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## Lawfulness of Interrogation Techniques under the Geneva Conventions

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### Summary

Allegations of abuse of Iraqi prisoners by U.S. soldiers at the Abu Ghraib prison in Iraq have raised questions about the applicability of the law of war to interrogations for military intelligence purposes. Particular issues involve the level of protection to which the detainees are entitled under the Geneva Conventions of 1949, whether as prisoners of war or civilian "protected persons," or under some other status. After photos of prisoner abuse became public, the Defense Department (DOD) released a series of internal documents disclosing policy deliberations about the appropriate techniques for interrogating persons the Administration had deemed to be "unlawful combatants" and who resisted the standard methods of questioning detainees. Investigations related to the allegations at Abu Ghraib revealed that some of the techniques discussed for "unlawful combatants" had come into use in Iraq, although none of the prisoners there was deemed to be an unlawful combatant.

This report outlines the provisions of the Conventions as they apply to prisoners of war and to civilians, and the minimum level of protection offered by Common Article 3 of the Geneva Conventions. There follows an analysis of key terms that set the standards for the treatment of prisoners that are especially relevant to interrogation, including torture, coercion, and cruel, inhuman and degrading treatment, with reference to some historical war crimes cases and cases involving the treatment of persons suspected of engaging in terrorism. Finally, the report discusses and analyzes some of the various interrogation techniques approved or considered for use during interrogations of prisoners at Abu Ghraib.

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# Lawfulness of Interrogation Techniques under the Geneva Conventions

## Introduction

Allegations of abuse of Iraqi prisoners by U.S. soldiers at the Abu Ghraib prison in Iraq raise questions about the applicability of the law of war to interrogations for military intelligence purposes. Particular issues involve the level of protection to which the detainees are entitled under the Geneva Conventions of 1949. After photos of prisoner abuse became public, the Defense Department (DOD) released a series of documents disclosing policy deliberations about appropriate techniques for interrogating persons the Administration had deemed to be unprotected by the Geneva Conventions with respect to the Global War on Terrorism (GWOT).<sup>1</sup> Investigations related to the allegations at Abu Ghraib revealed that some of the techniques discussed for "unlawful combatants" had come into use in Iraq, although none of the prisoners there was deemed to be an unlawful combatant.

This report outlines the provisions of the Conventions as they apply to prisoners of war and to civilians, and the minimum level of protection offered by Common Article 3 of the Geneva Conventions. The report analyzes key terms that govern the treatment of prisoners with respect to interrogation, which include torture, coercion, and cruel, inhuman and degrading treatment. Finally, the report discusses and analyzes the various interrogation techniques approved or considered for use during interrogations of prisoners at Abu Ghraib.

## Interrogation of Prisoners

Gathering of military intelligence has always been a top priority for belligerents, and captured enemy soldiers could be expected to have at least some knowledge pertinent to military operations.<sup>2</sup> As a consequence, prisoners of war (POWs) can expect to be questioned by their captors, who can be expected to employ whatever means are available to them for extracting such information. Possibly due in part to the inherent interest of belligerents both in procuring intelligence information and in protecting their own information and soldiers, ground rules developed for fair play in exploiting the intelligence value of captives. The emergence of "total war" in the twentieth century increased the military utility of economic data, industrial secrets,

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<sup>1</sup> Press Release, Department of Defense, DoD Provides Details on Interrogation Process (June 22, 2004), available at [<http://www.defenselink.mil/releases/2004/nr20040622-0930.html>].

<sup>2</sup> See A. J. BARKER, PRISONERS OF WAR 59 (1975) (noting that during the Napoleonic wars, the U.S. Civil War, and in the Crimea, "all belligerents staged raids for the express purpose of capturing prisoners for interrogation").

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and other information about the enemy that in centuries past might have been of little interest to warriors, increasing the intelligence value detainees might have, but not necessarily improving their treatment.<sup>3</sup>

## Prisoners of War

The ill-treatment of prisoners of war, even for the purpose of eliciting information deemed vital to self-defense, has long been considered a violation of the law of war, albeit one that is frequently honored in the breach.<sup>4</sup> The practice was understood to be banned prior to the American Civil War. The Lieber Code,<sup>5</sup> adopted by the Union Army to codify the law of war as it then existed, explained:

"Honorable men, when captured, will abstain from giving to the enemy, information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information" (Art. 80).

The Geneva Convention Relative to the Treatment of Prisoners of War (GPW)<sup>6</sup> Article 17, paragraph 4 provides the general rule for interrogation of prisoners of war:

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

This language replaced a provision in the 1929 Geneva Convention that stated "[n]o pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country."<sup>7</sup> According to the ICRC Commentary,<sup>8</sup> the many violations that occurred during World War II led drafters of the 1949 Convention to expand the provision to cover "information of any kind whatever," and by "prohibiting not only 'coercion' but also 'physical or mental

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<sup>3</sup> Former Nuremberg prosecutor Telford Taylor commented that

Today the value of prisoner interrogation for intelligence purposes and the fear of reprisals have ensured among the major powers (though by no means universally) observance of the obligation to accept surrender and grant humane treatment to prisoners of war.

Telford Taylor in *WAR CRIMES*, 49 (Henry Kim, ed. 2004).

<sup>4</sup> See Sanford Levinson, "Precommitment" and "Postcommitment": *The Ban on Torture in the Wake of September 11*, 81 *TEX. L. REV.* 2013, 2017-18 (2003).

<sup>5</sup> General Order No. 100, Instructions of the Government of Armies of the United States in the Field (1863) [hereinafter "Lieber Code"].

<sup>6</sup> August 12, 1949, 6 U.S.T. 3317 (hereinafter "GPW").

<sup>7</sup> Geneva Convention Relative to the Treatment of Prisoners of War art. 5 para 3, 47 Stat. 2021 (July 27, 1929)[hereinafter "1929 Geneva Convention"].

<sup>8</sup> INTERNATIONAL COMMITTEE OF THE RED CROSS, 3 COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (Jean Pictet, ed. 1960) [hereinafter "ICRC COMMENTARY III"].

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torture.”<sup>9</sup> The provision does not prohibit the detaining power from seeking any particular kind of information, but prohibits only the methods mentioned.<sup>10</sup> Coercion is also prohibited to elicit confessions from prisoners of war to be used against them at trial.<sup>11</sup>

Other articles that apply at all times during captivity are also relevant. They suggest that prisoners of war may not be singled out for special treatment based on the suspicion that they may have valuable information. Article 13 provides, in part, that “[p]risoners of war must at all times be humanely treated”<sup>12</sup> and they “must at all times be protected, particularly against acts of violence or intimidation...” Furthermore, it describes as a “serious breach” of the GPW “[a]ny unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody.” Article 14 states that “[p]risoners of war are entitled in all circumstances to respect for their persons and their honor.”<sup>13</sup>

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<sup>9</sup> *Id.* at 163 (citing in particular the “great hardship” inflicted on prisoners at “interrogation camps” to secure information). Interestingly, the ICRC Commentary seems to have viewed ‘coercion’ and ‘pressure’ to be the same thing, distinct from physical or mental torture.

<sup>10</sup> *Id.* The ICRC Commentary interprets the provision to prohibit the Detaining Power from “exert[ing] any pressure on prisoners,” even with respect to the personal identification information the prisoner is required to give under the first paragraph. *Id.* at 164. In other words, “It’s not what you ask but how you ask it.” See U.S. ARMY JUDGE ADVOCATE SCHOOL, LAW OF WAR WORKSHOP DESKBOOK 83 (CDR Brian J. Bill, ed. 2000) [hereinafter “LOW DESKBOOK”], available at <https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/CLAMO-Public.nsf.>

<sup>11</sup> GPW art. 99 (“No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.”).

<sup>12</sup> GPW art. 13, para. 1. The ICRC Commentary regarded this requirement as absolute, describing “humane” as follows:

With regard to the concept of humanity, the purpose of the Convention is none other than to define the correct way to behave towards a human being; each individual is desirous of the treatment corresponding to his status and can therefore judge how he should, in turn, treat his fellow human beings.

ICRC COMMENTARY III at 140. According to the ICRC Commentary, the elements of “humane” are set forth in the remainder of Article 13. *Id.* (noting that it includes not only a prohibition against corporal punishment but also a positive duty to protect the detainee from harm and provide assistance as necessary).

<sup>13</sup> GPW art. 14, para. 1; see ICRC COMMENTARY III at 143 (describing the article as encompassing both the “physical and the moral aspects of the individual”). Offenses against the physical person, according to the ICRC Commentary, include the killing, wounding or even endangering prisoners of war, or allowing these acts at the hands of others. *Id.* Protection of the “moral person” prohibits adverse propaganda and requires the detaining power to provide for the prisoners’ intellectual, educational and recreational pursuits, according to their individual preferences. *Id.* at 145. Respect for “honor” requires the protection of prisoners from “libel, slander, insult and any violation of secrets of a personal nature” (even if the source is another prisoner) and humiliating circumstances involving clothing and work. *Id.*

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Reprisal against prisoners of war is explicitly prohibited in Article 13. Article 16 requires that all prisoners of war must be treated equally:

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

Article 16 does not prohibit more favorable treatment based on these criteria.<sup>14</sup>

Article 25 provides for a minimum level of living conditions, suggesting that the manipulation of environmental conditions below these standards is not permitted:

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health. .... The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out.

Articles 21 and 22 address physical conditions of confinement, and do not appear to allow the placement of prisoners in solitary confinement in order to prepare them for interrogation. Article 21 provides:

Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Article 22 provides:

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate. The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

## Civilians

The first important modern effort to protect civilians in occupied territory is reflected in Hague Convention IV of 1907 and its accompanying Regulations.<sup>15</sup>

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<sup>14</sup> ICRC COMMENTARY III, *supra* note 8, at 154 (explaining that differentiation is prohibited only when it is of an adverse nature).

<sup>15</sup> Hague Convention No. IV Respecting the Laws and Customs of War on Land, Oct. 18, (continued...)

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Article 44 forbids the occupying power "to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense." In 1949, the treatment of enemy civilians was addressed for the first time in a separate instrument, the Fourth Geneva Convention ("GC").<sup>16</sup>

The GC governs the treatment of civilians who fall into the hands of the enemy, including those residing in the territory of that power as enemy aliens and the civilian population of occupied territory. Civilians in occupied territory are "protected persons" under the fourth Geneva Convention ("GC"), and are entitled under article 27 "in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs."<sup>17</sup> While an occupying power is permitted to "take such measures of control and security in regard to protected persons as may be necessary as a result of the war," Article 27 provides further that "[t]hey shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity." Article 32 forbids any "measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. . . [including] not only . . . murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person but also to any other measures of brutality whether applied by civilian or military agents." Reprisals against protected persons and their property are prohibited.

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<sup>15</sup> (...continued)

1907, 36 Stat. 2277, 205 Consol. T.S. 277 [hereinafter Hague Regulations].

<sup>16</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516 [hereinafter GC].

<sup>17</sup> According to the ICRC Commentary,

Article 27 is the basis on which the Convention rests, the central point in relation to which all its other provisions must be considered. It was in order to give greater prominence to this essential Article and to underline its fundamental importance that the Diplomatic Conference placed it at the beginning of Part III on the status and treatment of protected persons.

2 COMMENTARY ON THE GENEVA CONVENTIONS OF 1949 201 (Pictet, ed. 1960)[hereinafter ICRC COMMENTARY II]. The ICRC Commentary defined the rights as follows:

The right of respect for the person . . . covers all the rights of the individual . . . which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes . . . the right to physical, moral and intellectual integrity — an essential attribute of the human person.

The right to physical integrity involves the prohibition of acts impairing individual life or health.

Respect for intellectual integrity means respect for all the moral values which form part of man's heritage, and applies to the whole complex structure of convictions, conceptions and aspirations peculiar to each individual. Individual persons' names or photographs, or aspects of their private lives must not be given publicity.

The right to personal liberty, and in particular, the right to move about freely, can naturally be made subject in war time to certain restrictions made necessary by circumstances.

*Id.* at 201-02.



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Civilians may be detained or interned by an occupying power only if "security requirements make such a course absolutely necessary." (GC art. 42).<sup>18</sup> Article 5 provides for the detention of civilians who pose a definite threat to the security of the occupying power:

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Internment or assigned residence is the most severe measure allowed in the cases of protected civilians who pose a definite security threat (GC art. 41(1)), and these measures are to be reviewed by a court or administrative board at least twice annually. (GC art. 43).

Article 31 addresses interrogation explicitly. It provides that "[n]o physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."<sup>19</sup> In addition, protected persons may not be held as hostages, which would appear to preclude an occupying power from detaining civilians as a method of persuading others to cooperate in providing information about possible threats to the security.

Protected civilians may be imprisoned as a punitive measure only after a regular trial, subject to the protections in articles 64 through 77. Additionally, article 33 provides that "[c]ivilians may not be punished for an offence he or she has not

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<sup>18</sup> Most of the prisoners at Abu Ghraib in Iraq fall into this category. See AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade, LTG Anthony R. Jones and MG George R. Fay 11 (2004), available at [<http://www.defenselink.mil/news/Aug2004/d20040825fay.pdf>][hereinafter "Fay Report"]. The report explains further:

[A] "Civilian Internee" is someone who is interned during armed conflict or occupation for security reasons or for protection or because he has committed an offense against the detaining power. Within the confinement facility, however, there were further sub-classifications that were used, to include criminal detainee, security internee, and MI Hold. Security Internee[s] are [c]ivilians interned during conflict or occupation for their own protection or because they pose a threat to the security of coalition forces, or its mission, or are of intelligence value. This includes persons detained for committing offenses (including attempts) against coalition forces (or previous coalition forces), members of the Provisional Government, Non-Government Organizations, state infrastructure, or any person accused of committing war crimes or crimes against humanity. (References omitted).

<sup>19</sup> See DEPARTMENT OF THE ARMY, AR 190-8 ENEMY PRISONERS OF WAR, RETAINED PERSONNEL, CIVILIAN INTERNEES AND OTHER DETAINEES Para. 1-5(a)(1) (1997)[hereinafter AR 190-8]].

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personally committed," and prohibits all forms of collective penalties and intimidation. Article 100 addresses discipline in internment camps:

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulation imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs on the body is prohibited. In particular, prolonged standing and roll-calls, punishment drills, military drill and maneuver, or the reduction of food rations, are prohibited.

Like prisoners of war, protected civilians are entitled to equal treatment, "[w]ithout prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion."

### Common Article 3

The 1949 Geneva Conventions share several types of common provisions. The first three articles of each Convention are identical. Common Article 3 provides minimal rules applicable to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties." It provides that

each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment; . . .

2. The wounded and sick shall be collected and cared for. . . .

Common Article 3 has been described as "a convention within a convention" to provide a general formula covering respect for intrinsic human values that would always be in force, without regard to the characterization the parties to a conflict

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might give it.<sup>20</sup> Originally a compromise between those who wanted to extend POW protection to all insurgents and rebels and those who wanted to limit it to soldiers fighting on behalf of a recognized State, Common Article 3 is now widely considered to have attained the status of customary international law.<sup>21</sup> The prohibition against ill-treatment applies during interrogations.<sup>22</sup>

## Interpreting the Geneva Conventions

Despite the absolute-sounding provisions described above, whether certain techniques employed by interrogators are per se violations of the Geneva Convention remains subject to debate. Presumably, all aspects of prisoner treatment fall into place along a continuum that ranges from pampering to abject torture. The line between what is permissible and what is not remains elusive.<sup>23</sup> To complicate matters, interrogators may employ more than one technique simultaneously, and the courts and tribunals that have evaluated claims of prisoner abuse have generally ruled on the totality of treatment without specifying whether certain conduct alone would also be impermissible. Not surprisingly, governments may view conduct differently depending on whether their soldiers are the prisoners or the interrogators, and may be unwilling to characterize any conduct on the part of the adversary as lawful. Human rights advocates may tend to interpret the treaty language in a strictly textual fashion, while governments who may have a need to seek information from prisoners appear to rely on more flexible interpretations that take into account military operational requirements. Nonetheless, it may be possible to identify some threshold definitions.

### Threshold Definitions

The following sections explore relevant terms that provide boundaries for the conduct of a Detaining Power under the Geneva Convention with respect to prisoners of war, civilian internees, and other detainees.

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<sup>20</sup> See JEAN PICTET, *HUMANITARIAN LAW AND THE PROTECTION OF WAR VICTIMS* 32 (1975).

<sup>21</sup> See KRIANGSAK KITTICHAISAREE, *INTERNATIONAL CRIMINAL LAW* 188 (2001)(citing *Nicaragua v. United States*, ICJ Rep. 1986, 14).

<sup>22</sup> See *Prosecutor v. Krnojelac*, No. IT-97-25-I, paras. 5.17- 5.26 (ICTY Indictment, June 17, 1997) (citing eight instances of physical beatings during interrogations charged as torture); *Prosecutor v. Aleksovski*, No. IT-95-14/1-A (ITCY Appeals Chamber May 7, 1999)(defendant not guilty of grave breaches of the 1949 Geneva Conventions because the conflict was not international, but was convicted of violating the laws or customs of war, namely outrages upon personal dignity, for conduct including excessive and cruel interrogation found to be inhumane treatment); *Prosecutor v. Furundzija*, No. IT-95-17/1-T (ICTY Trial Chamber Dec. 10, 1998) (defendant held criminally responsible as a co-perpetrator of torture and for aiding and abetting in outrages upon personal dignity, including rape, in connection with interrogation of unclothed civilians).

<sup>23</sup> See John T. Parry, *What Is Torture, Are We Doing It, and What If We Are?*, 64 U. PITT. L. REV. 237, 241 (2003).

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**Torture.** Torture is proscribed by all four of the Geneva Conventions and their additional Protocols,<sup>24</sup> as well as customary international law.<sup>25</sup> Torture, which can be either mental or physical, is not explicitly defined in the Conventions. Modern tribunals may look to the United Nations Convention Against Torture ("CAT")<sup>26</sup> for a definition of torture:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>27</sup>

The International Tribunal for the former Yugoslavia (ICTY) has identified the following elements of the crime of torture in a situation of armed conflict:

- (i) . . . the infliction, by act or omission, of severe pain or suffering, whether physical or mental; in addition
- (ii) this act or omission must be intentional;

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<sup>24</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, *reprinted in* 16 I.L.M. 1391 [hereinafter Protocol I]. Protocol I art. 75 states:

The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

- (a) violence to the life, health, or physical or mental well-being of persons, in particular:
  - (i) murder;
  - (ii) torture of all kinds, whether physical or mental;
  - (iii) corporal punishment; and
  - (iv) mutilation;
- (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- (c) the taking of hostages;
- (d) collective punishments; and
- (e) threats to commit any of the foregoing acts.

The United States has not ratified Protocol I, but article 75 is widely considered to be universally binding as customary international law.

<sup>25</sup> See KITTICHAISAREE, *supra* note 21, at 143 (defining torture as "acts or omissions, by or at the instigation of, or with the consent or acquiescence of an official, which are committed for a particular prohibited purpose and cause a severe level of mental or physical pain or suffering") (citing International Criminal Tribunal for the former Yugoslavia (ICTY) decision in *Celebici* at para 442).

<sup>26</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) [hereinafter CAT]. For an analysis of relevant case law, see U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques, CRS Report RL32438.

<sup>27</sup> CAT art. 1(1).

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- (iii) it must aim at obtaining information or a confession, or at punishing, intimidating, humiliating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person;
- (iv) it must be linked to an armed conflict. . . .<sup>28</sup>

**Physical Torture.** The U.S. Army Field Manual (FM) 34-52, *Intelligence Interrogation*<sup>29</sup> ("FM 34-52") lists the following as examples of physical torture: electric shock; infliction of pain through chemicals or bondage (other than legitimate use of restraints to prevent escape); forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time; food deprivation; and any form of beating.<sup>30</sup>

The International Military Tribunal for the Far East (IMTFE) found that Japanese soldiers had used the following forms of torture: water treatment, burning, electric shocks, the knee spread, suspension, kneeling on sharp instruments and flogging.<sup>31</sup> The U.S. District Court for the District of Columbia found that U.S. POWs during the First Gulf War were tortured in Iraq:

The torture inflicted included severe beatings, mock executions, threatened castration, and threatened dismemberment. The POWs were systematically starved, denied sleep, and exposed to freezing cold. They were denied medical care and their existing injuries were intentionally aggravated. They were shocked with electrical devices and confined in dark, filthy conditions exposing them to contagion and infection. The POWs suffered serious physical injuries, including broken bones, perforated eardrums, nerve damage, infections, nausea, severe weight loss, massive bruises, and other injuries.<sup>32</sup>

In the context of a non-international war, the conflict in the former Yugoslavia, frequent examples of torture were said to include "beating, sexual violence, prolonged denial of sleep, food, hygiene, and medical assistance, as well as threats to torture, rape, or kill relatives. . . ."<sup>33</sup>

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<sup>28</sup> Prosecutor v. Furundzija, No. IT-95-17/1-A, para. 111 (ICTY Appeals Chamber July 21, 1999).

<sup>29</sup> DEPARTMENT OF THE ARMY FIELD MANUAL 34-52, *INTELLIGENCE INTERROGATION* (1992), available at [<http://www4.army.mil/ocpa/reports/ArmyIGDetaineeAbuse/FM34-52IntelInterrogation.pdf>](Sep. 1, 2004)[hereinafter FM 34-52].

<sup>30</sup> FM 34-52 at 1-8 (1992).

<sup>31</sup> United States *et al.* v. Sadao Araki, IMTFE 1948, *excerpts reprinted in* HOWARD S. LEVIE, 60 *INTERNATIONAL LAW STUDIES, DOCUMENTS ON PRISONERS OF WAR* 450 (U.S. Naval War College 1979) (hereinafter "POW DOCUMENTS").

<sup>32</sup> *Acree v. Republic of Iraq*, 271 F.Supp.2d 179, 185 (D.D.C. 2003), *vacated by* 370 F.3d 41(D.C.Cir. 2004)(failure to assert a valid cause of action cognizable under the terrorism exception to the Foreign Sovereign Immunities Act).

<sup>33</sup> Prosecutor v. Kvočka *et al.*, No. IT-98-30-PT, para. 144. (ICTY Trial Chamber Nov. 2, 2001). The trial chamber also noted that "Mutilation of body parts would be an example of acts per se constituting torture."

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**Mental Torture.** According to FM 34-52, examples of mental torture include mock executions, abnormal sleep deprivation, and chemically induced psychosis.<sup>34</sup> The International Military Tribunal for the Far East noted in its judgement of the major Japanese war criminals after World War II that mental torture had been commonly employed,<sup>35</sup> and cited the case of the Doolittle fliers to illustrate what mental torture entailed:

After having been subjected to the various other forms of torture, they were taken one at a time and marched blindfolded a considerable distance. The victim could hear voices and marching feet, then the noise of a squad halting and lowering their rifles as if being formed to act as a firing squad. A Japanese officer then came up to the victim and said: "We are Knights of the Bushido of the Order of the Rising Sun; We do not execute at sundown; we execute at sunrise." The victim was then taken back to his cell and informed that unless he talked before sunrise, he would be executed.<sup>36</sup>

A more recent example of mental torture, as found by a U.S. court, involved the treatment of American POWs by Iraqi agents during the 1991 Gulf War:

Iraqi agents caused the POWs to experience severe mental anguish by falsely reporting that they had killed Americans, including a pilot's wingman, other American POWs, and the President of the United States. The POWs suffered from knowing the agony that their families were enduring because the Iraqi authorities refused to inform the families that the POWs were alive.<sup>37</sup>

According to the ICTY, the following treatment may amount to mental torture:

For instance, the mental suffering caused to an individual who is forced to watch severe mistreatment inflicted on a relative would rise to the level of gravity required under the crime of torture. [B]eing forced to watch serious sexual attacks inflicted on a female acquaintance was torture for the forced observer. The presence of onlookers, particularly family members, also inflicts severe mental harm amounting to torture on the person being raped.<sup>38</sup>

**Physical / Mental Suffering.** Not all physical or mental suffering amounts to torture. While most people would likely accept that severe physical beatings or conduct such as electrocution and intentional cigarette burns amount to torture, relatively less physically brutal conduct, what might be described as psychological pressure (threats, verbal intimidation) and non-impact physical abuse (forcing detainee to remain in an uncomfortable position for a prolonged period) invite greater debate. Most forms of physical or psychological pressure are susceptible of being applied with varying degrees of intensity or duration. Relatively humane-sounding techniques applied at great length or in combination could cause physical and mental

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<sup>34</sup> FM 34-52 at 1-8.

<sup>35</sup> POW DOCUMENTS, *supra* note 31, at 437, 452.

