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QUARTERLY



Haiti

Sudan

Yasser Arafat *Presente!*

Bush-Kerry Propaganda

Kathy Kelly Prison Diary

Tasers

U.S. Torture

"A Warped Time"

"Enemy Combatants"

Number 78

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Yasser Arafat's Legacy Remains Heroic

Ray Hanania

1929 — 2004

For the past four years, Israelis have insisted that they have no partner for peace and that Yasser Arafat was the stumbling block not only to achieving a real peace but also ending the cycle of violence in which they were the silent partner.

But now that Arafat is gone, Israelis must face the truth. They can no longer blame the failed peace process on the one man they vilified in life and slandered by hate in death.

On his deathbed, Arafat sought burial in Jerusalem, the city of his family and his people. Israel rejected that request, a first glimpse exposing the real obstacle to Middle East peace.

Arafat was also a hero to the Palestinian people. Yet in total disregard for the feelings of the Palestinians, the Israelis led a vicious onslaught against Arafat that was worse than the campaign launched against him in life.

The level of animosity by Israelis against Arafat, a heroic symbol to the Palestinian people, unravels Israel as the real absent peace partner.

True peace has always had a peace partner in both Arafat and the Palestinians. They have a track record of genuine compromise unmatched by Israel.

Arafat was the only Palestinian leader who could and did recognize Israel's right to exist, even without demanding a quid pro quo from the Israelis. He accepted the concept of a two-state solution in spite of a rule of law that prevailed on the side of Palestinian claims.

Arafat embraced a negotiated compromise that he mistakenly believed was on the up-and-up with Israel. He did so knowing full well that during that process Israel never once acted on its promise to dismantle its settlements, which are illegal, every single



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phone: 202 331 9763 • fax: 202 331 9751

email: info@covertactionquarterly.org

www.covertactionquarterly.org

Front cover: Pro-President Aristide demonstration in Cap-Haitien, August 14, 2004. Photo by Sasha Krammer.

Back cover: Camp Mas-ha, West Bank, Palestine, July 2003. Photo by P. Marie.

The Seven Deadly Spins

Bush and Kerry Follow the Long Tradition of Wartime Propaganda

Mickey Z.

One might say that spin makes the United States of America go around. How else could John Kerry be considered a "liberal" while his un-elected opponent sought re-election?

One might also say that America is a nation founded on spin. Dig this: Florentine merchant-adventurer Amerigo Vespucci's self-generated claims as an explorer and as the first white man to reach the mainland of America in June 1497 have long been in dispute due to the geographically unfeasible distances and positions quoted in his letters. While it is widely accepted he made at least two voyages to the Americas, he was not the leader of any expedition and was not the first European of his era to set foot on the mainland. America named after a self-hyping fraud? It's just too perfect.

This affinity for deception and disinformation has found a comfy home in the realm of war and military interventions. During the build-up to the Spanish-American War, anarchist Emma Goldman remarked: "America had declared war with Spain. The news was not unexpected. For several months preceding, press and pulpit were filled with the call to arms in defense of the victims of Spanish atrocities in Cuba. It did not require much political wisdom to see that America's concern was a matter of sugar and had nothing to do with humanitarian feelings. Of course there were plenty of credulous people, not only in the country at large, but even in the liberal ranks, who believed in America's claim."¹ (Replace one

word, and it sounds like this: "It did not require much political wisdom to see that America's concern was a matter of oil and had nothing to do with humanitarian feelings.")

Well, despite the current "war on terror" facade and election-year hype, not much about American war propaganda has changed since Emma's day (except the technology) ... and beneath the posturing and pontificating even less has changed since September 11, 2001. "War on terror" rhetoric aside, it remains true that U.S. wars and interventions are skillfully packaged and sold and the official history of those conflicts is subject to spin and

backed by undoubted military might ... based on enlightened self-interest."² Selling this vacuous, bipartisan message to a wary populace, however, requires the Seven Deadly Spins:

Spin #1: The Sleeping Giant

By portraying oneself as the target of an unprovoked sneak attack all bases are covered. As George W. Bush declared on March 17, 2003, the night he gave Saddam Hussein a final ultimatum, "The United States and other nations did nothing to deserve or invite this threat, but we will do everything to defeat it."³ In other words, once rudely awakened, don't blame the sleeping giant if he tends to respond overzealously.

The U.S.S. Maine, Pearl Harbor, 9/11 ... these (and others) are all part of the sleeping giant hagiography. In fact, we just dealt with the 40-year anniversary of another provocation.

The *Washington Post* headline on August 5, 1964 read: AMERICAN PLANES HIT NORTH VIETNAM AFTER SECOND ATTACK ON OUR DESTROYERS; MOVE TAKEN TO HALT NEW AGGRESSION.

President Lyndon Johnson, speaking on national television on the evening of August 4, 1964, announced air strikes against North Vietnam.

In response, the *Los Angeles Times* exhorted readers to "face the fact that the Communists, by their attack on American vessels in international waters, have themselves escalated the hostilities."⁴

"Shortly after the events in the Gulf of Tonkin, Lyndon Johnson met with congressional leaders and lobbied

WHILE IT IS WIDELY ACCEPTED AMERIGO VESPUCCI MADE AT LEAST TWO VOYAGES TO THE AMERICAS, HE WAS NOT THE LEADER OF ANY EXPEDITION AND WAS NOT THE FIRST EUROPEAN OF HIS ERA TO SET FOOT ON THE MAINLAND. AMERICA NAMED AFTER A SELF-HYPING FRAUD? IT'S JUST TOO PERFECT.

distortion. These realities exist in order to portray our leaders — of either party — as moral and lay the foundation for future military ventures. Consider the words of aforementioned Democratic presidential candidate, Senator John F. Kerry (or JFK2 for those scoring at home): "Americans deserve a principled diplomacy ...

them to grant him broad powers to respond to the supposed provocation," says historian Donald R. Shaffer. "House and Senate leaders quickly acceded to his request."⁵

By a nearly unanimous vote, Congress passed the Gulf of Tonkin Resolution on August 7, 1964, thus authorizing Johnson "to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." Over the next two years, 400,000 U.S. soldiers shipped out to South Vietnam.

Did the North Vietnamese start this fight?

Squadron commander James Stockdale, who would later serve as Ross Perot's running mate in 1992, was a navy pilot flying over the Gulf of Tonkin that night. "I had the best seat in the house to watch that event," Stockdale recalled, "and our destroyers were just shooting at phantom targets - there were no PT boats there There was nothing there but black water and American fire power."⁶

One year after the dubious incident, Lyndon Johnson admitted: "For all I know, our Navy was shooting at whales out there."⁷

Spin #2: Good Wars

Spin #2 is designed to make us all feel better. Our history books tell tales of past glory ... our televisions blare news of new humanitarian gestures.

Inundated with hyperbole about U.S. selflessness, we are programmed to automatically assume the best when told "our" military is about to invade yet another small Third World nation. Based on America's history, we feel such actions are justified.

Justification is crucial for those in power and our self-anointed humanitarians employ a powerful form of rationalization: We can't sit back and allow bad guys to thrive. Sometimes we must commit violent acts to stop other, more violent acts from taking place.

President Bush says: "Our agenda ... is freedom and independence, security and prosperity for the Iraqi people," but the people of Somalia could speak

volumes about "our agenda."

Sold to the public as an act of U.S. philanthropy with images of malnourished African children and stories of evil warlords, little of the nation's history was allowed to get in the way when American troops landed in Somalia ostensibly to help quell the tide of famine. Large numbers of Somalis, however, saw the American forces as representatives of the hated former government and it wasn't long before the slogan of American forces was "The only good Somali is a dead Somali." It had become apparent that the U.S. had badly underestimated the resistance. (Sound familiar?)

As U.S. casualties mounted, more and more Somalis found themselves under attack. Marine Lt. Gen. Anthony Zinni commanded the operation. "I'm not counting bodies," he said. "I'm not interested."⁸

President Clinton ordered the bombing of civilian targets, declaring: "We're not inflicting pain on these fuckers. When people kill us, they

evildoers, godless communists, or a never-ending parade of thugs auditioning for a starring role as the "next Hitler." Spin #3 plays into our worst fears: the boogeyman. Our enemies are never mere flesh-and-blood. "The War on Terror is not a clash of civilizations," explains Kerry. "It is a clash of civilization against chaos."¹¹

There are many examples of people demonized by U.S. propaganda ... from this continent's indigenous population to the Iraqis dying as you read this. But what about the flipside of Spin #3? What about the genuinely bad guys the U.S. has cozied up to? Like, say, Mobutu Sese Seko of Zaire.

The Congo gained independence from Belgium in June 1960. Within three months, the CIA helped overthrow the African nation's first Prime Minister, the charismatic and legally elected socialist, Patrice Lumumba.

By January 1961, Lumumba was dead. Captured with CIA help in December 1960, Lumumba was "held prisoner for over a month, interrogated, tortured, then finally shot in the head.

His body was dissolved in hydrochloric acid."¹²

Four years later, thanks to U.S. support, the murderous, corrupt, but most importantly, anti-communist, Mobutu Sese Seko assumed power. Mobutu renamed the country Zaire and ruled with a shocking level of corruption and cruelty assisted by his CIA handlers.¹³

From 1965 to 1991, Zaire received more than \$1.5 billion in U.S. economic and military aid. In return, U.S. multinationals

increased their share of the ownership of Zaire's fabulous mineral wealth. On the foreign policy front, Zaire was a bastion of anti-communism during the Cold War, in the center of a continent Washington saw as perilously close to Moscow's influence.

As President George H.W. Bush put it, Mobutu was "our best friend in Africa."¹⁴

Mobutu's corruption and brutality went on for thirty years with the U.S. help. It was only when the plunder of western-owned assets and the ruination of the country were nearly

INUNDATED WITH HYPERBOLE ABOUT U.S. SELFLESSNESS, WE ARE PROGRAMMED TO AUTOMATICALLY ASSUME THE BEST WHEN TOLD "OUR" MILITARY IS ABOUT TO INVADE YET ANOTHER SMALL THIRD WORLD NATION.

should be killed in greater numbers. I believe in killing people who try to hurt you. And I can't believe we're being pushed around by these two-bit pricks."⁹

Oh, one more fact lost in the spin: Somalia has been the site of oil exploration by such companies as Amoco, Chevron and Conoco and the U.S. intervention force used Conoco's Mogadishu headquarters as a de facto U.S. embassy.¹⁰

Spin #3: U.S. vs. Them

By portraying all our enemies as savages, gooks, chinks, butchers, terrorists,

complete, when Mobutu's stolen billions had become a world-wide embarrassment, that the U.S. began to seek an acceptable change.

That's when the spin begins to turn in the other direction and the public suddenly learns all about Mr. Mobutu in a hurry.

Spin #4: Support the Troops

We grow up watching war movies and playing with guns. We are surrounded by war memorials and war monuments and are taught to respect and fear those in uniform. As we get older (and perhaps more skeptical), we witness the demonizing of those who oppose war. Our media is overrun with militaristic fervor. Our tax dollars finance war and pro-war propaganda. Our government passes laws designed to thwart dissent.

Even if you remain immune to the allure of the other six spins ... you'll still face the guilt factor of Spin #4: No matter what we think or how we feel, once the actual fighting begins, all Americans must unite behind our troops to ensure their safety through victory.

As Kerry reminds us, "America's greatest military strength has always been the courageous, talented men and women whose love of country and devotion to service lead them to attempt and achieve the impossible everyday."¹⁵

The Fourth Deadly Spin exploits our guilt by equating blind faith with patriotism. Those who protest against war are betraying their friends, their neighbors, and their country. Convincing skeptics to accept this equation requires hard work. Not surprisingly, there's an entire industry accomplishing this: Public Relations.

It is estimated that after being invaded by Iraq on August 2, 1990, the government of Kuwait funded as many as 20 public relations, law, and lobby firms to marshal world opinion. One of those firms, The Rendon Group, a public relations outfit with offices in Boston and Washington, was called on again after America's post-9/11 assault on Afghanistan. In order to make itself look good while bombing

Afghanistan, the Pentagon offered Rendon a four-month deal worth \$397,000.¹⁶

"We needed a firm that could provide strategic counsel immediately," Lt. Col. Kenneth McClellan, a media officer at the Pentagon, said. "We were interested in someone that we knew could come in quickly and help us orient to the challenge of communicating to a wide range of groups around the world."¹⁷

In the battle for the hearts and minds of American TV couch potatoes, Rendon got plenty of help from the major networks. CNN Chair Walter Isaacson ordered his reporters to downplay casualties from the U.S.

IN 1971, KERRY SAID: "I COMMITTED THE SAME KINDS OF ATROCITIES AS THOUSANDS OF OTHER SOLDIERS HAVE COMMITTED. I TOOK PART IN SEARCH AND DESTROY MISSIONS, IN THE BURNING OF VILLAGES."

"Meet the Press," April 18, 1971

bombing of Afghanistan: "It seems perverse to focus too much on the casualties or hardship in Afghanistan," Isaacson wrote as Operation Enduring Freedom (sic) commenced. "We must talk about how the Taliban are using civilian shields and how the Taliban have harbored the terrorists responsible for killing close to 5,000 innocent people."¹⁸

Spin #5: The Devil Made U.S. Do It

Like the reluctant parent who informs his bare-bottomed offspring that the ensuing spanking will hurt him more than the child, the claim is that sometimes America is "forced" to break out the belt. As a result, even America has to sometimes "play" a little rough and sometimes the "good guys" get their hands a little dirty in the name of freedom. In 1971, Kerry said: "I committed the same kinds of atrocities as thousands of other soldiers have

committed. I took part in search and destroy missions, in the burning of villages."

Kerry may insist on calling Vietnam a "tragic mistake," but such behavior was consistent with U.S. military interventions.

The three-month-long Spanish-American War is what Americans are taught to remember. What they are not taught about is its more vicious sequel, the 1899 Philippine-American War. President McKinley claimed to have "went down on my knees and prayed Almighty God for light and guidance." According to the president, his god urged him to "uplift and civilize and Christianize" the Filipinos, after which McKinley was able to sleep "soundly."¹⁹

The resulting war officially ended in 1902 but dragged on in guerrilla skirmishes until 1910. This little-known war produced a ratio of casualties similar to the proportion in Vietnam: more than 4,000 U.S. soldiers and roughly 600,000 Filipinos. More civilians died in the Philippine War than any other war in modern history up to that time and just as in Vietnam, large-scale atrocities were committed against civilian villages and then reported in the press as magnificent victories over 'fanatical' tribesmen.²⁰

Even when Americans fight each other, inhumane travesties proliferate. During the Civil War, predating the atrocities in Iraq by 140 years, prisoner of war camps were among the most tragic and inhumane disgraces of the war. Of the 45,000 prisoners at one particular Confederate camp in Andersonville, Georgia, 13,000 died from summer heat, disease, and inadequate food and medical supplies.

Union soldier Henry Hernbaker was captured at Gettysburg and taken to Andersonville. He wrote of being kept under a "scorching hot sun" without cover. "The whole upper surface of our feet would become blistered and then would break," Hernbaker reported. "The amputations would average as many as six per day, and I saw not a single instance of recovery from them."

Andersonville was overseen by Henry Wirz, who was heard to claim he killed "more damn Yankees with his treatment" than the army has with "powder and lead." Wirz later became the only Confederate soldier executed by the Union after the war.

Conditions in the North were no better. The Union camp in Elmira, New York housed just over 12,000 Confederate prisoners of whom nearly 3000 died from inhumane conditions. The camp was nicknamed "Hellmira."²¹

Spin #6: Surgical Strikes

The Sixth Deadly Spin eases our minds by informing us: We have good intentions and smart bombs. Those billion-dollar weapons can differentiate between the guilty and the innocent. However, as we are blinded by hype about our technological and ethical superiority, an estimated 100 million civilians lost their lives during the wars of the twentieth century. Today, nine out of ten wartime deaths are civilians, half of those are children. Bush: "Our soldiers have treated religious sites with respect, while systematically dismantling the illegal militia."

The United States spends more than one million dollars per minute on war and this expenditure is justified through a variety of spins. This includes Spin #6, which tells us that U.S. weapons are the most technologically advanced the world has ever seen. Like all spin, evidence to the contrary abounds.

All throughout the 1991 Operation Desert Storm (a name cleverly invoking the inevitability of nature), the Pentagon and an acquiescent U.S. corporate media sold the American public on the accuracy and efficiency of U.S. weaponry. But in July 1996, the General Accounting Office (GAO) released a study that found the claims made by the Pentagon and its principal weapons contractors concerning the pinpoint precision of the Stealth fighter jet, the Tomahawk land-attack missile, and laser-guided smart bombs

"were overstated, misleading, inconsistent with the best available data, or unverifiable."²²

The GAO concluded that new, costly 'smart' weapons systems did not necessarily perform better than old-fashioned, cheaper 'dumb' ones.

This pattern held during the 78-day bombing campaign over Yugoslavia in 1999. During the assault, Defense Secretary William Cohen declared: "We severely crippled the (Serbian) military forces in Kosovo by destroying more than 50 percent of the artillery and one-third of the armored vehicles." One year later, a U.S. Air Force report revealed a different story:

| Original Claim | Actual Number |
|--|---------------|
| 120 tanks destroyed | 14 |
| 220 armored personnel carriers destroyed | 20 |
| 450 artillery pieces destroyed | 20 |
| 744 confirmed strikes by NATO pilots | 58 |

The report also found that the Serbian military fooled U.S. technology with simple tactics like constructing fake artillery pieces out of black logs and

obviously hit enough tanks and other targets to win."²⁴

Among the "other targets" were civilians ... with at least 500 killed during the 78 days of bombing and untold more affected by the use of depleted uranium.²⁵

Spin #7: Only Losers Commit War Crimes

War crime tribunals have replaced scalps and mounted animal heads as the post-battle trophy. By bringing the vanquished to trial, the victors stamp their actions into closure with a moral seal of approval. That fierce-looking creature staring at us from behind bars is proof that the actions taken were dangerous but honorable and the end justifies the means.

"At every stage," says Bush, "the United States has gone to the United Nations — to confront Saddam Hussein, to promise serious consequences for his actions."

The Seventh Deadly Spin teaches us: Vanquished war criminals must and will be brought to justice in tribunals. The key word here is "vanquished," because only losers face indictment.

The highest-ranking Nazi defendant at Nuremberg, Hermann Goering, stated it plainly: "The victors will always be the judges, the accused the vanquished." Other accused Nazis wondered aloud: "What about Dresden? What about Hiroshima?" These crimes, of course, never came to any trial.

The undeniable transgressions of these and other iniquitous regimes have been well-documented elsewhere and some of those responsible for war crimes have been prosecuted. The war planners in the nations that defeated these regimes sat in judgment.

As General Curtis LeMay, commander of the 1945 fire bombings that killed 672,000 Japanese, admitted. "I suppose if I had lost the war, I would have been tried as a war criminal," he said. "Fortunately, we were on the winning side."

Make no mistake: Both Kerry and Bush understand spin ... they just tell different lies to disguise it.

WE ARE BLINDED BY HYPE ABOUT OUR ETHICAL SUPERIORITY. AN ESTIMATED 100 MILLION CIVILIANS LOST THEIR LIVES DURING THE WARS OF THE LAST CENTURY ... THE U.S. SPENDS MORE THAN ONE MILLION DOLLARS A MINUTE ON WAR AND THIS IS JUSTIFIED BY A VARIETY OF SPINS.

old truck wheels. One vital bridge avoided destruction from above when, 300 yards upriver, a phony bridge was erected out of polyethylene sheeting. NATO pilots bombed the fake bridge several times.²³

Confronted with this evidence, Pentagon spokesman Kenneth Bacon went into spin mode: "We

**Post-Mortem:
Let the Disobedience (and the Real
Work) Begin**

"Liberals can understand everything but the people who don't understand them." —Lenny Bruce

"Crying won't help you ... praying won't do you no good." —"When the Levee Breaks," Led Zep

So ... it seems the shorter of the two rich straight white male Yale-educated war criminals won, huh? The rancher beat the windsurfer. George W. Bush finally knows what it feels like to win a presidential election and thus will remain the public face of the American Empire for a little while longer.

Wait ... shhhh. If you listen carefully you can hear all those protestors dusting off their Hitler mustaches, Bush/Dick jokes, and "regime change begins at home" posters. Four more years for them, too. (Then again it was four more years for everyone on the planet ... no matter who won.)

And what of the luminary Left who made it all look as easy as A-B-B?

So much for any delusions we might have had about the influence of Chomsky, McMoore, Springsteen, and the rest. More people DID come out to vote in 2004 than in 2000 ... to vote Republican, that is. Vote or die? Time to run another marathon, P. Diddy. This publicity stunt was a dud.

It's not too early to say: Never again (now there's a rallying cry if I've ever heard one). Never again should we endure "radical" support for anything that even looks like a Democrat and that goes double for when Hillary runs against Rudy. (Keep your "small differences" and "ledge" to yourself in 2008 ... please.)

To everyone who did not lose their nerve, hit the panic button, or pull a flip-flop even JFK2 would never attempt, well, here we are.

Now what?

The Nuremberg Tribunal (1945–1946)

proclaimed: "Individuals have international duties which transcend the national obligations of obedience!

Therefore [individual citizens] have the duty to violate domestic laws to prevent crimes against peace and humanity from occurring."

Mind you, this is the Nuremberg Tribunal I'm quoting ... not an anarchist collective or a dusty Thoreau tome. This is an edict borne of a population that chose to remain silent in the face of its government's criminality. Lucy Gwin, editor of the essential disability rights zine Mouth, once told me she believed the greatest gift that could ever been given to the American people is the permission to disobey.



Mickey Z. is the author of four books, most recently: The Seven Deadly Spins: Exposing the Lies Behind War Propaganda (Common Courage Press). www.mickeyz.net.

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one, in the face of even the most conservative interpretations of international law. The peace process blamed on Arafat for failing was never on the up-and-up. It was always skewed toward Israel's best interests and advantage. It was managed by Clinton envoy, Dennis Ross, a negotiator who had a religious conviction and bias toward Israel. Worse, rather than act as true arbiters for compromise, the United States and president Clinton stood as solid advocates for Israel.

The assertion that Israel's offer to the Palestinians at Camp David was "fair" or "just" is so patently outrageous that it's hard to resume peace negotiations from that point with any seriousness.

It may have been the "best offer," but it was flawed. Never written down. Never affirmed. Always waved like a mirage to draw the Palestinians into conceding more in exchange for what they always get from Israel, nothing.

Israel will forever be challenged by a people who refused to surrender, who cannot be defeated and who insist on negotiation based on fairness and justice.

There is only one fair solution to the Palestine-Israel conflict and Arafat supported it. It is Israel that stands as the true obstacle to peace. Compromise demands the return of the Gaza Strip, the West Bank and Arab East Jerusalem, lands occupied in the 1967 War.

Compromise demands that Israel dismantle ALL of its illegal settlements, including those built around East Jerusalem on lands confiscated illegally from their rightful Palestinian owners.

