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Examination of Detainee Abuse (U)

Overview (U)

(U) During our inquiry, we examined individual cases of detainee abuse in order to discern any relationship to detainee operations in general, and to interrogation in particular. We detail some of these cases in the sections covering GTMO, Afghanistan, and Iraq; however, in this section, we will provide an overview of our analytic method, and a high-level summary of DoD abuse investigations.

(U) As of September 30, 2004, the military services and DoD agencies had initiated 317 investigations in response to allegations of detainee abuse by DoD personnel and contractors in GTMO, Afghanistan, and Iraq. (In order to complete our analysis in a timely fashion, we chose September 30 as the cutoff date for the incorporation of investigations in this report. All of the following information is current as of September 30, except where otherwise noted.) For the purposes of our analysis, we define "abuse" as conduct that constitutes Uniform Code of Military Justice (UCMJ) offenses against persons (or would constitute such an offense if the perpetrator were subject to the UCMJ, in the case of contractors). These offenses include murder, manslaughter, negligent homicide, assault, rape, indecent assault, cruelty and maltreatment, reckless endangerment, and communi-

cating a threat. We did not treat thefts from detainees as abuse, unless such misconduct was combined with an assault or other form of maltreatment:

(U) In general, the Army Criminal Investigation Division (CID) and Naval Criminal Investigation Service (NCIS) investigated serious abuse allegations (i.e., misconduct resulting - or potentially resulting - in death or grievous bodily harm), while individual commands investigated lesser allegations. Many of the investigations have multiple victims and multiple suspects; consequently, there is no direct correlation between the number of cases and the numbers of suspects and victims. For example, the primary CID investigation of the abuses at Abu Ghraib (which remains open) has identified 15 suspects and 35 victims.

(U) The status of the 317 investigations is depicted on the chart on the next page.

(U) As the chart demonstrates, 187 investigations have been closed (38 death investigations and 149 for other abuse), of which six have substantiated that death resulted from abuse (five in Iraq and one in Afghanistan), and 65 have substantiated that other abuse occurred. These findings will be discussed in more detail below.

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DOD Detainee-Related Investigations Summary (U)

CASES	AFGHANISTAN	IRAQ	GTMO	TOTAL	TOTAL SUB- STANTIATED
DETAINEE DEATHS	4 ■ ■ 0 ■ 0	15 ■ ■ 2 ■ 0	0 ■ ■ 0 ■ 0	23	N/A
OPEN					
DETAINEE ABUSE	5 ■ ■ 2 ■ 0	92 ■ ■ 1 ■ 1* * Contractor	2 ■ ■ 2 ■ 0	107	N/A
DETAINEE DEATHS	1 ■ ■ 0 ■ 0	32 ■ ■ 0 ■ 0	0 ■ ■ 0 ■ 0	38	SUBSTANTIATED 6
CLOSED		Note: Does not include 22 Abu Ghraib mortar attack deaths.			
DETAINEE ABUSE	12 ■ ■ 0 ■ 0	101 ■ ■ 3 ■ 3* * Contractor	12 ■ ■ 0 ■ 0	149	65
TOTAL	27	274	16	317	71

■ Army Related Cases ■ Navy Related Cases
 ■ USMC Related Cases ■ Other Related Cases **UNCLASSIFIED**

(U) The status of the 317 open and closed investigations is again depicted in the following two charts on the next page, which break the investigations into death-related (in the first chart) and non-death related investigations (in the second chart).

(U) As the first chart demonstrates, of the 61 detainee death investigations, 38 have been closed; and in six cases it was determined that the deaths resulted from abuse. The remaining 32 closed death investigations resulted in determina-

tions that the fatalities resulted from either natural causes or justifiable homicides, or that the allegations of wrongdoing were unsubstantiated or unfounded. As the second chart shows, detainee abuse not resulting in death was substantiated in 65 of 149 closed investigations.

(U) Because information provided by open cases may not be reliable, and may ultimately be proven unfounded, we focused our analysis primarily on the 71 closed investigations that substantiated abuse. Of these, eight concerned incidents at

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Detainee Death Investigations (U)

CASES	AFGHANISTAN	IRAQ	GTMO	TOTAL	TOTAL SUB-STATUTED
OPEN					
DETAINEE DEATHS	4 0 0	15 2 0	0 0 0	23	N/A
CLOSED					
DETAINEE DEATHS	1 0 0	32 0 0	0 0 0	38	6
		Note: Does not include 22 Abu Ghraib mortar attack deaths.			
TOTAL	5	56	0	61	6

☒ Army Related Cases ☒ Navy Related Cases
☒ USMC Related Cases ☐ Other Related Cases

All data as of 30 Sep 2004.

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Detainee Non-Death Abuse Investigations (U)

CASES	AFGHANISTAN	IRAQ	GTMO	TOTAL	TOTAL SUB-STATUTED
OPEN					
DETAINEE ABUSES	5 2 0	92 1 1*	2 2 0	107	N/A
CLOSED					
DETAINEE ABUSES	12 0 0	101 3 3*	12 0 0	149	65
		* Contractor			
TOTAL	22	218	16	256	65

☒ Army Related Cases ☒ Navy Related Cases
☒ USMC Related Cases ☐ Other Related Cases

All data as of 30 Sep 2004.

