

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

Redefining Torture—Air Date: 12/12/05

From allegations of U.S.-operated secret prisons to Abu Ghraib and Guantanamo Bay, the Bush Administration is revisiting the limits of legal conduct in its pursuit of intelligence. Congress has introduced legislation to limit the rights of enemy combatants to challenge their detentions in federal court while other measures, led by Senator McCain, seek to close loopholes in current anti-torture laws. On this edition of Justice Talking, we examine the laws that govern interrogations and the use of torture in the war on terror.

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MARGOT ADLER: From NPR, this is Justice Talking.

UNIDENTIFIED MALE: It was unclear to me what the status of the prisoner we had was. Were they enemy prisoners of war? Were they security internees? People were telling me that they weren't being treated as though they were enemy prisoners of war.

SECRETARY OF STATE CONDOLEEZZA RICE: Any policy will sometimes have mistakes. And it is our promise to our partners that should that be the case that we will do everything that we can to rectify those mistakes.

UNIDENTIFIED MALE: I think McCain is mostly a windbag. The agency isn't torturing. And by his amendment, I think with Mr. Levin, they have just basically said that the agency is torturing or the American government is torturing. And it's not true.

MARGOT ADLER: I'm Margot Adler. Today we talk about torture. What's official U.S. policy, what's actually happening on the ground, and whether fighting the war on terror changes the rules. Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Since photos documenting the prisoner abuse scandal at Abu Ghraib were released, many Americans were outraged at how prisoners of war were being treated by American soldiers. It forced Congress, the military and the White House to re-examine the use of torture by American captors, and how prisoners of war and detainees should be treated.

Should interrogation techniques differ depending on who is being interrogated and where they're being held? For example, are detainees in Guantanamo Bay different from those imprisoned in Iraq? Just how do the Geneva Conventions apply to the war on terror and can we fight a non-traditional war with traditional rules and laws? These are hard questions. While we can't promise to answer them all today, we will be talking with a number of different people about what they think the answer should be.

Later in the show I'll talk with a former CIA agent about torture and how far he thinks the intelligence agency should be allowed to go to get information. Also, I'll have a conversation with a former Army interrogator who tells us about his experience in Iraq and how he did things to prisoners that he thinks went over the line. And a human rights lawyer and a former prosecutor give us their starkly different views about how the Bush Administration is handling intelligence gathering in the war on terrorism.

But first, to help us untangle the confusing web of what happened when, who did what, and what is different about where we are now. I'm joined by Michael Hirsh. He covers international affairs for Newsweek and is author of "At War With Ourselves", a book that explores America's foreign policy. He joins me from Washington, D.C. Thanks for coming in to talk with me Mike.

MICHAEL HIRSH: Oh, happy to be here.

MARGOT ADLER: What has been the United States policy on the use of torture as a means of getting intelligence? Let's start pre-9/11.

MICHAEL HIRSH: Well, the United States has never condoned or embraced the use of torture. I mean, it still doesn't. It's a war of words currently over what we doing currently in interrogation rooms. But even before the Geneva Conventions there certainly was never any policy that permitted this kind of behavior.

MARGOT ADLER: But former CIA Counter-terrorism Chief, Cofer Black, said to Congress there was a before-9/11 and there was an after-9/11, and after 9/11 the gloves came off. So walk us through what happened after 9/11.

MICHAEL HIRSH: Well, as the Bush Administration grappled with the horror of 9/11 and what it meant, it began to conceive of this and has said so often, a completely different kind of war with different rules or no rules at all. They repeatedly said, for example, that the Al Qaeda terrorists were not normal combatants. They were not uniformed, they

were not soldiers, they didn't observe the Geneva Conventions. And even more than that, that this was not a situation where, as with the Japanese at Pearl Harbor, you would get a formal declaration of war.

And so it became imperative to pre-empt, and that was true in the interrogation room as it was, the whole idea of pre-emptive war, attacking a state before it attacks you. And so around that basic concept they began to legalize and to discuss ways of justifying that. And one of the conclusions they came to very early on, you know within months of 9/11, was that the Geneva Conventions adopted in 1949 did not apply to Al Qaeda. And therefore Al Qaeda would not be subject ...

MARGOT ADLER: Because they were not regular soldiers in other words.

MICHAEL HIRSH: Exactly.

MARGOT ADLER: Well does it mean that we've defined torture differently in the past and are defining it different now or are defining interrogation differently?

MICHAEL HIRSH: Yeah. One of the things that occurred as the Administration began these discussions, there were basically two phases. One was, what do we do about Geneva, okay. And then early in 2002 a series of memos came out of the White House and the Justice Department saying we're not going to observe that. Then there's a second moment when the Administration is grappling with what can you do if you have a likely terror suspect who you think knows something about perhaps a plot on the United States or about Al Qaeda's structure and he's not talking. And this was actually in response to a couple of particular subjects, like Abu Zabida. He was in CIA custody. The CIA said, well he's not talking, what can we do?

