



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:

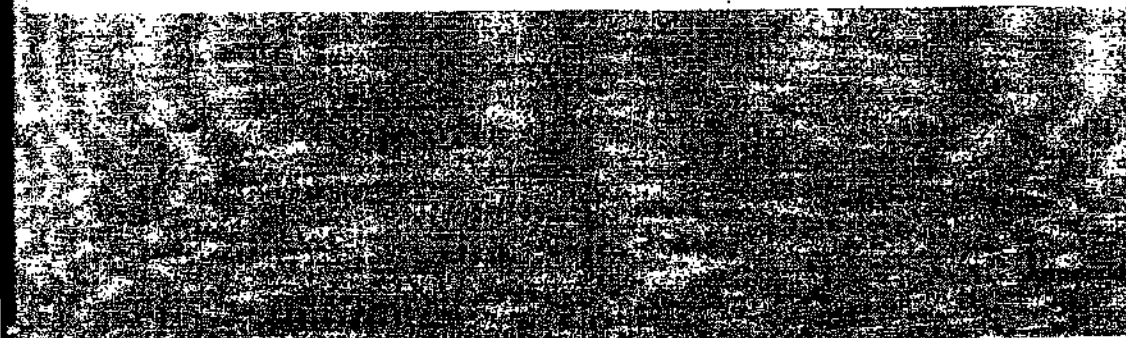
- Criminal investigations into individual allegations
- Army Provost Marshal General assessment of detention and corrections operations in Iraq
- Joint Task Force Guantanamo assistance visit to Iraq to assess intelligence operations
- Administrative Investigation under AR 15-6 regarding Abu Ghraib operations
- 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



OSD 06804-04



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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

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

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



Interrogation Policies in Guantanamo, Afghanistan and Iraq

17	FM 34-52 (1992)	Jan 02 - 01 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	1
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	4
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	4

1 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.

2 Five Approved Techniques require SOUTHCOM approval and SECDEF notification.

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

4 Figure includes one technique which requires CG approval.

5 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

	FM 34-52 (1992)	Secretary of Defense Approved Tiered System	FM 34-52 (1992) with some Cat I	Secretary of Defense Memo
Interrogation Techniques	Jan 02 - 01 Dec 02	02 Dec 02 - 15 Jan 03	16 Jan 03 - 15 Apr 03	16 Apr 03 - Present
Direct questioning	X	X	X	X
Incentive/removal of incentive	X	X	X	X
Emotional love	X	X	X	X
Emotional hate	X	X	X	X
Fear up harsh	X	X	X	X
Fear up mild	X	X	X	X
Reduced fear	X	X	X	X
Pride and ego up	X	X	X	X
Pride and ego down	X	X	X	X
Futility	X	X	X	X
We know all	X	X	X	X
Establish your identity	X	X	X	X
Repetition approach	X	X	X	X
File and dossier	X	X	X	X
Mutt and Jeff				X*
Rapid Fire	X	X	X	X
Silence	X	X	X	X
Change of Scene	X	X	X	X
Yelling		X (Cat I)	X	
Deception		X (Cat I)		
Multiple interrogators		X (Cat I)	X	
Interrogator identity		X (Cat I)	X	
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 III)		
Environmental manipulation				X
Sleep adjustment				X
False flag				X

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*Techniques require SOUTHCOM approval and SECDEF notification.

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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

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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:

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- **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:

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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.

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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

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.

INDEPENDENT PANEL TO REVIEW DoD DETENTION OPERATIONS

- (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 4th 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.

Independent Panel to Review DoD Detention Operations

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Office of the Secretary Of Defense



