Enduring Abuse: Torture and Cruel Treatment by the United States at Home and Abroad

A shadow report by the American Civil Liberties Union prepared for the United Nations Committee Against Torture on the occasion of its review of

The United States of America’s Second Periodic Report to the Committee Against Torture

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The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil liberties in the United States. The ACLU is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. The ACLU was founded in 1920, largely in response to the curtailment of liberties that accompanied America’s entry into World War I, including the persecution of political dissidents and the denial of due process rights for non-citizens. In the intervening decades, the ACLU has advocated to hold the U.S. government accountable to the rights protected under U.S. Constitution and other civil and human rights laws. Since the tragic events of September 11, the core priority of the ACLU has been to stem the backlash against human rights in the name of national security.

In 2004, the ACLU created a Human Rights Working Group specifically dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution. The ACLU Human Rights Working Group incorporates international human rights strategies into ACLU advocacy on issues relating to national security, immigrants' rights, women's rights and racial justice.

The ACLU welcomes the opportunity to comment on the United States’ compliance with the Convention Against Torture through this shadow report to the Committee Against Torture. The shadow report is based primarily on the ACLU’s advocacy in the courts, in Congress, and through Freedom of Information Act requests that led to the compelled production by the U.S. government of over 100,000 pages of documents on the torture and abuse of detainees in U.S. custody in Guantánamo, Iraq and Afghanistan.
EXECUTIVE SUMMARY

The United States has failed to comply with its obligations under the Convention Against Torture at home and abroad. To justify torture and abuse in the “global war on terrorism,” the government narrowly defined torture and argued that the prohibition against cruel, inhuman or degrading treatment does not apply outside the United States. Its selective interpretation of the Convention justified the development of interrogation techniques that violated the treaty, created a climate of confusion among U.S. soldiers, and led to widespread torture and abuse of detainees in Guantánamo Bay, Iraq and Afghanistan.

Evidence from a range of sources, including over 100,000 government documents produced to the ACLU through Freedom of Information Act (“FOIA”) litigation, show a systemic pattern of torture and abuse of detainees in U.S. custody. This abuse was the direct result of policies promulgated from high-level civilian and military leaders and the failure of these leaders to prevent torture and other cruel, inhuman or degrading treatment by subordinates. Detainees have been beaten; forced into painful stress positions; threatened with death; sexually humiliated; subjected to racial and religious insults; stripped naked; hooded and blindfolded; exposed to extreme heat and cold; denied food and water; deprived of sleep; isolated for prolonged periods; subjected to mock drownings; and intimidated by dogs.

Despite the widespread and systemic nature of the torture and abuse, the United States has refused to authorize any independent investigation into the abuses. No high-level official involved in developing or implementing the policies that led to torture and abuse has been charged with any crime related to the abuses. The government continues to assert that the abuse was simply the actions of a few rogue soldiers.

Also in violation of the Convention, the U.S. continues to engage in unlawful renditions in which the CIA kidnaps individuals and transfers them to countries known for their routine use of torture, such as Egypt, Jordan, Saudi Arabia, and Syria. Other detainees have been “disappeared” to secret detention facilities overseas.

U.S. violations of the Convention Against Torture are not limited to actions by military personnel overseas in the “war on terror,” but in fact are far too ubiquitous at home. When Hurricane Katrina hit New Orleans in August 2005, over a thousand prisoners were abandoned after rising water flooded the prison and were left in their cells for days without food, water, or ventilation. Prisoners and detainees inside the United States are subjected to conditions and brutal practices that are chillingly similar to those experienced by detainees abroad—prolonged solitary confinement, extreme temperatures, intimidation by dogs, painful restraints and electro-stun devices. Indeed, these similarities are not surprising, as some of the officials and soldiers who committed abuse abroad previously worked in prisons inside the United States.

Serious limitations remain on the rights of redress and remedy for victims of torture and abuse committed by government officials inside and outside of the United States. The
rights of prisoners inside the United States to obtain redress are severely limited by the
Prison Litigation Reform Act. And the U.S. government continues to argue that victims
of abuse outside the United States have virtually no remedy for torture and abuse in
United States’ courts under domestic or international law.

The United States’ Second Periodic Report (“U.S. Report”) to the Committee Against
Torture states that “the U.S. remains committed to respecting the rule of law, including
the U.S. Constitution, federal statutes, and international treaty obligations, including the
Torture Convention.” As discussed fully in the following report, the actions and
omissions of the United States directly contradict these assurances.

A. Reservations and Understandings of the United States to the
Convention Against Torture

In May 2000, the Committee Against Torture urged the United States to withdraw its
reservations and understandings to the Convention Against Torture. Instead, the United
States specifically relied upon its reservations and understandings to limit the application
of the Convention in its response to the “global war on terrorism.” For example:

➢ Narrowing the definition of torture: An August 2002 Department of Justice
memorandum cited U.S. reservations to the Convention that narrowly define
torture, limiting physical pain to organ failure, death or impairment of bodily
function. The memorandum argued that the President, as commander-in-chief,
was entitled to authorize torture and cruel, inhuman or degrading treatment based
on necessity or self-defense. This memorandum was replaced in December
2004, but the revised memorandum does not define torture, nor does it disavow
the arguments in the August 2002 memorandum that the President has
commander-in-chief authority to authorize torture.

➢ Declaring the Convention non-self-executing to violate the prohibition on torture:
The government’s declaration that the Convention is not self-executing was
specifically relied on by the Department of Defense in an April 2003
memorandum on interrogation techniques in order to abdicate from the non-
derogable provision of Article 2, which prohibits acts of torture under any
circumstance.

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CAT/C/48/Add.4 (June 2005) (“U.S. Report”), Sec. I, para. 4 (all references to the Annex to the U.S.
Report herein are to the updated Annex dated October 2005).
2 Memorandum from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel to Alberto
Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation Under 18 U.S.C. §§ 23440-
3 Dep’t of Defense, Working Group Report on Detainee Interrogations in the Global War on Terrorism:
Assessment of Legal, Historical, Policy and Operational Considerations, Apr. 4, 2003 (hereinafter “Dep’t
of Defense, Working Group Report”), reprinted in THE TORTURE PAPERS; THE ROAD TO ABU GHRAIB, at
289 (Karen J. Greenberg and Joshua L. Dratel, ed., Cambridge Univ. Press, 2005).
Limiting the prohibition of cruel, inhuman or degrading treatment to the territory of the United States: In January 2005, then White House Counsel and Attorney General designate Alberto Gonzales referred to the U.S. reservation to Article 16 to limit the prohibition of cruel, inhuman or degrading treatment to actions taken within the territory of the United States.\(^4\)

The Detainee Treatment Act (“the DTA”), enacted in December 2005, attempted to close ambiguities in the extraterritorial application of the Convention by declaring that all individuals acting on behalf of the United States Government are categorically prohibited from engaging in or authorizing torture or cruel, inhuman or degrading treatment of detainees in U.S. custody regardless of the location of their detention, i.e., regardless of whether or not they are being held on U.S. territory.\(^5\) Yet it remains to be seen whether the U.S. government will implement the DTA in a way that brings it into compliance with the Convention.

For example, the definition of cruel, inhuman or degrading treatment in the DTA is not as broad as the Convention requires. Moreover, there will be limited opportunities to test the government’s understanding of this provision in court because the CIA continues to “disappear” detainees into secret detention facilities where they are held incommunicado. Finally, the President’s statement upon signing the DTA indicated that he would construe the ban on “cruel, inhuman and degrading treatment of detainees in a manner consistent with the constitutional authority of the President” and the President’s powers as commander-in-chief, suggesting that the President has unilateral power to authorize unlawful acts.

B. Deliberate Circumvention of Human Rights Law in the “Global War on Terrorism” (Articles 1, 2, 16)

The U.S. government, in the aftermath of September 11, chose to fight terrorism by picking and choosing what principles of human rights and humanitarian law to apply. The abuse of detainees in U.S. custody was facilitated by the government’s decision not to apply the Geneva Conventions, and to narrowly interpret or deliberately ignore prohibitions in the Convention Against Torture and in the International Covenant of Civil and Political Rights. In a series of legal memoranda, senior administration lawyers, led by then-White House Counsel and current Attorney General Alberto Gonzales, developed a framework to justify the administration’s circumvention of international law prohibitions of torture and abuse.


C. Legal Status of Persons Captured by United States’ Forces in the “Global War on Terrorism”

The United States asserts that all detainees captured in the “global war on terrorism” are “enemy combatants” and can be held pursuant to the President’s powers as commander-in-chief until the end of hostilities. Its position places all detainees in legal limbo in which they can be indefinitely detained without charge, denied access to counsel and family members, and provided with no meaningful access to a court. The U.S. continues to deny persons detained during hostilities in Afghanistan the status of prisoners of war (“POW”) under the Geneva Conventions. The forums created by the U.S. Department of Defense for Guantánamo detainees to contest their status as “enemy combatants” that fail to guarantee fundamental due process protections. All of these policies put the detainees at high risk of torture and abuse.

D. Torture and Abuse in the “Global War on Terrorism” (Articles 1, 16)

Evidence from a range of sources, including government investigations, as well as over 100,000 government documents produced to the ACLU through the Freedom of Information Act (“FOIA”) litigation, show a systemic pattern of torture and abuse of detainees in U.S. custody in Afghanistan, the U.S. Naval Base Station at Guantánamo Bay, Cuba, Iraq, and other locations outside the United States. 6 In many instances the harsh treatment was ordered as part of an approved list of interrogation methods to “soften up” detainees.

Reported methods of torture and abuse used against detainees include prolonged incommunicado detention; disappearances; beatings; death threats; painful stress positions; sexual humiliation; forced nudity; exposure to extreme heat and cold; denial of food and water; sensory deprivation such as hooding and blindfolding; sleep deprivation; water-boarding; use of dogs to inspire fear; and racial and religious insults. In addition, around one hundred detainees in U.S. custody in Afghanistan and Iraq have died. The government has acknowledged that 27 deaths in U.S. custody were homicide, some caused due to “strangulation,” “hypothermia,” “asphyxiation,” and “blunt force injuries.” These techniques constitute cruel, inhuman or degrading treatment and when used in combination or for prolonged periods of time may amount to torture.

6 In 2003, the ACLU, the Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense, and Veterans for Peace filed a FOIA request seeking documents from the Central Intelligence Agency, Department of Justice, the Department of State, the Department of Defense and the Federal Bureau of Investigation, concerning treatment of detainees in U.S. custody in Afghanistan, Guantánamo Bay, Cuba, and Iraq. The vast majority of documents were released only following protracted and ongoing litigation and court orders directing government agencies to produce documents. Stipulation and Order, American Civil Liberties Union Foundation v. Dep’t of Defense, No. 04-cv-4151 (S.D.N.Y. Aug. 17, 2004), available at http://www.aclu.org/torturefoia/legaldocuments/eeOrderforResponsivedocs.pdf. The CIA has yet to release any documents to the ACLU and this issue is currently before the courts. See generally http://www.aclu.org/torturefoia/legaldocuments/index.html for the Torture FOIA legal documents.
The well-documented systemic and widespread abuse against detainees was the direct result of policies promulgated by high-level civilian and military leaders and the failure of these leaders to uphold their legal duty to prevent and prohibit torture and other cruel, inhuman or degrading treatment by subordinates. Thousands of detainees remain in U.S. military custody or control in Iraq, Afghanistan, Guantánamo and other locations, and remain subject to unlawful policies and practices in violation of the Convention and other international human rights treaties.

E. Torture and Abuse in the United States (Articles 1, 16)

On the domestic front, the United States has failed to correct laws and practices regarding supermax prisons, juvenile detention, and the use electro-shock and restraint devices, as recommended by the Committee Against Torture in 2000. The ACLU is particularly concerned about the following issues:

- **Inhuman conditions of confinement, including inadequate medical and mental care:** Cruel and inhuman conditions of confinement continue to exist in various jails and prisons, including supermax prisons, where prisoners, many of whom are mentally ill, are confined in solitary confinement for up to twenty-four hours a day. Medical and mental health care in prisons throughout the U.S. remains inadequate and has at times resulted in the deaths of prisoners.

- **Sexual abuse in prisons:** Prisoner rape by other prisoners and sexual abuse by correctional officers continue to occur with impunity in U.S. prisons and jails.

- **Restraint devices and electro-shock weapons:** U.S. law enforcement officials and correctional authorities continue to use restraint chairs and electro-shock weapons in ways that amount to cruel, inhuman or degrading treatment. The deaths of 148 persons, from 1999 to September 2005, were attributed to Taser weapons.

- **Children in prisons:** Children under the age of eighteen continue to be housed with adults in some facilities. More than 2,500 juvenile offenders sentenced as adults for crimes committed under the age of eighteen are serving a life sentence without the possibility of parole.

- **Mistreatment of non-citizens:** In 2004, the Department of Homeland Security detained more than 200,000 non-citizens in jails and prisons for violating civil immigration laws. Reports of detainee mistreatment include unsanitary conditions of confinement, deaths due to inadequate medical treatment, and abuse by guards.

F. Inadequate Review of Interrogation Rules (Article 11)

The Detainee Treatment Act instructs that detainees held by the military must be treated in accordance with the U.S. Army Field Manual 34-52 on Intelligence Interrogation. A

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revised version of the manual, not yet made public, reportedly prohibits the use of dogs, stripping, sleep deprivation, and stress positions. These techniques were previously authorized by Secretary of Defense Donald Rumsfeld for use in Guantánamo, and then “migrated” to Afghanistan and Iraq. The manual only governs Department of Defense (DOD) personnel and not the CIA, although it would reportedly cover detainees in DOD custody who are interrogated by CIA officers.

G. **Unlawful Renditions (Articles 1, 3, 16)**

The U.S. has engaged in unlawful renditions in which individuals are kidnapped and transferred by the government to foreign intelligence services in countries that are known for their routine use of torture for interrogation purposes, such as Egypt, Jordan, Saudi Arabia, and Syria. The U.S. has also unlawfully rendered individuals to secret CIA detention centers overseas where they are held incommunicado. Over one hundred people have been transferred through unlawful rendition since September 11. The U.S. transfers persons to another country when the U.S. believes it is “more likely than not” that a person will not be tortured in that country and relies upon diplomatic assurances to assess concerns of torture. Given the record of torture and lack of legal protections in many receiving countries, these assurances are virtually meaningless. The U.S. standard of “more likely than not” is a higher standard for a person to prove than the “substantial grounds” for risk of torture in the receiving country that is required by the Convention.

H. **Failure to Conduct Prompt and Impartial Investigations (Article 12)**

The U.S. military has initiated and completed several internal investigations into allegations of abuse in Afghanistan, Iraq, and Guantánamo. The U.S. Report repeatedly cites these investigations in the wake of the Abu Ghraib scandal to showcase the government’s seriousness in responding to abuse allegations. The investigations were compromised by the fact that most of the investigations were conducted by the military itself. The U.S. has refused to authorize any independent investigation into abuses.

No high-level officials involved in developing or implementing policies on the treatment of detainees in the “global war on terrorism” have been charged with any criminal activity related to the abuses. The U.S. government continues to assert that the abuse was simply the actions of a few rogue soldiers. There has been no investigation into the government’s secret transfer of detainees and the Office of Inspector General’s examination of the role of the CIA has not yet been made public.

There have been few prosecutions for homicide compared to the number of deaths of Afghans and Iraqis in U.S. custody. In most of the official publicly-known actions taken in response to allegations of abuse, the punishment has been non-judicial or administrative. In cases where someone was convicted, the punishment generally was not commensurate with the graveness of the crime. For example, despite finding an army interrogator (the highest-ranking officer prosecuted to date) guilty of homicide, the
punishment was a reprimand and a $6,000 fine.\(^8\) In another instance, a soldier who admitted to killing an unarmed handcuffed Iraqi at point-blank received a three-year sentence.\(^9\) Such punishments send a message that torture and abuse committed by U.S. soldiers will not be severely punished.

Domestically, the United States has no independent, effective oversight bodies to monitor police departments, jails, prisons, and immigration detention centers. State laws unduly restrict access to prisoners by the media and non-governmental human rights organizations. In the absence of an independent body for monitoring prisons and jails, federal courts have become the reluctant overseers. Conditions of confinement in jails and prisons generally change only after protracted litigation and a court order. In addition, the ability of courts to protect prisoners and monitor prison conditions was weakened significantly by the Prison Litigation Reform Act ("PLRA"), which created obstacles for prisoners attempting to file cases, find lawyers, and obtain meaningful redress.\(^{10}\)

### I. Limitations on the Rights of Redress and Remedy (Articles 13, 14)

Serious limitations remain on the rights of redress and remedy for victims of torture and abuse committed by U.S. officials inside and outside of the United States. The rights of prisoners inside the United States to obtain redress are severely limited by the Prison Litigation Reform Act, which requires prisoners to exhaust protracted internal grievance procedures, and which fails to provide a remedy for mental or emotional injury without evidence of physical injury.

Victims of torture by U.S. officials outside the United States face even greater obstacles. The U.S. government continues to argue that victims have no remedy for torture and abuse in United States’ courts under domestic or international law. Most victims from Afghanistan and Iraq also have no remedy in their home countries or countries of residence. For example, Iraqi victims of torture cannot seek redress in Iraqi courts against U.S. personnel under a blanket immunity agreement that covers all U.S. personnel in Iraq.

### J. Admission of Coerced Testimony (Article 15)

Both the Combatant Status Review Tribunals, which review the status of detainees designated by the U.S. as “enemy combatants” and held in Guantánamo, and the military commissions, created to try non-U.S. nationals as “enemy combatants,” allow for the admission of coerced testimony. A new military commission instruction that would purportedly prevent the admission of evidence obtained under torture contains few safeguards to make the prohibition meaningful and does not exclude evidence exhorted

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under coercive interrogation techniques that fall short of torture but are nonetheless prohibited under the Convention Against Torture.

K. Failure to Make Torture a Distinct Crime (Articles 4, 5)

The U.S. government has not made torture a distinct federal crime, except for acts committed outside U.S. territory (18 U.S.C. § 2340A). Notably, despite evidence of torture committed by some U.S. forces, no U.S. official has been charged under this law. Following reports of torture and abuse, a few low-ranking soldiers have been court-martialed for offenses committed overseas under the Uniform Code of Military Justice (“UCMJ”). The UCMJ prohibits many acts such as assault, cruelty, and murder, but fails to prohibit “torture” as a distinct crime.

L. Failure to Adequately Educate and Train Government Officials (Article 10)

The U.S. government has failed to adequately educate and inform relevant personnel involved in the custody and interrogation of detainees about the absolute prohibition of torture, cruel, inhuman or degrading treatment. Rather, selective interpretations of treaty obligations were adopted by the U.S. to create vague and impermissible guidelines on detainee treatment. Although the President in 2002 said that detainees will be treated “humanely,” the White House failed to provide any guidance regarding the definition of inhuman treatment.

The government’s own investigations into abuse in Iraq and Afghanistan and documents produced through the ACLU Freedom of Information Act litigation show gross deficiencies in training of U.S. personnel involved with detainees. Government investigations concluded that soldiers and private contractors were not given adequate guidelines for the humane treatment of detainees, nor about acts prohibited by the Geneva Conventions. In one case, soldiers reported that prior to deployment in Iraq they did not receive specific training on detainee operations in the field and were thus relying on “techniques they literally remembered from the movies.” In some instances, soldiers were told that the “gloves need to come off” in their treatment of detainees and that soldiers should “beat the fuck out of detainees.”

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RECOMMENDATIONS TO THE UNITED STATES

Withdraw reservations and understandings and make necessary declarations

- Withdraw reservation to Article 16 and understanding to Article 1, which have been relied upon to limit the definition of torture and other cruel, inhuman or degrading treatment or punishment, and to limit extraterritorial application of the Convention Against Torture.

- Withdraw legal opinions that permit torture and other cruel, inhuman or degrading treatment or punishment, and replace them with an interpretation that is consistent with the Convention Against Torture.

- Make declarations according to Article 22 of the Convention Against Torture to recognize the competence of the Committee Against Torture to consider individual complaints.

Amend and enact laws to criminalize torture

- Amend 18 U.S.C. § 2340-2340A to define torture as broadly as the definition provided in Article 1 of the Convention Against Torture.

- Enact a new federal law prohibiting torture and cruel, inhuman or degrading treatment as defined by the Convention Against Torture, and make it applicable in the United States.

- Amend the Uniform Code of Military Justice specifically to criminalize torture as defined by the Convention Against Torture.

Ensure access to all prisoners and detainees in U.S. custody

- Grant full access, including private visitation rights, by United Nations’ independent human rights experts, the International Committee of the Red Cross (ICRC), and other independent human rights monitors to all prisoners and detainees in the custody of the United States.

- Grant all prisoners and detainees prompt access to legal counsel, independent doctors, and relatives.

- Grant all prisoners and detainees access to courts to challenge the legality of their detention. Presume detainees captured on the battlefield during international conflicts to be prisoners of war unless and until a competent tribunal determines otherwise under the Geneva Conventions.

- End the use of military commissions.
Grant all Guantánamo detainees a speedy and fair trial before an impartial body, in accordance with internationally recognized due process guarantees, or release them.

Ensure compliance with international juvenile detention and trial standards for child detainees.

End secret detentions

- Cease all secret detentions, including in all detention facilities under the effective control of the United States.
- Hold all detainees only in officially recognized detention facilities, disclose the location of all detention facilities, and articulate the legal basis under which each detainee is being held.
- Allow immediate and unfettered access to all secret detention facilities by the ICRC and other independent human rights monitors.
- Clarify the whereabouts of all persons detained after September 11, 2001 who are in the custody of the United States.

Interrogations must comply with human rights standards

- Ensure that all interrogation rules, instructions, methods and practices prohibited by the Convention Against Torture are not utilized by United States’ officials in any circumstances.

End practice of unlawful renditions

- Immediately end practice of rendering individuals to secret detention facilities or to countries where torture is a serious human rights problem.
- Ensure effective judicial review of all transfers of persons between the United States and other countries, and prohibit transfers unless there are “substantial grounds” to believe that a detainee will not be tortured if transferred.
- End reliance on diplomatic assurances to facilitate the transfer of detainees to a country where there are substantial grounds for believing that such persons might be subjected to torture or cruel, inhuman or degrading treatment or punishment.
Bring conditions of confinement into conformance with the Convention Against Torture

- Ensure that all prisoners and detainees are confined in conditions consistent with their human dignity. No prisoner or detainee should be confined in overcrowded, dangerous, filthy, or intolerably hot or cold cells.

- Ensure that all conditions of confinement at the federal, state, and local level conform to the minimum requirements of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners and international juvenile detention standards.

- Ensure that all prisoners and detainees have prompt access to medical care in prisons and detention facilities, including psychiatric and psychological care.

Prohibit long-term solitary confinement and sensory deprivation of persons in custody

- End the practice of long-term solitary confinement and sensory deprivation for all persons in confinement.

- Initiate a national review of the excessively harsh regime and conditions in supermax facilities and the criteria for transferring persons to such facilities.

Monitor and investigate the use of dangerous and cruel restraint procedures

- Ban the use of Tasers by law enforcement officials and correctional officers at the federal, state, and local level, pending outcome of an independent inquiry into their safety and use.

- Impose nationwide and enforceable standards, with adequate medical supervision, on the use of restraint chairs and pepper spray by law enforcement and correctional officials at the federal, state, and local level.

Investigate and prosecute prison rape and sexual assault

- Investigate and prosecute all allegations of prison rape and sexual assault.

- Strictly enforce federal and state criminal laws prohibiting rape and sexual assault in prisons and other detention facilities.

Abolish life without parole for juveniles

- Abolish the sentence of life without parole for children convicted of federal crimes. Enable child offenders serving life without parole to have their cases reviewed by a court for reassessment with the possibility for parole.
Amend or repeal the Prison Litigation Reform Act

➢ Amend or repeal the excessive requirement under the Prison Litigation Reform Act (PLRA) that prisoners exhaust all internal prison grievance before bringing a federal lawsuit.

➢ Repeal the PLRA’s requirement that prisoners must show physical injury to prove mental and emotional injury.

➢ Develop means of central collection of statistical data to ensure compliance with the Convention Against Torture in U.S. prisons, jails and other detention facilities.

Prohibit the use of coerced testimony

➢ Prohibit the use of any evidence coerced as a result of torture or cruel, inhuman or degrading treatment in any civilian or military proceeding.

Conduct independent and prompt investigations of all allegations of torture and abuse of persons in the custody of the United States

➢ Thoroughly and promptly investigate all allegations of torture and abuse in United States’ prisons, jails and other detention facilities, including all facilities under the effective control of the United States.

➢ Establish an independent commission to investigate the policies and practices that have led to the widespread and systemic torture and abuse of detainees in United States’ custody in Afghanistan, Guantánamo, Iraq, and in secret detention facilities.

➢ Establish independent oversight bodies to investigate complaints of torture and abuse by law enforcement and correctional officers and to monitor conditions in all prisons, jails, and detention centers in the United States.

Hold accountable all perpetrators of torture and abuse

➢ Hold accountable all individuals, including government officials, members of the armed forces, intelligence personnel, correctional officers, police, prison guards, medical personnel, and private government contractors and interpreters who have authorized, condoned or committed torture or cruel, inhuman or degrading treatment or punishment.

➢ Prosecute crimes of torture and abuse as aggressively as other criminal actions involving bodily or mental harm.
Provide human rights training to all government officials

- Provide information and training regarding the provisions of the Convention Against Torture to all government officials and private government contractors involved in the custody of any person by the United States, including members of the armed forces, intelligence personnel, correctional officers, police, prison guards, medical personnel, private contractors and interpreters, and prosecutors and judges.

- Commit to a nationwide public education program regarding the provisions of the Convention Against Torture.
THE FAILURE OF THE UNITED STATES TO COMPLY WITH THE CONVENTION AGAINST TORTURE

A. Reservations and Understandings of the United States to the Convention Against Torture

In May 2000, the Committee against Torture urged the United States to withdraw its reservations, interpretations and understandings to the Convention Against Torture. In its 2005 submission to the Committee, the United States stated that it would not withdraw its reservations or any other conditions because “there have been no developments in the interim that have caused the United States to revise its view of the continuing validity and necessity of the conditions set forth in its instrument of ratification.” Contrary to this position, U.S. understandings and reservations to Articles 1 and 16 at the time of ratification were invoked to justify violations of the Convention in the “global war on terrorism.”

At the time of ratification, the United States attached an understanding to what constitutes torture—“an act must be specifically intended to inflict severe physical or mental pain or suffering.” The Convention, however, does not require an act of torture to be specifically intended. In 2002, the Office of Legal Counsel of the U.S. Department of Justice, in advising on interrogation tactics in the “global war on terrorism,” emphasized the narrowness of the U.S. definition of torture. A letter from the Department of Justice to the White House, dated August 1, 2002, stated that the U.S. “understanding” on torture “accomplished two things”:

1. It made clear that the intent requirement for torture was specific intent. By its terms, the Torture Convention might be read to require only general intent. . . .
2. It added form and substance to the otherwise amorphous concept of mental pain or suffering. In so doing, this understanding ensured that mental torture would rise to a severity comparable to that required in the context of physical torture.

The U.S. also included a reservation to Article 16, which prohibits cruel, inhuman or degrading treatment or punishment “in any territory under its jurisdiction.” The United States’ understanding provides that the U.S. “considers itself bound to prevent ‘cruel, inhuman or degrading treatment or punishment’” only to the extent such treatment or

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15 U.S. Report, supra note 1, ¶ 156.
17 Letter from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel to Alberto Gonzales, Counsel to the President (Aug. 1, 2002), reprinted in THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB, supra note 3, at 220.
punishment is prohibited “by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”

The August 2002 Department of Justice memorandum explains that the reservation “confirm[s] our view that the treaty . . . prohibits only the worst forms of cruel, inhuman or degrading treatment or punishment.”

A military lawyer in October 2002, noting the United States’ reservation to Article 16, recommended interrogation techniques, which were approved by Defense Secretary Donald Rumsfeld, such as stress positions, isolation, forced grooming, exposure to cold water or weather, and use of wet towel and dripping water to induce perception of suffocation.

In that memorandum the military lawyer noted, “The United States is only prohibited from committing those acts that would otherwise be prohibited under the United States Constitutional Amendment against cruel and unusual punishment.”

**Prohibitions Under the Constitution of the United States**

The Fifth Amendment’s due process clause, applicable to interrogation procedures, prohibit actions taken under color of law (acting with government authority) that are “so brutal and offensive to human dignity” that they “shock the conscience.” The Eighth Amendment prohibition on cruel and unusual punishment is applicable only to convicted persons and to pretrial detainees.