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GTMO, three concerned incidents in Afghanistan, and 60 concerned incidents in Iraq. These 71 cases involve at least 122 victims, and so far, disciplinary or administrative action has been taken against 115 service members for misconduct. (This action includes numerous non-judicial punishments, 15 summary courts-martial, 12 special courts-martial, and 9 general courts-martial.) Criminal investigation of detainee abuse at Abu Ghraib, which has already resulted in the preferral of court-martial charges against seven service members and a guilty plea from three of those members, remains open.

(U) In addition, we concluded that one closed, substantiated investigation 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 that camp as a consequence of inappropriate interaction with a detainee. We discarded this investigation, leaving us 70 detainee abuse cases to analyze.

(U) A comparison of our detainee abuse analysis with those of the Jones, Fay, and Taguba reports is provided later, in our section discussing Iraq. Unlike those reports, however, we did not investigate specific allegations of misconduct. Rather, our examination consisted of a broad review of investigative reports, focusing on factors that may have played a role in these incidents of

abuse. Our review was intended neither as a legal assessment of specific cases, nor as a recommendation for commanders in the independent exercise of their responsibilities under the Uniform Code of Military Justice (UCMJ) or other administrative procedures.

Categorizing Abuse Cases (U)

(U) As an initial matter, we examined the abuse cases for any trends related to geographic areas or individual units within Afghanistan and Iraq; however, we found no such trends.

(U) We next analyzed the 70 closed, substantiated abuse cases by grouping them by severity and location, and then by whether they were related to interrogation. We also categorized the cases by service and component (e.g., U.S. Army Reserve) of the personnel involved. Our results are described below.

(U) Severity of Abuse

(U) As noted previously, we considered serious abuse to be misconduct resulting, or having the potential to result, in death or grievous bodily harm. We used the definition of "grievous bodily harm" contained in the Manual for Courts-Martial (2002 edition): "Grievous bodily harm" means serious bodily injury. It does not include minor injuries such as a black eye or bloody nose, but does include

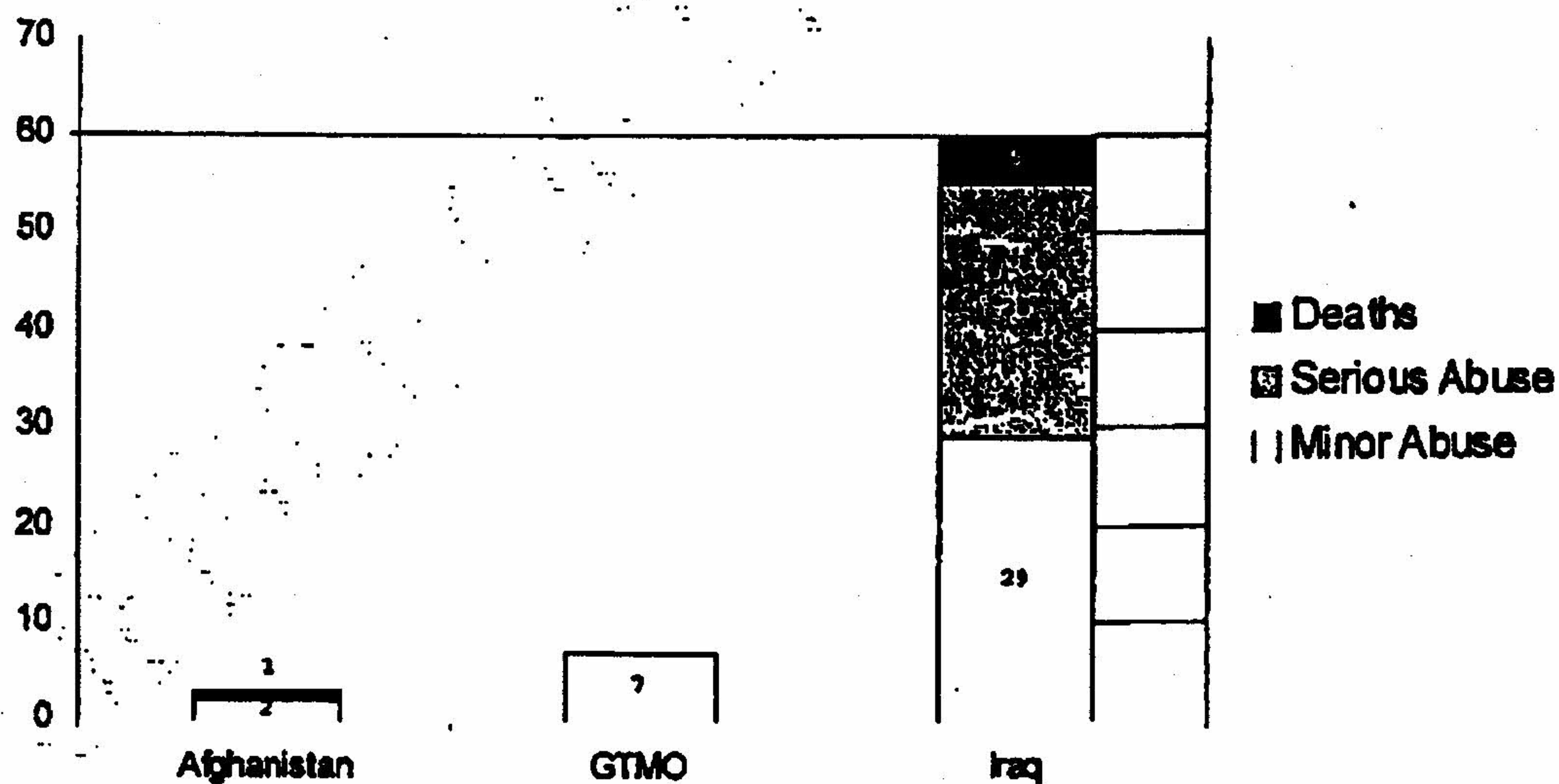
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fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries." In addition, we considered all sexual assaults (in the Manual for Courts-Martial termed "Indecent Assault"), threats to inflict death or grievous bodily harm, and maltreatment likely to result in death or grievous bodily harm to be serious abuse.

