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Classified Statement for the Record

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Senate Select Committee on Intelligence

General Michael V. Hayden
Director, Central Intelligence Agency

12 APRIL 2007

(U) Thank you Mr. Chairman and members of the Committee.

~~(PS//)~~ ~~(NF)~~ On 14 February 2007, we discussed renditions, one of the key tools the Central Intelligence Agency uses in the Global War on Terror; today, I have come to speak with you in more depth about a related program, our detention of key members and associates of al-Qa'ida. The Committee may remember that I have spoken with you in some detail on the subject of the CIA Rendition, Detention and Interrogation program in September 2006.

~~(TS//)~~ ~~(NF)~~ This Statement for the Record will focus on the detention program authorized by the [redacted] and established in the wake of the March 2002 capture of senior al-Qa'ida lieutenant Abu Zubaydah, expanding on my oral remarks with details about the history of the program, the safeguards we have built into it, the reasons CIA is best placed to manage this high value detainee interrogation and debriefing effort:

~~(TS//)~~ ~~(NF)~~ History of the Detention Program

~~(PS//)~~ ~~(NF)~~ As I mentioned in my 14 February statement on the renditions program, in the wake of the 11 September attacks on this country—which represented the most devastating single assault on our territory in the nation's history—the President directed all agencies of the US Government to work to assure that no such barbaric act could happen again. The

~~(TS//)~~ ~~(NF)~~ it was not until the capture of key al-Qa'ida lieutenant Abu Zubaydah in March 2002 that the need for a CIA program became clear. Abu Zubaydah was an up-and-coming lieutenant of

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Usama Bin Ladin (UBL) who had intimate knowledge of al-Qa'ida's current operations, personnel, and plans. Because of the importance of his information to protecting the United States, it was necessary for US officials to interrogate Zubaydah to ensure that: 1) the US Government had timely access to actionable intelligence, 2) all US Government intelligence, homeland security, and law enforcement questions were asked, 3) there was no filter between Zubaydah's information and the US Government.

~~(TS//NF)~~ While FBI and CIA continued unsuccessfully to try to glean information from Abu Zubaydah using established US Government interrogation techniques, all of those involved were mindful that the perpetrators of the 11 September attacks were still at large and, according to available intelligence reportedly, were actively working to attack the US Homeland again. CIA also knew from its intelligence holdings that Abu Zubaydah was withholding information that could help us track down al-Qa'ida leaders and prevent attacks. As a result, CIA began to develop its own interrogation program, keeping in mind at all times that any new interrogation techniques must comply with US law and US international obligations under the 1984 UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

~~(PS//NF)~~ A handful of techniques were developed for potential use; these techniques are effective, safe, and do not violate applicable US laws or treaty obligations. In August 2002, CIA began using these few and lawful interrogation techniques in the interrogation of Abu Zubaydah. As stated by the President in his speech on 6 September 2006, "It became clear that he (Abu Zubaydah) had received training on how to resist interrogation. And so the CIA used an alternative set of procedures...the procedures were tough, and they were safe, and lawful, and necessary."

- Prior to using any new technique on Abu Zubaydah, CIA sought and obtained from the Department of Justice an opinion confirming that none of these new techniques violated US statutes prohibiting torture or US obligations under the UN Convention Against Torture.

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- As CIA's efforts to implement these authorities got underway in 2002, the majority and minority leaders of the Senate, the Speaker and the minority leader of the House, and the chairs and ranking members of the intelligence committees were fully briefed on the interrogation procedures.
- After the use of these techniques, Abu Zubaydah became one of our most important sources of intelligence on al-Qa'ida,

~~(S)~~~~(NF)~~ The Procedures Governing the Interrogation Program~~(S)~~

~~(NF)~~ The CIA interrogation program from late 2002 until the passage of the Detainee Treatment Act in 2005 included the use of 13 "exceptional interrogation techniques" (EITs) derived from the Department of Defense's SERE training program, which is used to prepare US servicemen for possible capture, detention, and interrogation in hostile areas.

- All interrogation sessions in which one of these lawful procedures are authorized for use must be observed by non-participants to ensure the procedures are applied appropriately and safely. These observers are authorized to terminate an interrogation immediately should they believe anything unauthorized is occurring.
- Any deviations from approved program procedures and practices are to be immediately reported and immediate corrective action taken, including referral to CIA's Office of the Inspector General and the Department of Justice, as appropriate.

(U) Shortly after 11 September 2001, the majority and minority leaders of the Senate, the Speaker and the minority leader of the House, and the chairs and ranking members of the intelligence committees were briefed on:

- Briefings to the chairs, ranking members, and majority and minority staff directors have been provided on multiple occasions since that time, and in the fall of 2005, in connection with discussion on the Detainee Treatment Act, several other members were briefed on the program, including the *interrogation procedures*.

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- The Department of Justice (DOJ) has reviewed procedures proposed by the CIA on more than one occasion and determined them to be lawful.
- The program has been investigated and audited by the CIA's Office of the Inspector General (OIG), which was given full and complete access to all aspects of the program.

~~(S//~~
Lives~~(NF)~~ Benefits of the Program: Capturing Terrorists, Saving~~(S//~~

~~(NF)~~ Since the 2002 inception of the program, high value detainee reporting has become a crucial pillar of US counterterrorism efforts. CIA assesses that a significant number of its knowledge of al-Qa'ida has been derived from detainee reporting, and well over half of our finished intelligence products on the group since 2002 make some reference to this reporting.

- For both warning and operational purposes, detainee reporting is disseminated broadly among US intelligence and law enforcement entities and
- For today's briefing, I'm going to highlight a few key areas where detainee reporting has played a significant role: capturing other terrorists, disrupting plots, advancing our analytical understanding of and operations against al-Qa'ida, and helping to corroborate and direct other sources of collection. The President discussed some of these successes in his September 2006 speech and some of this material was briefed to staff members during previous Congresses, but I believe it is worthwhile for the sake of the current Committee to provide this explicitly detailed account to you today, so that you can get a better sense of why we view this program as so key to our fight against al-Qa'ida.

~~(S//~~

~~(NF)~~ Capturing Other Terrorists: Detainees have played some role—from identification of photos to providing in depth targeting information—in nearly every capture of al-Qa'ida members and associates since 2002.