The U.S. Supreme Court has held that the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” Its prohibitions include disproportionate punishments, non-physical forms of cruel and unusual punishment, and wanton or unnecessary infliction of pain.

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18 U.S. Reservations, supra note 16. Finland, the Netherlands, and Sweden formally objected to the U.S. reservation to Article 16. Id.

19 Bybee, August 2002 Memorandum, supra note 2.


21 Id. at 230.

22 Rochin v. California, 342 U.S. 165, 172-173 (1952) (finding the illegal break-in of the petitioner’s home by government agents, the struggle to force open petitioner’s mouth, and the forcible extraction of his stomach’s contents to retrieve pills “shock[ed] the conscience” and violated Rochin’s due process rights).

23 See, e.g., City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244 (1983); County of Sacramento v. Lewis, 523 U.S. 833, 849-50 (1998) (affirming that due process rights of pretrial detainees are “at least as great as the Eighth Amendment protections available to a convicted prisoner”).


25 The following cases, although not exhaustive, illustrate what conditions U.S. courts have found to constitute torture or cruel and unusual treatment. See, e.g., Hope v. Pelzer, 536 U.S. 730, 738 (2002) (finding “gratuitous infliction of ‘wanton and unnecessary’” pain when officers made inmate take his shirt off, attached him to a hitching post in the sun for seven hours, given no bathroom break, given water only once or twice and at least one guard taunted Hope for being thirsty); Estelle v. Gamble, 429 U.S. 97 (1976) (failure to provide essential medical treatment constitutes cruel and unusual punishment); Simpson v. Socialist People’s Libyan Arab Jamahiriya, 326 F.3d 230, 234 (D.C. Cir. 2003) (to assess whether an act is cruel or degrading treatment a court must look at the victims’ suffering which depends upon the totality of circumstances. “[T]orture is a label ‘usually reserved for extreme, deliberate and unusually cruel practices, for example . . . tying up or hanging in positions that cause extreme pain’”); Abebe-Jiri v. Negewo, 72 F.3d 844, 845 (11th Cir. 1996) (finding that the victim suffered severe pain constituting torture when she was
High-level United States government officials have sought to actively undermine the extraterritorial application of prohibitions against torture and abuse. In January 2005, then Attorney General-designate Alberto Gonzales and White House counsel, in a written response during his confirmation hearings asserted that the Convention’s prohibition on cruel, inhuman or degrading treatment does not apply to U.S. personnel in the treatment of non-citizens abroad. He wrote:

[T]he only legal prohibition on cruel, inhuman or degrading treatment comes from the international legal obligation created by the CAT itself. The Senate’s reservation, however, limited Article 16 to requiring the United States to prevent conduct already prohibited by the Fifth, Eighth, and Fourteenth Amendments. Those amendments, moreover, are themselves limited in application. The Fourteenth Amendment [right to equality before the law] does not apply to the federal government, but rather to the States. The Eighth Amendment [prohibition on cruel and unusual punishments] has long been held by the Supreme Court to apply solely to punishment imposed in the criminal justice system. Finally, the Supreme Court has squarely held that the Fifth Amendment [right to due process] does not provide rights for aliens unconnected to the United States who are overseas. Thus, as a direct result of the reservation the Senate attached to the CAT, the Department of Justice has concluded that under Article 16 there is no legal obligation under the CAT on cruel, inhuman or degrading treatment with respect to aliens overseas.

In disregard for the Convention’s absolute prohibition on torture even in “state of war or public emergency,” the Department of Defense specifically relied on the United States’ declaration at the time of ratification that the treaty is not self-executing to abdicate from the non-derogable provision of Article 2 of the Convention in determining interrogation techniques for detainees held in Guantánamo. In that memorandum, the Department of Defense states:

Article 2 also provides that acts of torture cannot be justified on the grounds of exigent circumstances, such as state of war or public

hung from a pole, naked and with her arms and legs bound, and was severely beaten); Doe v. Qi, 349 F.Supp.2d 1258, 1318 (N.D. Cal. 2004) (finding that a victim who had been beaten and “hung from pipes for three days, handcuffed to other prisoners and not allowed to sleep” had been tortured); Mehinovic v. Vuckovic, 198 F.Supp.2d 1322, 1346 (N.D. Ga. 2002) (finding torture where a victim who was beaten, kicked in the face and torso, and subjected to a “long and nightmarish beating that included being hit while hanging upside down from a rope until he almost lost consciousness;” finding that the “threat of imminent death; or the threat that another person will imminently be subjected to death, [or] severe physical pain and suffering” can constitute mental torture).

27 Responses from Alberto R. Gonzales (then Nominee for Attorney General) to the written questions of Senator Dianne Feinstein, supra note 4.
emergency, or on orders from superior officer or public authority. The United States did not have an Understanding or Reservation relating to this prohibition (however, the U.S. issued a Declaration stating that Article 2 is not self-executing). 28

Although the U.S. Report reaffirms U.S. policy against torture, the report does not disavow the statements made by Attorney General Gonzales during the Senate confirmation process that the U.S. is free to subject non-citizens to cruel, inhuman or degrading treatment when it acts outside of U.S. territory. In fact, recent statements by the Department of Justice reaffirmed the views of Attorney General Gonzales. On December 7, 2005, U.S. Secretary of State Dr. Condoleezza Rice stated that, “[a]s a matter of U.S. policy, the United States obligations under the CAT, which prohibits, of course, cruel and inhumane and degrading treatment, those obligations extend to U.S. personnel wherever they are, whether they are in the United States or outside of the United States.” 29 However, on that same day, the U.S. Department of Justice contradicted Rice’s statement by reaffirming Attorney General Gonzales’ January 2005 position limiting the extraterritorial prohibition of cruel, inhuman or degrading treatment. 30

Efforts to close the loopholes between law and policy on the prohibition of torture and cruel, inhuman or degrading treatment were the subject of considerable debate between Congress and the White House in 2005. In December 2005, Congress approved the Detainee Treatment Act, which prohibits cruel, inhuman or degrading treatment or punishment of persons in the custody of the U.S. government without any regard to geographical limitations. 31 Before it passed, however, Vice President Dick Cheney and CIA Director Porter Goss proposed a waiver which stated that the prohibition of cruel, inhuman or degrading treatment “shall not apply with respect to clandestine counterterrorism operations conducted abroad, with respect to terrorists who are not citizens of the United States, that are carried out by an element of the United States government other than the Department of Defense. . . if the president determines that such operations are vital to the protection of the United States or its citizens from terrorist attack.” 32 President George W. Bush also threatened to veto the bill.

The Detainee Treatment Act states that “[n]o individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman or degrading treatment or punishment.” 33 The legislation specifically states that there shall be no “geographical limitation on the applicability of the prohibition against cruel, inhuman or degrading treatment or punishment.” 34 At the time of signing the law, President Bush, however, wrote that that

31 Detainee Treatment Act, supra note 5.
33 Detainee Treatment Act, supra note 5.
34 Id.
he would construe the ban “in a manner consistent with the constitutional authority of the
president” and his powers as commander-in-chief, implying that he may authorize acts
prohibited by the law.35

B. Deliberate Circumvention of Human Rights Law in the “Global War
on Terrorism” (Articles 1, 2, 16)

The U.S. government, in the aftermath of the 9/11 attacks, decided to fight terrorism by
picking and choosing what principles of humanitarian and human rights law to apply.
“There was a before-9/11 and an after-9/11. After 9/11 the gloves came off,” testified
Cofer Black, former director of the CIA’s counterterrorist unit, in prepared testimony to
Congress in 2002.36 The declassification of a series of legal memoranda by high-ranking
legal officials in the executive branch made it clear that the gloves did come off in the
government’s response to terrorism.

The torture and abuse of detainees described below was carried out pursuant to policies
and practices devised at the highest levels of the U.S. government.37 The abuse of
detainees in U.S. custody was facilitated by the government’s decision not to apply the
Geneva Conventions. The government further ignored the fact that, irrespective of the
Geneva Conventions, all detainees are protected by analogous provisions in the
Convention Against Torture, the International Covenant of Civil and Political Rights, and
by customary international law.

Torture and cruel, inhuman or degrading treatment or punishment are prohibited at all
times under human rights law, even in war or when fighting terrorism. Article 2(2) of the
Convention Against Torture specifically states that “No exceptional circumstances
whatsoever, whether a state of war or a threat of war, internal political instability or any
other public emergency, may be invoked as justification of torture.” The International
Covenant of Civil and Political Rights similarly prohibits a state party to derogate from
its obligations not to engage in acts of torture and other cruel, inhuman or degrading
treatment or punishment even “in times of public emergency which threatens the life of
the nation.”38 The prohibition of cruel, inhuman or degrading treatment at all times is

35 Edward Alden, Bush statement appears to contradict anti-torture pledge, FINANCIAL TIMES, Jan. 6,
2006, at 6.
36 Pre 9/11 Intelligence Failures: Hearing before the U.S. House and Senate Intelligence Committees,107th Congress (2002) (statement of Cofer Black, former Director of the CIA’s Counterterrorist Center).
37 A Guide to the Memos on Torture, NY TIMES, www.nytimes.com/ref/international/24MEMO-
GUIDE.html; see also Annex B.
38 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), Art. 4, 21 UN GAOR, 21st
that the prohibition on torture and cruel, inhuman or degrading treatment is a peremptory norm of
international law, non-derogable and binding on all states. U.N. Human Rights Committee, General
Comment 29 (States of Emergency, Article 4) in Compilation of General Comments and General
Recommendations Adopted By Human Rights Treaty Bodies, 13, U.N. Doc. CCPR/C/21/Rev.1/Add.11
add11.htm; U.N. Human Rights Committee, General Comment 20 (Article 7), available at
http://www.unhchr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53e1256d500056e56f/$FILE/G0441302.pdf.
applicable to state agents under Article 16(2) of the Convention Against Torture which states that the provisions “are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment”—such as the ICCPR. Yet the United States deliberately chose to bypass these prohibitions.

After September 11, senior administration lawyers, led by then-White House Counsel and current Attorney General Alberto Gonzales, developed the framework for the administration to circumvent international law restraints on detention and interrogation in a series of legal memoranda.

- **January 22, 2002:** A Department of Justice memorandum concluded that “customary international law does not bind the President or the U.S. Armed Forces in their decisions concerning the detention and conditions of al-Qaeda and Taliban prisoners.”

- **January 25, 2002:** Then White House counsel Alberto Gonzales, in a legal memorandum, argued that the Geneva Conventions would restrict interrogation methods used by the U.S. in this “new kind of war.” Non-applicability would preserve U.S. “flexibility” in the war against terrorism, which “in my judgment renders obsolete Geneva’s strict limitations on questioning of enemy prisoners.” Gonzales also warned that U.S. officials involved in harsh interrogation techniques could potentially be prosecuted for war crimes under U.S. law, referring to the federal War Crimes Act, a 1996 law that carries the death penalty, if the Conventions were applied.

- **February 7, 2002:** President George W. Bush announced that while the U.S. government would apply the “principles of the Third Geneva Convention” to captured members of the Taliban, it would not consider any of them to be prisoners of war because, in the U.S. view, they did not meet the requirements of an armed force. With regard to captured members of al-Qaeda, he stated that the U.S. government considered the Geneva Conventions inapplicable but would nonetheless treat the detainees “humanely . . . and to the extent appropriate and consistent with military necessity.”

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39 Memorandum from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel to Alberto Gonzales, Counsel to the President and William J. Haynes II, General Counsel, Dep’t of Defense, Re: Application of treaties and laws to al Qaeda and Taliban detainees at 37 (January 22, 2002), available at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.22.pdf.


41 Id. Gonzales said that “it was difficult to predict with confidence” how U.S. prosecutors might apply the Geneva Conventions’ strictures against “outrages against personal dignity” and “inhuman treatment” in the future, and argued that declaring that Taliban and al-Qaeda fighters did not have Geneva Convention protections “substantially reduces the threat of domestic criminal prosecution.” Id.

U.S. treaty obligations under the Convention Against Torture and the ICCPR, which prohibit all forms of torture and cruel, inhuman or degrading treatment or punishment at all times. In 2005, former deputy White House counsel Timothy Flanigan revealed in his testimony to the U.S. Senate that, in the administration’s view, “inhumane treatment” is not “susceptible to a succinct definition.” In fact, the White House provided no guidance on the meaning of inhumane treatment, he explained.43

➢ August 1, 2002: Jay S. Bybee, then assistant attorney general and now a federal judge, argued that torturing al-Qaeda detainees in captivity abroad “may be justified,” and that laws against torture may be unconstitutional if they “encroached upon the President’s constitutional power to conduct a military campaign” as commander-in-chief.44 The memorandum argued that the doctrines of “necessity or self-defense may justify interrogation methods that might violate” criminal laws on the part of officials who tortured al-Qaeda detainees.45 The memorandum asserted that “physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”46 The memorandum also suggested that “mental torture” only included acts that resulted in “significant psychological harm of significant duration, e.g., lasting for months or even years.”47

➢ October 2002: Guantánamo authorities, in a series of four memoranda, requested approval from U.S. Secretary of Defense Donald Rumsfeld to employ harsher interrogation techniques on prisoners.48

➢ November 27, 2002: William J. Haynes, II, General Counsel, Department of Defense recommended that Secretary Rumsfeld approve sixteen of the requested techniques for use in interrogations at Guantánamo.49

44 Bybee, August 2002 Memorandum, supra note 2 at 31.
45 Id at 2. The memo also took an extremely narrow view of which acts might constitute torture. It referred to seven practices that U.S. courts have ruled to constitute torture: severe beatings with truncheons and clubs, threats of imminent death, burning with cigarettes, electric shocks to genitalia, rape or sexual assault, and forcing a prisoner to watch the torture of another person. It then advised that, “interrogation techniques would have to be similar to these in their extreme nature and in the type of harm caused to violate law.” Id. at 24
46 Id at 1.
47 Id.
December 2, 2002: Secretary Rumsfeld approved the recommended list, which included such techniques as the use of “stress positions,” 20-hour interrogations, removal of clothing, playing upon a detainee’s phobias to induce stress (such as through the use of dogs), deception to make the detainee believe the interrogator was from a country with a reputation of torture, use of falsified documents and reports, isolation for up to 30 days, and sensory deprivation. These techniques were contrary to the Army Field Manual FM 34-52 and “migrated” to Iraq and Afghanistan where they were regularly applied to detainees.

January 15, 2003: Senior members of the U.S. military, including the General Counsel of the Department of Navy, were critical of the techniques approved by Secretary Rumsfeld on December 2, 2002, leading Secretary Rumsfeld to rescind his blanket authorization. However, in an order to the commander of the U.S. Southern Command, Secretary Rumsfeld stated that he could personally authorize the continued use of these rescinded techniques.

January 24, 2003: The Commander of Task Force-180 (“CJTF-180”) of Afghanistan forwarded to the Pentagon Working Group a list of interrogation techniques used in Afghanistan. One suggested technique was the use of forced nudity. The memorandum “highlighted that deprivation of clothing had not historically been included in battlefield interrogations. However, it went on to recommend clothing removal as an effective technique that could potentially raise objections as being degrading or inhumane, but for which no specific written legal prohibition existed.”

February 2003: The CJTF-180 memorandum was “included in a Special Operations Forces (SOF) Standard Operating Procedures document published in February 2003,” and used in Afghanistan. In Iraq, interrogation guidelines were initially drafted that were “a near copy of the Standard Operating Procedure created by SOF.”


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50 Id.

51 Memorandum from Donald Rumsfeld, Sec’y of Defense to Commander USSOUTHCOM, Re: Counter-Resistance Techniques (Jan. 15, 2003), available at [www.washingtonpost.com/wp-srv/nation/documents/011503rumsfeld.pdf](http://www.washingtonpost.com/wp-srv/nation/documents/011503rumsfeld.pdf). His order stated: “Should you determine that particular techniques in either of these categories are warranted in an individual case, you should forward that request to me. Such a request should include a thorough justification for the employment of those techniques and a detailed plan for the use of such techniques.” Id.


concerning the interrogation of prisoners. The report asserted the need to interrogate prisoners “in a manner beyond that which may be applied to a prisoner of war who is subject to the Geneva Conventions.” 54 The working group’s report made clear that, in reviewing interrogation techniques, they relied heavily on the logic of the President’s February 7, 2002 memorandum regarding the applicability of the Geneva Conventions to al-Qaeda and Taliban prisoners. Specifically, the report states that U.S. law prohibiting torture “must be construed as inapplicable to interrogations undertaken pursuant to his [the President’s] Commander-in-Chief authority.” 55


- Techniques included hooding, mild physical contact, dietary and environmental manipulation, sleep adjustment, false flag (leading detainees to believe that interrogator is from another country), isolation, threats of transfer to a third country where the detainee knows there is risk of torture or death. 56 All techniques, except hooding, mild physical contact, and threats to third country transfer, were approved by Secretary Rumsfeld. 57

- Nine techniques were recommended “for use with unlawful combatants outside the United States.” 58 Those techniques included isolation, use of prolonged interrogations, forced grooming, prolonged standing, sleep deprivation (not to exceed four days in succession), physical training, face or stomach slap, removal of clothing, and increasing anxiety by use of aversion (e.g. presence of dogs). 59 Secretary Rumsfeld approved the use isolation and indicated that additional techniques could be approved on a case-by-case basis. 60

54 Dep’t of Defense, Working Group Report, supra note 3, at 287.
55 Id at 303. “In response to intensive questioning before the U.S. Senate Armed Services Committee as to whether the 2002 DOJ memo or subsequently authorized interrogation practices had contributed to individual soldiers committing abuses, [Vice Admiral Church, former Navy Inspector General] responded that ‘clearly there was no policy, written or otherwise, at any level, that directed or condoned torture or abuse; there was no link between the authorized interrogation techniques and the abuses that, in fact, occurred.’” U.S. Report, Annex, Part Two, § III(B)(1).
56 Dep’t of Defense, Working Group Report, supra note 3, at 358-359.
59 Rumsfeld, April 2003 Memorandum, supra note 57, at 1.
60 Army Field Manual 34-52 lists “abnormal sleep deprivation” as an example of mental torture, and “forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of times” as an example of physical torture. Army Field Manual 34-52, supra note 7.
August 2003: In April 2005, the ACLU released government documents obtained through FOIA litigation showing that a Military Intelligence official in Iraq asked interrogators for a “wish list” of interrogation techniques they felt would be effective, adding, “The gloves are coming off gentleman [sic] regarding detainees, [redacted] has made it clear the we want these individuals broken.” Interrogators responding to that request sought approval for the use of “low voltage electrocution,” “phone book strikes,” “muscle fatigue inducement,” “sleep deprivation,” “closed-fist strikes” and other “coercive” techniques that “cause no permanent harm to the subject …[but] often call for medical personnel to be on call for unforeseen complications.”

September 14, 2003: Lieutenant General Richardo Sanchez, the senior commander in Iraq, authorized a set of interrogation techniques based on techniques authorized by Secretary Rumsfeld in April of 2003, and suggestions by Captain Carolyn Wood, head of the 519th Military Intelligence Battalion. The memorandum specifically allows for interrogation techniques involving the use of military dogs, sensory deprivation, stress positions, yelling, loud music, and light control.

October 12, 2003: Lt. Gen. Sanchez issued a revised set of interrogation techniques for use in Iraq. The techniques included authorizing interrogators to “control” the lighting, heating, food, shelter, and clothing of detainee, and requiring a muzzle when using dogs in interrogations.

ACLU review of more than 100,000 pages of unclassified but redacted government documents released through FOIA litigation shows that harsh treatment of detainees was ordered as part of an approved list of interrogation methods to “soften up” detainees in U.S. custody in Afghanistan, Guantánamo, and Iraq.

According to the Schlesinger Commission, which was tasked to examine Department of Defense detention operations, coercive interrogation methods approved by Defense Secretary Rumsfeld for use on prisoners at Guantánamo—including the use of guard dogs to induce fear in prisoners, stress techniques such as forced standing and shackling in painful positions, and removal of clothing for long periods—“migrated to Afghanistan

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63 Fay-Jones Report, supra note 52, at 24-25.
and Iraq, where they were neither limited nor safeguarded,” and contributed to the widespread and systematic torture and abuse at U.S. detention centers there.\footnote{Schlesinger Report, \textit{supra} note 53, at 14.}

\textbf{C. Legal Status of Persons Captured by United States’ Forces in the “Global War on Terrorism”}


\textbf{1. Executive Rather than Judicial Determinations on Detention}

The United States asserts that all detainees captured in the U.S. government’s “global war on terrorism” are “enemy combatants” and can be held pursuant to the President’s powers as commander-in-chief and under the laws of war until the end of hostilities. The U.S. argues that detaining enemy combatants prevents them from returning to the battlefield, thereby deterring further attacks, and allows the U.S. to gather intelligence through interrogation which also acts to prevent future attacks.\footnote{U.S. Report, Annex, Part One, § II(A).} The government in effect argues that the need to fight a “global war on terrorism”—with no end in sight—justifies the indefinite detention of persons without charge, without access to counsel and family members, and with no judicial oversight.

The U.S. has denied persons detained during hostilities in Afghanistan the status of prisoners of war (“POW”) under international humanitarian law and has denied other meaningful protections under international human rights law.\footnote{ICCPR, \textit{supra} note 38, Arts. 9, 14 (requires that lawfulness of detention must be reviewed by court and providing the right to fair trial).} The U.S. Report states that “there is no doubt under international law as to the status of al-Qaida, the Taliban,
their affiliates and supporters” because the President of the United States had determined that such persons are not POWs under the Geneva Conventions.\(^1\) U.S. policy violates Article 5 of the Third Geneva Convention, ratified by the U.S., which requires each POW determination to be made on an individual basis by a competent tribunal and not by the executive branch of government.\(^2\) Notably, this particular provision of the Third Geneva Convention has been implemented by U.S. Army Regulation 190-8, which further provides that detainees are entitled to POW protection whenever their status is not clear.\(^3\) Detainees held in Guantánamo have challenged their detention and some have asserted POW status thus warranting an Article 5 tribunal under the army’s own regulations.\(^4\)

Irrespective of whether international humanitarian law applies, the parallel obligations under human rights law are applicable at all times. As noted by the U.N. Human Rights Committee, the International Covenant on Civil and Political Rights “applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specifically relevant for the purposes of the interpretation of Covenant rights, both spheres of laws are complementary, not mutually exclusive.”\(^5\)

### 2. Status of Persons Detained In Guantánamo Bay and Afghanistan

#### Detainees in Afghanistan

The U.S. military exercises control over detainees in U.S. military custody in Afghanistan under an agreement with the Afghan government.\(^6\) The U.S. Report notes that the status

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\(^1\) U.S. Report, supra note 1, Annex, Part One, § II (B); see also Ari Fleischer, *White House Press Secretary announcement of President Bush’s determination re legal status of Taliban and Al Qaeda detainees* (Feb. 7, 2002) (declaring that the Taliban and al-Qaeda are not POWs), available at http://www.state.gov/s/l/38727.htm.

\(^2\) Geneva Convention Relative to the Treatment of Prisoners of War, Art. 5, Aug. 12, 1949, 75 U.N.T.S. 135 (“should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hand of the enemy . . . such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal”).

\(^3\) U.S. DEPT. OF ARMY REGULATION 190-8, ENEMY PRISONERS OF WAR, RETAINED PERSONNEL, CIVILIAN INTERNEES AND OTHER DETAINEES § 1-6(a) (Oct. 1, 1997), available at http://usmilitary.about.com/gi/dynamic/offsite.htm?site=http://www.usapa.army.mil/pdffiles/r190%5F8.pdf. The Army Field Manual 34-52 states: “Captured insurgents and other detained personnel whose status is not clear, such as captured terrorists, are entitled to POW protection until their precise status has been determined by competent authority.” Army Field Manual 34-52, supra note 3.


of persons detained is reviewed within 90 days of being taken into custody. At that time an initial determination is made as to whether they fall under the category of “enemy combatant” and their status is then reviewed annually. The U.S. government continues to disregard its obligations under international humanitarian and human rights law by detaining individuals in Afghanistan indefinitely with no right to contest their detention before an independent tribunal. These policies put the detainees at high risk of torture and abuse.

**Detainees at Guantánamo Bay**

For more than three years the U.S. government has violated its treaty obligations under international humanitarian and human rights law by refusing to allow more than 700 detainees held in Guantánamo the right to challenge the legality of their detention. Only after the U.S. Supreme Court’s decisions in June 2004 in *Rasul v. Bush* and *Hamdi v. Rumsfeld* was the government forced to provide a review process for the detainees. In *Rasul*, the Supreme Court held that U.S. courts have jurisdiction to hear cases by Guantánamo detainees. In *Hamdi*, a case involving a U.S. citizen held as an “enemy combatant,” the court held that persons detained by the U.S. must be afforded a meaningful opportunity to contest their detention before a neutral decision maker.

As of April 2005, roughly 520 detainees remained in Guantánamo. From January 2002 until April 2005, 232 Guantánamo detainees were released or transferred to the custody of their country of origin. These transfers did not transpire as a result of habeas proceedings, but took place through secret negotiations between the U.S. and the governments of the detainees’ nationality. The U.S. government asserts that some of the released detainees have returned to the battlefield and engaged in attacks on U.S. forces in Afghanistan. Secrecy and rejection of judicial or other independent scrutiny has marked the U.S. government’s detention policies and practices, making it impossible to verify such claims. The U.S. Report also fails to acknowledge that most of the released detainees were never charged with a crime.

In 2004, the U.S. Department of Defense established the Combatant Status Review Tribunals (“CSRTs”) and Administrative Review Tribunals (“ARBs”) as a forum for Guantánamo detainees to contest their status as “enemy combatants.” The CSRTs and ARBs violate U.S. obligations under the ICCPR and fail to guarantee fundamental due process protections. The constitutionality of these commissions is currently on appeal to the U.S. Supreme Court.

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**Combatant Status Review Tribunals**

According to the U.S. government, CSRTs “serve as fora for detainees to contest their designation as enemy combatants and thereby the legal basis for their detention.”

Issued on July 7, 2004, the CSRT Order broadly defines the term “enemy combatant” to mean “an individual who was part of or supporting Taliban or al Qaeda forces, or . . . . partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.”

The government contends that “unlike an Article 5 tribunal [under the Geneva Conventions] the CSRT guarantees the detainee additional rights, such as the right to a personal representative to assist in reviewing information and preparing the detainee’s case, presenting information, and questioning witnesses at the CSRT,” as well as to “receive an unclassified summary of the evidence in advance of the hearing in the detainee’s native language, and to introduce relevant documentary evidence.”

The CSRT and Article 5 hearings serve entirely different purposes and operate under markedly different circumstances. Article 5 hearings take place on or near the zone of combat, immediately after capture, and are designed to swiftly determine a prisoner’s legal status: detention under the Geneva Convention as a POW, referral for prosecution for war crimes or prosecution for violation of civilian law. If found innocent, the detainee is returned to the place of capture and released. Article 5 hearings conducted in the combat zone are summary in form because they are followed by additional processes that protect against unlawful and arbitrary detention.

In contrast the CSRT hearings are conducted months or years after arrest or capture, thousands of miles from the combat zone, and after repeated interrogation under questionable circumstances. During this entire period detainees are held virtually incommunicado with limited or no access to family or legal counsel. In contrast to an Article 5 hearing, an adverse determination in a CSRT hearing is not necessarily followed by additional legal process. Rather, the detainee has no further opportunity to demonstrate his innocence, thereby resulting in an indefinite loss of liberty.

CSRTs also fail to provide minimum standards of fairness and due process. For example, by presuming that the detainee is in fact an “enemy combatant,” the tribunals do not adhere to the initial presumption of innocence standard. The individual detainee, therefore, carries the burden of rebutting the presumption. By contrast, in an Article 5 hearing the detainee is initially presumed to be a POW. These administrative tribunals rely substantially upon classified evidence and detainees are entitled only to the assistance of a personal representative—a member of the detaining authority who may keep no conversations between the detainee confidential—and not to genuine legal

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82 U.S. Report, *supra* note 1, Annex, Part One § II(B).
representation. In violation of Article 15 of the Convention, evidence extracted under torture or coercion is also not excluded in CSRTs.

The CSRT procedure has been heavily criticized by a federal judge in a consolidated habeas case on behalf of a number of the detainees. U.S. District Judge Joyce Hens Green ruled in January 2005 that CSRT procedures “fail to satisfy constitutional due process requirements in several respects” and held that the U.S. government should allow detainees to challenge their detention in U.S. courts. Her ruling is on appeal before the U.S. Court of Appeals for the District of Columbia Circuit.