<sup>36</sup> *Id.*

<sup>37</sup> *Acree* at 185.

<sup>38</sup> *Kvocka* at para. 149.

## CRS-12

suffering that might be characterized as torture.<sup>39</sup> Distinguishing between physical and mental forms of pressure may not be particularly helpful in determining whether torture has occurred.<sup>40</sup> Physical abuse may cause mental suffering that outlasts the physical suffering. Non-violent physical methods (playing loud music), especially over an extended period of time may cause physical as well as psychological suffering. Some victims may be more susceptible to certain types of pressure and therefore experience suffering that might not affect another. Permanent injury is not required.<sup>41</sup>

According to the ICTY

[T]he severity of the pain or suffering is a distinguishing characteristic of torture that sets it apart from similar offences. A precise threshold for determining what degree of suffering is sufficient to meet the definition of torture has not been delineated. In assessing the seriousness of any mistreatment, the Trial Chamber must first consider the objective severity of the harm inflicted. Subjective criteria, such as the physical or mental effect of the treatment upon the particular victim and, in some cases, factors such as the victim's age, sex, or state of health will also be relevant in assessing the gravity of the harm.<sup>42</sup>

**For Interrogation Purposes.** Some experts take the position that the purpose of eliciting information from the victim is a necessary element of torture, and that behavior that is cruel and causes suffering, but does not entail coercion to elicit a confession or information, is not torture.<sup>43</sup> Others take the view that cruel treatment

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<sup>39</sup> See Barak Cohen, *Democracy and the Mis-rule of Law: The Israeli Legal System's Failure to Prevent Torture in the Occupied Territories*, 12 IND. INT'L & COMP. L. REV. 75, 77-78 (2001):

For example, few people would argue that a prisoner subjected to prolonged, intense questioning, perhaps after a sleepless night on a narrow prison bed, while seated in an uncomfortable chair, is suffering from torture. In fact, it is arguable whether that prisoner is even being treated inhumanely, given the fact that interrogations inherently tend to employ some measure of physical discomfort. However, extreme applications of a combination of these factors—prolonged lack of sleep, being forced to stand for unreasonable periods of time with arms held to the front at shoulder level, being denied food and use of a lavatory for extended periods, culminating with concentrated questioning and verbal threats of future abuse could be considered torture, although any one of these activities by itself might not be severe enough to constitute torture per se.

<sup>40</sup> See *id.* at 78 (arguing that physical and mental abuse both “employ physical means to achieve a psychological effect — fear and anxiety that ultimately brings about the rupture of the subject's ego, thereby allowing a torturer to impose his will on the subject”).

<sup>41</sup> Prosecutor v. Kvočka et al., No. IT-98-30-PT, para. 148 (ICTY Trial Chamber Nov. 2, 2001).

<sup>42</sup> *Id.* at paras. 142-143.

<sup>43</sup> See HOWARDS. LEVIE, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT 357 &n. 60 (1979)(citing commentaries of Jean Pictet and Claude Pilloud, who would classify maltreatment for other purposes under the offense of “wilfully causing great suffering”). FM 34-52 states that torture is “the infliction of intense pain to extract a confession or information, or for sadistic pleasure.” FM 34-52 at 1-8 (1992).

## CRS-13

for other purposes, or even for no purpose, can constitute torture.<sup>44</sup> Under the Geneva Conventions, it appears to matter little whether certain treatment is described as torture; the Conventions protect against treatment that is cruel, inhumane, and degrading even if such treatment does not amount to torture.

**Coercion.** The Geneva Conventions do not define coercion. Their prohibition against coercion may vary somewhat depending on the status of the person undergoing interrogation. In the case of protected civilians, “[n]o physical or moral coercion shall be exercised against [them], in particular to obtain information from them or from third parties.”<sup>45</sup> Prisoners of war, on the other hand, may be subjected to no coercion *of any kind*, nor can they be “threatened, insulted, or exposed to unpleasant or disadvantageous treatment.” The conclusion might be drawn that some other kind of coercion, neither moral nor physical, may be permissible with respect to civilians but not for POWs. Perhaps “moral” coercion is distinct from “mental” coercion. However, we have found no references purporting to describe techniques in this category. Common Article 3 does not explicitly forbid coercion.

The essence of coercion is the compulsion of a person by a superior force, often a government, to do or refrain from doing something involuntarily. The intentional application of an unlawful force that robs a person of free will is coercive. However, circumstances that cause a person to reevaluate a course of action, even if deception is instrumental, may arguably be non-coercive pressure. Under the interpretation set forth in FM 34-52, “physical or mental torture and coercion revolve around the elimination of the source’s free will.”<sup>46</sup> These activities, along with “brainwashing,” are not authorized, it explains, but are not to be confused with the psychological techniques and ruses presented in the manual. FM 34-52 includes in the definition of mental coercion “drugs that may induce lasting and permanent mental alteration and damage.” This appears to reflect a change from earlier doctrine, which prohibited the use of *any* drugs on prisoners unless required for medical purposes.<sup>47</sup>

<sup>44</sup> *Id.* The ICTY has found that required element of a “prohibited purpose,” *see supra* note 28, does not require that the sole or even predominating motive or purpose behind the conduct is a prohibited purpose. *See Prosecutor v. Kunarac, Kovac and Vukovic*, Nos. IT-96-23 and IT-96-23/11, para. 486 (ICTY Trial Chamber Feb. 22, 2001).

<sup>45</sup> GC art. 31. According to the ICRC Commentary, the prohibition “covers all cases, whether the pressure is direct or indirect, obvious or hidden . . . [and] for any purpose or motive whatever.” *See ICRC COMMENTARY II, supra* note 17, at 219-20. The ICRC commented that the authors of the Convention were mainly concerned with “coercion aimed at obtaining information, work or support for an ideological or political idea,” but notes the language is broader than that of the Hague Regulations on the same subject. *Id.*

<sup>46</sup> FM 34-52 at 1-8.

<sup>47</sup> *See Stanley J. Glod and Lawrence J. Smith, Interrogation under the 1949 Prisoners of War Convention*, 21 MIL. L. REV. 145, 153-54 (1963)(citing JAGW 1961 / 1157, 21 June 21, 1961).

In an opinion by The Judge Advocate General of the Army reviewing the employment of [“truth serum”] in the light of Article 17, it was noted that Article 17 justly and logically must be extended to protect the prisoner against any inquisitorial practice by his captors which would rob him of his free will. On this basis it was held that the use of truth serum was outlawed by Article 17. In addition, its use contravenes Article 18, which states in

(continued...)



## CRS-14

In the context of U.S. criminal law, coercion is usually asserted as a defense to a crime<sup>48</sup> or as an element of a crime, or to render a confession inadmissible in court as involuntary. The standards differ depending on the purpose. To assert coercion as a defense to a criminal charge, a defendant generally has to show a well-grounded fear of imminent injury or death.<sup>49</sup> On the other hand, a confession is the product of coercion if a defendant's "will was overborne" or if his confession was not "the product of a rational intellect and a free will."<sup>50</sup> Prolonged questioning has been held to be inherently coercive,<sup>51</sup> as has incommunicado detention<sup>52</sup> and interrogation by a psychiatrist trained in hypnosis,<sup>53</sup> the use of violence,<sup>54</sup> threats,<sup>55</sup> and other mental "modes of persuasion."<sup>56</sup>

The standards that apply in criminal cases, however, probably do not apply to a determination of coercion under the Geneva Conventions.<sup>57</sup> The pertinent question appears to be whether the person subject to treatment designed to influence his conduct is able to exercise a choice and complies willingly or has no choice other than to comply.

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<sup>47</sup> (...continued)

part: "... no prisoner of war may be subject to . . . medical or scientific experiments of any kind which are not justified by the medical, dental, or hospital treatment of the prisoner concerned and carried out in his interest." The opinion declared that "... the suggested use of a chemical "truth serum" during the questioning of prisoners of war would be in violation of the obligations of the United States under the Geneva Convention Relative to the Treatment of Prisoners of War." From this opinion it seems clear that any attempt to extract information from an unwilling prisoner of war by the use of chemicals, drugs, physiological or psychological devices, which impair or deprive the prisoner of his free will without being in his interest, such as a bonafide medical treatment, will be deemed a violation of Articles 13 and 17 of the Convention.

The 1987 version of FM 34-52 suggested that the use of any drugs for interrogation purposes amounted to mental coercion. FM 34-52 ch. 1 (1987).

<sup>48</sup> "Coercion," also known as "duress," is recognized in nearly every American jurisdiction as an excuse for otherwise criminal conduct. See PAUL H. ROBINSON, 2 CRIMINAL LAW DEFENSES § 177(a) (1984) ("... an actor is excused for his conduct . . . if [it results from ] (1) being in a state of coercion caused by a threat that a person of reasonable firmness in his situation would not have resisted and (2) the actor is not sufficiently able to control his conduct so as to be held accountable for it").

<sup>49</sup> *D'Aquino v. United States*, 192 F.2d 338, 359 (9<sup>th</sup> Cir. 1951).

<sup>50</sup> *Townsend v. Sain*, 372 U.S. 293, 307 (1963) (confession induced by truth serum would be inadmissible).

<sup>51</sup> *E.g.*, *Haynes v. Washington*, 373 U.S. 503 (1963).

<sup>52</sup> *E.g.*, *Davis v. North Carolina*, 384 U.S. 737 (1968).

<sup>53</sup> *E.g.*, *Leyra v. Denno*, 347 U.S. 556 (1954) (confession was coerced where the subject was already emotionally drained from several days of interrogation).

<sup>54</sup> *Brown v. Mississippi*, 297 U.S. 278 (1936).

<sup>55</sup> *E.g.*, *Ward v. Texas*, 316 U.S. 547 (1942).

<sup>56</sup> *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960).

<sup>57</sup> LOW DESKBOOK, *supra* note 10, at 97 &n. 61.

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Asserting coercion by the enemy as a defense to treason or aiding the enemy has not been fruitful; courts have tended to apply the same test that would govern in other criminal cases.<sup>58</sup> In the post-WWII treason prosecution of Iva Ikuko Toguri D'Aquino (Tokyo Rose), the court stated its belief that despite the hostilities:

there was no occasion for departing from the ordinary rules applicable to the defense of duress and coercion. We know of no rule that would permit one who is under the protection of an enemy to claim immunity from prosecution for treason merely by setting up a claim of mental fear of possible future action on the part of the enemy. We think that the citizen owing allegiance to the United States must manifest a determination to resist commands and orders until such time as he is faced with the alternative of immediate injury or death. Were any other rule to be applied, traitors in the enemy country would by that fact alone be shielded from any requirement of resistance. The person claiming the defense of coercion and duress must be a person whose resistance has brought him to the last ditch.<sup>59</sup>

However, the failure of an asserted coercion defense does not mean that the behavior giving rise to the claim is lawful. Acts intended to coerce need not succeed to meet the definition of coercion as an element of a crime.<sup>60</sup> In the case of prisoners held by the Chinese during the Korean War, courts referred to conditions in the prisoner of war camps as brutal and inhumane, in violation of international law.

The conditions under which American prisoners of war in Korea were required to live were at best abominable and at worst intolerable. During the early stages, lack of adequate food, clothing, housing, and medical service resulted in a death rate which bespeaks man's inhumanity to man. Nevertheless, the accused was not subjected to any discomforts which were not shared by his comrades, and if his lot was harsh, so was theirs. . . . It goes without saying that all men cannot stand firm against torture, physical violence, starvation or psychological mistreatment. But in this instance, the record discloses that the accused weakened when others stood fast, and it does not reveal that he was compelled to sacrifice his countrymen because of the use of those influences.<sup>61</sup>

Yet soldiers who succumbed to the ill-treatment and collaborated with the enemy were unsuccessful in asserting the defense of coercion.

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<sup>58</sup> See *United States v. Fleming*, 19 C.M.R. 438 (1955); *U.S. v. Dickenson*, 20 C.M.R. 154, 181 (1955) (testimony of accused that he was subject to "'cruel and brutal treatment' and that someone told him that he 'would kill me if I did not agree with the Chinese and abide by the rules and regulations of the camp'" insufficient to show POW's misconduct was coerced); *U.S. v. Batchelor*, 22 C.M.R. 144 (1956); *U.S. v. Bayes*, 22 C.M.R. 487, 491 (1956).

<sup>59</sup> *D'Aquino v. United States*, 192 F.2d 338, 359 (9<sup>th</sup> Cir. 1951).

<sup>60</sup> See MODEL PENAL CODE § 212.5 (defining criminal coercion as a threat intended to restrict unlawfully another's freedom of action).

<sup>61</sup> *United States v. Batchelor*, 22 C.M.R. 144, 162 (1956). The court did, however, note that the defendant's participation with the Chinese propaganda program "was instrumental in coercing other prisoners to sign the petitions." *Id.* at 150.

## CRS-16

The infliction of any type of physical or mental suffering that would amount to torture would almost certainly qualify as "coercion." However, States have sought to find methods of applying "pressure" to convince a detainee that cooperation would be in his best interest, thereby persuading him to disclose information voluntarily. It may be useful to consider theories about coercion from the field of counterintelligence.

**Non-coercive Interrogation.** According to a 1963 CIA manual<sup>62</sup> on interrogation:

The term non-coercive is used . . . to denote methods of interrogation that are not based upon the coercion of an unwilling subject through the employment of superior force originating outside himself. However, the non-coercive interrogation is not conducted without pressure. On the contrary, the goal is to generate maximum pressure, or at least as much as is needed to induce compliance. The difference is that the pressure is generated inside the interogatee. His resistance is sapped, his urge to yield is fortified, until in the end he defeats himself.<sup>63</sup>

The manual describes the following techniques for non-coercive counterintelligence interrogation: "Nobody Loves You" (pointing out that all of the information about an interrogation subject has come from persons other than himself, eliciting a desire to tell his side of the story); "The All-Seeing Eye (or Confession is Good for the Soul)" (by manipulating information already known about the subject, the interrogator can convince a subject that all his secrets are already out and that further lies would be futile or even counterproductive);<sup>64</sup> "The Informer" (planting an informant as the source's cellmate);<sup>65</sup> "News from Home" (allowing a detainee to receive carefully selected letters from home);<sup>66</sup> "The Witness" (bringing an alleged witness with knowledge of subject's misdeeds within the subject's view to create a desire to refute charges);<sup>67</sup> "Joint Suspects" (causing the subject to believe that

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<sup>62</sup> Central Intelligence Agency, KUBARK Counterintelligence Interrogation, July 1963, [hereinafter "KUBARK Manual"]. This and another CIA manual, Human Resource Exploitation Training Manual (1983) were released pursuant to a Freedom of Information Act (FOIA) request by the Baltimore Sun in 1997. See National Security Archive Electronic Briefing Book No. 122, at [<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122>] (providing links to both documents) (Sep. 7, 2004). The 1983 manual, which had been used by the CIA to train Honduran military units between 1983 and 1987, became the subject of Senate Intelligence Committee hearings in 1988 because of human rights abuses committed in Honduras.

<sup>63</sup> KUBARK Manual, *supra* note 62, at 52.

<sup>64</sup> *Id.* at 67.

<sup>65</sup> *Id.* (noting that the technique is "so well-known, especially in Communist countries, that its usefulness is impaired if not destroyed").

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 67-69.

## CRS-17

another person involved in the crime is trying to throw all blame upon the subject);<sup>68</sup> "Ivan Is a Dope" (pointing out that the adversary is incompetent or ignores the welfare of its agents, but that the interrogator's entity will treat the subject better);<sup>69</sup> "Joint Interrogators" (good cop/bad cop routine: the brutal, angry, domineering interrogator contrasted with the friendly, quiet interrogator, with multiple variations).<sup>70</sup>

**Coercive Interrogation.** Coercive methods, according to the same CIA manual, "are designed not only to exploit the resistant source's internal conflicts and induce him to wrestle with himself but also to bring a superior outside force to bear upon the subject's resistance." Further, it noted, "[a]ll coercive techniques are designed to induce regression," which is described as "the loss of those defenses most recently acquired by civilized man: . . . the capacity to carry out the highest creative activities, to meet new, challenging, and complex situations, to deal with trying interpersonal relations, and to cope with repeated frustrations." These functions, it posited, could be impaired through the use of "relatively small degrees of homeostatic derangement, fatigue, pain, sleep loss, or anxiety"<sup>71</sup> to bring about the typical response to coercion: "debility, dependency, and dread."<sup>72</sup> The following were named as the "principal coercive techniques of interrogation: arrest, detention, deprivation of sensory stimuli through solitary confinement or similar methods, threats and fear, debility, pain, heightened suggestibility and hypnosis, narcosis [use of drugs], and induced regression."<sup>73</sup>

### Inhumane or Degrading Treatment.

The prohibition of inhumane treatment of prisoners of war was already understood to be part of the law of war during the 19<sup>th</sup> century. Art. 56 of the Lieber Code provided:

A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

Both the Union and Confederate governments accused the other of inhumane treatment of prisoners of war. The North was accused of exposing prisoners of war to cold weather as well as deprivation of adequate food, clothing, and fuel.<sup>74</sup> The

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<sup>68</sup> *Id.* at 70 -71.

<sup>69</sup> *Id.* at 71-72.

<sup>70</sup> *Id.* at 72.

<sup>71</sup> *Id.* at 83 (citation omitted). The manual advised against the use of such techniques.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 85.

<sup>74</sup> *See, e.g.*, Letter from Jefferson Davis to the Confederate Congress, November 7, 1864, reprinted in 7 *Journal of the Congress of the Confederate States of America* 254 (November (continued...))

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South was accused of "subjecting [prisoners of war] to torture and great suffering, by confining in unhealthy and unwholesome quarters, by exposing to the inclemency of winter and to the dews and burning sun of summer, by compelling the use of impure water, and by furnishing insufficient and unwholesome food," as well as using bloodhounds to track escaped prisoners, thereby allowing recaptured prisoners to be "cruelly and inhumanly injured."<sup>75</sup>

The barbarities complained of during the Civil War were repeated or multiplied during subsequent wars, despite the inclusion of provisions in treaties to protect prisoners of war.<sup>76</sup> The ICRC Commentary to the Geneva Conventions views humane treatment as the fundamental theme running throughout the Convention.<sup>77</sup> GPW art. 13 is viewed as embodying the principal elements of humane treatment.<sup>78</sup> Paragraph 1 of article 13 requires that POWs "at all times be humanely treated."<sup>79</sup> It goes on to identify as inhumane any "unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war," "physical mutilation or to [unjustified] medical or scientific experiments" and exposure to "acts of violence or intimidation and against insults and public curiosity." "Inhuman treatment" is defined in GPW art. 130 to constitute a grave breach of the Convention.<sup>80</sup>

<sup>74</sup> (...continued)

7, 1864); 6 Journal of the Confederate Conference, 142 (February 24, 1863) (quoting Chicago Times newspaper article report that twelve Confederate prisoners at Camp Douglas were frozen to death).

<sup>75</sup> These were the charges against Henry Wirz, who was convicted by military commission for crimes related to prisoner-of-war camp at Andersonville. See POW DOCUMENTS, *supra* note 31, at 46.

<sup>76</sup> Hague Regulations, *supra* note 15, arts. 4-20; 1929 Geneva Convention, *supra* note 7; see G.I.A.D. DRAPER, THE RED CROSS CONVENTIONS 2-6 (1958)(recounting historical developments leading up to the 1949 Geneva Conventions).

<sup>77</sup> ICRC COMMENTARY III, *supra* note 8, at 140.

<sup>78</sup> *Id.*; HOWARD S. LEVIE, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT 352 (1979)(remarking that the first sentence of art. 13 is the fundamental principle throughout the GPW). Others would include arts. 14 and 16 in the minimum definition of "humane treatment." See THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 329-30 (Dieter Fleck, ed. 1995)(hereinafter "HANDBOOK").

<sup>79</sup> The language "at all times" was new to the 1949 Convention, added by drafters to prevent derogations from the principle of humanity by reference to the circumstances of the conflict. See HANDBOOK, *supra* note 78, at 329; see also ICRC Commentary III, *supra* note 8, at 140 (noting the principles are valid at all times, including "cases where repressive measures are legitimately imposed on a protected person, since the dictates of humanity must be respected even if measures of security or repression are being applied").

<sup>80</sup> See LEVIE, *supra* note 110, at 356 (noting that the question remains open as to when maltreatment, other than torture or biological experiments, becomes "inhuman"). The ICRC Commentary offered the following interpretation:

It could not mean, it seems, solely treatment constituting an attack on physical integrity or health; the aim of the Convention is certainly to grant prisoners of war in enemy hands

(continued...)

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The prohibition on “acts of violence or intimidation and against insults and public curiosity” appears to have resulted from the World War II practice in Europe and the Far East of parading captive soldiers through the streets for propaganda purposes.<sup>81</sup> The ICRC has interpreted GPW art. 13 to prohibit the public display of prisoners through the news media. The ICRC considers the use of any image “that makes a prisoner of war individually recognizable” to be a violation, because the condition of being taken prisoner might be considered degrading or humiliating in itself, and that representations of captives could also have an impact on families.<sup>82</sup> The Department of Defense interprets the provision to protect POWs from being filmed or photographed in such a manner that viewers would be able to recognize the prisoner. Photos and videos depicting POWs with their faces covered or their identities otherwise disguised does not, in the view of the Department of Defense, violate GPW art. 13. Other experts would make an exception for reporting on prisoners and their conditions of captivity, in order to enforce international humanitarian law and to improve their conditions in captivity.<sup>83</sup> However, it appears to be well-accepted that broadcasting images of POWs for humiliation or propaganda purposes is inhumane.<sup>84</sup>

Other examples of treatment deemed degrading or humiliating in the context of the Geneva Conventions include urinating on POWs and forcing them to undergo

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<sup>80</sup> (...continued)

a protection which will preserve their human dignity and prevent their being brought down to the level of animals. Certain measures, for example, which might cut prisoners of war off completely from the outside world and in particular from their families, or which would cause great injury to their human dignity, should be considered as inhuman treatment.

ICRC Commentary III, *supra* note 8, at 627.

<sup>81</sup> See Trial of Lt. Gen. Kurt Maelzer, 11 LRTWC 53 (U.S. Military Commission 1946), excerpts reprinted in POW DOCUMENTS, *supra* note 31, at 355-56; United States *et al.* v. Sadoa Araki (IMTFE 1948), excerpts reprinted in POW DOCUMENTS, *supra* note 31, at 437, 461-62 (describing how Allied POWs were “paraded through the streets” in an “emaciated condition” and “held up to contempt by a Japanese officer”).

<sup>82</sup> See Anthony Dworkin, *The Geneva Conventions and Prisoners of War*, Crimes of War Project, March 23, 2003, at [<http://www.crimesofwar.org/special/Iraq/brief-pow.html>] (quoting ICRC spokesman Florian Westphal) (Sep. 1, 2004). *But see* HILAIRE MCCOUBREY, INTERNATIONAL HUMANITARIAN LAW 148-49 (2d ed. 1998) (“On the other hand, photographs of masses of prisoners of war with no humiliation beyond the fact of capture may not so obviously violate [article 13].”); United States v. Sidao Araki, in POW DOCUMENTS, *supra* note 31, at 476 (charging that the Japanese government concealed ill-treatment of prisoners by censoring photographs depicting conditions at POW camps).

<sup>83</sup> See HANDBOOK, *supra* note 7, at 704 (citing “examples of reports on prisoner of war camps in the former Yugoslavia” as an illustration of the need to weigh “preserv[ation] of prisoners’ lives against the rule prohibiting their exposure to public curiosity”).

<sup>84</sup> During the invasion of Iraq in 2003, both Houses of Congress passed resolutions condemning as inhumane and humiliating the broadcast of interrogations of U.S. POWs. H.Con.Res. 118, 108<sup>th</sup> Cong. (2003); S.Con.Res. 31, 108<sup>th</sup> Cong. (2003).

