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Obama's Guantánamo, counter terror policies similar to Bush's?

**Afghanistan's Bagram is becoming the new Guantánamo, one legal scholar
said at a gathering of the American Constitution Society.**

By Warren Richey
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The debate over America's counterterrorism policies is sounding a lot like the debate over the Bush administration's aggressive "war on terror."

Nine months into the Obama administration, the same human rights and civil liberties officials who were sharply critical of President Bush are leveling similar criticisms about the new administration.

Although the rhetoric from the White House is toned down, harsh interrogations have stopped, and secret CIA prisons are shuttered, critics complain that emerging Obama antiterror policies seem more Bush-like than Obama-like.

The administration has embraced Mr. Bush's law of war philosophy justifying the potential indefinite detention of terror suspects deemed by President Obama to be too difficult to put on trial, but also too dangerous to release.

Administration officials are hinting that Obama may fail to fulfill his pledge to close the Guantánamo prison camp by January. A new version of the controversial military commission process is expected to emerge soon from Congress. And construction continues for a new, expanded terror prison camp at the Bagram air base in Afghanistan.

"Bagram is becoming Obama's Guantánamo," Hope Metcalf, director of the National Litigation Project of the Lowenstein International Human Rights Clinic at Yale Law School, warned during a panel discussion in Washington Thursday.

"The situation at Bagram is, if anything, far worse than Guantánamo," she told a gathering of the American Constitution Society. "At Bagram, there are no lawyers, no courts, and essentially no hope."

Joanne Mariner, director of the counterterrorism program at Human Rights Watch, told the same assembly that the pace of detainee releases from Guantánamo has slowed from the rate during the Bush administration. Currently, 221 detainees remain at Guantánamo.

Of 38 Guantánamo habeas corpus cases in which judges had examined the government's evidence, 30 detainees had been ordered released, Ms. Mariner said. Of those, she said, only 12 have won actual freedom.

According to Mariner, the slowdown is partly because of a reluctance in Europe to accept released detainees in light of a refusal in Congress to permit any resettlements in the United States. But, she added, the pace of resettlements in Europe may soon pick up. A number of detainees are now in the pipeline for resettlement there, she said. Accepting countries include Portugal, Belgium, and Ireland.

Among contentious issues under debate in Congress is whether a revamped military commission should include authorization to try suspected terrorists for providing material support to a terror group.

Critics argue that material support is not a traditional war crime. They say officials are seeking to include it as a triable offense before a military commission to provide an easy path to a conviction.

Analysis of the material-support issue is "ongoing," said David Kris, assistant attorney general for national security.

"This is ultimately a historic and legal inquiry," he told the gathering of the American Constitution Society.

Mr. Kris was asked how national-security lawyers in the Obama administration would avoid becoming legal "enablers" for officials who might seek authorization to engage in controversial interrogation tactics.

Kris said it was up to the attorney general and other top Justice Department officials – including himself – to "set the right tone."

The Justice Department, he added, was seeking to hire "good, strong people with character and principles."