THE DHS REPORT ON MAHER ARAR

Marty Lederman links to the DHS OIG report on Maher Arar's transfer to and subsequent torture in Syria. It's really really ugly reading, even though they've obviously redacted a lot of the paragraphs that ought to reveal the decision making process by which we decided sending Arar home to Canada or even to Switzerland so instead sent him to be tortured (many of the redacted paragraphs are marked with "U's," signifying they're unclassified).

Anyway, some more light reading to bring with me on my trip to Minneaplis this weekend for the Media Reform Conference.

In the meantime, I'm struck by this bit from Marty:

> Interestingly, in his own testimony today, the Homeland Security IG states that "we have reopened our review into the Mr. Arar matter because, less than a month ago, we received additional information that contradicts one of the conclusions in our report. As such, we are in the process of conducting additional interviews to determine the validity of this information to the extent we can."

It's not clear what the IG is treating as conclusions. But one of the big issues in the report—predictably—was how the hell it was that DOJ reviewed Syria's human rights record and didn't notice (right, yeah) that Arar was likely to be tortured. So I'm curious if the IG learned some new details about that decision-making process.

THE JAG DISMISSES THE UNITARY EXECUTIVE

Via POGO, the Pentagon has made two key documents relating to the military's use of torture available on its website: a March 2003 JAG Memo slamming a draft of the Working Group's Report on Detainee Interrogation, and the Working Group's Report which was published the following month. As POGO notes, these documents were declassified some time ago (Marty Lederman had posted the JAG one here and WaPo posted the report here), but they provide important context to the discussions surrounding John Yoo's March 2003 Torture Memo.

I'll come back to the Working Group Report (which lays out the potential risks for when the public discovers the US is using torture and has a nifty list of the ways our interrogation techniques would piss off our allies), but for now I just wanted to show how dubious the Judge Advocate general, General Thomas Romig, found John Yoo's (and the Administration's) Unitary Executive theories to be:

> The Office of Legal Counsel (OLC), Department of Justice (DOJ), provided DOD with its analysis of international and domestic law as it relates to the interrogation of detainees held by the United States Government. This analysis was incorporated into the subject draft Report and forms, almost exclusively, the legal framework for the Report's Conclusions, Recommendations, and PowerPoint spreadsheet analysis of interrogation techniques in issue. I am concerned with several pivotal aspects of the OLC opinion.
>
> While the OLC analysis speaks to a number of defenses that could be raised on behalf of those who engage in interrogation techniques later perceived to be illegal, the "bottom line" defense

> proffered by OLC is an exceptionally broad concept of "necessity." This defense is based on the premise that any existing federal statutory provision or international obligation is unconstitutional per se, where it otherwise prohibits conduct viewed by the President, acting in his capacity as Commander-in-Chief, as essential to his capacity to wage war. I question whether this theory would ultimately prevail in either the U.S. courts or in any international forum. If such a defense is not available, soldiers ordered to use otherwise illegal techniques run a substantial risk of criminal prosecution or personal liability arising from a civil lawsuit.
>
> The OLC opinion states further that customary international law cannot bind the U.S. Executive Branch as it is not part of the federal law. As such, any presidential decision made in the context of the ongoing war on terrorism constitutes a "controlling" Executive act; one that immediately and automatically displaces any contrary provision of customary international law. This view runs contrary to the historic position taken by the United States Government concerning such laws and, in our opinion, could adversely impact DOD interests worldwide. On the one hand, such a policy will open us to international criticism that the "U.S. is a law unto itself." On the other, implementation of questionable techniques will very likely establish a new baseline for acceptable practices in this area, putting our service personnel at far greater risk and vitiating many of the POW/detainee safeguards the U.S. has worked hard to establish over the past five decades. [bold my emphasis]

I guess this makes clear—as if we didn't already know—why Cheney wanted to control the promotions process for JAGs. As Romig himself said of Cheney's efforts,

> Retired Major General Thomas Romig, the Army's top JAG from 2001 to 2005, called the proposal an attempt "to control the military JAGs" by sending a message that if they want to be promoted, they should be "team players" who "bow to their political masters on legal advice."
>
> It "would certainly have a chilling effect on the JAGs' advice to commanders," Romig said. "The implication is clear: without [the administration's] approval the officer will not be promoted."