## CRS-20

inspections of their genitals to determine if they were Jewish (Gulf War I),<sup>85</sup> forcing captured Royal Marines to lie down on the ground for the benefit of television cameras (Falklands War),<sup>86</sup> and the Communist practices for indoctrinating POWs and pressuring them to sign confessions.<sup>87</sup> Acts causing severe humiliation or degradation may rise to the level of “outrages upon human dignity.”<sup>88</sup>

### Status of Detainees

Belligerents have sometimes argued that certain prisoners are not entitled to protection under the laws of war and relevant treaties, and that such prisoners might be subjected to harsher treatment than that accorded to prisoners of war. For example, during the Civil War, the Union initially promised to treat Confederate soldiers and sailors as common criminals and brigands, but later relented, with respect to regular Confederate soldiers and partisans (but not “guerrilla marauders”) in order to secure better treatment for captured Union soldiers. The Confederate States denied prisoner-of-war status to Union soldiers who were black. This policy was a point of contention between the two sides throughout the war, and afterward, when Johnson granted amnesty to participants in the rebellion, the amnesty did not extend to those who had refused to treat black soldiers as prisoners of war.<sup>89</sup>

During World War II, Germany and Japan adopted different standards for various types of prisoners. The Germans regarded Bolsheviks as undeserving of POW status under the Geneva Convention, and those prisoners were to be shot on the slightest provocation without any warning.<sup>90</sup> The Security Police and Gestapo adopted a series of harsher techniques for interrogating certain (mainly civilian)

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<sup>85</sup> *Acree v. Republic of Iraq*, 271 F.Supp.2d 179, 185 (D.D.C. 2003), *vacated by* 370 F.3d 41(D.C.Cir. 2004).

<sup>86</sup> *See MCCOUBREY, supra* note 82, at 148.

<sup>87</sup> *See* SEN. COMM. ON THE JUDICIARY, 92D CONG., COMMUNIST TREATMENT OF PRISONERS OF WAR (Comm. Print 1972).

<sup>88</sup> *See* Prosecutor v. Kunarac, Kovac and Vokovic, No. IT-96-23-PT (ICTY Appeals Chamber June 12, 2002). The ICTY has listed elements of “outrages upon personal dignity” to include

- (i) that the accused intentionally committed or participated in an act or an omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity, and
- (ii) that he knew that the act or omission could have that effect.

*Id.* at para. 161. Serious humiliation would have to be “so intense that any reasonable person would be outraged.” *Id.* at para. 162. Examples include “inappropriate conditions of confinement,” “perform[ing] subservient acts,” being “forced to relieve bodily functions in their clothing,” and “endur[ing] the constant fear of being subjected to physical, mental, or sexual violence” in camps. *Kvočka et al.*, at para. 173.

<sup>89</sup> Proclamation No. 37, 13 Stat. 758, 759 (May 29, 1865)(excepting from amnesty “all who have engaged in any way in treating otherwise than lawfully as prisoners of war persons found in the United States service, as officers, soldiers, seamen, or in other capacities”).

<sup>90</sup> *United States et al. v. Goering*, 22 TMWC 411 (IMT 1946), *excerpts reprinted in* POW DOCUMENTS, *supra* note 31, at 357, 360.

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prisoners who were thought to possess valuable information and who resisted questioning. Known as the "Third Degree," the methods included a "simple diet (bread and water), hard bunk, dark cell, deprivation of sleep, exhaustive drilling, [and] flogging for more than twenty strokes a doctor must be consulted."<sup>91</sup> Such methods were restricted to "Communists, Marxists, Jehova's Witnesses, saboteurs, terrorists, members of resistance movements, parachute agents, anti-social elements, Polish or Soviet Russian loafers or tramps," and for any other case where permission from the Gestapo Chief was first obtained.<sup>92</sup> At Nuremberg, defendants argued that the treatment of Soviet prisoners was not unlawful because the Soviet Union had not ratified the Geneva Convention. For the most part, the international and national military tribunals did not accept this defense.<sup>93</sup>

Countries fighting terrorism or insurgencies have sometimes adopted special methods of interrogating suspects. For example, Great Britain in the 1970's implemented sensory deprivation interrogation methods known as the "five techniques" against suspected members of the terrorist Irish Republican Army (IRA).<sup>94</sup> Some of the subjects of such interrogation brought suit in the European Court of Human Rights. The court described these techniques as follows:

(a) wall-standing: forcing the detainees to remain for periods of some hours in a 'stress position,' described by those who underwent it as being 'spreadeagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers'; (b) hooding: putting a black or navy colored bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation; (c) subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise; (d) deprivation of sleep: pending their interrogations, depriving the detainees of sleep; (e) deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the center and pending interrogations.

The ECHR held that "use of the five techniques did not constitute a practice of torture within the meaning of Article 3 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms]," but did constitute "inhuman and degrading treatment."<sup>95</sup>

Israel's General Security Service ("GSS") has employed interrogation methods involving "psychological pressure" and "moderate physical pressure" to obtain

<sup>91</sup> 22 TMWC 50 (1946).

<sup>92</sup> See *United States v. Wilhelm von Leeb*, 12 LRTWC 1, 20 (U.S. military Tribunal, Nuremberg 1948)(German High Command Case), available at <http://www.ess.uwe.ac.uk/WCC/ghctril1.htm>(Sept. 8, 2004).

<sup>93</sup> *Id* at 87 (finding general principals of international law required humane treatment, irrespective of whether Geneva Conventions were binding on Parties).

<sup>94</sup> *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) para. 94 (1978).

<sup>95</sup> *Id* at para. 167.



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information from suspected terrorists.<sup>96</sup> A judicial commission headed by the former Israeli Supreme Court President, Justice Moshe Landau, investigated the interrogation practices of the GSS. The Landau Commission justified the use of physical pressure as necessary in the face of hostile acts, and recommended that rather than covering up the use of such tactics, the government should “acknowledge that some measure of coercion is permissible, and then codify and carefully monitor the allowable techniques.”<sup>97</sup> The Knesset endorsed the findings of the Commission and enacted statutory authority adopting the Commission’s guidelines. The Landau Commission recommended:

The means of pressure should principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation. However, when these do not attain their purpose, the exertion of a moderate measure of physical pressure cannot be avoided.<sup>98</sup>

The contours of methods were detailed in a classified annex to the report and have not been made public, but later reports by human rights groups and a 1999 decision by the Israeli High Court shed light on the types of pressure the GSS employed.<sup>99</sup> The methods reportedly included position abuse, imposing hoods on subjects to produce disorientation, sleep deprivation, “shaking,” the use of excessively tight handcuffs, and exposure to uncomfortable temperatures and loud noises.<sup>100</sup> The Israeli High Court ruled that while such techniques did not constitute torture, they were nonetheless barred because they treated the suspects in an ‘inhuman and degrading’ manner.<sup>101</sup>

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<sup>96</sup> See Ralph Ruebner, *Democracy, Judicial Review and the Rule of Law in the Age of Terrorism: The Experience of Israel — a Comparative Perspective*, 21 B.U. INT’L L.J. 1 (2003).

<sup>97</sup> Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity (1987) [hereinafter Landau Commission Report], *excerpted in* 23 ISRAEL L. REV. 146, 167-76 (1989), *see* Ardi Imseis, Note, “Moderate” Torture on Trial: Critical Reflections on the Israeli Supreme Court Judgment Concerning the Legality of General Security Service Interrogation Methods, 19 BERKELEY J. INT’L L. 328, 333-34 (2001)(citing Landau Commission findings that confessions procured from Palestinians using physical pressure were used to obtain convictions in military courts).

<sup>98</sup> See Landau Commission Report, *supra* note 97, at para. 4.7.

<sup>99</sup> See Cohen, *supra* note 39, at 81-82.

<sup>100</sup> *Id.* (citing GSS agents’ testimony at military hearings).

<sup>101</sup> The Judgment Concerning the Interrogation Methods Implied by the GSS, the Supreme Court of Israel, sitting as the High Court of Justice, adjudicating H.C. 5100/94, H.C. 4054/95, H.C. 6536/95, H.C. 6536/95, H.C. 5188/96, H.C. 7563/97, H.C. 7628/97, H.C. 1043/99, *available at* [<http://www.court.gov.il>].

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## Department of Defense Methods of Interrogation

In the aftermath of the disclosure of photographs and reports of abuses at the Abu Ghraib prison in Bagdad, the Defense Department released a series of documents related to policy with respect to the interrogation of prisoners there and at the U.S. Naval Station at Guantanamo Bay, Cuba, where detainees captured in Afghanistan or elsewhere are being held as (unlawful) "enemy combatants." The released documents reveal deliberations about appropriate techniques for interrogating persons the Administration had deemed to be unprotected by the Geneva Conventions. The following sections analyze the interrogation methods that were suggested or approved for use at the Abu Ghraib prison. The descriptions of the various methods in the DOD documents are somewhat sketchy, however, and the sensitive nature of intelligence methods and the lack of detailed information about how the methods have been put into practice make comparison between these methods and past practices difficult.

### Approved Approaches for all Detainees

The list of approved methods for interrogation of terror suspects consisted, for the most part, of methods described in FM 34-52.<sup>102</sup> According to FM 34-52, "the Geneva and Hague Conventions and the UCMJ set definite limits on the measures which can be used to gain the willing cooperation of prisoners of war." It does not, however, elaborate on what the "definite limits" are,<sup>103</sup> or the extent to which they apply to persons who are not prisoners of war.<sup>104</sup> Some of the techniques might be considered coercive for the purposes of a criminal prosecution, and would likely be inadmissible were they used to elicit statements from an accused soldier prior to a court-martial.<sup>105</sup> Some techniques would very likely be unpleasant, possibly contravening GPW art. 17 if used against POWs who refuse to answer, but it appears to be the Army's position that the approved techniques below do not breach the

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<sup>102</sup> Fay Report, *supra* note 18, at 16.

<sup>103</sup> FM 34-52, ch. 1 (1987), noted that:

The psychological techniques and principles outlined should neither be confused with, nor construed to be synonymous with, unauthorized techniques such as brainwashing, mental torture, or any other form of mental coercion to include drugs. These techniques and principles are intended to serve as guides in obtaining the willing cooperation of a source. The absence of threats in interrogation is intentional, as their enforcement and use normally constitute violations of international law and may result in prosecution under the UCMJ.

<sup>104</sup> *But see* AR 190-8 para. 2(1)(d):

The use of physical or mental torture or any coercion to compel prisoners to provide information is prohibited. . . . Prisoners may not be threatened, insulted, or exposed to unpleasant or disparate treatment of any kind because of their refusal to answer questions. Interrogations will normally be performed by intelligence or counterintelligence personnel.

<sup>105</sup> *See* Law and Military Operations in Haiti, 1994-1995: Lessons Learned for Judge Advocates 60 (Dec. 11, 1995).

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law.<sup>106</sup> Most of the techniques do not appear to violate any provisions of the Geneva Conventions on their face, but military experts do not always agree among themselves as to their propriety and boundaries.

The "approach phase" begins when the interrogator first comes in contact with the source<sup>107</sup> and continues until the prisoner begins answering questions pertinent to the objective of the interrogation."<sup>108</sup> The effort generally consists of the establishment of control over the source and the interrogation, establishment of rapport between the interrogator and the source, and the manipulation of the source's emotions and weaknesses to gain his willing cooperation.<sup>109</sup> An interrogator may employ more than one technique simultaneously to elicit the desired information.

**Direct.** This approach involves the straightforward questioning of the detainee without the interrogator adopting any of the tactics described below. The interrogator simply asks the prisoner for the information, without concealing the interrogator's purpose or using deception of any kind, and is most effective when the prisoner is cooperative. As long as there is no exploitation of circumstances to cause fear or suffering, the Geneva Conventions' prohibition on coercion would not seem to be implicated. While it may be acceptable to exploit a detainee's initial shock upon capture to obtain information,<sup>110</sup> exploiting a detainee's suffering by interrogating a wounded prisoner would be more problematic, and could constitute a breach of the obligation to provide medical treatment.<sup>111</sup> As noted above, it is generally agreed that

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<sup>106</sup> See FM 34-52, ch. 1 (1987):

The use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind is prohibited by law and is neither authorized nor condoned by the US Government. Experience indicates that the use of force is not necessary to gain the cooperation of sources for interrogation. Therefore, the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear. However, the use of force is not to be confused with psychological ploys, verbal trickery, or other nonviolent and noncoercive ruses used by the interrogator in questioning hesitant or uncooperative sources.

<sup>107</sup> FM 34-52 (1992) at 3-10.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 3-21.

<sup>110</sup> See HOWARD S LEVIE, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT 109 (1977):

The front-line unit which captures a prisoner of war will frequently, and understandably, attempt to exploit that event by seeking to obtain information from him concerning tactical positions and plans and order of battle before evacuating him to the rear. Psychologically, this is probably the most fruitful time to interrogate a prisoner of war because of the state of shock from which he will be suffering, and his fear of the unknown, including how he will be treated by the enemy in whose complete power he now so suddenly finds himself. The capturing unit may seek such information without in any way violating the provisions of the 1949 Convention, provided that it does not use any form of coercion and provided that it evacuates the prisoner of from the combat zone as soon as practicable.

(References omitted).

<sup>111</sup> GPW art. 15.

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the Geneva Conventions allows *any* question to be posed to a prisoner of war, so long as the prisoner is not unlawfully compelled to give an answer.<sup>112</sup>

**Incentive / Incentive Removal.** The incentive approach rewards the source for his cooperation. According to FM 34-52, the approach is based on “the application of inferred discomfort upon [a detainee] who lacks willpower.”<sup>113</sup> It states that interrogators are not to withhold anything the prisoner is entitled to receive by right under the Geneva Conventions, but may withhold privileges.<sup>114</sup> Under this view, it would be improper to use as an incentive something that is required for the health or survival of the detainee, such as adequate nutrition and necessary medical care. However, comfort items might serve as lawful incentives.<sup>115</sup> For example, it would be improper to withhold water or food until a prisoner begins to cooperate, but

<sup>112</sup> See *id.* at 106-109; LOW DESKBOOK, *supra* note 10, at 83 (citing 15 UNITED NATIONS WAR CRIMES COMMISSION, LAW REPORTS OF TRIALS OF WAR CRIMINALS 101 n. 4 (1949)); Glod and Smith, *supra* note 47, at 145; ICRC COMMENTARY, *supra*, at 163-64.

<sup>113</sup> FM 34-52 at 3-14. The 1987 version of the manual stated that the approach is accomplished by “satisfying the source’s needs.” The 1992 version stresses that “[a]ny pressure applied in this manner must not amount to a denial of basic human needs under any circumstances,” *id.* at 3-14, possibly indicating a change in military doctrine. The interpretation that privileges may be used as an incentive may stem from GPW art. 17, which provides that POWs who refuse to provide the required information may be penalized with “a restriction of the privileges accorded to his rank or status.” This has been interpreted to apply to “those contained in the provisions concerning special privileges to be accorded to officers, non-commissioned officers or persons with similar status.” See ICRC COMMENTARY III, *supra* note 8, at 159. The following provisions are said to qualify:

- Article 16: General clause referring to privileged treatment according to rank and age;
- Article 39, paragraph 3: Special provisions for saluting in the case of officers;
- Article 40: Wearing of badges of rank;
- Article 44: Special clause regarding treatment of officers;
- Article 45: Special clause regarding treatment of other prisoners of war according to rank and age;
- Article 49, paragraph 1: General conditions concerning labour: age reservation;
- Article 49, paragraph 2: Exemption from work for non-commissioned officers;
- Article 49, paragraph 3: Exemption from work for officers;
- Article 60: Advances of pay;
- Article 79, paragraph 2: Appointment of prisoners’ representative in camps for officers and in mixed camps;
- Article 79, paragraph 3: Appointment of officers to administrative posts in labour camps;
- Article 87, paragraph 4: Requirement that the Detaining Power may not deprive a prisoner of war of his rank or prevent him from wearing his badges;
- Article 97, paragraph 3: Provision of quarters separate from those of non-commissioned officers and men for officers undergoing punishment;
- Article 104, paragraph 2: Notification of proceedings against a prisoner of war;
- Article 122, paragraph 4: Information transmitted by the Information Bureau.

*Id.* at 160-61. These restrictions, which apply only to the intentional refusal to give correct data *required* of POWs under art. 17, are said to be the “outer limit of the pressure which may be applied upon a prisoner of war incident to his interrogation.” See LEVIE, *supra* note 110, at 108.

<sup>114</sup> FM 34-52 at 3-14.

<sup>115</sup> *Id.* (suggesting that “luxury items” might include candy, fruit, or cigarettes).

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it would not be improper to reward a cooperative prisoner with food he may regard as a "treat."

What qualifies as a "comfort item" or a "privilege" may be subject to debate, but the language of the Geneva Conventions suggests that in addition to items necessary for basic subsistence, items necessary for human dignity, such as clothing, would make inappropriate incentives.<sup>116</sup> However, it might not be considered inhumane or degrading to compel prisoners to wear prison uniforms or clothing not to their particular liking, so long as the clothing is adequate for conditions (GPW art. 27) and the result is not degrading or dehumanizing.<sup>117</sup> Such a practice might nonetheless breach other provisions, for example, GPW art. 18 (POWs are entitled to retain their personal articles other than weapons and military equipment not for personal protection or identification); GPW art. 40 (POWs are allowed to wear their badges of rank and nationality, as well as decorations); GPW art. 34 and GC 38 (right to practice religion); GC art. 27 (protected persons are entitled to respect for their religious convictions and practices, and their manners and customs).

FM 34-52 suggests that "realistic incentives" be used to establish rapport, such as "a meal, shower, [opportunity to] send a letter home" for the short term, or for the long term, repatriation or political asylum.<sup>118</sup> Whether the use of "privileges" or "entitlements" is appropriate under the Geneva Conventions may depend on the circumstances. Prisoners of war and interned civilians are entitled to adequate nutrition and hygiene and, except for civilian internees who are definitely suspected of posing a security threat, to communicate with family members. Making these privileges available (or varying their quantity and quality) based on the cooperation of each detainee during interrogations could run afoul of the GPW prohibition on disadvantageous treatment of any kind,<sup>119</sup> as well as other provisions outlining

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<sup>116</sup> See Fay Report, *supra* note 18, at 10 ("The use of clothing as an incentive (nudity) is significant in that it likely contributed to an escalating "de-humanization" of the detainees and set the stage for additional and more severe abuses to occur.").

<sup>117</sup> The International Committee of the Red Cross (ICRC) reported as "ill-treatment" of prisoners at Abu Ghraib a method of securing cooperation whereby prisoners were "drip-fed" with new items (clothing, bedding, hygiene articles, lit cells, etc.) In exchange for their "cooperation".... Several had been given women's underwear to wear under their jumpsuit (men's underwear was not distributed), which they felt to be humiliating.

Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation § 3.2 (Feb. 2004) [hereinafter "ICRC Report"], available at [<http://msnbcmedia.msn.com>] (Sep. 1, 2004).

<sup>118</sup> FM 34-52 at 3-12.

<sup>119</sup> See Glod and Smith, *supra* note 47, at 152. By way of example, the authors posit that

to interrogate subtly a hungry prisoner outside a mess hall would probably not contravene Article 17; however, if all other prisoners were fed and the one being interrogated was not, the action would be illegal because it would expose him to what Article 17 terms "unpleasant and disadvantageous treatment."

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rights.<sup>120</sup> For example, one U.S. court found that depriving POWs of any opportunity at all to communicate with the outside world amounted to "torture."<sup>121</sup> However, allowing a cooperative detainee the opportunity to send three letters home per month, where other prisoners are only allowed to send the two required by GPW art. 71 and GC art. 107, may be permissible.

States whose prisoners of war have been subjected to the use of incentives to elicit information have criticized the technique as inhumane under the particular circumstances. In describing the conditions to which the U.S. prisoners of war<sup>122</sup> held by North Korea were subjected, the Defense Department told Congress:

Water was often scarce; bathing became difficult. Barracks were foul and unsanitary. In the best of the camps the men behind the barbed wire were sometimes given tobacco, a few morsels of candy, occasional mail. As will be noted, such items were usually offered as rewards for "cooperative conduct."<sup>123</sup>

A British report describing the lot of their POWs held by the Chinese noted that supplies of food, medicine, and standards of accommodation the POWs received depended "to a large extent on the degree of cooperation with their captors," and deplored the use of physical violence and solitary confinement as "incentives" for cooperation.<sup>124</sup> The report also described how the Chinese manipulated mail as an inducement for cooperation, commenting that the refusal to allow POWs the chance to write home to let their families know they were alive was a breach of the Geneva Convention.<sup>125</sup>

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<sup>120</sup> See 2003 Eritrea-Ethiopia Claims Commission (EECC): Partial Award on Prisoners of War (Ethiopia's Claim 4), reprinted at 42 ILM 1056, 1069 (2003) (Ethiopian POWs who were provided inadequate housing, sanitation, drinking water, bathing opportunities and food were entitled to compensation).

<sup>121</sup> See *Acree v. Republic of Iraq*, 271 F.Supp.2d 179, 185 (D.D.C. 2003), vacated by 370 F.3d 41 (D.C.Cir. 2004) (failure to state a cause of action).

No American POWs were permitted to notify their families of their capture and current state of health. As a calculated part of the torture of the POWs and their family members, Iraq refused all requests by both the POWs and the International Committee of the Red Cross ("ICRC") for notification of capture. For the POWs, this was a special dimension of the torture and mental anguish as they worried about their loved ones.

<sup>122</sup> The Geneva Conventions did not apply *de jure* to the war in Korea as not all parties had yet signed or ratified them. North Korea and the United Nations Command declared their intention to apply the provisions in their treatment of prisoners of war. The Chinese government took the position that United Nations troops were war criminals and thus not entitled to treatment as prisoners of war.

<sup>123</sup> Report by the Secretary of Defense's Advisory Committee on Prisoners of War (1955), reprinted in POW DOCUMENTS, *supra* note 31, at 643, 644.

<sup>124</sup> Ministry of Defence, United Kingdom, Treatment of Prisoners of War in Korea (1995), reprinted in POW DOCUMENTS, *supra* note 31, at 651, 652. The aim of the treatment was not only to interrogate for intelligence information, but also to indoctrinate prisoners to the communist way of thinking and cause them to make confessions and statements for propaganda purposes. *Id.* at 654.

<sup>125</sup> *Id.* at 660.

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**Emotional Love / Hate.** Using the emotional approach, an interrogator seeks to exploit the source's emotions in order to override his rationale for resisting. According to FM 34-52, love or fear for one person may be exploited or turned into hate for someone else.<sup>126</sup> For the emotional love approach, the interrogator focuses on the source's anxiety brought on by his predicament. The interrogator then makes use of the love the source feels toward his family, homeland, comrades, etc., to devise an effective incentive, such as communication or promised reunification with the source's family, a quicker end to the war to save his comrades' lives, and so forth. FM 34-52 states that a "good interrogator will usually orchestrate some futility with an emotional love approach to hasten the source's reaching the breaking point. This places a burden on the source and may motivate him to seek relief through cooperation with the interrogator."

The emotional hate approach focuses on any genuine feelings of hatred, or possibly a desire for revenge, the source may feel toward his country's regime, his immediate superiors, officers in general, his fellow soldiers or the like. The interrogator might hint at an opportunity for revenge if the source cooperates and divulges certain information.

The manipulation of emotions as described does not seem to violate any prohibitions of the Geneva Conventions on its face. The success of the technique relies on the arts of perception and persuasion, which most commentators agree are not out of bounds. However, if the emotional love method, for example, were to involve threats against the lives of family members, for example, its use could contravene the Conventions' prohibitions of threats.

**Fear Up Harsh / Mild.** According to FM 34-52, the aim of the "increased fear up harsh" technique is to convince the source who appears to be hiding something that he does indeed have something to fear (not necessarily from the interrogator) and that he has no option but to cooperate. The interrogator will behave in a heavy, overpowering manner, using a loud and threatening voice, and perhaps throwing objects around the room to heighten the source's implanted feelings of fear.<sup>127</sup> Of the questioning methods approved by the manual, this approach is said to have greatest potential to violate the law of war,<sup>128</sup> presumably because it could lead to threats or violence against the subject.

The 'mild' version of the 'fear up' approach seeks to exploit circumstances that point to the interrogatee's involvement in some activity that could bring harsh punishment. The interrogator does not raise his voice or behave in an overbearing manner; instead, he uses a "credible distortion of the truth" as a subtle means to blackmail the subject into cooperating. The interrogator persuades the subject that he has good cause for fear under the circumstances, but the interrogator might intimate that he might be willing to conceal or alter the reported circumstances of the source's capture, as long as the source cooperates.

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<sup>126</sup> FM 34-52 at 3-15.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 3-16.

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**Reduced Fear.** The “decreased fear down” approach is to be used primarily on a source who is already in a state of fear. The technique involves calming the source and convincing him that he will be properly and humanely treated, or that he is safer in captivity than in combat, for example.<sup>129</sup> Using a soothing tone of voice, the interrogator attempts to create rapport with the source by engaging in small talk until the source is ready to answer more pressing questions. It is difficult to conceive of an implementation of this approach that would cause a violation of the Conventions.

**Pride & Ego Up / Down.** The “pride and ego” approach concentrates on tricking the source into revealing pertinent information through the use of flattery or abuse. The pride and ego up variation is used on sources who feel inferior, especially low ranking enlisted personnel or junior grade officers, who might respond to the opportunity to demonstrate their intellect or importance. The interrogator speaks as if he is very impressed with the accomplishments of the subject, engendering positive feelings on the source’s part that he is finally getting the recognition he deserves. The source may reveal pertinent information in order to solicit more laudatory comments from the interrogator.

