human rights *first*
THE NEW NAME OF
LAWYERS COMMITTEE FOR HUMAN RIGHTS

Headquarters
333 Seventh Avenue
13th Floor
New York, N.Y. 10001
Tel: (212) 845-5200
Fax: (212) 845-5299

Washington D.C. Office
100 Maryland Avenue, N.E.
Suite 500
Washington, D.C. 20002
Tel: (202) 547-5692
Fax: (202) 543-5999

www.HumanRightsFirst.org

July 15, 2004

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Rumsfeld:

I am writing to inform you of our recent report *Ending Secret Detentions*, a copy of which is enclosed, and to urge that you to take steps immediately to allow regular, unrestricted access by the International Committee of the Red Cross (ICRC) to all US-held prisoners being detained abroad, including those being held at undisclosed locations. In addition, we urge that you report to Congress on the numbers and locations of these prisoners, and inform their families as to their whereabouts and legal status.

As our report details, there are credible reports dating as far back as December 2002 that the United States is holding prisoners not only at the military bases in Guantanamo Bay, Cuba, and Bagram, Afghanistan, but also in: Jalabad, Asadabad and Kabul in Afghanistan; Kohat and Alizai in Pakistan; the U.S. Naval Base on Diego Garcia; on U.S. military ships, including the USS Bataan and the USS Peleliu; and at other undisclosed locations.

The U.S. Government has refused to confirm or deny whether it is holding individuals secretly and without disclosure in these locations. But your recent admission that on October 31, 2003, you ordered a prisoner to be secretly detained without providing notification of his detention to the ICRC, along with the acknowledged practice of holding certain detainees in "undisclosed locations," reinforces concerns that there are many other prisoners being held secretly in U.S. custody around the world.

In January, the ICRC formally requested that it be given access to all US-held detainees abroad, including those held at undisclosed locations. Today, more than six months later, the United States has still failed to provide ICRC access to these prisoners.

Secret detentions and disappearances facilitate torture and have long been the hallmark of despotic regimes. These practices are illegal and unworthy of the United States. I urge that you grant immediate and unfettered access by the ICRC to all US-held

prisoners, inform the families of those being held of their whereabouts and their legal status, and report to Congress on the numbers and locations of all US-held prisoners being detained abroad.

I appreciate your prompt attention to this matter and look forward to hearing your response to this letter and our report.

Sincerely,

Elisa Massimino

Elisa Massimino
Washington Director

Enclosures

human rights *first*
THE NEW NAME OF
LAWYERS COMMITTEE FOR HUMAN RIGHTS

Headquarters
333 Seventh Avenue
13th Floor
New York, N.Y. 10001
Tel. (212) 845-5200
Fax: (212) 845-5299

Washington D.C. Office
100 Maryland Avenue, N.E.
Suite 500
Washington, D.C. 20002
Tel: (202) 547-5692
Fax: (202) 543-5999

www.HumanRightsFirst.org

July 16, 2004

Deputy Secretary Paul D. Wolfowitz
Office of the Secretary of Defense
1000 Defense Pentagon
Room 3E944
Washington, DC 20301

Dear Deputy Secretary Wolfowitz:

I am writing to inform you of our recent report *Ending Secret Detentions*, a copy of which is enclosed. Human Rights First urges that you do all you can to ensure to regular, unrestricted access by the International Committee of the Red Cross (ICRC) to all US-held prisoners being detained abroad, including those being held at undisclosed locations. In addition, we urge that the Administration report to Congress on the numbers and locations of these prisoners, and inform their families as to their whereabouts and legal status.

As our report details, there are credible reports dating as far back as December 2002 that the United States is holding prisoners not only at the military bases in Guantanamo Bay, Cuba, and Bagram, Afghanistan, but also in: Jalabad, Asadabad and Kabul in Afghanistan; Kohat and Alizai in Pakistan; the U.S. Naval Base on Diego Garcia; on U.S. military ships, including the USS Bataan and the USS Peleliu; and at other undisclosed locations.

The U.S. Government has refused to confirm or deny whether it is holding individuals secretly and without disclosure in these locations. But the recent admission by Secretary Rumsfeld that he ordered a prisoner to be secretly detained without providing notification of his detention to the ICRC, along with the acknowledged practice of holding certain detainees in "undisclosed locations," reinforces concerns that there are many other prisoners being held secretly in U.S. custody around the world.

In January, the ICRC formally requested that it be given access to all US-held detainees abroad, including those held at undisclosed locations. Today, more than six months later, the United States has still failed to provide ICRC access to these prisoners.

Secret detentions and disappearances facilitate torture and have long been the hallmark of despotic regimes. These practices are illegal and unworthy of the United States. I urge you to support granting immediate and unfettered access by the ICRC to all US-held prisoners, ensuring that the families of those being held are informed of their whereabouts and their legal status, and submission of a report to Congress on the numbers and locations of all US-held prisoners being detained abroad.

I appreciate your prompt attention to this matter and look forward to hearing your response to this letter and our report.

Sincerely,

Elisa Massimino
Washington Director

human rights *first*

THE NEW NAME OF
LAWYERS COMMITTEE FOR HUMAN RIGHTS

Headquarters
333 Seventh Avenue
13th Floor
New York, N.Y. 10001
Tel: (212) 845-5200
Fax: (212) 845-5299

Washington D.C. Office
100 Maryland Avenue, N.E.
Suite 500
Washington, D.C. 20002
Tel: (202) 547-5692
Fax: (202) 543-5999

www.HumanRightsFirst.org

July 26, 2004

The Honorable Paul Wolfowitz
Deputy Secretary of Defense
Department of Defense
Washington, D.C. 20301

Dear Mr. Secretary:

Thank you for meeting with the human rights executive directors on Wednesday. I am writing to summarize the points I raised with respect to current U.S. military detention and interrogation practices, and look forward to receiving your responses to our proposals. At the request of your staff, we also have provided 20 additional copies of Human Rights First's recently issued report, *Ending Secret Detentions*, which addresses many of the issues I summarized at the meeting.

Given the very serious nature of the abuses that have already been disclosed, at Abu Ghraib prison and elsewhere, it is clear that there is a systemic problem at U.S.-controlled detention and interrogation facilities that needs to be addressed. General Mikolashek's report further underscores this need for broad-based corrective actions.

When we met, I outlined three specific actions that we urge you to adopt quickly. The first is that you, Secretary Rumsfeld, and ideally the President make strong public statements clarifying current U.S. interrogation policy. Specifically, you should state in detail that torture and all other forms of cruel, inhuman and degrading treatment or punishment are strictly forbidden. You should make clear that all coercive interrogation techniques that cause pain, suffering, or humiliation are strictly prohibited. Military JAG officers should be present in each detention facility to provide legal guidance and to ensure that these rules are followed. And you should communicate throughout the system that anyone who violates these rules will be strictly disciplined and subject to prosecution.

Second, beginning immediately you should end secret or incommunicado detentions of the type described in our report. The International Committee of the Red Cross (ICRC) should be given unrestricted access to every detainee in U.S.

custody or control. The ICRC should be allowed to communicate the fact of these detentions to the family members of the detainees. And you should communicate to appropriate committees of Congress the locations of all detention facilities and other relevant information they may request about current detention practices and policies.

Finally, we urge you to call for and support the establishment of an independent, comprehensive investigation of all U.S. military and intelligence detention and interrogation policies and practices in Iraq, Afghanistan, Guantanamo Bay, and elsewhere in the world. As I stressed at our meeting, there are now close to 100 Executive Branch and Congressional investigations and inquiries underway on these topics. While many of these investigations are useful, there is a compelling need for a single, independent entity to piece together all of the elements, to present a full picture of what has happened, to identify the systemic problems that have emerged, and to issue recommendations to ensure such systemic abuse cannot easily recur. Nothing short of this type of comprehensive inquiry will satisfy public skepticism or, in our judgment, go far enough to correct the serious problems that exist.

I look forward to hearing your response to this proposal. We reiterate our willingness to meet with your staff to discuss any of these points in greater detail.

Sincerely,

Mike Posner

Michael Posner
Executive Director

human rights *first*

THE NEW NAME OF LAWYERS COMMITTEE FOR HUMAN RIGHTS

Ending Secret Detentions

June 2004

About Us

For the past quarter century, Human Rights First (the new name of Lawyers Committee for Human Rights) has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; help build a strong international system of justice and accountability; and make sure human rights laws and principles are enforced in the United States and abroad.

Acknowledgements

This report was written by Deborah Pearlstein and edited by Michael Posner.

Others who contributed to the report are Michael McClintock, Elisa Massimino, Avi Cover, Ken Hurwitz, Priti Patel, Aziz Rana, Benjamin Hensler and Stephen Townley.

This report is available online at www.HumanRightsFirst.org.

For more information about the report contact:

Human Rights First Communications Department at Tel: (212) 845-5245

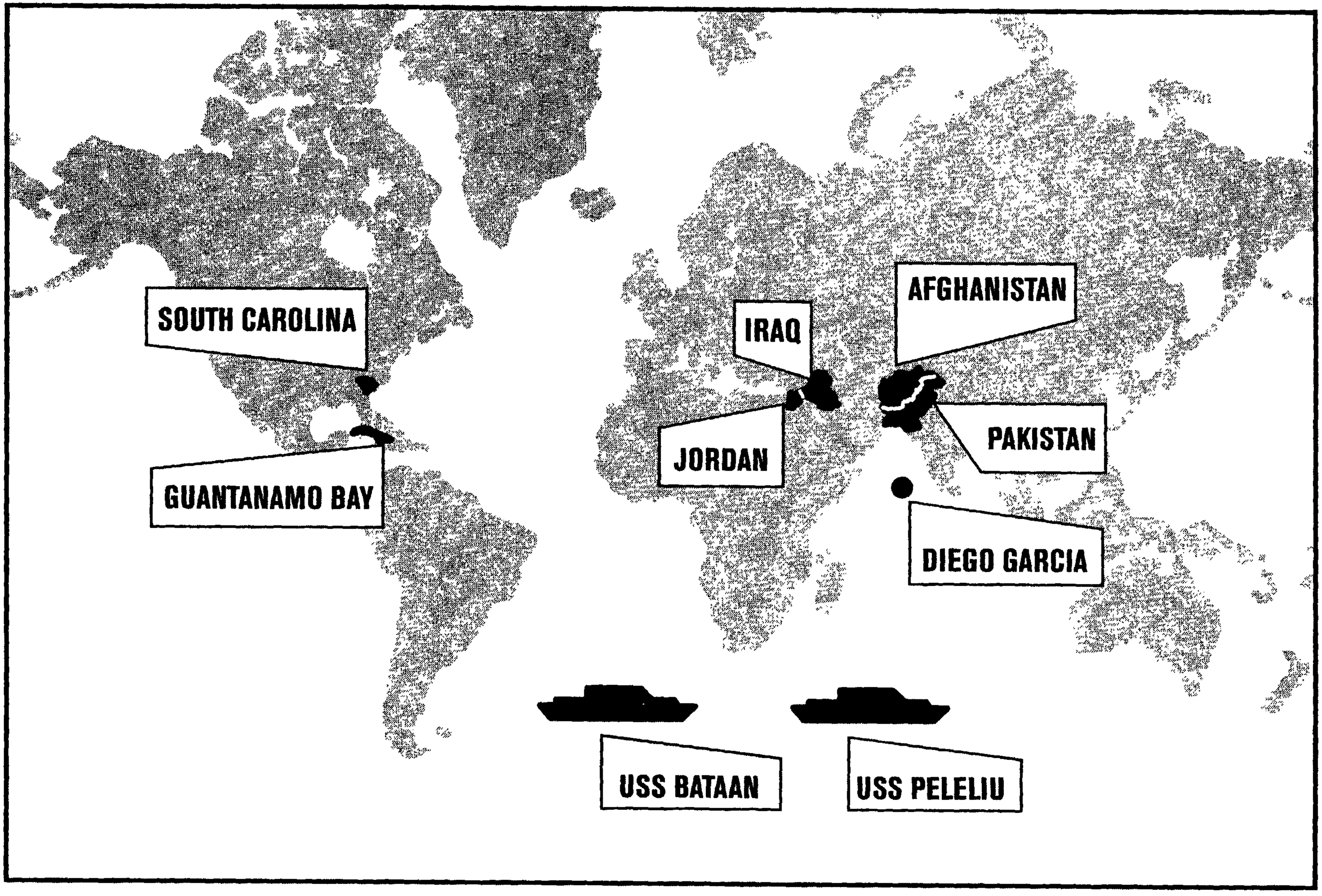
Printed in the United States

New York Headquarters
Human Rights First
333 Seventh Avenue
13th Floor
New York, NY 10001
Tel: (212) 845-5200
Fax: (212) 845-5299

Washington, DC Office
Human Rights First
100 Maryland Avenue, N.E.
Suite 502
Washington, DC 20002
Tel: (202) 547-5692
Fax: (202) 543-5999

www.HumanRightsFirst.org

Reported U.S. Detention Facilities in the "War on Terror"



U.S. Operated Detention Facilities in the "War on Terror"

Afghanistan

Disclosed

- Collection Center at the U.S. Air Force Base in Bagram.
- Detention facility in Kandahar (an "intermediate" site, where detainees await transport to Bagram).
- Approximately 20 "outlying transient sites" (used to hold detainees until they may be evacuated either to Kandahar or Bagram).

Suspected

Detention facilities in:

- Asadabad*
- Kabul*
- Jalalabad*
- Gardez*
- Khost*
- CIA interrogation facility at Bagram
- CIA interrogation facility in Kabul (known as "the Pit")

*These sites may be part of the approximately 20 "outlying transient sites."

Guantanamo Bay, Cuba

Disclosed

- U.S. Naval Base at Guantanamo Bay

Iraq

Disclosed

- Abu Ghraib (near Baghdad)
- Camp Cropper (near the Baghdad Airport)
- Camp Bucca (near Basra)
- Nine facilities under division or brigade command
- Facilities run by military divisions:
    - 1st Infantry Division DIF (Tikrit)

Legal issues in cases of both disclosed and undisclosed locations:

Disclosed

In the cases where detention facilities are well known, there is no information or only conflicting information about how many individuals are held there, troubling information about inadequate provision of notice to families about the fact of detainees' capture and condition, and unclear or conflicting statements about detainees' legal status and rights. While the ICRC has visited these facilities, their visits have been undermined in ways contrary to the letter and spirit of binding law.

In other cases, the existence of the detention facility is acknowledged by the United States (as in the case of more than a dozen detention facilities in Iraq) but very little else is known, particularly the nature of the detainees' legal status and rights.

Suspected

These are cases where the detention facility itself is not officially acknowledged but has been reported by multiple sources. In the absence of official acknowledgment, there is of course no information on how many might be held at such facilities, whether their families have been notified, why they are held, or whether the ICRC has access to them (indeed, the ICRC has stated publicly that they do not).

- 1st Marine Expeditionary Force DIF (Al Fallujah)
- 1st Cavalry Division DIF (Baghdad)
- 1st Armored Division DIF (Baghdad)
- Multi-National Division-South East (Az Zubayr)

- Facilities run by military brigades:
  - Dayyarah West (Multi-National Brigade - North)
  - Tal Afar (Multi-National Brigade - North)
  - Al Hillah (Multi-National Division - Center South)
  - Wasit (Multi-National Division - Center South)
- In addition, there are a number of "brigade holding areas in division sectors" where detainees may be held up to 72 hours before transfer to Division facilities.
- Ashraf Camp. Ashraf Camp is a detention facility for Mujahideen-E-Khalq (MEK), an Iraqi based organization seeking to overthrow the government in Iran. Ashraf Camp was disclosed as a detention site for MEK detainees in February 2004, but as of June 11, 2004, the Coalition Press Information Center (CPIC) refused to discuss the status or location of the MEK detainees.

Pakistan

Suspected

- Kohat (near the border of Afghanistan)
- Alizai

Diego Garcia

Suspected

- United States and United Kingdom officials deny repeated press reports indicating that at least some individuals are being detained on the British possession of Diego Garcia, including, at one time, Hambali (Riduan Isamuddin), the leader of the Jemaah Islamiyah.

Jordan

Suspected

- Al Jafr Prison (CIA interrogation facility)

United States

Disclosed

- Naval Consolidated Brig (Charleston, South Carolina). This is where the U.S. Government is detaining at least three individuals as "enemy combatants": two U.S. citizens, Jose Padilla and Yaser Hamdi, as well as Ali Saleh Kahlah al-Marri, a Qatari national residing in the United States.

Suspected

- U.S. Naval Ships: USS Bataan and USS Peleliu.

Table of Contents

A Human Rights First Report

I. Introduction

More than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Put it this way, they're no longer a problem to the United States and our friends and allies.

President George W. Bush
State of the Union Address
February 4, 2003

In April, the U.S. Supreme Court heard oral arguments in the cases of Jose Padilla and Yaser Hamdi – both U.S. citizens who have been held in military detention facilities for more than two years. One Justice wondered aloud how the Court could be sure that government interrogators were not abusing these detainees. You just have to "trust the executive to make the kind of quintessential military judgments that are involved in things like that," said Deputy Solicitor General Paul Clement.[1] Later that evening, CBS's *60 Minutes* broadcast the first shocking photographs of U.S. troops torturing Iraqi prisoners at the Abu Ghraib detention center in Iraq.

The photos from Abu Ghraib have made a policy of "trust us" obsolete. But they are only the most visible symptoms of a much larger and more disturbing systemic illness. Since the attacks of September 11, the United States has established a network of detention facilities around the world used to detain thousands of individuals captured in the "war on terrorism." Information about this system – particularly the location of U.S. detention facilities, how many are held within them, on what legal basis they are held, and who has access to the prisoners – emerges in a piecemeal way, if at all, and then largely as a result of the work of investigative reporters and other non-governmental sources. The official secrecy surrounding U.S. practices has made conditions ripe for illegality and abuse.

Several of these facilities, including the U.S. military bases at Guantanamo Bay, Cuba, and at Bagram Air Force Base in Afghanistan, are well known. The existence of these facilities – and the fact of unlawful conduct within them – have been widely publicized and well documented.[2] Nonetheless, there is still no or only conflicting information about how many individuals are held there, troubling information about inadequate provision of notice to families about the fact of detainees' capture and condition, and unclear or conflicting statements about detainees' legal status and rights. While the International Committee of the Red Cross (ICRC) has visited these facilities, their visits have been undermined in ways contrary to the letter and spirit of binding law.

In addition, there are detention facilities that multiple sources have reported are maintained by the United States in various officially undisclosed locations, including facilities in Iraq, Afghanistan, Pakistan, Jordan, on the British possession of Diego Garcia, and on U.S. war ships at sea. U.S. Government officials have alluded to detention facilities in undisclosed locations, declining to deny their existence or refusing to comment on reports of their existence.[3] A Department of Defense official told Human Rights First in June 2004 that while Abu Ghraib and Guantanamo's Camp Echo were open to discussion, "as a matter of policy, we don't comment on other facilities."[4] Similarly, Captain Bruce Frame, a U.S. army spokesman from CENTCOM, the unified military command that covers Africa, the Middle East, and Central Asia, told Human Rights First only that there "may or may not" be detention centers in countries other than Iraq and Afghanistan in CENTCOM's area of responsibility.[5]

The Known Unknowns

What is unknown about this detention system still outweighs what is known about it. But facilities within it share in common key features that – while having unclear benefits in the nation's struggle against terrorism – make inappropriate detention and abuse not only likely, but virtually inevitable.

First, each of these facilities is maintained in either partial or total secrecy. For the past half-century, the United States has considered itself bound by international treaties and U.S. military regulations that prohibit such blanket operating secrecy. Yet in this conflict, the ICRC – which the United States has long respected as a positive force in upholding international humanitarian law – has repeatedly sought and been denied access to these facilities.[6] As the ICRC recently noted in a public statement:

> Beyond Bagram and Guantanamo Bay, the ICRC is increasingly concerned about the fate of an unknown number of people captured as part of the so-called global war on terror and held in undisclosed locations. For the ICRC, obtaining information on these detainees and access to them is an important humanitarian priority and a logical continuation of its current detention work in Bagram and Guantanamo Bay.[7]

Indeed, Human Rights First has been unable to identify any official list of U.S. detention facilities abroad employed in the course of the "war on terrorism." There is likewise no public accounting of how many are detained or for what reason they are held. And there has been a disturbing absence of serious congressional oversight of both known and undisclosed detention facilities.[8]

Second, these facilities have thrived in an environment in which the highest levels of U.S. civilian leadership have sought legal opinions aimed at circumventing the application of domestic and international rules governing arrest and detention. Where it would have once seemed crystal clear to military commanders and on-the-ground military custodians alike that the Geneva Conventions governed the arrest and detention of individuals caught up in the conflicts in Iraq and Afghanistan, this Administration has challenged the applicability of those rules. In several recently leaked legal opinions from White House Counsel, and the Departments of Defense and Justice, it has become clear that some in the Administration have given a green light to the wholesale violation of these rules.[9]

As a result, it remains unclear what legal status has been assigned to those being detained at these U.S.-controlled facilities. Are they prisoners of war, civilians who took a direct part in hostilities (who the Administration calls "unlawful combatants"), or are they suspected of criminal violations under civilian law? The Administration has applied no clear system for defining their status. It also is unclear under many circumstances which U.S. agency is ultimately responsible for their arrest or the conditions of their confinement. And it now seems that U.S. military and intelligence agencies are involved in their interrogation, as well as civilian or foreign government contractors to whom aspects of detention and interrogation has been outsourced. It is likewise unclear to whom a family member or legal representative can appeal to challenge the basis for their continued detention.

Finally, the U.S. government has failed to provide prompt notice to families of those captured that their family member is in custody, much less information about their health or whereabouts. In such cases, the families of individuals removed to such unknown locations have had no opportunity to challenge detentions that may continue for extended periods.[10] For example, Saifullah Paracha, according to information his family received from the ICRC, has been detained at Bagram Air Force Base for more than 11 months. His wife and children remain in the dark, not only of the reason for his detention, but also when they can expect Mr. Paracha to be released or tried.[11] Other individuals captured more than a year ago remain in detention at other undisclosed locations.[12] The lack of information to family members about these detainees violates U.S. legal obligations and sets a negative precedent for treatment that may directed at U.S. soldiers in the future. It also engenders great anguish and suffering on the part of the families of detainees – no less than did the practice of "forcible disappearance" in past decades – while engendering enormous hostility toward the United States.

In the Interest of National Security

The Administration has argued that, faced with the unprecedented security threat posed by terrorist groups "of global reach,"[13] it has had to resort to preventive detention and interrogation of those suspected to have information about possible terrorist attacks. According to the Defense and Justice Departments, a key purpose of these indefinite detentions is to promote national security by developing detainees as sources of intelligence. And while much of what goes on at these detention facilities is steeped in secrecy, intelligence agents insist that "[w]e're getting great info almost every day."[14]

Whatever the value of intelligence information obtained in these facilities – and there is reason to doubt the reliability of intelligence information gained only in the course of prolonged incommunicado detention[15] – there is no legal or practical justification for refusing to report comprehensively on the number and location of these detainees – or to fail to provide the identities of detainees to the ICRC, detainees' families, their counsel, or to others having a legitimate interest in the information (unless a wish to the contrary has been manifested by the persons concerned).