- In March 2003, former al-Qa'ida external operations chief Khalid Shaykh Muhammad (KSM) provided information about an al-Qa'ida operative, Majid Khan, whom he was aware had recently been captured. KSM—possibly believing the detained operative was “talking”—admitted to having tasked Majid with delivering \$50,000
- Khan—confronted with KSM's information about the money—acknowledged that he delivered the money to an operative named “Zubair” and provided Zubair's physical

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description and contact number. Based on that information, Zubair was captured in June 2003.

- During debriefings, Zubair revealed that he worked directly for Jemaah Islamiyah (JI) leader and al-Qa'ida's South Asia representative Hambali.

we used the information provided by Zubair to arrest Hambali.

- Next, KSM—when explicitly queried on the issue—identified Hambali's brother, 'Abd al-Hadi, as a prospective successor to Hambali. Information from multiple detainees, including KSM, narrowed down 'Abd al-Hadi's location and enabled his capture in Karachi in September 2003.
- Bringing the story full circle, 'Abd al-Hadi identified a cell of JI operatives whom Hambali had sent to Karachi for possible al-Qa'ida operations. When confronted with his brother's revelations, Hambali admitted that he was grooming members of the cell for US operations—at the behest of KSM—probably to continue trying to implement KSM's plot to fly hijacked planes into the tallest building on the US West Coast.

(TS/) In addition to these two key cases, a number of other significant captures have resulted thanks to detainee reporting. It is important to highlight that these cases involve law enforcement's use of our detainee reporting:

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- Jose Padilla: After his capture in March 2002, Abu Zubaydah provided information leading to the identification of alleged al-Qa'ida operative Jose Padilla. Arrested by the FBI in 2002 as he arrived at O'Hare Airport in Chicago, he was transferred to military custody in Charleston, South Carolina, where he is currently being held.
- Iyman Faris: Soon after his arrest, KSM described an Ohio-based truck driver whom the FBI identified as Iyman Faris, already under suspicion for his contacts with al-Qa'ida operative Majid Khan. FBI and CIA shared intelligence from interviews of KSM, Khan, and Faris on a near real-time basis and quickly ascertained that Faris had met and accepted operational taskings from KSM on several occasions. Faris is currently serving a 20-year sentence for conspiracy and material support to a terrorist organization.

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~~(S//~~ ~~NF)~~ **Disrupting plots:** One of the fall-outs of detaining these additional terrorists has been the thwarting of a number of al-Qa'ida operations in the United States and overseas.

- The West Coast Airliner Plot: In the early planning stage of the attacks of 11 September, al-Qa'ida leaders considered an ambitious plot that called for striking both coasts of the United States with as many as ten planes in one operation. Usama Bin Ladin (UBL) reportedly scaled back that plan to the US East Coast only—saving the West Coast for a follow-on attack—and UBL specifically mentioned California as a target to be attacked in the weeks following 11 September, according to detainee reporting. Operatives assigned to this plot were detained during 2002 and 2003, including KSM. Evidence suggests—as I noted earlier—that Hambali was considering pursuing this plot, and his efforts were disrupted by his detention and his cell of operatives.

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- Heathrow Airport plot: Shortly after his capture in March 2003, KSM divulged limited information about his plot to use commercial airliners to attack Heathrow Airport and other targets in the United Kingdom; he discussed this plot probably because he believed that key Heathrow plotter Ramzi bin al-Shibh, who had been detained six months previously, had already revealed the information. KSM speculated that the operation was completely disrupted with the detention of senior al-Qa'ida planner Khallad Bin Attash and Ammar al-Baluchi; a variety of other reporting suggests this assessment is accurate.
- The Karachi plots. Key members of al-Qa'ida's Pakistan network who were detained in 2003 have provided details of the anti-US attacks they were planning in Karachi against the US Consulate, Westerners at the airport, and Western housing compounds.

~~(S//NF)~~) Advancing Our Understanding of Al-Qa'ida: Prior to the capture of Abu Zubaydah in March 2002, we had large gaps in knowledge of al-Qa'ida's organizational structure, key members and associates, intentions and capabilities, possible targets for the next attack, and its presence around the globe. Within months of his arrest, Abu Zubaydah provided details about al-Qa'ida's organizational structure, key operatives, and modus operandi. For example, it was Abu Zubaydah, early in his detention, who identified KSM as the mastermind of 9/11. Until that time, KSM did not even appear in our chart of key al-Qa'ida members and associates.

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- In the years since 9/11, successive detainees have helped us gauge our progress in the fight against al-Qa'ida by providing updated information on the changing structure and health of the organization, in part because they can help illuminate other sensitive collection platforms for us.

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~~(S)~~ ~~(NF)~~ The Army Field Manual (FM 2.22.3) governs the interrogation of large numbers of detainees held by the US Military, who are captured in the course of traditional military hostilities. It is used by U.S. military personnel to help them collect tactical military intelligence from military detainees. Should the CIA be limited only to the interrogation techniques contained in the new Army Field Manual,

would not be sufficient to justify

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continuing a covert CIA detention and interrogation program. The CIA program has proven to be effective after c

~~(TS//~~ ~~/NF)~~ We have been advised there is no/no classified annex describing or authorizing additional techniques. It must be noted that the cover sheet for FM 2.22.3 clearly states the manual is "Approved for public release; distribution is unlimited", hence UNCLASSIFIED. Consequently, we must assume that AQ and other organizations have or can easily obtain a copy and train their people to resist these techniques and the methodology. Hence, we have not only laid out our game plan for the taking but have included the entire playbook as well. As a result, should our interrogation of AQ suspects be limited to the techniques outlined in the field manual, we are left with very little offense and are relegated to rely primarily on defense. Without the approval of EITs to compliment the techniques approved in FM 2.22.3, we have severely restricted our attempts to obtain timely information from HVDs who possess information that will help us save lives and disrupt operations. Limiting our interrogations tools to those detailed in the field manual will increase the probability that a determined, resilient HVD will be able to withhold critical, time-sensitive, actionable intelligence that could prevent an imminent, catastrophic attack. In essence, we would be back to a pre-9/11 posture.

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(U) The Way Forward

~~(TS//~~ ~~NOFORN//~~ CIA currently has no Enhanced Interrogation Techniques (EITs) approved for use with a detainee. Prior to being authorized for use, CIA requires a signed Executive Order, as required by the Military Commissions Act, and a DOJ opinion that each proposed method, whether applied individually or in tandem with others, would comply with applicable US law. Currently, seven EITs are under consideration.