**Administrative Review Board**

The Administrative Review Board is a second administrative body also established by the executive branch that annually reviews the detainees’ CSRT designated status as “enemy combatants.” Based on classified evidence, including evidence that might have been extracted under coercion, the Board determines whether an individual detainee should remain in U.S. custody, be transferred to the custody of another country, or be released. As in CSRT proceedings, detainees have no access to a lawyer and are presumed to pose a threat to the United States or its allies.

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85 *In re Guantánamo Detainee Cases*, 355 F. Supp. 2d at 468-78 (finding the following due process violations: all the CSRT’s decisions were based substantially on classified evidence that the detainees were not allowed to see; the personal representative of the detainee is neither a lawyer nor an advocate and thus cannot be considered an effective substitute for a lawyer and is obligated to disclose to the tribunal any relevant inculpatory information he or she obtains from the detainee; the tribunal can rely on statements possibly obtained through torture or other coercive means; and the definition of “enemy combatant” is vague and overly broad).

86 In a second decision concerning the rights of Guantánamo detainees, Judge Richard J. Leon, also of the district court for the District of Columbia, ruled in favor of the government, finding that detainees had no rights cognizable under habeas and that the CSRT procedure provided more than adequate due process protections. *Khalid v. Bush*, 355 F. Supp. 2d 311 320-23 (D.D.C. 2005). This decision is also on appeal before the United States Court of Appeals for the District of Columbia Circuit. *Khalid v. Bush*, No. 05-5063 (D.C. Cir. filed Mar. 2, 2005).


Detainees are expected to compile the information necessary to support their claims to innocence. In other words, detainees held thousands of miles from home, virtually incommunicado, with limited or no contact with family, and no legal counsel, are expected to gather information to prove that they are not a threat and should be released. The detainee may request the assistance of a U.S. military officer but, as in the case of the CSRT “personal representative,” the detainee relationship with the military officer is not privileged, nor could the detainee be expected to trust someone who is appointed by the detaining authority. The panel makes a recommendation to the Designated Civilian Official, appointed by the Secretary of Defense, who makes the final status decision. There is no appeal to an independent body.  

Access to Courts

The U.S. Report paints a deceptive picture in which Guantánamo detainees are able to access U.S. courts, noting that habeas corpus petitions have been filed and that “domestic judicial proceedings . . . may address allegations of mistreatment and complaints about the CSRTs that have arisen with respect to Guantánamo Bay.” Given numerous obstacles, including the United States’ refusal to identify all of the detainees at Guantánamo, less than two hundred detainees have filed habeas petitions. In addition, in response to each habeas petition filed since June 2004, the government has repeated its pre-Rasul position that detainees have no rights under the U.S. Constitution because the U.S. is not sovereign over Guantánamo, and that the executive has sole discretion to determine who is an enemy combatant.

Guantánamo detainees’ access to courts has also been seriously jeopardized by the Detainee Treatment Act, which undermines the landmark U.S. Supreme Court decision, http://www.defenselink.mil/home/dodupdate/documents/20060328a.html; Memorandum from Gordon England, Sec’y of the Navy to Sec’y of State, et al., Re: Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantánamo Bay Naval Base, Cuba (July 29, 2004), available at http://www.defenselink.mil/news/Jul2004/d20040730comb.pdf; In re Guantánamo Detainee Cases, 355 F.Supp.2d at 450 (The opinion summarizes the tribunals by writing “[t]he detainees do not have a right to counsel in the proceedings, although each is assigned a military officer who serves as a ‘Personal Representative’ to assist the detainee in understanding the process and presenting his case. Formal rules of evidence do not apply, and there is a presumption in favor of the government's conclusion that a detainee is in fact an ‘enemy combatant.’”).


U.S. Report, supra note 1, Annex, Part One § II(G).

Brief for Appellant, Al Odah et al. v. United States of America, No. 50-5064 (D.C. Cir. filed Mar. 7, 2005), available at http://www.scotusblog.com/AlOdah.CTADC.DOJ.OpeningBrief.pdf. The brief argues that “the determination of who are enemy combatants is a quintessentially military judgment entrusted primarily to the Executive Branch.” Id. at 53. The executive, the government argues, “has a unique institutional capacity to determine enemy combatant status and a unique constitutional authority to prosecute armed conflict abroad and to protect the Nation from further terrorist attacks. By contrast, the judiciary lacks the institutional competence, experience, or accountability to make such military judgments at the core of the war-making powers.” Id. On the question of the Geneva Conventions, the brief argues that the lower court’s contention that Taliban detainees picked up in Afghanistan should have been presumed to have prisoner of war status is “inconsistent with the deference owed to the President as Commander-in-Chief” who had unilaterally decided otherwise. Id. at 60.
granting Guantánamo detainees a meaningful opportunity to contest their detention in U.S. courts. The DTA includes the Graham-Levin Amendment, which strips U.S. courts of jurisdiction to hear challenges by Guantánamo detainees, except for the U.S. Court of Appeals for the District of Columbia Circuit, which has sole jurisdiction to review the final decision of the Combatant Status Review Tribunals. The DTA bars detainees from filing any other action against the U.S. regarding any aspect of their detention. Thus, Guantánamo detainees are prevented from seeking redress from the United States or its agents for alleged torture and abuse while in U.S. custody. Following enactment of the DTA, for example, the government moved to dismiss a Guantánamo detainee’s torture claim for forced feeding on the grounds that the DTA removes court jurisdiction to hear or consider applications for writs of habeas corpus and other actions brought by Guantánamo detainees.

President Bush’s statement upon signing the DTA also signaled the administration’s intention to use the Act to move to dismiss currently pending Guantánamo habeas cases. The congressional sponsors of the Graham-Levin Amendment appear to have differing views as to how the law should be applied to pending and future cases.

Just days after the DTA became law, the U.S. Department of Justice filed notice in federal courts in Washington D.C. of its intention to file motions to dismiss the pending habeas petitions. On January 12, 2006, the Department of Justice filed a motion to dismiss *Hamdan v. Rumsfeld* (pending before the U.S. Supreme Court), which challenges the constitutionality of military commissions. The government, citing the DTA, which states that the law “shall take effect on the date of the enactment of the Act,” argues that only the U.S. Court of Appeals for the District of Columbia has jurisdiction to hear cases by Guantánamo detainees. Thus, the government contends that all pending cases before any U.S. court should be dismissed for lack of jurisdiction. The Supreme Court is expected to resolve this issue in the *Hamdan* case.

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93 Detainee Treatment Act, *supra* note 5, § 1005(e).
95 “I also appreciate the legislation’s elimination of the hundreds of claims brought by terrorists at Guantánamo Bay, Cuba, that challenge many different aspects of their detention and that are now pending in our courts.” President’s Statement on the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, 41 WEEKLY COMP. PRES. DOC. 1920 (Dec. 30, 2005), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2005_presidential_documents&docid=pd30de05_txt-6.pdf. See also Statement on Signing of H.R. 2863, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, 41 WEEKLY COMP. PRES. DOC. 1918, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2005_presidential_documents&docid=pd30de05_txt-5.pdf.
98 Detainee Treatment Act, *supra* note 5, § 1005(h).
100 White, *Levin Protests Move to Dismiss Detainee Petitions*, *supra* note 96.
Military Orders

On November 13, 2001, the President signed a Military Order formalizing a Department of Defense plan to try certain non-citizens designated by the President as “enemy combatants” before military commissions.\(^1\) The Military Order can be applied to anyone suspected of being, or having knowingly harbored, either a member of al-Qaeda or someone who has “engaged in, aided or abetted, or conspired to commit, acts of international terrorism.”\(^2\) The Military Order has been supplemented by military commission orders and instructions setting forth crimes cognizable before the commissions and the rules that govern proceedings before them.\(^3\)

As of October 21, 2005, President Bush had designated seventeen detainees eligible for trial before a military commission. Of those, the U.S. has transferred three to their country of origin where they were subsequently released.\(^4\) As of February 2006, ten detainees have been charged with offenses and referred for prosecutions.\(^5\) On August 31, 2005, the Secretary of Defense approved changes to the military commissions, which the U.S. government contends included “a review of relevant domestic and international legal standards.”\(^6\) The amended rules, however, fail to guarantee an independent trial court, or provide impartial appellate review, and do not prohibit the admission of testimony taken under coercive circumstances. In short, the military commissions do not afford a fair trial under the U.S. Constitution, U.S. international treaty obligations, customary international law, or the Uniform Code of Military Justice.

The commission rules and procedures, in their amended form, are flawed in the following ways:

**Right to counsel:** Military defense counsel is assigned to each defendant. Although a defendant may retain civilian counsel at his own expense, military counsel would remain assigned to the defense team. Many detainees find it difficult to trust or cooperate with U.S. military counsel assigned to them, for reasons of culture, personal history, language

\(^2\) Id. at 1666.
and the prolonged and arbitrary conditions of their imprisonment, thus undermining trust and cooperation vital to an effective defense.\textsuperscript{107}

**Lack of independence:** The procedures outlined for military commissions fail to provide for an impartial and independent tribunal. The military, with the President as its commander-in-chief, has the sole authority to appoint the judges, prosecutors and defense counsel. The executive branch is thus prosecutor, judge, and jury, and in death penalty cases, the executor.\textsuperscript{108}

Under the commission system, an “Appointing Authority” controls the make-up of the commission panel and procedures of the commission. The Appointing Authority, appointed by the Secretary of Defense, is responsible for approving and referring criminal charges to the commission on behalf of the executive branch.\textsuperscript{109} Legal questions, including any dispositive questions, are decided by the Appointing Authority on an interlocutory basis.\textsuperscript{110}

**Overbroad definition of armed conflict:** Acts of terrorism should not be conflated with acts of war.\textsuperscript{111} Yet, an offense prosecutable by the military commissions must be one that took place “in the context of and was associated with armed conflict.”\textsuperscript{112} The instructions further state, “[t]his element does not require a declaration of war, ongoing mutual hostilities, or confrontation involving a regular national armed force.”\textsuperscript{113} The definition of an armed conflict under the commission rules is overbroad and could include any terrorist act anywhere in the world within the commission’s jurisdiction. In fact, the defendant’s conduct need only be distantly or vaguely related to a traditional armed conflict.

**Restrictions on access to evidence and proceedings:** The commission rules deny civilian counsel with security clearance the same access to classified information as military counsel. Similarly, the rules permit the exclusion of defendants from portions of trials to protect classified information. While military counsel can see all evidence used in the case, military counsel may not discuss classified evidence with their client, which prevents the accused from confronting the evidence against him.

\textsuperscript{107} See generally ACLU, Conduct Unbecoming: Pitfalls in the President’s Military Commissions (March 2004), available at http://www.aclu.org/FilesPDFs/conductunbecoming.pdf.
\textsuperscript{108} Id.
\textsuperscript{110} Military Commission Order No. 1, supra note 109 at § 4(A)(d).
\textsuperscript{113} Id.
Use of evidence obtained through coercion not barred: New rules would purportedly prevent the admission of evidence obtained under torture, but the rules contain few safeguards to make the prohibition meaningful and fail to exclude evidence exhorted under coercive interrogation techniques that fall short of torture but are nonetheless prohibited under the Convention. Under the new commission rules evidence “shall be admitted if, in the opinion of the Presiding Officer [or a majority of the commission] . . . the evidence would have probative value to a reasonable person.”

Defendants can continue to be detained even if acquitted: Even an acquittal of charges does not translate into release from detention because the President may continue to deem and detain such person as an “enemy combatant” until the end of the “global war on terrorism.”

Limited appeals to civilian courts: Previously, the military commission rules did not allow detainees the right to appeal to a civilian court. The rules were amended by the Detainee Treatment Act, which allow detainees tried in a capital case or sentenced to a term of imprisonment of ten or more years to appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The U.S. Court of Appeals has discretion to review any other case before the military commissions.

The military commission proceedings began in August 2004 but were halted in November 2004 after a federal district court, in *Hamdan v. Rumsfeld*, held that the use of military commissions to try detainees violated the U.S. Constitution and international law. On July 15, 2005, the U.S. Court of Appeals for the District of Columbia Circuit unanimously overturned the lower court’s decision and ruled that the President has the power to create military commissions, which the court considered a “competent tribunal” under Article 5 of the Third Geneva Convention. The court ruled that the defendant was not entitled to court-martial proceedings in accordance with the U.S. Uniform Code of Military Justice, nor to the protections of common Article 3 of the Geneva Conventions, which prohibit trials by any tribunal other than “a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

The court relied in part by the Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224, 224 (2001) resolution passed by the U.S. Congress, which authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided” the attacks. The court recognized the President’s “authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.”

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114 Military Commission Order No. 1, supra note 109, § 6(D)(1).
116 Detainee Treatment Act, supra note 5, § 1005(e).
118 *Hamdan v. Rumsfeld*, 415 F.3d 33, 42 (D.C. Cir. 2005), cert. granted, 74 U.S.L.W. 3287 (U.S. Nov. 7, 2005) (No. 05-184). (The appeals court also held that “[i]f Hamdan were convicted, and if common article 3 covered him, he could contest his conviction in federal court after he exhausted his military remedies.”).
119 *Id.* at 37-38.
The U.S. Supreme Court heard oral arguments on this case in March 2006, and is expected to rule by summer 2006. The military commission proceedings resumed in January 2006, despite the pending Supreme Court case.\textsuperscript{120}

3. “Enemy Combatants” in the United States

The U.S. government has designated two U.S. citizens, Jose Padilla and Yaser Esam Hamdi, and a Qatari national, Ali Saleh Kahlah al-Marri, who was in the U.S. on a student visa, as enemy combatants.\textsuperscript{121} The Supreme Court ruled that Yasser Hamdi, a Saudi national born in the U.S. and detained for more than three years, was entitled to due process and could not be held indefinitely without trial. He was subsequently deported to Saudi Arabia and his U.S. citizenship was revoked.

Jose Padilla was arrested at Chicago O’Hare Airport in May 2002 under suspicion of plotting to detonate a radioactive “dirty” bomb in the U.S. An executive order signed by President Bush declared him an enemy combatant on June 9, 2002. Padilla was then transferred from civilian to military custody, two days before he was to appear for a court hearing on his case, without his lawyer being informed. In September 2005, the U.S. Court of Appeals for the Fourth Circuit held that the President was authorized to detain a U.S. citizen without trial as an enemy combatant if such person had taken up arms against the U.S. and had entered the U.S. for the purpose of attacking the U.S.\textsuperscript{122}

On November 22, 2005, prior to the U.S. Supreme Court’s decision on whether it would review Padilla’s case, the U.S. government unsealed a criminal indictment accusing him of fighting against American forces alongside al-Qaeda in Afghanistan. Notably, the indictment did not mention any of the allegations that were used by the government in designating Padilla as an “enemy combatant.” Padilla was transferred from military to civilian custody, in Florida, in January 2006.\textsuperscript{123}

On June 23, 2003, less than a month before Qatari national al-Marri was due to go on trial in the U.S. on charges of credit card fraud and making false statements to the Federal

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\item \textsuperscript{120} Kathleen T. Rhem, \textit{Guantanamo Hearing Opens Amid Legal Issues}, AMERICAN FORCES INFORMATION SERVICE, Jan. 12, 2006.
\item \textsuperscript{121} See ACLU, \textit{Indefinite Detention Without Charge of American Citizens as ’Enemy Combatants} (Sept. 13, 2002), available at http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=10673&c=206&Type=s.
\item \textsuperscript{122} Padilla v. Hanft, 423 F.3d 386 (4th Cir. 2005).
\item \textsuperscript{123} On December 21, 2005, the U.S. Court of Appeals for the Fourth Circuit denied the government’s application to transfer Padilla for criminal proceedings in Florida and to vacate the court’s opinion. In a stinging rebuke to the government, the court stated that the government’s “actions may be to avoid consideration of our decision by the Supreme Court.” The court further stated that the government “actions have left not only the impression that Padilla may have been held for these years, even if justifiably, by mistake—an impression we would have, though the government could ill afford to leave extant. . . And these impressions have been left, we fear, at what may ultimately prove to be substantial cost to the government’s credibility before the courts.” Order denying motion to transfer petitioner, Dec. 21, 2005, \textit{Padilla v. Hanft}, No. 05-6396 (4th Cir. filed Dec. 21, 2005). The U.S. Supreme Court, however, in January 2006 reversed the Fourth Circuit and approved Padilla’s transfer to Florida. Hanft v. Padilla, 126 S.Ct. 978 (Roberts, Circuit Judge 2006). On April 3, 2006, the Supreme Court declined to review Padilla’s case. Padilla v. Hanft, 423 F.3d 386 (4th Cir. 2005) \textit{cert. denied}, 74 USLW 3275.
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Bureau of Investigation ("FBI"), President Bush designated him as an “enemy combatant” by executive order. Al-Marri was transferred from the control of the Department of Justice to incommunicado solitary confinement in a Naval Consolidated Brig in Charleston, South Carolina. He remains in military custody in South Carolina. To date, al-Marri has been detained for more than three years in solitary confinement. In August 2005, al-Marri’s lawyers sued government officials claiming that military jailers subjected al-Marri to inhuman treatment, made threats against his family, and mistreated the Quran. At the time of this submission, the question of whether President Bush has the authority to detain al-Marri, a non-U.S. citizen, as an “enemy combatant” without charge or due process is being appealed.

D. Torture and Abuse in the “Global War on Terrorism” (Articles 1, 16)

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

—Definition of torture provided by the Office of Legal Counsel, U.S. Department of Justice, August 2002.

1. Torture and Cruel, Inhuman or Degrading Treatment of Detainees at Guantánamo

Since the transfer of the first group of detainees to Guantánamo in early January 2002, credible reports of the use of torture and other cruel, inhuman or degrading treatment were received from various sources, including the news media, U.S. government officials, lawyers representing detainees in habeas litigation, accounts of former detainees, the ICRC and other non-governmental human rights organizations.

Internal documents of the Federal Bureau of Investigation obtained through the ACLU FOIA litigation show that as early as late 2002 the FBI had begun to document and complain internally about interrogation techniques used by the military on Guantánamo detainees. Although heavily redacted, the documents describe the harsh treatment of detainees as part of an approved list of interrogation methods which were referred to as “torture techniques.” FBI agents described specific instances of physical and psychological abuse, sexual humiliations, “torture techniques,” as well as inhuman and degrading conditions of confinement.

Torture techniques: An email from an unnamed official to FBI officials describes an incident in which Defense Department interrogators at Guantánamo

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125 Id. at ¶¶ 25-28.
126 See id. at ¶¶ 25, 34, 38.
127 Id. at ¶¶ 69-72, 80. See also Eric Lichtblau, Detainee at Brig in Charleston Accuses His Jailers of Abuse, N.Y. TIMES, Aug. 9, 2005, at A13.
128 Bybee, August 2002 Memorandum, supra note 2, at 1.
impersonated FBI agents while using “torture techniques” against a detainee. The email states:

- “Of concern, DOD [Department of Defense] interrogators impersonating Supervisory Special Agents of the FBI told a detainee that [redacted]... These tactics have produced no intelligence of a threat neutralization nature to date and CITF [FBI’s Criminal Investigation Task Force] believes that techniques have destroyed any chance of prosecuting this detainee. If this detainee is ever released or his story made public in any way, DOD interrogators will not be held accountable because these torture techniques were done by ‘FBI’ interrogators. The FBI will be left holding the bag before the public” (emphasis supplied) (Dec. 5, 2003).129

- **Sleep deprivation and use of dogs**: “BAU [Behavioral Analysis Unit] personnel witnessed sleep deprivation, [redacted] and utilization of loud music/bright lights/growling dogs in the Detainee interview process by DOD representatives” (undated).130

- **DOD impersonating FBI**: An FBI email regarding DOD personnel impersonating FBI officials during interrogations refers to a “ruse” and notes that “all of those [techniques] used in these scenarios” were approved by the Deputy Secretary of Defense (Jan. 21, 2004).131

- **Violation of internal policies**: A heavily redacted memorandum by the FBI Criminal Investigation Task Force discusses aggressive interrogation techniques approved by the Secretary of Defense. These techniques ran contrary to the FBI’s Criminal Investigation Task Force (“CITF”) policy regarding permissible law enforcement techniques for interrogations.

  - “The Secretary of Defense (Tab 2), Joint Chiefs of Staff, and Southern Command (Tab 3) authorities approved these techniques in early October 2002 and late November 2002. CITF policy precludes participation in these aggressive interrogation techniques and advocates proven rapport-building interview strategies consistent with a law enforcement mission.”

  - “All deployed CITF personnel are instructed to disengage, stand clear, and report any questionable interrogation techniques. Deployed FBI agents participate in CITF briefings and are in-line with CITF instructions. CITF maintains that its personnel will not utilize interrogation techniques or strategies.”132

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129 Annex B6, E-mail from [name redacted] to Gary Bald, FBI; Frankie Battle, FBI; and Arthur Cummings, FBI (Dec. 5, 2003).
131 Annex B8, E-mail from [name redacted] to [name redacted] (Jan. 21, 2004).
Documents obtained through the ACLU FOIA contain many accounts of detainee abuse described by the FBI.

- **Naked detainee shackled hand and foot and exposed to extreme temperatures:** An FBI agent describes interrogations at Guantánamo and writes, “I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defecated on themselves and had been left there for eighteen to twenty-four hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. . . . On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night.” (Aug. 2, 2004).

- **Beaten unconscious:** “A detainee in an interview with the FBI alleged that he had been beaten unconscious approximately three or four weeks ago when he was still at Camp X-Ray. According to the detainee, an unknown number of guards entered his cell, unprovoked, and started spitting and cursing at him. . . . [The detainee] rolled onto his stomach to protect himself, detainee stated a soldier named [redacted] jumped on his back and started beating him in the face [redacted] then choked him until he passed out. [Redacted] stated that [redacted] was beating him because [redacted] was a Muslim.” (May 22, 2004).

- **Use of “highly aggressive interrogation techniques” against Guantánamo detainees:**
  
  - In late 2002, an FBI Special Agent (SA) observed a female “whispering in the detainee’s ears and caressing and applying lotion to his arms (this was during Ramadan when physical contact with a woman would have been particularly offensive to a Moslem man). On more than one occasion the detainee appeared to be grimacing with pain and [redacted] hands appeared to be making contact with the detainee. Although SA [redacted] could not see her hands at all times, he saw them moving towards the detainees’ lap. He also observed the detainee pulling away and against the restraints. . . . SA [redacted] asked what had happened to cause the detainee to grimace in pain. The marine said [redacted] grabbed detainee’s thumbs and bent them back, and grabbed his genitals. The marine also implied that this was less harsh than her treatment of others by indicating that he had seen her treatment of other detainees result in detainees curling into a fetal position on the floor crying in pain.”

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133 Annex B14, E-mail from [name redacted], Inspection Division, FBI to [name redacted], Inspection Division, FBI (Aug. 2, 2004).
135 Annex B22-24, Letter from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division, FBI to Major General Donald J. Ryder (July 14, 2004).
In September or October 2002, FBI agents “observed canine used in aggressive manner to intimidate detainee.” In November 2002, FBI agents observed a detainee “after he had been subjected to intense isolation for over three months in a cell that was always flooded with light. By late November, the detainee was exhibited behavior consistent with extreme psychological trauma (talking to non-existing people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end).”

- **Sexual humiliation**: A detainee interviewed in April 2003 by the FBI said “a female interrogator, after not getting cooperation from him, called four guards into the room. While the guards held him, she removed her blouse, embraced the detainee from behind and put her hand on his genitals. The interrogator was on her menstrual period and she wiped blood from her body on his face and head.”

In February 2006, a report was submitted to the U.N. by five experts of the Commission on Human Rights, including the chairperson of the Working Group on Arbitrary Detention and four Special Rapporteurs on torture; freedom of religion; independence of judges and lawyers; and on the right to physical and mental health. They concluded that interrogation techniques authorized by the Department of Defense amounted to degrading treatment in violation of Article 7 of the ICCPR and Article 16 of the Convention Against Torture, and “amounted to torture” as defined under Article 1 of the Convention when the victim experienced severe pain and suffering. The report also concluded that the widespread and prolonged use of solitary confinement under conditions of indefinite detention by the U.S. amounted to inhuman treatment. The report found that reports of excessive violence during the force-feeding of detainees on hunger strike met the Convention’s definition of torture.

Three of the five U.N. experts, although not the Special Rapporteur on torture, were invited by the U.S. government to visit Guantánamo in 2005, but the invitation stipulated that the visit could not include “private interviews or visits with detainees.” The experts declined to visit the facility under such restrictions as it would undermine the “purpose of an objective and fair assessment of the situation of the detainees.”

Though conditions at Guantánamo might have improved due to domestic and international pressure, Guantánamo remains a place where the United States has blocked access by detainees to impartial and independent tribunals, and where detainees remain at high risk of torture and abuse and of transfer to countries where they may be tortured and abused.

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136 *Id.*
139 *Id.* at ¶ 88.
140 *Id.* at ¶ 3.
2. Torture and Cruel, Inhuman or Degrading Treatment of Detainees in Afghanistan

The U.S. military has detained and continues to detain individuals at detention facilities throughout Afghanistan under control of the U.S. military. The torture and abuse of detainees in U.S. custody in Afghanistan has been widespread and systemic. It began soon after the commencement of military actions and has lasted well beyond the declared end of major combat in June 2002.

As widely documented in human rights and press reports, U.S. military personnel have subjected detainees in U.S. custody in Afghanistan to torture or other cruel, inhuman or degrading treatment. Some of the reported abuses include:

- **Extreme physical abuse**: Soldiers have severely beaten detainees, forced them into painful and contorted positions for hours or days on end, and dumped cold water over them in the middle of the winter. Beatings were for the specific purpose of making detainees more susceptible to interrogation.
- **Sexual abuse and humiliation**: Detainees were kept naked for prolonged periods in the presence of male and female soldiers and in front of other detainees. Soldiers, both male and female, subjected detainees to sexual taunts, knowing that such treatment would be particularly offensive and humiliating by Afghan cultural norms.
- **Use of dogs**: Interrogators used dogs to frighten and intimidate detainees.
- **Sensory deprivation**: Detainees were kept hooded or goggled, held in dark cells, and kept in isolation for prolonged periods.
- **Sleep deprivation**: Detainees were forced to stay awake for prolonged periods by methods such as shining bright lights, blaring loud music, shouting at them or beating them if they fell asleep.

The FOIA documents produced by the Department of Defense to the ACLU reveal widespread abuse of Afghan detainees. For example:

- A sworn statement by U.S. personnel in Task Force 202 Military Intelligence reported that a detainee’s face was cut and swollen in several places consistent with repeated blows to the face. The detainee stated that guards had asked everybody to stand and when he couldn’t, because his leg was numb, he was kicked by guards in the head and face. He was later assaulted by two or three guards on subsequent nights. The declarant had spoken to detainee about a week prior and had not noticed visible marks on his face at the time. 141

Four Afghan victims of torture represented by the ACLU and Human Rights First (“HRF”) have sued the U.S. Secretary of Defense for torture and abuse they suffered

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141 Annex B28-29, Sworn statement of Military Intelligence Officer in Kandahar, Afghanistan (Feb. 18, 2002).
while in U.S. custody. The Afghans, all of whom were released without charge, allege that the torture and cruel, inhuman or degrading treatment included:

- Subjecting them to abusive and painful positions for several hours at a time during nightly interrogations, including: (1) hung upside down from the ceiling with a chain; (2) forced to hang by arms with a chain; (3) forced to kneel on a wooden pole handcuffed to ceiling; (4) forced to maintain “T” position for one hour; (5) forced to sit in a small space with no back support for six hours while wrists and legs were tied and eyes and ears were covered;
- Beaten and kicked;
- Sexual assaults, taunts and humiliation: stripped naked for lengthy periods of time; anally probed; stripped and doused repeatedly with water during interrogation; direct insults directed at detainee’s mother, wife, and sister;
- Threatened with transport to Guantánamo;
- Barking dogs used at close range;
- Sensory deprivation, including being forced to wear black, opaque goggles and earplugs that blocked all sound for long periods of time;
- Solitary confinement;
- Sleep deprivation;
- Being kept outdoors for weeks with no protection from the elements and extreme weather; and
- Deprivation of water for prolonged periods of time.

3. Torture and Cruel, Inhuman or Degrading Treatment of Detainees in Iraq

The U.S. military has detained and continues to detain individuals at numerous detention facilities in Iraq, including but not limited to the notorious Abu Ghraib prison; the detention facility known as “Camp Cropper,” at the Baghdad international airport; a facility near the city of Umm Qasr known as Camp Bucca; facilities in or near the cities of Tikrit and Mosul; and numerous locations in or near the city of Baghdad, all under control of U.S. forces.

