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Medical Issues Relevant to Interrogation and Detention Operations (U)

Background (U)

(U) The primary task of the Interrogation Special Focus Team was to identify and report on interrogation techniques in Guantanamo Bay, Afghanistan, and Iraq; consequently, our investigative process was not specifically designed or intended to exhaustively study all medical aspects of detention operations. However, our investigation still led to important insights into detainee medical care and the roles of medical personnel. In this section of our report, we summarize those insights and our relevant findings.

(U) Military medical personnel serve vital and diverse roles in supporting the operational readiness and combat effectiveness of U.S. Armed Forces. They promote force readiness through comprehensive individual healthcare. They maintain the effectiveness of deployed forces through preventive efforts that cut the risks of contagious disease and non-battle injury. They save lives on the battlefield through state-of-the-art combat casualty care and medical evacuation. Military medical personnel also serve as ambassadors of American goodwill through civic and humanitarian activities worldwide. In addition, their scientific research advances medical knowledge and public health both at home and abroad.

(U) On numerous levels, the emotional bonds between military medicine and American combat forces are strong. Medics and corpsmen are cited often for valor and sacrifice alongside fighting men and women of all services. Many have died, and many more go in harm's way to render lifesaving care. This report is not intended to alter such proud heritage.

Medical Doctrine (U)

(U) Medical doctrine of the U.S. Armed Forces is rooted in the Geneva Conventions of 1949, which are repeatedly cited or quoted in DoD Directives, service regulations, and implementing orders. DoD guidance applies the standard of humane medical care to all detainee categories; requires that forces receive training adequate to ensure knowledge of their obligations under the Geneva Conventions and DoD policy; and requires that all military personnel (not just medical personnel) report suspected violations to their chains of command.

(U) Summarized below are important sources of U.S. military medical doctrine as it pertains to detainee operations and interrogation.

(U) Detainee Screening and Medical Treatment

(U) Recent DoD Policy Guidance

(U) On April 10, 2002 the Assistant Secretary of Defense for Health Affairs (ASD[HA]) issued HA Policy 02-005, "DoD Policy on Medical

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Care for Enemy Persons Under U.S. Control Detained in Conjunction with Operation ENDURING FREEDOM." This brief document primarily directs that detainees from Afghanistan be provided medical care "to the extent appropriate and consistent with military necessity" in accordance with the 1997 multi-service regulation, "Enemy Prisoners of War, Retained Personnel, Civilian Internees and other Detainees" (described below). Unlike many other documents, HA Policy 02-005 makes no distinction between different categories of detainees. It also states the following:

(U) "In 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).

(U) DoD Enemy POW Detainee Program

(U) "DoD Program for Enemy Prisoners of War (EPOW) and Other Detainees" (DoD Directive 2310.1) was issued August 18, 1994. It confirms as DoD policy that U.S. Military Services shall comply with the principles, spirit, and intent of the international law of war, both customary and codified, to include the Geneva Conventions (Section 3.1). It also requires that U.S. forces receive training to ensure knowledge of their obligations under the Geneva Conventions and the DoD Law of War Program (discussed below) before assignment to a foreign area where capture or detention of enemy personnel is possible (Section 3.2).

(U) Multi-Service Regulation (Army Regulation 190-8)

(U) "Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees" is a multi-service regulation coordinated by the U.S. Army and issued jointly by the Army (AR 190-8), Navy (OPNAVINST 3461.6), Air Force (AFJI 31-304), and Marine Corps (MCO 3461.1). This regulation is hereinafter cited AR 190-8.

(U) AR 190-8 contains detailed guidance on numerous issues pertaining to the administration and treatment of enemy prisoners of war (EPW), retained personnel (RP), civilian internees (CI), and other detainees (OD) in the custody of U.S. Armed Forces. Its stated purpose is to implement international law, both customary and codified, and the four 1949 Geneva Conventions are specifically listed as the principal relevant treaties. AR 190-8 also states "In the event of conflicts or discrepancies between this regulation and the Geneva Conventions, the provisions of the Geneva Conventions take precedence."

(U) Specific provisions for "hygiene and medical care" call for sanitary quarters, personal

hygiene items, and access to medical care. Required medical records must include documentation of initial medical examinations, monthly medical inspections, and monthly weight recordings. Separate requirements for healthy food rations and adequate water supply appear elsewhere.

(U) Throughout AR 190-8, distinctions are made between different categories of persons in custody, and careful reading is necessary to determine exactly which provisions apply to whom. Provisions for hygiene and medical care, along with those for food rations and water supply, appear identically in one section addressing EPW/RP and another section addressing CE. There is no analogous section addressing ODs, who are specifically mentioned in few places.

(U) AR 190-8 emphasizes that all detainees are entitled generically to "humanitarian care and treatment." While HA Policy 02-005 (described above) extends provisions pertaining to *medical care* and its documentation to all enemy persons detained in conjunction with Operation ENDURING FREEDOM (Afghanistan), it does not extend any other provisions of AR 190-8 to ODs.