As Marty and Scott Horton and Jane Mayer have reported extensively, this JAG memo (and the others at Marty's link) show the degree to which DOD was warned against accepting John Yoo's advice. Curious that the DOD is making this all more accessible now, just as we're about to start the Gitmo Show Trials.

Update: opps, mistranscribed "broad."

JOHN YOO V. ALICE FISHER AND MICHAEL CHERTOFF

Man, if you had to choose whom to believe between John Yoo or Alice Fisher and Michael Chertoff who would it be? John Yoo is a hack—but he's an unashamed hack, proud of his accomplishments. Alice Fisher? Michael Chertoff? They're more of the dishonest hack type.

The reason I ask is that there's a seeming

contradiction between what Yoo claims in his March 2003 torture memo regarding DOD practices and Alice Fisher and Michael Chertoff's statements to DOJ's OIG regarding related events. At issue is whether the Criminal Division of DOJ—Fisher was the Deputy Assistant Attorney General in 2003, and just resigned from Criminal Division Chief; Chertoff was head of the Criminal Division when the Administration was developing its torture policies—told OLC how they would treat certain actions criminally. The Yoo Torture Memo claims that OLC had consulted with the Criminal Division about which statutes would not apply to the military during the conduct of war:

> The Criminal Division concurs in our conclusion that these canons of construction preclude the application of the assault, maiming, interstate stalking, and torture statutes to the military during the conduct of a war.

But the DOJ OIG report on torture records Alice Fisher stating that the Criminal Division did not give advice—at least not on the techniques themselves.

> Fisher stated that at some point she became aware that the CIA requested advice regarding specific interrogation techniques and that OLC had conducted a legal analysis. She also said she was aware of two OLC memoranda on that topic, but they did not relate to the FBI. Fisher also told the OIG that Chertoff was very clear that the Criminal Division was not giving advice on which interrogation techniques were permissible and was not "signing off" in advance on any techniques. (page 70fn; 113/438)

And Chertoff claims that he was asked—but refused to give—sign off on particular techniques.

> Chertoff said that the Criminal Division was asked to provide an "advance declination" in connection with the CIA's use of some techniques, but that he had refused to provide it. (page 100-101; 143-4/438)

In the sentence immediately following the description of Chertoff's denial, it also describes Chertoff admitting that he reviewed the memo.

> In testimony before the U.S. Senate on February 2, 2005, Chertoff stated that he was asked to review a draft of an OLC memorandum that eventually became the August 1, 2002, OLC memorandum regarding "Standards of Conduct for Interrogation," which is sometimes referred to as the "Yoo memorandum." Chertoff stated in his Senate testimony and his OIG interview that at least some of the CIA "techniques" were described to him at the time.

And then in a footnote, it reminds that the memo Chertoff reviewed did specifically address whether torture would or would not be charged.

> This general opinion did not describe any specific interrogation techniques, but did include an examination of "possible defenses that would negate any claim that certain interrogation methods violate the statute" prohibiting torture. A separate DOJ opinion issued the same day stated that the specific techniques approved …

The reason this matters is because if Chertoff did sign off on what would and would not be charged, then the memos basically become attempts to make the illegal legal. Marty Lederman explains,