Detainee Files

CHURCH REPORT/SASC CHURCH HEARING
OSD 75667-05

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



VADM A.T. Church, III, USN

Revised Form: Multiple Sources
Revised: 14/01
Classification: OF March 2005

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OSD 75667-05

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SECRETARY OF DEFENSE



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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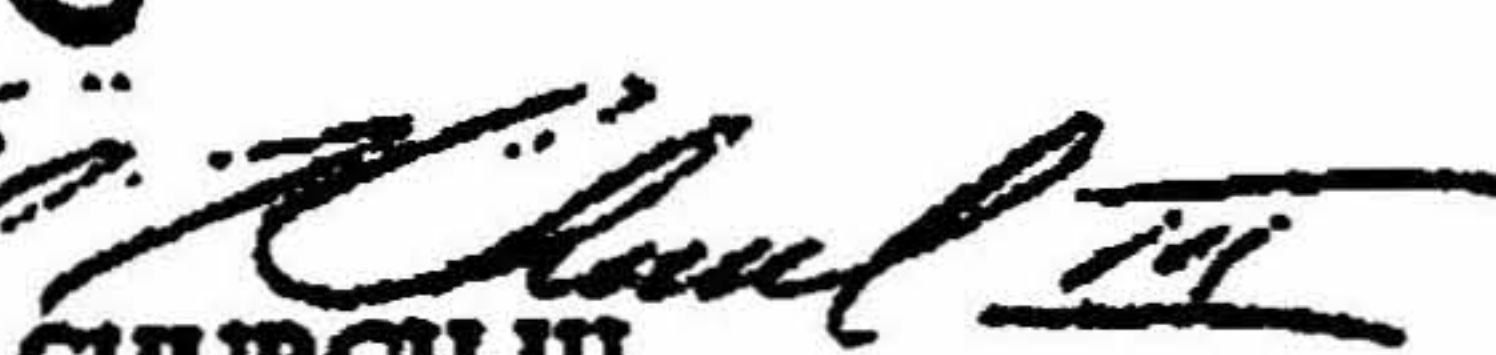
March 7, 2005

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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CORRESPONDENCE & DOCUMENTS

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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, "We 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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Ghralb 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-7 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 reported 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

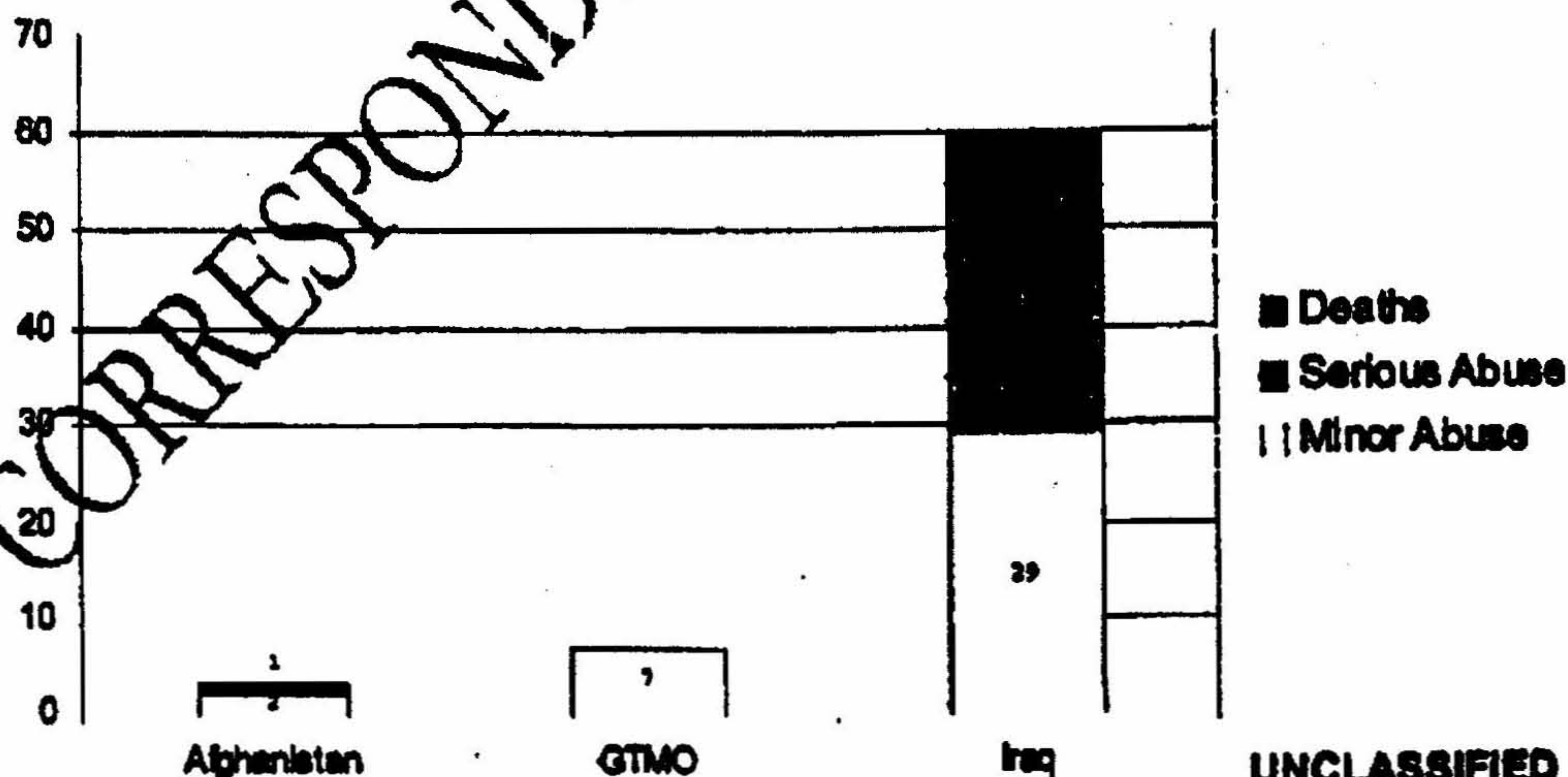
investigation, leaving us 70 substantiated detainee abuse cases to analyze. The chart below reflects the breakdown of these 70 abuse cases.

