

# IMBALANCE OF POWERS

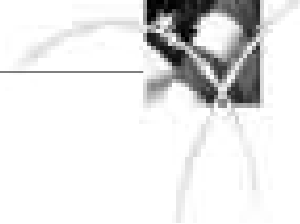
How Changes to U.S. Law & Policy Since  
9/11 Erode Human Rights and Civil Liberties

September 2002 — March 2003

*Imbalance of Powers* is an update to Lawyers Committee's  
*A Year of Loss: Re-examining Civil Liberties Since  
September 11*, which was published in September 2002.



LAWYERS COMMITTEE  
FOR HUMAN RIGHTS



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## Chapter 4

# SECURITY DETAINEES AND THE CRIMINAL JUSTICE SYSTEM

### INTRODUCTION

Prosecution of the war against terrorism in Afghanistan and elsewhere has resulted in the detention by the United States of citizens of at least 43 other countries. Approximately 650 of these people continue to be held at military detention facilities on the U.S. naval base at Guantanamo Bay, Cuba. At the same time U.S. law enforcement operations have led to the arrest and detention of others, including several American citizens. At least two Americans, José Padilla and Yaser Hamdi, are being held indefinitely, without charge or trial, as “enemy combatants.”

In a few cases, these security detainees have been taken before the ordinary criminal courts to face prosecution for criminal offenses. Federal prosecutors and courts generally have dealt

effectively with the challenges posed by these prosecutions, balancing the requirements of security and justice. Yet administration officials have suggested that the fair trial standards of U.S. federal courts are too demanding for some

high profile prosecutions to proceed without endangering security. While the law contemplates further measures to safeguard witnesses and evidence in sensitive trials to meet the needs of both security and justice, these options have not been vigorously pursued. To the contrary, administration sources have suggested that in these cases, they may be “forced” to transfer these cases to special military commissions outside both the civil and the ordinary military justice systems.

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On a parallel track, the Bush Administration continues to refine the structure of a proposed emergency military court system now being established pursuant to a “military order” issued by President Bush in November 2001. While military commissions have yet to be convened, in late February 2003, the Department of Defense released a draft instruction setting out the crimes that could be tried by such commissions. These special courts could try non-United States citizens currently being held without charge or trial. At the same time, as noted, administration spokesmen have suggested that detainees now being prosecuted before the federal criminal courts may be removed from these courts’ jurisdiction — and given new trials before military commissions under procedures that would severely curtail fair trial guarantees. Meanwhile, an increasing number of alarming reports of mistreatment of detainees at the hands of U.S. interrogators are emanating from Bagram Airbase in Afghanistan and other detention facilities used by the U.S. to hold security detainees.

## **“ENEMY COMBATANTS”**

The largest category of individuals in detention comprises the so-called “enemy combatants.” These are individuals being treated not as civilians (as in INS and criminal cases), but as members of a military force, either al Qaeda or the Taliban, and as participants in an armed conflict pitting those forces against the United States. The administration has designated these men as “unlawful combatants,” or “enemy combatants,”<sup>196</sup> rather than as “prisoners of war,” for the express purpose of denying them the rights that combatants normally receive. At the same time, by considering these detainees as “combatants,” the administration in effect asserts the right to detain them indefinitely and without trial. Under international humanitarian law, combatants in armed conflict who are captured by the enemy may be held in detention until the “cessation of active hostilities.”<sup>197</sup> In this instance, the administration construes this term to mean the end of the “war against terrorism.”

One of the principal rights the administration aims at denying the detainees, by using the term “unlawful combatants,” is their right to a hearing, an entitlement specified in Article 5 of the Third Geneva Convention. A competent tribunal could weigh, among other things, the merits of defendants’ claims that they are not combatants at all. Individuals designated as combatants may be in some cases only people caught in the wrong place at the wrong time, or victims of parties (such as bounty hunters) improperly motivated by personal, ethnic, or political rivalries unrelated to the conflict between the United States, and al Qaeda and the Taliban.<sup>198</sup>

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While many of these “enemy combatant” detainees were taken into custody in or near the battle zone in Afghanistan, others were apprehended in Pakistan; still others came from even further away, such as six Algerian detainees arrested and transported to Guantanamo from Bosnia, after a local court had ordered their release for lack of evidence.<sup>199</sup> The Guantanamo base is the best-known detention center for these men, but an unknown number are being held in other locations both in Afghanistan and elsewhere.

Particularly troubling has been the government’s inclusion of U.S. citizens within the category of “enemy combatants,” while rejecting debate on the appropriateness of the term. By unilaterally imposing the “enemy combatant” label on citizens whom it suspects of terrorist activities, the Executive Branch is attempting to bypass all criminal procedures and constitutionally mandated protections. U.S. citizens José Padilla and Yaser Hamdi are currently being detained in the United States as alleged enemy combatants.

These cases are unprecedented in U.S. legal history. In these cases, the administration in effect has reserved for itself the authority to deny those so labeled, regardless of citizenship, all legal rights and remedies, whether under international human rights or humanitarian law, U.S. criminal law, the Uniform Code of Military Justice, or the U.S. Constitution. The terminology of “unlawful” or “enemy combatants” improperly collapses the crucial distinction between, on the one hand, individuals captured while participating in an armed conflict (such as the armed conflict in Afghanistan between the United States and the Taliban government and its al Qaeda allies), and, on the other hand, those implicated in serious terrorist crimes plotted or executed outside a zone of conflict, that are properly handled within the criminal justice system.

## THE COURTS AND “ENEMY COMBATANTS”

Since September 2002, there have been a number of important developments with respect to the treatment of those labeled “enemy combatants,” affecting both U.S. citizens and non-citizens.

Although public attention to the Guantanamo detainees has dwindled, approximately 650 people are still interned there, many for more than a year with no end in sight. In Afghanistan there are increasing reports in the news media that U.S. interrogators are using psychological and physical coercion. In some cases, moreover, prisoners have been transferred for interrogation to states known to use torture, such as Egypt, Jordan, Morocco, and Syria.

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Finally, some reports have indicated that the Pentagon may be preparing to begin trying captives in military commissions. The military commissions have been designed to bypass both the U.S. criminal justice system and the military court system, which operates under the Uniform Code of Military Justice. There are indications that the government, unhappy with developments in the prosecution of Zacarias Moussaoui — the so-called “20<sup>th</sup> hijacker” — may remove his case from the civilian courts and try him instead in a military commission.

## **U.S. CITIZENS WITH ALLEGED LINKS TO AL QAEDA**

### **JOSÉ PADILLA**

José Padilla, a Brooklyn-born U.S. citizen, was arrested on May 8, 2002, at Chicago’s O’Hare airport, on arrival from Pakistan. Administration spokesmen said the arrest was based on information obtained from the interrogation of Abu Zubaydah, a senior al Qaeda leader in U.S. custody.

The administration asserts that Padilla had contact with al Qaeda in Pakistan and may have been part of a plot to bomb an unspecified target in the United States. Padilla was held for one month as a material witness, in connection with this alleged plot to create and detonate a conventional explosive containing radioactive materials in an urban area — a “dirty bomb.” In June 2002 he was transferred to military custody based on a presidential determination that he was an “enemy combatant.”<sup>200</sup>

Padilla’s transfer to military custody, and his designation as an “enemy combatant,” came promptly after Judge Michael Mukasey, of the United States District Court for the Southern District of New York, indicated Padilla would either have to be charged or released, thus ending his indefinite detention as a material witness. The administration invoked the designation “enemy combatant” to limit the role of courts in assessing the basis for Padilla’s detention.

In June 2002, Padilla’s lawyers filed a petition for habeas corpus, asserting their client’s right to meet with his legal representatives. Although Padilla had met with his public defenders when held as a material witness, since his transfer to military custody, he has been denied access to his attorneys. In their petition, his lawyers also challenged the factual basis of Padilla’s designation as an “enemy combatant” and urged the court to examine the facts leading to that designation.

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At issue is the power of the Executive Branch to identify an American citizen as an agent of an enemy and on that basis to strip that citizen of his or her liberty and other rights under U.S. law. In such cases, the executive has argued that the federal courts must defer to the President's determination as to who is an "enemy combatant."

On December 4, 2002, Judge Mukasey issued a 102-page opinion in the Padilla case.<sup>201</sup> He affirmed Padilla's right to consult with his attorneys. Yet the government continued to resist the court's order. On January 9, 2003, the government filed a motion for reconsideration, insisting that allowing Padilla to talk with his lawyers could "set back his interrogation by months, if not derail the process permanently... [by interfering with] the military's efforts to develop a relationship of trust and dependency that is essential to effective interrogation."<sup>202</sup> A response was filed on January 13, and oral argument was held two days later. On March 12, 2003, Judge Mukasey rejected the Bush Administration's motion for reconsideration and reaffirmed his December ruling that Padilla, held without charge or trial in a U.S. military brig, had the right to meet with his defense lawyers — a decision that the government is now likely to appeal to the U.S. Court of Appeals for the Second Circuit.<sup>203</sup>

On a separate issue, Judge Mukasey's December ruling supported the government's assertion that the law does not bar Padilla's confinement. At issue in this ruling is a federal statute, 18 U.S.C. § 4001(a), which provides that "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."<sup>204</sup>

While rejecting the government's view that this statute is not applicable to "enemy combatant" detentions, the court concluded that Senate Joint Resolution 23 ("Authorization for Use of Military Force") signed by President Bush on September 18, 2002, provides an adequate authorizing act of Congress. The Joint Resolution authorizes the President to "use all necessary and appropriate force against those...organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001...in order to prevent any future acts of international terrorism against the United States by such...organizations or persons."<sup>205</sup>

It is unclear whether Congress intended this resolution to give consent to the arrest and indefinite detention of U.S. citizens, particularly citizens arrested within the United States. This issue is likely to be addressed on appeal in the Padilla case.

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Judge Mukasey also gave broad deference to the government’s factual determinations. He held that it was outside the court’s purview to decide “*de novo* whether Padilla is associated with al Qaeda and whether he should therefore be detained as an unlawful combatant.” Rather, the court’s responsibility:

runs only to deciding two things: (i) whether the controlling political authority — in this case the President — was in fact exercising a power vouchsafed to him by the Constitution and the laws; that determination in turn is to be made only by examining whether there is some evidence to support his conclusion that Padilla was, like the [World War II] German saboteurs in *Quirin*, engaged in a mission against the United States on behalf of an enemy with whom the United States is at war, and (ii) whether that evidence has not been entirely mooted by subsequent events.<sup>206</sup>

This “some evidence” standard Judge Mukasey refers to is lower than “probable cause” (*i.e.*, “more likely than not”), the normal burden in a *civil* lawsuit, and substantially less stringent than the “beyond a reasonable doubt” standard required in *criminal* cases.

Moreover, the invocation of *Quirin*<sup>207</sup> is misleading. *Quirin* was a World War II case in which the Supreme Court upheld the conviction by military commission of eight German soldiers (at least one, a U.S. citizen) who landed from submarines onto shore in New York and Florida, with the intent to commit sabotage in the United States. In *Quirin*, there was *no factual dispute whatsoever* regarding either the “combatant” status of the German defendants or their preparations to commit sabotage within the United States. By contrast, the central issue in the Padilla case is the factual determination of his “enemy combatant” status. Moreover, there was never a claim in the *Quirin* case that the defendants were not entitled to a trial, and the *Quirin* defendants were tried by a military commission. Yet in the Padilla case, the government argues that it has discretion to detain Padilla indefinitely without charge.

On February 7, 2003, at the court’s direction, Padilla’s lawyers filed a Memorandum of Law contesting the appropriateness of the “some evidence” standard.<sup>208</sup> The Memorandum highlights the fact that “[t]here has never been a case, in nearly a century of federal jurisdiction, in which the government has asked a court to find ‘some evidence’ based on a record in which the claimant had no right to participate.” The Memorandum urged the court to employ a standard of review requiring the government to demonstrate Padilla’s “enemy combatant” status by

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“clear and convincing evidence,” a standard somewhere between “probable cause” and “beyond a reasonable doubt.”<sup>209</sup>

## YASER HAMDI

Yaser Hamdi was among hundreds of men taken into U.S. custody in the course of the war in Afghanistan. He had been turned over to U.S. forces in Afghanistan after surrendering to Northern Alliance forces headed by warlord and alleged war criminal Abdul Rashid Dostum.<sup>210</sup> Once captured, he was transferred to the Guantanamo Naval Base. When U.S. authorities realized that Hamdi was a U.S. citizen, born in Louisiana, he was transferred to a U.S. military base in Virginia, where he continues to be held incommunicado. In April 2002, Hamdi was designated an “enemy combatant.”

In May 2002, a petition for habeas corpus was filed by a public defender, acting on Hamdi’s behalf. Federal District Court Judge Robert Doumar denied this petition on the grounds that the public defender had no standing to act on behalf of Hamdi. A second filing was made on June 11, 2002, on behalf of Hamdi’s father. This time the petition succeeded, and the court ordered the government to allow the public defender to meet with the detainee in private, as requested.

The government successfully appealed Judge Doumar’s order, and the Fourth Circuit Court of Appeals remanded the case to the District Court to reconsider whether it had jurisdiction to order a writ of habeas corpus on behalf of an “enemy combatant.” On July 25, 2002, the government filed a motion to dismiss the habeas petition. The administration argued that the court had very limited, if any, authority to review core military decisions, such as those involved in the apprehension and detention of “enemy combatants.”

On August 16, 2002, Judge Doumar issued an opinion rejecting the government’s arguments. He ordered the government to produce the underlying factual evidence supporting its determination that Hamdi was an “unlawful enemy combatant,” for the court’s *in camera* review. He also required the “screening criteria utilized to determine the status of Hamdi” and details of those who had made the determination.<sup>211</sup>

Judge Doumar criticized the adequacy of a two-page affidavit — the “Mobbs declaration” — that the government submitted to him to justify the designation of Hamdi as an “enemy combatant.” Declaring that he would not be a “rubber stamp” for the government, he ruled that the Mobbs declaration’s assertion that Hamdi was “affiliated with

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a Taliban military unit and received weapons training” did not suffice to justify Hamdi’s detention. Judge Doumar questioned the conclusory statements in the Mobbs declaration. He expressed concern that while the government asserted that Hamdi was:

“affiliated with a Taliban military unit and received weapons training”... [t]he declaration makes no effort to explain what “affiliated” means nor under what criteria this “affiliation” justified Hamdi’s classification as an enemy combatant. The declaration is silent as to what level of “affiliation” is necessary to warrant enemy combatant status....It does not say where or by whom he received weapons training or the nature and extent thereof. Indeed, a close inspection of the declaration reveals that [it] never claims that Hamdi was fighting for the Taliban. Without access to the screening criteria actually used by the government in its classification decision, this Court is unable to determine whether the government has paid adequate consideration to due process rights to which Hamdi is entitled under his present detention.<sup>212</sup>

On August 19, 2002, the government appealed the decision. On January 8, 2003, the Fourth Circuit Court of Appeals issued its judgment, vacating Judge Doumar’s decision and upholding the government’s position.<sup>213</sup> One important aspect of the court’s decision was its strong rejection of Judge Doumar’s view that the District Court had an obligation to test the legal adequacy of the government’s unsupported two-page declaration that Hamdi was “affiliated” with the Taliban. (By labeling Hamdi an “enemy combatant,” the government asserted that it has the authority to deny him the right as a U.S. citizen, to challenge the basis for his detention, with the assistance of counsel. Consistent with that position, the government has resisted his lawyers’ efforts to persuade the court to look into the circumstances of his capture.)