The “pride and ego down approach,” in contrast, exploits a source’s sense of inferiority by attacking the source’s sense of personal worth, criticizing his loyalty, intelligence, abilities, technical competence, leadership qualities, slovenly appearance, or any other perceived weakness. The interrogator uses a sarcastic, caustic tone of voice to express distaste or disgust. If the tactic works, the source will become defensive and try to prove the interrogator wrong. In his attempt to vindicate his pride, according to FM 34-52, the source will usually involuntarily provide pertinent information.<sup>130</sup> The approach could contravene the Geneva Conventions’ prohibition of insults and degrading treatment.

**Futility.** The “futility” approach is used to exploit the doubts and misgivings already in the source’s mind to make him believe that it is useless to resist the interrogation efforts. FM 34-52 describes multiple techniques for accomplishing the desired effect.<sup>131</sup> By making the situation appear hopeless, the interrogator allows the source to rationalize his cooperation. This approach, as described, appears to be permissible as “guile,” but extreme treatment designed to induce a feeling of overall futility could cause mental suffering severe enough to raise questions under the Geneva Conventions.

**We Know All.** The “we know all” approach involves making a source believe that the interrogator already knows everything about the source.<sup>132</sup> The interrogator compiles all available data on the source and his unit. The interrogator then asks questions to which he already has the answer. When the source refuses to answer or provides an incomplete or false response, the interrogator himself supplies the correct

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<sup>129</sup> *Id.*

<sup>130</sup> FM 43-52 at 3-17.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 3-19.



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answer. The interrogator tries to convince the source that all information is already known, so he may as well cooperate. When the source begins to give accurate and complete information, the interrogator begins interjecting questions for which he does not have the answers. This appears to be an unobjectionable tactic involving more wile than coercion, and seems to be widely accepted as legitimate.

**Establish Your Identity.** In the “establish your identity approach,” the interrogator insists that the source has been identified as an infamous criminal who is merely posing as someone else to avoid punishment.<sup>133</sup> The source may be tricked into giving detailed information on his unit to establish or substantiate his true identity in order to refute the interrogator’s allegations. The technique appears to involve trickery that might be acceptable under the Geneva Conventions, but could conceivably be applied in a threatening or coercive manner.

**Repetition.** The interrogator may repeat the same question many times in order to get a hostile source to cooperate.<sup>134</sup> The source becomes bored with the procedure and may give more complete and candid answers simply in order to gain relief from the monotony.<sup>135</sup> Taken to extremes, for example, during prolonged interrogations, it might be said to induce mental suffering

**File & Dossier.** The “file and dossier” approach is a variation of the “we know all approach,” but uses a prop. Prior to the session, the interrogator prepares a dossier containing all available information obtained from records and documents concerning the source or his organization, possibly padding it with extra paper to create the illusion that it contains much more information than is really there. The interrogator confronts the source with the dossier, exploiting the known facts about the source to convince him that resistance would be futile.

**Rapid Fire.** FM 34-52 describes the “rapid fire” approach as a “psychological ploy based upon the principles that everyone likes to be heard when he speaks, and it is confusing to be interrupted in midsentence with an unrelated question.”<sup>136</sup> One or two interrogators ask a series of questions without allowing the source time to answer them completely before the next question is asked. The source may become confused and contradict himself, which the interrogator can exploit by confronting the source with the inconsistencies. The source may reveal more than he intends in attempting to clarify his answers.

**Silence.** The silence approach involves an interrogator who says nothing to the source, but “looks him squarely in the eye, preferably with a slight smile on his face,” in an effort to make the subject nervous and force him to break eye contact

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 3-20.

<sup>135</sup> *Id.* at 3-20.

<sup>136</sup> *Id.*

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first<sup>137</sup>. The source may begin to talk or ask questions to break the tension. When the interrogator eventually begins to ask questions, the subject may feel relieved and more willing to divulge information.

### Require CG's Approval

The methods listed below were authorized to be used under certain conditions but required the approval of the Commanding General. These methods are not described in FM 34-52, although some resemble techniques described as coercive by the CIA manual.<sup>138</sup> Some appear to involve the "environmental control" techniques of the sort that led to the revision of FM 34-52 in 1992,<sup>139</sup> to cause "debility,"<sup>140</sup> or fear. Some have argued that these techniques amount to torture, but Pentagon officials reportedly said that such methods can be applied within the framework of the Geneva Convention, as long as the prisoner's basic physical needs are met.<sup>141</sup>

**Change of Scenery Down.** For this technique, the interrogator removes the detainee from the standard interrogation setting to one that may be less comfortable, but would not constitute a "substantial change in environmental quality."<sup>142</sup> The purpose of a change of scenery is to throw the detainee off balance psychologically.

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<sup>137</sup> *Id.*

<sup>138</sup> KUBARK Manual, *supra* note 62, at 85-86

Little is gained if confinement merely replaces one routine with another. Prisoners who lead monotonously unvaried lives "... cease to care about their utterances, dress, and cleanliness. They become dulled, apathetic, and depressed." And apathy can be a very effective defense against interrogation. Control of the source's environment permits the interrogator to determine his diet, sleep pattern, and other fundamentals. Manipulating these into irregularities, so that the subject becomes disorientated, is very likely to create feelings of fear and helplessness.

<sup>139</sup> See Fay Report, *supra* note 18, at 16 (noting that detention policies in Iraq may have been based on the outdated 1987 version of FM 34-52). According to the report, the 1987 version could suggest to the untrained that the interrogator should control environmental factors, citing FM 34-52 (1987) Chapter 3:

Establish and Maintain Control. The interrogator should appear to be the one who controls all aspects of the interrogation to include the lighting, heating, and configuration of the interrogation room, as well as the food, shelter, and clothing given to the source. The interrogator must always be in control, he must act quickly and firmly. However, everything that he says and does must be within the limits of the Geneva and Hague Conventions, as well as the standards of conduct outlined in the UCMJ.

<sup>140</sup> KUBARK Manual, *supra* note 62, at 92-93 (describing methods of inducing physical weakness, including "prolonged constraint; prolonged exertion; extremes of heat, cold, or moisture; and deprivation or drastic reduction of food or sleep").

<sup>141</sup> Department of Defense Background Briefing, May 14, 2004 (arguing that methods listed as requiring approval, if applied correctly and with appropriate oversight, and in conformity with the safeguards and as long as the baseline of the Geneva Conventions is maintained); see *Interrogation Guidelines*, Sydney Morning Herald, May 15, 2004.

<sup>142</sup> Department of Defense, Working Group Report on Detainee Operations 64, April 4, 2003, available at [<http://www.pentagon.mil/news/Jun2004/d20040622doc8.pdf>] (Sept. 1, 2004).

## CRS-32

As long as it is not seen as punishment for failure to cooperate, and the environment does not fall below the standards for health and hygiene, a change of scenery would not seem to violate the Geneva Conventions.

**Dietary Manipulation.** This technique involves changing the diet of a detainee, not in such a way as to deprive him of food or water, affect his health, or interfere with his religious practices. This could involve a substitution of cold rations for hot, according to the DOD Working Group Report. The object is probably to disorient the detainee by upsetting his regular routine.<sup>143</sup>

**Environmental Manipulation.** This method involves alteration of the environment to create moderate discomfort, by means of adjusting the room temperature or introducing an unpleasant smell, without bringing about conditions that would injure the detainee.<sup>144</sup>

Subjecting prisoners of war to inhospitable climate conditions has long formed the basis for complaints about inhumane treatment in violation of the law of war.<sup>145</sup> Purposeful exposure of prisoners of war to temperature extremes for interrogation purposes has been found to be ill-treatment under the 1929 Geneva Conventions.<sup>146</sup>

**Sleep Adjustment.** The detainee's ordinary sleep schedule is disturbed by, for example, reversing the sleep cycles from night to day, but without depriving the detainee of sleep. The method likely induces a feeling of disorientation similar to "jet lag." "Sleep management" for a maximum of 72 hours was approved for use at Abu Ghraib with the commander's approval. The DOD Working Group distinguished "sleep management" from "sleep deprivation," which it defined as

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<sup>143</sup> KUBARK Manual, *supra* note 62, at 86: "The point is that man's sense of identity depends upon a continuity in his surroundings, habits, appearance, actions, relations with others, etc. Detention permits the interrogator to cut through these links and throw the interrogatee back upon his own unaided internal resources."

<sup>144</sup> General Counsel of the Department of Defense, Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations 64 (April 2003)[hereinafter "DODWG"], available at [<http://www.defenselink.mil/news/Jun2004/d20040622doc8.pdf>].

<sup>145</sup> 6 Journal of the Confederate Conference, 142 (February 24, 1863) (quoting Chicago Times newspaper article report that twelve Confederate prisoners at Camp Douglas were frozen to death). The following resolution was proposed:

Whereby it appears that twelve prisoners of the Confederate Army in the hands of the Abolition authorities of the United States have been murdered by forcibly confining them in a rigorous climate, in intensely cold weather, without any adequate means for their protection and the preservation of their lives, against the severity of the Northern climate into which they were forcibly taken: Therefore, it is Resolved, That the President be requested to cause inquiry to be made by one of our commissioners for the exchange of prisoners, or by such other means as he may deem expedient, whether the facts stated in said article are true, and if true, whether said fact, that he be requested to take proper steps to retaliate upon the enemy for their worse than brutal murder.

<sup>146</sup> See POW DOCUMENTS, *supra* note 31, at 291 (discussing Trial of Erich Killinger and Four Others (British Military Court, Wuppertal at Germany, 1945)).

## CRS-33

“[k]eeping the detainee awake for an extended period of time (allowing individual to rest briefly and then awakening him, repeatedly) NOT to exceed four days in succession.”<sup>147</sup> The DOD Working Group noted, “as a matter of policy,” that other nations consider sleep deprivation to amount to torture or cruel, inhuman, or degrading treatment.<sup>148</sup>

Sleep deprivation is an age-old method for weakening the subject physically. However, the CIA manual recommended sleep disruption as a more effective method of coercion:

Another objection to the deliberate inducing of debility is that prolonged exertion, loss of sleep, etc., themselves become patterns to which the subject adjusts through apathy. The interrogator should use his power over the resistant subject's physical environment to disrupt patterns of response, not to create them. Meals and sleep granted irregularly, in more than abundance or less than adequacy, the shifts occurring on no discernible time pattern, will normally disorient an interrogatee and sap his will to resist more effectively than a sustained deprivation leading to debility.<sup>149</sup>

**Isolation.** The detainee would be isolated from other detainees (for no longer than 30 days<sup>150</sup>), but otherwise complying with the basic standards of treatment. The DOD Working Group recommended isolation as an “exceptional”<sup>151</sup> technique, and

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<sup>147</sup> DODWG, *supra* note 144, at 64.

<sup>148</sup> *Id.* at Annex Summary of Analysis and Recommendations Detainee Interrogation Working Group Pertaining to Unlawful Combatants Outside of the U.S., n.24 (citing Concluding Observations of the Committee against Torture, U.N. Doc. A152/44, paragraphs 253-260; Judgment on the Interrogation Methods Applied by the GSS, Nos HC 5100/94, HC 4054/95, HG 5188/96, HG 7563197, HG 7628/97, HG 1043199 (Sup Ct of Israel, sitting as the High Court of Justice, Sep 6, 1999; Ireland v. United Kingdom, 25 Eur. Ct. H.R. (Ser. A) (1978)).

<sup>149</sup> KUBARK Manual, *supra* note 62, at 93.

<sup>150</sup> The DOD Working Group notes that isolation for interrogation purposes is “not known to have been generally used for . . . longer than 30 days.” DODWG, *supra* note 144, Annex at 6. According to the CIA manual, isolation becomes ineffective after a certain period of time, depending on the individual. See KUBARK Manual, *supra* note 62, at 87 (“Little is known about the duration of confinement calculated to make a subject shift from anxiety, coupled with a desire for sensory stimuli and human companionship, to a passive, apathetic acceptance of isolation and an ultimate pleasure in this negative state.”).

<sup>151</sup> The DOD Working Group recommended the following limitations for “exceptional” techniques to be used on persons deemed to be “unlawful combatants”:

- (i) limited to use only at strategic interrogation facilities;
- (ii) there is a good basis to believe that the detainee possesses critical intelligence;
- (iii) the detainee is medically and operationally evaluated as suitable (considering all techniques to be used in combination);
- (iv) interrogators are specifically trained for the techniques;
- (v) a specific interrogation plan (including reasonable safeguards, limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel) has been developed;
- (vi) there is appropriate supervision: and

(continued...)

## CRS-34

noted that its use could implicate the definitions of torture or cruel, inhumane and degrading treatment under CAT,<sup>152</sup> and that, if applied to POWs, it would violate articles 13 (prohibiting intimidation), 14 (requiring respect for the person), 34 (prohibiting coercion) and 126 (entitlement to access and basic standards of treatment).<sup>153</sup>

**Presence of Military Working Dogs.** Introducing the presence of military dogs without directly threatening action or endangering the detainee was suggested as a method for creating anxiety but not terror or mental trauma.<sup>154</sup> The DOD Working Group framed the technique as an example of "increasing anxiety by use of aversions," which it flagged as inconsistent with policies followed by U.S. allies and possibly violating the CAT.

**Sensory Deprivation.** The DOD Working Group did not describe "sensory deprivation," but the CIA manual offered a discussion of it as a byproduct of solitary confinement and isolation:

The chief effect of arrest and detention, and particularly of solitary confinement, is to deprive the subject of many or most of the sights, sounds, tastes, smells, and tactile sensations to which he has grown accustomed.<sup>155</sup>

Artificially limiting the extent to which a person is able to sense his environment has been found to induce stress and when taken to the extreme, can cause hallucinations and delusions.

The apparent reason for these effects is that a person cut off from external stimuli turns his awareness inward, upon himself, and then projects the contents of his own unconscious outwards, so that he endows his faceless environment with his own attributes, fears, and forgotten memories. [One expert] notes, "It is obvious that inner factors in the mind tend to be projected outward, that some of the mind's activity which is usually reality-bound now becomes free to turn to phantasy and ultimately to hallucination and delusion."<sup>156</sup>

The CIA theorized that

The more completely the place of confinement eliminates sensory stimuli, the more rapidly and deeply will the interrogatee be affected. Results produced only after weeks or months of imprisonment in an ordinary cell can be duplicated in

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<sup>151</sup> (...continued)

(vii) there is appropriate specified senior approval for use with any specific detainee (after considering the foregoing and receiving legal advice).

DODWG, *supra* note 144, at 70.

<sup>152</sup> DODWG, *supra* note 144, Annex at 6 (noting isolation could transgress treaty obligations unless carried out with proper safeguards).

<sup>153</sup> *Id.* n. 15.

<sup>154</sup> DODWG, *supra* note 144, at 65.

<sup>155</sup> KUBARK Manual, *supra* note 62, at 87.

<sup>156</sup> *Id.* at 87.

CRS-35

hours or days in a cell which has no light (or weak artificial light which never varies), which is sound-proofed, in which odors are eliminated, etc. An environment still more subject to control, such as water-tank or iron lung, is even more effective.<sup>157</sup>

**Stress Positions.** The DOD Working Group did not define stress position, but suggested "prolonged standing" (not to exceed four hours in a 24-hour period), which it described as lengthy standing in a "normal" position (non-stress). . . not enforced by physical restraints.<sup>158</sup> Prolonged standing is explicitly prohibited against civilian internees as inhuman treatment.<sup>159</sup> The use of stress positions has been found to constitute torture or cruel, inhumane and degrading treatment in the past. The KUBARK manual included prolonged standing in its discussion of "coercive interrogation" methods, recommending that a subject's "resistance is likelier to be sapped by pain which he seems to inflict upon himself" rather than by direct torture, and suggests forcing the detainee to stand at attention for long periods of time.<sup>160</sup> It seems likely that the use of stress positions would violate the Geneva Conventions for all categories of persons under their protection if were to induce the requisite amount of suffering or humiliation, but the extent of suffering necessary to cross that line is not firmly established.

**Removal of Clothing.** Depriving detainees of clothing probably serves to divest them of their identity, but could endanger a detainees health depending on environmental conditions. The DOD Working Group stated its goal as creating a feeling of helplessness and dependence, but cautioned "it must be monitored to ensure the environmental conditions are such that this technique does not injure the detainee."<sup>161</sup> Forced nudity without threats or sexual assault may not rise to the level of an "outrage upon human dignity," but would probably be considered inhumane and degrading.

**Removal of All Comfort Items, Including Religious Items.** This technique is a harsher version of the "Removal of Incentives" approach described above. Whether it violates the Geneva Conventions depends on the nature of the items considered to fall under the "comfort" rubric. The removal of religious items could entail a violation of GC art. 27, providing that protected persons are entitled to respect for their religious convictions and practices, or GPW art. 14, respect for the person of the prisoner of war.

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<sup>157</sup> *Id.* at 87-88 (citing research that found "... that isolation per se acts on most persons as a powerful stress . . . . The symptoms most commonly produced by isolation are superstition, intense love of any other living thing, perceiving inanimate objects as alive, hallucinations, and delusions").

<sup>158</sup> DODWG, *supra* note 144, at 65.

<sup>159</sup> GC art. 100; *see* ICRC Commentary II, *supra* note 17, at ("... anything which attacks the internees' personal dignity without being necessary for security reasons, is to be banned as inhuman.").

<sup>160</sup> KUBARK Manual, *supra* note 62, at 94.

<sup>161</sup> DODWG, *supra* note 144, at 65.

CRS-36

**Forced Grooming.** The DOD Working Group described forced grooming as shaving of hair or beard (accomplished without risking injury to the detainee). It may be viewed as a violation of the respect for the person under GPW art. 14, or as a violation of a prisoner's religious rights under GC art. 27. By itself, it would not seem to constitute an outrage on human dignity,<sup>162</sup> but could be seen as inhumane or degrading.

**Use of Scenarios Designed to Convince the Detainee that Death or Severely Painful Consequences are Imminent.** This technique was listed as a "Category III technique" that could only be used to interrogate the most uncooperative detainees at Guantanamo with the approval of the Commanding General.<sup>163</sup> Category III techniques also included exposure to cold weather or water (with medical monitoring) and "the use of a wet towel and dripping water to induce a feeling of suffocation."<sup>164</sup> There seems to be little doubt that such methods would violate the Geneva Conventions,<sup>165</sup> as constituting coercion, threats, and possibly mental torture.<sup>166</sup> As such, these techniques are also likely to be considered inhumane by Geneva Convention standards.

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<sup>162</sup> In one case against Japanese non-commissioned officers tried by an Australian military tribunal, a finding of maltreatment was aggravated by the fact that, after beating the prisoners unconscious, the defendants had cut off their hair and beards. The court noted that the prisoners were "Indians, of the Sikh religion, which forbids them to have their hair or beards removed. . ." See Trial of Tanaka Chuichi, 11 LRTWC 62 (Australian Military Court, Rabaul, July 12, 1946), *excerpted in POW Documents, supra* note 31, at 344.

<sup>163</sup> See Memorandum, "Counter-Resistance Strategies," Department of Defense Joint Task Force 170, Oct. 11, 2002 [hereinafter "JTF-170 Memo"].

<sup>164</sup> *Id.* at 2.

<sup>165</sup> A legal brief attached to the JTF-170 Memo did not analyze the techniques with reference to the Geneva Convention because the Administration had determined they do not apply. See *id.* at encl.1.

<sup>166</sup> See KUBARK Manual, *supra* note 62, at 92. While listing "threats and fear" among the coercive interrogation techniques, the CIA did not recommend threats of death:

The threat of death has often been found to be worse than useless. It "has the highest position in law as a defense, but in many interrogation situations it is a highly ineffective threat. Many prisoners, in fact, have refused to yield in the face of such threats who have subsequently been 'broken' by other procedures." The principal reason is that the ultimate threat is likely to induce sheer hopelessness if the interrogatee does not believe that it is a trick; he feels that he is as likely to be condemned after compliance as before. The threat of death is also ineffective when used against hard-headed types who realize that silencing them forever would defeat the interrogator's purpose. If the threat is recognized as a bluff, it will not only fail but also pave the way to failure for later coercive ruses used by the interrogator. (Internal citations omitted).

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*M/V Subject file*

**INSPECTOR GENERAL**



Washington, D.C. 20505

(b) (2)  
(b) (3)

Inspector General

APPROVED FOR RELEASE  
DATE: APR 2008

21 November 2005

The Honorable Jane Harman  
Ranking Democratic Member  
Permanent Select Committee on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Ms. Harman:

[redacted] A copy of the Office of Inspector General's final Report of Investigation, entitled *Death of Manadal Al-Jamaidi*, is enclosed for your information as requested by your staff. The Report pertains to the circumstances surrounding the death of the detainee. An identical letter, with a copy of the same enclosure, is being provided to Chairman Hoekstra.

(U//FOUO) At the inception of this investigation, the Inspector General notified the Chairman and Ranking Member of the House Permanent Select Committee on Intelligence, as well as the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, of this potentially serious problem pursuant to the provisions of Section 17(d)(2) of the CIA Act, 50 U.S.C. §403q(d)(2).

Sincerely,

[redacted signature box]

John L. Helgerson

Enclosure

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Enclosure classified as above. Classification of transmittal document (when separated from enclosure)

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The Honorable Jane Harman

OIG/INV/[ ] (14 November 2005)  
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Current\ [ ] Al-Jamaidi\Letter to Cong Jane Harman.doc

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Washington, D.C. 20505

**INSPECTOR GENERAL**

(b) (2)  
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Inspector General

APPROVED FOR RELEASE  
DATE: APR 2008

21 November 2005

The Honorable John D. Rockefeller IV  
Vice Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, D.C. 20510

Dear Mr. Vice Chairman:

[redacted] A copy of the Office of Inspector General's final Report of Investigation, entitled *Death of Manadal Al-Jamaidi*, is enclosed for your information as requested by your staff. The Report pertains to the circumstances surrounding the death of the detainee. An identical letter, with a copy of the same enclosure, is being provided to Chairman Roberts.

(U//FOUO) At the inception of this investigation, the Inspector General notified the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, as well as the Chairman and Ranking Member of the House Permanent Select Committee on Intelligence, of this potentially serious problem pursuant to the provisions of Section 17(d)(2) of the CIA Act, 50 U.S.C. §403q(d)(2).

Sincerely,

[redacted signature box]

John L. Helgerson

Enclosure

[redacted enclosure box]

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The Honorable John D. Rockefeller IV

OIG/INV [ ] [ ] (14 November 2005)  
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Central Intelligence Agency

AIG/INV



Washington, D.C. 20505

**INSPECTOR GENERAL**

Inspector General [redacted]

(b) (2)  
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APPROVED FOR RELEASE  
DATE: APR 2008

16 February 2006

The Honorable Peter Hoekstra  
Chairman  
Permanent Select Committee  
on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

(U//FOUO) This is in response to a verbal request from Mr. Donald Stone of your Staff, on 16 February 2006, that the Committee be provided with another copy of the Report of Investigation: *Death of Manadal al-Jamaidi* [redacted] dated 3 November 2005.

(U) On 21 November 2005, copies 13 and 16 of this report were provided to the Committee. A third copy--Copy 19--is being provided herewith.