Compromise demands that Israel trade, inch-for-inch, land for any that it keeps. Instead, Israel's "greatest offer" proposed 1 inch for every 9 inches of occupied land, and not even in writing.

Rather than open a new door to peace, Arafat's death might pave the way for a Palestinian leadership driven by political extremism and the rejection of negotiation with Israel based on religious faith.

The rise of religious Palestinian extremism is a force Israel inadvertently helped create when Israeli hard-liners helped Sheikh Ahmed Yassin launch an Islamic alternative to Arafat and the Palestine Liberation Organization in the 1970s. They believed a religious alternative would undermine Arafat's growing influence.

That policy continued even up until Arafat's death. By destroying Arafat's secular government, and blaming the failure of the peace process on him personally, Israeli hard-liners have strengthened Hamas.

But wily in life, Arafat was strategic in death, too.

Though he died on November 11th, it was the ultimate irony that news of Arafat's impending "death" began on the 9th anniversary of the assassination of Yitzhak Rabin, Arafat's only real partner in peace.

Rabin was murdered by an Israeli fanatic on November 4, 1995, demonstrating that Israelis are

prone to violence in the face of a reasoned outcome that requires true compromise.

Arafat was a hero. Plain and simple. He was a revolutionary in the same sense of George Washington. If Arafat can be faulted for anything, it was that he was never a good negotiator, nor was he a great government leader either. But what revolutionaries ever are?

Arafat faced an even greater, more insurmountable challenge of trying to transform from a revolutionary to the leader of a government constantly undermined and influenced by Israel.

But his genius is undeniable.

Arafat took the Palestinian people out of an oblivious desert. And in the face of the greatest ever hate-inspired propaganda campaign directed against any people on this Earth, he prevailed exposing a canard instilled by Israeli rejectionism that "the Palestinians, they don't exist."

Israel will forever be challenged by a people who refused to surrender, who cannot be defeated and who insist on negotiation based on fairness and justice.

Israelis must accept that there can be no peace without justice or fairness. They can no longer hide behind Arafat as the excuse for why peace is unachievable.

Although Arafat, the man, will be gone, his inspiration to fight for justice and fairness is a legacy that will forever flourish among Palestinians.

Arafat was also pragmatic and recognized that compromise and the notion of "two states" mandated that Palestinians give up the demand that refugees be allowed to return to their original homes and lands. But he insisted that the Israelis recognize their responsibility in creating the refugee problem, apologize for it and be the major sponsors of a compensation fund.

But without a solid foothold in sharing Jerusalem, Arafat could not push that compromise which remains the core foundation of the Palestinian resistance to Israel's existence. Palestinians have given away a lot to Israel and even most moderates don't believe that the right of return should be surrendered without a major concession from Israel.

As has always been the case, the choice between a just and fair peace, or a future of increasing violence is one that only Israel has the power to make.



Ray Hanania is an award-winning nationally syndicated Palestinian American columnist. www.hanania.com.

Time Warp! (Or “A Warped Time”)

Kersasp D. Shekhdar

“That men do not learn very much from the lessons of history is the most important of all the lessons of history.”
–Aldous Huxley

Below is a set of properties identifying a particular country at a particular point in time. What is the country and what is the time?

- 1. This country is still feeling both humiliation and resentment over an outright defeat suffered thirty years ago in a vicious and hard-fought war which it itself initiated without cause. (Prior to actual onset of hostilities, this country had already infiltrated considerable numbers of military men and spies in the attacked nation; it was meant to be a quasi-Imperial outpost; these agents were preventing the people of that nation from gaining their freedom.)*
- 2. This country is purposefully carrying out the largest militarization in world history, and has been doing so for the past several years. Its military expenditures dwarf those of other countries.*
- 3. This country has been, and is, stockpiling huge quantities of poison gas, chemical weapons, and biological weapons.*
- 4. After a very closely contested election, the leader of this country does not win the leadership post outright. Instead, after haggling and dickering, the final word is had by an extra-electoral governmental entity. It awards the would-be leader the highest governmental post of the country.*
- 5. The media of this country are no longer independent news organs but are shills and “whores” for the government and the powerful, and yellow journalism is becoming more and more frequent.*
- 6. The media and the government have inculcated into the unsophisticated masses a stupid type of disdain for free-thinkers, intellectuals, and those highly educated in the liberal arts; these groups increasingly are reviled by the masses.*
- 7. Peculiar and warped chemical and biological experiments are conducted by State agencies in secret on prison inmates, POWs, and mental patients.*
- 8. An officially supported, apparent campaign of thought-control is underway as the government and its media channels barrage the public with slogans, doublespeak, misinformation and propaganda terms. It goes undetected by the vast majority of the people; for the most part the campaign succeeds.*
- 9. The same year that this country's ruler comes to power, an atrocity is committed upon a national symbol that causes it to burn. This act inflames the populace. Blame is quickly and undoubtedly placed on a specific group of people. However, a well-informed and intelligent minority find the official explanations hopelessly inadequate and unsound.*
- 10. Cynically using the terrible act on the national symbol as a pretext, the ruling elite have rammed certain laws through the legislative body under cover of whipped-up hysteria. Those who had asked pointed questions when the laws were introduced are intimidated by being branded “unpatriotic” or “enemies of the state.” These laws “enable” the government to assume extreme authoritarian powers, eliminate civil liberties and contravene the (written) constitution, inter alia; thus the illegal and unconstitutional is provided a facade of legality.*
- 11. A loose corps of jingo thugs, encouraged by agents of the government, harass and tattle upon free-thinkers and dissidents who express disagreement with those in power. The government also encourages informants to report any supposed suspicious activity on the part of their fellow-citizens to the government.*
- 12. Initially, there is a silencing of dissenting voices; they are branded with a few different undesirable labels and are ostracized; this lets loose a slow-burning vague fear across the land; thus, those who lacked courage to begin with have become too frightened to express any political disaffection whatsoever.*
- 13. Later, detention and internment (on trumped-up charges) simply for demonstrating opposition to the agenda and actions of the regime in power and even presumed guilt-by-association gradually become more common. Even after several hundred citizens and residents have secretly been detained, this anti-democratic phenomenon is ignored by the controlled mass-media.*
- 14. A monopoly on State power is a hidden agenda which is gradually becoming not-so-hidden, and this is being carried out by a particular, well-organized group (in one or more government, financial, and/or industrial sectors).*
- 15. The demonization of an ethnic group is underway in this country. It is subtly encouraged by the government and its media cohorts. A considerable number of members of this group emigrate from the country.*
- 16. A particular racial group has claimed exalted status and exclusive privileges in this country. This group considers itself to be an unblemished and/or preselected class and is officially, i.e. by dint of legislation and/or governmental pronouncements, first among equals in this country. They have acquired the majority of potent assets in this country by hook or by crook and they lord it over other – to their way of thinking, lesser – races.*

17. A majority of the citizens is on the whole happy to be citizens of this country but a minority is becoming more and more alarmed at the unusual and extreme change of direction in their country's politics.

18. While the global citizenry is very slow to wake up, serious political scientists and career historians around the world closely watch this country with rising concern. Yet nobody takes any action to redress the global balance of power which is at risk of moving permanently off-kilter.

19. The (comparatively) small-scale invasions and police actions this country has launched in one or two other countries to achieve de facto annexation or extensions to Empire have gone unpunished by an increasingly emasculated international body which is (supposed to be) an unified consortium of nations.

20. This country has launched a cruel war of aggression under thoroughly bogus pretexts.

21. Citizens who were not members of the armed-forces proper when the war was launched are sent – and most willingly go – to the other countries to fight the war.

22. Prisoners and POWs are tortured using sensory torture techniques, including extreme sleep deprivation and other methods.

23. The war crimes and atrocities of this country's warmongers and armed-forces, rather than being reported as such, are either suppressed, justified by way of casuistry, and/or twisted into heroic actions in this country's mass media's reports.

24. Those citizens suspected of crimes can be, and are, tried in special secret courts or tribunals in which due process is either suspended or not recognized, the accused are denied their choice of counsel and do not have any course of appeals. All this is deemed necessary in the interest of "national security." The government suppresses news and publicity about these actions and keeps them as secret as possible. The controlled mass media is only too happy to oblige.

25. The country's ruler makes public claims of having a Divine mandate regarding his misrule. But his actions – and increasingly, the conduct of the people themselves – show that the country by-and-large is going the opposite way.

26. The people of this country continue to experience increases in their sense of international isolationism and their xenophobic tendencies are reinforced by the government and the media.

27. As time goes on, this country is looked on with increased suspicion and loathing by other nations.

28. Cunning psychological manipulation (by the government and its media agents) cause the people of this country a vague sense of feeling "put upon"; there appears to be a reactive borderline paranoia and an unhealthy, virulent breed of nationalism simmering across this country. These feed upon each other in a vicious cycle.

29. In an election that stuns interested watchers world-wide, the people of this country re-elect the ruler. This time, a greater number and a greater percentage of voters ostensibly vote for him, and this time he is directly elected to the top governmental post without the intercession of any third party.

30. A few of the above properties give one the impression of creeping Fascism.

31. A few of the above properties give one the impression of creeping Totalitarianism.

32. Most governments and nations, though discomfited, go about their usual business and pursue the policy of appeasement. However a few prescient and courageous governments are loudly protesting the whole thing.

What is the country and what is the time? No extra points for coming up with more than one correct answer. . . .

Austrian traitor Arthur Seyss-Inquart, the Nazi chief of Austria and Holland: "I hope that this . . . is the last act of the tragedy of the Second World War and that the lesson taken from this world war will be that peace and understanding should exist between peoples." When diabolical tyrants make utterances of "peace" and "peoples," they always do so to deceive and manipulate the populace. The only time that they utter such humanistic words with sincerity and belief is when they face imminent death. As did Seyss-Inquart when he spoke these last words just before he was hanged on the counts of Waging Wars of Aggression, War-Crimes and Crimes against Humanity by the International Military Tribunal in 1946 at Nuremberg.

"History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again."

—Maya Angelou.

Mr. Marx, Will we have Farce? Or Tragedy, Act the Second?

Activist and reporter Sam Smith said ". . . I suddenly noticed that the truth was no longer setting people free; it was only making them drowsy.' So we thought, 'Then shall we change the style, the manner, in which we tell the truth?'"

Kersasp D. Shekhdar is a Zarathushtrian ('Zoroastrian') Mazdayasni by birth. He is a scientist and a freelance writer.

To learn more about the above mentioned 32 points, please refer to the back issues list of *CovertAction Quarterly*. The whole set of CAQ is available for ordering. Please order one set today.

THE OTHER OCCUPATION: THE HAITIAN VERSION OF APARTHEID

Jean-Claude Martineau

Whenever the name of Haiti is mentioned in the international media, it is immediately followed by what seems to be a title, a last name or a claim to fame: The poorest country in the western hemisphere. It is the only country whose name is associated with poverty. There must be a poorest country in Africa, Asia, or Europe, but they have never been mentioned. Although there are about two dozen countries poorer than Haiti, she has become, by default, the poverty champion of the world.

Why then is the West, particularly the U.S., so interested in Haiti that they occupied it three times? What do they want there since, by their own admission, there are no resources worth stealing? The answer must be found somewhere else.

When Haiti proclaimed her independence in 1804, the white slave masters chose to ignore it. But Haiti was fast becoming a beacon of freedom for the abolitionists in their fight to end the slave trade and slavery. The South American revolutionaries also viewed Haiti as a beacon of light in their struggle for independence. One way or another this bad example had to be erased, this experiment had to fail.

During her two hundred years of independence Haiti has suffered all types of interventions: military, economic, political and even cultural. Very

few countries, if any, have been treated with so much malfeasance by the West.

It would take a whole book to enumerate all these interventions. We will only mention the most significant ones.

When the French royal family regained power after the defeat of Napoleon, it tried to reestablish its sovereignty over its former colony. On the other hand, the Haitian president Jean Pierre Boyer wanted France to

French colonists. Boyer accepted to pay one hundred and fifty million gold francs. Later the debt was reduced to ninety million but was still a heavy burden for a small country at the beginning of its national life. No other country has ever paid for an independence it won on the battlefield. The debt was paid off during the presidency of Lysius Salomon (1879-88). For over fifty years, the accumulation of capital

that could have launched the country on the path to development was made impossible. This was the first burden imposed on Haiti to get off the road from being a prosperous colony toward becoming a poor republic.

It was the so-called elite that kept the door wide open for foreign interventions. After independence, the Haitian society was completely militarized. In his district, a general was the judge, the agricultural inspector the head of police, etc ... When the time came to distribute the land that used to belong to

the French, a general would receive so many acres, a colonel so many less and so on. The farmers and soldiers received nothing. Since that time the landless peasants have been and are still the largest social group in Haiti. They have no rights, no protection under the law, no political weight, no schools, no hospitals, nothing.

THERE MUST BE A POOREST COUNTRY IN AFRICA, ASIA, OR EUROPE , BUT THEY HAVE NEVER BEEN MENTIONED. ALTHOUGH THERE ARE ABOUT TWO DOZEN COUNTRIES POORER THAN HAITI, SHE HAS BECOME, BY DEFAULT, THE POVERTY CHAMPION OF THE WORLD.

recognize Haiti's independence, believing that it was the only way to end Haiti's isolation. The two positions couldn't be further apart so the two sides engaged in negotiation.

Finally in 1825, after years of discussions and interruptions, France accepted Haiti's proposition providing that she paid reparations to the former



Pro-President Aristide demonstration in Haiti, 2004.

Photo: Sasha Krammer

Jean Dominique, our great journalist and patriot, who was assassinated in 2000, called them "the excluded." In the meantime, the many sections of the elite were fighting for dominance. From the fall of Boyer in 1844 to the American occupation in 1915, Haiti was in a state of permanent civil war: Mulattoes against Blacks, the north against the west, the south against the west and any combination in between. The European powers and the U.S. were too happy to supply weapons and ammunition in exchange for some promises of commercial or territorial advantages in the event that the group they supported would win. During that

century of unrest, many foreign businesses established in Haiti pretended to have suffered some losses and demanded reparations from the government. According to historian Desquiron, who died in 1999, there were about a thousand such claims. From time to time a war flotilla would appear in Port-au-Prince Bay, threatening to obliterate the city if such debt, such claim or such promise was not honored by the Haitian government. In March 1849, it was the French admiral Duquesne; in July 1861, the Spanish admiral Rubalcava; in 1872 the German captain Batsch; in April 1891, the American admiral

Gherardi; in December 1902, the German captain Thiele.

In spite of the obvious danger to the country's independence, the different factions of the elite kept on fighting each other. They would unite only if a popular uprising threatened their stupid game. During that period Haiti had about twenty presidents (only one of them civilian), more than a dozen coup-d'états and as many constitutions.

The last moments of this period were particularly active: four presidents in two years. The very same day the fourth one was killed by the Port-au-Prince's population, in July 1915, the American admiral William Cappington

landed his marines in Haiti. The reason for the occupation of Haiti was to restore order in the country's finances and political life. Let's remember that almost a year before, an American war ship, the Mathias landed a marine regiment in Port-au-Prince. They marched to the national bank, broke it open, took the republic's gold reserve and left. This gold, estimated at half a million dollars has never been returned. Still, Haiti was forced to accept a loan of forty million dollars to pay her debts. These included the one thousand or so claims presented by the foreign businessmen established in Haiti. Some of these claims may have been legitimate, most were ridiculous and some openly criminal. Take the following case reported by Jean Desquiron in "Port-au-Prince à la une": In 1861, Antonio Pelletier was a slave ship captain with an original idea. Since the slave trade

foreign intervention, only a specific minority is satisfied. The permanent unrest had subsided to the delight of the foreign and national businesses. Politically, the occupants favored the mulatto section of the elite. Although they never represented ten percent of the Haitian population, the four presidents under the American occupation were mulattoes.

In 1918, a constitution, probably written in the U.S. was given to Haiti. It took out an article that was present in every Haitian constitution since 1804 and that provided that no foreigner should own land in Haiti. Soon after this constitution was voted by a hand-picked parliament, the most fertile land in Haiti fell into American hands. A company called MacDonald, for instance, received a contract to build and operate a railroad line from Port-au-Prince to Saint-Marc, a city one

The Americans re-enacted an old law called *corvée*. This law provided that each peasant must give six days of free labor a year repairing roads. The peasants were rounded up and marched to their assigned work area. Many never came home.

Where there is oppression, there will be revolt and that's exactly what happened. The Haitian peasants revolted and started an armed rebellion against the occupation. They opposed American firepower with hoes, machetes and dozens of rifles.

To put down the rebellion, the Americans and the U.S.-made Haitian army used every weapon in their arsenal. It was the first time that Americans used airplanes in combat.

The revolt ended after a year when its leader Charlemagne Peralte was assassinated in 1919. His body was exposed, tied to a door and naked

WHERE THERE IS OPPRESSION, THERE WILL BE REVOLT AND THAT'S EXACTLY WHAT HAPPENED. THE HAITIAN PEASANTS REVOLTED AND STARTED AN ARMED REBELLION AGAINST THE OCCUPATION. THEY OPPOSED AMERICAN FIREPOWER WITH HOES, MACHETES AND DOZENS OF RIFLES.

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was outlawed but slavery still practiced in the hemisphere, why not get the slaves from Haiti? He raided the coasts of the independent black republic, kidnapping people whom he would sell into slavery. He was caught, tried and jailed. Somehow he managed to escape. He returned eighteen years later, in 1879 to sue the Haitian government for damages. With the support of the American ambassador John Langston, he demanded two and a half million dollars.

Some Haitians still want to believe that the American occupation was beneficial. It is true that a few benefited from it. But as it goes in almost every

hundred kilometers northwest of the capital. The contract gave the company twenty kilometers (13 miles) on either side of the tracks. This would have been a large piece of real estate in any country let alone a small one like Haiti. A significant number of peasant families were displaced, but the occupant had a plan for them. Tens of thousands of Haitians were shipped to Cuba and the Dominican Republic, where Americans had built dozens of sugar mills. It is obvious that the sugar mills were built with Haitian cheap labor in mind since only one was created in Haiti. That was the slave trade all over again in the twentieth century.

except for a loincloth fashioned after the one we are told Jesus Christ wore on the cross. That is why, up to even now, Haitians say that Peralte was crucified.

Then the retaliation came. Even in the 1960's some old Haitian peasants could still tell some unbelievable horror stories about that time: People were hanged, burnt alive and hunted like wild games. What enhances these stories is the fact that a large number of American soldiers came from the southern states. Some of them may have heard, seen or even participated in many lynchings. You turn these men loose on a Black and rebellious population and you have an open season on Negroes.

The resistance didn't stop, it only changed form. A group of intellectuals founded the Patriotic Union. In their newspaper they conducted an active campaign against the occupation. Finally a strike started by students spread to other sectors and became a general strike. The Americans accepted to leave and the occupation ended in August 1934 after nineteen years.

They left behind a tiny minority in power, an army to defend their interests and control the masses and a majority poorer and more excluded than ever. They had the possession of the country's most fertile land and they had created an exportable pool of cheap labor.

The occupation ended but the interventions in Haitian affairs continued:

From 1946 to 1950 Dumarsais Estimé was president of Haiti.

Under his progressive administration, the minimum wage was raised for the first time in about a century and Port-au-Prince was modernized to celebrate the city's bicentennial. The loans contracted under the occupation were paid off. Estimé organized an international exposition that practically launched the Caribbean tourism. Haiti was then an important exporter of banana but the industry belonged to the Standard Fruit company, an American business. Estimé nationalized the company. He was overthrown soon after by the military.

In 1957, the army seized power and called for an election. The candidate the military favored was none other than the infamous François "Papa Doc" Duvalier. During his reign, more than thirty thousand Haitians were killed. One particular event helped him establish and consolidate his dictatorship: In 1960, the United Nations came to Haiti to recruit teachers to go to the Congo. Engineers, doctors, professors, agronomists, lawyers and artists were hired to teach French, math, history

at the high school level. The salaries were high enough to attract thousands of Haitian professionals. The U.N. knew very well that the illiteracy ratio in Haiti was about ninety per cent, a lot higher than in the Congo.

These interventions robbed Haiti of the brains that could have helped in the building of a modern society and

The American administration rushed to the rescue. They proposed and financed the slaughter of every single pig in Haiti. They paid five to twenty dollars per animal depending on their size. Pork is the most consumed meat in Haiti. That's why every peasant family tries to have a few in order to face some unforeseen spending like weddings and funerals. In Haiti, they call the pig the peasant's bank account. Although large areas were not affected

WHEN "BABY DOC" WAS FINALLY KICKED OUT BY A POPULAR UPRISING IN 1986, THE AMERICAN ADMINISTRATION SENT TWO PLANES TO TAKE HIM AWAY TO FRANCE. ONE FOR HIM AND HIS ENTOURAGE AND THE OTHER FOR THE LOOT THEY WERE TAKING OUT OF THE COUNTRY.

more importantly, in opposing the dictatorship of "Papa Doc."

When François Duvalier died in 1971, His son Jean-Claude inherited the presidency; he was nineteen. Within weeks of his inauguration, all the big democratic powers had recognized the government. "Baby Doc" received more aid from the so-called democracies than all the Haitian governments combined. When he was finally kicked out by a popular uprising in 1986, the American administration sent two planes to take him away to France. One for him and his entourage and the other for the loot they were taking out of the country.

The AIDS epidemic appeared in the beginning of the 1970s. Nobody knew what it was or where it came from. It was determined soon after that there were four high-risk groups. The fourth one was the Haitians. They were at risk not because of a certain behavior that could be changed, but by being who they were. There were no studies, no research, no investigations backing that view. As a result of that racist position, scores of Haitians lost their jobs in the U.S. and the tourist industry in Haiti was severely damaged.

In the early 1980s an epidemic of Swine Fever attacked the Haitian pigs.

by the Swine Fever, all the pigs were killed except for a few hundred hidden by their owners. The rural economy was ruined.

In February 2004, the United States and France invaded and occupied Haiti. This intervention had been in the making for at least three years. It started by gathering an amazing opposition made of people who call themselves former communists, (some used to be pro-Moscow and some others pro-Beijing), some former military and civilian officials of the Duvalier regime and some other members of the repugnant elite. They have nothing in common except a virulent hatred for Jean-Bertrand Aristide. They accused the president of all the crimes in the book: He was a dictator, a drug dealer, he participated in human sacrifices and so forth and so on.

It was strange to hear members of the opposition complaining over the radio or on television that they didn't have the right to speak. It was also surprising to hear former members of the Duvalier regime accuse anyone of dealing drugs when they were the ones to introduce the profession in Haiti. All these of course were just pretexts; the real reason was that Aristide was from the

"excluded," therefore he had no right to be the president.

When it became obvious that the opposition was getting nowhere, in spite of the armed groups in their ranks, the Americans decided to intervene directly to "save" the Haitian people from the President they have elected twice. At the time, Haiti was celebrating the two hundredth anniversary of her independence from France. By inviting the French to be part of the

government was done through violence. For the first time in the country's history, three consecutive administrations took power peacefully. From Ertha Trouillot to Aristide then to Rene Preval and back to Aristide. It was an interesting development. Most Haitians were hopeful that stability was at hand at last. The American and French governments decided that the process had to be stopped. The actual interim government they put in place

your military might, in spite of your economic power, in spite of the racist dishonesty of your propaganda machine, independence will prevail, you will fail.