In its opinion,<sup>214</sup> the Fourth Circuit acknowledges the “Bill of Rights’ historic guarantees” and the recognition by “our forebears...that the power to detain could easily become destructive if exerted without check or control by an unrestrained executive free to imprison, dispatch, or exile any man that was obnoxious to the government, by an instant declaration that such is their will and pleasure” (internal quotes omitted).<sup>215</sup>

But in practice, the court rejects the need for any meaningful review of the basis of Hamdi’s continued detention. Indeed, the court goes even further than the administration’s own lawyers, who had conceded that in considering a habeas corpus petition on behalf of a citizen, a

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court was probably entitled to require the government to provide “some evidence” to support its conclusion that a detained citizen was an “enemy combatant.”<sup>216</sup>

Under the *Hamdi* ruling the government only has to show that the detainee was in the zone of combat. The Fourth Circuit holds that any U.S. citizen (and, of course, any other individual regardless of citizenship) who is “captured in a zone of active combat operations in a foreign country” loses standing to challenge the factual determinations underlying his seizure and purportedly justifying his continuing detention. Logically, however, even if Hamdi was detained near the battlefield, that fact alone does not prove that Hamdi was a combatant, let alone whether he was an unlawful enemy combatant. (The fact that Hamdi surrendered to General Dostum’s Northern Alliance forces, and was not captured in combat by U.S. forces, raises further questions about the facts of his case.) While the court expresses support for the principle that “[t]he detention of United States citizens must be subject to judicial review,” its view of the scope of that review is so constricted as to be practically meaningless.

In overturning Judge Doumar’s decision, the Fourth Circuit points to what it characterizes as the “signal flaw” in the District Court’s reasoning: “We are not here dealing with a defendant who has been indicted on criminal charges in the exercise of the executive’s law enforcement powers. We are dealing with the executive’s assertion of its power to detain under the war powers of Article II [of the Constitution].” The Fourth Circuit acknowledges that, “[a]s an American citizen, Hamdi would be entitled to the due process protections normally found in the criminal justice system, including the right to meet with counsel, if he had been charged with a crime.” But the court insists, “Hamdi has not been charged with any crime. He is being held as an enemy combatant pursuant to the well-established laws and customs of war.”

The court’s opinion relies in part on *Ex Parte Quirin*,<sup>217</sup> in which the Supreme Court

stated in no uncertain terms that detentions “ordered by the President in the declared exercise of his powers as Commander in Chief of the Army in time of war and of grave public danger” should not “be set aside by the courts without the clear conviction that they are in conflict with the Constitution or laws of Congress constitutionally enacted.”<sup>218</sup>

But in citing the *Quirin* decision, the Circuit Court omits the word “trial.” What the *Quirin* court affirmed was the “detention *and trial*” of

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the Nazi saboteurs (emphasis added). The detainees in *Quirin* were given a full military trial under then-applicable law.

In describing the facts of *Quirin*, the Circuit Court presents the FBI's version of the arrests of the saboteurs, as crack police work: "All of [the saboteurs] were apprehended by FBI agents, who subsequently learned of their mission to destroy war industries and facilities in the United States." Yet in the *Quirin* case there was no factual dispute about who the saboteurs were, what they had done, and what they had been planning, all of which were conceded by the defendants themselves. By contrast, in the *Hamdi* case, the right to a proceeding for the reliable determination of the facts is precisely what is at issue.

The court goes out of its way to reject the "sweeping proposition...that, with no meaningful judicial review, any American citizen alleged to be an enemy combatant could be detained indefinitely without charges or counsel on the government's say-so." However it then asserts that Hamdi is not just any American citizen, but rather "an American citizen captured and detained by American allied forces in a foreign theater of war during active hostilities and determined by the United States military to have been indeed allied with enemy forces."<sup>219</sup>

The court's analysis is based on the September 18, 2001 Congressional Resolution authorizing the President to use all necessary force against those he determines planned, authorized, committed or aided the September 11 attacks, or who harbored such organizations or persons. On this basis, the court finds the President has properly exercised his constitutional war powers, as Commander in Chief, and that "these powers include the authority to detain those captured in armed struggle."<sup>220</sup>

Though the government asserts that Hamdi has confirmed his belligerent activities under interrogation, Hamdi himself has not been allowed to provide his own story directly in any legal forum, and the lawyer representing Hamdi in the proceeding has never been allowed to speak with him.<sup>221</sup> If the government shows that Hamdi was physically in the war zone, the Fourth Circuit concluded, nothing more is required.

Because it is undisputed that Hamdi was captured in a zone of active combat in a foreign theater of conflict, we hold that the submitted declaration is a sufficient basis upon which to conclude that the Commander in Chief has constitutionally detained Hamdi pursuant to the war powers entrusted to him by the United States Constitution. No further factual inquiry is necessary or proper.<sup>222</sup>

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With an eye on the Padilla proceeding pending in New York, the Fourth Circuit does limit its reasoning in one respect:

Any broad or categorical holdings on enemy combatant designations would be especially inappropriate. We have no occasion, for example, to address the designation as an enemy combatant of an American citizen captured on American soil or the role that counsel might play in such a proceeding.<sup>223</sup>

Accordingly, the Court of Appeals stops short of expressly addressing questions as to the definition of the zone of combat operations, or the duration of the conflict. Yet it does comment: “The executive branch is...in the best position to appraise the status of a conflict, and the cessation of hostilities would seem no less a matter of political competence than the initiation of them.”<sup>224</sup>

In the war against terrorism, President Bush has stated that the enemy is global,<sup>225</sup> the entire world is the battlefield, and the war will continue until “international terrorism” has been defeated. Using this frame of reference, if the *Hamdi* decision stands, there will be little room for the courts to review the basis for detentions made pursuant to this universal and near permanent state of war. If the executive chooses to call someone an “enemy combatant,” the Fourth Circuit’s approach is that the courts should be “satisfied that the Constitution does not entitle him to a searching review of the factual determinations underlying his seizure....”<sup>226</sup>

Hamdi’s lawyer has said that he will seek review of this decision by the U.S. Supreme Court.<sup>227</sup>

## **ARRESTS AND TRIALS OF NON-CITIZENS WITHIN THE UNITED STATES**

### **ZACARIAS MOUSSAOUI**

Zacarias Moussaoui was arrested on August 16, 2001 in Minnesota. Instructors at a flying school he attended were suspicious of him because he paid for his \$8,000 flight classes in cash and expressed “unusual interest” in flying big airplanes and the fact that a plane’s doors could not be opened during flight. He was initially held on immigration charges, and was in INS custody on September 11, 2001. On December 11, 2001, Moussaoui was indicted in Virginia on charges of conspiracy related to the September 11 attacks. Moussaoui acknowledges being a disciple of Osama bin Laden and a member of al Qaeda, but he denies any involvement in the September 11 plot. He faces the death penalty, if convicted.

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Moussaoui has rejected court appointed lawyers and insisted upon representing himself. Some observers have complained of the circus-like atmosphere created by his demeanor and his use of the U.S. court system as a platform for inflammatory political statements. The case is being heard by District Court Judge Leonie Brinkema.

On January 30, 2003, Judge Brinkema ordered the government to give Moussaoui's lawyers access to alleged September 11 mastermind Ramzi bin al-Shibh. In the Moussaoui Indictment, bin al-Shibh, a Yemeni national and senior leader of al Qaeda, is named as an unindicted co-conspirator. In 1998 and 1999, bin al-Shibh allegedly lived in Hamburg, Germany with September 11 hijacker Mohammed Atta, and later spent time with Moussaoui in London. He is also alleged to have sent various amounts of money to Atta and others of the hijackers, as well as approximately \$14,000 to Moussaoui, shortly before Moussaoui registered for flight training in Minnesota.<sup>228</sup> Though bin al-Shibh was still at large when the indictment was issued, he was captured in Pakistan in September 2002. Because of the central role accorded bin al-Shibh in the prosecution's account of the September 11 conspiracy, testimony from bin al-Shibh could be key to inculpat-ing, or — as Moussaoui insists — exonerating Moussaoui from involvement in the plot. Bin al-Shibh has been held in an undisclosed location since his capture. According to press reports he has admitted to sending money to Moussaoui. But he also reportedly told CIA interrogators "that no one trusted the unhinged Moussaoui for such an important mission [as the September 11 attacks] and that Moussaoui was never made part of the 9/11 conspiracy."<sup>229</sup>

As with the "enemy combatant" cases, the government maintains that making bin al-Shibh available to attorneys working with Moussaoui, let alone putting him on the witness stand, would upset the delicate dynamics of bin al-Shibh's interrogation, and risk revealing sensitive confidential information at trial.<sup>230</sup>

The prosecution has appealed Judge Brinkema's Order to the Fourth Circuit Court of Appeals, and, on February 12, 2003, the court granted the prosecution's request that the trial proceedings be stayed until the appeal is decided.<sup>231</sup>

Recently some government officials have begun to signal that if this issue is not resolved in the government's favor, they might remove the case from the federal court and transfer it to a military commission. Under the rules of the proposed military commissions, Moussaoui's rights, among other things, to cross-examine witnesses, obtain access to "secret evidence," and to be tried in public could all be denied.

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There are now strong indications that if the Fourth Circuit upholds Judge Brinkema's Order, the government will pursue the military commission option.<sup>232</sup>

## RICHARD REID

On October 4, 2002, Richard Reid pleaded guilty in Federal District Court in Boston to all charges, including attempted murder and attempted use of a weapon of mass destruction. Reid had been arrested on December 22, 2001, after failing to ignite an explosive hidden in his shoe on a Miami-bound flight from Paris. In changing his previous not-guilty plea, he continued to boast of his allegiance to Osama bin Laden; and prosecutors stressed they had not entered into any agreements with Reid to induce the guilty plea.<sup>233</sup>

On January 30, 2003, Judge William G. Young sentenced Reid to life imprisonment. A defiant Reid "asserted his attempt to blow up a trans-Atlantic jetliner with explosives hidden in his shoes was the act of a soldier in a war against those who attack Islam." Judge Young responded: "You are not an enemy combatant — you are a terrorist." He added:

To give you that reference, to call you a soldier gives you far too much stature.... [W]e do not negotiate with terrorists. We hunt them down one by one and bring them to justice.<sup>234</sup>

Judge Young concluded that "all this war talk is way out of line" in a court of law.<sup>235</sup>

## THE GUANTANAMO DETAINEES

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

In late October 2002, the United States released four of the Guantanamo detainees, three Afghans and a Pakistani, explaining that the four no longer posed a threat to U.S. security. Though one of the men was 60 years old and two others upwards of 70 years old, the Defense Department insisted that "at the time of their detention, these enemy combatants posed a threat to U.S. security."<sup>236</sup>

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Within days of the October releases, 30 new detainees were shipped to Guantanamo, bringing the total at that time to 625. On February 7, 2003, approximately 25 additional men were brought to Guantanamo, raising the total to about 650.<sup>237</sup> Defense Department officials continue to say that many of the detainees held in Guantanamo can expect to be held there until the end of the war against terrorism, a war that shows no signs of ending. To date, there have been 20 suicide attempts by 16 detainees, mostly attempts to hang themselves with cloth. According to one prison mental health expert, these cases represent “an extraordinarily high number compared to other prison populations.”<sup>238</sup> The names of the detainees continue to be withheld, although the International Committee of the Red Cross (ICRC) has been allowed to visit detainees at Guantanamo and to communicate with families. Lawyers representing some of the detainees held at Guantanamo have filed habeas corpus petitions, asking U.S. courts to assert jurisdiction over their cases. At least two federal courts have ruled that they lack such jurisdiction.<sup>239</sup>

## THE RASUL AND ODAH CASES

On December 2, 2002, the U.S. Court of Appeals for the District of Columbia heard arguments from the government and attorneys representing the families of Australian, British, and Kuwaiti detainees on Guantanamo, who were apprehended in Afghanistan or Pakistan. The families maintain that the detainees were either innocent victims of bounty hunters or unfortunates mistakenly identified to U.S. forces as combatants. While conceding that the U.S. government was entitled to hold battlefield detainees in Guantanamo, the detainees’ lawyers insisted that there must be some kind of adjudicative proceeding, if not in a federal court, then at least in a “competent tribunal” as provided for in article 5 of the Third Geneva Convention.<sup>240</sup>

In cases brought by the families of Guantanamo detainees — *Odah, et al v. the United States* — the U.S. Court of Appeals for the District of Columbia held on March 11, 2003 that U.S. courts do not have jurisdiction to review the cases of those detained at the U.S. Naval Base in Guantanamo Bay, Cuba, because the U.S. base is outside the sovereign territory of the United States. The Court of Appeals decision upheld the earlier district court ruling.<sup>241</sup>

## THE ABASSI CASE

International concern about the indeterminate status of the detainees has continued to grow. A striking example of such concern was expressed in a November 6, 2002 British Court of Appeal opinion,

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*Abassi v. Secretary of State*, a case respecting a British detainee at Guantanamo, Feroz Abassi. Though the three-judge panel declined to grant Abassi's mother the remedy she sought — an order to the British Foreign and Commonwealth Office to intercede on behalf of her son — the court used exceptionally blunt language to express its frustration at the “legal black hole” Abassi was in. In its opinion, the court said:

What appears to us to be objectionable is that Mr. Abassi is subject to indefinite detention in territory over which the United States has exclusive control, with no opportunity to challenge the legitimacy of his detention before any court or tribunal....It may be that the anxiety we have expressed will be drawn to their attention.<sup>242</sup>