~~(TS//~~ ~~NOFORN//~~) At the entrance to an office in CIA's Counterterrorism Center is a sign and a reminder: "Today's date is September 12th, 2001." We make no apologies for this attitude or for the lawful and legitimate actions we have taken to counter al-Qa'ida. And let me be clear, our enemy is still potent and able to attack us here and overseas.

- While al-Qa'ida has conducted no new attack on the US Homeland, this is not for lack of trying. Al-Qa'ida was within weeks, if not days, of mounting an attack against planes

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flying into the United States from London last summer that could have been more lethal than the 11 September attacks, and its leaders also continue to try to gain access to chemical, radiological, biological, and nuclear weapons.

- Al-Qa'ida's only obstacle to attacking us again is our continued assertive effort to stop them. CIA's detention and interrogation program remains critical to our ability to sustain this effort and protect the American people from another attack. As the President stated in his 6 September 2006 speech to the nation on The Creation of Military Commissions to Try Suspected Terrorists, "... the most important source of information on where the terrorists are hiding and what they are planning is the terrorists, themselves."

Thank you.

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(S//NF) [] On 19 February 2004 the DCI sent a notification to the Hill on this case.

(S//NF) [] Also, another note concerning the criminal referral was subsequently sent to the Hill.

(C//NF) [] SAC/DEF also should have been informed of the criminal referral, not just the intelligence committees.

(C//NF) [] We are continuing to diligently work this case with DOJ and the military. More interviews are scheduled, some of which will require additional trips to Iraq.

(U) [] Who is conducting the criminal investigation?

(U) [] The Terrorism and Violent Crimes section at DOJ.

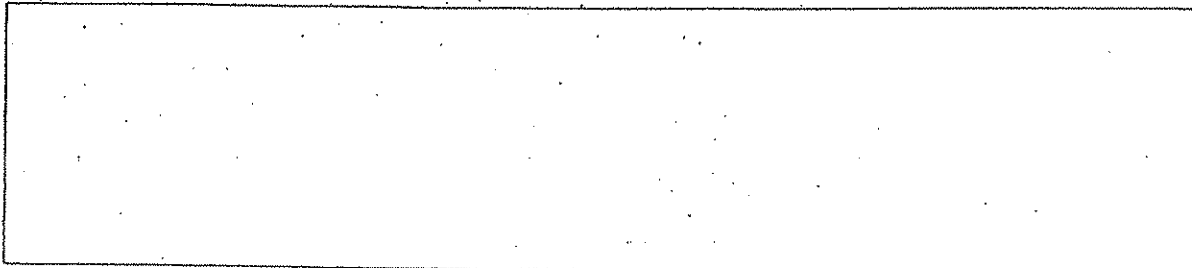
(U) [] Have there been arrests? A grand jury?

(U) [] I can't say.

(S//NF) The [] base outlined by [] was that of former Iraqi General 'Abid Hamad Mahawish al-Mahalawi, who was captured near al-Qa'im in western Iraq by the military. While under military custody al-Mahalawi died, and his death was ruled a homicide. Army CID has the lead on the investigation, and has asked for help. At some point prior to his death, [] stated, [] were in the presence of [] working with Army CID to investigate allegations of mistreatment of him by [] prior to his death. This case was also reported in the 29 January 2004 congressional notification that reported the al-Jamaidi case. A formal crimes report on this case has not yet been submitted.

(S//NF) [] Can you state what was the precise cause of Mahawish's death?

(U) [] No, I cannot comment due to the ongoing investigation.



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[Redacted]

(U) [] What is Army policy on punishment for mistreatment?

(U) [] There's a range of punishments.

(U) [] The ultimate penalty is the death penalty, under federal statutes.

(U) [] Who determines if detainees are under the Geneva Convention?

(U) [] The Department of Justice.

(U) [] Are Agency employees under the Geneva Convention?

(U) [] This is not our area of expertise--

[Redacted]

~~(S//NF)~~ [] In the case of the first death,

~~(S//NF)~~ [] No, he was held by the military. We believe he was involved in killing Americans. The military kicks the doors, they hold the detainees..

(U) [] Whose rules are followed in interrogations?

[Redacted]

(U) [] What accounted for these lapses?

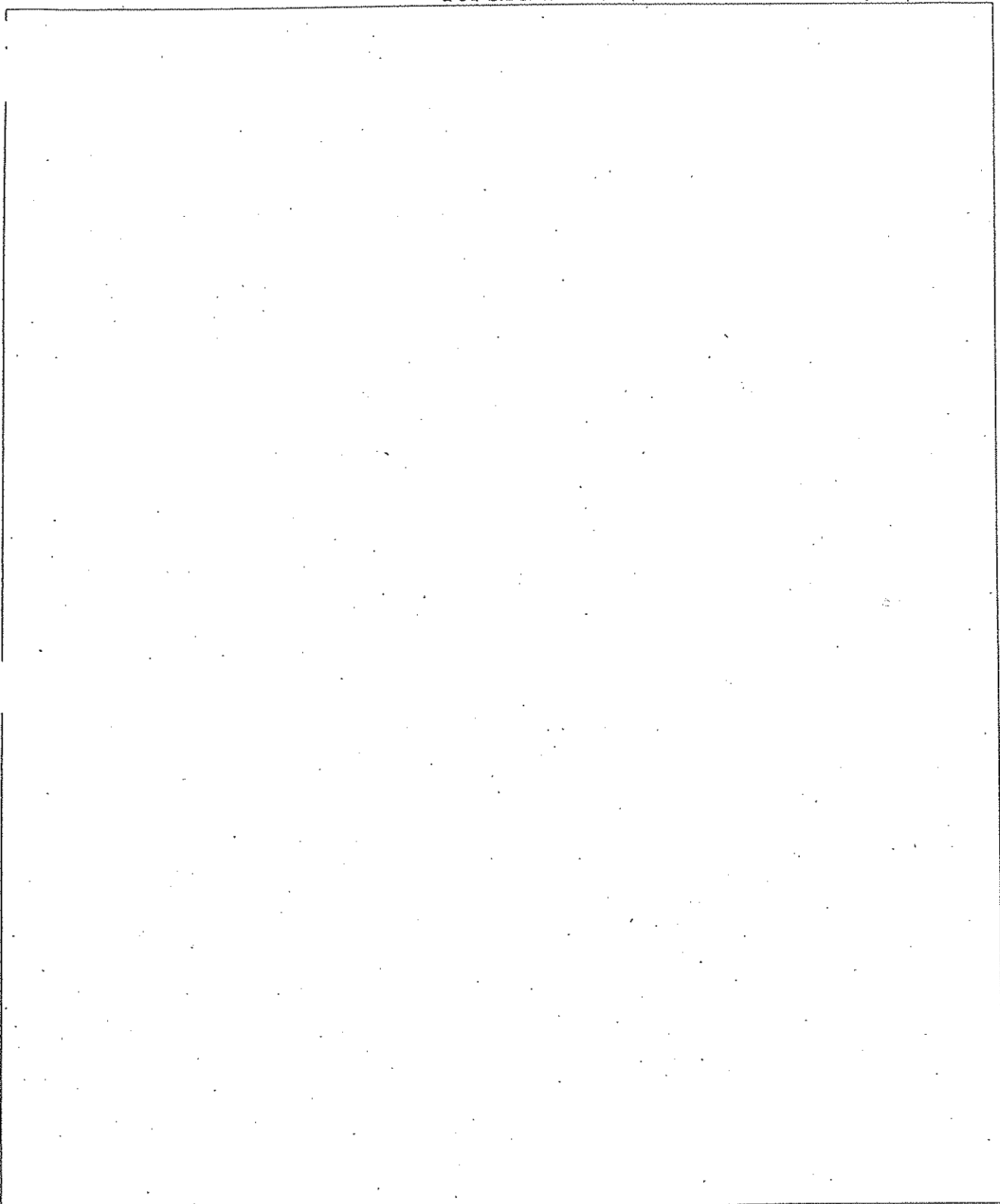
[Redacted]