Jean-Claude Martineau is a Haitian writer, historian and songwriter. He was the spokesperson for President Aristide when he was in exile in the U.S. after the first coup d'etat against Aristide.

NOW THAT THE U.S. AND FRANCE HAVE INVADED HAITI TO REMOVE AN ELECTED PRESIDENT, WHAT COULD BE THEIR PLAN FOR THE COUNTRY'S FUTURE? IF SUCH A PLAN EXISTS, IT CANNOT HAVE ANYTHING TO DO WITH DEMOCRACY. THE INTERVENTION DESTROYED THE DEMOCRACY THE HAITIAN PEOPLE WERE TRYING TO BUILD WITH GREAT DIFFICULTY.

invasion, the American administration has shown clearly its intention to humiliate this Black nation. Beside the common hatred of the masses they share with the repugnant elite, each of the two invaders had a bone to pick with the elected government. For the Americans it was the relations with Cuba and for the French it was the demand to return the money Haiti paid for her independence.

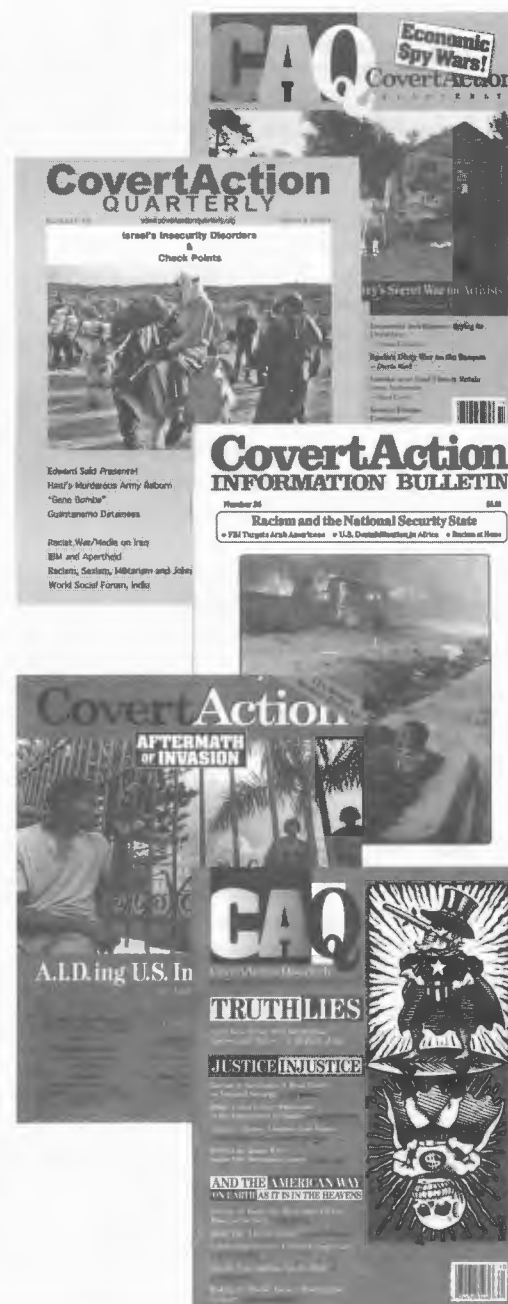
Now that the U.S. and France have invaded Haiti to remove an elected president, what could be their plan for the country's future? If such a plan exists, it cannot have anything to do with democracy. The intervention destroyed the democracy the Haitian people were trying to build with great difficulty. The president who was removed from office had two more years to go on his term. The vote of the majority was erased, damaging the principle of "one person one vote." The cornerstone of democracy: Election was vilified. The right of association and free speech were eliminated. The leaders of the deposed president's party are either in jail, in exile or in hiding.

Instability has always been Haiti's main problem: Every change in

has no support from the people. According to the Haitian constitution, an interim government has but one mandate: It is to organize elections within ninety days. The U.S. has taken upon itself to override an independent country's constitution and prolong the illegal government's term to two years. The pretexts used against Iraq cannot be applied to Haiti. No weapons of mass destruction, no connection with al Qaeda and no harboring of terrorists. Haiti didn't even qualify to be an issue in the presidential debates. After all it's only eight million Negroes. The contempt for Haiti is so strong that the American administration didn't even send any help after the passage of cyclone Jeanne to the very government they put in place. If Haiti has been taken out of the headlines, it is exactly because this racist occupation cannot be justified.

A specific role has been assigned to Haiti by the West. It is to prove that Black people cannot govern themselves and to tell the weak and small nation that if they want to be independent, the West will make their life miserable. But Haiti has written a different script for herself. She says: In spite of

To read more on Haiti, please see CAQ numbers: 36, 45, 51, 55, 57, 76.



The Sudan & The Darfur

Gillian Lusk

And they keep on dying. Over a year since Sudan's Islamist¹ government began slaughtering its own citizens in the remote western region of Darfur, those citizens continue to be killed by a government that claims to represent them. In April 2004, many people marked the commemoration of the Rwandan genocide of April 1994 by saying "Never again!" Yet Darfur's genocide is still underway.²

Among those warning that "Rwanda in slow motion" was taking place were Sudanese, journalists, human rights activists and the Canadian General Roméo Dallaire, who had helplessly watched his own United Nations troops helplessly watching Rwanda's genocide unfold.³ Also among them was the man who had headed the U.N. Peacekeeping Operations Department at that terrible time and who is now head of the entire U.N. machine, Kofi Annan.⁴

Three months after the Rwandan's tenth anniversary, on July 22, the United States Congress declared that genocide was taking place. Four days later, on July 26, the Holocaust Memorial Museum in Washington, DC, issued a "genocide emergency," signifying that genocide was taking place or was "imminent."⁵ Five months after Rwanda's anniversary, on September 9, and after much shuffling in the corridors of power, Secretary of State Colin Powell declared that genocide had indeed occurred. He then announced that the U.S. government wasn't going to do anything about it.⁶ International law

requires action once genocide is established. A Department of State official told me the U.S. government had already done what international law required, a reference to the two U.S.-sponsored resolutions put to the Security Council,⁷ demanding that Khartoum disarm its Janjaweed militias⁸, which it has not done.

Eight months after the Rwandan anniversary [in December 2004], the ordinary villagers of Western Sudan continue to die at the hands of the National Islamic Front (NIF)⁹ regime

devoid of accurate statistics and cursed with a regime that doesn't want anyone to know the true figures, no one can be sure. Many die uncounted.

Estimates of the current death rate range between a few hundred and 1,000-plus a day. Most are ordinary villagers. Some are killed by the NIF regime and the militias it controls. Some die of earlier injuries or because illness and hunger have weakened their resistance to the many virulent diseases that prowl through the camps of over 200,000 refugees in neighboring Chad or the camps for internally displaced persons (IDPs) inside Darfur, which provide a kind of refuge for hundreds of thousands more. Little children die first.

However, many of the men – and from some villages, most – are already dead, lined up by the government militias and shot. They were almost all country folk, leading a traditional life herding sheep, goats and cattle and farming family plots of millet and tomatoes. They are the poorest of the poor in a country where in normal times, one American-sized plate of food would be far more than the majority of people eats in a day. Their possessions would not fill one giant modern suitcase – indeed, this is one of the many forms of wheeled transport that is not available to them. They rely on donkeys and sometimes camels or horses.

This tragedy raises two questions: Why is the Government of Sudan killing these villagers? And why is the "International Community" not trying to stop the killing? These two questions are necessarily connected.

PERHAPS 150,000 PEOPLE HAVE ALREADY DIED, VIRTUALLY ALL OF THEM INNOCENT AND UNARMED CIVILIANS. SOME MEDICAL PEOPLE PUT THE DEATH TOLL AT DOUBLE THAT. IN THE MIDST OF SUCH A SLAUGHTER AND IN A COUNTRY DEVOID OF ACCURATE STATISTICS AND CURSED WITH A REGIME THAT DOESN'T WANT ANYONE TO KNOW THE TRUE FIGURES, NO ONE CAN BE SURE. MANY DIE UNCOUNTED.

which rules them and the world still watches helplessly. Perhaps 150,000 people have already died, virtually all of them innocent and unarmed civilians. Some medical people put the death toll at double that.¹⁰ In the midst of such a slaughter and in a country



Those who want to file a complaint, need to pay high fees to the courts in the form of stamps. These are two samples of them.



The starting point inevitably has to be in the Sudan and there, the question to ask is less "Why are the rural people of Darfur being killed?" than "Why is the Sudan Government killing them?" That might sound rhetorical: It is not. Khartoum's Islamist regime has done its utmost to steer attention (domestic and foreign) away from itself. This works well, for the interested governments – African, Arab, Asian and Western – can then hide behind the fig-leaf Khartoum has helpfully offered them. After all, diplomatic convention insists that in the common run of international relations, governments do not attack each other, especially since the fall of the Soviet Union. Thus a kind of conspiracy has developed which helps to prevent other governments from speaking out, let alone actively intervening, while conveniently allowing the NIF government to pursue its own murderous agenda. Which it has done.

The "Other" Disposable People

So why is Khartoum slaughtering its own people in Darfur? For the same reason that it did so, more slowly but just as murderously, in other regions, mainly the South and the adjoining Nuba Mountains.¹¹ They got in the way. They constituted a political threat to the NIF's vision of a Sudan ruled according to its fundamentalist interpretation of Islam. Just like Jews, as well as Slavs, Romas and other "others" for the European Nazis of the 1930s and 1940s, they don't fit into the grand scheme of things and are therefore utterly disposable. In the distorted vision of the fanatic, they are "other" and not fully human. The moment they pose – or are judged by the government to pose – a political threat, they are dealt with, often by extermination.

The Darfur disaster is not simply a civil war or ethnic conflict, as the

Sudanese regime has tried, with some success, to persuade the world. It is true that, in the main, people deemed "African" have been attacked by people deemed "Arab." These are not the convenient divisions that some outsiders would like to imagine, though. Virtually the entire population of Sudan is of African descent. Many in Northern Sudan (which includes the western region of Darfur) also have some Arab ancestry – and even more claim it. This is because Arab origins mean you can claim to be a descendant of Prophet Muhammad. Have a look at the Book of Genesis with all its "begat ... begat ..." stretching back over the centuries and you will get some idea of the significance of genealogy in a largely oral (because illiterate) desert society where religion is woven into the fabric of society in all its aspects.

This is one meaning of "Arab" in Sudan. Nevertheless, there are plenty of threads which run in the other direction. In Darfur, the epithet "Arab" has traditionally often been used by settled peoples (mainly "African") as an insult for nomads: in Africa, settled farmers tend to consider themselves superior to pastoralists, just as settled Europeans often look down on wandering Roma people. Darfur is one of the most ancient homes of Islamic scholarship in Africa, so much so that it merits a "school" named after it within Egypt's Al Azhar University, one of the globe's main centers of Islamic scholarship. This tradition was developed in Darfur by "African" peoples, mainly the Fur.¹² If people are seen as "African," it is not just because they are not nomadic – many "Arabs" are also settled and some "Africans" are semi-nomadic, for many keep herds of livestock. "Africans" tend to have two distinguishing features: they see themselves as belonging to an indigenous

tribe (for instance, Fur, Zaghawa) and most of them speak their tribal language as their first language, with Arabic as a lingua franca.

This is not then a question of skin color: most outsiders and indeed many Sudanese couldn't begin to distinguish the "Africans" and the "Arabs" from one another. This crisis is not primarily about traditional rivalries over ethnicity or access to land and water. The Khartoum government is exploiting competition over resources, replacing traditional conflict resolution mechanisms with conflict itself, organized and paid for by the Islamist regime.

One of the givens in reports of the Darfur slaughter is that this is not about religion because both sides are Muslim. The audible sigh of relief is misplaced. Everything the Sudan government does is in some sense "about religion" because it is an Islamist government. In other words, its *raison d'être* is to impose its vision of an Islamic state on Sudan and beyond that, on the Arab world, the Islamic world, Africa and even the wider world. The fact that after 15 years of ruthless rule it has failed to impose this vision even on its own country does not (contrary to what a lot of foreign officials seem to think) mean that it has given up its dream. If you believe you are implementing God's plan, you may not give up so easily. Religious fundamentalists of every hue have known this throughout the ages. Yet it is a hard truth to grasp for Westerners, especially Europeans living in "post-Christian" societies where faith is widely seen as a matter of personal choice, not a driving force of society, let alone of politics.

The Sudanese regime knows this and devotes considerable effort to a "charm campaign" that projects an image of itself as having abandoned what it called its "Salvation Revolution" and its "Civilization Project." The message is: "We're just cynical power-hungry corrupt politicians like yourselves." This goes at least some way towards explaining why Western governments have convinced themselves they should "engage" with the NIF, despite not only Darfur and years of killing in the South and elsewhere, but also an integral role at the heart of the Islamist International, aka al Qaeda.

Soon after it had taken power, the NIF invited international Islamists from many countries to Khartoum, founding the People's Arab Islamic Congress (PAIC), later seen as a precursor of al Qaeda. Its Secretary General was Mustafa Osman Ismail (aka "Mister Smile"), now Sudan's Foreign Minister. One Islamist guest was Usama bin Laden. He stayed five years, owning a tannery (tanneries are useful relay stations for chemicals) and owning "farms" used as terrorist training camps.¹³

Usama went back to Afghanistan in 1995. The NIF regime later claimed that it had offered to hand him to the U.S. government, which refused. This was categorically denied by leading politicians of the time, including Sandy Berger, Madeleine Albright and Susan Rice.¹⁴ Pro-Khartoum lobbies kept the story going, presenting the NIF as innocent hosts to a passing Persian Gulf businessman. It is this emphasis that most makes the "attempted handover" story implausible. Usama was an integral part of the Sudanese system and the NIF is an integral part of the international Islamist movement. There is no way the NIF could have betrayed him without bringing down the wrath of that international movement (and we saw on 9/11 what that can produce). It would also have destroyed its credibility with its own small but highly efficient support base. However, since Western observers were more interested in Clintonesque politics than Sudanese politics, it is widely believed that Khartoum tried to hand Usama back but was refused.

¹³The NIF is far from being an "average" thuggish government, as many seem to believe. Originally called the Muslim Brotherhood when it spread to Sudan from neighboring Egypt in the 1930s and 1940s, the NIF spent years preparing for power.¹⁵ Students of Islamist extremism take it as meaning that Islamists work on a different time-scale from most of the world. This is very clear in the NIF which, in a society already used to a

developed sense of history and a slow pace of life, trained its cadres to spend years infiltrating the system to take power.¹⁶ "Sleepers" patiently bided their time in remote outposts until the NIF, a tiny but highly organized party, seized power from an elected government in a military coup on June 30 1989. Others were open about being Muslim Brothers but benefitted from the traditional tolerance of Northern Sudanese to each others' politics. This was a society where everyone had a relative who was an Islamist, just as

famous face was that of Hassan Abdullah el Turabi, a man with a mission and a masters degree in law from London and a doctorate from the Sorbonne in Paris — which played a not inconsiderable role in keeping the French government on his side.

The coup was timed to sabotage talks to end the war in the South, talks patiently put together mainly by the Northern political secularists of left and centre who saw clearly that a "multi-cultural" country could not continue to privilege Northern Muslims.

This multi-denominational united country is far from being the basis of the North-South peace deal now being pushed through by the U.S. and Britain.¹⁹ [The deal's] "one state, two systems" formula consigns the North to the Islamists in perpetuity, which is a major reason that it will not work for Northerners who long to escape from under the Islamist yoke and who treasure the idea of democracy.

The NIF remains the totalitarian party it has always been. Though Hassan el Turabi was in 1999 pushed sideways by the government's most powerful man, his former deputy Ali Osman Mohamed Taha, little else has changed in the NIF, though it did (not for the

first time) change its name.²⁰ Nonetheless, since it has not changed its spots, most Sudanese still call it the NIF.

In its first years of power, its most visible atrocities involved war and forced Islamisation in the South and Nuba Mountains, with torture everywhere.²¹ Northern politicians and the educated elite were "tortured into exile." Particular targets were the many intellectuals of the center and left who, while mostly practising Islam, demanded a secular political system. Most are now in exile in the West or the Persian Gulf area, and are distraught to find many on the Western left siding with the government they have fled.

This is the NIF that has committed such horrific massacres in Darfur. The

USAMA BIN LADEN WAS AN INTEGRAL PART OF THE SUDANESE SYSTEM AND THE NIF IS AN INTEGRAL PART OF THE INTERNATIONAL ISLAMIST MOVEMENT. THERE IS NO WAY THE NIF COULD HAVE BETRAYED HIM WITHOUT BRINGING DOWN THE WRATH OF THAT INTERNATIONAL MOVEMENT (AND WE SAW ON 9/11 WHAT THAT CAN PRODUCE).

everyone had one who was a Communist or a Baathist or belonged to one of the two major parties, both religiously based but Islamic rather than Islamist.¹⁷ It didn't occur to most Sudanese that the Islamists were seriously planning to take power or, since they had little base in the army, that they would succeed.¹⁸

The main political actors in the NIF's 1989 coup were not the military men led by Brigadier General Omer Hassan Ahmed el Beshir, now an improbable President and Field Marshal. The people who were and still are in charge were civilians, a mixture of lawyers, doctors and other professionals, most with doctorates from U.S. and other Western universities. The Sudanese Islamist movement's most

armed fronts of the opposition umbrella, the National Democratic Alliance, have been active mainly in the Nuba Mountains and South, where the Sudan People's Liberation Army holds sway, and also in the East, bordering Eritrea and Ethiopia.²² Yet from the start, the NIF had perceived the vast Darfur (the size of France but virtually devoid of hardtop roads) as a potential threat. It attempted to disarm those in "African" ethnic groups holding weapons and at the same time, armed "Arab" groups. Arabism is an easy ideology for Islamists to exploit because of the importance of Arab roots, culture and language for Muslims. The Quran was written in Arabic, after all.

The NIF has also used "divide-to-rule" with a tenacity that would have impressed Imperial Romans. It has consistently armed militias to fight its proxy wars, just as it has armed the Janjaweed in Darfur. And just as it has in the South and the southern "buffer zones," it has also used its own armed forces to back up the militias, from aerial bombing of villages to providing uniforms. Now, in the name of "reining in" the Janjaweed as the U.N. Security Council has requested, it is integrating these killers into the regular armed forces and police, where they "disappear" into the ranks – until it is time for the next depredation.

The immediate trigger for these depredations was attacks by a new opposition front in Darfur, the Darfur Liberation Front, which rapidly renamed itself the Sudan Liberation Army (SLA). It had grown from self-defense groups of some "African" tribes, trying to protect their kinsfolk from "Arab" and sometimes government-inspired raids. The pattern of earlier government repression is clear from the number of arbitrary arrests of lawyers and human rights activists in Darfur in the months before the conflict broke, as evidenced in multiple reports and "Urgent Actions" from Amnesty International and from

Sudanese activists.²³ The SLA briefly took the provincial capital of El Fasher in April 2003.

This is now taken as the starting point for the conflict, even though the government-backed militias were armed and ready to go. They did go. Like several NDA parties, the SLA demands a politically secular constitution for Sudan and was rapidly accepted into the NDA. Neither this nor its near total avoidance of killing civilians²⁴ earned it international respectability,

... AN INTENSE BUT OFTEN COVERT CAMPAIGN BY THE NIF REGIME, PRESENTED DARFUR AS A "CIVIL WAR." THIS IN TURN ENABLED WESTERN, ARAB AND AFRICAN GOVERNMENTS TO EVADE THEIR RESPONSIBILITIES TO INTERVENE TO SAVE LIVES BY CLAIMING TO BE "EVEN-HANDED." BLAMING BOTH SIDES EQUALLY WHERE ONLY ONE WAS COMMITTING ETHNIC CLEANSING.

however. This was largely because of an intense but often covert campaign by the NIF regime to present Darfur as a "civil war." This in turn enabled Western, Arab and African governments to evade their responsibilities to intervene to save lives by claiming to be "even-handed." Blaming both sides equally where only one was committing ethnic cleansing.

The picture has been complicated by the existence of another Darfur rebel group, the Justice and Equality Movement. The JEM consists of Islamists seen linked to El Turabi, who has claimed the JEM for his own. Though it has little recorded military activity, it is rich where the SLA is poor and, unlike the SLA, it is expert at dealing with the [foreign] media. Since it wants a different Sudan from the SLA, its equal place at the peace

talks in Chad²⁵ and later Nigeria has not helped the larger and more powerful SLA. Recently, two and possibly three more "rebel movements" have sprung up, all conveniently Islamist – indeed the National Movement for Reform and Development says it split from the JEM because it was too close to the government.²⁶

In the South and Nuba Mountains, the NIF has spent 15 years creating proxy militias to muddy and bloody the waters. Many Sudanese believe it is doing the same in Darfur.

The NIF has consistently used a tactic of testing potential external enemies to see how far it can go. In Darfur, it has gone a long way. It will have learned a lot and will have regained the confidence that was somewhat dented by the international sanctions after the Sudan-backed assassination attempt on Egyptian President Hosni Mubarak in June 1995²⁷ and the U.S. bombing of El Shifa pharmaceutical factory, in August 1998.²⁸ The U.S. invasion of Iraq also gave it nightmares. It need not have worried. The international perception of a failed if not neo-colonial operation in Iraq has weakened the West and strengthened

the NIF. Western governments can no longer go to the U.N. Security Council and get a resolution through that criticizes a terrorist government for committing genocide, let alone does something to stop it.²⁹ This is a major change.

All this has immeasurably strengthened the Sudanese government. With aid and debt relief offered by the West if it signs up to the Naivasha peace deal with the SPLA, it appears to have saved itself when five years ago it was likely to fall, toppled by a combination of Sudanese and foreign pressure. To stay in power is the NIF's greatest aim and, as it has through its history, it will make many compromises to do that. However, these are merely tactical. For it has a much greater aim than holding power for its own sake, as it has convinced

other governments it wants to do. It in fact remains wedded to its Islamist agenda, domestic and foreign, and as it showed when it waited patiently for years to take power, it is ready to bide its time to hold on to it.



Gillian Lusk is Deputy Editor of the London-based fortnightly newsletter Africa Confidential and specializes in Sudanese matters. She lived in Sudan in 1975-1987, working most of that time as a journalist. She was Chairperson of the Sudan Studies Society of the United Kingdom (SSSUK) in 2000-2004. She writes and broadcasts regularly on Sudanese politics.