(U) If you have any questions, please contact our Executive Officer, [redacted] at [redacted]

Sincerely,

[redacted signature box]

John L. Helgerson

Enclosure

[redacted] Copy 19


Enclosure classified as above.  
Classification of transmittal document (when separated from enclosure): UNCLASSIFIED//FOUO

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The Honorable Peter Hoekstra

OIG:  (16 Feb 06)  
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Stone Feb 06 request.doc

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*Central Intelligence Agency*  
*Inspector General*  
**REPORT OF INVESTIGATION**



(U//FOUO) DEATH OF MANADAL AL-JAMAIDI

3 November 2005

*John L. Helgerson*  
*Inspector General*

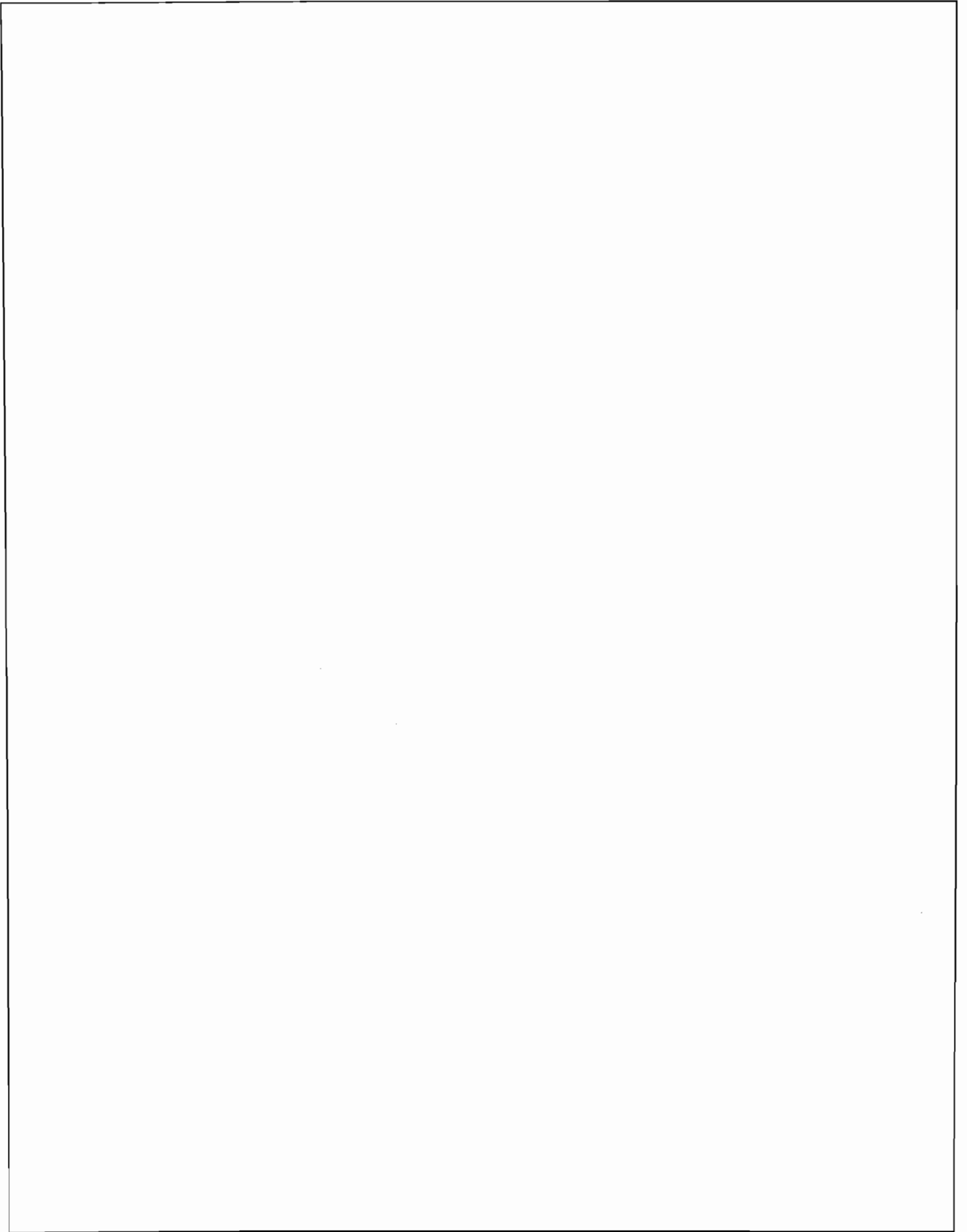
*Assistant Inspector General*  
*for Investigations*

*Supervisory Special Agent*

*Special Agents*

*Copy 19 of 30*







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Central Intelligence Agency



Washington, D.C. 20505

*inv subject file*

**INSPECTOR GENERAL**  
[redacted]

Inspector General  
[redacted]

(b) (2)  
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APPROVED FOR RELEASE  
DATE: APR 2008

21 November 2005

The Honorable Peter Hoekstra  
Chairman  
Permanent Select Committee on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

[redacted] A copy of the Office of Inspector General's final Report of Investigation, entitled *Death of Manadal Al-Jamaidi*, is enclosed for your information as requested by your staff. The Report pertains to the circumstances surrounding the death of the detainee. An identical letter, with a copy of the same enclosure, is being provided to Ranking Democratic Member Harman.

(U//FOUO) At the inception of this investigation, the Inspector General notified the Chairman and Ranking Member of the House Permanent Select Committee on Intelligence, as well as the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, of this potentially serious problem pursuant to the provisions of Section 17(d)(2) of the CIA Act, 50 U.S.C. §403q(d)(2).

Sincerely,

[redacted signature box]

*John D. Bergerson*

Enclosure

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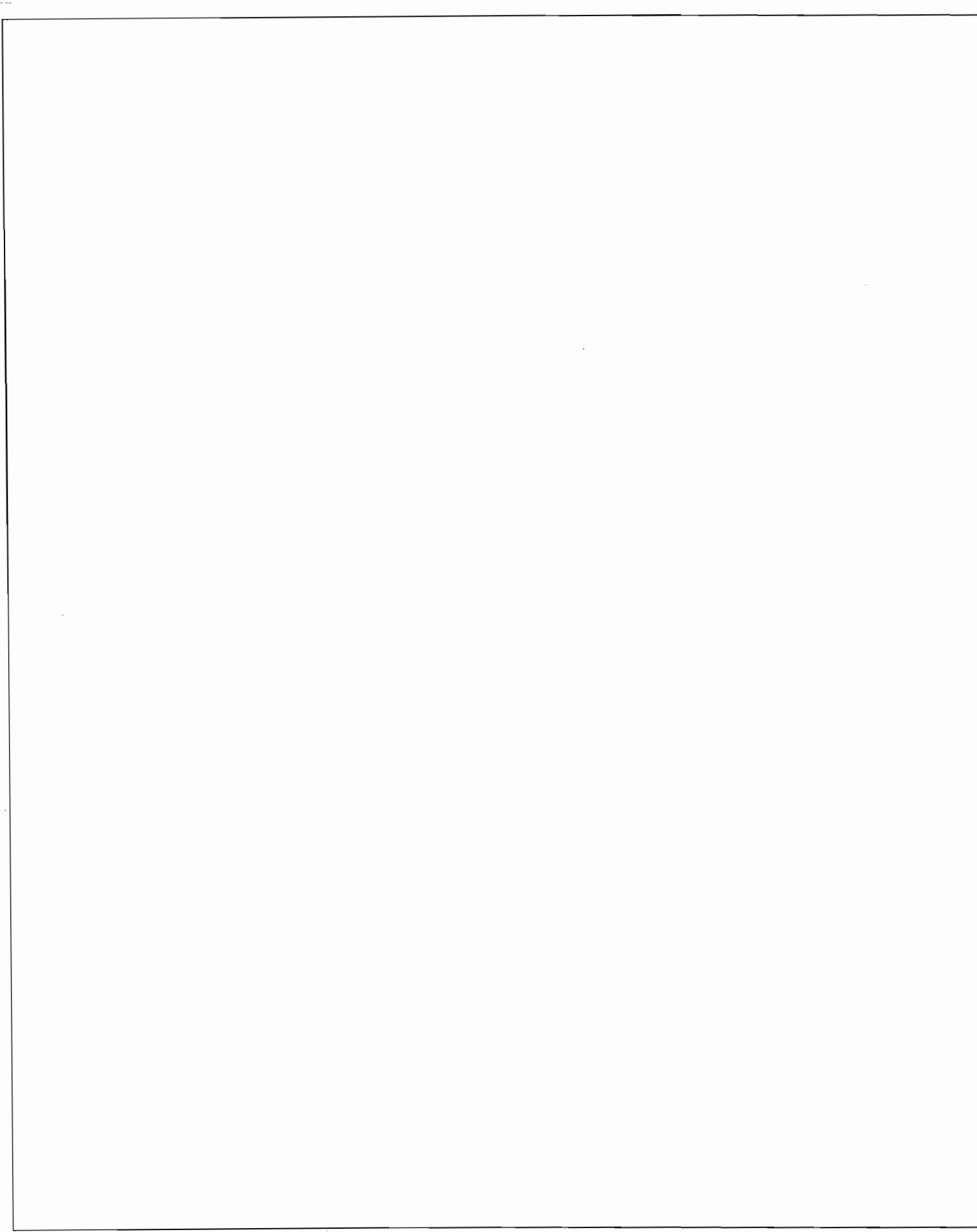
The Honorable Peter Hoekstra

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**INSPECTOR GENERAL**



Washington, D.C. 20505

Inspector General  
[redacted]

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APPROVED FOR RELEASE  
DATE: APR 2008

21 November 2005

The Honorable Pat Roberts  
Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

[redacted] A copy of the Office of Inspector General's final Report of Investigation, entitled *Death of Manadal Al-Jamaidi*, is enclosed for your information as requested by your staff. The Report pertains to the circumstances surrounding the death of the detainee. An identical letter, with a copy of the same enclosure, is being provided to Vice Chairman Rockefeller.

(U//FOUO) At the inception of this investigation, the Inspector General notified the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, as well as the Chairman and Ranking Member of the House Permanent Select Committee on Intelligence, of this potentially serious problem pursuant to the provisions of Section 17(d)(2) of the CIA Act, 50 U.S.C. §403q(d)(2).

Sincerely,

[redacted signature box]

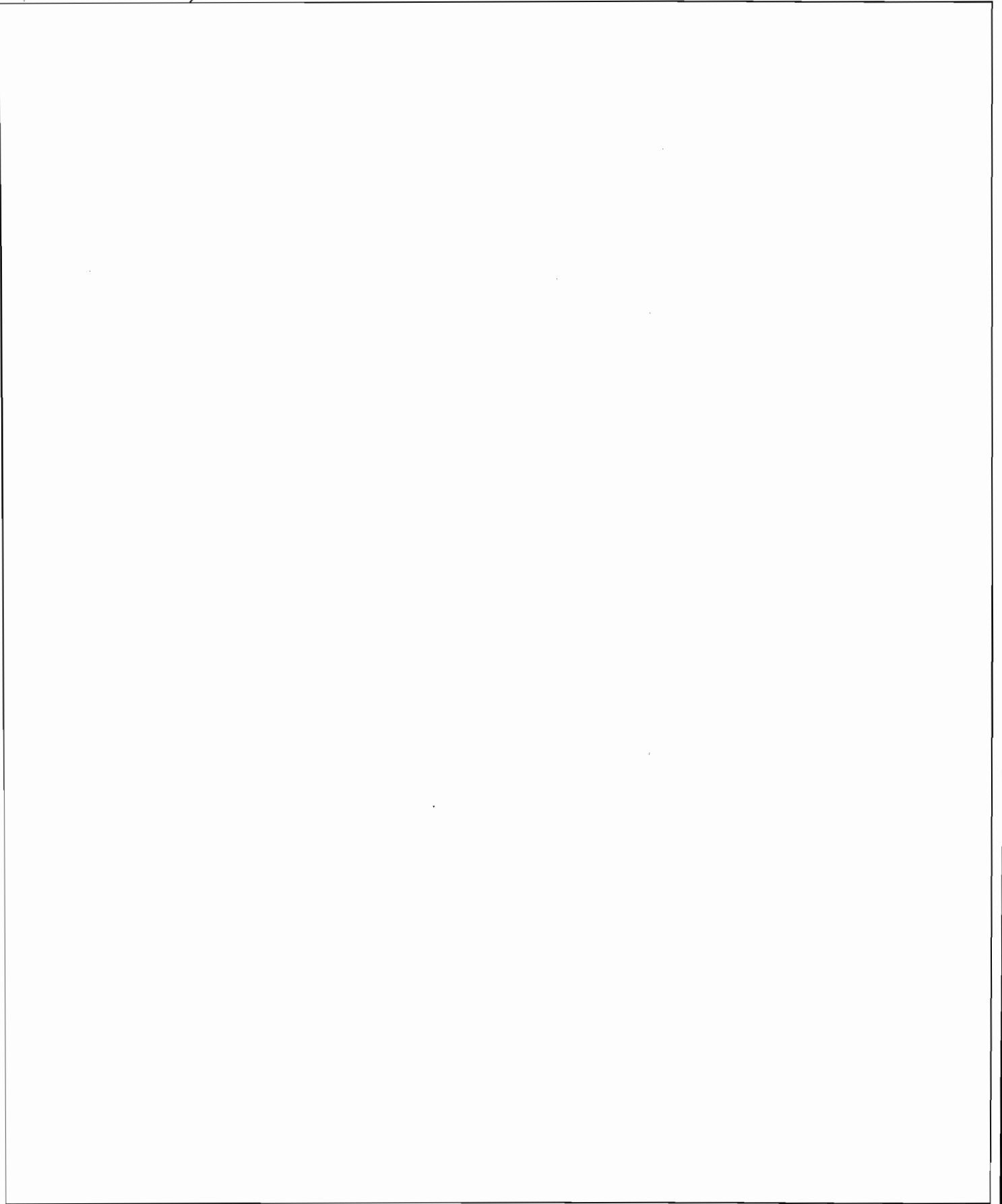
John L. Helgerson

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**TRANSMITTAL AND DOCUMENT RECEIPT**

TO: Inspector General Office of the Director of National Intelligence	FROM: CIA/OIG	(b) (1) APPROVED FOR RELEASE (b) (2) DATE: APR 2008 (b) (3) (b) (6)
COURIER RECEIPT N/A	DATE: 23 January 2006	

DOC. CONTROL #	DESCRIPTION	Classification
<input type="text"/> Copy 17 of 30	<del>(U//FOUO)</del> Nonregistration of Detainees	<del>Secret</del> <input type="text"/>
<input type="text"/> Copy 7 of 7 Series B Copy 4 of 7	<input type="text"/>	<del>Secret</del> <input type="text"/>
<input type="text"/> <del>Copy 2 of 3</del> Series B Copy 2 of 3	<del>(U//FOUO)</del> Death of Mandal Al-Jamaidi	<del>Secret</del>

TO AVOID TRACER ACTION, PLEASE SIGN & RETURN TO: CIA/OIG/FO

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**TRANSMITTAL AND DOCUMENT RECEIPT**





~~SECRET~~ [Redacted]  
Inspector General [Redacted]

(703) 874-2553

IG-2006-0037  
23 January 2006

NOTE FOR: Inspector General  
Office of the Director of National Intelligence  
SUBJECT: (U) Request for CIA/OIG Reports

Ned:

(U//FOUO) Attached for your review are three reports relating to detention and interrogation issues, concerning which I believe it is possible the DNI will receive questions from the Oversight Committees. I have briefed the chairmen and ranking members of our findings on all these. The committees have received copies of two of these reports, but not yet the one on nonregistration ("ghosts"), which was completed recently. Any questions, let me know.

[Redacted]  
John J. Helgerson

[Redacted]


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SEPARATED FROM ATTACHMENTS

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(U) Request for CIA/OIG Reports

sr/s/EO/Helgerson/Correspondence with ODNI/Note to IG  
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Central Intelligence Agency



Washington, D.C. 20505

APPROVED FOR RELEASE  
DATE: APR 2008

Inspector General  
[Redacted]

[Redacted]  
19 December 2006

MEMORANDUM FOR: General Counsel  
Director of National Intelligence

FROM: [Redacted]  
Executive Officer  
Office of Inspector General, CIA

SUBJECT: (U//FOUO) Report of Investigation: Death  
of Manadal Al-Jamaidi [Redacted]

1. (U//FOUO) Per your request to the CIA's Office of General Counsel, the attached Report of Investigation is provided for your use and to share with the DNI as you deem appropriate. A copy of the report was previously provided to the DNI via the DNI Office of the Legislative Affairs.

2. (U//FOUO) Due to the highly sensitive nature of the report, it should be shared only with those individuals who need to know and should not be reproduced. We ask that you return the copy to CIA/OIG when you are finished with it.

3. (U//FOUO) If you have any questions or need additional information or other reports in the future please contact me directly at [Redacted] or secure [Redacted]

[Redacted]

Attachment:  
[Redacted]

[Redacted]

ATTACHMENT CLASSIFIED AS ABOVE. CLASSIFICATION OF TRANSMITTAL DOCUMENT (WHEN SEPARATED FROM ATTACHMENT): UNCLASSIFIED//~~FOUO~~ [Redacted]

~~SECRET~~//20311219

SUBJECT: (U//FOUO) Report of Investigation: Death of  
Manadal Al-Jamaidi [redacted]

EXO/OIG: [redacted] (13 Dec 06)  
[redacted] ODNI GC  
request Al Jamaidi.doc

Distribution:

- Original - Addressee w/att
- 1 - Office of Legislative Affairs, ODNI w/o att
- 1 - Inspector General, ODNI w/o att
- 1 - OCA w/o att
- 1 - [redacted]
- 1 - DAC w/o att
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JUN. 17. 2004 2:27PM LEGAL

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NO. 499

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DATE: APR 2008

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THE WHITE HOUSE  
WASHINGTON

February 7, 2002

MEMORANDUM FOR THE VICE PRESIDENT  
 THE SECRETARY OF STATE  
 THE SECRETARY OF DEFENSE  
 THE ATTORNEY GENERAL  
 CHIEF OF STAFF TO THE PRESIDENT  
 DIRECTOR OF CENTRAL INTELLIGENCE  
 ASSISTANT TO THE PRESIDENT FOR NATIONAL  
 SECURITY AFFAIRS  
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving "High Contracting Parties," which can only be states. Moreover, it assumes the existence of "regular" armed forces fighting on behalf of states. However, the war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm -- ushered in not by us, but by terrorists -- requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.
2. Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:
  - a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.
  - b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to

NSC DECLASSIFICATION REVIEW [E.O. 12958 as amended]  
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 by R.Soubers

Reason: 1.5 (d)  
 Declassify on: 02/07/12

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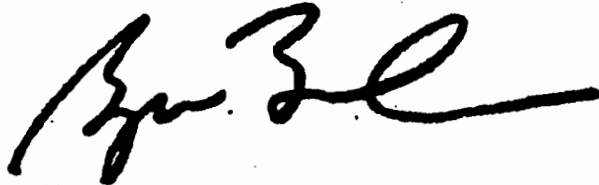
NO. 499 P. 3

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exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

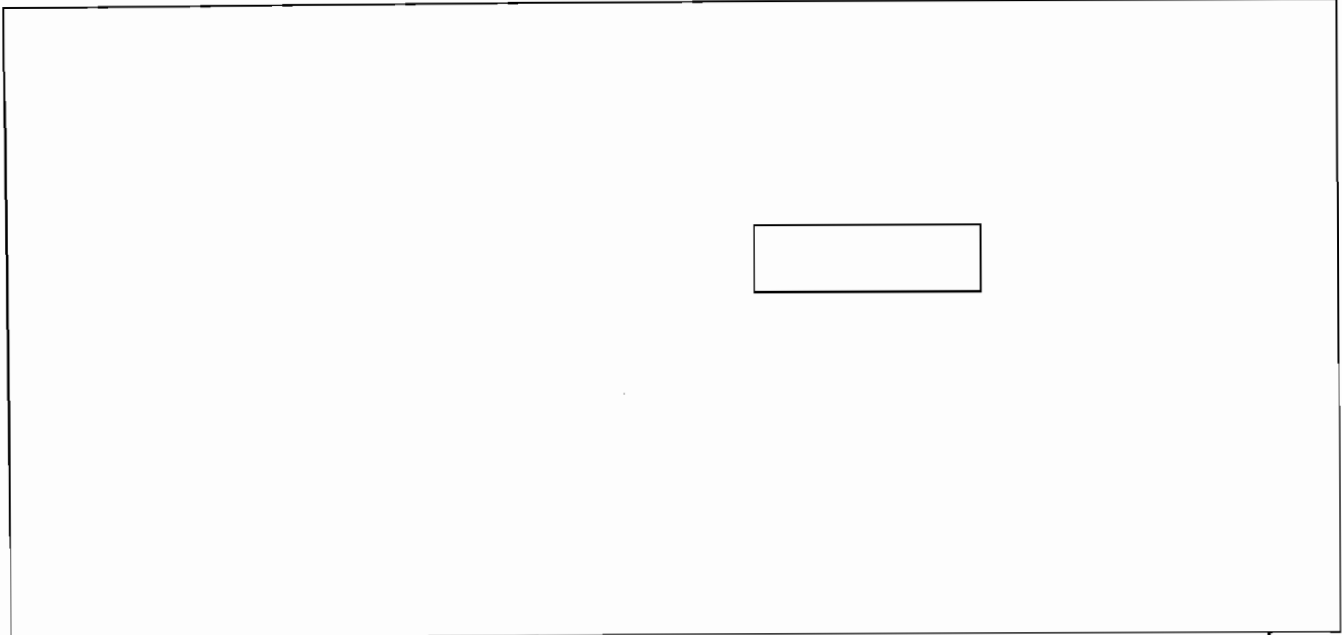
- c. I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to "armed conflict not of an international character."
  - d. Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.
3. Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
  4. The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.
  5. I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
  6. I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.



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**SUSPENSE DATE: N/A**

**DOCUMENT NO: DAC-03896-04**

**Action Officer:**

**COORDINATION/ROUTING:**

DDCI, OCA,  and DO/CTC to respond as appropriate to complete action.

All congressional correspondence must be coordinated with OCA. OCA point of contact is  on

**SUMMARY:**

Letter from Porter J. Goss, Chairman and Jane Harman, Ranking Democrat, House Permanent Select Committee on Intelligence regarding a hearing entitled "The Critical Need for Interrogation in the Global War On Terrorism," Wednesday, 14 July 2004, room H-205 of the U.S. Capital. Three panels will appear before the Committee in closed session, starting at 9:00 a.m. The DDCI, DDO and the Director, CTC are requested to appear before the panels.

**Date of Document: 6 July 2004**

**Received In DAC: 7 July 2004**



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JUL-06-2004 TUE 03:24 PM House Intelligence

FAX NO. 2022251991

P. 01/03

OCAFEXE @

DAC-03896-04



U.S. HOUSE OF REPRESENTATIVES

Permanent Select Committee  
on Intelligence  
H-405, U.S. Capitol  
Washington, D.C. 20515-6415  
Office No: (202) 225-4121  
Fax No: (202) 225-1991

DATE: 7/6/04

NUMBER OF PAGES 3  
(including cover sheet)

TO:

FROM: HPSCI Ptas

FAX:

PHONE NO:

COMMENTS:



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P. 02/03

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EMERITUS MEMBERS  
 J. DONNIE WASTERT, SPEAKER  
 NANCY PELOSI, DEMOCRATIC LEADER

Room H-405, U.S. Capitol  
 (202) 226-4121

PATRICK S. MURRAY, STAFF DIRECTOR | CHIEF COUNSEL  
 SUZANNE E. SPALDING, MINORITY COUNSEL

U.S. HOUSE OF REPRESENTATIVES  
 PERMANENT SELECT COMMITTEE  
 ON INTELLIGENCE  
 WASHINGTON, DC 20515-6415

July 6, 2004

The Honorable George J. Tenet  
 Director of Central Intelligence  
 Washington, DC 20505

Dear Mr. Tenet:

On July 14, 2004, the House Permanent Select Committee on Intelligence will host a hearing entitled "The Critical Need for Interrogation in the Global War on Terrorism." Three panels will appear before the Committee in closed session, room H-405 of the U.S. Capitol. From 9:00 a.m. - 11:00 a.m., we will explore the policies regarding interrogations as part of the Global War on Terrorism, their legal basis, and what collection requirements have been levied on the interrogators.

From 11:00 a.m. - 1:00 p.m., we will review the guidelines for interrogations, the training provided to both interrogators and military police in the handling of detainees that possess - or could possess - critical information for the Global War on Terrorism, and resources dedicated to collecting this information.

Between 2:00 p.m. and 4:00 p.m., we will discuss the value of interrogations to the Intelligence Community. Specifically, the Committee is interested in what information has been collected to date from detainee interrogations, its relevance, timeliness, and accuracy, and what intelligence is currently being sought from detainees in the Global War on Terrorism. Finally, we would request that this panel be prepared to provide an estimate of what the loss to the Intelligence Community would be if the interrogation process were to end completely.

We ask that Deputy Director of Central Intelligence, Mr. John McLaughlin, appear on the first panel, Deputy Director for Operations, Mr. Jim Pavitt, represent the Agency on the second panel, and Counterterrorism Center Director, Mr. Jose Rodriguez, appear on the third.

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FAX NO. 2022251991

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The Honorable George J. Tenet  
July 6, 2004  
Page 2

We ask that the witnesses' oral statements be limited to 10 minutes. In accordance with committee rules, we ask that written statements be submitted no later than the close of business on July 12, 2004. Questions regarding this hearing may be directed to Mr. Michael Kostiw or Ms. Abigail Sullivan at (202) 225-4121.

