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SUBJECT: Handling of Al Qaeda Detainees

Most people are familiar with two time-tested models with respect to criminals and prisoners:

- A country's criminal justice system; and
  - The international system for the treatment of prisoners of war.
- First, the criminal justice system: People charged with breaking the law generally have harmed only a limited number of people. The U.S. criminal justice system is designed to reflect the fact that those charged are generally our people and the crimes they are charged with has generally harmed a few people, not thousands.
- Second, prisoners of war: In war, soldiers get captured. In the Geneva Convention, the U.S. and other countries decided it is desirable to recognize that individuals who are legitimately representing their country in uniform and fighting for their country should be treated as “lawful combatants,” and that it benefits all civilized countries to have their soldiers when captured be treated in a humane manner.
- And, third, the 21<sup>st</sup> century has brought a new situation—terrorist networks. Here the terrorists captured are not a threat to a few people, but to potentially thousands, or tens of thousands, given the possible availability of weapons of mass destruction. It is also different in that terrorists may not be representing a country, but rather killing on behalf of a terrorist network, not for a nation, but a cause.

Because the old models don't fit this new threat, the President decided that the U.S. should have available military commissions, to be designed to deal in a trial with this different set of circumstances.



So, too, the new circumstances require differences in procedures with respect to the detention process. Therefore, suitable procedures appropriate for detention, interrogation and other, pre-trial matters, are being devised by the U.S. Government.

Several differences with respect to terrorist networks are of note:

- First is to prevent more terrorist attacks. The most critical task is to gather intelligence from detainees, so that imminent terrorist threats can be stopped before more people are killed. (An example was the information from Afghanistan that stopped terrorist attacks on Singapore targets and U.S. naval vessels.) Intelligence gathering, not law enforcement, has to be the first priority.
- Second is the need for speed. Speed is generally not critical with common criminals or prisoners of war. In the case of terrorists, given the reach of terrorist networks and the possible access to weapons of mass destruction, we have no choice but to give priority to speed.
- Third is confidentiality. It is generally not critical to keep information from the public with respect to a normal criminal prosecution or prisoners of war. In the case of terrorists, however, it can be vital to protect sources and methods. Also, to the extent it is known that a specific terrorist is being held, it can reduce the value of intelligence gained from that captive, because terrorists still at large will gain the knowledge that the information that individual had is now available to the authorities, and they can and do then take steps to deny and deceive U.S. anti-terrorist efforts.
- Fourth is safety. Given the record of violence by terrorists, there is a need to consider the safety of witnesses and their families, jurors, prosecutors, judges, and those detaining the terrorists.

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