

The Panel finds the following:

- The CJTF-7 Deputy Commander failed to initiate action to request additional military police for detention operations after it became clear that there were insufficient assets in Iraq.
- The CJTF-7 C-2, Director for Intelligence failed to advise the commander properly on directives and policies needed for the operation of the JIDC, for interrogation techniques and for appropriately monitoring the activities of Other Government Agencies (OGAs) within the Joint Area of Operations.
- The CJTF-7 Staff Judge Advocate failed to initiate an appropriate response to the November 2003 ICRC report on the conditions at Abu Ghraib.

#### **Failure of the Combatant Command to Adjust the Plan**

Once it became clear in July 2003 there was a major insurgency growing in Iraq and the relatively benign environment projected for Iraq was not materializing, senior leaders should have adjusted the plan from what had been assumed to be a stability operation and a benign handoff of detention operations to the Iraqis. If commanders and staffs at the operational level had been more adaptive in the face of changing conditions, a different approach to detention operations could have been developed by October 2003, as difficulties with the basic plan were readily apparent by that time. Responsible leaders who could have set in motion the development of a more effective alternative course of action extend up the command chain (and staff), to include the Director for Operations, Combined Joint Task Force 7 (CJTF-7); Deputy Commanding General, CJTF-7; Commander CJTF-7; Deputy Commander for Support, CFLCC; Commander, CFLCC; Director for Operations, Central Command (CENTCOM); Commander, CENTCOM; Director for Operations, Joint Staff; the Chairman of the Joint Chiefs of Staff; and the Office of the Secretary of Defense. In most cases these were errors of omission, but they were errors that should not go unnoted.

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There was ample evidence in both Joint and Army lessons learned that planning for detention operations for Iraq required alternatives to standard doctrinal approaches. Reports from experiences in Operation Enduring Freedom and at Guantanamo had already recognized the inadequacy of current doctrine for the detention mission and the need for augmentation of both MP and MI units with experienced confinement officers and interrogators. Previous experience also supported the likelihood that detainee population numbers would grow beyond planning estimates. The relationship between MP and MI personnel in the conduct of interrogations also demanded close, continuous coordination rather than remaining compartmentalized. "Lessons learned" also reported the value of establishing a clear chain of command subordinating MP and MI to a Joint Task Force or Brigade Commander. This commander would be in charge of all aspects of both detention and interrogations just as tactical combat forces are subordinated to a single commander. The planners had only to search the lessons learned databases (available on-line in military networks) to find these planning insights. Nevertheless, CENTCOM's October 2002 planning annex for detention operations reflected a traditional doctrinal methodology.

The change in the character of the struggle signaled by the sudden spike in U.S. casualties in June, July and August 2003 should have prompted consideration of the need for additional MP assets. GEN Abizaid himself signaled a change in operations when he publicly declared in July that CENTCOM was now dealing with a growing "insurgency," a term government officials had previously avoided in characterizing the war. Certainly by October and November when the fighting reached a new peak, commanders and staffs from CJTF-7 all the way to CENTCOM and the Joint Chiefs of Staff knew by then the serious deficiencies of the 800<sup>th</sup> MP Brigade and should have at least considered reinforcing the troops for detention operations. Reservists, some of whom had been first mobilized shortly after September 11, 2001, began reaching a two-year mobilization commitment, which, by law, mandated their redeployment and deactivation.

There was not much the 800<sup>th</sup> MP Brigade (an Army Reserve unit), could do to delay the loss of those soldiers, and there was no individual replacement system or a unit replacement plan. The MP Brigade was totally dependent on higher headquarters to initiate action to alleviate the personnel crisis. The brigade was duly reporting readiness shortfalls through appropriate channels. However, its commanding general was emphasizing these shortfalls in personal communications with CJTF-7 commanders and staff as opposed to CFLCC. Since the brigade was assigned to CFLCC, but under the Tactical Control (TACON) of CJTF-7, her communications should have been with CFLCC. The response from CJTF-7's Commander and Deputy Commander was that the 800<sup>th</sup> MP Brigade had sufficient personnel to accomplish its mission and that it needed to reallocate its available soldiers among the dozen or more detention facilities it was operating in Iraq. However, the Panel found the further deterioration in the readiness condition of the brigade should have been recognized by CFLCC and CENTCOM by late summer 2003. This led the Panel to conclude that CJTF-7, CFLCC and CENTCOM failure to request additional forces was an avoidable error.

The Joint Staff recognized intelligence collection from detainees in Iraq needed improvement. This was their rationale for sending MG Miller from Guantanamo to assist CJTF-7 with interrogation operations. However, the Joint Staff was not paying sufficient attention to evidence of broader readiness issues associated with both MP and MI resources.

We note that CJTF-7 Headquarters 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) which was not finally approved until December 2003—six months into the insurgency. At one point, CJTF-7 Headquarters 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.

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Finally, the Joint Staff failed to recognize the implications of the deteriorating manning levels in the 800<sup>th</sup> MP Brigade; the absence of combat equipment among detention elements of MP units operating in a combat zone; and the indications of deteriorating mission performance among military intelligence interrogators owing to the stress of repeated combat deployments.

When CJTF-7 did realize the magnitude of the detention problem, it requested an assistance visit by the Provost Marshal General of the Army, MG Ryder. There seemed to be some misunderstanding of the CJTF-7 intent, however, since MG Ryder viewed his visit primarily as an assessment of how to transfer the detention program to the Iraqi prison system.

In retrospect, several options for addressing the detention operations challenge were available. CJTF-7 could have requested a change in command relationships to place the 800<sup>th</sup> MP Brigade under Operational Control of CJTF-7 rather than Tactical Control. This would have permitted the Commander of CJTF-7 to reallocate tactical assets under his control to the detention mission. While other Military Police units in Iraq were already fully committed to higher-priority combat and combat support missions, such as convoy escort, there were non-MP units that could have been reassigned to help in the conduct of detention operations. For example, an artillery brigade was tasked to operate the CJTF-7 Joint Visitors Center in Baghdad. A similar tasking could have provided additional troop strength to assist the 800<sup>th</sup> MP Brigade at Abu Ghraib. Such a shift would have supplied valuable experienced sergeants, captains and lieutenant colonels sorely lacking in both the MI and MP units at Abu Ghraib. A similar effect could have been achieved by CENTCOM assigning USMC, Navy and Air Force MP and security units to operational control of CJTF-7 for the detention operations mission.

Mobilization and deployment of additional forces from CONUS was also a feasible option. A system is in place for commands such as CJTF-7, CFLCC, and CENTCOM to submit a formal Request for Forces (RFF). Earlier, CJTF-7 had submitted a RFF for an



additional Judge Advocate organization, but CENTCOM would not forward it to the Joint Chiefs of Staff. Perhaps this experience made CJTF-7 reluctant to submit a RFF for MP units, but there is no evidence that any of the responsible officers considered any option other than the response given to BG Karpinski to "wear her stars" and reallocate personnel among her already over-stretched units.

While it is the responsibility of the JCS and services to provide adequate numbers of appropriately trained personnel for missions such as the detention operations in Iraq, it is the responsibility of the combatant commander to organize those forces in a manner to achieve mission success. The U.S. experience in the conduct of post-conflict stability operations has been limited, but the impact of our failure to conduct proper detainee operations in this case has been significant. Combatant commanders and their subordinates must organize in a manner that affords unity of command, ensuring commanders work for commanders and not staff.

The fact that the detention operation mission for all of Iraq is now commanded by a 2-star general who reports directly to the operational commander, and that 1,900 MPs, more appropriately equipped for combat, now perform the mission once assigned to a single under-strength, poorly trained, inadequately equipped, and weakly-led brigade, indicate more robust options should have been considered sooner.

Finally, the panel notes the failure to report the abuses up the chain of command in a timely manner with adequate urgency. The abuses at Abu Ghraib were known and under investigation as early as January 2004. However, the gravity of the abuses was not conveyed up the chain of command to the Secretary of Defense. The Taguba report, including the photographs, was completed in March 2004. This report was transmitted to LTG Sanchez and GEN Abizaid; however, it is unclear whether they ever saw the Abu Ghraib photos. GEN Myers has stated he knew of the existence of the photos as early as January 2004. Although the knowledge of the investigation into Abu Ghraib was widely known, as we noted in the previous section, the impact of the photos was not appreciated

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by any of these officers as indicated by the failure to transmit them in a timely fashion to officials at the Department of Defense. (See Appendix A for the names of persons associated with the positions cited in this section.)

## **MILITARY POLICE AND DETENTION OPERATIONS**

In Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom, commanders should have paid greater attention to the relationship between detainees and military operations. The current doctrine and procedures for detaining personnel are inadequate to meet the requirements of these conflicts. Due to the vastly different circumstances in these conflicts, it should not be surprising there were deficiencies in the projected needs for military police forces. All the investigations the Panel reviewed highlight the urgency to augment the prior way of conducting detention operations. In particular, the military police were not trained, organized, or equipped to meet the new challenges.

The Army IG found morale was high and command climate was good throughout forces deployed in Iraq and Afghanistan with one noticeable exception. Soldiers conducting detainee operations in remote or dangerous locations complained of very poor morale and command climate due to the lack of higher command involvement and support and the perception that their leaders did not care. At Abu Ghraib, in particular, there were many serious problems, which could have been avoided, if proper guidance, oversight and leadership had been provided.

### **Mobilization and Training**

Mobilization and training inadequacies for the MP units occurred during the various phases of employment, beginning with peacetime training, activation, arrival at the mobilization site, deployment, arrival in theater and follow-on operations.

Mobilization and Deployment

Problems generally began for the MP units upon arrival at the mobilization sites. As one commander stated, "Anything that could go wrong went wrong." Preparation was not consistently applied to all deploying units, wasting time and duplicating efforts already accomplished. Troops were separated from their equipment for excessive periods of time. The flow of equipment and personnel was not coordinated. The Commanding General of the 800<sup>th</sup> MP Brigade indicated the biggest problem was getting MPs and their equipment deployed together. The unit could neither train at its stateside mobilization site without its equipment nor upon arrival overseas, as two or three weeks could go by before joining with its equipment. This resulted in assigning equipment and troops in an ad hoc manner with no regard to original unit. It also resulted in assigning certain companies that had not trained together in peacetime to battalion headquarters. The flow of forces into theater was originally planned and assigned on the basis of the Time Phased Force Deployment List (TPFDL). The TPFDL was soon scrapped, however, in favor of individual unit deployment orders assigned by U.S. Army Forces Command based on unit readiness and personnel strength. MP Brigade commanders did not know who would be deployed next. This method resulted in a condition wherein a recently arrived battalion headquarters would be assigned the next arriving MP companies, regardless of their capabilities or any other prior command and training relationships.

Original projections called for approximately 12 detention facilities with a projection of 30,000 to 100,000 enemy prisoners of war. These large projections did not materialize. In fact, the initial commanding general of the 800<sup>th</sup> MP brigade, BG Hill, stated he had more than enough MPs designated for the Internment/Resettlement (I/R—hereafter called detention) mission at the end of the combat phase in Iraq. This assessment radically changed following the major combat phase, when the 800<sup>th</sup> moved to Baghdad beginning in the summer of 2003 to assume the detention mission. The brigade was given additional tasks assisting the Coalition Provisional Authority (CPA) in reconstructing the Iraqi corrections system, a mission they had neither planned for nor anticipated.

Inadequate Training for the Military Police Mission

Though some elements performed better than others, generally training was inadequate. The MP detention units did not receive detention-specific training during their mobilization period, which was a critical deficiency. Detention training was conducted for only two MP detention battalions, one in Afghanistan and elements of the other at Camp Arifjan, Kuwait. The 800<sup>th</sup> MP Brigade, prior to deployment, had planned for a major detention exercise during the summer of 2002; however, this was cancelled due to the activation of many individuals and units for Operation Noble Eagle following the September 11, 2001 attack. The Deputy Commander of one MP brigade stated "training at the mobilization site was wholly inadequate." In addition, there was no theater-specific training.

The Army Inspector General's investigators also found that training at the mobilization sites failed to prepare units for conducting detention operations. Leaders of inspected reserve units stated in interviews that they did not receive a clear mission statement prior to mobilization and were not notified of their mission until after deploying. Personnel interviewed described being placed immediately in stressful situations in a detention facility with thousands of non-compliant detainees and not being trained to handle them. Units arriving in theater were given just a few days to conduct a handover from the outgoing units. Once deployed, these newly arrived units had difficulty gaining access to the necessary documentation on tactics, techniques, and procedures to train their personnel on the MP essential tasks of their new mission. A prime example is that relevant Army manuals and publications were available only on-line, but personnel did not have access to computers or the Internet.

## **Force Structure Organization**

The current military police organizational structure does not address the detention mission on the nonlinear battlefield characteristic of the Global War on Terror.

### Current Military Police Structure

The present U.S. Army Reserve and Army National Guard system worked well for the 1991 Gulf War for which large numbers of reserve forces were mobilized, were deployed, fought, and were quickly returned to the United States. These forces, however, were not designed to maintain large numbers of troops at a high operational tempo for a long period of deployment as has been the case in Afghanistan and Iraq.

Comments from commanders and the various inspection reports indicated the current force structure for the MPs is neither flexible enough to support the developing mission, nor can it provide for the sustained detainee operations envisioned for the future. The primary reason is that the present structure lacks sufficient numbers of detention specialists. Currently, the Army active component detention specialists are assigned in support of the Disciplinary Barracks and Regional Correctional Facilities in the United States, all of which are non-deployable.

### New Force Structure Initiatives

Significant efforts are currently being made to shift more of the MP detention requirements into the active force structure. The Army's force design for the future will standardize detention forces between active and reserve components and provide the capability for the active component to immediately deploy detention companies.

The Panel notes that the Mikolashek inspection found significant shortfalls in training and force structure for field sanitation, preventive medicine and medical treatment requirements for detainees.

### **Doctrine and Planning**

Initial planning envisaged a conflict mirroring operation Desert Storm; approximately 100,000 enemy prisoners of war were forecast for the first five days of the conflict. This expectation did not materialize in the first phase of Operation Iraqi Freedom. As a result, there were too many MP detention companies. The reverse occurred in the second phase of Iraqi Freedom, where the plan envisaged a reduced number of detention MPs on the assumption the initial large numbers of enemy prisoners of war would already have been processed out of the detention facilities. The result was that combat MPs were ultimately reassigned to an unplanned detention mission.

The doctrine of yesterday's battlefield does not satisfy the requirements of today's conflicts. Current doctrine assumes a linear battlefield and is very clear for the handling of detainees from the point of capture to the holding areas and eventually to the detention facilities in the rear. However, Operations Enduring Freedom and Iraqi Freedom, both occurring where there is no distinction between front and rear areas, forced organizations to adapt tactics and procedures to address the resulting voids. Organizations initially used standard operating procedures for collection points and detention facilities. These procedures do not fit the new environment, generally because there are no safe areas behind "friendly lines" – there *are* no friendly lines. The inapplicability of current doctrine had a negative effect on accountability, security, safeguarding of detainees, and intelligence exploitation. Instead of capturing and rapidly moving detainees to secure collection points as prescribed by doctrine, units tended to retain the detainees and attempted to exploit their tactical intelligence value without the required training or infrastructure.

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Current doctrine specifies that line combat units hold detainees no longer than 12 – 24 hours to extract immediately useful intelligence. Nonetheless, the Army IG inspection found detainees were routinely held up to 72 hours. For corps collection points, doctrine specifies detainees be held no longer than three days; the Army IG found detainees were held from 30 to 45 days.

### **Equipment Shortfalls**

The current force structure for MP detention organizations does not provide sufficient assets to meet the inherent force protection requirement on battlefields likely to be characteristic of the future. Detention facilities in the theater may have to be located in a hostile combat zone, instead of the benign secure environment current doctrine presumes.

MP detention units will need to be equipped for combat. Lack of crew-served weapons, e.g., machine guns and mortars, to counter external attacks resulted in casualties to the detainee population as well as to the friendly forces. Moreover, Army-issued radios were frequently inoperable and too few in number. In frustration, individual soldiers purchased commercial radios from civilian sources. This improvisation created an unsecured communications environment that could be monitored by any hostile force outside the detention facility.

### **Detention Operations and Accountability**

Traditionally, military police support the Joint Task Force (JTF) by undertaking administrative processing of detention operations, thereby relieving the war-fighters of concern over prisoners and civilian detainees. The handling of detainees is a tactical and operational consideration the JTF addresses during planning to prevent combat forces from being diverted to handle large numbers of detainees. Military police are structured,



therefore, to facilitate the tempo of combat operations by providing for the quick movement of prisoners from the battle area to temporary holding areas and thence to detention facilities.

However, the lack of relevant doctrine meant the design and operation of division, battalion, and company collection points were improvised on an ad hoc basis, depending on such immediate local factors as mission, troops available, weather, time, etc. At these collection points, the SOPs the units had prior to deployment were outdated or ill-suited for the operating environment of Afghanistan and Iraq. Tactical units found themselves taking on roles in detainee operations never anticipated in their prior training. Such lack of proper skills had a negative effect on the intelligence exploitation, security, and safeguarding of detainees.