143 Each allegation listed was experienced by at least one of the plaintiffs.
144 Id. at ¶¶ 174, 178, 190, 195, 200, 205, 209.
145 Id. at ¶¶ 174, 178, 195, 200.
146 Id. at ¶¶ 21, 174, 186, 190, 195, 209.
147 Id. at ¶ 174.
148 Id.
149 Id. at ¶¶ 17, 190, 195, 205.
150 Id. at ¶ 24, 182, 186, 195.
151 Id. at ¶¶ 178, 182, 186, 190, 200.
152 Id. at ¶ 174, 205.
153 Id. at ¶¶ 17, 190, 195, 205.
In its February 2004 report, the International Committee of the Red Cross found that “methods of physical and psychological coercion were used by military intelligence in a systemic way to gain confessions and extract information.” The methods cited by the ICRC included:

- Hooding to disorient and prevent detainees from breathing freely;
- Being forced to remain for prolonged periods in painful stress positions;
- Being attached repeatedly over several days, for several hours each time, to the bars of cell doors naked or in positions causing physical pain;
- Being held naked in dark cells for several days;
- Being paraded naked, sometimes hooded or with women’s underwear over their heads;
- Sleep, food, and water deprivation;
- Prolonged exposure, while hooded, to the sun during the hottest time of day.

The Fay-Jones investigation into the misconduct of the 205th Military Intelligence Brigade in charge of Abu Ghraib prison found that interrogation techniques used in Guantánamo were brought to Iraq and Afghanistan. Those techniques included:

- Use of “sleep adjustment,” a technique of reversing sleep schedules from night to day;
- Forced nudity and “use of clothing” as an incentive for detainee cooperation;
- Abusing detainees with dogs;
- Isolation;
- Sensory deprivation;
- Placing detainees in excessively cold or hot cells with limited light or ventilation.

Many of the physical and psychological techniques cited by the ICRC were applied to Iraqi victims of torture represented by the ACLU and HRF in a lawsuit against Secretary of Defense Donald Rumsfeld and other military generals. The five Iraqis, all of whom were released without charge, allege that the torture and abuse included the following techniques:

- Kicked and severely beaten with fists and guns by uniformed soldiers;
- Forced to run a gauntlet of ten to twenty soldiers while beaten with baton.

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155 Id.
156 Fay-Jones Report, supra note 52, at 10, 70.
157 See generally Ali Amended Complaint, supra note 142. This complaint was filed on behalf of Iraqi torture victims Arkan Mohammed Ali; Thahe Mohammed Sabar; Sherzad Kamal Khalid; Ali H.; Najeeb Abbas Ahmed. Id.
158 Ali Amended Complaint, supra note 142, at ¶¶ 174, 178, 190, 195, 200, 205, 209.
Subjected to prolonged sensory and sleep deprivation;\textsuperscript{160} 
Deprived of food and water for long periods;\textsuperscript{161} 
Restrained with tight hoods that restricted breathing and vision;\textsuperscript{162} 
Subjected to mock executions including threatening to run detainees down with a military vehicle; staging a mock firing squad; holding a gun to detainee’s head; threatened with transfer to Guantánamo where detainees were told that soldiers were permitted to kill with impunity; brandishing guns and threats to shoot; approaching detainee with a sword and threatening to slaughter him. Thrusting detainee briefly into a cage of live lions previously owned by Saddam Hussain’s son, Uday;\textsuperscript{163} 
Threatened with transfer to another country;\textsuperscript{164} 
Sexually assaulted by inserting fingers in anus and fondling of buttocks and penis in presence of male and female soldiers;\textsuperscript{165} 
Exposed to temperatures exceeding 120 Fahrenheit (50 degrees Celsius);\textsuperscript{166} and 
Denied the use of toilet facilities for extended periods.\textsuperscript{167}

One fifty-nine-year-old detainee’s medications for high blood pressure, heart disease and his eyeglasses were all confiscated; he was refused medical care when he suffered chest pains, and a possible stroke, while in custody.\textsuperscript{168} Another detainee was repeatedly locked for several days in a wooden telephone booth-like box, sometimes after being stripped naked, with a hood over his head.\textsuperscript{169}

A seventeen-year-old detainee who had multiple gunshot wounds was refused medical treatment for several hours and his bullets were removed from his neck and back without anesthetic.\textsuperscript{170} He was also not provided adequate medical care and pain medication after receiving a life-threatening shrapnel wound during a mortar attack while housed in an outdoor tent at Abu Ghraib.\textsuperscript{171}

The FOIA documents produced by the Department of Defense to the ACLU also confirm the pattern of abuse of Iraqi detainees.

- **Strangulation, beatings, and cover up of abuse:**
  - The physical abuse of detainees in Iraq is described in an “Urgent Report” to FBI Director and various FBI officials from the Sacramento FBI office.

\textsuperscript{159} Id. at ¶¶ 195, 200. 
\textsuperscript{160} Id. at ¶¶ 174, 178, 182, 186, 190, 200. 
\textsuperscript{161} Id. at ¶ 17, 190, 195, 205. 
\textsuperscript{162} Id. at ¶ 200. 
\textsuperscript{163} Id. at ¶ 190, 195. 
\textsuperscript{164} Id. at ¶¶ 21, 174, 186, 190, 195, 209. 
\textsuperscript{165} Id. at ¶ 178, 195. 
\textsuperscript{166} Id. at ¶ 21, 195. 
\textsuperscript{167} Id. at ¶¶ 178, 195, 200. 
\textsuperscript{168} Id. at ¶ 209. 
\textsuperscript{169} Id. at ¶ 17, 190. 
\textsuperscript{170} Id. at ¶¶ 204-205. 
\textsuperscript{171} Id.
“The following information provides initial details from an individual [redacted] who observed serious physical abuses of civilian detainees in [redacted] Iraq during the period of [redacted]. . . . [redacted] observed numerous physical abuse incidents of Iraqi civilian detainees conducted in [redacted] Iraq. He described that such abuses included strangulation, beatings, placement of lit cigarettes into the detainees’ ear openings, and unauthorized interrogations.”

- “[Redacted] was providing this information to the FBI based on his knowledge that [redacted] were in engaged in a cover-up of these abuses. He stated these cover-up efforts included [redacted]. . . .” (June 25, 2004).  

- **Beaten and doused with cold water:** In an email to unnamed FBI officials, allegations of abuse at Abu Ghraib are noted: “They tortured me and cuffed me in an act called the scorpion, and pouring cold water on me They tortured me from morning until the morning of the next day, and when I fell down from the severing torture I fell on the barbed wires, and then they dragged me from my feet and I was wounded and, and they punched me on my stomach” (June 29, 2004).  

- **Physical torture of student and his family members in Mosul, Iraq:** In December of 2003, coalition forces placed bags over the high school student and his family members’ heads, beat them all day, doused them with cold water at night, made them sit up and down, and denied them food and water. A soldier pushed the student into the wall and kicked him in the face, breaking his jaw and teeth.  

- **Pouring peroxide on open wounds and hitting with ax handle:** In a 2004 document, a civilian contractor recounts in a sworn statement that he witnessed Marines pouring peroxide and water over the open wounds of an Iraqi prisoner. The contractor also saw Marines place bags over the prisoners’ heads and strike them in the head with pick axes’ handles in an effort to obtain information.  

- **Torture and abuse of numerous detainees by interrogators in Al-Azimiyah Palace, Baghdad from December 2003 to May 2004:** Detainees were forced to wear women’s underwear on their head, and were electrocuted, burned with cigarettes,

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172 Annex B30-32, Report from [name redacted] Supervisory Special Agent, FBI to Bruce J. Gebhardt, Deputy Director, FBI; Cassandra Chandler, Executive Assistant Director, FBI; John Pistole, Executive Assistant Director, FBI; Grant Ashley, Assistant Director, FBI; Gary Bald, Assistant Director; Arthur Cummings, SC, FBI (June 25, 2004).

173 Annex B33-34, E-mail from [name redacted], Inspection Division, FBI to M.C. Briese, Counterterrorism Division, FBI and [redacted], Counterterrorism Division, FBI (June 29, 2004).


sodomized with wine bottles and wooden sticks, subjected to extreme physical exercise during temperatures of 150 degrees Fahrenheit (65.5 degrees Celsius) to the point of collapse, and sustained chest wounds from “battery cables” attached to their chests. According to a contractor at Abu Ghraib who screened detainees coming from Azimiyah Palace, 90 incidents of abuse took place there.  

- **Bruising, burning and punching:** Detainees in the custody of Special Operations Task Force 6-26 (TF 6-26) in Baghdad were bruised, had burn marks on their backs and complained of kidney pain. Defense Intelligence Agency (DIA) personnel witnessed TF 6-26 officers “punch a prisoner in the face to the point where [he] needed medical attention.” The DIA personnel were ordered to leave the room, and pictures they took of the injuries were immediately confiscated. They were also threatened by TF 6-26 personnel and “ordered not to talk to anyone in the US.”  

- **Rape:** An e-mail notes the initiation of an FBI investigation into the alleged rape of a juvenile male detainee at Abu Ghraib prison in Iraq.  

Beatings and mock execution: Documents describing detainee abuse by Taskforce Ironhorse Soldiers reveal that on August 20, 2003, “when [a detainee] was not forthcoming with information . . . . [soldiers] punched him with a closed fist in the stomach and torso, and . . . . on the side of head . . . . When the interrogation did not reveal the information the group was seeking, LTC [Redacted] took the detainee outside to the nearest clearing barrel and after shooting a warning shot, placed his 9mm weapon near the detainee’s head and fired off a round” (see DOD043354). Other documents show mock executions of detained boys by members of the 1st Armored Division. In one instance, a Lieutenant took a 13 years old boy, put a gun to his head, whispered something in his ear, and then shot to the right of the boy’s head.

4. **Deaths in U.S. Custody in Iraq and Afghanistan**

At the time of this submission, about one hundred detainees are known to have died in U.S. military and CIA custody. This estimate is based on government autopsy reports produced to the ACLU, reports by human rights organizations, and reports in the press.  

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177 Annex B47-48, Memorandum from Under Secretary of Defense for Intelligence (June 25, 2004).
178 Annex B51, E-mail from Chris Zwecker, Criminal Investigation Division, FBI to Robert Mueller, Director, FBI; Bruce J. Gebhardt, Deputy Director, FBI; and Valerie Caproni, Office of General Counsel, FBI.
179 Annex B-53, Staff Judge Advocate Memorandum.
The government has publicly acknowledged that at least twenty-seven have been investigated as homicides.\footnote{182 U.S. Army, Criminal Investigation Division, \textit{Army Criminal Investigators Outline 27 Confirmed or Suspected Detainee Homicides for Operation Iraqi Freedom, Operation Enduring Freedom} (Mar. 25, 2005), available at \url{http://www.cid.army.mil/Documents/OIF-OEF%20Homicides.pdf}.}

According to U.S. army autopsy reports of forty-four detainees produced to the ACLU, twenty-one appear to be homicides. Eight of the homicides appear to be the direct result of abusive techniques used on detainees, in some instances, by the CIA, Navy Seals and Military Intelligence personnel. The autopsy reports list the cause of deaths as “strangulation,” “hypothermia,” “asphyxiation,” and “blunt force injuries.” (See Annex A for chart of detainee deaths and prosecutions). A large number of the so-called “natural deaths” were attributed in the autopsy reports to “Arteriosclerotic Cardiovascular Disease”—coronary heart disease. But rarely did the government undertake any investigation into events preceding the person’s collapse to determine what circumstances may have induced or exacerbated the heart attack.

\section*{5. Ghost Detainees and Secret Detention Facilities}

\textit{The fact that [the alleged prisons] are secret, assuming there are such sites . . . some people say the test of your principles is what you do when no-one is looking. The president has insisted that whether in public or private, the same principles will apply.}


The Navy Inspector General Vice Admiral Church’s investigation of Department of Defense detainee operations and interrogation techniques reported thirty cases of “ghost detainees” who were held under “oral, ad hoc agreements” and that were “the result, in part, of the lack of any specific, coordinated interagency guidance.”\footnote{186 U.S. Dep’t of Defense, \textit{Review of DoD Detention Operations and Detainee Interrogation Techniques}, \textit{Executive Summary}, at 18 (Mar. 2005) (hereinafter “Church Report”), available at \url{http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf}.} Official documents obtained pursuant to the ACLU FOIA litigation confirmed the existence of a
memorandum of understanding between the U.S. military and the CIA on “Ghost Detainees.”

In congressional testimony, Gen. Paul Kern, the senior officer who oversaw the U.S. Army inquiry (Fay-Jones investigation), told the Senate Armed Services Committee, “The number [of ghost detainees] is in the dozens, to perhaps up to 100.” Another Army investigator, Maj. Gen. George Fay, put the figure at “two dozen or so.” Both officers said they could not give a precise number because no records were kept and because the CIA refused to provide information to the investigators.

Documents released through the ACLU FOIA litigation refer to a sworn statement by a soldier regarding the death of an OGA detainee. “The OGA then packed the detainee in ice and placed him in a local taxi. The taxi driver was paid to take the body away. . . . [redacted] allowed OGA to house their detainees at the AG facility in ‘ghost cells’ in block 1A. Witnessed a detainee wearing only pink underwear.” An Army report into intelligence activities at Abu Ghraib refers to the same November 2003 case, in which a detainee was brought to the prison by CIA employees but never formally registered with military guards. He died at the site and his body was removed after being wrapped in plastic and packed in ice.

The National Commission on Terrorist Attacks upon the United States report (“the 9/11 Commission”) also reported that some detainees are held in secret locations and have been subjected to torture and abuse.

Secret detention facilities are illegal under international law. With no independent oversight, such undisclosed detention centers, inaccessible even to the ICRC, leave detainees vulnerable to torture and abuse. The U.S. national security adviser has insisted that, according to the President, the “same principles” will apply whether in public or

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189 Fay-Jones Report, supra note 52 at 53-54.
190 13 The 9/11 Commission relied “heavily on information obtained from captured al Qaeda members,” but was not allowed direct access to them. Instead, Commission members were instructed to submit their questions for use by third parties during interrogation sessions. The commission was “authorized” to identify ten alleged al-Qaeda detainees “whose custody had been confirmed officially by the U.S. government. National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report at 146 (2004), available at http://www.9-11commission.gov/report/911Report.pdf.
private. The President’s February 2002 memorandum, which remains in force, limits the obligation to provide humane treatment exclusively to the armed forces and not to the CIA and other government agencies. It also omits references to persons rendered to other countries for interrogation.194

In December 2005, the Washington Post reported that President Bush, shortly after September 11, 2001, authorized the largest CIA covert operation known by its initials GST.195 GST includes programs that authorized the CIA to capture al-Qaeda suspects with help from foreign intelligence services, to maintain secret prisons abroad, to use interrogation techniques that violate international law, and to maintain aircraft to move detainees around the globe.

An earlier Washington Post Article, citing current and former U.S. intelligence officials and foreign sources, reported that approximately two dozen suspected terrorists were sent by the CIA to secret prison facilities, known as “black sites,” in Afghanistan, Eastern Europe, Thailand, and Guantánamo.196 The centers in Thailand and Guantánamo reportedly closed in 2003 and 2004 respectively.197 Following this news report, the CIA reportedly transferred detainees from Europe to secret CIA prisons located elsewhere.198

A Pentagon review of Department of Defense interrogation operations acknowledged that “the CIA has independent operations in Afghanistan.”199 A reported CIA detention facility known as the Salt Pit, an abandoned brick factory north of Kabul, has been the site of the death of an Afghan detainee who was allegedly stripped, chained to the floor, assaulted, and left in a cell overnight without blankets. He died of hypothermia.200

Allegations of mistreatment of disappeared persons have been reported in the press. According to the New York Times, for instance, C.I.A. interrogators “used graduated levels of force [against Khalid Shaikh Muhammad, a suspected al-Qaeda member], including a technique known as ‘water boarding,’ in which a prisoner is strapped down, forcibly pushed under water and made to believe he might drown.”201 Muhammad’s two

194 President Bush, Feb. 2002 Memorandum, supra note 42 (The memorandum states “as a matter of policy, the United States Armed Forces shall continue to treat detainees humanely.”).
197 Id.
198 Priest, Covert CIA Program Withstands New Furor, supra note 195.
199 Dep’t of Defense, Department of Defense Briefing on Detention Operations and Interrogation Techniques (Mar. 10, 2005), available at http://www.pentagon.mil/transcripts/2005/tr20050310-2262.html; see also Schlesinger Report supra note 53, at 70 (noting that the CIA conducted interrogations in Department of Defense facilities in Iraq and were “allowed to operated under different rules.”).
200 Dana Priest, CIA Avoids Scrutiny of Detainee Treatment, WASH. POST, Mar. 3, 2005, at A1. The Salt Pit has reportedly been shut down, with the CIA using another facility. The death in custody was referred for investigation but no one has been charged yet. Priest, CIA Holds Terror Suspects in Secret Prisons, supra note 196.
young sons were also taken into custody and there have been reports that the CIA is holding them as an inducement to make him talk.\footnote{Olga Craig, \textit{CIA holds young sons of captured al-Qaeda chief}, \textit{SUNDAY TELEGRAPH} (Mar. 9, 2003), at 2.}

It was also reported that, as an interrogation device, U.S. officials initially withheld painkillers from Abu Zubayda, a suspected al-Qaeda member, who had been shot during his capture.\footnote{Dana Priest, \textit{CIA Puts Harsh Tactics on Hold: Memo on Methods of Interrogation Had Wide Review}, \textit{WASH. POST}, June 27, 2004, at A1.} Tactics used by the CIA, according to the \textit{Washington Post}, include “feigning suffocation, 'stress positions,' light and noise bombardment, sleep deprivation, and making captives think they are being interrogated by another government.”\footnote{\textit{Id}.}

In November 2005, the news media, citing unnamed CIA officials, reported on harsh interrogation techniques authorized by top CIA officials, which led to questionable confessions and deaths of detainees.\footnote{Brian Ross and Richard Esposito, \textit{CIA’s Harsh Interrogation Techniques Described}, \textit{ABC NEWS}, Nov. 18, 2005.} According to CIA sources six “Enhanced Interrogation Techniques,” instituted in mid-March 2002, were used on a dozen top al-Qaeda targets, incarcerated in isolation at secret locations on military bases in regions from Asia to Eastern Europe.\footnote{\textit{Id}.}

- Attention Grab: The interrogator forcefully grabs the shirt-front of the prisoner and shakes him.
- Attention Slap: An open-handed slap aimed at causing pain and triggering fear.
- Belly Slap: A hard open-handed slap to the stomach. The aim is to cause pain, but not internal injury. Doctors consulted advised against using a punch, which could cause lasting internal damage.
- Long Time Standing: This technique is described as among the most effective. Prisoners are forced to stand, handcuffed and with their feet shackled to an eye bolt in the floor for more than forty hours. Exhaustion and sleep deprivation are effective in yielding confessions.
- Cold Cell: The prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is doused with cold water.
- Water Boarding: The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner’s face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt.\footnote{\textit{Id}. See also Dana Priest, \textit{CIA Puts Harsh Tactics on Hold}, \textit{WASH. POST}, June 27, 2004; James Risen, David Johnston and Neil A. Lewis, \textit{Harsh CIA Methods Cited in Top Qaeda Interrogations}, \textit{N.Y. TIMES}, May 13, 2004.}
A classified report prepared in 2004 by CIA Inspector General John L. Helgerson found these techniques appeared to constitute cruel, inhuman or degrading treatment under the Convention Against Torture.\textsuperscript{208} CIA Director Porter Goss, however, countered that CIA interrogators use “unique” methods to obtain “vital” information from prisoners, but strictly obey laws against torture.\textsuperscript{209} The ACLU has sought CIA documents through FOIA and is currently litigating the issue, but the CIA has insisted that releasing evidence of alleged criminal acts by CIA agents would jeopardize national security.

The United States government has failed to revoke measures or directives authorizing “disappearances” and to end the use of secret detention facilities in violation of the Convention.

E. Torture and Abuse in the United States (Articles 1, 16)

Since the United States’ last report to this committee, the ACLU and other organizations have continued to document instances of torture and abuse of prisoners and detainees in prisons and jails. Prisoners and detainees have been beaten, shot at, kicked, shocked with electrical stun guns, repeatedly pepper-sprayed, held in solitary confinement for up to twenty-four hours a day under 24-hour surveillance, and restrained in chairs for hours during which time prisoners have defecated on themselves. Prisoners have also been raped and sexually assaulted by correctional officers and other inmates, and denied immediate medical assistance, resulting in the death of some prisoners.

More than 2.1 million persons are incarcerated in prisons and jails in the United States. The number of prisoners has increased six-fold since 1970. According to the U.S. Bureau of Justice Statistics, the U.S. rate of incarceration in 2004, 724 prisoners per 100,000 persons, is the highest reported in the world. As of 2004, 41\% of these prisoners were African-American and 19\% were Hispanic.\textsuperscript{210} Overcrowding, budget cuts affecting services and rehabilitation programs for prisoners, and inadequate correctional staff to maintain safety and security leave prisoners vulnerable to abuse by each other as well as by staff.

Below is a sample of cases in which the ACLU has been involved since 1999. These cases demonstrate that persons in confinement have been subjected to abuse and torture in violation of U.S. obligations under the Convention.

\textsuperscript{209} CIA Methods Not Torture, REUTERS, Nov. 1, 2005.
Correctional Officers Relied Upon for Guidance on Treatment of Detainees in Iraq

At least three U.S. correctional officials hired by the Department of Justice to set up Iraq’s prison system had previously led prison systems charged with abuse of American prisoners. These officials included Terry Stewart, a previous head of the Arizona prison system, who was sued by the Department of Justice for the rape and sexual assault on female prisoners by correctional staff. Another official was Lane McCotter, who resigned as head of the Utah prison system while under fire because of the death of a mentally ill prisoner who had been held for sixteen hours in a restraint chair. Gary DeLand, who had also headed the Utah system, faced litigation for denying adequate medical care to prisoners.211

Further, the Taguba Report on the Abu Ghraib prison abuses found that military police guards lacked training on detention procedures and relied on personnel with civilian corrections experience to guide them. The report stated: “I find that without adequate training for a civilian internee detention mission, brigade personnel relied heavily on individuals within the brigade who had civilian corrections experience, including many who worked as prison guards or corrections officials in their civilian jobs” (emphasis supplied).212

Some of the soldiers charged in the Abu Ghraib abuse had been prison guards in civilian life. For instance, Charles Graner had previously worked as a guard at a maximum security prison in Pennsylvania, which was the center of an abuse scandal in which guards routinely beat and humiliated detainees.213 Two soldiers allegedly involved in abuses in Camp Whitehorse, a detention facility in Iraq, had been correctional officers in civilian life. At a subsequent court-martial, one of them allegedly told other soldiers that abusive treatment maintains prisoner discipline.214

212 Taguba Report, supra note 185, at “Regarding Part 3 of the Investigation” ¶5. See also id. at “Regarding Part 2 of the Investigation” ¶ 20 (“Basic Army Doctrine was not widely referenced or utilized to develop the accountability practices throughout the 800th MP Brigade’s subordinate units. Daily processing, accountability, and detainee care appears to have been made up as the operations developed with reliance on, and guidance from, junior members of the unit who had civilian corrections experience.”).
1. Conditions of Confinement in Prisons and Jails in the United States

   a. Prisoners “Left to Die” During Hurricane Katrina

Before Hurricane Katrina, Orleans Parish Prison (“OPP”) was the largest prison facility in the State of Louisiana. On an average day, OPP held over 6,500 prisoners, 60% of whom were held on attachments, traffic, or municipal charges. After Hurricane Katrina hit New Orleans in August 2005, the ACLU received reports from over 1,000 prisoners who claimed that they were left for days without food, water, or ventilation. Many of the prisoners reported that as the water rose, deputies forced them into their cells using bean bag guns, mace, and Taser guns. Once they were returned to their cells, many prisoners were locked in to prevent them from escaping. Prisoners reported that deputies abandoned their posts, leaving them to fend for themselves. In order to deal with the heat and the unbearable stench that resulted from overcrowding and the lack of operable toilets and showers, prisoners broke windows for air; some also hung signs out of the windows pleading for help. According to hundreds of prisoner testimonials, OPP deputies and members of the Special Investigation Division shot at some of the prisoners who were attempting to escape the rising water inside the prison, and several individuals reported that they witnessed fellow prisoners getting shot in the back.

When the prisoners were finally evacuated from OPP, up to four or five days after floodwaters reached chest-level in some parts of the prison, they were brought to an overpass where they were confronted by armed guards with K-9 dogs used to threaten them. Several prisoners said that the dogs bit other prisoners. Many of the prisoners said that they were maced and beaten during the evacuation and while on the overpass, generally for nothing more than sitting next to a fellow prisoner who attempted to stand and stretch after being forced to sit on the pavement for hours or even days. Other prisoners recounted being maced and beaten for requesting food and water. Female prisoners also reported that deputies directed degrading and sexually offensive comments at them.

- “It was like we were left to die. No water, no air, no food. We were left with deputies that were out of control,” said one woman.

- One man, who was housed in Templeman II (Unit F-2), said he and other prisoners saw “a few dead bodies and we were told not to say anything or we were going to be like them.”

Hundreds of prisoners said conditions worsened when they were moved to other facilities, such as Elayn Hunt Correctional Center (“Hunt”). At Hunt, thousands of former OPP prisoners were left outside in a large field for up to one week; they remained in the field, most without shelter, even while it rained.

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One person described Hunt as “pure hell.” “The guards treated us like old nasty dogs. We couldn’t ask them nothing… [or] you might get shot at,” he said.

Another man described lawlessness at Hunt: “Everywhere you looked there were fights, people getting stabbed, people getting raped… When [deputies] did come with food, they threw it to us from scaffolds like they were at Mardi Gras.”

The ACLU represents the Orleans Parish prisoners in an ongoing class action lawsuit.

### b. Other Cruel and Inhuman Conditions of Confinement

The ACLU is suing Saginaw county officials for the inhuman conditions of confinement in the Saginaw County jail in Michigan. The ACLU found that prisoners are routinely stripped of their clothing by force and placed naked in an isolation cell where they can be observed by members of the opposite sex. Although a jail directive in December 2001 curtailed this practice, the ACLU found that the practice continues to exist. Some prisoners are provided paper gowns, which are inadequate to cover their bodies, are of poor quality, and easily tear. The prisoners are forced to use the paper gowns either as toilet paper, or to remove the mace that is sprayed on them when the guards strip them of their clothes; as a result, they are often left naked.

Prisoners report that they are subjected to extremely cold temperatures in the isolation cells and are not provided with toilet paper. In one cell, where a commode is available, it is plugged with human feces and waste. Fecal matter, urine, blood and other bodily fluids cover the walls and floors in one of the cells. Two other cells have neither a commode nor a sink; prisoners relieve themselves in a hole.

In January 2002, Mississippi death row prisoners—many of whom had been on death row for decades—began a hunger strike to protest brutally harsh conditions of confinement. Six months later, after efforts to resolve the problems administratively had failed, the ACLU filed a class action on behalf of all the death row prisoners, challenging such inhuman conditions of confinement as exposure to lethal extremes of heat and humidity, pervasive filth, uncontrolled pest infestation, non-functional plumbing and constant exposure to human waste, lack of water, extreme isolation, and the warehousing of...
severely mentally ill prisoners in adjoining cells. At trial, the plaintiffs proved that these conditions were so extreme that they caused most prisoners to develop serious mental illness, and caused already mentally ill prisoners to become profoundly psychotic. The ACLU won a comprehensive injunction in the trial court, which was affirmed by the U.S. Court of Appeals for the Fifth Circuit.

c. Supermaximum Security Prisons

The U.S. government defends the use of supermaximum facilities “[f]or certain violent inmates . . . to protect the safety of the community at large and of other members of the prison population.” But many of the more than 20,000 people held in supermax prisons are mentally ill, and many are held in long-term isolation for years. Supermax prisons are deliberately designed to subject prisoners to extremes of social isolation and sensory deprivation. Prisoners are typically confined in windowless cells for twenty-three to twenty-four hours a day. They are let out of their cell a few times a week for a shower and limited physical movement in a small, enclosed space, typically without exercise equipment. They have almost no access to education or vocational activities, and very limited opportunity for human interaction. Such conditions would be difficult even for the emotionally robust to tolerate but, for the mentally ill, they often lead to catastrophic deterioration, self-mutilation, and sometimes suicide.

The U.S. Report refers to an ACLU suit brought against Wisconsin’s Department of Corrections regarding conditions in a supermax prison in Boscobel, Wisconsin, which was settled with an agreement that includes a ban on housing seriously mentally ill prisoners in supermax. Many such facilities continue to operate in the U.S., inflicting extreme suffering and sometimes irreparable harm on mentally ill prisoners in violation of U.S. obligations under the Convention.