~~(S//NF)~~ [] How could they not know the rules?

[Redacted]

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[Redacted]

(C/NF) [Redacted] We are trying to obtain the names of all of those individuals subjected to delayed registration to trace them.

(U) [Redacted] The press says they were "prepping" them for interrogation.

(C/NF) [Redacted] We had never heard this before, and we are looking in to it.

(C/NF) [Redacted]: General Ryder said he is looking into it and thus far he cannot substantiate it.

(U) [Redacted])

(C/NF) [Redacted] No. The accountability review board was stood up in January 2004. It's work should be done by the end of this month.

(C/NF) [Redacted] The Director has decided to expand it's review.

(U) [Redacted] What are the distinctions between Iraqi and al-Qaida prisoners?

(C/NF) [Redacted] [Redacted]

(C/NF) [Redacted] The DOJ has ruled that Iraqis fall under the Geneva Convention.

[Redacted]

Liaison Officer
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Distribution:
1-DAC (official record copy)
1-OCA (chrono)

Follow-up Action Items:

Additional Information:

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PRINTED: Friday, August 19, 2005
AT: 11:08

CODEWORDS: NF

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Memorandum for the Record

KEY: C/2004-00555

EVENT: CMTE BRIEFING-CLOSED **DATE:** 05/06/2004 **TIME:** 10:00 **STATUS:** COMPLETED
PLACE: H405 CAPITOL
FOR: HPSCI
SUBJECT: IRAQ DETAINEES

ATTENDEES:

ASSOCIATION

NAME

ROLE

CHIEF/NE

[Redacted]

BRIEFER

D/OCA

MOSKOWITZ, STANLEY

SUPPORT

DC/NE

[Redacted]

BRIEFER

DCI/OCA

SUPPORT

DO/NE

BRIEFER

HPSCI

GOSS, PORTER [R-FL]

CHAIRMAN

HPSCI

BEUREUTER, DOUG

REP

HPSCI

BOEHLERT, SHERWOOD L [R-NY]

REP

HPSCI

BOSWELL, LEONARD [D-IA]

REP

HPSCI

BURR, RICHARD M. [R-NC]

REP

HPSCI

COLLINS, MAC

REP

HPSCI

CRAMER, ROBERT (BUD) [D-AL]

REP

HPSCI

CUNNINGHAM, RANDY (DUKE) [R-CA]

REP

HPSCI

ESHOO, ANNA [D-CA]

REP

HPSCI

GIBBONS, JAMES (JIM) A [R-NV]

REP

HPSCI

HARMAN, JANE [D-CA]

REP

HPSCI

HASTINGS, ALCEE L. [D-FL]

REP

HPSCI

HOEKSTRA, PETER [R-MI]

REP

HPSCI

LAHOOD, RAY [R-IL]

REP

HPSCI

REYES, SILVESTRE [D-TX]

REP

HPSCI

RUPPERSBERGER, DUTCH [D-MD]

REP

HPSCI

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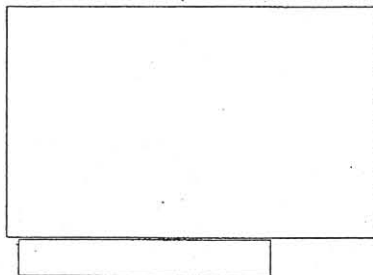
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BRIEFER

Executive Summary:

In this closed briefing, U.S. military representatives were called by HPSCI to brief members on its detainee operations in Iraq, in reaction the widespread media coverage and controversy over alleged abuses of detainees there, especially at Abu Ghraib prison in Baghdad. CIA was invited by HPSCI to attend the briefing, and did so as backbenchers, responding to only a couple of questions posed by members as outlined below. The lead representatives for the military were Lieutenant General Keith Alexander, G2, Major General Don Ryder, Army Provost Marshall and Commander, Criminal Investigation Command, and Major General Michael Marchand, Deputy Judge Advocate General of the Army.

Summary Text:

(U) (Note: Information set forth herein is not a verbatim transcript of statements made at the briefing. Rather, it is a good faith effort to set down for the record information that was conveyed at the briefing.)

(U) Representative Jane Harman opened the briefing by commenting that she found the published photos of activities at Abu Ghraib prison to be deplorable. Ms. Harman also said that she was distressed that HPSCI had not been informed of the matter until the day before. In doing so she noted that the DCI had the day before made clear that as far as could be determined the CIA was not involved in any of the activities being reported about Abu Ghraib in the open media. Ms Harman further expressed her desire to "have it all," i.e. all information on what happened at Abu Ghraib, and her determination that even those at the highest levels as appropriate must be held accountable.

(U) General Alexander read a prepared statement (a copy of General Alexander's statement provided to SSCI the day before on 5 May 2004, which is substantially the same as his statement at this briefing, is attached) and in reply asserted that the U.S. Army thinks that what happened to detainees at Abu Ghraib is totally reprehensible, and not condoned by the Army.