The initial point of capture may be at any time or place in a military operation. This is the place where soldiers have the least control of the environment and where most contact with the detainees occurs. It is also the place where, in or immediately after battle, abuse may be most likely. And it is the place where the detainee, shocked by capture, may be most likely to give information. As noted earlier, instead of capturing and rapidly transporting detainees to collection points, battalions and companies were holding detainees for excessive periods, even though they lacked the training, materiel, or infrastructure for productive interrogation. The Naval IG found that approximately one-third of the alleged incidents of abuse occurred at the point of capture.

#### Detention

The decision to use Abu Ghraib as the primary operational level detention facility happened by default. Abu Ghraib was selected by Ambassador Bremer who envisioned it as a temporary facility to be used for criminal detainees until the new Iraqi government could be established and an Iraqi prison established at another site. However, CJTF-7 saw an opportunity to use it as an interim site for the detainees it expected to round up as

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part of Operation Victory Bounty in July 2003. CJTF-7 had considered Camp Bucca but rejected it, as it was 150 miles away from Baghdad where the operation was to take place.

Abu Ghraib was also a questionable facility from a standpoint of conducting interrogations. Its location, next to an urban area, and its large size in relation to the small MP unit tasked to provide a law enforcement presence, made it impossible to achieve the necessary degree of security. The detainee population of approximately 7,000 out-manned the 92 MPs by approximately a 75:1 ratio. The choice of Abu Ghraib as the facility for detention operations placed a strictly detention mission-driven unit—one designed to operate in a rear area—smack in the middle of a combat environment.

### **Detainee Accountability and Classification**

Adequate procedures for accountability were lacking during the movement of detainees from the collection points to the detainee facilities. During the movement, it was not unusual for detainees to exchange their identification tags with those of other detainees. The diversity of the detainee population also made identification and classification difficult. Classification determined the detainee assignment to particular cells/blocks, but individuals brought to the facility were often a mix of criminals and security detainees. The security detainees were either held for their intelligence value or presented a continuing threat to Coalition Forces. Some innocents were also included in the detainee population. The issue of unregistered or "ghost" detainees presented a limited, though significant, problem of accountability at Abu Ghraib.

### **Detainee Reporting**

Detainee reporting lacked accountability, reliability and standardization. There was no central agency to collect and manage detainee information. The combatant commanders

and the JTF commanders have overall responsibility for the detainee programs to ensure compliance with the international law of armed conflict, domestic law and applicable national policy and directives. The reporting system is supposed to process all inquiries concerning detainees and provide accountability information to the International Committee of the Red Cross. The poor reporting system did not meet this obligation.

### Release Procedures

Multiple reviews were required to make release recommendations prior to approval by the release authority. Nonconcurrence by area commanders, intelligence organizations, or law enforcement agencies resulted in retention of ever larger numbers of detainees. The Army Inspector General estimated that up to 80 percent of detainees being held for security and intelligence reasons might be eligible for release upon proper review of their cases with the other 20 percent either requiring continued detention on security grounds or uncompleted intelligence requirements. Interviews indicated area commanders were reluctant to concur with release decisions out of concern that potential combatants would be reintroduced into their areas of operation or that the detainees had continuing intelligence value.

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## INTERROGATION OPERATIONS

Any discussion of interrogation techniques must begin with the simple reality that their purpose is to gain intelligence that will help protect the United States, its forces and interests abroad. The severity of the post-September 11, 2001 terrorist threat and the escalating insurgency in Iraq make information gleaned from interrogations especially important. When lives are at stake, all legal and moral means of eliciting information must be considered. Nonetheless, interrogations are inherently unpleasant, and many people find them objectionable by their very nature.

The relationship between interrogators and detainees is frequently adversarial. The interrogator's goal of extracting useful information likely is in direct opposition to the detainee's goal of resisting or dissembling. Although interrogators are trained to stay within the bounds of acceptable conduct, the imperative of eliciting timely and useful information can sometimes conflict with proscriptions against inhumane or degrading treatment. For interrogators in Iraq and Afghanistan, this tension is magnified by the highly stressful combat environment. The conditions of war and the dynamics of detainee operations carry inherent risks for human mistreatment and must be approached with caution and careful planning and training.

A number of interrelated factors both limited the intelligence derived from interrogations and contributed to detainee abuse in Operations Enduring Freedom and Iraqi Freedom. A shortfall of properly trained human intelligence personnel to do tactical interrogation of detainees existed at all levels. At the larger detention centers, qualified and experienced interrogators and interpreters were in short supply. No doctrine existed to cover segregation of detainees whose status differed or was unclear, nor was there guidance on timely release of detainees no longer deemed of intelligence interest. The failure to adapt rapidly to the new intelligence requirements of the Global War on Terror resulted in inadequate resourcing, inexperienced and untrained personnel, and a backlog of detainees

destined for interrogation. These conditions created a climate not conducive to sound intelligence-gathering efforts.

### **The Threat Environment**

The Global War on Terror requires a fundamental reexamination of how we approach collecting intelligence. Terrorists present new challenges because of the way they organize, communicate, and operate. Many of the terrorists and insurgents are geographically dispersed non-state actors who move across national boundaries and operate in small cells that are difficult to surveil and penetrate.

### **Human Intelligence from Interrogations**

The need for human intelligence has dramatically increased in the new threat environment of asymmetric warfare. Massed forces and equipment characteristic of the Cold War era, Desert Storm and even Phase I of Operation Iraqi Freedom relied largely on signals and imagery intelligence. The intelligence problem then was primarily one of monitoring known military sites, troop locations and equipment concentrations. The problem today, however, is discovering new information on widely dispersed terrorist and insurgent networks. Human intelligence often provides the clues to understand these networks, enabling the collection of intelligence from other sources. Information derived from interrogations is an important component of this human intelligence, especially in the Global War on Terror.

The interrogation of al Qaeda members held at Guantanamo has yielded valuable information used to disrupt and preempt terrorist planning and activities. Much of the 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. In the case of

al Qaeda, interrogations provided insights on organization, key personnel, target selection, planning cycles, cooperation among various groups, and logistical support. This information expanded our knowledge of the selection, motivation, and training of these groups. According to Congressional testimony by the Under Secretary of Defense for Intelligence, we have gleaned information on a wide range of al Qaeda activities, including efforts to obtain weapons of mass destruction, sources of finance, training in use of explosives and suicide bombings, and potential travel routes to the United States.

Interrogations provide commanders with information about enemy networks, leadership, and tactics. Such information is critical in planning operations. Tactically, detainee interrogation is a fundamental tool for gaining insight into enemy positions, strength, weapons, and intentions. Thus, it is fundamental to the protection of our forces in combat. Notably, Saddam Hussein's capture was facilitated by interrogation-derived information. Interrogations often provide fragmentary pieces of the broader intelligence picture. These pieces become useful when combined with other human intelligence or intelligence from other sources.

### **Pressure on Interrogators to Produce Actionable Intelligence**

With the active insurgency in Iraq, pressure was placed on the interrogators to produce "actionable" intelligence. In the months before Saddam Hussein's capture, inability to determine his whereabouts created widespread frustration within the intelligence community. With lives at stake, senior leaders expressed, forcibly at times, their needs for better intelligence. A number of visits by high-level officials to Abu Ghraib undoubtedly contributed to this perceived pressure. Both the CJTF-7 commander and his intelligence officer, CJTF-7 C2, visited the prison on several occasions. MG Miller's visit in August/September, 2003 stressed the need to move from simply collecting tactical information to collecting information of operational and strategic value. In November

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2003, a senior member of the National Security Council Staff visited Abu Ghraib, leading some personnel at the facility to conclude, perhaps incorrectly, that even the White House was interested in the intelligence gleaned from their interrogation reports. Despite the number of visits and the intensity of interest in actionable intelligence, however, the Panel found no undue pressure exerted by senior officials. Nevertheless, their eagerness for intelligence may have been perceived by interrogators as pressure.

### **Interrogation Operations Issues**

A number of factors contributed to the problems experienced in interrogation operations. They ranged from resource and leadership shortfalls to doctrinal deficiencies and poor training.

#### Inadequate Resources

As part of the peace dividend following the Cold War much of the human intelligence capability, particularly in the Army, was reduced. As hostilities began in Afghanistan and Iraq, Army human intelligence personnel, particularly interrogators and interpreters, were ill-equipped to deal with requirements at both the tactical level and at the larger detention centers. At the tactical level, questioning of detainees has been used in all major conflicts. Knowledge of the enemy's positions, strength, equipment and tactics is critical in order to achieve operational success while minimizing casualties. Such tactical questioning to gain immediate battlefield intelligence is generally done at or near the point of capture. In Iraq, although their numbers were insufficient, some of the more seasoned MIs from the MI units supporting Abu Ghraib were assigned to support the Army Tactical HUMINT teams in the field.

In both Afghanistan and Iraq, tactical commanders kept detainees longer than specified by doctrine in order to exploit their unique local knowledge such as religious and tribal affiliation and regional politics. Remaining with the tactical units, the detainees could be



available for follow-up questioning and clarification of details. The field commanders were concerned that information from interrogations, obtained in the more permanent facilities, would not be returned to the capturing unit. Tactical units, however, were not properly resourced to implement this altered operating arrangement. The potential for abuse also increases when interrogations are conducted in an emotionally charged field environment by personnel unfamiliar with approved techniques.

At the fixed detention centers such as Abu Ghraib, lack of resources and shortage of more experienced senior interrogators impeded the production of actionable intelligence. Inexperienced and untrained personnel often yielded poor intelligence. Interpreters, particularly, were in short supply, contributing to the backlog of detainees to be interrogated. As noted previously, at Abu Ghraib for instance, there were detainees who had been in custody for as long as 90 days before being interrogated for the first time.

#### Leadership and Organization Shortfalls at Abu Ghraib

Neither the leadership nor the organization of Military Intelligence at Abu Ghraib was up to the mission. The 205th MI Brigade had no organic interrogation elements; they had been eliminated by the downsizing in the 1990s. Soldiers from Army Reserve units filled the ranks, with the consequence that the Brigade Commander had to rely on disparate elements of units and individuals, including civilians, which had never trained together. The creation of the Joint Interrogation and Debriefing Center (JIDC) introduced another layer of complexity into an already stressed interrogations environment. The JIDC was an ad hoc organization made up of six different units lacking the normal command and control structure, particularly at the senior noncommissioned officer level. Leadership was also lacking, from the Commander of the 800<sup>th</sup> MP Brigade in charge of Abu Ghraib, who failed to ensure that soldiers had appropriate SOPs for dealing with detainees, to the Commander of the 205<sup>th</sup> MI Brigade, who failed to ensure that soldiers under his command were properly trained and followed the interrogation rules of engagement. Moreover, the Director of the JIDC was a weak leader who did not have experience in

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interrogation operations and who ceded the core of his responsibilities to subordinates. He failed to provide appropriate training and supervision of personnel assigned to the Center. None of these leaders established the basic standards and accountability that might have served to prevent the abusive behaviors that occurred.

### Interrogation Techniques

Interrogation techniques intended only for Guantanamo came to be used in Afghanistan and Iraq. Techniques employed at Guantanamo included the use of stress positions, isolation for up to 30 days and removal of clothing. In Afghanistan techniques included removal of clothing, isolating people for long periods of time, use of stress positions, exploiting fear of dogs, and sleep and light deprivation. Interrogators in Iraq, already familiar with some of these ideas, implemented them even prior to any policy guidance from CJTF-7. Moreover, interrogators at Abu Ghraib were relying on a 1987 version of FM 34-52, which authorized interrogators to control all aspects of the interrogation to include light, heating, food, clothing and shelter given to detainees.

A range of opinion among interrogators, staff judge advocates and commanders existed regarding what techniques were permissible. Some incidents of abuse were clearly cases of individual criminal misconduct. Other incidents resulted from misinterpretations of law or policy or confusion about what interrogation techniques were permitted by law or local SOPs. The incidents stemming from misinterpretation or confusion occurred for several reasons: the proliferation of guidance and information from other theaters of operation; the interrogators' experiences in other theaters; and the failure to distinguish between permitted interrogation techniques in other theater environments and Iraq. Some soldiers or contractors who committed abuse may honestly have believed the techniques were condoned.

### Use of Contractors as Interrogators

As a consequence of the shortage of interrogators and interpreters, contractors were used to augment the workforce. Contractors were a particular problem at Abu Ghraib. The Army Inspector General found that 35 percent of the contractors employed did not receive formal training in military interrogation techniques, policy, or doctrine. The Naval Inspector General, however, found some of the older contractors had backgrounds as former military interrogators and were generally considered more effective than some of the junior enlisted military personnel. Oversight of contractor personnel and activities was not sufficient to ensure intelligence operations fell within the law and the authorized chain of command. Continued use of contractors will be required, but contracts must clearly specify the technical requirements and personnel qualifications, experience, and training needed. They should also be developed and administered in such a way as to provide the necessary oversight and management.

### Doctrinal Deficiencies

At the tactical level, detaining individuals primarily for intelligence collection or because they constitute a potential security threat, though necessary, presents units with situations not addressed by current doctrine. Many units adapted their operating procedures for conducting detainee operations to fit an environment not contemplated in the existing doctrinal manuals. The capturing units had no relevant procedures for information and evidence collection, which were critical for the proper disposition of detainees.

Additionally, there is inconsistent doctrine on interrogation facility operations for the fixed detention locations. Commanders had to improvise the organization and command relationships within these elements to meet the particular requirements of their operating environments in Afghanistan and Iraq. Doctrine is lacking to address the screening and interrogation of large numbers of detainees whose status (combatants, criminals, or innocents) is not easily ascertainable. Nor does policy specifically address administrative

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responsibilities related to the timely release of detainees captured and detained primarily for intelligence exploitation or for the security threat they may pose.

### Role of CIA

CIA personnel conducted interrogations in DoD detention facilities. In some facilities these interrogations were conducted in conjunction with military personnel, but at Abu Ghraib the CIA was allowed to conduct its interrogations separately. No memorandum of understanding existed on interrogations operations between the CIA and CJTF-7, and the CIA was allowed to operate under different rules. According to the Fay investigation, the CIA's detention and interrogation practices contributed to a loss of accountability at Abu Ghraib. We are aware of the issue of unregistered detainees, but the Panel did not have sufficient access to CIA information to make any determinations in this regard.

## **THE ROLE OF MILITARY POLICE AND MILITARY INTELLIGENCE IN DETENTION OPERATIONS**

Existing doctrine does not clearly address the relationship between the Military Police (MP) operating detention facilities and Military Intelligence (MI) personnel conducting intelligence exploitation at those facilities. The Army Inspector General report states neither MP nor MI doctrine specifically defines the distinct, but interdependent, roles and responsibilities of the two elements in detainee operations.

In the Global War on Terror, we are dealing with new conditions and new threats. Doctrine must be adjusted accordingly. MP doctrine currently states intelligence personnel may collaborate with MPs at detention sites to conduct interrogations, with coordination between the two groups to establish operating procedures. MP doctrine does not, however, address the subject of approved and prohibited MI procedures in an MP-operated facility. Conversely, MI doctrine does not clearly explain MP detention procedures or the role of MI personnel within a detention setting.

### **GUANTANAMO**

The first detainees arrived at Guantanamo in January 2002. The SOUTHCOM Commander established two joint task forces at Guantanamo to execute the detention operations (JTF-160) and the interrogation operations (JTF-170). In August of that year, based on difficulties with the command relationships, the two JTFs were organized into a single command designated as Joint Task Force Guantanamo. This reorganization was conceived to enhance unity of command and direct all activities in support of interrogation and detention operations.

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

On November 4, 2002, MG Miller was appointed Commander of Joint Task Force Guantanamo. As the joint commander, he called upon the MP and MI soldiers to work together cooperatively. Military police were to collect passive intelligence on detainees. They became key players, serving as the eyes and ears of the cellblocks for military intelligence personnel. This collaboration helped set conditions for successful interrogation by providing the interrogator more information about the detainee—his mood, his communications with other detainees, his receptivity to particular incentives, etc. Under the single command, the relationship between MPs and MIs became an effective operating model.

### AFGHANISTAN

The MP and MI commands at the Bagram Detention Facility maintained separate chains of command and remained focused on their independent missions. The Combined Joint Task Force-76 Provost Marshal was responsible for detainee operations. He designated a principal assistant to run the Bagram facility. In parallel fashion, the CJTF-76 Intelligence Officer was responsible for MI operations in the facility, working through an Officer-in-Charge to oversee interrogation operations. The two deputies worked together to coordinate execution of their respective missions. A dedicated judge advocate was assigned full time to the facility, while the CJTF-76 Inspector General provided independent oversight. Based on information from the Naval Inspector General investigation, this arrangement in Afghanistan worked reasonably well.