MARGOT ADLER: Now who is he again?

MICHAEL HIRSH: He was a top Al Qaeda officer based in Afghanistan and later captured near Pakistan or in Pakistan. And, again, you have what the Israeli's used to the ticking time bomb scenario. If you think you have a terrorist in your hands and he knows about some imminent plot, what are you justified in doing? And so Administration lawyers began to discuss this and that's when they began to first talk about these so-called enhanced interrogation techniques which human rights groups sometimes call torture. They published a series of memos internally which so narrowly defined torture that basically anything that didn't cause permanent damage to a person or kill the person would not be torture.

And this is what groups later on, like Human Rights Watch, said was outrageous and, indeed, the legal reasoning was such that many conservative lawyers later disavowed the thinking in those memos.

MARGOT ADLER: Now these were the controversial torture memos that we hear about, right?

MICHAEL HIRSH: Right, exactly.

MARGOT ADLER: Let's talk for a moment about Senator McCain's bill which would add additional protection against torture. What does the bill actually do?

MICHAEL HIRSH: Well, the bill, very briefly and in very clear language, basically says that anyone in custody under control of the Defense Department or any other agency will be treated according to the U.S. observance of International Treaties, and particularly the Convention Against Torture, and will not, therefore, be subject to cruel, inhuman or degrading treatment or punishment. And then he goes on to say that we define that cruel, inhuman or degrading treatment or punishment as whatever is prohibited by the 5th, 8th and 14th Amendments to the Constitution, which are basically the amendment that protect our due process of law when we're being tried, and also forbid cruel and unusual punishment.

So, basically, McCain is saying this should apply to all people in U.S. detention anywhere around the world. And he also says in this amendment that whatever interrogation techniques are used should be clearly stated in the Army Field Manual. So it's basically an attempt to clarify what has remained fuzzy for so long as the Administration has gone through this process of trying to figure out how to handle detainees. You know, what you hear again and again from soldiers in Iraq and elsewhere is that they simply don't know what the rules are.

Once Geneva was thrown out, it never became clear what was permissible and McCain is trying to address this.

MARGOT ADLER: Now, I've got to ask you, since you say that we don't do torture and Porter Goss of the CIA said the CIA doesn't do torture, I'm still confused why in a sense we need all of these laws, why there's objections since no one says they're doing it. I'm very confused about why this has become such a big, complicated controversy.

MICHAEL HIRSH: Well Margot it does back to the definition of what torture is. The Administration comes out with these standard statements which they've been saying ever since the Abu Ghraib scandal broke, that we don't do torture. But, you know, that begs the question what is torture and how do you define it. And this is where we go back to these legal memos that I mentioned earlier where the Administration defined torture so narrowly as to mean that you could basically do whatever you want in an interrogation room, pushing someone around, putting them in stress positions for hours at a time, lowering a temperature, the temperature in the room to cause hypothermia.

A technique called water boarding where a person is placed lying face up, a cloth drenched with water is placed over their face and water is poured into it to make them think they're drowning. A lot of techniques like this that many people would consider torture, the Administration would not define as torture under its very narrow language. And so this is what McCain is trying to deal with in his amendment. He's trying to say,

look, whatever we don't allow to be done to people here in the United States under our own constitution, we're not going to permit to be done anywhere else. This is about us. It's about our values.

It's about how we treat our enemies. It's not about whether some other party to some conflict has signed the Geneva Conventions. That's never been what we are about as Americans.

MARGOT ADLER: What has been the policy of other countries with regards to torture?

MICHAEL HIRSH: Well, this gets into the issue of whether it's legitimate to render suspects to countries where we suspect or know for certain that abusive techniques occur, like Uzbekistan for example, or Saudi Arabia. There's at least one case that is being tried in U.S. courts now involving a suspect who was interrogated in Saudi Arabia and because he alleges that he was tortured, the question has arisen whether what he said during that interrogation is admissible as evidence in U.S. courts. It's remained murky.

And I have to say that there is no small amount of hypocrisy that we're witnessing as other countries condemn the United States for these interrogation abuses and these, you know, black sites and secret prisons when there are a large number of these countries that have conducted or conduct such practices.

MARGOT ADLER: New allegations have cropped up recently that Iraqi police have been torturing and killing Sunnis in Iraq. Some argue that this is a result of the ethnic conflict and years of abuse by Saddam Hussein. How much responsibility must the U.S. take here? After all, they have trained the police force and are supposedly working with them side by side.

MICHAEL HIRSH: That's an excellent question. About a year ago, almost a year ago, a colleague of mine at Newsweek, and me published an article called the Salvador Option which was about how the Pentagon was considering employing or aiding squads of hit men, it wasn't clear whether they would be assassination teams or whether they would simply do snatch operations to detain leading suspected Sunni insurgents. And that appears to be what is happening. And the interesting analogy to El Salvador, of course, is that while allegations have been flying for two decades since that era about what the U.S. involvement was with the so-called death squads in El Salvador, it's never become completely clear, you know, what the policy was.