## **INTERROGATIONS AT GUANTANAMO**

There continues to be a debate about the treatment of the Guantanamo detainees. On October 9, 2002, the Pentagon removed the Guantanamo base commander, Brig. Gen. Rick Baccus. Neither Baccus nor the military would confirm press reports that Baccus was relieved of his command for “being too nice” to those in detention. But, according to press reports, Baccus had come under criticism for addressing the detainees with words such as “peace be with you,” and “may God be with you”; promising the prisoners they would be “treated humanely”; and authorizing placement in the camp of ICRC posters specifying certain rights that prisoners have under the Geneva Conventions.<sup>243</sup>

Some press reports also have speculated that most of the detainees in Guantanamo constitute neither significant intelligence sources nor material danger to the United States and its allies, one reason why the interrogations were producing so little intelligence information.<sup>244</sup>

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

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improperly placed on Guantanamo.” One officer summed up the problem: “No one wanted to be the guy who released the 21<sup>st</sup> hijacker.”<sup>245</sup>

## ALLEGATIONS OF MISTREATMENT BY U.S. INTERROGATORS

U.S. military and intelligence services also continue to carry out interrogations outside of Guantanamo, including at the U.S. base at Bagram, Afghanistan, where, according to news sources, “[i]nterrogators...are sometimes able to use more aggressive and creative tactics in questioning detainees than their counterparts at Guantanamo Bay can employ.”<sup>246</sup>

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

In contrast to the detention center at Guantanamo Bay, where military lawyers, news reporters and the Red Cross received occasional access to monitor prisoner conditions and treatment, the CIA’s overseas interrogation facilities are off-limits to outsiders, and often even to other government agencies. In addition to Bagram [Afghanistan] and Diego Garcia [an Indian Ocean island leased by the United States from Britain], the CIA has other secret detention centers overseas, and often uses the facilities of foreign intelligence services. Free from the scrutiny of military lawyers steeped in the international laws of war, the CIA and its intelligence service allies have the leeway to exert physically and psychologically aggressive techniques, said national security officials and U.S. and European intelligence officers.<sup>247</sup>

“Stress and duress” techniques reportedly described by U.S. national security officers include keeping prisoners standing or kneeling for hours in black hoods; binding them in awkward, painful positions; depriving them of sleep with 24-hour lights; subjecting them to loud noises; “softening up” by beating; throwing them blindfolded into walls; and depriving wounded prisoners of adequate pain control medicines.<sup>248</sup> These are practices the United States has regularly condemned when carried out by other governments, particularly if they have been continued for lengthy periods of time and/or combined with other abuses.<sup>249</sup>

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Following the capture in Pakistan of alleged senior al Qaeda operations planner Khalid Shaikh Mohammed, at the end of February 2003, reporters asked White House spokesman Ari Fleischer about U.S. interrogation practices. He insisted that U.S. interrogations have been and would continue to be “humane and to follow all international laws and accords dealing with this type of subject.” Yet other unnamed U.S. officials have told reporters that “[t]here are a lot of ways short of torturing someone to get information from a subject,” and that they “expected the Central Intelligence Agency to use every means at its disposal short of what it considers outright torture, to try to crack [Mohammed].”<sup>250</sup> U.S. officials told the *New York Times* that purportedly lawful techniques used in the past have included “depriv[ing] suspects of sleep and light, ke[eping] them in awkward physical positions for hours and us[ing] psychological intimidation or deception to confuse and disorient them.”<sup>251</sup>

One U.S. law-enforcement official reportedly explained his understanding that as long as the pain and suffering are not “severe,” it is permissible to use physical force and to cause “discomfort.”<sup>252</sup>

The U.S. interrogation center at Bagram has come under increasing scrutiny. Military authorities are reportedly conducting a criminal investigation into the December 2002 deaths, in Bagram, of two Afghan detainees, deaths officially reported by a military pathologist as “homicide[s],” resulting in part from “blunt force trauma.”<sup>253</sup>

Lt. Gen. Daniel K. McNeill, the U.S. commander of the coalition forces in Afghanistan, acknowledged that prisoners at Bagram were being made to stand for long periods, though he denied accusations that prisoners had been chained to the ceiling or held in chains attached to the ceiling, and he insisted that prisoners are being properly treated in the center.<sup>254</sup>

In a related development, recent news reports also suggest that a number of detainees have been “rendered” — or transported for questioning — to foreign intelligence services, in countries where torture and other mistreatment are common police practices. One U.S. official explained to a reporter, “We don’t kick the [expletive] out of them. We send them to other countries so *they* can kick the [expletive] out of them.”<sup>255</sup> Favored destinations include Jordan, Egypt and Morocco.<sup>256</sup> In at least one case, U.S. operatives managed the apprehension and transfer of a German citizen al Qaeda suspect to Syria (where he had been born), provoking strong protest from Germany.<sup>257</sup>

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While “U.S. officials deny that they condone torture by allies in the campaign against terrorism,”<sup>258</sup> the Pentagon has refused either to confirm or deny that any “renderings” from Guantanamo have occurred. On February 6, 2003, however, *Newsday* reported claims by Vincent Cannistraro, “former director of the CIA’s counterterrorism center,” that intelligence regarding possible links between Saddam Hussein and Islamic terrorism had been obtained “from a senior al-Qaida detainee who had been held in the U.S. base at Guantanamo, Cuba, and was ‘rendered’ to Egypt after refusing to cooperate. ‘They promptly tore his fingernails out and he started to tell things,’ [Cannistraro] said.”<sup>259</sup>

## **U.S. LAW PROHIBITS TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Any practice of torture or other cruel, inhuman or degrading treatment or punishment by United States officials violates international human rights standards to which the United States is a party. These include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention), and the International Covenant on Civil and Political Rights.<sup>260</sup>

The use of torture also violates U.S. law. In 1994, Congress passed a new federal law which specifically provides for penalties including fines and up to 20 years’ imprisonment for acts of torture committed by American or other officials outside the United States. In cases where torture results in death of the victim, the sentence is life imprisonment or execution.<sup>261</sup>

“Renderings” to countries known to engage in routine torture violate article 3 of the Torture Convention, which prohibits sending an individual to another state where there are “substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>262</sup> Such transfers, and even credible threats of such transfers, made to combatants detained in an armed conflict also violate article 17 of the Third Geneva Convention, which provides that “[n]o physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be *threatened*, insulted, or exposed to unpleasant or disadvantageous treatment of any kind” (emphasis added). Indeed, if committed against persons protected by the Geneva Conventions, “torture or inhuman treatment...[or] willfully causing great suffering or serious injury to body or health,” would all constitute “grave breaches” under the Geneva Conventions.<sup>263</sup>

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Even if the practices alleged in the recent press reports do not constitute “torture,” article 16 of the Torture Convention obliges states not to commit “*other* acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture” (emphasis added).<sup>264</sup>

When the U.S. Senate ratified this treaty, it construed this language as being consistent with U.S. domestic legal principles.<sup>265</sup> This important international standard has been carefully interpreted by courts for the last 25 years.

In an important decision, *Judgment Concerning the Interrogation Methods Implied [sic] by the General Security Services*,<sup>266</sup> in 1999, the Supreme Court of Israel ruled that even in the face of the “harsh reality” of continual terror unleashed against Israeli civilians, torture or cruel and inhuman treatment have no place in a democratic state, and must be prohibited. In a rigorous examination of the physically coercive interrogation practices employed by the Israeli General Security Services (GSS), the court insisted that two general principles must at all times be respected. These are:

First, a reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever....These prohibitions are ‘absolute.’ There are no exceptions to them and there is no room for balancing. Indeed, violence directed at a suspect’s body or spirit does not constitute a reasonable investigation practice.....

Second, a reasonable investigation is likely to cause discomfort. It may result in insufficient sleep. The conditions under which it is conducted risk being unpleasant. Indeed, it is possible to conduct an effective investigation without resorting to violence. Within the confines of the law, it is permitted to resort to various machinations and specific sophisticated activities which serve investigations today....In the end result, the legality of an investigation is deduced from the propriety of its purpose and from its methods. Thus, for instance, sleep deprivation for a prolonged period, or sleep deprivation at night when this is not necessary to the investigation time wise may be deemed a use of an investigation method which surpasses the least restrictive means.<sup>267</sup>

With these principles as a guide, the Israeli Supreme Court found a number of interrogation techniques to be absolutely forbidden under international and Israeli law, including: cuffing,<sup>268</sup> hooding,<sup>269</sup> loud music,<sup>270</sup> deprivation of sleep,<sup>271</sup> and position abuse.<sup>272</sup>

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The Israeli Supreme Court also emphasized that the effect of these individual treatments is enhanced when they are used together. When an interrogation position “includes all the outlined methods employed simultaneously....[t]heir combination, in and of itself gives rise to particular pain and suffering....particularly when it is employed for a prolonged period of time.”<sup>273</sup>

In 1978, the European Court of Human Rights dealt with a similar though not identical combination of interrogation methods, in that case examining the United Kingdom’s counter-terrorism efforts against the IRA. The five methods dealt with in *Ireland v. United Kingdom* were: protracted standing against the wall on the tip of one’s toes; covering the suspect’s head throughout the detention (except during the actual interrogation); exposing the suspect to powerfully loud noise for a prolonged period, and deprivation of sleep, and of food and drink.<sup>274</sup>

In *Ireland v. United Kingdom*, the European Court of Human Rights found that the combination of these five techniques

applied...for hours at a stretch...caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation....The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

Accordingly, the court held this conduct to be absolutely prohibited.<sup>275</sup>

A range of factors come into play in establishing whether a victim’s “pain or suffering” is so “severe” as to constitute “torture,” as distinct from other prohibited ill-treatment under the Torture Convention. As the European Court of Human Rights explained in 1999 in the case of *Selmouni v. France*, determining whether the treatment in a particular case constituted “torture” is “in the nature of things relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.”<sup>276</sup>

Recent European Court of Human Rights cases have stressed the fact that:

[T]he [European Convention on Human Rights] is a living instrument which must be interpreted in the light of present-day conditions....and that certain acts which were classified in the

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past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in the future....[T]he increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.<sup>277</sup>

Courts that have been required to gauge the proper balance between the rights and dignity of the individual and the security of the nation have been highly sensitive to the dangers posed to civilized society by organized terrorist groups. As Israeli Supreme Court President Aharon Barak concluded in the *Judgment Concerning the Interrogation Methods Implied* [sic] *by the GSS*:

This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual’s liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and its strength and allow it to overcome its difficulties.<sup>278</sup>

The United States has played a leading role in making torture a crime punishable under universal jurisdiction, beginning with the Nuremberg trials. President Bush’s statement in his 2002 State of the Union Address, that “America will always stand firm for the non-negotiable demands of human dignity,” was consistent with this tradition of support for the highest international standards.

Today the universal standards the United States helped establish are at risk. When U.S. officials themselves boast that U.S. forces are using “stress and duress” interrogation techniques, this sends a message that human rights standards are flexible. An open door to physical and psychological mistreatment of those being questioned also can have a corrosive effect on the United States’ military and police institutions, its judiciary, and the integrity of its political process. It can devastate its claim to moral authority at home and abroad. Equally, it can set in motion a reversal of progress in halting torture and cruel, inhuman and degrading treatment of detainees around the world.

It is imperative now for senior U.S. officials to reaffirm the absolute prohibition of torture and other cruel, inhuman or degrading treatment everywhere. In cases where there are allegations of improper interrogation practices by U.S. forces, including recent reports of deaths in

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custody, U.S. authorities must ensure prompt, thorough investigations leading to criminal prosecutions in cases where violations are discovered.

## THE MILITARY COMMISSIONS

In a November 13, 2001 Military Order, President Bush authorized the trial of suspected (non-citizen) terrorists for “violations of the laws of war and other applicable laws” in military commissions, special tribunals that would side-step due process guarantees provided in the civilian courts as well as those of the United States military court system.<sup>279</sup> The Order set out basic principles for these tribunals and requires the Secretary of Defense to develop the norms, regulations, and procedures under which they would operate — as well as appointing the officers to sit on them.

In issuing the order, President Bush cited his proclamation of a national emergency on September 14, 2001, as well as the war powers accorded him by Congress after the attacks.<sup>280</sup> The special tribunals were said to be required to meet the demands of the emergency situation, although no provision was made for them to lapse at the conclusion of the emergency:

I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.<sup>281</sup>

The new military commissions have yet to be convened. In February 2003, press reports indicated that the Defense Department was “working on final preparations for a system of military tribunals to prosecute suspected terrorists”; and that Defense Department lawyers had fought to limit their scope to war crimes.<sup>282</sup> At the end of February, an undated, 19-page Department of Defense draft was made available, entitled Military Commission Instruction, Subject: Crimes and Elements for Trials by Military Commission.<sup>283</sup> The draft sets out crimes punishable under the laws and customs of war (war crimes), as well as crimes including Hijacking or Hazarding a Vessel or Aircraft, Terrorism, Murder by an Unprivileged Belligerent, Destruction of Property by an Unprivileged Belligerent, Spying, Perjury or False Testimony, and Obstruction of Justice Related to Military Commissions. The Department of Defense was allowing an unspecified but brief period for informal comments by the public, and reportedly intending to finalize and publish the instructions for the military commissions in March.

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## RECOMMENDATIONS

1. The administration should allow José Padilla and Yaser Hamdi access to legal counsel. These two U.S. citizens are now being held in military detention as “enemy combatants.”
2. The Department of Justice should work with the federal court in the case of Zacarias Moussaoui to develop appropriate procedures for reviewing relevant evidence, consistent with national security concerns.
3. With respect to those being held at Guantanamo, the administration has an affirmative obligation to develop and state publicly: 1) its criteria for holding such people in detention; and 2) a decision-making process and criteria for returning the detainees to their home countries. Many of these people have been held for a year or more. The U.S. government’s position that the detainees are “enemy combatants,” and that they may be held until the global war against terrorism is concluded, is untenable.
4. U.S. law prohibits U.S. military and law enforcement agents from resorting to physical or psychological mistreatment of detainees, even those held outside the United States. Senior administration officials should condemn such conduct unequivocally and make clear that violators will be punished.
5. The Department of Defense has commenced investigation of the December 2002 deaths of Mullah Habibullah and a man known by the single name Dilawar, two detainees held at the U.S. military base in Bagram, Afghanistan. If the investigation concludes that actions by U.S. agents contributed to their deaths, the responsible individuals should be prosecuted.

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# Endnotes

<sup>1</sup> *A Year of Loss: Reexamining Civil Liberties since September 11* is available at: [http://www.lchr.org/us\\_law/loss/loss\\_main.htm](http://www.lchr.org/us_law/loss/loss_main.htm).

