

defense department bureaucrat. *Hamdi v. Rumsfeld*, 243 F. Supp. 2d 527, 535 (2002) (“If the Court were to accept the Mobbs Declaration as sufficient justification for detaining Hamdi in the present circumstances, then it would in effect be abdicating any semblance of the most minimal level of judicial review. In effect, this Court would be acting as little more than a rubber-stamp.”). At the same time, the Supreme Court rejected the government’s argument that the separation of powers limited judicial review of the legality of Hamdi’s detention, 124 S. Ct. at 2650, and upheld Hamdi’s right to have access to appointed counsel, 124 S. Ct. at 2652—both holdings portended by this Court’s rulings in this case over two years ago.

Following the issuance of the Supreme Court’s opinion, the United States Court of Appeals for the Fourth Circuit on August 6, 2004, issued its Judgment remanding the case to this Court for further proceedings consistent with the Supreme Court’s opinion. On August 11, 2004, the parties jointly filed a Motion to Stay Proceedings for twenty-one days to permit additional negotiations—that remain ongoing—that may result in Hamdi’s release. In addition, Hamdi filed a Motion for Leave to File an Amended Petition of Habeas Corpus.

On August 19, 2004, the Court issued an Order granting in part the parties’ Motion to Stay Proceedings and set this matter for a full hearing on the merits on August 30, 2004. In light of the Supreme Court’s ruling and this Court’s August 19, 2004, Order, Hamdi hereby files a Hearing Memorandum to address matters presented by the hearing scheduled by the Court.

I. The Court Has Jurisdiction To Conduct a Hearing

As a general matter, an interlocutory appeal divests a district court of jurisdiction “over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58-59 (1982). The district court thereafter regains jurisdiction upon the issuance of the mandate

by the clerk of the court of appeals. *United States v. Montgomery*, 262 F.3d 233, 239 (4th Cir. 2001). Pursuant to Federal Rule of Appellate Procedure 41(b), the mandate “must issue 7 calendar days after the time to file a petition for rehearing expires” Fed. R. App. P. 41(b). And, pursuant to Federal Rule of Appellate Procedure 40(a)(1), the time for filing a petition for rehearing expires “45 days after entry of judgment” in a civil case in which the United States or its officer is a party. Fed. R. App. P. 40(a)(1). Accordingly, the mandate in this case should issue on September 27, 2004—forty-five plus seven days after August 6, 2004, the date the Fourth Circuit issued its judgment remanding the case to this Court. This Court unquestionably will have jurisdiction on that date.

For a number of reasons, however, this Court may have jurisdiction to conduct a hearing prior to September 27, 2004. First, the sole issue on appeal was whether the Mobbs Declaration, a document submitted by the government to support Mr. Hamdi’s classification as an “enemy combatant,” provided a sufficient basis for meaningful judicial review. See August 21, 2002, Certification Order and Stay, *Hamdi v. Rumsfeld*, Case No. 2:02cv439. Because the appeal was from an interlocutory order certified for appellate review under 28 U.S.C. § 1292(b), this Court at all times retained jurisdiction over other aspects of the case not involved in the appeal. See *Griggs*, 459 U.S. at 58-59; *Railway Labor Exec. Assoc. v. City of Galveton*, 898 F.2d 481, 481 (5th Cir. 1990). This Court therefore enjoys jurisdiction to address all matters other than whether the Mobbs Declaration, standing alone, provides an adequate basis for meaningful judicial review.

Second, the mandate rule has virtually no relevance in this case because the Supreme Court has left nothing for the Fourth Circuit to do. The mandate rule is designed to avoid circumstances in which two courts address the same issues at the same time. *Montgomery*, 262 F.3d at 239-40;

United States v. DeFries, 129 F.3d 1293, 1303 (D.C. Cir. 1997). Here, the Supreme Court has vacated the Court of Appeals' decision and remanded the case for further proceedings consistent with its opinion, 124 S. Ct. at 2653, and the time for seeking rehearing in the Supreme Court has expired. See U.S. Sup. Ct. R. 44. The Fourth Circuit "is bound by the decree as the law of the case, and must carry it into execution, according to the mandate. That court cannot vary it, or examine it for any other purpose other than execution, or give any other or further relief, or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded." *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895). For this reason, the Fourth Circuit's August 6, 2004, order simply remands the case to this Court for further proceedings. Accordingly, the "risk of an intermural collision [from further proceedings] is small" *United States v. Brooks*, 145 F.3d 446, 456 (1st Cir. 1998), and the Court therefore enjoys shared jurisdiction. See *United States v. Stafford*, 29 F.3d 181, 184 (5th Cir. 1994) (holding district court had jurisdiction to resentence defendant after appellate court remanded for resentencing but before issuance of mandate). *But see Kusay v. United States*, 62 F.3d 192, 196 (7th Cir. 1995) (holding district court lacked jurisdiction to deny habeas petition before issuance of mandate following remand from appellate court for evidentiary hearing).

Third, although identified as a rule of "jurisdiction," the mandate rule does not refer to statutory jurisdiction or mandatory language under the Federal Rules. *Local P-171 v. Thompson Farms Co.*, 642 F.2d 1065, 1074 (7th Cir. 1981). On the contrary, the mandate rule is simply a "judge made rule" that "should not be employed to defeat its purpose or to induce needless paper shuffling." *Kern Oil and Refining Co. v. Tenneco Oil Co.*, 840 F.2d 730, 734 (9th Cir. 1988) (quoting 9 J. Moore, *Federal Practice*, ¶ 203.11 at 3-44 n.1 (1980)); accord *RCA Corp. v. Local 241*,

700 F.2d 921, 924 (3d Cir. 1983); *Thompson Farms Co.*, 642 F.2d at 1074.

Here, the Supreme Court has found that “[p]lainly, the ‘process’ Hamdi has received is not that to which he is entitled under the Due Process Clause.” 124 S. Ct. at 2651. Moreover, any additional delay to await the issuance of the mandate will serve no purpose other than to thwart “a principal aim of the writ [of habeas corpus:] . . . to provide for swift judicial review of alleged unlawful restraints on liberty.” *Peyton v. Rowe*, 391 U.S. 54, 63 (1968). In other words, waiting until the issuance of the mandate would serve no purpose other than to accommodate form and devalue the substance of this proceeding. Nonetheless, should the Court have any question as to the propriety of additional proceedings before September 27, 2004, the Court need only wait, after going forward with additional proceedings, to execute a docket entry following receipt of the Fourth Circuit’s mandate. *See United States v. Coleman*, 688 F.2d 663, 664 (9th Cir. 1982) (affirming jurisdiction of court to conduct hearing prior to issuance of mandate because docket entry was not entered until after receipt of mandate).¹

II. Issues to be Addressed by the Court

A. The Government Has Failed to Provide Sufficient Notice of the Factual Basis for Hamdi’s Classification as an “Enemy Combatant”

The Supreme Court held in this case that “a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decisionmaker.”

¹ Negotiations to resolve this case are proceeding in good faith and may well produce a resolution of this matter, if not by August 30, 2004, certainly within a short time thereafter. For this reason, notwithstanding Petitioner’s strong interest in a prompt hearing to address his claims and belief that this Court has jurisdiction to do so, Petitioner almost certainly would not object to a short delay of the hearing if sought by the government in the interest of finalizing a resolution in this case that would result in Petitioner’s release from custody.

124 S. Ct. at 2648. Moreover, the Court held that “[i]t is equally fundamental that the right to notice and an opportunity to be heard ‘must be granted at a meaningful time and in a meaningful manner.’” *Id.* at 2649 (quoting *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)).

In order to implement these directives, the Court must determine whether the government has provided sufficient notice to Hamdi “of the factual basis for his classification.” It has not. Specifically, the government has failed to provide adequate notice of the factual basis for the government’s allegation that Hamdi was “‘part of or supporting forces hostile to the United States or coalition partners’ and ‘engaged in an armed conflict against the United States.’” *See* 124 S. Ct. at 2645.

The sole factual support submitted in support of Hamdi’s classification as an “enemy combatant” to date is contained in the Mobbs Declaration, a nine-paragraph declaration by a defense department bureaucrat with no personal knowledge of the facts of Hamdi’s conduct. As this Court has acknowledged, the Mobbs Declaration “leads to more questions than it answers.” 243 F. Supp. 2d at 533. Indeed, the Mobbs Declaration “never claims that Hamdi was fighting for the Taliban, nor that he was a member of the Taliban.” Moreover, although the Mobbs Declaration states that Hamdi admitted that he “entered Afghanistan the previous summer to train with and, *if necessary*, fight for the Taliban.” “[a] possible inference from Hamdi’s alleged statement was that he was not fighting for the Taliban when he was surrendered to the Northern Alliance forces.” *Id.* at 534. The Mobbs Declaration therefore does not allege that Hamdi was “part of or supporting” the Taliban or that Hamdi was “engaged in an armed conflict against the United States.”

In addition, Mobbs’ allegation that Hamdi was armed is of no moment if he was not engaged in armed conflict. And in light of the unstable circumstances prevailing in Afghanistan and the

ubiquity of weapons, any evidence that Hamdi possessed a rifle does not establish that Hamdi was in fact a combatant. See Mark Landler, *A Nation Challenged: Guns*, N.Y. Times, Jan. 14, 2002, at A1 (noting that people in Afghanistan do not feel safe without weapons and that weapons are embedded in Afghan culture) (attached as Exhibit 1). People in Afghanistan, in fact, even take weapons to weddings and fire celebratory shots in the air. Eric Schmitt, *U.S. Describes Ground Fire From Afghan Wedding*, N.Y. Times, July 4, 2002, at A6 (attached as Exhibit 2).

Furthermore, the Mobbs Declaration fails to explain the “basis” for the ambiguous factual assertions contained in the document—the sources of the information, the conditions under which the information was purportedly obtained, the standard used to designate Hamdi as an enemy combatant, and whether exculpatory information exists. Without such information, Hamdi will not have an opportunity to properly respond to the alleged factual basis for his classification as an enemy combatant. For example, disclosure of the source and conditions under which the government has obtained its information may reveal whether such information was derived through bribery of foreign officials, cruel and inhuman treatment, or other circumstances which might call the veracity of the information into question.

In sum, the government has failed to provide a sufficient notice of the factual basis for the government’s allegation that Hamdi was “‘part of or supporting forces hostile to the United States or coalition partners’ and ‘engaged in an armed conflict against the United States.’” Unless the government provides this information prior to the hearing, the Court should find that Hamdi’s habeas petition should be granted due to lack of notice and order that he should be released from the government’s custody.

B. Is Mr. Hamdi an “enemy combatant”?

Three times in its plurality opinion, the Supreme Court identified a two-pronged definition of conduct that exclusively would warrant detention of Hamdi as an enemy combatant. 124 S. Ct. at 2639, 2641, 2645. Specifically, in order to be subject to detention, “Hamdi would need to be ‘part of or supporting forces hostile to the United States or coalition partners’ *and* ‘engaged in an armed conflict against the United States.’” *Hamdi*, 124 S. Ct. 2633, 2645 (2004) (emphasis added).

The Court therefore established two essential elements for designation as an “enemy combatant”: (1) membership or support for military forces hostile to the United States or its coalition partners; and (2) engagement in actual armed conflict against the United States. Unless the government establishes these two factual predicates for his detention, Hamdi must be set free.

C. May the United States Continue to Detain Without Charge Individuals Found to be Taliban Combatants?

In the alternative, even if the Court were to find that Hamdi was properly classified as an “enemy combatant,” it must still consider whether the government has authority to continue to detain him. The plurality opinion stated that Congress’ grant of authority under the Authorization for Use of Military Force (“AUMF”), 115 Stat. 224, with respect to the detention of combatants was coextensive with “the authority to detain for the duration of the *relevant conflict* . . . based on longstanding law-of-war principles.” 124 S. Ct. at 2641 (emphasis added). As Justice O’Connor explained, “longstanding law-of-war principles” generally authorize detention of prisoners of war only for the duration of an international armed conflict. *Id.* At the time the opinion was issued, Justice O’Connor wrote that the “relevant conflict” was “*apparently* . . . ongoing in Afghanistan.” *Id.* at 2642 (emphasis added). Nonetheless, the plurality left room for additional factual development

before this Court. In particular, the Court noted that the duration of the “relevant conflict” would turn in part on whether “the record establishes that United States troops are still involved in active combat in Afghanistan.” *Id.* at 2642.

Since the issuance of the Supreme Court’s opinion, the President of Afghanistan, Hamid Karzai, has not only “dismissed the Taliban threat as ‘exaggerated,’” but also identified Afghanistan’s private militias as “the country’s greatest danger.” Carlotta Gall and David Rohde, *Afghan President Describes Militias as the Top Threat*, N.Y. Times, July 12, 2004, Sec. A, p.1 (attached as Exhibit 3). Moreover, the commander of U.S. forces in Afghanistan has urged that “the government must reconcile with the rank-and-file Taliban.” Ann Scott Tyson, *A U.S. ‘proconsul’ in Afghanistan*, Christian Sci. Monitor, July 29, 2004, at p.6 (attached as Exhibit 4). In fact, the Afghanistan government is now seeking the support and reintegration of former Taliban officials into the political process with the consent of U.S. forces. Miranda Kennedy, *Karzai Courts Former Taliban Officials*, Nat’l Pub. Radio. August 3, 2004 (transcript attached as Exhibit 5). In other words, any conflict that remains ongoing in Afghanistan has almost nothing to do with the international conflict that otherwise authorized the seizure and detention of Taliban fighters in 2001 but instead is an internal security matter involving numerous factions.

If the Court finds that the United States is no longer engaged in “active combat” in the “relevant conflict” that authorized the detention of Taliban footsoldiers under international law in the first place, Hamdi must be released from the government’s custody. Similarly, if the “relevant conflict” that forms the basis for the authorization to detain Hamdi has ended, the Court must order Hamdi’s release.

D. Conditions of Confinement

Regardless of the Court's determination regarding Hamdi's status as an "enemy combatant" or the nature of the relevant conflict, the Court also should address the conditions of Hamdi's confinement if he is not ordered released. As the Supreme Court explained, detention as enemy combatant must be "merely a temporary detention which is devoid of all penal character' . . . 'A prisoner of war is no convict.'" 124 S. Ct. at 2640 (quoting W. Winthrop, *Military Law & Precedents* 788 (rev. 2d ed. 1920)). Therefore, Hamdi's solitary incommunicado confinement should end.

The Supreme Court has long recognized the unique hardship imposed by solitary confinement. *See Hutto v. Finney*, 437 U.S. 678, 685 (1978) (stating that "[c]onfinement in a prison or in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards"); *see also Furman v. Georgia*, 408 U.S. 238, 245 (1972) (Douglas, J., concurring) (stating that "solitary confinement may at times be 'cruel and unusual' punishment") (citing *inter alia In re Medley*, 134 U.S. 160 (1890)). In *Hutto*, the Court affirmed the district court which had found the conditions in the Arkansas prison system, including "[c]onfinement in punitive isolation . . . for an indeterminate period of time," constituted cruel and unusual punishment under the Eighth Amendment. *See* 437 U.S. at 681-82. Specifically, the Court affirmed the district court's order placing a maximum limit of 30 days on confinement in punitive isolation. 437 U.S. at 688. The Court also agreed with the district court's statement that punitive isolation "is not necessarily unconstitutional, but it may be, depending on the duration of the confinement and the conditions thereof." 437 U.S. at 685-86.

The Court's concern is grounded in the common-sense idea that solitary confinement may

be particularly detrimental to a prisoner's psychiatric condition. Indeed, as reflected in the attached memorandum authored by Dr. Stuart Grassian, "solitary confinement – that is, confinement of a prisoner alone in a cell for all or nearly all of the day, with minimal environmental stimulation and minimal opportunity for social interaction – can cause severe psychiatric harm. This harm includes a specific syndrome which has been reported by many clinicians. . . . In more severe cases, the syndrome is associated with agitation, self-destructive behavior, and overt psychotic disorganization." Opinion of Dr. Stuart Grassian at 2 (attached as Exhibit 6).

The Supreme Court has observed that the detention of "enemy combatants" should be "devoid of all penal character." More importantly, given the particularly onerous psychological effects that may result from continued solitary confinement, Hamdi respectfully asks the Court to order that Hamdi's conditions of confinement be modified to eliminate his detention in solitary incommunicado incarceration.

III. Procedural Matters

A. Order and Burden of Proof

According to the procedural scheme mapped out by the Supreme Court's plurality opinion, the government bears the burden of putting "forth credible evidence that the habeas petitioner meets the enemy-combatant criteria." 124 S. Ct. at 2649. If the government satisfies this evidentiary obligation, the plurality noted that "the onus could shift to the petitioner to rebut that evidence with more persuasive evidence that he falls outside the criteria." *Id.*

Although the plurality failed to identify the appropriate burden of proof, the Supreme Court has never required less than "clear and convincing" evidence to authorize a substantial deprivation of a citizen's liberty. *See Addington v. Texas*, 441 U.S. 418, 432-33 (1979). For this reason, the

Court should apply the “clear and convincing” standard of proof to the evidence adduced to support the indefinite detention of Hamdi as an “enemy combatant.” Indeed, application of this standard of proof would reaffirm the principle that “[i]n our society liberty is the norm,” and detention without trial “is the carefully limited exception.” 124 S. Ct. at 2646 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).²

B. Admissibility of Hearsay

The plurality explained that “[h]earsay . . . may need to be accepted as the most reliable available evidence from the Government in such a proceeding” because of the nature of ongoing military conflict and the burden imposed by requiring the government to adduce non-hearsay evidence. 124 S. Ct. at 2649 (emphasis added). Nonetheless, the plurality did not authorize the wholesale introduction of hearsay in the absence of a showing that non-hearsay evidence is unavailable due to the ongoing military conflict. *See id.* In other words, this Court need not accept hearsay evidence that purportedly supports Hamdi’s classification as an enemy combatant unless the government first establishes the necessity to introduce hearsay instead of non-hearsay evidence.

² Requiring clear and convincing evidence to support Hamdi’s detention as an enemy combatant is particularly warranted given the ongoing reports of the government’s detention of large numbers of innocent people swept up in the aftermath of the Afghanistan conflict. *See* Samara K. Der, *How Expert Gets Detainees to Talk*, the Capital Times (Madison, Wi.), Aug. 16, 2004, at 1A (reporting that Guantanamo interrogator admitted that “the United States is holding dozens of prisoners at the U.S. Naval Base at Guantanamo who have no meaningful connection to al-Qaida or the Taliban.”) (attached as Exhibit 7); James Meek, *People the Law Forgot*, The Guardian, Dec. 3, 2003 (describing former Guantanamo detainees released by government) (attached as Exhibit 8); Stuart Taylor, Jr., *Guantanamo: A Betrayal of What America Stands For*, the Atlantic, July 29, 2003 (reporting that up to a third of Guantanamo detainees may be innocent) (attached as Exhibit 9); Greg Miller, *Many Held at Guantanamo Not Likely Terrorists*, L.A. Times, Dec. 22, 2002, at 1 (reporting that at least ten percent of Guantanamo detainees may be innocent) (attached as Exhibit 10).

C. Discovery

The plurality repeatedly emphasized the importance of affording Hamdi “a fair opportunity to rebut the Government’s factual assertions before a neutral decisionmaker.” 124 S. Ct. at 2648, 2649. In order for Hamdi’s opportunity for rebuttal to be fair, however, he must receive not only notice but also access to the government’s basis for classifying him as an “enemy combatant.” In particular, Petitioner requests that the Court require Respondents to provide copies of: (1) any statements or reports of statements made by Petitioner while in the custody of the United States or the Northern Alliance; (2) any documents the government intends to rely upon at the hearing; (3) any document relied upon by Mr. Mobbs in drafting his declaration; and (4) any record of compensation provided to the Northern Alliance for the transfer of Hamdi into U.S. custody. Petitioner has previously requested that the government provide this information. *See* Letter to Acting S.G. Paul Clement dated August 19, 2004 (attached as Exhibit 11).

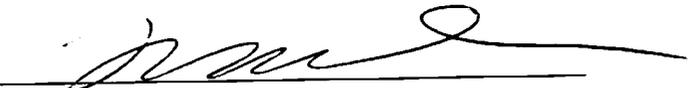
Furthermore, to the extent that this discovery may show that witnesses in Guantanamo Bay, Cuba, or elsewhere may be relevant to the issues before the Court, Petitioner requests that the Court, upon a showing that such witnesses may have relevant information, permit Petitioner to seek to obtain additional testimony and supplement the record. Because Petitioner has received no discovery related to his classification as an “enemy combatant,” and because the Court promptly scheduled a hearing within 11 days of the Court’s August 19, 2004, Order, Petitioner will have no opportunity prior to the hearing to obtain such testimony.

Conclusion

Wherefore, Petitioner Hamdi respectfully requests that the Court order Hamdi’s release, and order other appropriate relief in accordance with 28 U.S.C. § 2243.

Respectfully submitted,

FRANK W. DUNHAM
Federal Public Defender

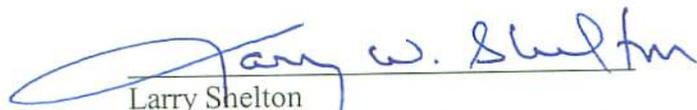
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CERTIFICATE OF SERVICE

I certify that on this 26th day of August, 2004, a copy of the foregoing was hand-delivered to Lawrence R. Leonard, Managing Assistant United States Attorney, at the Office of the United States Attorney, Eastern District of Virginia, Norfolk Division, World Trade Center, 101 W. Main, Suite 8000, Norfolk, VA 23510.


Larry Shelton
Supervisory Assistant Federal Public Defender

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January 14, 2002 Monday
Late Edition - Final

SECTION: Section A: Column 1: Foreign Desk; Pg. 1

LENGTH: 1222 words

HEADLINE: A NATION CHALLENGED: GUNS;
Kabul Tries to Disarm Its Citizens In a Step Toward Law and Order

BYLINE: By MARK LANDLER

DATELINE: KABUL, Afghanistan, Jan. 13

BODY:

Starting Monday, people here whose jobs require them to carry guns will also have to carry government identification cards, the authorities said today. It is part of an ambitious plan by Afghanistan's interim rulers to end the ubiquity of weapons in this heavily armed society.

Disarming Afghanistan's 24 million people is critical to restoring order in the country, according to Gen. Bismullah Khan, a Northern Alliance commander who oversees security in Kabul and its surrounding province.

General Khan said that crime had spiked in Kabul in the chaotic aftermath of the Taliban rule, as Northern Alliance soldiers, militia members, irregular troops, security guards and any number of other people with guns roam this city.

Traumatized by two decades of war and repression, the people of Kabul now face the more pedestrian, but equally lethal, dangers of banditry and car-jacking as well as the threat of death by violence.

Once the ID cards are issued, the authorities plan to require civilians to register their weapons with the police. At that time, they will take on the sensitive issue of who is allowed to keep guns in their homes.

"We haven't decided to go house to house yet," General Khan said, "but we are studying how to do it." Officials said they hoped to carry out the program across the country.

The Taliban government also believed that guns destabilized society and it, too, devoted considerable resources to collecting weapons. Successive rulers of Afghanistan have discovered, however, that with an estimated 700,000 armed men, reducing the corrosive influence of guns is an extremely difficult task.

It is complicated by the fact that after 23 years of nearly constant war, people here do not feel safe without a gun. Firearms are deeply embedded in the Afghan culture, as the image of a mujahedeen fighter with an AK-47 strapped to his shoulder attests.

"After 23 years of war, you can't expect there to be a sense of security in Afghanistan," General Khan said.

Even telling soldiers from civilians is tricky. Security guards wear military-style uniforms and carry machine guns. Some civilians, like Habib Samadi, wear camouflage fatigues because it helps them navigate checkpoints in the city.

Mr. Samadi just lost his older brother to violence. The brother, Walid Samadi, a cabdriver, had accepted a job as a driver for three Northern Alliance soldiers while they were in Kabul, the capital they had helped wrest from the Taliban.

A week later, Walid Samadi's brothers spotted his taxi, now painted black, cruising the streets of the city. They identified it by a placard on the rear that said "good luck."

Two men were arrested and confessed to having killed Walid Samadi. His body was dumped in a well in a remote part of the Shamali Valley, north of here. The soldiers said they had ordered him out of the car and shot him in the face, chest and back as he pleaded for his life.

It is a tragic but hardly unusual story. From taxi drivers to school workers, everyone here seems to know a recent crime victim.

"Whenever there is a knock at the door or a small noise outside, I jump," said Naima Samadi, as she huddled in her unheated home, cradling a photo of her slain son. "I am afraid that my other sons will be killed."

