U.S. Admits Most Afghan Detainees Not Al-Qaeda

by Edward Spannaus

In a highly unusual action, Secretary of State Colin Powell sent what is described as "a strongly worded letter" to Defense Secretary Donald Rumsfeld on April 14, urging the Defense Department to move faster in determining which prisoners, seized in Afghanistan, and held at the U.S. base in Guantanamo Bay, Cuba, can be released. Citing complaints from eight allies whose citizens are among the prisoners, Powell's letter said that mishandling of the detainees undermines international cooperation in the war on terror, according to *U.S. News & World Report.* He asked Rumsfeld why it is taking so long to reach "a final determination" on the prisoners' fate, and Rumsfeld later agreed to speed up the release of about 100 detainees sought by the United Kingdom, Russia, Pakistan, and Spain, the report said.

On an earlier trip to Guantanamo, Rumsfeld described the prisoners there as "among the most dangerous, best trained, vicious killers on the face of the Earth."

Ten days after Powell's letter, unnamed U.S. officials were quoted in the *New York Times* making the unprecedented admission, that only a small number out of more than 600 detainees are actually members of al-Qaeda. "The rest have either been determined to be nobodies, rounded up in the chaotic aftermath of the war, or presumed to be nobodies whose state has not yet been determined," the *Times* reported, in a lengthy article which noted that only 22 of the Afghan detainees had been released so far; the rest "remain in a legal, political, and geographic limbo."

This admission corresponds with what *EIR* had already reported, in two interviews in its May 31, 2002 and March 28, 2003 issues with Dr. Najeeb bin Mohamed al-Nauimi, the former Justice Minister of Qatar, who founded the Committee for the Defense of the Detainees at Guantanamo. Dr. al-Nauimi told *EIR* that his estimation was that no more than 60-70 of the detainees were actually committed to al-Qaeda or the Taliban. (Dr. al-Nauimi was also interviewed by the *New York Times* for their belated story.)

Justice Department Grilled

Two days before those dramatic admissions were published in the *Times,* an official of the Justice Department (DOJ) had been publicly raked over the coals concerning the Bush Administration's treatment of the Guantanamo detainees. This took place at an April 22 meeting in Washington, of the American Bar Association's Standing Committee on National Security Law, attended by perhaps 100 present and former lawyers for U.S. intelligence and law enforcement agencies.

During a panel discussion, John Yoo, the head of the DOJ's Office of Legal Counsel, suggested that no one goes to Guantanamo unless he is a terrorist. During the question period, *EIR* noted that the government's actions in Guantanamo are causing enormous damage to the United States abroad, and cited the estimate from Dr. al-Nauimi, that only 60-70 of the detainees are actually hard-core al-Qaeda or Taliban, and the rest swept up in the fog of war, or handed over to the United States for pay by other Afghans.

Yoo denied this, saying that "a lot of people have their cover stories," and declared that "we have a very good process" for sorting people out and hearing their explanations of why they were picked up. But another panelist, longtime national security specialist Morton Halperin, jumped in to say that Yoo's claim was not true, and that in fact there is no adequate process for a prisoner to challenge his detention. Halperin pointed out that in contrast, all Iraqi prisoners in the first Gulf War, and in the recent one, were given hearings in which they could present their side of the story. "That's what the Geneva Convention requires," Halperin said, "and that is what you refuse to give people. . . . There is no reason not to do it, and you haven't given any reason not to do it." Halperin said the Administration simply states, instead, that all the prisoners are terrorists.

Geneva Convention Procedure

The standard procedure for processing and sorting out prisoners, and determining whether they should continue to be held or released, is what is known as an "Article V hearing," because it complies with Article V of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW). This procedure is incorporated into U.S. Army Regulation 190-8, and it has been routinely used in other conflicts. For example, it was used approximately 1,200 times in the 1991 Gulf War, according to Joseph Onek, the director of the Liberty and Security Initiative of the Georgetown University-affiliated Constitution Project; Onek told *EIR* that there is absolutely no reason why it should not be used with the Guantanamo prisoners.

Under this regulation, a tribunal consists of three commissioned officers charged with determining if a captive is entitled to prisoner-of-war status, or should be classified as an unlawful combatant, or should be released. The detainee is not given a lawyer, but may call and question witnesses, and may testify on his own behalf. A written record is to be kept of the proceeding.

Onek asks, since the United States has used this procedure in both Gulf wars, "Why aren't we doing it here?" He declares it "totally unjustifable" that the United States doesn't provide some kind of hearing for the Guantanamo detainees, and then issue a written report. Onek believes that the mind-set of the lawyers, primarily at the Justice Department and the White House, is: "We don't want to bind ourselves to anything. We

want to have absolute discretion."