(U) Third Geneva Convention

(U) The Third Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (GPW) is an international treaty ratified by the United States. GPW establishes criteria for defining status as an enemy prisoner of war (EPW). These criteria do not encompass all categories of detainees. It is important to note that no detainees from Operation ENDURING FREEDOM (Afghanistan) and relatively few detainees from Operation IRAQI FREEDOM (Iraq) are assessed by the United States to meet criteria for EPW status. In any case, several key provisions of the Convention form the foundation of U.S. military medical doctrine as it relates to EPWs. Those provisions are summarized below.

(U) *Articles 9-11* (in Part I, General Provisions) propose roles for impartial humanitarian organizations, such as the ICRC, which is mentioned by name but not specifically mandated.

(U) *Article 13* (in Part II, General Protection of Prisoners of War) mandates humane treatment of POWs and their protection from violence or intimidation, and Article 15 (also in Part II) requires the Detaining Power to provide EPWs with free medical care as required by their state of health. Part III of the Convention addresses captivity.

(U) *Articles 29-31* (in Chapter III [Hygiene and Medical Attention] of Section II [Internment of Prisoners of War] of Part III [Captivity]) collectively establish requirements for clean and healthful camps, personal hygiene accommodations, local access to medical care, and monthly medical

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inspections. Prisoners must be admitted to any military or civilian medical unit able to provide necessary special treatment.

(U) *Articles 120-121* (in Section III [Death of Prisoners of War] of Part III [Captivity]) call for documentation of POW deaths along with their cause and circumstances, medical examination of bodies, and official inquiries when EPW deaths may have been caused by sentries or other persons, or when their cause of death is unknown.

(U) Fourth Geneva Convention

(U) The Fourth Geneva Convention Relative to the Protection of Civilian Persons In Time of War of August 12, 1949 (GC) is a separate international treaty, also ratified by the United States. While the two documents differ in many respects, those GPW provisions cited above are all extended in GC (most are copied verbatim) to also cover civilian internees (CI), who constitute the large majority of detainees under U.S. control in Iraq.

(U) International Committee of the Red Cross

(U) The ICRC is a humanitarian organization that works to protect and assist victims of war and violence. They utilize structured site visits and personal interviews in order to assess the psychological and material conditions of detention. Findings and recommendations are reported to the detaining authority, either verbally or in writing, and are not normally made public. Similarly, the ICRC does not normally request written responses to their recommendations, but instead seeks to build working relationships with detaining authorities and to promote compliance with their recommendations during periodic site re-visits. Recommendations of the ICRC are not legally binding. One of their positions, for example, is that prisoners on hunger strike should not be force fed, even at the risk of death - an issue not addressed in Geneva Conventions.

(U) Until recently, medical doctrine of the U.S. Armed Forces provided little specific guidance on interactions with the ICRC. AR 190-8 mentiones the ICRC as one example of a "neutral state or an international humanitarian organization" that may be designated by the U.S. Government to monitor whether "protected persons" (EPW, CI, and PR) were receiving humane treatment as required by the Geneva Conventions. It does not specifically require ICRC coordination, despite its mention by name in several places that discuss interface with outside observers.

(U) Medical Involvement in Interrogation

(U) U.S. armed forces doctrine envisions medical involvement adequate to ensure that detainees are interrogated in safety and only when

medically fit. For example, Army Field Manual [FM] 34-52, *Intelligence Interrogation*, requires medical coordination when establishing an interrogation site (Chapter 5) and medical release of the sick or wounded before interrogation. Another field manual requires that Division Surgeons establish procedures for detainee casualty treatment and disposition, and that medical personnel advise commanders of violations of the Geneva Conventions, including interrogations of enemy wounded or sick who are medically unfit, or the killing, torture, mistreatment, or harming of a wounded or sick enemy soldier (FM 8-10-5, *The Brigade and Division Surgeon's Handbook*, Chapter 5).

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(U) Beyond this, existing U.S. medical doctrine does not specifically addresses the participation of medical personnel in detainee interrogations. In particular, DoD policy does not prevent individuals with expertise in mental health or behavioral science from helping interrogators to develop and refine interrogation strategies.

(U) Military Legal Review

(FOUO) In July 2002, the Staff Judge Advocate of Joint Task Force (JTF) 170 at Guantanamo Bay provided the only military opinion [redacted] (b)(5)

(U) General Assembly Resolution 37/194

(U) The United Nations General Assembly on December 18, 1982 issued Resolution 37/194, "Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Though not legally binding, this resolution states, in part, "It is a contravention of medical ethics for health personnel,

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particularly physicians, to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees...."

(U) Interrogator Access to Medical Information

(U) Medical doctrine of the U.S. Armed Forces does not prohibit interrogator access to detainee medical information. As discussed later, the actual practice appears to be rare. Command-level military policies generally recognize two acceptable bases for such access. The first basis involves situations where interrogators might need insight into active medical issues to ensure that interrogations are safely limited. A second basis arises when detainees claim that interrogations should be restricted on medical grounds. In this instance, interrogators might wish to know if real medical issues deserve special consideration or, conversely, if the detainee is making false claims.