The lawlessness extends beyond the capital. In southern Afghanistan, where the interim government has little control and the United States continues to bomb suspected hide-outs of Taliban fighters and Al Qaeda terrorists, the lack of security is hampering relief efforts.

The United Nations has not been able to distribute food in Kandahar, the former stronghold of the Taliban, because of fears that armed bandits will attack its convoys and workers.

"Security continues to be a significant obstacle to reaching people," said Jordan Dey, a spokesman for the World Food Program.

Last week, Afghanistan's interim government took its first step to combat the lawlessness. It ordered between 300 and 400 Northern Alliance troops, who had been loitering in Kabul since the Taliban fled their advance on Nov. 9, to leave the city.

Today, the interior minister, Yunus Qanooni, said the bulk of the soldiers had moved to barracks outside Kabul. Those still here are waiting for quarters to be readied.

While Kabul is peaceful enough by day, there has been a surge in nighttime robberies by people wearing uniforms, some of whom claim to be looking for weapons or fugitive Taliban members.

Abdul Karim, director of research for the Kabul Police, said there had been 15 such robberies during one week, from Dec. 30 to Jan. 6.

That compares with 100 reported cases of all serious crimes: robbery, murder, drug smuggling and the like in the last two months. "This is not a normal situation," Mr. Karim said. "When there are no guns in the hands of people, the number of robberies will decrease. Right now, it's a very difficult situation to control."

The police are also hopelessly outgunned. Mr. Karim said there were only 100 trained police officers in Kabul, constituting 30 percent of the force. The other 70 percent, some of them former soldiers, were hired off the street to help with assignments.

"Our problem is that we lack the basic elements of a police department," Mr. Qanooni said. "It was completely destroyed by the Taliban. We must rebuild it from zero."

The New York Times January 14, 2002 Monday

While the government creates a new police force, the military is starting to confiscate weapons from troops no longer on active duty. Gen. Qalandar Big, who runs the main ammunition depot here, said he had collected 2,000 guns.

General Big showed off a small collection of machine guns and rocket-propelled grenade launchers that he said came from Northern Alliance troops. But he became evasive when asked where the 2,000 weapons were, saying they had not yet been delivered to him. "We have not faced resistance," General Big said. "Most people in Afghanistan are in favor of turning in their weapons."

Still, he noted that when the Taliban abandoned Kabul, they left very few weapons behind. Many of those people remain at large, in the rugged hills of eastern Afghanistan near the Pakistan border. They constitute another armed and dangerous group.

Confiscating weapons from civilians poses its own difficulties. When the Taliban collected guns from families, for example, people often turned in one, while keeping a spare.

Mr. Qanooni said the government would rather entice than compel people to surrender their weapons. The most basic solution, he said, would be to provide economic opportunities so that people no longer believed that they needed a gun to survive.

"We need to give jobs to the mujahedeen," he said. Failing that, Mr. Qanooni said the government could offer to buy guns from their owners. "If we spent \$200 million, we could buy all of them," he said. "Unfortunately, we do not have it."

Perhaps the thorniest challenge is to break the cycle of violence in Afghanistan. The murder of Walid Samadi was the second violent death in his family; his eldest brother Farid, an engineering student, was killed by a shell during the Afghan civil war in 1994.

Asked whether he wanted to carry a gun, Walid's younger brother, Habib, shook his head vigorously. "We don't like to carry weapons," he said. "We hate weapons." After looking at his grief-stricken mother, he added, "Of course it would be good for the security of our family."

URL: <http://www.nytimes.com>

GRAPHIC: Photos: Gen. Bismullah Khan, a Northern Alliance commander who is overseeing security in Kabul.; Naima Samadi held a picture of her son Walid, who was killed driving for Northern Alliance soldiers. With her are her sons Habib, right, and Zabib. (Photographs by Chang W. Lee/The New York Times)(pg. A8)

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July 4, 2002 Thursday
Late Edition - Final

SECTION: Section A; Column 1: Foreign Desk; Pg. 6

LENGTH: 964 words

HEADLINE: U.S. Describes Ground Fire From Site in Afghan Village

BYLINE: By ERIC SCHMITT

DATELINE: WASHINGTON, July 3

BODY:

The American air assault against targets in a string of villages in southern Afghanistan on Monday that residents say killed 40 civilians and injured 100 was the culmination of a larger, weeks-long mission to kill or capture pockets of dug-in Taliban fighters. Pentagon officials said today.

A military spokesman in Afghanistan told The Associated Press that the bombing had been prompted by antiaircraft fire from a village compound where a wedding was taking place, possibly explaining the casualties.

The overall operation deployed as many as 400 American, Afghan and other allied soldiers and commandos in small teams over hundreds of square miles in an area of Oruzgan province known to shelter Taliban fighters and sympathizers.

Coalition forces repeatedly skirmished with suspected Taliban in the days and weeks before Monday's raid, killing some of the enemy, and American warplanes flying over the area were fired upon routinely, said Lt. Gen. Gregory Newbold of the Marine Corps, the operations director for the Joint Chiefs of Staff.

On Monday, as the ground sweeps continued, American spotters observed antiaircraft guns firing at an AC-130 gunship circling nearby. All six sites attacked by the gunship had antiaircraft guns that were shooting at the lumbering, low-flying plane, but the fiercest shooting that day, as in previous days, came from a compound in the tiny village of Kakrak, officials said.

A team of American and Afghan investigators from Kandahar arrived in the village today to begin to sort out a tragedy that prompted the Afghan president, Hamid Karzai, to criticize his American allies sharply, and caused President Bush's spokesman to issue an unusual statement of condolences over the loss of life. The Pentagon has refused to say whether the AC-130 was responsible for the casualties while the inquiry is under way.

Residents of the village told investigators that the American bombardment hit a compound where there was a wedding celebration, according to pool reporters traveling with the officials. Villagers acknowledged they fired

The New York Times July 4, 2002 Thursday

celebratory rifle shots during the day, but they said there was no fire for least five hours before bombs were dropped. The air assault, they said, began around 1 a.m. and lasted for about three hours.

The villagers also told investigators that the compound held no weapons. They showed the investigators and reporters blood and other remains, saying the dead had been quickly buried according to their Muslim customs.

But a spokesman for the investigation team, Maj. Gary Tallman, told The A.P. that an antiaircraft gun was firing from inside the compound when the AC-130 attacked. The same gun had fired at American reconnaissance planes during the previous two days in coordination with other antiaircraft guns in the area, Major Tallman said.

Major Tallman acknowledged to The A.P., however, that no wreckage of an antiaircraft gun had been found in the compound. Spokesmen for the Central Command in Tampa, Fla., said they had been unable to reach Major Tallman to verify his comments.

But officials at the Pentagon said that the antiaircraft fire and the civilians certainly appeared to be close to one another.

"Our personnel observed them firing before these C-130's engaged," said General Newbold. "There is a difference between firing that goes in celebration and clearly directed fire of a different caliber."

General Newbold also said that a reconnaissance team had uncovered 15 tons of munitions, including antiaircraft weapons, in a cache about 10 miles from the village. "It's symptomatic of the area and the capabilities that they have," he said.

The Pentagon spokeswoman, Victoria Clarke, said that it was unclear whether the Taliban had used human shields in this episode, which she described as one of their common tactics. "It is not unusual for the Al Qaeda or the Taliban to place weapons and ammunition and fighters in areas where people, civilians, are living, around schools, areas like that," she said.

"There are pockets of Al Qaeda and Taliban who wish to do harm to us, who wish to do harm to the Afghan transitional government," Ms. Clarke said.

In a separate but related part of the raid on Monday, General Newbold said that a B-52 had dropped seven satellite-guided bombs on cave complexes a few miles from Kakrak. One of the bombs went astray and was originally thought to have caused the casualties, but that possibility has been largely ruled out, officials said.

"The caves were bombed because they had fighting emplacements outside of them," General Newbold said. "They were not occupied, but they represented a strong point which -- let's call them the Taliban -- could man and therefore greatly threaten our forces."

Villagers in Kakrak claimed they were victims, not villains. Villagers took reporters to the roof of a mud-brick building with a 5-foot-by-5-foot hole that residents said had been caused by the bombing. Inside the house, there were four small bloodstains and a pair of children's sandals.

The groom-to-be, Abdul Malik, said 25 members of his family, including his father and some brothers and sisters, had been killed. He said he and his bride were in a different village at the time the attack happened.

The American investigators, however, appeared to be skeptical that the evidence presented matched the large casualty reports. "There should be more blood," reporters quoted the investigators saying. "Where are the bodies?"

Pentagon officials acknowledged that the local custom of burying bodies as soon as possible could make it difficult to determine the precise number of people killed.

American military doctors and psychiatrists for the second day visited some of the 21 civilians, many of whom are young children, who are being treated in two hospitals in Kandahar.

URL: <http://www.nytimes.com>

GRAPHIC: Map of Afghanistan highlighting Kakrak: An American plane was fired on from Kakrak. U.S. officials said.

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July 12, 2004 Monday
Late Edition - Final

SECTION: Section A; Column 6: Foreign Desk; Pg. 1

LENGTH: 1330 words

HEADLINE: AFGHAN PRESIDENT DESCRIBES MILITIAS AS THE TOP THREAT

BYLINE: By CARLOTTA GALL and DAVID ROHDE

DATELINE: KABUL, Afghanistan, July 11

BODY:

President Hamid Karzai said Sunday that Afghanistan's private militias had become the country's greatest danger -- greater than the Taliban insurgency -- and that new action was required to disarm them.

"We tried to do it by persuasion," Mr. Karzai said in an interview with The New York Times two days after he had postponed parliamentary elections by six months because of the threat of disruption. But now, he said, "The stick has to be used, definitely."

Mr. Karzai did not specify what action he would undertake. But his assessment represented a new ranking of Afghanistan's problems, with attacks by Taliban supporters and slow voter registration suddenly receding, to be replaced by worries about election intimidation by warlords and militias.

Mr. Karzai, who has largely governed through consensus, met with Afghan and international officials later Sunday to lay out a new strategy.

The United Nations, NATO and the United States-led coalition are involved in Afghanistan, training the police, augmenting the army and providing security for the elections. Mr. Karzai is counting on that process to continue to improve his government's standing.

His leadership over two and a half years, with heavy American backing, has rested largely on accommodation with various forces, an approach he defended Sunday. But his frustration, and that of his top ministers, seemed acute.

Asked to rate his government on how well it had achieved its goals, Mr. Karzai offered the barely passing grade of D. He said that corruption remained rampant and that the failure of the disarmament program was a source of keen anxiety among the people.

The New York Times July 12, 2004 Monday

Out of the 60,000 armed militiamen, only 10,000 have been disarmed and demobilized, and the program has stalled rather than accelerated in recent months. The hope now is to disarm 60 percent to 70 percent of the militias before the new parliamentary elections in April 2005, the leader of the joint election commission, Zakim Shah, said Saturday.

Mr. Karzai said the struggle with the warlords would be decisive, suggesting that his government and society were at a turning point.

Asked what lessons he could offer for Iraq, he said Washington should not let private militias flourish.

Postponing the parliamentary elections had not been his preference, he said, but he acknowledged that Afghans wanted to see militias disarmed and sent away first.

"The frustration that we have in this country is that progress has sometimes been stopped by private militias, life has been threatened by private militias, so it should not be tolerated," he said. Without disarmament, "the Afghan state will have really serious difficulties," he said.

Mr. Karzai and important foreign officials in Afghanistan said that despite the delay in elections, the country should take pride in the independence of the new joint election commission, which delayed the parliamentary elections in the face of the cabinet's opposition. The plan had been for parliamentary and presidential elections to be held simultaneously.

Presidential elections, which are considered simpler to carry out, are now scheduled for Oct. 9, already a delay of four months from the original timetable.

Mr. Karzai is widely expected to win in a field of a dozen minor challengers. An alliance of powerful northern political leaders and warlords has thrown its support behind Mr. Karzai, making it unlikely that he will face a serious challenge.

Critics have accused Mr. Karzai of striking a deal with the northern leaders. On Sunday, he denied that an agreement had been reached.

In recent months, the big concern had been to register voters at the time of an insurgency by Taliban supporters. Yet registration is progressing, especially in rural areas, and militias are now looming as the primary threat to free and fair elections, Mr. Karzai said. "We hear of intimidations even now," he said.

Yet the likelihood of disarmament in the next six months remains uncertain. Mr. Karzai has always tried to bring the warlords on board rather than confront them, and the tension between his deal making and his new declaration of toughness has not been resolved.

Despite vows to toughen his tactics, Mr. Karzai spent much of the interview explaining the need for accommodation. He would be tough on the process of disarmament, not on individuals, he said.

Jean Arnault, the leader of the United Nations mission in Afghanistan, which is helping in the disarmament and elections, said the United Nations favored disarmament through cooperation rather than sanctions. "Sanctions push people to find new ways to skirt the issue," he said Saturday in an interview.

Mr. Karzai spoke of his most recent trip to the United States, when he visited the room in Philadelphia where the Declaration of Independence was signed, and reflected on the task of building a functioning democracy.

"In Afghanistan we will have many more messy years to come, before we can claim that we have succeeded," he said. "This is a country in the making, and I am very realistic about that."

"We have succeeded in bringing new money to Afghanistan in a very strong manner. We have succeeded in stabilizing the economy," he said. "But we have failed to curb corruption" and to disarm the militias, he said.

The New York Times July 12, 2004 Monday

Nevertheless, compared with two years ago, when internal government rivalries and the assassination of his vice president forced him to accept American bodyguards who still protect him today, he said he now had a government that worked.

"It has changed," he said. "We are a government. Two years ago we were not. Today I can decide things. Two years ago we could not."

Afghan security officials said that another serious concern for Afghanistan was foreign interference, notably but not only by Pakistan. Foreign states may be behind some of the violence that plagues Afghanistan, one security official warned this week.

A bomb exploded Sunday morning in Herat in western Afghanistan, killing five civilians, including a 12-year-old boy, and wounding 21 others, said the police chief of Herat, Ziauddin Mahmoudi. In a statement later on Sunday, Mr. Karzai condemned the attack, saying it was "the work of Afghanistan's enemies who are desperately trying to derail Afghanistan from the path of reconstruction, peace and democracy."

Senior officials in southern Afghanistan have warned that leaders of the former Taliban government are increasing their insurgency there and in the southeast, and that they are gaining popular support.

Mr. Karzai, who will visit Pakistan this month, said he was concerned about the training in Pakistan of militants, who then cross over and carry out attacks in Afghanistan. Afghan troops recently captured a militant who said he had been trained in Pakistan, Mr. Karzai said. The government raises the issue with Pakistan "on a daily basis," he said, adding that he would like for Pakistan to do more.

But he dismissed the Taliban threat as "exaggerated." He differentiated those attacks from bombings and other acts of "terrorism" and "warlordism," which he said were the bigger problems.

He described relations with Afghanistan's principal neighbors, Iran and Pakistan, as cooperative, and said both had benefited from Afghanistan's recovery. "We are thinking from a businessman's point of view. It is very businesslike. We want to make money -- and how do you make money? -- by trading with our neighbors," he said.

He said if he won a new five-year term in October, he would do things "very differently" and not trap himself in a coalition with people who did not support change.

"I will try to have as much of a professional, technocratic cabinet as possible, especially in the departments where there is the need for them," he said. But he acknowledged that he would still have to balance that with a policy of bringing factional leaders or warlords into the government. "The success will come when the balance is right," he said.

URL: <http://www.nytimes.com>

GRAPHIC: Photo: President Hamid Karzai of Afghanistan expressed concern yesterday that private militias and warlords would try to disrupt elections. (Photo by Hiromi Yasui for The New York Times)(pg. A9)

LOAD-DATE: July 12, 2004

The Christian Science Monitor, July 29, 2004

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Christian Science Monitor (Boston, MA)

July 29, 2004, Thursday

SECTION: WORLD: Pg. 06

LENGTH: 1129 words

HEADLINE: A US 'proconsul' in Afghanistan

BYLINE: By Ann Scott Tyson Correspondent of The Christian Science Monitor

DATELINE: KABUL, AFGHANISTAN

HIGHLIGHT:

Since taking command of US forces here, Lt. Gen. David Barno has focused US forces on nation building.

BODY:

When President Hamid Karzai chose to stand up this week to Afghanistan's most powerful warlord, Defense Minister Marshal Mohammed Fahim, he did so with the confidence that the US-led coalition here would keep the general's sizable militia in check.

As NATO forces stepped up patrols in Kabul, the peaceful announcement of Mr. Karzai's bold decision to bypass the defense chief as a vice presidential candidate was welcomed by one man in particular: top American officer Lt. Gen. David Barno.

"Rejection of violence and the recognition that peaceful changes are executed through the ballot boxes are both marks of an emerging democracy." General Barno told the Monitor on Wednesday. "Military action of any type is absolutely inappropriate in this evolving and maturing democratic political structure," he stressed.

Combining a soldier's focus with a diplomat's finesse, Barno has, over the last nine months, molded a new, holistic approach to Afghanistan aimed at strengthening the central government against challenges from warlords and insurgents alike. In essence, he's turned a faltering, combat-centric US military strategy on its head - and taken on a role beyond the usual scope of a US military commander.

Political progress, not sweeping infantry offensives, is the measuring stick of success in Afghanistan today, he says.

"Our main effort, as we'll call it in military terms, is for the election... to be successful in the fall." Barno said in an earlier interview in his spartan Kabul office. "We are fighting a classic counter-insurgency campaign here - it does not have a kinetic solution to it."

A methodical and unpretentious West Point graduate, Barno acts more as mediator than commander - more proconsul than three-star general. He resides in the American embassy compound in Kabul, an hour's drive from the sprawling and heavily fortified US military base at Bagram.

A diplomat's schedule

He begins each day with a tete-a-tete with US ambassador Zalmay Khalilzad, and meets a constant stream of Afghan leaders, UN officials, and foreign dignitaries.

As political tensions mounted this week, Barno and Mr. Khalilzad met daily with key leaders to reinforce "the importance of peaceful means of change," he told the Monitor, as the US military monitored the situation "for any changes or increase in tension."

The Christian Science Monitor, July 29, 2004

"The political process underway, leading to both Presidential and Parliamentary elections is the right outlet for all expressions of differences," he says.

He also held a string of meetings with everyone from the chief of staff of the Afghan defense ministry to the commander of the International Security Assistance Force in Kabul and the senior UN representative.

Election security a key priority

Ensuring a smooth presidential election on Oct. 9 is the primary aim of a new military operation Barno launched this month. Thousands of US soldiers, Afghan National Army (ANA) troops, and police are stepping up patrols and targeted raids in the south and east to stem deadly attacks by insurgents seeking to disrupt voter registration and the election. The US military has also been flying Afghan and UN election officials to far-flung reaches of the country and protecting them with US troops in an effort to widen grassroots participation and set up voter registration and polling sites.

Registration success

The coordinated effort has paid off. Nearly 80 percent of Afghanistan's estimated 10 million eligible voters have registered for the election. UN spokesman Manoel de Almeida e Silva announced last week in Afghanistan.

Another challenge involves preventing the tens of thousands of armed militia led by regional warlords from interfering with the elections. Indeed, 65 percent of Afghan people blame warlords and local commanders for the lack of security in Afghanistan, according to a survey of 2,300 Afghan voters released this week by the International Republican Institute and funded by the US Agency for International Development.

Some observers say the shift in the US approach in Afghanistan was long overdue, while others criticize US forces for overstepping traditional boundaries between fighting and giving aid.

Wednesday, the Nobel prize-winning humanitarian agency Medecins Sans Frontieres (MSF) said it was withdrawing completely from Afghanistan, citing security concerns and frustration with the US military. The group rejects military involvement in relief efforts, arguing that it endangers the independent status of humanitarian workers.

"The deliberate linking of humanitarian aid with military objectives destroys the meaning of humanitarianism. It will result, in the end, in the neediest Afghans not getting badly needed aid - and those providing aid being targeted," said Nelke Manders, Head of Mission Afghanistan for MSF, in a press release on the organization's website.

When Barno arrived last October, security and reconstruction formed what he calls the "yin and yang" of his new strategy.

"Our role is not the narrow counter terrorist role that we may have started in when initial operations began in Afghanistan, but now much more broadly framed, I think, to help assist with the ongoing political, economic, and in some ways even social, development of the country," says Barno.

He systematically sold his new approach to the US embassy, then the United Nations and international community, and finally the Karzai government.

Nation building would replace war fighting as the top US marching order. Large, long-range infantry sweeps would give way to more dispersed missions by smaller units with "ownership" of the districts surrounding their bases.

The military's new Provincial Reconstruction Teams (PRT) would act as a catalyst, branching out to bring development projects to tribal villages and meanwhile empowering the central and local governments that allocate the resources. Offensive military operations, such as a major push by a battalion of US Marines into the Taliban heartland of Oruzgan Province in June, are designed not as an end in themselves but to pave the way for the insertion of PRTs.

Open mind on low-level Taliban

Ultimately, Barno sees the solution for Afghanistan not in US forces hunting down the Taliban and other insurgent or radical groups. Instead, he says, the government must reconcile with the rank-and-file Taliban while bringing only a handful of about 150 hard-core opponents to justice.

Following a punishing daily routine, Barno takes a daily jaunt on the elliptical trainer, a rotating, low-impact treadmill. With little time for books, he ends the evening reading military reports. "His hobby" says former spokesman Lt. Col. Tucker Mansager, "is keeping his soldiers alive."

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The New York Times August 13, 2004 Friday

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August 13, 2004 Friday
Late Edition - Final

SECTION: Section A; Column 3; Foreign Desk; THREATS AND RESPONSES: THE AMERICAN DETAINEE; Pg. 10

LENGTH: 648 words

HEADLINE: U.S. Signals End to Legal Fight Over an 'Enemy Combatant'

BYLINE: By PHILIP SHENON

DATELINE: WASHINGTON, Aug. 12

BODY:

The Justice Department's announcement that it may soon free Yaser Esam Hamdi, an American citizen captured in Afghanistan and held as an enemy combatant for nearly three years, signals an end to one of the longest and most important legal struggles to result from the Bush administration's war on terrorism, administration officials acknowledged Thursday.

The department disclosed this week that it was in negotiations to release Mr. Hamdi, who was denied access to a defense lawyer for most of his confinement, a situation that led the Supreme Court to sharply rebuke the administration this summer.

A lawyer for Mr. Hamdi, Frank W. Dunham Jr., said in an interview that he was convinced that the administration was "committed to this man's release rather than litigation" in lower courts, and that Mr. Hamdi might return shortly to Saudi Arabia, where he was raised.

"We've got to get a deal signed and get it implemented," Mr. Dunham said, adding that the negotiations were now down to small details, including what Mr. Hamdi would wear on release -- "Does he wear an orange jumpsuit or civilian clothes, those sorts of details." He said the Saudi government had provided assurances that if Mr. Hamdi returned to Saudi Arabia, he would be treated well.

Officials at the Justice Department, which failed to convince the Supreme Court that the government had the right to hold an American citizen as an enemy combatant indefinitely and without counsel, said that a decision to free Mr. Hamdi would not suggest any failure by the Bush administration.

Instead, department officials, speaking on condition of anonymity because of the continuing negotiations, said that a decision to release him would show only that the government had reached the end of a process of interrogations that determined that Mr. Hamdi had no additional intelligence information to provide to the United States and that he posed no threat.

"A large part of this is the passage of time," a department official said. "The two purposes for holding enemy combatants is, first, to gather intelligence and, two, to prevent an enemy combatant from rejoining an enemy unit."

In the case of Mr. Hamdi, the official said, the enemy was the Taliban government, "and the Taliban has pretty much been decimated."

The official would not say if the decision to open negotiations about freeing Mr. Hamdi had anything to do with the Supreme Court ruling.

The New York Times August 13, 2004 Friday

"I don't know if I can say that one way or the other," the official said. "We have just reached a place where our purposes for holding an enemy combatant are being evaluated."

Mr. Hamdi, who was born in Louisiana in 1980 but grew up in Saudi Arabia, was captured on a battlefield in Afghanistan in November 2001. He was never charged with a crime but was instead labeled an enemy combatant, accused by the Bush administration of fighting alongside the Taliban after the American invasion of Afghanistan to root out Al Qaeda. His American citizenship was verified after he was transferred to the American military base at Guantanamo Bay, Cuba, and he was eventually moved to a Navy brig in Charleston, S.C.

In its decision in June, the Supreme Court said that "a state of war is not a blank check for the president" and that Mr. Hamdi had to be given the ability to mount a legal challenge to his detention.

