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## Legacy of Torture

The Bush administration insisted that “enhanced interrogation techniques” — torture — were necessary to extract information from prisoners and keep Americans safe from terrorist attacks. Never mind that it was immoral, did huge damage to this country’s global standing and produced little important intelligence. Now, as we had feared, it is also making it much harder to try and convict accused terrorists.

Because federal judges cannot trust the confessions of prisoners obtained by intense coercion, they are regularly throwing out the government’s cases against Guantánamo Bay prisoners.

A [new report](#) prepared jointly by ProPublica and the National Law Journal showed that the government has lost more than half the cases where Guantánamo prisoners have challenged their detention because they were forcibly interrogated. In some cases the physical coercion was applied by foreign agents working at the behest of the United States; in other cases it was by United States agents.

Even in cases where the government later went back and tried to obtain confessions using “clean,” non-coercive methods, judges are saying those confessions too are tainted by the earlier forcible methods. In most cases, the prisoners have not actually walked free because the government is appealing the decisions. But the trend suggests that the government will continue to have a hard time proving its case even against those prisoners who should be detained.

In 2008, the Supreme Court ruled that Guantánamo prisoners could challenge their detention as enemy combatants in federal court, under the constitutional right of habeas corpus. Since then, the government has lost 37 of the 53 habeas cases that have been decided, largely because it could not prove the prisoners were terrorists.

In the 15 cases where prisoners have alleged coercive interrogations, according to the ProPublica report, judges have sided with the prisoners eight times. (There are probably

more cases than these, but the judges' opinions have been too heavily redacted by the government to tell.) Only three detainees in habeas cases have actually been let go.

In one compelling example, Judge Gladys Kessler of the United States District Court for the District of Columbia in November [threw out the case](#) against Farhi Saeed bin Mohammed, captured in Pakistan in 2001. The government described Mr. Mohammed as a fighter for Al Qaeda, and Judge Kessler acknowledged there was some evidence he had associated with terrorists.

But the main evidence that he was an active terrorist was supplied by another prisoner, Binyam Mohamed, who Judge Kessler said was repeatedly tortured for two years while being held in Pakistan and Morocco at the behest of the United States. His genitals were mutilated; he was deprived of sleep and food; he was held in stress positions and forced to listen to piercingly loud music.

Because the government did not dispute Binyam Mohamed's torture — and could not otherwise prove that Farhi Mohammed was actively engaged in fighting for Al Qaeda or the Taliban — she ordered him released. The government is appealing.

At least 50 other Guantánamo prisoners have filed habeas lawsuits. Torture could also affect the trial, if there is one, of Khalid Shaikh Mohammed, who planned the 9/11 attack.

The decisions speak well of the federal judges who are adhering to civilized legal standards even when the decision to release prisoners is difficult. We hope this demonstrated respect for due process will help repair this country's battered reputation. Had Bush-era interrogators held to similar standards, there would be fewer dubious detention cases at Guantánamo, and the government would have a much stronger case against those prisoners who are there legitimately.