For instance, in February 2005, the ACLU filed a suit challenging the confinement of mentally ill prisoners at the Wabash Valley Correctional Facility’s Secured Housing Unit (“SHU”), a supermax penal facility in Indiana. The extreme conditions in this unit have led to four suicides since 2000, including a prisoner who hanged himself, one who

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221 U.S. Report, supra note 1, ¶ 95.


223 Id.

set himself on fire, another who cut his wrist and throat, and another who choked himself to death with a washcloth. 225 The Indiana Department of Corrections (“IDOC”) maintains that the SHU functions as a disciplinary segregation unit for prisoners who have received two years of disciplinary segregation and are deemed inappropriate to house elsewhere. 226 A disproportionately high number of mentally ill prisoners, however, are transferred to the SHU because their inability to obey prison rules causes them to accumulate disciplinary infractions. 227 Indeed, the IDOC admits that “well over half” of the prisoners in the SHU are mentally ill. 228

Prisoners are locked in windowless concrete cells virtually twenty-four hours a day. They are allowed one hour of solitary exercise in a fifteen by twenty-four feet concrete cell. 229 Because the exercise area is exposed, recreation is frequently cancelled because of inclement weather. 230 Each cell is illuminated twenty-four hours a day and prisoners are not allowed contact with each other. Whenever a prisoner leaves his cell he is placed in restraints. Meals are provided through a slot in the locked door of the cell. 231 Prisoners who report feeling suicidal or who demonstrate symptoms of mental illness may be placed in four-point restraints for four hours or more. Those who are deemed dangerous to themselves are stripped to their underwear and returned to their cells with nothing more than a blanket for seventy-two hours or longer. 232 Some prisoners are confined in the SHU for years on end. 233

In 2005, the ACLU also filed a complaint on behalf of prisoners confined in Mississippi State Penitentiary in Parchman, Mississippi. This supermax facility houses 1000 men—many of them for decades—who are confined twenty-three to twenty-four hours a day in total isolation and complete monotony. They are constantly exposed to pervasive filth and stench, malfunctioning plumbing, human excrement, lethal extremes of heat and humidity, grossly inadequate physical and mental care, and the constant pandemonium created by severely mentally ill prisoners housed in adjoining cells without treatment, who scream, rave, and hallucinate. 234 Many of the 1000 men confined to this facility are held in supermax conditions not for any actual disciplinary or security reason, but because they are HIV positive, have special medical needs, are severely mentally ill, or at some point requested protective custody. They are deprived of any meaningful review of their placement in, or indefinite confinement to, the supermax, and they have no opportunity to earn their way into less-restrictive housing. The lack of due process and of any reward for good behavior greatly intensifies the already profound hopelessness and mental illness engendered by the conditions of confinement. In February 2006, the ACLU

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225 Id. at ¶ 46.
226 Id. at ¶ 1.
227 Id. at ¶ 44.
229 Mast Complaint, supra note 224, at ¶¶ 24-26.
230 Id. at ¶ 27.
231 Id. at ¶¶ 32-35
232 Id. at ¶¶ 53-54.
233 Id. at ¶¶ 43, 58, 76, 91.
reached an agreement, in principle, with the Mississippi Department of Corrections to settle the suit, which will comprehensively address these conditions.

d. Inadequate Medical Care and Mental Health Care

Medical and mental health care is deficient and frequently life-threatening in prisons throughout the United States. Correctional systems too often lack adequate funds to hire and retain qualified medical personnel and fail to institute proper procedures to treat prisoners. For instance, in September 2004, a quadriplegic twenty-seven-year-old man in the District of Columbia who had no previous arrests, and who had been sentenced to ten days in a jail for possession of a single marijuana cigarette, died four days into his sentence due to the lack of medical care. Although he told jail staff he needed a ventilator to breathe at night, he was never provided with one. Indeed, staff did not even bother to help him get enough food and water, and at times he was locked into a cell with absolutely no way to communicate his needs.

Tragically, this is not an isolated case. Throughout the country, the failure to provide minimally adequate health care becomes a death sentence for too many prisoners. For example, in the ACLU’s case against the oldest and largest prison complex in Michigan, a federal judge recently described a series of prisoner deaths over a short period of time. These deaths included a prisoner who “died of neglect, a drug resistant staph infection and gastro-intestinal bleeding,” as well as patients whose cancers went untreated until treatment was useless. Similarly, pretrial detainees in the Baltimore Jail presented a federal court with evidence of failure to provide necessary medical care to over 100 detainees, including a woman whose breast lump grew to the size of a golf ball, while staff ignored her repeated requests for medical care. Another detainee who suffered from cancer was left untreated in his bed, with no attempt to keep him comfortable and clean. A month later, when he was released from the jail, he had a bedsore covering most of one buttock. Another woman came into the jail suffering from a drug-resistant staph infection. Although the medical staff noted that she had an abscess, with green and yellow discharge from multiple sites, she was not treated for four days nor placed in medical isolation.

Poor mental health care in prisons has also resulted in the deaths of prisoners. In 2002, the ACLU filed a suit on behalf of seriously mentally ill prisoners in El Paso County Jail in Colorado Springs, Colorado. The suit alleged that the condition of mentally ill prisoners was exacerbated due to the lack of adequate mental health treatment and that, as a result, they were at risk of serious injury and death conditions amounting to cruel and unusual punishment. This badly overcrowded jail, whose population regularly exceeds 1000, makes available only two hours of psychiatric service per week. Ten prisoners have

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237 Duvall v. Ehrlich, No. 04-7518 (4th Cir. filed Sept. 22, 2004), Joint Appendix at 432-33; 443; 448; 446-47; 533-35; 655-56a; 1033-40; 1069.
died in the jail since 1998, including five suicides, a prisoner who died while tied to the jail’s “restraint board,” and a prisoner suffering from alcohol withdrawal who died after being repeatedly pepper-sprayed by staff. The jail also fails to provide necessary psychotropic medications, fails to provide in-patient hospitalization for those mentally ill prisoners who need it, and uses restraints on the mentally ill in an unsafe manner. Most recently, in July 2005, a twenty-one-year-old woman hanged herself in the jail, three days after jail staff dismissed her request for mental health care as “manipulation.”

The ACLU is also resisting jail officials’ attempt to end federal court oversight of the Maricopa County Jail in Phoenix, Arizona, the nation’s fourth largest jail. An independent consultant recently concluded that the jail’s health care staffing “is insufficient to meet the needs of the inmate population,” and that due to the jail’s failure to provide care, “an inmate’s health status is likely to deteriorate while in the custody of … Maricopa County.” The jail’s mental health care is no better; an Arizona state judge concluded that “[s]evere overcrowding, unsanitary conditions, cockroach infestations, extreme noise, lack of air conditioning and bullying by professional criminals, including assaults, extortion and stealing medications, are typical of the conditions under which the mentally ill must live.” The judge further found that, in the jail’s psychiatric unit, “at times patients must be kept in the day room and hallways. The overcrowding results in diminished hygiene, including [living units] that are at times cockroach infested and filthy, flooded with urine and smeared with feces.”

2. Prison Rape and Sexual Assault

Adult and juvenile prisoners confront prison rape and sexual assault across the nation. The ACLU receives many complaints of rape and of prison officials’ failure to provide protection from rape and violence. The corrections industry estimates that there are 12,000 rapes per year, which exceeds the annual number of rapes reported by women in New York City, Los Angeles, Philadelphia, Boston, San Diego, and Phoenix combined. In July 2005, the U.S. Bureau of Justice Statistics reported a total of 8,210 allegations of sexual violence in 2004; nearly one-third were substantiated following

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investigations. Almost 42 percent of those allegations involved staff-on-prisoner sexual abuse and an additional 11 percent involved sexual harassment of prisoners by staff.\textsuperscript{245} Sexual abuse in prisons is vastly under-reported. Only a very small percentage of victims report sexual abuse to prison authorities; they remain silent out of shame and out of a well-founded fear of retaliation by sexual predators, prison staff, and prison gangs.\textsuperscript{246} According to the prison code, “snitching” on other prisoners is a crime punishable by severe beating or death.\textsuperscript{247} And when the complaint is against a staff member—either for sexual abuse, or for failing to protect from sexual abuse—correctional officers can easily bring false disciplinary charges, punishable by solitary confinement and loss of good times credits adding more years to the time a prisoner must serve. Moreover, even when coerced sex is reported, the authorities usually treat it as consensual, and refuse protection. This is especially the case in prisons dominated by violent prison gangs (including many Texas prisons) where prison authorities have essentially abdicated control of the prison population to violent gang leaders. The gangs force vulnerable prisoners—those who are young, slight, non-aggressive, mentally ill, medicated, effeminate, homosexual, transsexual, or non-gang affiliated—to serve as sex-slaves to generate funds for the gang and to enhance its power.\textsuperscript{248}

To escape from sexual slavery and violent abuse, vulnerable prisoners have no choice but to attach themselves to a “protector” or strong man, to be his exclusive sexual property, in return for his protection from being prostituted out to the gangs. This kind of protective pairing is inevitably characterized as “voluntary” by prison authorities. In reality, the only “choice” the vulnerable prisoner is allowed to exercise is whether to be sexually “owned” by a single predator, or to be utterly at the mercy of violent gangs.\textsuperscript{249}

In April 2002, the ACLU filed a civil suit seeking damages and injunctive relief on behalf of Roderick Keith Johnson, a gay African-American who alleged that from September 2000 to April 2002 he was subjected to a system of gang propagated sexual slavery. Gang members routinely bought and sold him as chattel, raped and degraded him on virtually a daily basis, and threatened him with death if he resisted. He repeatedly pleaded with prison officials to house him in protective custody, but they refused to conduct any meaningful investigation of his complaints and denied his pleas for safekeeping.\textsuperscript{250} They repeatedly expressed contempt for non-aggressive gay men, and as a matter of practice failed to protect such prisoners from sexual assault, at least until they had been beaten or “gutted.” The month-long trial of the case began in September 2005 in Wichita Falls, Texas. The testimony corroborating Johnson’s claims included not only eye-witnesses to the rapes and beatings he endured, but also the testimony of gang leaders who had

\begin{footnotesize}
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\item \textsuperscript{245} U.S. Bureau of Justice Statistics, \textit{Sexual Violence Reported by Correctional Authorities}, 2004 (July 2005), available at \url{http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca04.pdf}.
\item \textsuperscript{247} Id.
\item \textsuperscript{248} Id.
\item \textsuperscript{250} Complaint, Johnson v. Johnson, No. 7:02-CV-87-R, 2003 WL 21510816 (N.D.Tex. 2003), available at \url{http://www.aclu.org/FilesPDFs/johnson.pdf}.
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forcibly pimped him out to other prisoners. The twelve-person jury, after deliberating over eight hours, returned a verdict ten to two in favor of the defendants. Jurors interviewed by the press made it clear that the jury believed Johnson had been raped, but were unwilling to hold prison officials liable because they had been “following policy” in denying Johnson protection.

In a first step in acknowledging the pervasive problem of rape in prisons, the U.S. Congress, in 2003, passed the Prison Rape Elimination Act, which is applicable to private and public institutions holding adults and juveniles.251 The law requires the Bureau of Justice Statistics to conduct annual surveys and research on the prevalence and effects of prison rape in local, state and federal prisons.252 It also established a National Commission to study prison rape, report its findings to Congress, and develop national standards for preventing prison rape.253 The National Commission held three hearings in 2005, and received testimony from prisoners, officials, and advocates about prisoner and staff sexual violence.254

Despite enactment of the law, much remains to be done to protect prisoners from sexual assault and rape in prisons and jails and to provide them with real possibilities to seek redress. Prison officials themselves rarely push for the prosecution of prisoner rape by other prisoners and are even less likely to hold perpetrators accountable for sexual assault of prisoners by officials. Few public prosecutors are concerned with prosecuting crimes committed against prisoners, preferring to leave internal prison problems to the discretion of prison authorities. As a result, the perpetrators of prison rape and assault virtually never face criminal charges or receive punishment.

3. Cruel Use of Restraint and Electro-Stun Devices

The use of restraint and electro-stun devices under international law is limited to situations where they are necessary to prevent escape, or to prevent prisoners from injuring themselves or from damaging property.255 In 2000, the Committee expressed concern about “[t]he use of electro-shock devices and restraint chairs as methods of constraint, which may violate the provisions of Article 16 of the Convention” and recommended that the U.S. “[a]bolish electro-shock stun belts and restraint chairs as

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252 Id. at § 4 (a).
253 Id. at § 7. The law also creates the Review Panel on Prison Rape in the Department of Justice, which will hold annual public hearings concerning the operation of the prisons with the highest and lowest rates of prison rape. Id. at § 4(b).
methods of restraining those in custody; their use almost invariably leads to breaches of Article 16 of the Convention.”256 The United States has failed to implement the Committee’s recommendation. There are still no binding national standards on the use of restraint chairs and electro-shock devices. In U.S. prisons and jails, restraints are still used routinely to subdue prisoners, resulting in abuse and even some deaths.

In the absence of enforceable national standards on usage and safety, the use of restraint chairs and pepper spray has resulted in abuse of prisoners and even some deaths.257 For example, the ACLU in Georgia filed suit on behalf of a group of six prisoners and pre-trial detainees who were repeatedly placed in a restraint chair and pepper sprayed by Dooly County jail officials, even after they were subdued.258 The jail has been using restraint chairs to punish prisoners despite a U.S. Supreme Court decision emphasizing that restraint should not be used to impose “wanton and unnecessary pain,” and should not be applied once a prisoner has been subdued.259

Plaintiffs alleged that they were strapped to a restraint chair and exposed to 40 degrees Fahrenheit (4.4 degree Celsius) conditions; were repeatedly pepper sprayed in the eyes and face; were strapped to a restraint chair without a bathroom break and forced to defecate on themselves; and hosed with water while in a restraint chair.260 One plaintiff, who suffered from depression and a related mental illness, had attempted suicide twice while in detention; after his second suicide attempt he was strapped in a restraint chair while still smeared with feces. After an hour he was hosed down but then restrained for another three to four hours without a bathroom break.261

In addition to ongoing use of restraint chairs and pepper spray, Tasers are now used throughout the nation by law enforcement agencies to subdue suspects by law enforcement agencies. Tasers are hand-held electronic stun guns that fire two barbed darts up to a distance of 21 feet, penetrate up to two inches of the target’s clothing or skin, and deliver a 50,000 volt electro shock. From 1999 to September 2004, at least 148 people in the United States and Canada died after encounters with police who shocked them with Tasers.262 In September 2005, the ACLU of Northern California published a report reviewing the use of Tasers by seventy-nine law enforcement agencies in northern and central California and found that, despite the growing number of deaths and the increasing concern from medical experts about Taser safety, the use of Tasers remains

256 Concluding Observations Concerning the United States, supra note 14, at ¶¶ 179 (e), 180(c).
257 The restraint chair is a wooden chair with straps for inmates’ wrists and ankles that prevents all movement except for the turning of one’s head. Olerosin Capsicum, commonly known as pepper spray, an inflammatory agency derived from cayenne pepper causes coughing, gagging, shortness of breath, acute sensation on skin and other exposed areas.
260 Delong Complaint, supra note 258, ¶¶ 40, 50-52, 56, 81.
261 Id. at ¶¶ 89, 96-108.
largely unregulated.\textsuperscript{263} ACLU found that police departments rely on training materials provided by the manufacturer, Taser International, which grossly exaggerate the safety of Tasers.\textsuperscript{264}

### Deaths Associated with Use of Tasers

On January 2, 2005, Gregory Saulsbury, age 30, was acting violently, apparently under the influence of drugs. Saulsbury’s family called for medical help but members of the Pacifica Police Department in California were the first to arrive at the scene. A struggle ensued, and two officers shot Saulsbury with their Tasers eleven times. A coroner’s report showed twenty-two marks on Saulsbury’s body. The confrontation lasted less than four minutes. The medical examiner found that a combination of high levels of cocaine, the struggle with the police, and the Taser contributed to Saulsbury’s death.\textsuperscript{265}

Andrew Washington, age 21, died on September 6, 2004, shortly after being shot seventeen times with a Taser in a three-minute period in Vallejo, California. Washington was fleeing police after allegedly hitting a parked car. As he climbed a fence, a Vallejo police officer repeatedly shocked Washington with a Taser until he noticed that Washington was having trouble breathing. Police called for an ambulance but Washington, who had no prior history of heart problems, was pronounced dead at the hospital. The autopsy report indicated that the cause of death was “cardiac arrest associated with excitement during the police chase and cocaine and alcohol intoxication, occurring shortly after Tasering.”\textsuperscript{266}

Children and drug users are particularly susceptible to ventricular fibrillation as a result of Taser shock.\textsuperscript{267} Multiple applications of Taser also increase the risk of death as it increases the chance that an electrical charge will reach the heart.\textsuperscript{268} ACLU found that only 43 percent of police departments surveyed in California had any policy prohibiting the use of Tasers on pregnant women, just 35 percent had any policy regulating use on the elderly, and only 19 percent had policies restricting the use of Tasers on children.\textsuperscript{269}

In Colorado, the ACLU received several complaints of individuals being stunned by Tasers while already restrained. In a letter to the Denver Mayor’s Task Force ACLU pointed out that the use of 50,000 volt shock on a subject who is restrained and poses no

\textsuperscript{263} Id.
\textsuperscript{264} Id.
\textsuperscript{265} Id. at 3 (citing Transcript from 911 call obtained from Santa Rosa Police Department; \textit{Six Shots Preceded Santa Rosa Man’s Death}, CBS 5 NEWS, July 19, 2005; and Jeremy Hay, \textit{Santa Rosa Man Dies After Police Struggle}, SANTA ROSA PRESS DEMOCRAT, July 17, 2005.).
\textsuperscript{267} \textit{Stun Gun Fallacy}, supra note 262, at 4.
\textsuperscript{268} Id. at 4.
\textsuperscript{269} Id. at 13.
physical threat to an officer or anyone else, “constitutes abusive, excessive, and unreasonable force.”

For example:

- A man was shocked in the genitals by an electroshock weapon while he was handcuffed and seated in the back of a squad car. The police report confirms that the officer carried out what he called “a drive stun to the groin area.”

- A woman six-and-one-half months pregnant was tased in the abdomen while she was handcuffed and seated in the back of a squad car.

- A county jail prisoner was shocked twice with a stun gun while he was handcuffed to a wall in the booking room. The officer’s report explains that the prisoner was “mouthing off.”

- Police responded to a call of an overdose and took a visibly intoxicated and possibly suicidal subject to a hospital. Hospital personnel put him in soft restraints on a hospital bed. When the subject failed to follow police orders to shut up, the police report states that police responded by shocking him with a Taser.

Notably, in March 2005 two federal enforcement divisions of the Department of Homeland Security announced that they were not purchasing Tasers because of safety concerns. Given the serious safety risks associated with Tasers, use of Tasers by law enforcement should be banned at the local, state and federal level.

4. Cruel Punishment for Juveniles

In a welcome move, the U.S. Supreme Court in February 2005 prohibited the imposition of the death penalty against people who commit crimes under the age of eighteen. In *Roper v. Simmons*, the court held that juveniles are “categorically less culpable” than adult criminals. The ruling noted that juveniles lack the “well-formed” identities of adults, are susceptible to “immature and irresponsible behavior,” and are vulnerable to “negative influences and outside pressures.”

Unfortunately, in a similarly cruel practice, forty-one states continue to sentence children to life without parole for crimes committed before the age of eighteen. In many states, juveniles can be transferred to adult courts and sentenced to life without any chance of parole regardless of their age, and without consideration of the circumstances of the offense. Over two thousand people

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271 Id.


In Michigan, according to the ACLU’s research, at least 307 individuals are serving life without parole for crimes committed as juveniles.\footnote{276}{ACLU, \textit{Second Chances}, supra note 274, at 4.} Michigan has the third-highest rate in the nation of sentencing child offenders to life without parole. Almost half (146) are serving the sentence for crimes committed when they were sixteen or younger. Most were sixteen or seventeen at the time of the offense, forty-three were fifteen and two were fourteen. While all the youth serving the sentences were convicted of an offense involving a homicide, not all were principally responsible for the death. Nearly half reported that they were convicted on an “aiding and abetting” theory and nearly half reported that they were not the principal and had adult co-defendants.\footnote{277}{\textit{Id}.} Nationwide, an estimated 59 percent received the sentence for their first-ever criminal conviction.\footnote{278}{Human Rights Watch, \textit{Rest of their Lives}, supra note 275, at 1.} Sixteen percent were between thirteen and fifteen years old at the time they committed their crimes, and an estimated 26 percent were convicted of felony murder (participation in a robbery or burglary during which a co-participant committed murder without the knowledge or intent of the teen).\footnote{279}{\textit{Id}.}

The unfairness of imposing an adult punishment on children is heightened by racial and gender inequities. The majority (221) of juvenile lifers in Michigan are minority youth, 211 of whom are African-American.\footnote{280}{ACLU, \textit{Second Chances}, supra note 274, at 6.} Nationwide, the estimated rate at which black youth receive life without parole sentences (6.6 per 10,000) is ten times greater than the rate for white youth (0.6 per 10,000).\footnote{281}{Human Rights Watch, \textit{The Rest of their Lives}, supra note 275, at 1.}

Girls in Michigan comprise two percent of those serving life without parole. Unlike boys who are sent to Michigan Youth Correctional Facility and housed with other prisoners under the age of twenty, girls are sent directly to adult women’s prisons and housed with adults.\footnote{282}{\textit{Id}.}

Excessive punishment becomes cruel, inhuman or degrading if its severity or length is disproportionate to the crime or to the culpability of the offender. The preamble of the Convention Against Torture prohibits cruel, inhuman or degrading punishment by recognizing that such “rights derive from the inherent dignity of the human person.”\footnote{283}{See also ICCPR, supra note 38, Art. 10 (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”); United Nations Convention on the Rights of the Child, Art. 37(a) Sept. 2, 1990, 1577 U.N.T.S. 3. (prohibiting sentence of capital punishment or life imprisonment without possibility of release for offenses committed by persons below eighteen years of age).}
For treatment to be humane, it must be appropriate to age and legal status.\textsuperscript{284} Sentencing children to life without parole violates these standards.

5. Abuse of Non-Citizens in Detention in the United States

a. Abuse of Non-Citizens in Immigration Detention Centers

In 2004, the Department of Homeland Security detained more than 200,000 non-citizens in jails and prisons for violating civil immigration laws.\textsuperscript{285} The press and human rights advocates have reported on unsanitary conditions of confinement, inadequate medical treatment resulting in death, and abuse by guards of non-citizens detained for immigration violations. In 2004, the press reported on the physical abuse of non-citizen detainees in Hudson and Passaic county jails in New Jersey, including multiple allegations of physical assault and attacks by guard dogs. The press also reported that the medical records showed that at least two prisoners had been taken to the hospital for treatment for dog bites.\textsuperscript{286}

Following the publicity of the story about the use of dogs, the Department of Homeland Security issued a memorandum ordering its field offices to refrain from contracting with jails and detention centers that use dogs around immigration detainees.\textsuperscript{287} Jails not holding immigration detainees are not covered by this memorandum and may continue to use dogs to sniff for drugs and other contraband and to guard prisoners.\textsuperscript{288}

In December 2005, the press reported that several non-citizens detained for immigration civil violations died after guards and medical staff failed to provide immediate proper medical care.\textsuperscript{289} The Department of Homeland Security’s detention centers and federal prisons have medical standards which require staff to respond to medical emergencies “within a 4 minute response time” and to apply life-saving measures if needed. In the four cases reported by \textit{National Public Radio}, each detainee died due to failure of the


\textsuperscript{288} \textit{Id.} See also Asjylyn Loder, \textit{Passaic Jail Still Relying on Dogs; Federal Ban is Limited}, \textit{The Record}, Dec. 24, 2004 (Critics say that dogs should be banned from all jails as questions have arisen whether dogs can be used safely to control inmates. In March 2003, two jail guards assaulted a federal prisoner and used a dog to intimidate the prisoner).

\textsuperscript{289} See, e.g., Zwerdling, \textit{The Death of Richard Rust}, supra note 285. Witnesses who held a prayer service to remember Richard Rust were locked in their cells for two to three days and told to keep quiet. Rust, who collapsed suddenly in Oakdale Federal Detention Center, was not provided medical assistance until ten to twelve minutes later by which time he had already died. \textit{National Public Radio’s} attempts for several months through emails, letters, and phone calls to get the Department of Homeland Security and Oakdale Detention Center to discuss the events surrounding Rust’s death were refused. \textit{Id.}
guards and medical staff to provide immediate medical attention. This deliberate indifference to a person’s serious medical needs constitutes cruel treatment in violation of the Convention Against Torture.

b. Abuse of Non-Citizens Detained in the “Global War on Terror”

Shortly after the terrorist attacks on New York and Washington, D.C., the United States rounded up, arbitrarily detained, and mistreated hundreds of men who were from Arab, South Asian or Muslim countries. According to two official reports published by the Office of the Inspector General of the U.S. Department of Justice (“OIG”), few if any had real links to terrorism. The process of naming them as “of special interest” to the investigation was often based on the most tenuous and haphazard of connections. These men were detained often for months at a time, even in cases where they were not contesting deportation and the government could have effectuated their immediate removal from the country. The United States refused to disclose to the public a list of all these so-called “special interest” detainees, and many of them remain unknown.

While detained, these immigration detainees were subjected to a regime of physical and psychological abuse. According to the conclusions of the second OIG report (“OIG Supplemental Report”), staff and supervisors engaged in the following types of physical brutality: slamming, bouncing and ramming detainees against the walls; bending detainees’ arms, hands, wrists and fingers; pulling and stepping on detainees’ restraints to cause pain; improper use of restraints; and rough and inappropriate handling.291

Anser Mehmood, a Pakistani national, was detained by the U.S. from October 2001 to May 2002. Border Patrol agents took him to the Metropolitan Detention Center in Brooklyn, New York in leg, arm and wrist shackles. Upon arrival, federal correctional officers threw him against a wall so hard that his mouth started to bleed and a bone in his hand was broken. He was not given x-rays or appropriate medical treatment even though a doctor saw that his hand was broken. The correctional officers told him that he was being held as a “World Trade Center suspect,” even though he had been arrested for immigration violations. For the first four months of detention, Mehmood was held in a solitary, illuminated cell for twenty-four hours a day, and was regularly insulted by prison guards for being a Muslim.292


These incidents were not isolated. The OIG Supplemental report is replete with evidence substantiating the systemic nature of the abuse, noting that “almost all the detainees were slammed against walls,” at least “one officer always twisted detainees’ hands,” some officers stepped on detainees’ leg chains “whenever they were stopped,” and detainees were often handled roughly and inappropriately.\footnote{OIG Supplemental Report \textit{supra} note 290, at 10, 17, 21, 26.}

Two reports published by the ACLU also document the devastating impact that the deportation of these men has had on their families and on immigrant communities in the United States.\footnote{ACLU, \textit{America's Disappeared}, supra 290; ACLU, \textit{World's Apart: How Deporting Immigrants After 9/11 Tore Families Apart and Shattered Communities} (Dec. 2004), available at \texttt{http://www.aclu.org/FilesPDFs/worldsapart.pdf}.} In January 2004, the ACLU filed a petition to the U.N. Working Group on Arbitrary Detention (“the Working Group”), on behalf of certain immigrants detained by the U.S. in connection with the events of September 11, 2001.\footnote{ACLU Arbitrary Detention Petition \textit{supra} note 292.} In November 2005, the Working Group issued an opinion on the case of Benamar Benatta. Benatta, an Algerian national, was held in U.S. custody for over three years “without [the government] actually taking any procedural action on the offense with which he is accused”—a violation of Article 9 (prohibition on arbitrary detention) of the ICCPR. The Working Group also condemned the “high-security prison regime (involving impositions that could be described as torture), which for no reason whatsoever, was imposed on [Benatta] while he was under investigation by the FBI.”\footnote{U.N. Econ. and Soc. Council, \textit{Opinions Adopted by the Working Group on Arbitrary Detention}, Commission on Human Rights, ¶ 9, U.N. Doc. E/CN.4/2005/6/Add.1 (Nov. 19, 2004), available at \texttt{http://www.aclu.org/FilesPDFs/benatta.opinion.pdf}.}

c. Misuse of Material Witness Act

Following the September 11 attacks, the Department of Justice detained at least seventy men living in the United States—all Muslim but one—under a federal law that permits the government, in narrow circumstances, to arrest and briefly detain “material witnesses” who have information about a criminal case and who might otherwise flee to avoid testifying in a criminal proceeding. The government secured the indefinite detention of such persons not for criminal purposes but as possible terrorist suspects. A report published jointly by the ACLU and Human Rights Watch in June 2005 documented how witnesses were often arrested at gunpoint in front of families and neighbors and transported to jail in handcuffs, typically held around-the-clock in solitary confinement, and subjected to the harsh and degrading high-security conditions typically reserved for prisoners accused or convicted of the most dangerous crimes.\footnote{ACLU and Human Rights Watch, \textit{Witness to Abuse: Human RightsAbuses Under the Material Witness Law Since September 11} (July 2005), available at \texttt{http://www.aclu.org/FilesPDFs/materialwitnessreport.pdf}.} They were taken to court in shackles and chains. In at least one case, a material witness was made to testify in shackles.
The government has jailed almost all of the material witnesses in maximum security prison and sometimes in the same special units holding the most dangerous prisoners in the facility. Many have been kept in solitary confinement twenty-four hours a day, with little time outside their cells for recreation. Some have been in windowless cells. In some cells the lights have been kept on morning, noon, and night. In the early stages of their detention, they have not been allowed to call their families or friends. Some of the material witnesses have endured physical and verbal abuse by prison guards who accused them of being terrorists.