I mean, for example, this has dogged John Negroponte who was an ambassador to Honduras back then, even though there's no real evidence that he was involved in this policy. I guess my point is that we may never really know what the U.S. involvement is with this. It is believe though, as we reported almost a year ago, that in fact the U.S. was very frustrated with what the Sunni insurgents were doing and it felt like the Sunni population what was supporting the insurgents was not feeling any pain, let's put it that way.

Was not feeling the expense of supporting the insurgency and we needed a more aggressive push back and they felt that to some degree, during Salvador as brutal as this counter-insurgency was, it succeeded the quelling the insurgency. So I think that there has been involvement, at the very least on a wink and a nod level, of permitting these sort of Shiite, and I think in some cases Kurdish Peshmerga, hit squads to exist.

MARGOT ADLER: Thanks for joining me today, Mike.

MICHAEL HIRSH: Thanks for having me Margot.

MARGOT ADLER: Michael Hirsh is a Newsweek magazine reporter who covers international affairs and has written extensively about the war in Iraq. Coming up, a former U.S. Army interrogator in Iraq tells us about some of the interrogations he participated in and what he calls “torture lite.” Don’t go away.

MARGOT ADLER: This is Justice Talking, I’m Margot Adler. On today’s show we’re taking a look at U.S. interrogation policy in the war on terror. To get a better understanding of what it’s been like in Iraq for those trying to get intelligence from prisoners, I called Tony Lagouranis. He was a U.S. Army interrogator from 2001 to 2005 and served a tour of duty in Iraq for one year. He lives in Chicago which is where I reached him. Welcome Tony.

TONY LAGOURANIS: Thank you.

MARGOT ADLER: Tony, when you went to Iraq, what did you expect you would be doing?

TONY LAGOURANIS: Well, I thought I was going to be trying to break up the insurgency and trying to liberate the Iraqis.

MARGOT ADLER: And to do that, what kind of training did you have?

TONY LAGOURANIS: I was trained to do human intelligence collecting, specifically interrogation. And we were trained to do interrogations on a pretty conventional army prisoner. And also we were trained using the Geneva Conventions for enemy prisoners of war.

MARGOT ADLER: Now when you were actually in Iraq, what was a typical interrogation like?

TONY LAGOURANIS: It was all the approach. It was all trying to break the person down. Because first of all, nobody wanted to give us information. But, second of all, we were getting a lot of innocent people who didn’t have information to give us and we didn’t know which was which. So we were not, we weren’t getting intelligence basically.

MARGOT ADLER: Did you feel that you and the other interrogators went too far?

TONY LAGOURANIS: Well, I did, yeah. I mean...

MARGOT ADLER: What happened?

TONY LAGOURANIS: I was being ordered to do some harsh tactics when I was up in Mosel.

MARGOT ADLER: Like what?

TONY LAGOURANIS: Like using the cold weather to induce hypothermia, using stress positions for long periods of time, using sleep deprivation, environmental manipulation, dietary manipulation. I also used military working dogs. Everything that I was told to do up there I would go to our interrogation rules of engagement which lay out what we could and couldn't do. These came from the Pentagon. And I checked it out and everything they were telling me to do was legal.

MARGOT ADLER: In what sense was it legal?

TONY LAGOURANIS: Well, these interrogation rules of engagement were published by the Pentagon. I could refuse an illegal order, but, you know, if I didn't know if it was illegal then I couldn't refuse.

MARGOT ADLER: Do you think that you participated in torture?

TONY LAGOURANIS: Yeah, I mean, I participated in what they call "torture lite".

MARGOT ADLER: Torture lite?

TONY LAGOURANIS: Right. It's not smashing fingers or using electricity.

MARGOT ADLER: Do you think that the methods you used yielded good intelligence?

TONY LAGOURANIS: No. None of those harsh methods that I used yielded good intelligence. The only time that I got intelligence, which was pretty rare frankly, I interrogated probably almost 400 prisoners while I was in Iraq.

MARGOT ADLER: Wow.

TONY LAGOURANIS: And the only time I got good intelligence was when I was trying to build a good rapport with a prisoner, I was trying to get him to trust me. Even that was rare.

MARGOT ADLER: Did you feel that there were clear policies explaining what you could do and what you could not do as an interrogator when you were in Iraq?

TONY LAGOURANIS: It was unclear to me what the status of the prisoner that we had was. Were they enemy prisoners of war? Were they security internees? Protected persons? I didn't know what it was. People were telling me that they weren't being treated as though they were enemy prisoners of war. And that's the only way that we were trained, was to interrogate enemy prisoners of war.

MARGOT ADLER: Did you go to your superiors to bring up your concerns?

TONY LAGOURANIS: Yeah, I did all the time actually.

MARGOT ADLER: And what happened?

TONY LAGOURANIS: Well, my direct chain of command, they were really trying to figure out with me what was legal and what we could refuse to do.