Eight justices said that Mr. Hamdi's detention had either been invalid from the beginning or had become so over time. In her opinion, Justice Sandra Day O'Connor said that "history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others."

Mr. Dunham said that he was convinced that Mr. Hamdi was no terrorist, and that he had never raised arms against American soldiers.

"Our position was that he wasn't even fighting," Mr. Dunham said.

URL: <http://www.nytimes.com>

GRAPHIC: Photo: Yaser Esam Hamdi may go to Saudi Arabia when released. (Photo by Associated Press)

LOAD-DATE: August 13, 2004

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National Public Radio

National Public Radio Morning Edition
August 3, 2004
Analysis: Taliban members joining Afghanistan's
government

Edition: 10:00-11:00

Article Text: The president of Afghanistan is trying to improve relations with the Taliban. Hamid Karzai is the US-backed leader who replaced the Taliban in Kabul. Insurgents have been fighting against his government ever since, but Karzai is trying to persuade some former Taliban officials to support him. Miranda Kennedy reports.

MIRANDA KENNEDY reporting: After months of rumors that Afghan President Hamid Karzai was courting former Taliban officials, he confirmed it, saying giving them legitimacy would help bring normalcy to war-torn Afghanistan. Jawed Ludin is his spokesman. Mr. JAWED LUDIN (Karzai Spokesman): This has been a policy that the president has promoted right from the beginning that Afghanistan is, once again, becoming really the home of all Afghans, except those who have committed crimes against this nation and who have blood on their hands. Simply because they have the Taliban hat on, we can't exclude them. They were just ordinary Afghans, and there were thousands of them and many of them are already back in their homes.

KENNEDY: Afghanistan's current government says there are two kinds of Taliban elements: the militants who frequently attack civilians, aide workers and election officials, and those who were simply foot soldiers in the Taliban regime and had nothing to do with its atrocities.

Mr. WAHEED MUZHDA (Former Taliban Member): All Taliban was not very extremist people. Some of these people are now supporting Hamid Karzai's regime.

KENNEDY: Waheed Muzhda says he is one of those. He was a foreign ministry official in the Taliban government. Now he's a senior aide in the supreme court under the new government. He says Karzai needs the Taliban.

Mr. MUZHDA: And in several provinces of Afghanistan, Taliban is a powerful power. Karzai knows about these problems and Karzai thinks this will be better to have--talking with these people. This is a cheaper way for the Karzai government than the way of war against these people.

KENNEDY: But according to Muzhda who is helping the negotiations, some Taliban have conditions. They say they won't join the government unless Karzai cracks down more on moral corruption and becomes more rigorous in promoting Islamic values.

Mr. MUHAMMAD ASTALL (Hazara): (Foreign language spoken)

KENNEDY: The idea that some former Taliban may take up government positions again makes Muhammad Astall furious. He's a Hazara, the ethnic group most persecuted by the Taliban regime. Almost 100 members of his

family were killed when the Taliban stormed their central Afghanistan village in 1998. The Taliban is alleged to have murdered some 10,000 ethnic Hazaras, Tajiks and Uzbeks that year.

Unidentified Man: All the Taliban are criminals. There is nobody inside that Taliban regime that are not shedding the people's blood. But I think the main purpose of Mr. Karzai to join the Taliban within the government is to bring a national unity, but I think it's very harmful to democracy and we should not expect democracy in the presence of Taliban in the government.

KENNEDY: But President Karzai believes that assimilating former Taliban will help Afghanistan's transition into democracy by improving security conditions. He recently said that warlords and their militias pose a greater threat to Afghanistan's recovery than remaining Taliban elements and has often declared the militant Taliban to be completely crushed. The US-led coalition forces in Afghanistan, who continue to battle Taliban and al-Qaeda militants in many parts of the country, have clearly decided to go along with Karzai on this policy.

Major JON SIEPMANN (Spokesperson): President Karzai's probably walked a tight rope and done it very effectively so far. It's a balance.

KENNEDY: Major Jon Siepmann is the spokesperson for the coalition forces.

Major SIEPMANN: From the coalition's perspective, we're not seeing civil war, we're not seeing widespread fighting. Are there issues with some of these people? Absolutely. Some of them are not good people and probably need to be replaced. To the extent that we're able to keep things stable in progressing forward, I think we're successful, and I think that's what we're seeing now.

KENNEDY: Karzai recently said that he only considers about 150 Taliban leaders to be criminals. No former Taliban have been given ministry positions yet, but it probably won't be long until they are.
For NPR News, I'm Miranda Kennedy. INSKEEP: The time is 19 minutes past the hour.

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Exhibit B

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PSYCHIATRIC EFFECTS OF SOLITARY CONFINEMENT

My name is Dr. Stuart Grassian. I am a Board Certified Psychiatrist and have been on the faculty of the Harvard Medical School since 1974. I have very substantial experience in evaluating the psychiatric effects of solitary confinement, and have been retained in class action suits concerning this issue in the states of Massachusetts, New York, Kentucky, and California, and have also evaluated and testified regarding the effects of such conditions in other lawsuits in Massachusetts, Texas, Georgia and Florida.

I have been on the teaching staff of Beth Israel Hospital continually since 1977, and have been from time to time on the faculty of major medical meetings, including the American Academy of Psychiatry and Law, and the American Psychiatric Association Institute on Hospital and Community Psychiatry. I have lectured on the subject of the psychiatric effects of solitary confinement in various settings, including Beth Israel Hospital/Harvard Medical School. I have published two articles on the subject of the psychological effects of solitary confinement, and am in the process of preparing a third article on this subject, based upon clinical data compiled as part of my involvement as a psychiatric expert in Madrid v. Gomez, a class action suit concerning conditions at Pelican Bay State Prison, California's "supermax" prison facility.

In addition to my involvement in these cases concerning the effects of solitary confinement, I have also been retained as an expert in other areas of civil litigation, especially involving the psychological effects of trauma and childhood sexual abuse. In the past several years, I have been involved in continuing research regarding the effects of childhood sexual abuse and the manner in which memory of such abuse is maintained over the years; one paper stemming from this research has been submitted for publication, and a revised version will be incorporated as a chapter of a book, Trauma and Memory, to be published by Harvard University Press. I have also lectured on these subjects at various academic conferences. I am Board subspecialty certified by the ABPN in Forensic Psychiatry.

The information which follows is based upon my experience, research, and testimony. All of it has appeared either in previously published material and/or in court testimony and opinions of various State and Federal courts.

I. Summary of Opinions.

In my opinion, solitary confinement -- that is, confinement of a prisoner alone in a cell for all or nearly all of the day, with minimal environmental stimulation and minimal opportunity for social interaction -- can cause severe psychiatric harm. This harm includes a specific syndrome which has been reported by many clinicians in a variety of settings, all of which have in common features of inadequate, noxious and/or restricted environmental and social stimulation. In more severe cases, this syndrome is associated with agitation, self-destructive behavior, and overt psychotic disorganization.

In addition, solitary confinement often results in severe exacerbation of a previously existing mental condition, or in the appearance of a mental illness where none had been observed before. Even among inmates who do not develop overt psychiatric illness as a result of confinement in solitary, such confinement almost inevitably imposes significant psychological pain during the period of isolated confinement and often significantly impairs the inmate's capacity to adapt successfully to the broader prison environment.

Moreover, although many of the acute symptoms suffered by inmates are likely to subside upon termination of solitary confinement, many -- including some who did not become overtly psychiatrically ill during their confinement in solitary -- will likely suffer permanent harm as a result of such confinement. This harm is most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and, perhaps more significantly, often severely impairs the inmate's capacity to reintegrate into the broader community upon release from imprisonment.

In my experience, many inmates housed in such stringent conditions are extremely fearful of acknowledging the psychological harm or stress they are experiencing as a result of such confinement. This reluctance of inmates in solitary confinement is in substantial measure a response to the perception that such confinement is an overt attempt by authorities to "break them down" psychologically, and in my experience, tends to be more severe when the inmate experiences the stringencies of his confinement as being the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process. Furthermore, in solitary confinement settings, mental health screening interviews are often conducted at the cell front, rather than in a private setting, and inmates are generally quite reluctant to disclose psychological distress in the context of such an interview, since such conversation would inevitably be heard by other inmates in adjacent cells, exposing them to possible stigma and humiliation in front of their fellow inmates.

Lastly, the adverse impact of punitively imposed solitary confinement will generally be far more severe than the effect of such confinement when it is imposed for administrative purposes, since by intent, punitive solitary confinement imposes

stringencies and deprivations which are in excess of those which are minimally required to maintain an inmate in segregated confinement; such stringencies often include limitations on programming, occupational and educational opportunities, visitation, use of telephone, television and radio access, and access to reading materials, among others. Conversely, inmates housed in segregation for administrative reasons -- such as for the protection of the inmate himself from possible harm by other inmates -- will often retain access to these many of the same opportunities and privileges as provided to inmates housed in congregate housing.

Indeed, the insitutional policies which create different conditions in administrative segregation, as opposed to punitive segregation, reflect an important underlying reality -- that "institutional security" actually is employed to mean two very different things. The narrower usage of the term reflects concerns about the safety of the individual inmate being housed, as well as the safety of those with whom he has contact. The broader use of the term, however, is fundamentally unbounded -- or at least, has boundaries which are not really distinguishable from the the broad purposes of any system of criminal justice. The harsh stringencies which are employed in punitive segregation reflect institutional assumptions that the harshly painful deprivations associated with a sentence to punitive solitary confinement, will serve as a deterrence to other inmates who might be tempted to break institutional rules. This rationale for imposing pain on an offender -- the rationale that the punishment of this offender by his society might deter other possible offenders -- is simply a rationale for any system of criminal justice and punishment. A fifteen year sentence of punitive solitary confinement is an imposition of pain of staggering proportions. If, in response to one offense, both the prison institution and the broader society can each impose so heavy a burden of harm and pain upon the putative offender in order to deter other possible future offenders, then it seems to be an inescapable conclusion that this putative offender is, indeed being exposed to double jeopardy.

II. SOLITARY CONFINEMENT CAN CAUSE SEVERE PSYCHIATRIC HARM

A. Solitary Confinement Can Cause a Specific Psychiatric Syndrome.

During the course of my involvement as an expert, I have had the opportunity to evaluate the psychiatric effects of solitary confinement in well over 100 prisoners in various state and federal penitentiaries. I have observed that for many of the inmates so housed, incarceration in solitary caused either severe exacerbation or recurrence of preexisting illness, or caused the appearance of an acute mental illness in individuals who had previously been free of any such illness.

I became aware of the particular toxicity of solitary confinement when I first had the opportunity to evaluate prisoners in solitary confinement as a result of my involvement in a class action lawsuit in Massachusetts, Libby v. Hogan, which challenged conditions in solitary confinement at the maximum security State

challenged conditions in solitary confinement at the maximum security State Penitentiary in Walpole, Massachusetts. The clinical observations I made in the course of my involvement in that lawsuit, coupled with my research into the medical literature concerning this issue, have formed the basis of two articles I have since published on this topic in peer-reviewed journals. These are: 1. Grassian, S.(1983), "Psychopathological Effects of Solitary Confinement". American Journal of Psychiatry; 140, 1450-1454. 2. Grassian, S. and Friedman, N. (1986), "Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement". International Journal of Law and Psychiatry, 8, 49-65. These articles are included as Appendices E and F of this declaration. Moreover, my subsequent professional experience has included observations of similar phenomena in many other solitary confinement settings.

When I initially agreed to evaluate the Walpole prisoners, I had not yet reviewed the literature on the psychiatric effects of solitary confinement and, indeed, I was somewhat skeptical; I expected that inmates would feign illness and exaggerate whatever psychiatric symptomatology they suffered. I discovered, however, something very different. Contrary to my expectations, the prisoners appeared to be extremely defensive about the psychiatric problems they were suffering in SHU; they tended to rationalize away their symptoms, avoid talking about them, or deny or distort their existence, all in an apparent effort to minimize the significance of their reactions to isolation. Numerous interviews began with statements such as "solitary doesn't bother me" or "some of the guys can't take it -- not me", or even with the mention of a symptom and a simultaneous denial of its significance: "As soon as I got in I started cutting my wrists. I figured it was the only way to get out of here."

As my interviews progressed, these facile accounts gave way to descriptions of experiences which were very worrisome. For example, one inmate was unable to describe the events of the several days surrounding his wrist-slashing, nor could he describe his thoughts or feelings at the time. Similarly, the prisoner who said he could "take it" eventually came to describe panic, fears of suffocation, and paranoid distortions which he suffered while in isolation. Moreover, the specific psychiatric symptoms reported were strikingly consistent among the inmates:

1. The Specific Psychiatric Syndrome Associated with Solitary Confinement.

a. Hyperresponsivity to External Stimuli

More than half the prisoners reported a progressive inability to tolerate ordinary stimuli. For example, "You get sensitive to noise -- the plumbing system. Someone in the tier above me pushes the button on the faucet ... its too loud, gets on your nerves. I can't stand it. I start to holler."

b. Perceptual Distortions, Illusions, and Hallucinations

Almost a third of the prisoners described hearing voices, often in whispers,

Almost a third of the prisoners described hearing voices, often in whispers, often saying frightening things to them. There were also reports of noises taking on increasing meaning and frightening significance. For example, "I hear noises, can't identify them -- starts to sound like sticks beating men, but I'm pretty sure no one is being beaten ... I'm not sure." These perceptual changes at times became more complex and personalized: "They come by with four trays; the first has big pancakes. I think I am going to get them. Then someone comes up and gives me tiny ones -- they get real small, like silver dollars. I seem to see movements -- real fast motions in front of me. Then seems like they are doing things behind your back -- can't quite see them. Did someone just hit me? I dwell on it for hours."

c. Panic Attacks

Well over half the inmates interviewed described severe panic attacks while in SHU.

d. Difficulties with Thinking, Concentration and Memory

Many reported symptoms of difficulty in concentration and memory; for example, "I can't concentrate, can't read ... Your mind's narcotized. Sometimes can't grasp words in my mind that I know. Get stuck, have to think of another word. Memory's going. You feel like you are losing something you might not get back." In some cases this problem was far more severe, leading to acute psychotic, confusional states. One prisoner had slashed his wrists during such a state and his confusion and disorientation had actually been noted in his medical record.

e. Intrusive Obsessional Thoughts: Emergence of Primitive Aggressive Ruminations

Almost half the prisoners reported the emergence of primitive aggressive fantasies of revenge, torture, and mutilation of the prison guards. In each case, the fantasies were described as entirely unwelcome, frightening and uncontrollable. For example, "I try to sleep 16 hours a day, block out my thoughts -- muscles tense -- think of torturing and killing the guards -- lasts a couple of hours. I can't stop it. Bothers me. Have to keep control. This makes me think I'm flipping my mind ... I get panicky -- thoughts come back -- pictured throwing a guard in lime -- eats away at his skin, his flesh -- torture him -- try to block it out, but I can't."

f. Overt Paranoia

Almost half the prisoners interviewed reported paranoid and persecutory fears. Some of these persecutory fears were short of overt psychotic disorganization. For example: "Sometimes get paranoid -- think they meant something else. Like a remark about Italians. Dwell on it for hours. Get frantic. Like when they push buttons on the sink. Think they did it just to annoy me." In other cases this paranoia deteriorated into overt psychosis: "Spaced out. Hear singing,

cases this paranoia deteriorated into overt psychosis: "Spaced out. Hear singing, people's voices, 'Cut your wrists and go to Bridgewater and the Celtics are playing tonight.' I doubt myself. Is it real? ... I suspect they are putting drugs in my food, they are putting drugs in my cell ... The Reverend, the priest -- even you -- you're all in cahoots in the Scared Straight Program."

g. Problems With Impulse Control

Slightly less than half of the prisoners reported episodes of loss of impulse control with random violence: "I snap off the handle over absolutely nothing. Have torn up mail and pictures, throw things around. Try to control it. Know it only hurts myself." Several of these prisoners reported impulsive self-mutilation; "I cut my wrists many times in isolation. Now it seems crazy. But every time I did it, I wasn't thinking -- lost control -- cut myself without knowing what I was doing."

2 This Syndrome has the Characteristics of an Acute Organic Brain Syndrome -- a Delirium.

Clearly, these symptoms were very dramatic, and they moreover appeared to form a discrete syndrome -- that is, a constellation of symptoms occurring together and with a characteristic course over time, thus suggestive of a discreet illness. Moreover, this syndrome was strikingly distinct from the more common array of functional psychiatric illnesses -- indeed, some of the symptoms described above are found in virtually none of these disorders: Acute dissociative, confusional psychoses are a rare phenomenon in psychiatry; random, impulsive violence in the context of such confusional state is even more unusual. Moreover, the type and extent of perceptual disturbances seen in this syndrome are exceedingly uncommon among the functional psychiatric illnesses. For example, loss of perceptual constancy (objects becoming larger and smaller, seeming to "melt" or change form, sounds becoming louder and softer, etc.) is very rare, and when found is far more commonly associated with neurologic illness (especially seizure disorders and brain tumors affecting sensory integration areas of the brain) than with primary psychiatric illness. (When seen in primary psychiatric illness, it is basically only seen in especially severe, insidious, early onset schizophrenia -- the kind of schizophrenic illness which has always been thought to clinically "feel" like a fundamentally biological/neurologic disease.)

In addition, functional psychiatric illness very rarely presents with such severe and florid perceptual distortions, illusions, and hallucinations simultaneously affecting multiple perceptual modalities -- auditory, visual, olfactory, tactile, kinesthetic. (In fact, in the more common psychotic illnesses such as schizophrenia and psychotic depression, auditory hallucinations are by far the most common type, visual hallucinations come a distant second, and hallucinations in all other modalities are actually very uncommon; moreover, combined modality hallucinations -- other than the combination of auditory with visual -- are exceedingly rare.)

Similarly, hyperresponsivity to external stimuli with a dysesthetic

Similarly, hyperresponsivity to external stimuli with a dysesthetic (subjectively painful) response to such stimuli, is likewise rare; in fact it is exceedingly rare, so rare that appearance of this symptom also would tend to suggest an organic -- brain dysfunction -- etiology. (This symptom is similar, for example, to the experience many people have during a febrile illness of finding any touching of their body exceedingly unpleasant or the inability of a patient with a headache to tolerate an even ordinary volume of sound, or the inability of some pregnant women to tolerate even ordinary smells without becoming nauseated.)

Thus, the fact that all of these quite unusual symptoms ran together in the same syndrome was itself a clear confirmation of the distinct nature of this syndrome. While this syndrome is strikingly atypical for the functional psychiatric illnesses, it is in fact quite characteristic of an acute organic brain syndrome -- that is, delirium, a syndrome characterized by a decreased level of alertness, EEG abnormalities, and by the same perceptual and cognitive disturbances, fearfulness, paranoia, and the same agitation and random, impulsive and self-destructive behavior which I observed in the Walpole population.

Moreover, delirium is a syndrome which is known to result from the type of conditions -- including restricted environmental stimulation -- which are characteristic of solitary confinement; even the EEG abnormalities characteristic of delirium have been observed in individuals exposed to conditions of sensory deprivation. By now, the potentially catastrophic effects of restricted environmental stimulation have been the subject of a voluminous medical literature; annual international symposia are being held on the subject, and the issue has even found its way into the popular media. (This literature is summarized in the appendices to this letter.)

B. Psychiatric Disturbances Occurring in Other Settings of Restricted Environmental Stimulation

My involvement in class-action lawsuits in New York State, California and Kentucky has yielded observations of the effects of solitary confinement which are quite parallel to my observations at Walpole. (The findings at Pelican Bay State Prison, California, are discussed at Paragraphs 73-77 of this affidavit, and those at the Federal Correctional Institute at Lexington, Kentucky are found in paragraph 78.)

In addition, earlier published reports on the effects of solitary confinement describe findings which are quite similar to my observations at Walpole. In addition, a pattern of psychiatric disturbances similar to those I found at Walpole have been seen in a variety of other -- non-prison -- settings, all of which, however, share in common features of restricted environmental stimulation:

These latter have included observations of prisoners of war, of hostages, of patients with impairment of their sensory apparatus (for example, hearing or visually impaired patients), of patients confined in the intensive care unit, of patients undergoing long term immobilization in hospital (e.g. spinal traction patients), of observations of psychiatric difficulties suffered by explorers (for example, Arctic and

observations of psychiatric difficulties suffered by explorers (for example, Arctic and Antarctic exploration by individuals and small groups) and of observations of difficulties encountered by pilots during solo jet flight.

In all of these situations, despite the multiple differences which exist between them, the very same syndrome emerges. The literature documenting this fact is well-known, rich and detailed. It is reviewed in the Appendices to this declaration.

C. The Historical Experience With Solitary Confinement: The Nineteenth Century Experience.

1. The Origin of the American Penitentiary and the Nineteenth Century German Experience.

Preindustrial societies often did not make any fundamental distinction between deviant behavior seen as the product of "criminal intent" as opposed to behavior seen as stemming from "mental illness." For such societies, deviant behavior -- whatever its origins -- was a social evil that was deeply feared and cruelly punished.

But in the early nineteenth century, a surge of great social optimism swept over America, and perhaps an overly optimistic faith in the possibility of rehabilitation of persons whose behavior was deviant. Not coincidentally, this spirit gave rise virtually simultaneously to two great social reform movements in the United States: the development of large mental hospitals and the construction of the first large penitentiaries.

Both of these institutions were founded upon the premise that psychological and social deviance was largely a result of the evils and stresses of "modern society", and both held a fundamental belief that healing would naturally occur if the deviant individual was removed from the evils of the larger society, and thus enabled to come to know his own true nature.

In the case of the mental hospital, this belief gave rise to the concept of a healing, pastoral, therapeutic community. But in the case of the penitentiary, an additional safeguard was obviously required: the inmates clearly had to be protected, not only from the evil influences of the broader society, but also from the evil influences of each other. The proper approach thus appeared to be to give each inmate the opportunity to live a life alone, like a penitent monk in his own monastic cell.

Thus, the earliest American penitentiaries were, generally, systems of rigid solitary confinement. Extravagant attention was paid to the design of these institutions, to ensure the absolute and total isolation of the offender from any "evil and corrupting influences." The Philadelphia Prison, completed in 1829, was particularly conscientious in this regard:

The arrangements ... guaranteed that convicts would avoid all contamination and follow a path to reform. Inmates remained in

contamination and follow a path to reform. Inmates remained in solitary cells for eating, sleeping and working. ... No precaution against contamination was excessive. Officials placed a hood over the head of a new prisoner when marching him to his cell so he would not see or be seen by other inmates Thrown upon his own innate sentiments, with no evil example to lead him astray, ... the criminal would start his rehabilitation. Then, after a period of total isolation, without companions, books, or tools, ... (he) would return to the community cured of vice and idleness, to take his place as a responsible citizen. (Rothman, pp 86-87)

The American penitentiary, and the Philadelphia System, became world-famous; no important visitor to the United States neglected to tour its penitentiaries and to bring back their principles for emulation in Europe. Some such as de Tocqueville of France and Nicholas Julius from Prussia came specifically for that purpose (Rothman p. 91). de Tocqueville wrote of the utter, "perfect" desolation of the American penitentiary, of the "profound silence" within its "vast walls," likening it to the silence of death. (Rothman, p. 97)

2. Psychological Effects of Severe Isolation

The openness with which these institutions were held up to public scrutiny led in time to open concern about the psychological effects of such confinement. During a tour of the United States in 1842, Charles Dickens wrote with pathos of the Philadelphia Prison:

The system here is rigid, strict and hopeless solitary confinement Over the head and face of every prisoner who comes into this melancholy house, a black hood is drawn, and in this dark shroud, ... he is led to the cell from which he never again comes forth, until his whole term of imprisonment had expired. He is a man buried alive ... dead to everything but torturing anxieties and horrible despair. ...

The first man I saw ... answered ... always with a strange kind of pause ... he gazed about him and in the act of doing so fell into a strange stare as if he had forgotten something.

In another cell was a German ... a more dejected, broken-hearted, wretched creature, it would be difficult to imagine.

There was a sailor. ... Why does he stare at his hands and pick the flesh open, upon the fingers, and raise his eyes for an instant ... to those bare walls ... ? (quoted in Liederman, p. 66)

American concern about the effects of rigid solitary confinement began as early as the 1830's. Statistical comparisons began to be made between the Philadelphia system and its chief competitor -- the Auburn system prevailing in New

York State at Auburn and Sing-Sing penitentiaries. The latter system also utilized solitary confinement, but less rigidly; inmates left their cells to work together in workshops and exercise in a common courtyard, although here, too, absolute and strict silence was maintained at all times. Statistical comparisons began to generate evidence that "it was unnatural ... to leave men in solitary, day after day, year after year; indeed, it was so unnatural that it bred insanity." (Rothman, p. 87). The Philadelphia Prison appeared to have a higher incidence, not only of insanity, but also of physical disease and death than its New York State counterparts.