<sup>2</sup> John Adams, *A Dissertation on the Canon and Feudal Law* (1765), reprinted in 1 *Papers of John Adams* 120 (M.J. Kine ed., 1977).

<sup>3</sup> 5 U.S.C. §552 (1966).

<sup>4</sup> 5 U.S.C. Appendix 2.

<sup>5</sup> See Attorney General John Ashcroft, "Memorandum for Heads of All Federal Departments and Agencies," October 12, 2001, available at <http://www.doi.gov/foia/foia.pdf> (accessed March 2, 2003).

<sup>6</sup> See Attorney General Janet Reno, "Attorney General Reno's FOIA Memoranda," October 4, 1993, available at [http://www.usdoj.gov/oip/foia\\_updates/Vol\\_XIV\\_3/page3.htm](http://www.usdoj.gov/oip/foia_updates/Vol_XIV_3/page3.htm) (accessed March 2, 2003).

<sup>7</sup> See Adam Clymer, "Government Openness at Issue as Bush Holds on to Records," *New York Times*, January 3, 2003.

<sup>8</sup> See The Homeland Security Act of 2002, available at <http://news.findlaw.com/wp/docs/terrorism/hsa2002.pdf> (accessed March 2, 2003).

<sup>9</sup> See *ibid.*, at § 212(3).

<sup>10</sup> See "The Clinton Administration's Policy on Critical Infrastructure Protection: Presidential Decision Directive 63," available at <http://www.epic.org/reports/epic-cip.html> (accessed February 2, 2003).

<sup>11</sup> See Dan Caterinicchia, "Sharing Seen as Critical for Security," *Federal Computer Week*, May 9, 2002.

<sup>12</sup> See, e.g., "Protecting the Homeland by Exemption: Why the Critical Infrastructure Information Act of 2002 Will Degrade the Freedom of Information Act," 2002 *Duke Law and Technology Review* 0018, September 20, 2002, available at <http://www.law.duke.edu/journals/dltr/articles/2002dltr0018.html> (accessed March 2, 2003).

<sup>13</sup> See 5 U.S.C. § 552(b)(4).

<sup>14</sup> See 5 U.S.C. § 552(b)(1)(A).

<sup>15</sup> See 5 U.S.C. § 552(b)(7).

<sup>16</sup> H.R. Rep. No. 107-609, p. 220 (2002).

<sup>17</sup> *Ibid.*

<sup>18</sup> See "Editorial: Secrecy Isn't Security," *Denver Post*, November 3, 2002.

<sup>19</sup> Senator Carl Levin, "Statement of Senator Carl Levin (D-Mich.) on Confirming Governor Ridge as Department of Homeland Security Secretary," January 22, 2003, available at <http://levin.senate.gov/floor/012203fs1.htm> (accessed March 3, 2003).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*; Homeland Security Act of 2002, § 214(f).

<sup>22</sup> Homeland Security Act of 2002, § 214(a)(1)(C).

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- <sup>23</sup> See Center for Democracy and Technology, “Coalition Letter Opposing Bennett-Kyl Legislation (S. 1456) Creating FOIA Exemption for Information on Critical Infrastructure Security,” May 7, 2002, available at <http://www.cdt.org/security/critinfra/020507coalition.shtml> (accessed March 3, 2003); Matt Bivens, “Holes in the Homeland Security Act,” *Nation*, December 19, 2002, available at <http://www.thenation.com/failsafe/index.mhtml?bid=2&pid=229> (accessed March 3, 2003).
- <sup>24</sup> See “Too Many Secrets,” *Orlando Sentinel Tribune*, January 10, 2003; David Banisar, “Reject the Corporate Secrecy Grab: Industry’s Push for New Exemptions from the Freedom of Information Act is Unnecessary and Dangerous,” *Security Focus*, January 28, 2002, available at <http://online.securityfocus.com/columnists/56> (accessed February 5, 2003).
- <sup>25</sup> See Reporters Committee for the Freedom of the Press, “Committee Warns of Severe Restrictions in Homeland Security Bill,” November 19, 2002.
- <sup>26</sup> See “Homeland Insecurity: Excessive Secrecy Protects No-one,” *Columbia Journalism Review*, January/ February 2003.
- <sup>27</sup> See The Homeland Security Act of 2002, § 871.
- <sup>28</sup> See 5 U.S.C. App. 2 (1972).
- <sup>29</sup> See H.R. Rep. No. 107-609, p. 221 (2002).
- <sup>30</sup> See *Ibid.* (Noting that many agencies with homeland security missions, such as the DOJ and the FBI, operate under FACA without difficulty).
- <sup>31</sup> See John W. Dean, “GAO v. Cheney Is Big Time Stalling: The Vice President Can Win Only If We Have Another *Bush v. Gore*-like Ruling,” Part II, *FindLaw’s Legal Commentary*, February 1, 2002, available at <http://writ.news.findlaw.com/dean/20020201.html> (accessed March 2, 2003).
- <sup>32</sup> See Dana Milbank and Ellen Nakashima, “Cheney Rebuffs GAO’s Records Request,” *Washington Post*, August 4, 2001.
- <sup>33</sup> See Byron York, “GAO vs. Cheney: Coming Soon,” *National Review*, February 20, 2002, available at <http://www.nationalreview.com/york/york022002.shtml> (accessed February 2, 2003).
- <sup>34</sup> See Paul Courson, “GAO Files Unprecedented Suit Against Cheney,” *CNN News*, February 22, 2002.
- <sup>35</sup> See Dana Milbank and Ellen Nakashima, “Cheney Rebuffs GAO’s Records Request,” *Washington Post*, August 4, 2001.
- <sup>36</sup> See Marcia Coyle, “GAO is Hit with Setback to Power,” *National Law Journal*, December 16, 2002.
- <sup>37</sup> See Stuart Taylor, Jr., “A Victory Gone Too Far,” *Legal Times*, December 16, 2002.
- <sup>38</sup> General Accounting Office, “GAO Statement Concerning Litigation,” February 22, 2002, available at <http://www.gao.gov/press/gaostatement0222.pdf> (accessed March 2, 2003).
- <sup>39</sup> See “Biography of Judge John D. Bates,” available at <http://www.dcd.uscourts.gov/bates-bio.html> (accessed March 2, 2003).
- <sup>40</sup> See *Walker v. Cheney*, Civil Action No. 02-0340 (JDB), U.S. District Court for the District of Columbia, available at <http://www.dcd.uscourts.gov/02-340.pdf> (accessed March 2, 2003).
- <sup>41</sup> See Stuart Taylor, Jr., “A Victory Gone Too Far,” *Legal Times*, December 16, 2002.
- <sup>42</sup> See Dana Milbank, “GAO Backs Off Cheney Lawsuit,” *Washington Post*, February 7, 2003.

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<sup>43</sup> See United States General Accounting Office, “GAO Press Statement on Walker v. Cheney,” February 7, 2003, available at <http://www.gao.gov/press/w020703.pdf> (accessed March 2, 2003).

<sup>44</sup> *Ibid.*

<sup>45</sup> See “President Signs Anti-Terrorism Bill,” White House Press Release, October 26, 2002, available at <http://www.whitehouse.gov/news/releases/2001/10/20011026-5.html> (accessed March 2, 2003).

<sup>46</sup> See Lawyers Committee for Human Rights, *A Year of Loss: Re-examining Civil Liberties since September 11*, pp.7-8, available at [http://www.lchr.org/us\\_law/loss/loss\\_main.htm](http://www.lchr.org/us_law/loss/loss_main.htm) (accessed March 2, 2003).

<sup>47</sup> *Ibid.*

<sup>48</sup> See Steve Schultze, “Sensenbrenner Wants Answers on Act,” *Journal Sentinel*, August 19, 2002; “Justice: From the Ashes of 9/11: Big Bad John,” *National Journal*, January 25, 2003.

<sup>49</sup> Letter of Daniel J. Bryant, Assistant Attorney General, to the Honorable F. James Sensenbrenner, Jr., July 26, 2002, enclosing “Questions Submitted by the House Judiciary Committee to the Attorney General on USA PATRIOT Act Implementation,” available on <http://www.house.gov/judiciary/patriotresponses101702.pdf> (accessed February 20, 2003).

<sup>50</sup> Senators Patrick Leahy, Charles Grassley, and Arlen Specter, “Interim Report: FBI Oversight in the 107<sup>th</sup> Congress by the Senate Judiciary Committee: FISA Implementation Failures,” p. 13, February 2003, available at <http://specter.senate.gov/files/specterspeaks/ACF6.pdf> (accessed March 5, 2003).

<sup>51</sup> *Ibid.*

<sup>52</sup> See “ACLU Seeks Information on Government’s Use of Vast New Surveillance Powers,” August 21, 2002, available at [http://archive.aclu.org/issues/privacy/USAPA\\_feature.html](http://archive.aclu.org/issues/privacy/USAPA_feature.html) (accessed March 2, 2003).

<sup>53</sup> See ACLU, “ACLU Presses for Full Disclosure on Government’s New Snoop Powers,” January 17, 2003, available at <http://www.aclu.org/NationalSecurity/NationalSecuritylist.cfm?c=107> (accessed March 2, 2003).

<sup>54</sup> See “Groups Hit DOJ’s Data on Wiretap FOIA Request as ‘Meaningless,’” *Washington Internet Daily*, January 21, 2003.

<sup>55</sup> Letter to David M. Walker, Comptroller General of the U.S., U.S. General Accounting Office, from U.S. House Representative John Conyers, Jr. and U.S. Senator Russell D. Feingold, dated January 28, 2002, available at [http://www.house.gov/judiciary\\_democrats/gaoantiterrorltr12802.pdf](http://www.house.gov/judiciary_democrats/gaoantiterrorltr12802.pdf) (accessed December 10, 2002).

<sup>56</sup> See Draft Domestic Security Enhancement Act of 2003, January 9, 2003, available at [http://www.publicintegrity.org/dtaweb/downloads/Story\\_01\\_020703\\_Doc\\_1.pdf](http://www.publicintegrity.org/dtaweb/downloads/Story_01_020703_Doc_1.pdf) (accessed March 2, 2003).

<sup>57</sup> See Jake Tapper, “More Secret Arrests, More Power to Spy,” *Salon*, February 11, 2003.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> See, e.g., *Ibid.*; Jack Balkin, “A Dreadful Act II: Secret Proposals in Ashcroft’s Anti-Terror War Strike Yet Another Blow at Fundamental Rights,” *Los Angeles Times*, February 13, 2003.

<sup>62</sup> Jesse H. Holland, “Ashcroft, Mueller, Ridge Talk to Senate Committee about Terrorism Battle,” Associated Press, March 4, 2003.

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<sup>63</sup> *Ibid.*

<sup>64</sup> U.S. Supreme Court, *Afroyim v. Rusk*, 387 U.S. 253 (1967), BLACK, J., Opinion of the Court.

<sup>65</sup> Senate Judiciary Committee, Hearing on the War against Terrorism, March 4, 2003, testimony of U.S. Attorney General John Ashcroft, Homeland Security Secretary Tom Ridge, and Federal Bureau Of Investigation Director Robert Mueller, Federal News Service, March 4, 2003.

<sup>66</sup> Under current law, it is up to the judge to determine how much of the government's application to consider *in camera* and *ex parte*. See Timothy Edgar, "Interested Persons Memo: Section-by-Section Analysis of Justice Department draft 'Domestic Security Enhancement Act of 2003,' February 14, 2003, p. 10, available at <http://www.aclu.org/news/NewsPrint.cfm?ID=11835&c=206> (accessed March 10, 2003).

<sup>67</sup> *Ibid.* Rule 6(e) of the Federal Rules of Criminal Procedure requires attorneys and grand jurors to refrain from publicly commenting on "matters occurring before the grand jury." The current rule does not apply to grand jury witnesses.

<sup>68</sup> See Chuck Grassley, "Grassley Seeks Whistleblower Protections for New Federal Employees Senator Says Public Safety and Security at Stake," Press Release, June 26, 2002, available at <http://www.senate.gov/~grassley/releases/2002/p02r6-26b.htm> (accessed January 19, 2003).

<sup>69</sup> *Ibid.*

<sup>70</sup> Senators Patrick Leahy, Charles Grassley, and Arlen Specter, "Interim Report: FBI Oversight in the 107<sup>th</sup> Congress by the Senate Judiciary Committee: FISA Implementation Failures," pp. 5-6, February 2003, available at <http://specter.senate.gov/files/specterspeaks/ACF6.pdf> (accessed March 5, 2003).

<sup>71</sup> *Ibid.*, p. 32.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, p. 1.

<sup>74</sup> *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976).

<sup>75</sup> *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J. dissenting).

<sup>76</sup> John Ashcroft, "Welcoming Big Brother," *Washington Times*, August 12, 1997. Mr. Ashcroft wrote this op-ed as a U.S. senator, in response to a request by the Clinton administration for increased authority to survey high-tech communications.

<sup>77</sup> Electronic Privacy Information Center, EPIC Briefing on Total Information Awareness, available at [http://www.epic.org/events/tia\\_briefing/](http://www.epic.org/events/tia_briefing/) (accessed December 9, 2002).

<sup>78</sup> The American Library Association puts this simply on its website: "Libraries or librarians served with a search warrant issued under FISA rules may not disclose, under of penalty of law, the existence of the warrant or the fact that records were produced as a result of the warrant. A patron cannot be told that his or her records were given to the FBI or that he or she is the subject of an FBI investigation." Available at <http://www.ala.org/alaorg/oif/usapatriotlibrary.html> (accessed February 20, 2003).

<sup>79</sup> "Questions Submitted by the House Judiciary Committee to the Attorney General on USA PATRIOT Act Implementation," submitted with letter of Daniel J. Bryant, Assistant Attorney General, to the Honorable F. James Sensenbrenner, Jr., July 26, 2002, question 12, available at <http://www.house.gov/judiciary/patriotresponses101702.pdf> (accessed February 20, 2003).

<sup>80</sup> Dana Hull, "Libraries Face Privacy Test," *Mercury News*, October 18, 2002; Eleanor J. Bader, "Thought Police: Big Brother May be Watching What You Read," *In These Times*, October 25, 2002.

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<sup>81</sup> Special Libraries Association, Press Release, January 9, 2003, "Report on the USA Patriot Act Videoconference," available at <http://www.sla.org/content/memberservice/communication/pr/presrelease/2303.cfm> (accessed February 20, 2003).

<sup>82</sup> American Booksellers Federation for Free Expression, "ABFFE Sues Justice Department for Data on Patriot Act Subpoenas," available on <http://www.abffe.com/>. The full text of the lawsuit is available at [http://www.epic.org/privacy/terrorism/patriot\\_foia\\_complaint.pdf](http://www.epic.org/privacy/terrorism/patriot_foia_complaint.pdf) (accessed February 24, 2003). The American Civil Liberties Union (ACLU) and the Electronic Privacy Information Center (EPIC) were also parties to the suit.