MARGOT ADLER: And tell me why you decided to leave the Army.

TONY LAGOURANIS: Well, when I got back from Iraq, I mean, you know I just really felt so badly about what our mission was over there and our goals over there and the way we're going things, I just really didn't want to be a part of that operation.

MARGOT ADLER: You said you were a bit insubordinate. How did that happen?

TONY LAGOURANIS: We had new people in the unit and we were conducting training about interrogation and also about general Army values and the way we conduct ourselves, and I was speaking up and saying that everything we were doing over there was just useless and meaningless and we weren't maintaining our values, and we weren't being effective. And I just wasn't afraid to say this to my leaders and so they, you know they could have punished me but they didn't. They, instead, they just sort of got me out on a medical discharge.

MARGOT ADLER: I'm wondering, Tony, if you've read about McCain's anti-torture amendment and if you think that Congressional action will have any effect?

TONY LAGOURANIS: Well, you know one of the things I saw in Iraq was when they started having more oversight after the Abu Ghraib scandal, the torture moved from the detention facilities to the line units where they would, people would, the line units were arresting people, sort of torturing the people.

MARGOT ADLER: In their homes?

TONY LAGOURANIS: Before they came to the prisons. So it seems like actually the problem got worse after Abu Ghraib because, then you had absolutely no oversight at all. At least when it was happening in the prison there was some amount of control. I mean, maybe not, you know, in cell blocks A and B, Abu Ghraib, but when you have the line units doing it, I mean, they can kill people and there isn't even a record of this person

having existed. It's great. I think we should legislate against torture, but is it going to do any good in Iraq? I don't know.

MARGOT ADLER: Tony, thank you so much for talking with me about your experiences in Iraq.

TONY LAGOURANIS: Okay, thank you.

MARGOT ADLER: Tony Lagouranis was a U.S. Army interrogator from 2001 to 2005 and served a tour of duty in Iraq for one year. He left the military in July, 2005 with an honorable discharge.

MARGOT ADLER: To talk about U.S. policy regarding interrogation techniques and about pending legislation in regard to detainees and torture, our guests are Andrew McCarthy and Barbara Olshansky. Andrew McCarthy is a former federal prosecutor, a contributor to the National Review Online, and he's a senior fellow with the Foundation for the Defense of Democracies. He led the prosecution against Sheik Omar Abdel-Rahman who was convicted for his role in the 1993 World Trade Center bombing and a plot to bomb New York City landmarks. He joins me from a studio in Fairfield, Connecticut. Welcome Andy.

ANDREW MCCARTHY: Hi Margot, good to talk to you.

MARGOT ADLER: Barbara Olshansky is the Legal Director of the Global Justice Initiative at the Center for Constitutional Rights. She has been fighting for the rights of Guantanamo Bay detainees and is representing several Iraqi men who allege they were tortured. She joins me from a studio in New York City. Welcome Barbara.

BARBARA OLSHANSKY: Thank you for having me.

MARGOT ADLER: I'd like to begin with some definitions. How would you each define torture? Barbara, you first.

BARBARA OLSHANSKY: Wow. The term torture is defined in various international instruments. The idea is coercive physical or mental strategies intended to injure the individual in order to force information out of that person or a confession out of that person, or to degrade that individual in order to break his or her will or spirit.

MARGOT ADLER: Andy, would you have any differences in that definition?

ANDREW MCCARTHY: Yeah, I differ with it substantially. Under American law it's not just coercive physical or mental treatment, it's actually got to be the infliction of severe pain, whether it's physical pain or mental pain. There is a consistent effort in this definition to try to switch us over to a super national definition of the law, but what we're

bound by in this country is American law. And under American law, torture has a very defined statutory definition and it involves severe pain and it would not prohibit all methods of coercive interrogation that fall short of that standard.

BARBARA OLSHANSKY: I sort of object to that on a number of different levels. And I guess first is with Andy, if I can call you that.

ANDREW MCCARTHY: Sure.

BARBARA OLSHANSKY: Andy's reference to what he calls a super national definition of law. And I think that perspective is a very interesting one which is the one that this Administration in particular has been fond of and utilized and that is one that takes the United States very deliberately out of the world community of nations and out of its obligations and commitments under international treaties and covenants. And it seems to imply that the United States has never been a party to any of those treaties and covenants when, in fact, it has.

United States has signed and ratified the Geneva Conventions, the Convention Against Torture, and domestically in the United States there is also the Torture Victim Protection Act and also the War Crimes Act. And so it's not something that exists outside in some other universe. It is very much a part of what the world has agreed on. And torture and the notion of torture is what's called an absolute prohibition in international law. It is use cogants (ph.), one of the highest laws of the world, and it means that torture is absolutely prohibited in both peace time and in war time.

And those principles are part of our domestic United States law by virtue of the Supremacy Clause. And that's something that gets missed, stepped aside or swept aside when we talk about super national definition.

MARGOT ADLER: I'm going to let Andy respond, but I have to just throw into this mix, is torture ever effective? Andy?