Sincerely,



Porter J. Goss  
Chairman



Jane Harman  
Ranking Democrat

CARL LEVIN  
MICHIGAN

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DATE: APR 2008

## United States Senate

WASHINGTON, DC 20510-2202

December 14, 2006

General Michael V. Hayden, USAF  
Director, Central Intelligence Agency  
Washington, DC 20505

Dear General Hayden:

On September 6<sup>th</sup>, President Bush disclosed that a small number of suspected terrorist leaders and operatives had been held and questioned outside the United States in a program operated by the Central Intelligence Agency (CIA). At that time, the President also announced the transfer of CIA-held detainees to Guantanamo Bay. He stated that the International Committee of the Red Cross would be advised of their detention and have the opportunity to meet with them. The President also stated that interrogation tactics used at Guantanamo against those detainees would be limited to those tactics authorized in the U.S. Army Field Manual.

I believe that the President's action was long overdue. Indeed, I would oppose any CIA detention program that is either not in compliance with our obligations under the Geneva Conventions or that uses interrogation tactics other than those authorized in the U.S. Army Field Manual. Accordingly, please advise me as to the following:

1. Whether it is the policy of the CIA to notify and register with the International Committee of the Red Cross any detainee held by the agency.
2. Whether CIA policy permits its personnel to use any interrogation tactic other than those authorized in the U.S. Army Field Manual.
3. The circumstances, if any, in which interrogation tactics other than those authorized by the U.S. Army Field Manual may be used by CIA personnel and the authority under which those tactics are authorized.

Thank you.

Sincerely



Carl Levin

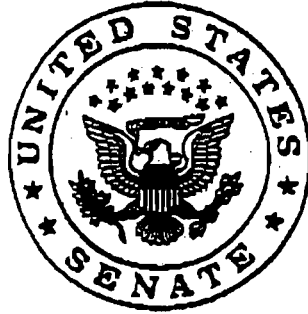
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Classification FOUO



**U.S. Senate  
Select Committee on Intelligence**

**Fax Cover Sheet**

To: GENERAL HAYDEN

From: SEN CARL LEVIN

SSCI#: 12/14/2006 LTR RE PRES. BUSH DISCLOSURE

Date: 12/15/2006

Time: 12:37

Page 1 of 2

Prepared by: JW

**Note to Recipient:**

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## Background on the Crisis in Iraq

U.S. Foreign Policy - [Prison: Torture /  
Mistreatment](#)

## Ansar al-Islam in Iraqi Kurdistan

*Ansar al-Islam fi Kurdistan* (Supporters of Islam in Kurdistan) is one of a number of Sunni Islamist groups based in the Kurdish-controlled northern provinces of Iraq. Its bases are in and around the villages of Biyara and Tawela, which lie northeast of the town of Halabja in the Hawraman region of Sulaimaniya province bordering Iran.

Ansar al-Islam came together as a group in September 2001, initially under the name of *Jund al-Islam* (Soldiers of Islam), but its constituent factions have existed for several years. Espousing an ultra-orthodox Islamic ideology reminiscent of Wahhabism, the group's leaders issued decrees imposing their strict interpretation of Islam on the local inhabitants and introducing harsh punishments for those who failed to comply with their decrees. Since its establishment, the group's armed fighters have engaged in intermittent clashes with the forces of the Patriotic Union of Kurdistan (PUK), in whose stronghold Biyara and Tawela are located.

### Key Sections

[Armed Islamist groups in Iraqi Kurdistan](#)

[The emergence of Ansar al-Islam](#)

[Human rights abuses by Jund al-Islam/Ansar al-Islam](#)

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During a mission to Iraqi Kurdistan in September 2002, Human Rights Watch investigated reports of human rights abuses perpetrated by members of Ansar al-Islam in areas under their control. These reports suggested that Ansar al-Islam had been responsible for arbitrary arrests of numerous Kurdish civilians, prolonged and illegal detention, the torture and ill-treatment of detainees, and the killing of combatants after surrender. In Sulaimaniya and Halabja Human Rights Watch interviewed a number of people who said they had been targeted by Ansar al-Islam or had fled for fear of further abuse. Among them were victims of torture, the relatives of detainees, and internally displaced persons.

For its part, Ansar al-Islam has said that its members or supporters have been the targets of repression by the two principal political parties in Iraqi Kurdistan. Human Rights Watch met with dozens of Islamist detainees, some of whom were accused of links with Ansar al-Islam by the PUK and the Kurdistan Democratic Party (KDP). They were held in PUK and KDP custody in Sulaimaniya and Arbil respectively, for the most part in prolonged detention without trial and without any legal basis. Some of them reported being tortured or otherwise ill-treated during interrogation. Both KDP and PUK officials denied that torture was being used in their respective prisons, and told Human Rights Watch that any such allegations would be investigated and perpetrators would be punished. While in Iraqi Kurdistan, Human Rights Watch received information from a wide range of sources on persons allegedly targeted by both the KDP and the PUK for suspected links with Islamist groups, including Ansar al-Islam.

PUK officials have repeatedly accused Ansar al-Islam of having links with Osama bin Laden's *al-Qaeda* network, and that its members included Arabs of various nationalities who had received military training in Afghanistan. The PUK also said some fifty-seven "Arab Afghan" fighters had entered Iraqi Kurdistan via Iran in mid-September 2001. While Human Rights Watch did not investigate these alleged links, the testimonies of villagers who had fled Biyara and Tawela and were interviewed in September 2002 appeared to

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support this contention. A number of them, including former detainees, said that there were foreigners among Ansar al-Islam forces, that on occasion they were interrogated by non-Iraqis speaking various Arabic dialects, and that they had heard other languages spoken that they did not recognize.

Scores of Iraqi Kurds affiliated to Ansar al-Islam, including key leaders, consider themselves veterans of the Afghan war. They had spent time in Afghanistan, initially fighting against Soviet forces during the 1980s. Representatives of other Iraqi Kurdish Islamist groups who maintain links with Ansar al-Islam told Human Rights Watch that a small number of Iraqi Kurds affiliated to the group had also fought alongside the Taliban, and that they then returned to Iraqi Kurdistan following the latter's defeat.

There are also other indications of possible Ansar al-Islam connections with al-Qaeda operatives in Afghanistan. Documents discovered in an al-Qaeda guest house in Afghanistan by the *New York Times* discuss the creation of an "Iraqi Kurdistan Islamic Brigade" just weeks prior to the formation of Ansar al-Islam in December 2001, and some Ansar al-Islam members in PUK custody have described in credible detail training in al-Qa'ida camps in Afghanistan. The existence of any ongoing links between al-Qa'ida and Ansar al-Islam is unknown.

Human Rights Watch has not investigated the alleged links between the Iraqi government and Ansar al-Islam, and is not aware of any convincing evidence supporting this contention. On the other hand, the location of the group's bases very close to the Iranian border, taken together with credible reports of the return of some Ansar al-Islam fighters to Iraqi Kurdistan through Iran, suggest that these fighters have received at least limited support from some Iranian sources. Villagers living under Ansar al-Islam control, and mainstream Islamists who have visited those areas, reported to Human Rights Watch that Iranian agents had been present on occasion. However, the exact nature of relations between the two sides is unclear: PUK and other sources acknowledged that Iran had played a mediating role aimed at ending the clashes between PUK and Ansar al-Islam forces.

### **Armed Islamist groups in Iraqi Kurdistan**

After Kurdish forces took control of Iraq's three northern provinces following the government's withdrawal in October 1991, numerous opposition groups operated in the region. Islamist political forces in Iraqi Kurdistan, which are exclusively Sunni Muslim, were represented in the Islamic Movement in Kurdistan (IMK), established in 1987. The IMK brought together several factions, some of whose members had fought in Afghanistan during the 1980s. By the mid-1990s the IMK was considered the third most significant political and military force in the Kurdish region, after the KDP and the PUK. After unsuccessfully contesting the 1992 parliamentary elections, the IMK operated largely outside the framework of the joint Kurdish administration, focusing instead on developing and strengthening a separate administrative, political and military infrastructure in areas under its control, notably in Hawraman and Sharazur, which bordered the region controlled by the PUK. In December 1993 tensions between the IMK and the PUK peaked in armed clashes in parts of Sulaimaniya and Kirkuk provinces. The IMK was forced to retreat to areas close to the border with Iran. The leadership left the eastern region altogether and for some months remained under KDP protection in Salahuddin. When increasing tensions between the KDP and the PUK deteriorated into armed clashes in May 1994, IMK forces fought alongside the KDP against the PUK. Eventually, the IMK leadership was able to return to its strongholds in Hawraman and Sharazur, and to establish its headquarters in the city of Halabja.

The IMK splintered over power struggles as well as policy differences. In May 2001 'Ali Bapir, a long-time IMK military commander, announced the formation of the Islamic Group in Iraqi Kurdistan.

Several smaller factions within the IMK, which espoused a more puritanical and ultra-orthodox Islamic ideology, also broke away from the movement at different times. Some opposed any form of cooperation with "secular" political parties and disagreed with the IMK's 1997 decision to participate in the PUK regional government. They also called for stricter application of the *shari'a* (Islamic law) in IMK-held areas.

Of these factions, the most important militarily was a group known as the Soran Forces. It consisted of several hundred armed fighters (said to include non-Iraqi Arabs), some of who had fought in Afghanistan. A second faction was the Islamic Unification Movement (IUM, or *al-Tawhid*), said to be the most extremist of the splinter groups. Composed of some thirty or forty individuals, the IUM based itself for a time in Balek, in the Qandil mountains near Haj Omran and close to the Iran border. A third group, Hamas, also opposed the IMK's decision to participate in the PUK regional government. Among its stated aims was to launch attacks on secular institutions in Iraqi Kurdistan, including Western humanitarian and relief organizations.

### **The emergence of Ansar al-Islam**

These smaller breakaway factions themselves gradually merged. In July 2001, al-Tawhid joined with Hamas to form the Islamic Unity Front (IUF), which the Soran Forces also joined the following month. On September 1, 2001, the IUF was dissolved and its three component groups announced the formation of Jund al-Islam. The group promptly declared *jihad* (holy war) against secular and other political parties in Iraqi Kurdistan deemed to have deviated from the "true path of Islam". Following armed clashes in which the PUK defeated Jund al-Islam, the group was dissolved in December 2001 and renamed Ansar al-Islam. A long-time member of the IMK, Najmuddin Faraj Ahmad, known as Mala Fateh Krekar, became its *amir* (leader).

The ideas and practices propagated by Jund al-Islam (and later Ansar al-Islam) represent a radical departure from mainstream Sunni Islam as practiced in Iraqi Kurdistan. The group appears to have more in common with ultra-orthodox *Wahabi* movements emanating from Saudi Arabia. This doctrine entails a literal interpretation of the Qur'an, and advocates a return to the proclaimed purity of the early Islamic community. Jund al-Islam declared it was seeking to "defend the areas under the influence of the Muslims from interference and control by the secularists," and that among its aims was "the propagation of virtue and the prevention of vice" (*al-amr bil ma'ruf wal nahiy 'an al-munkar*), as well as ensuring the application of *shari'a* and undertaking "the religious duty of jihad against the secularist apostates."

### **Human rights abuses by Jund al-Islam/Ansar al-Islam**

On September 8, 2001, one week after it came into being, Jund al-Islam issued decrees, including: the obligatory closure of offices and businesses during prayer time and enforced attendance by workers and proprietors at the mosque during those times; the veiling of women by wearing the traditional *'abaya*; obligatory beards for men; segregation of the sexes; barring women from education and employment; the removal of any photographs of women on packaged goods brought into the region; the confiscation of musical instruments and the banning of music both in public and private; and the banning of satellite receivers and televisions. Jund al-Islam also announced that it would apply Islamic punishments of amputation, flogging and stoning to death for offenses such as theft, the consumption of alcohol and adultery. Human Rights Watch is not aware of any amputations or stonings having been carried out, but local villagers reported the cases of three men who were flogged after being accused of drinking alcohol.

Jund al-Islam also announced a crackdown on religious practices it considered polytheistic. On September 4, 2001, its forces entered three villages whose inhabitants were members of a minority religious sect, *Ahl al-Haq* (known locally as Kaka'is), whose beliefs combine Zoroastrianism and Shi'ism. The families were rounded up and ordered to

adhere strictly to the Jund al-Islam decrees. Over the ensuing weeks, efforts were made to force Kaka'is to abandon their faith. Those who refused were apparently told they would be made to pay a "religious tax" imposed on all non-Muslims, as well as risk having their property seized. A number of Kaka'i holy shrines were defaced or destroyed. One villager from the main Kaka'i village of Hawar told Human Rights Watch that on September 23, 2001, representatives of Jund al-Islam told the inhabitants that they had three choices: to adhere to the group's school of Islam, pay fines in lieu, or leave the area altogether. According to his account, the majority of the estimated 450 households from the three Kaka'i villages fled their homes and have since become internally displaced. According to more recent reports, Jund al-Islam laid mines in the agricultural plots owned by Kaka'i villagers, apparently in an effort to deter them from returning to their homes.

The community of Naqshabandi Sufis, another minority religious group whose shaikhs have long inhabited the Biyara and Tawela region, were also prevented from performing their religious rites. This crackdown had begun even before the founding of Jund al-Islam. Members of its groups had closed down several holy sites, including the burial place of Shaikh Husamaddin Naqshabandi, a traditional place of pilgrimage for members of the order. In mid-July 2002 his tomb was desecrated and his remains removed by Jund al-Islam and buried elsewhere. A Naqshabandi shaikh who had fled to Halabja told Human Rights Watch that Jund al-Islam has accused adherents of his faith of being infidels, and imposed on women a strict dress code and severely curtailed their freedom to leave their homes.

Jund al-Islam also targeted individuals as part of their campaign. One of their victims was a local singer from Biyara, Arjumand Hawrami, arrested on September 11, 2001 upon his return from a visit to Iran where he had given a performance. He told Human Rights Watch that he was held for almost two weeks and repeatedly beaten after being accused of being an infidel and of encouraging inappropriate behavior such as singing and dancing. He was released only after making an apology, promising that he would abandon his profession, and paying a fine of 1,000 dinars. Another case was that of Dr. Rebwar Sayyid 'Umar, who was abducted from his surgery in Halabja on September 22, 2001 and detained in the vicinity of Biyara. He was apparently accused of being a spy for the U.S., and was blindfolded and beaten during interrogation. He was released twenty days later after being exchanged for an Iraqi Arab detainee in PUK custody.

Several other villagers from Biyara, Tawela and the surrounding region gave Human Rights Watch similar testimony. Some of those taken into custody were accused by Jund al-Islam of being affiliated to the PUK. In others cases, they were accused of violating the Islamic codes introduced in the area. Two of those interviewed also said they were told by their captors that they would be exchanged for Arab detainees being held in PUK custody. Most said that the release of detainees was invariably contingent upon the payment of a sum of money to Jund al-Islam.

Former detainees also described the routine use of torture and other forms of ill-treatment during interrogation. In one case, a former policeman employed by the PUK administration had acid poured onto his hands on the day of his release. He gave Human Rights Watch photographs taken shortly after his release of the burn marks on his skin. The scars from the burns were visible to the interviewer. He had been abducted from Halabja on March 11, 2001 by one of the factions that later formed Jund al-Islam and held for three days. During those three days he was beaten and forced to lie down in the snow overnight while semi-clad. In another case, a school teacher from Tawela was arrested on August 24, 2002 and held for five days. The teacher told Human Rights Watch that he had been beaten so badly on his back that he was unable to lie down for three weeks following his release. He showed Human Rights Watch photographs of the injuries he had sustained.

Further human rights abuses were perpetrated in the context of the continuing clashes between Jund al-Islam and PUK forces. Tensions between the two sides led to the outbreak of armed clashes near the villages of Gomalar and Tapa Drozna on September 23, 2001. On the same day, thirty-seven PUK fighters were killed by Jund al-Islam in the



village of Kheli Hama on the Sulaimaniya-Halabja road. Twelve were killed in an ambush or during the ensuing exchange of fire, but the remaining twenty-five were reportedly killed after surrender. A farmer from Kheli Hama interviewed by Human Rights Watch said that he was in the village when it was surrounded by Jund al-Islam, and that he had witnessed the killing of five PUK fighters after they had laid down their weapons and surrendered. Some prisoners' throats had been slit, while others had been beheaded; some of the bodies were mutilated, including by having their sexual organs severed. They were apparently found with their hands tied behind their back. Photographs taken by the PUK of the victims' bodies were shown on the party's satellite television channel, KurdSat, on September 26. Following the capture of the Shinirwe heights from Jund al-Islam in the first week of October, the PUK announced it had found among the materials seized a videocassette showing the victims' bodies, apparently filmed by Jund al-Islam. It was broadcast on KurdSat on October 5. None of the perpetrators have been apprehended to date, but at least one of the suspects was reportedly killed in subsequent clashes with PUK forces.

Fierce clashes continued between PUK and Jund al-Islam forces for over two weeks, killing scores on both sides. The fighting also spread to Halabja. By September 26, the PUK had reasserted its control over Halabja. In late September and during the first half of October 2001, the PUK arrested scores, reportedly on suspicion of complicity in acts of sabotage. They were said to include members of Jund al-Islam as well as the IMK and the Islamic Group. On October 11, 2001, the PUK announced a temporary ceasefire, reportedly to allow merger talks between Jund al-Islam and the Islamic Group to proceed. The talks failed and fighting resumed near Biyara and Tawela. Two weeks later, on October 25, the PUK issued a thirty-day amnesty for Jund al-Islam fighters, excluding those believed responsible for the February 18, 2001 assassination of the governor of Arbil, Franso Hariri, and those involved in the Kheli Hama killings of September 23. Jalal Talabani also said that foreign nationals in the ranks of Jund al-Islam would not be permitted to remain in Iraqi Kurdistan. Despite the amnesty, armed clashes continued into November, as did killings outside the immediate context of the fighting. Following the dissolution of Jund al-Islam and its reconstitution under the name of Ansar al-Islam in December 2001, the group announced a ceasefire. Talks were held with the PUK between December 2001 and late March 2002, aimed at arriving at a political agreement, but the assassination attempt on April 2, 2002 against Barham Salih, prime minister in the PUK regional government, led to their suspension. A statement issued by Ansar al-Islam's Shura Council on April 3 denied any involvement in the incident, but PUK officials later released the names of three of the suspects it had apprehended and said there was evidence linking them to Ansar al-Islam. The evidence reportedly included military identification cards issued by the PUK to its armed forces and found in the possession of the suspects, which belonged to some of the PUK fighters killed at Kheli Hama.

The number of suspects arrested in the aftermath of the assassination attempt was not known at the time of writing: Ansar al-Islam said "hundreds" of Muslim youths were arrested by the PUK, among them six women. It said that the detained women were released following meetings with the PUK in Sulaimaniya on April 18 and 19. On May 4, the leader of Ansar al-Islam, Mala Fateh Krekar, issued an amnesty for PUK fighters and those of other political groups who had assisted them. At the same time, Ansar al-Islam accused the PUK of deploying additional forces in the vicinity of Biyara and Tawela in the first week of May 2002 and said that consequently it would suspend further talks until three conditions were met: the release of all "Muslim prisoners" in PUK custody, the withdrawal of PUK forces to the positions they had occupied prior to September 9, 2001, and the allocation of a monthly payment from the PUK regional government's revenues to meet Ansar al-Islam's expenses.

In June 2002, relations between the two sides deteriorated further as the PUK held Ansar al-Islam responsible for attempting to perpetrate more acts of sabotage. These included at least two attempted suicide bombings and the attempted bombing up of a cultural center in Sulaimaniya.

On December 4, 2002, a group of Ansar al-Islam fighters attacked two PUK posts near Halabja, briefly seizing control of them. PUK officials claimed that about half of the fifty PUK casualties had been killed after they had surrendered or been captured. Some surviving PUK fighters gave eyewitness accounts of executions of captured PUK fighters by Ansar al-Islam to international journalists.



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**Leadership Failure**  
**Firsthand Accounts of Torture of Iraqi Detainees by the**  
**U.S. Army's 82<sup>nd</sup> Airborne Division**

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*On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent.<sup>1</sup> In a way it was sport. The cooks were all U.S. soldiers. One day [a sergeant] shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy's leg with a mini Louisville Slugger, a metal bat. He was the fucking cook. He shouldn't be in with no PUCs.*

— 82<sup>nd</sup> Airborne sergeant, describing events at FOB Mercury, Iraq

*If I as an officer think we're not even following the Geneva Conventions, there's something wrong. If officers witness all these things happening, and don't take action, there's something wrong. If another West Pointer tells me he thinks, "Well, hitting somebody might be okay," there's something wrong.*

— 82<sup>nd</sup> Airborne officer, describing confusion in Iraq concerning allowable interrogation techniques

## I. Summary

Residents of Fallujah called them "the Murderous Maniacs" because of how they treated Iraqis in detention. They were soldiers of the U.S. Army's 82<sup>nd</sup> Airborne Division, 1<sup>st</sup> Battalion, 504<sup>th</sup> Parachute Infantry Regiment, stationed at Forward Operating Base Mercury (FOB Mercury) in Iraq. The soldiers considered this name a badge of honor.<sup>2</sup>

One officer and two non-commissioned officers (NCOs) of the 82<sup>nd</sup> Airborne who witnessed abuse, speaking on condition of anonymity, described in multiple interviews with Human Rights Watch how their battalion in 2003-2004 routinely used physical and mental torture as a means of intelligence gathering and for stress relief. One soldier raised his concerns within the army chain of command for 17 months before the Army agreed to undertake an investigation, but only after he had contacted members of Congress and considered going public with the story.

According to their accounts, the torture and other mistreatment of Iraqis in detention was systematic and was known at varying levels of command. Military Intelligence

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<sup>1</sup> "Person Under Control" or PUC (pronounced "puck") is the term used by U.S. military forces to refer to Iraqi detainees.

<sup>2</sup> FOB Mercury is located approximately 10 miles east of Fallujah, a center of the insurgency at the time. U.S. forces came under intense attacks in and around Fallujah, placing them under constant pressure and at high risk in daily combat. As soon as the 82<sup>nd</sup> pulled out of FOB Mercury in April 2004, the U.S. Marines that replaced the 82<sup>nd</sup> undertook a major offensive against insurgents in Fallujah.

personnel, they said, directed and encouraged army personnel to subject prisoners to forced, repetitive exercise, sometimes to the point of unconsciousness, sleep deprivation for days on end, and exposure to extremes of heat and cold as part of the interrogation process. At least one interrogator beat detainees in front of other soldiers. Soldiers also incorporated daily beatings of detainees in preparation for interrogations. Civilians believed to be from the Central Intelligence Agency (CIA) conducted interrogations out of sight, but not earshot, of soldiers, who heard what they believed were abusive interrogations.

All three soldiers expressed confusion on the proper application of the Geneva Conventions on the laws of armed conflict in the treatment of prisoners. All had served in Afghanistan prior to Iraq and said that contradictory statements by U.S. officials regarding the applicability of the Geneva Conventions in Afghanistan and Iraq (see Conclusion) contributed to their confusion, and ultimately to how they treated prisoners. Although none were still in Iraq when we interviewed them, the NCOs said they believed the practices continue.

The soldiers came forward because of what they described as deep frustration with the military chain of command's failure to view the abuses as symptomatic of broader failures of leadership and respond accordingly. All three are active duty soldiers who wish to continue their military careers. A fax letter, e-mail, and repeated phone calls to the 82<sup>nd</sup> Airborne Division regarding the major allegations in the report received no response.

When the Abu Ghraib scandal broke in April 2004, senior officials in the Bush administration claimed that severe prisoner abuse was committed only by a few, rogue, poorly trained reserve personnel at a single facility in Iraq. But since then, hundreds of other cases of abuse from Iraq and Afghanistan have come to light, described in U.S. government documents, reports of the International Committee of the Red Cross, media reports, legal documents filed by detainees, and from detainee accounts provided to human rights organizations, including Human Rights Watch.<sup>3</sup> And while the military has

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<sup>3</sup> See Human Rights Watch, "Getting Away with Torture?: Command Responsibility for the U.S. Abuse of Detainees," *A Human Rights Watch Report*, April 2005, Section II (A World of Abuse), available at: [hrw.org/reports/2005/us0405/4.htm#\\_Toc101408092](http://hrw.org/reports/2005/us0405/4.htm#_Toc101408092). See also, International Committee of the Red Cross, "Report on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons, February 2004," available at: <http://www.health-now.org/mediafiles/mediafile50.pdf> (describing detainee abuse in locations across Iraq, including sites in Baghdad, Al-Khaim, Tikrit, Ramadi, and at Abu Ghraib, at p 7); Douglas Jehl and Eric Schmitt, "The Conflict in Iraq: Detainees: U.S. Military Says 26 Inmate Deaths May Be Homicide," *The New York Times*, March 16, 2005 (describing cases of detainee homicide occurring in areas across Afghanistan and Iraq). On Afghanistan-related abuses, see Human Rights Watch, "Enduring Freedom: Abuses by U.S. Forces in Afghanistan," *A Human Rights Watch Report*, March 2004, available at

launched investigations and prosecutions of lower-ranking personnel for detainee abuse, in most cases the military has used closed administrative hearings to hand down light administrative punishments like pay reductions and reprimands, instead of criminal prosecutions before courts-martial. The military has made no effort to conduct a broader criminal investigation focusing on how military command might have been involved in reported abuse, and the administration continues to insist that reported abuse had nothing to do with the administration's decisions on the applicability of the Geneva Conventions or with any approved interrogation techniques.

