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## **The CIA's Detention, Interrogation, and Rendition Program** **by Joanne Mariner**

*The following is a transcript of a speech given at The Future of Freedom Foundation's June 2007 conference, "Restoring the Republic: Foreign Policy & Civil Liberties" held in Reston, Virginia.*

**Jacob Hornberger:** Joanne Mariner is the terrorism and counterterrorism program director at Human Rights Watch. A graduate of Yale Law School, Joanne clerked for the Ninth Circuit Federal Court of Appeals before joining Human Rights Watch in 1994. She has documented war crimes in Colombia, Kosovo, and Darfur, briefed members of Congress, and conducted advocacy before U.N. bodies on human rights issues. Let me tell you something about Joanne. This isn't your standard ivory tower research person. She spends half her life in New York and half her life in Paris. When she is in Paris, she uses it as a base to travel through the Middle East, through Africa doing hands-on research on human rights abuses. She told me awhile back that she and a couple of her associates actually were in Darfur, spent a week or two camping out on the desert with the rebels to make sure that the research got it right. She also, when she's here in New York, she uses it as a base for traveling in Colombia, Latin America to document human rights abuses there.

She has written this fantastic expose that's available on the Internet on rape in prisons where she actually went into the prisons across the country, conducted extensive surveys, personal interviews with the most violent of criminals in order to document this enormous scandal in American prisons involving rape of prisoners. She is fluent in both Spanish and French, and one of the websites I go to every day is [findlaw.com](http://findlaw.com), and they have a lot of good articles there, but the primary reason I go to that website is because Joanne writes an article for [findlaw](http://findlaw.com) every month, and I can't wait for that article. She writes so clearly and so succinctly. If you want to learn everything there is to know in just regular, average, non-lawyer language about rendition, CIA, kidnapping, Guantanamo, torture, go to [findlaw.com](http://findlaw.com), access Joanne's archives and

read all the articles that she has written on those issues. The title of her talk today is "The CIA's Detention, Interrogation and Rendition Program." Please welcome Joanne Mariner. <applause>

**Joanne Mariner:** Thank you so much for the kind introduction. I'm going to speak about, as Jacob said, or Bumper said, the detention, interrogation, and rendition program run by the CIA since September 11th. The story I'm going to tell is really in some crucial respects very similar to the story that Daniel Ellsberg told yesterday. It's a story of secrecy, gross wrongdoing and the raw exercise of government power. I think from what I understand about libertarianism, it could be conceived of as the utter negation of libertarian ideals of individual freedom and autonomy. Persons in CIA custody have been disappeared, stolen from their families, held in secret prisons, and subjected to a range of physical and psychological abuses, including torture. It's a story of unlimited executive power, untrammelled by law or custom, not subject to Congressional oversight, and free of any judicial supervision.

As I'll describe, the only traditional democratic safeguard that has held up over the past five years in terms of constraining the CIA in any way has been the press. Before I jump into my narrative, I need to actually define a few terms for you to give you a kind of a glossary if you will for understanding the CIA program. The first term torture may not seem like it would need definition. We all know what torture is, right? Well no. The Bush administration, having embraced the practice of torture but not the word, has found it necessary to redefine torture in ways that, you know, their use of the word wouldn't be recognizable to the average person, whereas in common parlance and international law we understand torture as a practice that causes severe pain or suffering.

The Bush administration in August 2002 issued a memo, a legal opinion, that defined torture so narrowly that only activities, and I quote, "resulting in death, organ failure or the permanent impairment of a significant body function were held to be torture punishable by law." That definition does not coincide with any reasonable definition of what torture is, but it's been very effective in terms of allowing the Bush administration to say we don't torture. Well, we don't necessarily commit practices that cause organ failure or death but we do commit practices that cause severe pain and suffering, which most people would recognize as torture. This definition was later revoked by the administration, but the underlying problem of redefining torture so that U.S. practices aren't covered has remained consistent.

A few more related terms that you need to understand in order to grasp what has been going on in the area of counterterrorism since September 11<sup>th</sup> One is alternative interrogation methods; another is enhanced interrogation techniques, also known as classified methods and activities. What are all these terms? These terms are euphemisms. These terms are words that the President and other high officials use in order to not say torture. The government would be ashamed to admit it uses torture, the word has a lot of stigma, but it's quite proud to say that it

uses alternative methods and techniques against suspected terrorists. It's a sort of wink, wink, nudge, nudge approach that we all know from Monty Python.

So what are these alternative methods? Well, they range from long-term sleep deprivation, which, you know, many people, I've even had discussions with friends, they have a hard time understanding how could long-term sleep deprivation be a problem? We've all pulled overnights studying for exams or something. Well, that's not the kind of sleep deprivation I'm talking about. I'm talking about keeping people awake for up to a week. This is the kind of sleep deprivation that in fact was used under Stalin quite effectively and has been used by oppressive regimes all over the world. Another abuse is the simple one of violent beatings. Detainees have had their arms broken in custody, have had, you know, been beaten up in really many traditional ways.