NOTES

1. I use "Islamist" to mean "politically fundamentalist," i.e. part of the contemporary radical movement to which al Qaeda and Usama bin Laden also belong and which is based on the writings of people such as Sayed Qutb or Abdel Waheb or Khomeini. It does not mean "Islamic" or "Muslim," which both pertain to the theology, practices or adherents of Islam as a whole.
2. Many reports speak of a deteriorating situation, including those of the United Nations. Human Rights Watch and Amnesty International both issued reports to coincide with a U.N. Security Council meeting on Sudan on November 18-19 2004. Other major sources include Africa Confidential (London), Parliamentary Brief (www.thepolitician.org, Summer 2003, August 2004, October 2004), U.N. reports including those on the Integrated Regional Network (IRIN) and ones by the Office of the Commissioner for Human Rights, the World Health Organisation, World Food Program and Special Rapporteurs on Human Rights, on Women, on Genocide; e-mail articles by Professor Eric Reeves (EReves@Smith.Edu).
3. Dallaire has written several articles including in *New York Times*, October 4, 2004.
4. Annan made several speeches around the Rwandan anniversary time.
5. The Committee on Conscience of the Holocaust Memorial Museum first issued a "genocide warning" then a "genocide emergency." It took the unprecedented step of closing the museum to draw attention to Darfur.
6. General Colin Powell, after a long awaited Department of State determination whose delays reflected obvious disagreements in the administration, argued that Khartoum is "cooperating" on terrorism. The NIF's "cooperation" must by definition be limited by its own involvement in Islamist terror.
7. See UNSC website at UN.ORG for details of the first resolutions, which were never followed by any of the promised measures against the Sudan govern-

ment. Apart from the commercial interests in Sudan of permanent members Britain and France, the problem countries are China (vast oil investment) and Russia (which sells weapons, including the MiG-29 fighters, Antonov transport aeroplanes and HIND attack helicopters used to bomb civilians in Darfur). Algeria and Pakistan, both with governments threatened by Islamist organizations, are nonetheless loathe, amid the Iraq mess, to join the U.S. in criticising a fellow Muslim country. The U.S. put the motions but failed to follow them up.

8. "Janjaweed" is a Darfur word used roughly to mean "bandits." Sudan regime claims that the Janjaweed are out of its control are false. It arms, trains, finances, clothes and fights alongside them.
9. The NIF ostensibly split in 1999, with the majority under Vice-President Ali Osman Mohamed Taha, Hassan el Turabi's deputy, calling itself the National Congress (and thereby stealing the name of a small, secularist party) and El Turabi's wing, calling itself the Popular Congress. The NIF has repeatedly remanned itself through its history and Turabi has several times been arrested over the years. The PC does nothing that seriously damages the NC: rather the opposite.
10. See Eric Reeves for attempts to establish reliable mortality figures; also the WHO and Médecins sans Frontières (MSF).
11. The South first rose up against Northern domination in 1955 and, with an 11-year break, war has continued since. This helps to explain why the U.S. and U.K. give the North-South "Naivasha" peace talks precedence over Darfur. The Nuba Mountains, along with Southern Blue Nile and Abyei District, form the North-South buffer zone, are officially in the North but are relegated to the back row in Naivasha, though fully involved in the war.
12. Historically, the "African" Fur Sultanate was a slave-trading kingdom, which underlines the complexities of "Arab" and "African" identities and relations.
13. Many books and articles on UBL or 9/11 mention that he was in Sudan but virtually none look at the Sudan dimension of Usama or of international Islamism. The NIF regime has been expert at exploiting this vacuum.
14. Berger, Albright, Anthony Lake and Rice have all written newspaper rebuttals.
15. The then President, Jaafar Nimeiri, opened the door to Islamists and other opposition in 1977. The Muslim Brotherhood began seriously preparing for power, which it seized in 1989: this illustrates the party's long-term thinking.
16. For the NIF's patient infiltration of the system, see in particular Parliamentary Brief, Oct. 2004.
17. Many Southerners and some Northerners see the Umma Party and Democratic Unionist Party as Islamist, too, but despite their lack of internal democracy, they do pay lip service to democracy and are susceptible to some checks and balances; unlike the NIF, they are not Islamist in the contemporary, totalitarian sense.

18. A common refrain among outraged Sudanese was, "We didn't think we were so organized!"

19. The Naivasha process is under the auspices of the Inter-Governmental Authority on Development (IGAD), an African regional body, here led by Kenya, but the driving forces are Britain and the U.S., "IGAD Partners" in a "Troika" that also includes Norway.

20. The NIF has gained huge mileage by ostensibly dumping Turabi; now, amid its ethnic cleansing in Darfur, it presents him abroad as endangering the "stability" the NIF has brought.

21. This has been amply documented by Human Rights Watch and Amnesty International, plus the Sudanese Organisation Against Torture (SOAT), African Rights and Justice Africa.

22. The opposition umbrella, the National Democratic Alliance is based in Eritrea; its armed movements are active inside Sudan. Ethiopia's support for the NDA virtually ended with the 1998-2000 Eritrea-Ethiopia war, on an "enemy's enemy" policy.

23. This pattern is visible with hindsight. Moreover, the government was quietly disarming "African" tribes and arming "Arab" ones, accelerating and spreading, after its 1989 coup, actions by the previous government. Now rebels are widely blamed by Western officials for triggering the killing but an examination of the preceding years suggests otherwise.

24. Many witnesses have said this to journalists and others, notably U.N. Commissioner for Human Rights Louise Arbour, who reported in October 2004.

25. The NIF regime is expert at spinning out negotiations, as Naivasha (two and a half years to date) shows. In April in the Chadian capital, Njamena, it agreed to a ceasefire with rebels which it has consistently broken. On November 9, it attacked an internally displaced persons' (IDP) camp in Southern Darfur, demolishing shelters and beating residents, in front of U.N. and African Union officials. On November 10, it signed agreements on humanitarian access and security for refugees in Abuja, Nigeria. On November 11, it demolished hovels the IDPs had rebuilt. At the end of November, it threw some Western aid agencies (beneficiaries of the agreed "humanitarian access") out of the country.

26. NMRD on Sudan Media Centre site, in Arabic, and *Africa Confidential*, Volume 45 Number 23, November 19, 2004.

27. President Mubarak accused Sudan of being behind the attempt, specifically blaming "Hassan" (i.e. Turabi). The U.N. imposed sanctions on Sudan, later lifted.

28. The NIF regime expertly exploited the widespread conviction that the bombing was caused by the Lewinsky affair. Many questions about the factory raised at the time remain unanswered. *Africa Confidential*, Vol. 39 No. 17.

29. *Africa Confidential* Vol. 45 No 23 and U.N. website for text of November 18 SC resolution.

The Supreme Court and “Enemy Combatants”

Marc Norton

“If my thought dreams could be seen, they’d probably put my head in a guillotine.”

—Bob Dylan, *It’s Alright Ma (I’m Only Bleeding)*

Both the corporate media and the pundits of the left claim to see a major victory for the “rule of law” in the June 28 Supreme Court rulings on Guantanamo and “enemy combatants.”

But the fundamental aspect of these decisions is that they have enshrined the concept of enemy combatants into our legal system.

From now on, anybody deemed an enemy combatant — citizen and non-citizen alike — can be imprisoned and stripped of their constitutional “due process” rights, including the presumption of innocence and the right to a jury trial. Indefinite detention remains an option. The military will be running the show, not the courts.

A few more victories like this, and we will all be eating prison gruel.

David Rivkin, a former legal counsel in the administrations of both Ronald Reagan and George Bush the First, boldly claimed the win for the dark side: “The Supreme Court held that the government is entitled to hold even American citizens as enemy combatants and

does not have to treat them as criminal suspects. And that is a huge victory for the government.”¹

Attorney General John Ashcroft expressed the concept both sardonically and succinctly, declaring that, in light of the Supreme Court rulings, “certain terrorists have more rights.”²

Anti-Immigrant Hysteria, Domestic Terrorists and Enemy Combatants

In the immediate aftermath of 9/11, immigrants from Arab and Muslim countries were subjected to a series of federal roundups. Hundreds, if not thousands, were jailed without

were later deported. There is still no complete and accurate record of these detainees. Thousands more were targeted for “voluntary” interviews and investigations. Many thousands more were subjected to a “special registration” campaign that produced yet more arrests and deportations. FBI director Robert Mueller set “specific numerical goals” for “terrorism investigations,” based on the number of mosques in given communities³ — this from a representative of the same political trend that opposes affirmative action. There was open talk of the need for torture of terrorism suspects.

Congress, for its part, rushed through the passage of the Patriot Act. This act, among its many transgressions on the Constitution and the Bill of Rights, included the creation of the new crime of “domestic terrorism.”

The Patriot Act defines a domestic terrorist as someone who commits “acts dangerous to human life that are a violation of the criminal laws ... [and] that appear to be intended ... to influence the policy of a government by intimidation or coercion.”⁴ Many

have argued that this broad definition would make terrorists even of Martin Luther King and Rosa Parks. After all,

INDEFINITE DETENTION REMAINS AN OPTION. THE MILITARY WILL BE RUNNING THE SHOW, NOT THE COURTS. A FEW MORE VICTORIES LIKE THIS, AND WE WILL ALL BE EATING PRISON GRUEL.

charges, held incommunicado for unknown periods of time in unknown places. Many of those rounded-up

civil disobedience often provokes a response that is "dangerous to human life," nearly always involves violating the law, and is certainly intended "to influence the policy of a government." Of course, "intimidation or coercion" are in the eye of the beholder.

As yet, no individual has actually been prosecuted as a domestic terrorist under the Patriot Act. But the creation of the new category of "domestic terrorist," propagated by the media far and wide, coupled with the ongoing anti-immigrant hysteria, helped lay the ideological groundwork for yet another invented category of criminality, the "enemy combatant."

The concept of enemy combatants did not emerge from any legislation. It sprung instead from the seeds of war sown in the fields of Afghanistan. By the time the U.S.-made Taliban was driven out of the cities of that war-torn nation, the U.S. found itself holding many hundreds of prisoners. In one of those quaint wars from the 20th century, these prisoners would have been sent to camps for prisoners-of-war. They would have been given the minimal protections of the Geneva Conventions, at least in theory, including the right not to be forcefully interrogated.

But, today, the U.S. is the world's one-and-only superpower. There is no more Soviet Union. China is, more or less, an ally. France and Germany can do little more than bluster and complain. The government of Britain is a mere lapdog. Most of the rest of the world's nations are fighting simply to hold their own, or have been reduced to beggar status.

Geneva Conventions? Who is going to enforce them? In this day and age, the masters of war in Washington don't care one whit about such things.

Thus, those rounded up during the initial phase of the war in Afghanistan were viewed, not as prisoners-of-war, but as mere assets for CIA and military intelligence forces.

One of the first graphic examples of the status of the Afghan war prisoners was a video of John Walker Lindh, the "Marin Taliban" — the young, white

American Muslim convert from wealthy Marin County, just north of San Francisco, who was captured by U.S.-allied forces in Afghanistan — being brutally interrogated by U.S. intelligence agents. This video was taken shortly before a prisoner uprising that resulted in the deaths of over 200 prisoners, and at least one CIA operative. Then came the pictures of Lindh, naked, tied up and crammed into a shipping container prior to his interrogation. This was three years before the revelations about the torture of prisoners in Abu Ghraib, in yet another imperial war of the early 21st century.

Guantanamo

Before long, the prisoners rounded up in Afghanistan were being sent thousands of miles away to Guantanamo Bay, a U.S. military base

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in Cuba illegally occupied for over a century. The world was presented with more graphic images of prisoners, hog-tied and blindfolded, sent off to open-air cages, treated little better than animals in the zoo.

Many thousands more have subsequently been snatched from over 60 countries, and sent to secret detention facilities around the world. As President George W. Bush proudly declared in his February 4, 2003 State of the Union address, "More than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate."⁵ The existence of a whole system of secret military detention facilities around the world has been best documented in a recent report by Human Rights First.⁶ Most of these prisoners haven't even been touched by the legal struggle

over enemy combatants, because they have little or no contact with their families or friends, much less lawyers and courts. They have truly become the "disappeared."

In Guantanamo, it was readily apparent to the whole world that the Geneva Conventions were being flagrantly violated. As protests mounted about the incarceration and treatment of the Guantanamo prisoners, it became necessary for the U.S. to develop some excuse for its lawlessness. Thus the concept of enemy combatants.

For sure, there had been individuals incarcerated in previous U.S. wars and afforded less than due process. The pundits supporting the barbarity of Guantanamo have been quick to cite any example they could. For those with some historical memory, the example of the Japanese interned during World War II comes readily to mind, although most of the Bush regime's apologists have stayed away from any discussion of that disgraceful case-in-point.

But, historical examples be what they may, the category of enemy combatants was brand new. You can't find this term in any law book, not even in the Patriot Act. But the corporate media, glad to make one of its many contributions to the war on terror, collaborated with the Bush regime to make up and insert this new category into the political discourse, much like Winston Smith in George Orwell's *1984* creating history from his desk at the Ministry of Truth.

The Bush regime's new concept of enemy combatants was breathtaking. As it evolved, it gradually became clear that Bush was claiming the authority to unilaterally declare anyone, anywhere in the world, to be an enemy combatant, and consequently strip such persons of all rights afforded them by the constitution, by international law, or by any law whatsoever. No assertion of authority could have been more absolute.

Jose Padilla and Yaser Esam Hamdi
Still, given the way things work in the U.S., the legal black hole in

Guantanamo caused barely a ripple in the body politic. Those disappeared in plain sight in Cuba are, after all, foreigners. U.S. politics is so fundamentally rooted in racism, white supremacy and national chauvinism that our military masters could probably have loaded that island sanctuary down with enemy combatants until it sank, with few serious political consequences. Various civil-libertarian legal organizations filed lawsuits about Guantanamo, but were off-handedly thrown out of court with that age-old excuse of bureaucrats everywhere, "lack of jurisdiction."

The contrast with the handling of Lindh's case, the white guy from Marin, couldn't have been more stark. He was thrown into the slammer, but the keys weren't thrown away. He got a lawyer (and a good one at that), and was heading towards an honest-to-goodness trial before he cut a deal.

In July, 2002, Lindh accepted a plea bargain that included a provision that, if he ever engaged in "terrorist" activity again, he would be treated as an enemy combatant, and thus deprived of his normal "due process" constitutional rights. This may have been a good deal for Lindh, but it set a very dangerous precedent for future defendants, especially those not so well sheltered by affluent parents and high-powered attorneys.⁷

And then along came Yaser Esam Hamdi.

Hamdi shook up the paradigm. No white guy he. But, born in Louisiana the same year that Ronald Reagan was elected President, he was a U.S. citizen, despite the fact that his family later moved to Saudi Arabia. At some point he went off to Afghanistan, according to his father, to do relief work. He was eventually seized by the warlords of the Northern Alliance. The warlords turned him over to the U.S. military. The U.S. imprisoned him for a while in Afghanistan, then sent him to Guantanamo.

Later, learning that Hamdi was a U.S. citizen, they realized that they had

a hot potato in hand. Holding a citizen as an enemy combatant in Guantanamo might cause problems for the "lack of jurisdiction" argument that had been keeping the civil-libertarian lawyers from making any headway in their Guantanamo lawsuits. So they shipped Hamdi stateside, to a naval brig in Norfolk, Virginia. Later still, they sent him to a brig in Charleston, South Carolina. This guy has been everywhere except Abu Ghraib.

THOSE DISAPPEARED IN PLAIN SIGHT IN CUBA ARE, AFTER ALL, FOREIGNERS. U.S. POLITICS IS SO FUNDAMENTALLY ROOTED IN RACISM, WHITE SUPREMACY AND NATIONAL CHAUVINISM THAT OUR MILITARY MASTERS COULD PROBABLY HAVE LOADED THAT ISLAND SANCTUARY DOWN WITH ENEMY COMBATANTS UNTIL IT SANK ...

In Charleston, Hamdi was imprisoned with the other known citizen enemy combatant, Jose Padilla. Raised in the U.S., Padilla was a resident of New York. He is of Puerto Rican descent, and a Muslim. One day he got off a plane in Chicago and was arrested as a "material witness" to an alleged plot to detonate a radioactive "dirty bomb." Attorney General John Ashcroft himself called a press conference to announce Padilla's arrest.

But the government lawyers soon ran into legal problems keeping Padilla in custody. It appears that whatever evidence there is against him is rather slim, or based on hearsay, or both. There does not appear to be any material evidence of any "dirty bomb." This guy is, after all, a citizen, so they couldn't just send him to Guantanamo or otherwise disappear him so easily. Ashcroft's reputation itself was on the line, so they couldn't just cut him loose either. So, they declared him an enemy combatant, and sent him off to Charleston.

And there he sits, for well over two years now. For most of this time he has been denied access to his lawyer, Donna Newman, who was appointed by the Southern District Court of New York to represent him when he was still being held as a material witness. When Padilla finally got to meet with Newman, their conversations were monitored by the feds. So much for attorney-client privilege. Newman bravely filed a habeas corpus petition.

Amazingly, she eventually won a ruling from the New York appeals court ordering the government to either release Padilla, or to file criminal charges.

In the meantime, the Guantanamo cases were making their way through the courts. With two citizen enemy combatants sitting in the clink, one of whom had passed through Guantanamo, the cases made some headway. In November 2003, the Supreme Court decided to hear appeals. This simultaneously caused shouts of joy from the mouths of civil libertarians, and shivers of fear to run down their backs. What would the supremes

do with this case?

Hamdi's father also launched a legal assault on his son's status. He was not successful, but he kept appealing all the way up the line. In January 2004, the Supreme Court agreed to review his case. With the Hamdi case already before the Court, the Bush regime decided to appeal the New York Padilla ruling, and asked the Court to consider the Hamdi and Padilla cases together. The supremes readily agreed to make it so.

And so the stage was set for a triple whammy of Supreme Court decisions: Guantanamo and the two citizen enemy combatants, Hamdi and Padilla.

"Major Victory"

The hearing before the Supreme Court on the Guantanamo prisoners was held in late April. The Padilla and Hamdi cases were argued about a week later – ironically, on the same day that the torture photos from Abu Ghraib were broadcast on CBS's *Sixty Minutes* for the first time.

The Court's rulings on all three cases were delivered in late June. The corporate media and most progressive civil liberties organizations proclaimed these rulings to be a severe rebuke to the Bush regime. Steven Shapiro of the American Civil Liberties Union called the rulings "historic" and a "strong repudiation" of the administration.⁸ "This is a major victory for the rule of law," claimed Michael Ratner of the Center for Constitutional Rights, "and affirms the right of every person, citizen or non-citizen... to test the legality of his or her detention in a U.S. Court."⁹ Everyone "can now have their day in court," said Jamie Fellner from Human Rights Watch.¹⁰

With all due respect, the need to declare "victory" doesn't turn a sow's ear into a silk purse. In yet another irony of history, the Court's rulings were delivered on June 28, the same day that the U.S. granted "sovereignty" to the puppet rulers in Iraq. One good story deserves another.

A week after the rulings, the *San Francisco Chronicle* ran a piece that challenged some of the hot air about the decisions. "Last Monday's rulings," wrote staff writer Bob Egelko, grant enemy combatants "the right to go to court and challenge their confinement." But, "virtually everything else about their cases was left up in the air — for example, which courts will hear them, what rules will apply, and what role military tribunals might play ... The court did not order the release of any prisoner and did little to interfere with day-to-day military control of the detainees."

Egelko described a whole series of recent rulings in which the Supreme Court "decided not to decide," including the challenge to Vice President Dick Cheney's secret energy task force meetings, and the "under God" phrase in the Pledge of Allegiance. "More than any term I can remember, what [the court] didn't decide will raise important questions," said University of Southern California Law Professor Erwin Chemerinsky.

"The court punted a lot of the hard stuff to the future," said the infamous University of California at Berkeley Professor John Yoo. Yoo is the former Bush administration official who wrote some of the vile

memos excusing torture. Yoo would undoubtedly like a lot of things punted to the future.¹¹

An examination of each of three cases, in turn, reveals their essence.

Padilla Ruling: Back to Square One

Most of the commentary on the enemy combatant decisions has dismissed the Padilla ruling as a mere footnote to the real story. But it probably doesn't feel that way to Padilla. By a 5-4 vote, the Court declared that Padilla's habeas corpus petition had been filed in the wrong court. Padilla was told to go back to ground zero and start all over again.¹²

In this world of cascading ironies, the Court majority was none other than the same five justices who turned the Presidency over to Bush in 2000, known to many as the "Felonious Five" — Chief Justice William Rehnquist, Anthony Kennedy, Sandra Day O'Connor, Antonin Scalia and Clarence Thomas. Just as they tore up all those ballots in Florida, they tore up Padilla's petition and threw it in the trash.

Padilla's attorney filed the case in New York, where Padilla had first been held as a material witness. According to the Court majority, the petition should have been filed in South Carolina, where Padilla is currently in custody. Instead of naming Secretary of Defense Donald Rumsfeld as the defendant, the Court declared that the right defendant should have been Melanie Marr, Commander of the Consolidated Naval Brig in South Carolina.

The strongly-worded dissent, written by Justice John Paul Stevens, has barely been mentioned in the media, either corporate or progressive. This dissent tears the majority's ruling to shreds.

The Defense Department first took custody of Padilla in New York, not in South Carolina. All the proceedings concerning Padilla's detention as a "material witness" took place in New York. Padilla's attorney wasn't informed that he had been moved to South Carolina until after she filed the habeas corpus petition in New York. "If jurisdiction was proper when the petition was filed," wrote Stevens, "it cannot be defeated by a later transfer of the prisoner to another district."

Stevens further argues that the President had expressly designated Rumsfeld, not Melanie Marr, to detain Padilla. Rumsfeld has shown "both his familiarity with the circumstances of Padilla's detention, and his personal involvement in the handling of Padilla's case."

But Stevens goes beyond technical arguments. He lays into the Felonious Five, calling portions of their argument "disingenuous at best." That's parlor-room talk for lying. Padilla's case, Stevens goes on, poses "a unique and unprecedented threat to the freedom of every American citizen ... At stake is nothing less than the essence of a free society... For if this Nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny."

Strong stuff. No victory here.

Hamdi Ruling: Freedom Is Slavery

In mid-October, over two months after the July Supreme Court rulings, Hamdi was released from the brig he shared with Padilla and flown to Saudi Arabia, bereft of his U.S. citizenship, and with a whole slew of extraordinary conditions. The negotiations that led to this outcome began with the July ruling on his case.

The decision in the Hamdi case consists of four different written opinions. None alone commands a majority.¹³

The ringleaders in the Hamdi decision, who signed the controlling opinion, are a subset of the Felonious Five — Rehnquist, Kennedy and O'Connor. O'Connor wrote the decision. These three were joined by Stephen Breyer.

The key finding by this gang of four is to uphold the concept of enemy combatants, for citizens and non-citizens alike. "There is no bar to this Nation's holding one of its own citizens as an enemy combatant," they boldly declare.

Having so blithely dispensed with the fundamental issue, the gang gets down to the work of defining what "due process" rights a person has once he or she has been declared an enemy combatant. Here they are venturing out into uncharted territory.

Since the whole concept of enemy combatants is make-believe to begin with, there are no laws or precedents on which they can rely. So they just make it up as they go along.

Innocent until proven guilty? Nope. "The Constitution would not be offended by a presumption in favor of the Government's evidence ... Thus, once the Government puts forth credible evidence that the habeas petitioner meets the enemy-combatant criteria, the onus could shift to the petitioner to rebut that evidence ..."