These soldiers' firsthand accounts provide further evidence contradicting claims that abuse of detainees by U.S. forces was isolated or spontaneous. The accounts here suggest that the mistreatment of prisoners by the U.S. military is even more widespread than has been acknowledged to date, including among troops belonging to some of the best trained, most decorated, and highly respected units in the U.S. Army. They describe in vivid terms abusive interrogation techniques ordered by Military Intelligence personnel and known to superior officers.

Most important, they demonstrate that U.S. troops on the battlefield were given no clear guidance on how to treat detainees. When the administration sent these soldiers to war in Afghanistan, it threw out the rules they were trained to uphold (embodied in the Geneva Conventions and the U.S. Army Field Manual on Intelligence Interrogation). Instead, President Bush said only that detainees be treated "humanely," not as a requirement of the law but as policy. And no steps were taken to define what humane was supposed to mean in practice.<sup>4</sup> Once in Iraq, their commanders demanded that they extract intelligence from detainees without telling them what was allowed and what was

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[www.hrw.org/reports/2004/afghanistan0304/](http://www.hrw.org/reports/2004/afghanistan0304/); Human Rights Watch to Secretary of Defense Donald Rumsfeld, open letter, December 13, 2004, available at: [www.hrw.org/english/docs/2004/12/10/afghan9838.htm](http://www.hrw.org/english/docs/2004/12/10/afghan9838.htm). On Iraq-related abuses, see Major General Antonio M. Taguba, "Article 15-6 Investigation of the 800th Military Police Brigade," March 2004 (describing "numerous incidents of sadistic, blatant, and wanton criminal abuses" at Abu Ghraib prison, constituting "systematic and illegal abuse of detainees," at p. 16); Major George R. Fay, "Article 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade," (Documenting 44 allegations of war crimes at Abu Ghraib). On Guantánamo-related abuses, see also Human Rights Watch, "Guantánamo: Detainee Accounts," *A Human Rights Watch Backgrounder*, October 2004, <http://www.hrw.org/backgrounder/usa/gilmo1004/>. See also, Paisley Dodds, "Guantánamo Tapes Show Teams Punching, Stripping Prisoners," *Associated Press*, February 1, 2005; Neil A. Lewis, "Red Cross Finds Detainee Abuse In Guantánamo," *The New York Times*, November 30, 2004.

<sup>4</sup> See Timothy Flanigan, written responses to questions submitted by U.S. Senator Richard Durbin, following Flanigan's confirmation hearing to be Deputy Attorney General of the United States on July 26, 2005. Flanigan, who was Deputy White House Counsel when President Bush issued his order requiring "humane treatment" of detainees, stated: "I do not believe the term 'inhumane' treatment is susceptible to succinct definition." In a further exchange with Senator Durbin, Flanigan stated that: "I am not aware of any guidance provided by the White House specifically related to the meaning of 'inhumane treatment.'"

forbidden. Yet when abuses inevitably followed, the administration blamed only low-ranking soldiers instead of taking responsibility.

These soldiers' accounts show how the administration's refusal to insist on adherence to a lawful, long-recognized, and well-defined standard of treatment contributed to the torture of prisoners. It also shows how that policy betrayed the soldiers in the field—sowing confusion in the ranks, exposing them to legal sanction when abuses occurred, and placing in an impossible position all those who wished to behave honorably.

\* \* \*

The officer and NCOs interviewed by Human Rights Watch say that torture of detainees took place almost daily at FOB Mercury during their entire deployment there, from September 2003 to April 2004. While two of the soldiers also reported abuses at FOB Tiger, near the Syrian border, the most egregious incidents allegedly took place at FOB Mercury. The acts of torture and other cruel or inhuman treatment they described include severe beatings (in one incident, a soldier reportedly broke a detainee's leg with a baseball bat), blows and kicks to the face, chest, abdomen, and extremities, and repeated kicks to various parts of the detainees' body; the application of chemical substances to exposed skin and eyes; forced stress positions, such as holding heavy water jugs with arms outstretched, sometimes to the point of unconsciousness; sleep deprivation; subjecting detainees to extremes of hot and cold; the stacking of detainees into human pyramids; and, the withholding of food (beyond crackers) and water.

According to Army Field Manual 19-4 covering enemy prisoner of war operations, Military Police have responsibility for safeguarding, accounting for, and maintaining captives. The soldiers interviewed by Human Rights Watch said that established procedure was violated by having frontline soldiers guard and prepare detainees for interrogation, instead of speeding detainees to a rear area where they would be looked after by trained Military Police.

Detainees in Iraq were consistently referred to as PUCs. This term was devised in Afghanistan to take the place of the traditional designation of Prisoner of War (POW), after President Bush decided that the Geneva Conventions did not apply there. It carried over to Iraq, even though the U.S. military command and the Bush administration have continually stated that the Geneva Conventions are in effect. Although not all persons captured on a battlefield are entitled to Prisoner of War (POW) status, U.S. military doctrine interprets the Geneva Conventions as requiring that all

captured persons be treated as POWs unless and until a "competent tribunal" determines otherwise.<sup>5</sup>

Detainees at FOB Mercury were held in so-called "PUC tents, which were separated from the rest of the base by concertina wire. Detainees typically spent three days at the base before being released or sent to Abu Ghraib. Officers in the Military Intelligence unit and officers in charge of the guards directed the treatment of detainees. Soldiers told us that detainees who did not cooperate with interrogators were sometimes denied water and given only crackers to eat, and were often beaten. There was little done to hide the mistreatment of detainees: one of the soldiers we interviewed observed torture when he brought newly captured Iraqis to the PUC tents.

The torture of detainees reportedly was so widespread and accepted that it became a means of stress relief for soldiers. Soldiers said they felt welcome to come to the PUC tent on their off-hours to "Fuck a PUC" or "Smoke a PUC." "Fucking a PUC" referred to beating a detainee, while "Smoking a PUC" referred to forced physical exertion sometimes to the point of unconsciousness. The soldiers said that when a detainee had a visible injury such as a broken limb due to "fucking" or "smoking," an army physician's assistant would be called to administer an analgesic and fill out the proper paperwork. They said those responsible would state that the detainee was injured during the process of capture and the physician's assistant would sign off on this. Broken bones occurred "every other week" at FOB Mercury.

"Smoking" was not limited to stress relief but was central to the interrogation system employed by the 82<sup>nd</sup> Airborne Division at FOB Mercury. Officers and NCOs from the Military Intelligence unit would direct guards to "smoke" the detainees prior to an interrogation, and would direct that certain detainees were not to receive sleep, water, or food beyond crackers. Directed "smoking" would last for the 12-24 hours prior to an interrogation. As one soldier put it: "[the military intelligence officer] said he wanted the PUCs so fatigued, so smoked, so demoralized that they want to cooperate."

The soldiers believed that about half of the detainees at Camp Mercury were released because they were not involved in the insurgency, but they left with the physical and mental scars of torture. "If he's a good guy, you know, now he's a bad guy because of the way we treated him," one sergeant told Human Rights Watch.

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<sup>5</sup> Maj. J. Berger, Maj Derek Grims, Maj Eric Jensen (Eds.) *Operational Law Handbook*, International and Operational Law Department, Judge Advocate General's Legal Center and School, Charlottesville Virginia, 2004, p. 26.



The soldiers with whom Human Rights Watch spoke had served as guards in Afghanistan and had observed interrogations at FOB Tiger in Iraq, and said that civilian interrogators at those locations had also used coercive methods against prisoners. These interrogators were always referred to by the U.S. military abbreviation OGA, which stands for "Other Government Agencies." It was assumed that such persons were with the CIA, but because OGA also includes other civilian agencies, the soldiers with whom Human Rights Watch spoke said they could not be sure.

Soldiers generally had less direct access to OGA interrogations, in part because OGA personnel often took detainees to an isolated building and were generally more careful about being seen. But the soldiers who had watched OGA interrogations in Afghanistan said that soldiers applied in Iraq some of the techniques they learned from the OGA, including forced stress positions, sleep deprivation, and exposure. At FOB Tiger, the officer said, he heard the sounds of physical violence coming from rooms where OGA interrogations were being held, but without being present in the room could not know whether the sounds were real or simulated. The soldiers said that civilian interrogators sometimes removed prisoners from detention facilities and took the paperwork that indicated a detainee was being held, apparently "disappearing" that detainee.<sup>6</sup>

The officer who spoke to Human Rights Watch made persistent efforts to raise concerns he had with superior officers up the chain of command and to obtain clearer rules on the proper treatment of prisoners. When he raised the issue with superiors, he was consistently told to keep his mouth shut, turn a blind eye, or consider his career. When he sought clearer procedures from general officers, he was told merely to use his judgment.

Altogether this officer said he spent 17 months trying to clarify rules for prisoner treatment while seeking a meaningful investigation. He explained at length how he openly had brought his complaint directly up the chain-of-command, from his direct commanding officer, to the division commander, to the Judge Advocate General's (JAG) office, and finally to members of the U.S. Congress. In many cases, he was encouraged to keep his concerns quiet; his brigade commander, for example, rebuffed him when he asked for an investigation into these allegations of abuse. He believes he was not taken

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<sup>6</sup> According to the U.N. Declaration on the Protection of All Persons from Enforced Disappearance (1992), enforced disappearances occur when:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, ... followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

seriously until he began to approach members of Congress, and, indeed, just days before the publication of this report he was told that he would not be granted a pass to meet on his day off with staff members of U.S. Senators John McCain and John Warner. He said he was told that he was being naïve and that he was risking his career.

Human Rights Watch welcomes reports that the Army has agreed to investigate the abuses discussed in this report. We are concerned however those investigations will only focus on low-level soldiers and officers, instead of looking as far as necessary up the chain of command. We are also concerned that military personnel who come forward to report abuses will find their careers suffer, as their commanding officers implied they would, rather than be commended for doing their duty.

If FOB Mercury is not to become one more in an expanding series of U.S. detention facilities associated with brutality and degrading treatment, further tarnishing the reputation of the U.S. armed forces, the policy failures must be faced head-on and the most senior responsible officials held accountable.

Accordingly, Human Rights Watch urges the following:

- The U.S. Attorney General should appoint a special counsel to investigate any U.S. officials—no matter their rank or position—who have participated in, ordered, or had command responsibility for war crimes or torture, or other prohibited ill-treatment against detainees in U.S. custody.<sup>7</sup>
- The U.S. Congress should create a special commission, along the lines of the 9/11 commission, to investigate the issue of detainee abuse by U.S. military and civilians personnel abroad, including the incidents described here, as proposed in legislation sponsored by Senator Carl Levin.
- Congress should enact legislation along the lines proposed by Senators John McCain, Lindsay Graham, and John Warner, which would prohibit any forms of detainee treatment and interrogation not specifically authorized by the U.S. Army Field Manual on Intelligence Interrogation, and not consistent with the

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<sup>7</sup> To allow the special prosecutor to have full authority to investigate and prosecute both federal law and Uniform Code of Military Justice violations, the Secretary of Defense should appoint a consolidated convening authority for all armed services, to cooperate with the appointed civilian special prosecutor.

Convention Against Torture. Such legislation must cover not only military units but also civilian agencies involved in interrogations, such as the CIA.

- The U.S. Department of Defense should conduct a thorough investigation of the allegations made in this report at all levels of the chain of command. Such an investigation must not be limited to lower-ranking enlisted personnel and officers, but must include higher-ranking officers and civilian officials linked to policies that directed, encouraged or tolerated such abuse. Measures should be taken to ensure that soldiers who bring forward credible allegations of detainee abuse are not in any way punished for their actions.
- The 82<sup>nd</sup> Airborne Division should implement measures to ensure the immediate investigation of credible allegations of detainee abuse.

### ***Note on Presentation of the Soldiers' Accounts***

All three accounts below consist of direct quotes from the soldiers. Each of the soldiers was interviewed more than once. For the sake of clarity and to avoid repetition, Human Rights Watch has edited and rearranged specific passages in the accounts.

## **II. Account of Sergeant A, 82<sup>nd</sup> Airborne Division**

Sergeant A served in Afghanistan from September 2002 to March 2003 and in Iraq from August 2003 to April 2004. Human Rights Watch spoke with him on four separate occasions in July and August 2005.

In retrospect what we did was wrong, but at the time we did what we had to do. Everything we did was accepted, everyone turned their heads.

We got to the camp in August [2003] and set up. We started to go out on missions right away. We didn't start taking PUCs until September. Shit started to go bad right away. On my very first guard shift for my first interrogation that I observed was the first time I saw a PUC pushed to the brink of a stroke or heart attack. At first I was surprised, like, this is what we are allowed to do? This is what we are allowed to get away with? I think the officers knew about it but didn't want to hear about it. They didn't want to know it even existed. But they had to.

On a normal day I was on shift in a PUC tent. When we got these guys we had them sandbagged and zip tied, meaning we had a sandbag on their heads and zip ties [plastic cuffs] on their hands. We took their belongings and tossed them in the PUC tent. We were told why they were there. If I was told they were there sitting on IEDs [Improvised Explosive Devices, homemade bombs] we would fuck them up, put them in stress positions or put them in a tent and withhold water.

The "Murderous Maniacs" was what they called us at our camp because they knew if they got caught by us and got detained by us before they went to Abu Ghraib then it would be hell to pay. They would be just, you know, you couldn't even imagine. It was sort of like I told you when they came in it was like a game. You know, how far could you make this guy go before he passes out or just collapses on you. From stress positions to keeping them up fucking two days straight, whatever. Deprive them of food water, whatever.

To "Fuck a PUC" means to beat him up. We would give them blows to the head, chest, legs, and stomach, pull them down, kick dirt on them. This happened every day.

To "smoke" someone is to put them in stress positions until they get muscle fatigue and pass out. That happened every day. Some days we would just get bored so we would have everyone sit in a corner and then make them get in a pyramid. This was before Abu Ghraib but just like it. We did that for amusement.

Guard shifts were four hours. We would stress them at least in excess of twelve hours. When I go off shift and the next guy comes we are already stressing the PUC and we let the new guy know what he did and to keep fucking him. We put five-gallon water cans and made them hold them out to where they got muscle fatigue then made them do pushups and jumping jacks until they passed out. We would withhold water for whole guard shifts. And the next guy would too. Then you gotta take them to the john if you give them water and that was a pain. And we withheld food, giving them the bare minimum like crackers from MREs [Meals Ready to Eat, the military's prepackaged food]. And sleep deprivation was a really big thing.

Someone from [Military Intelligence] told us these guys don't get no sleep. They were directed to get intel [intelligence] from them so we had to set the conditions by banging on their cages, crashing them into the cages, kicking them, kicking dirt, yelling. All that shit. We never stripped them down because this is an all-guy base and that is fucked up shit. We poured cold water on them all the time to where they were soaking wet and we would cover them in dirt and sand. We did the jugs of water where they held them out to collapse all the time. The water and other shit... start[ed] [m]aybe late September, early October, 2003. This was all at Camp Mercury, close to the MEK base<sup>8</sup> like 10 minutes from Fallujah. We would transport the PUCs from Mercury to Abu Ghraib.

None of this happened in Afghanistan. We had MPs [military police] attached to us in Afghanistan so we didn't deal with prisoners. We had no MPs in Iraq. We had to secure prisoners. [Military intelligence] wants to interrogate them and they had to provide guards so we would be the guards. I did missions every day and always came back with 10-15 prisoners. We were told by intel that these guys were bad, but they could be wrong, sometimes they were wrong. I would be told, "These guys were IED trigger men last week." So we would fuck them up. Fuck them up bad. If I was told the guy was caught with a 9mm [handgun] in his car we wouldn't fuck them up too bad – just a little. If we were on patrol and catch a guy that killed my captain or my buddy last week – man, it is human nature. So we fucked them up bad. At the same time we should be held to a higher standard. I know that now. It was wrong. There are a set of standards. But you gotta understand, this was the norm. Everyone would just sweep it under the rug.

What you allowed to happen happened. Trends were accepted. Leadership failed to provide clear guidance so we just developed it. They wanted intel. As long as no PUCs came up dead it happened. We heard rumors of PUCs dying so we were careful. We kept it to broken arms and legs and shit. If a leg was broken you call the PA – the physician's assistant – and told him the PUC got hurt when he was taken. He would get Motrin [a pain reliever] and maybe a sling, but no cast or medical treatment.

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<sup>8</sup> Iranian opposition group Mojahedin-e-Khalq, which has a base in Iraq.

In Afghanistan we were attached to Special Forces<sup>9</sup> and saw OGA. We never interacted with them but they would stress guys. We learned how to do it. We saw it when we would guard an interrogation.

I was an Infantry Fire Team Leader. The majority of the time I was out on mission. When not on mission I was riding the PUCs. We should have had MPs. We should have taken them to Abu Ghraib [which] was only 15 fucking minutes drive. But there was no one to talk to in the chain – it just got killed. We would talk among ourselves, say, “This is bad.” But no one listened. We should never have been allowed to watch guys we had fought.

FOB Mercury was about as big as a football field. We had a battalion there with three or four companies and attachments. We lived in the buildings of an old Iraqi military compound that we built up with barriers, ACs [air conditioners], and stuff. We had civilian interpreters on post and contractors came every day to fix shit. The contractors were local Iraqis.

The PUCs lived in the PUC area about 200 meters away. It had a triple-strength circle concertina barrier with tents in the middle with another triple-strength concertina perimeter. Inside each was a Hesco basket that is wire that normally has cloth in it. We filled them with dirt to make barriers and some we emptied and buried to use as access points for the Iraqis. This was all inside the confines of the FOB. There was a guard tower behind the PUC tent with two guards. One was always looking at the PUC tent. We never took direct fire but did take regular rocket and mortar attacks. We did not lose anyone but had shrapnel injuries.

On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent. In a way it was sport. The cooks were all US soldiers. One day a sergeant shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy's leg with a mini Louisville Slugger that was a metal bat. He was the fucking cook. He shouldn't be in with no

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<sup>9</sup> The 82<sup>nd</sup> Airborne Division provided support to Special Operations Forces during operations in Afghanistan in 2002 and 2003.

PUCs. The PA came and said to keep him off the leg. Three days later they transported the PUC to Abu Ghraib. The Louisville Slugger [incident] happened around November 2003, certainly before Christmas.

People would just volunteer just to get their frustrations out. We had guys from all over the base just come to guard PUCs so they could fuck them up. Broken bones didn't happen too often, maybe every other week. The PA would overlook it. I am sure they knew.

The interrogator [a sergeant] worked in the [intelligence] office. He was former Special Forces. He would come into the PUC tent and request a guy by number. Everyone was tagged. He would say, "Give me #22." And we would bring him out. He would smoke the guy and fuck him. He would always say to us, "You didn't see anything, right?" And we would always say, "No, Sergeant."

One day a soldier came to the PUC tent to get his aggravation out and filled his hands with dirt and hit a PUC in the face. He fucked him. That was the communications guy.

One night a guy came and broke chem lights<sup>10</sup> open and beat the PUCs with it. That made them glow in the dark which was real funny but it burned their eyes and their skin was irritated real bad.

If a PUC cooperated Intel would tell us that he was allowed to sleep or got extra food. If he felt the PUC was lying he told us he doesn't get any fucking sleep and gets no food except maybe crackers. And he tells us to smoke him. [Intel] would tell the Lieutenant that he had to smoke the prisoners and that is what we were told to do. No sleep, water, and just crackers. That's it. The point of doing all this was to get them ready for interrogation. [The intelligence officer] said he wanted the PUCs so fatigued, so smoked, so demoralized that they want to cooperate. But half of these guys got released because they didn't do nothing. We sent them back to Fallujah. But if he's a good guy, you know, now he's a bad guy because of the way we treated him.

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<sup>10</sup> Chem lights refer to chemical light sticks. While we do not know the exact composition of the ones allegedly used in Iraq, these lights are typically made of a hydrogen peroxide solution mixed with a phenyl oxalate ester and dye for color. Information available at <http://science.howstuffworks.com/light-stick2.htm>

After Abu Ghraib things toned down. We still did it but we were careful. It is still going on now the same way, I am sure. Maybe not as blatant but it is how we do things.

Each company goes out on a mission and you kick the door down and catch them red handed. We caught them with RPGs [rocket propelled grenades]. So we are going to give you special attention. We yank them off the truck and they hit the ground hard, maybe 5-6 feet down. We took everything and searched them. Then we toss him in the PUC tent with a sandbag on his head and he is zip tied. And he is like that all day and it is 100 degrees in that tent. Once paperwork was done we started to stress them. The five-gallon water can was full of water. We would have people hold out their arms on each side parallel to the ground. After a minute your arms get tired and shake. Then we would take some water out and douse them to get them cold. And the tent is full of dust and they get dirty and caked with it. Then we make them do pushups and jumping jacks. At the end of a guard shift they look like zombies.

We had these new high-speed trailer showers. One guy was the cleaner. He was an Iraqi contractor working on base. We were taking pretty accurate mortar fire and rockets and we were getting nervous. Well one day we found him with a GPS<sup>11</sup> receiver and he is like calling in strikes on us! What the fuck!? We took him but we are pissed because he stabbed us in the back. So we gave him the treatment. We got on him with the jugs and doused him and smoked and fucked him.

### **III. Account of Sergeant B, 82<sup>nd</sup> Airborne Division**

Sergeant B served in Afghanistan from September 2002 to March 2003 and in Iraq from August 2003 to April 2004. Human Rights Watch spoke with him on two separate occasions in August 2005.

I was an infantry squad leader doing mounted patrols and conducting raids in Iraq. I would catch the bad guys. You heard a lot of stuff as a

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<sup>11</sup> A GPS, or Global Positioning System receiver, provides the user with location data derived from satellites. This data may be used to target weapons, as the soldier alleges.



squad leader in charge of guys watching PUCs about guys mistreating PUCs.

We got to Mercury on the 6<sup>th</sup> of September. We came from working in al-Qaim. In late September we started to take on PUCs as part of our mission. Since we were capturing them we would detain them for no more than three days, three days max, to interrogate them for intel. We had a mechanized company attached to us which took us up to about battalion strength, maybe 750 people when you include the HHC [headquarters].

PUCs were placed in a GP [general purpose] medium or small tent, about 20x15, and that is being generous. We had 2-3 tents with no more than 10-15 PUCs per tent with a couple guards to a tent. You added guards if you had more PUCs. We would immediately put these guys in stress positions. PUCs would be holding hands behind their backs and be cuff tied and we would lean their forehead against a wall to support them.

As far as abuse goes I saw hard hitting. I heard a lot of stories, but if it ain't me I wouldn't care. I was busy leading my men. I did hear about [a sergeant] breaking PUC bones. Stories came out on mission. Guys were always talking about what they did to the PUCs. Guys mentioned stuff but I couldn't care less what happened at the PUC tent a week ago. Putting guys with frustration in charge of prisoners was the worst thing to do.

I also saw smoking. They would get the PUCs to physically exert themselves to the limit. Feeding was a huge issue and it was brought up. The PUCs wouldn't eat what we were feeding them as they were against Americans and MREs, so all I saw them eat were crackers. [Sergeant A told Human Rights Watch that PUCs were often only fed crackers. It is unclear why Sergeant B believes the detainees had a choice.]

Rest was also an issue. We were told they could be interrogated 45 minutes on, 15 minutes off for sleep and whatever, but I was not regularly in the PUC tents. I brought the PUCs in for interrogation. That is when I saw whatever I saw. Intel had some bad guys and we all know sleep deprivation is a powerful tool.

In Iraq, from the beginning, we messed up on the treatment soldiers had to endure while guarding prisoners. There are five "S's" [Search, Silence, Segregate, Speed (to the rear), Safeguard] and we blew Speed and Security. Speed was the biggest problem. Speed means you get them to the rear to process them. You need to get them away from the troops they are trying to kill.

The Geneva Conventions is questionable and we didn't know we were supposed to be following it. In Afghanistan you were taught to keep your head down and shoot.... You never thought about the Geneva Conventions. There was an ROE [Rules of Engagement] and it was followed, same in Iraq. But we were never briefed on the Geneva Conventions. These guys are not soldiers. If we were to follow the Geneva Conventions we couldn't shoot at anyone because they all look like civilians.