### ABU GHRAIB, IRAQ

The Central Confinement Facility is located near the population center of Baghdad. Abu Ghraib was selected by Ambassador Bremer who envisioned it as a temporary facility to be used for criminal detainees until the new Iraqi government could be

established and an Iraqi prison established at another site. Following operations during the summer of 2003, Abu Ghraib also was designated by CJTF-7 as the detention center for security detainees. It was selected because it was difficult to transport prisoners, due to improvised explosives devices (IEDs) and other insurgent tactics, to the more remote and secure Camp Bucca, some 150 miles away.

### **Request for Assistance**

Commander CJTF-7 recognized serious deficiencies at the prison and requested assistance. In response to this request, MG Miller and a team from Guantanamo were sent to Iraq to provide advice on facilities and operations specific to screening, interrogations, HUMINT collection and interagency integration in the short- and long- term. The team arrived in Baghdad on August 31, 2003. MG Miller brought a number of recommendations derived from his experience at Guantanamo to include his model for MP and MI personnel to work together. These collaborative procedures had worked well at Guantanamo, in part because of the high ratio of approximately one-to-one of military police to mostly compliant detainees. However, the guard-to-detainee ratio at Abu Ghraib was approximately 1 to 75, and the Military Intelligence and the Military Police had separate chains of command.

MG Ryder, the Army Provost Marshal, also made an assistance visit in mid-October 2003. He conducted a review of detainee operations in Iraq. He found flawed operating procedures, a lack of training, an inadequate prisoner classification system, under-strength units and a ratio of guard to prisoners designed for "compliant" prisoners of war and not for criminals or high-risk security detainees. However, he failed to detect the warning signs of potential and actual abuse that was ongoing during his visit. The assessment team members did not identify any MP units purposely applying inappropriate confinement practices. The Ryder report continues that "Military Police, though adept at passive collection of intelligence within a facility, do not participate in

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Military Intelligence-supervised interrogation sessions. The 800<sup>th</sup> MP Brigade has not been asked to change its facility procedures to set the conditions for MI interviews, nor participate in those interviews.”

### Prevailing Conditions

Conditions at Abu Ghraib reflected an exception to those prevailing at other theater detainee facilities. U.S. forces were operating Tiers 1A and 1B, while Tiers 2 through 7 were under the complete control of Iraqi prison guards. Iraqis who had committed crimes against other Iraqis were intended to be housed in the tiers under Iraqi control. The facility was under frequent hostile fire from mortars and rocket-propelled grenades. Detainee escape attempts were numerous and there were several riots. Both MI and MP units were seriously under-resourced and lacked unit cohesion and mid-level leadership. The reserve MP units had lost senior noncommissioned officers and other personnel through rotations back to the U.S. as well as reassignments to other missions in the theater.

When Abu Ghraib opened, the first MP unit was the 72<sup>nd</sup> MP Company, based in Henderson, Nevada. Known as “the Nevada Company,” it has been described by many involved in investigations concerning Abu Ghraib as a very strong unit that kept tight rein on operational procedures at the facility. This company called into question the interrogation practices of the MI brigade regarding nakedness of detainees. The 72<sup>nd</sup> MP Company voiced and then filed written objections to these practices.

The problems at Abu Ghraib intensified after October 15, 2003, when the 372<sup>nd</sup> Military Police Company took over the facility. The 372<sup>nd</sup> MP Company had been given the most sensitive mission: control of Tier 1A and Tier 1B, where civilian and military intelligence specialists held detainees identified for interrogations as well as “high-risk” detainees. An “MI hold” was anyone of intelligence interest and included foreign and



## THE ROLE OF MP AND MI IN DETENTION OPERATIONS

Iraqi terrorists, as well as individuals possessing information regarding foreign fighters, infiltration methods, or pending attacks on Coalition forces. The "high-risk" troublemakers were held in Tier 1B. The prison cells of Tiers 1A and 1B were collectively known as "the hard site." The 372<sup>nd</sup> soldiers were not trained for prison guard duty and were thinly stretched in dealing with the large number of detainees. With little experience to fall back on, the company commander deferred to noncommissioned officers who had civilian correctional backgrounds to work the night shift. This deference was a significant error in judgment.

### Leadership Shortfalls

At the leadership level, there was friction and a lack of communication between the 800<sup>th</sup> MP Brigade and the 205<sup>th</sup> MI Brigade through the summer and fall of 2003. There was no clear delineation of responsibility between commands and little coordination at the command level. Both the Director of the Joint Interrogation and Debriefing Center (JIDC) and the Commander of the 320<sup>th</sup> MP Battalion were weak and ineffective leaders. Both failed to ensure their subordinates were properly trained and supervised. They failed to establish and enforce basic soldier standards, proficiency, and accountability. Neither was able to organize tasks to accomplish their missions in an appropriate manner. By not communicating standards, policies, and plans to soldiers, these leaders conveyed a sense of tacit approval of abusive behaviors toward prisoners. This was particularly evident with respect to prisoner-handling procedures and techniques, including unfamiliarity with the Geneva Conventions. There was a lack of discipline and standards of behavior were not established nor enforced. A lax and dysfunctional command climate took hold.

In November 2003, the 205<sup>th</sup> MI Brigade Commander was assigned as the Forward Operation Base Commander, thus receiving responsibility for Abu Ghraib. This assignment was made as a result of CJTF-7 Commander's concern over force protection at the prison. The Fay investigation found this did not change the relationship of MP and

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MI units in day-to-day operations at the facility, although the Commander of the 800<sup>th</sup> MP Brigade says she was denied access to areas of Abu Ghraib for which she was doctrinally responsible. Key leaders did not seem to recognize or appreciate psychological stressors associated with the detention mission. MG Taguba concluded these factors included "differences in culture, soldiers' quality of life, and the real presence of mortal danger over an extended time period. The failure of commanders to recognize these pressures contributed to the pervasive atmosphere existing at Abu Ghraib Detention Facility."

### **Military Working Dogs at Abu Ghraib**

The Military Police directives give guidance for the use of military working dogs. They are used to provide an effective psychological and physical deterrent in the detention facility, offering an alternative to using firearms. Dogs are also used for perimeter security, inspections and patrols. MG Miller had recommended dogs as beneficial for detainee custody and control during his visit in August/September 2003. However, he never recommended, nor were dogs used for interrogations at Guantanamo. The working dog teams were requested by the Commander 205<sup>th</sup> MI Brigade who never understood the intent as described by MG Miller. It is likely the confusion about using dogs partially stems from the initial request for dog teams by military intelligence and not military police.

The working dogs arrived at Abu Ghraib in mid-November 2003. The two Army teams were assigned primarily to security of the compound while the three Navy teams worked inside at the entry control point. The senior Army and Navy dog handlers indicated they had not previously worked in a prison environment and received only a one-day training session on scout and search for escaped Enemy Prisoners of War. The Navy handler stated that upon arrival at Abu Ghraib he had not received an orientation on what was expected from his canine unit nor what was authorized or not authorized. He further

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stated he had never received instruction on the use of force in the compound, but he acknowledged he knew a dog could not be used on a detainee if the detainee posed no threat.

Guidance provided by the CJTF-7 directive of September 14, 2003 allowed working dogs to be used as an interrogation technique with the CJTF-7 Commander's approval. This authorization was updated by the October 12, 2003 memorandum, which allowed the presence of dogs during interrogation as long as they were muzzled and under control of the handler at all times but still required approval. The Taguba and Jones/Fay investigations identified a number of abuses related to using muzzled and unmuzzled dogs during interrogations. They also identified some abuses involving dog-use unrelated to interrogations, apparently for the sadistic pleasure of the MPs involved in these incidents.

### MP/MI Relationship

It is clear, with these serious shortfalls and lack of supervision, the model MG Miller presented for the effective working relationship between MI and MP was neither understood nor could it have been successfully implemented. Based on the Taguba and Jones/Fay investigations, "setting favorable conditions" had some basis in fact at Abu Ghraib, but it was also used as an excuse for abusive behavior toward detainees.

The events that took place at Abu Ghraib are an aberration when compared to the situations at other detention operations. Poor leadership and a lack of oversight set the stage for abuses to occur.

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## LAWS OF WAR/GENEVA CONVENTIONS

American military culture, training, and operations are steeped in a long-held commitment to the tenets of military and international law as traditionally codified by the world community. Department of Defense Directive 5100.77, DoD Law of War Program, describes the law of war as:

That part of international law that regulates the conduct of armed hostilities. It is often called the law of armed conflict. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

The law of war includes, among other agreements, the Geneva Conventions of 1949. The Geneva Conventions set forth the rights and obligations which govern the treatment of civilians and combatants during periods of armed conflict. Specifically, Geneva Convention III addresses the treatment of prisoners of war; and Geneva Convention IV addresses the treatment of civilians.

Chairman of the Joint Chiefs of Staff Instruction 5810.01B, Implementation of the DoD Law of War Program, reiterates U.S. policy concerning the law of war: "The Armed Forces of the United States will comply with the law of war during all armed conflicts, however such conflicts are characterized...."

The United States became engaged in two distinct conflicts, Operation Enduring Freedom (OEF) in Afghanistan and Operation Iraqi Freedom (OIF) in Iraq. As a result of a Presidential determination, the Geneva Conventions did not apply to al Qaeda and Taliban combatants. Nevertheless, these traditional standards were put into effect for OIF and remain in effect at this writing. Some would argue this is a departure from the

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traditional view of the law of war as espoused by the ICRC and others in the international community.

### **Operation Enduring Freedom**

On October 17, 2001, pursuant to the commencement of combat operations in OEF, the Commander, CENTCOM, issued an order instructing the Geneva Conventions were to be applied to all captured individuals in accordance with their traditional interpretation. Belligerents would be screened to determine whether or not they were entitled to prisoner of war status. If an individual was entitled to prisoner of war status, the protections of Geneva Convention III would apply. If armed forces personnel were in doubt as to a detained individual's status, Geneva Convention III rights would be accorded to the detainee until a Geneva Convention III Article 5 tribunal made a definitive status determination. If the individual was found not to be entitled to Geneva Convention III protections, he or she might be detained and processed under U.S. criminal code, a procedure consistent with Geneva Convention IV.

A policy debate concerning the application of treaties and laws to al Qaeda and Taliban detainees then began taking shape. The Department of Justice Office of Legal Counsel (OLC) provided opinions to Counsel to the President and Department of Defense General Counsel concluding the Geneva Conventions did not protect members of the al Qaeda organization, and the President could decide that Geneva Conventions did not protect Taliban militia. Counsel to the President and the Attorney General so advised the President.

On February 7, 2002 the President issued a memorandum stating, in part,

...the war against terrorism ushers in a new paradigm.... Our nation recognizes that this new paradigm – ushered in not by us, but by terrorists – requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.

Upon this premise, the President determined the Geneva Conventions did not apply to the U.S. conflict with al Qaeda, and that Taliban detainees did not qualify for prisoner of war status. Removed from the protections of the Geneva Conventions, al Qaeda and Taliban detainees have been classified variously as "unlawful combatants," "enemy combatants," and "unprivileged belligerents."

The enemy in the Global War on Terror is one neither the United States nor the community of nations has ever before engaged on such an extensive scale. These far-reaching, well-resourced, organized, and trained terrorists are attempting to achieve their own ends. Such terrorists are not of a nation state such as those who are party to the agreements which comprise the law of war. Neither do they conform their actions to the letter or spirit of the law of war.

The Panel accepts the proposition that these terrorists are not combatants entitled to the protections of Geneva Convention III. Furthermore, the Panel accepts the conclusion the Geneva Convention IV and the provisions of domestic criminal law are not sufficiently robust and adequate to provide for the appropriate detention of captured terrorists.

The Panel notes the President qualified his determination, directing that United States policy would be "consistent with the principles of Geneva." Among other things, the Geneva Conventions adhere to a standard calling for a delineation of rights for all persons, and humane treatment for all persons. They suggest that no person is "outlaw," that is, outside the laws of some legal entity.

The Panel finds the details of the current policy vague and lacking. Justice Sandra Day O'Connor, writing for the majority in *Hamdi v Rumsfeld*, June 28, 2004 points out "the Government has never provided any court with the full criteria that it uses in classifying individuals as [enemy combatants]." Justice O'Connor cites several authorities to support the proposition that detention "is a clearly established principle of the law of

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war," but also states there is no precept of law, domestic or international, which would permit the indefinite detention of any combatant.

As a matter of logic, there should be a category of persons who do not comply with the specified conditions and thus fall outside the category of persons entitled to EPW status. Although there is not a particular label for this category in law of war conventions, the concept of "unlawful combatant" or "unprivileged belligerent" is a part of the law of war.

### **Operation Iraqi Freedom**

Operation Iraqi Freedom is wholly different from Operation Enduring Freedom. It is an operation that clearly falls within the boundaries of the Geneva Conventions and the traditional law of war. From the very beginning of the campaign, none of the senior leadership or command considered any possibility other than that the Geneva Conventions applied.

The message in the field, or the assumptions made in the field, at times lost sight of this underpinning. Personnel familiar with the law of war determinations for OEF in Afghanistan tended to factor those determinations into their decision-making for military actions in Iraq. Law of war policy and decisions germane to OEF migrated, often quite innocently, into decision matrices for OIF. We noted earlier the migration of interrogation techniques from Afghanistan to Iraq. Those interrogation techniques were authorized only for OEF. More important, their authorization in Afghanistan and Guantanamo was possible only because the President had determined that individuals subjected to these interrogation techniques fell outside the strict protections of the Geneva Conventions.

One of the more telling examples of this migration centers around CJTF-7's determination that some of the detainees held in Iraq were to be categorized as unlawful



combatants. "Unlawful combatants" was a category set out in the President's February 7, 2002 memorandum. Despite lacking specific authorization to operate beyond the confines of the Geneva Conventions, CJTF-7 nonetheless determined it was within their command discretion to classify, as unlawful combatants, individuals captured during OIF. CJTF-7 concluded it had individuals in custody who met the criteria for unlawful combatants set out by the President and extended it in Iraq to those who were not protected as combatants under the Geneva Conventions, based on the OLC opinions. While CJTF-7's reasoning is understandable in respect to unlawful combatants, nonetheless, they understood there was no authorization to suspend application of the Geneva Conventions, in letter and spirit, to all military actions of Operation Iraqi Freedom. In addition, CJTF-7 had no means of discriminating detainees among the various categories of those protected under the Geneva Conventions and those unlawful combatants who were not.

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## **THE ROLE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS**

Since December 2001, the International Committee of the Red Cross (ICRC) has visited U.S. detention operations in Guantanamo, Iraq, and Afghanistan numerous times. Various ICRC inspection teams have delivered working papers and reports of findings to U.S. military leaders at different levels. While the ICRC has acknowledged U.S. attempts to improve the conditions of detainees, major differences over detainee status as well as application of specific provisions of Geneva Conventions III and IV remain. If we were to follow the ICRC's interpretations, interrogation operations would not be allowed. This would deprive the U.S. of an indispensable source of intelligence in the war on terrorism.

The ICRC is an independent agency whose activities include observing and reporting on conditions in wartime detention camps and facilities. During visits, it attempts to register all prisoners, inspect facilities, and conduct private interviews with detainees to discuss any problems concerning detainee treatment or conditions; it also provides a means for detainees to contact their families. While the ICRC has no enforcing authority and its reports are supposedly confidential, any public revelation regarding standards of detainee treatment can have a substantial effect on international opinion.

The ICRC seeks to handle problems at the lowest level possible. When a team conducts an inspection, it provides a briefing, and sometimes a report, to the local commander. Discrepancies and issues are presented to the detaining authorities, and follow-up visits are made to monitor compliance with recommendations. The commander may or may not implement the recommendations based on either resource constraint or his interpretation of applicable law. These constraints can make complete implementation of ICRC recommendations either difficult or inappropriate. If recommendations are not implemented, the ICRC may address the issue with higher authorities. The ICRC does

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

not expect to receive, nor does the DoD have a policy of providing, a written response to ICRC reports. However, DoD elements do attempt to implement as many of the recommendations as practicable, given security and resource constraints.

One important difference in approach between the U.S. and the ICRC is the interpretation of the legal status of terrorists. According to a Panel interview with CJTF-7 legal counsel, the ICRC sent a report to the State Department and the Coalition Provisional Authority in February 2003 citing lack of compliance with Protocol I. But the U.S. has specifically rejected Protocol I stating that certain elements in the protocol, that provide legal protection for terrorists, make it plainly unacceptable. Still the U.S. has worked to preserve the positive elements of Protocol I. In 1985, the Secretary of Defense noted that "certain provisions of Protocol I reflect customary international law, and others appear to be positive new developments. We therefore intend to work with our allies and others to develop a common understanding or declaration of principles incorporating these positive aspects, with the intention they shall, in time, win recognition as customary international law." In 1986 the ICRC acknowledged that it and the U.S. government had "agreed to disagree" on the applicability of Protocol I. Nevertheless, the ICRC continues to presume the United States should adhere to this standard under the guise of customary international law.