The United States is of course within its power to ask questions and to cultivate local sources of information. And the United States certainly has the power to detain – in keeping with its authority under the Constitution and applicable international law – those who are actively engaged in hostilities against the United States, or those suspected of committing or conspiring

to commit acts against the law. But it does not have the power to establish a secret system of off-shore prisons beyond the reach of supervision, accountability, or law.

Finally, even if some valuable information is being obtained, there are standards on the treatment of prisoners that cannot be set aside. The United States was founded on a core set of beliefs that have served the nation very well over two centuries. Among the most basic of these beliefs is that torture and other cruel, inhuman or degrading treatment is wrong; arbitrary detention is an instrument of tyranny; and no use of government power should go unchecked. The refusal to disclose the identity of detainees, prolonged incommunicado detention, the use of secret detention centers, and the exclusion of judicial or ICRC oversight combine to remove fundamental safeguards against torture and ill-treatment and arbitrary detention. Current practices which violate these principles must be stopped immediately.

The abuses at Abu Ghraib underscore the reason why, since the United States' founding, Americans have rejected the idea of a government left to its own devices and acting on good faith in favor of a government based on checks and balances and anchored to the rule of law. As James Madison noted, "[a] popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy."[16] This nation's history has repeatedly taught the value of public debate and discourse. To cite one example, the United States learned this 30 years ago when a series of congressional investigations uncovered widespread, secret domestic spying by the CIA, NSA, FBI, and the Army – revelations whose impact on the intelligence agencies was, in former CIA Director Stansfield Turner's words, "devastating."[17]

We should be clear – the United States has important and legitimate interests in gathering intelligence information and in keeping some of this information secret. But we are not demanding the public release of any information that would compromise these interests. What we are calling for is an official accounting – to Congress and to the ICRC – of the number, nationality, legal status, and place of detention of all those the United States currently holds. We ask that all of these places of detention be acknowledged and open to inspection by the ICRC, and that the names of all detainees by made available promptly to the ICRC and to others with a legitimate interest in this information. Neither logic nor law supports the continued withholding of the most basic information about the United States' global system of secret detention. Trust is plainly no longer enough.

Michael Posner and Deborah Pearlstein
New York
June 17, 2004

II. The Known Unknowns

[A] large number of terrorist suspects were not able to launch an attack last year because they are in prison. More than 3,000 of them are al-Qaida terrorists and they were arrested in over 100 countries.

Coordinator for Counterterrorism Cofer Black
Remarks on the Release of the Annual Patterns of Global Terrorism 2002 Report
April 30, 2003

While the United States has made it clear that it has arrested and detained thousands of individuals in the "war on terrorism" since September 11, 2001, it has provided scant information about the nature of this global detention system – information that is critical to preventing incidents of illegality and abuse.

In some cases, the detention facility itself is well known – as in the case of the U.S. Naval Base at Guantanamo Bay, Abu Ghraib prison in Iraq, or the U.S. Air Force Base at Bagram, Afghanistan – but there is no or only conflicting information about how many individuals are held there, troubling information about inadequate provision of notice to families about the fact of detainees' capture and condition, and unclear or conflicting statements about detainees' legal status and rights. While the ICRC has visited these facilities, their visits have been undermined in ways contrary to the letter and spirit of binding law.

In other cases, the existence of the detention facility is acknowledged by the United States – as in the case of more than a dozen detention facilities in Iraq – but very little else is known, particularly the nature of the detainees' legal status and rights. And families in Iraq tell too many stories about loved ones arrested by coalition forces there without families understanding why – family members who then effectively disappear.

Finally, there are cases in which the existence of the detention facility itself is not officially acknowledged but has been reported by multiple sources – for example, Kohat and Alizai in Pakistan; Jalalabad, Asadabad, and Kabul in Afghanistan;[18] the U.S. Naval Base on Diego Garcia; and U.S. military ships, particularly the USS Bataan and the USS Peleliu.[19] In the absence of official acknowledgment of such undisclosed locations, there is of course no information on how many might be held at such facilities, whether their families have been notified, why they are held, or whether the ICRC has access to them (indeed, as noted above, the ICRC has stated publicly that it does).

U.S. concerns for the security of lawful detention facilities and for force protection are of course appropriate. But it is contrary to U.S. law and policy that information be withheld or classified without a basis in law. As the Federation of American Scientists recently emphasized in a letter to the Information Security Oversight Office expressing concern that General Taguba's Abu Ghraib report had been inappropriately classified: "[T]he executive order that governs national security classification states that 'In no case shall information be classified in order to... conceal violations of law.'"[21] More to the point, it is unclear either how disclosing, in a comprehensive and regular manner, the following basic information endangers legitimate U.S. missions abroad:

Mohammed Ismail Agha

Mohammed Ismail Agha, now 15 years old, spent 14 months of his life in U.S. custody, first in Afghanistan and later in Camp Iguana at the U.S. Naval Base at Guantanamo Bay. Mr. Agha comes from Durabin, an isolated agricultural village in Afghanistan. According to Mr. Agha, Afghan soldiers captured him and turned him over to U.S. soldiers, who flew him to Bagram Air Force Base, where he spent more than six weeks. Mr. Agha described Bagram as a "very bad place." Guards prevented him from sleeping by yelling and kicking his door. At Bagram, Mr. Agha was interrogated every day and questioned about his affiliation with the Taliban or other Islamic groups. During his interrogations, he stated his interrogators "made me stand partway, with my knees bent, for one or two hours. Sometimes I couldn't bear it any more and I fell down, but they made me stand that way some more." He was told if he did not confess he would be taken to Guantanamo Bay. After six weeks at Bagram, Mr. Agha was hooded, his wrists and ankles chained, and flown to Guantanamo Bay where he spent more than a year. While in Guantanamo, Mr. Agha, being the eldest son and major support for his family, was worried about them Despite writing a few letters home, his family was unaware of his whereabouts for almost a year. His father "went to all the work sites in the towns" to no avail, eventually concluding his son "must be dead." Mr. Agha was finally released on January 29, 2004. [20]

- How many individuals are currently held by the United States at military or intelligence detention facilities;
- What legal status these detainees have been accorded (e.g. as prisoners of war, "unlawful combatants," or some other status) and what process is followed to determine this status;
- Whether the detainees have received unrestricted visits from the ICRC;
- Whether the immediate families of the detainees have been notified of their loved ones' location, status, and condition of health.[22]

Afghanistan

According to CENTCOM, the U.S. unified military command with operational control of U.S. combat forces in the region, coalition forces have only one general detention facility in Afghanistan: the Collection Center at the U.S. Air Force Base in Bagram. An acknowledged U.S. detention facility in Kandahar is considered an "intermediate" site, where detainees await transportation to Bagram.[24] In addition, CENTCOM acknowledges a series of "outlying transient sites" that are used to hold detainees until they may be evacuated either to Kandahar on their way to the detention facility at Bagram, or directly to the detention facility at Bagram.[25] Some reports put the total number of these facilities at 20.[26]

Non-governmental organizations and press have reported the existence of detention facilities in Asadabad,[27] Kabul, and Jalalabad, and two under the command of Special Forces in Gardez and Khost.[28] In addition to the detention facility under military command at Bagram Air Force Base, numerous sources cite an interrogation facility under CIA control at Bagram as well.[29] A recent press report revealed a primary CIA interrogation facility to be in Kabul, known as the Pit.[30]

Until the events of the past few months, the Department of Defense had taken the position that even the number of people detained by the United States in Afghanistan was classified. In response to a request by Human Rights First on March 27, 2004, the Department of Defense answered that "[t]he number of detainees within Afghanistan is classified due to ongoing military operations and force protection concerns."[31]

Saifullah Paracha

Saifullah Paracha's family understands that he was brought to Bagram Air Force Base in July 2003. Mr. Paracha is a U.S. permanent resident. He is a Pakistani citizen who came to the United States for his post-college studies in 1971. He lived in the U.S. until the mid-1980s, when he and his family decided to move back to Pakistan. Along with an American partner, Charles Anteby, he maintained an import/export company dealing in exporting clothing to the United States from Pakistan. According to Mr. Paracha's wife, Mr. Anteby set up a meeting with Kmart in Bangkok and asked Mr. Paracha to fly down for the meeting. Mr. Paracha boarded the Air Thai plane to Bangkok, but the driver sent to collect Mr. Paracha at the Bangkok airport reported that Mr. Paracha had not deplaned. Air Thai confirmed that Mr. Paracha boarded the plane. Mr. Paracha's family received a letter from the ICRC in August 2003, more than six weeks after he went missing, informing them that he was in Bagram Air Force Base. The family was given his prisoner number. They have since received additional letters.[23]

My most dearest Ammi, Farhat, Muneeza, Mustafa and Zahra,

Assalam-o-Alaikum

I pray to Almighty for your welfare, health and happiness. May Allah keep you in His safe custody. Today after a while I received two of your letters dated 24th September and October 01, 03 and am replying immediately. I can only write letters when the ICRC people are here, and in their presence, and as fast as possible. Their visits are their own planning and then the letters are being examined by the US Authority. This is why it takes time to reach you or me. I am very happy, satisfied and proud of you that you're going to the office and taking care of the family – Allah bless you and reward you here and Thereafter. Also my worries are over when I received your letters about the family, Uzair and business details. I am very happy to hear about Muniza. Please give her my love also. Mustafa did not reply on the issue of exercise. Please remind him and tell him not to fight with Zahra.

Letter of November 17, 2003 from Saif Paracha to his family, as transmitted through the International Committee of the Red Cross, and translated by his family.

Despite these stated classification restrictions, the Defense Department more recently offered that there are currently 358 individuals detained by the United States in Afghanistan.[32] Other reports put the number at about 380.[33] The ICRC has counted "some 300" detainees at Bagram as of May 2004.[34]

The ICRC has expressed its concern as the periods of detention at Bagram increase that "the U.S. authorities have not resolved the questions of [the detainees'] legal status and of the applicable legal framework."[35] Indeed, the ICRC has had limited access to the Bagram facility, and has been able to meet with certain detainees after they have been held in Bagram for a few weeks.[36] The ICRC also reportedly visited Kandahar between December 2001 and June 2002, when it understood that the Kandahar detention center was only a transit post on the way to Bagram.[37] However, evidence emerged more recently that the United States continued to hold some suspects for longer periods at Kandahar, and the ICRC asked to be allowed to visit the center again. After considering the ICRC's request for three weeks, the Pentagon recently agreed to begin making arrangements to allow ICRC access again.[38] It is still unclear whether the ICRC will have access to other detention centers (transient or otherwise) in Afghanistan.

From published interviews with those released from detention facilities in Afghanistan, and discussions with family members of a detainee held at Bagram, there does not appear to be a family notification policy.[39] For example, Abdul Gehafouz Akhundzada was arrested in February 2003, and reportedly taken to Bagram Air Force Base. Despite appeals to the United States and local government officials, as of late 2003, no further information of Mr. Akhundzada was available.[40] The family of another detainee at Bagram Air Force Base, Saifullah Paracha, was notified of his detention at Bagram not by the United States, but by the ICRC.[41] Despite repeated attempts, Human Rights First was unable to discern whether the Department of Defense had a family notification policy for detainees in Afghanistan.

Iraq

Despite some improvement, hundreds of families have had to wait anxiously for weeks and sometimes months before learning the whereabouts of their arrested family members. Many families travel for weeks throughout the country from one place of internment to another in search of their relatives and often come to learn about their whereabouts informally (through released detainees) or when the person deprived of his liberty is released and returns home.

Report of the International Committee of the Red Cross on Iraq
February 2004

The Coalition Press Information Center (CPIC) confirms three main detention facilities in Iraq for security detainees: Abu Ghraib near Baghdad, Camp Cropper near the Baghdad Airport, and Camp Bucca near Basra in southern Iraq.[42] In addition, the CPIC Press Office detailed 9 additional facilities under division or brigade command.[43] Additional facilities run by military divisions are :

- 1st Infantry Division DIF (Tikrit)
- 1st Marine Expeditionary Force DIF (Al Fallujah)

- 1st Cavalry Division DIF (Baghdad)
- 1st Armored Division DIF (Baghdad)
- Multi-National Division-South East (Az Zubayr)

In areas without division internment facilities, military brigades oversee the detention facilities. These facilities are in or near the towns of:

- Dayyarah West (Multi-National Brigade - North)
- Tal Afar (Multi-National Brigade - North)
- Al Hillah (Multi-National Division - Center South)
- Wasit (Multi-National Division - Center South)[44]

In addition, there are "brigade holding areas in division sectors...where detainees may be held up to 72 hours before transfer to Division facilities."[48]

The twelve facilities listed by CPIC conflict with remarks made by General Geoffrey Miller, Deputy Commanding General, Detention Operations in Iraq, who stated in May 2004 that there were 14 detention facilities in Iraq.[49] Indeed, lists of detention facilities in Iraq disclosed by non-governmental organizations identify additional facilities to the ones provided by the CPIC.[50]

The U.S. Government's account of the nature of the legal status of detainees in Iraq has varied substantially. In April 2003, the Department of Defense, appropriately, stated that it was holding detainees either as prisoners of war under the Third Geneva Convention, or as civilian internees under the Fourth Geneva Convention.[51] By May 2003, the U.S. Government seemed to introduce a new category of detainees—"unlawful combatants."[52] The category of unlawful combatants seems to have eventually been dropped, and on September 16, 2003, General Janis

Saddam Saleh Al Rawi

Saddam Saleh Al Rawi, a former political prisoner under Saddam Hussein, was detained for almost four months in Abu Ghraib by U.S.-led Coalition Forces until he was released on March 28, 2004. He reports that he was arrested without being given an explanation of the charges against him. According to Mr. Al Rawi's testimony,[45] he spent the first few days of his detention in solitary confinement. Following that, he was removed to another location within the prison where he was interrogated and tortured for 18 consecutive days. During this time, he was repeatedly kicked, beaten, and had two of his teeth knocked out. He received one meal every 12 hours. Prison guards threatened him with dogs and stood on his hands.[46] The soldiers threatened to rape him if he did not provide the soldiers with information. At other times, they threatened to send him to Guantanamo Bay if he did not comply. His interrogation and torture often lasted for up to 23 hours. Following his interrogation sessions, he was often prevented from sleeping due to loud music. Before a visit by the ICRC in January 2004, he reports that he was warned that if he said anything to the ICRC that the prison guards did not like, "he would never live to regret it."[47] When the ICRC arrived, he did not say anything to them of the conditions of his confinement, answering most questions, "I don't know." He was kept in solitary confinement for approximately three months before he was released.

Karpinski, commander of the 800th Military Police Brigade announced that more than 4,000 detainees in Iraq were being held as "security detainees," separate from prisoners of war and criminal detainees;[53] *in contrast, security detainees were those who had attacked U.S. forces or* were suspected of involvement in or planning of such attacks.[54] It was the first time the term was used to describe Iraqi prisoners.[55]

The U.S. *Government's accounting* of detainees in Iraq has significantly increased over time, while the number of those held under recognized lawful categories has drastically diminished. In May 2003, the U.S. Government indicated it was holding 2000 detainees, of which most were prisoners of war, along with 500 unlawful combatants.[56] In late July 2003, 1100 detainees were held as prisoners of war and "high value detainees."[57] With the introduction of the security detainee category in September 2003, the number of prisoners of war plummeted to 300, while the number of total detainees increased to 10,000 with 4400 security detainees and 5300 criminal detainees. [58] In early January 2004, the total number of detainees was approximately 12,000, while the number of prisoners of war dropped to 20.[59] The number of security detainees ballooned as of June 2004, when the Coalition Authority confirmed it was detaining over 6300 security detainees.[60] Of the more than 6300 security detainees, more than 3000 are detained in Abu Ghraib, the largest detention facility under Coalition authority in Iraq.[61]

On June 13, 2004, the Coalition Authority pledged to release or transfer to Iraqi control as many as 1,400 prisoners throughout the country, but would continue to hold between 4,000 and 5,000 people as security detainees.[63] While the reduction in numbers is a positive step, handing over detainees to Iraqi control without adequate disclosure or certainty of legal process simply replicates the secrecy and prisoner vulnerability marking present detention practices.

Wisam Adnan Hameed Ismaeel Hussain

The Christian Peacemakers Team, a religious organization working in Iraq since 2002, reports that Wisam Hussain, a 22-year-old taxi driver from Al Dhoura near Baghdad, disappeared August 7, 2003. When he failed to return home, his family searched a number of hospitals and Abu Ghraib prison. They were assured he was not at Abu Ghraib because though his name was in the prison files, it was not in the computer database. They returned to Abu Ghraib in October 2003, and the officials they spoke to at the prison informed the family they needed Wisam's identification number to confirm whether he was in the prison. Wisam is the sole breadwinner in his family, which consists of his father, mother, four sisters and 2 brothers. His siblings are all under 18 years old. It is believed he may have been seized because he drove a red Volkswagen. The U S.-led coalition believed that a red Volkswagen was connected to a bombing in August 2003, and subsequently all red Volkswagens and their drivers were rounded up.[62]

In addition to security detainees, prisoners of war, and criminal detainees, the Coalition Authority separately detains members of the Mujahideen-E-Khalq (MEK), an Iraqi based organization seeking to overthrow the government in Iran. Brigadier General Mark Kimmitt, Deputy Director for Coalition Operations, in a press briefing in early January 2004 commented that the status of almost 3500 MEK detainees was being determined.[64] There was no mention of their legal status or under what authority the United States was detaining them. The Administration then confirmed the detention of the MEK in a separate detention facility, Ashraf Camp.[65] In June 2004, the CPIC

Press Office refused to discuss the situation of the MEK detainees.[66] No information regarding the policy basis for their segregation and the legal basis on which the MEK are being detained was provided.[67]

From the outset of the war in Iraq into the occupation, the Administration has asserted the application of the Geneva Conventions to the conflict, but has failed to properly follow the Conventions.[68] The Geneva Conventions, codifying the laws of war, apply in all international armed conflicts. Under the Geneva Conventions, there are two categories of individuals who can be detained by an occupying power: prisoners of war and civilians.[69] Generally, prisoners of war are to be released at the end of active hostilities.[70]

There are two narrow bases on which an occupying power can detain civilians: (1) if it is "necessary, for *imperative* reasons of security," and (2) for penal prosecutions.[71] The Conventions do not mention a separate category of "security detainees." In addition, Article 5 of the Fourth Geneva Convention permits detaining powers to deny persons rights of communication under the Convention where there is a "definite suspicion" of activities that are "hostile to the security" of the occupying power. The burden of *definite* suspicion is a high burden that must be individualized and not of a general nature.[72] And the power to detain such persons is restricted to cases where "absolute military security so requires."[73] Even under these circumstances, all other protections under the Fourth Geneva Convention apply. In particular, Article 5 requires that such individuals "shall nevertheless be treated with humanity...[and] be granted the full rights and privileges of a protected person under the present Convention at the earliest date" possible. The security of the occupying power does not empower the occupier to deprive such individuals of other protections under the Fourth Geneva Convention, such as the right to receive medical attention if necessary, the right to see a chaplain if the detainee was seriously ill, and the protection against torture.[74]

The comprehensiveness of the ICRC's access to all detention facilities is unclear. According to the ICRC's 2004 report on Iraq, the ICRC has access to some of the detention facilities in Iraq, including Camp Cropper, Al Russafa, Abu Ghraib, Camp Bucca, as well as several temporary internment places such as Talil Airforce Base and detention facilities in Tikrit and Mosul.[75] It is unclear whether the ICRC has access to additional facilities. Moreover, despite having granted the ICRC access to some facilities, the United States has denied the ICRC access to particular prisoners within those facilities. Indeed, some detainees have been moved in order to evade ICRC monitoring.[76]

Finally, the system created by the Coalition Provisional Authority (CPA) to inform families of detainees of their loved ones' capture remains inadequate. As the *New York Times* reported in March on Iraqi experiences:

> Often they were led away in the middle of the night, with bags over their heads and no explanation. Many people have said that when they asked soldiers where their family members were being taken, they were told to shut up. A few hundred women have also been detained. And complicating the families' searches, there are several major prisons and hundreds of smaller jails and bases across Iraq.[77]

U.S. forces in conjunction with the CPA maintain a list of detainees in U.S. custody and provide the list to the ICRC.[78] In addition, there is an Iraqi Assistance Center and nine General

Information Centers in Baghdad where lists are accessible.[79] Those with an internet connection can access detainee information via the CPA website.[80]

However, the list is not comprehensive in that it does not include detainees held at Mosul or Tikrit.[81] It often does not contain full names of detainees; translation renders some names unrecognizable to family members; or the identification numbers for detainees do not correspond with the list.[82] Many families are not in a position to travel to one of the centers in Baghdad to locate information.[83] Moreover, the ICRC reports that capture cards, required for prisoners of war under the Third Geneva Convention, containing biographical information were often incomplete, making it difficult for the ICRC to effectively notify families.[84] Even when families are able to locate their loved ones in detention, military personnel cite the average wait time for obtaining a visit to be one month.[85] In some cases obtaining a visit can take more than three months.[86]

Guantanamo Bay

More is known about the detention facility at the U.S. Naval Base at Guantanamo Bay than virtually all other facilities. The detention facility there was opened in early 2002, when the U.S. military removed several hundred individuals from Afghanistan.[88] As of April 2004, Guantanamo Bay housed 595 detainees, from approximately 40 countries.[89] According to the Defense Department, 134 detainees have been released since the detention facility opened, and 12 others have been returned for continued detention in their home country.[90]

Hayder Thamer Salman

Hayder Thamer Salman, a 23-year-old computer scientist working at the Pharmaceutical College of Baghdad, is believed to have been seized by U.S.-led coalition forces on January 22, 2004, while he was driving his car near Al-Yarmuk Hospital. While he was driving, a U.S. convoy ahead of him was attacked. Fire from both sides ensued and Hayder was hurt by the crossfire. Hayder and his friend who was a passenger were both detained. His friend was interrogated and held for almost two weeks and then released. Hayder's location remains unknown. Hayder's father was executed under Saddam's regime. His mother, a lecturer at the Medical College in Baghdad, has searched for him since his seizure. She went to see an officer in charge of the Yarmuk area. She received numerous emails informing her that her son was at different hospitals, but each hospital told her he was not there. She has been unable to locate him and believes he is being held at a hospital as a security detainee.[87]

Nonetheless, the numbers provided by the Administration raise concerns that the information regarding the number of detainees provided by the U.S. Government does not reveal the whole picture. For example, on July 18, 2003, the Department of Defense announced there were "approximately 660" detainees in Guantanamo, representing the net figure resulting from the release of 27 detainees and the new arrival of 10.[91] From then until April 2, 2004, the Pentagon made eight additional official announcements, advising of further releases aggregating 78, and 20 new arrivals.[92] Mathematically, this should have resulted in a net decrease of 58, leaving a total detainee population of 602. In fact, on that date, there were only 595 detainees on the base, according to the Department of Defense,[93] leaving seven unaccounted for. While the releases of one Spaniard (on February 13,

2004) or one Dane (on February 25) or five Britons (on March 9) were publicly announced,[94] there were seven other detainees whose release or transfer apparently did not merit official mention.