(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 Miami 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 knew 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 CACI 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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sidered DoD support to all of these agencies, but we focused primarily on DoD support to the CIA. (The CIA cooperated with our investigation, but provided information only on activities in Iraq.) It is important to highlight that it was beyond the scope of our tasking to investigate the existence, location or policies governing detention facilities that may be exclusively operated by OGAs, rather than by DoD.

(U) DoD personnel frequently worked together with OGAs to support their common intelligence collection mission in the Global War on Terror, a cooperation encouraged by DoD leadership early in Operation ENDURING FREEDOM. In support of OGA detention and interrogation operations, DoD provided assistance that included detainee transfers, logistical functions, sharing of intelligence gleaned from DoD interrogations, and oversight and support of OGA interrogations at DoD facilities. However, we were unable to locate formal interagency procedures that codified the support roles and processes.

(U) In OEF and OIF, senior military commanders were issued guidance that required notification to the Secretary of Defense prior to the transfer of detainees to or from other federal agencies. This administrative transfer guidance was followed, with the notable exception of occasions when DoD temporarily held detainees for the CIA - including the detainee known as "Triple-X" - without

properly registering them and providing notification to the International Committee of the Red Cross. This practice of holding "ghost detainees" for the CIA was guided by oral, *ad hoc* agreements and was the result, in part, of the lack of any specific, coordinated interagency guidance. Our review indicated, however, that this procedure was limited in scope. To the best of our knowledge, there were approximately 30 "ghost detainees," as compared to a total of over 50,000 detainees in the course of the Global War on Terror. The practice of DoD holding "ghost detainees" has now ceased.

(U) Aside from the general requirement to treat detainees humanely, we found no specific DoD-wide direction governing the conduct of OGA interrogations in DoD interrogation facilities. In response to questions and interviews for our report, however, senior officials expressed clear expectations that DoD-authorized interrogation policies would be followed during any interrogation conducted in a DoD facility. For example, the Joint Staff J-2 stated that "[o]ur understanding is that any representative of any other governmental agency, including CIA, if conducting interrogations, debriefings, or interviews at a DoD facility must abide by all DoD guidelines." On many occasions, DoD and OGA personnel did conduct joint interrogations at DoD facilities using DoD-authorized interrogation techniques. However, our interviews with DoD personnel assigned to various detention facilities throughout Afghanistan and Iraq demonstrated that they did

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not have a uniform understanding of what rules governed the involvement of OGAs in the interrogation of DoD detainees. Such uncertainty could create confusion regarding the permissibility and limits of various interrogation techniques. We therefore recommend the establishment and wide promulgation of interagency policies governing the involvement of OGAs in the interrogation of DoD detainees.

Medical Issues Related to Interrogation (U)

(U) In reviewing the performance of medical personnel in detention and interrogation-related operations during the Global War on Terror, we were able to draw preliminary insights in four areas: detainee screening and medical treatment; medical involvement in interrogation; interrogator access to medical information; and the role of medical personnel in preventing and reporting detainee abuse. We note that the Office of the Secretary of Defense is currently developing specific policies to address all of the issues raised below.

(U) First, the medical personnel that we interviewed understood their responsibility to provide humane medical care to detainees, in accordance with U.S. military medical doctrine and the Geneva Conventions. The essence of these requirements is captured succinctly in a DoD policy issued by the Assistant Secretary of

Defense for Health Affairs on April 10, 2002, "DoD Policy on Medical Care for Enemy Persons Under U.S. Control Detained in Conjunction with Operation Enduring Freedom." The policy states, "[I]n any case in which there is uncertainty about the need, scope, or duration of medical care for a detainee under U.S. control, medical personnel shall be guided by their professional judgments and standards *similar to those that would be used to evaluate medical issues for U.S. personnel*, consistent with security, public health management, and other mission requirements" (emphasis added). Few U.S. personnel, however, had received specific training relevant to detainee screening and medical treatment. As a result, in Afghanistan and Iraq we found inconsistent field-level implementation of specific requirements, such as monthly detainee inspections and weight recordings. Thus there is a need for a focused training program in this area so that our medical personnel are aware of and comply with detainee screening and medical treatment requirements.