This would grant legal protections to terrorists equivalent to the protections accorded to prisoners of war as required by the Geneva Conventions of 1949 despite the fact terrorists do not wear uniforms and are otherwise indistinguishable from noncombatants. To do so would undermine the prohibition on terrorists blending in with the civilian population, a situation which makes it impossible to attack terrorists without placing noncombatants at risk. For this and other reasons, the U.S. has specifically rejected this additional protocol.

The ICRC also considers the U.S. policy of categorizing some detainees as "unlawful combatants" to be a violation of their interpretation of international humanitarian law. It contends that Geneva Conventions III and IV, which the U.S. has ratified, allow for only

two categories of detainees: (1) civilian detainees who must be charged with a crime and tried and (2) enemy combatants who must be released at the cessation of hostilities. In the ICRC's view, the category of "unlawful combatant" deprives the detainees of certain human rights. It argues that lack of information regarding the reasons for detention and the conditions for release are major sources of stress for detainees.

However, the 1949 Geneva Conventions specify conditions to qualify for protected status. By logic, then, if detainees do not meet the specific requirements of privileged status, there clearly must be a category for those lacking in such privileges. The ICRC does not acknowledge such a category of "unprivileged belligerents," and argues that it is not consistent with its interpretation of the Geneva Conventions.

Regarding the application of current international humanitarian law, including Geneva Conventions III and IV, the ICRC has three concerns: (1) gaining access to and ascertaining the status of all detainees in U.S. custody; (2) its belief that linking detention with interrogations should not be allowed which follows from its refusal to recognize the category of unprivileged combatants and (3) they also worry about losing their effectiveness.

Although the ICRC found U.S. forces generally cooperative, it has cited occasions when the forces did not grant adequate access to detainees, both in Iraq and Afghanistan. Of particular concern to the ICRC, however, has been the existence of "ghost detainees," detainees who were kept from ICRC inspectors. While the Panel has not been able to ascertain the number of ghost detainees in the overall detainee population, several investigations cite their existence. Both the Taguba and Jones/Fay reports cite instances of ghost detainees at Abu Ghraib. Secretary Rumsfeld publicly declared he directed one detainee be held secretly at the request of the Director of Central Intelligence.

On balance, the Panel concludes there is value in the relationship the Department of Defense historically has had with the ICRC. The ICRC should serve as an early warning

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

indicator of possible abuse. Commanders should be alert to ICRC observations in their reports and take corrective actions as appropriate. The Panel also believes the ICRC, no less than the Defense Department, needs to adapt itself to the new realities of conflict, which are far different from the Western European environment from which the ICRC's interpretation of Geneva Conventions was drawn. The Department of Defense has established an office of detainee affairs and should continue to reshape its operational relationship with the ICRC.

## RECOMMENDATIONS

Department of Defense reform efforts are underway and the Panel commends these efforts. 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 how to adjust force compositions, training, doctrine and responsibilities for active/reserve/guard and contractor mixes to ensure we are better prepared to succeed in the war on terrorism.

The Panel reviewed various inspections, investigations and assessments that produced over 300 recommendations for corrective actions to address the problems identified with DoD detention operations. For the most part the Panel endorses their recommendations. In some areas the recommendations do not go far enough and we augment them. We provide additional recommendations to address relevant areas not covered by previous analyses.

The Independent Panel provides the following additional recommendations:

1. The United States should further define its policy, applicable to both the Department of Defense and other government agencies, on the categorization and status of all detainees as it applies to various operations and theaters. It should define their status and treatment in a way consistent with U.S. jurisprudence and military doctrine and with U.S. interpretation of the Geneva Conventions. We recommend that additional operational, support and staff judge advocate personnel be assigned to appropriate commands for the purpose of expediting the detainee release review process.
2. The Department of Defense needs to address and develop joint doctrine to define the appropriate collaboration between military intelligence and military police in a detention facility. The meaning of guidance, such as MPs "setting the conditions" for

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

interrogation, needs to be defined with precision. MG Taguba argued that all detainee operations be consolidated under the responsibility of a single commander reporting directly to Commander CJTF-7. This change has now been accomplished and seems to be working effectively. Other than lack of leadership, training deficiencies in both MP and MI units have been cited most often as the needed measures to prevent detainee abuse. We support the recommendations on training articulated by the reports published by the various other reviews.

3. The nation needs more specialists for detention/interrogation operations, including linguists, interrogators, human intelligence, counter-intelligence, corrections police and behavioral scientists. Accompanying professional development and career field management systems must be put in place concurrently. The Panel agrees that some use of contractors in detention operations must continue into the foreseeable future. This is especially the case with the need for qualified interpreters and interrogators and will require rigorous oversight.

4. Joint Forces Command should chair a Joint Service Integrated Process Team to develop a new Operational Concept for Detention Operations in the new era of warfare, covering the Global War on Terror. The team should place special and early emphasis on detention operations during Counter-Insurgency campaigns and Stability Operations in which familiar concepts of front and rear areas may not apply. Attention should also be given to preparing for conditions in which normal law enforcement has broken down in an occupied or failed state. The Panel recommends that the idea of a deployable detention facility should be studied and implemented as appropriate.

5. Clearly, force structure in both MP and MI is inadequate to support the armed forces in this new form of warfare. Every investigation we reviewed refers to force structure deficiencies in some measure. There should be an active and reserve component mix of units for both military intelligence and military police. Other forces besides the Army are also in need of force structure improvements. Those forces have not been addressed



## RECOMMENDATIONS

adequately in the reports reviewed by the Panel, and we recommend that the Secretaries of the Navy and Air Force undertake force structure reviews of their own to improve the performance of their Services in detention operations.

6. Well-documented policy and procedures on approved interrogation techniques are imperative to counteract the current chilling effect the reaction to the abuses have had on the collection of valuable intelligence through interrogations. Given the critical role of intelligence in the Global War on Terror, the aggressiveness of interrogation techniques employed must be measured against the value of intelligence sought, to include its importance, urgency and relevance. A policy for interrogation operations should be promulgated early on and acceptable interrogation techniques for each operation must be clearly understood by all interrogation personnel.

7. All personnel who may be engaged in detention operations, from point of capture to final disposition, should participate in a professional ethics program that would equip them with a sharp moral compass for guidance in situations often riven with conflicting moral obligations. The development of such a values-oriented ethics program should be the responsibility of the individual services with assistance provided by the Joint Chiefs of Staff.

8. Clearer guidelines for the interaction of CIA with the Department of Defense in detention and interrogation operations must be defined.

9. The United States needs to redefine its approach to customary and treaty international humanitarian law, which must be adapted to the realities of the nature of conflict in the 21<sup>st</sup> Century. In doing so, the United States should emphasize the standard of reciprocity, in spite of the low probability that such will be extended to United States Forces by some adversaries, and the preservation of United States societal values and international image that flows from an adherence to recognized humanitarian standards.

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10. The Department of Defense should continue to foster its operational relationship with the International Committee of the Red Cross. The Panel believes the International Committee of the Red Cross, no less than the Defense Department, needs to adapt itself to the new realities of conflict which are far different from the Western European environment from which the ICRC's interpretation of Geneva Conventions was drawn.

11. The assignment of a focal point within the office of the Under Secretary for Policy would be a useful organizational step. The new focal point for Detainee Affairs should be charged with all aspects of detention policy and also be responsible for oversight of DoD relations with the International Committee of the Red Cross.

12. The Secretary of Defense should ensure the effective functioning of rapid reporting channels for communicating bad news to senior Department of Defense leadership without prejudice to any criminal or disciplinary actions already underway. The Panel recommends consideration of a joint adaptation of procedures such as the Air Force special notification process.

13. The Panel notes that the Fay investigation cited some medical personnel for failure to report detainee abuse. As noted in that investigation, training should include the obligation to report any detainee abuse. The Panel also notes that the Army IG found significant shortfalls in training and force structure for field sanitation, preventive medicine and medical treatment requirements for detainees. As the DoD improves detention operations force structure and training, it should pay attention to the need for medical personnel to screen and monitor the health of detention personnel and detainees.

14. The integration of the recommendations in this report and all the other efforts underway on detention operations will require further study. Analysis of the dynamics of program and resource implications, with a view to assessing the trade-offs and opportunity costs involved, must be addressed.

## Appendices

## GLOSSARY

<b>Army Regulation 15-6</b>	AR 15-6	Army regulation which specifies procedures for command investigations. The common name for both formal and informal command investigations.
<b>Active Component</b>	AC	Active military component of the Army, Navy, Air Force or Marines.
<b>Abuse Cases</b>		An incident or allegation of abuse, including, but not limited to death, assault, sexual assault, and theft, that triggers a CID investigation, which may involve multiple individuals.
<b>Behavioral Science Coordination Team</b>	BSCT	Team comprised of medical and other specialized personnel that provides support to special operations forces.
<b>Civilian Internees</b>	CI	Designation of civilians encountered and detained in the theater of war.
<b>Criminal Investigation Command</b>	CID	Investigative agency of the U. S. Army responsible for conducting criminal investigations to which the Army is or may be a party.
<b>Collection Points</b>	CP	Forward locations where prisoners are collected, processed and prepared for movement to the detention center.
<b>Coalition Provisional Authority</b>	CPA	Interim government of Iraq, in place from May 2003 through June 2004.
<b>Convention Against Torture and Other Cruel Inhumane or Degrading Treatment</b>		An international treaty brought into force in 1987 which seeks to define torture and other cruel, inhuman or degrading treatment or punishment and provides a mechanism for punishing those who would inflict such treatment on others.
<b>Enemy Prisoner of War</b>	EPW	International Committee of the Red Cross term for prisoners of war; this status bestows certain rights to the individual in the Geneva Conventions.
<b>Force Design Update</b>	FDU	The Army process to review and restructure forces.

## GLOSSARY

<b>Fragmentary Order</b>	<b>FRAGO</b>	An abbreviated form of an operation order (verbal, written or digital) usually issued on a day-to-day basis that eliminates the need for restarting information contained in a basic operation order.
<b>Army Field Manual 34-52 "Intelligence Interrogation"</b>	<b>FM 34-52</b>	Current manual for operations and training in interrogation techniques. The edition dated 1987 was updated in 1992.
<b>Geneva Conventions</b>	<b>GC</b>	The international treaties brought into force in August 1949. These conventions extend protections to, among others, prisoners of war and civilians in time of war.
<b>Global War on Terror</b>	<b>GWOT</b>	Worldwide operation to eradicate individuals and groups that participate in and sponsor terrorism.
<b>Internment/Resettlement</b>	<b>I/R</b>	Internment/resettlement mission assigned to specific US Army Military Police units who are responsible for the detention of Enemy Prisoners of War during armed conflict.
<b>International Committee of the Red Cross</b>	<b>ICRC</b>	Nongovernmental organization that seeks to help victims of war and internal violence.
<b>In Lieu Of</b>	<b>ILO</b>	When used in reference to manning, indicates that forces were used in a manner other than originally specified.
<b>Initial Point of Capture</b>	<b>IPOC</b>	Location where an enemy prisoner or internee is captured.
<b>Iraq Survey Group</b>	<b>ISG</b>	Organization located in Iraq with the mission to find weapons of mass destruction.
<b>Joint Manning Document</b>	<b>JMD</b>	Master document covering personnel requirements for the joint theater.
<b>Navy Criminal Investigative Service</b>	<b>NCIS</b>	Investigative service for the US Navy and Marine Corps.

## GLOSSARY

<b>National Detainee Reporting Center</b>	NDRC	Agency charged with accounting for and reporting all EPW, retained personnel, civilian internees and other detainees during armed conflict.
<b>Operation Enduring Freedom</b>	OEF	Military operation in Afghanistan
<b>Other Government Agencies</b>	OGA	Refers to non-Department of Defense agencies operating in theaters of war.
<b>Operation Iraqi Freedom</b>	OIF	Military operation in Iraq.
<b>Office of Legal Counsel</b>	OLC	Refers to the Department of Justice Office of Legal Counsel.
<b>Operation Noble Eagle</b>	ONE	Operation to activate and deploy forces for homeland defense and civil support in response to the attacks of September 11, 2001.
<b>Operation Victory Bounty</b>	OVB	CJTF-7 operation to sweep Baghdad area for remaining elements of the Saddam Fedayeen in 2003.
<b>Operational Control</b>	OPCON	Command authority over all aspects of military operations.
<b>Republican Guard</b>	RG	Elite Iraqi military forces under the regime of Saddam Hussein.
<b>Reserve Component</b>	RC	Army, Navy, Air Force and Marine Reserves and Army and Air National Guard
<b>Request for Forces</b>	RFF	Commanders request for additional forces to support the mission.
<b>Standing Operating Procedure</b>	SOP	A set of instructions covering those features of operations which lend themselves to a definite or standardized procedures without loss of effectiveness. The procedure is applicable unless ordered otherwise.
<b>Tactical Control</b>	TACON	Command authority to control and task forces for maneuvers within an area of operations.

## GLOSSARY

<b>Tactical Human Intelligence Team</b>	THT	Forward deployed intelligence element providing human intelligence support to maneuver units.
<b>Time Phased Force Deployment List</b>	TPFDL	Identifies the units needed to support an operational plan and specifies their order and method of deployment.
<b>Army Regulation 15-6</b>	AR 15-6	Army regulation which specifies procedures for command investigations. The common name for both formal and informal command investigations.
<b>Active Component</b>	AC	Active military component of the Army, Navy, Air Force or Marines.
<b>Abuse Cases</b>		An incident or allegation of abuse, including, but not limited to death, assault, sexual assault, and theft, that triggers a CID investigation, which may involve multiple individuals.
<b>Behavioral Science Coordination Team</b>	BSCT	Team comprised of medical and other specialized personnel that provides support to special operations forces.
<b>Civilian Internees</b>	CI	Designation of civilians encountered and detained in the theater of war.
<b>Criminal Investigation Command</b>	CID	Investigative agency of the U. S. Army responsible for conducting criminal investigations to which the Army is or may be a party.
<b>Collection Points</b>	CP	Forward locations where prisoners are collected, processed and prepared for movement to the detention center.
<b>Coalition Provisional Authority</b>	CPA	Interim government of Iraq, in place from May 2003 through June 2004.
<b>Convention Against Torture and Other Cruel Inhumane or Degrading Treatment</b>		An international treaty brought into force in 1987 which seeks to define torture and other cruel, inhuman or degrading treatment or punishment and provides a mechanism for punishing those who would inflict such treatment on others.

## GLOSSARY

<b>Enemy Prisoner of War</b>	EPW	International Committee of the Red Cross term for prisoners of war; this status bestows certain rights to the individual in the Geneva Conventions.
<b>Force Design Update</b>	FDU	The Army process to review and restructure forces.
<b>Fragmentary Order</b>	FRAGO	An abbreviated form of an operation order (verbal, written ordigital) usually issued on a day-to-day basis that eliminates the need for restarting information contained in a basic operation order.
<b>Army Field Manual 34-52 "Intelligence Interrogation"</b>	FM 34- 52	Current manual for operations and training in interrogation techniques. The edition dated 1987 was updated in 1992.
<b>Geneva Conventions</b>	GC	The international treaties brought into force in August 1949. These conventions extend protections to, among others, prisoners of war and civilians in time of war.
<b>Global War on Terror</b>	GWOT	Worldwide operation to eradicate individuals and groups that participate in and sponsor terrorism.
<b>Internment/Resettlement</b>	I/R	Internment/resettlement mission assigned to specific US Army Military Police units who are responsible for the detention of Enemy Prisoners of War during armed conflict.
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## GLOSSARY

**Tactical Human  
Intelligence Team**

**THI** Forward deployed intelligence element providing human intelligence support to maneuver units.

**Time Phased Force  
Deployment List**

**TPFDL** Identifies the units needed to support an operational plan and specifies their order and method of deployment.

## GLOSSARY

### Guantanamo

United States Southern Command	USSOUTHCOM	One of nine Unified Combatant Commands with operational control of U.S. military forces. Area of responsibility includes Guantanamo Bay, Cuba.	Commander GEN James Hill
Joint Task Force 160	JTF-160	Initially responsible for detention operations at Guantanamo, merged in JTF-G 11/4/02.	
Joint Task Force 170	JTF-170	Initially responsible for interrogation operations at Guantanamo, merged in JTF-G 11/4/02.	
Joint Task Force Guantanamo	JTF-G	Joint task force for all operations at Guantanamo, formed 11/4/02.	

### Afghanistan

United States Central Command	USCENTCOM	One of nine Unified Commands with operational control of U.S. military forces. Area of responsibility includes Afghanistan and Iraq.	GEN John Abizaid
Coalition Forces Land Component Command	CFLCC	Senior headquarters element for multinational land forces in both Iraq and Afghanistan.	LTG David McKiernan
Combined Joint Task Force 180	CJTF-180	Forward deployed headquarters for Afghanistan.	