Commenting on this, Elaine Cassel, writing for CounterPunch online, says, "Now that will be kind of difficult, won't it, since Hamdi has been incarcerated for going on three years, has no contact with anyone in the outside world, and will have a hell of a time coming up with witnesses to refute the conclusion of the government that he was indeed fighting with the Taliban or al Qaeda against the U.S. Let's see, even if he knew people to subpoena to support an alibi — if he has one — federal marshals don't serve subpoenas in Afghanistan."¹⁴

What kind of evidence can the government submit? Just about anything, apparently. According to the ruling, even hearsay is fine, as it "may need to be accepted as the most reliable available evidence ..."

Right to an attorney? Sort of, sometimes, maybe. Hamdi's attorney argued that his client should have had the right to an attorney when he was first detained. But, according to the gang of four, while Hamdi "has the right to access to counsel in connection with the proceedings on remand," since Hamdi now has an attorney, "no further consideration of this issue is necessary at this stage of the case." Punt that ball.

Trial by jury? Don't be silly. Be satisfied with "a meaningful opportunity to contest the factual basis for that detention before a neutral decision-maker," whatever that means. Indeed, the ruling explicitly states that an "appropriately authorized and properly constituted military tribunal" would probably meet "the standards we have articulated."

Indefinite detention? The decision states that "indefinite detention for the purpose of interrogation is not authorized." But, "if the record establishes that United States troops are still involved in active combat in Afghanistan," Hamdi's detention is just fine, until whenever. Anybody taking guesses on when the "war on terror" in Afghanistan will be over?

Notably, these proposals for the evisceration of the Constitution and the Bill of Rights for enemy combatants are only an outline. In the words of the gang of four, "enemy combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive at a time of ongoing military conflict."

Indefinite detention? Anybody taking guesses on when the "war on terror" in Afghanistan will be over?

Now, put all this in the context of O'Connor's much-quoted statement that "We have long since made it clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." This decision may not give the President a blank check, but if you win the lottery, you aren't going to complain too loudly about not getting a "blank check."

David Cole, the legal affairs correspondent for the Nation, put this ruling in the proper perspective, even while attempting to trumpet the major victories line. The rulings, he says, "make it likely that all the detainees will get some sort of hearing to assess their status."¹⁵ Major victory!

Hamdi Ruling: Thomas and the Odd Couple

The gang of four are only a plurality of the Court, not a majority. Scalia and Thomas, the other two members of the Felonious Five, went their own separate ways.

Thomas, as has been widely reported, saw no virtue in signing on to the O'Connor decision. Where the gang of four saw the value in distancing themselves a bit from the Bush regime, Thomas is ever the loyal sycophant, and is doing what he can to angle for

the Chief Justice job when Rehnquist eventually steps down. So Thomas proudly declares that Hamdi deserves to live in hell forever, 'cause the boss man said so.

Scalia went the other way, joined in an odd-couple embrace by Stevens. Never a man to mince words, his opinion cuts right to the point: "Hamdi is entitled to a habeas decree requiring his release unless (1) criminal proceedings are promptly brought, or (2) Congress has suspended the writ of habeas corpus."

Scalia's opinion is long, heavy on history, but delivered with not a little humor. He accuses the gang of four of having a "Mr. Fix-It Mentality. The plurality seems to view its mission to Make Everything Come Out Right, rather than merely to decree the consequences, as far as individual rights are concerned, of the other two branches' actions and omissions."

Would that Scalia could have held to this view in *Bush v. Gore*, when the Felonious Five clearly viewed its mission to Make Everything Come Out Right for Bush.

But Scalia continues. He accuses the gang of four of acting as if they were "writing a new Constitution" by coming up with "an unheard-of system in which the citizen rather than the Government bears the burden of proof, testimony is by hearsay rather than live witnesses, and the presiding officer may well be a 'neutral' military officer rather than a judge and jury."

And this: "The whole point of the procedural guarantees in the Bill of Rights is to limit the methods by which the Government can determine facts that the citizen disputes and on which the citizen's liberty depends."

Why, oh why, don't the big heads in the American Civil Liberties Union, the Center for Constitutional Rights, and Human Rights Watch quote this guy in their press releases? The reason, of course, is that it is from the dissenting opinion, and would show their major victories line to be a fraud.

Of course, Scalia, hardly the darling of civil-libertarians, is free to pontificate in this case, knowing that the gang of four's opinion is going to carry the day. Scalia's willingness to play a

dual game is clearly revealed by his voting with the rest of the Felonious Five to dump Padilla's case. By the logic of his Hamdi opinion, he should have been eager to join the minority in the Padilla case, and make it the majority. If he had done that, we truly would have had at least one major victory among these rulings. But that is not Scalia's game.

Hamdi Ruling: The Swing Votes

With Thomas, Scalia and Stevens plowing their own fields, it took two more members of the Court — David Souter and Ruth Bader Ginsburg — to make the gang of four's ruling the opinion of the Court.

On the one hand, Souter's opinion, joined by Ginsburg, comes to the conclusion that "none of the Government's arguments suffices to justify Hamdi's detention." Souter leans heavily on the Non-Detention Act, which superseded the Cold War Emergency Detention Act of 1950. The Non-Detention Act states unequivocally that "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." Souter rejects the gang of four's contention that the congressional resolution authorizing the war in Afghanistan implicitly included the right to detain citizens as enemy combatants.

Further, Souter insists that the administration's failure to abide by the Geneva Conventions robs them of the right to claim to be operating by the rules of war. Finally, Souter explicitly disagrees with the gang of four's meditations on the presumption of guilt, hearsay evidence, military tribunals and the like.

So, Souter and Ginsburg seem to be in the same camp with the odd couple of Scalia and Stevens, all four rejecting the Bush administration's position almost entirely.

And so, Hamdi's case was punted to the future, to a courtroom where the rules of the game and the position of the highest court of the land would be about as clear as mud.

Claremont Graduate University Professor Michael M. Uhlmann sums it up this way: "In short, there are five votes strongly sustaining presidential authority" in the Hamdi case: the gang of four, led by O'Connor, plus Thomas.

"The civil libertarian perspective will live to fight another day if and when Padilla and Hamdi return for further consideration. But for the moment, there is little in either decision to give it much purchase."¹⁶

Hamdi's Exile

On October 11, Hamdi was put on a plane and flown to Saudi Arabia, where he was greeted by his family. Hamdi's attorney had negotiated a deal that got Hamdi out of the brig, although with some draconian conditions. This undoubtedly felt like a victory to Hamdi, who might otherwise have spent many more years in confinement, facing a decidedly uncertain future.

But the conditions of his release, the precedent that it sets, and the issues in the Court's ruling left hanging, should give us all considerable pause.

Under the terms of his release, Hamdi was forced to:

Renounce his U.S. citizenship.

Pledge not to sue for his travails of the last three years.

Promise not to leave Saudi Arabia for five years.

Agree never to travel to Afghanistan, Iraq, Pakistan, Syria, Israel, the West Bank or Gaza.

Advise the U.S. embassy 30 days before any foreign travel.

"I wanted to sign anything, everything, just to get out of there, to get back here," Hamdi told the press shortly after his release.¹⁷

Under the circumstances, who wouldn't do what Hamdi did? As with Lindh's plea bargain, this was probably a good deal for the defendant. But it wasn't a very good deal for the Constitution and the Bill of Rights.

"For the first time in American history a citizen has been stripped of his citizenship and deported without ever having been charged with a crime," writes *CounterPunch* wag Mike Whitney. "The [Supreme] Court... by refusing to force the government to either release Hamdi or charge him with a crime" paved the way for yet another weapon to be added to the arsenal of our post-9/11 rulers: "the threat of exile."¹⁸

For those who might think that this deal was just an isolated instance

of zealous prosecutors and a desperate detainee, consider that one of the key provisions in the Bush administration's proposed Patriot Act II would allow the government to revoke the citizenship of U.S. citizens, no matter how long their families have lived in the U.S. — and then deport those individuals to god-only-knows-where.

Recall that "Marin Taliban" Lindh was forced, as part of his plea bargain, to consent to being designated an enemy combatant if he ever engaged in "terrorist" activity again.

Consider that federal prosecutors reportedly used the threat of an enemy combatant designation during plea negotiations with the six Arab-Americans from Lackawanna, New York, who were accused of being a "sleeper cell," forcing them into guilty pleas of providing material support to terrorists.¹⁹

Think about Lyman Faris, a naturalized U.S. citizen from Kashmir, doing 20 years after pleading guilty to, among other things, casing out the Brooklyn Bridge to see if an al Qaeda squad could bring it down with cable cutters. Faris reportedly pled guilty after prosecutors discussed the idea of declaring him an enemy combatant.²⁰ Faris later unsuccessfully tried to withdraw his guilty plea. His plea agreement is being held under seal, and officials refuse to say when and where he was arrested, or where he is currently being held.²¹

If the designation of a U.S. citizen as an enemy combatant, or as a "terrorist," can lead to the revocation of citizenship and exile, perhaps even to some torture chamber in the dungeons of one of the empire's far-flung allies, what rights do we have left?

But there is more. By settling with Hamdi, the feds avoided having to put any meat on the bones of the Hamdi ruling. Just what is "a meaningful opportunity to contest the factual basis ... before a neutral decisionmaker?" What is a "properly constituted military tribunal?" What kind of evidence can the government submit? How does the "shift to the petitioner to rebut [the] evidence" play out in practice? What kind of access does an enemy combatant have to an attorney? How long can the "war on terror" go on?

Nobody knows the answer to these questions. Instead, anybody designated as an enemy combatant — or fearful of being so designated — can only guess what is in store for him or her. Further prosecution of the Hamdi case would at least have provided guideposts for the future. Now the guideposts are nowhere in sight.

"I think what they're doing is saying that Hamdi ... is a case we just want to move off the headlines and dockets," comments Scott L. Silliman, director of Duke University's Center for Law, Ethics and National Security.²²

With litigation over Hamdi's case off the table, Padilla is the only case of a citizen enemy combatant still alive. Padilla's case will likely be tied up in litigation for years to come. Perhaps, if it looks like his case is headed back to the Supreme Court, the Washington warlords will cut him loose in some fashion, like Hamdi, and leave the question of the rights of citizen enemy combatants — or more to the point, their lack of rights — an open threat to those who dare to even think about fighting the empire.

Guantanamo Ruling

Finally, we come to the Guantanamo ruling. What we find here is nothing like either the Padilla or Hamdi decisions. Instead, we find two long, dry opinions (and one concurring opinion) that only a lawyer could love, arguing legislative and judicial precedents beyond the comprehension of any lay person, and perhaps beyond the comprehension of man himself.²³

The gist of it, though, is that the majority rejected the Bush regime position that the Court lacks jurisdiction to hear habeas corpus petitions from the prisoners at Guantanamo. Stevens wrote the majority opinion, joined by four others. The only crossover from the Felonious Five faction was O'Connor. Kennedy wrote his own opinion, concurring in the judgment. Scalia wrote another dissenting opinion, joined this time by Rehnquist and the unflappable Thomas.

So, is this, at last, the major victory? Hardly. The Guantanamo ruling establishes one thing, and one thing only. The Guantanamo prisoners have the theoretical right to file habeas corpus petitions.

JUSTICE O'CONNOR EXTRACTED FROM DETAINEES' COUNSEL THE CONCESSION THAT IF THE DETAINEES WERE TO BE TRIED BY MILITARY TRIBUNALS, THE GROUNDS FOR ACCESS TO FEDERAL COURTS WOULD BE REMOVED.

This, of course, presumes that they can somehow find an attorney to file a petition — not an easy task while being held incommunicado in a concentration camp on an island in the Caribbean.

As the *Washington Post* editorialized, "Holding that jurisdiction exists to consider these cases is not the same as saying they have legal merit, so the decision is far from a promise of meaningful review of Guantanamo detentions ..."²⁴

Nothing in the Guantanamo ruling speaks directly to the process by which the military determines that a detainee is an enemy combatant, or what standards of "due process" need to be addressed for a habeas corpus petition to succeed in freeing an enemy combatant. The only guidance the Court gave on these matters is contained in the Hamdi ruling. The standards outlined in the Hamdi ruling are, of course, shockingly slim on the "due" part of "due process."

But, even more significantly, the Hamdi ruling sets out standards for enemy combatants who are citizens. The hundreds of prisoners in Guantanamo are, presumably, non-citizens.

"It seems improbable that the Court will grant greater due process protection to aliens than is available to citizens," says Professor Uhlmann. In fact, it can only be assumed that the Court's protections for non-citizen

Guantanamo prisoners would be substantially lower than for citizens. And, as Uhlmann further points out, "Justice O'Connor extracted from detainees' counsel the concession that if the detainees were to be tried by military tribunals, the grounds for access to federal courts would be removed."²⁵

In these circumstances, it should not be difficult for some "neutral" military decisionmaker to make a judgment about Guantanamo detainees that would pass muster with the supremes.

The Pentagon's Game Plan

Events at Guantanamo in recent months suggest that this is the judgment of the Pentagon as well. It appears that the military

feels little need to do anything more than make a few, limited adjustments to their game plan.

The Pentagon has unfolded a three-part process in response to the changed legal circumstances:

Beginning hearings on the status of each prisoner.

Convening military tribunals for select prisoners.

Limited releases for some detainees.

The individual prisoner hearings had their genesis in a pre-ruling Rumsfeld plan to provide "annual reviews" of the status of each prisoner. This was a blatant attempt to give the Supreme Court an excuse to defer to a process already in motion. Although the Court didn't bite on this bait, the supremes did nothing to suggest that these hearings might not provide an effective antidote to any habeas corpus petitions.

Within days of the Court's rulings, the Pentagon outlined a plan to bring each of the Guantanamo prisoners before a Combatant Status Review Tribunal. The purpose of these hearings is to determine whether or not an individual prisoner is, in the military's judgment, an enemy combatant. If determined to be an enemy combatant, each prisoner is then to receive an annual review of his status.

The Pentagon predicted that it could complete this entire process in three to four months. The hearings

began in August. But they don't seem to be in any hurry. According to the Pentagon, as of October 18, decisions have been made for only 96 of approximately 550 prisoners.

As a result of these hearings, 95 prisoners have been found to be properly classified as enemy combatants. Only one prisoner has been found not to be an enemy combatant.²⁶

Military Tribunals

The day after the supremes' rulings, the Pentagon announced that it would hold military tribunals for three of the Guantanamo detainees – a Sudanese, a Yemeni, and an Australian. Another Sudanese detainee was later added to the mix. The Sudanese and the Yemeni are accused of being bodyguards and associates of Osama bin Laden. The Australian is accused of attempted murder and conspiracy to commit terrorism.

These military tribunals were authorized by an order signed by Bush on November 13, 2001.²⁷ They were the brainchild of a group of White House officials, working in great secrecy, centered in Vice President Cheney's office, in consultation with both Rumsfeld and Ashcroft. Among those who worked on the policy were several young lawyers who had clerked for Clarence Thomas and Antonin Scalia, as well as the infamous John Yoo.²⁸

The legal precedent for Bush's order came from President Franklin Roosevelt's military commission established to try eight bumbling Nazi saboteurs who had been dumped in the U.S. by a German submarine during World War II. But, whereas Roosevelt's order was confined to authorizing the trial of these eight saboteurs, Bush's order put in place "a parallel system of justice for a universe of people who we had no idea about – who they would be, how many of them there would be," according to Richard L. Shiffrin, formerly the

Pentagon's deputy general counsel for intelligence issues. In addition, Roosevelt's commissions were based on the military justice system in place prior to the adoption of the Geneva Conventions in 1949. There are no statutory rules for these commissions, as the authority for them is based entirely on executive orders.

The Guantanamo tribunals began in August, and are expected to take several months. They quickly descended from tragedy into farce. Defense attorneys have moved to have four of the tribunal members removed for bias. One of the tribunal members admitted that he was unfamiliar with the Geneva Conventions. The presiding officer on the tribunal, one of those the attorneys have asked to step down, himself called for the removal of two of the panel members. In turn, the prosecutor appointed by the Pentagon has called for the presiding officer to consider resigning.

AS BRIG. GEN. MARTIN LUCENTI, THE DEPUTY COMMANDER OF THE UNIT THAT RUNS GUANTANAMO, PUTS IT, "MOST OF THESE GUYS WEREN'T FIGHTING. THEY WERE RUNNING... MANY OF THEM WILL BE RELEASED BECAUSE THEY WILL BE OF LOW INTELLIGENCE VALUE AND LOW THREAT STATUS." LT. COL. THOMAS S. BERG SAYS IT EVEN MORE BLUNTLY. "IN MANY CASES, WE HAD SIMPLY GOTTEN THE SLOWEST GUYS ON THE BATTLEFIELD."

The *Los Angeles Times* called these tribunals "Captain Kangaroo courts... The Arab interpreters were so incompetent that the proceedings resembled a game of 'telephone...'"²⁹ One defendant was cut off in mid-sentence when he supposedly proclaimed, "I am from al

Qaeda and the relationship between me and September 11th..."³⁰

But in one of those amazing stroke of evil brilliance, the Army general who is supervising the commission removed two panel members and an alternate, and reduced the number of panel members from five to three. A victory for the defendants? In fact, where prior to this move the prosecution needed the vote of four of the five tribunal members to convict, the prosecution now needs only two out of three votes.

"The relief we've been granted is completely illusory. It only looks good if you don't look close," said Navy Lt. Cmdr. Charles Swift, one of the defense attorneys.³¹ "It's a Pyrrhic victory," he added.³²

This era of history seems to be full of Pyrrhic victories.

The Gates to Guantanamo

In yet another parallel process, the Pentagon has continued a cautious series of releases of some Guantanamo prisoners back to their home countries, including Afghanistan, Pakistan, Saudi Arabia, Morocco, Britain, France, Russia, Spain and Sweden. In many of these cases, the detainees were then jailed by their home governments. Press reports based on information provided by the military indicate that nearly 200 prisoners have been released from Guantanamo, some before the Supreme Court rulings, some after.

Part of this release program is spin, and part of it is based on straight-forward military logic. The fact is that many of the Guantanamo prisoners "turned out to be low-level militants, Taliban fighters and men simply caught in the wrong place at the wrong time."³³ As Brig. Gen. Martin Lucenti, the deputy commander of the unit that runs Guantanamo, puts it, "most of these guys weren't fighting. They were running... Many of them will be released because they will be of low intelligence value and low threat

status.”³⁴ Lt. Col. Thomas S. Berg says it even more bluntly. “In many cases, we had simply gotten the slowest guys on the battlefield.”³⁵ Lucenti goes on to say that “the majority ... will either be released or transferred to their own countries.”³⁶

At the same time, Pentagon officials claim that at least ten of the released Guantanamo prisoners have again taken up arms,³⁷ including a

The *Washington Post* reports that authorization to create this class of “ghost detainees” was based on a Justice Department memo, written at the request of the CIA. The memo refers to both Iraqi citizens and foreigners. This memo openly flouts the Geneva Conventions, which defines such actions as a “grave breach,” and thus a “war crime” under U.S. law. The CIA has not disclosed

special “Alien Terrorist Removal Court to adjudicate the deportation of noncitizens charged with terrorism on the basis of classified information.”⁴⁴

And let’s not forget Andrew C. McCarthy, a former U.S. attorney who led the prosecution against Sheikh Omar Abdel Rahman, the blind sheikh convicted in connection with the first World Trade Center bombing. McCarthy calls for “a new

AND LET’S NOT FORGET ANDREW C. MCCARTHY, A FORMER U.S. ATTORNEY WHO CALLS FOR “A NEW JUDICIAL PARADIGM” AND A SPECIAL NATIONAL-SECURITY COURT — MUCH LIKE THE COURT ESTABLISHED BY THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) THAT NOW HEARS GOVERNMENT APPLICATIONS FOR NATIONAL-SECURITY WIRETAPS AND SEARCHES. THIS COURT WOULD HAVE JURISDICTION OVER MATTERS RELATED TO THE DETENTIONS AND ANY RESULTING TRIALS OF ALLEGED UNLAWFUL COMBATANTS. MCCARTHY HAS SIMILARLY CALLED FOR “AMENDING OUR LAWS TO PERMIT LIMITED, REGULATED TORTURE.”

detainee who allegedly killed a judge in Afghanistan, and another who allegedly oversaw kidnappings in Pakistan.³⁸

But the gates to Guantanamo don’t just open one way. In late September, for example, the military reported shipping ten new prisoners from Afghanistan to Guantanamo.³⁹ The Pentagon also says that construction will begin soon on another prison unit at the base, a \$24-million complex for 200 high-security prisoners. A 100-unit maximum security unit opened in April.⁴⁰

Recently-released testimony from a former commander at Abu Ghraib reveals that the CIA deliberately kept some Iraqi prisoners off the books in order “to be able to pull somebody in 24, 48, 72 hours if they had to get ‘em to Gitmo [Guantanamo], do what have you.”⁴¹

the identities or locations of the Iraqi prisoners involved.⁴²

Enter Congress

A July article by Siobhan Gorman in the *National Journal* speculated that the Supreme Court’s rulings might encourage Congress to set up a new enemy combatant legal system. Former Assistant Attorney General Viet Dinh, the man who shepherded the Patriot Act through a compliant Congress, was quoted as saying that the Court’s rulings are “an open invitation for Congress to act,” define who could be classified as an enemy combatant, and set up judicial procedures for dealing with them.⁴³ It seems that Dinh may want a new legislative project.

Then there is Yale Law School Professor Peter H. Schuck, who has been granted space in the *Los Angeles Times* to advocate for the creation of a

judicial paradigm” and “a special national-security court — much like the court established by the Foreign Intelligence Surveillance Act (FISA) that now hears government applications for national-security wiretaps and searches. This court ... would have jurisdiction over matters related to the detentions and any resulting trials of alleged unlawful combatants.”⁴⁵ McCarthy has similarly called for “amending our laws to permit limited, regulated torture.”⁴⁶

Adam Schiff (D-California), a member of the House Judiciary Committee, has stepped into the breach and introduced a bill which would require the Defense Department to define enemy combatants and procedures, which would then be subject to congressional review. “It’s a pretty deferential standard,” Schiff says. Schiff expects that

his bill may get some play after the November election.⁴⁷

Now that Bush is re-selected, soon to follow will be a whole crowd of inside-the-beltway progressive lobbyists, jumping into the debate over the legal technicalities of the new enemy combatant system, declaring ever more major victories along the way.

The Road Ahead

The "major victory" line on the enemy combatant Supreme Court rulings serves only to disorient the left and the public at large. No matter how bad it gets, there are those who insist on maintaining a certain official optimism whereby even defeat is transformed into victory. New categories of criminality like enemy combatants or domestic terrorists are invented and imposed on the body politic, but, not to worry, our progressive leaders have everything under control. Leave it to them.

But, today, Jose Padilla continues to languish in a navy brig. Yaser Esam Hamdi lives in exile in Saudi Arabia. Hundreds of prisoners in Guantanamo are still caught in a legal black hole. And many more rot away in secret detention facilities in countless untold places throughout the empire.