> From all that appears, John was not

> acting entirely on his own with respect to the March 14th Opinion. Section II of the memo is where much of the most astounding legal analysis appears. In that section, John concludes that the federal statutes against torture, assault, maiming, and stalking (i.e., threats) simply do not apply to the military in the conduct of war, by virtue of four "canons of construction": (i) that criminal statutes should not be construed to apply to the military during war; (ii) that they should not be construed to apply to the sovereign more broadly; (iii) that they are superseded as to the military by the Uniform Code of Military Justice; and (iv) of course, that if Congress did mean for them to apply in this context, it would be a violation of the Commander in Chief's prerogatives.
>
> The memo's application of these canons to these statues (especially the torture statute) is, in my opinion, fairly outrageous, for reasons I'll discuss in further posts. And this section is the heart of the Opinion – the belts and suspenders in support of the basic conclusion that the military need not worry itself about all of these (and other) criminal laws in interrogation of al Qaeda suspects.
>
> Here's the remarkable thing: Page 11 of the Opinion states that "[t]he Criminal Division concurs in our conclusion that these canons of construction preclude the application of the assault, maiming, interstate stalking, and torture statutes to the military during the conduct of a war."
>
> In other words, John Yoo checked with the Criminal Division as to whether the military could torture and maim detainees in a war, and that Division,

> which ordinarily strongly resists narrowing constructions of criminal statutes, agreed that the torture and maiming (and other) statutes were inapplicable.

Now, as I said upthread, this is a seeming contradiction. What Fisher and Chertoff appear to be denying is that they bought off on any specific torture techniques. That's different, of course, than buying off on the concept that the Criminal Division would not prosecute torture per se during wartime.

So actually, with their carefully parsed responses, Fisher and Chertoff are probably not lying. They're just trying to distract from the fact that Chertoff bought off on the larger concept that DOJ would not prosecute torture in time of war—and then gave Yoo the leeway to decide for himself what kinds of torture he wanted to authorize.

"THE WATERBOARD"

The ACLU has a bunch of new documents on water-boarding posted—including a very heavily redacted draft of the 2004 CIA OIG report on the CIA's interrogation methods. The report is interesting for three reasons:

- The way they refer to water-boarding
- The timing
- The rationale

The Waterboard

One of the very few things they've left unredacted (in all these heavily redacted documents) are the references to water-boarding. But they don't use it as a verb, "to water-

board." Rather, they almost always refer to it as "the waterboard."

> The water board technique
>
> interrogators administered [redacted] the waterboard to Al-Nashiri
>
> interrogators used the waterboard on Khalid Sheykh Mohammad
>
> Cables indicate that interrogators [redacted] applied the waterboard technique to Khalid Sheykh Mohammad
>
> waterboard session of Abu Zubaydah
>
> waterboard on Abu Zubaydah
>
> The waterboard has been used on three detainees: Aby Zubaydah, Al-Nashiri, and Khalid Sheykh Mohammad

I don't know why this bugs me so much, but it does. It really emphasizes the clinical and bureaucratic nature of this practices, and pretends that human beings are not the ones inflicting it.

The Timing

The ACLU refers to this as a "draft document," though there is nothing on what is visible on the cover page to suggest this wasn't a final draft—so we can't be sure whether the date on the report is the date when it was finally released.

Still, I find the date worthy of note: May 7, 2004. Here's how that date works into the torture timeline:

> April 7, 2004 (approximately): 60 Minutes II acquires photos authenticating Abu Ghraib story.
>
> Mid-April, 2004: General Myers calls Dan Rather to ask him to delay story.
>
> Mid-April, 2004: Taguba begins to brief officers on his report ("weeks" before

> his May 6 meeting with Rummy).
>
> April 28, 2004: Hamdi and Padilla argued before SCOTUS. Paul Clement assures the Court that we don't torture. 60 Minutes breaks Abu Ghraib story and proves he's wrong.
>
> May 2004 (within days after Abu Ghraib becomes public): CIA briefing for Addington, Bellinger, and Gonzales on torture tapes.
>
> May 6, 2004: Taguba meets with Rummy, Wolfowitz, Cambone, Myers, and others
>
> > In the meeting, the officials professed ignorance about Abu Ghraib. "Could you tell us what happened?" Wolfowitz asked.
> >
> > [snip]
> >
> > "Here I am," Taguba recalled Rumsfeld saying, "just a Secretary of Defense, and we have not seen a copy of your report. I have not seen the photographs, and I have to testify to Congress tomorrow and talk about this."
>
> May 7, 2004: Rummy testifies before Congress on Abu Ghraib.
>
> May 7, 2004: CIA OIG draft report on interrogation techniques. Though this document is heavily redacted, reports say the investigation found interrogation techniques constitute cruel and inhuman treatment.
>
> May 10 2004: Sy Hersh's Abu Ghraib story.