The uncertain status of those held at Guantanamo has also been the subject of widespread international concern.[95] The President designated those detained at Guantanamo as "enemy" or "unlawful combatants,"[96] a status with unclear legal meaning as it has been used by the Administration. A number of the detainees' family members filed *habeas corpus* petitions in U.S. courts challenging the government's authority to indefinitely detain prisoners without charge, and the U.S. Supreme Court is expected to issue a decision on the matter in late June.

In the meantime, the legal status of the Guantanamo detainees remains obscure. Under the Geneva Conventions, persons captured during an international armed conflict are either prisoners of war or civilians; both categories come with specific protections delineated in the Geneva Conventions.[97] Prisoners of war are entitled, for example, to be treated humanely at all times, send and receive letters, and be free from physical or mental torture in the course of interrogations.[98] Civilians who engage directly in combat are not entitled to prisoner-of-war protections, but are entitled to basic protections such as the right to be treated with humanity; unlike prisoners of war, they may also be prosecuted for the act of having taken up arms.[99] If there is any doubt as to the status to which a detainee is entitled, he must be afforded a so-called Article 5 hearing to determine, on an individual basis, the rights to which he is entitled.[100] None of the detainees currently held at Guantanamo has been afforded a standard Article 5 hearing.[101] Indeed, as "unlawful combatants," Guantanamo detainees have been afforded neither the protections under the Geneva Conventions, nor the protections of the U.S. criminal justice system, nor has any of the nearly 600 detainees yet been tried for crimes under the law of war.

Pakistan

Joint Pakistan and U.S. operations in the "war on terrorism" and the capture of suspects in Pakistan have raised suspicion of U.S. detention locations in Pakistan, particularly at Kohat and Alizai. In Spring 2002, U.S. military and law enforcement officials began aiding Pakistani officials in tracking Al-Qaeda and Taliban members within Pakistan.[102] Press reports indicate that as of July 2003, Pakistani authorities detained and transferred to U.S. custody almost 500 individuals.[103]

A number of press reports have indicated the use by the United States of a prison in Kohat, Pakistan, near the border of Afghanistan. Immediately following the war in Afghanistan, Pakistani authorities moved all "civilian" prisoners from the prison in Kohat, along with all prison records and staff. The prison in Kohat came to be used to hold suspected terrorists and Taliban members. In the first half of 2002, over 140 suspected Al-Qaeda and Taliban members were moved to the Kohat prison.[104] According to press reports, the Pakistani army maintained the external security of the prison, while U.S. officials were responsible for the internal security.[105] U.S. interrogators questioned prisoners freely in Kohat and determined which among them to move to Guantanamo Bay.[106] A number of people raised concerns at the treatment of the prisoners, including a local leader, Javed Ibrahim Paracha of the Pakistan Muslim League-Nawaz (PML-N), who described prisoners, shackled and only in their shorts, being whisked onto military planes in the middle of the night.[107]

In September 2003, the Pakistani press reported that U.S. officials were given authority over Kohat airport and that construction was planned for a special facility to house Taliban and Al Qaeda prisoners. When questioned about this development, Director-General of Inter Services Public Relations (ISPR) Major General Shaukat Sultan denied that the Kohat airport was being handed over to the United States.[108] The Department of Defense and the CIA refuse to confirm or deny the existence of detention facilities in Pakistan.[109]

Diego Garcia

The U.S. Naval Base on the island of Diego Garcia is located in the Indian Ocean, 3,000 miles south of Iraq. Diego Garcia was established as part of the British Indian Ocean Territories. The United States leased the territory from the United Kingdom in 1966 for an initial period of 50 years.[110] It was developed as a joint U.S. and U.K. air and naval refueling and support station during the Cold War and has since been used during the Persian Gulf War, Afghan War, and the recent war in Iraq.[111] There are approximately 1,700 military personnel and 2,000 civilian contractors on the island.[112] No one is allowed on the island unless they are military personnel or supporting military operations.[113]

Pentagon officials have denied the existence of detention facilities at Diego Garcia housing individuals detained in the context of the "war on terrorism."[114] The CIA has refused to comment on whether there are detainees on Diego Garcia.[115] U.K. officials have similarly denied assertions that detainees are being held by the United States on Diego Garcia. The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Baroness Amos stated that there were no prisoners on Diego Garcia as of January 8, 2003, and later found questions of whether there were Taliban soldiers on Diego-Garcia to be "entirely without merit."[116] Nonetheless, the denials by the United States and Britain contradict repeated press reports indicating that at least some individuals have been detained on Diego Garcia, including, at one time, Hambali (Riduan Isamuddin), the leader of the Jemaah Islamiyah.[117]

Jordan

Investigative reporters have identified the Al Jafr Prison, in the southern desert, as a CIA interrogation facility.[118] According to press reports, approximately 100 detainees have passed through the prison, including high level Al Qaeda leaders, Khalid Sheikh Mohammed and Abd al-Rahim al Nashiri.[119] The CIA and the Pentagon have refused to confirm or deny the existence of any detention facilities in Jordan.[120] Other sources have told us that at least one such facility exists.

United States

The U.S. Government is detaining at least three individuals as "enemy combatants" on U.S. soil: two U.S. citizens, Jose Padilla and Yaser Hamdi, as well as Ali Saleh Kahlah al-Marri, a Qatari national residing in the United States. They are all held at the Naval Consolidated Brig in Charleston, South Carolina.[121]

The legal status or rights held by these "enemy combatants" is now being considered by the U.S. Supreme Court, which is expected to rule in the coming weeks on the legality of their detention. The President has designated Padilla, Hamdi and al-Marri "enemy combatants," and deprived them of protection under the Geneva Conventions or under U.S. criminal law.[122] In effect, the

President has reserved for himself the authority to deny those so labeled, regardless of citizenship, all legal rights and remedies, whether under international human rights or humanitarian law, U.S. criminal law, the Uniform Code of Military Justice, or the U.S. Constitution.

The U.S. Government has likewise failed to provide information regarding the "enemy combatants." Both Mr. Padilla and Mr. al-Marri were abruptly removed from the criminal justice system to military custody.[123] In the case of Jose Padilla, he was originally provided a public defense attorney and his case was entered into the U.S. criminal justice system. While proceedings were pending, the President declared Mr. Padilla an "enemy combatant" and ordered him transported to a military brig in South Carolina – without informing his lawyer.[124] There is no clear procedure for informing families that their loved one has been designed an "enemy combatant." Both Mr. Padilla's and Mr. al-Marri's lawyers informed their respective families of their detention while they were still in the criminal justice system.[125] As far as lawyers for Padilla, Hamdi, and al-Marri are aware, the U.S. Government did not officially inform their respective families.[126]

The detainees' access to the outside world has been limited. After nearly two years in incommunicado detention, both Mr. Hamdi and Mr. Padilla were granted a visit with their lawyers (following the Supreme Court's decision to hear their cases).[127] In addition, the ICRC has been granted a visit to Mr. Padilla and Mr. Hamdi. [128] Mr. al-Marri's attorney does not know whether the ICRC has visited Mr. al-Marri.[129]

U.S. Ships

In the aftermath of the war in Afghanistan, a number of detainees were transferred and held for short periods of time on the USS Bataan and USS Peleliu. In January 2002, John Walker Lindh and David Hicks, along with a number of Taliban and Al Qaeda prisoners were detained aboard the USS Bataan.[130] Mr. Lindh was transferred to the USS Bataan on December 31, 2001 and remained there until January 22, 2002.[131] Eight detainees were held on the USS Bataan during the same time period.[132] Both Mr. Hicks and Mr. Lindh were detained on the USS Peleliu prior to being transferred to the USS Bataan.[133] Mr. Lindh was transferred to the USS Peleliu on December 14, 2001.[134] During that time, there were at least four additional detainees on board the USS Peleliu.[135] The Defense Department has refused to confirm or deny whether any current detainees are being held onboard naval ships.[136]

III. The Law

[There] may be instances arising in the future where persons are wrongfully detained in places unknown to those who would apply for habeas corpus in their behalf. . . . These dangers may seem unreal in the United States. But the experience of less fortunate countries should serve as a warning . . . .

Ahrens v. Clark, 335 U.S. 188 (1948) (Rutledge, J., dissenting)

In its Country Reports on human rights conditions abroad, the U.S. Department of State has consistently criticized the practice of holding individuals incommunicado in secret detention facilities.[137] For a nation founded on the principle of limited government, the reason for the criticism is not difficult to understand. As one federal court recently put it in rejecting the Government's efforts to secretly deport certain individuals from the United States: "The Executive Branch seeks to uproot people's lives, outside the public eye, and behind a closed door. Democracies die behind closed doors."[138]

For this reason, the major international treaties that govern the use of detention by the United States recognize the fundamental necessity of maintaining openness in government detention – whether of civilians or of prisoners of war, and whether they are detained in the course of international armed conflict or not. Moreover, longstanding U.S. law and policy reflect adherence to these obligations.

Under the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR), which the United States ratified more than a decade ago, makes clear that all states parties have a duty to institute procedures that will minimize the risk of torture.[139] At the top of the list of required procedures: maintaining officially recognized places of detention, keeping registers of all in custody, and disclosing the names of all individuals detained to their families and friends.[140]

> To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations

> should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.[141]

Such requirements are imposed because prisoners are "particularly vulnerable persons," who can easily become subject to abuse. In fact, incommunicado detention, especially by denying individuals contact with family and friends, violates the ICCPR's obligation to treat prisoners with humanity.[142] States are thus required to implement provisions "against incommunicado detention" that deter violations and ensure accountability.[143]

The Human Rights Committee (HRC), the independent ICCPR monitoring body (whose members are human rights experts elected by states parties), has consistently recognized the import of these obligations. For example, in *El-Megreisi v. Libya*, the HRC found that the Libyan government in detaining an individual for six years, the last three of which incommunicado and at an unknown location, had violated the ICCPR's prohibition of torture and its requirement that prisoners be treated with dignity.[144] This, despite the fact that the family knew that the detainee was alive and his wife had been allowed to visit him once. The HRC nonetheless found that the detainee's prolonged incommunicado imprisonment as well as the government's refusal to disclose El-Megreisi's whereabouts amounted both to arbitrary detention and to a state failure to minimize the risks of torture.[145]

Under the Geneva Conventions

The Geneva Conventions of 1949, which the United States has signed and ratified, are the primary instruments of international humanitarian law protecting all those caught up in the course of armed conflict. The U.S. Government has generally taken the position that the Geneva Conventions apply in the U.S. armed conflict in Iraq.[146] Despite this, both conflicting public statements, and internal Administration dispute over the applicability of these treaties, have left their role in these conflicts deeply unclear.[147]

The Administration's position regarding the Afghanistan conflict has been even less clear. In press statements in early January 2002, Defense Secretary Donald Rumsfeld stated that as a matter of policy, but not of legal obligation, the United States intended to treat detainees from Afghanistan in a manner "reasonably consistent with the Geneva Conventions," and would "generally" follow the Geneva Conventions, though only to "the extent that they are appropriate," as "technically unlawful combatants do not have any rights under the Geneva Convention."[148] Following an internal review of this position at the urging of Secretary of State Colin Powell (who was concerned about the potential effect on U.S. forces of a blanket renunciation of the Geneva Conventions), the Administration modified its position slightly.[149] On February 7, 2002, White House Spokesman Ari Fleischer announced President Bush's decision "that the Geneva Convention applies to members of the Taliban militia, but not to members of the international al-Qaida terrorist network."[150] Despite the stated application of the Conventions, however, the Administration determined that Taliban fighters were not eligible for prisoner-of-war status because the government had violated international humanitarian law; this allegation had never previously stopped the United States from affording enemy government forces prisoner-of-war protections.

The U.S. obligation to record and account for prisoners of war, defined under the Third Geneva Convention, is clear. Prisoners of war are to be documented, and their whereabouts and health conditions made available to family members and to the country of origin of the prisoner.[151] The

Fourth Geneva Convention (governing the treatment of civilians) establishes virtually identical procedures for the documentation and disclosure of information concerning civilian detainees.[152] These procedures are meant to ensure that "[i]nternment . . . is not a measure of punishment and so the persons interned must not be held incommunicado."[153]

The disclosure required by the Geneva Conventions is done in the first instance through a system of capture cards. "Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card . . . informing his relatives of his *capture, address and state of health*. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner."[154] (The United States' failure to observe the capture card system in Iraq was the subject of ICRC criticism in its recently leaked 2004 report.[155])

The Central Agency described in Article 123 is a body meant to be established in a neutral country whose purpose is "to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend."[156] The ICRC has historically established the Central Agency and "[w]henever a conflict has occurred since the Second World War, the International Committee has placed the Agency at the disposal of the belligerents, and the latter have accepted its services."[157]

U.S. Domestic Law and Policy

The U.S. government has long-standing rules requiring the disclosure to the ICRC of detainee information as well as the provision of ICRC access to prisoners, in order to ensure that U.S. Geneva Conventions obligations have been fulfilled. This policy is enshrined in binding military regulations and field manuals dating back half a century.

Defense Department Directive 2310.1 – currently in force – affirms the United States' obligation to comply with the Geneva Conventions and establishes a framework for information disclosure.[158] Under this Directive, the Secretary of the Army must develop plans for "the treatment, care, accountability, legal status, and administrative procedures to be followed about personnel captured or detained by, or transferred from the care, custody, and control of, the U.S. Military Services."[159] In particular, the Secretary of the Army is required to plan and operate a prisoner of war and civilian internment information center to comply with the United States' Geneva Convention obligations (described above), and "serve to account for all persons who pass through the care, custody, and control of the U.S. Military Services."[160] The Undersecretary of Defense for Policy (a position currently held by Doug Feith) has "primary staff responsibility" for overseeing the detainee program.[161]

To implement its obligations under Article 122 of the Third Geneva Convention, requiring each detaining power to establish a national information bureau,[162] and to fulfill Directive 2310.1, the Army established the National Prisoner of War Information Center (NPWIC). According to binding Army Regulation 190-8, the NPWIC is charged with maintaining records for both POWs and detained civilians.[163] The center functioned during the 1991 Gulf War, and has been used in subsequent U.S. military operations. As an information processor, the NPWIC ensures full

accountability for persons who fall into U.S. hands. It does not make decisions regarding whether an individual is entitled to prisoner-of-war or other legal status.[164]

As recently as last April, W. Hays Parks, Special Assistant to the Army JAG, maintained that the NPWIC would be employed in Iraq: "Once the theater processing is accomplished, those reports are sent back here to the National Prisoner of War Information Center, which is run under the Army Operations Center. Those lists are all collated, put together and we ensure that we have proper identification, the best information we can get from that. And thereafter, that information is forwarded by the United States government to the International Committee of the Red Cross."[165]

In his report, General Taguba noted that such regulations had not been fully complied with, since the reporting systems – such as the National Detainee Reporting System (NDRS) and the Biometric Automated Toolset System (BATS) – which traditionally provide information to the NPWIC were "underutilized and often [did] not give a 'real time' accurate picture of the detainee population due to untimely updating."[166] Repeated efforts by Human Rights Firsts to contact the Department of the Army, Office of Public Affairs, in order to clarify the status of the center and the use of these reporting systems were not answered.

Finally, since 1956, the Army's field manual has explicitly recognized the ICRC's right to detainee information and access, and its special role in ensuring Geneva Conventions compliance. The manual stipulates: "The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times."[167] The Navy's operations handbook likewise authorizes the ICRC to monitor "the treatment of prisoners of war, interned civilians, and the inhabitants of occupied territory."[168] It describes the ICRC's special status and access to detainees:

> [The ICRC's] principal purpose is to provide protection and assistance to the victims of armed conflict. The Geneva Conventions recognize the special status of the ICRC and have assigned specific tasks for it to perform, including visiting and interviewing prisoners of war, providing relief to the civilian population of occupied territories, searching for information concerning missing persons, and offering its "good offices" to facilitate the establishment of hospital and safety zones.[169]

Army regulations make even more explicit the rights of detainees, both civilians and combatants, to contact the ICRC and ensure adequate access and disclosure. With respect to detained combatants, prisoner representatives have right to correspond with the ICRC.[170] Similar internee committees representing detained civilians also have rights to unlimited correspondence with the ICRC. "Members of the Internee Committee will be accorded postal and telegraphic facilities for communicating with . . . the International Committee of the Red Cross and its Delegates. . . . These communications will be unlimited."[171]

IV. The Purpose Behind the Law

It will 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.

Secretary of State Colin Powell
Internal Memorandum on Effects of Disregarding Geneva Conventions in Afghanistan
January 26, 2002

Current U.S. detention and interrogation practices undermine both the protection of human rights, and U.S. national security interests. As described above, the United States has failed to meet its obligation to keep registers of all in custody, and to disclose the names of all individuals detained to their families and friends.[172] The United States has also failed to fulfill its obligation under longstanding U.S. policy and law to afford the ICRC unfettered access to all detainees held in the course of armed conflict.[173] And the United States has failed to afford every individual in its custody some recognized legal status – some human rights – under law.[174]

These laws were enacted in part to meet essential policy objectives. As we have seen vividly demonstrated in Abu Ghraib prison in Iraq, unregulated and unmonitored detention and interrogation practices invite torture and abuse. These abuses put the United States' own forces abroad at greater risk of the same kinds of torture. These illegal practices also seriously undermine the United States' ability to "win the hearts and minds" of the global community – a goal essential to defeating terrorism over the long term. This chapter discusses the basis for those concerns.

Current Practice Sets Conditions for Torture & Abuse

All I want to say is that there was "before" 9/11 and "after" 9/11. After 9/11 the gloves come off.

Former CIA Counterterrorism Director Cofer Black
Testimony to the Joint House and Select Intelligence Committee
September 26, 2002

When governments cloak detention in a veil of secrecy, by holding prisoners incommunicado or at undisclosed locations, the democratic system of public accountability cannot function. As former UN Special Rapporteur on Torture Nigel Rodley has written, the more hidden detention

practices there are, the more likely that "all legal and moral constraint on official behavior [will be] removed."[175]

These concerns have produced a series of international standards governing detention, expressed in the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). In order to maintain public accountability and minimize the chance for abuse, international law requires families to be notified of both arrest and detainee whereabouts.[176] For the same reason, governments must hold detainees only in publicly recognized detention centers and maintain updated registers of all prisoners.[177] By ensuring that state detention practices are subject to public scrutiny, these disclosure requirements constrain state violence and provide basic safeguards for prisoner treatment.

Without these protections, the safety and dignity of prisoners are left exclusively to the discretion of the detaining power – circumstances that have repeatedly produced brutal consequences. For instance, during Saddam Hussein's rule of Iraq, secrecy was an essential component of detention practices. Individuals were arbitrarily arrested; tracing their whereabouts was a virtual impossibility. As Amnesty International reported in 1994: "Usually families of the 'disappeared' remain[ed] ignorant of their fate until they [were] either released or confirmed to have been executed."[178] Thus, in the March 1991 uprising after the first Gulf War, "opposition forces broke into prisons and detentions centres" across northern and southern Iraq and released hundreds of prisoners "held in secret underground detention centres with no entrance or exit visible."[179]

The United States' own recent experiences in Iraq provide a more apt case in point. As widely publicized reports now make clear, U.S. detention officials have used various prohibited interrogation techniques on Iraqi prisoners, including manipulating detainees' diets, imposing prolonged isolation, using military dogs for intimidation, and forcing detainees to maintain "stress positions" for prolonged periods. These practices violate U.S. and international law,[180] and a thorough internal Army investigation report documenting their use circulated within the U.S. Government in February 2004. Yet according to press accounts, these practices continued "until a scandal erupted in May over photographs depicting abuse at the prison."[181]

Policies of secrecy and non-disclosure have also made subsequent investigations into wrong-doing – and efforts to hold violators accountable – more difficult. Investigations into reports of abuse and even deaths of detainees in custody have been scattered and insufficient.[182] For example, the *New York Times* has reported on two deaths in U.S. custody at Bagram Air Force that occurred in December 2002; according to the Times, the Army pathologist's report indicated the cause of death was "homicide," a result of "blunt force injuries to lower extremities complicating coronary artery disease." Despite multiple requests from Human Rights First and other human rights organizations, the Pentagon has refused to disclose any information on how, or even whether, it was investigating these deaths.[183] Recently leaked Army reports indicate that the investigation into the deaths continues, and that the crimes remain unsolved nearly a year and a half later.[184]

Such experiences give added import to international disclosure requirements regarding detention practices. They also make the failure of the United States to disclose detainees'

whereabouts or numbers particularly disconcerting. By keeping its practices hidden from view, the United States created conditions ripe for the torture and abuse now in evidence.

Current Practice Undermines Protections for Americans Abroad

It is critical to realize that the Red Cross and the Geneva Conventions do not endanger American soldiers, they protect them. Our soldiers enter battle with the knowledge that should they be taken prisoner, there are laws intended to protect them and impartial international observers to inquire after them.