ANDREW MCCARTHY: Yeah, it's like anything that provides an incentive to the person who is being interrogated, whether it's physical abuse or whether it's a more common form which is where somebody cuts a deal with a prosecutor in order to obtain sentencing leniency.

MARGOT ADLER: But let me ask you. I've been hearing everyone from Porter Goss to Michael Scheuer saying that torture isn't generally effective.

ANDREW MCCARTHY: Why then, one wonders, would, for example, Dean Harold Coe, when he testified at the Gonzalez confirmation hearings, or Senator McCain when he recently wrote his essay in Newsweek Magazine, why would they make provisos or exceptions or at least contemplate exceptions for what they call the ticking bomb scenario. There would be no point in anticipating that if coercive interrogation methods were used in order to get a morally culpable person to provide information about an

imminent disaster. If you were going to make provision to get that information and basically find a way to excuse the coercive methods under those circumstances, there wouldn't be any reason to consider or contemplate doing that if people seriously believed that torture never works.

MARGOT ADLER: Let's let Barbara Olshansky come in on this one.

BARBARA OLSHANSKY: I think, and what I've heard from the military that we've been working with, from folks from the Military Defense Council assigned to the Military Commissions in Guantanamo, to the military that we've worked with that are now in the civilian world, like Admiral John Hudson, who's now the Dean at Franklin-Pearce Law School, is that the military is very clear that torture is not an effective tool. And I guess, you know, obviously it is anecdotal evidence, but, you know, the best evidence that I've seen with my own eyes is that which came out of my representation of the two clients of mine in the Rasul case, Shafiq Rasul and Asif Iqbal, and they confessed.

MARGOT ADLER: Who are those people?

BARBARA OLSHANSKY: Well, they were two very young men, boys really. They were just in their teen who were picked up in Afghanistan and actually sent to a number of places in Afghanistan before they were sent to Guantanamo, and were released before we even won the decision in the Supreme Court. And they confessed to being in a video with Osama Bin Laden and talking with him. And within a day of their return home, MI5, the British Security Agency, it took them less than 24 hours to confirm that in fact was not them, it couldn't have been them, and that the entirety of their confession was false. And MI5 actually went, you know, on the air to tell the British public that was in fact the case.

And, you know, it just became very clear to me that people, and even people that think they are tough guys, will say anything to have the torture stop. Torture isn't really always used to get information. And I think this is really a tremendous fallacy that's floated out there.

MARGOT ADLER: So what is it used for?

BARBARA OLSHANSKY: I think it's used to degrade people, to humiliate people, to set an example for the world. And I think we've seen this before. We've seen this in Viet Nam, we've seen it in other terrible instances where the United States has one role or another while it's, whether it's paying somebody to do the torture for us or doing it ourselves. The idea is not to humiliate someone in order to get them to talk, but to humiliate someone as an example in order to sort of cow the population. And that, that is, you know, a very different purpose. There is no intelligence purpose behind that.

MARGOT ADLER: Barbara, would you say that torture is ever permissible? I mean, what about the ticking bomb scenario where a bomb is about to go off in 12 hours and it's

imperative to get information, the kind of situation that Andy was bringing up. What about that?

BARBARA OLSHANSKY: I just think it's really a bunch of complete baloney. I think, you know, that scenario is one that's cooked up after the fact to justify what we want to do.

MARGOT ADLER: Okay, let's hear from Andy now.

ANDREW MCCARTHY: What you just heard is typical. She didn't answer the question which is do you oppose torture or not in the ticking bomb scenario.

BARBARA OLSHANSKY: Yes.

ANDREW MCCARTHY: But I would, I'd back up for a second, because to go back to the beginning, when I mentioned this super national construct that Barbara is urging, what is typical in this debate is that when questions come up that can't be answered or points come up that cut against Barbara's side, what they typically do is either waive the hand to say that, oh well, that's a situation that could never come up, or they don't mention very important legal qualifications that dramatically change the debate. For example, it is true that we've signed the Conventions that Barbara has talked about.

The Geneva Conventions not only were designed to prohibit against barbarity, but they were specifically designed in mind with doing precisely what terrorists don't do or protecting precisely what the terrorist target is, which is civilian population. The Convention Against Torture, which is the one that's most pertinent to the conversation we're having here this evening, is actually not only a convention against torture, but cruel, inhuman and degrading treatment. When the United States ratified that treaty, it ratified the treaty with an important qualification.

It said that the treaty provisions against cruel, inhuman and degrading treatment, which are different from torture, which is severe pain which I mentioned earlier, cruel, inhuman and degrading treatment which are different from torture, which is severe pain which I mentioned earlier. Cruel, inhuman and degrading treatment in the United States is limited to what those provisions may have meant in terms of the 5th, 8th and 14th amendments to the Constitution, which do not extend to the people who are held in Guantanamo Bay. I mean, you can slice it any way you want to slice it. But they don't have the protections of those provisions to the Constitution.

