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# So Guantanamo wasn't needed after all

By Alasdair Palmer

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President Bush's policy on how to treat people captured in the course of the war on terror is unravelling fast. In order to comply with a Supreme Court ruling, he has to get new rules for military tribunals for the suspects held at Guantanamo through Congress.

Last week, Sen John McCain vowed to fight the president's attempt to change the definition of "cruel, inhumane and degrading" treatment in the Geneva Conventions, and to give members of the CIA immunity from prosecution for "grave breaches" of the convention (in other words, torture). Bush's former secretary of state, Colin Powell, endorsed McCain's attack, solemnly pointing out what has long been obvious: "The world is beginning to doubt the moral basis of our fight against terrorism."

The incarceration and torture of men such as Khaled Sheikh Mohammed, the man who planned the 9/11 attacks, has certainly done immense damage to America's reputation, as has the indefinite detention without trial of terrorist suspects in Guantanamo.

advertisement **George Bush did not, of course, come up with those policies himself: his lawyers did. They were convinced that the administration would have a chance of successfully interrogating the terrorists they captured only if they kept them out of the reach of... yes, other lawyers.**

That was the reason for setting up the Guantanamo camp on Cuba. What the lawyers feared most was civilian trials for those captured

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in the war on terror. They were worried by the presumption of innocence, which inevitably makes securing a guilty verdict difficult in terrorist cases, where the evidence usually depends on the coercion of witnesses.

Moreover, the experience of the trials arising from the first attempt to blow up the World Trade Centre revealed that when the prosecution disclosed its evidence to the defence, it handed the terrorists a huge amount of intelligence on the US government's knowledge of their network.

There was a furious debate in the months after 9/11 as to whether the US should treat and try those captured in the war on terror according to the Geneva Convention. Lawyers in the defence department insisted that it should not: terrorists did not wear uniforms, they broke all the laws of war, and they did not serve a state but a terrorist group. They should therefore be categorised as "enemy combatants" to whom the conventions did not apply.

The strongest argument against their case was based not on law but on policy. Colin Powell, then running the State Department, predicted that to announce that the US was "coming off Geneva" would destroy America's reputation abroad and make it much harder to win the war on terror. Small breaches of the convention would any way not count as "violating" it, he added. And no one was contemplating "grave breaches"... were they?

In fact, "grave breaches" were precisely what some lawyers in Bush's administration were advocating. The now-notorious "torture memo" stated that the President's wartime powers meant he could order just about anything he liked. That memo was later revoked by other, less extreme officials within the Justice Department.

But by then, the pictures from Abu Ghraib were out and the "torture memo" was public. The world had concluded that the US's primary weapons in the war on terror were vicious cruelty and the violation of international law.

What must be most galling to Gen Powell now is that it could all have been avoided if the President had taken his advice. Military tribunals based on Geneva Convention principles would have ensured that terrorist suspects were held legally on US soil.

As for torture, the lawyers who advocated it broke the fundamental rule governing gruesome methods: do not try to justify them by anything

except necessity. Above all, do not write your justification down in a 50-page memo that will inevitably leak.

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