<sup>83</sup> "We're just a small business trying to make a living, and I do not relish the idea of standing up against the F.B.I.," said Ken Kurtis, one of the owners of Reef Seekers. "But I think somebody's got to do it." Michael Moss and Ford Fessenden, "New Tools for Domestic Spying, and Qualms," *New York Times*, December 10, 2002.

<sup>84</sup> *Ibid.*

<sup>85</sup> See 50 U.S.C. § 1801-1811, 1821-1829, 1841-1846, 1861-62.

<sup>86</sup> See, e.g., Senators Patrick Leahy, Charles Grassley, and Arlen Specter, "Interim Report: FBI Oversight in the 107<sup>th</sup> Congress by the Senate Judiciary Committee: FISA Implementation Failures," p. 5, February 2003, available at <http://specter.senate.gov/files/specterspeaks/ACF6.pdf> (accessed March 5, 2003).

<sup>87</sup> In determining whether there is probable cause to issue a traditional criminal warrant, the issuing judge makes "a practical common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

<sup>88</sup> See *In Re All Matters Submitted to the Foreign Intelligence Surveillance Court*, U.S. Foreign Intelligence Surveillance Court, May 17, 2002, p. 5, available at <http://www.fas.org/irp/agency/doj/fisa/fisc051702.html> (accessed March 4, 2003).

<sup>89</sup> See *In Re Sealed Case No. 02-001*, U.S. Foreign Intelligence Surveillance Court of Review, November 18, 2002, p. 34, available at <http://www.cadc.uscourts.gov/common/newsroom/02-001.pdf>. See also David Cole, "Secret Court Takes the Fourth," *CounterPunch*, November 22, 2002 (noting that FISA does not require probable cause of a crime), available at <http://www.counterpunch.org/cole1122.html> (accessed March 5, 2003).

<sup>90</sup> Anita Ramasastry, "The Foreign Intelligence Surveillance Court of Review Creates a Potential End Run Around Traditional Fourth Amendment Protections for Certain Criminal Law Enforcement Wiretaps," *FindLaw Legal Commentary*, November 26, 2002, available at <http://writ.news.findlaw.com/ramasastry/20021126.html> (accessed March 5, 2003).

<sup>91</sup> For a discussion of the FBI's powers under FISA, see *In Re All Matters Submitted to the Foreign Intelligence Surveillance Court*, U.S. Foreign Intelligence Surveillance Court, May 17, 2002, pp. 5-6.

<sup>92</sup> *Ibid.*, p. 9.

<sup>93</sup> See, e.g., Anita Ramasastry, "Why the Foreign Intelligence Surveillance Act Court Was Correct to Rebuke the Department of Justice," *FindLaw Legal Commentary*, September 4, 2002, available at <http://writ.news.findlaw.com/ramasastry/20020904.html> (accessed March 3, 2003).

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<sup>94</sup> See *In Re All Matters Submitted to the Foreign Intelligence Surveillance Court*, U.S. Foreign Intelligence Surveillance Court, May 17, 2002.

<sup>95</sup> Section 208 of the USA Patriot Act called for the appointment of 11 federal judges to the Foreign Intelligence Surveillance Court. At the time the decision was issued, however, only seven federal judges sat on the court: (1) Honorable Royce C. Lamberth; (2) Honorable William H. Stafford, Jr.; (3) Honorable Stanley S. Brotman; (4) Honorable Harold A. Baker; (5) Honorable Michael J. Davis; (6) Honorable Claude M. Hilton; and (7) Honorable Nathaniel M. Gorton.

<sup>96</sup> See *In Re All Matters Submitted to the Foreign Intelligence Surveillance Court*, U.S. Foreign Intelligence Surveillance Court, May 17, 2002, p. 14.

<sup>97</sup> The judges on the Foreign Intelligence Surveillance Court of Review are: (1) Honorable Ralph Guy; (2) Honorable Edward Leavy; and (3) Honorable Laurence Silberman.

<sup>98</sup> See David Cole, "Secret Court Takes the Fourth," November 22, 2002, available at <http://www.counterpunch.org/cole1122.html> (accessed March 4, 2003).

<sup>99</sup> See *In Re Sealed Case No. 02-001*, U.S. Foreign Intelligence Surveillance Court of Review, November 18, 2002, available at <http://www.cadc.uscourts.gov/common/newsroom/02-001.pdf> (accessed March 5, 2003).

<sup>100</sup> See *Ibid.*, pp. 24-27.

<sup>101</sup> See *Ibid.*, pp. 28-30.

<sup>102</sup> See, e.g., Ramasastry, "The Foreign Intelligence Surveillance Court of Review," *FindLaw Legal Commentary*, November 26, 2002, (explaining that criminal law enforcement can now "legally direct, or at least heavily influence, FBI investigations related to foreign intelligence").

<sup>103</sup> See *In Re Sealed Case No. 02-001*, U.S. Foreign Intelligence Surveillance Court of Review., pp. 29-30.

<sup>104</sup> *Ibid.*, p. 30. See also Charles Lane, "In Terror War, 2nd Track for Suspects," *Washington Post*, December 1, 2002.

<sup>105</sup> See *In Re Sealed Case No. 02-001*, U.S. Foreign Intelligence Surveillance Court of Review., pp. 28-30.

<sup>106</sup> See Draft Domestic Security Enhancement Act of 2003, January 9, 2003, available at [http://www.pulicintegrity.org/dtaweb/downloads/Story\\_01\\_020703\\_Doc\\_1.pdf](http://www.pulicintegrity.org/dtaweb/downloads/Story_01_020703_Doc_1.pdf) (accessed March 5, 2003).

<sup>107</sup> See, e.g., Timothy Edgar, "Interested Persons Memo: Section-by-Section Analysis of Justice Department draft 'Domestic Security Enhancement Act of 2003,' February 14, 2003, p. 4, available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11835&c=206> (accessed March 5, 2003).

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> Human Rights Watch Press Release, "U.S. Homeland Security Bill, Civil Rights Vulnerable and Immigrant Children Not Protected," November 21, 2002, available at <http://www.hrw.org/press/2002/11/homeland1211.htm> (accessed December 10, 2002).

<sup>111</sup> Electronic Privacy Information Center, Total Information Awareness (TIA), available at <http://www.epic.org/privacy/profiling/tia/> (accessed December 3, 2002).

<sup>112</sup> Electronic Privacy Information Center, EPIC Briefing on Total Information Awareness, available at [http://www.epic.org/events/tia\\_briefing/](http://www.epic.org/events/tia_briefing/) (accessed December 9, 2002).

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- <sup>113</sup> Declan McCullagh, Federal Database Spy Site Slipping Away, *Cnet*, December 20, 2002, available at <http://news.com.com/2100-1023-978598.html> (accessed February 5, 2003).
- <sup>114</sup> Michelle Mittelstadt, Excess of Access for Feds?, *Dallas Morning News*, December 15, 2002, available at <http://www.dallasnews.com/dmn/news/stories/121502dnnatsnooping.b2ea3.html> (accessed January 8, 2003).
- <sup>115</sup> William New, "New Senate Chair Voices Concerns on Information Sharing," *National Journal's Technology Daily*, available at <http://www.govexec.com/dailyfed/0103/101003td2.htm> (accessed January 13, 2003).
- <sup>116</sup> Jim Puzzanghera, "Massive Database Dagnet Explored," *San Jose Mercury News*, November 20, 2002, available at <http://www.siliconvalley.com/ml/siliconvalley/4569587.htm> (accessed January 8, 2002).
- <sup>117</sup> William Safire, "You Are A Suspect," *New York Times*, November 14, 2002, available at <http://www.nytimes.com/2002/11/14/opinion/14SAFI.html> (accessed January 10, 2002).
- <sup>118</sup> Associated Press, "Grassley Wants Review of Database," *Washington Times*, November 24, 2002, available at <http://www.washtimes.com/national/20021124-77963510.htm>. (accessed December 10, 2002).
- <sup>119</sup> Susan Cornwell, Senate Blocks Funding for Pentagon Database, *Washington Post*, January 23, 2003, available at <http://www.washingtonpost.com/wp-dyn/articles/A34837-2003Jan23.html> (accessed January 27, 2003).
- <sup>120</sup> Senator Ron Wyden Press Release, "Wyden Wins Passage of Legislation To Curb Plan to Spy on American Citizens," January 23, 2003, available at <http://www.senate.gov/~wyden/media/2002/2003123C23.html> (accessed February 10, 2003).
- <sup>121</sup> ACLU of Colorado Press Release, ACLU Calls for Denver Police to Stop Keeping Files on Peaceful Protesters, March 11, 2002, available at [http://www.aclu-co.org/news/pressrelease/release\\_spyfiles.htm](http://www.aclu-co.org/news/pressrelease/release_spyfiles.htm) (accessed February 25, 2003).
- <sup>122</sup> Dean Schabner, Big Brother Comeback? *ABC News*, January 02, 2003, [http://abcnews.go.com/sections/us/DailyNews/police\\_spying030102.html](http://abcnews.go.com/sections/us/DailyNews/police_spying030102.html) (accessed February 25, 2003).
- <sup>123</sup> Michael Moss and Ford Fessenden, AMERICA UNDER SURVEILLANCE: Privacy and Security; New Tools for Domestic Spying, and Qualms, *New York Times*, December 10, 2002, available at <http://query.nytimes.com/search/article-printpage.html?res=9D05E4DF173AF933A25751C1A9649C8B63> (accessed February 25, 2003).
- <sup>124</sup> Anita Ramasastry, "Patriot II: The Sequel Why It's Even Scariest than the First Patriot Act," *Findlaw* February 17, 2003, <http://writ.news.findlaw.com/ramasastry/20030217.html> (accessed February 25, 2003).
- <sup>125</sup> *Ibid.*
- <sup>126</sup> Timothy Edgar, "Interested Persons Memo: Section-by-Section Analysis of Justice Department draft 'Domestic Security Enhancement Act of 2003,' also known as 'PATRIOT Act II'", *ACLU*, February 14, 2003, <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11835&c=206> (accessed February 25, 2003).
- <sup>127</sup> *Ibid.*
- <sup>128</sup> Robert McMahon, "U.N.: Humanitarian Group Awards Karzai, Presses U.S. On Refugee Policy," Radio Free Europe/Radio Liberty, Press Release, available at <http://www.rferl.org/nca/features/2002/11/14112002172346.asp> (accessed March 6, 2003).

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<sup>129</sup> See “IRSA Applauds Congress’ Appeal to President Bush for Increased Refugee Admissions,” September 27, 2002, available at <http://www.refugees.org/news/crisis/resettlement/092702.cfm> (accessed March 6, 2003). In a December 31, 2002 letter to Special Assistant to the President Elliot Abrams, Representative Smith again called for action “to ensure that our nation maintains its role as a beacon of freedom through maintaining a strong refugee program.” Letter, Representative Christopher H. Smith to Special Assistant to the President Elliot Abrams, December 31, 2002, available at [http://www.refugeesusa.org/preview/help\\_ref/abrams\\_admissions.pdf](http://www.refugeesusa.org/preview/help_ref/abrams_admissions.pdf) (accessed March 6, 2003).

<sup>130</sup> On January 16, 2003, the Hebrew Immigrant Aid Society, writing on behalf of the Refugee Council USA, a coalition of faith-based and non-sectarian agencies (which includes the Lawyers Committee), wrote to Secretary of State Colin Powell to express concern about the attempted freeze on the admission of Iraqi refugees: “America’s founding father, George Washington, wrote that the United States gives bigotry no sanction and persecution no assistance. Racial and ethnic-based policies such as outright bans on certain nationalities irrespective of the merit of their refugee claims demonstrate a failure to heed Washington’s words.”

<sup>131</sup> See 66 Fed. Reg. 54909-54912. See also Lawyers Committee for Human Rights, “A Year of Loss: Reexamining Civil Liberties since September 11,” p. 18, available at [http://www.lchr.org/us\\_law/loss/loss\\_ch3a.htm](http://www.lchr.org/us_law/loss/loss_ch3a.htm) (accessed March 6, 2003).

<sup>132</sup> See Women’s Commission for Refugee Women & Children, *Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection*, January 2003, and *Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correction Center, Miami*, June 2001; Alfonso Chardy, “Activists Accused the INS of Mistreating Female Refugees at the TGK Center,” *Miami Herald*, February 8, 2001.

<sup>133</sup> The Lawyers Committee has filed two amicus briefs in this case, arguing that the detention policy — targeted specifically at Haitians — violates international law (on file with the Lawyers Committee for Human Rights).

<sup>134</sup> Women’s Commission for Refugee Women & Children, *Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection*, January 2003, p. 31, n. 229 (citing INS brief in bond hearing).

<sup>135</sup> *Ibid.* p. 31, n.233 (citing Declarations of Captain Kenneth Ward, U.S. Coast Guard; Memorandum to Stephen E. Biegun, National Security Council, from Maura Harty, Department of State; Declaration of Joseph J. Collins, Department of State).

<sup>136</sup> Jacqueline Charles, “Marchers Demand Release of Haitians,” *Miami Herald*, November 22, 2002; Tim Reid, “Crisis over Refugees Threatens Jeb Bush,” *New York Times*, November 1, 2002.

<sup>137</sup> Mary Jacoby and Steve Bousquet, “Democrat Confronts Bush: Set Haitians Free,” *St. Petersburg Times*, October 31, 2002; Charles Rabin, “Rally Follows Deportation of Haitian Migrants,” *Miami Herald*, October 27, 2002.

<sup>138</sup> Department of Justice, “Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act,” (Order No. 2243-02), November 13, 2002, available at <http://www.immigration.gov/graphics/lawsregs/fr111302.pdf> (accessed March 7, 2003).

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<sup>139</sup> See Lawyers Committee for Human Rights, “Comments on INS No. 2243-02 Notice of Designation Expansion of Expedited Removal to Sea Arrivals,” (Order No. 2243-02, Fed. Reg. 68924-26, November 13, 2002), December 13, 2002, available at [http://www.lchr.org/media/2002\\_alerts/1112.htm](http://www.lchr.org/media/2002_alerts/1112.htm) (accessed December 20, 2002). The Notice authorizes the INS to place in expedited removal individuals arriving in the United States by sea, boat, or other means, who have not been admitted or paroled, and who have not been physically present in the United States for a continuous period of two years.

<sup>140</sup> 67 Fed. Reg. at 68924.