Senator John McCain
Wall Street Journal Commentary
June 1, 2004

The United States' official compliance with the Geneva Conventions since World War II has been animated by several powerful concerns that remain equally important in the struggle against terror. First and foremost is the belief that American observance of rule-of-law protections drives our enemies to reciprocate in their treatment of American troops and civilians caught up in conflicts overseas. As the U.S. Senate recognized in ratifying the Conventions:

> If the end result [of ratification] is only to obtain for Americans caught in the maelstrom of war a treatment which is 10 percent less vicious than what they would receive without these conventions, if only a few score of lives are preserved because of the efforts at Geneva, then the patience and laborious work of all who contributed to that goal will not have been in vain.[185]

Secretary of State John Foster Dulles agreed that American "participation is needed to . . . enable us to invoke [the Geneva Conventions] for the protection of our nationals."[186] And Senator Mike Mansfield added that while American "standards are already high":

> The conventions point the way to other governments. Without any real cost to us, acceptance of the standards provided for prisoners of war, civilians, and wounded and sick will insure improvement of the condition of our own people.[187]

The fundamental self-interest behind ratification of the Geneva Conventions has proven effective in conflicts preceding the "war on terrorism." General Eisenhower, for example, explained that the Western Allies treated German prisoners in accordance with the principles of international humanitarian law because "the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing."[188]

During the Vietnam War, North Vietnam publicly asserted that all American POWs were war criminals, and hence not entitled to the protections of the Geneva Conventions.[189] Still, the United States applied the Geneva Conventions' principles to all enemy prisoners of war – both North Vietnamese regulars and Viet Cong – in part to try to ensure "reciprocal benefits for American captives."[190] U.S. military experts have made clear their belief that American adherence to the Geneva Conventions in Vietnam saved American lives:

> [A]pplying the benefits of the Convention to those combat captives held in South Vietnam did enhance the opportunity for survival of U.S. service members held by the

> Viet Cong and North Vietnamese. While the enemy never officially acknowledged the applicability of the Geneva Convention, and treatment of American POWs continued to be brutal, more U.S. troops were surviving capture. Gone were the days when an American advisor was beheaded, and his head displayed on a pole by the Viet Cong. On the contrary, the humane treatment afforded Viet Cong and North Vietnamese Army prisoners exerted constant pressure on the enemy to reciprocate, and the American POWs who came home in 1973 survived, at least in part, because of [that].[191]

The United States government's allegiance to basic international law obligations continued during the 1991 Gulf War, in which the United States armed forces readily afforded full protection under the Geneva Conventions to the more than 86,000 Iraqi POWs in its custody.[192]

It is in large measure for their effectiveness in protecting America's own that many former American prisoners of war today support the United States government's adherence to the principles of the Geneva Conventions that helped protect them. As Senator (and former prisoner of war) John McCain has explained:

> The Geneva Conventions and the Red Cross were created in response to the stark recognition of the true horrors of unbounded war. And I thank God for that. I am thankful for those of us whose dignity, health and lives have been protected by the Conventions . . . . I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war.[193]

Senator McCain recently reaffirmed his belief that our failure to abide by our own obligations puts our troops in danger abroad: "While our intelligence personnel in Abu Ghraib may have believed that they were protecting U.S. lives by roughing up detainees to extract information, they have had the opposite effect. Their actions have increased the danger to American soldiers, in this conflict and in future wars."[194]

Commenting on recent events in the "war on terrorism," former U.S. Ambassador to Vietnam (and former prisoner of war) Pete Peterson agreed, explaining: "There can be no doubt that the Vietnamese while consistently denying any responsibility for carrying out the provisions of the Geneva Accords, nevertheless tended to follow those rules which resulted in many more of us returning home than would have otherwise been the case."[195]

Current Practice Undermines American "Soft Power" in the World

Detention can induce fear, isolation and hopelessness. . . .

Physicians for Human Rights
From *Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*
June 2002

The United States' practices in its global network of detention facilities also has a deeply negative effect on the U.S. ability to combat the threat of terrorism. As national security experts have pointed out, military power is only one of a set of tools in the nation's toolbox to reduce the chances of more terrorist attacks on U.S. soil. Other critical tools – what some have called "soft power" – include diplomatic and economic measures, cultural and educational exchange,

and the ability to credibly leverage moral and popular authority.[196] This last tool depends critically on visible demonstration that the United States deeds match its words in supporting democracy and human rights.

The extent to which the United States' detention practices represent a failure in this regard is in painful evidence when one compares the Administration's statements to recent revelations about acts of torture by U.S. personnel:

- On March 23, 2003, after American soldiers were captured and abused in Iraq, the United States condemned Iraqi treatment of American prisoners as violating the Geneva Conventions and contrasted it to the United States' own treatment of prisoners it had taken. President Bush demanded that American prisoners "be treated humanely . . . just like we're treating the prisoners that we have captured humanely."[197]
- On March 23, 2003, Deputy Secretary of Defense Wolfowitz also invoked the Geneva Conventions when objecting to Iraqi treatment of U.S. prisoners: "We've seen those scenes on Al Jazeera that others have seen. We have reminded the Iraqis . . . that there are very clear obligations under the Geneva Convention to treat prisoners humanely . . . . We treat our own prisoners, and there are hundreds of Iraqi prisoners, extremely well."[198]
- On June 26, 2003, President Bush affirmed the United States' commitment not to torture security suspects or interrogate them in a manner that would constitute "cruel and unusual punishment."[199]
- On April 28, 2004, Supreme Court Justice Ruth Bader Ginsburg asked U.S. Deputy Solicitor General Paul Clement how the Court could be sure that government interrogators were not torturing detainees in U.S. custody. Clement insisted that the Court would just have to "trust the executive to make the kind of quintessential military judgments that are involved in things like that."[200]

The Administration's words are admirable. But the deeds resulting from its policies have engendered deep uncertainty, fear, and anger among the many in the Muslim world. As Brigadier General Mark Kimmitt, chief spokesman for the U.S. military in Iraq, recently acknowledged: "The evidence of abuse inside Abu Ghraib has shaken public opinion in Iraq to the point where it may be more difficult than ever to secure cooperation against the insurgency, that winning over Iraqis before the planned handover of some sovereign powers next month had been made considerably harder by the photos."[201]

The effect of U.S. secrecy and failure to communicate regarding policies of detention has deeply alienated the families of those detained. As the *New York Times* reported of some of the families of Iraqi detainees:

> Sabrea Kudi cannot find her son. He was taken by American soldiers nearly nine months ago, and there has been no trace of him since. "I'm afraid he's dead," Ms. Kudi said. Lara Waad cannot find her husband. He was arrested in a raid, too. "I had God – and I had him," she said. "Now I am alone." . . . . Ms. Kudi, whose son, Muhammad, was detained nearly nine months ago, has been to Abu Ghraib more than 20 times. The huge prison is the center of her continuing odyssey through military bases, jails, assistance

> centers, hospitals and morgues. She said she had been shoved by soldiers and chased by dogs. "If they want to kill me, kill me," Ms. Kudi said. "Just give me my son."[202]

Recent polls by the Coalition Provisional Authority show that about 80 percent of Iraqis view U.S. troops unfavorably. More significant, Muslim clerics now regularly rail against the United States for the abuse of Iraqi captives at Abu Ghraib prison. As one Muslim preacher was recently quoted saying: "No one can ask them what they are doing, because they are protected by their freedom. . . . No one can punish them, whether in our country or their country. The worst thing is what was discovered in the course of time: abusing women, children, men, and the old men and women whom they arrested randomly and without any guilt. They expressed the freedom of rape, the freedom of nudity and the freedom of humiliation."[203]

Finally, U.S. policies that promote secrecy and lack of accountability have encouraged authoritarian regimes around the globe to commit abuses in the name of counterterrorism – abuses that undermine efforts to promote democracy and human rights. These regimes self-consciously invoke the very language the United States uses to justify such security policies in order to suppress lawful dissent and quell political opposition in their own countries. To cite a few examples:

- In Egypt (where President Mubarak has endorsed a diminished post-September 11 concept of the "freedom of the individual");
- In Liberia (where former President Taylor ordered a critical journalist declared an "enemy combatant"; the journalist was subsequently jailed and tortured);
- In Zimbabwe (where President Mugabe, while voicing agreement with the Bush Administration's policies in the "war on terrorism," declared foreign journalists and others critical of his regime "terrorists" and suppressed their work);
- In Eritrea (where the governing party arrested 11 political opponents, has held them incommunicado and without charge, and defended its actions as being consistent with United States actions after September 11); and
- In China (where the Chinese government charged a peaceful political activist with terrorism and sentenced him to life in prison, leading the U.S. State Department to note "with particular concern the charge of terrorism in this case, given the apparent lack of evidence [and] due process").[204]

The United States is losing the critical moral high ground that is essential to achieving success against terror; we are now used as an example of unchecked government power by the most repressive regimes in the world.

V. Ending Secret Detentions

The revelations that have emerged about U.S. policy and practice of detention and interrogation in the "war on terrorism" are deeply disturbing. While the United States of course has legitimate interests in keeping some information secret, there is no legitimate security interest in failing to provide a baseline accounting to Congress, the ICRC, and the families of those detained of the number, nationality, legal status, and general location of all those the United States currently holds.

Human Rights First thus calls on the Bush Administration to take the following critical steps:

1. Disclose to Congress and the ICRC the location of all U.S.-controlled detention facilities worldwide, and provide a regular accounting of: the number of detainees, their nationality, and the legal basis on which they are being held.
2. Order a thorough, comprehensive, and independent investigation of all U.S.-controlled detention facilities, and submit the findings of the investigation to Congress.
3. Take all necessary steps to inform the immediate families of those detained of their loved ones' capture, location, legal status, and condition of health.
4. Immediately grant the ICRC unrestricted access to all detainees being held by the United States in the course of the global "war on terrorism."
5. Publicly reject assertions by Administration lawyers that domestic and international prohibitions on torture and cruelty do not apply to the President in the exercise of his commander-in-chief authority.
6. Investigate and prosecute all those who carried out acts of torture and other cruel, inhuman or degrading treatment in violation of U.S. and international law, as well as those officials who ordered, approved or tolerated these acts.
7. Publicly disclose the status of all pending investigations into allegations of mistreatment of detainees and detainee deaths in custody.

VI. Partial List of Letters and Inquiries by Human Rights First Since June 2003

1. June 8, 2004, Human Rights Executive Directors Working Group letter to Senators, re: calling for support of amendment proposed by Senator Durbin reiterating the United States' commitment to the Convention Against Torture.
2. June 4, 2004, Human Rights First letter to John Ashcroft, Attorney General, re: calling for expeditious investigation and prosecution of those responsible for abuses at Abu Ghraib.
3. June 2, 2004, Human Rights First letter to P. Mathew Gillen, Director of Consular Affairs, Saudi Arabia, re: status of Ahmed Abu Ali, U.S. citizen detained in Saudi Arabia.
4. May 13, 2004, Human Rights First letter to Donald H. Rumsfeld, Secretary of Defense, re: disclosure of information regarding location of detentions.
5. May 7, 2004, Human Rights Executive Directors Working Group letter to President George W. Bush, re: abuses at Abu Ghraib.
6. December 16, 2003, Human Rights First letter to Brigadier General Thomas L. Hemingway, Legal Advisor to the Appointing Authority, Office of Military Commissions, re: access to military commissions.
7. November 17, 2003, Human Rights Executive Directors Working Group letter to Colin L. Powell, Secretary of State, re: calling for investigation into the case of Maher Arar.
8. November 17, 2003, Human Rights Executive Directors Working Group letter to Condoleezza Rice, National Security Advisor to the President, re: calling for investigation into the case of Maher Arar.
9. November 17, 2003, Human Rights Executive Directors Working Group letter to William J. Haynes II, General Counsel, Department of Defense, re: calling for investigation into the case of Maher Arar.
10. November 12, 2003, Human Rights First letter to Lieutenant General John R. Vines, U.S. Commander in Afghanistan, re: status of military investigations into deaths at Bagram Air Base.
11. June 25, 2003, Human Rights First letter to Major General John R. Vines, U.S. Commander in Afghanistan, re: status of military investigations into deaths at Bagram Air Base.

12. June 18, 2003, Human Rights First letter to William J. Haynes II, General Counsel, Department of Defense, re: access to military commissions.

Endnotes

1 Oral Argument at 23, Rumsfeld v. Padilla, 124 S.Ct. 1904, 72 USLW 3656 (2004) (No. 03-1027).

2 Human Rights First, *Assessing the New Normal: Liberty and Security for the Post –September 11 United States,*(2003), p. 83; Human Rights Watch, "Enduring Freedom: Abuses by U.S. Forces in Afghanistan," March 8, 2004, available at http://hrw.org/reports/2004/afghanistan0304/ (accessed June 6, 2004); Pamela Hess, "Rumsfeld Approves Interrogation Procedures," *United Press International*, May 20, 2004, Douglas Jehl and Andrea Elliott, "Cuba Base Sent Its Interrogators To Iraqi Prison," *New York Times*, May 29, 2004; David Johnston and Thom Shanker, "Pentagon Approved Intense Interrogation Techniques for Sept. 11 Suspect at Guantanamo," *New York Times*, May 21, 2004; "Interrogations Led to Afghan, Iraqi Deaths," *United Press International*, May 24, 2004; Douglas Jehl and David Rohde, "Abu Ghraib unit is linked to Afghan prisoner deaths, Bagram detainees describe similar treatment," *International Herald Tribune*, May 25, 2004. For example, the death of two men in custody at the U.S. Air Force Base at Bagram, Afghanistan, in December 2002, and the lack of public information on the internal investigation raised concerns about the government's mistreatment of detainees. Mullah Habibullah and Dilawar (identified by only one name), were determined to have suffered from "blunt force injuries" and their deaths were classified as "homicides" by Department of Defense pathologists. *See e.g.*, Duncan Campbell, "Afghan Prisoners Beaten to Death at U.S. Military Interrogation Base," *Guardian* March 7, 2003, Marc Kaufman, "Army Probing Deaths of Two Afghan Prisoners," *Washington Post*, March 5, 2003. Despite a letter by Human Rights First to Lieutenant General John R. Vines as recently as November 2003, there has been no public disclosure of the status of the investigations into Mr. Habibullah and Dilawar's deaths. In addition, detainees released from Bagram report being sleep deprived through use of bright lights and kicking by officials, being placed in painful positions for long periods of time, prolonged hooding, and painful shackling. Moazzem Begg, a British national, wrote in a letter home of being hungry and unable to sleep because of the bright lights. Paul Harris and Burhan Wazir, "Briton tells of ordeal in Bush's torture jail," *Guardian*, December 29, 2002. Haji Osman, a released Guantanamo detainee who was first held in Bagram, witnessed detainees being made to stand for two hours as punishment. Others, he said, were kept alone in cells and allowed minimal contact with other detainees. Amy Waldman, "Guantanamo and Jailers: Mixed Review by Detainees," *New York Times*, March 17, 2004. Muhammad Sidiq, also released from Guantanamo spoke of being beaten at Bagram and Guantanamo. He said: "They started covering our faces and they started beating us on our head and giving electric shock." *Ibid.*

3 See, e.g., Jon Manuel, "US hides high-profile prisoners," *BBC News*, May 21, 2004, available at http://news.bbc.co.uk/1/hi/world/americas/3736157.stm (accessed June 11, 2004); James Risen, David Johnston and Neil A. Lewis, "Harsh C.I.A. Methods Cited in Top Qaeda Interrogations," *New York Times*, May 13, 2004.

4 Human Rights First telephone interview, Colonel Johnson, Duty Officer, Department of Defense, June 11, 2004.

5 Human Rights First telephone interview with Capt. Bruce Frame, CENTCOM Office of Public Affairs, June 7, 2004. CENTCOM is one of nine Unified Combatant Commands with operational control of U.S. combat forces; its area of responsibility includes Egypt, Iran, Iraq, Jordan, Lebanon, Syria, Yemen, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates, Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, Seychelles, Iran, Pakistan, Afghanistan, Kyrgyzstan, Kazakhstan, Turkmenistan, and Uzbekistan. United States Central Command: Area of Responsibility, available at http://www.centcom.mil/aboutus/aor.htm (accessed June 10, 2004).

6 International Committee of the Red Cross, Operational Update: "U.S. detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC," May 14, 2004, available at http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList454/73596F146DAB1A08C1256E9400469F48. ("The ICRC is especially concerned about the fact that the US detains an unknown number of people outside any legal framework. Many of those captured in the context of the so-called War on Terror are being held at US detention facilities in Bagram, Afghanistan and in Guantanamo Bay, Cuba. A small number of persons are furthermore detained in Charleston, USA. According to public statements by official US sources, a number of detainees are also being held incommunicado at undisclosed locations. The ICRC has been visiting detainees in Bagram and Guantanamo Bay, as well as in Charleston. The ICRC has also repeatedly appealed to the American authorities for access to people detained in undisclosed locations.")

7 International Committee of the Red Cross, "United States: ICRC President Urges Progress on Detention-Related Issues," Press Release, March 4, 2004, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/774F1B35A7E20CC9C1256E1D007741C1 (accessed June 16, 2004).

8 Steven Lee Myers and Eric Schmitt, "Abuse Inquiries Seen As Leaving Significant Gaps," *New York Times*, June 6, 2004, available at http://www.nytimes.com/2004/06/06/international/middleeast/06ABUS.html?hp=&pagewanted=all&position (accessed June 6, 2004).

9 *See, e.g.*, Dep't of Defense, "Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations," March 6, 2003; Memo from William H. Taft, IV, Legal Adviser, Department of State, "Comments on Your Paper on the Geneva Convention," February 2, 2002; Memo from Albert Gonzales, Counsel to President, "Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban," January 25, 2002: Memo from Robert J. Delahunty, Special Counsel, and John Yoo, Deputy Assistant Attorney General, "Application of Treaties and Laws to al Qaeda and Taliban Detainees," January 9, 2002; Memo from Patrick F. Philbin, Deputy Assistant Attorney General, and John C. Yoo, Deputy Assistant Attorney General, "Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba," December 28, 2001.

10 *See, e.g.*, Report of the International Committee of the Red Cross 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, February 2004, Section 1.1.9, available at http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.htm [hereinafter "ICRC Iraq Report"] (discussing the U.S. government's failure to adequately maintain the system of capture cards, legally mandated under the Geneva Conventions) ("Since March 2003 capture cards have often been filled out carelessly, resulting in unnecessary delays of several weeks or months before families were notified, and sometimes resulting in no notification at all. . . . The ICRC has raised this issue repeatedly with the detaining authorities since March 2003, including at the highest levels of the CF in August 2003.").

11 Interview by CagePrisoners with Farhat Paracha, wife of Saifullah Paracha, January 24, 2004, available at http://www.cageprisoners.com/interviews.php?aid=402 (accessed June 11, 2004).

12 *See, e.g.*, James Risen, David Johnston and Neil A Lewis, "Harsh C.I.A. Methods Cited in Top Qaeda Interrogations," *New York Times*, May 13, 2004; "Al Qaeda Captive Provides Leads in Terror Fight: U.S. officials concede some information may be suspect," *CNN.com*, June 12, 2002, available at http://www.cnn.com/2002/US/06/12/inv.zubaydah.tips/ (accessed June 7, 2004).

13 President George Bush, Address to Joint Session of Congress, September 21, 2001, available at http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html (accessed June 10, 2004).

14 Nancy St. Martin, "U.S. Military Opens Doors, Sheds Light on Cuba Camp," *Miami Herald*, April 10, 2004 (quoting senior interrogator at Guantanamo Bay).

15 Welsh S. White, *False Confessions And The Constitution: Safeguards Against Untrustworthy Confessions*, 32 Harvard Civil Rights-Civil Liberties Law Review 105, 145-6 (1997).

16 Letter from James Madison to W.T. Barry (August 4, 1822), *in* 9 James Madison's Writings 103 (Gaillard Hunt ed., 1910).

17 Stansfield Turner, Secrecy and Democracy: The CIA in Transition 40-41 (1985).

18 James Risen and Thom Shanker, "Hussein Enters Post 9/11 Web of U.S. Prisons," *New York Times*, Dec. 17, 2003.

19 *See* Expeditionary Strike Force One, U.S. Naval Special Operations Command Office of Public Affairs, "ESG 1 Strikes From the Sea," Jan. 5, 2004 (reporting coalition force "takedowns" of vessels carrying drugs, including one with 15 individuals "with possible links to Al Qaeda," and reporting: "Ten of the individuals from . . . two takedowns have been transferred to a secure, undisclosed location for further questioning by U.S. officials."), available at http://64.233.167.104/search?q=cache:TvjFsWzKUU4J:https://www.navsoc.navy.mil/esg1/pdf/dhowtakedown.pdf+questicni ng+Peleliu&hl=en; "Searching a Suspected Compound: Marines Investigate Abandoned Taliban Compound Amid Speculation Over Omar Search," *ABC News.com*, Jan. 1, 2002, available at http://more.abcnews.go.com/sections/world/dailynews/strike_main020101.html; Grant Holloway, "Australia to Question al Qaeda Fighter," *CNN.com*, Dec. 19, 2001, available at http://www.cnn.com/2001/WORLD/asiapcf/auspac/12/19/aust.talbandit20.12/; "Australian Taliban Fighter Handed Over to U.S. Military Forces in Afghanistan," *Associated Press*, Dec. 17, 2001, available at http://multimedia.belointeractive.com/attack/military/1217australia.html.

20 Pamela Constable, "An Afghan boy's life in U.S. custody," *Washington Post*, Feb. 12, 2004 available at http://www.msnbc.msn.com/id/4245208/ (accessed June 14, 2004); Noor Khan, "Afghan boy released from Guantanamo tells of lost year," *Associated Press*, Feb. 8, 2004.

21 FAS Letter to Director J. William Leonard, Information Security Oversight Office, May 6, 2004, available at http://www.fas.org/sgp/news/2004/05/sa050604.pdf (accessed June 14, 2004).

22 Human Rights First included this list in a request for information sent to Secretary of Defense Donald Rumsfeld on May 13, 2004, available at http://www.humanrightsfirst.org/iraq/posner_let_dod_051304.pdf.

23 *Ibid.*

24 Email Communication from CENTCOM Combined Forces Command spokesperson Michele Dewerth to Human Rights First, June 9, 2004.

25 *Ibid.*

26 "U.S. Military to Allow Red Cross to Visit Second Afghan Prison," *Associated Press*, June 9, 2004, available at http://news.bostonherald.com/international/view.bg?articleid=31223&format=.

27 Reports indicate that one detainee was killed at the detention facility near Asadabad. *See* Dana Priest and Joe Stephens, "Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light," *Washington Post*, May 11, 2004.

28 Human Rights Watch, "Enduring Freedom: Abuses by U.S. Forces in Afghanistan," May 2004 [hereinafter "Enduring Freedom Report"], available at http://hrw.org/reports/2004/afghanistan0304/ (accessed June 14, 2004); Dana Priest and Joe Stephens, "Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light," *Washington Post*, May 11, 2004; John Daniszewski, "Afghans Report Abuse in Jails," *Los Angeles Times*, May 23, 2004.

29 *See* Enduring Freedom Report, *supra*, note 26; Dana Priest and Joe Stephens, "Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light," *Washington Post*, May 11, 2004.

30 Dana Priest and Joe Stephens, "Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light," *Washington Post*, May 11, 2004.

31 Response of Department of Defense Public Affairs Office to Human Rights First, March 27, 2004, *on file* with Human Rights First.

32 Human Rights First phone conversation with DOD Press Office, June 7, 2004; *see also* Dana Priest and Joe Stephens, "Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light," *Washington Post*, May 11, 2004.

33 Sayed Salahuddin, "U.S. Military to Allow ICRC to Visit Afghan Jail," *Reuters*, June 9, 2004.

34 International Committee of the Red Cross, "US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC," May 14, 2004, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5YYH5X.

35 *Ibid.*

36 Enduring Freedom Report, *supra*, note 26; International Committee of the Red Cross, "US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC," May 14, 2004, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5YYH5X.

37 Sayed Salahuddin, "U.S. Military to Allow ICRC to Visit Afghan Jail," *Reuters*, June 9, 2004.

38 *Ibid.*

39 Human Rights First Interview with Family of Saifullah Paracha, June 9, 2004 [hereinafter "Paracha Interview"]; Enduring Freedom Report, *supra*, note 26.

40 *See* Enduring Freedom Report, *supra*, note 26.

41 Paracha Interview, *supra*, note 38.

42 Human Rights First Email Interview with Coalition Press Information Center (CPIC), June 11, 2004 [hereinafter June 11 CPIC Interview]; Human Rights Watch, "Iraq: Background on U.S. Detention Facilities in Iraq," May 7, 2004 available at http://www.hrw.org/english/docs/2004/05/07/iraq8560.htm.