(U) As reflected in the chart below, there were a total of six substantiated deaths (one in

Afghanistan and five in Iraq), 26 serious abuse incidents that did not result in death (all in Iraq), and 38 minor abuse incidents (two in Afghanistan, seven in GTMO, and 29 in Iraq). (We should note that the cases involving the two Bagram PUC deaths were substantiated and closed on October 8, 2004, after the majority of our analysis had been completed. These cases, therefore, are not included in the data that we analyzed.) Of the 64 non-death abuse cases analyzed, two were sexual assaults. The majority of

Closed Substantiated Abuse Cases (U)



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the remaining cases were assaults and other forms of physical abuse.

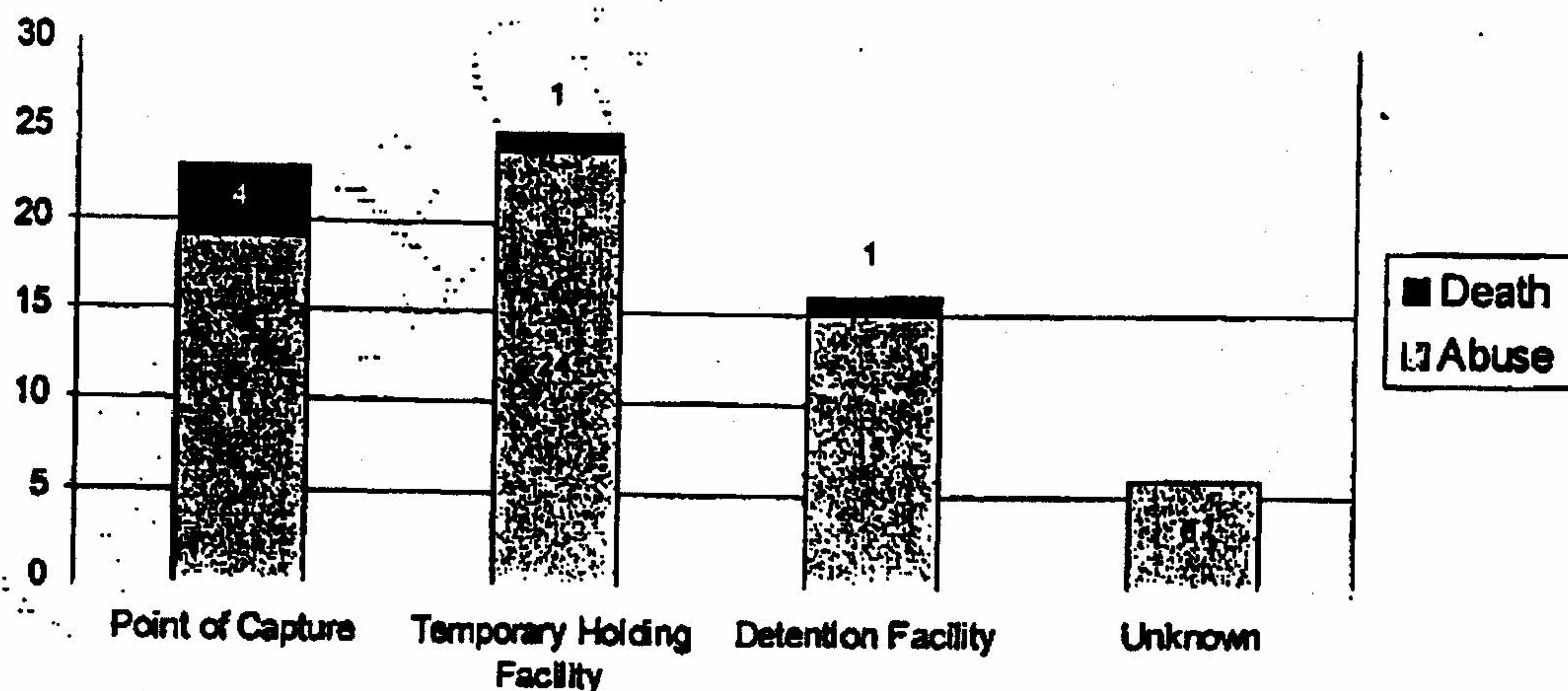
(U) Location of Abuse

(U) For the purposes of our analysis, we considered "point of capture" (POC) incidents to include any deaths or abuse occurring outside of holding facilities, including those that occurred during detainee transportation. Facilities at the division level and below were considered

Temporary Holding Facilities (THF) (e.g., Corps Holding Areas or Division Collection Points), and internment/resettlement facilities were considered Detention Facilities (DF) (e.g., Abu Ghraib). These terms are functional in nature rather than doctrinal and are used here only for the purpose of our analysis.