(U) The remainder of the briefing was largely constituted of questions and answers, as outlined below:

(U) Goss: We and other committees should have been briefed earlier on this; there is therefore an aspect to this of being ambushed. We try to be transparent about our concerns, and we expect to receive the same from you in return. This committee's principal interest is intelligence, and the use of interrogation as a tool to obtain intelligence. It is not clear if the mistreatment of detainees was gratuitous, or if sanctioned but unacceptable.

(U) Marchand: We are guided by AR 15-6. Typically, a report of misconduct would be reported up the chain of command; this kind of an investigation does not automatically go up to the Secretary.

(U) Goss: What is of relevance here is the alleged incidents--we should have been advised.

(U) Alexander: In response to allegations in the Taguba report that military intelligence personnel were involved, we did a "procedure 15"--on the CID side, there are no charges or substantiation of charges against military intelligence personnel.

(U) Ryder: There is however "titled" or credible information that they were involved.

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(U) Goss: Let's get back to my basic question. Were the abuses part of interrogator activity?

(U) Ryder: There is no evidence or indication that anyone in intel directed it. These acts appear to have been committed by undisciplined soldiers who lost their values and did not understand what they were doing on a midnight shift.

(U) Goss: Do you think it was gratuitous?

(U) Ryder: Yes.

(U) Goss: If these activities were sanctioned or tolerated that would be of huge importance. That is very important to know because then corrections would be needed. Intelligence is a tool that we need. We know that there have been isolated instances. Do we have widespread problems?

(U) Ryder: Any case is inappropriate.

(U) Goss: Are there dozens of such cases?

(U) Ryder: There is a total of 35 known cases. From December 2002 to today, 25 deaths, 10 others are soldier misconduct. Of the 25 deaths, 14 are undetermined or natural causes. One is justified manslaughter, with a soldier following ROE. There are two ongoing homicide investigations. Ten other cases of physical abuse, and two cases of sexual assault against females.

(U) Goss: In these cases, were interrogations underway?

(U) Alexander: In two cases, interrogator personnel in Afghanistan may be involved, based on "titled" information--no charges have been filed yet.

(U) Goss: Were these cases of gratuitous acts, or part of assigned procedures on interrogation?

(U) Ryder: In eight cases there may have been abuses during interrogation.

(U) Goss: If these actions were sanctioned, that will be important.

(U) Harman: This is a 10 in the Richter Scale. This is totally unsatisfactory and I am disgusted. It is not satisfactory to tell me about rules and procedures. We need to know a lot more. The Taguba Report said interrogators asked the guards to set up favorable conditions for interrogations. General Miller from Guantanamo went to Baghdad in August 2003 and did a report--did he report any abuses?

(U) Alexander: No abuses were reported in the Miller report. We are not shirking our responsibility. In describing rules and procedures we want to clarify reporting channels. We take these matters very seriously.

(U) Harman: Who read and reacted to the Taguba Report? Why was the reaction so slow?

(U) Marchand: On 13 January 2004 a soldier came forward. On 14 January the process started, we started to investigate the prison. Most of us were aware by 15 January. Six of the soldiers already have charges presented to them. Three have been referred to trial. That is moving pretty quickly.

(U) Harman: I remain unsatisfied with how this has been handled. We should have been briefed on the 14th.

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(U) Bereuter: There is nothing more damaging to U.S. image and interests. There has to be a better mechanism to get to top levels of attention. Sergeant Davis said nothing was ever in writing for Wings 1 A and B -- they were in MI hands. Also, there were ghost detainees hidden from the Red Cross and other agencies. This suggests it was all part of a procedure.

(U) Alexander: To date, there has been no other corroborating evidence. We are still looking for who gave those instructions.

Ryder: There is no evidence that leads to those soldiers' statements. Those soldiers were trained. They had obligations to report if they saw something.

(U) Bereuter: Why was it not immediately reported up the chain?

(U) Alexander: I can't say. Your logic is sound.

(U) Hastings: Who were the contractors responsible to?

(U) Alexander: The practice was to have two people in the room at all times, including a 97E from the 205th MI Brigade.

(U) Hastings: Can the military prosecute the contractors?

(U) Marchand: To date, no.

(U) Hastings: What is meant by "set the conditions?"

(U) Alexander: This means the rules and procedures to be followed in interrogations.

(U) Hastings: Who in OSD is responsible for formulating detainee policy?

(U) Alexander: Dr. Cambone.

(U) Hastings: In the future, you need to be mindful against just low ranking soldiers taking the heat. If we were in Japan, you Generals would be falling on your swords. At some point, seniors need to step up.

(U) Boehlert: Of the 35, anything else?

(U) Ryder: That's it.

(U) Boehlert: Can we be provided with narratives for all of the cases?

(U) Ryder: Yes.

(U) Boehlert: Did interrogations usually involve military and civilian interrogators?

(U) Alexander: Lieutenant Colonel Jordan ran interrogations. There was a number of teams. For each interrogation, there was one civilian and one military.

(U) Boehlert: Were there ROE?

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(U) Alexander: Yes.

(U) Boehlert: Is the Justice Department involved?

(U) Marchand: We are still looking at what the civilians did.

(U) Boehlert: Shouldn't Justice be there?

(U) Alexander: I'm not sure they're not.

(U) Boehlert: What have our coalition partners said?

(U) Alexander: Other facilities are run by other countries. The coalition puts out ROE. We are not a part of the British investigations.

(U) Boehlert: I hope you can sense the strong feelings here of outrage and indignation.

(U) Boswell: Words are not adequate to express--I second my colleague's comments. There are 15-20,000 contractors in Iraq. Are the contractor interrogators former military?

(U) Alexander: Yes, former 97E's. Many have served 20 or more years in the military. There are 4,200 linguists.

(U) Boswell: We may need to look at the contractor situation, colleagues.

~~(C/NF)~~ Alexander: 548 97E's are on active duty. We need to increase them to 1,800--we recognize this issue.

(U) Gibbons: This is a great disappointment. In reading the Taguba Report, it is unclear to me if we have military police or military intelligence in command. This is a big concern. There was poor training of civilian detention guards. Many failures throughout the chain of command. Can you document changes in training since these disclosures?

(C) Alexander: Some changes have occurred in the middle. General Sanchez put General Pappas in charge of the facility in November. Mobile training teams have been sent out, additional training on interrogation operations.

(U) Gibbons: What about interrogation ROE? When put in place?

(U) Alexander: Those are standard.

(U) Gibbons: So everyone knew their responsibility. Somehow there is a failure in command.