(U) Preventing and Reporting Suspected Abuse

(U) Under U.S. military doctrine, responsibilities for preventing and reporting detainee abuse are not limited to medical personnel. DoD directives, such as the DoD Enemy POW Detainee Program (discussed above), require all military personnel to know their obligations under international law. Others, such as the DoD Law of War Program (discussed below) establish strict requirements for reporting suspected violations.

(U) DoD Law of War Program

(U) DoD Law of War Program (DoD Directive 5100.77) was issued December 9, 1998. It emphasizes that *law of war* encompasses "all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law." The directive specifically references all four Geneva Conventions of 1949, and it goes on to establish DoD policy that all possible, suspected, or alleged violations of the law of war be reported through chains of command, and then thoroughly investigated.

(U) Other Sources of Guidance

(U) A number of professional organizations have issued ethical statements or proposed standards for professional behavior. Although useful as ethical guidelines, none are legally controlling. One often-cited example is the World Medical Association's 1975 Declaration of Tokyo, "Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Relation to Detention and Imprisonment," which forbids physician participation, observation, or counte-

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nance of torture or cruel and inhuman punishment.

(U) Cause of Death Determinations

(U) Military guidance on detainee autopsy has evolved since 2001. Although autopsy is the rule for any death of a prison inmate in the American civilian sector, medical doctrine of the U.S. Armed Forces did not specifically address the issue until recently.

(U) AR 190-8

(U) AR 190-8 only briefly mentions "Death and burial" in identical sections that apply respectively to EPW/RP and to CI, but not to ODs. These provisions call for investigative reports of suicides, deaths or serious injury caused by guards or others, and deaths resulting from unnatural or unknown causes. Autopsies are not addressed, and much of the focus is on disposition of remains. That theme is also reflected in an attached Certificate of Death format (DA Form 2669-R, May 82), which only allows one-third of one line for indicating Cause of Death and does not ask whether an autopsy has been performed.

(U) Interim Efforts

(FOUO) Upon recognizing that some detainee death cases were not being referred for autopsy, the Office of the Armed Forces Medical Examiner (OAFME) coordinated with the U.S. Army Office of the Provost Marshall General (OPMG), which in October 2003 directed its Criminal Investigative Division (CID) personnel to ensure that all detainee deaths are referred for autopsy. The situation improved, but some subsequent cases still involved release of remains before notifying CID.

(U) Recent DoD Policy Guidance

(U) Secretary of Defense Memorandum, "Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States," signed June 9, 2004, formalizes requirements to immediately report the death of any detainee in the custody of U.S. Armed Forces (including EPW, RP, CI, and OD) to a U.S. Armed Forces service investigative agency. The memorandum establishes the OAFME as having primary jurisdiction within DoD for determining the cause and manner of death in such cases, and explicitly presumes that autopsies will be performed unless otherwise determined by the Armed Forces Medical Examiner (AFME) specifically. It goes on to summarize, "Determination of the cause and manner of death in these cases will be the sole responsibility of the AFME or another physician designated by the AFME."

Medical Findings (U)

(U) Our findings relevant to medical issues are organized below into four sections. The first section is an overview of detainee deaths and the processes in place to determine causes of death. Three site-specific sections then follow, addressing Guantanamo Bay, Afghanistan, and Iraq, respectively. The site-specific sections include reviews of individual detainee deaths, along with other impressions from local site visits and interviews of medical personnel. In this regard, our discussion of Guantanamo Bay is more extensive and detailed than those of Afghanistan and Iraq. Although unintended, this is no accident. The concentration of facilities and stable environment at Guantanamo Bay allowed us, in a very brief period, to aggressively tour detention and medical facilities, review medical records, and interview medical personnel. This was not possible in Afghanistan and Iraq.

(U) Our findings in relation to detainee deaths are based primarily on our own review of investigative summary reports by CID as of September 30, 2004. We augmented these reviews with discussion of overall processes and selected individual cases during a visit to the OAFME in Rockville, Maryland.

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(U) We elected to study detainee deaths for pragmatic reasons. Detainee deaths are sentinel events more likely to trigger attention, reporting, and independent CID investigation. In many cases, forensic autopsies add objective corroboration of other findings. The overall result is a reasonable body of documentation on a manageable number of cases. Meanwhile, our medical interest in reviewing summary reports on detainee deaths differed from the focus of CID investigators. Even though we sometimes applied our own label of "Suspicious for Abuse" in categorizing detainee deaths, we did not attempt to definitively assess detainee abuse. Instead, we looked for references to healthcare or medical personnel, and for insights on how their roles related to those of non-medical processes and individuals. Our assessments in this regard are necessarily subjective.

(U) Overview of Detainee Deaths

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(U) Guantanamo Bay

(U) Detainee Screening and Medical Treatment

(FOUO) Detainees at Guantanamo Bay

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