(U) The chart below depicts abuses by detention locations. Of the 70 cases analyzed, 23

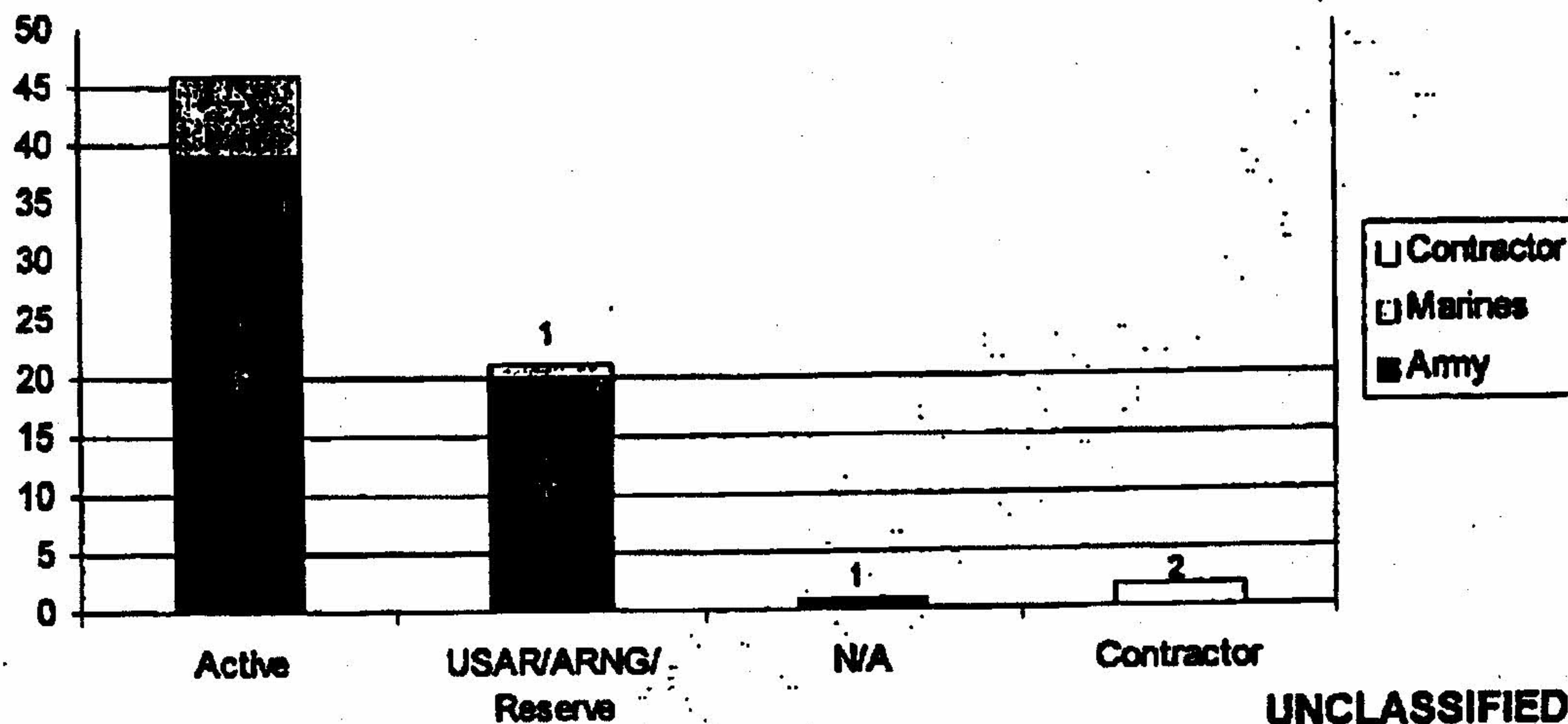
Reported Abuse by Site Type (U)



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**Closed Substantiated Cases by Service Component of
Personnel Involved (U)**



occurred at POC, 25 at THFs, 16 at DFs, and six at unidentified locations. Included in those figures are the six death cases: four at POC, one at a THF, and one at a DF.

(U) Service and Component

(U) There were 46 Active Component investigations, 21 Reserve/National Guard (nine Reserve, eight National Guard, and four mixed), one from an unknown unit, and two contractor-related cases. The data are displayed in the chart above.