Many material witnesses reported that they were subjected to derogatory comments by prison guards, were physically abused while in federal custody, and were humiliated by what they considered gratuitous strip searches by multiple guards, often in public places. Albader al-Hazmi, held as a material witness at Metropolitan Detention Center in Brooklyn, recalled:

> I was searched naked many times sometimes twice daily in front of many guards. The guards, they were enjoying searching us naked. When they felt like it they would beat us. . . . One of the guards said to me while beating me say thanks to Allah.

The report found that the U.S. Department of Justice relied on false, flimsy or irrelevant evidence to secure arrest warrants for the men and to persuade courts that they were a flight risk and needed to be incarcerated. Almost all the men, in fact, had cooperated with federal authorities before their arrest. Many proved to have no information relevant to a criminal proceeding.

One-third of the seventy confirmed material witnesses were incarcerated for at least two months. Some were imprisoned for more than six months, and one actually spent more than a year behind bars. The Department of Justice apparently used the material witness statute to buy time to conduct fishing expeditions for evidence to justify arrests on criminal or immigration charges. When there was no such evidence, the Justice Department simply held the men under the material witness law until it concluded that it had no further use for them or until a judge finally ordered their release.

In October 2005, Senator Patrick Leahy introduced a bill (S.1739) to amend the material witness statute. The bill provides that material witnesses must be confined in the least restrictive means possible and detained to the extent practicable in a facility separate from accused or convicted criminals. The bill also provides material witness detainees with the right to have notice of the arrest warrant and the right to a prompt hearing to determine whether the witness poses a flight risk.

The bill falls short in some respects, however. For example, it continues to permit the use of the material witness statute in grand jury proceedings, which pose the greatest potential for abuse. Grand jury proceedings often last for months or years, and because they occur at a far earlier stage in the criminal process, a witness to a grand jury proceeding could more easily be detained for a much longer period than a witness to a
trial proceeding. In addition, because grand juries have wide latitude as investigative bodies, it is far more difficult for a detained witness to establish that his or her testimony is not “material”—or for a judge to evaluate materiality—at the grand jury stage. The bill also fails to limit or reform the secrecy of many material witness proceedings. At this submission, the bill is pending before the Judiciary Committee of the United States Senate.

F. Inadequate Review of Interrogation Rules (Article 11)

The Abu Ghraib photographs of torture and abuse became public in April 2004. Secretary of Defense Rumsfeld and other officials in the United States government knew, or had reason to know, about the abuses being reported as early as 2002, and yet they failed to adequately review interrogation techniques that contributed to the abuse or to issue new policy guidelines for soldiers to apply in their handling of detainees in Afghanistan and Iraq. Only in December 2004 did the Department of Justice withdraw the August 2002 memorandum. But the new memorandum fails to define torture and to prohibit cruel, inhuman or degrading treatment or punishment. It also fails to address the August 2002 memorandum’s assertion that the President can authorize torture and that there can be various defenses against criminal liability for torture such as “necessity” and “self-defense.” Instead, the new memorandum simply asserts that to address such concerns is “unnecessary” because of the “President’s unequivocal directive that United States personnel not engage in torture.”

Moreover, the Pentagon Working Group report of April 2003 was not deemed inapplicable to Department of Defense activities until March 2005. In November 2005, the Department of Defense did, however, issue a new policy directive that applies to all intelligence interrogations conducted by DOD military and civilian personnel, contractor employees under the DOD, law enforcement personnel and counterintelligence personnel.

301 Memorandum from William J. Haynes II, General Counsel, Dept. of Justice to the JAG Corps (Mar. 17, 2005). Haynes’s memo states that “in light of the Justice Department’s modification of its earlier legal analysis, the legal portion of the 2003 DoD Working Group Report on Detainee Interrogations does not reflect now-settled executive branch views of the relevant law.” Haynes continued: “I determine that the Report of the Working Group on Detainee Interrogations is to be considered a historical document with no standing in policy, practice, or law to guide any activity of the Department of Defense. This determination should be disseminated throughout the Department of Defense, as appropriate.” Id. See also Josh White, Military Lawyers Fought Policy on Interrogations, WASH. POST, July 15, 2005, at A1.
conducting interrogations for intelligence purposes.\textsuperscript{302} The directive is applicable to all who interrogate detainees in DOD custody.

The directive assigns responsibilities for interrogation activities to senior DOD officials; requires interrogation techniques sought by Army field commanders to be reviewed by the Secretary of Defense’s office; requires training and certification of all interrogators; and establishes procedures for reporting violations of the policy. The directive specifically prohibits the use of “[m]ilitary working dogs, contracted dogs, or any other dog in use by a government agency . . . as part of an interrogation approach not to harass, intimidate, threaten, or coerce a detainee for interrogation purposes.”\textsuperscript{303} The directive prohibits “[a]cts of physical or mental torture,” but fails to affirmatively prohibit cruel, inhuman or degrading treatment or punishment.

The Detainee Treatment Act enacted by Congress in December 2005 in response to detainee abuse explicitly prohibits cruel, inhuman or degrading treatment or punishment, as prohibited by the Fifth, Eighth, and Fourteenth Amendment, of anyone in U.S. custody and physical control irrespective of geographical location. It limits interrogations to standards codified in the Army Field Manual 34-52, which has been updated and at this writing is not yet released.\textsuperscript{304} The army field manual, however, is not applicable to the CIA. The press has reported that an annex to the amended manual will remain secret. The ACLU is concerned that the annex may reintroduce the administration’s claim, made in August 2002 and still not repudiated, that the President has “commander-in-chief-authority” to order torture. This concern is supported by the President’s signing statement to the Detainee Treatment Act which suggests that the President as commander-in-chief can authorize unlawful acts by government agencies under his control, thereby nullifying the applicability of the law.

G. **Unlawful Renditions (Articles 1, 3, 16)**

*We don’t kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them.*

—Unnamed U.S. government official.\textsuperscript{305}

The United States openly defends the practice of rendition as a counterterror technique and has used it in ways which violate the prohibitions against refoulement, torture, and cruel, inhuman or degrading treatment.\textsuperscript{306} Renditions involve the clandestine abduction and detention, without legal process, of persons suspected of terrorist activities. These


\textsuperscript{303} Id.

\textsuperscript{304} Detainee Treatment Act, *supra* note 5, § 1002(a).

\textsuperscript{305} Priest and Gellman, *U.S. Decries Abuse But Defends Interrogations*, *supra* note 299.

suspects are transferred by the U.S. to foreign intelligence services for interrogation, in countries were torture is routine. Rendition also includes the transfer of terror suspects into CIA custody in unknown secret detention centers overseas.

The former Director of the Central Intelligence Agency, George J. Tenet, described rendition as one of the United States’ key counter-terrorism policies. Tenet has stated publicly that in an unspecified period before September 11, the U.S. had undertaken over seventy such renditions, adding that the CIA had “racked up many successes, including the rendition of many dozens of terrorists prior to September 11, 2001.”

The news media reported that the practice of “rendering” individuals was developed by military or CIA lawyers and “vetted by Justice Department’s office of legal counsel” and has been applied to hundreds of individuals in post-9/11 terrorism interrogations. Using civilian aircrafts, which have permission to land on U.S. military airfields worldwide, the CIA flies captured terrorist suspects from one country to another for detention and interrogation.

The exact number of persons rendered post September 11 is not known. The news media has reported that more than 100 suspected terrorists were sent by the CIA to foreign intelligence services and to CIA-run secret detention centers overseas. About two dozen high-level terror suspects are in CIA custody in secret detention centers. The remaining—a group considered less important, with less direct involvement in terrorism and having limited intelligence value—have been transferred to countries including Egypt, Jordan, Saudi Arabia, and Syria for interrogations purposes. In a May 2005 television interview, Prime Minister of Egypt, Ahmed Nazif, openly acknowledged that since September 11 the Egyptian government had cooperated with the United States in the rendition of some sixty to seventy suspected terrorists to Egypt alone. The U.S Department of State Human Rights Reports for these countries consistently states that the use of torture during interrogations in these countries is “routine.”

The news media, quoting unnamed U.S. officials, reported that detainees were deliberately moved to countries known for their use of torture to ease constraints on their interrogations. An official who had supervised the capture and transfer of accused terrorists said, “If you don’t violate someone’s human rights some of the time, you

308 Dana Priest and Joe Stephens, Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons is Coming to Light, WASH. POST, May 11, 2004 (detailing the existence of “interrogation rooms of foreign intelligence services—some with documented records of torture—to which the U.S. government delivers or ‘renders’ mid or low-level terrorism suspects for questioning”).
311 Priest, CIA Holds Terror Suspects in Secret Prisons, supra note 195.
312 Id.; Jehl and Johnson, Rule Change Lets CIA Freely Send Suspects Abroad to Jails, supra note 310.
313 David Morgan, U.S. has sent 60-70 terror suspects to Egypt – PM, REUTERS, May 15, 2005.
probably aren’t doing your job . . . I don’t think we want to be promoting a view of zero tolerance on this.”

Pursuant to the practice of rendition to foreign intelligence services, U.S. officials claim that they obtain “diplomatic assurances” from the governments concerned that detainees will not be tortured. U.S. Attorney General Alberto Gonzales, in defending the practice of rendition, has stated that the purpose of U.S. policy is not to send detainees “to countries where we believe or we know that they’re going to be tortured.” He added that if a country has a long history of torture, the United States seeks diplomatic assurances that torture will not be used. However, he acknowledged that it was not possible to “fully control” what other nations do.

In practice, officials do nothing to monitor whether those assurances will be honored. They reportedly suggest questions to foreign intelligence interrogators and then turn a blind eye to the methods employed to extract the information. The U.S. Report states that it “is aware of allegations that it has transferred individuals to third countries where they have been tortured,” but maintains that the government does not transfer persons to countries where the U.S. believes it is “more likely than not” that they will be tortured, and obtains “assurances, as appropriate, from the foreign government.”

The ACLU considers diplomatic assurances to be unreliable and ineffective in protecting against torture and abuse even with so-called post-return monitoring mechanisms. Such “assurances” are inherently unreliable, not legally binding, and provide no recourse for the person who has been transferred.

The case of Maher Arar strikingly illustrates the dangers of the U.S. rendition program. Arar, a Syrian-born Canadian in transit from a family vacation through John F. Kennedy airport in New York, was detained by U.S. authorities in 2002. After holding him for nearly two weeks, U.S. authorities flew him to Jordan, where he was driven across the border and handed over to Syrian authorities following assurances from the Syrian government that he would not be subjected to torture or other abuse. Arar told U.S. officials that he would be tortured in Syria and repeatedly requested to be sent home to

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314 Priest and Gellman, U.S. Decries Abuse but Defends Interrogations, supra note 299.
316 Priest and Gellman, U.S. Decries Abuse but Defends Interrogations, supra note 299 (quoting senior United States official as stating that after an individual is rendered, the CIA are “still very much in control” and that they will often “feed questions to their investigators”). See also Rajiv Chandrasekaran and Peter Finn, U.S. Behind Secret Transfer of Terror Suspects, WASH. POST, Mar. 11, 2002; David E. Kaplan, et al., Playing Offense: The Inside Story of How U.S. Terrorist Hunters Are Going After Al Qaeda, U.S. NEWS & WORLD REPORT, June 2, 2003 (describing rendition of individuals to Jordan, Egypt, Morocco and Syria). For a comprehensive news report on the practice of rendition see Jane Mayer, Outsourcing Torture, NEW YORKER, Feb. 14, 2005.
317 U.S. Report, supra note 1, § II ¶30.
Canada. Arar, whom the United States asserts has links to al-Qaeda, was released without charge from Syrian custody ten months later. During his confinement in a Syrian prison, Arar alleged that he was repeatedly tortured, often with cables and electrical cords. Syrian authorities denied Arar’s claims and the U.S. government accepted the Syrian denial of torture at face value. (See discussion below on Arar’s civil suit in U.S. courts).

1. **Khaled El-Masri**

Khaled El-Masri, a German citizen of Lebanese descent, was forcibly abducted while on holiday in Macedonia, held in incommunicado detention, handed over to United States agents, then beaten, drugged, and transported to a secret prison in Afghanistan. There he was beaten, kicked, confined in squalid conditions, and detained without charge or public disclosure for several months. Five months after his abduction, El-Masri was deposited at night, without explanation, on a hill in Albania. Not long after El-Masri was flown to Afghanistan, Central Intelligence Agency officials realized that they had abducted and detained an innocent man, yet El-Masri’s unlawful detention continued for two additional months.

On December 13, 2005, the ACLU filed suit on behalf of El-Masri against George Tenet, former director of the CIA, and the airline companies that facilitated his rendition for the injuries El-Masri suffered as a consequence of the rendition process, including prolonged arbitrary detention, torture and other cruel, inhuman or degrading treatment.

2. **Ahmed Agiza and Mohammed El Zery**

On December 18, 2001, Ahmed Agiza and Mohammed El Zery, Egyptian citizens then seeking asylum in Sweden, were arrested on the street of their home towns in Sweden and handed over by Swedish security police to U.S. and Egyptian agents. The latter beat them, stripped them both naked, rammed suppositories into their rectums, and dressed them in diapers and prison uniforms. Both men were then placed on an aircraft where they were drugged and chained spread-eagled to the floor of the aircraft for the duration of the eight-hour flight to Cairo.

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319 [Id. at ¶ 54.]

320 [Id. at ¶ 2. German Chancellor Angela Merkel told a joint news conference in Berlin with Secretary of State Condoleezza Rice that the United States had acknowledged it made a mistake in the case of Khaled el-Masri. U.S. administration officials later said the U.S. government did not admit to a “mistake” regarding El-Masri and that the U.S. had informed Germany about El-Masri’s detention and release. Saul Hudson and Mark Trevelyan, *U.S. Germany Differ on CIA Abduction Case*, REUTERS, Dec. 6, 2005.]

321 [El-Masri Complaint, supra note 318.]

In Cairo, the men were transferred to the custody of Egyptian security police. Once in their custody, they were subject to lengthy interrogations. While being interrogated, they were subjected to torture and other inhumane treatment, including attachment of electric cables to their testicles, frequent beatings, and threats to their wives and families. They were held incommunicado and Egyptian officials denied their repeated requests to speak with a lawyer or family members. After five weeks under these conditions, the men were finally permitted to see the Swedish Ambassador and members of their families.\(^{323}\)

Mr. Agiza was subsequently sentenced to twenty-five years in prison after a six-hour trial before an Egyptian military tribunal. Agiza’s request for a forensic medical examination to prove his allegations of torture was denied by the tribunal. His trial, which was observed by a Human Rights Watch trial monitor, failed to comport with any recognized standards of due process. Without any explanation, the tribunal later reduced the sentence to fifteen years imprisonment.\(^{324}\)

Mr. Al-Zery was released after being tortured and interrogated, but at this submission he is not permitted to leave Egypt and is under constant surveillance by Egyptian security police.\(^{325}\)

H. Failure to Conduct Prompt and Impartial Investigations (Article 12)

1. Inadequate Government Investigations into Abuse in Afghanistan, Iraq and Guantánamo

_I really doubt whether the Defense Department can investigate itself, because there’s a possibility the secretary himself authorized certain actions. This cries out for an outside commission to investigate._

—Retired U.S. Army General Wayne A. Dowling, May 2004.\(^{326}\)

Torture and cruel, inhuman or degrading treatment in detention facilities in Afghanistan, Iraq and Guantánamo will continue to thrive if allegations of abuses, including deaths in custody, are not thoroughly investigated and perpetrators brought to trial. Investigations that have taken place regarding abuse of detainees in U.S. custody in Afghanistan, Iraq, and Guantánamo thus far have lacked scope and independence. The ACLU also discovered, by reviewing documents produced in the FOIA litigation, that whistleblowers were not taken seriously and were pressured to stay silent.

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A civilian interrogator reported that a civilian linguist had abused a detainee during an interrogation. The interrogator’s sworn statement says that when he informed his superior, the reaction was "[m]aybe the unit won't report the incident," and that he was fired after reporting the incident to several supervisors. The Army later conducted an investigation into the incident and found insufficient evidence to prove or disprove the allegations. Since the accused was in Egypt at the time of the investigation, he was only interviewed through phone and email.\footnote{Annex B89-94, Memorandum discussing Criminal Investigative Division Report. The Washington Post reported that after telling his commanding officer that he had witnessed five incidences of torture and abuse of Iraqi prisoners, U.S. Sergeant Frank Ford, a counterintelligence officer stationed in Samarra, was strapped to a gurney and flown out of Iraq on the grounds that he was suffering delusions as a result of combat stress. Despite a military psychiatrist’s initial conclusion that he was stable, he was ordered to undergo psychiatric evaluation in Germany. R. Jeffrey Smith and Josh White, Soldier who Reported Abuse was Sent to Psychiatrist, WASH. POST, Mar. 5, 2005.}

When describing the Marines’ “rough searches” of Iraqi prisoners, one Navy corpsman noted, “there was a lot of peer pressure to keep one’s mouth shut.”\footnote{Annex B95, U.S. Naval Criminal Investigative Service Report.}

In some cases, evidence of abuse was destroyed.

A DVD called “Ramadi Madness” included scenes of soldiers kicking a flexicuffed prisoner who reportedly later died and using a dead prisoner’s body to “wave hello.”\footnote{Annex B219, Excerpt from a Criminal Investigation Command Report (full record available at http://www.aclu.org/torturefoia/released/030705/8604_8702.pdf; http://www.aclu.org/torturefoia/released/030705/8703_8763.pdf; http://www.aclu.org/torturefoia/released/030705/8764_8808.pdf).} In another instance, footage depicts soldiers joyriding in a prisoner’s van while yelling profanities at Iraqi civilians. Copies of the DVD were destroyed by a sergeant after he learned the incident was under investigation. No soldier was charged in relation to the making of the DVD or the incidents depicted in it.\footnote{While the government did not release the “Ramadi Madness” DVD, claiming that copies had been destroyed, the Palm Beach Post has obtained a copy of the video and posted excerpts on its website, at http://www.palmbeachpost.com/localnews/content/news/epaper/2005/03/06/m16a_videoscene_0305.html.}

The U.S. government has initiated and completed several internal investigations into allegations of abuse in Afghanistan, Iraq, and Guantánamo.\footnote{See Annex C for summaries of these investigations.} The U.S. Report repeatedly cites the numerous investigations in the wake of the Abu Ghraib scandal to showcase the government’s seriousness in responding to abuse allegations.\footnote{U.S. Report, supra note 1, Annex, Part Two, § III(B)(2).} Not one investigation, however, has had independence or a broad mandate to fully investigate prisoner abuse. A major shortcoming of the investigations was the lack of independence—all the investigations were conducted by the military itself. Other failures in the investigations include:
No civilian investigated: No investigation examined the role of civilian leaders who had ultimate authority over detainee treatment and approved policies.

Looking down chain of command: All but one internal report looked down the chain of command, but, that too, was limited to interviewing key civilian leadership in the Department of Defense and “issues of personal accountability” were expressly excluded from its scope.

Cumulative reporting: The reports suffered from cumulative reporting, whereby each successive investigation was initiated with a review of the findings of previous investigations to the exclusion of necessary original research.

Failure to investigate unlawful rendition: No report examined the practice of unlawful rendition and the Office of Inspector General’s report examining the CIA’s conduct remains classified.

No interviews of victims: Most investigations did not interview the actual victims.\(^{333}\)

Notably, the Pentagon investigations essentially concluded that treatment that followed approved policies and techniques could not have been torture or cruel, inhuman or degrading treatment because they had been approved by higher authorities. Both the Pentagon investigations and the U.S. Report concluded that there is no evidence to suggest that “any governmental policy directed, encouraged or condones these abuses.”\(^{334}\)

The absence of independent and impartial investigations warrant the need for the appointment of a special counsel to investigate U.S. officials, irrespective of their rank or position, who participated in and ordered the torture and abuse of detainees in U.S. custody. An independent special commission with subpoena power should also be created to investigate the issue of prisoner abuse.

2. Inadequate Prosecution and Punishment

Despite the involvement of high-level civilian and military officials in the unlawful conduct described above, thus far only low-ranking soldiers have been held accountable. The government has refused to authorize any independent investigation into the policies and practices of torture and abuse, and no high-level official has been charged with any criminal activity in relation to the abuses.

The U.S. government has downplayed the extent of the torture and other abuse of detainees in U.S. custody, and continues to assert the position that it was simply the actions of a few rogue soldiers. While the U.S. government highlights the actions and


courts-martial of those soldiers who were directly involved in the torture and abuse of Iraqi detainees in Abu Ghraib, high-ranking commanders and civilian leaders who were involved in developing and implementing the policies on the treatment of detainees in the “global war on terrorism” have not been held to account. Indeed, some of the officials who were involved in developing the policies that led to the abuse and torture of prisoners have been nominated and confirmed to higher government posts.  

No one implicated in abuse of persons in custody in Afghanistan, Iraq or elsewhere had been criminally prosecuted until reports of Abu Ghraib became public in April 2004. The U.S. Report notes that there have been more than 190 substantiated incidents which have resulted in sixty-five courts-martial, seventy-six non-judicial punishments, thirty-eight reprimands, and twenty administrative actions. But the government fails to provide any data on the kinds of abuses that have warranted courts-martials, non-judicial punishments, reprimands, and administrative actions.

Notably, the U.S. has never enforced 18 U.S.C. § 2340A to prosecute U.S. officials or agents suspected of engaging in torture outside the U.S. Nor has the U.S. prosecuted anyone under the War Crimes Act 18 U.S.C. § 2441, which criminalizes war crimes committed by anyone inside or outside the U.S., or by anyone who is a member of the armed services or a U.S. national. Under the War Crimes Act, a war crime includes “grave breaches” of the Geneva Conventions or Common Article 3 of the Geneva Conventions which prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; . . . outrages upon personal dignity, in particular humiliating and degrading treatment.”

There have also been very few prosecutions for homicide in relation to the number of deaths of Afghans and Iraqis in U.S. custody. For instance, most of the implicated personnel in the deaths of Mullah Habibullah and Dilawar at the Bagram detention facility, who died in December 2002 after guards kneed them repeatedly in the legs while each was shackled to the ceiling, were brought before non-judicial administrative hearings instead of courts-martial.  

Out of twenty-seven soldiers and officers recommended for criminal charges fifteen were prosecuted. Five of those plead guilty to assault and other crimes; the stiffest punishment has been five months in a military prison. A solder convicted of maiming, assault and other crimes was sentenced to a demotion in rank and honorably discharged. Despite plea agreements in exchange for testimony or information against other soldiers, the prosecution failed to gain evidence for convictions—four former guards accused of assaulting detainees were all acquitted in courts-martial and charges against a fifth former guard were dropped.

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335 White House Counsel Alberto Gonzales was nominated and confirmed as Attorney General in 2005. Assistant attorney general Jay S. Bayee, author of the now discredited August 2002 memorandum, was nominated and confirmed judge in the U.S. Court of Appeals for the Ninth Circuit. See Seth Stern, The Brains Behind the Executive Power Muscle, CQ WEEKLY, Feb. 25, 2006; Charles Babington, Senate Confirms Gonzales as Attorney General, WASH. POST, Feb. 3, 2005.


337 Tim Golden, Years After 2 Afghans Died, Abuse Case Falters, N.Y. TIMES, Feb 13, 2006.
The case against the only officer to face criminal charges was dropped in January 2006 by the U.S. Army due to insufficient evidence to support the charges. Captain Christopher Beiring had been charged with lying to investigators and being derelict in his duties, in part by neglecting to order his soldiers to stop chaining detainees by the arms at the request of military interrogators who wanted to deprive detainees of sleep before questioning. The judge overseeing the pretrial inquiry sharply criticized the prosecutor’s case for having failed to present sufficient evidence to support the charges. The judge highlighted the problems in the prosecution’s attempt to hold soldiers accountable for breaking rules at Bagram detention center, which the defense successfully argued were not clear at all. In particular although an order was given to treat detainees humanely, internal military files in the case showed that soldiers and officers at Bagram differed as to what specific guidelines were applicable.

Punishments for deaths of Afghans and Iraqis in U.S. custody have been unusually light, giving the impression that future crimes of torture, including murder, would not be severely punished.

- **Reprimand for homicide**: In January 2006, a senior army interrogator, Chief Warrant Officer Lewis F. Velshofer Jr. was convicted of negligent homicide and negligent dereliction of duty in the death of Iraqi Mowhoush, and was reprimanded and fined $6,000. Mowhoush died after soldiers put him head-first into a sleeping bag, tied an electrical cord around him, straddled him, and covered his mouth. At this writing, Velshofer is the highest-ranking army officer to be tried on murder charges. An autopsy report listed “asphyxia due to smothering and chest compression” as the cause of death and cites bruises from impact with a blunt object. During court hearings evidence emerged that the detainee was questioned by CIA contractors and was allegedly beaten with a hose, slapped, and punched. Mowhoush had several broken ribs and bruising. Two soldiers initially charged with murder in the case were given immunity in exchange for their cooperation. The CIA’s involvement remains unaddressed. The defense argued that Velshofer was interpreting an email from superiors sent in August 2003, three months before Mowhoush died. The email, from Captain William Ponce, said: “The gloves are coming off, gentlemen . . . we want these individuals broken. Casualties are mounting.”

- **Three years for shooting an unarmed detainee**: Private Edward Richmond was charged with the premeditated murder of Muhamad Husain Kadir, an Iraqi

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339 Golden, *Years After 2 Afghans Died, Abuse Case Falters*, supra note 337.
340 Id.
civilian, in February 2004. Although premeditated murder carries a potential life sentence, during the court-martial the charge was reduced to voluntary manslaughter and Richmond was sentenced to three years in prison. The soldier allegedly shot Kadir, an unarmed detainee who was handcuffed, in the back of the head. It was alleged that the soldier had stated that he wanted to kill an Iraqi. By contrast, in March 2003, Sergeant Hasan Akbar, a black Muslim, was sentenced to death by court-martial for the premeditated murder of two fellow U.S. soldiers in Kuwait despite evidence by the defense that Akbar was mentally ill.

- **Three years for killing a wounded teenager:** In December 2004, a soldier pled guilty to killing a wounded Iraqi teenager, and was sentenced to three years. In contrast, Sergeant Oscar Nelson was sentenced to seven years in prison for the involuntary manslaughter of a fellow U.S. soldier in a driving accident.

- **Written reprimand for murder:** An investigation found probable cause to believe that the commander and three other members of Operational Detachment-Alpha 343, 3rd Special Forces Group, had committed the offenses of murder and conspiracy when they lured Mohamed Sayari, an Afghan civilian, into a roadblock, then detained and killed him. Investigation further found probable cause to believe that a fifth Special Forces soldier had been an accessory after the fact and that the team’s commander had instructed a soldier to destroy incriminating photographs of Sayari’s body. No Article 32 hearing (investigation into allegations) or court-martial convened. One soldier was given a written reprimand. None of the others received any punishment at all.

Documents released through the ACLU FOIA litigation reveal numerous examples of inadequate criminal investigations, lack of prosecution, or inappropriate administrative reprimands, rather than criminal prosecution.

- **Inadequate investigation:** Senior Psychological Operations (PsyOps) officers in Afghanistan reported witnessing indiscriminate assaults by Special Forces on civilian during raids, in May 2004, in the villages of Gurjay and Sukhagen. Abuses included hitting and kicking villagers in the head, chest, back and stomach and threatening to shoot them. An investigation into the allegations was closed.