In other words, this draft of the report, at least, bears the same date as Rummy had to testify before Congress. And the report came out

right in the middle of the panic over Abu Ghraib and probably early enough to be included in the May briefing of Addington, Bellinger, and Gonzales on the torture tapes.

They would have freaked out about this report in any case. But the timing of it surely exacerbated their panic.

The Rationale

As Doug Jehl reported at almost the same time as the torture tapes were destroyed, the report concluded that some of the interrogation methods might constitute cruel and inhuman treatment, and as such, violate the Convention against Torture.

> A classified report issued last year by the Central Intelligence Agency's inspector general warned that interrogation procedures approved by the C.I.A. after the Sept. 11 attacks might violate some provisions of the international Convention Against Torture, current and former intelligence officials say.
>
> The previously undisclosed findings from the report, which was completed in the spring of 2004, reflected deep unease within the C.I.A. about the interrogation procedures, the officials said. A list of 10 techniques authorized early in 2002 for use against terror suspects included one known as waterboarding, and went well beyond those authorized by the military for use on prisoners of war.
>
> The convention, which was drafted by the United Nations, bans torture, which is defined as the infliction of "severe" physical or mental pain or suffering, and prohibits lesser abuses that fall short of torture if they are "cruel, inhuman or degrading." The United States is a signatory, but with some reservations set when it was ratified by

> the Senate in 1994.
>
> The report, by John L. Helgerson, the C.I.A.'s inspector general, did not conclude that the techniques constituted torture, which is also prohibited under American law, the officials said. But Mr. Helgerson did find, the officials said, that the techniques appeared to constitute cruel, inhuman and degrading treatment under the convention.

While the CIA isn't showing us that part of the conclusion, it does show enough of the discussion on the legal issues surrounding the interrogation methods to show how they got to that conclusion. I find two parts of that discussion noteworthy.

First, after reviewing how the US interpreted Article 16 of the Convention—which prevents cruel, inhuman, or degrading treatment or punishment which do not amount to torture—to be limited to that "cruel, unusual, and inhumane treatment or punishment prohibited by the 5th, 8th, and/or 14th Amendments to the Constitution," it notes that:

> Although the Torture Convention expressly provides that no exception circumstances whatsoever, including war or any other public emergency, and no order from a superior officer, justifies torture, no similar provision was included regarding acts of "cruel, inhuman or degrading treatment or punishment."

This suggests that one thing the OIG considered was whether this no exception provision would apply to the cruel and inhuman clause. After all, if it did, it would present trouble for all the Yoo Memos that invoke exceptional circumstances and Commander in Chief authority.

The report also notes that Yoo's August 2002 did not consider whether any law—aside from the

torture statute—relevant to the detention and interrogation of detainees outside of the US, suggesting that Yoo didn't address these concerns about the Convention.

Then there's the part I really like. The report uses the State Department's own reporting to show that the techniques used by the US are considered offensive to the US:

> Annual U.S. State Department Country Reports on Human Rights Practices have repeatedly condemned harsh interrogation techniques used by foreign governments.
>
> [snip]
>
> > [from the 2002 Report issued in March 2003] In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.
>
> The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, ad threats against family members … [being] forced constantly to lie on hard floors [and] deprived of sleep …." Other reports have criticized hooding and stripping prisoners naked.

In other words, the report uses our country's own principled statements against torture techniques—precisely some of the ones we have used on detainees since 2001—to show that the US

considers these practices to be objectionable.

Now, in spite of the fact that they've shown how the OIG arrived at its conclusion that these interrogation methods violated the Convention, they've still invoked some kind of secrecy rule in order to redact that bit.

I guess that's the "we don't want to admit we broke the law" FOIA exception.

SECOND WORKING THREAD ON DOJ OIG TORTURE REPORT

The comments on the previous thread on the DOJ OIG Torture Report just closed.