### Iraq

United States Central Command	USCENTCOM	One of nine Unified Commands with operational control of U.S. military forces. Area of responsibility includes Afghanistan and Iraq.	GEN John Abizaid
Coalition Forces Land Component Command	CFLCC	Senior headquarters element for multinational land forces in both Iraq and Afghanistan.	LTG David McKiernan
Combined Joint Task Force 7	CJTF-7	Forward deployed headquarters for Operation Iraqi Freedom. Replaced in May 04 by Multi National Force - Iraq and Multi National Corps - Iraq	LTG Ricardo Sanchez
Combined Joint Task Force 7 Intelligence Staff	CJTF-7 C2	Intelligence staff support to CJTF-7	MG Barbara Fast
800th Military Police Brigade	800th MP BDE	U.S. Army Reserve Military Police Brigade, responsible for all internment facilities in Iraq, and assistance to CPA Minister of Justice.	BG Janis Karpinski
Joint Interrogation and Detention Center	JDIC	Element of CJTF-7 for interrogation mission at Abu Ghuraib.	LTC Steven Jordan

## GLOSSARY

320th Military Police Battalion	320th MP BN	Element of 800th Bde; assigned to Abu Ghuraib.	LTC Jerry Phillabaum
372nd Military Police Company	372nd MP CO	Element of 320th Bn; assigned to Abu Ghuraib in October 2003.	CPT Donald Reese
72nd Military Police Company	72nd MP CO	Nevada National Guard MP Company, assigned to Abu Ghuraib prior to 372nd MP Co.	
205th Military Intelligence Brigade	205th MI BDE	Military Intelligence Brigade responsible for multiple Army intelligence missions throughout Iraq.	COL Thomas Pappas
519th Military Intelligence Battalion	519th MI BN	Tactical exploitation element of 525 MI Bde; Company A was located at Abu Ghuraib.	MAJ Michnewicz
<b>Other</b>			
United States Army Forces Command	FORSCOM	U.S. Army major command responsible for training, readiness and deployment.	



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

MAY 12 2004

MEMORANDUM FOR THE HONORABLE JAMES R. SCHLESINGER,  
CHAIRMAN  
THE HONORABLE HAROLD BROWN  
THE HONORABLE TILLIE K. FOWLER  
GENERAL CHARLES A. HORNER, USAF (RET.)

SUBJECT: Independent Panel to Review DoD Detention Operations

Various organizations of the Department of Defense have investigated, or will investigate, various aspects of allegations of abuse at DoD Detention Facilities and other matters related to detention operations. Thus far these inquiries include the following:

- Criminal investigations into individual allegations
- Army Provost Marshal General assessment of detention and corrections operations in Iraq
- Joint Task Force Guantanamo assistance visit to Iraq to assess intelligence operations
- Administrative Investigation under AR 15-6 regarding Abu Ghraib operations
- Army Inspector General assessment of doctrine and training for detention operations
- Commander, Joint Task Force-7 review of activities of military intelligence personnel at Abu Ghraib
- Army Reserve Command Inspector General assessment of training of Reserve units regarding military intelligence and military police
- Naval Inspector General review of detention procedures at Guantanamo Bay, Cuba, and the Naval Consolidated Brig, Charleston, South Carolina

I have been or will be briefed on the results of these inquiries and the corrective actions taken by responsible officials within the Department.

It would be helpful to me to have your independent, professional advice on the issues that you consider most pertinent related to the various allegations, based on your review of completed and pending investigative reports and other materials and information. I am especially interested in your views on the cause of the problems and what should be done to fix them. Issues such as force structure, training of regular and reserve personnel, use of contractors, organization, detention policy and procedures, interrogation policy and procedures, the relationship between detention and interrogation, compliance with the Geneva Conventions, relationship with the International Committee



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OSD AMNESTY/CCR 157

of the Red Cross, command relationships, and operational practices may be contributing factors you might wish to review. Issues of personal accountability will be resolved through established military justice and administrative procedures, although any information you may develop will be welcome.

I would like your independent advice orally and in writing, preferably within 45 days after you begin your review. DoD personnel will collect information for your review and assist you as you deem appropriate. You are to have access to all relevant DoD investigations and other DoD information unless prohibited by law. Reviewing all written materials relevant to these issues may be sufficient to allow you to provide your advice. Should you believe it necessary to travel or conduct interviews, the Director of Administration and Management will make appropriate arrangements.

I intend to provide your report to the Committees on Armed Services, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Commanders of the Combatant Commands, the Directors of the Defense Agencies, and others as appropriate. If your report contains classified information, please also provide an unclassified version suitable for public release.

By copy of this memorandum, I request the Director of Administration and Management to secure the necessary technical, administrative and legal support for your review from the Department of Defense Components. I appoint you as full-time employees of this Department without pay under 10 U.S.C. §1583. I request all Department of Defense personnel to cooperate fully with your review and to make available all relevant documents and information at your request.



cc: SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
ASSISTANTS TO THE SECRETARY OF DEFENSE

DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, FORCE TRANSFORMATION  
DIRECTOR, NET ASSESSMENT  
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

THE WHITE HOUSE  
WASHINGTON

February 7, 2002

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

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

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

Appendix C



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

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



## Interrogation Policies in Guantanamo, Afghanistan and Iraq

17	FM 34-52 (1992)	Jan 02 - Dec 02		17	FM 34-52 (1992)	27 Oct 01 - 24 Jan 03		17	FM 34-52 (1992)	
33	Secretary of Defense Approved Tiered System	02 Dec 02 - 15 Jan 03	1	33	CJTF 180 Response to Director, Joint Staff	24-Jan-03	1, 3, 6	29	CJTF-7 Signed Policy	14-Sep-03
20	FM 34-52 (1992) with 3 Cat I Techniques	16 Jan 03 - 15 Apr 03		32	CJTF 180 Detainee SOP	27-Mar-04	1	19	CJTF-7 Signed Policy	12-Oct-03
24	Secretary of Defense Memo	16 Apr 03 - Present	1, 2	19	CJTF-A Rev 2 Guidance	Jun-04	4	19	CJTF-7 Signed Policy	13-May-04

C1 Some techniques specifically delineated in this memo are inherent to techniques contained in FM 34-52, e.g. Yelling as a component of Fear Up.

C2 Five Approved Techniques require SOUTHCOM approval and SECDEF notification.

R3 Figure includes techniques that were not in current use but requested for future use.

14 Figure includes one technique which requires CG approval.

65 Memorandum cited for Afghanistan and Iraq are classified.

6 Figure includes the 17 techniques of FM-34-52, although they are not specified in the Memo.

Appendix D

Source: Naval IG Investigation

# Evolution of Interrogation Techniques - GTMO

Interrogation Techniques	FM 34-52 (1992)		Secretary of Defense Approved Tiered System		FM 34-52 (1992) with some Cat I		Secretary of Defense Memo	
	Jan 02 - 01 Dec 02	02 Dec 02 - 15 Jan 03	16 Jan 03 - 15 Apr 03	16 Apr 03 - Present	16 Apr 03 - Present	16 Apr 03 - Present	16 Apr 03 - Present	
Direct questioning	X				X		X	
Incentive/removal of incentive	X				X		X	
Emotional love	X				X		X	
Emotional hate	X				X		X	
Fear up harsh	X				X		X	
Fear up mild	X				X		X	
Reduced fear	X				X		X	
Pride and ego up	X				X		X	
Pride and ego down	X				X		X	
Futility	X				X		X	
We know all	X				X		X	
Establish your identity	X				X		X	
Repetition approach	X				X		X	
File and dossier	X				X		X	
Mutt and Jeff							X*	
Rapid Fire	X				X		X	
Silence	X				X		X	
Change of Scene	X				X		X	
Yelling					X (Cat I)			
Deception					X (Cat I)			
Multiple interrogators					X (Cat I)			
Interrogator identity					X (Cat I)			
Stress positions, like standing					X (Cat II)			
False documents/reports					X (Cat II)			
Isolation for up to 30 days					X (Cat II)		X*	
Deprivation of light/auditory stimuli					X (Cat II)			
Hooding (transportation & questioning)					X (Cat II)			
20-interrogations					X (Cat II)			
Removal of ALL comfort items, including religious items					X (Cat II)			
MRE-only diet					X (Cat II)		X*	
Removal of clothing					X (Cat II)			
Forced grooming					X (Cat II)			
Exploiting individual phobias, e.g. dogs					X (Cat II)			
Mild, non-injurious physical contact, e.g. grabbing, poking or light pushing					X (Cat II)			
Environmental manipulation					X (Cat III)			
Sleep adjustment							X	
False flag							X	

\*Techniques require SOUTHCOM approval and SECDEF notification.



## **PSYCHOLOGICAL STRESSES**

The potential for abusive treatment of detainees during the Global War on Terrorism was entirely predictable based on a fundamental understanding of the principle of social psychology principles coupled with an awareness of numerous known environmental risk factors. Most leaders were unacquainted with these known risk factors, and therefore failed to take steps to mitigate the likelihood that abuses of some type would occur during detainee operations. While certain conditions heightened the possibility of abusive treatment, such conditions neither excuse nor absolve the individuals who engaged in deliberate immoral or illegal behaviors.

The abuse the detainees endured at various places and times raises a number of questions about the likely psychological aspects of inflicting such abuses. Findings from the field of social psychology suggest that the conditions of war and the dynamics of detainee operations carry inherent risks for human mistreatment, and therefore must be approached with great caution and careful planning and training.

### **The Stanford Prison Experiment**

In 1973, Haney, Banks and Zimbardo (1) published their landmark Stanford study, "Interpersonal Dynamics in a Simulated Prison." Their study provides a cautionary tale for all military detention operations. The Stanford Experiment used a set of tested, psychologically sound college students in a benign environment. In contrast, in military detention operations, soldiers work under stressful combat conditions that are far from benign.

The Stanford Prison Experiment (SPE) attempted to "create a prison-like situation" and then observe the behavior of those involved. The researchers randomly assigned 24 young men to either the "prisoner" or "guard" group. Psychological testing was used to eliminate participants with overt psychopathology, and extensive efforts were made to

Appendix G

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

simulate actual prison conditions. The experiment, scheduled to last two weeks, was cancelled after only six days due to the ethical concerns raised by the behaviors of the participants. The study notes that while guards and prisoners were free to engage in any form of interpersonal interactions, the "characteristic nature of their encounters tended to be negative, hostile, affrontive and dehumanizing."

The researchers found that both prisoners and guards exhibited "pathological reactions" during the course of the experiment. Guards fell into three categories: (1) those who were "tough but fair," (2) those who were passive and reluctant to use coercive control and, of special interests, (3) those who "went far beyond their roles to engage in creative cruelty and harassment." With each passing day, guards "were observed to generally escalate their harassment of the prisoners." The researchers reported: "We witnessed a sample of normal, healthy American college students fractionate into a group of prison guards who seemed to derive pleasure from insulting, threatening, humiliating, and dehumanizing their peers."

Because of the random assignment of subjects, the study concluded the observed behaviors were the result of situational rather than personality factors:

The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather, the result of an intrinsically pathological situation which could distort and rechannel the behaviour of essentially normal individuals. The abnormality here resided in the psychological nature of the situation and not in those who passed through it.

The authors discussed how prisoner-guard interactions shaped the evolution of power use by the guards:

The use of power was self-aggrandizing and self-perpetuating. The guard power, derived initially from an arbitrary label, was intensified whenever there was any perceived threat by the prisoners and this new level subsequently became the baseline from which further hostility and harassment would begin. The most hostile guards on each shift moved spontaneously into the leadership roles of

giving orders and deciding on punishments. They became role models whose behaviour was emulated by other members of the shift. Despite minimal contact between the three separate guard shifts and nearly 16 hours a day spent away from the prison, the absolute level of aggression as well as the more subtle and "creative" forms of aggression manifested, increased in a spiraling function. Not to be tough and arrogant was to be seen as a sign of weakness by the guards and even those "good" guards who did not get as drawn into the power syndrome as the others respected the implicit norm of never contradicting or even interfering with an action of a more hostile guard on their shift.

In an article published 25 years after the Stanford Prison Experiment, Haney and Zimbardo noted their initial study "underscored the degree to which institutional settings can develop a life of their own, independent of the wishes, intentions, and purposes of those who run them." They highlighted the need for those outside the culture to offer external perspectives on process and procedures. (2)

### **Social Psychology: Causes of Aggression and Inhumane Treatment**

The field of social psychology examines the nature of human interactions. Researchers in the field have long been searching to understand why humans sometimes mistreat fellow humans. The discussions below examine the factors behind human aggression and inhumane treatment, striving to impart a better understanding of why detainee abuses occur.

#### Human Aggression

Research has identified a number of factors that can assist in predicting human aggression. These factors include:

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

- **Personality traits.** Certain traits among the totality of an individual's behavioral and emotional make-up predispose to be more aggressive than other individuals.
- **Beliefs.** Research reveals those who believe they can carry out aggressive acts, and that such acts will result in a desired outcome, are more likely to be aggressive than those who do not hold these beliefs.
- **Attitudes.** Those who hold more positive attitudes towards violence are more likely to commit violent acts.
- **Values.** The values individuals hold vary regarding the appropriateness of using violence to resolve interpersonal conduct.
- **Situational Factors.** Aggressive cues (the presence of weapons), provocation (threats, insults, aggressive behaviors), frustration, pain and discomfort (hot temperatures, loud noises, unpleasant odors), and incentives can all call forth aggressive behaviors.
- **Emotional factors.** Anger, fear, and emotional arousal can heighten the tendency to act out aggressively.

The personality traits, belief systems, attitudes, and values of those who perpetrated detainee abuses can only be speculated upon. However, it is reasonable to assume, in any given population, these characteristics will be distributed along a bell curve, which will predispose some more than others within a group to manifest aggressive behaviors. These existing traits can be affected by environmental conditions, which are discussed later.

### Abusive Treatment

Psychologists have attempted to understand how and why individuals and groups who usually act humanely can sometimes act otherwise in certain circumstances. A number of psychological concepts explain why abusive behavior occurs. These concepts include:



**Deindividuation.** Deindividuation is a process whereby the anonymity, suggestibility, and contagion provided in a crowd allows individuals to participate in behavior marked by the temporary suspension of customary rules and inhibitions. Individuals within a group may experience reduced self-awareness which can also result in disinhibited behavior.

**Groupthink.** Individuals often make very uncharacteristic decisions when part of a group. Symptoms of groupthink include: (1) Illusion of invulnerability—group members believe the group is special and morally superior; therefore its decisions are sound; (2) Illusion of unanimity in which members assume all are in concurrence, and (3) Pressure is brought to bear on those who might dissent.

**Dehumanization.** Dehumanization is the process whereby individuals or groups are viewed as somehow less than fully human. Existing cultural and moral standards are often not applied to those who have been dehumanized.

**Enemy Image.** Enemy image describes the phenomenon wherein both sides participating in a conflict tend to view themselves as good and peace-loving peoples, while the enemy is seen as evil and aggressive.

**Moral Exclusion.** Moral exclusion is a process whereby one group views another as fundamentally different, and therefore prevailing moral rules and practices apply to one group but not the other.

#### **Abuse and Inhumane Treatment in War**

**Socialization to Evil and Doubling.** Dr. Robert Jay Lifton has extensively examined the nature of inhumane treatment during war. Dr. Lifton suggested that ordinary people can experience "socialization to evil," especially in a war environment. Such people often experience a "doubling." They are socialized to evil in one environment and act accordingly within that environment, but they think and behave otherwise when removed from that environment. For example, doctors committed unspeakable acts while working in Auschwitz, but would go home on weekends and behave as "normal" husbands and fathers.

**Moral Disengagement.** Moral disengagement occurs when normal self-regulatory mechanisms are altered in a way that allows for abusive treatment and similar immoral behaviors. Certain conditions, identified by Bandura and his colleagues (3), can lead to moral disengagement, such as:

- **Moral Justification.** Misconduct can be justified if it is believed to serve a social good.
- **Euphemistic Language.** Language affects attitudes and beliefs, and the use of euphemistic language such as “softening up” (and even “humane treatment”) can lead to moral disengagement.
- **Advantageous Comparison.** “Injurious conduct can be rendered benign” when compared to more violent behaviors. This factor is likely to occur during war. Essentially, abusive behaviors may appear less significant and somehow justifiable when compared to death and destruction.
- **Displacement of Responsibility.** “People view their actions as springing from the social pressures or dictates of others rather than as something for which they are socially responsible.” This is consistent with statements from those under investigation for abuses.
- **Diffusion of Responsibility.** Group decisions and behaviors can obscure responsibility: “When everyone is responsible, no one really feels responsible.”
- **Disregarding or Distorting the Consequences of Actions.** Harmful acts can be minimized or ignored when the harm is inflicted for personal gain or because of social inducements.
- **Attribution of Blame.** “Victims get blamed for bringing suffering on themselves.”

Detainee and interrogation operations consist of a special subset of human interactions, characterized by one group which has significant power and control over another group which must be managed, often against the will of its members. Without proper oversight

## INDEPENDENT PANEL TO REVIEW DoD DETENTION OPERATIONS

and monitoring, such interactions carry a higher risk of moral disengagement on the part of those in power and, in turn, are likely to lead to abusive behaviors.