~~(C/NF)~~ Ryder: There are three kinds of MP's, all are trained how to treat people early on, in basic and advanced individual training. They knew they had the authority and obligations. There was additional training by training teams of 31E's--they went to Abu Ghraib. Soldiers there have all been retrained. What you see in the paper, it is a discipline, small unit issue.

(U) Eshoo: I am a proud Roman Catholic. The Catholic scandal has comparisons here. The Bishops have given explanations--tin symbols. How could a human being ever allow or condone what happened? Who in the chain of command spoke up directly to the top? General Alexander, how is this "blurred?" The Taguba Report said the MP's set the conditions--this sounds dark to me--what does it mean? Also, you say it is a small unit leadership issue - how? What recommendations did General Miller provide in October 2003? Can we get a copy of the Miller report? On 1

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ly, who takes over the prisoners?

(S/AF) Ryder: Regarding the small unit comment: those acts were on the watch of a staff sergeant, the lowest level of unit. The military depends upon its NCO's. They are the backbone of the Army.

(U) Eshoo: I appreciate that. But my sense is that no one was taken enough by the abuses to say "oh my God," and to understand the implications for our country.

(U) Alexander: We understand. When I was in charge of INSCOM, I was responsible. If there was an offense, there was an investigation. Here, there was an investigation.

(U) Marchand: I believe I heard General Pace at the press conference with the Secretary of Defense say he heard about it on 15 January.

(S/AF) Alexander: On "setting conditions," by that we mean the procedures and incentives used with detainees in interrogations. You have them listed on paper (note: copy not obtained). There is a symbiotic relationship between MP's and intelligence in these situations that is important.

(C/AF) Ryder: On 1 July, the Iraqis will take over the penal system. We will continue to handle the security detainees.

(U) Cunningham: Other scandals. The pages here in Congress. Enron. The Catholic Church. In all these cases, the focus isn't on the good but on the bad. There is a stain on the U.S. as a result of this and that is what has us so upset. Leadership is at the point of contact. Here, they seem to have lost attention to detail. Bureaucracies tend to prevent immediate action. There are exceptions to the chain of command. When I was a wing commander in the military, I told my people to go to me directly and speedily in certain cases. They included sexual harassment. Racial prejudice. Spouse and child abuse. Drug abuse. In other words, any issues that could prove critical to the reputation of the unit, the service or our country. Twice, I shut down my squadron to address such issues. We are upset by the failure here to notify.

(U) Harman: Hear, hear!

(U) Holt: [redacted]

(C/AF) [redacted]

(U) Holt: The military has many types of contractors. What is the chain of command for these people? Does everybody who associates with prisoners have training? Can we see the training manuals? Are your investigations of deaths different [redacted]

(S/AF) [redacted] We work closely together. In the case of one of the deaths, the military has primacy and we are assisting the investigation. In this case, some Agency personnel had exposure to the deceased.

(U) Holt: Are CIA personnel involved in military investigations and vice versa?

(C) Ryder:

(U) Holt: Same for CIA?

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(U) I believe so. The same nexus of coordination for all.

(U) Hoekstra: Who can talk to us about all of the other allegations? Mr. Chairman I recommend we get them here.

(U) Alexander: General Faye is looking at all of those allegations now.

(U) Hoekstra: Are all of these investigations alleging MI involvement - are you following up?

(C/NF) Alexander: Yes.

(C/NF) Ryder: Some have invoked their rights.

(U) Ruppertsburger: Are the videos more explicit?

(U) Ryder: I have not seen them - they are being transported as evidence.

(U) Ruppertsburger: Have you seen General Miller's report?

(U) Alexander: I saw it. I'm not sure it went to the Secretary of Defense. It went to General Sanchez, theater, OSD and Dr. Cambone.

(U) Ruppertsburger: Were any CIA officers involved in directing MP abuses?

(U) Alexander: Not to my knowledge.

(C/NF) Ruppertsburger:

(U) Alexander: I have no knowledge of that.

(U) Ruppertsburger: All of this was at the small unit level, all reservists?

(U) Ryder: Yes, all reserve. Their mission was this job.

(U) Ruppertsburger: My office was contacted by constituents on this matter in January. I forwarded the information and then heard nothing. Do you have any recommendations on how to fix the PR problem?

(U) Alexander: I'd like to take that for the record.

(U) Ruppertsburger: When can you have a response?

(U) Alexander: Monday or Tuesday of next week.

(U) Marchand: No soldier anywhere could believe that those actions represent the norm. Nevertheless, we will do more training.

(U) Alexander: There is no defense of the indefensible.

(U) Hastings: Can we get the Miller Report?

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(U) Collins: From the time you received the report, how long was it before orders were issued?

(U) Alexander: The next day.

(U) Collins: What was the window of activities?

(C/NF) Ryder: Mid or end of September 2003 to early December 2003, it appears.

(U) Collins: So this was just after Miller's visit, which resulted in pressure to step things up. What was the date to step things up? The date of Saddam's capture?

(C/NF) 10 December 2003.

(U) Collins: What is emotional hate?

(C/NF) Marchand: This is when interrogators act that way to influence prisoners.

(U) Collins: What were the new results of these stepped up procedures?

(U) Alexander: I don't know.

(U) Goss: So what we have here are allegations made by some that the MI told them to do it. Is that about it?

(U) Alexander: Yes.

(U) Goss: Do we have necessary professional training for interrogators in the Army?

(U) Alexander: I believe that we do have the training and procedures in place.

(C/NF) Goss: Guantanamo was under the glass, and turned into a success story. General Miller went to upgrade professionalism--orders went out after he came back. Is anyone policing the abuses? We will be looking further into this.

(U) Harman: This has been a useful briefing. Representative Cunningham gets a gold star for the way he expressed it. Moral outrage seems to have been missing. There was an obligation to notify this committee that was breached. We were in Baghdad a month after the pictures were obtained--nobody out there said anything.

(U) Holt: The fact that we were not notified says that it was not seen as important. How can we distinguish between the contributions of Guantanamo and Abu Ghraib? I went to Fort Dix to see interrogator training there and was impressed. Should there be greater use of video surveillance?

(C/NF) Alexander: Great idea. We use it at Guantanamo.

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02/14/05 08:43 AM

To:

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Subject: Phone call from NSC/LGL re NY Times article

I was called this morning by NSC Legal (who was calling at request of WH Counsel) in response to NY Times article over the weekend that SSCI would hold hearings on CIA's detention/interrogation of terrorists. NSC Legal (Dan Levin) asked whether any such hearing were scheduled. I told him I was unaware of any such hearings and that weekend reporting caught me by surprise. I also referred him to the Wolf Blitzer transcript (in todays Media Highlights) that indicated that SSCI was not planning to "investigate" but to "monitor" any CIA activities.