(U) Relationship of Abuse to Interrogation

(U) We categorized abuses arising from

questioning of detainees by any DoD personnel, not just MI interrogators, as interrogation-related. In categorizing abuse as "interrogation-related," we took an expansive approach. For example, if a soldier slapped a detainee for failing to answer a question at the point of capture, we treated that misconduct as interrogation-related abuse. Of the 70 investigations analyzed, 20 met this criteria. Closed substantiated interrogation related abuse cases are further categorized by theater of operations and type of site in the chart on the next page.

Analysis of Abuse Investigations (U)

(U) Methodology

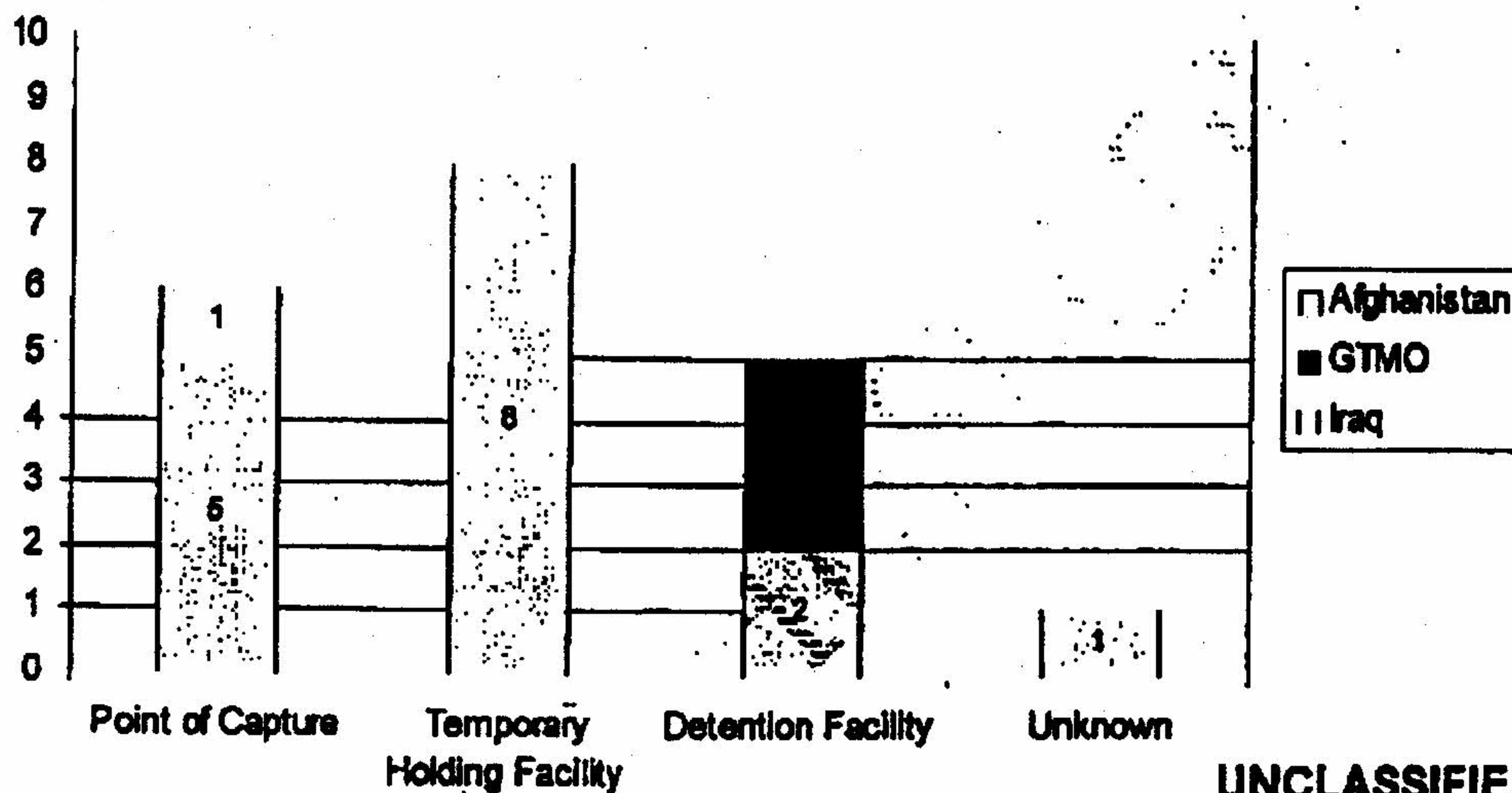
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Closed Substantiated Interrogation Related Abuse Case by Type of Facility at which the Incident Occurred (U)



(U) After categorizing the substantiated abuse cases, we reviewed each investigation report to identify possible explanations for the abuse. For abuses investigated by a service criminal investigative agency (CID or NCIS), we reviewed the complete investigative reports. These investigations generally contained statements from eyewitnesses and, in some cases, statements from suspects and purported victims. For investigations conducted by individual commands, which generally addressed the less serious incidents, we reviewed summaries or reports of the substantiated abuse.