Ali Saleh Kahlab al-Marri, a citizen of Qatar, is locked away today in the same navy brig as Jose Padilla. Like Padilla, he was arrested in the U.S., while attending graduate school in Illinois. First, he was held as a "material witness." Then he was charged with making false statements. Finally, he was declared an enemy combatant. His attorneys filed a suit, but in early October, the Supreme Court declined to consider his petition, because his attorneys allegedly filed his suit in the wrong court, just like Padilla's attorney.⁴⁸ Al-Marri's lawyer claims that he was declared an enemy combatant because he refused to plead guilty.⁴⁹ Al-Marri desperately needs a "major victory."

One of my old Mafioso-style labor leaders had a line about lawyers. Listen to them, he said, think about what they

say, but remember that you are in charge, and do what you have to do. That was good advice. It is even better advice when you run into lawyers acting like they are also political leaders.

THE NEO-CONS AND EX-CONS AND FUTURE CONS IN THE WHITE HOUSE WANT THE WHOLE WORLD TO THINK THAT THEY ARE CRAZY ENOUGH TO LOCK UP ANYBODY AND EVERYBODY THEY MIGHT GET THEIR HANDS ON, AND THEN THROW AWAY THE KEY. AND, GUESS WHAT, THEY ARE THAT CRAZY.

Weren't you offended by the full-page ads that the Center for Constitutional Rights ran a while back, boldly declaring things like "We didn't rant and rave about our government ignoring the Geneva Convention. We sued President Bush."⁵⁰ Or, "We didn't whine about the Patriot Act stripping our constitutional rights. We got a key provision ruled unconstitutional."⁵¹

Come off it, guys. The Center for Constitutional Rights does great legal work. The movement needs good lawyers. But, in the end, freedom and justice is won only through organized and sustained mass struggle. And, damn right, that includes a lot of serious whining, ranting and raving.

Guantanamo and the "enemy combatant" construct do not exist because a bunch of lawyers working for the Bush regime had a legal problem they needed to solve. Guantanamo and "enemy combatants" exist because the ruling class has a political problem they need to solve. In the post-9/11 world, the Bush regime and its heirs need to throw the fear of god into everyone on the planet who even thinks about getting in their way.

Just like a whole series of presidents wanted the Rooskies to think that they were crazy enough to start throwing hydrogen bombs around, the

neo-cons and ex-cons and future cons in the White House want the whole world to think that they are crazy enough to lock up anybody and everybody they might get their hands on, and then throw away the key. And, guess what, they are that crazy.

We now have the construct of enemy combatants embedded, to use a modern term, into our legal and political system. That's bad news, anyway you cut it, no matter what your progressive lawyer friends tell you.

As the imperial wars of the early 21st century grow ever more bloody, as the war on the poor, people of color and the working class in the homeland grinds on, and as the fascist tendencies inherent in a decaying capitalist system come more and more to the fore, the impulse to

expand the enemy combatant parallel legal universe may well prove irresistible to those who rule the empire.

It may just be that this is the historical epoch in which we will need to take our struggle for freedom and justice beyond reformism.



Marc Norton is not now and never has been a lawyer. He is a union activist and a bellman at a hotel in San Francisco. He works way too many graveyard shifts. www.MarcNorton.us.

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Taser Turmoil

The Media Frenzy Over Law Enforcement's Newest Tool Ignores What May Be the Real Cause of Most In-Police-Custody Deaths

Lynne Wilson¹

Rahim Hadani had no idea that he was calling the police when he dialed 911. He wanted an ambulance. He had tried for over an hour to calm down his good friend, Roman Andreichikov. Nothing worked. Andreichikov, a 25 year-old personal trainer and body builder, mumbled incoherently, picked at his skin and became increasingly agitated. Andreichikov repeatedly threatened to jump from the balcony of his forty-fourth floor Vancouver, B.C. apartment. Hadani knew that he needed help. The crack cocaine addiction that Andreichikov had managed to kick for two years was once again devouring his easy-going personality.² As he waited for paramedics to arrive, Hadani was able to get Andreichikov to sit on a couch, where he held onto its arm and rocked back and forth.

What greeted Hadani at the apartment door that night lacked even the illusion of help. A Vancouver Police officer entered abruptly with his M26 Taser in hand. Four burly Vancouver Police officers trailed single file behind him. Officers questioned Andreichikov about his name and date of birth, then told him to get off the couch and lie face-down on the floor. A large man, Andreichikov did as he was told, calmly.

Possibly because he was having difficulty breathing, Andreichikov suddenly flipped over onto his back. The officer with the Taser shot two probes into Andreichikov's leg and fired 50,000 volts of electricity into his body, overwhelming his nervous system and causing him to stiffen with involuntary

muscle contractions. While he was still convulsing, the officers placed him back into a prone position for handcuffing. Three of the officers piled onto Andreichikov's body. One pushed his head against the floor. Two bent his legs at the knees while using their combined body weight to drive his ankles into his back.

"I can't breathe," Hadani recalls hearing those last words from his friend as he watched with horror the three officers pressing their combined weight into his back. "If you're mumbling, you're still breathing," one of the officers replied. Thirty seconds later, Andreichikov died.³ The next day, local Vancouver newspapers barely mentioned Andreichikov's death except to say that an investigation was being conducted.⁴

enforcement's newest and increasingly popular "less lethal" weapon.⁵ Media in the U.S. stack up the body counts of so-called "Taser deaths" on a weekly basis.⁶ The most widely circulated "body count" appeared as "71 Cases of Death Following Stun-Gun Use" on September 15, 2004 in the *Arizona Republic*.

But little in the way of a careful or a thoughtful investigation into the meaning of these deaths appears. There is no analysis of what is actually happening besides being Tased to cause these men to die.⁷ There is nothing about the hundreds of people who similarly die in police custody without Tasers.⁸ The horrific details of Andreichikov's death are barely mentioned in the "list of 71."⁹

Amnesty and ACLU Calls for a Ban on Tasers

Rather than begin a discussion of what other aspects of these deaths are preventable, human rights organizations have called for an outright ban on Tasers. Amnesty International calls for a suspension of Taser sales to law enforcement until independent medical testing proves that they are safe.¹⁰ Numerous state chapters of the American Civil Liberties Union call for limiting

police use of Tasers to those situations where an officer is justified in using deadly force.¹¹ Placing the bar so high is essentially the same as an outright ban since many police officers will refuse to use a less lethal weapon when confronted with an armed suspect posing a "substantial risk of causing

THE OFFICER WITH THE TASER SHOT TWO PROBES INTO ANDREICHIKOV'S LEG AND FIRED 50,000 VOLTS OF ELECTRICITY INTO HIS BODY, OVERWHELMING HIS NERVOUS SYSTEM AND CAUSING HIM TO STIFFEN WITH INVOLUNTARY MUSCLE CONTRACTIONS.

Media Coverage Over "Taser-Related" Deaths and the List of 71

The tragic circumstances surrounding Roman Andreichikov's death and the media's silence about what actually happened to him speak volumes about the complexity of the current controversy over police use of Tasers, law



This is how a Taser looks like!

death or serious bodily harm.”¹² Furthermore, they are not legally required to do so.¹³ In addition, police departments may be legally liable for not giving their officers a range of less-lethal options when taking into custody those who are mentally impaired or those who are in a diminished state because of drug intoxication.¹⁴

The ACLU and Amnesty International cite numerous examples of clear excessive and abusive use of Tasers, such as using them on handcuffed detainees or on people who are hospitalized, or using them as tools of torture to coerce statements.¹⁵ Clearly, officer abuse of less-lethal weapons of any sort (including batons, dogs, pepper spray or any other less-lethal) should be prohibited and any law enforcement agency who condones such abuse through its policies and practices should be held accountable in the courts.¹⁶ A number of cases involving such excessive police use of Tasers have been successfully settled.¹⁷

But the anti-Taser camp’s arguments hinge almost entirely on the “increasing numbers of in-custody deaths” associated with Tasers as the key reason for demanding a ban until

independent medical studies are done. A careful look at the circumstances surrounding those deaths make it clear that enough is known now to make an informed decision about the viability of Tasers.

Deciphering the List of 71

For example, the “list of 71” includes at least two obvious suicides: One young man died from cardiac arrest “due to slashed wrists” and another barricaded himself inside his house, pulling a gas line out from the back of a stove and filling the house with gas.¹⁸ Another died from head injuries suffered during a fight that took place before police arrived.¹⁹ Even if police used Tasers in those situations, it is impossible to see how those two deaths were “caused” by the Taser use.

Many of the reported deaths fit the same profile as Roman Andreichikov: In one that is nearly identical, a roommate called police saying Keith Tucker was “punching walls and talking to people not in the room.” Police found Tucker sitting on a bed but when they approached him, he started to kick and to punch the officers. Officers used a Taser to subdue

and to handcuff him. During the process of handcuffing, he started to have difficulty breathing. He died later at a hospital.²⁰ In another, a man was breaking windows and doors in a business district. Seven officers forced him to the ground after using pepper spray and Tasers. He stopped breathing 20 minutes after being handcuffed.²¹

At least two of the deaths on “the list of 71” were of individuals who had swallowed large quantities of crack cocaine or other drugs.²² At least 40 were high on cocaine, PCP or methamphetamine (or combinations) at the time police were called. Five of the deaths involved men who had histories of schizophrenia or bipolar disorder and had quit taking their medication. Six clearly involved superceding causes such as head injuries. Three involved individuals who suffered from severe heart disease and were involved in protracted struggles with police.²³ The sketchy details available for the remaining 17 indicate that some type of drug-induced behavior (or lack of drugs in the case of mental illness) was involved, even if toxicity screens were not available because of the recency of the deaths.²⁴

Like Roman Andreichikov, many of the men who died after being Tased were suffering from a psychotic state that has been documented in medical studies as cocaine-induced or "excited" delirium.²⁵ "Excited (or agitated) delirium" is a medical term that loosely refers to a condition of extreme mental and motor excitement with confused and unconnected thoughts. It is caused by prolonged cocaine, PCP or methamphetamine use but is also associated with some forms of mental illness.²⁶ It is marked by severe agitation, physical aggression, hallucinations, impaired thinking and paranoia.

Physical Effects of Taser Use During a Struggle with Police

It has been hypothesized that when an already delirious person is involved in a prolonged violent struggle with police, the use of a Taser may briefly increase "metabolic acidosis" in the body by increasing the muscular activity during the five seconds that the Taser use lasts. This in turn may decrease respiration.²⁷ Such an effect would not in and of itself cause a cardiac event leading to death so long as the person "was able to breathe in a way that would compensate for a metabolic acidosis. *Such would not be the case if the individuals remained agitated or were prevented from breathing freely* [emphasis supplied]."²⁸

One medical study looked at the effect of Taser use during 16 police confrontations in Los Angeles resulting in death. It concluded that Taser use "in and of itself does not cause death."²⁹ In one of the cases, however, the Taser was considered a "contributing factor" to the man's death. The man had a history of serious pre-existing heart disease including cardiac arrhythmia and was high on PCP at the time of his struggle with the police. The medical conclusion was that because of the seriousness of his heart condition, he could have suffered a fatal cardiac arrhythmia from "the PCP, the excitement, the electrical stimulation, or a combination of any or all of these factors [emphasis supplied]."³⁰

In three of the cases in "the list of 71" deaths, the Taser was similarly listed as a "contributing factor." The most controversial of these involved James Borden, who died while in the custody of Indiana jailers on November 6, 2003. A portion of Mr. Borden's struggle was caught on videotape and was subsequently shown on CBS News.³¹ The autopsy report lists the cause of death as a heart attack secondary to an enlarged heart, "pharmacologic intoxication," and electrical shock.³² Mr. Borden suffered from bipolar disorder, diabetes and congestive heart failure. He had 25 times the therapeutic dose of ephedrine (amphetamines) in his system. The videotape of a handcuffed Mr. Borden shows him being Tased.³³ Mr. Borden, while uncooperative, had never expressed a threat to himself or anyone else, behavior that the Correctional Center's directive required to justify Taser use.³⁴

What is not shown on the edited videotape, what is left out of the autopsy report and from other news reports of Mr. Borden's demise is one crucial detail. According to the recent civil rights lawsuit filed in federal court

According to the Special Prosecutor who brought charges against one of the jailers, by the time of the last Tasing Mr. Borden was "at least unable to breathe" and already in the process of dying.³⁶

The second most controversial of "the list of 71" deaths also involved a physical restraint procedure during which heavy pressure was placed on the back and chest area while holding the person's face down. Willie Lomax, age 26, died on February 21, 2004 at a public housing complex after a struggle with private security guards and Las Vegas police officers.³⁷ Mr. Lomax was behaving erratically when security guards asked him if he needed medical help. The guards tried to take control of him because they believed he might harm himself or others but Mr. Lomax reportedly became combative. A Las Vegas police officer arrived and warned him he would use the Taser.³⁸ After the first shock, Mr. Lomax again became combative and after the second shock, the security officers were able to handcuff him. Mr. Lomax continued to struggle and kick, and the Las Vegas officer used the Taser five

more times in an effort to gain control of Mr. Lomax. At some point during the struggle, one of the security officers held Mr. Lomax down by pushing his knee into Mr. Lomax's back. He stopped breathing while being transported to a hospital, was resuscitated and died the next day.

An inquest jury found that the "combination of the force of the knee in his back, the Taser, his drug use" and the restraint process "all played an equal role in" Mr. Lomax's demise.³⁹ A medical examiner's report stated that the cause of death was "cardiac arrest during restraint procedures" with the Taser, PCP intoxication and pneumonia listed as contributing factors.⁴⁰

A number of medical experts attribute all such "excited delirium" deaths to drug use, even though every reported "excited delirium" death is preceded by a forceful struggle with

MR. BORDEN WAS THROWN TO THE GROUND AFTER THE FIRST TASERING. FOUR SHERIFF DEPUTIES THEN PILED ON TOP OF HIM, FORCING HIS FACE INTO THE GROUND. HE WAS TASERED AGAIN AND AT THAT POINT HE STOPPED BREATHING AND TURNED BLUE. RESUSCITATION EFFORTS WERE NOT SUCCESSFUL.

on behalf of Mr. Borden's estate, Mr. Borden was thrown to the ground after the first Tasing. Four sheriff deputies then piled on top of him, forcing his face into the ground. He was Tased again and at that point he stopped breathing and turned blue. Resuscitation efforts were not successful.³⁵

police.⁴¹ A number of major medical studies confirm that it is the use of forceful takedowns rather than drugs that is the key element in “excited delirium” deaths.⁴² Even if cocaine is also a constant element, the levels of cocaine are lower than levels found in those who die from intoxication without struggling with police.⁴³ As one study noted:

Drugs such as cocaine and amphetamines can, of course, cause death without positional asphyxiation from restraint as a factor, but the frequency of sudden death in people restrained prone while in a state of excited delirium, compared with the rarity of sudden death in such people when not restrained, implicates restraint as a causative factor in such deaths.⁴⁴

Cocaine toxicity places increased “catecholamine stress” on the heart which in turn causes an increase in oxygen demands. These oxygen demands are increased even more by hyperactivity

person’s ability to breathe is so crucial to preventing in-custody deaths, many experts recommend that police restrict all restraint methods to a minimum and that they completely avoid any compression of the trunk or neck.⁴⁶ Since 1995, the U.S. Department of Justice has warned police officers to use extreme caution when subduing those with high risk factors for restraint asphyxia such as obesity, high drug or alcohol use, or an enlarged heart⁴⁷:

The risk of positional asphyxia is compounded when an individual with predisposing factors becomes involved in a violent struggle with an officer or officers, particularly when physical restraint includes use of behind-the-back handcuffing combined with placing the subject in a stomach-down position.⁴⁸

Modern medical examiners now consider “restraint asphyxia” a specific diagnosis and many of the deaths in the “list of 71” contain such a diagnosis as

The key medical study on which the “restraint asphyxia” diagnosis is based was of 21 deaths of men who died while in police custody.⁵¹ Included in the 21 deaths was one man who was subjected to Tasers while being restrained, eight who were subjected to pepper spray and two who were subjected to baton use. Many of the case summaries contain descriptions of the restraint processes that are almost identical in every way to the processes that were used on James Borden and Willie Lomax: One officer placing a knee on the person’s back and pulling on his wrists while one or more others put pressure on the upper back or neck with a forearm and body weight.⁵² It is the restraint process and not the Taser or the pepper spray or the baton alone that causes the person to stop breathing and die.

Restrictive Policies and Better Restraint and Crisis Training Are Needed

Recently, a federal appeals court upheld a jury verdict totaling \$900,000 for the in-custody death of a 32 year old autistic man, Calvin Champion.⁵³

THREE NASHVILLE POLICE OFFICERS TOOK THE STRUGGLING AND KICKING MR. CHAMPION TO THE GROUND AND EVENTUALLY HANDCUFFED AND “HOBbled” HIM WITH ANKLE RESTRAINTS. FIVE LAY WITNESSES TESTIFIED AT TRIAL THAT DURING THE RESTRAINT PROCESS, THE OFFICERS SAT OR OTHERWISE PUT PRESSURE ON MR. CHAMPION’S BACK WHILE HE WAS PRONE ON THE GROUND. THEY ALSO TESTIFIED THAT THE OFFICERS CONTINUED TO USE PEPPER SPRAY AFTER HE WAS SUBDUED AND HAD STOPPED RESISTING. THE JURY ASSESSED \$300,000 AGAINST EACH OF THE NASHVILLE OFFICERS...

during the struggle with police. When the chest is forcefully compressed down while the person is held in a prone position, the person has no ability to lift the chest up to inhale any oxygen at all, let alone the extra oxygen needed because of the additional stressors.⁴⁵ It is this physical process that can cause a fatal cardiac arrhythmia or heart attack. Because maintaining a

a cause of death.⁴⁹ This diagnosis is reserved for those cases where people exhibiting “excited delirium” behavior die in police custody. Common elements include: (1) prone restraint with pressure on the upper torso; (2) handcuffing, leg restraint, or hogtying; (3) acute psychosis and agitation (whether or not induced by stimulant drugs); (4) physical exertion and struggle; and (5) obesity.⁵⁰

Mr. Champion became agitated while at a shopping mall and his caretaker called 911 for help. Responding officers were not initially informed of his inability to communicate and pepper-sprayed him when he refused to respond to commands. Three Nashville police officers took the struggling and kicking Mr. Champion to the ground and

eventually handcuffed and “hobbled” him with ankle restraints. Five lay witnesses testified at trial that during the restraint process, the officers sat or otherwise put pressure on Mr. Champion’s back while he was prone on the ground. They also testified that the officers continued to use pepper spray after he was subdued and had stopped resisting. The jury assessed \$300,000 against each of the Nashville officers for Champion’s pain and suffering before he died.

officer would have continued to spray a chemical agent in the face of a handcuffed and hobbled mentally retarded arrestee ... No reasonable officer would continue to put pressure on that arrestee’s back after the arrestee was subdued by handcuffs, an ankle restraint, and a police officer holding the arrestee’s legs.”⁵⁵

The court’s ruling in *Champion*⁵⁶ highlights the crucial role of clear restrictive policies on the use of less-lethal weapons and aggressive

more vulnerable populations, it is legally appropriate to place a higher bar to Taser use. But many departments have vague policies. The best policies clearly restrict Taser use to those situations where officers are confronted with a person who is actively resisting as well as assaultive, or likely to cause serious injury to self or others.⁵⁹

Recently, after four Taser-related deaths in British Columbia (including Roman Andreichikov), the British

BECAUSE ONE OUT OF EVERY TEN CALLS TO POLICE NOW INVOLVES SOMEONE WHO IS MENTALLY ILL, CRISIS INTERVENTION TRAINING SHOULD BE REQUIRED OF EVERY PATROL OFFICER WHO WILL BE USING THE NEW GENERATIONS OF LESS-LETHAL WEAPONS, INCLUDING TASERS. ACCORDING TO ONE USE-OF-FORCE EXPERT, A “FORCEFUL TAKEDOWN” IS NEVER A PRIMARY OPTION, REGARDLESS OF A SUSPECT’S MENTAL STATE: “EFFECTIVE COMMUNICATION ... IS ALWAYS THE FIRST WEAPON OF CHOICE.”

In upholding this verdict, the appeals court specifically pointed out that all of the officers had been trained about the potential danger of putting pressure on a person’s back or diaphragm and that many court decisions had made it clear that certain types of restraint (such as neck or choke holds) cause asphyxia. But the court pointed out the egregiousness of the facts presented since the officers here had both placed their weight “upon Champion’s body by lying across his back and simultaneously pepper spraying him.”⁵⁴ Not only had these particular officers been trained about the dangers of “putting pressure on a prone, bound, and agitated detainee” but they had also been trained to not pepper spray a person who was handcuffed. Furthermore, Champion was an unarmed, emotionally disturbed person whose “diminished capacity” required more restraint than would otherwise be allowed. The court concluded that “[n]o reasonable

takedown tactics. Such policies are especially important when police are confronted with someone suffering from a mental crisis whether or not that crisis is drug-induced. It is clear that the current legal trend is to hold officers to a higher standard when they are taking into custody someone who is in a state of “diminished capacity.” This includes those in a state of “excited delirium” as well as those who are suicidal.

Although the International Association of Chiefs of Police places the use of Tasers (or “electro-muscular control weapons”) at the same level of force as pepper-spray,⁵⁷ it seems appropriate to be more restrictive on Taser use if only because of the complete physical incapacitation Tasers cause. Also, the current generation of Tasers was specifically designed for use on emotionally disturbed or intoxicated people who seem particularly immune to the incapacitating effects of pepper spray.⁵⁸ Because these are

Columbia Office of the Police Complaint Commissioner conducted a comprehensive review of the role of Tasers.⁶⁰ The report is considered interim as it does not include the BC Chief Coroner’s review of all in-custody restraint-related deaths in British Columbia. The BC Police Complaint Commissioner reviewed all medical literature available concerning stun guns and Tasers, including a recent public forum conducted by the Orange County Sheriff’s Office in Florida,⁶¹ as well as all materials relating to Taser safety. The Commissioner made three important recommendations: (1) that the most recent generation of Tasers (X26) provides a greater margin of safety⁶² and is preferred over the older model (M26); (2) that a standardized training course for all B.C. police officers cover the phenomena of “excited delirium” since “changes in patterns of drug abuse make it likely officers will encounter victims of Excited Delirium more frequently”; and (3) that restraint

protocols be modified to eliminate the maximal restraint position.⁶³

In addition to modifications of restraint policies, enhanced training is crucial. Because one out of every ten calls to police now involves someone who is mentally ill,⁶⁴ crisis intervention training should be required of every patrol officer who will be using the new generations of less-lethal weapons, including Tasers.⁶⁵ According to one use-of-force expert, a "forceful takedown" is never a primary option, regardless of a suspect's mental state: "Effective communication ... is always the first weapon of choice."⁶⁶

Effective techniques for police handling of emotionally disturbed persons are relatively simple and can be learned in a few days, according to one police training expert.⁶⁷ They include such tactics as keeping a safe distance away, calling for backup, appointing one officer as the "talker," avoiding provocative displays (of Tasers, for example) or threats of force, and taking as much time as necessary (many hours or days) to talk the emotionally disturbed person into custody.⁶⁸ Courts have generally, however, rejected arguments that such training should be required.⁶⁹

But training in restraint procedures is mandatory. Police are trained to make sure that a handcuffed detainee can breathe and to watch for warning signs after the person is restrained. What about finding a way to avoid "forceful takedowns" altogether and training officers to do better when handling combative suspects who exhibit signs of "excited delirium"? More humane methods have been around for years. One police training outfit in New York called "Modern Warrior," in 1994 developed a videotape training program for officers called "Preventing In-Custody Deaths."⁷⁰

After explaining the anatomy, the effect of drugs and complications arising from the cutting off of airflow to the lungs, a New York Police Department training officer demonstrates how to "take down" a combative person without compressing the person's chest. It looks so simple. Perhaps if the Taser-blazing officers who took Roman Andreichikov down had seen that video, he would have lived to fight his own inner demons one more time.