A final term that we should become familiar with is waterboarding, which is the most extreme of the techniques used by the administration. Waterboarding is essentially mock drowning, but it is not just making the detainee believe he is going to drown, it makes him feel like he's drowning, so it is the, you know, the sensation of drowning and try to imagine what that is like. That is torture. The U.S. has long considered this practice to be torture and a war crime, and in fact as early as 1901, a U.S. court martial sentenced an American military officer to ten years of hard labor for using this technique against a suspected insurgent in the Philippines. After World War II, U.S. military commissions successfully prosecuted a number of Japanese soldiers as war criminals because they had used this technique against American soldiers. After the Vietnam War, a U.S. Army officer was prosecuted, court-martialed, and convicted in 1968 for helping to waterboard a prisoner in Vietnam.

So past administrations, you know, over the past century have considered waterboarding to be torture, but under this administration, official views on waterboarding have changed quite dramatically. In fact, asked about the practice in March 2005, then CIA director Porter Goss told Congress that waterboarding was "a professional interrogation technique." So let's go back to September 2001. As Cofer Black, then CIA head of counterterrorism, put it, there was a before 9/11 and an after 9/11. After 9/11, the gloves came off. What does that mean? Well, what it meant concretely was that on September 17, 2001, the President signed a classified directive that authorized the CIA to detain and interrogate suspected terrorists outside of any traditional legal framework.

The public, of course, did not learn of this directive at the time. In fact, it was only last year when, as you may recall, the President announced or revealed the existence of the CIA program so that the existence of the directive also had to be acknowledged. But the directive itself, the contents, the substance of the directive, remains utterly secret. In fact, even the name of the CIA program that was created under the directive is secret, is classified secret, meaning that

the CIA claims that the disclosure of the program's name could be expected to result in serious danger to the nation's security.

More secrecy, this time involving people, very quickly after the directive was issued: people began disappearing, people all around the world began disappearing. The first documented case is that of Jamil Qasim Saeed Mohammed, a Yemeni scientist who was arrested in Pakistan, handed over to U.S. agents and flown out of the country on a private jet, a CIA contracted jet, in October 2001. He was taken to Jordan. We know this because we've obtained the flight records. He's never been seen again. Another early case, and I think still an extremely important case, is that of Ibn al-Shaykh al-Libi. Al-Libi, who is alleged to be a high level al-Qaeda operative, was arrested in late 2001 and in January 2002 the CIA transferred him to Egypt where he was badly tortured. Statements made by al-Libi under torture in which he claimed that the Iraqi government had provided chemical and biological weapons training to al-Qaeda, the, you know, needed al-Qaeda Saddam link to justify war, those statements featured in Colin Powell's speech to the U.N. in February 2003 in which Colin Powell justified war with Iraq. As we all know, these claims turned out to be utterly false, and in fact al-Libi himself recanted them a year later when he was no longer in Egyptian custody, saying that he only made the statements because, you know, in order to escape torture, because he was saying what his torturers wanted him to say.

Let me fast-forward now. There are many other cases of rendition I could describe, and a previous speaker made reference to the case of Maher Arar, who's a Canadian citizen who was handed over from U.S. custody. He was picked up at JFK and handed over to the Syrians, held there for more than a year and badly tortured, but I'll skip over some of those cases. I hope that, you know, you read about these things when you go home, but let me jump now into the CIA's own detention program.

So at some point in late 2002, the CIA moved beyond just transferring people to abusive countries, to Egypt, to Jordan, to Morocco, to Syria, which are all countries that we know suspects were transferred to, the CIA moved beyond that to actually operating its own secret prisons. This program grew quickly and in fact, even though as I will emphasize again and again, everything about this program is very secret, so we don't have firm numbers and there are many names missing I believe, but we believe that at least 60 to 80 people were held in these secret prisons over the past five years. Details of this detention program began coming to light in 2004 when Khaled el-Masri, a German citizen of Lebanese descent, told the German police what sounded like an absolutely wild and unbelievable story about having been kidnapped, abused, and held in secret detention in Afghanistan by the U.S.