MARGOT ADLER: Barbara, help us understand how this Courts have ruled. Last year the Supreme Court decided two cases. Let's take the one involving Yaser Hamdi first. Hamdi was a U.S. citizen. He was picked up in Afghanistan and held as an enemy combatant in a U.S. military brig in South Carolina. As I understand the case, the Supreme Court concluded that due process demands that a U.S. citizen held in the United States as an enemy combatant should be given a meaningful opportunity to contest his detention. Is that correct?

BARBARA OLSHANSKY: That's correct.

MARGOT ADLER: And what has happened to Hamdi since that ruling? Did he get his day in court?

BARBARA OLSHANSKY: Well, I think, in fact, that really ended up being his day in court. Once push came to shove, and the government was in the position of having to, within the context of due process, prove the case against Yaser Hamdi, I think it became pretty clear that they couldn't. And instead what happened was a deal was reached. And really Yaser Hamdi went home to live with his parents. He has a ten year bar from entering the United States. One interesting not to this is that despite everything that happened to Yaser Hamdi, he was still so enamored of America that he wanted it written into his agreement that he could come back to visit Disneyland with his family when the ten years was up.

MARGOT ADLER: And was it?

BARBARA OLSHANSKY: Yes.

MARGOT ADLER: Coming up, more of our debate over the government's current and proposed rules on interrogation. Later in the show, we'll visit a couple of treatment facilities for torture survivors. Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. The use of torture by the military has been all over the news for months. It brings up important issues about how we are carrying out the so-called war on terror including what limits there should be, if any, in our attempts to get information that could foil the next terrorists plot against the United States. I'm talking with Barbara Olshansky and Andrew McCarthy. Barbara Olshansky is with the Global Justice Initiative at the Center for Constitutional Rights. And Andrew McCarthy is a Senior Fellow with the Foundation for the Defense of Democracies. David Rivkin is a lawyer who says we need to have torture as an option. He appeared on a previous edition of Justice Talking. Here's what he had to say.

DAVID RIVKIN: It's a cop out to argue that there's no benefit to these kinds of interrogations, that they produce no results. Because we know one thing, that we were able to decapitate, kill or capture two-third of Al Qaeda leadership in the last 10, 12, 18 months. All of these captures, by and large, have been done on the basis of interrogation. Because God knows we don't have people who have penetrated those organizations. So we have saved a lot of people and killed and apprehended a lot of our enemies. So on the one side, let's not pretend that those things don't matter.

MARGOT ADLER: Barbara Olshansky, how do you answer him?

BARBARA OLSHANSKY: I guess I answer him and Andy in a couple of ways. I mean, Andy's probably not going to like it and probably not David Rifkin either, but the way I

see it, a moral absolute is a moral absolute. Unless Andy thinks that I'm not answering his question, no there is no scenario in which torture is permitted because either we are those people that adhere to the moral principles that are imbedded in our Constitution and our democracy, or we are not.

MARGOT ADLER: Barbara Olshansky with the Center for Constitutional Rights. Hina Shamsi is a Senior Counsel at Human Rights First, an international human rights organization in New York. She is representing eight men who allege they were tortured in U.S. detention facilities. I asked her about the case.

HINA SHAMSI: We represent, Margot, four Iraqis and four Afghans who were tortured and abused in U.S. custody in their home countries. This is actually the only lawsuit that connects the dots between the creation of new interrogation policies and practices and the beginnings of abuse in Afghanistan in 2001, and the migration of those policies and practices to Iraq.

MARGOT ADLER: She says the case has a dual purpose.

HINA SHAMSI: Because one of the main aims of this lawsuit, alongside seeking redress for the clients, is to ensure that senior leadership is held accountable for absolutely gross violations of human rights that have undermined America's image and its counter-terrorism efforts abroad. The point about accountability is that without accountability or responsibility, there is no deterrence and under both U.S. and international law, senior commanders have the obligation for and can be responsible for crimes that they directly ordered, as well as for crimes that were committed by their subordinates when the commander knew or should have known that the bad acts were going on, but they failed to prevent them, or to punish them.

MARGOT ADLER: Andy, how do you respond to these allegations and do you agree with her that U.S. senior leadership should be held accountable.

ANDREW MCCARTHY: I think that any allegation of torture or abuse ought to be aggressively investigated, and I think that anybody who is found in the chain of command to have either ordered it or been in a position knowingly to prevent it and not prevent it should be punished. Anybody whose business it was to know about it and who allowed it to happen should be punished. And I have no reason to think that hasn't gone on.

MARGOT ADLER: I'd like to ask both of you what you think the result of the allegations of abuse at Abu Ghraib has been as far as affecting the U.S. standing the world. Andy, you first.