NOTES

1. The author is a civil rights lawyer in Seattle who writes frequently about police accountability and the law. She is a member of the National Lawyers Guild's National Police Accountability Project.

2. Dee Hon, "Dead in Custody: Taser Special Report," June 21, 2004, *The Tyee* (an independent internet media source), www.thetyee.ca/News. (summarizing Hadani's description of Andreichikov's death on May 1, 2004).

3. According to *The Tyee*, it may take a year for the British Columbia coroners office to complete its findings into Andreichikov's death. *Ibid*.

4. Dee Hon, "Tasers: What Police and Media Aren't Saying," *The Tyee*, August 6, 2004.

5. According to Taser International's website, over 5,400 law enforcement agencies now have Tasers. The United Kingdom recently approved Taser use (September 16, 2004) as has the U.S. Department of Defense (October 18, 2004). www.taser.com. In addition, the Federal Transportation Security Administration recently approved the user of tasers on Korean Air flights in the U.S. Levin and Woodyard, "Stun Guns Approved for Use on Airlines," *USA Today* (11/8/04) (noting that domestic airlines such as United once planned to use tasers on its flights but backed off due to bankruptcy and Congressional approval of pilots being armed with handguns).

6. Matt McKinney, "Stun Guns Pack Uncertain Risk," *Star Tribune*, October 17, 2004 (documenting through news reports 105 deaths since 1983 "in which a person died after being shocked by police with an electric stun weapon"); Robert Anglen, "71 Cases of Death Following Stun-Gun Use," *Arizona Republic*, September 15, 2004 (summarizing such deaths reported between September 1999 and September 2004); Alex Berenson, "As Police Use of Tasers Rises, Questions Over Safety Increase," *New York Times* (front page), July 18, 2004 (noting a "growing number of people, now at least 50, including 6 in June alone, who have died since 2001 after being shocked").

7. Although women have reportedly been subjected to Tasers, not a single woman has died after being shocked with a Taser.

8. See, e.g., "Family of Man Beaten to Death Sues City," *Seattle Post-Intelligencer*, September 11, 2004, at p. A3 (lawsuit against City of Cincinnati for death of Nathaniel Jones, 41, who was beaten with batons and then suffered "respiratory failure while officers lay or sat on him"). See also Connor, M.G., "In-Custody Death: Excited Delirium, Restraint Asphyxia, Positional Asphyxia and In-Custody Death Syndromes" (2002) (estimating the number of in-custody deaths from restraint at between 50-125 per year, in the U.S.) at: www.strugglingteens.com.

9. Listed as Number 47: "Shocked during a struggle with police at an apartment. He died shortly after being

shocked. His death is under investigation. The autopsy report has not been released." Anglen, "71 Cases of Death Following Stun-Gun Use," supra at n. 5.

10. Richard Norton-Taylor, "Amnesty Demands Medical Trials for Taser Stun Guns," *The Guardian*, December 3, 2003.

11. Letter from ACLU of Northern California to San Francisco Police Commission, September 21, 2004; Letter from ACLU of Colorado to Denver Police Chief, February 26, 2004.

12. *Tennessee v. Garner*, 471 U.S. 1 (1985).

13. *Plakas v. Drinski*, 19 F.3d 1143 (7th Cir. 1994) (where deadly force is otherwise justified, there is no constitutional duty to use non deadly force). However, where the suspect is armed with a knife or other object rather than a firearm, officers may be more likely to use a Taser. See, e.g., *Numbers 8* (Anthony Spencer) (knife), 12 (Clever Craig) (barbell), 21 (Terrance Hanna) (knife and hammer), 23 (Timothy Sleet) (knife), 61 (Samuel Truscott) (knife and bat). Anglen, supra n.5.

14. *Deorle v. Rutherford*, 272 F.3d 1272 (9th Cir. 2001) (officers may be required to consider a range of tactics in effecting the arrest of an emotionally disturbed person); *Cruz v. City of Laramie, Wyoming*, 239 F.3d 1183 (10th Cir. 2001) (similar holding where person being subdued has a "diminished capacity" because of drug use); *Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992) (city may be liable for failing to adequately train its officers in dealing with the mentally ill where such lack of training may have caused shooting death of known paranoid schizophrenic).

15. ACLU of Colorado press release of March 16, 2004 (listing such alleged abuses as shocking a handcuffed man in the genitals, Tasing an obviously pregnant woman in the abdomen, shocking a jail inmate while he was handcuffed to a wall).

16. *Headwaters Forest v. Humboldt County*, 276 F.3d 1125 (9th Cir. 2002) (holding unconstitutional the use of pepper spray on nonviolent protesters).

17. Hector Castro, "City Will Pay \$25,000 to Settle Taser Complaint," *Seattle Post-Intelligencer*, September 21, 2004; Portland Copwatch, "Tasers Zapped By Bad Publicity: Local Woman Wins \$145,000 After False Eye Pops Out," *The People's Police Report* (September 2004).

18. *Numbers 22* (Joshua Hollander) and 63 (David Riley) on "the list of 71," *Arizona Republic*, supra at n. 5. In addition, two of the men who died were being arrested after stabbing to death a girlfriend or a wife.

19. Number 13 (Jason Nichols) on "the list of 71."

20. Number 60 on the list of 71 deaths, *Ibid*.

21. Number 40 (Peter Lamondy) "on the list of 71" deaths, *Ibid*.

22. *Numbers 5* (Marvin Hendrix) and 30 (Clark Whitehouse).

23. For example, Troy Nowell (agé 51) was Tased during an arrest for assaulting two elderly women and a man outside of a union hall. He suffered a heart attack during a protracted struggle with the police

after the Tasing (Number 25).

24. See, e.g., Number 70 (Michael Rosa) who was wandering through yards and screaming or Number 69 (Jason Yeagley) who was wandering through the road and acting strangely or Number 68 (Lawrence Davis) who jumped on a patrol car windshield and began yelling incoherently.

25. In many of the cases, coroners list as the primary cause of death "cocaine-induced agitated delirium." Numbers 18 (Frederick Webber) and 17 (Gordon Jones).

26. Wetli, C.V., "Cocaine Induced Psychosis and Sudden Death in Recreational Cocaine Users," *Journal of Forensic Sciences* Vol. 30, No. 3, July 1985, pp. 873-880. See also Ross, "Factors Associated with Excited Delirium Deaths in Police Custody," *Modern Pathology* 11 (11) pp. 1127-1137. 1998.

27. Raymond Fish and Leslie Geddes, "Effects of Stun Guns and Tasers," *Lancet* (September 1, 2001), Vol. 358: 687-688.

28. *Ibid.*, p. 688.

29. Ronald Kornblum and Sara Reddy, "Effects of the Taser in Fatalities Involving Police Confrontation," *Journal of Forensic Sciences* (March 1991), pp. 434-47.

30. *Ibid.*, p. 447.

31. Steven Higgs, "Imagine There's No Justice," The November Coalition (an online magazine "working to end drug war injustice"), March 28, 2004.

32. Summarized at Number 34 on "the list of 71" deaths. See also, Terre Haute Regional Hospital Department of Pathology Autopsy Report (November 7, 2003).

33. "Taser Under Fire Over Deaths," April 6, 2004. www.cbsnews.com.

34. Cory Schouten, "Jailer to Face Two Charges in Taser Death," *Indiana Daily Student* (May 13, 2004) at www.idsnews.com

35. Amended Complaint, Estate of James Borden et al v. Monroe County Sheriff et al, U.S. Dist. Ct. S.D. Indiana Cause No. 1:04-CV-0318 RLY-WTL (filed August 27, 2004).

36. Steve Higgs, "Breaking This Silence, At Last," *The Bloomington Alternative* (May 13, 2004).

37. Number 42, supra n. 5.

38. "Coroner's Inquest: Jurors Rule Taser a Factor in Death, Officer's Actions Determined to be Excusable," *Las Vegas Review-Journal* (June 26, 2004).

39. *Ibid.*

40. *Ibid.*

41. See, e.g., Stephens, Jentzen, Karch, Wetli & Marsh, "National Association of Medical Examiners Position Paper on the Certification of Cocaine-Related Deaths," *American Journal of Forensic Medicine and Pathology* (2004) 25(1): pp. 11-13 (cocaine should be considered the underlying cause of death when "acute use of" it was the "direct underlying cause of the trauma").

42. Stratton, Rogers, Brickett & Gruzinski, "Factors

Associated with Sudden Death of Individuals Requiring Restraint for Excited Delirium," *American Journal of Emergency Medicine* (2001), 19(3): pp. 187-91 (study of 18 excited delirium deaths associated with a struggle and forced restraint; 5 of the 18 were Taser-related); O'Halloran and Lewman, "Restraint Asphyxiation in Excited Delirium," *American Journal of Forensic Medicine and Pathology* (1993), 14(4): pp. 289-95 (study of 11 in-custody deaths including two who were shocked with stun guns prior to death).

43. Pollanen, Chiasson, Ciarns & Young, "Unexpected Death Related to Restraint for Excited Delirium: A Retrospective Study of Deaths in Police Custody and in the Community," *Canadian Medical Association Journal* (1998) 158:1603-1607 (blood levels of cocaine in users with "excited delirium" was lower than levels found in people who died from cocaine intoxication).

44. Supra n. 41, p. 294.

45. Tofano v. Reidel, 61 F.Supp. 2d 289 (D.N.J. 1999) (medical examiner concluded where detainee was held face down in a prone position with officers exerting pressure on the back that the plaintiff's death was due to a deprivation of oxygen).

46. Pedal, Zimmer, Mettern, Mittmeyer & Oehmichen, "Fatal Incidences During Arrest of Highly Agitated Persons," *Arch Kriminology* (German) (Jan-Feb 1999), 203: pp. 1-9; Ross, "Factors Associated with Excited Delirium Deaths in Police Custody," *Modern Pathology* (November 1998) Vol. 11, No. 11: pp. 1127-37.

47. National Law Enforcement Technology Center, "Positional Asphyxia - Sudden Death," (June 1995), (based on a report prepared by the International Association of Chiefs of Police).

48. *Ibid.*, p. 2.

49. Numbers 36 (Kerry O'Brien) and 38 (Lewis King) in supra n.5.

50. O'Halloran and Frank, "Asphyxial Death During Prone Restraint Revisited: A Report of 21 Cases," *American Journal of Forensic Medical Pathology* (March 2000), 21 (1): pp. 39-52.

51. *Ibid.*

52. *Ibid.*

53. Champion v. Outlook Nashville, Inc. et al, 380 F.3d 893 (6th Cir. August 19, 2004).

54. Champion, 380 F.3d p. 903.

55. *Ibid.*, p. 905.

56. As well as other recent rulings such as Deorle v. Rutherford, 272 F.3d 1272 (9th Cir. 2003).

57. IACP National Law Enforcement Policy Center, Electronic Control Weapons Model Policy, August 2004.

58. From Taser International Brochure, "Safety Every Officer Deserves."

59. See, e.g., Chicago Police Department General Order 92-03-11 regarding use of Tasers.

60. BC Office of the Police Complaint Commissioner, "Taser Technology Review & Interim

Recommendations," OPEC File No. 2474, September 2004.

61. Orange County Sheriff's Office (Florida), Taser Task Force Medical Findings, July 28, 2004, Transcripts of testimony of Dr. Aurelio Duran (a cardiac electrophysiologist), Dr. Daniel Brennan (an emergency physician), Dr. Bob Vandervoort (a pharmacist), and Dr. Jan Garavaglia (a medical examiner).

62. The X26 Taser uses a more focused electrical current and lower electrical output and also contains enhanced data collection capabilities.

63. Supra n. 58, p. 56.

64. In addition, minorities suffer from far less access to mental health and substance abuse treatment and thus may be over-represented in these types of encounters. Erica Goode, "Mentally Ill Endure Racial Bias: Minorities Suffer More Illnesses But Get Inferior Care, Report Says," *New York Times* (August 27, 2001) (summarizing U.S. Surgeon General's Report).

65. Charles Gillespie, "Training Improves Safety in Dealing with Mentally Ill," The Associated Press, Aug. 5, 2001.

66. Dee Hon, supra, n. 2.

67. James J. Fyfe, "Policing the Emotionally Disturbed," 28 *J. Am. Acad. Psychiatry* L. 345, 347 (2000).

68. *Ibid.*

69. Michael Avery, "Unreasonable Seizures of Unreasonable People: Defining the Totality of Circumstances Relevant to Assessing the Police Use of Force Against Emotionally Disturbed People," 34 *Columbia Human Rights Law Review*, 261, pp. 328-29 (2003).

70. The "Modern Warrior" website is: www.modernwarrior.com.

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CHANGE AGENTS

A Prison Diary

Kathy Kelly

“A little bio” by Stanley E. Campbell:

“Kathy Kelly is my heroine. She just recently returned from eight months in Jail for protesting the School of the Americas at Ft. Benning Georgia ... Kathy has been to Iraq many times, but not as a human shield, but as a long-time friend and supporter of the Iraqi people.

She started her Iraq visits shortly after 1991 and was determined to get goods into that beleaguered country, at least as far as food and medicines were concerned. She would take as much medical supplies as she could carry, in spite of the U.S.-managed embargo.

Kathy also found friends among the small Christian communities of Baghdad and Basra. She'd stay with nuns in a convent or at individual parishioners' homes, and became well known among all circles of Iraq.

Kathy Kelly is very admired by American peace activists, having founded a Catholic Worker house in Chicago after quitting her job as a school teacher. She still teaches some classes, but not enough to pay income taxes: she's not responsible for American weapons of war.

The group she started, Voices in the Wilderness, has led peace marches to war-torn Yugoslavia in the hopes of standing between armies. She once walked a small squad of pacifists onto a battlefield and did stop the fighting for a day (soldiers were probably so chagrined, they couldn't fire their rifles).

Kathy Kelly has spoken here in Rockford, always to ever-increasing crowds. We are happy to have her here and celebrate her life.”

—Stanley E. Campbell
Executive Director
Rockford Urban Ministries
“actions, not just words”
Rockford, Illinois.

“Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing.”

— Arundhati Roy, Porto Alegre, Brazil, World Social Forum, January 27, 2003.

“Kathleen Kelly, report to Admin.” I was routinely cleaning toilets in my dorm at Pekin Federal Prison Camp when the loudspeaker summoned me to the Administration Building. “You’re going next door,” said the guard on duty.

“Someone wants to talk with you.” During a five minute ride to the adjacent medium-security men’s prison, I quickly organized some thoughts about civil disobedience and prison terms, expecting to meet a journalist. Instead, two well-dressed men stood to greet me and then flashed their FBI badges. They had driven to Pekin, IL from Chicago, where they work for the FBI’s National Security Service.

Both men were congenial. They

assured me that their visit had nothing to do with Voices in the Wilderness violations of federal law in numerous trips to Iraq, where we regularly delivered medicines and medical relief supplies. Nor had they come to talk about why I’m currently imprisoned for protesting the U.S. Army’s military combat training school in Fort Benning, Georgia. What they proposed was “a conversation,” since they had information which they felt would help



me and Voices teams in Iraq, both now and in the future. Likewise, I could help them, and perhaps improve national security, by answering some of their questions.

I said I'd prefer not to talk with them without a lawyer present. The more talkative agent quickly nodded and suggested a follow-up visit with a

lawyer. He spoke further about his favorable impressions of Voices in the Wilderness and how useful it would be for our travelers to better understand some of the people whom the Iraqi government, under Saddam Hussein, had assigned to work with us as "miners" during our past trips. He said he had information about "bad things"

they had done or had planned to do. Having this conversation would benefit Voices in its travel to other countries as well. (Voices has focused solely on Iraq, although some of us have visited other countries with other groups).

At that point, I decided not to talk with them at all. "I don't want to accuse either of you of any wrongdoing," I said, wanting to be polite, "but your organization has used methods that I don't support, and sometimes your job requires you to lie."

Still amiable and interested in some kind of conversation, albeit one-sided, they let me know that they had carefully read our website. "We saw the pictures of the children," said the less talkative agent. The three of us were silent for a moment.

His partner mentioned that they've already met with numerous Iraqi Americans, none of whom had anything bad to say about Voices in the Wilderness.

"Do you have any questions for us?" they asked several times. "Is there anything you want to say?"

"Well, yes," I said, finally. "I do want to say something. I don't mean this disrespectfully, but I do encourage you to resign." Smiling broadly, they told me they'd placed a bet about whether or not I'd talk to them, but hadn't anticipated being asked to resign.

"Sorry, my wife wouldn't like it," said one. "I've got a pension to collect," said the other.

Several times, they advised me not to publicize the visit. "You know the Arab mind," one advised. "If you tell people we visited you in prison, they'll never believe you didn't talk with us, and you won't be trusted when you go to other countries." There's no such thing as a monolithic Arab point of view, and what intelligence agencies have done to undermine trust in Iraq and the surrounding region is a chapter unto itself, but I bit my tongue.

I think these men came to see me because they were responding to inquiries from their colleagues in Iraq. Perhaps someone, whom I've known, in Iraq, is being "vetted" for a position within the U.S. Occupation, or perhaps an Iraqi under investigation for wrongdoing named me as one who could vouch for his or her decency. I don't

see how I could tell anything about my personal experience that would have been harmful to another person, and maybe I could have been helpful in showing that someone I know was genuinely concerned for innocent civilians.

involve dehumanizing actions (my encounter was, I think, exceptionally benign). Instead of searching for blameworthy bad apples as though we are blind children trying to pin the tail on the donkey, why not carefully acknowledge our collective, passive

without willingly looking into the mirror and acknowledging all of its history. The U.S. must come to grips with having been, since World War II, (when under the shadow of the mushroom cloud we ushered the world into the nuclear age), a nation constantly at

THE U.S. MUST COME TO GRIPS WITH HAVING BEEN, SINCE WORLD WAR II, A NATION CONSTANTLY AT WAR: KOREA, VIETNAM, NICARAGUA, EL SALVADOR, GRENADA, PANAMA, THE FIRST GULF WAR, KOSOVO, COLOMBIA, AFGHANISTAN, THE ONGOING WAR IN IRAQ. WE'VE WAGED HOT WAR AFTER HOT WAR, AND UNDERGIRDING ALL THESE WARS IS THE CONTINUING WAR OF WESTERN CULTURE AGAINST THE BIODIVERSITY OF OUR PLANET. TO PRESERVE OUR PLEASURES AND PRIVILEGES, WE HAVE BECOME THE MOST DANGEROUS WARLIKE CULTURE IN HUMAN HISTORY.

But mainly I feel sad, a bit weary, and somehow responsible because the most crucial "information" Voices in the Wilderness can and should offer seldom reaches the general public, much less officialdom. We tried hard to inform people that hundreds of thousands of Iraqi children died as a direct result of economic sanctions. But it was as though we were part of a defective "Jeopardy" quiz game. We had answers to questions that would never be asked.

The agents who visited me asked me about "bad apples" in Iraq. On Capitol Hill, panels of civilians and military leaders want to punish the few "bad apples" responsible for torture and abuse of Iraqi prisoners. When we clamor for closure of the military combat training school in Fort Benning, Georgia, a school whose graduates have massacred, tortured, assassinated and disappeared many thousands of people in Latin America, public relations spokespeople for the base say that we are over-reacting to "a few bad apples."

Suppose we set aside the bushels of "bad apples." Military, prison and intelligence gathering structures routinely and inherently

responsibility for systems predicated on threat, force and violence. When money, talent, and resources are poured into military systems and prison systems, while health, education and welfare systems compete for inadequate budget allotments, we can expect constant warfare abroad and the quadrupling of prisoner populations which occurred in the U.S. over the last 25 years.

Military and prisoner structures don't train recruits to view "the enemy" or "the inmate" as precious and valuable humans deserving forgiveness, mercy, and respect if they have trespassed against us. These systems don't foster the notion that we ourselves could be mistaken, that we might seek forgiveness, or that we might, together with presumed outcasts, create a better world. Don't expect love of enemy and the Golden Rule to guide military, prison or intelligence systems anywhere in the world.

U.S. history abounds with remarkable achievements — the movements to abolish slavery, attain women's suffrage, build unions and establish civil rights, to name but a few. But no country can ever achieve political maturity

war: Korea, Vietnam, Nicaragua, El Salvador, Grenada, Panama, the first Gulf War, Kosovo, Colombia, Afghanistan, the ongoing war in Iraq. We've waged hot war after hot war, and undergirding all these wars is the continuing war of western culture against the biodiversity of our planet. To preserve our pleasures and privileges, we have become the most dangerous warlike culture in human history.

A few bad apples? Not a chance!

As more pictures of beleaguered Iraqi prisoners emerge, prolonging and swelling a horrid scandal, I can't help but wonder why the pictures of suffering Iraqi children never raised equivalent concern or indignation in the U.S. or elsewhere in the world.

I won't forget that one of the FBI agents mentioned seeing pictures of Iraqi children on the VitW website. I feel haunted by the infants, the toddlers, the young teens and their heart-broken mothers and fathers whom we met at bedside after bedside in Iraqi hospitals. Walking on the oval track, here in prison, I whisper the names and recall the sweet faces of the little ones I grew to know, fleetingly. All of

them were condemned to death. None of them were bad apples. They were fine fruits of loving families. Hundreds of thousands died, — some after many days of writhing pain on bloodstained mats, without pain relievers. Some died quickly, wasted by water-borne diseases; as the juices ran out of their bodies, they appeared like withered, spoiled fruits. But no, they weren't bad apples. They could have lived, certainly should have lived, — and laughed and danced, and run and played — but somehow, — honestly, I don't understand it — somehow they were sacrificed, brutally and lethally punished to death.

Their pictures, each of their stories, had something to say to us. If U.S. people had seen their images, day after day, the economic sanctions would never have lasted long enough to claim the lives of over 1/2 million children under age five. These Iraqi children who couldn't survive abysmally failed foreign policies still have something to say to us.

"Please call me by true name," wrote Thich Nhat Hanh, a monk and poet who led the Buddhist non-aligned movement during the Vietnam War. He wants us to fully understand who we are.