El-Masri was arrested in Macedonia by Macedonian agents in December 2003 as he was crossing into Macedonia. He was held secretly at a motel in Skopje for a month and interrogated, then he was handed over to the CIA where, like every other detainee I've spoken to, he was sort of

wrapped up like a package, they put them in sort of a mummy-like outfit, you know, blindfold, sort of earmuffs over the ears, arms strapped to their legs, you know, shackles all around and then wrapped up in cloth and packaged like that and sent to Afghanistan, where he was held for four months in a secret prison until... In fact the sad thing is the U.S., it's been pretty reliably reported that the U.S. very early on knew that it had the wrong man, knew that it had an innocent man, and yet it was "What do we do with this guy now that we've brought him to Afghanistan?" And Condi Rice actually had to press for his release and say, "No, we cannot, you know, we cannot continue holding this man that we know is innocent."

So instead though of bringing him back to Germany or Macedonia, they, I mean whoever thought of this idea, I don't know what the thinking behind it was, but they dumped him in the middle of nowhere in Albania, another country that he had never been to, but he finally did manage to make his way back to Germany with, you know, bedraggled, long hair, long beard that had grown in detention, and immediately reported his story to the German police who I think for awhile, you know, had a very difficult time believing it, but now, of course, in retrospect it's all very well known and it's been reported that Condi Rice actually apologized to Chancellor Angela Merkel in Germany, saying that, you know, sorry, we made a mistake, oops.

Another, I think, well-reported case is that of three Yemeni men who were shipped home from CIA prisons in May 2005, three of them. They had been held since 2003 without any contact with the outside world, and they had been moved from site to site. Amnesty International did a very comprehensive set of interviews with these men and they concluded that the men had been held in at least four separate sites in different countries, probably in three different countries, and judging from clues like the kind of food they were fed, the temperature, the, you know, when it was night and day, they concluded that the most likely countries are Djibouti, where the U.S. has a military base, Afghanistan, where obviously the U.S. has an enormous military presence, and somewhere in Eastern Europe.

The Eastern Europe connection turned out to be extremely important because although the U.S. Congress has been, and I'll talk about that in a little while, basically hands off with this program, the Europeans when they found out about it have been a little more aggressive and European public opinion has been simply appalled at the thought that secret CIA prisons have been operating on European territory. And the scandal really broke in late 2005 when the *Washington Post* published a front page story that you may remember describing in a very comprehensive way the history and scope of the CIA's detention program. Based on interviews with anonymous intelligence sources, the *Post* said that the program had at various times included sites in eight separate countries, including Thailand, Afghanistan, and several European democracies. Although at the request of the U.S. government, the *Post* declined to name those European democracies, even though it knew what countries were in fact at issue, Human Rights

Watch released flight information pointing to Poland and Romania as the site of these secret prisons.

A few weeks later, ABC News, again based on reliable but anonymous intelligence sources, reported that at least 11 detainees were held at a secret site in Poland. This led to an enormous uproar in Europe and two very high level official investigations, the first by the Council of Europe, which is a human rights and sort of, you know, cross-regional body that covers I believe it's 45 European, eastern European countries, and another investigation by the European parliament. Both of these ended up revealing really important information about flights, documenting flights, detainee flights, rendition flights, all across Europe, and also documenting European complicity in these activities. So although my purpose here is not to discuss European practices, it's worth emphasizing that it wasn't just the U.S. acting as a rogue state alone. It was acting together with European and other intelligence services, actually more so Middle Eastern intelligence services, obviously Syria and Egypt and a lot of other people that we don't want to brag about our close relationship we have worked very closely with.

In the summer of 2006, a month after the Supreme Court's landmark opinion in the Hamdan case, which you may have heard of—it's a case in which the court held that even terrorism suspects have basic rights under the Geneva Convention, including the right not to be tortured, a position that this government had strongly opposed. A month after that decision was handed down, we believe that actually a number of detainees were returned to their home countries or sent to other countries.

One of these detainees was a Palestinian named Marwan Jabour who was actually handed from the U.S. to Jordan. The Jordanians interrogated him for a month and handed him to the Israelis, to Shin Bet. Shin Bet held him for about a month and a half, actually let him see a lawyer, and we like to criticize Israeli techniques, but this was the first time he had seen a lawyer in more than two years, and then released him. And so I was able to interview him shortly after his release, and he told me a very detailed and compelling account of spending more than two years in CIA custody. And what he said was that he was originally arrested in Lahore, Pakistan, in May 2004 by Pakistani forces, he was detained in Lahore briefly, moved to the capital of Pakistan, Islamabad, where he was held for more than a month in a secret detention facility that interestingly enough was run jointly by the ISI, the Pakistani Intelligence Services, and the CIA. And of course he wasn't privy to the actual agreement between those two groups, but he said that from what he could see about how the place operated, the CIA were in charge, they were making the decisions about who was released, who was held, who was transferred.