Meanwhile, the American system had been emulated in many major European prisons, such as at Halle, Germany. Although the Americans had been the world leaders in instituting rigid solitary confinement in their penitentiary system, German clinicians eventually assumed the task of documenting its effects, ultimately leading to its demise.

Between 1854 and 1909, 37 articles appeared in German scientific journals on the subject of psychotic disturbances among prisoners, summarizing years of work and hundreds of cases. A major review of this literature was published in 1913: (Nitsche, 1913). A summary and synthesis of this rather large body of work appears as an appendix to this declaration.

But it should be noted that interest in the problem was not purely academic; psychotic disturbances among prisoners were of such frequency in these prisons that they attracted administrative as well as clinical concern, and great effort was made to explain this disturbing incidence. Thus, the literature covered a variety of issues, speculating for example, on the "moral degeneracy" of the prison population, some authors by comparing the psychopathology of those who committed "crimes of passion" with those who committed "crimes against property," or by detailing the incidence of the major diagnostic categories of the time (e.g., "circular insanity," "alcoholic psychoses," epilepsy, general paresis, etc.) among the prison population.

However, multiple reports based on careful clinical observation suggested that a substantial majority of these prison psychoses were direct reactions to the conditions of imprisonment itself. Gradually a clinically distinguishable syndrome of acute reactive prison psychoses began to be defined. Different variables were considered in attempting to explain the etiology of these reactive prison psychoses, including, for example, long versus short duration of imprisonment, or imprisonment of those already convicted versus imprisonment while awaiting trial. However, the most consistent factor described, reported in over half the total literature, was solitary confinement.

D. The Twentieth Century Experience: Prisoners of War, "Brain Washing", and Experimental Research.

1. Prisoners of War and "Brainwashing".

Unfortunately, other than some anecdotal reports, there was little discussion of the psychological effects of solitary confinement in the medical literature during the first half of the twentieth century. Undoubtedly, this was in part a consequence of the disastrous earlier experience with such confinement. As statistical evidence accumulated during the nineteenth century that solitary confinement produced a very disturbing incidence of insanity, physical disease and death, the system had fallen into disrepute, and with this, it had changed from an open, optimistic experiment in social reform into a hidden, secretive means of punishment and control.

Its devastating psychological impact, however, did not change, a fact which became suddenly and very painfully evident in the 1950's as the American public began hearing the frightening and dramatic reports of "brainwashing" of American prisoners of war in Korea -- reports that alterations in the sensory environment were being intentionally imposed upon these prisoners in a seemingly Orwellian attempt to profoundly disrupt their psychological equilibrium. (Biderman and Zimmer, 1961).

By the 1950's, reports had already appeared of major psychiatric disturbances among survivors of prolonged solitary confinement in war (e.g., Burney, 1952), but during the decade of the Korean War, major attention was riveted on the occurrence of these disturbances, not only in war, but in a variety of other settings as well.

In 1956, the Group for the Advancement of Psychiatry (GAP) held a symposium -- "Factors Used to Increase the Susceptibility of Individuals to Forceful Indoctrination" -- to study methods used by the Chinese and Russian Communists to "indoctrinate" and "break the will" of political prisoners and prisoners of war.

Dr. M. Meltzer, former Chief Medical Officer at Alcatraz Federal Penitentiary, contributed his observations of psychiatric disturbances among prisoners exposed to punitive solitary confinement at Alcatraz. These prisoners were rarely confined for periods beyond one week. (Meltzer, 1956) Despite this, Dr. Meltzer described acute psychotic breakdowns among prisoners so confined; his descriptions closely paralleled the observations at Walpole: "The motor effects ranged from occasional tense pacing, restlessness and sense of inner tension with noise making, yelling, banging and assaultiveness at one extreme, to a kind of regressed, dissociated, withdrawn hypnoid and reverie-like state at the other ... (The) sense of self, the ego and the ego boundary phenomena are profoundly affected by the isolation." (Meltzer, p. 98)

In the same symposium, Dr. John Lilly of the National Institute of Mental Health noted that despite the importance of other factors which tended to "weaken personalities and make them more susceptible to [forced indoctrination]" -- such as semi-starvation, physical pain and injury, and sleep deprivation -- social and sensory isolation was still the central pathogenic factor in such confinement. (Meltzer, p. 89)

2. Experimental Research on Sensory Deprivation.

An experimental model was therefore designed to study the effect of restricted environmental stimulation (RES); this research, conducted during the 1950's and early 1960's, primarily at Harvard and McGill University Medical Centers, was in fact funded in large part by the United States Government -- and especially by the Department of Defense and U.S. Central Intelligence Agency. This research is described in an appendix to this declaration. Its relevant conclusions can, however, be described relatively briefly:

In these studies (Brownfield, 1965; Solomon, et al., 1961), subjects were placed in a situation designed to maximally reduce perceptually informative external stimuli (e.g., light-proof, sound-proof rooms, cardboard tubes surrounding the arms and hands to reduce proprioceptive and tactile sensation, and so on). The research revealed that characteristic symptoms generally developed in such settings. These symptoms included perceptual distortions and illusions in multiple spheres, vivid fantasies, often accompanied by strikingly vivid hallucinations in multiple spheres, derealization experiences, and hyperresponsivity to external stimuli. What was also clear, however, was that while some subjects tolerated such experiences well, many did not, and a characteristic syndrome was observed, including not only the above symptoms, but also included cognitive impairment, massive free-floating anxiety, extreme motor restlessness, emergence of primitive aggressive fantasies which were often accompanied by fearful hallucinations, and with decreasing capacity to maintain an observing, reality-testing ego function. In some cases, an overt psychosis supervened with persecutory delusions and, in some cases, a marked dissociative, catatonic-like stupor (delirium) with mutism developed. EEG recordings confirmed the presence of abnormalities typical of stupor and delirium.

These findings clearly demonstrated that this experimental model did reproduce the findings in the non-experimental situations, including the findings among prisoners of War held in solitary confinement.

E. Factors Affecting Response to Sensory Restriction and Solitary Confinement.

Much of the subsequent research in this area attempted to delineate variables which might explain these differing outcomes. These variables can be divided into two categories: 1) differences among various conditions of perceptual deprivation, and 2) differences in preexisting psychological functioning among individuals experiencing such conditions:

1. Differing Conditions of Isolation.

One of the factors commonly cited in the literature as related to outcome is differences in the intensity and duration of the sensory deprivation experience; more severe sensory restriction, the presence of noxious stimulation, and longer duration of the sensory deprivation experience, have all been associated with an increased

risk of adverse psychiatric consequences.

In my experience, while conditions experienced by inmates in various prison solitary confinement settings generally bear some similarities (e.g. a cell of roughly 50-80 square feet, approximately 22 1/2 hours/day locked in the cell, with about one hour/day 5-7 days/week of exercise yard), in other respects, the conditions are fairly variable. For example, some cells have barred doors, which allow better ventilation, sound transmission and visual connection with the outside environment than do mesh steel doors; solid steel doors are the most restrictive -- especially when they are either hinged or slide shut with almost no air gap from the wall. Moreover, administrative conditions regarding the amount and circumstances of visitation, the availability of reading material, radio, and television, and so forth, are all factors which vary from institution to institution, and even from time to time within a given institution.

2. The Perceived Intent of the Isolation Experience

In addition to the factors described above, another critical factor in determining the effect of isolation, appears to be the perceived intent of the isolation. Experimental research has demonstrated that an individual who receives clues which cause him to experience the isolation situation as potentially threatening, is far more likely to develop adverse psychiatric reactions to the isolation experience; conversely, if the subject has reason to believe the situation is likely to be benign, he will be far more likely to tolerate or even enjoy it. Among the latter group of subjects who tolerated isolation well, many reported pleasant or, at least, nonthreatening, visual imagery, fantasy and hallucinatory experiences, often associated with a state of hypnotic reverie: "His mind may begin to wander, engage in daydreams, slip off into hypnogogic reveries with their attendant vivid pictorial images ... he may be quietly having sexual or other pleasurable thoughts." (Wright & Abbey, 1965, pg. 6.)

This finding is perhaps not surprising. It appears that sensory restriction produces perceptual disturbances and illusions, which are analogous to those produced by hallucinogenic drugs -- and clearly, while there are some individuals who could be said to have volunteered to undergo such hallucinatory, psychotic-like experiences, it must be almost uniformly terrifying to be forced involuntarily to undergo an experience similar to that induced by hallucinogenic drugs.

3. Individual Differences in Response.

Many studies have demonstrated that there is great variability among individuals in regard to their capacity to tolerate a given condition of sensory restriction. This variability helps to provide further insight into the nature of the toxic effect of such isolation conditions, and provides striking corroboration of the fact that such environmental stimulation, especially when of prolonged duration, is toxic to brain functioning, and causes symptoms characteristic of stupor and delirium.

Generally, individuals with mature, healthy personality functioning and with intact central nervous system functioning -- and of at least average intelligence -- have been found to have greater ability to tolerate such isolation situations, while individuals with primitive or psychopathic functioning, individuals with borderline cognitive capacities, impulse-ridden individuals and individuals whose internal cognitive/emotional life is chaotic or fearful, are especially at risk for severe psychopathologic reactions to such isolation. (Appendix C describes these studies in more detail.)

Moreover, there is clear evidence that in a situation of restricted environmental stimulation, preexisting central nervous system dysfunction is a major predisposing factor to the development of adverse psychiatric reactions and of overt delirium. For example, in one study of patients suffering visual deprivation following eye surgery (eye-patched patients), those patients with pre-existing central nervous system dysfunction were found to be at especially high risk to develop symptoms of delirium. (Ziskind et.al 1960). Moreover, the presence of a preexisting personality disorder or impairment of psychosocial functioning was associated with increased risk of incapacitating fearfulness, paranoia, agitation and irrational aggression towards staff (Klein & Moses 1974). (A more extensive review of this literature is contained in Appendix A to this letter.)

In addition, individuals may at times be exposed to situations which cause impairment of central nervous system functioning. Such situations -- especially if they impair the individual's state of alertness, for example, sleep deprivation, abnormal sleep-wake cycles, or the use of sedating medication -- will substantially increase the individual's vulnerability to the development of delirium. Delirium among post-surgical patients, and the so-called "ICU Psychoses" are examples of this phenomenon. (Appendix A discusses this issue in more detail.) And one of the characteristic difficulties experienced by inmates in solitary confinement is, in fact, abnormal sleep-wake cycles and impaired sleep.

a. Findings at Pelican Bay State Prison.

These findings received further corroboration in my observations of inmates at Pelican Bay State Prison, California. In 1991-92, as part of my participation in Madrid v. Gomez -- a class-action lawsuit challenging conditions at Pelican Bay State Prison, a new "supermax" facility in California -- I evaluated 50 inmates housed in the Special Housing Unit (SHU) at the institution, and prepared a lengthy report to the Federal Court of my findings. (Much of the literature review and historical material in the present declaration is taken from my Madrid declaration.) Many of the inmates I evaluated there suffered severe psychiatric disturbances while housed in Pelican Bay SHU -- either springing up *de novo* while so incarcerated, or representing a recurrence or severe exacerbation of preexisting illness. Of the 50 inmates I evaluated, at least 17 were actively psychotic and/or acutely suicidal and urgently in need of acute hospital treatment, and 23 others suffered serious psychopathological reactions to solitary confinement, including in several cases, periods of psychotic disorganization.

The clinical data at Pelican Bay also added striking corroboration that the severe and prolonged restriction of environmental stimulation in solitary confinement is toxic to brain functioning, by demonstrating that the most severe, florid psychiatric illnesses resulting from solitary confinement tend to be suffered by those individuals with preexisting brain dysfunction. As noted before, I have observed a high incidence of preexisting central nervous system dysfunction among inmates I have evaluated in solitary confinement settings. This was also the case at Pelican Bay, and statistical analysis of the Pelican Bay data quite dramatically demonstrated that inmates with such preexisting vulnerability were the most likely to develop overt confusional, agitated, hallucinatory psychoses as a result of SHU confinement.

b. Attention Deficit and Antisocial Personality Disorders

In addition, research regarding Attention Deficit Disorder and Antisocial Personality Disorder demonstrate that these conditions are similarly associated with a particular inability to tolerate restricted environmental stimulation. There is in fact increasing evidence that childhood impulsivity and Attention Deficit Hyperactivity Disorder bear some relationship to Antisocial Personality Disorder, that both are characterized by impulsivity and stimulation-seeking behavior, and that both involve biologically based abnormalities in central nervous system functioning. Moreover, the clinical literature demonstrates that individuals with Antisocial Personality Disorder are especially intolerant of restricted environmental stimulation. For example, Quay (1965) characterized the psychopathic individual as pathologically "stimulation seeking ... impulsive ... (and) unable to tolerate routine and boredom." (Appendix B contains a more detailed discussion.)

Given the exigencies of conducting clinical observations of inmates in solitary confinement, it is not surprising that little systematic attempt has been made to elucidate the underlying psychological characteristics of those most at risk for developing severe psychopathological reactions to such isolation. However, among the clinical reports on Ganser's Syndrome (a related condition) in nonprison populations are several studies of patients in psychiatric hospitals. These patients were, of course, available for extensive psychological assessment and observation, and these reports described the majority of these patients as suffering long-standing hysterical character disorders, having problems with severe impulsivity, childhood truancy, and antisocial behavior patterns. (Appendix B contains a more detailed discussion.)

Thus, the medical literature demonstrates that individuals whose internal emotional life is chaotic and impulse-ridden, and individuals with central nervous system dysfunction, may be especially prone to psychopathological reactions to restricted environmental stimulation. Yet among the prison population, it is quite likely that these are the very individuals who are especially prone to committing infractions that result in stricter incarceration, including severe isolation and solitary confinement.

c. Effects on Psychologically More Resilient Inmates: Baraldini v. Meese and Hameed v. Coughlin

In 1988, in the course of my involvement in Baraldini v. Meese, a class action challenging the confinement of a small group of women in a subterranean security housing unit at the Federal Penitentiary in Lexington, Kentucky, I had the opportunity to interview several women who were in confinement in this facility. These women had been convicted of having committed politically motivated crimes, were all highly educated, and had a history of relatively strong psychological functioning prior to their confinement. None of these women developed the florid confusional psychosis described earlier in this affidavit, yet each of them demonstrated significant psychopathological reactions to their prolonged confinement in a setting of severe environmental and social isolation. These included perceptual disturbances, free-floating anxiety and panic attacks. These inmates also uniformly described severe difficulties in thinking, concentration and memory; for example, one inmate reported that she was able to perform tasks requiring some mental effort -- such as reading or writing -- only for about the first three hours of the morning after she awoke; by then, her mind had become so slowed down, so much "in a fog", that she was entirely unable to maintain any meaningful attention or expend any meaningful mental effort.

In addition, in 1993, I evaluated Bashir Hameed, an inmate who had also been incarcerated in the SHU at Shawangunk C.F. and who had brought suit -- Hameed v. Coughlin, 89 CV 578 (NDNY) -- concerning his incarceration there. As I described in my testimony in that case, Mr. Hameed is an individual who evidenced strong prior psychological adjustment, and no prior psychiatric history, yet became significantly ill as a result of his SHU confinement.

F. Long Term Effects of Solitary and Small Group Confinement.

Long-term studies of veterans of P.O.W. camps and of kidnapping and hostage situations have demonstrated that while many of the acute symptoms I outlined above tend to subside after release from confinement, there are also long-term effects which may persist for decades. These not only include persistent symptoms of posttraumatic stress (such as flashbacks, chronic hypervigilance, and a pervasive sense of hopelessness), but also lasting personality changes -- especially including a continuing pattern of intolerance of social interaction, leaving the individual socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction. (This literature is reviewed in Appendix D to this declaration.)

In addition, from time to time I have had the opportunity to evaluate individuals who had been incarcerated in solitary confinement several years previously; I have found the same pattern of personality change described above -- these individuals had become strikingly socially impoverished and experienced

intense irritation with social interaction, patterns dramatically different from their functioning prior to solitary confinement.

III Conclusions

The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances. In more severe cases, inmates so confined have developed florid delirium -- a confusional psychosis with intense agitation, fearfulness, and disorganization. But even those inmates who are more psychologically resilient inevitably suffer severe psychological pain as a result of such confinement, especially when the confinement is prolonged, and especially when the individual experiences this confinement as being the product of an arbitrary exercise of power and intimidation. Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including impairments which may seriously reduce the inmate's capacity to reintegrate into the broader community upon release from prison.

Many of the prisoners who are housed in long-term solitary confinement are undoubtedly a danger to the community and to the Corrections Offices charged with their custody. But for many, they are a danger, not because they are coldly ruthless, but because they are volatile, impulse-ridden, and internally disorganized.

As noted earlier in this statement, modern societies made a fundamental moral division between socially deviant behavior which was seen as a product of evil intent, and that behavior seen as a product of illness. Yet this bifurcation has never been as simple as might at first glance appear. Socially deviant behavior can in fact be described along a spectrum of intent. At one end are those whose behavior is quite "instrumental" - ruthless, carefully planned and rational; at the other, are individuals whose socially deviant behavior is the product of unchecked emotional impulse, internal chaos, and often of psychiatric or neurologic illness.

It is a great irony that as one passes through the levels of incarceration -- from the minimum to the maximum security institutions, and then to the solitary confinement sections of those institutions -- one does not pass deeper and deeper into a subpopulation of the most ruthlessly calculating criminals. Instead, ironically and tragically, one comes full circle back to those who are emotionally fragile and, often, severely mentally ill. The laws and practices which have established and perpetuated this tragedy deeply offend any sense of common human decency.

Stuart Grassian, M.D.

APPENDICES

- A.** Reports of Psychiatric Disturbances in Conditions of Restricted Environmental Stimulation.
- B.** The Nineteenth Century German Experience with Solitary Confinement: Ganser's Syndrome.
- C.** Experimental Research on the Psychiatric Consequences of Profound Sensory Deprivation: Factors Influencing Vulnerability to Harm.
- D.** Reports of the Long-Term Effects of Solitary Confinement in Former Hostages and in Prisoners of War.

APPENDIX A

REPORTS OF PSYCHIATRIC DISTURBANCES IN OTHER CONDITIONS OF RESTRICTED ENVIRONMENTAL STIMULATION

The psychopathologic syndrome which I have described in the body of this declaration is found in other settings besides isolation in civil prisons. Some of these settings involve small group, rather than solitary isolation, and the studies have demonstrated that isolated groups comprising two individuals may be the most pathogenic of all. These studies also suggest that those individuals with below average intelligence and poor psychosocial adjustment prior to isolation developed more severe psychiatric difficulties during isolation in some studies, such disturbances persisted in one year follow-up after reentry.

Aviation

Bennett (1961) described psychiatric disturbances among pilots of the British Royal Air Force who had been exposed in-flight to periods of restricted auditory and visual stimulation. All of the groups he described became significantly anxious--many suffering full-blown panic attacks--and many experienced unusual sensations which they were very reluctant to describe. The most severely disturbed groups refused to expose themselves further to the isolation conditions of these flights; at all levels of impairment, however, anxiety was common (both panic and free-floating anxiety). Pilots reported anxiety symptoms such as feeling "hot and tense and powerless" (Bennett, p. 162) and "nervous and afraid" (ibid, p. 164). Feelings of derealization, feelings of detachment from reality, and perceptual distortions were described. Some of these perceptual distortions were dangerous (e.g., having the impression that the aircraft was turning when it was not) and resulted in serious errors in judgment (e.g., making the aircraft spiral dangerously downward after attempting to "correct" for what was incorrectly perceived as a turning aircraft). Clark & Graybiel (1957) described strikingly similar symptoms among United States Navy pilots exposed to periods of in-flight isolation. Among pilots who flew alone, at high altitude, (i.e., in a situation of monotonous visual and

sensory stimulation) and flying with a minimum of pilot activity, over one third experienced frightening feelings of unreality and became severely anxious.

Small Group Confinement

Many studies--both anecdotal and experimental--have been made of individuals confined together in small groups; groups thus described have ranged in size from two to approximately sixty individuals, the larger groups include reports of men isolated on a Pacific island, submarine inhabitants, Antarctic explorers, etc. (see Zubek, 1969). The most consistent finding was of dramatically increased levels of hostility, interpersonal conflict and paranoia (Zubek, p. 377). Individuals exposed to such conditions also tend to become irrationally territorial, staking out "areas of exclusive or special use, [and] acting with hostility to trespasses by others." (Zubek, p. 380)

Confined groups comprising just two individuals may be the most pathogenic of all, associated with especially high rates of mutual paranoia and violent hostility. Admiral Byrd believed it to be extremely unsafe to staff an Antarctic base unit with just two men:

It doesn't take two men long to find each other out . . . the time comes . . . when even his [campmate's] unformed thoughts can be anticipated, his pet ideas become a meaningless drivel, and the way he blows out a pressure lamp or drops his boots on the floor or eats his food becomes a rasping annoyance. . . . Men who have lived in the Canadian bush know well what happens to trappers paired off this way . . . During my first winter at Little America I walked for hours with a man who was on the verge of murder or suicide over imaginary persecutions by another man who had been his devoted friend. (Quoted in Zubek, 1969, p.381).

Many men confined in Antarctic stations have experienced near psychotic states, creating a danger to all inhabitants of the work station (Zubek, 1969). The pathogenicity of such dyadic groups was confirmed in an experimental study involving volunteer sailors living and working together in dyadic pairs, socially isolated from the world for a period of ten days. Under such conditions, the sailors developed evidence of subjective distress, inability to concentrate, a breakdown of inner controls on behavior, hostility, and increasing schizoid withdrawal from social contact (Cole, J.D., 1967).

Polar Habitation

Psychiatric disturbances have been described in Arctic and Antarctic inhabitants (explorers, researchers and their support staff), spending varying periods in winter isolation. In these regions, winters last for up to nine months with weather conditions so cold (-100F) that leaving the confines of the indoors is dangerous. Typically, teams of work groups have fewer than 50 members who spend up to two years working in small quarters. Small group isolation conditions at

these stations have been compared to life in prisons by at least one researcher: "... the isolation imposed by the harsh environment [of the Antarctic] is rarely experienced outside penal conditions" (Biersner & Hogan, 1984, p. 491).

In a review of the literature on the psychological adjustment to Antarctic living, Rothblum (1990) described a staff wintering over at a British Antarctic station; those of the staff who adjusted best tended to be socially mature, intelligent, reserved and trusting individuals. Similarly, French, United States and Australian studies revealed that intelligence and previous social adjustment predicted a decreased risk for psychiatric disturbance among workers at Antarctic stations. On the other hand, lack of respect for authority and aggression were important markers for poor isolation adjustment (Mullin & Connery, 1959).

Similarly, Wright, Chylinski, Sisler and Quarrington (1967) correlated outcome measures with psychological testing obtained prior to work station assignment. They found specifically that persons with antisocial and psychotic tendencies were poor risks for efficient functioning in conditions of isolation.

As a result of these disturbing findings among Antarctic workers, systematic efforts have been made to provide psychological screening of potential station employees and to ameliorate the isolation conditions prevailing in such stations (Cochrane & Freeman, 1989). Despite these efforts, significant psychiatric disturbances have continued to be observed (Natini & Shurley, 1974). The fact that these individuals were confined in small groups rather than alone was not found to prevent these disturbances; indeed, one of the central pathogenic factors cited in this literature has been the interpersonal tension and hostility generated by small group confinement (Biersner & Hogan, 1984).

Strange & Klein (1974) and Rothblum (1990) described a "winter-over syndrome" including progressively worsening depression, hostility, sleep disturbance, impaired cognitive functioning and paranoia during small group winter confinement in the Antarctic. Strikingly similar findings were reported by the United States Navy Medical Neuropsychiatric Research Unit, which found high incidence of sleep disturbance, depression, anxiety, aggression, somatic complaints, and a progressive impoverishment of social relationships as the winter progressed (Gunderson, 1963; Gunderson & Nelson, 1963). Psychiatric problems worsened as the length of time in this confinement increased; in one study of a group of Japanese winter-stationed in the Antarctic periodic psychological testing revealed increasing levels of anxiety and depression as the winter progressed (Rothblum, 1990). Similar findings have been described among a group of Americans stationed in the Antarctic (Gunderson & Nelson, 1963).