### Environmental Factors

The risk of abusive behaviors is best understood by examining both psychological and environmental risk factors. A cursory examination of situational variables present at Abu Ghraib indicates the risk for abusive treatment was considerable. Many of the problematic conditions at Abu Ghraib are discussed elsewhere in this report, to include such factors as poor training, under nearly daily attack, insufficient staffing, inadequate oversight, confused lines of authority, evolving and unclear policy, and a generally poor quality of life. The stresses of these conditions were certainly exacerbated by delayed troop rotations and by basic issues of safety and security. Personnel needed to contend with both internal threats from volatile and potentially dangerous prisoners and external threats from frequent mortar fire and attacks on the prison facilities.

The widespread practice of stripping detainees, another environmental factor, deserves special mention. The removal of clothing interrogation technique evolved into something much broader, resulting in the practice of groups of detainees being kept naked for extended periods at Abu Ghraib. Interviews with personnel at Abu Ghraib indicated that naked detainees were a common sight within the prison, and this was understood to be a general part of interrogation operations.

While the removal of clothing may have been intended to make detainees feel more vulnerable and therefore more compliant with interrogations, this practice is likely to have had a psychological impact on guards and interrogators as well. The wearing of clothes is an inherently social practice, and therefore the stripping away of clothing may have had the unintended consequence of dehumanizing detainees in the eyes of those who interacted with them. As discussed earlier, the process of dehumanization lowers the moral and cultural barriers that usually preclude the abusive treatment of others.

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- (1) Haney, C., Banks, C., and Zimbardo, P., Interpersonal Dynamics in a Simulated Prison, *International Journal of Criminology and Penology*, 1973, 1, 69-97.
- (2) Haney, C. and Zimbardo, P., The Past and Future of U.S. Prison Policy, Twenty-Five Years after the Stanford Prison Experiment, *American Psychologist*, July 1998, 709-27.
- (3) Bandura, A., Barbaranelli, C., Caprara, G., and Pastorelli, C., Mechanisms of Moral Disengagement in the Exercise of Moral Agency, *Journal of Personality and Social Psychology*, Vol. 71(2), August 1996, 364-74.

## **ETHICAL ISSUES**

### **Introduction**

For the United States and other nations with similar value systems, detention and interrogation are themselves ethically challenging activities. Effective interrogators must deceive, seduce, incite, and coerce in ways not normally acceptable for members of the general public. As a result, the U. S. places restrictions on who may be detained and the methods interrogators may employ. Exigencies in the Global War on Terror have stressed the normal American boundaries associated with detention and interrogation. In the ensuing moral uncertainty, arguments of military necessity make the ethical foundation of our soldiers especially important.

### **Ethical Foundations of Detention and Interrogation**

Within our values system, consent is a central moral criterion on evaluating our behavior toward others. Consent is the manifestation of the freedom and dignity of the person and, as such, plays a critical role in moral reasoning. Consent *restrains*, as well as *enables*, humans in their treatment of others. Criminals, by not respecting the rights of others, may be said to have consented – in principle – to arrest and possible imprisonment. In this construct – and due to the threat they represent – insurgents and terrorists “consent” to the possibility of being captured, detained, interrogated, or possibly killed.

### **Permissions and Limits on Detentions**

This guideline of implied consent for the U.S. first limits who may be detained. Individuals suspected of insurgent or terrorist activity may be detained to prevent them from conducting further attacks and to gather intelligence to prevent other insurgents and terrorists from conducting attacks. This suggests two categories of persons who may be

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

detained and interrogated: (1) persons who have engaged in or assisted those who engage in terrorist or insurgent activities; and (2) persons who have come by information regarding insurgent and terrorist activity.

By engaging in such activities, persons in the first category may be detained as criminals or enemy combatants, depending on the context. Persons in the second category may be detained and questioned for specific information, but if they do not represent a continuing threat, they may be detained only long enough to obtain the information.

### **Permissions and Limits on Interrogation Techniques**

For the U.S., most cases for permitting harsh treatment of detainees on moral grounds begin with variants of the “ticking time bomb” scenario. The ingredients of such scenarios usually include an impending loss of life, a suspect who knows how to prevent it—and in most versions is responsible for it—and a third party who has no humane alternative to obtain the information in order to save lives. Such cases raise a perplexing moral problem: Is it permissible to employ inhumane treatment when it is believed to be the only way to prevent loss of lives? In periods of emergency, and especially in combat, there will always be a temptation to override legal and moral norms for morally good ends. Many in Operations Enduring Freedom and Iraqi Freedom were not well prepared by their experience, education, and training to resolve such ethical problems.

A morally consistent approach to the problem would be to recognize there are occasions when violating norms is understandable but not necessarily correct—that is, we can recognize that a good person might, in good faith, violate standards. In principle, someone who, facing such a dilemma, committed abuse should be required to offer his actions up for review and judgment by a competent authority. An excellent example is the case of a 4<sup>th</sup> Infantry Division battalion commander who permitted his men to beat a detainee whom he had good reason to believe had information about future attacks against his unit. When the beating failed to produce the desired results, the commander

fired his weapon near the detainee's head. The technique was successful and the lives of U.S. servicemen were likely saved. However, his actions clearly violated the Geneva Conventions and he reported his actions knowing he would be prosecuted by the Army. He was punished in moderation and allowed to retire.

In such circumstances interrogators must apply a "minimum harm" rule by not inflicting more pressure than is necessary to get the desired information. Further, any treatment that causes permanent harm would not be permitted, as this surely constitutes torture. Moreover, any pain inflicted to teach a lesson or after the interrogator has determined he cannot extract information is morally wrong.

National security is an obligation of the state, and therefore the work of interrogators carries a moral justification. But the methods employed should reflect this nation's commitment to our own values. Of course the tension between military necessity and our values will remain. Because of this, military professionals must accept the reality that during crises they may find themselves in circumstances where lives will be at stake and the morally appropriate methods to preserve those lives may not be obvious. This should not preclude action, but these professionals must be prepared to accept the consequences.

### **Ethics Education**

The instances of detainee abuse in Iraq and Afghanistan do indicate a review of military ethics education programs is needed. This is not to suggest that more adequate ethics education will necessarily prevent abuses. Major service programs such as the Army's "core values," however, fail to adequately prepare soldiers working in detention operations.

While there are numerous ethics education programs throughout the services, almost all refer to certain "core values" as their foundation. Core-values programs are grounded in

## INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

organizational efficacy rather than the moral good. They do not address humane treatment of the enemy and noncombatants, leaving military leaders and educators an incomplete tool box with which to deal with "real-world" ethical problems. A professional ethics program addressing these situations would help equip them with a sharper moral compass for guidance in situations often riven with conflicting moral obligations.



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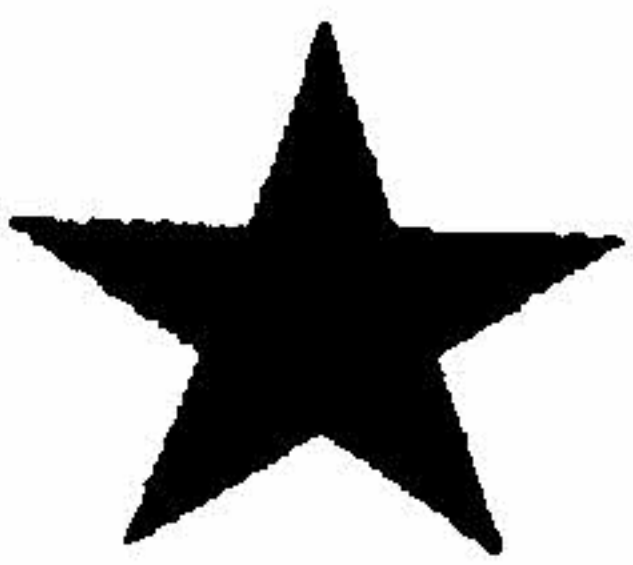
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## Detainee Files

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# Review of Department of Defense Detention Operations and Detainee Interrogation Techniques (U)



**VADM A.T. Church, III, USN**

Number of Pages	Multiple Pages
Number of Pages	146
Classification	OF March 2005

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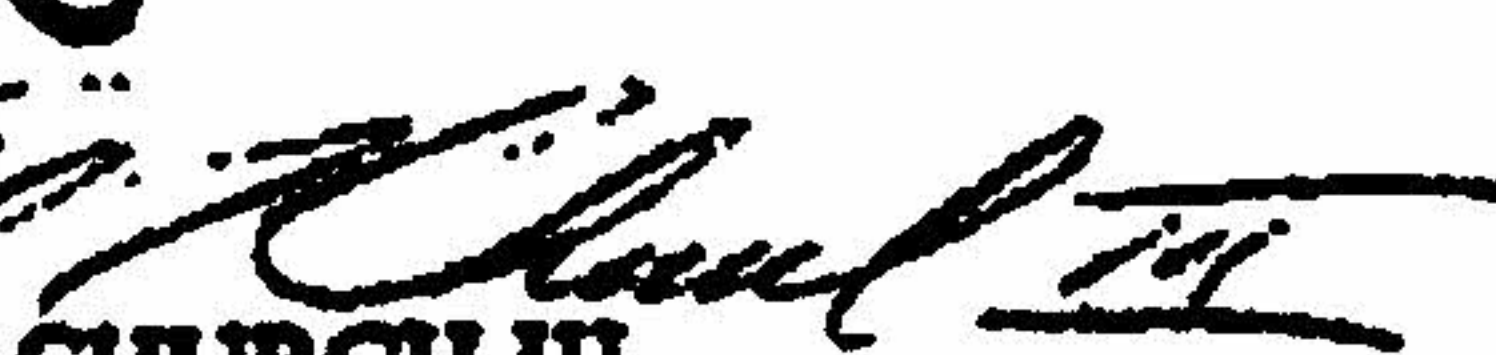
March 7, 2005

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Report on DoD Detention Operations and Detainee Interrogation Techniques

Reference: Secretary of Defense, Detention Operations and Detainee Interrogation  
Techniques, May 25, 2004

Pursuant to your tasking memorandum, I hereby submit the final results of my  
investigation of DoD detention operations and detainee interrogation techniques in the  
Global War on Terror (attached).

  
A. T. CHURCH III  
Vice Admiral, U.S. Navy  
Director, Navy Staff

Attachment:  
As stated

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## **Interrogation Policy Development (U)**

### **(U) Overview**

(U) An early focus of our investigation was to determine whether DoD had promulgated interrogation policies or guidance that directed, sanctioned or encouraged the abuse of detainees. We found that this was not the case. While no universally accepted definitions of "torture" or "abuse" exist, the theme that runs throughout the Geneva Conventions, international law, and U.S. military doctrine is that detainees must be treated "humanely." Moreover, the President, in his February 7, 2002 memorandum that determined that al Qaeda and the Taliban are not entitled to EPW protections under the Geneva Conventions, reiterated the standard of "humane" treatment. We found, without exception, that the DoD officials and senior military commanders responsible for the formulation of interrogation policy evidenced the intent to treat detainees humanely, which is fundamentally inconsistent with the notion that such officials or commanders ever accepted that detainee abuse would be permissible. Even in the absence of a precise definition of "humane" treatment, it is clear that none of the pictured abuses at Abu Ghraib bear any resemblance to approved policies at any level, in any theater. We note, therefore, that our conclusion is consistent with the findings of the Independent Panel, which in its August 2004 report determined that "[n]o 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."

(U) Nevertheless, with the clarity of hindsight we consider it a missed opportunity that no specific guidance on interrogation techniques was provided to the commanders responsible for Afghanistan and Iraq, as it was to the U.S. Southern Command (SOUTHCOM) for use at Guantanamo Bay. As the Independent Panel noted, "[w]e cannot be sure how the number and severity of abuses would have been curtailed had there been early and consistent guidance from higher levels."

(U) Another missed opportunity that we identified in the policy development process is that we found no evidence that specific detention or interrogation lessons learned from previous conflicts (such as those from the Balkans, or even those from earlier conflicts such as Vietnam) were incorporated into planning for operations in support of the Global War on Terror. For example, no lessons learned from previous conflicts were referenced in the operation orders (OPORDs) for either Operation ENDURING FREEDOM (OEF) in Afghanistan or Operation IRAQI FREEDOM (OIF). These OPORDs did cite military doctrine and Geneva Convention protections, but they did not evidence any specific awareness of the risk of detainee abuse - or any awareness that U.S. forces had confronted this problem before. Though we

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did not find evidence that this failure to highlight the inherent risk led directly to any detainee abuse, we recommend that future planning for detention and interrogation operations in the Global War on Terror take full advantage of prior and ongoing experience in these areas.

(U) Set forth below is a brief discussion of the significant events in the development of interrogation policy for Guantanamo Bay, Afghanistan and Iraq.

### **(U) Guantanamo Bay, Cuba (GTMO)**

(U) Interrogation policy for GTMO has been the subject of extensive debate among both the uniformed services and senior DoD policy makers. At the beginning of interrogation operations at GTMO in January 2002, interrogators relied upon the techniques in FM 34-52. In October 2002, when those techniques had proven ineffective against detainees trained to resist interrogation, Major General Michael E. Dunlavey - the Commander of Joint Task Force (JTF) 170, the intelligence task force at GTMO at the time - requested that the SOUTHCOM Commander, General James T. Hill, approve 19 counter resistance techniques that were not specifically listed in FM 34-52. (This request, and descriptions of the 19 techniques, were declassified and released to the public by the Department of Defense on June 22, 2004.) The techniques were broken down into Categories I, II, and III, with the third category

containing the most aggressive techniques. The SOUTHCOM Commander forwarded the request to the Chairman of the Joint Chiefs of Staff, General Richard B. Myers, noting that he was uncertain whether the Category III techniques were legal under U.S. law, and requesting additional legal review. On December 2, 2002, on the advice of the DoD General Counsel, William J. Haynes II, the Secretary of Defense approved the use of Category I and II techniques, but only one of the Category III techniques (which authorized mild, non-injurious physical contact such as grabbing, poking in the chest with a finger, and light pushing). The Secretary's decision thus excluded the most aggressive Category III techniques: use of scenarios designed to convince the detainee that death or painful consequences are imminent for him and/or his family, exposure to cold weather or water, and the use of a wet towel and dripping water to induce the misperception of suffocation. (Notably, our investigation found that even the single Category III technique approved was never put into practice.)

(U) Shortly after the December 2, 2002 approval of these counter resistance techniques, reservations expressed by the General Counsel of the Department of the Navy, Alberto J. Mora, led the Secretary of Defense on January 15, 2003 to rescind his approval of all Category II techniques and the one Category III technique (mild, non-injurious physical contact), leaving only Category I techniques in effect. The same day, the Secretary



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## Executive Summary (U)

### Introduction (U)

(U) On May 25, 2004, Secretary of Defense Donald H. Rumsfeld directed the Naval Inspector General, Vice Admiral Albert T. Church, III, to conduct a comprehensive review of Department of Defense (DoD) interrogation operations. In response to this tasking, Vice Admiral Church assembled a team of experienced investigators and subject matter experts in interrogation and detention operations. The Secretary specified that the team was to have access to all documents, records, personnel and any other information deemed relevant, and that all DoD personnel must cooperate fully with the investigation. Throughout the investigation - which included over 800 interviews with personnel serving or having served in Iraq, Afghanistan and Guantanamo Bay, Cuba, and senior policy makers in Washington, as well as review and analysis of voluminous documentary material - an impressive level of cooperation was evident throughout DoD.

(U) Any discussion of military interrogation must begin with its purpose, which is to gain actionable intelligence in order to safeguard the security of the United States. Interrogation is often an adversarial endeavor. Generally, detainees are not eager to provide information, and they resist interrogation to the extent that their personal character or training permits. Confronting detainees are interrogators, whose mission is to extract useful information as quickly

as possible. Military interrogators are trained to use creative means of deception and to play upon detainees' emotions and fears even when conducting interrogations of Enemy Prisoners of War (EPWs), who enjoy the full protections of the Geneva Conventions. Thus, people unfamiliar with military interrogations might view a perfectly legitimate interrogation of an EPW, in full compliance with the Geneva Conventions, as offensive by its very nature.

(U) The natural tension that often exists between detainees and interrogators has been elevated in the post-9/11 world. In the Global War on Terror, the circumstances are different than those we have faced in previous conflicts. Human intelligence, or HUMINT - of which interrogation is an indispensable component - has taken on increased importance as we face an enemy that blends in with the civilian population and operates in the shadows. And as interrogation has taken on increased importance, eliciting useful information has become more challenging, as terrorists and insurgents are frequently trained to resist traditional U.S. interrogation methods that are designed for EPWs. Such methods - outlined in Army Field Manual (FM) 34-52, *Intelligence Interrogation*, which was last revised in 1992 - have at times proven inadequate in the Global War on Terror; and this has led commanders, working with policy makers, to search for new interrogation techniques to obtain critical intelligence.