43 June 11 CPIC Interview, *supra*, note 42.

44 *Ibid.*

45 Report of the High Commissioner for Human Rights: The Present Situation of Human Rights in Iraq, June 4, 2004, ¶¶ 55-58, available at http://www.unhchr.ch/html/hchr/docs/iraq1.pdf (accessed June 14, 2004).

46 Testimony given to Christian Peacemakers Team, June 3, 2004, available at http://www.cpt.org/iraq/detainee_profiles/SaddamSalehAlRawiupdate.htm (accessed June 14, 2004).

47 Report of the High Commissioner for Human Rights: The Present Situation of Human Rights in Iraq, June 4, 2004, at ¶ 59, available at http://www.unhchr.ch/html/hchr/docs/iraq1.pdf (accessed June 14, 2004).

48 *Ibid.*

49 *Defense Department Briefing*, May 4, 2004, DefenseLINK, available at http://www.defenselink.mil/transcripts/2004/tr20040504-1424.html.

50 Human Rights Watch, Iraq: Background on U.S. Detention Facilities in Iraq, available at http://www.hrw.org/english/docs/2004/05/07/iraq8560.htm. (listing Talil Air force Base, Al-Rusafa, Al- Kadhimiyya, Al-Karkh, and Camp Falcon all near or in Baghdad, Al- Diwaniyya, a detention facility in Mosul, and the Ashraf Camp). Camp Ashraf is reportedly where detained members of Mujahideen-E-Khalq (MEK), an Iraqi based organization seeking to overthrow the government in Iran, are being held.

51 DOD News Release, "Briefing on Geneva Convention, EPW's and War Crimes," April 7, 2003, available at http://www.defenselink.mil/news/Apr2003/t04072003_t407genv.html.

52 DOD News Transcript, "Enemy Prisoner of War Briefing from Kuwait City," May 8, 2003, available at http://www.defenselink.mil/transcripts/2003/tr20030508-0160.html.

53 Criminal detainees are individuals who committed serious crimes, but not offenses directed against coalition forces. Authority over criminal detainees has been transferred in most cases to local Iraqi authority under Coalition supervision. Human Rights First Telephone Interview with CPIC, June 10, 2004.

54 "US holding 4,000 'extra' detainees," *Dawn*, Sept. 17, 2003, available at http://dawn.com/2003/09/17/int6.htm. (Dawn is a leading English language newspaper in Pakistan).

55 *Ibid.*

56 DOD News Transcript, "Enemy Prisoner of War Briefing from Kuwait City," May 8, 2003, available at http://www.defenselink.mil/transcripts/2003/tr20030508-0160.html.

57 DOD News Briefing, "DoD News Briefing – Mr. Di Rita and Lt. Gen. Schwartz," July 29, 2003, available at http://www.defenselink.mil/transcripts/2003/tr20030729-0465.html.

58 "US holding 4,000 'extra' detainees," *Dawn*, Sept. 17, 2003, available at http://dawn.com/2003/09/17/int6.htm.

59 DOD News Transcript, "Coalition Provisional Authority Briefing from Baghdad," Jan. 8, 2004, available at http://www.defenselink.mil/transcripts/2004/tr20040108-1121.html; Human Rights First Email Interview with CPIC, January 29, 2004.

60June 11 CPIC Interview, *supra*, note 42. While ICRC reports that as of the week of June 7-11 the Coalition was holding 3,291 detainees at Abu Ghraib, the organization did not know the numbers of detainees released or simply transferred to other facilities. Mohammed Rahami, "US Frees Scores More Iraqis from Abu Ghraib Jail," *Associated Press*, June 14, 2004, available at http://news.yahoo.com/news?tmpl=story&u=/nm/20040614/ts_nm/iraq_release_dc_1 (accessed June 14, 2004).

61 June 11 CPIC Interview, *supra*, note 42.

62 The Christian Peacemakers Team, "Detainee Story: Wisam Adnan Hameed Ismaeel Hussain," available at

http://cpt.org/iraq/detainee_profiles/documents/WisamAdnanHameedIsmaeelHussain.doc (accessed June 14, 2004).

63 Scheherezade Faramazi, "US Releases Hundreds from Abu Ghraib," *Associated Press*, June 14, 2004, available at http://story.news.yahoo.com/news?tmpl=story&u=/ap/20040614/ap_on_re_mi_ea/iraq_prisoners&cid=540&ncid=1473 (accessed June 14, 2004).

64 DOD News Transcript, "Coalition Provisional Authority Briefing from Baghdad," January 8, 2004, available at http://www.defenselink.mil/transcripts/2004/tr20040108-1121.html.

65 On February 26, 2004, General Sanchez disclosed the location of the MEK detainees, commenting that "We have the 3,800 MEK that continue to be under our custody out at [Camp] Ashraf." "Combined Joint Task Force 7 Briefing from Baghdad," available at http://www.defenselink.mil/transcripts/2004/tr20040226-0498.html.

66 Human Rights First Telephone Interview with CPIC, June 9, 2004.

67 *Ibid.*

68 DOD News Transcript, "Coalition Provisional Authority Briefing from Iraq," March 10, 2004, available at http://www.defenselink.mil/transcripts/2004/tr20040310-1283.html.

69 Under Article 4B of the Geneva Convention Relative to the Treatment of Prisoners of War "[p]ersons belonging, or having belonged, to the armed forces of the occupied territory" can be interned by the occupying power if it deems it necessary. Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August, 1949, art. 4B, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68 (accessed June 14, 2004).

70 Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August, 1949, art. 118, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68 (accessed June 14, 2004).

71 Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August, 1949, art. 78 (emphasis added). http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5 (accessed June 14, 2004).

72 Commentary to Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art. 5, available at http://www.icrc.org/ihl.nsf/b466ed681ddfcfd241256739003e6368/12409217ce36c309c12563cd0042a5e0?OpenDocument (accessed June 14, 2004).

73 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August, 1949, art. 5, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5 (accessed June 14, 2004).

74 Commentary to Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art. 5, available at http://www.icrc.org/ihl.nsf/b466ed681ddfcfd241256739003e6368/12409217ce36c309c12563cd0042a5e0?OpenDocument (accessed June 14, 2004).

75 ICRC Iraq Report, *supra*, note 10.

76 *See Report of Major General Antonio Taguba, "Article 15-6: Investigation of the 800th Military Police Brigade,"* (stating the "320th MP Battalion held a handful of "ghost detainees"...that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team.), available at http://www.humanrightsfirst.org/us_law/800th_MP_Brigade_MASTER14_Mar_04-dc.pdf (accessed June 14, 2004).

77 *Jeffrey Gettleman, "The Struggle for Iraq: The Detainees," New York Times, March 9, 2004, at A1.*

78 Report of High Commissioner: The Present Situation of Human Rights in Iraq (advanced edited version), Submission from the United States of America: Treatment of Persons in Detention in Iraq, Annex II, available at http://www.unhchr.ch/html/hchr/docs/annexII.doc.

79 Human Rights Watch, "Iraq: Background on U.S. Detention Facilities in Iraq," May 7, 2004, available at http://www.hrw.org/english/docs/2004/05/07/iraq8560.htm. (The nine GIC are located in al-Kadhimiyya, al-Karkh, al-Adhamiyya, al-Mansour, al-Rusafa, al-Sadr, al-Karrada, Tis'a Nisan, and al-Rashid districts.)

80 Report of High Commissioner: The Present Situation of Human Rights in Iraq (advanced edited version), Submission from the United States of America: Treatment of Persons in Detention in Iraq, Annex II, available at http://www.unhchr.ch/html/hchr/docs/annexII.doc

81 ICRC Iraq Report, *supra*, note 10.

82 Report of High Commissioner: The Present Situation of Human Rights in Iraq (advanced edited version), Submission from the United States of America: Treatment of Persons in Detention in Iraq, Annex II, available at http://www.unhchr.ch/html/hchr/docs/annexII.doc; ICRC Iraq Report, *supra*, note 10; Hannah Allam, "Missing Iraqis Believed to be Lost in Abu Ghraib Prison," *Knight Ridder*, June 11, 2004.

83 ICRC Iraq Report, *supra*, note 10.

84 *Ibid.*

85 Human Rights Watch, Iraq: Background on U.S. Detention Facilities in Iraq, available at http://www.hrw.org/english/docs/2004/05/07/iraq8560.htm

86 Human Rights Watch, Iraq: Background on U.S. Detention Facilities in Iraq, available at http://www.hrw.org/english/docs/2004/05/07/iraq8560.htm

87 "Detainee Story: Hayder Thamer Salman," available at http://cpt.org/iraq/detainee_profiles/documents/HayderThamerSalman doc (accessed June 14, 2004).

88 White House Press Briefing by Ari Fleischer, Jan. 9, 2002, available at http://www.whitehouse.gov/news/releases/2002/01/20020109-5.html.

89 DOD News Release, "Detainee Transfer Completed," DefenseLINK, April 2, 2004, available at http://www.defenselink.mil/releases/2004/nr20040402-0505.html; International Committee of the Red Cross, "US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC," May 14, 2004, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5YYH5X.

90 DOD News Release, "Detainee Transfer Completed," DefenseLINK, April 2, 2004, available at http://www.defenselink.mil/releases/2004/nr20040402-0505.html. Of those returned for continued detention, four were transferred to Saudi Arabia, one to Spain and seven to Russia.

91 DOD News Release, "Transfer Of Detainees Complete," July 18, 2003, available at http://www.defenselink.mil/releases/2003/nr20030718-0207.html

92 DOD News Release, "Detainee Transfer Completed,"April 2, 2004, available at http://www.defenselink.mil/releases/2004/nr20040402-0505.html; DOD News Release, "Transfer of Guantanamo Detainees Complete," Nov. 24, 2003, available at http://www.defenselink.mil/releases/2003/nr20031124-0685.html.

93 DOD News Release, "Detainee Transfer Completed," DefenseLINK, April 2, 2004, available at http://www.defenselink.mil/releases/2004/nr20040402-0505.html; International Committee of the Red Cross, "US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC," May 14, 2004, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5YYH5X.

94 DOD News Release, "Detainee Transfer Completed," DefenseLINK, Feb. 13, 2004, available at http://www.dod.mil/releases/2004/nr20040213-0981.html; DOD News Release, "Detainee Transfer Completed," DefenseLINK, Feb. 25, 2004, available at http://www.dod.mil/releases/2004/nr20040225-0365.html; DOD News Release, "Detainee Transfer Completed," DefenseLINK, March 9, 2004, available at http://www.dod.mil/releases/2004/nr20040309-0443.html.

95 *See* Human Rights First, *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, 2003; Tony Karon, "Why Guantanamo Has Europe Hopping Mad," *Time.com*, Jan. 24, 2002, available at http://www.time.com/time/world/article/0,8599,197210,00.html (accessed June 12, 2004); "Europe urges Guantanamo action," *BBC News*, Oct. 22, 2003, available at http://news.bbc.co.uk/2/hi/americas/3205055.stm.

96 U.S. Department of Defense, "DoD News Briefing – Secretary Rumsfeld and Gen. Myers,"

Jan. 11, 2002, available at http://www.defenselink.mil/news/Jan2002/t01112002_t0111sd.html (accessed June 11, 2004); *see also* Administrative Review Procedures for Enemy Combatants in the Control of the Department of Defense at Guantanamo Bay Naval Base, Cuba, May 11, 2004, DefenseLINK, Section A, available at http://www.defenselink.mil/news/May2004/d20040518gtmoreview.pdf.

97 ICRC Commentary to the IV Geneva Convention, p. 51 (Jean S. Pictet ed., 1958), available at http://www.icrc.org/ihl.nsf/b466ed681ddfcfd241256739003e6368/18e3ccde8be7e2f8c12563cd0042a50b?OpenDocument (accessed June 14, 2004).

98 Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949, arts. 13, 17, 71, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68 (accessed June 14, 2004).

99 ICRC Commentary to the IV Geneva Convention, p. 57 (Jean S. Pictet ed., 1958), available at http://www.icrc.org/ihl.nsf/bea7ecf1a7801c6241256739003e6369/12409217ce36c309c12563cd0042a5e0?OpenDocument (accessed June 14, 2004).

100 Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949, art. 5, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68 (accessed June 14, 2004).

101 Under existing procedures, each detainee is assessed by military officers in the field upon capture to determine the potential threat he poses to the United States. See Administrative Review Procedures for Enemy Combatants in the Control of the Department of Defense at Guantanamo Bay Naval Base, Cuba, May 11, 2004, DefenseLINK, Section A, available at http://www.defenselink.mil/news/May2004/d20040518gtmoreview.pdf.

102 K. Alan Kronstadt, CRS Report for Congress: Pakistan, Chronology of Events, Updated August 4, 2003, available at http://fpc.state.gov/documents/organization/23387.pdf.

103 "Pakistan arrests three Al-Qaeda suspects," *Agence France Presse*, June 18, 2003; "Al-Qa'idah Men Arrested in Pakistan termed 'Facilitators'," *The News, Global News Wire*, July 17, 2003; "Pakistani Authorities Question Al Qaeda Suspects," *Fox News*, June 19, 2003.

104 Shahid Hussain and Behroz Khan, "Six Die in Kohat Shootout," *Global News Wire*, July 4, 2002; Carlotta Gall and Mark Lander, "The Captives," *New York Times*, Jan. 5, 2002.

105 Aamir Shah, *Interrogation of Al-Qaida members starts, United Press International*, Dec. 27, 2001.

106 Shahid Hussain and Behroz Khan, *Six Die in Kohat Shootout, Global News Wire*, July 4, 2002.

107 Carlotta Gall and Mark Lander, "The Captives," *New York Times*, Jan. 5, 2002; *BBC Monitoring Central Asia Unit translating article from Urdu language daily, Qualities, Jan. 5, 2002.*

108 Inter Services Public Relations controls the release of military news and access to military sources. "Pakistan military spokesman denies Kohat airport under U.S. control," *BBC Monitoring South Asia-Political*, Sept. 19, 2003.

109 Human Rights First Telephone Interview with Duty Officer, DOD Press Office, June 11, 2004; Human Rights First Telephone Interview with Molly Hale, CIA Public Affairs Officer, June 11, 2004.

110 Ewen MacAskill and Rob Evans, "Diego Garcia: US blocks return home for exiled islanders," *Guardian*, September 1, 2000.

111 "Diego Garcia: A Strategic Base," Encyclopaedia Britannica (2003), available at http://www.britannica.com/eb/article?eu=422219&tocid=0&query=diego%20garcia&ct=.

112 Globalsecurity.org background on Diego Garcia, available at http://www.globalsecurity.org/military/facility/diego-garcia.htm (accessed June 11, 2004).

113 Navy Support Facility, official Navy website for Diego Garcia, available at http://www.dg.navy.mil/welcome/frameset.htm.

114 Gadi Dechter, "Britain: No U.S. interrogations on our soil," *United Press International*, May 19, 2004; Human Rights First phone interview with CIA Public Affairs Officer, June 11, 2004.

115 Gadi Dechter, "Britain: No U.S. interrogations on our soil," *United Press International*, May 19, 2004; Human Rights First *phone interview with Duty Officer, Defense Department Press Office, June 11, 2004.*

116 Hansard Parliamentary Debates, Jan. 8, 2003, Column 1020, available at http://www.parliament.the-stationery-office.co.uk/pa/ld199900/ldhansrd/pdvn/lds03/text/30108-04.htm; Hansard Parliamentary Debates, March 3, 2003, Column 603, available at http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030303/debtext/30303-11.htm#30303-11_spnew0 (accessed June 14, 2004).

117 Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations; 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *Washington Post*, Dec. 26 2002; Mark Seddon, "Is There Another Guantanamo Bay on British Soil," *Independent*, Dec. 13, 2003.

118 David Kaplan and Ilana Ozernoy, "Al Qaeda's Desert Inn," *U.S. News and World Report*, June 2, 2003.

119 *Ibid.*

120 Human Rights First phone interview with CIA Public Affairs Officer, June 11, 2004; Human Rights First phone interview with Duty Officer, DOD Press Office, June 11, 2004.

121 *See Brief of Petitioner, Rumsfeld v. Padilla, Supreme Court, March 2004, 03-1027; Brief of Respondent, Hamdi v.* Rumsfeld, 03-6696, Supreme Court, March 2004; Al-Marri v. Bush, Motion to Dismiss or Transfer, Petition for Writ of Habeas Corpus, 03CV1220, July 16, 2003, available at http://www.collegefreedom.org/MoGovDP.pdf.

122 See Brief of Petitioner, Rumsfeld v. Padilla, Supreme Court, March 2004, 03-1027, Brief of Respondent, Hamdi v. Rumsfeld, 03-6696, Supreme Court, March 2004; Al-Marri v. Bush, Motion to Dismiss or Transfer, Petition for Writ of Habeas Corpus, 03CV1220, July 16, 2003, available at http://www.collegefreedom.org/MoGovDP.pdf

123 *See* Brief of Petitioner, Rumsfeld v. Padilla, Supreme Court, March 2004, 03-1027.

124 *See ibid.*

125 Human Rights First Email Interview with Andrew Patel, June 11, 2004; Human Rights First Email interview with Mark Berman, June 11, 2004.

126 Human Rights First Email Interview with Andrew Patel, June 11, 2004; Human Rights First Email Interview with Mark Berman, June 11, 2004; Human Rights First Email Interview with Geremy Kamens, June 14, 2004.

127 Stevenson Swanson, "Padilla gets to talk with his lawyers," *Chicago Tribune*, March 4, 2004; Jerry Markon, "Terror Suspect, Attorneys Meet for 1st Time," *Washington Post*, Feb. 4, 2004.

128 *See* Brief of Respondents, Yaser Hamdi, n.1, and Brief of Petrtioner, Yaser Hamdi, n.2 in the Supreme Court, available at http://www.humanrightsfirst.org/us_law/inthecourts/supreme_court_hamdi.htm (accessed June 14, 2004); email interview with Andrew Patel, Mr. Padilla's lawyer, June 11, 2004.

129 Email interview with Mark Berman, Mr. al-Marri's lawyer, June 11, 2004.

130 Trista Talton, "Marines finish mission, wait for next assignment," *Morning Star (Wilmington, NC)*, January 3, 2002; Krista Hughes and Denis Peters, "Aussie Al-Qaeda Fighter Moved To Another Ship," *The Daily Telegraph*, January 3, 2002.

131 *U.S. v Lindh*, Government's Opposition to Defendant's Motion to Compel Discovery of Documents in Camera, March 29, 2002, available at http://news.findlaw.com/cnn/docs/terrorism/us032902opp2licmot.pdf (accessed June 14, 2004).

132 "US military claims Taliban leader's capture close," *ABC News.com*, Jan. 2, 2002; *see also* "Searching a Suspected Compound: Marines Investigate Abandoned Taliban Compound Amid Speculation Over Omar Search," *ABC News.com*, Jan. 1, 2002, available at http://more.abcnews.go.com/sections/world/dailynews/strike_main020101.html; Grant Holloway, "Australia to Question al Qaeda Fighter," *CNN.com*, Dec. 19, 2001, available at http://www.cnn.com/2001/WORLD/asiapcf/auspac/12/19/aust.talbandit20.12/; "Australian Taliban Fighter Handed Over to U.S. Military Forces in Afghanistan," *Associated Press*, Dec. 17, 2001, available at http://multimedia.belointeractive.com/attack/military/1217australia.html.

133 "Hicks' ship docks in Fremantle on rest visit," *AAP Newsfeed*, Jan. 27, 2002.

134 "Walker arrives in U.S. to face charges Thursday," *CNN.com*, Jan. 23, 2002, available at http://www.cnn.com/2002/US/01/23/ret.walker.transfer/ (accessed June 14, 2004).

135 "Hicks' ship docks in Fremantle on rest visit," *AAP Newsfeed*, Jan. 27, 2002.

136 Human Rights First Telephone Interview with Duty Officer, DOD Press Office, June 11, 2004. But see Expeditionary Strike Force One, U.S. Naval Special Operations Command Office of Public Affairs, "ESG 1 Strikes From the Sea," Jan. 5, 2004 (reporting coalition force "takedowns" of vessels carrying drugs, including one with 15 individuals "with possible links to Al Qaeda," and reporting: "Ten of the individuals from . . . two takedowns have been transferred to a secure, undisclosed location for further questioning by U.S. officials."), available at http://64.233.167.104/search?q=cache:TvjFsWzKUU4J:https://www.navsoc.navy.mil/esg1/pdf/dhowtakedown.pdf+questioning+Peleliu&hl=en.

137 *See, e.g.*, U.S. State Department Country Reports on Sri Lanka, 1993, 1994, 2001, available at http://www.state.gov/r/pa/ei/rls/c2671.htm (accessed June 11, 2004).

138 *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002).

139 The International Covenant on Civil and Political Rights (ICCPR), Art. 7 (1976), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (accessed June 10, 2004) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

140 UN Human Rights Committee, ICCPR General Comment 20, para. 11, on Article 7 (1992), available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument (accessed June 10, 2004).

141 *Ibid.*

142 In *Angel Estrella v. Uruguay* (74/80), para. 9.2, the HRC held that "prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving mail."

143 ICCPR General Comment 20, para. 11.

144 *El-Megreisi v. Libya* (440/1990); ICCPR, Arts. 7, 10. Paragraph 1 of Article 10 reads, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The HRC has also held that incommunicado detention of longer than eight months amounts to inhumane treatment that breaches Article 7. *Shaw v. Jamaica* (704/96).

145 Likewise, the HRC has found that because the state had failed to take disclosure measures that would have prevented the disappearance of the victim, the Committee would assume a strong likelihood that torture or ill-treatment had occurred. "The State party has not denied that Rafael Mojica (a) has in fact disappeared and remains unaccounted for . . . and (b) that his disappearance was caused by individuals belonging to the Government's security forces." *Mojica v. Dominican Republic* (449/91), 5.6.

146 On April 7, 2003, W. Hays Parks, Special Assistant to the Army JAG, remarked: "We are providing and will continue to provide captured Iraqi combatants with the protections of the Geneva conventions and other pertinent international laws. In addition, arrangements are in place to allow for representatives from the International Committee of the Red Cross to met [sic] with Iraqi prisoners of war." DOD News Transcript, "Briefing on Geneva Convention, EPWs and War Crimes," April 7, 2003, available at http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html (accessed June 11, 2004). More recently, during a background briefing, a senior military official reiterated the applicability of the Conventions. "From the very beginning of the conflict, the Geneva Conventions have been fully applicable. There's never been any dispute about that, never any doubt." DOD News Transcript, "Defense Department Background Briefing," May 14, 2004, available at http://www.defenselink.mil/transcripts/2004/tr20040514-0752.html (accessed June 11, 2004).