At the present time, it is estimated that there are 680 prisoners at Guantanamo. Although the Pentagon has been slowly setting up the framework under which the detainees could be tried by military tribunals (or commissions), legal experts expect that only a handful will ever actually be put on trial, because interrogations have shown most to be simply too unimportant.

Rumsfeld's 'Notverordnung'

'Transformation' Bill Hits Bumps in Congress

by Carl Osgood and Edward Spannaus

Secretary of Defense Donald Rumsfeld encountered more opposition than expected, in his effort to ram through Congress his draconian "Defense Transformation Act for the 21st Century," which would tear up the Constitutional separation of powers, and destroy civil service protections for the Defense Department's 800,000 civilian employees, in one stroke of a pen. This is the bill which Lyndon LaRouche called Rumsfeld's *Notverordnung*—with reference to the emergency decree that allowed Adolf Hitler to become Germany's dictator (see *EIR*, May 16).

By waiting until April 11 to submit his transformation plan to Congress, Rumsfeld and his allies had hoped to rush his personnel changes through the House and Senate as part of the broader $400 billion defense authorization bill, with minimal debate. But in fact, he totally lost on one of the major personnel proposals—that which would give the Secretary of Defense broad authority over the hiring, firing, and rotations of flag and general officers—which was not passed by either House. And the other major personnel proposal—the stripping of civil service protections for civilian employees—was passed only by the House, with the Senate declining to incorporate it in the authorization bill.

Thus the general-officer provision appears dead for this session of Congress, and the civil-service provisions are unlikely to go though, unless the Senate were to cave in to the House during the Senate-House conference which will have to resolve this and many other differences between the House and Senate versions of the defense bill.

Rumsfeld Mobilizes

During the three days of floor debate in Congress, Rumsfeld took every opportunity to push for passage of his "transformation" proposals. On May 21, he spent half the day on Capitol Hill in meetings with the Congressional GOP leadership. The following day, he took the rather extraordinary step of personally responding to a blast at his proposals published in a *Washington Post* op-ed by Rep. Ike Skelton (D-Mo.), the senior Democrat on the House Armed Services Committee. If Rumsfeld had hoped to sneak the bill through without much Congressional and public scrutiny, this was an admission that he had failed.

Skelton's May 21 op-ed was the most public manifestation of the fierce opposition in Congress against Rumsfeld's bill. Calling this the "most sweeping defense reform legislation proposed since the Goldwater-Nichols Act of 1986," Skelton declared: "The only thing that is obvious and consistent throughout the 50 provisions included in this bill is the aggregation of power sought by the Department of Defense, removing the legal restrictions and congressional oversight that should safeguard against any abuses, however unintentional. This approach is a rush to judgment that will affect vast numbers of people and, in many cases, will enshrine bad policy into law."

Skelton noted that the Goldwater-Nichols legislation took four years for Congress to pass, with the armed services committees of both Houses holding dozens of hearings in that span, and having "spent months drafting a comprehensive and bipartisan bill."

Skelton also zeroed in on Congress's Constitutional responsibilities. "The Constitution establishes Congress as a counterweight to executive authority for good reasons," he wrote, "to guard against the excessive aggregation of any administration's power and to ask critical questions that allow better law to be made." He warned that "without the ability to question and consider fully the implications of what we do, we abandon the planning needed to protect our nation's security and to protect those who serve their nation."

In addressing the Constitutional issues, Skelton reflected the tremendous impact of LaRouche's widely circulated campaign release, denouncing the Rumsfeld "transformation" gambit as a power play modeled on Hitler's similar assault on the German military and civil service in 1933. Thousands of copies of the LaRouche in 2004 pamphlet, *Children of Satan*, exposing the Rumsfeld/Wolfowitz/Perle *putsch*, have been circulating on Capitol Hill for the past month, as have *EIR*'s more recent coverage of the Rumsfeld bill.

In his *Washington Post* op-ed the next day, responding to Skelton, Rumsfeld based his argument on the utopian fascist notion that we are now "in the information age, when terrorists move information at the speed of an e-mail, money at the speed of a wire transfer, and people at the speed of a commercial airliner," while the Defense Department is supposedly forced to face this threat "bogged down in the bureaucratic processes of the industrial age." He argued that the time it took to pass Goldwater-Nichols cannot be taken today because "the new threats are here now," and our enemies "are watching us" from their deeply buried caves and bunkers seeking ways to kill hundreds of thousands. (Rumsfeld did not