In this facility, this is where he was kept awake for a week. In this facility, he was badly abused, he was forced to stand for, you know, a full day, kept awake, other, you know, put in painful positions so he couldn't sleep, you know, subject to techniques that were extremely abusive if not constituting torture. Then after a month there, he was flown, again, packaged up

like Khaled el-Masri, sort of like a mummy and flown to Afghanistan, where he was held in a secret prison where he believes that all of the personnel were American except perhaps a translator. He said there were native speakers, one Lebanese, one Iraqi, who may or may not have been naturalized American citizens, but everyone else, and he estimates that there were some 70 personnel in that prison, including doctors, psychiatrists, guards, interrogators, prison directors, you know, it was a full-fledged facility. All the rest were Americans.

In that facility he was stripped of his clothing and held naked for a month and filmed naked and interrogated naked by women interrogators, which probably would be painful for anyone to be kind of, you know, brought into a room with 10 or 15 people, one holding a camera and filmed naked and interrogated naked, but I think is even more shocking for someone from a more traditional Muslim background. When he was not being interrogated, he was chained tightly to the wall of his cell with a very short chain so he could not stand up. He was, for punishment sometimes when they caught him talking with other detainees once, they chained him up in painful stress positions, these kinds of positions where your arms are twisted behind your back and you're chained to a ring in the floor. He was threatened that if he did not cooperate, he would be put in what the interrogators called a dog box, which is something that they had in the interrogation room, and it was like a small box, you know, that would kind of crush you in a painful shape and, you know, give rise to all kinds of claustrophobia, and, you know, have very little air, which we heard other prisoners being subject to.

This went on for more than a month. Over time, as the months went by, his treatment improved, he was given his clothing back piece by piece though over a six-month period, sort of earning back his clothing. The physical mistreatment ended. He was placed in a larger cell finally after six months and he started getting better food. In other ways though his treatment changed not at all. He spent nearly all of his time alone in a windowless cell, he wore leg irons for a year and a half, he spent a year and a half without ever seeing sunlight, he talked about how he just wanted to see something green or something blue, the sky, a plant. Worse of all, he spent more than two years with no human contact with anyone except for at the very beginning there was, you know, a chat with some other prisoners, but he was punished for that and then put in another area, but essentially two years with no human contact with anyone besides his interrogators.

And he worried incessantly about his family but was not allowed to get in touch with them in any way, even to send a letter to his wife and three daughters, he had three young daughters, to let them know that he was alive. So the first time that they had any idea what had happened to him was when he suddenly showed up in Israeli custody last year after more than two years of separation.

As I've emphasized, during the first five years of this interrogation, detention, and rendition program, its hallmark was absolute secrecy. Even when the *Washington Post* published its very important and very comprehensive front page story on the program in November 2005,

there was not a single administration official who was willing to speak about the program on the record. It was, you know, "We will not confirm or deny." This changed dramatically in September 2006, and you may have seen the nationally televised speech that President Bush made on September 6th when he announced that 14 former CIA detainees had just been transferred to custody at Guantanamo, so they had gone from CIA to military custody. At that moment, not only did he acknowledge the existence of the CIA detention program, he defended the program in the strongest terms, arguing that it had saved American lives. In particular, and without of course describing these procedures, he claimed that the alternative set of interrogation procedures, those are his words, that had been used against the CIA detainees had led to the disclosure of vital intelligence information.

President Bush's speech, and I remember hearing that it was going to be given, we found out I think about two hours in advance, and actually sitting there watching it was appalling on several levels. First, and maybe most importantly in terms of American traditional standards, it amounted to a full-throated defense of torture. Although he refused to describe the CIA's interrogation techniques, he knows what those techniques are and he defended them wholeheartedly without saying what they were, but using the, you know, euphemism of alternative interrogation techniques, he defended them wholeheartedly. Second, although he said that the CIA's prisons were temporarily empty, he left open the possibility that they would be used again, and in fact he nearly promised they would be used again, he emphasized how important they were. Third, although he admitted that prisoners beyond the 14 who were transferred to Guantanamo had been held in the CIA's program, he failed to name those additional prisoners and gave no information about their fate or whereabouts, what had happened to them. Fourth, he used the occasion of the transfer of these prisoners to unveil the Military Commissions Act, which is a piece of legislation which has many, many flaws, and we won't have time today to go through them, but one of its serious and most appalling aspects is that it's really designed with the CIA program in mind, and it's designed to facilitate the prosecution of people using evidence obtained abusively via this program.

So before I go into just a short description of some of, you know, a couple of problems of the Military Commissions Act, I just want to mention Congress and the courts. After hearing, you know, what went on with this, you know, very summary picture of what went on over five years, you have to ask yourself, where was Congress, where was the courts, where are these mechanisms that are supposed to provide some kind of oversight and accountability? Well, simply put, Congress exercised no oversight over the CIA's activities during this period. The administration withheld nearly all information about the program to Congress and yet Congress did not complain about this failure. Only the heads of the congressional intelligence committees were even briefed about the program, and even they got only the barest outlines of the program. They probably received much more information from reading Dana Priest's articles than they ever received from

the administration itself, and yet Congress held no hearings about this program, neither open or closed, and it made no real effort to force the administration to come forward with the details of the program. And without knowing the details of the program, how could it assess the program, how could it decide whether the program is legal?