But I've been meaning to start a new thread with a link to the searchable report that Selise made. Selise adds:

> 1. *Appendix B and C I did not convert.*
> 2. *I compressed the file when I was done (it got up to 72MB) so it's back to about 6 MB.*
> 3. *if there are any important errors I should correct, just let me know…*

WORKING THREAD: DOJ IG REPORT ON TORTURE

William Ockham and masaccio have been making very interesting comments about the DOJ IG report on torture for the last several days, and I decided it was high time to put up a working thread on the report.

To kick us off, let me point to a long masaccio comment in which he explores the apparent plan—subsequently scotched—to transfer al-Qahtani out of Gitmo so he could be tortured more aggressively.

> WilliamOckham asked on an earlier thread about the redactions in the chapter on Al-Qahtani. I have been looking at that chapter, and I am pretty sure the missing word is transfer or transport. Most of the deletions to that point in the report relate to one of three things: detention locations other than Iraq, Bagram, and GTMO; techniques of interrogation used on specific people; and agencies, probably including the CIA and perhaps its personnel and divisions.
>
> When we get to Chapter 5 on Al-Qahtani, we see the redaction in question. Apparently the point of interviewing him was to see what he could tell people about the 9/11 attacks, since he was believed to be the twentieth hijacker. In line with the other redactions, we see CIA, or some other three letter word redacted, and more redactions of techniques and people. We get a real hint about the word transfer or transport from footnote 71, which specifically states that there was a proposal to move Al-Qahtani to Jordan or Egypt to allow them to use other techniques. This appears in the text at least once, at page 88. The use of SERE techniques is raised, and footnote 62

says that these include dietary manipulation, sleep deprivation, nudity and waterboarding. There are several other mentions of the use of waterboarding.

There are several references to the intention of the military to very aggressive techniques, using words like relentless, and sustained attack (p. 90). Then there is this:

> According to the FBI, [its agents] had concerns not only about the proposed techniques, but also about the "glee" with which the would-be participants discussed their respective roles in carrying out these techniques and the "utter lack of sophistication" and "circus-like atmosphere" within this interrogation strategy session.

This lead me to speculate that the key to the redaction is that the transfer in question is not the transfer to Jordan or Egypt, but to an American black site where US personnel or contractors would torture him. Since waterboarding is mentioned, and other techniques are deleted, I think there is a chance the redacted techniques may be even more medieval.

There are two other interesting things. First, the whole discussion is in the context of deciding whether the FBI or the DoD would head up the interrogation. The FBI took the position that its techniques were best if they were given plenty of time for them to work, while DoD should take the lead if there was an immediate need for military intelligence. Once Al-Qahtani was captured, it seems obvious that FBI should take the lead, since their

> techniques had proven successful and accurate, given time. But the military just steamrolled them.
>
> The second thing is the porous memory of Alice Fisher, who "did not recall" much of anything. Other people told the OIG they talked to her, and she just doesn't remember the substance of those discussions. There is a nice example on page 98.

One thing I'd add to support masaccio's argument that the treatment in question went beyond water-boarding is that they always refer to the treatment that Abu Zubaydah underwent—not the one that Khalid Sheikh Mohammed did (not to mention al-Nashiri). That suggests the possibility that there's something Abu Zubaydah underwent that the other two confirmed detainees who were water-boarded did not undergo.

Update: per masaccio's suggestion, let's cite page numbers according to the page number in the PDF reader rather than the actual page number. This will make it easier to find each other's references. So, for example, instead of referring to the page numbered as 18, refer to 61/438.

DOD AND TORTURE DECLASSIFICATION TIMING

I think I'll be doing a series of posts on the DOJ IG report on torture. In this post, I will look at some of the timing surrounding torture declassification.