(U) Second, it is a growing trend in the Global War on Terror for behavioral science personnel to work with and support interrogators. These personnel observe interrogations, assess detainee behavior and motivations, review interrogation techniques, and offer advice to interrogators. This support can be effective in helping interrogators collect intelligence from detainees; however, it must be done within proper limits. We found that behavioral science personnel were not involved in detainee

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medical care (thus avoiding any inherent conflict between caring for detainees and crafting interrogation strategies), nor were they permitted access to detainee medical records for purposes of developing interrogation strategies. However, since neither the Geneva Conventions nor U.S. military medical doctrine specifically address the issue of behavioral science personnel assisting interrogators in developing interrogation strategies, this practice has evolved in an *ad hoc* manner. In our view, DoD policy-level review is needed to ensure that this practice is performed with proper safeguards, as well as to clarify the status of medical personnel (such as behavioral scientists supporting interrogators) who do not participate in patient care.

(U) Another area that deserves DoD policy-level review (and that is unaddressed by the Geneva Conventions or current DoD policy) is interrogator access to detainee medical information. Interrogators often have legitimate reasons for inquiring into detainees' medical status. For example, interrogators need to be able to verify whether detainees are being truthful when they claim that interrogations should be restricted on medical grounds. Granting interrogators unfettered access to detainee medical records, however, raises the problem that detainee medical information could be inappropriately exploited during interrogations. Such access might also discourage detainees from being truthful with medical personnel, or from seeking help with medical issues, if detainees believe that their medical histories

will be used against them during interrogation. Although U.S. law provides no absolute confidentiality of medical information for any person, including detainees, DoD policy-level review is necessary in order to balance properly these competing concerns. This is especially true given the substantial variation that we found in field-level practices for maintaining and securing detainee medical records. While access to medical information was carefully controlled at GTMO, we found in Afghanistan and Iraq that interrogators sometimes had easy access to such information. Nevertheless, we found no instances where detainee medical information had been inappropriately used during interrogations, and in most situations interrogators had little interest in detainee medical information even when they had unfettered access to it.

(U) Finally, it was not possible for us to assess comprehensively whether medical personnel serving in the Global War on Terror have adequately discharged their obligation to report (and where possible, prevent) detainee abuse. However, our interviews with medical personnel indicated that they had only infrequently suspected or witnessed abuse, and had in those instances reported it through the chain of command. Separately, we performed a systematic review of investigative notes and autopsy results in order to assess the roles of medical personnel, especially in any case where detainee abuse was suspected. We reviewed 68 detainee deaths: 63 in Iraq and five in Afghanistan:

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there were no deaths at GTMO. (These deaths were not all abuse-related, and therefore do not correlate directly to the death cases described in our analysis of abuse.) Of these deaths, we identified three in which it appeared that medical personnel may have attempted to misrepresent the circumstances of death, possibly in an effort to disguise detainee abuse. Two of these were the previously described deaths in Bagram, Afghanistan in December 2002, and one was the aforementioned death at Abu Ghraib in November 2003. The Army Surgeon General is currently reviewing the specific medical handling of these three cases.

Conclusion (U)

(U) Human intelligence in general, and interrogation in particular, are indispensable components of the Global War on Terror. The need for intelligence in the post-9/11 world, and our enemy's ability to resist interrogation, have caused our senior policy makers and military commanders to reevaluate traditional U.S. interrogation methods and search for new and more effective interrogation techniques. According to our investigation, this search has always been

conducted within the confines of our armed forces' obligation to treat detainees humanely. In addition, our analysis of 70 substantiated detainee abuse cases found that no approved interrogation techniques caused these criminal abuses; however, two specific interrogation plans approved for use at GTMO did highlight the difficulty of precisely defining the boundaries of humane treatment.

(U) It bears emphasis that the vast majority of detainees held by the U.S. in the Global War on Terror have been treated humanely, and that the overwhelming majority of U.S. personnel have served honorably. For those few who have not, there is no single, overarching explanation. While authorized interrogation techniques have not been a causal factor in detainee abuse, we have nevertheless identified a number of missed opportunities in the policy development process. We cannot say that there would necessarily have been less detainee abuse had these opportunities been acted upon. These are opportunities, however, that should be considered in the development of future interrogation policies.

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