In a review of the literature on the psychological adjustment to Arctic life, Cochrane and Freeman (1989) describe a syndrome which parallels the Antarctic literature: sleep disturbances, apathy, irritability, cognitive dysfunction, hallucinations, depression and anxiety were widely reported as a result of the small group isolation endured by inhabitants. They also reported "depression, irritability, easily provoked anger which may escalate into dramatic and florid acting out and,

not surprisingly, a breakdown in relationships with other members of the group . . . insomnia, pallor, loss of interest, psychomotor retardation, paranoid ideation, non-specific hallucinations of light flashes and sudden movements" (p. 887) Many individuals became intolerant of social contact, and fearful of reentering society. Even when Arctic workers were adequately preselected by psychological screening, trained and supported, sleep difficulties, apathy and irritability persisted.

Studies on reintegration into the home environment after Antarctic living even one year after reintegration, found persisting problems and symptoms, including sleep disturbances, cognitive slowing, emotional withdrawal, resentment of authority, indecisiveness and poor communication (Rothblum, 1990).

Biersner & Hogan (1984) summarized the findings related to personality variables in the Arctic and Antarctic workers:

Individuals with high needs for novelty and new sensations . . . who are emotionally unstable, or who are unconcerned with social approval seem unsuited for . . . such environments. The opposite [traits are found in] those who adjust well (p.495)

Explorers: Solo Voyages

Anecdotal reports of shipwrecked sailors and individuals accomplishing long solo sea voyages have generally described "disturbances in attention and in organization of thought, labile and extreme affect, hallucinations and delusions" (Zubek, 1969, p. 7). Dramatic anecdotal reports have appeared from time to time. Some of these were summarized in a review article by Dr. Philip Solomon, one of the lead scientists in the Harvard Medical School/Boston City Hospital group:

"Christine Ritter in her very sensitive document 'A Woman in the Polar Night,' reported that at times she saw a monster . . . [and] experienced depersonalization to the extent that she thought she and her companions were dissolving in moonlight 'as though it were eating us up' . . . The Spitzbergen hunters use the term ran (strangeness) to describe these experiences"

Tales of the sea have provided many accounts of hallucinatory phenomena. John Slocum sailed alone around the world . . . [In the South Atlantic] he suddenly saw a man, who at first he thought to be a pirate, take over the tiller

Walter Gibson, a soldier in the British Indian Army, was on a ship torpedoed in the Indian Ocean by the Japanese in World War II [The shipwrecked survivors] reported that "all of us at various stages in that first week became a prey to hallucinations" . . . [As the weeks passed] the feeling of comradeship disappeared and the men began to find themselves "watching our fellows covertly and suspiciously." Murder, suicide and cannibalism followed as social controls dissolved.

Medical Conditions

1. Eye Patched Patients

Restricted environmental stimulation conditions also occur post-operatively and in certain medical conditions: in a study of 100 American patients with macular degeneration of the retina (Holroyd, Rabins, Finkelstein, Nicholson, Chase & Wisniewski, 1992), a high percentage of such patients experienced disturbing visual hallucinations. Those patients who were relatively cognitively limited, those who were socially isolated and those with simultaneous sensory impairment in another modality (e.g., hearing-impaired patients) fared worst. But other factors, including the presence of concomitant medical illness, did not appear to affect the incidence of hallucinations.

In an especially relevant study of eye patched patients, Klein & Moses (1974) determined that psychologically well-adjusted patients (as assessed prior to surgery) tended not to develop visual hallucinations during the period when their eyes were patched, whereas those suffering preexisting personality disturbances did tend to develop such hallucinations. Among those patients who did develop hallucinations, almost half developed complex hallucinations involving human figures and with a content suggesting serious preoccupations with themes of depression and anxiety. Moreover, among those patients who had both preexisting personality disturbances and difficulty with their premorbid psychosocial adjustment, eye patching produced severe psychiatric symptomatology, including: paranoid thoughts about being poisoned, physically harmed or attacked; psychomotor agitation; interpersonal aggressiveness; inability to comply with staff directives; fearful visual hallucinations, and incapacitating anxiety. In this most disturbed group, symptoms had not remitted when observed one week after their eye patches were removed.

Other studies have also found patients to suffer from perceptual distortions, thinking disturbances and mood changes following the visual deprivation that is part of post-operative recovery in eye surgery (Ziskind, 1958; Ziskind, Jones, Filante & Goldberg, 1960). Furthermore, Ziskind et. al., (1960) noted that: "In patients with . . . brain damage, there were also deliriod symptoms, e.g., confusion, disorientation, memory impairment, vivid hallucinations [and disorganized] hyperkinetic activity" (p. 894). Finally, in Jackson's (1969) extensive literature review of hospitalized eye patched patients, psychiatric disturbance was commonly found. These patients suffered from unusual emotional, cognitive and sensory-perceptual disturbances, similar to those previously described.

2. Poliomyelitis

Polio patients confined to tank-type respirators have become psychotic as a direct result of such confinement; moreover, they became more ill, with more florid hallucinations and delusions, at night when sensory input was diminished. The same florid hallucinatory, delusional psychosis has been found in other patients similarly confined in tank respirators (Liederman, et. al., 1958).

3. Cardiac Patients

Patients with decompensated heart disease are at times placed on very strict bed rest; some of these patients have developed acute confusional, paranoid, hallucinatory psychoses, especially at night during periods of decreased sensory input (Liederman, et. al., 1958).

Studies of post-operative open heart surgery patients who were bed confined--their visual stimulation restricted to looking up at a white-tiled hospital room ceiling--revealed a high rate of disordered thinking, visual and auditory hallucinations and disorientation (Egerton & Kay, 1964; Kornfeld, Zimberg & Maim, 1965; Lazarus & Hagens, 1968; Wilson, 1972). There is an extremely disturbing incidence of psychosis following open heart surgery, ranging in various studies from 14 to 30 percent (Lee & Ball, 1975). Upon recovery these patients described their post-operative environment as a major pathogenic factor in producing their psychiatric illness (Kornfeld et. al., 1965). Perceptual disturbances and emotional liability, as well as paranoia, depression and obsessive-compulsive reactions to the restrictive post-operative environment have been documented in other studies as well (Ellis, 1972; Goldstein, 1976; Lee & Ball, 1975; Thomson, 1973).

4. Hearing Impaired Individuals

Another condition of restricted environmental stimulation leading to psychiatric disturbance involves the hearing impaired. Studies of the deaf (Altshuler, 1971; Houston & Royse, 1954) consistently find significantly higher rates of paranoia in these individuals. High rates of paranoia have been reported in both the developmentally hearing impaired as well as those who became deaf in later life (Zimbardo, Andersen & Kabat, 1981). Experimentally induced deafness in psychiatrically unimpaired adults also produced paranoia (Zimbardo, et. al., 1981).

5. Other Medical Patients

Disorientation and delusional psychoses have also been reported among immobilized orthopedic patients and in patients postsurgically bed-confined (Liederman, et. al., 1958). Nursing researchers (Downs, 1974) have studied this phenomenon and have concluded that frightening hallucinatory experiences "are probably far more widespread than has been reported" (Downs p. 434).

6. Occupational Situations

McFarland and Moore (1957) reported in the New England Journal of Medicine on a study of fifty long-distance truck drivers; of these, thirty experienced vivid visual hallucinations; some became disoriented, "as in a dream."

7. Animals

As noted in the body of this declaration, many prisoners confined in solitary report become intolerant of normal levels of environmental--especially social--

stimulation. These reports receive experimental confirmation in laboratory research on animals. Such research demonstrates that sensory deprivation produces an intolerance to normal levels of environmental stimulation; animals exposed to sensory deprivation conditions became overly aroused--"hyperexcitable"--when exposed to normal levels of environmental stimulation, often resulting in severe behavioral disturbances (Riestin, 1961). Other studies have demonstrated that such animals often display diffuse, frenzied, random activity, and social withdrawal, and are prone to psychophysiological illnesses (e.g., peptic ulcers) when exposed to environmental stress (Zubek, 1969).

Barnes (1959) produced agitation in mice and rats after a few days of isolation, a report which corroborated previous studies with rats. Others (Matsumoto, Cai, Satoh, Ohta & Watanabe, 1991) have also found that isolation induced aggressive behavior in mice (e.g., biting attacks). Further, social isolation has been demonstrated to produce profound and lasting psychological effects in primates. Washburn and Rumbaugh (1991) note that over 400 published investigations of the effects of social isolation on primates show such deleterious effects as self-mutilation and disturbances in perception and learning. They found that in adult rhesus monkeys even brief periods of social isolation produce compromised cognitive processing. McKinney, Suomi and Harlow (1971) produced symptoms of depression in rhesus monkeys by confining them for 30 days. They concluded that solitary "confinement produced greater destructive behavioral effects in less time and with fewer individual differences among subjects than did total social isolation, previously [demonstrated to be] the most powerful technique for producing psychopathological behavior among monkey subjects" (p. 1317). Induced depression through confinement has been reported in both young and mature monkeys (Harlow & Suomi, 1974). Finally, isolation-produced fear in dogs has been clearly demonstrated (Thompson & Melzack, 1956).

APPENDIX B

THE NINETEENTH CENTURY GERMAN EXPERIENCE WITH SOLITARY CONFINEMENT...

Between 1854 and 1909, thirty-seven articles appeared in the German medical literature on the subject of psychotic disturbances among prisoners, summarizing years of work and many hundreds of cases. A major review of this literature was published in 1912 (Nitsche, 1912). Solitary confinement was the single most important factor identified in the etiology of these psychotic illnesses.

Indeed, the first report on the subject of prison psychoses was that of Delbruck (1854), Chief Physician at the Prison at Halle, in which "the frequency of mental disturbances was at last so great that it attracted the attention of the

authorities." (Nitsche, p.1). Delbruck's report concluded that:

Prolonged absolute isolation has a very injurious effect on the body and mind and that it seems to predispose to hallucinations He advised the immediate termination of solitary confinement. (Nitsche, p. 2).

In 1863, Gutsch reported on 84 cases of "The Psychosis of Solitary Confinement" and described vivid hallucinations and persecutory delusions, apprehensiveness, psychomotor excitation, sudden onset of the syndrome, and rapid recovery upon termination of solitary confinement. Many of these individuals developed "suicidal and maniacal outbursts." (Nitsche, p. 8)

In 1871, in a report on 15 cases of acute reactive psychoses, some of which apparently occurred within hours of incarceration in solitary, Reich described, in addition to hallucinosis and persecutory delusions, severe anxiety leading to "motor excitement The patient becomes noisy, screams, runs aimlessly about, destroys and ruins everything that comes in his way." He also described an acute confusional state accompanying these symptoms, sudden cessation of symptoms, recovery, and subsequent amnesia for the events of the psychosis:

"The gaze is staring, vacant, indefinite. . . consciousness becomes more and more clouded . . . and later there is amnesia for all events during this time . . . He frequently awakens as from a dream" (Nitsche, pp. 32-33)

In a statistical summary, Knecht reported in 1881 on the diagnostic assessment of 186 inmates at the "insane department" of the prison at Waldheim, and concluded that over half the total were reactive manifestations to solitary confinement. The majority of these inmates fell insane within two years of confinement in solitary. (Nitsche, p. 17)

In 1884, Sommer reported on 111 cases describing an acute, reactive, hallucinatory, anxious, confusional state associated with solitary confinement, emphasizing the "excited outbursts" and "vicious assaults" of these patients. His patients' illness began with difficulty in concentration, and hyperresponsivity to minor "inexplicable" external stimuli. These "elementary disturbances of the sensorium (i.e., the five senses)" were seen as leading to "elementary hallucinations" which became more numerous, eventually including auditory, visual and olfactory hallucinations, and eventually becoming incorporated with fearful persecutory delusions. (Nitsche, pp. 12-16)

In 1889, Kim described 129 cases of psychosis among the inmates at the county jail at Freiburg, concluding that in 50 of those cases, "solitary confinement can be definitely considered as the etiological factor, (and these) show a certain characteristic stamp" (Nitsche, p. 21) including persecutory delusions and hallucinations in multiple spheres (auditory, visual olfactory, tactile). He also noted that these symptoms often precipitated at night:

The patient is suddenly surprised at night by hallucinatory experiences which bring on an anxious excitement. These manifestations become constant from now on, in many cases

occurring only at night, in others also in the daytime. Attentive patients not infrequently hear at first a humming and buzzing in their ears, unpleasant noises and inarticulate sounds which they cannot understand until finally they hear well differentiated sounds and distinct words and sentences The visual hallucinations are very vivid. (Nitsche, p. 24)

In 1888, Moeli contributed a description of Vorbereiden -- "the symptom of approximate answers". Ten years later Ganser contributed to the literature the elucidation of a syndrome which included Moeli's symptom. (Ganser, 1898) As Arieti points out, Ganser's Syndrome became well-known -- indeed, almost a codification of the whole body of literature on the prison psychoses. Ganser provided a comprehensive and well-elucidated synthesis of symptoms, most of which had been previously described elsewhere. The syndrome he described included, (in addition to Vorbereiden), vivid visual and auditory hallucinations, a distinct clouding of consciousness, sudden cessation of symptoms, "as from a dream" and "a more or less complete amnesia for the events during the period of clouded consciousness." Ganser's most original description was of "hysterical stigmata" within the syndrome, including conversion symptoms -- especially, total analgesia. (Arieti, 1974, Vol. II, pp. 710-712)

Some of the German authors failed to note whether the inmates they were describing were housed in solitary confinement and, unfortunately, Ganser was one of these, stating only that his were "prisoners awaiting trial." However, Langard, in 1901, also reporting on observations of accused prisoners awaiting trial, described an acute violent hallucinatory confusion with persecutory delusions, and specifically stated that this syndrome occurred exclusively among those who awaited trial in solitary confinement. (Nitsche, p. 32)

Also in 1901, Raecke similarly reported on prisoners awaiting trial and described the full syndrome of Ganser, including Vorbereiden; he specifically condemned solitary confinement as responsible for the syndrome (Nitsche, p. 34). He described his cases as beginning with apathy, progressing to "inability to concentrate, a feeling of incapacity to think," and even catatonic features, including negativism, stupor, and mutism. (Nitsche, pp. 33-35)

In another report written the same year, Skliar reported on 60 case histories of which he identified 21 as acute prison psychoses caused by solitary confinement. While Vorbereiden was not noted, most of the other symptoms described by Ganser and Raecke were noted, including: massive anxiety, fearful auditory and visual hallucinations -- in severe cases, hallucinations of smell, taste, and "general sensation" as well -- persecutory delusions, senseless agitation and violence, confusion and disorientation. The psychosis developed rapidly -- at times within

Vorbereiden is a rather remarkable symptom of deranged and confused thought processes in which the individual's response to a question suggests that he grasped the gist of the question, and his answer is clearly relevant to the question, and is related to the obvious correct answer, yet still oddly manages to be incorrect. An example would be: Q: "How many colors are there in the flag of the United States?" A: "Four." Q: "What are they?" A: "Yellow."

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hours of incarceration in solitary confinement. Catatonic symptomatology was also noted (Nitsche, pp. 35-36).

The German literature reported only on prisoners who suffered gross psychotic symptomatology, some of whom were observed in hospitals or "insane departments" of prisons; thus, these reports generally described only syndromal expressions that rose to the level of overt psychosis. The German reports do, however, powerfully demonstrate the existence of a particular, clinically distinguishable psychiatric syndrome associated with solitary confinement. These multiple reports described a syndrome which included:

1. Massive free-floating anxiety
2. "Disturbances of the Sensorium", including --
 - a. Hyperresponsivity to external stimuli
 - b. Vivid hallucinations in multiple spheres (including auditory, visual, olfactory, gustatory and tactile modalities); in some reports, these began as simple "elementary" hallucinations and progressed to complex, formed hallucinations.
3. Persecutory delusions, often incorporating coexistent complex hallucinations.
4. Acute confusional states. In some reports, these were seen as beginning with simple inattention and difficulty in concentration. In others, the onset was described as sudden. The confusional state and disorientation was in several reports described as resembling a dissociative, dream-like state, at times involving features of a catatonic stupor, including negativism and mutism, and upon recovery leaving a residual amnesia for the events of the confusional state. Ganser and others observed hysterical conversion symptoms during this confusional state.
5. Vorbereiden: An infrequent finding, mostly described in conjunction with a confusional, hallucinatory state.
6. Motor excitement, often associated with sudden, violent destructive outbursts.
7. Characteristic course of the illness:
 - a. Onset was described by some authors as sudden, by others as heralded by a progression beginning with sensory disturbances and/or inattention and difficulty in concentration.
 - b. In many cases, rapid subsidence of acute symptoms upon termination of solitary confinement.

The German reports were generally based upon prisoners who had been hospitalized because of their psychotic illness; in contrast, the population reported upon in the Walpole study was not preselected by overt psychiatric status; despite this, all of the major symptoms reported by the German clinicians were observed in the Walpole population, except for Vorbereiden and hysterical conversion

symptoms. In addition, less severe forms of the isolation syndrome were observed in the Walpole population, including:

- Perceptual distortions and loss of perceptual constancy, in some cases without hallucinations.
- Ideas of reference and paranoid ideation short of overt delusions.
- Emergence of primitive aggressive fantasies which remained ego-dystonic and with reality-testing preserved.
- Disturbances of memory and attention short of overt dis-orientation and confusional state.
- Derealization experiences without massive dissociative regression.

Since Ganser's report has become the twentieth century's clearest memory of a much vaster body of literature, it is also of interest to review the literature describing observations of Ganser's Syndrome in non-prison populations. Several of these reports have been studies of patients in psychiatric hospitals suffering from this syndrome. Since these patients were hospitalized, it was possible to obtain more extensive evaluation and testing of their status. Several reports (Ingraham & Moriarty, 1967; May, Voegelé & Padino, 1960; Tyndel, 1956; Weiner & Braiman, 1955) described a majority of the patients studied as suffering long standing hysterical conversion symptoms. Impulsivity, childhood truancy, and antisocial behavior were also commonly described. These findings suggest also that antisocial behavior patterns and psychopathic personality disorder may bear a close relationship to primitive hysterical personality disorder, a relationship which has been described by other authors as well (e.g., Woodruff, Goodwin & Gaze 1974).

APPENDIX C

EXPERIMENTAL RESEARCH ON THE PSYCHIATRIC CONSEQUENCE OF PROFOUND SENSORY DEPRIVATION: FACTORS INFLUENCING VULNERABILITY TO PSYCHIATRIC HARM

As noted in the body of this declaration, laboratory research has demonstrated that experimentally-induced sensory deprivation has major psychological effects, and can precipitate severe psychiatric illness (see e.g. Brownfield, 1965; Solomon 1961). This research generally involves short periods of relatively marked perceptual deprivation generally of a few hours in duration. Much of the research in this area attempted to delineate factors, in addition to the duration and intensity of sensory restriction, which might account for these differing outcomes; the factors which have been elucidated include two which are especially relevant to this discussion, and may help to explain the particular malignancy of sensory deprivation in solitary confinement:

The Influence of Expectation

Orne and Scheibe (1964) suggested that a subject's reaction to participation in a sensory deprivation experiment could be profoundly manipulated by external

cues imposed by the experimenter:

[These] dramatic effects could be a function of the demand characteristics of the experimental situation There is evidence that preparing a subject for probable hallucinations significantly affects the frequency of hallucinations. Such devices as "panic buttons" in experiments . . . are in a sense eloquent instructions. The use of such a device increases the subject's expectation that something intolerable may occur, and with it, the likelihood of a bad experience. (p. 4)

In their own experiment, Ome and Scheibe exposed two groups of subjects to identical conditions of sensory deprivation. The experimental group's introduction to the experiment included the presence of a medical "Emergency Tray," and instructions about a "Panic Button." As predicted, the experimental group became significantly more symptomatic in measures of cognitive impairment and restlessness, and also more symptomatic in every other measure -- including perceptual aberrations, anxiety, and spatial disorientation.

In a related manner, prisoners in solitary confinement generally view such confinement as threatening and punitive, and often as a deliberate attempt to make them "crack up" or "break my spirit." In light of this, it is not surprising that the only recent report suggesting no major ill effect of solitary confinement (Walters, 1963) utilized prisoners who volunteered to spend 4 days in solitary confinement.

Individual Differences in Response

Several authors have directed attention to the fact that within a given experimental format, massive differences in response can be observed among individual subjects. Often subjects who tolerated the experimental situation well reported pleasant, or at least non-threatening, visual imagery, fantasy, and hallucinatory experiences:

His mind may begin to wander, engage in daydreams, slip off into hypnagogic reveries with their attendant vivid pictorial images . . . he may be quietly having sexual and other pleasurable thoughts. (Wright & Abbey, 1965, p. 6)

On the other hand:

Another subject in the same situation may deal with it in quite another manner. He may soon complain of all manner of things; the bed is causing him a backache, his mind is a blank, . . . intense boredom, tenseness, depressive feelings or of having unpleasant thoughts or picture-like images that disturb him. (Goldberger, 1966, p. 777)

In response to these concerns about the incidence of psychopathological reactions to sensory deprivation, an important thrust of the experimentation in this area has been, by prescreening, to select as subjects only those persons demonstrating, by some measure, psychological strength and capacity to tolerate regression. The theoretical premise of such work has been, as Goldberger (1966)

states:

In the sensory deprivation experiments, it is the ego's autonomy from the drives that is predominately involved . . . Differences in drive-discharge thresholds, phantasy, and daydream capacity, capacity for what Kris has termed "regression in the service of the ego" are other theoretically relevant structural dimensions accounting for differences in isolation behavior. (p. 778)

These ideas have been subjected to experimental verification, which has corroborated that some individuals tolerate such isolation better than others. For example, Wright and Abbey (1965) using the Rorschach Test for prescreening, concluded that:

[The Rorschach] manifestations of an individual's defense and control mechanisms . . . appears to be a reliable measure for predicting whether or not an individual will be effective in controlling the drive-dominated responses that might emerge during his period of reduced sensory stimulation. (Wright & Abbey, 1965, p. 37)

Anecdotal reports in a similar vein appear from time to time in the literature. Freedman and Greenblatt (1960) mention one subject who became panicky during sensory deprivation and stated he had been diagnosed "borderline psychotic" (p. 1489). Curtis reports on a psychotic paranoid reaction in one subject who suffered delusions for several days afterwards, and severe anxiety and depression lasting several weeks; personality test prescreening had suggested "poor adjustment, hostility, lack of insight, and insecurity in interpersonal relationships" (Curtis & Zuckerman, 1968, p. 256).

Grunebaum, Freeman, and Greenblatt (1960), prescreened 43 subjects and identified 7 as suffering "personality deviations." Two of these subjects, who were diagnosed as borderline, developed frightening, aggressive fantasies, paranoia, and difficulty in reality testing; one of them prematurely terminated the experiment. Two others were diagnosed as psychopathic; both forced the premature termination of the experiment by disruptive behavior.

Azima and Kramer (1956), using interview techniques and formal psychological test data, studied the effects of 2 to 6 days of sensory deprivation on hospitalized psychiatric patients. Among the previously non-psychotic patients they studied, two developed overt paranoid psychoses during the experiment, ultimately necessitating electroshock treatment. These particular individuals appeared to have been unable to tolerate the emergence of aggressive fantasies and images during the sensory deprivation experience.

Effects of Sensory Deprivation on Antisocial Personality Disorder:

Individuals with psychopathic personality disorder are probably among the least tolerant of sensory deprivation. Quay (1965) actually described the essential core of psychopathic

pathology as a pathological inability to tolerate restricted environmental stimulation:

The psychopath is almost universally characterized as pathologically stimulus seeking and highly impulsive He is unable to tolerate routine and boredom (His) outbursts frequently appear to be motivated by little more than a need for thrill and excitement It is the impulsivity and lack of even minimal tolerance for sameness which appear to be the primary and distinctive features of the disorder. (p. 180)

He goes on to argue that psychopathic individuals may chronically exist in a state of relative stimulus deprivation:

Highly impulsive psychopathic behavior [may be seen] in terms of stimulation seeking pathology. Decreased reactivity and/or rapid adaptation [to environmental stimuli] . . . produce in these persons an affective state . . . close to that produced by sensory deprivation in the normal individual.