Mr. Levin asked me to check and get back to him whether SSCI has actually asked for any hearing. If they have not yet, but do at some point in the future, he would like to know soonest.

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PANEL II OF A HEARING OF THE SENATE JUDICIARY COMMITTEE SUBJECT:
NOMINATION OF ALBERTO GONZALES TO BE THE ATTORNEY GENERAL OF THE
UNITED STATES CHAIRED BY: SENATOR ARLEN SPECTER (R-PA)
WITNESSES: JOHN HUTSON, PRESIDENT AND DEAN, FRANKLIN PIERCE LAW
CENTER; HAROLD HONGJU KOH, DEAN, YALE LAW SCHOOL LOCATION: 216
HART SENATE OFFICE BUILDING, WASHINGTON, D.C. TIME: 5:17 P.M.
EST DATE: THURSDAY, JANUARY 6, 2005

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SEN. SPECTER: Under the committee rules we have one
week for the submission of written questions.

I'd like to call our next witnesses, a panel of Dean
Hutson, Mr. Johnson and Dean Koh.

Our first witness, in alphabetical order, is Dean John
Hutson.

SEN. EDWARD KENNEDY (D-MA): Mr. Chairman, just while
the witness is coming, can I extend a warm welcome to Dean Koh -
- the whole panel -- but Dean Koh has a brother who ran the
Public Health Service in Massachusetts and is -- was just
under -- I would say under Republican governors, but his
outreach was extraordinary, and his leadership was just
exemplary. And he's just a very highly regarded and respected
member of our Massachusetts community. And so I wanted to I am
sure the good dean has seen him more recently than I have, but I
just wanted to point out that service and the commitment to the
public good runs long and deep in this family, and I appreciate
the chance to extend a warm welcome.

SEN. LEAHY: If I could also note for the record too, Mr. Chairman, Dean Koh's daughter Emily is here too, a freshman at Yale. And I thought some day in the Koh archives they'll go back to this record and they'll be able to see her name is in there.

SEN. SPECTER: Well, thank you very much, Senator Kennedy and Senator Leahy, for those comments.

As I have started to outline, our first witness alphabetically is Dean John Hutson, dean and president of the Franklin Pierce Law Center in Concord, New Hampshire. Dean Hutson has a record as a rear admiral, graduate of the University of Minnesota Law School, and has had a long and distinguished naval career, including being the judge -- Navy's judge advocate general during the administration of President Bill Clinton.

We're allotting 10 minutes for the testimony of each of you gentlemen, and then to be followed by questioning from the panel. Dean Hutson, we look forward to your testimony, and the floor is yours.

DEAN HUTSON: Thank you, Mr. Chairman, Senator Leahy, Senator Kennedy, Senator Cornyn. Thank you for inviting me. I request that my written statement be made a part of the record.

SEN. SPECTER: Your statement will be made a part of the record in full, as will statements of Dean Koh and Mr. Johnson.

DEAN HUTSON: Thank you, sir.

As Americans, we have been given many gifts by our creator and our forebearers. We hold these gifts in trust for our progeny and for mankind generally. One of these gifts is great military strength. This military prowess is enhanced by our legacy of strong advocacy for human rights for all human beings by virtue of their humanity alone, and by our long history of unwavering support and adherence to the rule of law.

These gifts come with a string attached. Like all gifts, there's a responsibility to husband them. We must not squander them. Rather, we must nurture them, refine them and pass them on in even better condition than they were given to us. Generations of Americans have understood this responsibility and have accepted it. In the wake of World War

II, Truman, Eisenhower, Marshall, Senator Bentsen and others fulfilled their part of that sacred trust. They had seen the horror of war, a horror that few of us have seen, but have only read about. They responded with programs like the Marshall Plan, and with international commitments like the Geneva Conventions. I believe that the Geneva Conventions are part of our legacy not unlike the Bill of Rights, the Fourteenth Amendment, and Brown v. Board of Education. They demonstrate the goodness of the United States. They also demonstrate our strength and our military might. Even in the midst of that most awful of human endeavors -- war -- we should treat our enemies humanely, even when we have captured them. To do so is a sign of strength, not weakness. To not do so is a sign of desperation.

I come here to speak in opposition of the confirmation of Judge Gonzales, because he appears not to understand that. He finds the Geneva Conventions to be an impediment, a hindrance to our present efforts, quaint and obsolete in important respects. His analysis and understanding of the Geneva Conventions, which I discuss in detail in my written statement, is shallow, short-sighted and dangerous. It's wrong legally, morally, diplomatically and practically. It endangers our troops in this war and future wars, and it makes our nation less safe.

My 28 years in the Navy tells me that his analysis of the Geneva Conventions and their applicability to the war in Afghanistan and the war on terror is particularly disturbing, because it indicates an utter disregard for the rule of law and human rights. Those are the reasons American fighting men and women shed their blood, and why we send them into battle. But if we win this battle and lose our soul in the process, we will have lost the war, and their sacrifices will have been for naught.

The Geneva Conventions have protected American troops from harm for many years. Our forces are more forward deployed than any other nations in terms of numbers of deployments, locations to which they're deployed, and the number of forces deployed. This has been the case since World War II, and will continue to be true. That's because -- because of that, there is no country for which adherence to the rule of law and to the Geneva Conventions is more important than it is to the United States. It's our troops that benefit. Original U.S. proponents of the conventions saw them as a way to protect U.S. troops from the enemy, not the enemy from U.S. troops. It's good for our

military if we -- it's not good for our military if we now throw them over the side just because some people believe they're inconvenient to the present effort. This is only the present war. It's not the last war, it's not even the next to last war.

Another important aspect of the Geneva Conventions is that it prepares us for the peace that will ensue. We can't so alienate our allies that they won't fight alongside us again. Nor should we embitter our enemies so that they will fight on longer and harder than they otherwise would, or be unwilling to relent, even though their cause is hopeless. Abrogating the Geneva Conventions imperils our troops and undermines the war effort. It encourages reprisals. It lowers morale.

I believe that the prisoner abuses that we have seen in Iraq, as well as in Afghanistan in Gitmo, found their genesis in the decision to get cute with the Geneva Conventions. At that point it became a no-holds-barred unlimited warfare -- not just in Abu Ghraib, but around the country.