147 Last September, Brig. Gen. Karpinski said that the United States was holding thousands of prisoners in Iraq who did not "fit into any category," and that "We got an order from the secretary of defence (Donald Rumsfeld) to categorise" them. As a result, the label of "security detainee" was created, which as of mid-September covered 4,400 detainees. "U.S. holding 4,000 'extra' detainees" *Agence France-Presse*, Sept. 16, 2003, available at http://dawn.com/2003/09/17/int6.htm (accessed June 11, 2004). According to the AFP: "Asked if they had any rights or had access to their families or legal help while they were being 'secured,' she said: 'It's not that they don't have rights ... They have fewer rights than EPWs (enemy prisoners of war).' But she added that they had not requested any such privileges." *Ibid.*

148 DOD News Briefing, "Secretary Rumsfeld and Gen. Myers," Jan. 11, 2002, available at http://www.defenselink.mil/transcripts/2002/t01112002_t0111sd.html (accessed June 14, 2004).

149 David E. Sanger, "Prisoners Straddle an Ideological Chasm," *New York Times*, January 27, 2002.

150 U.S. Department of State, International Information Programs, "Bush Says Geneva Convention Applies To Taliban, Not al-Qaida," Feb. 7, 2002.

151 Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949 (Third Geneva Convention), art. 70, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68?OpenDocument (accessed June 11, 2004).

152 Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva 12, 1949, art. 106, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5?OpenDocument (accessed June 111, 2004).

153 ICRC Commentary to the Fourth Geneva Convention, art. 106 (Jean S. Pictet ed., 1958), available at http://www.icrc.org/ihl.nsf/b466ed681ddfcfd241256739003e6368/7c03d27a0f0154a3c12563cd0042d9b4?OpenDocument (accessed June 11, 2004).

154 Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949 (Third Geneva Convention), art. 70, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68?OpenDocument (accessed June 11, 2004) (emphasis added).

155 ICRC Iraq Report, *supra*, note 10, § 1.1.9, available at http://www.humanrightsfirst.org/us_law/detainees/coerciveinterrogation.htm (accessed June 11, 2004) (discussing the U.S. government's failure to adequately maintain the system of capture cards).

156 Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949 (Third Geneva Convention), art. 123, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68?OpenDocument (accessed June 11, 2004).

157 ICRC Commentary to the Third Geneva Convention, art. 123 (Jean S. Pictet ed., 1960), available at http://www.icrc.org/ihl.nsf/b466ed681ddfcfd241256739003e6368/970e4666c4c759f2c12563cd00429408?OpenDocument (accessed June 11, 2004).

158 Dep't of Defense, Department of Defense Program for Enemy Prisoners of War and Other Detainees, August 18, 1994, available at http://www.dtic.mil/whs/directives/corres/text/d23101p.txt (accessed June 11, 2004).

159 *Ibid.*, 4.2.1.

160 *Ibid.*, 4.2.3, 4.2.4. The Secretary is also required to report to the Defense Secretary, the Chairman of the Joint Chiefs of Staff, other U.S. Government Agencies, and the ICRC on compliance with the Geneva Conventions. *Ibid.*, 4.2.5.

161 *Ibid.*, 4.1.1

162 Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949 (Third Geneva Convention), art. 122, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68?OpenDocument (accessed June 11, 2004).

163 Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees § 1-7 (1997)

164 Judge Advocate Newsletter, vol. 5, issue 12, December 2001, available at http://sja.hqmc.usmc.mil/newsletter/2001/12_01/12_01.htm#NATIONAL%20PRISONER%20OF%20WAR%20INFORMATION%20CENTER%20(NPWIC) (accessed June 8, 2004).

165 DOD News Briefing, "Geneva Convention, EPWs and War Crimes," April 7, 2003.

166 Report of Major General Antonio Taguba, "Article 15-6: Investigation of the 800th Military Police Brigade," available at http://www.globalsecurity.org/intell/library/reports/2004/800-mp-bde.htm [hereinafter Taguba Report].

167 Dep't of the Army, Field Manual 27-10: The Law of Land Warfare 3-18, para. 207 (1956), available at http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/27-10/toc.htm (accessed June 11, 2004).

168 Dep't of the Navy, NWP 1-14M: The Commander's Handbook on the Law of Naval Operations 6.2.1 (1995), available at http://www.cpf.navy.mil/pages/legal/NWP%201-14/NWP1-14%20COVER.htm (accessed June 11, 2004).

169 *Ibid.*, 6.2.2.

170 Army Regulation 190-8,§ 3-5(d)1(b).

171 *Ibid.*, 6.4(f).

172 Paracha Interview, *supra*, note 38; Enduring Freedom Report, *supra*, note 26; Interview with the Wife of Shaker Abdur-Raheem Aamer, a detainee at Guantanamo, available at http://www.cageprisoners.com/interviews.php?aid=1410; Interview with Wife of Ahcene Zemiri, a detainee at Guantanamo, transcript available at http://www.cageprisoners.com/interviews.php?aid=125; Interview with Maha Habib, wife of Guantanamo detainee, transcript available at http://www.cageprisoners.com/interviews.php?aid=1948; Human Rights First, *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, 2003 available at http://www.humanrightsfirst.org/us_law/loss/assessing/assessingnewnormal.htm; ICRC Iraq Report, *supra*, note 10; Report of High Commissioner: The Present Situation of Human Rights in Iraq (advanced edited version), Submission from the United States of America: Treatment of Persons in Detention in Iraq, Annex II, available at http://www.unhchr.ch/html/hchr/docs/annexII.doc; Hannah Allam, "Missing Iraqis Believed to be Lost in Abu Ghraib Prison," *Knight Ridder*, June 11, 2004; Human Rights First Telephone Interview with CIA Public Affairs Officer, June 11, 2004; Human Rights First Telephone Interview with Duty Officer, DOD Press Office, June 11, 2004; Human Rights First Telephone Interview with Molly Hale, CIA Public Affairs Officer, June 11, 2004.

173 Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva 12, 1949, art. 143, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5?OpenDocument (accessed June 111, 2004); ICCPR, Art. 9, available at: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (accessed June 14, 2004); Enduring Freedom Report, *supra*, note 26; International Committee of the Red Cross, "US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC," May 14, 2004, available at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5YYH5X; Sayed Salahuddin, "U.S. Military to Allow ICRC to Visit Afghan Jail," *Reuters*, June 9, 2004, Taguba Report, *supra*, note 166 (stating the "320th MP Battalion held a handful of "ghost detainees"...that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team.).

174 *ICRC Commentary to the IV Geneva Convention*, p. 51 (Jean S. Pictet ed., 1958), available at http://www.icrc.org/ihl.nsf/WebCOMART?OpenView&Start=1&Count=150&Expand=4#4 (accessed June 14, 2004); *see also* Third Geneva Convention, Art. 82, at http://www.icrc.org/ihl.nsf/c525816bde96b7fd41256739003e636a/fe7bf8f4bf13cafbc12563cd0051b18e?OpenDocument; Fourth Geneva Convention, Arts. 42, 43, 71, available at http://www.icrc.org/ihl.nsf/WebCONVART?OpenView&Start=1&Count=150&Expand=4#4 (accessed June 14, 2004); ICCPR, Arts. 9, 14, available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (accessed June 14, 2004).

175 Nigel S. Rodley, The Treatment of Prisoners Under International Law 244 (2nd ed. 1999).

176 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly Resolution 43/173, December 9, 1988, Principle 16, available at http://www.un.org/documents/ga/res/43/a43r173.htm (accessed June 11, 2004); Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at http://www.unhchr.ch/html/menu3/b/h_comp34.htm (accessed June 11, 2004).

177 UN Body of Principles, Principle 12; Standard Minimum Rules, Rules 4, 7, 95.

178 Amnesty International, "Disappearances" and Political Killings: Human Rights Crisis of the 1990s 16 (1994).

179 Ibid.

180 *See, e.g.*, Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949, arts. 13, 14, 17, 87, 121, 130, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68 (accessed June 14, 2004); Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August, 1949, arts. 5, 27, 31, 32, 33, 147, available at http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5 (accessed June 14, 2004); ICCPR, arts. 4, 7, 10 (1976), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (accessed June 10, 2004); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, art. 1, available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm (accessed June 14, 2004).

181 R. Jeffrey Smith and Josh White, "General Granted Latitude at Prison," *Washington Post*, June 12, 2004, at A1, available at http://www.washingtonpost.com/ac2/wp-dyn/A35612-2004Jun11?language=printer.

182 Steven Lee Myers and Eric Schmitt, "Wide Gaps Seen in U.S. Inquiries on Prison Abuse," New *York Times*, June 6, 2004, available at http://www.nytimes.com/2004/06/06/international/middleeast/06ABUS.html?hp=&pagewanted=all&position (accessed June 14, 2004).

183 *See, e.g.*, Letter to Major General John R. Vines (cc: Donald Rumsfeld) from Elisa Massimino, June 25, 2003; Letter to Lieutenant General John R. Vines (cc: Donald Rumsfeld, William Haynes) from Elisa Massimino, Nov. 12, 2003. These and other letters are reprinted in an Appendix to this report.

184 Bradley Graham, "Number of Army Probes of Detainee Deaths Rises to 33," *Washington Post*, May 22, 2004, at A17, http://www.washingtonpost.com/wp-dyn/articles/A46659-2004May21.html.

185 S. Rep. No. 84-9, at 32 (1955).

186 Geneva Conventions of the Protection of War Victims: Hearing Before the Senate Comm. on Foreign Relations, 84th Cong., 1st Sess., at 61 (1955).

187 101 Cong. Rec. 9960 (July 6, 1955).

188 Dwight D. Eisenhower, Crusade in Europe 469 (1949).

189 Laws of War at 62 n.100.

190 Maj. Gen. George S. Prugh, Vietnam studies, law at war: vietnam 1964-73, at 63 (Dep't of the Army 1975); *see also* 64 Dep't of State Bull. 10 (Jan. 4, 1971) (White House statement announcing President Nixon's call for application of the 1949 Geneva Conventions to ease "the plight of American prisoners of war in North Viet-Nam and elsewhere in Southeast Asia"); *Note, Safeguarding the Enemy Within*, 71 *Fordham L. Rev.* 2565, 2574 (2003) (noting U.S. Army's establishment of widespread Article 5 tribunals in Vietnam to adjudicate POW status of enemy detainees).

191 Col. Fred L. Borch, Review of Honor Bound, 163 Mil. L. Rev. 150, 152 (2000).

192 Dep't of Defense News Transcript, Briefing on Geneva Convention, EPW's and War Crimes (Apr. 7, 2003). Almost 1,200 Article 5 hearings were conducted, resulting in 886 prisoners being determined to be civilians. Department of Defense, Final Report to Congress: Conduct of the Persian Gulf War 578 (1992).

193 *Senator John McCain, Speech to the American Red Cross Promise of Humanity Conference* (May 6, 1999), available at http:/www.senate.gov/~mccain/index.cfm?fuseaction=Newscenter.Viewpressrelease&Content_id=820.

194 John McCain, Commentary, *Wall Street Journal*, June 1, 2004, at A16.

195 Human Rights First Interview with Ambassador Peterson, February 20, 2004.

196 *See, e.g.*, Joseph S. Nye, Soft Power: The Means to Success in World Politics (2004).

197 White House Release, President Discusses Military Operation (Mar. 23, 2003), at http://www.whitehouse.gov/news/releases/2003/03/20030323-1.html (accessed June 14, 2004).

198 Dep't of Defense News Transcript, Deputy Secretary Wolfowitz Interview with New England Cable News (Mar. 23, 2003), at http://www.defenselink.mil/news/Mar2003/t03242003_t0323nec.html (accessed June 14, 2004).

199 White House Release, Statement by the President (June 26, 2003), at http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html (accessed June 14, 2004).

200 Oral Argument at 23, Rumsfeld v. Padilla, 124 S.Ct. 1904, 72 USLW 3656 (2004) (No. 03-1027).

201 Dep't of Defense News Transcript, Coalition Provisional Authority Briefing, May 10, 2004, at http://www.defenselink.mil/transcripts/2004/tr20040510-0742.html (accessed June 14, 2004); *see also* Scott Wilson and Sewell Chan, "As Insurgency Grew, So Did Prison Abuse Needing Intelligence, U.S. Pressed Detainees," *Washington Post*, May 10, 2004, at http://www.washingtonpost.com/wpdyn/articles/A13065-2004May9.html.

202 *Jeffrey Gettleman, "The Struggle for Iraq: The Detainees," New York. Times*, March 9, 2004, at A1.

203 Edward Cody, "Iraqis Put Contempt For Troops On Display," *Washington Post*, June 12, 2004, at A1 (quoting Sheik Mohammed Bashir at the Sunni Muslim mosque, Um al-Oura), available at http://www.washingtonpost.com/ac2/wp-dyn/A35558-2004Jun11?language=printer.

204 See Lawyers Committee for Human Rights, *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, at 77-80 (Fiona Doherty & Deborah Pearlstein, eds. 2003).

human rights *first*

THE NEW NAME OF
LAWYERS COMMITTEE FOR HUMAN RIGHTS

New York Headquarters

Human Rights First
333 Seventh Avenue
13th Floor
New York, NY 10001

Tel: (212) 845-5200
Fax: (212) 845-5299

Washington, DC Office

Human Rights First
100 Maryland Avenue, N.E.
Suite 502
Washington, DC 20002

Tel: (202) 547-5692
Fax: (202) 543-5999

www.HumanRightsFirst.org

Final Report of the Independent Panel To Review DoD Detention Operations

August 2004

Independent Panel to Review DoD Detention Operations

Chairman

The Honorable James R. Schlesinger

Panel Members

The Honorable Harold Brown

The Honorable Tillie K. Fowler

General Charles A. Horner (USAF-RET)

Executive Director

Dr. James A. Blackwell, Jr.

INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

CHAIRMAN
THE HONORABLE JAMES R. SCHLESINGER

PANEL MEMBERS
THE HONORABLE HAROLD BROWN
THE HONORABLE TILLIE K. FOWLER
GENERAL CHARLES A. HORNER (USAF-RET.)

EXECUTIVE DIRECTOR
DR. JAMES A. BLACKWELL, JR.

August 24, 2004

To U.S. Secretary of Defense Donald Rumsfeld

We, the appointed members of the Independent Panel to Review DoD Detention Operations, pursuant to our charter do hereby submit the results of our findings and offer our best recommendations.

Sincerely,

The Honorable James R. Schlesinger
Chairman

The Honorable Harold Brown
Panel Member

The Honorable Tillie K. Fowler
Panel Member

General Charles A. Horner
(USAF –Ret.)
Panel Member

223 23rd Street , Crystal Plaza 5, Suite 884, Arlington, VA 22202-3712
Office Main Phone: (703) 602-3200 Unsecured Fax: (703) 602-2712

The Independent Panel to Review Department of Defense Detention Operations

August 2004

Table of Contents

Table of Appendices

Executive Summary

OVERVIEW

The events of October through December 2003 on the night shift of Tier 1 at Abu Ghraib prison were acts of brutality and purposeless sadism. We now know these abuses occurred at the hands of both military police and military intelligence personnel. The pictured abuses, unacceptable even in wartime, were not part of authorized interrogations nor were they even directed at intelligence targets. They represent deviant behavior and a failure of military leadership and discipline. However, we do know that some of the egregious abuses at Abu Ghraib which were not photographed did occur during interrogation sessions and that abuses during interrogation sessions occurred elsewhere.

In light of what happened at Abu Ghraib, a series of comprehensive investigations has been conducted by various components of the Department of Defense. Since the beginning of hostilities in Afghanistan and Iraq, U.S. military and security operations have apprehended about 50,000 individuals. From this number, about 300 allegations of abuse in Afghanistan, Iraq or Guantanamo have arisen. As of mid-August 2004, 155 investigations into the allegations have been completed, resulting in 66 substantiated cases. Approximately one-third of these cases occurred at the point of capture or tactical collection point, frequently under uncertain, dangerous and violent circumstances.

Abuses of varying severity occurred at differing locations under differing circumstances and context. They were widespread and, though inflicted on only a small percentage of those detained, they were serious both in number and in effect. No approved procedures called for or allowed the kinds of abuse that in fact occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities. Still, the abuses were not just the failure of some individuals to follow known standards, and they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels.

Secretary of Defense Donald Rumsfeld appointed the members of the Independent Panel to provide independent professional advice on detainee abuses, what caused them and what actions should be taken to preclude their repetition. The Panel reviewed various criminal investigations and a number of command and other major investigations. The Panel also conducted interviews of relevant persons, including the Secretary and Deputy Secretary of Defense, other senior Department of Defense officials, the military chain-of-command and their staffs and other officials directly and indirectly involved with Abu Ghraib and other detention operations. However, the Panel did not have full access to information involving the role of the Central Intelligence Agency in detention operations; this is an area the Panel believes needs further investigation and review. It should be noted that information provided to the Panel was that available as of mid-August 2004. If additional information becomes available, the Panel's judgments might be revised.

POLICY

With the events of September 11, 2001, the President, the Congress and the American people recognized we were at war with a different kind of enemy. The terrorists who flew airliners into the World Trade Center and the Pentagon were unlike enemy combatants the U.S. has fought in previous conflicts. Their objectives, in fact, are to kill large numbers of civilians and to strike at the heart of America's political cohesion and its economic and military might. In the days and weeks after the attack, the President and his closest advisers developed policies and strategies in response. On September 18, 2001, by a virtually unanimous vote, Congress passed an Authorization for Use of Military Force. Shortly thereafter, the U.S. initiated hostilities in Afghanistan and the first detainees were held at Mazar-e-Sharrif in November 2001.

On February 7, 2002, the President issued a memorandum stating that he determined the Geneva Conventions did not apply to the conflict with al Qaeda, and although they did apply in the conflict with Afghanistan, the Taliban were unlawful combatants and

therefore did not qualify for prisoner of war status (see Appendix C). Nonetheless, the Secretary of State, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff were all in agreement that treatment of detainees should be consistent with the Geneva Conventions. The President ordered accordingly that detainees were to be treated ". . . humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." Earlier, the Department of State had argued the Geneva Conventions in their traditional application provided a sufficiently robust legal construct under which the Global War on Terror could effectively be waged. The Legal Advisor to the Chairman, Joint Chiefs of Staff, and many of the military service attorneys agreed with this position.

In the summer of 2002, the Counsel to the President queried the Department of Justice Office of Legal Counsel (OLC) for an opinion on the standards of conduct for interrogation operations conducted by U.S. personnel outside of the U.S. and the applicability of the Convention Against Torture. The OLC responded in an August 1, 2002 opinion in which it held that in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain and suffering that is difficult to endure.

Army Field Manual 34-52 (FM 34-52), with its list of 17 authorized interrogation methods, has long been the standard source for interrogation doctrine within the Department of Defense (see Appendix D). In October 2002, authorities at Guantanamo requested approval of stronger interrogation techniques to counter tenacious resistance by some detainees. The Secretary of Defense responded with a December 2, 2002 decision authorizing the use of 16 additional techniques at Guantanamo (see Appendix E). As a result of concerns raised by the Navy General Counsel on January 15, 2003, Secretary Rumsfeld rescinded the majority of the approved measures in the December 2, 2002 authorization. Moreover, he directed the remaining more aggressive techniques could be used only with his approval (see Appendix D).

At the same time, he directed the Department of Defense (DoD) General Counsel to establish a working group to study interrogation techniques. The Working Group was headed by Air Force General Counsel Mary Walker and included wide membership from across the military legal and intelligence communities. The Working Group also relied heavily on the OLC. The Working Group reviewed 35 techniques and after a very extensive debate ultimately recommended 24 to the Secretary of Defense. The study led to the Secretary of Defense's promulgation on April 16, 2003 of a list of approved techniques strictly limited for use at Guantanamo. This policy remains in force at Guantanamo (see Appendix E).

In the initial development of these Secretary of Defense policies, the legal resources of the Services' Judge Advocates General and General Counsels were not utilized to their full potential. Had the Secretary of Defense had a wider range of legal opinions and a more robust debate regarding detainee policies and operations, his policy of April 16, 2003 might well have been developed and issued in early December 2002. This would have avoided the policy changes which characterized the Dec 02, 2002 to April 16, 2003 period.

It is clear that pressures for additional intelligence and the more aggressive methods sanctioned by the Secretary of Defense memorandum, resulted in stronger interrogation techniques that were believed to be needed and appropriate in the treatment of detainees defined as "unlawful combatants." At Guantanamo, the interrogators used those additional techniques with only two detainees, gaining important and time-urgent information in the process.

In Afghanistan, from the war's inception through the end of 2002, all forces used FM 34-52 as a baseline for interrogation techniques. Nonetheless, more aggressive interrogation of detainees appears to have been on-going. On January 24, 2003, in response to a data call from the Joint Staff to facilitate the Working Group efforts, the Commander Joint Task Force-180 forwarded a list of techniques being used in

Afghanistan, including some not explicitly set out in FM 34-52. These techniques were included in a Special Operation Forces (SOF) Standard Operating Procedures document published in February 2003. The 519th Military Intelligence Battalion, a company of which was later sent to Iraq, assisted in interrogations in support of SOF and was fully aware of their interrogation techniques.

Interrogators and lists of techniques circulated from Guantanamo and Afghanistan to Iraq. During July and August 2003, the 519th Military Intelligence Company was sent to the Abu Ghraib detention facility to conduct interrogation operations. Absent any explicit policy or guidance, other than FM 34-52, the officer in charge prepared draft interrogation guidelines that were a near copy of the Standard Operating Procedure created by SOF. It is important to note that techniques effective under carefully controlled conditions at Guantanamo became far more problematic when they migrated and were not adequately safeguarded.

Following a CJTF-7 request, Joint Staff tasked SOUTHCOM to send an assistance team to provide advice on facilities and operations, specifically related to screening, interrogations, HUMINT collection, and inter-agency integration in the short and long term. In August 2003, MG Geoffrey Miller arrived to conduct an assessment of DoD counter-terrorism interrogation and detention operations in Iraq. He was to discuss current theater ability to exploit internees rapidly for actionable intelligence. He brought the Secretary of Defense's April 16, 2003 policy guidelines for Guantanamo with him and gave this policy to CJTF-7 as a possible model for the command-wide policy that he recommended be established. MG Miller noted that it applied to unlawful combatants at Guantanamo and was not directly applicable to Iraq where the Geneva Conventions applied. In part as a result of MG Miller's call for strong, command-wide interrogation policies and in part as a result of a request for guidance coming up from the 519th at Abu Ghraib, on September 14, 2003 LTG Sanchez signed a memorandum authorizing a dozen interrogation techniques beyond Field Manual 34-52—five beyond those approved for Guantanamo (see Appendix D).

MG Miller had indicated his model was approved only for Guantanamo. However, CJTF-7, using reasoning from the President's Memorandum of February 7, 2002 which addressed "unlawful combatants," believed additional, tougher measures were warranted because there were "unlawful combatants" mixed in with Enemy Prisoners of War and civilian and criminal detainees. The CJTF-7 Commander, on the advice of his Staff Judge Advocate, believed he had the inherent authority of the Commander in a Theater of War to promulgate such a policy and make determinations as to the categorization of detainees under the Geneva Conventions. CENTCOM viewed the CJTF-7 policy as unacceptably aggressive and on October 12, 2003 Commander CJTF-7 rescinded his September directive and disseminated methods only slightly stronger than those in Field Manual 34-52 (see Appendix D). The policy memos promulgated at the CJTF-7 level allowed for interpretation in several areas and did not adequately set forth the limits of interrogation techniques. The existence of confusing and inconsistent interrogation technique policies contributed to the belief that additional interrogation techniques were condoned.