He argues that behavioral impulsivity in such individuals may be an effort at coping with this condition of relative sensory deprivation which they experience:

It may be possible to view much of the impulsivity of the psychopath, his need to create excitement and adventure, his thrill seeking behavior, and his inability to tolerate routine and boredom as a manifestation of an inordinate need for an increased or changing pattern of stimulation," (p. 181)

In a later study, directly comparing psychopathic inmates with non-psychopathic controls, Emmons & Webb (1974) corroborated these findings; the psychopathic inmates scored significantly higher on measures of boredom susceptibility and of impulsivity. The authors concluded that psychopaths are pathologically stimulation seeking and incapable of tolerating isolation conditions.

In a large scale study of criminal offenders suffering from mental illness, Cota & Hodgins (1990) noted that the prevalence rate of severe mental illness is higher among incarcerated offenders than among the general population; and that, compared with non-mentally ill inmates, the mentally ill inmates were more likely to be housed in solitary. (p. 271) Moreover many of these mentally ill inmates suffered from a combination of psychiatric disorders predisposing them to both psychotic breakdown and to extreme impulsivity (often including substance abuse). (p. 272). Such individuals tended to be highly impulsive, lacking in internal controls, and tended to engage in self-abusive and self-destructive behavior in the prison setting, and especially so when housed in solitary.

Many of the inmates placed in solitary confinement are thus likely to be among the least capable of tolerating the experience, and among the most likely to suffer behavioral deterioration as a consequence of such confinement.

APPENDIX D

REPORTS OF THE LONG-TERM EFFECTS OF SOLITARY CONFINEMENT IN FORMER POLITICAL PRISONERS AND IN PRISONERS OF WAR: SOLITARY CONFINEMENT AS A MEANS OF "BRAIN WASHING" AND "INDOCTRINATING"

Although concerns about the psychiatric effects of solitary confinement among prisoners of war were raised in the medical literature at least as early as post World War II, this issue reached massive public exposure only after the fearful news of "brainwashing" among American prisoners of war in Korea. As is well known, the 1950's were an era of tremendous fear of Communism and of the attempts by Communist States to "indoctrinate" people into their ideology. As noted in the body of this declaration, in the 1950's the U.S. Department of Defense and Central Intelligence Agency sponsored a great deal of research on these issues; Hinkle and Wolff (1956) published results of extensive research done by them for the Department of Defense. The paper documented interrogation techniques of the Soviet KGB in regard to the incarceration of political prisoners, and the Chinese communists' imprisonment of American prisoners of war in Korea.

The report indicated that the KGB operated detention prisons, many of which were "modern . . . well built and spotlessly clean . . . (with) attached medical facilities and rooms for the care of sick detainees. An exercise yard is a standard facility. Incarceration in these prisons is almost universally in solitary confinement in a cell approximately 10' x 6' in size. An almost invariable feature of the management of any important suspect under detention is a period of total isolation in a detention cell." (p. 126)

This isolation was seen as a central feature of the imprisonment. "The effects upon prisoners of the regimen in the isolation cell are striking . . . A major aspect of this prison experience is isolation . . . (In the cells) his internal as well as external life is disrupted (and) . . . he develops a predictable group of symptoms, which might almost be called 'disease syndrome.'" This syndrome develops over time.

He becomes increasingly anxious and restless and his sleep is disturbed . . . The period of anxiety, hyperactivity, and apparent adjustment to the isolation routine usually continues from 1 to 3 weeks . . . The prisoner becomes increasingly dejected and dependent. He gradually gives up all spontaneous activity within his cell and ceases to care about personal appearance and actions. Finally, he sits and stares with a vacant expression, perhaps endlessly twisting a button on his coat. He allows himself to become dirty and disheveled . . . He goes through the motions of his prison routine automatically, as if he were in a daze . . . Ultimately, he seems to lose many of the restraints of ordinary behavior. He may soil himself; he weeps; he mutters . . . It usually takes from 4 to 6 weeks to produce this phenomenon in a newly

imprisoned man . . . His sleep is disturbed by nightmares. Ultimately he may reach a state of depression in which he ceases to care about his personal appearance and behavior and pays very little attention to his surroundings. In this state the prisoner may have illusory experiences. A distant sound in the corridor sounds like someone calling his name. The rattle of a footstep may be interpreted as a key in the lock opening the cell. Some prisoners may become delirious and have visual hallucinations.

Not all men who first experience total isolation react in precisely this manner. In some, the symptoms are less conspicuous. In others, dejection and other despondence earlier, or later. Still others, and especially those with preexisting personality disturbances, may become frankly psychotic. (p. 129)

The authors note that the procedures in the Chinese detention camps are somewhat more complex. Prisoners there underwent an initial period of isolation similar to that found in the Soviet prisons. (p. 153) In the second phase, however they were housed in extremely tight quarters within "group cells" comprising approximately eight prisoners. Under the tensions and hostilities created in this environment, brutality of prisoners against other prisoners was almost inevitable and was, according to the authors, apparently an intended result of this "group cell" confinement. (p. 159)

There are many long-term studies of American prisoners of war; unfortunately, the factor of solitary confinement has not generally been separated out in these studies. However, one relatively recent study of Korean POWs describe long-term effects including interpersonal withdrawal and suspiciousness, confusion, chronic depression and apathy towards environmental stimuli. Irritability, restlessness, cognitive impairment and psychosomatic ailments were extremely common in the group, most of whom had suffered periods of incarceration in solitary confinement at the hands of the Chinese. This report also included a case report of one individual exposed to harsh conditions of solitary confinement for more than 16 months; 30 years after release, he continued suffering sleep disturbances, nightmares, fearfulness, interpersonal suspicion and withdrawal, severe anxiety and severe depression. These former prisoners also had psychosomatic ailments including gastrointestinal disturbances, chronic headaches and obsessive ruminations. They tended to become confused and thus cognitively impaired and were emotionally volatile and explosive.

In a more recent study, Sutker et al. (1991) studied former prisoners of war in the Korean conflict, approximately 40 years after their release from confinement. Solitary confinement was cited as one of the severe stressors in this group. These former prisoners demonstrated persistent anxiety, psychosomatic ailments, suspiciousness, confusion, and depression. They tended to be estranged and detached from social interaction, suffered from obsessional ruminations, and tended to become confused and cognitively impaired, suffering memory and concentration difficulties which affected their cognitive performance on formal testing.

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HEADLINE: HOW EXPERT GETS DETAINEES TO TALK

BYLINE: Samara Kalk Der The Capital Times

BODY:

Interrogating prisoners is nothing like it is portrayed in the movies or on TV programs such as "NYPD Blue," says a Madison native who for the past eight years has worked as an interrogator for the U.S. military.

The 34-year-old man, an active duty intelligence professional, was home last week for his first leave in nearly three years. Introduced to a Capital Times reporter by mutual acquaintances as they relaxed on the Memorial Union Terrace, he agreed to an interview on condition that he not be identified.

The man, whom we will call "Patrick," cited his security and that of his family as reasons for anonymity. He said that using his name or giving away other details could also compromise his military career.

Patrick graduated from a local high school, went to a private Midwestern college and has been in the active military for the past 13 years.

He has served with U.S. special operation forces in Afghanistan; Iraq; Guantanamo Bay, Cuba; and in Europe and the Balkans. He also has taught interrogation techniques to others in the military.

He was in Afghanistan for nine months in 2003 and has had other shorter deployments this year. He said he is going back to Afghanistan soon for a tour of "undetermined length."

His assignment at Guantanamo was short, but there, he said, he interrogated al-Qaida and Taliban detainees.

His job, he said, is to provide interrogation and "humint" (human intelligence) support to special forces.

He underwent 63 weeks of language training in Arabic and had months of other intelligence training focusing on interrogation, debriefing, intelligence collection, report writing and analysis of terrorist organizations.

"What's equally important is the emphasis on history, culture, politics, ethnography. So you basically become the subject matter expert for that area you are working in," Patrick said during a two-hour interview last week at a local coffee shop.

The interrogator's job, he said, is to determine the particular detainee's motivations and what buttons to push. Patrick maintained that interrogation hardly ever involves physical force or physical intimidation, because that just doesn't work.

More often, his job is to figure out what rewards a particular detainee needs or wants from him. Sometimes that means additional comfort items: a prayer rug, an extra shower, outside exercise time or different food.

"One of the things that was most effective with al-Qaida and Taliban in Guantanamo was food from the McDonald's on the base. Buying them a Filet-o-Fish, a Quarter Pounder with Cheese or a Big Mac. That was very effective in getting cooperation." Patrick said.

There is a lot of sitting down and talking with those who have been captured and developing a relationship or rapport so there is a free, open dialogue, he said -- as free as it can be in captivity.

"The interrogator sort of directs and manipulates the conversation but it has to be an open exchange between both sides," he said.

More "dynamic" or "intense" methods are used infrequently, Patrick said. "And these are the people who are hard-core bad guys who have been trained and given courses to resist interrogation techniques."

Most of those methods are already well known: having the detainees stand for prolonged periods of time or keeping them awake for long periods, asking them harsher questions, or subjecting them to more intense, lengthy questioning sessions.

"When you catch somebody in a lie, you just turn it back on them and force them to explain why their story has changed or why they are not saying the same thing consistently," he said.

From his interrogations, Patrick said, he has learned everything from "big picture information" like terrorist training methods and the identities of personnel, down to local protection information -- for example, where someone has hidden weapons or planted explosives.

Patrick agrees with the criticism that the United States is holding dozens of prisoners at the U.S. Navy Base at Guantanamo who have no meaningful connection to al-Qaida or the Taliban and is denying them access to legal representation.

"I think this is very problematic," he said. "There are a large number of people at Guantanamo who shouldn't be there, and we actually need to process them through as quickly as possible so interrogators can spend time on the ones we know are the bad guys.

"However, some of the rulings by the Supreme Court and other legal decisions that foreigners captured on an enemy battlefield have rights and access to the U.S. legal system, to me seem a little silly. We're not talking about someone who was arrested for stealing a car or even murdering somebody. Those U.S. citizens have rights under the Constitution and rights to due process.

"Instead, we are talking about foreigners who were captured in an armed conflict against U.S. forces."

Patrick also has strong feelings about the U.S. abuses at the notorious Iraqi prison Abu Ghraib. Because of these abuses, and what he calls "a lack of training, lack of command and lack of supervision," U.S. intelligence collection will suffer for a long time, he said.

"A small group of people screwed up and it will affect how we go about collecting intelligence for at least 10 years."

The conditions that allowed the problems to occur were noted in Guantanamo and Afghanistan, he said. Those conditions, he said, were lack of a clear line of authority between military police and military intelligence.

The military police, when they run a prison, basically warehouse people. and the interrogation unit is there to get information from the detainees. The two functions don't always match up with the best way to run a detention facility, Patrick said.

"And it seems like the U.S. military hasn't figured that out."

Most every prisoner seen in the pictures was being humiliated. which is against regulations and against the Geneva Conventions, he said.

"It was wrong and those people should be brought before justice, and if found guilty they should serve time," he said. "However -- and it's a big however -- it was not torture. Nothing seen in the pictures constitutes the torture of a detained person."

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GRAPHIC: LYNNE SLADKEY/ASSOCIATED PRESS

A detainee is led by military police after being interrogated by military officials at Camp X-Ray at the U.S. Naval Base at Guantanamo Bay, Cuba. "Patrick," a Madison native, served as an interrogator there.

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HEADLINE: Welcome to Guantanamo: A special investigation into the prison that shames American justice. By James Meek: The people the law forgot

BYLINE: James Meek

BODY:

It is almost two years since the Guantanamo prison camp opened. Its purpose is to hold people seized in the war on terror and defined by the Bush administration as enemy combatants though many appear to have been bystanders to the conflict. Images of Camp Delta orange-jumpsuited, manacled detainees have provoked international outrage. But the real horror they face isn't physical hardship. It is the threat of infinite confinement, without trial or access to legal representation. James Meek has spent the past month talking to former inmates and some of those involved in operating the Pentagon Kafkaesque justice system. He has built an unprecedented picture of life on the base, which we present in this special issue

One summer day in Cuba in 2002, a 31-year-old Pakistani teacher of English named Abdul Razaq noticed something unusual in the familiar patterns of movement among the orange-suited figures in the mesh cages on either side of him. Two or three cages along from his own, a fellow Pakistani prisoner, Shah Mohammed, was silently going about trying

to hang himself from a sheet lashed to the mesh. He had the cloth around his throat and he was choking.

Other prisoners in neighbouring cells had noticed and, as they usually did when a detainee in the United States prison camp in Guantanamo Bay tried to kill himself, they raised a hue and cry in their many languages.

First we shouted at Shah Mohammed to stop, but when he didn't, we called the guards, says Razaq, who was released from Guantanamo in July, and returned to his home town in October after three months detention by the Pakistani authorities. The guards came in and saved him. It was the first time he attempted this in my block, then he was taken to another place. He appeared to be unconscious. It was one of four suicide attempts by Mohammed while he was in Guantanamo. He was released in May and lives in the Swat Valley, on the far side of the Malakand Hills from Peshawar, a few dozen miles from Razaq's home. It is a district of God-fearing, conservative, cricket-loving yeomen, who are passionate about their land and liberty, and protective of their right to bear arms; the fields of sugar cane and tobacco are well tended, and prices in the gun shops are more reasonable than their counterparts in America. In the mornings, a crocodile of small boys in black berets, walking to school, stretches for miles.

Mohammed, who is 23 and a baker by trade, is 5ft 3in and light on his feet. He has been having nightmares ever since he came back. His face peers out from behind a lustrous black beard and long hair like a child hiding between the winter coats in a wardrobe. In Kandahar and Guantanamo, he was interrogated 10 times.

His face only lights up when you ask about fishing. He has been doing a lot of it ?mostly for trout ?since his return. The other day he caught a five-pounder with his Japanese rod. The biggest damage is to my brain. My physical and mental state isn't right. I'm a changed person, he says. I don't laugh or enjoy myself much. Asked why he tried to commit suicide so often, Mohammed is vague. He talks about worries over troubles at home; his mother's health, his brother's business, and his own problems. But his attempts at self-harm at Guantanamo began after he was confined, without

explanation, in a sealed punishment cell for a month not, it seems, because he had broken camp rules, but because the American authorities had nowhere else to put him while they were finishing new facilities.

In India Block, as the block of punishment cells is known, there were no windows. There were four walls and a roof made of tin, a light bulb and an air conditioner. They put the air conditioning on and it was extremely cold. They would take away the blanket in the morning and bring it back in the evening. I was kept in this room for one month. We ask them: Is this a sort of a punishment And the translator would say, no, this is being done on orders from the general.

As treatment for Mohammed? suicidal state of mind, US medics injected him with an unknown drug, against his will, refused and they brought seven or eight people and held me and injected me, he says. I couldn't see down, I couldn't see up. I felt paralysed for one month, this injection, the effect, I couldn't think or do anything. They gave me tranquillising tablets. They just told me: 'our brain is not working properly.' They were forcing me to take

these injections and tablets and I didn't want to do that. Some people were being injected every month. In trying to learn what life is like at the US prison camp at Guantanamo, the few score of released detainees almost all Pakistanis and Afghans are among the scant sources available. Journalists are allowed to visit the facility; the Guardian has been three times, and I was offered a slot, but journalists, like family members, lawyers and human rights investigators, have no access to the detainees themselves. Like a tour of the White House, the visits offer a superficial openness about the lives of the main occupants.

Yet the testimony of those former detainees, together with rare scraps of information from censored mail, official statements and the odd comment from guards and others who have been inside, overlaps into a coherent portrait. In the almost two years since the Guantanamo prison camp opened to hold people seized by the US in what the Bush administration has designated the war on terror it has settled from a rough and ready, occasionally brutal place of confinement into a full-grown mongrel of international law, where all the harshness of the punitive US prison system is visited on foreigners, unmitigated by any of the legal rights US prisoners enjoy. To this is added the mentally corrosive threat, alien to the US constitution, of infinite confinement, without court or appeal, on the whim of a single man the president of the US. The question, what is Guantanamo really like, has all the appeal of the unknown. But inside it lurks a darker question, with all the implications for freedom in America and beyond that its answer contains: what is Guantanamo? One of the few political statements to slip past the censors by a man still detained there is contained in a short postcard from a French prisoner, Nizar Sassi, to his family, dated August 2002. If you want a definition of this place, he wrote, you don't have the right to have rights. The US executive acted quickly in the weeks following the September 11 terrorist attacks on New York and Washington. Within 26 days, Afghanistan was being attacked from the air; Kabul fell in nine weeks. Eleven weeks after the World Trade Centre was destroyed, resistance by Taliban fighters and their non-Afghan allies in northern Afghanistan was crushed.

But, as US defence secretary Donald Rumsfeld told the military in a revealing slip in April 2002, we have been successful in not eliminating al-Qaida. Having failed to find the suspected mastermind behind 9/11, Osama bin Laden, his Taliban ally, Mullah Omar, or much in the way of terrorist infrastructure, the US set about constructing, behind razor wire on a secure Caribbean island, an incarcerated model of what its war on terror rhetoric implies. It has gathered terrorism suspects from all over the world, imposed discipline and order on them, encouraged them to hate the US and kept them together for years. It was as if the Bush administration so wanted the Hollywood fantasy of a central terrorist campus to be true that they built it themselves.

Because the roughly 660 detainees still on Guantanamo have no voice, and because the US has never explained case by case why it locked them up, the outside world has only the accounts of their families and the catch-all US definition of enemy combatant to understand who they are and why they are there.

Most were arrested in Afghanistan but many were handed over to the US by other countries. They are an extremely heterogeneous group. There are some 40 different nationalities, there's 18 different languages, says Daryl Matthews, a forensic psychiatrist based in Hawaii who spent a week at the Guantanamo prison camp in May. 'There's a big division between Arabic-speaking and Urdu-Pashto-speaking ones. There are some people who are extremely well educated and westernised, and some people who are not at all. There are some very young people and some very old and wise people. There are people who speak English well, people who don't speak English at all. There are some who go in with mental disorders . . . there are some very secular, and some deeply devout. There is Shafiq Rasul from Tipton in the West Midlands, who took his wardrobe of designer clothes with him to Pakistan, was captured with his friends Asif Iqbal and

Ruhel Ahmed by the Northern Alliance, and was handed over to the US in Sheberghan in northern Afghanistan in December 2001. Jamil al-Banna and Bisher al-Rawi, two refugees living in Britain, were arrested in the Gambia in west Africa and handed over to the US by the Gambians. Moazzam Begg and Richard Belmar, two other Britons, were arrested in Pakistan and handed over to the US by the Pakistanis. David Hicks, an Australian, who had previously led a life of shark fishing and kangaroo skinning, and had fathered two children, ended up in the Sheberghan prison after fighting with the KLA in Albania and the Kashmiri insurgency group Lashkar-e-Taiba. Mehdi-Muhammed Ghezali, who grew up in the Swedish town of Rebro and whose father was Algerian and mother Finnish, had a promising career as a footballer ahead of him before turning up with the Taliban in Afghanistan and being captured. Nizar Sassi and Mourad Bechnellali grew up in Venissieux, a suburb of Lyons. Their lives came to revolve around the mosque on Lenin Boulevard before they travelled east. Ibrahim Fauzee, a citizen of the Maldives, was arrested in Karachi while staying in the home of a man with suspected al-Qaida links. Tarek Dergoul, from east London, thought to have been arrested during the battle for Tora Bora in southern Afghanistan, is reported to have had an arm amputated as a result of wounds. Sami al-Haj, a Sudanese assistant cameraman with the al-Jazeera TV station, was picked out and held while leaving Afghanistan for Pakistan after the fall of Kabul with the rest of his crew. They never saw him again. Another Briton, Martin Mubanga, from north London, was handed over to the US by Zambia. Jamal Udeen, from Manchester, born into a devout Catholic home, and converted to Islam in his 20s and was seized in Afghanistan only three weeks after he left England. Airat Vakhitov, one of eight Russians on Guantanamo, thought he had been liberated when a reporter from Le Monde discovered him in a Taliban jail, where he had sat in darkness and been beaten for seven months on suspicion of spying for the KGB. But he only exchanged the Taliban prison for an American one. And there is Mish al-Hahrbi, a Saudi schoolteacher. After he tried to kill himself on Guantanamo, he suffered severe and irreversible brain damage.

The road for many detainees, including the small number who have since been released, began with, they claim, a non-combatant reason for being where they were when they were caught. Mohammed says he went to work for the Taliban as a baker; Razaq says he was a missionary. They were held by the Northern Alliance in northern Afghanistan, selected by the Alliance to receive a cursory interview from US special forces or the CIA, and flown to Kandahar, where they were

held for weeks or months before being flown to Cuba.

Razaq, in his first interview with a journalist, told me he was convinced the only reason he was sent to Cuba was because he spoke English. He had been held by the Northern Alliance for a month in Sheberghan prison, in crowded conditions with little food, when Alliance soldiers came and asked the group

of Pakistani, Arab and Uzbek captives

who among them spoke English. Razaq stepped forward.

His hands were tied and he was taken to a small room with mud walls where he was made to kneel on the ground in front of two Americans in uniform, one sitting on a mud bench projecting from the wall and the other standing. The interview took three or four minutes, and consisted of two questions: What is your name, and why have you come to Afghanistan. Afterwards he was taken outside. He just had time to see a group of bound men with hoods on their heads sitting in a row before he, too, was hooded. They were taken to an airfield and flown to Kandahar. No signal had passed between his interrogators and the soldiers who hooded him. In other words, on the basis that he knew English, the US had already decided to take him to Kandahar, whatever the result of this initial interview.

Another released Pakistani, Mohammed Saghir, a grey-bearded sawmill owner who is now 53, tells me that he had not even had a cursory interview at Sheberghan before he was bound hand and foot, blindfolded and helicoptered to Kandahar.

Shah Mohammed was held at a prison in Mazar-i-Sharif, near Sheberghan, before being sent to Kandahar. He met Hicks, the Australian, while he was there. There were early signs of the differential treatment, apparently according to national background and skin colour, that was to be one of the characteristics of the US handling of terror suspects. spoke to the Australian, he knew a bit of Urdu, says Mohammed. he said he had come for Jihad. He was asked a lot of questions (by the Americans), more than us. He was taken to a navy ship and I was taken to Kandahar. Mohammed was to see Hicks again.

The released detainees recount the roughness with which they were treated at Kandahar. from the moment of their transport there. ?ne thing I?e learned about the Americans is they are very harsh when they transport people around,says Razaq. they had tied up my hands so tight that for two months I couldnt use my right hand. They haul you from your neck and drop you off the plane in a very disrespectful manner. For a long time we didnt know it was Kandahar. We thought they were going to kill us there.They would just pick us up and throw us out (of the plane).says Saghir. Some people were hurt, some quite badly.Mohammed says: They kicked us out of the plane and threw us on the ground. The accommodation at Kandahar was uncomfortable. Prisoners slept and sat in small groups under canvas canopies, on the bare earth, surrounded by razor wire and under constant surveillance. They were given a single blanket each. It was winter. Razaq says that the bottled water they were given to drink would be frozen in the mornings. He said that for the first 20 days, a strict no-talking rule was enforced. Saghir describes how no one had been allowed to sleep for more than an hour. If someone slept for an hour they would yell at him: Get him up The prisoners were interrogated steadily, with long intervals between sessions. we used to ask them: why are we being kept here? says Mohammed. They would reply: You will be interrogated, and whoever is found innocent will be allowed to go.They never told us we would be taken to Cuba.

Razaq was one of the last to leave Kandahar. He saw the camp emptying around him. From his testimony, it appears that once a detainee was committed to Kandahar, the vast US military bureaucracy could only send people to Guantanamo. I dont know what made them suspect me, but there were rumours that they arrested me because they thought I was a very senior Taliban official.he says. in fact, in the last interrogation at Kandahar. the American interrogator gave me water to drink and assured me I would be released.

This assurance was given to me on several occasions. I never knew where they were taking the people who disappeared. We asked the Red Cross, but they wouldnt give us any information. But there was this gate through which we could see people in red costumes in the distance. At the end, it seemed they just

wanted to send everyone to Cuba and I was in the last group.?The last thing the US captors did before dispatching the Kandahar detainees to Cuba was shave off their beards, a process they found humiliating. Razaq was told it was because, without showers. they had picked up lice. ?e resisted, but four or five commandos came and they had a machine and just shaved off my beard and moustache,says Saghir.