Unfortunately, and I think this is a contrast with the courts on Guantanamo, in terms of policing CIA activities, the courts as well have failed. The ACLU brought two important cases challenging CIA detention and rendition practices, one on behalf of Maher Arar, the Canadian whose case I described who was rendered to Syria, the other on behalf of Khaled el-Masri, the German who was wrongly detained in Afghanistan for four and a half months. Both of these cases were dismissed at the very early stages of litigation and even the reasons for the dismissal are really appalling. With Maher Arar, the court ruled that the results of any litigation, of any court scrutiny of this situation could be embarrassing for the U.S. and Canadian governments. Well, I think that's probably true, but that's obviously no reason for throwing the case out of court and ignoring the rights of this man who was tortured. With Khaled el-Masri, the court ruled that litigation could result in the revelation of state secrets, and there's a state secrets privilege, and sometimes that state secrets privilege is used to say that there's certain areas that can't be explored in court, but in this case it was much more aggressive and the state secrets privilege was used to throw the entire case out of court.

But as much as I'm critical of those decisions, I still want to say that it is the active support of Congress for the CIA's detention and interrogation programs that's most appalling. I would really strongly emphasize that Congress failed as an institution in passing the Military Commissions Act, the MCA last fall. The MCA is a complex piece of legislation, and certainly we don't have time here to go into all the details of it, but let me just go into one part of it that is quite pertinent to this CIA program, because it's the aspect of the legislation that specifically is meant to help conceal these CIA, to continue to conceal these CIA activities, to bar any disclosure of information about them.

What this is, is a set of provisions in the MCA that allows the government to protect "the sources, methods or activities by which the United States acquired evidence if that evidence is classified." Well, President Bush and everyone else has insisted that these interrogation techniques are classified, they're highly classified. So because of these provisions in the MCA, in the legislation itself and even more so in the rules of evidence that were issued this spring by the administration, because of these provisions, the administration has gone a good ways towards ensuring that the public is never going to hear the details of these interrogation techniques except from anonymous sources who speak to the *Washington Post*, but the detainees, the information that the detainees themselves have about what they went through is never going to reach the public. Worse, even legal counsel for the detainees who will need to know about how the detainees were treated in order to challenge the admissibility of evidence obtained under torture,

they too may be barred from learning about what these detainees endured. Obviously, that is going to get in the way of the right to a fair trial.

Of course, the MCA in many other ways obstructs the right to a fair trial or guarantees that we're not going to see fair trials, but this aspect of it is particularly appalling I think. Worse, the administration is even going beyond the provisions in the MCA, and I think one of really the most Kafkaesque aspects of this entire saga happened last year in terms of the government trying to bar legal access to a detainee named Majid Kahn. They tried and they successfully barred access to him precisely because he was abused. According to the government, Majid Kahn, who is one of the 14 CIA detainees who was transferred to military custody last September, according to papers filed by the government in a court case in which the lawyers tried to gain access to their client, according to the government, Majid Kahn came into possession of information that is classified top secret, the government's highest classification level.

So what was this top secret information that Majid Kahn came into possession of and how did he come into possession of it? Well, what this information is, is information about alternative interrogation techniques. These techniques were used on Majid Kahn, but the government wants to bar him even from telling his lawyers about these techniques because they're classified as top secret. Late last year, even though Majid Kahn's lawyer argued very convincingly that the government was simply misusing its classification authority to conceal illegal or embarrassing executive conduct, the court ruled in favor of the government. So to date, none of the 14 CIA detainees who were transferred last September have seen a lawyer. They have yet to see a lawyer and I think what the government is trying to do is delay that as long as possible and put the most heavy and burdensome constraints. I mean I think sooner or later they will finally see lawyers, but the government is trying to make it very difficult for them to communicate with their lawyers openly, and we'll see how this plays out in the future.

I want to make a few points about secrecy, partially in reaction to comments that I heard Daniel Ellsberg make yesterday. Daniel Ellsberg made the very important point that unlike a number of other western democracies including the U.K., the United States does not have an official secrets act. That's true, but I'd like to point out that when Dana Priest came out with her front page story on CIA prisons, politicians and commentators immediately called for her to be prosecuted under the vaguely worded 1917 Espionage Act, and in fact the Justice Department opened an investigation. So while Dana Priest has not been charged and hopefully will not be charged, I think there's a real chilling effect and there's not just a chilling effect caused by people calling for investigations and for, you know, preliminary investigations being carried out, but there's actually a case that's ongoing now that's of real concern.