DETENTION AND INTERROGATION OPERATIONS

From his experience in Guantanamo, MG Miller called for the military police and military intelligence soldiers to work cooperatively, with the military police "setting the conditions" for interrogations. This MP role included passive collection on detainees as well as supporting incentives recommended by the military interrogators. These collaborative procedures worked effectively in Guantanamo, particularly in light of the high ratio of approximately 1 to 1 of military police to mostly compliant detainees. However, in Iraq and particularly in Abu Ghraib the ratio of military police to repeatedly unruly detainees was significantly smaller, at one point 1 to about 75 at Abu Ghraib, making it difficult even to keep track of prisoners. Moreover, because Abu Ghraib was located in a combat zone, the military police were engaged in force protection of the complex as well as escorting convoys of supplies to and from the prison. Compounding

these problems was the inadequacy of leadership, oversight and support needed in the face of such difficulties.

At various times, the U.S. conducted detention operations at approximately 17 sites in Iraq and 25 sites in Afghanistan, in addition to the strategic operation at Guantanamo. A cumulative total of 50,000 detainees have been in the custody of U.S. forces since November 2001, with a peak population of 11,000 in the month of March 2004.

In Iraq, there was not only a failure to plan for a major insurgency, but also to quickly and adequately adapt to the insurgency that followed after major combat operations. The October 2002 CENTCOM War Plan presupposed that relatively benign stability and security operations would precede a handover to Iraq's authorities. The contingencies contemplated in that plan included sabotage of oil production facilities and large numbers of refugees generated by communal strife.

Major combat operations were accomplished more swiftly than anticipated. Then began a period of occupation and an active and growing insurgency. Although the removal of Saddam Hussein was initially welcomed by the bulk of the population, the occupation became increasingly resented. Detention facilities soon held Iraqi and foreign terrorists as well as a mix of Enemy Prisoners of War, other security detainees, criminals and undoubtedly some accused as a result of factional rivalries. Of the 17 detention facilities in Iraq, the largest, Abu Ghraib, housed up to 7,000 detainees in October 2003, with a guard force of only about 90 personnel from the 800th Military Police Brigade. Abu Ghraib was seriously overcrowded, under-resourced, and under continual attack. Five U.S. soldiers died as a result of mortar attacks on Abu Ghraib. In July 2003, Abu Ghraib was mortared 25 times; on August 16, 2003, five detainees were killed and 67 wounded in a mortar attack. A mortar attack on April 20, 2004 killed 22 detainees.

Problems at Abu Ghraib are traceable in part to the nature and recent history of the military police and military intelligence units at Abu Ghraib. The 800th Military Police

Brigade had one year of notice to plan for detention operations in Iraq. Original projections called for approximately 12 detention facilities in non-hostile, rear areas with a projection of 30,000 to 100,000 Enemy Prisoners of War. Though the 800th had planned a detention operations exercise for the summer of 2002, it was cancelled because of the disruption in soldier and unit availability resulting from the mobilization of Military Police Reserves following 9/11. Although its readiness was certified by U.S. Army Forces Command, actual deployment of the 800th Brigade to Iraq was chaotic. The "Time Phased Force Deployment List," which was the planned flow of forces to the theater of operations, was scrapped in favor of piecemeal unit deployment orders based on actual unit readiness and personnel strength. Equipment and troops regularly arrived out of planned sequence and rarely together. Improvisation was the order of the day. While some units overcame these difficulties, the 800th was among the lowest in priority and did not have the capability to overcome the shortfalls it confronted.

The 205th MI Brigade, deployed to support Combined Joint Task Force-7 (CJTF-7), normally provides the intelligence capability for a Corps Headquarters. However, it was insufficient to provide the kind of support needed by CJTF-7, especially with regard to interrogators and interpreters. Some additional units were mobilized to fill in the gaps, but while these MI units were more prepared than their military police counterparts, there were insufficient numbers of units available. Moreover, unit cohesion was lacking because elements of as many as six different units were assigned to the interrogation mission at Abu Ghraib. These problems were heightened by friction between military intelligence and military police personnel, including the brigade commanders themselves.

ABUSES

As of the date of this report, there were about 300 incidents of alleged detainee abuse across the Joint Operations Areas. Of the 155 completed investigations, 66 have resulted in a determination that detainees under the control of U.S. forces were abused. Dozens of

non-judicial punishments have already been awarded. Others are in various stages of the military justice process.

Of the 66 already substantiated cases of abuse, eight occurred at Guantanamo, three in Afghanistan and 55 in Iraq. Only about one-third were related to interrogation, and two-thirds to other causes. There were five cases of detainee deaths as a result of abuse by U.S. personnel during interrogations. Many more died from natural causes and enemy mortar attacks. There are 23 cases of detainee deaths still under investigation; three in Afghanistan and 20 in Iraq. Twenty-eight of the abuse cases are alleged to include Special Operations Forces (SOF) and, of the 15 SOF cases that have been closed, ten were determined to be unsubstantiated and five resulted in disciplinary action. The Jacoby review of SOF detention operations found a range of abuses and causes similar in scope and magnitude to those found among conventional forces.

The aberrant behavior on the night shift in Cell Block 1 at Abu Ghraib would have been avoided with proper training, leadership and oversight. Though acts of abuse occurred at a number of locations, those in Cell Block 1 have a unique nature fostered by the predilections of the noncommissioned officers in charge. Had these noncommissioned officers behaved more like those on the day shift, these acts, which one participant described as "just for the fun of it," would not have taken place.

Concerning the abuses at Abu Ghraib, the impact was magnified by the fact the shocking photographs were aired throughout the world in April 2004. Although CENTCOM had publicly addressed the abuses in a press release in January 2004, the photographs remained within the official criminal investigative process. Consequently, the highest levels of command and leadership in the Department of Defense were not adequately informed nor prepared to respond to the Congress and the American public when copies were released by the press.

POLICY AND COMMAND RESPONSIBILITIES

Interrogation policies with respect to Iraq, where the majority of the abuses occurred, were inadequate or deficient in some respects at three levels: Department of Defense, CENTCOM/CJTF-7, and Abu Ghraib Prison. Policies to guide the demands for actionable intelligence lagged behind battlefield needs. As already noted, the changes in DoD interrogation policies between December 2, 2002 and April 16, 2003 were an element contributing to uncertainties in the field as to which techniques were authorized. Although specifically limited by the Secretary of Defense to Guantanamo, and requiring his personal approval (given in only two cases), the augmented techniques for Guantanamo migrated to Afghanistan and Iraq where they were neither limited nor safeguarded.

At the operational level, in the absence of specific guidance from CENTCOM, interrogators in Iraq relied on Field Manual 34-52 and on unauthorized techniques that had migrated from Afghanistan. On September 14, 2003 CJTF-7 signed the theater's first policy on interrogation, which contained elements of the approved Guantanamo policy and elements of the SOF policy (see Appendix D). Policies approved for use on al Qaeda and Taliban detainees, who were not afforded the protection of the Geneva Conventions, now applied to detainees who did fall under the Geneva Convention protections.

CENTCOM disapproved the September 14, 2003 policy, resulting in another policy signed on October 12, 2003 which essentially mirrored the outdated 1987 version of the FM 34-52 (see Appendix D). The 1987 version, however, authorized interrogators to control all aspects of the interrogation, "to include lighting and heating, as well as food, clothing, and shelter given to detainees." This was specifically left out of the current 1992 version. This clearly led to confusion on what practices were acceptable. We cannot be sure how much the number and severity of abuses would have been curtailed

had there been early and consistent guidance from higher levels. Nonetheless, such guidance was needed and likely would have had a limiting effect.

At the tactical level we concur with the Jones/Fay investigation's conclusion that military intelligence personnel share responsibility for the abuses at Abu Ghraib with the military police soldiers cited in the Taguba investigation. The Jones/Fay Investigation found 44 alleged instances of abuse, some which were also considered by the Taguba report. A number of these cases involved MI personnel directing the actions of MP personnel. Yet it should be noted that of the 66 closed cases of detainee abuse in Guantanamo, Afghanistan and Iraq cited by the Naval Inspector General, only one-third were interrogation related.

The Panel concurs with the findings of the Taguba and Jones investigations that serious leadership problems in the 800th MP Brigade and 205th MI Brigade, to include the 320th MP Battalion Commander and the Director of the Joint Debriefing and Interrogation Center (JDIC), allowed the abuses at Abu Ghraib. The Panel endorses the disciplinary actions taken as a result of the Taguba Investigation. The Panel anticipates that the Chain of Command will take additional disciplinary action as a result of the referrals of the Jones/Fay investigation.

We believe LTG Sanchez should have taken stronger action in November when he realized the extent of the leadership problems at Abu Ghraib. His attempt to mentor BG Karpinski, though well-intended, was insufficient in a combat zone in the midst of a serious and growing insurgency. Although LTG Sanchez had more urgent tasks than dealing personally with command and resource deficiencies at Abu Ghraib, MG Wojdakowski and the staff should have seen that urgent demands were placed to higher headquarters for additional assets. We concur with the Jones findings that LTG Sanchez and MG Wojdakowski failed to ensure proper staff oversight of detention and interrogation operations.

We note, however, in terms of its responsibilities, CJTF-7 was never fully resourced to meet the size and complexity of its mission. The Joint Staff, CJTF-7 and CENTCOM took too long to finalize the Joint Manning Document (JMD). It was not finally approved until December 2003, six months into the insurgency. At one point, CJTF-7 had only 495 of the 1,400 personnel authorized. The command was burdened with additional complexities associated with its mission to support the Coalition Provisional Authority.

Once it became clear in the summer of 2003 that there was a major insurgency growing in Iraq, with the potential for capturing a large number of enemy combatants, senior leaders should have moved to meet the need for additional military police forces. Certainly by October and November when the fighting reached a new peak, commanders and staff from CJTF-7 all the way to CENTCOM to the Joint Chiefs of Staff should have known about and reacted to the serious limitations of the battalion of the 800th Military Police Brigade at Abu Ghraib. CENTCOM and the JCS should have at least considered adding forces to the detention/interrogation operation mission. It is the judgment of this panel that in the future, considering the sensitivity of this kind of mission, the OSD should assure itself that serious limitations in detention/interrogation missions do not occur.

Several options were available to Commander CENTCOM and above, including reallocation of U.S. Army assets already in the theater, Operational Control (OPCON) of other Service Military Police units in theater, and mobilization and deployment of additional forces from the continental United States. There is no evidence that any of the responsible senior officers considered any of these options. What could and should have been done more promptly is evidenced by the fact that the detention/interrogation operation in Iraq is now directed by a Major General reporting directly to the Commander, Multi-National Forces Iraq (MNFI). Increased units of Military Police, fully manned and more appropriately equipped, are performing the mission once assigned to a single under-strength, poorly trained, inadequately equipped and weakly-led brigade.

In addition to the already cited leadership problems in the 800th MP Brigade, there were a series of tangled command relationships. These ranged from an unclear military intelligence chain of command, to the Tactical Control (TACON) relationship of the 800th with CJTF-7 which the Brigade Commander apparently did not adequately understand, and the confusing and unusual assignment of MI and MP responsibilities at Abu Ghraib. The failure to react appropriately to the October 2003 ICRC report, following its two visits to Abu Ghraib, is indicative of the weakness of the leadership at Abu Ghraib. These unsatisfactory relationships were present neither at Guantanamo nor in Afghanistan.

RECOMMENDATIONS

Department of Defense reform efforts are underway and the Panel commends these efforts. They are discussed in more detail in the body of this report. The Office of the Secretary of Defense, the Joint Chiefs of Staff and the Military Services are conducting comprehensive reviews on how military operations have changed since the end of the Cold War. The Military Services now recognize the problems and are studying force compositions, training, doctrine, responsibilities and active duty/reserve and guard/contractor mixes which must be adjusted to ensure we are better prepared to succeed in the war on terrorism. As an example, the Army is currently planning and developing 27 additional MP companies.

The specific recommendations of the Independent Panel are contained in the Recommendations section, beginning on page 87.

CONCLUSION

The vast majority of detainees in Guantanamo, Afghanistan and Iraq were treated appropriately, and the great bulk of detention operations were conducted in compliance with U.S. policy and directives. They yielded significant amounts of actionable intelligence for dealing with the insurgency in Iraq and strategic intelligence of value in the Global War on Terror. For example, much of the information in the recently released 9/11 Commission's report, on the planning and execution of the attacks on the World Trade Center and Pentagon, came from interrogation of detainees at Guantanamo and elsewhere.

Justice Sandra Day O'Connor, writing for the majority of the Supreme Court of the United States in *Hamdi v. Rumsfeld* on June 28, 2004, pointed out that "The purpose of detention is to prevent captured individuals from returning to the field of battle and taking up arms once again." But detention operations also serve the key purpose of intelligence gathering. These are not competing interests but appropriate objectives which the United States may lawfully pursue.

We should emphasize that tens of thousands of men and women in uniform strive every day under austere and dangerous conditions to secure our freedom and the freedom of others. By historical standards, they rate as some of the best trained, disciplined and professional service men and women in our nation's history.

While any abuse is too much, we see signs that the Department of Defense is now on the path to dealing with the personal and professional failures and remedying the underlying causes of these abuses. We expect any potential future incidents of abuse will similarly be discovered and reported out of the same sense of personal honor and duty that characterized many of those who went out of their way to do so in most of these cases. The damage these incidents have done to U.S. policy, to the image of the U.S. among

populations whose support we need in the Global War on Terror and to the morale of our armed forces, must not be repeated.

INTRODUCTION–CHARTER AND METHODOLOGY

The Secretary of Defense chartered the Independent Panel on May 12, 2004, to review Department of Defense (DoD) Detention Operations (see Appendix A). In his memorandum, the Secretary tasked the Independent Panel to review Department of Defense investigations on detention operations whether completed or ongoing, as well as other materials and information the Panel deemed relevant to its review. The Secretary asked for the Panel's independent advice in highlighting the issues considered most important for his attention. He asked for the Panel's views on the causes and contributing factors to problems in detainee operations and what corrective measures would be required.

Completed investigations reviewed by the Panel include the following:

- Joint Staff External Review of Intelligence Operations at Guantanamo Bay, Cuba, September 28, 2002 (Custer Report)

- Joint Task Force Guantanamo assistance visit to Iraq to assess intelligence operations, September 5, 2003 (Miller Report)

- Army Provost Marshal General assessment of detention and corrections operations in Iraq, November 6, 2003 (Ryder Report)

- Administrative investigation under Army Regulation 15-6 (AR 15-6) regarding Abu Ghraib, June 8, 2004 (Taguba Report)

- Army Inspector General assessment of doctrine and training for detention operations, July 23, 2004 (Mikolashek Report)

- The Fay investigation of activities of military personnel at Abu Ghraib and related LTG Jones investigation under the direction of GEN Kern, August 16, 2004

- Naval Inspector General's review of detention procedures at Guantanamo Bay, Cuba and the Naval Consolidated Brig, Charleston, South Carolina (A briefing was presented to the Secretary of Defense on May 8, 2004.)

- Naval Inspector General's review of DoD worldwide interrogation operations, due for release on September 9, 2004

- Special Inspection of Detainee Operations and Facilities in the Combined Forces Command-Afghanistan AOR (CFC-A), June 26, 2004 (Jacoby Report).

- Administrative Investigation of Alleged Detainee Abuse by the Combined Joint Special Operations Task Force – Arabian Peninsula (Formica Report) Due for release in August, 2004. Assessment not yet completed and not reviewed by the Independent Panel

- Army Reserve Command Inspector General Assessment of Military Intelligence and Military Police Training (due for release in December 2004)

Panel interviews of selected individuals either in person or via video-teleconference:

June 14, 2004:

- MG Keith Dayton, Director, Iraq Survey Group (ISG), Baghdad, Iraq
- MG Geoffrey Miller, Director, Detainee Operations, CJTF-7, Baghdad, Iraq
- Hon Donald Rumsfeld, Secretary of Defense
- Hon Steve Cambone, Under Secretary of Defense for Intelligence
- MG Walter Wojdakowski, Deputy Commanding General, V Corps, USAREUR and 7th Army

- MG Donald Ryder, Provost Marshal, U.S. Army/Commanding General, U.S. Army Criminal Investigation Command, Washington, D.C.
- COL Thomas Pappas, Commander, 205th Military Intelligence Brigade, V Corps, USAREUR and 7th Army

June 24,2004:

- LTG David McKiernan, Commanding General, Third U.S. Army, U.S. Army Forces Central Command, Coalition Forces Land Component Command
- MG Barbara Fast, CJTF-7 C-2, Director for Intelligence, Baghdad, Iraq
- MG Geoffrey Miller, Director, Detainee Operations, CJTF-7, Baghdad, Iraq
- LTG Ricardo Sanchez, Commanding General, CJTF-7, Commanding General, V Corps, USAREUR and 7th Army in Iraq
- Mr. Daniel Dell'Orto, Principal Deputy General Counsel, DoD
- LTG Keith Alexander, G-2, U.S. Army, Washington, D.C.
- LTG William Boykin, Deputy Undersecretary of Defense for Intelligence, Intelligence and Warfighting Support, Office of the Under Secretary of Defense for Intelligence
- Hon Douglas Feith, Under Secretary of Defense for Policy

July 8, 2004:

- COL Marc Warren, Senior Legal Advisor to LTG Sanchez, Iraq
- BG Janis Karpinski, Commander (TPU), 800th Military Police Brigade, Uniondale, NY
- Hon Paul Wolfowitz, Deputy Secretary of Defense
- Hon William Haynes, General Counsel DoD
- Mr. John Rizzo, CIA Senior Deputy General Counsel
- GEN John Abizaid, Commander, U.S. Central Command
- MG George Fay, Deputy to the Army G2, Washington, D.C.
- VADM Albert Church III, Naval Inspector General

July 22, 2004:

- Hon Donald Rumsfeld, Secretary of Defense

The Panel did not conduct a case-by-case review of individual abuse cases. This task has been accomplished by those professionals conducting criminal and commander-directed investigations. Many of these investigations are still on-going. The Panel did review the various completed and on-going reports covering the causes for the abuse. Each of these inquiries or inspections defined abuse, categorized the abuses, and analyzed the abuses in conformity with the appointing authorities' guidance, but the methodologies do not parallel each other in all respects. The Panel concludes, based on our review of other reports to date and our own efforts that causes for abuse have been adequately examined.

The Panel met on July 22nd and again on August 16th to discuss progress of the report. Panel members also reviewed sections and versions of the report through July and mid-August.

An effective, timely response to our requests for other documents and support was invariably forthcoming, due largely to the efforts of the DoD Detainee Task Force. We conducted reviews of multiple classified and unclassified documents generated by DoD and other sources.

Our staff has met and communicated with representatives of the International Committee of the Red Cross and with the Human Rights Executive Directors' Coordinating Group.

It should be noted that information provided to the Panel was that available as of mid-August 2004. If additional information becomes available, the Panel's judgments might be revised.

THE CHANGING THREAT

The date September 11, 2001, marked an historic juncture in America's collective sense of security. On that day our presumption of invulnerability was irretrievably shattered. Over the last decade, the military has been called upon to establish and maintain the peace in Bosnia and Kosovo, eject the Taliban from Afghanistan, defeat the Iraqi Army, and fight ongoing insurgencies in Iraq and Afghanistan. Elsewhere it has been called upon to confront geographically dispersed terrorists who would threaten America's right to political sovereignty and our right to live free of fear.

In waging the Global War on Terror, the military confronts a far wider range of threats. In Iraq and Afghanistan, U.S. forces are fighting diverse enemies with varying ideologies, goals and capabilities. American soldiers and their coalition partners have defeated the armored divisions of the Republican Guard, but are still under attack by forces using automatic rifles, rocket-propelled grenades, roadside bombs and surface-to-air missiles. We are not simply fighting the remnants of dying regimes or opponents of the local governments and coalition forces assisting those governments, but multiple enemies including indigenous and international terrorists. This complex operational environment requires soldiers capable of conducting traditional stability operations associated with peacekeeping tasks one moment and fighting force-on-force engagements normally associated with war-fighting the next moment.

Warfare under the conditions described inevitably generates detainees—enemy combatants, opportunists, trouble-makers, saboteurs, common criminals, former regime officials and some innocents as well. These people must be carefully but humanely processed to sort out those who remain dangerous or possess militarily-valuable intelligence. Such processing presents extraordinarily formidable logistical, administrative, security and legal problems completely apart from the technical obstacles posed by communicating with prisoners in another language and extracting actionable intelligence from them in timely fashion. These activities, called detention operations,

are a vital part of an expeditionary army's responsibility, but they depend upon training, skills, and attributes not normally associated with soldiers in combat units.

Military interrogators and military police, assisted by front-line tactical units, found themselves engaged in detention operations with detention procedures still steeped in the methods of World War II and the Cold War, when those we expected to capture on the battlefield were generally a homogenous group of enemy soldiers. Yet this is a new form of war, not at all like Desert Storm nor even analogous to Vietnam or Korea.

General Abizaid himself best articulated the current nature of combat in testimony before the U.S. Senate Armed Services Committee on May 19, 2004:

> Our enemies are in a unique position, and they are a unique brand of ideological extremists whose vision of the world is best summed up by how the Taliban ran Afghanistan. If they can outlast us in Afghanistan and undermine the legitimate government there, they'll once again fill up the seats at the soccer stadium and force people to watch executions. If, in Iraq, the culture of intimidation practiced by our enemies is allowed to win, the mass graves will fill again. Our enemies kill without remorse, they challenge our will through the careful manipulation of propaganda and information, they seek safe havens in order to develop weapons of mass destruction that they will use against us when they are ready. Their targets are not Kabul and Baghdad, but places like Madrid and London and New York. While we can't be defeated militarily, we're not going to win this thing militarily alone.... As we fight this most unconventional war of this new century, we must be patient and courageous.

In Iraq the U.S. commanders were slow to recognize and adapt to the insurgency that erupted in the summer and fall of 2003. Military police and interrogators who had previous experience in the Balkans, Guantanamo and Afghanistan found themselves, along with increasing numbers of less-experienced troops, in the midst of detention operations in Iraq the likes of which the Department of Defense had not foreseen. As Combined Joint Task Force-7 (CJTF-7) began detaining thousands of Iraqis suspected of

involvement in or having knowledge of the insurgency, the problem quickly surpassed the capacity of the staff to deal with and the wherewithal to contain it.

Line units conducting raids found themselves seizing specifically targeted persons, so designated by military intelligence; but, lacking interrogators and interpreters to make precise distinctions in an alien culture and hostile neighborhoods, they reverted to rounding up any and all suspicious-looking persons—all too often including women and children. The flood of incoming detainees contrasted sharply with the trickle of released individuals. Processing was overwhelmed. Some detainees at Abu Ghraib had been held 90 days before being interrogated for the first time.