For the flight to Cuba, the prisoners were given the orange jumpsuits familiar from television footage of their arrival at Guantanamo. They were bound hand and foot, blindfolded, gagged. and their ears were muffled. Once on board the military transport plane, their feet were chained to the floor. their hands bound to the handrests. and restraining straps stretched across their bodies. The translator told us: dont make any movement, dont worry, you are being taken home, says Mohammed. i dont remember how many hours but we left at night from Kandahar and arrived in Cuba in the evening. We stopped somewhere and changed planes. Saghir says that, as with the arrival at Kandahar, the detainees, still bound, gagged and blindfolded, were thrown off the plane on arrival in Cuba. Some had their noses broken, he says. i got a bruise under my left eye where my face hit the ground.The first prisoners were moved from the runway to a truck, from there to a launch across the bay, and from there to the bare mesh cages which would be their home for the first few months of 2002, the original detention centre, Camp X-Ray. Those initial images of blinded, deafened, mute and bound men in glaring orange became a potent weapon in the hands of those who opposed the manner in which the Bush administration was coping with terrorism, particularly in Europe and the Muslim world. A country which would not countenance an international criminal court, the pictures seemed to say, had built a harsh international jail. The bizarre setup of Guantanamo itself. a fortified American toehold in

one of the world last outposts of communism, added to the sense of prisoners being cast into the centre of concentric circles of isolation. Cubans remember, if few others do, that the world first concentration camps were built on their island by the Spanish in

the 1890s.

In the first few weeks of Camp X-Ray existence, the regime was even harsher than it looked from the pictures of tiny cages. The prisoners were not allowed to speak to each other. not even in a whisper. I spent the first month in utter silence.says Mohammed.

According to Saghir, in this initial, relatively brutal phase of Guantanamo, there was little tolerance for the practice of Islam, with its requirement of prayer five times a day. In the first one-and-a-half months they wouldn't let us speak to anyone, wouldn't let us call for prayers or pray in the room, he says. We were only given 10 minutes for eating. I tried to pray and four or five commandos came and they beat me up. If someone would try to make a call for prayer they would beat him up and gag him. After one-and-a-half months, we went on hunger strike. US officials at the camp have admitted hunger strikes did take place there in some cases, prisoners were force fed but in the minds of the detainees, they have been associated with protests that have achieved results. According to Saghir, it was only after a mass four-day hunger strike that the no-talking rule was lifted, a loudspeaker was put up to broadcast the call to prayer, more time was given for meals, and Korans and other books were provided. Mohammed says that an eight-day hunger strike when a guard had thrown the Koran on the ground had ended with a personal apology from a senior officer

and a promise that the Koran would not be touched again.

Razaq, who arrived after Camp X-Ray had already shut down, said that the culture of protest was a feature of life in Guantanamo. In the beginning there was a mass hunger strike, but later on there were individual cases of people not eating, he says. In other cases detainees would take off their plastic tags carrying their US identification codes and throw them at the guards, or would bang on their metal benches. Sometimes the guards would use a disabling gas in response.

When we threw off our tags the guards asked us to hand over our blankets, but two of our colleagues didn't oblige, so they sprayed them to make them unconscious, tied them up and took them to the punishment block; during that transfer they were quite brutal, says Razaq. But I didn't see any slapping. Life in X-Ray became easier after the no-talking rule was lifted. The camp authorities appear to have instituted a kind of linguistic mosaic, giving detainees a reasonable chance of finding someone to talk to, but without allowing too large a cluster of people speaking the same language. Mohammed sketches out the group of 10 cages he was in in X-Ray. His immediate neighbours were Hicks, a Bangladeshi, two Arabs whose names he does not remember, and Rokhanay, from northern Afghanistan. Slightly further away, but still in talking distance, was Asif Iqbal from Tipton, another Arab, Abu Nakar, and two southern Afghans, Wasiq and Nurullah. 'Asif was at an advantage because he was able to speak to the Americans in English,' says Mohammed. He was like my translator. He had just come for a visit to Pakistan and then went to Afghanistan. He never intended to wage Jihad. He would swear at the guards from time to time. Sometimes, on some issue, he would just start yelling at them but the Americans would not respond. David Hicks knew some Urdu as well, so I would speak to him, and he would speak to Asif. The Guantanamo prisoners have no way of knowing what is happening in the outside world, whether it concerns football scores or the war in Iraq. Apart from the guards and interrogators, the only contact

the prisoners have is with officials of the international committee of the Red Cross and with occasional visitors from the intelligence services and foreign ministries of their

home countries. The ICRC never talks about conditions in Guantanamo and little else has leaked out.

Swedish activists campaigning for the release of Mehdi Ghezali have used Sweden's freedom of information laws to obtain a censored version of a report by an intelligence officer, Bo Eriksson, on a visit to Guantanamo with another Swede in February 2002. It and other documents reveal that the US was so obsessed with security that it drafted in a Swedish-speaking US army officer to listen in on the meeting between the agents and Ghezali, and, even so, got an envoy in Stockholm to ask the Swedes for a copy of their report into the meeting that they had already listened in on.

The cells measure approximately 2x3 metres with walls of wire mesh, concrete floors and metal ceilings, wrote Eriksson. Inside the cells, the detainees have a mattress, a blanket, a hand towel, a couple of buckets and water bottles made from soft plastic. Outside their cells, the detainees wear orange overalls and plastic slippers. Their freedom of movement is not restricted to the cells, although outside their cells they wear hand and foot restraints. The handcuffs are fastened to a belt around their waist allowing them only restricted movement with their hands and arms. (Ghezali) only just managed to drink water from a mug with hand restraints on.

The leg restraints mean that when detainees are moved they have to move forward taking very small steps. One of the guards keeps a hand on the back of the detainee's neck the whole time, bending the detainee's head forwards so that he is looking at the ground the whole time he is being moved. . . . They are not tortured, nor do they receive any other degrading treatment. The mesh cell walls mean of course that the detainees never have a moment's privacy. On one occasion, detainees had suspended a plastic sheet on the fence to prevent people from looking in but they had been

forced to remove it since it became unbearably hot despite the cool breeze from the sea. In April 2002, the prisoners were moved to new accommodation, Camp Delta, and Camp

X-Ray was closed. Their beards grew back. The new facilities, which make up the main part of the prison camp to this day, feature blocks of 48 cages each, with two rows of mesh cages separated by a narrow corridor. The blocks have no external walls, only a pitched roof; they stand on concrete bricks in areas of raked gravel surrounded by high, opaque green fences topped by razor wire. The cages are about as long and wide as a tall man lying down, and contain a metal bunk, a tap and a toilet. Besides this standard type of accommodation, there are at least six others. There is the more relaxed regime of Camp Four, where docile, cooperative prisoners are rewarded with dormitory-style living and free association with other detainees. Within Camp Four, there is a further category of prisoners, believed to include Britons Moazzam Begg and Feroz Abbasi, kept isolated from other prisoners in preparation for being put on trial. In Camp Delta, there is a special block set aside for three juvenile prisoners, with a view of the ocean and a less repressive confinement. There is Delta Block, where prisoners with mental problems are kept under special observation; and India Block, and possibly one other block, which contain the punishment isolation cells.

The Guardian has also learned that a very small number of prisoners, thought to be between two and five, are kept permanently isolated in a special, super-secure facility within Camp Delta.

Mohammed, Saghir and Razaq all had experience of the punishment cells. Saghir says that he was locked up in one of the windowless metal boxes for more than a week when an Arab spat at a guard and the entire line of 24 cages was punished with solitary.

One of the US justifications for holding the Guantanamo prisoners for so long in isolation is that they need to be interrogated for valuable intelligence. There has been an enormous amount of interrogation: each prisoner has typically been questioned between 10 and 20 times, which would, assuming interviews last 90 minutes on average, have generated some 15,000 hours of transcripts, containing perhaps 200 million words, the equivalent of around 250 Bibles. Yet without exception, the detainees say they were questioned by different interrogators each time, and each time the questions were the same.

Prisoners describe the interrogation room as a small, windowless, air-conditioned, plywood space, lit by fluorescent ceiling tubes. One, two or three Americans ask questions, through a translator if necessary. The only furniture is a wooden table with metal legs and metal chairs. Interviews are recorded on tape and by written note. There is a metal ring fixed to the floor; while they are being interrogated, the prisoners sit in a chair and have their chains fixed to the ring.

they would ask: where is Osama? Do you know any of the al-Qaida leaders? Have you met them? Things like that, says Saghir. They would not get angry with my answers. We would ask them and they would say: we don't know when you will be let free. Only our bosses know, we are here to do our job.

Sometimes it seemed that the interrogators wanted the detainees to show sympathy with the victims of 9/11. Saghir was once told by a translator that he had got closer to being released by giving a right answer. In my last interrogation I was asked: these people who attacked the twin towers, would you call them Muslims? I answered: I won't call them Muslims, but I'm not a religious scholar, I couldn't judge these people. The translator then said: you have gone one stage further, there will be no more interrogations.

After Kandahar, none of the released prisoners has described torture or even aggression by the interrogators, but Razaq said detainees who refused to answer questions were sometimes put in isolation cells as punishment.

The interrogated and the interrogator do attempt mind games with each other. In one interrogation, the interrogators effectively told Razaq he was free to go. They said: oK, your file is clear. Where do you want us to drop you?

Daring to hope, Razaq answered: 'eshawar? Immediately, the interrogators began questioning him again as if for the first time, and made him take a lie-detector test, maybe this was one of their tactics, says Razaq.

They first made me happy and

accept that I will be free, then they changed direction. Guantanamo is a bleak, dull, repressive place for its inmates. Yet there is something about it which may not be immediately apparent to Europeans dismayed by the level of security, the chains and the punitive, degrading way the prisoners are caged: it is not dissimilar to facilities in the harsh US civilian prison system. By focusing on physical conditions, there is a risk of missing the unique aspect of Guantanamo ?the arbitrary, unprecedented and unfair way in which President Bush and his administration have confined hundreds of people without either any idea how long they are to be locked up, or any way to plead their case. It is this which the legal establishment in the US and Europe finds most menacing. It is this which causes the greatest mental torment to the prisoners and their families. And the strange Pentagon creatures that have been set up to try some detainees. the military commissions, are, the Guardian has learned, troubling even the uniformed lawyers signed up to make them work.

prisons are a big industry in the US, says Daryl Matthews. we imprison a lot of people. People dont understand the extent and the misery of prisons in the US. People who are considered the most dangerous people in the US are moved in shackles. Ive been in prisons in the US much more secure than Guantanamo . . . Ive interviewed people in masks and shackles on the mainland US. These are scary places. I don? think the issue for the Guantanamo folks is their conditions of confinement. Its easy to be fascinated by a place you can get to but thats not the issue. The issue is human rights. Matthews, who opposes the death penalty, none the less provides psychiatric advice to courts in civilian capital cases. Yet he is still wrestling with his conscience over whether to provide the same service to the military commissions that will try the Guantanamo detainees. The commissions have the power to impose the heaviest sentences, up to and including death. Unlike the rapists, child abductors and serial killers on capital charges in the US, unlike the Oklahoma bomber Timothy McVeigh, cold war Soviet spies or Nazi war criminals, unlike even the shoe bomber Richard Reid, the confessed terrorist and

al-Qaida supporter, the hundreds of people locked up in Guantanamo have neither been told why they have been deprived of their liberty for two years, nor when or how they might be released, charged or tried, nor given any opportunity to challenge their status before a tribunal.

That isolation and uncertainty, Matthews points out, puts an extra burden on the detainees. most of the stresses that operate on the Guantanamo detainees would operate on anyone in a maximum security facility (on the mainland US).he says. theyre bored, its noisy, they have no privacy, they get some exercise but not very much. They have to deal with strangers who dont like them all the time, guards and other inmates. They don? have access to personal objects. Its horrible being a prisoner . . . when I read about your British detainees, and families being concerned that people are being tortured because they are depressed, I wish I could tell the families it doesnt need torture to make someone depressed in prison. Just a normal prison environment produces profound alteration in mental states, suicide and depression.

but at Guantanamo theres an added level of stress, and I think that is the thing thats somewhat unique . . . Inmates in a normal prison are focused on how much time they are going to serve, on contacting their lawyers, on being able to take constructive efforts to get out; these are important ways prisoners deal with the stress of confinement, and these guys cant do anything. When the terrorists attacked the US on September 11, the world found in Bush and his attorney-general, John Ashcroft, men who had already embraced the idea that large-scale incarceration and executions were the way to fight wrongdoing, who wanted to encourage judges to impose harsher sentences, and who felt that defence lawyers were the bane of justice. The leash-is-off rhetoric of the war on terror fitted naturally into the rightwing narrative of recent history, which portrayed spineless liberals betraying the victims of crime by too scrupulous a concern for the rights

of suspects.

Ashcroft makes the link explicit. In a recent speech, close to the second anniversary of 9/11, he boasted that the Bush administration had used the same tactics to fight terrorism as to fight crime. For almost two decades, some in Washington have preached defeatism and surrender in the battle against the drug smugglers, the criminal and the lawless.he said. It one time, elite opinion held that law enforcement and citizens could not do anything. They believed we were doomed to live with rising crime. They argued that criminals were driven by circumstance and root causes beyond our control . . . The ideological critics were proven wrong . . . We have proven that the right ideas tough laws, tough sentences, and constant cooperation are stronger than the criminal or the terrorist cell. A foretaste of how the Bush administration planned to avoid defeatism and surrender in pursuit of terrorists came with the detention of more than 1,000 foreign Muslims in the US in the immediate aftermath of 9/11. Although they were technically held for

outstaying their visas and other workaday immigration offences. 762 of them were investigated for suspected terrorist links. Few, if any, were ever charged with anything terrorist-related, but all had to wait weeks or months to be cleared by the FBI. Those held in one detention centre, in Brooklyn, were initially prevented from contacting family and lawyers; some experienced violence and racist abuse.

The presidential order that created the basis for the Guantanamo prison camp, and for the military commissions that will try any of the detainees charged with terrorist offences or war crimes, was published on November 13 2001, the day the Northern Alliance took control of Kabul. With the sudden, unexpected fall of Mazar-i-Sharif in the north a few days earlier, it became clear to the Bush administration that they were about to have access to hundreds, perhaps thousands of Taliban and allied fighters, some of whom might be terrorists. The question suddenly became urgent as to what status to give the captives so that the US could interrogate them, detain them at the president's pleasure, and punish them. At the time, hopes were high of capturing Bin Laden himself. The Guantanamo detainees may to some extent be paying the price for the Americans' inability to capture the al-Qaida leader. In a sense, Guantanamo is St Helena without Napoleon, with the dregs of the Grand Armée locked up instead.

Practical templates were available in international law that, on the face of it, would have allowed Washington to satisfy its aims. It remains a mystery as to why the Bush administration chose not to follow international law, but to make up its own. Its first step away from international norms was to refuse to categorise the Afghanistan captives as prisoners of war. One source told me of a possibly apocryphal story that Bush and his aides were going through the Geneva convention when the president came to the part that declares PoWs must be paid between eight and 75 Swiss francs a day. At this point, the story goes, Bush lost his temper and ordered his people to find a way for the captives not to be PoWs.

Officially, the US hides behind the fact that the resistance in Afghanistan didn't dress like soldiers. It is true that, like CIA operatives in the field in Afghanistan and Iraq, and like many of the Northern Alliance allies of the US, the Taliban and non-Afghan fighters didn't wear uniforms, but that does not prevent them being declared prisoners of war. Article 5 of the Third Geneva Convention is clear: any captured belligerent whose status is uncertain should be considered a PoW until their status is settled by a competent tribunal. The US carried out hundreds of these tribunals during the 1991 Gulf war and in the recent Iraq war. In Afghanistan, it didn't.

Asked why there hadn't been any tribunals for the Afghan captives, Major John Smith,

a military attorney in the Pentagon department organising the forthcoming trials of Guantanamo detainees, says it is because

the president decided there was no need.

The president's decision was that there

was no doubt these individuals did not qualify for PoW status and a tribunal wasn't required, he says.

Eugene Fidell, a former military lawyer, now president of the National Institute of Military Justice in the US, said that the decision not to hold tribunals had deprived his country of the moral high ground. Whether that policy decision was right or wrong, or wrong in part, let's say, as to al-Qaida or Taliban members, it represented a fork in the road. And the path taken has had, I think, a very poisonous effect on our standing in the world community. Had there been formal tribunals, the US could still have interrogated, charged and tried the PoWs. They might also have screened out some of their more pathetic captives before they had to endure Guantanamo, such as Mohammed Hagi Fiz, a toothless, fragile old Afghan in his 70s, released in October 2002, or Abdul Razeq, an Afghan suffering from schizophrenia, released in May 2002 with a six-month supply of medication.

The strangeness of the US position is that although it does not consider the Guantanamo captives prisoners of war in the formal Geneva Convention sense, it considers them prisoners of war in one very specific sense that they can be held until the war is over. It calls them enemy combatants a term not recognised in international law. To the question what war? the Bush administration responds: the war on terror. In other words, the captives can be held for as long as the US president likes; until forever, in fact, since, unlike normal wars, where a particular territory and a particular military entity is involved, this one exists only as a concept. The war was going on before September 11 2001 it is hard

to think of a year in recent decades in which US citizens or US interests have not come under terrorist attack and it is difficult to see how any US leader could ever take the political risk of declaring a war on terror to have finished.

The US persists in claiming that the war can and will be won. detention as an enemy combatant is not criminal. its to take them off the battlefield,says Smith. we are at war with al-Qaida. Its not a metaphorical war, its a real war.At one point in our conversation he compares the US in 2003 to Britain in 1941. I believe we will be able to defeat al-Qaida. Its a political situation, and its a tough decision, but I think at some point we will be able to say that al-Qaida is no longer a threat to the US

. . . at some point, al-Qaida and terrorism will be defeated.Yet enemy combatant status, combined with the lack of Article 5 tribunals, means that the Guantanamo detainees are kept captive until the end of a potentially endless war without the opportunity to plead before a court that they had nothing to do with that war.The US does not consider itself obliged to put them on trial, so has no obligation to give them lawyers; even if they are put on trial, and are acquitted, under its own rules, the US might simply lock them up again.

it seems to me that our governments talking out of both sides of its mouth.says James Harrington, a lawyer from upstate New York who represents a US citizen, not in Guantanamo. awaiting sentencing on terrorism charges. We say theyre not PoWs and wont be treated as PoWs but at the same time we say we are at war. It either should be one or the other. If we are trying to say to the rest of the world we have due process and best practice in our country . . . we shouldn? be treating other people in ways that are unfair. These guys get picked up, shipped to somebody elses country, held there so they arent in the US so they dont get the same rights as in the US, and then get treated by rules made up by the government to suit the governments interests.Louise Christian, a British lawyer representing three of the Britons held in Guantanamo, said the US today looked more like Britain in the 1970s than in the 1940s. Its the same thing that happened in this country when we had mainland bomb attacks from the IRA, that the tremendous panic and fear just replaced everything else. There was no understanding in this country of how we were viewed outside,she says. we locked people up arbitrarily. We ignored the fact that people were being coerced into making confessions. But I think also the daily experience of internment, seeing your best friends and neighbours locked up without cause, led to great bitterness, and the continuing of the conflict in Northern Ireland. because of feelings of in justice. Obviously there were people who did do terrible things. But if the government response is to criminalise a whole category of people, all we do is increase support for people who are guilty.Having hurriedly come up with the enemy combatant notion to deal with the hoped-for capture of Bin Laden, and having applied it to the ragbag of captives picked from Northern Alliance jails in Afghanistan, the US government has become so comfortable with it that it has begun to wield it around the world. and at home, in ways that frighten rights activists and lawyers. Now, it appears, anyone, US citizen or not, can be declared an enemy combatants at any time, and thus be detained indefinitely at Bushs discretion.

Enemy combatant status is leaking out of Guantanamo and into the mainland US. There are now three enemy combatants held in US military jails. One is a Qatari computer student living in Illinois, Ali Saleh Kahlah

al-Marri. He was awaiting trial on low-grade criminal charges indirectly linked to terrorism when, immediately after the governments case against him looked to be in trouble, the Bush administration declared him an enemy combatant and moved him to a high-security naval prison, allowing a trial to be avoided, and the accused to be held for as long as the president likes.

Bushs November 13 order refers to enemy combatants being treated humanely, without any adverse distinction based on race, colour, religion, gender, birth, wealth, or any similar criteria Yet it is hard to equate the starkly differing treatment of three men allegedly found fighting alongside the Taliban with this creed. The only white American in that category, John Walker Lindh, was given a criminal trial, the full panoply of legal rights, and swiftly sentenced. Another American citizen, but of Saudi descent, Yasser Hamdi, was moved from Guantanamo to a naval prison on the mainland US. and is still held there incommunicado as an ?enemy combatant? Compare that to Mohamed Tariq, an ordinary Pakistani from Shah Mohammed village, not yet released. There is no reason

to think he did anything that Lindh or Hamdi did not do. But he remains on Guantanamo. Speculation that a mass release of European prisoners is imminent, welcome as it is. only highlights the arbitrary nature of the detentions.

Nothing illustrates the US government new power over suspects, and the unfairness of its treatment of the Guantanamo detainees, better than the case of the Lackawanna Six a group of Yemeni-Americans from a suburb of Buffalo, who were accused of aiding

al-Qaida. In the end, all pleaded guilty but only after prosecutors had dropped heavy hints that they would be declared enemy combatants if they didn't.

basically, what was related to us was that if the case was not resolved by a plea, the government was going to consider any options that it had, says Harrington, attorney for one of the men, Sahim Alwan. they didn't say they were going to do it (declare them enemy combatants, they just were going to consider it.

even as vague a definition as enemy combatant is, it didn't seem it would apply in this particular case. but given the way that the government has used their authority, obviously it was something that was a concern for us. It was a factor my client took into account. He was worried about it. I think it's an improper use of the procedure first of all. It's pretty heavy-handed. In the end, the group were allowed to remain within the civilian justice system, in their home country, the US. They had access to legal counsel. The Bush administration was happy to use its enemy combatant device against them if things did not seem to be going the prosecution way, but equally happy to let them go through the normal civilian courts. Those Guantanamo detainees who are to face trial have no such option. They are to face a different kind of court entirely military commissions a system that has been condemned internationally. by the US legal establishment and, the Guardian has learned, is regarded with dismay even by some of the uniformed lawyers whose job it is to make it work.

The government has had to dig back into two arcane cases involving Nazi agents six decades ago, before the Geneva Conventions were even written, to find precedents for military commissions, and, as with the skipping of PoW tribunals for the Guantanamo detainees, it is a mystery why they did so. They had at least two other options: the civilian criminal courts, as used to try past terrorist cases, such as the 1993 World Trade Centre bombing, and court martials in the US military courts, as used to try the deposed leader of Panama, General Manuel Noriega. The Bush administration defends the choice of military commissions on the grounds that the alleged, presumably terrorist, offences for which some Guantanamo prisoners will be tried are 'war crimes' and on the grounds that the commissions will help safeguard classified information that would leak out from normal trials or courts martial. Critics say that neither argument stands up, and that the real reason military commissions are being used is that they give the accused little chance of a fair hearing, and stack the deck in favour of convictions.

The two facets of the commissions that have drawn the most fire are that the government assumes the right to listen in to any conversations between defence lawyers and their clients, and that, once convicted, the accused have no possibility of having their case reviewed by an independent appeal body. But there is more in the detail of how the commissions are supposed to work that reads like pages from Franz Kafka workbook.

The first thing that strikes the lay student of military commissions is the enormous power vested in the US deputy secretary of defence, Paul Wolfowitz, who is the commissions

appointing authority. The judges seven in a capital case are appointed by Wolfowitz. Any judge can be substituted up to the moment of verdict, by Wolfowitz. The military prosecutors are chosen by Wolfowitz. The suspects they charge, and the charges they make, are determined by Wolfowitz. All defendants are entitled to a military defence lawyer, from a pool chosen by Wolfowitz. The defendants are entitled to hire a civilian lawyer, but they have to pay out of their own funds, and by revealing where the funds are, they risk having them seized on suspicion of their being used for terrorist purposes, on the order of Wolfowitz. Defendants need not lose heart completely if convicted. They can appeal, to a panel of three people, appointed by Wolfowitz. When it has made its recommendation, the panel sends it for a final decision to Wolfowitz.

What's the system, says Clive Stafford-Smith, a British-American lawyer known for representing death-row clients and who now represents some of the Britons on Guantanamo, although he has never been allowed to meet them. it's a multi-headed Hydra with Paul Wolfowitz's face on every head. Given the obstructions in the way of civilian lawyers they have to be US citizens, they have to get security clearance at their own expense, they have to abandon their practices and move to Guantanamo permanently for months on end conscientious military defence lawyers seem to be the best hope of a fair trial for many of the detainees charged.

The Guardian has learned of deep unhappiness among the relatively small pool of experienced military defence lawyers that the Pentagon can call upon to do that job. There is anger both at the restrictions being placed on them, and the fact that the Bush administration has gone back to the 1940s for a court model, ignoring six decades of evolution of the sophisticated US military justice system.