The very first footnote in the 300-odd page report sticks a shiv into DOD for its stalling

on this report:

> The OIG has redacted (blacked out) from the public version of this report information that the FBI, the Central Intelligence Agency (CIA) or the Department of Defense (DOD) considered classified. We have provided full versions of the classified reports to the Department of Justice, the CIA, the DOD, and Congressional committees. The effort to identify classified information in this report has been a significant factor delaying release of the report. To obtain the agencies' classification comments, we provided a draft report to the FBI, the CIA, and the DOD for classification review on October 25, 2007. The FBI and the CIA provided timely responses. The DOD's response was not timely. Eventually, the DOD provided initial classification comments to us on March 28, 2008. However, we believed those classification marking were over-inclusive. After several additional weeks of discussion with the DOD about these issues the DOD provided revised classification comments. The DOD's delay in providing comments, and its over-inclusive initial comments, delayed release of this report.

This is not the first we've heard of DOD's stalling. In an April interview with McClatchy, Fine complained about it.

> Marisa Taylor reports that DOD is stalling the release of a DOJ IG report on the FBI's role in torture.
>
> > The release of a report on the FBI's role in the interrogations of prisoners in Afghanistan, Guantanamo Bay and Iraq has been delayed for months because the Pentagon is reviewing how much

> > of it should remain classified, according to the Justice Department's watchdog.
> >
> > Glenn Fine, the Justice Department's inspector general, told McClatchy that his office has pressed the Defense Department to finish its review, but officials there haven't completed the process "in a timely fashion."
> >
> > "Why that happened, I don't know," Fine said in an interview this week.
>
> Tell me, Marisa Taylor, did Fine have a smirk on his face when he said that? I couldn't imagine why DOD would be stalling the release of this report!
>
> Though Fine suggests there has been some recent movement in the classification review process.
>
> > Fine said the Pentagon now appears to be moving on his request.
> >
> > "My sense is they are working hard on it now, and I believe we're going to reach a resolution one way or another in the not-too-distant future," he said. [my emphasis]
>
> Tell me, Glenn Fine, did this sudden responsiveness on the part of the DOD start in the last three weeks or so.

As it turns out, yes, the sudden (partial) responsiveness had started two weeks earlier, on March 28. That means DOD first sent its declassification comments to DOJ just three days before Daniel Dell'Orto declassified John Yoo's torture memo.

> Declassify under authority of Executive Order 1958
> By Acting General Counsel, Department of Defense,
> By Daniel J. Dell'Orto
> 31 March 2008

So let's review the timing, shall we?

> February 25: Jim Haynes resigns
>
> March 10 (estimated): Jim Haynes' resignation takes effect
>
> March 28: DOD first provides declassification comments
>
> March 31: DOD declassifies Yoo torture memo

DOD suddenly got a lot more forthcoming in March, didn't it?

OUT OF SCOPE: THE DOJ IG REPORT

I've just now finished reading the conclusion of the Department of Justice Inspector General's report on torture. I gotta say, I'm not surprised Alice Fisher chose this week to quit, nor am I surprised that Gitmo's Convening Authority decided not to charge al-Qahtani, as both Fisher and Qahtani figure prominently in the report.

The other general comment I have about the report is about its scope: it was designed to protect the Administration and its method of legalizing torture. For example, the report notes:

> We did not examine issues related to DOJ Office of Legal Counsel opinions

> concerning the legality of several interrogation techniques the CIA sought to use on certain high value detainees. While senior FBI and DOJ officials were aware of these opinions, an assessment of the validity of the OLC legal opinions was beyond the scope of this review.

Similarly, the IG report apparently did not review what happened to complaints about torture once they got to Bush's top aides (though the report doesn't actually say whether this was because of a scope issue or because Bush's aides refused to cooperate).

> On a broader level, we were unable to determine definitively whether the concerns of the FBI and DOJ about DOD interrogation techniques were ever addressed by any of the structures created for resolving inter-agency disputes about antiterrorism issues. These structures included the Policy Coordinating Committee, the "Principals" Committee, and the "Deputies" Committee, all chaired by the National Security Council (NSC). Several senior DOJ Criminal Division officials also told us that they raised concerns about particular DOD detainee practices in 2003 with the National Security Council, but they did not recall learning that any changes were made at GTMO as a result. Several witnesses told us that they believed that Attorney General Ashcroft spoke with the NSC or the DOD about these concerns, but former Attorney General Ashcroft declined our request for an interview in connection with this report.