#### **IV. Account of Officer C, 82<sup>nd</sup> Airborne Division**

C is an officer with the 82<sup>nd</sup> Airborne Division and West Point graduate who served in Afghanistan from August 2002 to February 2003 and in Iraq from September 2003 to March 2004. HRW spoke with him more than two dozen times in July, August, and September 2005. Below are excerpts from those interviews grouped by subject matter (the subject headings were supplied by Human Rights Watch).

At FOB Mercury, he was not in charge of interrogations but saw several interrogations in progress and received regular reports from NCOs on ill-treatment of detainees. He felt strongly that abuses there reflected larger policy confusion about what was permitted, and that the officer corps in particular has a duty to come forward and take responsibility.

##### ***On Conditions at FOB Mercury***

When we were at FOB Mercury, we had prisoners that were stacked in pyramids, not naked but they were stacked in pyramids. We had prisoners that were forced to do extremely stressful exercises for at least two hours at a time which personally I am in good shape and I would not be able to do that type of exercises for two hours.... There was a case where a prisoner had cold water dumped on him and then he was

left outside in the night. Again, exposure to elements. There was a case where a soldier took a baseball bat and struck a detainee on the leg hard. This is all stuff that I'm getting from my NCOs.

In the PUC holding facility you could have had people that could have been in the wrong house at the wrong time brought in an all of a sudden they are subjected to this. So that's a big problem, obviously a huge human rights issue.

It's army doctrine that when you take a prisoner, one of the things you do is secure that prisoner and then you speed him to the rear. You get him out of the hands of the unit that took him. Well, we didn't do that. We'd keep them at our holding facility for I think it was up to seventy-two hours. Then we would place him under the guard of soldiers he had just been trying to kill. The incident with the detainee hit with baseball bat; he was suspected of having killed one of our officers.

[At FOB Mercury] they said that they had pictures that were similar to what happened at Abu Ghraib, and because they were so similar to what happened at Abu Ghraib, the soldiers destroyed the pictures. They burned them. The exact quote was, "They [the soldiers at Abu Ghraib] were getting in trouble for the same things we were told to do, so we destroyed the pictures."

### ***On Frustration Obtaining a Meaningful Response within the Military Chain of Command***

I witnessed violations of the Geneva Conventions that I knew were violations of the Geneva Conventions when they happened but I was under the impression that that was U.S. policy at the time. And as soon as Abu Ghraib broke and they had hearings in front of Congress, the Secretary of Defense testified that we followed the spirit of the Geneva Conventions in Afghanistan, and the letter of the Geneva Conventions in Iraq and as soon as he said that I knew something was wrong. So I called some of my classmates [from West Point], confirmed what I was concerned about and then on that Monday morning I approached my chain of command.

I talked to an officer in the Ranger regiment<sup>12</sup> and his response was, he wouldn't tell me exactly what he witnessed but he said "I witnessed things that were more intense than what you witnessed," but it wasn't anything that exceeded what I had heard about at SERE school.<sup>13</sup>

After that I called the chaplain at West Point who I respected a lot and I talked to him about some things and we were on the same page. Then I had said well, "I'm going to talk to my company commander and then my battalion commander on Monday."

My company commander said, "I see how you can take it that way, but..." he said something like, "remember the honor of the unit is at stake" or something to that effect and "Don't expect me to go to bat for you on this issue if you take this up," something to that effect.

I went and talked to my battalion commander. Again, he clearly thinks he has done the right things and that what I am bringing attention to is within the standards and that he is okay. He didn't dismiss me. He just said "Go talk to JAG. We'll work this out." It wasn't alarming to him in any way, shape or form that these things had happened.

So I went to JAG and ... he says, "Well the Geneva Conventions are a gray area." So I mentioned some things that I had heard about and said, "Is it a violation to chain prisoners to the ground naked for the purpose of interrogations?" and he said, "That's within the Geneva Conventions." So I said, "Okay. That is within the Geneva Conventions." And then there is the prisoner on the box with the wires attached to him, and to me, as long as electricity didn't go through the wires, that was in accordance with what I would have expected US policy to be and that he wasn't under the threat of death. And he said,

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<sup>12</sup> The Rangers are "rapidly deployable airborne light infantry organized and trained to conduct highly complex joint direct action operations in coordination with or in support of other special operations units of all Services. Rangers also can execute direct action operations in support of conventional nonspecial operations missions conducted by a combatant commander and can operate as conventional light infantry when properly augmented with other elements of combined arms." Department of Defense Dictionary of Military Terms, available at <http://www.dtic.mil/doctrine/jel/doddict/>

<sup>13</sup> SERE stands for "Survival, Evasion, Resistance, Escape," and is a military course of training "encompassing those basic skills necessary for world-wide survival; expedite search and rescue efforts; evade capture by hostile forces; resistance to interrogation, exploitation and indoctrination; and escape from detention by enemy forces." Available at <http://www.fasolant.navy.mil/brunsere.htm>

"Well, that is a clear violation of the Geneva Conventions." And I said, "Okay, but I'm looking for some kind of standard here to be able to tell what I should stop and what I should allow to happen." And he says, "Well, we've had questions about that at times."

Then he said, "There was a device that another battalion in the 82<sup>nd</sup> had come up with that you would put a prisoner in. It was uncomfortable to sit in." And he went to test it out by sitting in it and he decided that it wasn't torture. I hear this and I am flabbergasted that this is the standard the Army is using to determine whether or not we follow the Geneva Conventions. If I go to JAG and JAG cannot give me clear guidance about what I should stop and what I should allow to happen, how is an NCO or a private expected to act appropriately?

When I talked to [an official in the Inspector General's office about the policy confusion on what was permitted] he says, "You obviously feel very upset about this, but—I don't think you're going to accomplish anything because things don't stick to people inside the Beltway [Washington, D.C.]." He says, "I worked at the Pentagon and things don't stick to people inside the Beltway."

When the Secretary of the Army came [to my training], I addressed him on numerous issues, which I don't want to go into. One of those issues was treatment of prisoners. I mentioned that I didn't have clear guidance, and the Secretary of the Army said, "Well, we realized that that was a problem but you are a little bit behind the times. We've solved that matter. And I didn't get a chance to respond to that. I should have, I should have pressed that issue a lot harder. That's one of my regrets. Just bringing up the issue at all was stressful, but it hasn't been resolved because there is no clear guidance. And through discussions with other officers the problem is not taken care of. It really is multiple problems. It's two problems. One is the Army handling interrogations and the other is the relationship between OGA and prisoners and what they can and can't do."

The officer also spoke with multiple experts on the U.S. military Law of Land Warfare, his peers, and his soldiers, all of whom, he said, expressed concern that the Geneva Conventions were not being applied in Iraq. He decided to bring his concerns to the Congress since he felt they were not being adequately addressed by his chain of

command. Days before this report was published his brigade commander told him to stop his inquiries; his commanding officer told him that he could not leave the base to visit with staff members of Senators McCain and Warner without approval and that approval was being denied because his commanding officer felt the officer was being naïve and would do irreparable harm to his career.

### ***On Policy Confusion within the Ranks on Coercive Interrogation***

[In Afghanistan,] I thought that the chain on command all the way up to the National Command Authority<sup>14</sup> had made it a policy that we were going to interrogate these guys harshly.

[The actual standard was] “we’re not going to follow the Geneva Conventions but we are going to treat you humanely.” Well, what does humane mean? To me humane means I can kind of play with your mind, but I cannot hit you or do anything that is going to cost you permanent physical damage. To [another officer I spoke with] humane means it’s okay to rough someone up and to do physical harm. Not to break bones or anything like that but to do physical harm as long as you’re not humiliating him, which was the way he put it. We’ve got people with different views of what humane means and there’s no Army statement that says this is the standard for humane treatment for prisoners to Army officers. Army officers are left to come up with their own definition of humane treatment.

I don’t know for sure [how high up the hierarchy responsibility for the abusive treatment lies]. What I know is that it’s widespread enough that it’s an officer problem. It’s at least an officer problem. You make the standard, and that is what goes up to the executive branch. You communicate the standard, that’s when it’s somewhat the executive branch, but then it comes more into the officer branch, and enforcing the standard is the officer branch... And in the Schlesinger report<sup>15</sup> it even says that when the President made the decision that al-Qaeda wasn’t going to be covered by the Geneva Conventions, there was a

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<sup>14</sup> The President of the United States and the Secretary of Defense.

<sup>15</sup> The Schlesinger Report, issued in August 2004, was one of seven U.S. military inquiries into detainee abuse by U.S. forces. The panel that produced the Schlesinger report was chosen by Secretary of Defense Rumsfeld and determined that leadership failures led to detainee abuse in Iraq.

clear danger that it was going to undermine the culture in the United States Army that enforces strict adherence to the law of land warfare. That's in the Schlesinger report.

But anyway, the President makes that decision, and decides that we're not going to cover them by the Geneva Conventions, which according to the letter of the law, I think there's a strong argument for that... [But] then that lack of standard migrates throughout the Army. It filters throughout the Army, so that now the standard, this convoluted, "You'll know what's right when you see it," filters through the whole Army.

If you draw a hard line and you say "Don't do anything bad to prisoners," like you bring them in, you give them food, you give them water, and then you leave them alone. If that happens then, yeah, that is an easy line to draw, but when you start drawing shades of gray and you start stripping prisoners, or you start making prisoners do humiliating things and then you tell a soldier to draw the line somewhere, then no. A soldier is not going to be able to draw that line because as soon as you cross that line and as soon as you start stripping prisoners or you start making people do vigorous exercise, or you start basically putting yourself in a position of authority where you are subjecting someone else to harsh treatment, things are going to get out of hand because everyone is going to draw the line at a different place. Just like the discussion between me and the other officer, where's the line? What is acceptable and what is not acceptable? People don't know. The West Point officers knew the line coming out of West Point. We knew where the Geneva Conventions drew the line, but then you get that confusion when the Sec Def [Secretary of Defense] and the President make that statement. And we were confused.

[In Iraq, my understanding of how we should treat prisoners] didn't change. There are a couple of reasons for that. Pre-deployment training was minimal going to Iraq because we deployed on short notice from West Point through Fort Bragg to Iraq. So there might be some disconnect there, but also none of the unit policies changed. Iraq was cast as part of the War on Terror, not a separate entity in and of itself but a part of a larger war.

[I didn't discuss abuse of detainees with my superiors in Iraq because] to me, it was obviously part of the system and the reasons had been laid out about why we're not following the Geneva Conventions in respect to the detainees. We did follow them in other aspects and once that was laid out I thought it was pretty clear cut.... That was just the way I thought we were running things.

Another officer approached me and was like "I'm not sure this is the way you should be treating someone." It was almost like an off-hand, kind of like...just a conversation like making a comment. He said something like "I don't know if this is right" and my response was "Hey, it's out in the open and we've said that we are doing this. It's not like we're doing it on the sly."

If I as an officer think we're not even following the Geneva Conventions, there's something wrong. If officers witness all these things happening, and don't take action, there's something wrong. If another West Pointer tells me he thinks, "Well, hitting somebody might be okay," there's something wrong.

What I'm saying is had I thought we were following the Geneva Conventions as an officer I would have investigated what was clearly a very suspicious situation.

### ***On the Implications of the Abu Ghraib Abuse Revelations in April 2004***

Someone mentioned to me in passing that there was a really bad prisoner abuse scandal and I took note of it and I thought, "that is horrible. That is going to be bad PR [public relations] for the Army" and I thought, "Okay, rogues did something." And then as the week progressed I watched on the news and they showed some of the pictures -- not all of them -- a large portion of the pictures were in accordance with what I perceived as U.S. policy. Now all the stuff with sodomy with the chem light and all that was clearly beyond what I would have allowed to happen on a personal moral level and what I thought policy was. But the other stuff, guys handcuffed naked to cells in uncomfortable positions, guys placed in stress positions on boxes,



people stripped naked. All that was...if I would have seen it, I would have thought it was in accordance with interrogation procedures.

I listened to the congressional hearings and when the Secretary of Defense testified that we followed the spirit of the Geneva Conventions in Afghanistan and the letter of the Geneva Conventions in Iraq... that went against everything that I [understood about US policy]. That's when I had a problem.

The first concern when this originally happened was loyalty to the Constitution and separation of powers, and combined with that is the honor code: "I will not lie, cheat or steal or tolerate those who do." The fact that it was systematic, and that the chain of command knew about it was so obvious to me that [until that point] I didn't even consider the fact that other factors might be at play, so that's why I approached my chain of command about it right off the bat and said, "Hey, we're lying right now. We need to be completely honest."

Congress should have oversight of treatment of prisoners. That is the way; the Army should not take it upon itself to determine what is acceptable for America to do in regards to treatment of prisoners. That's a value... that's more than just a military decision, that's a values decision, and therefore Congress needs to know about it, and therefore the American people need to have an honest representation of what's going on presented to them so that they can have a say in that.

### ***On Failure of the Officer Corps***

It's unjust to hold only lower-ranking soldiers accountable for something that is so clearly, at a minimum, an officer corps problem, and probably a combination with the executive branch of government.

It's almost infuriating to me. It is infuriating to me that officers are not lined up to accept responsibility for what happened. It blows my mind that officers are not. It should've started with the chain of command at Abu Ghraib and anybody else that witnessed anything that violated the Geneva Conventions or anything that could be questionable should've been standing up saying, "This is what happened. This is why I allowed

it to happen. This is my responsibility," for the reasons I mentioned before. That's basic officership, that's what you learn at West Point, that's what you should learn at any commissioning source.

That's basic Army leadership. If you fail to enforce something, that's the new standard. So I guess what I'm getting at is the Army officers have overarching responsibility for this. Not privates, not the Sergeant Jones, not Sergeant Smith. The Army officer corps has responsibility for this. And it boggles my mind that there aren't officers standing up saying, "That's my fault and here's why." That's basic army leadership.

Look, the guys who did this aren't dishonorable men. It's not like they are a bunch of vagabonds. They shown more courage and done more things in the time that I've spent with them than I could cover in probably a week of talking to you. They are just amazing men, but they're human. If you put them in a situation, which is the officer's responsibility, where they are put in charge of somebody who tried to kill them or maybe killed their friend, bad things are going to happen. It's the officer's job to make sure bad things don't happen.

[Another important] thing is making sure this doesn't happen again.... [We need] to address the fact that it was an officer issue and by trying to claim that it was "rogue elements" we seriously hinder our ability to ensure this doesn't happen again. And, that has not only moral consequences, but it has practical consequences in our ability to wage the War on Terror. We're mounting a counter-insurgency campaign, and if we have widespread violations of the Geneva Conventions, that seriously undermines our ability to win the hearts and minds of the Muslim world.

[I]f America holds something as the moral standard, it should be unacceptable for us as a people to change that moral standard based on fear. The measure of a person or a people's character is not what they do when everything is comfortable. It's what they do in an extremely trying and difficult situation, and if we want to claim that these are our ideals and our values then we need to hold to them no matter how dark the situation.

### ***On the Role of "OGA"***

In Afghanistan we were attached to Special Forces and saw OGA. We never interacted with them but they would stress guys. We learned how to do it. We saw it when we would guard an interrogation.

They [OGA interrogators in Afghanistan] had a horn. In this case they would involve U.S. soldiers. There was a really loud horn and any time the detainee would fall asleep they would blare the horn in his ear so that he had to wake up and they would do that until he stood up again and stayed awake.

[A]t FOB Tiger [near the Syrian border] there were a lot of high value targets and ...there was a Special Forces [SF] team nearby and I was going to talk to them just about career stuff and as I was going out I saw someone who I thought was OGA... go into the prisoner detainee holding facility and take one of the detainees out. And then they took infantry guards and they went into an unoccupied building that they could seal off, closed the door, and they gave orders to the infantry guards not to let anyone in. The reason I know this is because I was trying to talk to the SF guys and I asked them "Hey, do you know where the SF guys are?" and they were like "Well, maybe some of them are in here but you can't go in there right now. They are with a prisoner." And there were noises coming out of there. There could have been physical violence but [they were at least] threatening the prisoner,... doing things that weren't actually causing bodily harm but threatening to do that.

I talked to an MP who said that he was in charge of holding detainees and that the CIA would just come and take the detainees away. They would be like, "How many detainees do you have?" and he knew he has seventeen detainees but the OGA would be like, "No, you have sixteen," so he'd be like "Alright. I have sixteen." And who knows where that detainee went.

## V. Conclusion

The abuses alleged in this report can be traced to the Bush administration's decision to disregard the Geneva Conventions in the armed conflict in Afghanistan.

On February 7, 2002, President George W. Bush announced that the Geneva Conventions concerning the treatment of prisoners did not apply at all to al-Qaeda members or to Taliban soldiers because they did not qualify as members of the armed forces. He insisted that detainees would nonetheless be treated "humanely." Defense Secretary Donald Rumsfeld told journalists that day: "The reality is the set of facts that exist today with the al-Qaeda and the Taliban were not necessarily the set of facts that were considered when the Geneva Conventions was fashioned."

The accounts presented in this report are further evidence that this decision by the Bush administration was to have a profound influence on the treatment of detained persons in military operations in Iraq as well as in the "global war on terror." In short, the refusal to apply the Geneva Conventions to Guantánamo Bay and Afghanistan was to undermine long-standing adherence by the U.S. armed forces to federal law and the laws of armed conflict concerning the proper treatment of prisoners.

Public statements by the Bush administration prior to the February 2002 decision set the tone for effectively rejecting the Geneva Conventions. After the first detainees arrived at Guantánamo in January 2002, Defense Secretary Rumsfeld declared them all to be unlawful combatants who "do not have any rights" under the Geneva Conventions. He said that the United States would "for the most part, treat them in a manner that is reasonably consistent with the Geneva Conventions, to the extent they are appropriate." Later that month, then White House counsel Alberto Gonzales wrote President Bush that the Geneva Conventions provisions on questioning enemy prisoners were "obsolete" and argued, among other things, that rejecting the applicability of the Geneva Conventions "[s]ubstantially reduces the threat of domestic criminal prosecution" of U.S. officials for war crimes.

Then Secretary of State Colin Powell and senior military leaders privately objected to the administration's position. Secretary Powell argued that declaring the conventions inapplicable would "reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops, both in this specific conflict and in general."

The administration's policy opened the door for the since-discredited legal theories put forward by the Justice Department in the infamous "torture memo" of August 2002. This memo provided contorted rationalizations for the use of clearly unlawful interrogation methods. The conclusions of these memos were opposed, without success, by senior members of the Judge Advocate General's office in all four services. Air Force Major General Jack Reves wrote in a recently released memo from 2003: "[T]he use of the more extreme interrogation techniques simply is not how the U.S. armed forces have operated in recent history. We have taken the legal and moral 'high-road' in the conduct of our military operations regardless of how others may operate. Our forces are trained in this legal and moral mindset beginning the day they enter active duty."

And Army Major General Thomas Romig wrote that the Justice Department's view on the laws of war "runs contrary to the historic position taken by the United States Government concerning such laws and, in our opinion, could adversely impact [Pentagon] interests worldwide [including by] putting our service personnel at far greater risk and vitiating many of the POW/detainee safeguards the U.S. has worked hard to establish over the past five decades."

According to the 2004 Schlesinger Commission report, coercive interrogation methods approved by Defense Secretary Rumsfeld for use on prisoners at Guantánamo — including the use of guard dogs to induce fear in prisoners, stress techniques such as forced standing and shackling in painful positions, and removing their clothes for long periods — "migrated to Afghanistan and Iraq, where they were neither limited nor safeguarded," and contributed to the widespread and systematic torture and abuse at U.S. detention centers there.

Even after the abuses at Abu Ghraib prison in Iraq became public, Secretary Rumsfeld continued to dismiss the applicability of the Geneva Conventions. On May 5, 2004, he told a journalist the Geneva Conventions "did not apply precisely" in Iraq but were "basic rules" for handling prisoners. Visiting Abu Ghraib on May 14, Rumsfeld remarked, "Geneva doesn't say what you do when you get up in the morning." In fact, the U.S. armed forces have devoted considerable energy over the years to making the Geneva Conventions fully operational by military personnel in the field. Various U.S. military operational handbooks and manuals, such as Field Manual 27-10 on the Law of Land Warfare and Field Manual 34-52 on Intelligence Interrogation, provide the means for implementing Geneva Conventions provisions, even where those provisions are vague.

Effectively throwing out military manuals based on the laws of armed conflict was a prescription for the abuse that followed. Field Manual 34-52 for instance, does not merely restate the requirements of the Geneva Conventions, but it provides useful advice for soldiers to apply the standards in practice. For instance, the manual states: "Experience indicates that the use of force is not necessary to gain the cooperation of sources for interrogation. Therefore, the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear."

Torture and other cruel and inhumane treatment alleged in this report do not fall into the "gray areas" in the law. Common article 3 to the four Geneva Conventions of 1949, which is accepted as the minimal standard of treatment for persons in custody during any armed conflict, prohibits "at any time and in any place whatsoever, ... violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, [and] outrages upon personal dignity, in particular, humiliating and degrading treatment." Further protections can be found in the fundamental guarantees under article 75 of the Protocol I of 1977 to the Geneva Conventions, which is accepted as reflecting customary laws of armed conflict.

Even if the Geneva Conventions were not applicable, various provisions of the U.S. Uniform Code of Military Justice subjects soldiers to court-martial or disciplinary measures for mistreating prisoners. Applicable UCMJ criminal provisions include article 93 (cruelty and maltreatment), article 128 (assault), and articles 118 and 119 (murder and manslaughter), as well as article 120 (rape and carnal knowledge), article 124 (maiming), and, for officers, article 133 (conduct unbecoming an officer). Superior officers who order the mistreatment of prisoners or who knew or should have known that such mistreatment was occurring and did not take appropriate measures can be prosecuted as a matter of command responsibility.

The treatment of prisoners alleged here also violates U.S. obligations under international human rights law. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture." The International Covenant on Civil and Political Rights, which also bans torture and other mistreatment, ensures that the right to be free from torture and other cruel, inhuman or degrading treatment can never be suspended by a state, including during periods of public emergency.

These standards have largely been incorporated into U.S. law that is applicable to members of the armed services. The War Crimes Act of 1996 (18 U.S.C. § 2441) makes it a criminal offense for U.S. military personnel and U.S. nationals to commit war crimes as specified in the Geneva Conventions. The federal anti-torture statute (18 U.S.C. § 2340A), enacted in 1994, provides for the prosecution of a U.S. national or anyone present in the United States who, while outside the United States, commits or attempts to commit torture.

Human Rights Watch calls for investigations into all allegations of mistreatment of prisoners in U.S. custody. Appropriate disciplinary or criminal action should be undertaken against all those implicated in torture and other abuse, whatever their rank. As we have reported elsewhere, there is increasing evidence that high-ranking U.S. civilian and military leaders made decisions and issued policies that facilitated serious and widespread violations of the law. The circumstances strongly suggest that they either knew or should have known that such violations took place as a result of their actions. There is also mounting information that, when presented with evidence that abuse was in fact occurring, they failed to act to stop it.

Human Rights Watch reiterates its call for the appointment of a special counsel to investigate any U.S. officials — no matter their rank or position — who participated in, ordered, or had command responsibility for war crimes or torture, or other prohibited ill-treatment against detainees in U.S. custody.

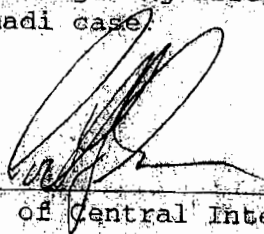
APPROVED FOR RELEASE  
DATE: APR 2008

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DECLASSIFICATION OF INFORMATION RELATING TO THE DEATH  
OF MANADEL AL-JAMADI UNDER SECTION 3.1(b) OF EXECUTIVE  
ORDER 12958, AS AMENDED

In accordance with section 3.1(b) of Executive Order 12958, as amended, I hereby declassify the following Central Intelligence Agency (CIA) intelligence information for use in the criminal investigations and prosecutions arising from the death of Manadel Al-Jamadi, an Iraqi insurgent in U.S. custody:

- The fact that CIA personnel were present during the military's capture of Al-Jamadi;
- The fact that CIA personnel questioned Al-Jamadi at the SEAL compound at Baghdad International Airport;
- The fact that CIA personnel questioned Al-Jamadi at Abu Ghraib prison;
- Statements of CIA personnel (minus their names and other classified information) regarding what they did and what they observed during the capture and questioning of Al-Jamadi; and
- The fact that the CIA Office of Inspector General is investigating allegations of impropriety in the Al-Jamadi case.

  
\_\_\_\_\_  
Director of Central Intelligence

4/1/05  
Date

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