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346 Sergeant Sentenced to Death for Killing Two Officers in Kuwait, ASSOCIATED PRESS, Apr. 29, 2005.
citing failure to “prove or disprove” the offenses because the victims and villagers could not be interviewed.\textsuperscript{350}

- **Using fake names to thwart investigations:** In a U.S. Army file, an investigator states that he was unable to continue an investigation into claims that a detainee captured by Task Force 6-26 in Tikrit, Iraq, was stripped, humiliated and physically abused until he passed out, because the unit accused of the abuse is part of the Special Access Program (SAP). A memorandum included in the report states that “fake names were used by the 6-26 members” and that the unit claimed to have a computer malfunction which resulted in the loss of 70 percent of their files. The memorandum concludes, “Hell, even if we reopened [the investigation] we wouldn’t get any more information than we already have.”\textsuperscript{351}

- **Non-judicial punishments for offenses in Iraq:**
  - A detainee was hit repeatedly with closed fists during questioning. Punishment: Forfeiture of one month pay.
  - A detainee was handed a shovel and told, at rifle point, to begin digging his own grave. M-4s were fired in his vicinity for intimidation purposes. Punishment: Forfeiture of one month pay.
  - A detainee was hit in the stomach with a fist after an escape attempt. Punishment: Reduction in rank suspended; forfeiture of pay of $250 per month for two months but forfeiture in excess of $100 suspended; extra duty for fifteen days.
  - After an escape attempt, detainee was slapped on the face with an open hand and struck in the body with a bottle of water while restrained. Punishment: Extra duty for fourteen days suspended; writing assignment as corrective training.
  - An Army officer influenced soldiers to lie on sworn statements in an effort to cover up the pushing of two detainees off the Samarra bridge, and the subsequent drowning death of one. Punishment: written reprimand.\textsuperscript{352}

- **No punitive action taken for broken jaw:** A commander’s inquiry report into the broken jaw of a high-school boy states that the victim was told “to say that I’ve fallen down and no one beat me.” (The boy’s mouth had to be wired shut and he could eat only through a straw because of his broken jaw). The report concluded that the broken jaw was caused either as a result of a blow by a U.S. soldier or a collapse due to “complete muscle failure” from being excessively exercised. It found that “abuse of detainees in some form or another was an acceptable practice and was demonstrated to the inexperienced infantry guards almost as guidance” by 311th Battalion Military Intelligence personnel. Personnel “were striking the detainees,” and evidence suggested that the 311th Military Intelligence personnel

\textsuperscript{351} Annex B105, Excerpt from Army Criminal Investigative Command Investigation Number 0213-2004-CID259-80250 (full record available at \url{http://www.aclu.org/projects/foiasearch/pdf/DOD044418.pdf}).
\textsuperscript{352} Annex B106-109, Article 15 Investigation records.
and/or translators “engaged in physical torture of the detainees.” It was recommended that no punitive action be taken against the Commander of the Battalion.  

Mock executions not punished: An investigation established probable cause to believe that a Lt. Col. had issued a death threat and fired his pistol next to the head of a detainee (an Iraqi police officer suspected of being part of a plot to assassinate U.S. troops) during an interrogation, and that four enlisted soldiers and a female civilian interpreter had punched and kicked the detainee “numerous times while they were interrogating him.” Statements in the file indicate that the beatings lasted for approximately an hour and that, during this period, a soldier (or the translator) brandished a knife at the detainee and told him that she would cut him with it. The soldiers, all from 2-20th Field Artillery Bn., 4th Inf. Div., received non-judicial punishments. None were discharged, and even the non-judicial punishments—such as reduction in rank—were mostly “suspended,” i.e., would not go into effect unless the soldier committed another offense within six months. There is no indication that the interpreter was sanctioned or recommended for investigation or prosecution.

Investigation closed despite witness: A U.S. soldier filed a sworn statement that he “saw what I think were war crimes” and that his “chain of command did nothing to stop these war crimes, and allowed them to happen.” The soldier reported physical assaults by U.S. troops on detainees held at Camp Red in Baghdad, the use of prolonged hooding, exposure to the elements, and excessive restraints. Though the soldier witnessed the abuse, the investigation was closed due to “insufficient evidence.”

Failure to investigate ICRC report on abuse: An investigation was initiated on June 21, 2004 at the request of Criminal Investigation Division Head Quarters into allegations contained in a February 10, 2004, ICRC report. The request included an excerpt from the ICRC report reflecting twenty-five detainees’ allegations that, at the Al-Baghdadi Air Base, coalition forces forced them to sit on their knees with handsuffed behind their backs for long periods of time; frequently beat them on various parts of their bodies, including their genitals, while they were hooded; and subjected them to sleep deprivation. The report further explained that “a method described in the allegations consisted in forcing [detainees] to lie face down, their hands cuffed behind their back and shackled to their ankles for two to three hours. While in this position, soldiers would allegedly insert in their mouths cloths full of dust and hot pepper. One [detainee] arrested on 21 August alleged that he had been hooded, beaten and placed naked in front

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of an air conditioning machine while cold water was thrown on his body. A dog, initially with a muzzle, attached [sic] him with its paws and then bit him on the right thigh (according to the examination of the ICRC doctor, he had marks compatible with a dog bite).” The investigating office opened an investigation, but closed it within two days on the basis that the ICRC report did not include the names of any victims and that ICRC did not disclose the names of the victims to the Coalition. The investigation was subsequently reopened and closed again because “the identity of the victim could not be ascertained.” There is no indication that Criminal Investigation Division attempted to examine the medical or detainee records of Al-Baghdadi Air Base during the period in question, or to interview personnel or detainees who were located there at that time.  

No criminal investigations appear to have been conducted for abuses committed in CIA-run secret detention facilities around the world or in connection with illegal rendition of persons to third countries where persons were tortured.

Moreover, no CIA officers have been charged in relation to alleged mistreatment, with the exception of a CIA contractor who is charged with the death of a detainee in Afghanistan. In January 2006, the Department of Justice disclosed that, since the conflict began in Afghanistan, nineteen referrals have been made to the U.S. Attorney’s office regarding allegations against civilians who have engaged in torture and abuse. Except for one CIA contractor, no CIA employees have been indicted. The New York Times, citing current and former intelligence and law enforcement officials, reported in October 2005 that federal prosecutors do not intend to bring criminal charges in several cases involving the handling of detainees by the CIA, including the case of a death by hypothermia of an Afghan detainee held by the CIA in the “Salt Pit.”

The CIA cases are being supervised by U.S. Attorney Paul J. McNulty, who has been nominated by the White House to be Deputy Attorney General, the number two position at the Department of Justice. While some low ranking military soldiers have been prosecuted, no CIA employee allegedly engaged in unlawful activity has been indicted.

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3. Lack of Independent Oversight of Jails and Prisons in the United States

The United States has no independent prison monitoring body. Responsibility for outside oversight of detention facilities varies from state to state; most jurisdictions have few, if any, monitoring mechanisms. In most cases, prisoner complaints are investigated by the institutions themselves, through internal grievance mechanisms that necessarily lack independent, outside scrutiny. In some states, an Ombudsperson can receive complaints from prisoners, but they too are not independent and are affiliated with the state. Those states that have independent, external monitoring bodies authorized to conduct regular inspections of jails and prisons have inadequate resources to monitor effectively. Moreover, local jails tend to escape outside oversight more than state facilities. Some states have established state jail standards by which to evaluate the conditions in their jails, but compliance with such standards is largely un-enforced.

In some cases where a government investigative agency has found abuse, no criminal prosecutions have taken place. For instance, despite the documented abuse of non-citizen “special interest” detainees by correctional officers at the Metropolitan Detention Center in Brooklyn, New York, as discussed above, not one government official has been prosecuted. Instead, the Federal Bureau of Prisons fired two detention officers, suspended two for 30 days, and demoted one officer.

In the absence of independent monitoring mechanisms, the federal judiciary has become a national prison oversight body. But, since 1996, despite a growing prison population, the Prison Litigation Reform Act has made it difficult for prisoners to secure legal remedies for abuse (see discussion above).

The United States argues that “various non-governmental organizations continue to employ advocacy and litigation to draw attention to sub-standard conditions in the nation’s prisons,” but that does not absolve the government of its obligation to enforce nationwide standards on conditions of confinement. For instance, it was only after the ACLU brought the following lawsuits that the prison facilities agreed to end cruel and inhuman practices:

- **Jones 'El v. Berge:** In 1999, Wisconsin opened the Supermax Correctional Institution in a remote part of the state, where conditions included twenty-four hour illumination and “bed checks” in which prisoners were awakened hourly throughout the night. Prisoners were locked in their windowless cells for all but four hours a week. They received no outdoor exercise. Because of a lack of

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360 The U.S. government has not ratified the Optional Protocol to the Convention Against Torture, which would allow independent monitors to inspect prison facilities in countries that have ratified the optional treaty.

361 OIG Supplemental Report, *supra* note at 290, at 22, 24, 25, 38, 43, 47.


appropriate ventilation, the cells were unbearably hot in the summer—a condition particularly dangerous to prisoners prescribed psychotropic medications. All visits, except with lawyers, were conducted via video screen. Some prisoners were allowed only one six minute telephone call per month. These conditions were particularly devastating to mentally ill prisoners, whose condition was exacerbated and who often attempted self-harm or suicide. In October 2001, the ACLU obtained an injunction requiring removal of mentally ill prisoners from the supermax, and evaluation of other prisoners to see if they required removal.\textsuperscript{364} This injunction resulted in the removal of over thirty mentally ill prisoners from the facility. In March 2002, the remaining issues were settled with entry of a consent decree (agreement between parties approved by court) and a court monitor was appointed.\textsuperscript{365}

- **Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Choinski:** This case was filed in August 2003 to challenge the conditions under which mentally ill prisoners were held at Connecticut’s supermax facility, on behalf of an independent agency empowered under federal law to protect the rights of persons with disabilities. The parties reached a tentative settlement in March 2004, which was approved by the state legislature. Under the settlement, prisoners with serious mental illness may not be housed in supermax facilities, and mental health treatment will be improved both in the supermax and in the facility where mentally ill prisoners are sent. In September 2005, the court approved the settlement and the ACLU is monitoring its implementation.\textsuperscript{366}

- **Joslyn v. Armstrong:** In 2001, the ACLU filed suit against Connecticut’s Commissioner of Corrections, seeking to remove Connecticut prisoners from Virginia’s notorious supermax facility, the Wallens Ridge State Prison, located in a remote corner of western Virginia. Prisoners at the time were routinely tied down in five-point restraints, for up to forty-eight hours, for trivial offenses such as kicking a cell door. Staff at the prison routinely shocked prisoners with stun guns for minor offenses such as insulting staff or refusing to kneel. One Connecticut prisoner died after being repeatedly shocked; another committed suicide. In July 2001, Connecticut agreed to remove its prisoners from Wallens Ridge and not to send Connecticut prisoners there in the future.\textsuperscript{367}

\begin{itemize}
\item \textsuperscript{364} *Jones’El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001).
\item \textsuperscript{365} Order and Settlement Agreement, *Jones’El v. Berge*, No. 00-C-421-C, (W.D. Wis. 2002), available at \url{http://www.aclu.org/FilesPDFs/order%20and%20settlement%20agreement.pdf}. Subsequently, the state refused to implement a provision of the settlement that required air conditioning of the prison as the only way to protect prisoners from excessive heat and humidity in view of the prison’s design. The trial court issued an order enforcing the consent decree in November 2003, and the state appealed to the U.S. Court of Appeals for the Seventh Circuit. In July 2004, the Seventh Circuit affirmed the trial court order. *Jones’El v. Berge*, 374 F.3d 541 (7th Cir. 2004). The ACLU is continuing to monitor implementation at the prison, now renamed the Wisconsin Secure Program Facility.
\item \textsuperscript{366} Settlement Agreement Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Choinski, No. 303CV1352, (D.Ct. Mar. 8, 2004), available at \url{http://www.aclu.org/FilesPDFs/-f07s2zl.pdf}.
\item \textsuperscript{367} ACLU, *Bowing to ACLU Lawsuit, CT Officials Will Move Prisoners Out of Notorious Virginia “Supermax,”* (July 24, 2001), available at \url{http://www.aclu.org/prison/conditions/14757prs20010724.html}.
\end{itemize}
Moore v. Fordice: In 1999, the ACLU agreed to represent all Mississippi prisoners with HIV who were held in a segregated unit at Parchman and who were dying in great numbers as they were being denied the HIV “cocktail” (triple-drug therapy including a protease inhibitor). Following an evidentiary hearing, the district court found that the medical care was grossly defective, and entered an injunction requiring the State to provide HIV care consistent with Center of Disease Control guidelines, including triple-drug therapy. The district court nevertheless rejected the prisoners’ request to make the ACLU National Prison Project their class counsel, and shortly thereafter issued a gag order prohibiting the ACLU from communicating with any Mississippi prisoner about medical care or any other conditions of confinement. In November 2000, the U.S. Court of Appeals for the Fifth Circuit reversed the trial court, lifted the gag order, and ordered the ACLU substituted as counsel.368 The district court later granted the plaintiffs’ motion to bar the State’s long-standing policy of excluding all prisoners with HIV from work release and other programs, and eventually found that HIV care for the plaintiffs had been transformed as a result of the litigation.

The ACLU believes that the absence of independent monitoring bodies to oversee federal, state, and local, prisons and jails, and the lack of enforceable nationwide standards on conditions of confinement, contribute directly to the ongoing abuse and mistreatment of prisoners.

I. Limitations on the Rights of Redress and Remedy (Articles 13, 14)

1. Redress for Violations Outside the United States

Victims of torture by U.S. officials outside the United States in the “global war on terrorism” face significant legal hurdles to redress in U.S. courts. Most victims from Afghanistan and Iraq have no remedy in their home countries or countries of residence, and the U.S. government continues to argue that they have no remedy in United States’ courts. For instance, Iraqi victims of torture cannot seek redress in Iraqi courts against U.S. personnel. A blanket immunity agreement, Coalition Provisional Authority (“CPA”) Order 17, issued June 27, 2003, covers all foreign personnel in the U.S.-led CPA grants immunity for “local courts and any form of arrest or detention other than by persons acting on behalf of their parent states.”369 The immunity agreement will continue in effect after transfer of political power to the Iraqi government.

Victims who have accessed U.S. courts to date have not prevailed in legal actions before lower U.S. federal courts, although these cases are subject to appeal to higher courts. In February 2006, for instance, in a case brought by former Guantánamo detainees against Secretary of Defense Rumsfeld and other members of the U.S. military seeking redress from torture, a federal court held that the proper defendant to the suit is the United States

368 Gates v. Cook, 234 F.3d 221 (5th Cir. 2000).
because the defendants were acting within the scope of their employment in authorizing or condoning “aggressive interrogation techniques.”

Clients in these suits have brought claims on several legal grounds, including the U.S. Constitution and international law. The U.S. government has taken the position that in these suits that the Federal Tort Claims Act ("FTCA") provides the exclusive remedy for all suits alleging "wrongful or negligent" acts performed by U.S. officials acting within the scope of their employment. Under this law the United States Attorney General or a designee, subject to limited judicial review, is authorized to determine whether a government official was acting within the scope of their employment when the act occurred. If the Attorney General so determines, a certifying letter is filed with the court and the United States is substituted for the individual official. The case then proceeds against the United States under the FTCA. Incorporated in the FTCA, however, is a list of twelve explicit exceptions as to when the United States can be sued. For example, suits for injuries sustained in a foreign country and in the course of combatant activities cannot be brought under the FTCA.

With regard to the plaintiffs’ constitutional claims, the lower court also held that at the time of the alleged torture, under U.S. case law in effect at the time of the alleged torture and inhuman treatment, it was not clear whether plaintiffs—because they were foreign nationals detained at Guantánamo—had a clearly established right not to be tortured. Specifically, the court noted that it was “not until the Supreme Court decision in Hamdi v Rumsfeld . . . and Rasul v. Bush . . ., [that] military personnel [were] provided their first indication that detainees may be afforded a degree of constitutional protection.”

Plaintiffs have appealed the court’s decision.

In another recent case involving the rendition to Syria of Canadian citizen Maher Arar, a federal court in New York held that national security and foreign policy considerations precluded the court from evaluating the actions of federal officials. The court concluded that adjudicating Arar’s claim would improperly interfere with “policy-making” by the political branches and might produce “embarrassment of our government abroad.” The court found that “in the international realm . . . judges have neither the experience nor the background to adequately and competently define and adjudge the rights of an individual vis-à-vis the needs of officials acting to defend the sovereign interests of the United States.” In the course of his ruling, the judge also suggested that it may be an open question as to whether the U.S. Constitution protects individuals from torture under all circumstances, and especially in the context of the war on terrorism.

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371 Id. at 31-33.
372 Id. at 44.
373 Arar v. Ashcroft, 414 F.Supp.2d 250 (E.D.N.Y. Feb. 16, 2006) (Arar had sued the former attorney general, the former commissioner of the Immigration and Naturalization Service, the former secretary for homeland security, the director of the Federal Bureau of Investigation, and other U.S. officials for detaining him incommunicado at the U.S. border for thirteen days and for ordering his deportation to Syria for the express purpose of detention and interrogation under torture by Syrian officials).
374 Id. at 281-282.
375 Id.
2. Redress for Violations Inside the United States

The right of redress for prisoners subjected to torture and abuse in facilities inside the United States has been weakened significantly by the Prison Litigation Reform Act of 1996. The PLRA makes it harder for prisoners to file cases, find lawyers, and obtain meaningful redress. Originally intended to prevent frivolous lawsuits from congesting the U.S. court system, it has created unintended obstacles which make it more difficult to protect prisoners from psychological and sexual abuse, and from torture.

One provision of the PLRA, 42 U.S.C. § 1997e(e), bars prisoners from filing federal civil claims seeking damages for mental or emotional injury suffered while in custody without a prior showing of physical injury. The following cases illustrate that the courts have narrowly interpreted the “mental or emotional injury” requirement and thwarted congressional intent in passing the PLRA—to preserve the rights of prisoners to bring serious claims.

- A prisoner sued for damages based on the claim that he was kept in solitary confinement with hands and feet shackled, was subjected to body cavity strip searches, and allowed out of his cell only three hours a week. The court dismissed the claim on the basis that the plaintiff did not allege physical injury.  

- A district court dismissed a claim by two female prisoners that they were strip-searched by male guards because they did not explicitly claim physical injury. (One of the women had subsequently attempted suicide as a result of the strip search and had to have her stomach pumped.)  

- A district court dismissed a complaint, under the mental or emotional injury provision, that a prisoner was routinely viewed in the nude by opposite-sex staff. The court dismissed the action despite a finding by the court that the complaint involved a violation of clearly established constitutional rights sufficient to defeat the qualified immunity defense being argued by the government.  

- A district court dismissed a complaint, under the mental or emotional injury provision, by prisoners who claimed that they were subjected to retaliatory strip and body cavity searches, and verbally harassed by guards.

Another provision of the PLRA, 42 U.S.C. § 1997e(a), prevents prisoners from seeking the protection of the federal courts without exhausting available prison grievance systems. Since such systems typically have short deadlines, and require multiple appeals,

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376 Adnan v. Santa Clara County Department of Corrections, No. 4:02-CV-03451, 2002 WL 32058464 at *3 (N.D. Cal., Aug. 15, 2002).
377 Memorandum Opinion and Order, Moya v. City of Albuquerque, No. 96-1257 DJS/RLP (D.N.M., Nov. 17, 1997).
they are difficult for poorly educated prisoners to navigate, yet a mistake may forever bar the prisoner from federal court.

Another common feature of prison grievance systems is a requirement that, before the prisoner can file a formal grievance, the prisoner must attempt to resolve the complaint informally with the staff member who caused the problem. In the case of a prisoner who has been sexually assaulted by a staff member, this provision may require the victim of the assault to confront her assailant, and exposes her to the possibility of serious reprisals for reporting the assault before she can seek the protection of the federal courts. Below are some examples of claims that have been barred by this provision:

- A district court dismissed a case challenging the strip search of female prisoners by male guards on the ground that the prisoners had failed to exhaust the grievance system, even though the prisoners had given written complaints about the searches to prison officials. 380

- A district court dismissed a prisoner lawsuit alleging excessive force by a correctional officer resulting in injury because the prisoner had missed a five-day deadline in the grievance system. 381

- A court of appeals affirmed the dismissal of a prisoner’s case for failure to exhaust when the prisoner had been told by the warden that he would “take care” of the prisoner’s medical problem, leading the prisoner not to file a formal grievance. 382

- A court of appeals threw out a prisoner’s claim that he had suffered an unprovoked, brutal beating by staff and had been denied medical care for his injuries when, after six months of waiting for a decision from the prison grievance system, the prisoner attempted to file in court. 383

- A court of appeals held that the prisoner’s near-blindness did not excuse his failure to exhaust. 384

U.S. courts have also repeatedly made factual findings that prisoners who attempted to use the grievance system have suffered retaliation from prison officials. See, e.g., Walker v. Bain, 257 F.3d 660 (6th Cir. 2001) (court of appeals decision noting jury verdict for prisoner whose property was confiscated in retaliation for filing grievances); Gomez v. Vernon, 255 F.3d 1118 (9th Cir. 2001) (court of appeals decision affirming injunction for prisoners who were the subject of staff retaliation for filing grievances and for litigation); Trobaugh v. Hall, 176 F.3d 1087 (8th Cir. 1999) (court of appeals decision directing award of compensatory damages for prisoner who was placed in isolation for filing

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380 Memorandum Opinion and Order, Moya v. City of Albuquerque, supra note 377.  
382 Chelette v. Harris, 229 F.3d 684 (8th Cir. 2000).  
383 Ford v. Johnson, 362 F.3d 395 (7th Cir. 2004).  
384 Ferrington v. Louisiana Department of Corrections, 315 F.3d 529 (5th Cir. 2002).
grievances); Hines v. Gomez, 108 F.3d 265 (9th Cir. 1997) (affirming jury verdict for prisoner subjected to retaliation for filing grievances).

J. Admission of Coerced Testimony (Article 15)

1. Admission of Coerced Testimony in Combatant Status Review Tribunals and Military Commissions

In violation of Article 15 of the Convention, the Combatant Status Review Tribunals and the Administrative Review Board rules do not bar the admission of statements coerced torture and abuse. The government contends that that the CSRTs and ARBs are informal review mechanisms and not legal proceedings even though they determine whether a detainee will remain incarcerated indefinitely.

On March 24, 2006, just days before the Supreme Court argument in Hamdan v. Rumsfeld, the Department of Defense issued a new instruction for the military commissions that would purportedly prevent the admission of evidence obtained under torture. But the rule contains few safeguards to make the prohibition meaningful and fails to exclude evidence exorted under coercive interrogation techniques that fall short of torture but are prohibited under the Convention. Under military commission rules, the standard for admission of evidence is simply whether, in the opinion of the Presiding Officer, the evidence “would have probative value to a reasonable person.”\(^{385}\)

Despite evidence that the U.S. has approved and used coercive interrogation tactics on detainees at Guantánamo and elsewhere, it is far from clear whether defendants will be able to prevent consideration by military commissions of evidence gathered through such methods. Additionally, the defense is unlikely to learn whether evidence was obtained from coercive interrogation of other detainees held either at Guantánamo, or elsewhere, because the witness need not be brought before the commission; a hearsay account of what was said could be introduced into the evidence instead.

Finally, the Detainee Treatment Act authorizes the Department of Defense to consider evidence obtained through torture or other inhuman treatment in assessing the enemy combatant status of detainees held in Guantánamo, in violation of Article 15 of the Convention. The law allows the admission of statements derived though coercive methods to be admitted in proceedings of the Combatant Status Review Tribunal or Administrative Review Board or a similar successor board or tribunal if there is “probative value (if any) of any such statement.”\(^{386}\)

\(^{385}\) Military Commission Order No. 1, supra note 109, at 1, 6(D)(1).

\(^{386}\) Detainee Treatment Act, supra note 5, § 1005. See also Letter from the ACLU to Congress, Re: Proposed Changes to the McCain Anti-Torture Amendment and the Graham Court-Stripping Amendment to the DOD Authorization Bill Jeopardize Protections Against Torture and Abuse (Dec. 14, 2005), available at http://www.aclu.org/natsec/gen/23028leg20051214.html.

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2. Admission of Coerced Testimony in Criminal Cases in the United States

In November 2005, a U.S. citizen, Ahmed Abu Ali, was convicted by a federal jury of nine counts of conspiracy to commit acts of terrorism, including plotting with al-Qaeda operatives to assassinate President Bush. Abu Ali claimed that his confession was coerced during interrogation by Saudi Arabian security forces. Abu Ali had been living and studying in Saudi Arabia. According to Abu Ali, Saudi security forces arrested him on June 8, 2003. During the first three days of interrogation, he was punched, kicked in the stomach, struck with a hard object more than ten times, whipped while he was chained to the floor, and threatened with amputation or beheading. After three days of interrogation, he confessed to being a member of al-Qaeda. Abu Ali was interrogated for a month, held incommunicado in solitary confinement without judicial review. On July 8, 2003 Abu Ali received a visit from the U.S. embassy. Abu Ali confessed on July 24, 2003.  

During pre-trial proceedings, the defense sought to have Abu Ali’s videotaped confession suppressed. The defense’s motions were denied by the judge on the grounds that the U.S. government had shown by a “preponderance of evidence” that the statements made by Abu Ali were “voluntary” and not a result of “gross abuse” or “inherently coercive conditions,” and thereby should be considered in the jury trial.

During the jury trial, the defense was not permitted to submit evidence pertaining to Saudi Arabia’s record on torture, including U.S. Department of State reports documenting the use of abuse and torture by Saudi security forces to coerce confessions. Conversely, the court admitted statements by Saudi Arabian officials that torture in general is prohibited and that Saudi forces do not engage in torture.

K. Inadequacy of United States Laws Criminalizing Torture (Articles 4, 5)

U.S. statutes and regulations enacted following ratification of the treaty are limited to specific contexts such as refugee claims, extradition of foreign fugitives, criminalizing acts of torture committed by U.S. officials outside of U.S. territory, providing compensation to U.S. citizens tortured by a foreign nation, and providing a civil remedy non-citizens for torture violations. The United States has yet to fully comply with its obligations under the Convention to adequately prevent U.S. officials and individuals from engaging in torture.

389 Id. at 341-42.
acting with official consent from subjecting detainees to torture and cruel, inhuman or degrading treatment or punishment and to punish such conduct wherever it exists.

The United States cites 18 U.S.C. § 2340-2340A as a federal criminal law sufficient to ensure U.S. compliance with the Convention. This law criminalizes conduct by a U.S. national, or a foreign national present in the U.S. who acting with government authority commits or attempts to commit torture outside the United States. The U.S. told the Committee in 1998 that it did not enact a specific statute to prohibit torture within the United States out of deference to federal-state relations and because it determined that existing federal and state criminal laws were sufficient to cover any domestic act which would violate the Convention Against Torture.\textsuperscript{391} The ACLU believes that the inapplicability of state criminal law to U.S. facilities abroad, and the lack of other federal criminal law comparable to section 2340A, creates serious gaps in the United States’ obligation under the treaty to criminalize torture in any territory of the United States. These gaps have led to the government’s selective interpretation on what laws are applicable extraterritorially.

For instance, the U.S. government argued in defending interrogation techniques used on Guantánamo detainees that 18 U.S.C. § 2340 “does not apply to the conduct of U.S. personnel at GTMO [Guantánamo]” because the United States is defined to include all jurisdictions of the United States, including the special maritime and territorial jurisdiction of the U.S.\textsuperscript{392} At the same time the U.S. government argues that U.S. courts have no jurisdiction, and the U.S. Constitution, including the Fifth and Eighth Amendment, are inapplicable to Guantánamo detainees because Cuba has ultimate sovereignty over Guantánamo even though it is under U.S. control. The U.S. has also consistently maintained that the ICCPR is inapplicable outside the United States or its special maritime and territorial jurisdiction.\textsuperscript{393} The Detainee Treatment Act closes the loophole regarding the U.S. administration’s interpretation of the extraterritorial applicability of the Convention. It remains to be seen, however, whether the U.S. will in practice enforce the treaty extraterritorially given President Bush’s signing statement that the law does not bind him as commander-in-chief to dictate actions to agencies under the executive branch in fighting terrorism (see discussion above).

Further, the ACLU believes that the definition of torture as defined under 18 U.S.C. § 2340A, which reflects United States’ understanding of torture at the time of ratification of the Convention fails to comply with the treaty. As discussed above, § 2340A was specifically cited by the government to allow interrogation procedures which violated the treaty.