Of course, there is no Inspector General function for the NSC—it's one big executive privilege black hole in which complaints about torture can be buried. Make no mistake, though,

the implication is that Condi Rice, Stephen Hadley, Dick Cheney, and Rummy did nothing apparent to resolve the inter-Agency tensions about torture.

But John Ashcroft? Refusing to meet with DOJ's own Inspector General to talk about torture? Keep in mind, the Inspectors General Offices are supposed to have some independence from the heads of their agencies—in the case of DOJ's IG, the Attorney General—specifically so they can include a review of the Attorney General's behaviors in matters of concern.

But I guess John Ashcroft would rather help the Administration bury the concerns about torture by refusing to cooperate.

Well, I've got about 350 pages of the report left to read. Better, I guess, to walk into it knowing that the report skirts three big black holes that hide the most important discussions about torture. If nothing else, the way in which this report does not and cannot discuss the issues that OLC, Condi Rice, and John Ashcroft apparently faced tells you what we need to know about torture.

Update: In somewhat related news, the Center for Constitutional Rights, which represents Qahtani, reveals that Qahtani tried to commit suicide last month after he was charged. Neither CCR nor Qahtani's family were informed of the suicide attempt.

> Newly declassified notes from Center for Constitutional Rights (CCR) attorney Gitanjali Gutierrez's meetings with her client, Mohammed al Qahtani, earlier this month reveal that he attempted suicide in early April after he learned death penalty charges were referred against him by the government to the Military Commissions at Guantanamo. Mr. al Qahtani cut himself a series of times with escalating severity. His third cut resulted in a deep wound, profuse bleeding and hospitalization.

> Mr. al Qahtani told his attorney, "I cannot accept this injustice. If I have to stay in this jail I want to put an end to this suffering."
>
> Neither his lawyers nor his family were notified of his attempted suicide or his hospitalization following the attempt at taking his life.
>
> When Ms. Gutierrez met with her client the week of April 28, 2008, she noticed the scars immediately: "I was shocked because, except for a period during his torture in 2002, Mohammed has not been suicidal or self-injurious at Guantanamo."

SUNSET MUSINGS

It was a nice quiet weekend; thankfully somewhat thin on bad and/or outrageous news. Other than all the allergens that are currently thick as soup in the air, the weather here is perfect; 90 degrees and not a cloud in sight. Perfect day to get the backyard and pool ready for the summer. There are a couple of legal pieces on the various Bush atrocities of government I should probably work on, but that just seems like a little too much work as I sit here on the patio watching the sunset turn Camelback Mountain the most beautiful shades of purple, crimson, and gold that you can imagine. My wife calls sunsets like this "golden hour", they are truly stunning. The attached picture is from Flickr via Google Images, but I swear it must have been taken from my front yard; it is exactly the view I have as I write this post. Well, almost exactly, this is clearly taken at sunrise, because the view is looking to the east. It is a little hard to make out, but the pointed rock immediately underneath the sun is

known as the Praying Monk. When the light is right, it really does bear a remarkable resemblance to it's namesake.

The Casa de bmaz travelogue portion of this post thus complete, I would like to point out a recent New York Times story. It is the story of Sami al-Hajj, an individual caught up in Bush's berserker war on terror. Often in our discussions Hannah Arendt's phrase "the banality of evil" is applied; but it is not a metaphor, it really is the truth about our country these days. The following story is reported in national media, including the New York Times, but with a casual nonchalance that is an ox gore to our collective national soul.