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(U) Interrogation is constrained by legal limits. Interrogators are bound by U.S. laws, including U.S. treaty obligations, and Executive (including DoD) policy - all of which are intended to ensure the humane treatment of detainees. The vast majority of detainees held by U.S. forces during the Global War on Terror have been treated humanely. However, as of September 30, 2004, DoD investigators had substantiated 71 cases of detainee abuse, including six deaths. Of note, only 20 of the closed, substantiated abuse cases - less than a third of the total - could in any way be considered related to interrogation, using broad criteria that encompassed any type of questioning (including questioning by non-military-intelligence personnel at the point of capture), or any presence of military-intelligence interrogators. Another 130 cases remained open as of September 30, 2004, with investigations ongoing.

(U) The events at Abu Ghraib have become synonymous with the topic of detainee abuse. We did not directly investigate those events, which have been comprehensively examined by other officials and are the subject of ongoing investigations to determine criminal culpability. Instead, we considered the findings, conclusions and recommendations of previous Abu Ghraib investigations as we examined the larger context of interrogation policy development and implementation in the Global War on Terror. In accordance with our direction from the Secretary of Defense, our investigation focused principally on: (a) the development of approved interrogation policy

(specifically, lists of authorized interrogation techniques), (b) the actual employment of interrogation techniques, and (c) what role, if any, these played in the aforementioned detainee abuses. In addition, we investigated DoD's use of civilian contractors in interrogation operations, DoD support to or participation in the interrogation activities of other government agencies (OGAs), and medical issues relating to interrogations. Finally, we summarized and analyzed detention-related reports and working papers submitted to DoD by the International Committee of the Red Cross (ICRC). Our primary observations and findings on these issues are set forth below.

(U) Many of the details underlying our conclusions remain classified, and therefore cannot be presented in this unclassified executive summary. In addition, we have omitted from this summary any discussion of ICRC matters in order to respect ICRC concerns, and comply with DoD policy, regarding limitation of the dissemination of ICRC-provided information. Issues of senior official accountability were addressed by the Independent Panel to Review DoD Detention Operations (hereinafter "Independent Panel") - chaired by the Honorable James R. Schlesinger - with which we worked closely. Finally, we have based our conclusions primarily on the information available to us as of September 30, 2004. Should additional information become available, our conclusions would have to be considered in light of that information.



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directed that a working group be established to assess interrogation techniques in the Global War on Terror, and specified that the group should comprise experts from the Office of General Counsel of the Department of Defense, the Office of the Under Secretary of Defense for Policy, the military services and the Joint Staff.

(U) Following a sometimes contentious debate, this working group - led by U.S. Air Force General Counsel Mary Walker, and reporting to the DoD General Counsel - produced a series of draft reports from January through March 2003, including a March 6, 2003 draft report recommending approval of 36 interrogation techniques. As many as 39 techniques had been considered during the working group's review, including "water boarding" (pouring water on a detainee's towed face to induce the misperception of suffocation), which did appear among the 36 techniques in the March 6 draft. Four of the 39 techniques were considered unacceptable, however - including water boarding - and were ultimately dropped from the review, leaving 35 techniques that the working group recommended for consideration by the Secretary of Defense. In late March 2003, the Secretary of Defense adopted a more cautious approach, choosing to accept 24 of the proposed techniques, most of which were taken directly from or closely resembled those in FM 34-52. (The 35 techniques considered were reflected in the working group's final report, dated April 3, 2003.) The Secretary's guidance was promulgated to SOUTHCOM for use at GTMO in an April 16,

2003 memorandum (also declassified in June 2004) that remains in effect today.

(U) As this discussion demonstrates, the initial push for interrogation techniques beyond those found in FM 34-52 came in October 2002 from the JTF-170 Commander who, based on experiences to that point, believed that counter resistance techniques were needed in order to obtain actionable intelligence from detainees who were trained to oppose U.S. interrogation methods. In addition, the Secretary of Defense moderated proposed interrogation policies, cutting back on the number and types of techniques that were presented by some commanders and senior advisors for consideration. This was true when the Secretary rejected the three most aggressive Category III techniques that JTF-170 requested, and was later apparent in the promulgation of the April 16, 2003 policy, which included only 24 of the 35 techniques recommended for consideration by the working group, and included none of the most aggressive techniques.

(U) Military department lawyers were provided the opportunity for input during the interrogation policy debate, even if that input was not always adopted. This was evident during the review of JTF-170's initial request for counter resistance techniques in the lead-up to the December 2, 2002 policy, when service lawyer concerns were forwarded to the Joint Staff, and later in the establishment of the working group in January 2003 that led to the April 16, 2003 policy.

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In the first case, in November 2002 the services expressed serious reservations about approving the proposed counter resistance techniques without further legal and policy review, and thus they were uncomfortable with the Secretary's adoption of a subset of these techniques on December 2, 2002. However, in the aftermath of 9/11, the perceived urgency of gaining actionable intelligence from particularly resistant detainees - including Mohamed al Kahtani, the "20th hijacker" - that could be used to thwart possible attacks on the United States, argued for swift adoption of an effective interrogation policy. (In August 2001 Kahtani had been refused entry into the U.S. by a suspicious immigration inspector at Florida's Orlando International Airport, where the lead 9/11 hijacker, Mohamed Atta, was waiting for him.) This perception of urgency was demonstrated, for example, by the SOUTHCOM Commander's October 2002 memorandum forwarding the counter resistance techniques for consideration, which stated, "I firmly believe that we must quickly provide Joint Task Force 170 counter-resistance techniques to maximize the value of our intelligence collection mission."

(U) Afghanistan

(U) Rather than being the subject of debate within the Office of the Secretary of Defense, interrogation techniques for use in Afghanistan were approved and promulgated by the senior command in the theater. (Initially, this was Combined Joint Task Force 180, or CJTF-180,

subsequently renamed CJTF-76. At present, Combined Forces Command-Afghanistan, or CFC-A, commands operations in Afghanistan, with CJTF-76 as a subordinate command.)

(U) From the beginning of OEF in October 2001 until December 2002, interrogators in Afghanistan relied upon FM 34-52 for guidance. On January 24, 2003, in response to a Joint Staff inquiry via U.S. Central Command (CENTCOM), the CJTF-180 Acting Staff Judge Advocate forwarded to the CENTCOM Staff Judge Advocate a memorandum that listed and described the interrogation techniques then in use in Afghanistan. Many of these techniques were similar to the counter resistance techniques that the Secretary had approved for GTMO on December 2, 2002; however, the CJTF-180 techniques had been developed independently by interrogators in Afghanistan in the context of a broad reading of FM 34-52, and were described using different terminology.

(U) In addition to these locally developed techniques, however, the January 24, 2003 memorandum tacitly confirmed that "migration" of interrogation techniques had occurred separately. During December 2002 and January 2003, according to the memorandum, interrogators had employed some of the techniques approved by the Secretary of Defense for use at GTMO. Use of the Tier II and single Tier III technique ceased, however, upon the Secretary's rescission of their

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approval for GTMO on January 15, 2003.

(U) CJTF-180 did not receive any response to its January 24, 2003 memorandum from either CENTCOM or the Joint Staff, and interpreted this silence to mean that the techniques then in use (which, again, no longer included the tiered GTMO techniques) were unobjectionable to higher headquarters and therefore could be considered approved policy.

(U) On February 27, 2003, the CJTF-180 Commander, Lieutenant General Dan K. McNeill, revised the January 24, 2003 techniques by modifying or eliminating five "interrogator tactics" not found in FM 34-52 in response to the investigation of the December 2002 deaths of two detainees at the Bagram Collection Point. While the abuses leading to the Bagram deaths consisted of violent assaults, rather than any authorized techniques, the CJTF-180 Commander modified or eliminated these five tactics as a precaution, out of a general concern for detainee treatment. This revised policy remained in effect until March 2004, when CJTF-180 issued new interrogation guidance.

(U) The March 2004 guidance was not drafted as carefully as it could have or should have been. First, it revived some of the practices that CJTF-180 had modified or eliminated in February 2003, without explanation and without even referencing the February 2003 modifications. Second, some of the techniques in the new guidance were based upon an unsigned draft memo-

randum from the Secretary of Defense to CENTCOM (prepared by the Joint Staff) that was substantively identical to the Secretary's April 16, 2003 interrogation policy for GTMO. We found no evidence that the Secretary was ever aware of this draft memorandum, which was never approved.

(U) The March 2003 interrogation policy remained in effect until June 2004, when the CENTCOM Commander, General John Abizaid, directed that all interrogations in CENTCOM be standardized under a single policy. The CFC-A Commander, Lieutenant General David W. Barno, then directed that CJTF-76 adopt the existing interrogation policy used in Iraq, which had been developed in May 2004. This policy relies almost exclusively on interrogation techniques specifically outlined in FM 34-52, and remains in effect today.

(U) Iraq

(U) As in Afghanistan, interrogation policy in Iraq was developed and promulgated by the senior command in the theater, then Combined Joint Task Force-7, or CJTF-7. At the inception of OIF on March 19, 2003, interrogators relied upon FM 34-52 for guidance. In August 2003, amid a growing insurgency in Iraq, Captain Carolyn Wood, the commander of Alpha Company, 519th Military Intelligence Battalion (A/519), stationed at Abu Ghraib, submitted a draft interrogation policy directly to the 205th Military Intelligence Brigade and the CJTF-7 staff. This draft policy

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was based in part on interrogation techniques being used at the time by units in Afghanistan. On August 18, 2003, the Joint Staff's Director for Operations (J-3) sent a message requesting that the SOUTHCOM Commander provide a team of experts in detention and interrogation operations to provide advice on relevant facilities and operations in Iraq. As a result, from August 31 to September 9, 2003, the Joint Task Force Guantanamo (JTF-GTMO) Commander, Major General Geoffrey Miller, led a team to assess interrogation and detention operations in Iraq. One of his principal observations was that CJTF-7 had "no guidance specifically addressing interrogation policies and authorities disseminated to units" under its command.

(U) To rectify this apparent problem, the CJTF-7 Commander, Lieutenant General Ricardo Sanchez, published the first CJTF-7 interrogation policy on September 14, 2003. This policy was heavily influenced by the April 2003 JTF-GTMO interrogation policy, which MG Miller had provided during his visit, and was also influenced by the A/519 draft policy which, as noted above, contained some interrogation techniques in use in Afghanistan. However, LTG Sanchez and his staff were well aware that the Geneva Conventions applied to all detainees in Iraq, and thoroughly reviewed the CJTF-7 policy for compliance with the Conventions prior to its approval.

(U) After reviewing the September policy

once it was issued, CENTCOM's Staff Judge Advocate considered it overly aggressive. As a result, CJTF-7 promulgated a revised policy on October 12, 2003 that explicitly superseded the previous policy. This new policy removed several techniques that had been approved in the September 2003 policy, rendering the October 2003 policy quite similar to the guidance found in FM 34-52. It should be noted that none of the techniques contained in either the September or October 2003 CJTF-7 interrogation policies would have permitted abuses such as those at Abu Ghraib.

(U) On May 13, 2004, CJTF-7 issued another revised interrogation policy, which remains in effect today. The list of approved techniques remained identical to the October 2003 policy; the principal change from the previous policy was to specify that under no circumstances would requests for the use of certain techniques be approved. While this policy is explicit in its prohibition of certain techniques, like the earlier policies it contains several ambiguities, which - although they would not permit abuse - could obscure commanders' oversight of techniques being employed, and therefore warrant review and correction. (The details of these ambiguities remain classified, but are discussed in the main body of this report.) As noted above, in June 2004 this policy was adopted for use in Afghanistan.

(U) Subsequent to the completion of this

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report, we were notified that the Commander, Multi-national Forces Iraq (MNF-I), General George W. Casey, Jr., had approved on January 27, 2005 a new interrogation policy for Iraq. This policy approves a more limited set of techniques for use in Iraq, and also provides additional safeguards and prohibitions, rectifies ambiguities, and - significantly - requires commanders to conduct training on and verify implementation of the policy and report compliance to the Commander, MNF-I.

## **Interrogation Techniques Actually Employed by Interrogators (U)**

### **(U) Guantanamo Bay, Cuba**

(U) In GTMO, we found that from the beginning of interrogation operations to the present, interrogation policies were effectively disseminated and interrogators closely adhered to the policies, with minor exceptions. Some of these exceptions arose because interrogation policy did not always list every conceivable technique that an interrogator might use, and interrogators often employed techniques that were not specifically identified by policy but nevertheless arguably fell within the parameters of FM 34-52. This close compliance with interrogation policy was due to a number of factors, including strict command oversight and effective leadership, adequate detention and interrogation resources, and GTMO's secure location far from any combat zone. And although

conditions at GTMO were initially spartan, relying on improvised interrogation booths and pre-existing detention facilities (Camp X-Ray, constructed in the 1990s to house Cuban and Haitian refugees), these conditions continuously improved over time. The most important development was establishment in November 2002 of a command organization that placed detention and intelligence operations under the command of a single entity, JTF-GTMO, superseding the bifurcated organization which had at times impeded intelligence collection due to lack of proper coordination between interrogators and military police. JTF-GTMO, with its well-developed standard operating procedures and clear lines of authority, enabled effective coordination.

(U) In light of military police participation in many of the abuses at Abu Ghraib, the relationship between military police (MP) and military intelligence (MI) personnel has come under scrutiny. Under the GTMO model of MP/MI relations, military police work closely with military intelligence in helping to set the conditions for successful interrogations, both by observing detainees and sharing observations with interrogators, and by assisting in the implementation of interrogation techniques that are employed largely outside the interrogation room (such as the provision of incentives for cooperation). When conducted under controlled conditions, with specific guidance and rigorous command oversight, as at GTMO, this is an effective model that greatly

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enhances intelligence collection and does not lead to detainee abuse. In our view, it is a model that should be considered for use in other interrogation operations in the Global War on Terror. Current MP and MI doctrine, however, is vague on the proper relationship between MP and MI units, and accordingly requires revision that spells out the details of the type of coordination between these units that has proven successful at GTMO.

(U) Finally, we determined that during the course of interrogation operations at GTMO, the Secretary of Defense approved specific interrogation plans for two "high-value" detainees who had resisted interrogation for many months, and who were believed to possess actionable intelligence that could be used to prevent attacks against the United States. Both plans employed several of the counter-resistance techniques found in the December 2, 2002 GTMO policy, and both successfully neutralized the two detainees' resistance training and yielded valuable intelligence. We note, however, that these interrogations were sufficiently aggressive that they highlighted the difficult question of precisely defining the boundaries of humane treatment of detainees.

## (U) Afghanistan and Iraq

(U) Our findings in Afghanistan and Iraq stand in contrast to our findings in GTMO. Dissemination of interrogation policy was generally

poor, and interrogators fell back on their training and experience, often relying on a broad interpretation of FM 34-52. In Iraq, we also found generally poor unit-level compliance with approved policy memoranda even when those units were aware of the relevant memoranda. However, in both Afghanistan and Iraq, there was significant overlap between the techniques contained in approved policy memoranda and the techniques that interrogators employed based solely on their training and experience.

(U) While these problems of policy dissemination and compliance were certainly cause for concern, we found that they did not lead to the employment of illegal or abusive interrogation techniques. According to our investigation, interrogators clearly understood that abusive practices and techniques - such as physical assault, sexual humiliation, terrorizing detainees with unmuzzled dogs, or threats of torture or death - were at all times prohibited, regardless of whether the interrogators were aware of the latest policy memorandum promulgated by higher headquarters. Thus, with limited exceptions (most of which were physical assaults, as described below in our discussion of detainee abuse), interrogators did not employ such techniques, nor did they direct MPs to do so. Significantly, nothing in our investigation of interrogation and detention operations in Afghanistan or Iraq suggested that the chaotic and abusive environment that existed at the Abu

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Ghraib prison in the fall of 2003 was repeated elsewhere.

(U) Nevertheless, as previously stated, we consider it a missed opportunity that interrogation policy was never issued to the CJTF commanders in Afghanistan or Iraq, as was done for GTMO. Had this occurred, interrogation policy could have benefited from additional expertise and oversight. In Iraq, by the time the first CJTF-7 interrogation policy was issued in September 2003, two different policies had been thoroughly debated and promulgated for GTMO, and detention and interrogation operations had been conducted in Afghanistan for nearly two years. Yet, CJTF-7 was left to struggle with these issues on its own in the midst of fighting an insurgency. As a result, the September 2003 CJTF-7 interrogation policy was developed, as the CJTF Staff Judge Advocate at the time stated, in an "urgent" fashion. Interrogation policy reflecting the lessons learned to date in the Global War on Terror should have been in place in Iraq long before September 2003.