Many interrogators, already in short supply from major reductions during the post-Cold War drawdown, by this time, were on their second or third combat tour. Unit cohesion and morale were largely absent as under-strength companies and battalions from across the United States and Germany were deployed piecemeal and stitched together in a losing race to keep up with the rapid influx of vast numbers of detainees.

As the insurgency reached an initial peak in the fall of 2003, many military policemen from the Reserves who had been activated shortly after September 11, 2001 had reached the mandatory two-year limit on their mobilization time. Consequently, the ranks of soldiers having custody of detainees in Iraq fell to about half strength as MPs were ordered home by higher headquarters.

Some individuals seized the opportunity provided by this environment to give vent to latent sadistic urges. Moreover, many well-intentioned professionals, attempting to resolve the inherent moral conflict between using harsh techniques to gain information to save lives and treating detainees humanely, found themselves in uncharted ethical ground, with frequently changing guidance from above. Some stepped over the line of humane treatment accidentally; some did so knowingly. Some of the abusers believed other governmental agencies were conducting interrogations using harsher techniques

than allowed by the Army Field Manual 34-52, a perception leading to the belief that such methods were condoned. In nearly 10 percent of the cases of alleged abuse, the chain of command ignored reports of those allegations. More than once a commander was complicit.

The requirements for successful detainee operations following major combat operations were known by U.S. forces in Iraq. After Operations Enduring Freedom and earlier phases of Iraqi Freedom, several lessons learned were captured in official reviews and were available on-line to any authorized military user. These lessons included the need for doctrine tailored to enable police and interrogators to work together effectively; the need for keeping MP and MI units manned at levels sufficient to the task; and the need for MP and MI units to belong to the same tactical command. However, there is no evidence that those responsible for planning and executing detainee operations, in the phase of the Iraq campaign following the major combat operations, availed themselves of these "lessons learned" in a timely fashion.

Judged in a broader context, U.S. detention operations were both traditional and new. They were traditional in that detainee operations were a part of all past conflicts. They were new in that the Global War on Terror and the insurgency we are facing in Iraq present a much more complicated detainee population.

Many of America's enemies, including those in Iraq and Afghanistan, have the ability to conduct this new kind of warfare, often referred to as "asymmetric" warfare. Asymmetric warfare can be viewed as attempts to circumvent or undermine a superior, conventional strength, while exploiting its weaknesses using methods the superior force neither can defeat nor resort to itself. Small unconventional forces can violate a state's security without any state support or affiliation whatsoever. For this reason, many terms in the orthodox lexicon of war—e.g., state sovereignty, national borders, uniformed combatants, declarations of war, and even war itself, are not terms terrorists acknowledge.

Today, the power to wage war can rest in the hands of a few dozen highly motivated people with cell phones and access to the Internet. Going beyond simply terrorizing individual civilians, certain insurgent and terrorist organizations represent a higher level of threat, characterized by an ability and willingness to violate the political sovereignty and territorial integrity of sovereign nations.

Essential to defeating terrorist and insurgent threats is the ability to locate cells, kill or detain key leaders, and interdict operational and financial networks. However, the smallness and wide dispersal of these enemy assets make it problematic to focus on signal and imagery intelligence as we did in the Cold War, Desert Storm, and the first phase of Operation Iraqi Freedom. The ability of terrorists and insurgents to blend into the civilian population further decreases their vulnerability to signal and imagery intelligence. Thus, information gained from human sources, whether by spying or interrogation, is essential in narrowing the field upon which other intelligence gathering resources may be applied. In sum, human intelligence is absolutely necessary, not just to fill these gaps in information derived from other sources, but also to provide clues and leads for the other sources to exploit.

Military police functions must also adapt to this new kind of warfare. In addition to organizing more units capable of handling theater-level detention operations, we must also organize those units, so they are able to deal with the heightened threat environment. In this new form of warfare, the distinction between front and rear becomes more fluid. All forces must continuously prepare for combat operations.

THE POLICY PROMULGATION PROCESS

Although there were a number of contributing causes for detainee abuses, policy processes were inadequate or deficient in certain respects at various levels: Department of Defense (DoD), CENTCOM, Coalition Forces Land Component Command (CFLCC), CJTF-7, and the individual holding facility or prison. In pursuing the question of the extent to which policy processes at the DoD or national level contributed to abuses, it is important to begin with policy development as individuals in Afghanistan were first being detained in November 2001. The first detainees arrived at Guantanamo in January 2002.

In early 2002, a debate was ongoing in Washington on the application of treaties and laws to al Qaeda and Taliban. The Department of Justice, Office of Legal Counsel (OLC) advised DoD General Counsel and the Counsel to the President that, among other things:

- Neither the Federal War Crimes Act nor the Geneva Conventions would apply to the detention conditions of al Qaeda prisoners,
- The President had the authority to suspend the United States treaty obligations applying to Afghanistan for the duration of the conflict should he determine Afghanistan to be a failed state,
- The President could find that the Taliban did not qualify for Enemy Prisoner of War (EPW) status under Geneva Convention III.

The Attorney General and the Counsel to the President, in part relying on the opinions of OLC, advised the President to determine the Geneva Conventions did not apply to the conflict with al Qaeda and the Taliban. The Panel understands DoD General Counsel's position was consistent with the Attorney General's and the Counsel to the President's position. Earlier, the Department of State had argued that the Geneva Conventions in their traditional application provided a sufficiently robust legal construct under which the Global War on Terror could effectively be waged.

The Legal Advisor to the Chairman, Joint Chiefs of Staff and many service lawyers agreed with the State Department's initial position. They were concerned that to conclude otherwise would be inconsistent with past practice and policy, jeopardize the United States armed forces personnel, and undermine the United States military culture which is based on a strict adherence to the law of war. At the February 4, 2002 National Security Council meeting to decide this issue, the Department of State, the Department of Defense, and the Chairman of the Joint Chiefs of Staff were in agreement that all detainees would get the treatment they are (or would be) entitled to under the Geneva Conventions.

On February 7, 2002, the President issued his decision memorandum (see Appendix B). The memorandum stated the Geneva Conventions did not apply to al Qaeda and therefore they were not entitled to prisoner of war status. It also stated the Geneva Conventions did apply to the Taliban but the Taliban combatants were not entitled to prisoner of war status as a result of their failure to conduct themselves in accordance with the provisions of the Geneva Conventions. The President's memorandum also stated: "As a matter of policy, 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."

Regarding the applicability of the Convention Against Torture and Other Cruel Inhumane or Degrading Treatment, the OLC opined on August 1, 2002 that interrogation methods that comply with the relevant domestic law do not violate the Convention. It held that only the most extreme acts, that were specifically intended to inflict severe pain and torture, would be in violation; lesser acts might be "cruel, inhumane, or degrading" but would not violate the Convention Against Torture or domestic statutes. The OLC memorandum went on to say, as Commander in Chief exercising his wartime powers, the President could even authorize torture, if he so decided.

Reacting to tenacious resistance by some detainees to existing interrogation methods, which were essentially limited to those in Army Field Manual 34-52 (see Appendix E), Guantanamo authorities in October 2002 requested approval of strengthened counter-interrogation techniques to increase the intelligence yield from interrogations. This request was accompanied by a recommended tiered list of techniques, with the proviso that the harsher Category III methods (see Appendix E) could be used only on "exceptionally resistant detainees" and with approval by higher headquarters.

This Guantanamo initiative resulted in a December 2, 2002 decision by the Secretary of Defense authorizing, "as a matter of policy," the use of Categories I and II and only one technique in Category III: mild, non-injurious physical contact (see Appendix E). As a result of concern by the Navy General Counsel, the Secretary of Defense rescinded his December approval of all Category II techniques plus the one from Category III on January 15, 2003. This essentially returned interrogation techniques to FM 34-52 guidance. He also stated if any of the methods from Categories II and III were deemed warranted, permission for their use should be requested from him (see Appendix E).

The Secretary of Defense directed the DoD General Counsel to establish a working group to study interrogation techniques. The working group was headed by Air Force General Counsel Mary Walker and included wide membership from across the military, legal and intelligence communities. The working group also relied heavily on the OLC. The working group reviewed 35 techniques, and after a very expansive debate, ultimately recommended 24 to the Secretary of Defense. The study led to the Secretary's promulgation on April 16, 2003 of the list of approved techniques. His memorandum emphasized appropriate safeguards should be in place and, further, "*Use of these techniques is limited to interrogations of unlawful combatants held at Guantanamo Bay, Cuba.*" He also stipulated that four of the techniques should be used only in case of military necessity and that he should be so notified in advance. If additional techniques were deemed essential, they should be requested in writing, with "recommended safeguards and rationale for applying with an identified detainee."

In the initial development of these Secretary of Defense policies, the legal resources of the Services' Judge Advocates and General Counsels were not utilized to their fullest potential. Had the Secretary of Defense had the benefit of a wider range of legal opinions and a more robust debate regarding detainee policies and operations, his policy of April 16, 2003 might well have been developed and issued in early December 2002. This could have avoided the policy changes which characterized the December 2, 2002 to April 16, 2003 period.

It is clear that pressure for additional intelligence and the more aggressive methods sanctioned by the Secretary of Defense memorandum resulted in stronger interrogation techniques. They did contribute to a belief that stronger interrogation methods were needed and appropriate in their treatment of detainees. At Guantanamo, the interrogators used those additional techniques with only two detainees, gaining important and time-urgent information in the process.

In Afghanistan, from the war's inception through the end of 2002, all forces used FM 34-52 as a baseline for interrogation techniques. Nonetheless, more aggressive interrogation of detainees appears to have been ongoing. On January 24, 2003, in response to a data call from the Joint Staff to facilitate the Secretary of Defense-directed Working Group efforts, the Commander Joint Task Force-180 forwarded a list of techniques being used in Afghanistan, including some not explicitly set out in FM 34-52. These techniques were included in a Special Operations Forces (SOF) Standard Operating Procedures document published in February 2003. The 519th Military Intelligence Battalion, a Company of which was later sent to Iraq, assisted in interrogations in support of SOF and was fully aware of their interrogation techniques.

In Iraq, the operational order from CENTCOM provided the standard FM 34-52 interrogation procedures would be used. Given the greatly different situations in Afghanistan and Iraq, it is not surprising there were differing CENTCOM policies for the

two countries. In light of ongoing hostilities that monopolized commanders' attention in Iraq, it is also not unexpected the detainee issues were not given a higher priority.

Interrogators and lists of techniques circulated from Guantanamo and Afghanistan to Iraq. During July and August 2003, a Company of the 519th MI Battalion was sent to the Abu Ghraib detention facility to conduct interrogation operations. Absent guidance other than FM 34-52, the officer in charge prepared draft interrogation guidelines that were a near copy of the Standard Operating Procedure created by SOF. It is important to note that techniques effective under carefully controlled conditions at Guantanamo became far more problematic when they migrated and were not adequately safeguarded.

In August 2003, MG Geoffrey Miller arrived to conduct an assessment of DoD counterterrorism interrogation and detention operations in Iraq. He was to discuss current theater ability to exploit internees rapidly for actionable intelligence. He brought to Iraq the Secretary of Defense's April 16, 2003 policy guidelines for Guantanamo—which he reportedly gave to CJTF-7 as a potential model—recommending a command-wide policy be established. He noted, however, the Geneva Conventions did apply to Iraq. In addition to these various printed sources, there was also a store of common lore and practice within the interrogator community circulating through Guantanamo, Afghanistan and elsewhere.

At the operational level, in the absence of more specific guidance from CENTCOM, interrogators in Iraq relied on FM 34-52 and on unauthorized techniques that had migrated from Afghanistan. On September 14, 2003, Commander CJTF-7 signed the theater's first policy on interrogation which contained elements of the approved Guantanamo policy and elements of the SOF policy. Policies approved for use on al Qaeda and Taliban detainees who were not afforded the protection of EPW status under the Geneva Conventions now applied to detainees who did fall under the Geneva Convention protections. CENTCOM disapproved the September 14, 2003 policy resulting in another policy signed on October 12, 2003 which essentially mirrored the

outdated 1987 version of the FM 34-52. The 1987 version, however, authorized interrogators to control all aspects of the interrogation, "to include lighting and heating, as well as food, clothing, and shelter given to detainees." This was specifically left out of the 1992 version, which is currently in use. This clearly led to confusion on what practices were acceptable. We cannot be sure how much the number and severity of abuses would have been curtailed had there been early and consistent guidance from higher levels. Nonetheless, such guidance was needed and likely would have had a limiting effect.

At Abu Ghraib, the Jones/Fay investigation concluded that MI professionals at the prison level shared a "major part of the culpability" for the abuses. Some of the abuses occurred during interrogation. As these interrogation techniques exceeded parameters of FM 34-52, no training had been developed. Absent training, the interrogators used their own initiative to implement the new techniques. To what extent the same situation existed at other prisons is unclear, but the widespread nature of abuses warrants an assumption that at least the understanding of interrogations policies was inadequate. A host of other possible contributing factors, such as training, leadership, and the generally chaotic situation in the prisons, are addressed elsewhere in this report.

PUBLIC RELEASE OF ABUSE PHOTOS

In any large bureaucracy, good news travels up the chain of command quickly; bad news generally does not. In the case of the abuse photos from Abu Ghraib, concerns about command influence on an ongoing investigation may have impeded notification to senior officials.

Chronology of Events

On January 13, 2004, SPC Darby gave Army criminal investigators a copy of a CD containing abuse photos he had taken from SPC Graner's computer. CJTF-7, CENTCOM, the Chairman of the Joint Chiefs of Staff and the Secretary of Defense were all informed of the issue. LTG Sanchez promptly asked for an outside investigation, and MG Taguba was appointed as the investigating officer. The officials who saw the photos on January 14, 2004, not realizing their likely significance, did not recommend the photos be shown to more senior officials. A CENTCOM press release in Baghdad on January 16, 2004 announced there was an ongoing investigation into reported incidents of detainee abuse at a Coalition Forces detention facility.

An interim report of the investigation was provided to CJTF-7 and CENTCOM commanders in mid-March 2004. It is unclear whether they saw the Abu Ghraib photos, but their impact was not appreciated by either of these officers or their staff officers who may have seen the photographs, as indicated by the failure to transmit them in a timely fashion to more senior officials. When LTG Sanchez received the Taguba report, he immediately requested an investigation into the possible involvement of military intelligence personnel. He told the panel that he did not request the photos be disseminated beyond the criminal investigative process because commanders are prohibited from interfering with, or influencing, active investigations. In mid-April, LTG McKiernan, the appointing official, reported the investigative results through his chain of

command to the Department of the Army, the Army Judge Advocate General, and the U.S. Army Reserve Command. LTG McKiernan advised the panel that he did not send a copy of the report to the Secretary of Defense, but forwarded it through his chain of command. Again the reluctance to move bad news farther up the chain of command probably was a factor impeding notification of the Secretary of Defense.

Given this situation, GEN Richard Myers, the Chairman of the Joint Chiefs of Staff, was unprepared in April 2004 when he learned the photos of detainee abuse were to be aired in a CBS broadcast. The planned release coincided with particularly intense fighting by Coalition forces in Fallujah and Najaf. After a discussion with GEN Abizaid, GEN Myers asked CBS to delay the broadcast out of concern the lives of the Coalition soldiers and the hostages in Iraq would be further endangered. The story of the abuse itself was already public. Nonetheless, both GEN Abizaid and GEN Myers understood the pictures would have an especially explosive impact around the world.

Informing Senior Officials

Given the magnitude of this problem, the Secretary of Defense and other senior DoD officials need a more effective information pipeline to inform them of high-profile incidents which may have a significant adverse impact on DoD operations. Had such a pipeline existed, it could have provided an accessible and efficient tool for field commanders to apprise higher headquarters, the Joint Chiefs of Staff, and the Office of the Secretary of Defense, of actual or developing situations which might hinder, impede, or undermine U.S. operations and initiatives. Such a system could have equipped senior spokesmen with the known facts of the situation from all DoD elements involved. Finally, it would have allowed for senior official preparation and Congressional notification.

Such a procedure would make it possible for a field-level command or staff agency to alert others of the situation and forward the information to senior officials. This would not have been an unprecedented occurrence. For example, in December 2002, concerned Naval Criminal Investigative Service agents drew attention to the potential for abuse at Guantanamo. Those individuals had direct access to the highest levels of leadership and were able to get that information to senior levels without encumbrance. While a corresponding flow of information might not have prevented the abuses from occurring, the Office of the Secretary of Defense would have been alerted to a festering issue, allowing for an early and appropriate response.

Another example is the Air Force Executive Issues Team. This office has fulfilled the special information pipeline function for the Air Force since February 1998. The team chief and team members are highly trained and experienced field grade officers drawn from a variety of duty assignments. The team members have access to information flow across all levels of command and staff and are continually engaging and building contacts to facilitate the information flow. The information flow to the team runs parallel and complementary to standard reporting channels in order to avoid bypassing the chain of command but yet ensures a rapid and direct flow of relevant information to Air Force Headquarters.

A proper, transparent posture in getting the facts and fixing the problem would have better enabled the DoD to deal with the damage to the mission of the U.S. in the region and to the reputation of the U.S. military.

COMMAND RESPONSIBILITIES

Although the most egregious instances of detainee abuse were caused by the aberrant behavior of a limited number of soldiers and the predilections of the non-commissioned officers on the night shift of Tier 1 at Abu Ghraib, the Independent Panel finds that commanding officers and their staffs at various levels failed in their duties and that such failures contributed directly or indirectly to detainee abuse. Commanders are responsible for all their units do or fail to do, and should be held accountable for their action or inaction. Command failures were compounded by poor advice provided by staff officers with responsibility for overseeing battlefield functions related to detention and interrogation operations. Military and civilian leaders at the Department of Defense share this burden of responsibility.

Commanders

The Panel finds that the weak and ineffectual leadership of the Commanding General of the 800th MP Brigade and the Commanding Officer of the 205th MI Brigade allowed the abuses at Abu Ghraib. There were serious lapses of leadership in both units from junior non-commissioned officers to battalion and brigade levels. The commanders of both brigades either knew, or should have known, abuses were taking place and taken measures to prevent them. The Panel finds no evidence that organizations above the 800th MP Brigade- or the 205th MI Brigade-level were directly involved in the incidents at Abu Ghraib. Accordingly, the Panel concurs in the judgment and recommendations of MG Taguba, MG Fay, LTG Jones, LTG Sanchez, LTG McKiernan, General Abizaid and General Kern regarding the commanders of these two units. The Panel expects disciplinary action may be forthcoming.

The Independent Panel concurs with the findings of MG Taguba regarding the Director of the Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib. Specifically, the Panel notes that MG Taguba concluded that the Director, JIDC made material misrepresentations to MG Taguba's investigating team. The panel finds that he failed to properly train and control his soldiers and failed to ensure prisoners were afforded the protections under the relevant Geneva Conventions. The Panel concurs with MG Taguba's recommendation that he be relieved for cause and given a letter of reprimand and notes that disciplinary action may be pending against this officer.

The Independent Panel concurs with the findings of MG Taguba regarding the Commander of the 320th MP Battalion at Abu Ghraib. Specifically, the Panel finds that he failed to ensure that his subordinates were properly trained and supervised and that he failed to establish and enforce basic soldier standards, proficiency and accountability. He was not able to organize tasks to accomplish his mission in an appropriate manner. By not communicating standards, policies and plans to soldiers, he conveyed a sense of tacit approval of abusive behavior towards prisoners and a lax and dysfunctional command climate took hold. The Panel concurs with MG Taguba's recommendation that he be relieved from command, be given a General Officer Memorandum of reprimand, and be removed from the Colonel/O-6 promotion list.

The Independent Panel finds that BG Karpinski's leadership failures helped set the conditions at the prison which led to the abuses, including her failure to establish appropriate standard operating procedures (SOPs) and to ensure the relevant Geneva Conventions protections were afforded prisoners, as well as her failure to take appropriate actions regarding ineffective commanders and staff officers. The Panel notes the conclusion of MG Taguba that she made material misrepresentations to his investigating team regarding the frequency of her visits to Abu Ghraib. The Panel concurs with MG Taguba's recommendation that BG Karpinski be relieved of command and given a General Officer Letter of Reprimand.

Although LTG Sanchez had tasks more urgent than dealing personally with command and resource deficiencies and allegations of abuse at Abu Ghraib, he should have ensured his staff dealt with the command and resource problems. He should have assured that urgent demands were placed for appropriate support and resources through Coalition Forces Land Component Command (CFLCC) and CENTCOM to the Joint Chiefs of Staff. He was responsible for establishing the confused command relationship at the Abu Ghraib prison. There was no clear delineation of command responsibilities between the 320th MP Battalion and the 205th MI Brigade. The situation was exacerbated by CJTF-7 Fragmentary Order (FRAGO) 1108 issued on November 19, 2003 that appointed the commander of the 205th MI Brigade as the base commander for Abu Ghraib, including responsibility for the support of all MPs assigned to the prison. In addition to being contrary to existing doctrine, there is no evidence the details of this command relationship were effectively coordinated or implemented by the leaders at Abu Ghraib. The unclear chain of command established by CJTF-7, combined with the poor leadership and lack of supervision, contributed to the atmosphere at Abu Ghraib that allowed the abuses to take place.

The unclear command structure at Abu Ghraib was further exacerbated by the confused command relationship up the chain. The 800th MP Brigade was initially assigned to the Central Command's Combined Forces Land Component Commander (CFLCC) during the major combat phase of Operation Iraqi Freedom. When CFLCC left the theater and returned to Fort McPherson Georgia, CENTCOM established Combined Joint Task Force-Seven (CJTF-7). While the 800th MP Brigade remained assigned to CFLCC, it essentially worked for CJTF-7. LTG Sanchez delegated responsibility for detention operations to his Deputy, MG Wojdakowski. At the same time, intelligence personnel at Abu Ghraib reported through the CJTF-7 C-2, Director for Intelligence. These arrangements had the damaging result that no single individual was responsible for overseeing operations at the prison.

The Panel endorses the disciplinary actions already taken, although we believe LTG Sanchez should have taken more forceful action in November when he fully comprehended the depth of the leadership problems at Abu Ghraib. His apparent attempt to mentor BG Karpinski, though well-intended, was insufficient in a combat zone in the midst of a serious and growing insurgency.

The creation of the Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib was not an unusual organizational approach. The problem is, as the Army Inspector General assessment revealed, joint doctrine for the conduct of interrogation operations contains inconsistent guidance, particularly with regard to addressing the issue of the appropriate command relationships governing the operation of such organizations as a JIDC. Based on the findings of the Fay, Jones and Church investigations, SOUTHCOM and CENTCOM were able to develop effective command relationships for such centers at Guantanamo and in Afghanistan, but CENTCOM and CJTF-7 failed to do so for the JIDC at Abu Ghraib.

Staff Officers

While staff officers have no command responsibilities, they are responsible for providing oversight, advice and counsel to their commanders. Staff oversight of detention and interrogation operations for CJTF-7 was dispersed among the principal and special staff. The lack of one person on the staff to oversee detention operations and facilities complicated effective and efficient coordination among the staff.