Right now, officials with the American Israel Public Affairs Committee are being prosecuted under the Espionage Act for the apparent crime of having received classified information from a Defense Department analyst, for having received leaked information. Now,

that case has been going for awhile. The defense attorneys have made some very important objections, you know, based on freedom of the press and that kind of thing, but so far the court has been supportive of the government's effort. I think if this case ends in a conviction, journalists and human rights organizations and others that may receive leaked information or that are interested in revealing aspects of government wrongdoing have a lot to fear.

And then of course there's always the possibility that Daniel Ellsberg emphasized yesterday of if the Espionage Act isn't interpreted as broadly as the government would like it to be, that additional legislation will pass. So yesterday I was impressed that Joe Margulies was able to end on an optimistic note. I'm afraid that my speech is not going to be able to do so. Given what we've seen over the past five years, my real concern is that what we're seeing, what we have seen happen is the emergence of an alternative and entirely extraconstitutional system of criminal justice for terrorism suspects, one that starts with CIA disappearances, interrogation, abuse, and that ends with unfair trials before military commissions.

Why do I worry that this is permanent and not just a temporary aberration? Well, for one thing we now know that the CIA's prisons were only temporarily suspended, they were not closed. In April of this year, a terrorism suspect named Abd al-Hadi al-Iraqi, who was picked up in late 2006 we believe in Pakistan, was finally transferred to Guantanamo Bay. He had been held by the CIA for several months prior to his handover. There's also a suspect who was picked up in Kenya, who was arrested in Kenya. He's believed to have fled Somalia and the conflict there. He was picked up in late February, he was transferred to Guantanamo in late March. The government, unlike with al-Hadi, the government did not acknowledge that he had been in CIA custody, but we believe he was in CIA custody. There's a month gap in his detention.

The CIA we know has held people before in Djibouti, which is, you know, right there on the Horn of Africa, very close, so it's very likely that he too was held in the secret detention system. So the detention system is far from closed and I think it is threatening to be a permanent element of American criminal justice quite in contrast with our traditional and I think rights protective functioning of our justice system.

Just in closing, I'd like to draw attention to the hypocrisy involved here: the fact that the U.S. government has long condemned other governments' use of torture, disappearance and long-term detention without charge. If you read our annual human rights report, we point to Syria, we point to Egypt, we point to Morocco, we certainly don't brag about the fact that we've turned people over to those countries to suffer the abuses that those reports document. We certainly don't brag about the fact that we ourselves are committing the same abuses. Certainly, the use of these practices undermines the U.S.'s moral authority on human rights and is extremely damaging in that way. Also, I'd like to emphasize that even when seen in wholly practical terms, the U.S. government's reliance on secret detention and abusive interrogation is a mistake. The use of these techniques taints any evidence obtained from the persons abused, and as we've seen with Iben al-

Sheikh al-Ibbi, means that the evidence is not necessarily reliable. And it makes it very difficult to prosecute those persons in fair proceedings, and perhaps most importantly, it makes it difficult to provide the public accounting of these serious crimes that the victims of terrorism deserve. Thank you. <applause>

**Joanne Mariner:** I would also like to emphasize that I'm happy to talk about Guantanamo. Human Rights Watch works on a real range of counterterrorism issues inside and outside the U.S., so questions about the CIA, about Guantanamo, or about anything related I'm happy to answer. Go ahead, sir.

**Question:** Yes, my comment and question is this: First, the one thing I find more deplorable than the fact that all these things could be done in our name in secret is the fact that they could be disclosed and yet we allow them to continue to persist to be done. My question relates to the passage of the Military Commissions Act last fall. When it was first introduced, I was proud to see a number of prominent republicans stand in opposition to it, John McCain and Mr. Lindsey Graham of South Carolina in particular. But by the end of the day for some reason they had been swayed over to vote in favor of it. Can you tell me from your personal knowledge what swayed them?

**Joanne Mariner:** One of the very first drafts of the Military Commissions Act, which wasn't actually made public but was circulating in Congress and that we saw a copy of, was even worse than the draft that finally passed. And one element of it that particularly upset John McCain was it would redefine the crimes codified in the Geneva Convention, so, I mean you have the Geneva Conventions are a nearly universally ratified code of conduct for militaries. No country has tried to redefine the crimes in the Geneva Convention, so this would've been a real landmark in the most negative sense change. McCain and a couple of other senators who were particularly concerned about this aspect of the legislation negotiated with the administration and convinced them to change the language affecting the Geneva Conventions, although even there I'd emphasize that the compromise was one of those compromises that you win sort of in principle but in practice it, you know, it severely undermines the protections extended by the Geneva Conventions.