<sup>141</sup> *Ibid.*

<sup>142</sup> See Marisa Taylor, “Background Check for Asylum Seekers,” *San Diego Union-Tribune*, August 15, 2002.

<sup>143</sup> Request by the International Human Rights Law Group, et. al., “Request for Precautionary Measures Under Article 25 of the Commission’s Regulations,” June 20, 2002, available at <http://www.hrlawgroup.org/resources/content/IACHRPrecautionaryMeasures.pdf> (accessed January 26, 2003).

<sup>144</sup> *Ibid.*

<sup>145</sup> See Letter from the Inter-American Commission on Human Rights to Gay McDougall, International Human Rights Law Group, dated September 26, 2002, available at [http://www.hrlawgroup.org/resources/content/IACHR\\_Award.pdf](http://www.hrlawgroup.org/resources/content/IACHR_Award.pdf) (accessed December 2, 2002).

<sup>146</sup> *Ibid.*

<sup>147</sup> See Warren Richey, “Court to Clarify the Rights of Noncitizens,” *Christian Science Monitor*, January 14, 2003.

<sup>148</sup> U.S. Department of Justice, Office of the Inspector General, “Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act,” January 22, 2003, available at [http://www.usdoj.gov/oig/special/2003\\_01a/final.pdf](http://www.usdoj.gov/oig/special/2003_01a/final.pdf) (accessed March 5, 2003).

<sup>149</sup> U.S. Department of Justice, Office of Inspector General, “Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act,” July 15, 2002, available at [http://www.usdoj.gov/oig/special/patriot\\_act/index.htm](http://www.usdoj.gov/oig/special/patriot_act/index.htm) (accessed December 11, 2002).

<sup>150</sup> USA PATRIOT Act, Section 1001

<sup>151</sup> See Attorney General Press Briefings on September 9, 2001; September 28, 2001; and October 18, 2001. See also Dan Eggen and Susan Schmidt, “Count of Released Detainees is Hard to Pin Down,” *Washington Post*, November 6, 2001.

<sup>152</sup> See Amy Goldstein and Dan Eggen, “U.S. to Stop Issuing Detention Tallies,” *Washington Post*, November 9, 2001.

<sup>153</sup> Plaintiff’s Statement of Material Facts, *Center for National Security Studies v. Department of Justice*, March 18, 2002, available at <http://www.cnss.gwu.edu/~cnss/cnssstatementoffacts.htm> (accessed December 16, 2002).

<sup>154</sup> Letter to U.S. Senator Carl Levin from Daniel J. Bryant, Assistant Attorney General, U.S. Department of Justice, July 3, 2002 (on file at Lawyers Committee).

<sup>155</sup> See Dan Eggen, “U.S. Holds 6 of 765 Detained in 9/11 Sweep,” *Washington Post*, December 12, 2002.

<sup>156</sup> Adam Clymer, “Government Openness at Issue as Bush Holds Onto Records,” *New York Times*, January 3, 2003.

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<sup>157</sup> A number of civil liberties groups filed a complaint against the Department of Justice for failing to disclose information about the detainees under the Freedom of Information Act. To access filings in this case, see *Center for National Security Studies v. Department of Justice*, available at <http://cnss.gwu.edu/~cnss/cnssvdoj.htm> (accessed March 7, 2003).

<sup>158</sup> Organization, jurisdiction, and powers of the Board of Immigration Appeals, 8 C.F.R. 3.1, 67 Fed. Reg. 54878 (2002).

<sup>159</sup> Lisa Getter and Jonathan Peterson, "Speedier Rate of Deportation Rulings Assailed," *Los Angeles Times*, January 5, 2003.

<sup>160</sup> George Lardner Jr., "Ashcroft Reconsiders Asylum Granted to Abused Guatemalan; New Regulations Could Affect Gender-Based Persecution," *Washington Post*, March 3, 2003.

<sup>161</sup> Lawyers Committee for Human Rights, "A Year of Loss: Reexamining Civil Liberties since September 11," p. 36, available at [www.lchr.org/us\\_loss/loss\\_ch3a.htm](http://www.lchr.org/us_loss/loss_ch3a.htm) (accessed March 3, 2003); See also American Immigration Law Foundation News, Volume 4, Issue 3, March 2002, available at [www.aiif.org](http://www.aiif.org) (accessed March 5, 2003); Comments filed by the Lawyers Committee for Human Rights (on file with the Lawyers Committee).

<sup>162</sup> Lisa Getter and Jonathan Peterson, "Speedier Rate of Deportation Rulings Assailed; Ashcroft's Goal of Clearing Backlog of Immigration Appeals Has Board Members Deciding Cases in Minutes; Foreigners Are Losing," *Los Angeles Times*, January 5, 2003.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

<sup>165</sup> *Albathani v. INS*, No. 02-1541 (1<sup>st</sup> Cir., February 6 2003).

<sup>166</sup> In the year prior to the agreement, approximately 35 percent of asylum claims made in Canada (14,807 claims) were filed by asylum seekers who had passed through the United States.

<sup>167</sup> Lincoln Caplan, "Secret Affairs," *Legal Affairs*, November/December 2002.

<sup>168</sup> James W. Ziglar, "Let's Not Forget Our Immigration Duties," *Miami Herald*, March 4, 2003.

<sup>169</sup> *Detroit Free Press v. Ashcroft*, 303 F. 3d 681 (6<sup>th</sup> Cir. 2002).

<sup>170</sup> *North Jersey Media Group, Inc. v. Ashcroft*, 308 F. 3d 198 (3<sup>rd</sup> Cir. 2002).

<sup>171</sup> Henry Weinstein, "Secret Deportation Hearings Are Upheld," *Los Angeles Times*, October 9, 2002.

<sup>172</sup> American Civil Liberties Union, "Newspapers Ask High Court to Resolve Conflict Over Access to Secret Immigration Hearings," March 3, 2003, available at <http://www.aclu.org/SafeandFree.cfm?ID=12001&c=206&Type=s> (accessed March 5, 2003).

<sup>173</sup> Jim Edwards, "Sept. 11 Detainees Fear Abuse in Their Homelands After Deportation," *New Jersey Law Journal*, December 2, 2002.

<sup>174</sup> *Ibid.*

<sup>175</sup> Letter provided by Amnesty International, from H.D. Pardy, Director General, Consular Affairs Bureau, Department of Foreign Affairs and International Trade, Canada, February 18, 2003; see also "Demonstrators want Ottawa to do more for Canadian in Syrian jail," CBC, Canada News, December 17, 2002.

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<sup>176</sup> See United Nations Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, p. 197, U.N. Doc. A/RES/39/708 (1984); See also Foreign Affairs Reform and Restructuring Act (FARRA), Pub. L. No. 105-277, Div. G, October 21, 1998, Section 2242 (a).

<sup>177</sup> 8 C.F.R. § 208.18.

<sup>178</sup> Federal Bureau of Investigation Uniform Crime Reporting Program, "Hate Crimes Statistics, 2001," available at <http://www.fbi.gov/ucr/01hate.pdf> (accessed December 2, 2002).

<sup>179</sup> Curt Anderson, "FBI reports jump in violence against Muslims," Associated Press, November 25, 2002.

<sup>180</sup> See Human Rights Watch, "We Are Not the Enemy: Hate Crimes against Arabs, Muslims, and those Perceived to be Arab or Muslim after September 11," November 2002, p. 17, available at <http://www.hrw.org/reports/2002/usahate> (accessed December 2, 2002). See also American Arab Anti-Discrimination Committee, "ADC Fact Sheet: The Condition of Arab Americans Post-September 11," March 27, 2002, available at [http://www.adc.org/terror\\_attack/9-11aftermath.PDF](http://www.adc.org/terror_attack/9-11aftermath.PDF) (accessed December 10, 2002).

<sup>181</sup> See David Johnston and Don Van Natta Jr., "Agencies Monitor Iraqis in the U.S. for Terror Threat" *New York Times*, November 17, 2002; Gary Fields and Marjoire Valbrun, "FBI Contacts Iraqi Nationals Who Are Living in the U.S.," *Wall Street Journal*, January 15, 2003.

<sup>182</sup> Curt Anderson, "FBI questions Iraqis in U.S.," *Associated Press*, January 25, 2003.

<sup>183</sup> Congress authorized in 1996 the creation of an entry-exit system, as part of the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996," Immigration and Nationality Act, 110, 8 U.S.C. 1365a and the USA PATRIOT Act, 414. But the current registration program, as designed and implemented by the Justice Department, is dramatically flawed in carrying out this objective. Several members of Congress have objected to the manner in which their intent has been interpreted. See, e.g., Letter to Attorney General John Ashcroft from U.S. Senator Russell D. Feingold, U.S. Senator Edward M. Kennedy and U.S. Representative John Conyers, Jr., December 23, 2002, available at [http://www.house.gov/judiciary\\_democrats/dojentryexittr122302.pdf](http://www.house.gov/judiciary_democrats/dojentryexittr122302.pdf) (accessed January 23, 2003).

<sup>184</sup> The 25 countries have been identified in four groups, each having a different deadline. For more information on the particular requirements, see the American Immigration Lawyers Association website at [www.aila.org](http://www.aila.org) or the INS official website, [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

<sup>185</sup> "U.S. Detains Nearly 1,200 During Registry," *Washington Post*, January 17, 2003.

<sup>186</sup> John M. Broder and Susan Sachs, "Men From Muslim Nations Swamp Immigration Office," *New York Times*, December 17, 2002.

<sup>187</sup> Dan Eggen and Nurith C. Aizenman, "Registration Stirs Panic, Worry," *Washington Post*, January 10, 2003.

<sup>188</sup> Letter from Amnesty International to Attorney General John Ashcroft, dated January 10, 2003, available at <http://www.amnestyusa.org/news/2003/usa01102003-3.html> (accessed March 5, 2003).

<sup>189</sup> Dan Eggen and Nurith C. Aizenman, "Registration Stirs Panic, Worry," *Washington Post*, January 19, 2003.

<sup>190</sup> Barry James, "U.S. Plan to Monitor Muslims Meets With Widespread Protest," *New York Times*, January 18, 2003.

<sup>191</sup> Colum Lynch, "Registration Amnesty for Pakistanis Sought," *Washington Post*, January 22, 2003.

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<sup>192</sup> Barry James, "U.S. Plan to Monitor Muslims Meets With Widespread Protest," *New York Times*, January 18, 2003.

<sup>193</sup> See U.S. Department of State, Secretary of State Colin L. Powell, "Remarks with Canadian Minister of Foreign Affairs Bill Graham," November 14, 2002, available at <http://www.state.gov/secretary/rm/2002/15153.htm> (accessed March 7, 2002).

<sup>194</sup> Letter to Attorney General John Ashcroft from U.S. Senator Russell D. Feingold, U.S. Senator Edward M. Kennedy and U.S. Representative John Conyers, Jr., December 23, 2002, available at [http://www.house.gov/judiciary\\_democrats/dojentryexitltr122302.pdf](http://www.house.gov/judiciary_democrats/dojentryexitltr122302.pdf) (accessed January 23, 2003).

<sup>195</sup> Edward Walsh, "Senate Votes to Halt INS Registration Program," *Washington Post*, January 25, 2003.

<sup>196</sup> The administration has used the term "unlawful combatant" to stress that the detainees are not considered "prisoners of war." A basis for this claim is the supposed failure of al Qaeda and the Taliban to comply with the laws of war. For similar reasons, and with similar intent, the government has also used the term "enemy combatant" to describe these individuals. As used by the administration, the two terms are interchangeable.

<sup>197</sup> Article 118 of the Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 (the Third Geneva Convention), provides that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." The Third Geneva Convention is available at <http://www.icrc.org/ihl.nsf/WebCONVFULL/OpenView> (accessed February 10, 2003).

<sup>198</sup> See, e.g., Complaint in the case of *Odah, et al., v. United States of America, et al.* (D. D.C., May 1, 2002) ("The Family Members believe that the Kuwaiti Detainees were in Afghanistan or Pakistan, some before and some after September 11, 2001, as volunteers for charitable purposes to provide humanitarian aid to the people of those countries...[and] that none of the Kuwaiti Detainees is or ever has been a member or supporter of al Qaida or the Taliban, or of any terrorist organization.")

<sup>199</sup> "Bosnia Suspects Handed to U.S.," CNN.com, January 18, 2002, available at <http://www.cnn.com/2002/WORLD/europe/01/18/inv.bosnia.cuba/> (accessed February 10, 2003).

<sup>200</sup> The June 9, 2002 Order designating Padilla as an "enemy combatant" is available at <http://news.findlaw.com/hdocs/docs/terrorism/padillabush60902det.pdf> (accessed March 7, 2003).

<sup>201</sup> The entire opinion, *José Padilla v. George Bush, et al.*, and certain other documents relating to the case, are available at <http://news.findlaw.com/legalnews/us/terrorism/cases/index.html> (accessed January 27, 2003). Some other materials on the case, not available on the findlaw site, can be accessed through the National Institution of Military Justice website, available at <http://www.nimj.com>.

<sup>202</sup> Benjamin Weiser, "Lawyers Renew Plea to Meet Terror Suspect in Navy Brig," *New York Times*, January 14, 2003.

<sup>203</sup> Benjamin Weiser, "Judge Affirms Terror Suspect Must Meet With Lawyers," *New York Times*, March 12, 2003.

<sup>204</sup> The text of the statute is available at [http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=18&sec=4001](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=18&sec=4001) (accessed January 27, 2003).

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<sup>205</sup> P.L. No. 107-40, § 2(a)(2001), available at <http://jurist.law.pitt.edu/terrorism/sjres23.htm> (accessed January 27, 2003). Section 4001(a), passed in 1971 “amid mounting public pressure during the Vietnam War... represented a legislative response to the outrage over the executive interment of Japanese Americans during World War II, detentions carried out pursuant only to a presidential order.” Stephen I. Vladeck, “A Small Problem of Precedent: 18 U.S.C. § 4001(a) and the Detention of U.S. Citizen ‘Enemy Combatants,’” 112 *Yale Law Journal* 961, January 2003.

<sup>206</sup> *José Padilla v. George Bush, et al.*

<sup>207</sup> *Ex Parte Quirin*, 317 U.S. 1 (1942), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=317&invol=1> (accessed February 12, 2003). Due to the rushed pace of the proceedings (less than nine weeks from landing to execution of six of the saboteurs), the *Quirin* case has received much criticism from commentators. It is often mentioned together with another much criticized World War II Supreme Court case, *Korematsu v. United States*, 323 U.S. 214 (1944), which upheld President Roosevelt’s authority to order the internment of tens of thousands of citizens and non-citizens of Japanese extraction. *Korematsu* is available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=323&invol=214> (accessed February 12, 2003). A good analysis of the *Quirin* case is Louis Fisher, “Military Tribunals: The *Quirin* Precedent,” *Congressional Research Service Report for Congress*, RL31340, March 26, 2002, available at <http://www.au.af.mil/au/awc/awcgate/crs/rl31340.pdf> (accessed February 13, 2003).