(U) Findings

(U) Our review suggested that there is no

single explanation for why abuses occurred; rather, a combination of factors played a role. After hundreds of interviews, however, one point is clear - we found no direct (or even indirect) link between interrogation policy and detainee abuse. We note that our conclusion is consistent with the findings of the Independent Panel to Review DoD Detention Operations, chaired by the Honorable James R. Schlesinger, 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." In fact, interviews that we conducted at point of capture and temporary holding facilities in Iraq and Afghanistan showed that a large majority

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of interrogators and most field officers interviewed at those locations were unaware of the specific guidance promulgated and relied solely on their respective training and experience. This point will be reiterated and discussed in more detail in later report sections focused on interrogation operations in Guantanamo Bay, Afghanistan and Iraq.

(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 at varying dates and in varying locations throughout Afghanistan and Iraq, as well as a small number of cases at GTMO. While this lack of a pattern argues against a single, overarching 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, appre-

hending 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.

(U) Second, the nature of the enemy in Iraq (and to a lesser extent, in Afghanistan) may have played a role in the abuse. Our service members may have at times permitted our 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 counterinsurgency campaigns - for example, during the Philippine and Vietnam wars - 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) Finally, a breakdown of good order and

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discipline in some units could account for other incidents of abuse. This breakdown implies a failure of unit-level leadership to recognize the potential for abuse in detention and interrogation operations, to detect and mitigate the enormous stress on our troops in detention and interrogation operations, and a corresponding failure to provide the requisite oversight to prevent such abuse. 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.

Chronological Analysis of Abuse Cases (U)

(U) Overview

(U) We also conducted a chronological analysis to determine whether there was any correlation between particular events and the rate of detainee abuse. Specifically, we considered the relationship between the rate of abuse and the issuance of new interrogation-related policy directives to U.S. forces in each theater, and whether intensified combat operations or enemy resistance might help explain increases or decreases in detainee abuses. To determine whether abuse rates could be correlated to such events, we examined abuse cases on a month-to-month basis.

(U) The total number of cases considered in

this portion of our analysis is larger than in earlier sections, because we examined not only closed cases, but also certain open cases. In the chronological analysis we considered 189 cases, including 69 of the 71 closed, substantiated cases - one case was omitted because it did not identify the date of abuse, and we again omitted the GTMO water-throwing case - and 120 of 130 open cases (10 did not contain dates or were thefts). We recognize that many of the open cases may be eventually proved unsubstantiated or unfounded; however, we felt that including the open cases in chronological analysis might help identify potential trends.