So basically, I mean, we haven't gone through all the flaws of the Military Commissions Act, but it essentially bars the prosecution of those crimes. So it means they exist in principle but in practice those principles cannot really be affected, cannot really be implemented. But I think at any rate, those senators were under a lot of pressure, under a lot of political pressure, and John McCain, I was actually very disappointed to see ended up making a very strong speech in favor of the passage of the Military Commissions Act at a moment when, you know, in the few days preceding the passage of the act. And I believe that he voted against a bill or an amendment that Arlen Specter was the most prominent supporter of, and Arlen Specter too is a Republican. This was an amendment that would have protected the sacred right of habeas corpus, which as you

probably all know, one of the very worst aspects of the Military Commissions Act is that it strips detainees deemed enemy combatants from being able to bring complaints under habeas corpus. So detainees at Guantanamo, even foreigners held in the United States as enemy combatants, can no longer petition under habeas corpus to be free of detention or free of physical abuse. Go ahead.

**Question:** I wonder if you could give us your opinion just on the basis of what you have told us here this afternoon why Bush and the entire Bush administration has not been impeached using the same standard and tried as war criminals, <applause> the same standards that we tried the Nazis in 1946 at Nuremberg?

**Joanne Mariner:** That, I mean, that's a political question obviously and that has to do with, you know, the public response to these events. All I would note is when there was movement towards pressing Rumsfeld to resign, which in the end was successful, although there would have really been a lot of discussion throughout 2006, when there was discussion of the need for Rumsfeld to resign, Human Rights Watch was saying the question is not whether he should resign, the question is whether he should be indicted. And I think that <applause> could be said for many other high officials in this administration.

**Question:** I have a political question as well. You spoke of a lack of congressional oversight, and up until this year we had a Republican-controlled Congress, which doesn't excuse their inaction but it makes it a little more understandable. Now we have a Democrat-controlled Congress and still no hearings, no investigations. What would it take, in your opinion, to get Congress to get into the action here?

**Joanne Mariner:** That's a good point. I mean I think the fact that there was a Republican Congress helps explain the inaction that we saw, but there has been incremental change so far under the Democrats, there's been a lot more rhetoric. The Democrats have said "We're not going to be treated the way the Republicans were treated." And there has been some actual concrete change in that now the administration is reportedly not just giving the heads of the committees the sort of vague outlines of the program, it's giving the entire membership of the committees more details about what's going on. But then that begs the question, if this committee now is aware of what's going on, how come it's not taking more serious action to stop it? There was a bill introduced in the Senate that would've cut funding to the CIA program, but that was killed, so we'll see, you know, if there'll be more action in the future.

I can't say that I'm all that optimistic, I mean, in terms of what changes we can see on counterterrorism issues under this Congress, I'm most optimistic about the restoration or the possible restoration of habeas corpus, although even there I wouldn't say that it's a done deal. And of course we have President Bush threatening to veto any habeas corpus restoration, which raises the bar higher. We essentially need to have either, you know, a filibuster-proof, a veto-proof majority there, but in terms of CIA prisoners, you know, I think the fact that we're leading up to an election now, and these are very high stakes issues for politicians, means that it will take a

very brave and principled politician to lead the way on this, and I don't know if we have such figures.

**Question:** Good afternoon. I don't know, is it Ms. or Mrs. Mariner?

**Joanne Mariner:** Ms.

**Question:** Ms. When I got the brochure for the program here, the two speeches I was looking most forward to were the one you gave and Mr. Margulies gave last night, only because the media's been so cowardly in not covering these, well most of the media, some have obviously, because all the other speakers, I like to put them under this catch phrase, my good friend Ernie Hancock in Arizona says "Freedom good, government bad, bad, bad, bad, bad." My question to you concerns an individual case, case of the Egyptian cleric who was renditioned I guess in Italy.

**Joanne Mariner:** Yeah.

**Question:** And Laura Rosen from the American Prospect's covered this really extensively. Has the Italian prosecutor there actually indicted them? I haven't kept up with it.

**Joanne Mariner:** Yeah, that's a really important case actually. I didn't mention it, just out of time, but this case, for those of you who aren't familiar with it, is an Italian Imam who was kidnapped from Milan of all places in 2003 and rendered to Italy where he was, if you believe his testimony, which we've interviewed him and found it to be quite credible, and we also are very familiar with Egyptian interrogation techniques, so it's not surprising, but if you believe his testimony, he was very brutally tortured. He was held for quite a long time and he, in fact, was just released about a little more than a month ago in Egypt. The CIA carried out this rendition. Not only was it illegal in terms of international law, but they did it in kind of a bumbling way and they, of course, broke Italian law, and there is an Italian judge who was actually monitoring this Imam and the kind of network that he formed a part of, it's an Italian antiterrorism judge or antiterrorism investigating judge, which is like our prosecutor. He was outraged at this kidnapping and did a really, really thorough investigation of it and ended up via tracing cellphones and hotel records and other things and things that, you know, you realize the CIA is not James Bond, they left a real paper trail behind them. <Laughter>