(U) Finally, there has been much speculation regarding the notion that undue pressure for actionable intelligence contributed to the abuses at Abu Ghraib, and that such pressure also manifested itself throughout Iraq. It is certainly true that "pressure" was applied in Iraq through the chain of command, but a certain amount of pressure is to be expected in a combat environment. As LTC

Sanchez has stated, "if I had not been applying intense pressure on the intelligence community to know my enemy I would have been derelict in my duties and I shouldn't have been a commanding general." Our investigation indicated that interrogators in Iraq indeed were under intense pressure for intelligence, but this derived chiefly from a challenging detainee to interrogator (and interpreter) ratio and an inherent desire to help prevent coalition casualties. We agree with MG Fay's observation that pressure for intelligence "should have been expected in such a critical situation," and that it was not properly managed by unit-level leaders at Abu Ghraib. We found no evidence, however, that interrogators in Iraq believed that any pressure for intelligence subverted their obligation to treat detainees humanely in accordance with the Geneva Conventions, or otherwise led them to apply prohibited or abusive interrogation techniques. And although Major General Fay's investigation of the events at Abu Ghraib noted that requests for information were at times forwarded directly from various military commands and DoD agencies to Abu Ghraib, rather than through normal channels, we found no evidence to support the notion that the Office of the Secretary of Defense, the National Security Council staff, CENTCOM, or any other organization applied explicit pressure for intelligence, or gave "back-channel" permission to forces in the field in Iraq (or in Afghanistan) to use more aggressive interrogation techniques than those authorized by either command interrogation policies or FM 34-52.

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**Detainee Abuse (U)**

**(U) Overview**

(U) We examined the 187 DoD investigations of alleged detainee abuse that had been closed as of September 30, 2004. Of these investigations, 71 (or 38%) had resulted in a finding of substantiated detainee abuse, including six cases involving detainee deaths. Eight of the 71 cases occurred at GTMO, all of which were relatively minor in their physical nature, although two of these involved unauthorized, sexually suggestive behavior by interrogators, which raises problematic issues concerning cultural and religious sensitivities. (As described below, we judged that one other substantiated incident at GTMO was inappropriate but did not constitute abuse. This incident was discarded from our statistical analysis, as reflected in the chart below.) Three of the cases, including one death case, were from Afghanistan, while the remaining 60 cases, including five death cases, occurred in Iraq. Additionally, 100 cases remained open, with investigations ongoing. Finally, our investigation indicated that commanders are making vigorous efforts to investigate every allegation of abuse - regardless of whether the allegations are made by DoD personnel, civilian contractors, detainees, the International Committee of the Red Cross, the local populace, or any other source.

(U) Included among the open cases were several ongoing investigations related to abuse at Abu Ghraib, including the death of a detainee who was brought to Abu Ghraib by a special operations/OGA team in November 2003. Though not included in our abuse analysis, this case was considered in our review of medical issues. Similarly, the open cases include the December 2002 Bagram Collection Point deaths, as those investigations were not completed until October 2004; however, observations on the Bagram deaths are provided in our discussion below.

(U) We also reviewed a July 14, 2004 letter from an FBI official notifying the Army Provost Marshal General of several instances of aggressive interrogation techniques\* reportedly witnessed by FBI personnel at GTMO in October 2002. One of these was already the subject of a criminal investigation, which remains open. The U.S. Southern Command and the current Naval Inspector General are now reviewing all of the FBI documents released to the American Civil Liberties Union (ACLU) - which, other than the letter noted above, were not known to DoD authorities until the ACLU published them in December 2004 - to determine whether they bring to light any abuse allegations that have not yet been investigated.

(U) For the purposes of our analysis, we categorized the substantiated abuse cases as



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deaths, serious abuse, or minor abuse. We considered serious abuse to be misconduct resulting or having the potential to result in death, or in grievous bodily harm (as defined in the Manual for Courts-Martial, 2002 edition.) In addition, we considered all sexual assaults, threats to inflict death or grievous bodily harm, and maltreatment likely to result in death or grievous bodily harm to be serious abuse. Finally, as noted above, we concluded that one of the 71 cases did not constitute abuse for our purposes: this case involved a soldier at GTMO who dared a detainee to throw a cup of water on him, and after the detainee complied, reciprocated by throwing a cup of water on the detainee. (The soldier was removed from his assignment as a consequence of inappropriate interaction with a detainee.) We discarded this

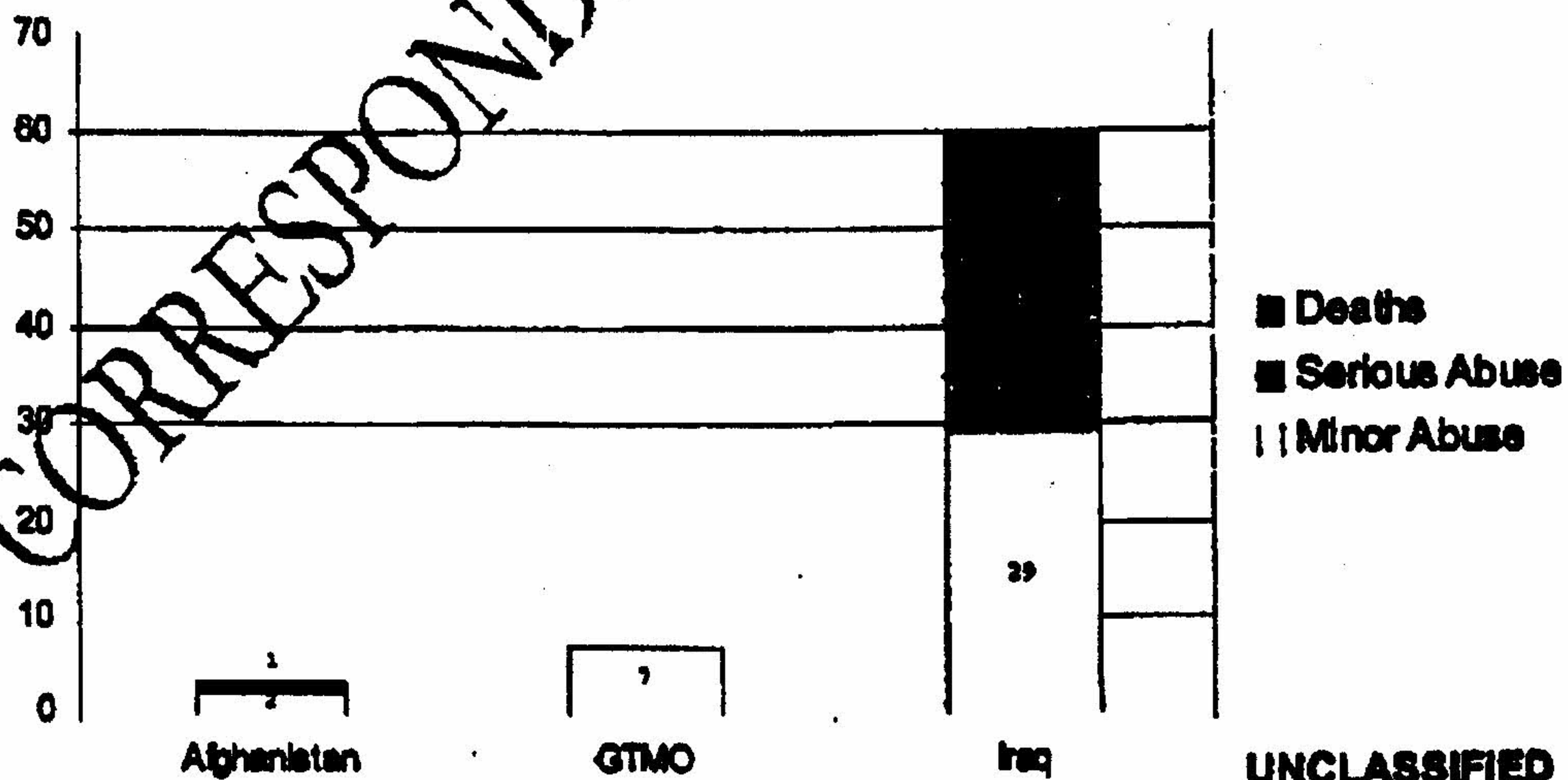
investigation, leaving us 70 substantiated detainee abuse cases to analyze. The chart below reflects the breakdown of these 70 abuse cases.

(U) There are approximately 121 abuse victims in these 70 cases of detainee abuse. As of September 30, 2004, disciplinary action had been taken against 115 service members for this misconduct, including numerous nonjudicial punishments, 15 summary courts-martial, 12 special courts-martial and nine general courts-martial.

**(U) No Connection Between Interrogation Policies and Abuse**

(U) We found no link between approved interrogation techniques and detainee abuse. Of

**Closed Substantiated Abuse Cases (U)**



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the 70 cases of closed, substantiated abuse, only 20 of these cases, or less than one-third, could be considered "interrogation-related;" the remaining 50 were unassociated with any kind of questioning, interrogation, or the presence of MI personnel. In determining whether a case was interrogation-related, we took an expansive approach: for example, if a soldier slapped a detainee for refusing to answer a question at the point of capture, we categorized that misconduct as interrogation-related abuse - even though it did not occur at a detention facility, the soldier was not an MI interrogator, and there was no indication the soldier was (or should have been) aware of interrogation policy approved for use by MI interrogators.

(U) At GTMO, where there have been over 24,000 interrogation sessions since the beginning of interrogation operations, there are only three cases of closed, substantiated interrogation-related abuse, all consisting of minor assaults in which MI interrogators exceeded the bounds of approved interrogation policy. As noted above, these cases included those of two female interrogators who, on their own initiative, touched and spoke to detainees in a sexually suggestive manner in order to incur stress based on the detainees' religious beliefs. All three cases resulted in disciplinary action against the interrogators.

(U) In Afghanistan, one case of interrogation-related abuse had been substantiated prior to

September 30, 2004. On March 18, 2004, when elements of a U.S. infantry battalion conducted a cordon and search operation in the village of Miam Do, the U.S. forces were met with resistance and several Afghans were killed in subsequent fighting. The unit then detained the entire population of the village for four days in order to conduct screening operations. An Army Lieutenant Colonel attached to the Defense Intelligence Agency accompanied the battalion during the screening operations, in which he punched, kicked, grabbed and choked numerous villagers. As a result, he was disciplined and suspended from participating in operations involving detainees.

(U) In addition, there are now two cases of closed, substantiated interrogation-related abuse involving two detainees who died on December 4 and December 10, 2002 at the Bagram Collection Point in Afghanistan. Those investigations were not closed until October 2004, after our data analysis had been completed, and thus are not included in our statistics. We did, however, review the final Army Criminal Investigative Division (CID) Reports of Investigation, which included approximately 200 interviews. We found both investigations to be thorough in addressing the practices and leadership problems that led to the deaths and we note that CID officials have already recommended charges against 15 soldiers (11 MP and four MI) in relation to the December 4 death, and 27 soldiers (20 MP and seven MI) in relation to the

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December 10 death. (Some of the same personnel are named in the detention and interrogation of both detainees.) Significantly, our review of the investigations showed that while this abuse occurred during interrogations, it was unrelated to approved interrogation techniques.

(U) In Iraq, there are 16 cases of closed, substantiated interrogation-related abuse. Five of these cases involved MI interrogators. There is no discernible pattern in the 16 cases: the incidents occurred at different locations and were committed by members of different units. The abusive behavior varied significantly among these incidents, although each involved methods of maltreatment that were clearly in violation of U.S. military doctrine and U.S. law of war obligations, as well as U.S. interrogation policy. The most common type of detainee abuse was straightforward physical abuse, such as slapping, punching and kicking. In addition, threats were made in nine of the 16 incidents.

(U) As the preceding discussion illustrates, there is no link between any authorized interrogation techniques and the actual abuses described in the closed, substantiated interrogation-related abuse cases. First, much of the abuse involved the sort of straightforward physical violence that plainly transgressed the bounds of any interrogation policy in any theater, and also violated any definition of "humane" detainee treatment. Second, much of the abuse is wholly unconnected

to any interrogation technique or policy, as it was committed by personnel who were not MI interrogators, and who almost certainly did not know (and had no reason to know) the details of such policy. Nevertheless, these personnel either know or should have known that their actions were improper because they clearly violated military doctrine and law of war obligations. And third, even when MI interrogators committed the abuse, their actions were unrelated to any approved techniques. Even if interrogators were "confused" by the issuance of multiple interrogation policies within a short span of time, as some have hypothesized regarding Abu Ghraib, it is clear that *none* of the approved policies - no matter which version the interrogators followed - would have permitted the types of abuse that occurred.

## (U) Underlying Reasons for Abuse

(U) If approved interrogation policy did not cause detainee abuse, the question remains: what did? While we cannot offer a definitive answer, we studied the DoD investigation reports for all 70 cases of closed, substantiated detainee abuse to see if we could detect any patterns or underlying explanations. Our analysis of these 70 cases showed that they involved abuses perpetrated by a variety of active duty, reserve and national guard personnel from three services on different dates and in different locations throughout Afghanistan and Iraq, as well as a small number of cases at GTMO. While this diversity argues against a single, overarching

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reason for abuse, we did identify several factors that may help explain why the abuse occurred.

(U) First, 23 of the abuse cases, roughly one third of the total, occurred at the point of capture in Afghanistan or Iraq - that is, during or shortly after the capture of a detainee. This is the point at which passions often run high, as service members find themselves in dangerous situations, apprehending individuals who may be responsible for the death or serious injury of fellow service members. Because of this potentially volatile situation, this is also the point at which the need for military discipline is paramount in order to guard against the possibility of detainee abuse, and that discipline was lacking in some instances. Additionally, the nature of the enemy, and the tactics it has employed in Iraq (and to a lesser extent, in Afghanistan) may have played a role in this abuse. Our service members may have at times permitted the enemy's treacherous tactics and disregard for the law of war - exemplified by improvised explosive devices and suicide bombings - to erode their own standards of conduct. (Although we do not offer empirical data to support this conclusion, a consideration of past counter-insurgency campaigns - for example, in the Philippines and Vietnam - suggests that this factor may have contributed to abuse.) The highly publicized case involving an Army Lieutenant Colonel in Iraq provides an example. On August 20, 2003, during the questioning of an Iraqi detainee by field artillery soldiers, the Lieutenant Colonel fired his weapon near

the detainee's head in an effort to elicit information regarding a plot to assassinate U.S. service members. For his actions, the Lieutenant Colonel was disciplined and relieved of command.

(U) Second, there was a failure to react to early warning signs of abuse. Though we cannot provide details in this unclassified executive summary, it is clear that such warning signs were present - particularly at Abu Ghraib - in the form of communiques to local commanders, that should have prompted those commanders to put in place more specific procedures and direct guidance to prevent further abuse. Instead, these warning signs were not given sufficient attention at the unit level, nor were they relayed to the responsible CJTF commanders in a timely manner.

(U) Finally, a breakdown of good order and discipline in some units could account for other incidents of abuse. This breakdown implies a failure of unit-level leadership to recognize the inherent potential for abuse due to individual misconduct, to detect and mitigate the enormous stress on our troops involved in detention and interrogation operations, and a corresponding failure to provide the requisite oversight. As documented in previous reports (including MG Fay's and MG Taguba's investigations), stronger leadership and greater oversight would have lessened the likelihood of abuse.

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## **Use of Contract Personnel in Interrogation Operations (U)**

(U) It is clear that contract interrogators and support personnel are "bridging gaps" in the DoD force structure in GTMO, Afghanistan and Iraq. As a senior intelligence officer at CENTCOM stated: "[s]imply put, interrogation operations in Afghanistan, Iraq and Guantanamo cannot be reasonably accomplished without contractor support." As a result of these shortfalls in critical interrogation-related skills, numerous contracts have been awarded by the services and various DoD agencies. Unfortunately, however, this has been done without central coordination, and in some cases, in an *ad hoc* fashion (as demonstrated, for example, by the highly publicized use of a "Blanket Purchase Agreement" administered by the Department of the Interior to obtain interrogation services in Iraq from OACI Inc.). Nevertheless, we found - with limited exceptions - that contractor compliance with DoD policies, government command and control of contractors, and the level of contractor experience were satisfactory, thanks in large part to the diligence of contracting officers and local commanders.

(U) Overall, we found that contractors made a significant contribution to U.S. intelligence efforts. Contract interrogators were typically former MI or law enforcement personnel, and on average were older and more experienced than military interrogators; many anecdotal reports indi-

cated that this gave contract interrogators additional credibility in the eyes of detainees, thus promoting successful interrogations. In addition, contract personnel often served longer tours than DoD personnel, creating continuity and enhancing corporate knowledge at their commands.

(U) Finally, notwithstanding the highly publicized involvement of some contractors in abuse at Abu Ghraib, we found very few instances of abuse involving contractors. In addition, a comprehensive body of federal law permits the prosecution of U.S. nationals - whether contractor, government civilian, or military - who may be responsible for the inhumane treatment of detainees during U.S. military operations overseas. Thus, contractors are no less legally accountable for their actions than their military counterparts.

## **DoD Support to Other Government Agencies (U)**

(U) For the purposes of our discussion, other government agencies, or OGAs, are federal agencies other than DoD that have specific interrogation and/or detention-related missions in the Global War on Terror. These agencies include the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), U.S. Customs and Border Protection, and the Secret Service. In conducting our investigation, we con-

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