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From Director
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Closing Guantánamo

In a long series of valedictory speeches and interviews, President Bush and Vice President Dick Cheney have been crowing about Guantánamo Bay, secret prisons and abusive interrogations, claiming they met the highest legal standards and that no prisoner had been tortured. Fortunately, the truth broke through the noise, in the words of some of the very people ordered to carry out the policies.

In an interview in The Washington Post, Susan Crawford, the retired judge who runs the military tribunals at Guantánamo, said that harsh interrogation methods had endangered the life of Mohammed al-Qahtani, a Saudi national accused of planning to take part in the 9/11 attacks. Authorized by then-Defense Secretary Donald Rumsfeld, they included sustained isolation, nudity and prolonged exposure to the cold.

"We tortured Qahtani," Judge Crawford said, adding that she was therefore unable to prosecute a man who seemed to pose a real threat to the United States.

Judge Crawford was not the only one speaking out. Major David Frakt of the Air Force Reserve, who was assigned to defend another Guantánamo prisoner, told MSNBC's Rachel Maddow that he and all the other defense lawyers in the system consider the tribunals "unfair, rigged" and unconstitutional. He noted that his client's prosecutor resigned to protest the lack of evidence in the case.

That is the real nature of Mr. Bush's grotesque legacy: abuse and torture at an outlaw prison where hundreds of men — many of whom did nothing — have been held for years without real evidence or charges. And truly dangerous men were treated so badly that it may be impossible to bring them to justice.

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It will be hard enough to close down Guantánamo as Barack Obama has vowed to do, but the legal burdens Mr. Bush is dumping on his successor are much greater.

The appalling Military Commissions Act of 2006, railroaded through Congress, must be repealed. Interrogation rules that respect American values and laws and the Geneva Conventions must be set for all government agencies, including the intelligence agencies.

And there is the profound question of whether the new administration should prosecute those who tortured and abused prisoners — and those who ordered them to do it. Judge Crawford's legal finding that torture occurred adds a new complication, since a treaty obliges the United States to investigate such allegations.

We have heard a lot of talk about how the country needs to look forward and not backward. We certainly would like to forget the horrors of the last eight years. But you cannot fix something before you know exactly

how it is broken. The clandestine system Mr. Bush and Mr. Cheney have built will not give up its secrets easily.

To ensure that the abuses stop, Mr. Obama and his administration will have to work hard to find out all that has happened. They will have to locate and override all of the policy memos, directives and executive orders that have redefined and condoned torture and other abuses. Guantánamo is the place to begin.

The timetable: Mr. Obama is expected to announce as early as Wednesday that he is beginning the process of shutting Guantánamo. We hope he sets a target date. That may make it easier to persuade other governments to agree to accept some prisoners — one of the difficult challenges ahead. But we do not agree with critics who insist that date must fall within his first 100 days.

This page called early and often for closing Guantánamo. But we recognize that this is going to be very hard work.

Sorting out the inmates: Mr. Obama's lawyers will have to review every file, most of which the Bush administration has refused to turn over to any authority, including Congress. We know from bitter experience that the Bush administration's judgment is worthless when it comes to what these prisoners may have done, how they have been treated and what justice they should face.

Just last week, Mr. Cheney claimed that the interrogation of prisoners like Khalid Shaikh Mohammed, believed to be the planner of 9/11, who was tortured by waterboarding, allowed the United States to capture a "very impressive" list of Al Qaeda leaders in 2003. If that is true, Mr. Obama needs to know who they are, where they are, and what was done to them in the last five years.

A blueprint: Senator Dianne Feinstein, the new head of the Intelligence Committee, has a bill for closing Guantánamo that Mr. Obama should embrace. It sets a one-year deadline and requires that every prisoner either be charged and tried in United States federal court; transferred for trial by an international tribunal under United Nations authority; returned to the custody of the government of their homeland, if that government does not abuse and torture prisoners; held as a prisoner of war; or, simply, released.

The separate system of tribunals created by the military commissions act must be abolished. They are a mockery of American justice, and utterly unnecessary.

It was extremely encouraging to hear Eric Holder, Mr. Obama's choice for attorney general, say at his confirmation hearing on Thursday that the new administration is open to trying prisoners in the United States. It is appalling that an attorney general nominee has to say he respects the law, but such is the Bush legacy.

The real bad guys: After the prisoners are sorted out, Mr. Bush's egregiously bad judgment leaves all Americans with a huge problem. The abuses authorized by top Bush officials, and so gleefully defended by Mr. Cheney in particular in the last few weeks, create the possibility that men like Mohammed al-Qahtani and Khalid Shaikh Mohammed will never be able to face justice in a real courtroom.

Mr. Obama's team will have to come up with a solution that does not set such men free. We are not sure what it should be, but there is one unacceptable choice: creating a new detentions law that would allow them held

without trial. That would merely compound Mr. Bush's catastrophically bad choices.

Interrogations: The 2006 military tribunals law bound military interrogators to the Army field manual's rules, which conform with the Geneva Conventions — unlike Mr. Bush's policies. But, at Mr. Bush's insistence, the bill carved out an exemption that allowed intelligence agencies to go on hiring civilian interrogators and to engage in practices that are clearly immoral and illegal. Ms. Feinstein's bill would eliminate the loophole on how prisoners are treated and ban the use of civilian interrogators.

We were glad to hear Mr. Holder state that the Obama administration considers the Geneva Conventions binding. But we wish he had been more clear on a solution, beyond calling the Army field manual a "good start" for interrogation rules in C.I.A. prisons. We also were unclear from his answers whether Mr. Obama has decided, as he should, to ban civilian interrogators.

Mr. Holder unequivocally declared waterboarding to be torture, which his predecessors would not do. But this is not just about waterboarding. Other practices, like forced nudity, prolonged isolation, and extremes of heat and cold, are abuses under the same laws and treaties that prohibit torture. And Judge Crawford reminded us that torture is not necessarily just one terrible act. In the Qahtani case, she said: "This was not any one particular act; this was just a combination of things that had a medical impact on him, that hurt his health. It was abusive and uncalled for. And coercive. Clearly coercive."

C.I.A. prisons: We have never heard a convincing explanation for why the Central Intelligence Agency needs its own network of prisons beyond the reach of law, in undisclosed locations. If there is a good reason, we hope this administration will explain it. We are skeptical, and we urge Mr. Obama to support Ms. Feinstein's bill, which would require the C.I.A. to report all detainees to the International Committee of the Red Cross.

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We recognize that this is a daunting agenda, and that to succeed, Mr. Obama's White House, Justice Department and Pentagon will also have to rebuild demoralized legal divisions where professionals were replaced with apparatchiks whose mission was to twist the law to justify their masters' decisions.

This work is essential to restoring the rule of law. It is essential to restoring this country's reputation around the world. And it is essential to restoring Americans' faith in themselves and in their government. That is the only way to move forward.

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