He ended up finding the names of the CIA agents who carried out this operation and has now indicted them. So there are 25 CIA agents <applause> and one non-CIA personnel who are now indicted in Italian courts and are facing prosecution. However, this is a very I think ticklish issue for the Italian government. The Italian government, you know, there's been notoriously a lot of unhappy feelings between Europe and the United States lately, so the Italian government would like to get along with the U.S. And so I mean the Italian courts are independent, but the Italian government clearly does not support this prosecution and has not requested the extradition of these 25 suspects. It's also clear that even were the Italian government to request their extradition, the U.S. government would never extradite these people, and not just to protect these people, of course to protect themselves, to protect high officials in the U.S. Because, as with

soldiers who commit abuses, it's not the 26 or 25 CIA who are most responsible for this kidnapping, it's the high-level people who ordered it, and again, you know, we get to the question of where is the accountability at the highest levels of government.

**Question:** I was reading the paper about waterboarding, but could you actually explain what that means?

**Joanne Mariner:** About what?

**Question:** Waterboarding, what it means?

**Joanne Mariner:** Waterboarding, it's really an ancient torture technique. As I said, it was used in the turn of the century and probably long before that. A detainee is strapped to a board, so, you know, hands strapped, legs strapped, just utterly immobile on a board, he's tilted so I think his head is a little bit lower than his feet, and they pour water over his face that, you know, induces or creates sort of an unbearable sensation of drowning. I mean, they're not actually going to drown this guy, but he feels like he's drowning, and he also doesn't know that they're not going to drown him. So it's very effective and, you know, nobody can withstand it, and also sort of I think undermines the government's argument, well if we, you know, if we let people know what these techniques were, terrorists would train and they would be able to withstand them. Well, they couldn't, I mean you can't, there's some things you can't withstand. So, and anyway, any terrorist that reads the *Washington Post* knows that this technique is used, so the secret's out.

**Question:** You made reference several times to how there was an expose in 2005 about some of the rendition programs, and I know an important part of that was due to the people they call the plane spotters, and these are people whose hobby is just to sit at airports and a lot of times write down the tail numbers. And later on they were able to take all that information and reconstruct, you know, these are the jets the CIA was using, these are what times they flew and sometimes even link up to, you know, this person was carried from this country to this country at this point. And, you know, I guess I see it as kind of a ray of hope that, you know, ordinary people, a lot of them probably didn't know what they were involving themselves in, but you know, were able to collect this information and break through that wall of secrecy. So I was wondering if you had any comment on that?

**Joanne Mariner:** Yeah, no, it's really interesting. It's, you know, one thing that the government couldn't really plan, probably had no idea that plane spotters existed, but it's people who I guess are really obsessed with airplanes and sit at airports and write down all the tail numbers of all the planes taking off and landing. And now with the Internet, you know, in kind of communing with fellow plane spotters, they post this information on the Internet, and that was some of the really initial leads that led to people identifying certain planes as CIA planes. What the CIA did, and the CIA thought that it was hiding its tracks this way, it contracted with various private corporations and rented planes that were used, but there are certain planes now that are completely notorious. There are planes that we know the plane that took el-Masri to Afghanistan.

The same plane that took el-Masri to Afghanistan took a man named Benyam Mohammed to Morocco where he was tortured. Benyam Mohammed is now at Guantanamo and is actually one of Joe Margulies' clients, but, you know, this information became public and it helped lead, it was documented in the *Washington Post* and the *New York Times*. It also helped lead the European union to ask for plane records when it carried out its investigation, so now we actually have Euro control records of, you know, comprehensive documentation of flights. Unfortunately, we don't have records for countries like Pakistan, and we know that probably the majority of these prisoners were picked up in Pakistan and delivered elsewhere. You know, if anyone has friends in Pakistan in the aviation industry, <laughs> please talk to me after. <laughter> One last question I guess.

**Question:** Thank you, Ms. Mariner for I guess acting as the research arm with the ACLU in the press as the Justice Department we don't have. But I have to ask you a point of clarification. Am I correct in understanding that the one individual who is being held, it's because he himself underwent these tortures and he knows what they did to his body and therefore he's obtained illegal knowledge about their methods?

**Joanne Mariner:** Yes.

**Question:** Oh, my God.

**Joanne Mariner:** I mean Majid Kahn has been barred from seeing a lawyer because he is in possession of classified information. That classified information is the fact that he was tortured and he could say what they did to him. Yeah, it's Kafkaesque. Thank you so much.

<Applause>