ANDREW MCCARTHY: I think it has been a terrible thing. It's certainly been used very effectively for propaganda. It's certainly been used very effectively by our enemies for propaganda. However, I don't believe that any reasonable country that we interact with thinks that, with respect to the treaties that we've signed which bind us with them, I don't

think it would be reasonable and I don't think they do think that they were ever in a war with us that we would ignore our Geneva Convention obligations where they actually apply as a matter of law. But I do think it's been a terrible damaging event and it certainly has harmed us in a lot of ways, particularly given that we're in a media age and the images are all around us, and omnipresent, and they are shown again and again.

MARGOT ADLER: Barbara?

BARBARA OLSHANSKY: We do agree on one thing. I do think that it certainly provides a tremendous amount of fodder for our enemies. We disagree on how the rest of the world views us. Our credibility has been tremendously harmed. People wonder when we will ever be able to take the moral high ground position of integrity in any human rights arena given what we've done.

MARGOT ADLER: We unfortunately have come to the end. I want to thank you both for coming on Justice Talking. Andrew McCarthy is a former federal prosecutor and is a Senior Fellow with the Foundation for the Defense of Democracies. Thank you so much, Andy.

ANDREW MCCARTHY: Thank you Margot and Barbara, nice to talk to you too.

MARGOT ADLER: Barbara Olshansky is Legal Director of the Global Justice Initiative at the Center for Constitutional Rights. Thank you so much Barbara.

BARBARA OLSHANSKY: Thank you.

MARGOT ADLER: Part of what is confusing about intelligence gathering is figuring out who the players are. There are different rules about how you can interrogate and treat prisoners depending on who you work for. There are military police, military intelligence, and military contractors. Then there's the CIA and the FBI. All have different roles to play and different rules to play by. To talk specifically about the role of the CIA and what rules apply, I called Michael Scheuer. He is a former CIA agent who resigned in 2004.

He was in charge of the CIA unit responsible for trying to capture Osama Bin Laden and ran that unit from December, 1995 to June, 1999. He also set up the CIA's rendition program. He is the author of the book "Imperial Hubris: Why the West is Losing the War on Terror." Thanks for joining me Michael.

MICHAEL SCHEUER: You're welcome. Thank you for having me.

MARGOT ADLER: Tell us how the climate the CIA changed after 9/11 and what kind of guidance was given before and afterwards about hunting down terrorists like Osama Bin Laden.

MICHAEL SCHEUER: Well, I think you can imagine that after 9/11 the pressure to produce results was very much greater than it used to be before 9/11. The major change was under the Bush Administration the people we captured, they wanted to hold in American custody, whereas the Clinton Administration wanted to deliver these people to places like Egypt or other Middle Eastern states. So the biggest change was exactly that. In places like Guantanamo Bay and in Iraq and Afghanistan, many of the senior Al Qaeda people we captured remained in the hands of Americans.

MARGOT ADLER: Now you started the CIA's rendition program. Tell us what it was created to do, how it works.

MICHAEL SCHEUER: It was created in late 1995 at the direction of the National Security Council. Under Mr. Clinton it was Mr. Lake, Mr. Berger, and Richard Clarke. And they wanted us to begin to dismantle and break up Al Qaeda cells around the world. And the Agency, of course, is the service organization, it's the President's tool in foreign policy, and we said, aye aye we'll do it, where do you want us to take these people? And they said, well, that's up to you. And the Agency said, no, listen, you don't get it. We're not jailers, we don't have jails, where do you want them taken?

And the Administration just didn't want to address that issue. So we focused on chasing Al Qaeda members who we knew were wanted in a particular country for a crime, a terrorism crime. And so what we would do is work with the liaison services, whether it was intelligence or police in the country where we located the person. If they would help us they would arrest him and then the country that had the warrant for him would pick him up and take him to their country for incarceration.

MARGOT ADLER: Why do you think the abuses at Abu Ghraib happened?

MICHAEL SCHEUER: Well, those were military. And the military, unfortunately accountability is not much of an idea in the American government any more, either in the intelligence services or the military.

MARGOT ADLER: But you also said, I read this somewhere, that somehow they thought they'd find a silver bullet and everything would go away. And clearly you don't believe there is a silver bullet in regard to the war on terrorism.

MICHAEL SCHEUER: No, ma'am there isn't.

MARGOT ADLER: So what should our government do to be more effective?

MICHAEL SCHEUER: They first should be honest with the American people which no administration has been for the last 15 years. We're in a war that cannot be done by arresting these people one man at a time and bringing them to justice as is often said. We're in a war against a large segment of the Islamic world because of what we do there. Not because we have liberties or we have gender equality or because we have freedoms

or elections, that has really nothing to do with what we're fighting. And the idea that we can continue to pursue them and defend American by one arrest at a time is nonsense.

And I think until the American people understand that, there really is no victory in sight. And I would say that, you know, the chances of a massive attack in the United States are probably increasing as time goes by.

MARGOT ADLER: Thank you so much Michael for talking with me.

MICHAEL SCHEUER: You're welcome ma'am. Thank you very kindly.

MARGOT ADLER: Michael Scheuer is a former CIA agent. He also started the CIA's rendition program. He is the author of the book, "Imperial Hubris: Why the West is Losing the War on Terror."