<sup>208</sup> The Memorandum of Law is available through the website of the National Institute of Military Justice, <http://www.nimj.com> (accessed February 11, 2003).

<sup>209</sup> The Memorandum argues for the “clear and convincing” standard by analogy to the Bail Reform Act, 18 U.S.C. § 3142, which permits (in paragraph (f)) pre-trial detention of criminal defendants who may pose a danger to the community only when the government shows “that no condition or combination of conditions will reasonably assure the safety of any other person and the community... by clear and convincing evidence.” The Bail Reform Act can be found at [http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=18&sec=3142](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=18&sec=3142) (accessed February 11, 2003). The Act was upheld by the Supreme Court in *United States v. Salerno*, 481 U.S. 739 (1987), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=481&page=739> (accessed February 11, 2003).

<sup>210</sup> *See, e.g.*, Barak Dehghanpishen, John Barry and Roy Gutman, “The Death Convoy of Afghanistan,” *Newsweek*, August 26, 2002, describing the gruesome “death by container” inflicted by Dostum’s forces in November 2001 on hundreds of unarmed surrendered Taliban soldiers. The soldiers were locked into sealed shipping containers and left to suffocate. *See also* Michael Griffin, “A Gruesome Record,” *Guardian*, November 16, 2001, describing the capture of Kabul in 1992 by mujahadin forces including “Dostum’s mounted militia... who... fell upon the civilian population, leaving many dead in their wake.”

<sup>211</sup> Order in the case of *Hamdi, et al., v. Rumsfeld, et al.* (E.D. Va., August 16, 2002).

<sup>212</sup> *Ibid.*

<sup>213</sup> The Fourth Circuit begins its analysis by rejecting in short order the relevance of 18 U.S.C. § 4001 (a), on substantially the same grounds as Judge Mukasey in the *Padilla* ruling.

<sup>214</sup> The opinion, *Hamdi, et al. v. Rumsfeld, et al.* (4<sup>th</sup> Cir., January 8, 2003) is available at the National Institute of Military Justice website, <http://www.nimj.com> (accessed January 27, 2003). Other documents relating to the *Hamdi* case can be found at <http://news.findlaw.com/legalnews/us/terrorism/cases/> (accessed January 27, 2003). *See also* Neil A. Lewis, “Threats and Responses: The Courts; Detention Upheld in Combatant Case,” *New York Times*, January 9, 2003.

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- <sup>215</sup> *Hamdi, et al. v. Rumsfeld, et al.* (4<sup>th</sup> Cir., January 8, 2003), available at the National Institute of Military Justice website, <http://www.nimj.com> (accessed January 27, 2003).
- <sup>216</sup> This is the standard that Judge Mukasey appears to be considering in the *Padilla* case, as described above.
- <sup>217</sup> 317 U.S. 1 (1942).
- <sup>218</sup> *Hamdi, et al. v. Rumsfeld, et al.* (4<sup>th</sup> Cir., January 8, 2003) (quoting *Ex Parte Quirin*), available at the National Institute of Military Justice website, <http://www.nimj.com> (accessed January 27, 2003).
- <sup>219</sup> *Ibid.*
- <sup>220</sup> *Ibid.*
- <sup>221</sup> Hamdi's lawyer, Frank Dunham, insists that "Nobody knows what his version of the facts might be." Nat Hentoff, "Liberty's Court of Last Resort," *Village Voice Online*, January 24, 2003, available at <http://www.villagevoice.com/issues/0305/hentoff.php> (accessed January 27, 2003).
- <sup>222</sup> *Hamdi, et al. v. Rumsfeld, et al.* (4<sup>th</sup> Cir., January 8, 2003), available at the National Institute of Military Justice website, <http://www.nimj.com> (accessed January 27, 2003).
- <sup>223</sup> *Ibid.*
- <sup>224</sup> *Ibid.*
- <sup>225</sup> See, e.g., David E. Sanger and Felicity Barringer, "President Readies U.S. for Prospect of Imminent War," *New York Times*, March 7, 2003: "Mr. Bush...said Sept. 11 'should say to the American people that we're now a battlefield.'" Earlier in its January 3 opinion, the Fourth Circuit quotes its own previous ruling in the same proceeding, noting that the "political branches are best positioned to comprehend this *global* war in its full context" (quoting *Hamdi v. Rumsfeld*, 296 F.3d 278 (4<sup>th</sup> Cir. 2002) (emphasis added)).
- <sup>226</sup> *Hamdi, et al., v. Rumsfeld, et al.* (4<sup>th</sup> Cir., January 8, 2003), available at the National Institute of Military Justice website, <http://www.nimj.com> (accessed January 27, 2003).
- <sup>227</sup> Henry Weinstein, "ABA Opposes Bush 'Enemy Combatants' Policy," *Los Angeles Times*, February 11, 2003.
- <sup>228</sup> See Attorney General Transcript News Conference regarding Zacarias Moussaoui, December 11, 2001, announcing the indictment of Moussaoui, available at [http://www.fas.org/irp/world/para/docs/mous\\_indict.html](http://www.fas.org/irp/world/para/docs/mous_indict.html) (accessed February 12, 2003). The Transcript web page includes a link to the Indictment, issued that day. Other court documents in the Moussaoui case can be found at <http://news.findlaw.com/legalnews/us/terrorism/cases/index.html> (accessed February 12, 2003).
- <sup>229</sup> "Under interrogation, Bin al-Shibh has reportedly given the CIA some valuable information, but also one highly unwelcome tidbit: Al Qaeda thinks Moussaoui is as crazy as we do." Jonathan Turley, "Sanity and Justice Slipping Away," *Los Angeles Times*, February 10, 2003.
- <sup>230</sup> "Moussaoui Granted Access to Suspect," Reuters, February 1, 2003.
- <sup>231</sup> Philip Shenon, "Judge Grants the Government a Delay of Moussaoui's Trial," *New York Times*, February 13, 2003. The original Order and the government's appeal have not been made public. The request for the stay is available at <http://news.findlaw.com/hdocs/docs/moussaoui/usmouss20703pmtot.pdf> (accessed February 12, 2003).

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<sup>232</sup> See Philip Shenon and Eric Schmitt, "Threats and Responses: The 9/11 Suspect; White House Weighs Letting Military Tribunal Try Moussaoui, Officials Say," *New York Times*, November 10, 2002; See also Andrew Cohen, "A Secret Trial for Moussaoui?," *CBS News.com*, November 7, 2002, available at <http://www.cbsnews.com/stories/2002/11/07/news/opinion/courtwatch/main528515.shtml> (accessed January 27, 2003). See also Jonathan Turley, "Sanity and Justice Slipping Away," *Los Angeles Times*, February 10, 2003; "The Moussaoui Experiment," *Washington Post*, January 27, 2003.

<sup>233</sup> See Greg Frost, "Shoe-Bomber Pleads Guilty, Admits Bin Laden Link," Reuters, October 4, 2002; Associated Press, "U.S. Prosecutors Submit Videos Simulating 'Shoe Bomb' Damage," *Wall Street Journal*, January 17, 2003.

<sup>234</sup> "Shoe Bomber Leaves Behind A Legacy," CBS News.com, January 31, 2003, available at <http://www.cbsnews.com/stories/2002/10/04/attack/main524340.shtml> (accessed February 12, 2003).

<sup>235</sup> Juliette Kayyem, "The Sentencing of 'Shoe Bomber' Richard Reid: Its Larger Significance for Terrorism Cases and the 'War on Terrorism' in General," Findlaw.com, available at [http://writ.news.findlaw.com/commentary/20030203\\_kayyem.html](http://writ.news.findlaw.com/commentary/20030203_kayyem.html) (accessed February 12, 2003).

<sup>236</sup> "Transfer of Detainees Completed," *Department of Defense News Release*, October 28, 2002, available at [http://www.dod.mil/news/Oct2002/b10282002\\_bt550-02.html](http://www.dod.mil/news/Oct2002/b10282002_bt550-02.html) (accessed March 2, 2004); "Three Afghans Home from Guantanamo," Associated Press, October 28, 2002; Todd Pittman, "Former Detainees Recount Life at Guantanamo," Associated Press, October 29, 2002.

<sup>237</sup> Paisley Dodds, "New Suspects Arrive at Guantanamo Bay," Associated Press, February 7, 2003; "U.S. Adds 30 Detainees to GITMO," Reuters, October 28, 2002.

<sup>238</sup> Don van Natta Jr., "Questioning Terror Suspects in a Dark and Surreal World," *New York Times*, March 9, 2003. Authorities will be opening a special ward for detainees with mental problems. "U.S. Plans Mental Ward for Detainees," Associated Press, March 7, 2003.

<sup>239</sup> Neil A. Lewis, "Judge Rebuffs Detainees at Guantanamo," *New York Times*, August 1, 2002.

<sup>240</sup> See Neil A. Lewis, "Guantanamo Prisoners Seek to See Families and Lawyers," *New York Times*, December 3, 2002.

<sup>241</sup> The cases are *Rasul, et al. v. George Walker Bush, et al.*, and *Odah, et al. v. United States of America, et al.* Some of the filings in the *Rasul* case are available at <http://www.campxray.net/page2.html> (accessed March 7, 2003). United States Court of Appeals, for the District of Columbia Circuit, Argued December 2, 2002, decided March 11, 2003, No. 02-5251, *Khaled A.F. Al Odah, et. al., v. United States of America, et al.*

<sup>242</sup> *Abassi v. Secretary of State*, entire opinion available on the website of the National Institute of Military Justice, <http://nimj.com> (accessed January 27, 2003). See Neil A. Lewis, "British Judges Criticize U.S. on the Prisoners Held at Guantanamo," *New York Times*, November 8, 2002.

<sup>243</sup> See Bill Gertz and Rowan Scarborough, "Notes from the Pentagon: GITMO Dispute," *Washington Times*, October 4, 2002, available at <http://www.washtimes.com/national/20021004-92332157.htm> (accessed January 27, 2003); "GITMO Camp Commander Relieved," *Washington Post*, October 14, 2002. Article 41 of the Third Geneva Convention provides that "[i]n every [prisoner of war] camp the text of the [Third Geneva] Convention... shall be posted, in the prisoners' own language, in places where all may read them."

<sup>244</sup> Greg Miller, "Many Held at Guantanamo Not likely Terrorists," *Los Angeles Times*, December 22, 2002; John Mintz, "Detainees at Base in Cuba Yield Little Valuable Information," *Washington Post*, October 29, 2002.

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<sup>245</sup> Greg Miller, "Many Held at Guantanamo Not Likely Terrorists," *Los Angeles Times*, December 22, 2002. As an example of the inflexibility of the screening procedures, Miller quotes one interrogator in Afghanistan describing a restaurant worker picked up near the Pakistani border who "had the mental capacity to put flatbread in an oven and that was the extent of the intellect....He never got trained on a rifle, never got pressed into service. But he was Arab by birth so he was picked up and sent away."

<sup>246</sup> John Mintz, "Detainees at Base in Cuba Yield Little Valuable Information," *Washington Post*, October 29, 2002.

<sup>247</sup> Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations," *Washington Post*, December 26, 2002.

<sup>248</sup> Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations," *Washington Post*, December 26, 2002. One U.S. official told reporters "in a deadpan voice, that 'pain control [in wounded patients] is a very subjective thing.'" In March, 2003, U.S. officials acknowledged to a reporter manipulating access to pain medication while interrogating Abu Zubaydah, a senior al Qaeda leader who was shot in the chest, groin and thigh when he was captured in March 2002 in Pakistan. "American questioners teased him with occasional painkillers to try to cull information." Erich Lichtblau and Adam Liptak, "Questioning of Accused Expected to Be Humane, Legal and Aggressive," *New York Times*, March 4, 2003. "American Taliban" John Lindh has alleged that he was stripped naked, blindfolded and bound to a stretcher "with heavy duct tape wrapped tightly around his chest, upper arms, ankles and the stretcher itself," and kept in this condition in a windowless metal shipping container for two days. Lindh also asserted that after being handed over to U.S. custody, he was interrogated while wounded with a bullet in his leg, and denied surgery for two weeks despite repeated requests to the U.S. agents questioning him." See Proffer of Facts in Support of Defendant's Suppression Motions, in the case of *United States v. John Phillip Walker Lindh* (E.D. Va., June 13, 2002).

<sup>249</sup> See Country Reports on Human Rights Practices — 2001, Released by the Bureau of Democracy, Human Rights, and Labor, Department of State, March 4, 2002 ("DOS Human Rights Report"), available at <http://www.state.gov/g/drl/hr/c1470.htm> (accessed January 27, 2003). The DOS Human Rights Report characterizes as "abuses" prolonged standing (Palestinian Authority); shackling in contorted positions (Israel; Palestinian Authority); sleep deprivation (Israel; Palestinian Authority); and beatings (Israel; Palestinian Authority). The report characterizes as "torture" prolonged standing (Turkey); sleep deprivation (Jordan; Turkey); loud music (Turkey); and beatings (Egypt; Syria; Turkey).

<sup>250</sup> Eric Lichtblau and Adam Liptak, "Questioning of Accused Expected to Be Humane, Legal and Aggressive," *New York Times*, March 4, 2003.

<sup>251</sup> Ibid. Military interrogators told the *Wall Street Journal*: "Interrogators can also play on their prisoners' phobias, such as fear of rats or dogs, or disguise themselves as interrogators from a country known to use torture or threaten to send the prisoners to such a place. Prisoners can be stripped, forcibly shaved and deprived of religious items and toiletries." Jess Bravin and Gary Fields, "How do Interrogators Make A Captured Terrorist Talk?," *Wall Street Journal*, March 4, 2003.

<sup>252</sup> Jess Bravin and Gary Fields, "How do Interrogators Make A Captured Terrorist Talk?," *Wall Street Journal*, March 4, 2003. One U.S. intelligence officer told the *Journal*: "U.S. officials overseeing interrogations of captured al Qaeda forces at Bagram and Guantanamo Bay Naval Base in Cuba can even authorize 'a little bit of smack-face.'" Ibid.