Courtesy of William Glaberton at the New York Times, is the tale of Sami al-Hajj

> A former cameraman for Al Jazeera who was believed to be the only journalist held at Guantánamo Bay was released on Thursday, after more than six years of detention that made him one of the best known Guantánamo detainees in the Arab world, his lawyers said.
> …
> "It is yet another case where the U.S. has held someone for years and years and years on the flimsiest of evidence" without filing charges, one of the lawyers, Zachary Katznelson, said Thursday.
> …
> The Pentagon several times changed its assertions about Mr. Hajj. But military officials have insisted recently that he carried money intended for Chechen rebels.
>
> He had been an Al Jazeera employee for only a short time when he was captured in 2001 by Pakistani forces at the Afghan border. He was later turned over to American forces and, in 2002, sent to Guantánamo.

Bill Bennett made a cottage industry of screaming "where's the outrage" in the late 90's. Of course, right wing scrap hack that he is, Bennett was talking about the passivity of the nation toward a man getting a consensual blowjob from a adult woman. Screw Bill Bennett, I want to know where the outrage is over the fact that our country is effectively buying human beings in foreign countries and locking them in "enhanced interrogation" dungeons indefinitely based either on no probative evidence whatsoever, or on ever changing hoaked up bunk cobbled together on the fly as a means to their torture slave ends.

The pathetically ironic part of this story is Glaberton plowing through how journalists have not covered the story of a mistreated journalist.

> The case did not draw the attention among American journalists that some of them said it deserved, in part because Mr. Hajj's full life story was not known. As with most Guantánamo detainees, the Pentagon's evidence against him was largely secret.
> …
> "I would have rather seen more of an outcry," said Joel Simon, executive director of the Committee to Protect Journalists, which tried to call attention Mr. Hajj's detention. Mr. Simon said the case was part of what he called a disturbing trend of the American military to hold journalists for long periods without charges before eventually releasing them. He said his group had documented 11 such cases since 2001.

Two critical concepts of immense importance to the fundamental nature of what this country is, what it stands for, and how it's citizens are informed by their press, and it is published with all the introspection, analysis and professionalism of a freaking high school bake

sale announcement.

I started writing this post Saturday afternoon, but it kind of got put on the back burner with all the outdoor fun we have been having here the last few days. As the comments appear to have closed on the last thread, I wanted to get something up. I have several other pieces that I am working on and will start putting up tonight; looks like a busy week ahead. Be back soon…..

UPDATE: There is another recent detainee story that deserves mention in the category of Bush/US Government cravenness as well. It is the story of young Canadian Omar Khadr, now 21, but only 15 years old when captured at the side of his dying father in a firefight in Afghanistan.

> A Canadian captured in Afghanistan at age 15 can be tried for murder in the Guantanamo war crimes court, a U.S. military judge ruled in rejecting claims that he was a child soldier who should be rehabilitated rather than prosecuted.
> …
> His military lawyer, Lt. Cmdr. William Kuebler, had argued in February hearings at the Guantanamo naval base that Khadr was a child soldier illegally conscripted by his father, an al Qaeda financier. He urged the judge to drop the charges, which carry a maximum penalty of life in prison.
> …
> Kuebler called the ruling "an embarrassment to the United States" and said Canada would share in the embarrassment if it allows its citizen to be tried at Guantanamo. He said Khadr would be the first child soldier tried for war crimes in modern history.
>
> The United States and Canada have ratified an international treaty, the Child Soldier Protocol, that outlaws recruitment of combatants under age 18 and requires governments to help child soldiers recover and reintegrate into

> society.

Lovely. Bush has treated yet another seminal international human rights treaty, ratified and adopted by the United States as the law of the land, as "just a damn piece of paper". Not only are we violating the Child Soldier Protocol to prosecute young Khadr, there is a serious question as to the truthfulness of the allegations against him. As Ishmael and Skdadl have pointed out previously, the Canadians are not exactly acquitting themselves well on the Khadr case either; they should be standing up for the propriety and spirit of the law, irrespective of whether Khadr is ultimately guilty. Crickets chirping in the yard up north too.

In regards to detainee issues, when I started plumbing some depths for a couple of sub-issues, I stumbled into this dissertation that is very thorough and useful. *Report On Guantanamo Detainees* by Mark (Seton Hall Law Professor) and Joshua (attorney) Denbeaux. Pretty outstanding resource, check it out.