MARGOT ADLER: We've been talking about what the government should or shouldn't sanction when it comes to torture. But what about the victims of torture? These survivors often suffer long lasting psychological trauma. For people who have been tortured in other countries and are living in the United States, there are several places where they can get help. Independent producer Amelia Templeton visits two of these programs.

AMELIA TEMPLETON: In 1988 Souleymane Guengueng was a 38-year-old accountant and the father of several children living in the Central African country of Chad. In the turmoil of civil war, the government accused him of siding with the opposition and jailed him for two and a half years. Now a middle-aged man with a deeply lined face, Guengueng speaks frankly about the torture he endured in prison.

SOULEYMANE GUENGUENG: I spent time in five different prisons. In one, I was kept in total darkness for three months without knowing if it was day or night. Then I was moved to another prison for seven months where I lived under light that never turned off. I left prison almost completely blind.

AMELIA TEMPLETON: When Guengueng finally escaped, beatings and cramped conditions had wrecked his body making it difficult for him to walk. With the assistance of a U.S. human rights organization, in 2002 he came to New York for treatment. Doctors at the Bellevue New York University Program for the Survivors of Torture performed three operations on his eyes.

SOULEYMANE GUENGUENG: Before, I couldn't see. Now I have more than 60% of my vision back and even my health. It was so bad I could barely walk 100 meters. Now I feel I could walk ten miles without tiring.

AMELIA TEMPLETON: Guengueng is one of more than 600 torture victims treated by the Belleview program this year. The treatment center was founded in 1995 by New York physician Allen Keller. He first worked with torture victims in 1977 as a volunteer in refugee camps along the Thai-Cambodian border. Now, Keller treats patients from more than 70 countries. At Belleview he has assembled a team of doctors, psychologists, social workers and translators to help torture victims. Keller says that a doctor can't simply heal the lingering physical pain or the effects of post-traumatic stress disorder.

ALLEN KELLER: The muscle aches and that pain may trigger very disturbing and frightening memories of the events that happened or vice versa. If they're having symptoms from post traumatic stress disorder, that may then lower their pain threshold and then, because of the nightmares, because of the physical problems, that can result in social isolation.

AMELIA TEMPLETON: Almost all of Keller's patients have fled their home countries. At Belleview, a social worker helps them apply for asylum and adapt to life in New York finding them jobs and things that they never needed before like English lessons and winter coats. Keller is not the only one doing this work. There are over 25 clinics in the U.S. Dr. David Kinzie founded one of the oldest torture treatment programs in the country in Portland, Oregon. A Viet Nam veteran, Kinzie first treated Vietnamese and Cambodian refugees in the late 1970's. He has been working with some of his patients for almost 30 years.

DAVID KINZIE: Once you establish trust you never can let them down. I mean, that happened once to us and it was just devastating. We told a few people, these were Cambodians mostly, that it's likely we're going to lose funding and couldn't treat them. It is like we took out every support and actually two of them ended up in emergency room with documented hypertensive crises. And so then I made a commitment that we stay open forever.

AMELIA TEMPLETON: The programs are funded through a combination of federal and private dollars. In New York alone, Dr. Keller estimates that there are at least 50,000 torture survivors. The events of September 11, recent heightened security measures, and news from the war in Iraq have made it even harder for them to cope. Belleview psychologist Yinka Akinsulure-Smith.

YINKA AKINSULURE-SMITH: When there were the pictures of what happened at Abu Ghraib in the newspapers a while ago, some of the men in my men's group came in really, really upset that, how could this happen under America's watch. They were totally overwhelmed and traumatized.

AMELIA TEMPLETON: Some even experienced relapses, reliving their own torture at night in their dreams. But for Guengueng the photos just made him angry.

SOULEYMANE GUENGUENG: It horrifies me that it is the United States putting people in prison, treating men like animals. It horrifies me that it is the United States that is using

torture. It disappoints and saddens me, and I don't know where we will find a more humane world if not here.

AMELIA TEMPLETON: Dr. Keller understands why some Americans support torture, thinking it might protect them from terror. But getting to know survivors has convinced him that it won't.

ALLEN KELLER: What I hear from the patients I've cared for is that when individuals are tortured or brutalized, they'll say whatever they think their captors want them to say to end the torture. So first and foremost, you don't get useful information. But regardless of that, it has devastating health consequences and I really worry that when we in any way justify or condone torture it's like pouring kerosene on what is a fire--a world-wide public health epidemic of torture.

AMELIA TEMPLETON: Right now, there is a three week wait to get an appointment at Bellevue. Sometimes it takes up to six weeks. Keller hopes it never gets worse than that. For Justice Talking, I'm Amelia Templeton.

MARGOT ADLER: We'd like to know what you think about whether our government should be able to use torture when fighting terrorism. You can tell us by going to our web site, JusticeTalking.org. Thanks for joining us. I hope you'll tune in next week. I'm Margot Adler.