And I remind the committee that we're conducting 40 or more death investigations in the course of the war on terror for detainees at the hands of their U.S. captors.

Our military doctrine has long been -- and I quote from the Department of the Army pamphlet -- "the United States abides by the laws of war in spirit and letter. Cruelty on enemy prisoners is never justified."

Twenty-eight years in the military taught me there are two indispensable aspects to military good order and discipline. They are the chain of command and the concept of accountability. Accountability means that you can delegate the authority to take an action, but you may never delegate the responsibility for that action. Young fresh-caught judge advocates know that government lawyers can't hide behind their advisor role to evade accountability for the actions that they recommend. The value of the chain of command is that what starts at the top of the chain of command drops like a rock down to the bottom of the chain of command, and subordinates execute the orders and adopt the attitudes of their superiors in the chain of command. It has always been thus, and that's the way we want it to be.

Government lawyers, including Judge Gonzales, let down the U.S. troops in a significant way by their ill-conceived advice. They increased the dangers that they'd face. At the top of the chain of command, to coin a phrase that we've heard

in the past, they set the conditions so that many of those troops would commit serious crimes. Nomination to attorney general is not accountability.

Only recently, in the face of the confirmation process, has the administration attempted to undo the damage. I have three thoughts on that. One is that I applaud the administration for doing that. The second is that it's a little late. We've had several years under the other policy. And last is that I don't see this as an exoneration of Judge Gonzales; rather, it's somewhat of an indictment. It's an acknowledgement of error.

Damage has been done, but it's never too late to do the right thing. If Judge Gonzales goes on to be the chief law enforcement officer of the United States after involvement in this, we will have failed to undo a wrong, but will have only exacerbated it. We're at a fork in the road. Somewhat ironically, this nomination has given the United States Senate an opportunity to tell the world what you think about those issues. What you do here will send a message, good or bad, to the world, and importantly to American armed forces and fighting men and women. Thank you, Mr. Chairman.

SEN. SPECTER: Thank you very much, Dean Hutson. We turn now to Mr. Douglas Johnson, executive director of the Center For Victims of Torture in Minneapolis -- previously served as a consultant to the human rights organization in Latin America, and to UNICEF and to the World Health Organization. We welcome you here today, Mr. Johnson, and look forward to your testimony.

MR. JOHNSON: Thank you, Mr. Chairman, and members of the committee, for the opportunity to be here to testify. It's a particular pleasure to testify to you, Senator Specter, because you were the primary champion of the Torture Victims Protection Act, which a couple of American clients of the Center for Victims of Torture worked with you on that, and are great admirers of your commitment to human rights. The Torture Victim Protection Act has been welcomed by human rights advocates around the world as a model of a new tactic in the arsenal of torture prevention.

The Center for Victims of Torture was established in 1985 as the first specialized institution in the United States to provide rehabilitation to victims of government-sponsored torture, and to work for abolition of torture. As CVT's

executive director for 16 years, I offer you our expertise and experience about the realities of torture.

It is CVT's policy, however, not to comment on the qualifications of specific individuals for government posts. But I think it's appropriate to be here, because in the general global human rights efforts and global human rights campaign there's a particular focal point on the minister of justice or the attorney general of countries who have at least three important roles in the prevention of torture. First is to establish policies and procedures that diminish the incentive to use torture, such as regulating the role that confessions play in the overall administration of justice. Secondly to prosecute or sanction torturers or persons who ill-treat detainees, and third to eliminate both the reality and the appearance of impunity among interrogators. These roles require a clear understanding of what torture is and why it is wrong, as well as very practical ideas on how to prevent its use.

I just want to note that the position against torture has been a very strong bipartisan effort by this Congress, and by administrations for many years. And one very notable measure of that was that the convention against torture was passed by this Congress and ratified, and no other human rights treaty has been ratified so promptly. That's an important measure because torture has a very human cost. The Center for Victims of Torture has provided care for more than 7,500 people from 60 different nations. Although there are difficult physical symptoms with the form of torture they endured, there's a remarkably common pattern of profound emotional reactions and psychological symptoms that transcends cultural and national differences. Its effects can include, but are not limited to, besides organ failure and death, emotional numbing, depression, disassociation, depersonalization, atypical behaviors such as impulse control problems, and high risk behavior, psychosis, substance abuse, neurophysiological impairment such as the loss of short-term and long-term memory, perceptual difficulties, the loss of ability to sustain attention or concentration, and the loss of the ability to learn. The main psychiatric disorders associated with torture are post-traumatic stress disorder and major depression.

While it is important to recognize that not everyone who has been tortured develops a diagnosable mental disorder, it is equally important to recognize that for many survivors the symptoms and after effects of torture endure for a lifetime.

Torture is said to be one of the most effective weapons against democracy, as survivors usually break their ties with their community and retreat from public life. And in that regard I would like to acknowledge the presence of a number of victims of torture here in the room today, and the organization they have pulled together called TASK, which represents a counter to that often frequent retreat from public life.

And the memoranda written by and also apparently solicited by White House Counsel Gonzales are replete with legal errors, which the other two members of the committee will describe, but also we believe with political miscalculations and moral lapses. They disregard the human suffering caused by torture and inhumane treatment. They are based on faulty premises, even fantasies, about the benefits and payoffs of torture. What is striking about all of these memorandum is the lack of the recognition of the physical and psychological damage of torture and inhumane treatment.

The assumption behind the memoranda, and particularly the Bybee memorandum and the later report of the working group on interrogation, is that some form of physical and mental coercion is necessary to get information to protect the American people from terrorism.

These are unproven assumptions based on anecdotes from agencies with little transparency. But they have been popularized in the American media by endless repetition of what's called the ticking time-bomb scenario. Based on our experience at the center with torture survivors and understanding the systems in which they have been abused, we believe it is important that these discussions not be shaped by speculation but rather through an understanding of how torture is actually used in the world. From our understanding, we have derived eight broad lessons, and those are first of all torture does not yield reliable information. Secondly, torture does not yield information quickly. Third, torture has a corrupting effect on the perpetrator. Fourth, torture will not be used only against the guilty. In fact, fifth, torture has never been confined to narrow conditions. Once it's used, it broadens. Psychological torture results in long-term damage. Stress and duress techniques are forms of torture. And finally, number eight, we could not use torture and still retain the moral high ground.

The cost to America of abandoning strict opposition to all forms of torture are far-reaching, from the disillusionment