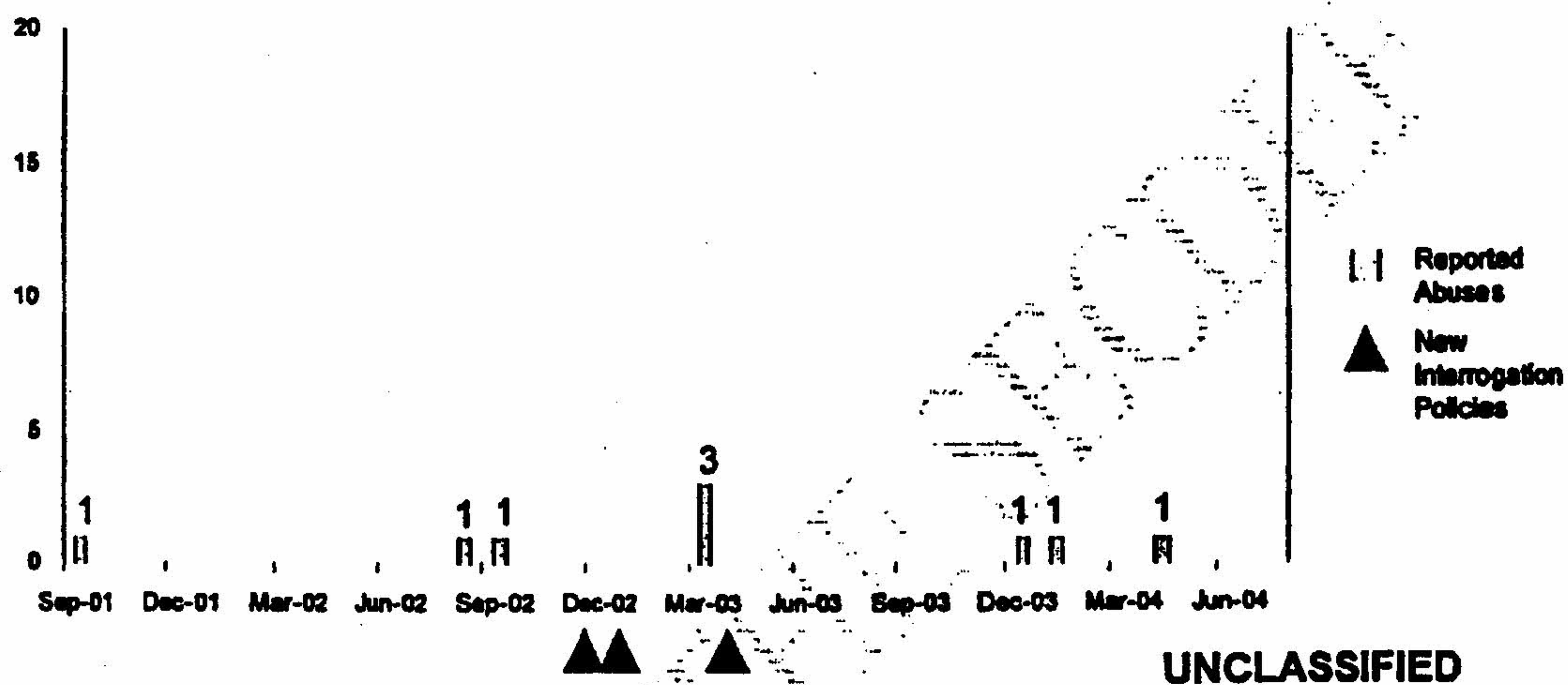
(U) Results

(U) GTMO

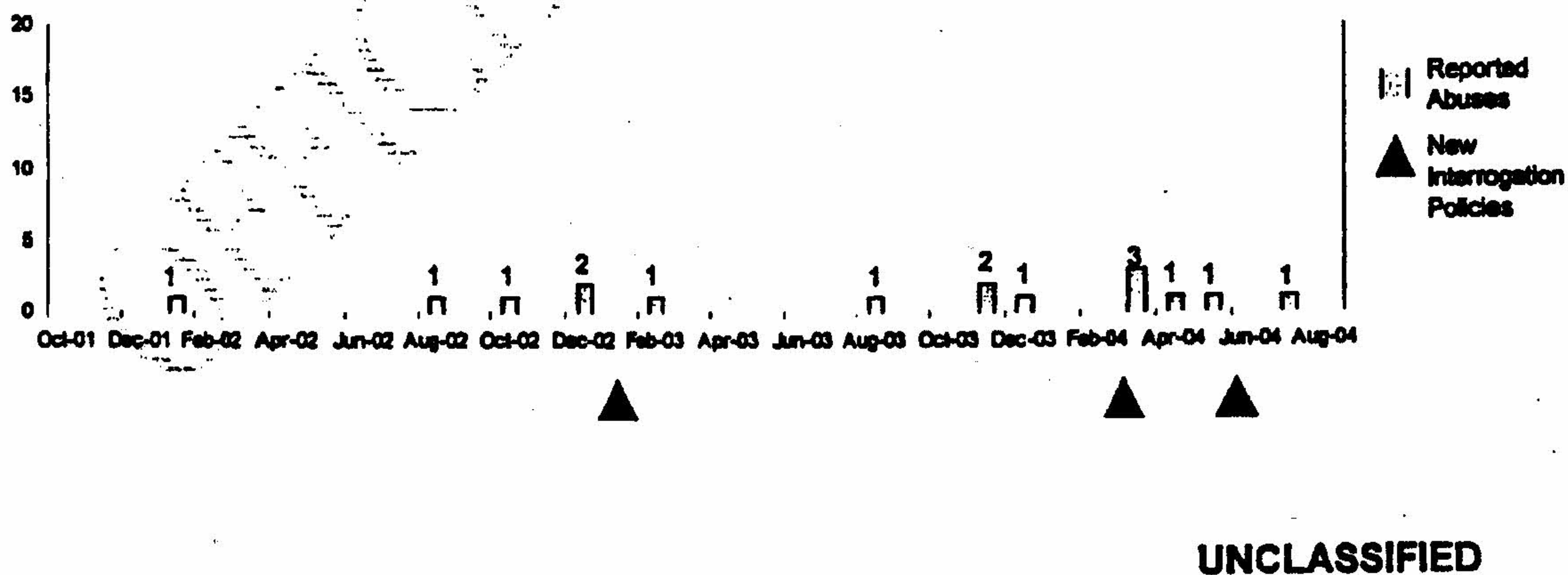
(U) Relatively few abuses have occurred at GTMO. As we will describe at further length in the GTMO section, we believe that this is attributable to, among other things, effective leadership, aggressive oversight, and a highly structured environment. While three of the abuse cases at GTMO occurred in April 2003, the same month that the Secretary of Defense approved a new interrogation policy for use there, the new interrogation policy did not cause those abuses to occur: as the GTMO section will describe, those abuses were completely unrelated to interrogation policy. We also found no correlation with other interrogation policies, issued in December 2002 and January 2003. (In

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GTMO (U)



Afghanistan (U)



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the following charts, issuance of new interrogation policies is indicated by red triangles.)