We have an extraordinary challenge, now, as U.S. people clearly don't want to be aligned with or represented by disgraceful and bullying behavior. We must resist being misled by finger pointing at "a few bad apples." We should acknowledge that all of us are called upon to be change agents, by changing our over-consumptive and wasteful lifestyles. We must look for

every sign of a "climate change" that will help us overcome our unfortunate addiction to war-making.

This may be a pivotal time. Consider the early stages of the Civil Rights movement. Participants must have wondered how many beatings, how many lynchings, how many Jim Crow indignities would be heaped on communities before opponents of civil rights would say they were tired of being the bully. In that movement, a pivotal point was reached when Bull Connor ordered police to train fire hoses on peaceful protesters, including children. Frustrated onlookers around the world were horrified. And increasing numbers of U.S. people no longer wanted to be identified with Bull Connor and all that he represented.

"Injustice must be exposed to the light of human conscience," said the Rev. Dr. Martin Luther King Jr., "and to the air of national opinion before it can be cured."

I feel sure that numerous members of the armed services, the intelligence agencies, and various other federal government bureaus, including the Bureau of Prisons employees, understand very well why we need radical change in the U.S. I feel sure that an era of reform and a climate conducive to progressive humanitarian measures will recycle into our history.

But all of us need to take advantage of our own opportunities to be agents of change. For some it may mean walking away from cruel, wrongful, or dishonest work. For others it may mean becoming whistle-blowers. Still others can announce the truth as

they see it in spite of risks to their pensions or job security. When we're willing to call ourselves by all of our names, change can happen.

Change is coming. Light as the breath of excruciatingly beautiful Iraqi children nearing their deaths, demanding as the imploring eyes of their mothers who asked us why, you can feel it coming.



Kathy Kelly, co-founder of Voices in the Wilderness and three-time nominee for the Nobel Peace Prize, began an eight-month prison sentence in April 2004 for her actions of civil disobedience at the School of the Americas/WHISC and at ELF tower in Wisconsin. She is free now.



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Torture of Prisoners in U.S. Custody

Marjorie Cohn

Major General Geoffrey Miller, the American commander in charge of detentions and interrogations at Abu Ghraib prison in Iraq, recently conducted an overnight tour of the facility for journalists.

He proudly displayed “Camp Liberty” and “Camp Redemption,” newly renovated in response to the torture scandal unleashed by the release of the disgusting photographs last spring.

Under the new system in place at Abu Ghraib, an interrogation plan is submitted to a lawyer for approval before any interrogation begins. The time required to process prisoners has been reduced from 120 to 50 days. Since July, 60% of the reviews have lead to releases.

depicted in the publicized photos, occurred.

Several official reports were written with more disturbing revelations. The International Committee of the Red Cross documented 70–90% of those held at Abu Ghraib were there by mistake.

The reaction of the Bush administration to the revelations of torture was to prosecute seven low ranking soldiers.

In spite of calls for investigation of Secretary of Defense Donald Rumsfeld and President George W. Bush for complicity in the mistreatment, the prison torture scandal has been on the back burner in the national discourse. The September release of Seymour Hersh’s book,

These claims are disingenuous. The roots of Abu Ghraib, writes Hersh, lie in the creation of the “unacknowledged” special-access program (SAP) established by a top-secret order signed by Bush in late 2001 or early 2002. The presidential order authorized the Defense Department to set up a clandestine team of Special Forces operatives to defy international law and snatch, or assassinate, anyone considered a “high-value” Al Qaeda operative, anywhere in the world.

Rumsfeld expanded SAP into Iraq in August 2003. It was Rumsfeld who approved the use of physical coercion and sexual humiliation to extract information from prisoners. Rumsfeld and Bush set this system in motion long before January 2004. The mistreatment

A MILITARY CONSULTANT WITH CLOSE TIES TO SPECIAL OPERATIONS TOLD HERSH: “PEOPLE WERE BEATEN TO DEATH” ... “WHAT DO YOU CALL IT WHEN PEOPLE ARE TORTURED AND GOING TO DIE AND THE SOLDIERS KNOW IT, BUT DO NOT TREAT THEIR INJURIES?” THE CONSULTANT ASKED RHETORICALLY. “EXECUTION,” HE REPLIED TO HIS OWN QUESTION.

Three hundred Iraqi prisoners were released on one day in September. Each walked away with \$25 and a 12-page glossy pamphlet on Iraq’s interim government.

General Miller, the tour guide, oversaw interrogations at the United States prison at Guantanamo Bay, Cuba. He had been sent to Abu Ghraib last fall to transfer his interrogation system from Cuba to Iraq. It was on his watch that the worst mistreatment,

Chain of Command: The Road from 9/11 to Abu Ghraib,¹ however, has put the issue back on the radar screen.

Rumsfeld testified before the Senate Armed Services Committee that his department was alerted to the abuse of prisoners at Abu Ghraib in January 2004. Rumsfeld told Bush in February about an “issue” involving mistreatment of prisoners in Iraq, according to a senior White House aide.

of prisoners at Abu Ghraib was part of the ongoing operation.

Hersh quotes a CIA analyst who was sent to the U.S. military prison at Guantanamo in late summer of 2002, to find out why so little useful intelligence had been gathered. After interviewing 30 prisoners, “he came back convinced that we were committing war crimes in Guantanamo.”

By fall 2002, the analyst’s report finally reached General John A. Gordon,

the deputy national security adviser for combating terrorism, who reported directly to national security adviser Condoleezza Rice. Gordon was deeply distressed by the report and its implications for the treatment of captured American soldiers. He also thought "that if the actions at Guantanamo ever became public, it'd be damaging to the president."

Gordon passed the report to Rice, who called a high-level meeting in the White House situation room. Rumsfeld, who had been encouraging his soldiers to get tough with prisoners, was present at the meeting. Yet Rice asked Rumsfeld "what the issues were, and he said he hadn't looked into it." Rice urged him to look into it: "Let's get the story right," she declared.

A military consultant with close ties to Special Operations told Hersh that war crimes were committed in Iraq and no action was taken. "People were beaten to death," he said. "What do you call it when people are tortured and going to die and the soldiers know it, but do not treat their injuries?" the consultant asked rhetorically. "Execution," he replied to his own question.

We should have seen it coming. In Bush's January 2003 State of the Union Address, he said: "All told, more than 3,000 suspected terrorists have been arrested in many countries, and many others have met a different fate." He added, "Let's put it this way. They are no longer a problem for the United States and our friends and allies."

Bush was admitting he had sanctioned summary execution, in direct violation of international, and United States, law.

The Bush administration has also admittedly engaged in the illegal practice of *rendition*, where people are sent to other countries to be tortured. The CIA acknowledged in testimony before Congress that prior to 2001, it had engaged in about seventy "extraordinary renditions."²

In December 2001, for example, American operatives kidnapped two Egyptians and flew them to Cairo, where they were subjected to repeated torture by electrical shocks from electrodes attached to their private parts.

Rape, sodomy with foreign objects, the use of unmuzzled dogs to bite and severely injure prisoners,

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and beating prisoners to death have been documented at Abu Ghraib. Women beg their families to smuggle poison into the prison so they could kill themselves because of the humiliation they suffered.

Allegations of routine torture have emerged from Mosul and Basra as well. "Some were burnt with fire, others [had] bandaged broken arms," claimed Yasir Rubaii Saeed al-Qutaji. Haitham Saeed al-Mallah reported seeing "a young man of 14 years of age bleeding from his anus and lying on the floor." Al-Mallah heard the soldiers say that "the reason for this bleeding was inserting a metal object in his anus."³

The Army has charged one sergeant with assault and other crimes, and is recommending that two dozen other American soldiers face criminal charges, including negligent homicide,

1996.⁶ American nationals who commit war crimes abroad can receive life in prison, or even the death penalty if the victim dies.

Under the doctrine of command responsibility, a commander can be held liable if he or she knew or should have known his inferiors were committing war crimes and he failed to prevent or stop them.

When John Walker Lindh was captured in Afghanistan in December 2001, his American interrogators stripped and gagged him, strapped him to a board, and displayed him to the press. He was writhing in pain from a bullet left in his body. A Navy admiral told the intelligence officer interrogating Lindh that "the secretary of defense's counsel has authorized him to 'take the gloves off' and ask whatever he wanted."⁷

treaties and rules of international law." The statement condemns the most senior lawyers in the Department of Justice, Department of Defense, White House, and Vice President Dick Cheney's office, who "have sought to justify actions that violate the most basic rights of all human beings."

Even the conservative American Bar Association (ABA) criticized what it called "a widespread pattern of abusive detention methods." Those abuses, according to the ABA, "feed terrorism by painting the United States as an arrogant nation above the law."

Relying on advice in these memos, Bush issued an unprecedented order that, as commander-in-chief, he has the authority to suspend the Geneva Conventions. In spite of Geneva's requirement that a competent tribunal decide whether someone qualifies for prisoner of war (POW) status, Bush

AT ABU GHRAIB, WOMEN BEG THEIR FAMILIES TO SMUGGLE POISON INTO THE PRISON SO THEY COULD KILL THEMSELVES BECAUSE OF THE HUMILIATION THEY SUFFERED.

for mistreatment of prisoners in Afghanistan.

In September, three Americans running a private prison, but reportedly working with the CIA, were convicted of kidnapping and torture and sentenced to 8-10 years in prison by an Afghan court. Afghan police had reportedly found three men hanging from the ceiling, and five others were found beaten and tied in a dark small room.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁴ a treaty ratified by the U.S. and thus part of its binding domestic law, defines torture as the infliction of severe pain or suffering for the purpose of obtaining a confession, discrimination, coercion or intimidation.

Torture, inhuman treatment, and willful killing are grave breaches of the Geneva Conventions,⁵ treaties ratified by the United States. Grave breaches of Geneva are considered war crimes under the U.S. War Crimes Act of

Although initially charged with crimes of terrorism carrying life in prison, Attorney General John Ashcroft permitted Lindh to plead guilty to lesser crimes that garnered him 20 years. The condition: Lindh make a statement that he suffered "no deliberate mistreatment" while in custody.⁸ The cover-up was underway.

Lawyers from the Defense Department and Justice Department penned lengthy memos and created a definition of torture much narrower than the one in the Torture Convention. They advised Bush how his people could engage in torture and avoid prosecution under the U.S. Torture Statute.

More than 300 lawyers, retired judges, and law professors (including this writer), a former FBI director, an ex-Attorney General, and seven past presidents of the American Bar Association, signed a statement denouncing the memos, which, we wrote, "ignore and misinterpret the U.S. Constitution and laws, international

took it upon himself to decide that Al Qaeda and Taliban prisoners in Afghanistan were not protected by the Geneva Convention on the POWs.

This decision was premised on the reasoning of White House Counsel (recently nominated by Bush to replace John Ashcroft as attorney general) Alberto Gonzalez, that "the war against terrorism is a new kind of war, a new paradigm [that] renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions."

A still-secret section of the recently-released U.S. Army's Fay Report⁹ says that "policies and practices developed and approved for use on Al Qaeda and Taliban detainees who were not afforded the protection of the Geneva Conventions, now applied to detainees who did fall under the Geneva Conventions' protections."¹⁰ But Bush didn't take into account that even prisoners who are not POWs must still be treated

humanely under the Geneva Convention on the Treatment of Civilians In Time of War (Geneva IV).

As late as May 2004, the Bush administration maintained that Geneva would apply to all prisoners captured in Iraq. But in late October 2004, the *Washington Post* reported that the CIA had secretly transferred 12 non-Iraqi prisoners out of Iraq in the past 18 months, notwithstanding the prohibitions in article 49 of the Fourth Geneva Convention. In response, Bush's lawyers opined that some non-Iraqi prisoners captured by U.S. forces in Iraq would not receive the benefit of the Geneva Conventions.

The Schlesinger Report¹¹ that came out within a day of the Fay Report accused the Pentagon's top civilian and military leadership of failing to exercise sufficient oversight and permitting conditions that led to the

similar to the plight of the Iraqis who were abused by American GIs. Prisoners are maced, raped, beaten, starved, left naked in freezing cold cells and otherwise abused in too many American prisons, as substantiated by findings in many courts that prisoners' constitutional rights to remain free of cruel and unusual punishment are being violated."¹²

Torture techniques used in Iraq, Afghanistan and Guantanamo are all too familiar in prisons in the U.S. as well. Hooded, robed figures with electrical wiring attached to them have been seen at the city jail in Sacramento, California. Prisoners in Maricopa County jails in Phoenix, Arizona have been forced to wear women's underwear. And guards in the Utah prison system have piled naked bodies in grotesque and uncomfortable positions.

unusual. It took one man in Kentucky 12 minutes to die from the humane lethal injection.

In May 2000, the U.N. Committee Against Torture considered the United States' initial report on implementation of the Convention Against Torture. It expressed concern at torture and ill-treatment by prison guards — much of it racially motivated, and the sexual abuse of female prisoners by male guards. Human Rights Watch reports that sexual misconduct is rarely investigated, much less punished, and that punishments tend to be light.

Eight prison guards were acquitted of charges they subjected prisoners to cruel and unusual punishment by arranging gladiator-style fights among inmates, and setting up the rape of an inmate by a notoriously violent inmate known as the "Booty Bandit" at Corcoran State Prison in California.

THE SCHLESINGER REPORT CONFIRMED 5 DETAINEE DEATHS AS A RESULT OF INTERROGATION, AND 23 MORE DEATHS ARE CURRENTLY UNDER INVESTIGATION. THE TORTURE OF PRISONERS IN U.S. CUSTODY DID NOT BEGIN IN IRAQ, AFGHANISTAN OR GUANTANAMO.

abuses. Rumsfeld's reversals of interrogation policy, according to the report, created confusion about which techniques could be used on prisoners in Iraq.

Rumsfeld has admitted ordering an Iraqi prisoner be hidden from the International Committee of the Red Cross. Pentagon investigators believe the CIA has held as many as 100 "ghost" detainees in Iraq. Hiding prisoners from the Red Cross violates Geneva.

The Schlesinger Report confirmed 5 detainee deaths as a result of interrogation, and 23 more deaths are currently under investigation.

The torture of prisoners in U.S. custody did not begin in Iraq, Afghanistan or Guantanamo. "I do not view the sexual abuse, torture and humiliation of Iraqi prisoners by American soldiers as an isolated event," says Terry Kupers, a psychiatrist who testifies about human rights abuses in U.S. prisons. "The plight of prisoners in the USA is strikingly

The connection between mistreatment of prisoners here and abroad is even more direct than that. For example, John Armstrong ran Connecticut's Dept. of Corrections from 1995-2003, before being sent to Iraq as a prison adviser in September 2003. On his Connecticut watch, two mentally ill prisoners died while being restrained by guards. Two more inmates died in custody after guards mistreated them. And Armstrong made a remark once that equated the death penalty with euthanasia.

Speaking of the death penalty, the use of the gas chamber was challenged in California as cruel and unusual punishment, before the execution of Robert Alton Harris about 10 years ago. As a result California adopted the use of the lethal injection because it was more "humane" method of killing a person. Lawyers in Kentucky are now challenging the three-chemical cocktail used for lethal injections in many states as cruel and

Although Bush signed the Prison Rape Elimination Act of 2003,¹³ the law provides for no enforcement mechanism or cause of action for rape victims.

But prison guards have been convicted of organizing assaults on inmates in a federal prison in Florence, Colorado, and at Pelican Bay State Prison in California. The Department of Justice concluded that conditions at prisons in Newport, Arkansas are unconstitutional. And New Jersey prison guards reportedly brutalized over 600 prisoners.

A U.S. District Court Judge in California threatened to place the prisons into receivership if the Department of Corrections (DOC) didn't overhaul its internal disciplinary system. In response, the DOC has undertaken an independent Bureau of Review to ensure violations do not occur in the future.

In the wake of the September 11 attacks, more than 1200 Arab, Muslim, and South Asian men were rounded up

in one of the most extensive incidents of racial profiling in the U.S. since the Japanese were interned during World War II. A December 2003 report by the Department of Justice's Office of the Inspector General¹⁴ investigated allegations of physical and verbal abuse of non-citizen prisoners by the Federal Bureau of Prisons' (BOP) Metropolitan Detention Center (MDC) in Brooklyn, NY.

BOP policy prohibits staff members from using brutality, physical violence,

should be included in the measurement of "evolving standards of decency."

The rules prohibit corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary actions.

Fyodor Dostoevsky once said, "The degree of civilization in a society can be judged by entering its prisons." In May, when the Abu Ghraib scandal

Marjorie Cohn is a Professor at Thomas Jefferson School of Law in San Diego, executive vice president of the National Lawyers Guild, the U.S. representative to the executive committee of the American Association of Jurists, and a contributing editor to Truthout.org.

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FYODOR DOSTOEVSKY ONCE SAID, "THE DEGREE OF CIVILIZATION IN A SOCIETY CAN BE JUDGED BY ENTERING ITS PRISONS." IN MAY, WHEN THE ABU GHRAIB SCANDAL WAS ON THE FRONT PAGES, THERE WERE DEMANDS FOR RUMSFELD TO RESIGN. BUT CHENEY TOLD RUMSFELD THERE WOULD BE NO RESIGNATIONS. IT WAS BLATANTLY POLITICAL. WE'RE GOING TO HUNKER DOWN AND TOUGH IT OUT, CHENEY SAID, SO AS NOT TO HURT BUSH'S CHANCES FOR ELECTION IN NOVEMBER.

intimidation toward inmates, or any force beyond that which is reasonably necessary to subdue an inmate.

The report concluded that several MDC staff members slammed and bounced detainees into the walls, twisted or bent their arms, hands, wrists, or fingers, pulled their thumbs back, tripped them and dragged them on the floor. It also found violations of BOP policy by verbal abuse as well.

In *Estelle v. Gamble*¹⁵, the U.S. Supreme Court applied the Eighth Amendment's ban on cruel and unusual punishment to conditions of confinement that are incompatible with the evolving standards of decency that mark the progress of a maturing society.

The United Nation's Economic and Social Council promulgated the Standard Minimum Rules for the Treatment of Prisoners. The Supreme Court in *Estelle* specified that these rules

was on the front pages, there were demands for Rumsfeld to resign. But Cheney told Rumsfeld there would be no resignations. It was blatantly political. We're going to hunker down and tough it out, Cheney said, so as not to hurt Bush's chances for election in November.

In spite of George W. Bush's renunciation of the International Criminal Court, many people around the world are clamoring for Bush and his deputies to be held accountable for the widespread torture of prisoners in Iraq, Afghanistan, Guantanamo, and the CIA's secret prisons elsewhere. In the words of Yale law professor Bruce Ackerman: "It is one thing to protect the armed forces from politicized justice; quite another, to make it a haven for suspected war criminals."¹⁶



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Number 64 (1998) Vietnam; Iraq sanctions; Political control technology; Jihad; Pinochet; Drug war fungus; Burma-Singapore heroin trade.

Number 65 (1998) Philip Agee; Ramsey Clark; Mumia Abu-Jamal; Serb demonization; Bosnia TV disinformation; Media evasions; NGOs in Latin America; Russian reform; War on Cuba; Assata Shakur; Ron Ridenhour; CIA vs. Daniel Tsang; CIA mistaken identities

Number 66 (1998-99) Pinochet; Palestinian Authority; Tomahawks; Sudan; Pentagon bucks; PanAm 103; Laurent Kabila interview; Algeria; Richard Holbrooke; NATO; Iztbegovitch; FBI's D.C. "espionage" trial.

Number 67 (1999) Mumia Abu-Jamal; NATO bombing and "Greater Albania"; Humanitarian intervention in Kosovo; Roma people; William Walker; Richard Holbrooke; Ocalan; Police militarization; Tupac Shakur; CIA and labor; CIA drug smuggling; Leonard Peltier.

Number 68 (1999) East Timor; Colombia; Panama; Cuba vs. U.S.; Serbia; NATO in Kosovo; KLA and drugs; MPRI; Urban Warrior; Homeland defense; Poverty globalization.

Number 69 (2000) Congo; Chechnya; Colombia; Ecuador; Iraqi oil; Depleted uranium; Yugoslavia; India; Cyprus; Bosnia-Herzegovina; Seattle/WTO; "Emergency management;" Hunger politics; Global water; Climate; Prison-industrial complex; Military civil disturbance planning; CIA and Cold War.

Number 70 (2001) Bush and environment;

Mullah Aid; Dick Held; Non-lethal weapons; Summit of the Americas; Israeli Nukes; Kissinger; Star Wars; Yugoslavia; Antonin Scalia; Bush and Blair; Rep. Rob Simmons; 10 Worst Corporations; Statement by Leonard Peltier.

Number 71 (2001) Depleted uranium; Political Islam; Plan Puebla-Panama; USA Patriot Act; War Criminals; Israel and Hamas; Palestinian right of return; Domestic Anthrax; Plan Colombia; CIA visa machine; DoD vs. environment.

Number 72 (2002) Police violence; ISI, CIA & Taliban; Palestine; Venezuela plotting & coup; Earl Silbert & Enron; U.S. Designs on Iraq; Argentina bankrupted; Attack on Indian Parliament; Global rollback; Elie Hobeika.

Number 73 (2002) Torture; Jenin and Amnesty International; Academia & CIA; Pakistan; 50 Years of Coups-Iran to Venezuela; Plutonium in Space; U'wa vs. Occidental; Why Nato?

Number 74 (2002) Jenin and Human Rights Watch; George Soros stage-managing imperialism; Religious fascists and the CIA in Bosnia; End of Posse Comitatus; Brown & Root; James Petras on Argentina; Rwanda injustice; Revving up Bush's war machine; Smashing the Kurds.

Number 75 (2003) Homeland Security Phoenix-Style; Space-Based Imperialism; First Nations Fight Back; Tobacco Smokescreen; Denver Police Files; Victory For Judi Bari; Bhopal; Presidential Deceits; When Will Bush Fall?

Number 76 (2004) Edward Said Presente; Haiti's Murderous Army Reborn; "Gene Bombs"; Guantanamo Detainees; Racist War/Media on Iraq; IBM and Apartheid; Racism, Sexism, Militarism and John Kerry; World Social Forum, India.

Number 77 Million Worker March; Israel-U.S. Connections Against Iraq; Sabotage in North Korea; The Bombing of PanAm 103 and Libya; Genocide in Chiapas; An Analysis of Hate Crime Report; A Kathy Kelly Diary.

9/11 COVER-UP CONTINUES –

Why Richard Clarke's "apology" is misleading. He is not talking about and the National Commission on 9/11 is not looking at the following:

- Carter administration – CIA – Islamists of Afghanistan
- Carter administration – CIA – Islamists of Iran
- al-Qaeda — Saudi — CIA — Reagan administration collaborations in Afghanistan and Sudan
- al-Qaeda — Saudi — CIA — Bush I administration collaborations in Afghanistan and Sudan
- al-Qaeda — CIA — Clinton administration collaborations in Albania, Algeria, Bosnia, Chechnya, Iraq, Libya, Sudan.

For a comprehensive reading on the subjects mentioned above, please refer to our back issues list, pp. 47-8.

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