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<sup>253</sup> Carlotta Gall, "U.S. Military Investigating Death of Afghan in Custody," *New York Times*, March 4, 2003; "Prisoners 'Killed' at US Base," BBC News World Edition (March 6, 2003), available at [http://news.bbc.co.uk/2/hi/south\\_asia/2825575.stm](http://news.bbc.co.uk/2/hi/south_asia/2825575.stm) (accessed March 6, 2003). A U.S. spokesman denied mistreatment at the camp, and attributed the "homicide" determinations to "a limited choice when filling the military death certificate." *Ibid.* Two other Afghan former prisoners told the *New York Times* that while they were held in Bagram they were:

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

<sup>254</sup> Carlotta Gall, "U.S. Military Investigating Death of Afghan in Custody," *New York Times*, March 4, 2003.

<sup>255</sup> John Mintz, "Detainees at Base in Cuba Yield Little Valuable Information," *Washington Post*, October 29, 2002; Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations," *Washington Post*, December 25, 2002.

<sup>256</sup> The DOS Human Rights Report recounts allegations of torture in Jordan, including "sleep deprivation, beatings on the soles of the feet, prolonged suspension with ropes in contorted positions, and extended solitary confinement." With regard to Egypt, the DOS Human Rights Report states that "there were numerous, credible reports that security forces tortured and mistreated citizens," with victims reporting such "methods of torture. . . [as] being stripped and blindfolded; suspended from a ceiling or doorframe with feet just touching the floor, beaten with fists, whips, metal rods, or other objects; subjected to electrical shocks; and doused with cold water. . . . Some victims, male and female detainees, reported that they were sexually assaulted or threatened with the rape of themselves or family members." As for Morocco, while noting some improvement over the years, the DOS Human Rights Report relates that "some members of the security forces still tortured or otherwise abused detainees," and cited "concerns regarding the Government's commitment to resolving the problem." See also Eric Lichtblau and Adam Liptak, "Questioning of Accused Expected to Be Humane, Legal and Aggressive," *New York Times*, March 4, 2003, quoting a senior Moroccan intelligence official: "I am allowed to use all means in my possession [in interrogating a prisoner]. . . . You have to fight all his resistance at all levels and show him that he is wrong, that his ideology is wrong and is not connected to religion. We break them, yes. And when they are weakened, they realize that they are wrong."

<sup>257</sup> Peter Finn, "Case of Al Qaeda Suspect Shows Underside of War on Terrorism," *Wall Street Journal*, January 30, 2003. See also Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations," *Washington Post*, December 26, 2002; Faye Bowers and Philip Smucker, "US Ships Al Qaeda Suspects to Arab States," *Christian Science Monitor*, July 26, 2002. The United States has long considered Syria one of the world leaders in human rights violations and support for terrorism. The DOS Human Rights Report reports "credible evidence that security forces continued to use torture, although to a lesser extent than in previous years. Former prisoners and detainees report that torture methods

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include administering electrical shocks; pulling out of fingernails; forcing objects into the rectum; beating, sometimes while the victim is suspended from the ceiling; hyperextending the spine; and using a chair that bends backwards to asphyxiate the victim or fracture the victim's spine."

<sup>258</sup> Knut Royce, "Mixed Reviews From Experts," *Newday*, February 6, 2003.

<sup>259</sup> *Ibid.*

<sup>260</sup> The International Covenant on Civil and Political Rights is available at [http://www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm) (accessed January 27, 2003). The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is available at <http://www.hrweb.org/legal/cat.html> (accessed January 27, 2003). Article 1 of the Torture Convention defines "torture" as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

<sup>261</sup> 18 U.S.C. § 2340A, available at [http://caselaw.lp.findlaw.com/cascode/uscodes/18/parts/i/chapters/113c/sections/section\\_2340a.html](http://caselaw.lp.findlaw.com/cascode/uscodes/18/parts/i/chapters/113c/sections/section_2340a.html) (accessed March 3, 2003). Section 2340 (available at [http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=18&sec=2340](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=18&sec=2340) (accessed March 3, 2003)) provides the following definitions:

- (1) "Torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
- (2) "Severe mental pain or suffering" means the prolonged mental harm caused by or resulting from —
  - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
  - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
  - (C) the threat of imminent death; or
  - (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality....

<sup>262</sup> Similarly, General Comment 20 (October 3, 1992) of the U.N. Human Rights Committee, which is the official body charged with interpreting the International Covenant on Civil and Political Rights, has stated its view that the Covenant's article 7 prohibition against torture and cruel, inhuman or degrading

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treatment or punishment includes the principle that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.” General Comment 20 is available at [http://193.194.138.190/tbs/doc.nsf/\(symbol\)/CCPR+General+comment+20.En?OpenDocument](http://193.194.138.190/tbs/doc.nsf/(symbol)/CCPR+General+comment+20.En?OpenDocument) (accessed January 27, 2003).

<sup>263</sup> See article 130 of the Third Geneva Convention; and article 147 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5?OpenDocument> (accessed February 10, 2003).

<sup>264</sup> Article 16, Torture Convention (emphasis added). The European Court of Human Rights has stressed this point. “Even in the most difficult of circumstances, such as the fight against organized terrorism and crime, the [European Convention on Human Rights] prohibits in absolute terms torture or inhuman or degrading treatment or punishment” (emphasis added). *Aksoy v. Turkey*, Case No. 21987/93, Judgment of the European Court of Human Rights (December 18, 1996).

<sup>265</sup> “[T]he United States considers itself bound by the obligation under article 16 to prevent cruel, inhuman or degrading treatment or punishment, only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means the ‘cruel, unusual and inhumane treatment or punishment’ prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” U.S. Reservations upon Ratification of the Torture Convention, available at: [http://193.194.138.190/html/menu3/b/treaty12\\_asp.htm](http://193.194.138.190/html/menu3/b/treaty12_asp.htm) (accessed March 7, 2003).

<sup>266</sup> Supreme Court of Israel, sitting as the High Court of Justice (September 6, 1999), available at <http://62.90.71.124/mishpat/html/en/system/index.html> (accessed March 5, 2003).

<sup>267</sup> *Ibid.*

<sup>268</sup> While accepting that the “suspect’s cuffing, for the purpose of preserving the investigators’ safety, is...within the investigator’s authority,” cuffing a person in a “distorted and unnatural position... [and] causing pain” is not required to preserve the investigators’ safety and is prohibited. *Ibid.*

<sup>269</sup> Accepting the legitimacy of the security service’s asserted need to “prevent contact between the suspect under interrogation and other suspects and his investigators” (to preclude collusive communications among suspects, for example, or to safeguard the investigators’ security), the court nonetheless rejected the use of a “head covering...entirely opaque...reaching the suspect’s shoulders,” as outside the scope of lawful authority. “Less harmful means must be employed, such as letting the suspect wait in a detention cell...[for covering the suspect’s eyes] in a manner that does not cause him physical suffering.” *Ibid.*

<sup>270</sup> The court was “prepared to assume that the authority to investigate an individual equally encompasses precluding him from hearing other suspects under investigation or voices and sounds that, if heard by the suspect, risk impeding the interrogation’s success.” But requiring the suspect to hear “powerfully loud music...causes the suspect suffering...[and so does not] fall within the scope of a fair and responsible interrogation.” *Ibid.*

<sup>271</sup> The court recognized that “[t]he interrogation of a person is likely to be lengthy...[and that t]he suspect...is at times exhausted...often [as] the inevitable result of an interrogation...part of the ‘discomfort’ inherent to an interrogation.” But the court insisted that the “situation is different [when]...sleep deprivation shifts from being a ‘side effect’...to an end in itself. If the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or ‘breaking’ him — it shall not fall within the scope of a fair and reasonable investigation,” and is absolutely prohibited. *Ibid.*

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<sup>272</sup> The particular position examined by the court involved seating the suspect for long hours on a very low chair, tilted forward facing the ground and tied in a contorted position. The court was willing to “suppose that the seating of the suspect on a chair lower than that of his investigator can potentially serve a legitimate investigation objective (for instance, to establish the ‘rules of the game’ in the contest of wills between the parties, or to emphasize the investigator’s superiority over the suspect),” but it found no defensible grounds to justify seating the suspect “in a manner that causes him real pain and suffering.” *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> *Ireland v. United Kingdom*, Case No. 5310/71, Judgment of the European Court of Human Rights (January 18, 1978).

<sup>275</sup> *Ibid.* Though the court determined this conduct to be “inhuman and degrading treatment,” the court was not able to agree that it “occasion[ed] suffering of the particular intensity and cruelty implied by the word torture as so understood.” The distinction did not in any way lessen the absolutely prohibited status of the five techniques, however. In previously hearing the case, the European Commission on Human Rights had unanimously considered the combined use of the five methods to amount to torture, on the grounds that (1) the intensity of the stress caused by techniques creating sensory deprivation “directly affects the personality physically and mentally”; and (2) “the systematic application of the techniques for the purpose of inducing a person to give information shows a clear resemblance to those methods of systematic torture which have been known over the ages... a modern system of torture falling into the same category as those systems... applied in previous times as a means of obtaining information and confessions.” 19 Yearbook of the European Conventions on Human Rights (1976) (language of the Commission as quoted in Nigel S. Rodley, *The Treatment of Prisoners under International Law* (Oxford 2000), pp. 91-92). Many commentators have found the Commission’s view to be more persuasive than the Court’s. See generally Rodley’s discussion, pp. 90-95.

<sup>276</sup> *Selmouni v. France*, Case No. 25803/94, Judgment of the European Court of Human rights (July 28, 1999).

<sup>277</sup> *Ibid.*

<sup>278</sup> Supreme Court of Israel, sitting as the High Court of Justice (September 6, 1999), available at <http://62.90.71.124/mishpat/html/en/system/index.html> (accessed March 5, 2003).

<sup>279</sup> White House, “President Issues Military Order,” November 13, 2001, available at <http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html> (accessed February 27, 2003).

<sup>280</sup> Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks (September 14, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010914-4.html> (accessed March 6, 2003); Authorization for Use of Military Force, P.L. No. 107-40, § 2(a)(2001) (September 18, 2002), available at <http://jurist.law.pitt.edu/terrorism/sjres23.htm> (accessed January 27, 2003).

<sup>281</sup> Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks (September 14, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010914-4.html> (accessed March 6, 2003).

<sup>282</sup> Jess Bravin, “War on Terror, List of War Crimes Qualifying for Military Tribunals Set,” *Wall Street Journal*, February 28, 2003. See also Jess Bravin, “U.S. Readies Tribunal System to Prosecute Terror Suspects,” *Wall Street Journal*, December 10, 2002; Neil A. Lewis, “Administration’s Position Shifts on Plans for Tribunals,” *New York Times*, November 2, 2002.

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<sup>283</sup> The document cites as its authority both the president's Military Order and Secretary of Defense Rumsfeld's Military Commission Order No. 1 (March 21, 2002), as well as sections 113(d) and 140(b) of Title 10 of the United States Code. The draft and a related U.S. Department of Defense press conference transcript are available at [http://www.defenselink.mil/news/Feb2003/t02282003\\_t0228commission.html](http://www.defenselink.mil/news/Feb2003/t02282003_t0228commission.html) (accessed March 3, 2003).

<sup>284</sup> Amnesty International Canada, "Liberia: Court Ruling in Human Rights Defender's Case is a Huge Disappointment," September 5, 2002, available at <http://www.amnesty.ca/library/news/afr3401402.htm> (accessed January 29, 2003); Charles Cobb, Jr., "Detained Journalist in Military Hands, Says Minister," July 3, 2002, available at <http://allafrica.com/stories/200207030780.html> (accessed January 29, 2003).

<sup>285</sup> See "Journalist Tortured, Envoy Blaney Discloses, Wants Gov't to Honor Terms of Agreement," *The News* (Monrovia), January 3, 2003, available at <http://allafrica.com/stories/200301030436.html> (accessed February 6, 2003); See also A. Abbas Dulleh, "Journalist Bility Says He, Others, Were Subjected to Severe Torture," *New Democrat News*, December 9, 2002, available at <http://www.newdemocrat.org/Stories/JournalistTorture.htm> (accessed February 7, 2003).

<sup>286</sup> See Jonathan Paye-Layleh, "Liberia Tribunal: Journalist is POW," Associated Press, October 24, 2002.

<sup>287</sup> See "Liberia: Hassan Bility to be Freed," *Index*, October 30, 2002, available at [http://www.indexonline.org/indexindex/20021030\\_liberia.shtml](http://www.indexonline.org/indexindex/20021030_liberia.shtml) (accessed December 2, 2002).

<sup>288</sup> See "Taylor Orders Release of Bility, et al," *Liberian Orbit*, October 28, 2002.

<sup>289</sup> See "Journalist Tortured, Envoy Blaney Discloses, Wants Gov't to Honor Terms of Agreement," *News* (Monrovia), January 3, 2003, available at <http://allafrica.com/stories/200301030436.html> (accessed February 6, 2003).

<sup>290</sup> *Ibid.*

<sup>291</sup> See Charles Cobb, Jr. "Detained Journalist in Military Hands, Says Minister," *AllAfrica.Com* (Washington, D.C.), July 3, 2002, available at <http://allafrica.com/stories/200207030780.html> (accessed February 7, 2003).

<sup>292</sup> Bill K. Jarkloh, "U.S. Against Government Failure to Produce Bility, Others," *The News* (Monrovia), July 10, 2002, available at <http://allafrica.com/stories/200207100274.html> (accessed February 6, 2003).

<sup>293</sup> See "Liberia: Amnesty Calls for Release of Rights Activist," *Africa News*, February 17, 2003; "Liberia Releases Religious Leaders, Intensifies Repression," *This Day* (Nigeria), January 12, 2003, available at <http://allafrica.com/stories/200301140173.html> (accessed February 7, 2003); Amnesty International, "Liberia: Court Ruling in Human Rights Defender's Case is a Huge Disappointment," September 5, 2002, available at <http://www.amnesty.ca/library/news/afr3401402.htm> (accessed February 7, 2003).

<sup>294</sup> Amnesty International, "Liberia: Court Ruling in Human Right Defender's Case Is a Huge Disappointment," Press Release, September 5, 2002, available at <http://web.amnesty.org/802568F7005C4453/0/80256AB9000584F680256C2B005B9704?Open&Highlight=2,liberia> (accessed March 7, 2003).

<sup>295</sup> Committee to Protect Journalists, "CPJ Condemns Raid on Newspaper and Radio Station," October 15, 2002, available at <http://www.cpj.org/news/2002/Uganda15oct02na.html> (accessed December 3, 2002).

<sup>296</sup> "Ugandan Paper Issues an Apology," BBC News, October 18, 2002, available at <http://news.bbc.co.uk/2/hi/africa/2339123.stm> (accessed December 4, 2002).