(U) *Afghanistan*

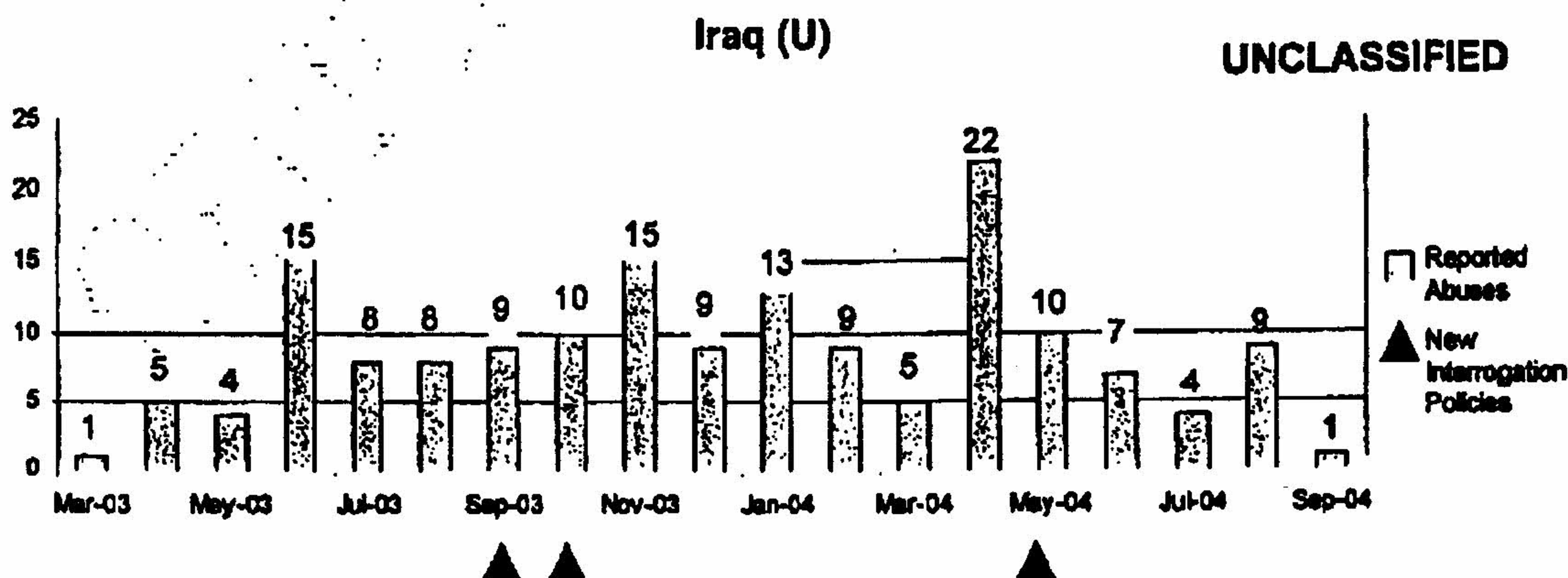
(U) Since Operation ENDURING FREEDOM began in October 2001, in no single month were there more than three cases of alleged abuse. With the limited numbers of reported abuse cases spread over many months, there is no discernable correlation of those abuses to CJTF 180's detention and interrogation policies (issued in January 2003, March 2004, and June 2004), combat operations, or other events.

(U) *Iraq*

(U) The total number of abuses in Iraq far exceeds those in GTMO and Afghanistan, which is not surprising based on the scale of combat operations and the ensuing insurgency. From the begin-

ning of Operation IRAQI FREEDOM in March 2003 through August 2004, the number of abuse cases per month remained relatively close to the average rate of nine per month, with the fewest number of reported abuses in March 2003 (one), July 2004 (four), and September 2004 (one). The issuance of interrogation policy memoranda in September 2003, October 2003, and May 2004, and MG Miller's visit to assess detention operations during August to September 2003 (all of which are described in our section on Iraq) do not appear to be correlated to the rate of detainee abuse, whether interrogation-related or not.

(U) We did observe spikes in abuse allegations in June 2003 (15), November 2003 (15), and April 2004 (22). While not necessarily statistically significant, it is possible that the June 2003 and April 2004 increases are attributable to the following events:



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(U) June 2003. Baghdad fell to Coalition Forces in May 2003. Almost immediately thereafter, Iraqis engaged in widespread looting and destruction. In this month, we observed a moderate increase in *alleged* detainee abuse cases; however, we found no evidence that this increase was interrogation-related or associated with U.S. policy changes. Rather, two thirds of the abuse cases in June 2003 involved point of capture abuses: the aggressive efforts of U.S. forces to stop looting and secure the peace appear to be a likely explanation for the increased number of alleged abuse cases that month.

(U) April 2004. This month saw an increase in combat operations, particularly in response to recent kidnappings, roadside bombings, and other attacks by insurgents against coalition forces. The number of U.S. service members killed in April 2004 increased to more than 150, almost a three-fold increase from only one month earlier in March 2004. During April 2004, alleged detainee abuse cases rose from five (all non-interrogation related) in March 2004 to 22 in April 2004 (with 8 of those cases being interrogation-related). It is possible, therefore, that increased combat operating tempo and efforts to stem the tide of the

insurgency led to increases in abuses.

Detainee Abuse: Summary (U)

(U) In sum, we found no evidence that detainee abuse was related to any interrogation policies. This explanation is supported by the more detailed descriptions of interrogation-related abuse cases that appear in the following sections on GTMO, Afghanistan and Iraq. Therefore, although interrogation policy has not been a causal factor in detainee abuse, we found several factors that may have contributed to the abuse. For example, much of it occurred at the point of capture in Afghanistan and Iraq, and in many instances our service members clearly lacked the discipline necessary at the point of capture to ensure that detainees were treated appropriately. Another factor may be the nature of the insurgency that we have encountered - one in which our enemy's disregard for the law of war may have at times led to an erosion of our own standards of conduct. Finally, a breakdown in good order and discipline, which may be attributable to the absence of strong leadership or oversight, may have contributed to setting the conditions for abuse.

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