The Pentagon Office of Military Commissions has six full-time military defence attorneys working for it. The only one to have been publicly identified is the chief defence counsel, Colonel Willie Gunn. The Guardian understands that the remaining five are not the lawyers originally recruited, but that the original volunteers were dismissed after refusing to sign a paper agreeing to the restrictions they would work under.

there was a circular that went out to military lawyers in the early spring of 2003 which said we are looking for volunteers for defence counsel, says a former military lawyer. There was a selection process, and the people they selected were the right people, they had the right credentials, they were good lawyers. The first day, when they were being briefed on the dos and don'ts, at least a couple said: you can't impose these restrictions on us because we can't properly represent our clients. When the group decided they weren't going to go along, they were relieved. They reported in the morning and got fired that afternoon. The Office of Military Commissions denies the claim. That is not true, never happened, says Major Smith. The military commission is a tool of justice. I expect some of these individuals (on Guantanamo) will plead not guilty, and will be represented zealously by their lawyers. Yet the Guardian understands from a uniformed source with intimate knowledge of the mood among the current military defence team that there is deep unhappiness about the commission set up a disturbing situation when the death chamber may await those found guilty.

It's like you took military justice, gave it to a prosecutor and said: modify it any way you want, the source says. The government would like to say we have done these commissions before. But what happened after (the Nazi cases) was that the military justice system changed . . . What we have done is stupid. It is, I would say, an insult to the military, to the evolution of the military justice system. They want to take us back to 1942.

What sort of justice are we taking to Iraq and Afghanistan? The constitution talks about justice. Is it only for America? As an illustration of the slapdash way he considers the commissions have been set up, he points to how a rule has been removed that barred defence lawyers, once they had arrived in Cuba, from carrying out research outside Guantanamo. Instead of the formal issuing of a new instruction, the Pentagon simply went to the commission website and rewrote the offending paragraph.

they went on the internet and just substituted the new passage, leaving the old date. I can't think of a better example of how these processes were created. They were going to make the rules and change them when they

felt like it. The source points out that under the rules, whereas the head of the Pentagon's prosecution team, Colonel Frederic Borch III,

could lead the government case in court, his defence counterpart, Colonel Gunn, was not allowed to take part in commission proceedings at all.

We could have had some people make rules that no one would complain about but they didn't. We had a bunch of like-minded people and yes-men. It's shocking how many articles I read and no one is picking up on the fact that Colonel Gunn is just a puppet. It's a farce. Eugene Fidell says that the military law establishment there are around 5,000 active duty lawyers in the US military have been infuriated by a comment piece in the New York Times by Alberto Gonzalez, the White House counsel, which suggests that the US military justice

system and military commissions are the

same thing.

That the Bush administration did was literally use as a model a set of rules Roosevelt signed for dealing with German saboteurs in the second world war, seven years before the Geneva Conventions. It baffles me how the government got into this position. We have an (appeals) court that's been around for 53 years and which has built up a huge body of law.

To rely on this review panel instead of using that court, its indefensible. And Wolfowitz's role is right out of the Mikado. Isn't it . . . the government has created something as close to being hermetically sealed as the human mind is capable of creating. The supreme court is now pledged to examine the legality of what is happening on Guantanamo next year. I think Americans are very uncomfortable with all this, says Fidell. I mean, prison islands in tropical regions give us a real bad feeling, whether it's Devils Island, or Robben Island or Norfolk Island. This is not a role that comes to us naturally.

One of the prosecutors told me that they think 30% of the people in Guantanamo Bay were nothing to do with anything. They were just in the wrong place at the wrong time, says Clive Stafford-Smith. When the prosecutor tells you 30%, I tend to think it's more like 70%. But the bottom line is we're not talking about 600 of the worst people in the world. We're talking about at least a couple of hundred who didn't do anything.

You kidnap people who may be totally innocent, you take them all the way around the world in hoods and shackles, you hold them incommunicado for two years, you don't give them a lawyer and you don't tell them what they're charged with. It's not a matter of what's wrong with it, it's a question of what's right with it. And it achieves nothing.

Shah Mohammed was given no apology or compensation when he was released, just a three-paragraph letter from a unit based at Bagram airport in Afghanistan, called CFTF180-Detainee Ops. It is signed by a soldier with a rank lower than corporal, Joseph P Burke. It reads: This memorandum is to certify that Shah Mohammed Alikhel (his tribal name), ISN-US9PK-00019DP, was detained by the United States Military from January 13 2002 to Mar 22 2003. The letter is dated May 8; in other words, Mohammed was kept prisoner two months longer than the US wanted him.

Despite interrogating him nine or 10 times, the letter goes on to say that the US has no record of Mohammed's place of birth. The letter concludes: This individual has been determined to pose no threat to the United States military or its interests in Afghanistan or Pakistan. There are no charges pending from the United States against this individual . . . the United States government intends that this person be fully rejoined with his family.

If they kept me for 18 months and sent me a letter to certify I'm innocent, then why did they keep me there for 18 months? asks Shah Mohammed. Don't they have any duty or obligation to me?

Even less than a duty is a nameless grudge: despite declaring him harmless, the US military transported him home to Pakistan as it had brought him to Cuba in chains.

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D.C. Dispatch | July 29, 2003

LEGAL AFFAIRS

Guantanamo: A Betrayal of What America Stands For

From...
National Journal

Bush has deprived hundreds of quite possibly innocent men of liberty for far too long

by **Stuart Taylor Jr.**

....

"The only thing I know for certain is that these are bad people." So said President Bush during his July 17 press conference with British Prime Minister Tony Blair, when a reporter asked whether they had concerns about "not getting justice" for some 660 Muslim prisoners from 42 countries languishing in 8-by-8-foot cells at Guantanamo Bay.

A key purpose of Blair's visit was to seek assurances of fair trials for two British citizens whom Bush had designated on July 3, along with an Australian and three other men, as eligible to be tried under his specially created military-commission regime for as-yet-unspecified war crimes.

Fair trials? After Bush has cluelessly insulted his guest by declaring the "certain" guilt—or, at least, the evil character—of all prospective defendants? The commissions are to be staffed by military officers whose futures could depend on pleasing their commander-in-chief. At no point will any independent tribunal review any conviction. If the boss is already so certain, why bother with trials at all?

In fact, Bush is not bothering with trials—or with hearings, or with any other semblance of due process—for the vast majority of the men who have been bound, gagged, and hooded, and then flown around the world from Afghanistan to be kept in solitary confinement and held virtually incommunicado for as long as 18 months. A few boys, as young as 13, are also at Guantanamo.

Some of the procedures to be used by Bush's military commissions are seriously flawed. And the concessions this

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week to ease Blair's concerns -- no death penalty, and slightly better access to counsel, for the two Brits and the Aussie—were underwhelming. But the far more fundamental injustice is Bush's lawless, indefinite incarceration of hundreds of men, with no reliable process for separating those who are terrorists from the dozens or even hundreds who may be harmless.

Whatever the six designated candidates for trial may have done, there are reasons to suspect that a substantial percentage of the 660 were Arab students and charity workers, other civilian noncombatants, or hapless Taliban conscripts who were simply in the wrong place at the wrong time. Examples:

U.S. officials, including one senior official, "have privately acknowledged to me that at least a third of the detainees at Guantanamo are completely innocent and don't belong there," says Thomas B. Wilner, a Washington lawyer who represents the families of the 12 Kuwaitis detained at Guantanamo. "And when I say innocent, I mean neither Taliban nor Al Qaeda, nor terrorists nor combatants. I mean students and the like swept up in a bounty hunt."

The administration has tacitly acknowledged the harmlessness of 64 Guantanamo detainees by releasing them. Here is how David Rohde of *The New York Times* described one after his return to Afghanistan last October: "Faiz Muhammad said he was 105. Babbling at times like a child, the partially deaf, shriveled old man was unable to answer simple questions. He struggled to complete sentences and strained to hear words that were shouted at him. His faded mind kept failing him."

Greg Miller of the *Los Angeles Times* reported last December 22: "The United States is holding dozens of prisoners at Guantanamo Bay who have no meaningful connection to Al Qaeda or the Taliban, and were sent to the maximum-security facility over the objections of intelligence officers in Afghanistan who had recommended them for release, according to military sources with direct knowledge of the matter. At least 59 detainees ... were deemed to be of no intelligence value after repeated interrogations in Afghanistan...."

"Dozens of the detainees are Afghan and Pakistani nationals described in classified intelligence reports as farmers, taxi drivers, cobblers, and laborers. Some were low-level fighters conscripted by the Taliban.... None of the 59 met U.S. screening criteria for [prisoners to be] sent to Guantanamo Bay, military sources said. But all were transferred anyway, sources said, for reasons that continue to baffle and frustrate intelligence officers."

A *Newsweek* investigation last summer into the Kuwaitis at Guantanamo concluded that at least five of them "may be little more than volunteers for their society's versions of faith-based charities" who had told their families that they "wanted to help Afghans suffering from drought and famine—and then from the war ... but discovered, once the conflict began, that they could not get out. And as the war turned against the Taliban, the Afghan people turned against the Arabs, no matter what had brought them to the country." As these five sought to flee, they were "sold" by a local tribal leader to Pakistani forces.

Some or even all of these claims of innocence and noncombatant status may be false. But the administration has cited no specific evidence at all to justify its detention of these—or any—Guantanamo detainees. Bush has simply announced that all of them are "unlawful combatants," and thus ineligible for prisoner-of-war status under the Third Geneva Convention of 1949. How does he know that? Well, administration lawyers stress, the detainees were not wearing uniforms when captured.

But quite a few of the billions of people in this world who don't wear uniforms are harmless civilians. And many of the Arabs now at Guantanamo were fingered by Afghans and Pakistanis who had even more to gain from lying than your typical jailhouse snitch: U.S. forces had dropped leaflets promising "millions of dollars for helping ... catch Al Qaeda and Taliban murderers ... enough money to take care of your family, your village, your tribe for the rest of your life." Any Arab unlucky enough to find himself in Afghanistan in late 2001 was, as Wilner puts it, "a very valuable commodity."

Instead of having military tribunals separate bad guys from good guys, Bush has marooned all 660 detainees in a legal no man's land. They have been charged with no crimes and given no chance to prove their innocence to any impartial arbiter. This appears to be a flagrant, ongoing violation of Article V of the Third Geneva Convention and other international law rules against arbitrary detentions. Article V states that "should any doubt arise" as to the status of a captive, "such persons shall enjoy the protection of the present convention [as prisoners of war] until such time as their status has been determined by a competent tribunal."

The Bush administration has said it needs no tribunal because it has no doubt that every detainee sent to Guantanamo was an unlawful combatant. Nonsense. Anyone who believes that the bounty hunts and interrogations that routed hundreds of these men to Guantanamo amount to a foolproof fact-finding process is

unqualified to be a small-town sheriff.

But under Bush's notion of justice, these men and boys have no legal rights. None. Even if acquitted of any war crimes by military commissions, they could remain incarcerated as enemy combatants. For that matter, even if Bush were to announce today that all 660 would be lined up and shot on August 1, no court in the world could intervene.

Bush won't do anything like that, of course. But he has already deprived hundreds of quite possibly innocent men of liberty for many months, under conditions so dispiriting that 18 have attempted suicide.

Bush's claim that U.S. courts have no power to review anything he and his subordinates do to the Guantanamo detainees is based on a legalistic argument: The naval base remains under Cuban sovereignty, even though the U.S. has complete control under a perpetual lease. Wilner plans to ask the Supreme Court to review this claim of absolute, unaccountable power, which a federal appeals court upheld in March.

Whatever the outcome, Bush's refusal to give hearings to these detainees has been "unworthy of a nation which has cherished the rule of law from its very birth," says the generally pro-American Economist. This travesty of justice has done nothing to make us more secure. Rather, it has put us in greater danger. By making our preachments about human rights seem the rankest hypocrisy, Bush is pouring gasoline onto the flames of anti-Americanism abroad and turning potential friends into enemies.

The Pentagon says it is "constantly reviewing the continued detention" of these 660 men. But Wilner and some other critics suspect that the administration has not released many whom it knows to be harmless because Bush, Donald Rumsfeld, and others are unwilling to admit how wrong they have been. I prefer not to believe that. Surely the president of the United States would not keep innocent men behind bars indefinitely just to save face. Would he?

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HEADLINE: The World:
Many Held at Guantanamo Not Likely Terrorists;
Dozens of detainees pose no real threat, but U.S. policies make it nearly impossible to get names off lists. There's also fear of freeing '21st hijacker.'

BYLINE: Greg Miller, Times Staff Writer

DATELINE: WASHINGTON

BODY:

The United States is holding dozens of prisoners at Guantanamo Bay who have no meaningful connection to Al Qaeda or the Taliban, and were sent to the maximum-security facility over the objections of intelligence officers in Afghanistan who had recommended them for release, according to military sources with direct knowledge of the matter.

At least 59 detainees -- nearly 10% of the prison population at the U.S. Navy base at Guantanamo Bay, Cuba -- 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 Bay, a facility intended to hold the most hardened terrorists and Taliban suspects.

Dozens of the detainees are Afghan and Pakistani nationals described in classified intelligence reports as farmers, taxi drivers, cobblers and laborers. Some were low-level fighters conscripted by the Taliban in the weeks before the collapse of the ruling Afghan regime.

None of the 59 met U.S. screening criteria for determining which prisoners should be sent to Guantanamo Bay, military sources said. But all were transferred anyway, sources said, for reasons that continue to baffle and frustrate intelligence officers nearly a year after the first group of detainees arrived at the facility.

"There are a lot of guilty [people] in there," said one officer, "but there's a lot of farmers in there too."

The sources' accounts point to a previously undisclosed struggle within the military over the handling of the detainees. Even senior commanders were said to be troubled by the problems.

Los Angeles Times December 22, 2002 Sunday

Maj. Gen. Michael E. Dunlavey, the operational commander at Guantanamo Bay until October, traveled to Afghanistan in the spring to complain that too many "Mickey Mouse" detainees were being sent to the already crowded facility, sources said.

One senior Army officer described Dunlavey's visit as a "fact-finding" mission. But another who met with Dunlavey said the general's purpose was more direct: "He came over to chew us out," the officer said. Dunlavey, an Army reservist, declined to comment.

The sources blamed a host of problems, including flawed screening guidelines, policies that made it almost impossible to take prisoners off Guantanamo flight manifests and a pervasive fear of letting a valuable prisoner go free by mistake.

"No one wanted to be the guy who released the 21st hijacker," one officer said.

While that concern remains a legitimate one, the fact that dozens of the detainees are still in custody a year or more after their capture has become a source of deep concern to military officers engaged in the war on terrorism around the globe.

Many fear that detaining innocents, and providing no legal mechanism for appeal, can only breed distrust and animosity toward the U.S. -- not only in the home countries and governments of the prisoners but also among the inmates.

"We're basically condemning these guys to long-term imprisonment," said a military official who was a senior interrogator at Guantanamo Bay.

"If they weren't terrorists before, they certainly could be now."

Moreover, he said, even amid the tight security there is significant indoctrination of prisoners by radical Islamists among them.

The Afghan and Pakistani governments have raised the issue with Washington. A Pakistani embassy official, who declined to be identified, said his government is convinced that many of the 58 Pakistanis known to be in custody "probably joined the Taliban but didn't know how to spell Al Qaeda."

Even some prisoners red-flagged by the screening guidelines were clearly of no intelligence value and should not have been sent, military intelligence sources said.

One prisoner was transferred because he was Arab by birth and had once fought for the Taliban, thereby meeting two key screening criteria. But before the war he had sustained such a massive head injury that he could utter little more than his name and was known by interrogators at Guantanamo Bay as "half-head Bob."

"He had basically had a combat lobotomy," the interrogator said. "Every [intelligence report] on him from Afghanistan said, 'No value, no value, don't send him.' "

Others were grabbed by Pakistani soldiers patrolling the Afghan border who collected bounties for prisoners, sources said. One such prisoner was captured at a restaurant near the border where he claimed to have lived and worked for 20 years.

"He had the mental capacity to put flatbread in an oven and that was the extent of his intellect," the interrogator said. "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."

Pentagon officials declined to discuss individual cases, but insist that the U.S. has reasonable grounds for holding all the prisoners at Guantanamo Bay.

Los Angeles Times December 22, 2002 Sunday

"All are considered enemy combatants lawfully detained in accordance with the law of armed conflict," said Navy Lt. Cmdr. Barbara Burfeind, a spokeswoman for the U.S. Southern Command, which oversees operations at Guantanamo Bay.

Several senior military officers responsible for transfers of prisoners also defended their decisions.

"Everybody that was sent met the conditions that were sent down from our higher headquarters," said Army Col. Michael T. Flynn, the top intelligence officer in Afghanistan when many of the detainees were transferred. "We were sending the right folks."

According to classified Pentagon guidelines, Guantanamo Bay was meant to be a long-term detention facility for Al Qaeda operatives, Taliban leaders, "foreign" fighters and "any others who may pose a threat to U.S. interests, may have intelligence value, or may be of interest for U.S. prosecution."

But from the beginning, prisoners who didn't meet those criteria were sent, sources said. In some cases, military police seemed to have more influence over flight lists than intelligence officers, lobbying commanders to ship out troublesome detainees.

Other detainees seemed to get caught up in the military's bureaucratic machinery. In many cases, low-value prisoners caught early in the war were placed at the bottom of prioritized lists. But as planeloads of prisoners were sent to Cuba, names at the bottoms of the lists drifted to the top, and some started showing up on flight manifests.

Once they appeared on the manifests, sources said, removing them proved almost impossible. Doing so required senior intelligence officers in Kuwait or Afghanistan to work through thickets of military red tape. It also required them to trust the judgment of junior intelligence officers, something they were loath to do given the stakes.

Through much of the war, the decisions were made far from the battlefield, by commanders in Kuwait or back in the United States. Intelligence officers in Afghanistan became increasingly dismayed at the number of low-level detainees on the manifests.

"We saw it as having huge potential for eroding public trust," one officer said. In a conflict dependent on the cooperation of local Afghans, he said, "winning the hearts and minds was our greater concern."

To call attention to the problem, some began circulating lists of prisoners they believed were being improperly placed on Guantanamo Bay flight manifests. The lists were seen by senior intelligence officers in Afghanistan, Kuwait and the United States.

One of the lists covers 49 Afghans and 10 Pakistanis who were held at Kandahar air base until the Afghan facility was shut down in June, prompting their transfer to Guantanamo Bay, sources said.

The list describes detainees' occupations, the circumstances of their captures, summaries of interrogations and alibis they provided. The prisoners range in age from 16 to 50, most with little or no education. None was deemed to have meaningful ties to Al Qaeda or the Taliban.

A typical entry describes a 30-year-old Afghan farmer captured by Afghan forces who "seemed most interested in stealing his car and money."

Another describes a 22-year-old Afghan who sold firewood at a bus station in the city of Kunduz and was picked up by Northern Alliance forces while he and six others were traveling to Kabul, the Afghan capital.

"He answers all questions quickly and fully," interrogators concluded. "His story is plausible and consistent, and there is no evidence that he has ever worked for or had any knowledge of the Taliban or Al Qaeda."

Not all of the detainees' stories are so tidy. Many admitted to being fighters for the Taliban, although often as low-level soldiers conscripted when they couldn't afford payments required by the Taliban to avoid service -- often amounting to six months' wages.

Los Angeles Times December 22, 2002 Sunday

Among the Pakistanis on the list was a 16-year-old who traveled to Afghanistan at the start of the war to help the Taliban, but quickly had second thoughts and was captured by the Northern Alliance while trying to flee. "He showed no signs of deception," interrogators noted. "He never fought for the Taliban."

Another Pakistani, a 33-year-old taxi driver, was captured near the city of Mazar-i-Sharif.

"The fact that the detainee's taxi car broke down was a deciding factor for him to leave home and fight the Jihad," according to his file.

"Detainee is a low-level fighter with no tactical intelligence. Recommend repatriation."

These detainees would almost certainly have been repatriated had they not been captured early in the war, before screening systems were overhauled to make releasing low-level prisoners easier, sources said.

By midsummer, military officials took to withholding the names of new inmates from prison rosters until they could be evaluated. That way, they didn't officially exist and, if deemed harmless, could be released before their names got caught up in the system.

"The same people who created this huge bureaucratic monster came up with a way to thwart it," one Army interrogator said, "which is never enter people into the system."

At Guantanamo Bay, the presence of dozens of low-value prisoners drained resources. The facility, known as Camp Delta, was also plagued by other problems.

A chronic shortage of military police meant interrogations were shut down at 9 p.m., sources said, denying interrogators the often effective tactic of subjecting detainees to marathon interview sessions.

There was also a confusing command structure that hampered information sharing. Guantanamo Bay was controlled by the Southern Command -- whose territory includes South America -- even though the war on Al Qaeda was principally the purview of the U.S. Central Command.

Intelligence reports often got tied up in transit between the two commands, sources said, sometimes delaying delivery for days. And intelligence officers at Southern Command who edited reports out of Guantanamo Bay knew far more about Colombian rebels than Al Qaeda terrorists.

The White House has classified prisoners at Guantanamo Bay as "enemy combatants," a murky status in which detainees are not allowed hearings or legal representation.

In July, a federal judge considering a lawsuit filed on behalf of 14 Kuwaiti detainees ruled that prisoners at Guantanamo Bay have no right to appear in U.S. courts and can be held indefinitely.

In March, Defense Secretary Donald H. Rumsfeld acknowledged that the prison population at Guantanamo Bay went beyond the "hard-core" cases for which it was constructed.

"The first people who were brought down were the hardest of the hard-core," Rumsfeld said. "Now it is a mix. They run pretty much across the spectrum.... Some may be transferred to other countries, some may be released, some may be held for the duration, some may be tried in one or more of the various mechanisms that are available."

But nine months after Rumsfeld's comments, only five prisoners have been released from a population that totals about 625 and represents 43 nations.

The first prisoner released, in April, was so mentally unstable he was known by interrogators as "Wild Bill."

"He would eat his own feces, dump fresh water from his canteen and urinate in it and drink it," the senior interrogator said. CIA, FBI and psychiatric experts "concluded he was insane."

Los Angeles Times December 22, 2002 Sunday

Four others were released at the end of October, including three Afghans and one Pakistani. Among them were one low-level Taliban conscript and two men who appeared to be in their 70s and said they had never served the Taliban.

GRAPHIC: QUESTIONING: A detainee is taken to an interrogation session in February at the Navy base at Guantanamo Bay, Cuba. "There are a lot of guilty people in there, but there's a lot of farmers in there too," one official says of the prisoners caught in the U.S. war on terrorism. PHOTOGRAPHER: Associated Press

LOAD-DATE: December 22, 2002

FEDERAL PUBLIC DEFENDER

EASTERN DISTRICT OF VIRGINIA
1650 KING STREET, SUITE 500
ALEXANDRIA, VIRGINIA 22314
TEL: (703) 600-0800
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*Frank W. Dunham, Jr.
Federal Public Defender*

August 19, 2004

VIA FACSIMILE AND FIRST CLASS MAIL

The Honorable Paul Clement
Acting Solicitor General
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

RE: *Hamdi v. Rumsfeld*, et al., Case No. 2:02CV439
Norfolk Division, Eastern District of Virginia

Dear Paul:

In light of this morning's conference call, I am constrained to ask for the following in the event this matter should proceed to a hearing on August 30, notwithstanding our best efforts to get it resolved before then:

1. Any statements or reports of statements made by the petitioner while in the custody of the United States;
2. Any documents you intend to utilize at a hearing should there be one;
3. Any document relied on by Mr. Mobbs in drafting his earlier declaration, and;
4. If compensation was paid to any member of the Northern Alliance for transfer of Mr. Hamdi from Northern Alliance to U.S. custody, any record which you may have of that.

We will reciprocate with respect to any requests you might have.

We remain anxious to resolve this matter along the lines we have been discussing and would join in a motion for an additional short continuance to accomplish this should

The Honorable Paul Clement
August 19, 2004
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that be necessary. However, when you read the transcript of the telephone conference/hearing with Judge Doumar, you will understand why I am fearful that such a joint motion might not be granted. It would have a better chance, perhaps, if we could represent in the motion not only that progress has been made toward settlement, but also that Mr. Hamdi is no longer being held in solitary confinement nor detained in a facility designed for holding criminals.

Very truly yours,

A handwritten signature in black ink, appearing to be 'F. W. Dunham, Jr.', with a long horizontal stroke extending to the right.

Frank W. Dunham, Jr.
Federal Public Defender