\textsuperscript{393} Dep’t of State, \textit{Second and Third Periodic Report of the United States to the U.N. Human Rights Committee Concerning the International Covenant of Civil and Political Rights}, ¶¶ 3, 130; Annex 1 (Oct, 21, 2005), available at \texttt{http://www.state.gov/g/drl/rls/55504.htm#art7}.
The Uniform Code of Military Justice applicable to U.S. troops worldwide does not expressly criminalize “torture,” but several offenses recognized under it can be used to punish acts of torture or abuse. They include cruelty, maltreatment, assault, as well as manslaughter or murder in cases in which the alleged abuse resulted in death. Although several low ranking soldiers have been investigated under the UCMJ, in many cases the punishments are not commensurate with the graveness of the crimes. (For example, soldiers have received written reprimands for murder and non-judicial punishments for abuse). Explicitly criminalizing torture as defined by Article 1 of the Convention in the UCMJ would act as a deterrent by sending a clear message that torture will not punished under the guise of a lesser offense.

The U.S. Report notes that the government enacted the Military Extraterritorial Jurisdiction Act (“MEJA”), 18 U.S.C. §§ 3261-3267, which is applicable to civilians, contractors or subcontractors not only of the Department of Defense, but also of “any other Federal agency or any provisional authority.” MEJA creates no new substantive offenses, but incorporates a range of existing federal criminal offenses that may be used to prosecute defense contractors and others who commit crimes outside U.S. territory. Federal crimes subject to MEJA prosecution include: arson, certain aggravated assaults (simple assaults are punishable by imprisonment for one year or less and would not be included), theft (over $1000 in value), homicide, kidnapping, damage to real or personal property, selling obscene material, robbery and certain sexual abuse or exploitation of minors offenses. 10 U.S.C. §§ 893, 897, 918-919, 929, 928, 934.

MEJA limits coverage of acts “to the extent such employment relates to supporting the mission of the Department of Defense.” The law is not clear as to what is meant by “mission.” The law also does not expand jurisdiction over contractors who operate beyond traditional U.S. military bases. For instance, the United States could argue that jurisdiction does not extend to U.S. secret detention facilities overseas or vessels under U.S. control.

L. Failure to Adequately Educate and Train Government Officials (Article 10)

The Convention Against Torture requires states to ensure that education and information regarding torture and cruel, inhuman or degrading treatment or punishment are “fully

395 18 U.S.C. § 3261(1)(A). MEJA creates no new substantive offenses, but incorporates a range of existing federal criminal offenses that may be used to prosecute defense contractors and others who commit crimes outside U.S. territory. Federal crimes subject to MEJA prosecution include: arson, certain aggravated assaults (simple assaults are punishable by imprisonment for one year or less and would not be included), theft (over $1000 in value), homicide, kidnapping, damage to real or personal property, selling obscene material, robbery and certain sexual abuse or exploitation of minors offenses. 10 U.S.C. §§ 893, 897, 918-919, 929, 928, 934.
included” in the training of any government agent involved in the custody, interrogation or treatment of any detainee. The government’s own investigations into abuse in Iraq and Afghanistan as well as documents produced through the ACLU FOIA litigation identify inadequate training of U.S. personnel which contributed to the abuse of detainees.

**Debate on Interrogation Policies Found on Computers in Prisons**

Gen. Paul Kern of the U.S. Army, who oversaw the Fay-Jones investigation, testified to the U.S. Congress that the debate on interrogation policies within official circles “found its way into the hard drives of the computers that we found in [Abu Ghraib] prisons… [T]hose policies were being debated while we were asking soldiers to conduct interrogations. And so they were seeking to find the limits of their authority… We need to be clear and crisp in our delivery of orders to these people so that they know what the rules are.”

An investigation undertaken by the Army Inspector Gen. Paul Mikolashek into training and prison procedures in Iraq and Afghanistan also found that troops did not receive adequate training. For instance the report states:

- Troops received “ambiguous guidance from command on the treatment of detainees”;
- Established interrogation policies were “not clear and contained ambiguity”;
- “Interrogations were conducted . . . in some forward locations, by leaders and Soldiers [sic] with no training in military interrogation tactics, techniques and procedures”;
- “To satisfy the need to acquire intelligence as soon as possible following capture, some officers and non-commissioned officers (NCOs) with no training in interrogation techniques began conducting their own interrogation sessions”;
- “The medical personnel interviewed stated that they did not receive any specific training in detainee operations.”
- “To offset the shortage of interrogators, contractors were employed, however, 35% (11 of 31) of contract interrogators lacked formal training in military interrogation policies and techniques.”

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398 Gen. Kern Statement, supra note 188.
400 Id. at 40.
401 Id. at 33.
402 Id. at 35.
403 Id. at 76.
404 Id. at 87.
Government documents produced to the ACLU show that soldiers and private contractors were inadequately trained on what constitutes humane treatment and that there was confusion among soldiers as to what laws to apply regarding detainee treatment.

- Confusion about whether Geneva Conventions were applicable: A Staff Sergeant with the 104th Military Battalion, 4th Infantry, responding to accusations that he improperly supervised an interrogator who assaulted an Iraqi prisoner, replied that comments made by senior leaders that detainees are not enemy prisoners of war under the Geneva Conventions “have caused a great deal of confusion as to the status of detainees.” “In hindsight,” he wrote, “it seems clear that, considering the seeming approval of these and other tactics by the senior command, it is a short jump of the imagination that allows actions such as those committed by [name redacted] to become not only tolerated but encouraged.”

- Unaware whether actions were abuse: A soldier in Iraq failed to report an incident he witnessed of a detainee being made to lie on his back with his feet elevated in “chair position” against a wall, who was made to do squats and had water poured on his head, making it difficult for the detainee to breathe, because he “did not know what was abuse. Prior to the incident, [the chain of command] had never talk[ed] about what is abuse!”

- Using techniques recollected from movies: Troops received no specific training on detainee operations before being sent into the field. The result was that “officers and NCO’s [non-commissioned officers] at point of capture engaged in interrogations using techniques they literally remembered from movies.”

- Systemic lack of training in the treatment of detainees: One interrogator complained that soldiers conducting raids are not well trained in how detainees must be treated in accordance with the laws of war, and that he “had to go to SJA [Staff Judge Advocate] many times about detainees arriving at the cage badly beaten. Many beatings occurred after the detainees were zip-tied by some units in 4ID [4th Infantry Division].” As there was no clear guidance on how to treat detainees, procedures varied greatly from team to team often based on the “common sense” judgments made by individuals with little to no applicable experience. “There was no specific training on treatment of detainees; the MPs [Military Police] relied on their common knowledge in this area,” said a Platoon Leader.

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406 Annex B75-82, Interrogator Questionnaire.

92
No written standard operating procedures: In the investigation into a shooting death of a detainee in Forward Operating Base Ironhorse on September 11, 2003, the report describes an incident in which SPC [Redacted] who was guarding a section, shot and killed a detainee who was handcuffed in isolation at FOB Ironhorse on 9/11/03. Medics had advised guards that detainees in isolation could get up and walk around in order to relieve discomfort, muscle, and joint pain. SPC said that he saw the detainee touching concertina wire. He did not give any verbal warning. SPC was described as overly aggressive and on occasion vulgar to the detainees. Findings: SPC was in violation. “There are insufficient instructions for guards in performing their duties. There are no written SOPs or post instructions for guards. …the combination of loaded weapons within the confines of the detention facility in addition to the inadequate number of guards on duty, created an environment conducive to the quick escalation for the use of deadly force.” Recommends an immediate criminal investigation.”

The U.S. Report notes that it gives “considerable importance” to educating and providing information regarding “the prohibition against torture and other abuses” to persons who are involved in the custody, interrogation, and treatment of persons arrested or detained. Neither the government’s report nor the Convention Against Torture is posted on the Department of Defense, the CIA, the Bureau of Prisons, the Department of Homeland Security’s websites.

The U.S. Report states that U.S. officials have “repeatedly condemned the use of torture,” but the administration has failed to condemn the practice of cruel, inhuman or degrading treatment by all government agencies and has actively sought to limit congressional attempts to ban such unlawful practices by all government agencies (see discussion on Detainee Treatment Act above).

The United States government’s wavering view on what it considers prohibited conduct against persons in U.S. custody is reflected in the views of the American public. A recent poll undertaken by Pew Research in 2005 found that 32% of Americans oppose the use of torture against terror suspects to gain important information. The defense lawyer for Specialist Charles Graner, who was found guilty of abuse against detainees in Abu Ghraib prison, said there was nothing wrong with stripping the prisoners, whom he described as “hardened terrorists,” and stacking them into a pyramid to control them. “They did it in a safe manner so nobody would get hurt . . . If there was anything wrong, it was that they took a picture and they were smiling,” Mr. Womack said.

The United States government should engage in a nationwide public education program to condemn unlawful practices against all persons in custody.

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411 U.S. Report, supra note 1, ¶ 58.
412 Id.
ANNEX A

Some Publicly Known Deaths of Detainees in U.S. Custody in Afghanistan and Iraq
### Annex A: Some Publicly Known Deaths of Detainees in U.S. Custody in Afghanistan and Iraq

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Location and Date</th>
<th>Cause of Death</th>
<th>Circumstances Surrounding Death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mohammed Sayari</td>
<td>Near Lwara, Afghanistan Aug. 28, 2002</td>
<td>Death by Blunt Force Injuries</td>
<td>Army Criminal Investigation Division found probable cause to believe that the commander and three other members of Operational Detachment-Alpha 343, 3rd Special Forces Group, had committed the offenses of murder and conspiracy when they lured Mohamed Sayari, an Afghan civilian, into a roadblock, detained him, and killed him. Investigation further found probable cause to believe that a fifth Special Forces soldier had been an accessory after the fact and that the team's commander had instructed a soldier to destroy incriminating photographs of Sayari's body. No court-martial or Article 32 hearing was convened. One soldier was given a written reprimand. None of the others received any punishment at all.</td>
</tr>
<tr>
<td>2.</td>
<td>Name unknown</td>
<td>Kabul, Afghanistan Nov. 2002</td>
<td>Death by Hypothermia</td>
<td>The CIA was reportedly involved in the killing of a detainee in Afghanistan. A CIA case officer at the “Salt Pit,” a secret U.S.-run prison just north of Kabul, ordered guards to “strip naked an uncooperative young Afghan detainee, chain him to the concrete floor and leave him there overnight without blankets,” the Washington Post reported after interviewing four government officials familiar with the case. According to the article, Afghan guards “paid by the CIA and working under CIA supervision” dragged the prisoner around the concrete floor of the facility, “bruising and scraping his skin,” before placing him in a cell for the night without clothes. An autopsy by a medic listed “hypothermia” as the cause of death, and the man was buried in an “unmarked, unacknowledged cemetery.” A U.S. government official interviewed told the Post: “He just disappeared from the face of the earth.”</td>
</tr>
</tbody>
</table>

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1 Most of the government autopsies and death reports received pursuant to a Freedom of Information Act request redact the names of the deceased. We have been able to ascertain the names of the deceased by matching the dates, places, and circumstances of each death with deaths that have been widely reported in the media.


| No. | Name                  | Location and Date                  | Cause of Death              | Circumstances Surrounding Death                                                                                                                                                                                                 |
|-----|-----------------------|------------------------------------|------------------------------|                                                                                                                                                                                                                            |
| 3   | Mullah Habibullah and Dilawar | Bagram, Afghanistan Dec. 4 and 10, 2002 | Death by Blunt Force Injuries | Two Afghan detainees, Mullah Habibullah and Dilawar, died at the Bagram detention facility in Afghanistan while in the custody of the U.S. military. During interrogation by members of the U.S. Army’s 519th Military Intelligence Battalion, the detainees were shackled to the ceiling with their hands suspended over their shoulders for prolonged periods. Both had suffered blunt force trauma to the legs, and investigators determined that multiple soldiers had beaten them. Military pathologists determined within days of the deaths that the cause was homicide. The autopsy for Dilawar notes death was due to blunt force injuries to lower extremities complicating coronary artery disease. Contusions and abrasions on forehead, nose, head, behind ear, neck, abdomen, buttock, elbow, thigh, knee, foot, toe, hemorrhage on rib area and leg. Detainee died of blunt force injuries to lower extremities, complicating underlying coronary artery disease. Nevertheless, for months afterwards, and not until the New York Times obtained a copy of Dilawar’s autopsy report, the military falsely asserted that the men had died of natural causes. |
| 4   |                       |                                    |                              |                                                                                                                                                                                                                            |
| 5   | Jamal Naseer          | Gardez, Afghanistan Mar. 2003      | Death by Blunt Force Injuries | Arrested along with seven other Afghan detainees and during seventeen days of detention allegedly subjected to abuse including electric shocks, beating, and immersion in water. No autopsy performed. |
| 6   | Nagem Sadun Hatab     | Nasiriyah, Iraq June 6, 2003      | Death by Strangulation       | Evidence of recently fractured hyoid bone in the neck and soft tissue hemorrhage extending downward to the level of the right thyroid cartilage. Autopsy revealed bone fracture, rib fractures, contusions in mid abdomen, back and buttocks extending to the left flank, abrasions on lateral buttocks. Contusions on back of legs and knees; abrasions on knees, left fingers and encircling to left wrist. Lacerations and superficial cuts, right 4th and 5th fingers. Also, blunt force injuries, predominantly recent contusions (bruises) on the torso and lower extremities. Abrasions on left wrist are consistent with use of restraints. No evidence of defense injuries or natural disease. Manner of death is homicide. DOD003329 refers to this case as “strangulation, found outside isolation unit.” |

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<tr>
<td>7.</td>
<td>Dilar Dababa</td>
<td>Baghdad, Iraq June 13, 2003</td>
<td>Death by Blunt Force Injuries</td>
<td>Detainee died of head injuries in a US interrogation facility. Dababa died of “closed head injury with a cortical brain contusion and subdural hematoma.” A sergeant beat Dababa while his squad leader was present. The sergeant received rank reduction and 60 days’ confinement. His commanding officer, who also beat the detainee, was charged with dereliction of duty, given a reprimand and fined $2,000.</td>
</tr>
<tr>
<td>8.</td>
<td>Abdul Wali</td>
<td>Asadabad, Afghanistan June 21, 2003</td>
<td>Death by Blunt Force Injuries</td>
<td>Abdul Wali died in US military custody. In June 2004, the Justice Department charged a civilian contractor working with the CIA with assault, rather than murder. The indictment stated that the contractor beat Abdul Wali, using his “hands and feet, and a…flashlight.”</td>
</tr>
<tr>
<td>9.</td>
<td>Manadel al-Jamadi</td>
<td>Abu Ghraib, Iraq Nov. 4, 2003</td>
<td>Death by Blunt Force Injuries</td>
<td>The autopsy report shows that the cause of his death was “blunt force injuries complicated by compromised respiration.” External injuries including multiple contusions are consistent with injuries sustained during apprehension. Fractures of the ribs and a contusion of the left lung imply significant blunt force injuries of the thorax and likely resulted in impaired respiration. Ligature marks of the wrists and ankles. Remote gunshot wound of torso. No significant natural diseases identified. According to investigating agents, during interrogation of the detainee, a hood made of synthetic material was placed over the head and neck of the detainee. Cause of death: Blunt force injuries complicated by compromised respiration. Manner of Death: Homicide. DOD 003329 refers to this case as “1 blunt force trauma and choking; died during interrogation.” DOD 003325 refers to this case with the notation “Q[uestioned] by OGA and NSWT [Navy Seals] died during interrogation.”</td>
</tr>
<tr>
<td>10.</td>
<td>Abdul Wahid</td>
<td>Forward Oper. Base, Gereshk, Afghanistan Nov. 6, 2003</td>
<td>Death by Blunt Force Injuries</td>
<td>Death caused by multiple blunt force injuries of the lower torso and legs complicated by rhabdomyolysis (release of toxins into the system due to destruction of muscle).</td>
</tr>
</tbody>
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<tbody>
<tr>
<td>11.</td>
<td>Abd Hamad Mowhoush</td>
<td>Al-Qaim, Iraq</td>
<td>Death by Smothering</td>
<td>Fifty-six-year-old Mowhoush died after two soldiers slid a sleeping bag over his body, except his feet, and rolled him repeatedly from his back to his stomach. An autopsy report lists “asphyxia due to smothering and chest compression” as the cause of death and cites bruises from the impact with a blunt object. The circumstance of death is recorded as “Q by MI, died during interrogation.”</td>
</tr>
<tr>
<td>12.</td>
<td>Abu Malik Kenami</td>
<td>Mosul, Iraq</td>
<td>Death by Hypothermia</td>
<td>A U.S. Army investigation into the death of Abu Malik Kenami is inconclusive but speculates that Kenami may have suffered a heart attack. The file notes that, on the day he died, Kenami had been “punished with ups and downs several times . . . and had his hands flex cuffed behind his back” (DOD 1285). He was also hooded, with “a sandbag placed over [his] head (DOD 1284). “Ups and downs” are “a correctional technique of having a detainee stand up and then sit-down rapidly, always keeping them in constant motion…for a time period that depends on “the violation and the punisher” (DOD 1284). He was found dead in the morning after having been placed in his bed cuffed and hooded. The file states that “[t]he cause of Abu Malik Kenami’s death will never be known because an autopsy was never performed on him” (DOD 1292) and describes his death as “suspicious or questionable” (DOD 1282). For reasons that are not made clear in the file, Kenami's corpse was stored in a “reefer van” for five days before it was turned over to a local mortician (p.1298). Despite the report’s conclusion that he exhibited no external signs, one sworn statement states that he may have died from hypothermia, and notes that he had a small scalp laceration and hematoma “which forces me to entertain trauma as a cause” (DOD 1331). The death certificate records the cause of death as natural (DOD 1332).</td>
</tr>
<tr>
<td>13.</td>
<td>Zaidoun Hassoun</td>
<td>Samarra, Iraq</td>
<td>Death by Drowning</td>
<td>Nineteen-year-old detainee drowned after U.S. soldiers allegedly forced him off a bridge in Samarra. Army investigation recommended prosecution of four soldiers for manslaughter. One soldier was sentenced to 45 days of confinement for assault, obstruction of justice and dereliction of duty, and one to six months’ confinement for assault and</td>
</tr>
</tbody>
</table>

13 Annex B96, supra note 387.
14 Annex B183, Excerpt from Autopsy Report, entry No. 03-571.
<table>
<thead>
<tr>
<th>No.</th>
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</thead>
</table>
| 14  | Abdul Jaleel       | Al Asad, Iraq     | Death by Blunt Force Injuries and Asphyxia | A 47-year-old Iraqi detainee died while being interrogated by “OGA.” He was standing shackled to the top of a door frame with a gag in his mouth at the time he died. The cause of death was asphyxia and blunt force injuries. Notes summarizing the autopsies record the circumstances of death as “Q by OGA, gagged in standing restraint.”

15. | Naser Ismail      | Balad, Iraq       | Death by Gunshot     | An unarmed Iraqi man was killed in his house in January 2004. The army staff seargent admitted to killing Ismail. He also tried to cover up the killing by making the slaying look like self-defense. He was acquitted of murder and obstruction of justice.

16. | Mohammed Munim al-Izmerly | Baghdad, Iraq     | Death by Blunt Force Injuries | On April, 25 2003, this prominent Iraqi scientist was taken by U.S. soldiers. He was held at Baghdad International Airport. On February 17, 2004, the family received news from the ICRC that sixty-five-year-old Mohammed al-Izerly was dead. He had died over two weeks earlier on January 31, 2004. The family commissioned their own autopsy, which concluded that he had died from a blunt force injury to the back of the head.

17. | Muhamad Husain Kadir | Near Taal Al Jal, Iraq | Death by Gunshot     | An unarmed Iraqi cow-herder was shot in the head by a soldier even though he was flexi-cuffed. At a court-martial in August 2004, the soldier was found not guilty of murder but guilty of voluntary manslaughter. He was sentenced to three years’ confinement and given a dishonorable discharge.

18. | Unknown            | Mosul, Iraq       | Death by Hypothermia  | A twenty-seven-year-old Iraqi male died while being interrogated by Navy Seals. During his confinement he was hooded, flexi-cuffed, sleep deprived and subjected to hot and cold environmental conditions, including the use of cold water on his body and hood. The exact cause of death was “undetermined.”

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18 Annex B182, Excerpt from Autopsy Report, entry No. 04-014.


<table>
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<tr>
<th>No.</th>
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</thead>
</table>
| 19. | Hamaady Kareem and    | Mahmudiyah, Iraq, April 15, 2004 | Death by Gunshot     | Two Iraqi men were allegedly shot in the back after being detained by a Second Lieutenant in the U.S. Marines who then hung a sign on their corpses with the Marine Corps’ slogan, “No better friend, no worse enemy.” It was alleged that a soldier shot them in anger after learning that military intelligence officers had decided not to detain them. The Lieutenant faced a preliminary military hearing late in April 2005 to determine whether he would face court-martial for the killings, which he maintained were committed in self-defense.  
Sarah Baxter, Goldman Sachs GI “Shot Iraqis in Back,” TIMES ONLINE, April 24, 2005.  
Annex B181, Autopsy Summary, entry No 04-309.  
| 20. | Tahah Ahmead Hanjil    |                         |                      | although the autopsy stated that hypothermia may have contributed to his death.  
Notes say he “struggled/ interrogated/ died sleeping.”  
Sarah Baxter, Goldman Sachs GI “Shot Iraqis in Back,” TIMES ONLINE, April 24, 2005.  
Annex B181, Autopsy Summary, entry No 04-309.  
| 21. | Karim Hassan          | Near Kufa, Iraq, May 21, 2004 | Death by Gunshot     | U.S. troops fired on a car they thought was carrying a radical Shia cleric. The driver, Karim Hassan was injured and a U.S. army captain shot and killed him, claiming it was a “mercy killing.” In March 2005, the captain was convicted by court-martial of assault with intent to commit voluntary manslaughter, which carried a possible ten-year prison sentence. On April 1, 2005, he was sentenced to dismissal from the army, but received no prison sentence.  
Sarah Baxter, Goldman Sachs GI “Shot Iraqis in Back,” TIMES ONLINE, April 24, 2005.  
Annex B181, Autopsy Summary, entry No 04-309.  
| 22. | Qassim Hassan         | Sadr City, Iraq, Aug. 18, 2004 | Death by Gunshot     | A sixteen-year-old wounded Iraqi was killed in a purported “mercy killing” by U.S. soldier. In December 2004, one soldier was sentenced to three years’ imprisonment and another to one year.  
Sarah Baxter, Goldman Sachs GI “Shot Iraqis in Back,” TIMES ONLINE, April 24, 2005.  
Annex B181, Autopsy Summary, entry No 04-309.  
| 23. | Name unknown          | Abu Ghraib, Baghdad, Iraq, Aug. 18, 2004 | Death by Gun Shot    | Iraqi male detainee in US custody at Abu Ghraib was shot in the head August 2004. “A group of prisoners became unruly and the guards used lethal force to subdue the crowd. A shotgun was fired and this detainee was struck and killed.”  
Sarah Baxter, Goldman Sachs GI “Shot Iraqis in Back,” TIMES ONLINE, April 24, 2005.  
Annex B181, Autopsy Summary, entry No 04-309.  
| 24. | Thaher Khaleefa Ahmed | Balad, Iraq, Oct. 25, 2004 | Death by gun shot wound | A handcuffed teenager was shot by a U.S. soldier during a house search. A day earlier the soldier held a 9mm pistol to the boy’s head, forced him to hold a smoke grenade with the pin out, and held him by the  
Sarah Baxter, Goldman Sachs GI “Shot Iraqis in Back,” TIMES ONLINE, April 24, 2005.  
Annex B181, Autopsy Summary, entry No 04-309.  
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<td></td>
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<td>throat. The boy was later released. The soldier was convicted of premeditated murder, maltreatment, and impeding the investigation. A military judge sentenced the soldier to eight years imprisonment. Because of a plea agreement the sentence was reduced to seven years.</td>
<td></td>
</tr>
</tbody>
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ANNEX B

Documents obtained through ACLU Freedom of Information Act litigation regarding treatment of detainees in Iraq, Afghanistan, and Guantánamo
Alternative Interrogation Techniques (Wish List)
4th Infantry Division, ICE

Open Hand Strikes (face and midsection) (no distance greater than 24 inches)
Fairly self-explanatory.

Pressure Point Manipulation
Manipulation of specific points on the human body can cause acute temporary pain but cause no long term effects or damage.

Close Quarter Confinement
Confinement of subject in extremely close quarters. Discomfort induces compliance and cooperation.

White Noise Exposure
Overexposure of subject to noise found to be meaningless and many times monotonous to subject. Often used in conjunction with Sleep Deprivation.

Sleep Deprivation
An initial period of total deprivation (usually 12 to 24 hours) followed by regular and irregular sleep patterns over several days.

Stimulus Deprivation
The human mind requires stimulation, however small, to maintain resistance to suggestion, mental and emotional manipulation and self will. Subject is deprived of this stimulation for 12 to 24 hours during initial stages. Effects on subject’s resistance are monitored with short intense interrogations (15-60 minutes at most). Subject’s resistance will usually rapidly decay after 36 to 48 hours. This technique requires no physical pressure to be applied. However, subject must be carefully monitored.

*There are a number of “coercive” techniques that may be employed that cause no permanent harm to the subject. These techniques, however, often call for medical personnel to be on call for unforeseen complications. They include but are not limited to the following:

Phone Book Strikes
Low Voltage Electrocutation
Closed-Fist Strikes
Muscle Fatigue Inducement

EXHIBIT D

6627
Annex B-1

DOD 002854
From: [Redacted]  
Sent: Monday, August 18, 2003 2:16 AM  
To: [Redacted]  
Subject: RE: Taskers

Alternative Interrogation Tech...
The attached document is the 4th Infantry Division's ICE suggestions if alternative interrogation techniques are authorized. All techniques not listed as "coercive" cause no lasting effects on the subject.

I apologize for tardiness, but my SIFRNET has been down for the last few hours.

TF TH CCP, Tikrit, IZ

---Original Message---
From: [Redacted]  
Sent: Thursday, August 21, 2003 3:51 AM  
To: [Redacted]  
Subject: Fw: Taskers

Sounds crazy, but we're just passing this on.

---Original Message---
From: [Redacted]  
Sent: Thursday, August 21, 2003 11:51 AM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Taskers

ALCON

Just wanted to make sure we are all clear on the taskers at hand

1- A list identifying individuals who we have in detention that fall under the category of "unlawful combatants" I've included a definition form the JJA folks:

In order to properly address your request for a legal definition of the term "unlawful combatant," I must first provide you with a framework of definitions with which to work. According to the Law of Land Warfare, the term "combatant" is defined as anyone engaging in hostilities in an armed conflict on behalf of a party to the conflict. Combatants are
lawful targets, unless out of combat. With that said, "lawful combatants" receive protections of the Geneva Conventions and gain combat immunity for their warlike acts, as well as become prisoners of war if captured. In comparison, "unprivileged belligerents," commonly referred to as "unlawful combatants," may be treated as criminals under the domestic law of the captor. Unprivileged belligerents may include spies, saboteurs, or civilians who are participating in the hostilities. The term "unlawful combatant" is not referenced, nor is it defined. The term that properly described these type of individuals is "unprivileged belligerents," and as stated before they may be treated as criminals under domestic law.

As far as an ROE that addresses the treatment of enemy combatants, specifically, unprivileged belligerents, we are unaware of any but we will continue to research the issue for you. I hope this information has been helpful.

2- An additional list identifying who we have detained who are "Islamic extremist"

3- Immediately seek input from interrogation elements (Division/Corps) concerning what their special interrogation knowledge base is and more importantly, what techniques would they feel would be effective techniques that SJA could review (basically provide a list).

Provide interrogation techniques "wish list" by 17 AUG 03.

The gloves are coming off gentleman regarding these detainees, has made it clear that we want these individuals broken. Casualties are mounting and we need to start gathering info to help protect our fellow soldiers from any further attacks. I thank you for your hard work and your dedication.

MI ALWAYS OUT (FRONT!)

W/r
AFZX-CB-EN

MEMORANDUM FOR T

SUBJECT: Response to 15-6 Investigation

27 August 2003

During Operation Scorpion Sting our whole platoon was attached to Eagle Troop. We assisted them in cleaning up the streets from copper wire in their sector. We spent two days doing that, and we would take at least 15 truck loads of copper wire to the back of the camp each day. About one week later, we got a call from Cougar 2-boat to go back up with Eagle Troop to go pick up some copper wire. When we got there we loaded up the copper wire into our trailers, and headed back to the camp. We put the copper wire from the week before. As we arrived, they showed us the trailer where we had put the copper wire the week prior. We didn’t catch them, so we headed back. Everyone else was at about 20 minutes. I told the platoon sergeant that he wanted to go after them again. He said ok. When we got back from going after the looters, we came back with five detainees. We down loaded them and had them help the other two unload the trailers. I stayed at my truck because I was hurt from the heat. I also explained to my soldiers why we need to give the detainees water. Then, after we had them finish down loading the trailers, we took them to the CMOC.

That day I and another said they saw us go to a detaining. The statements were false. I did not knock a detaining. After we loaded the truck, the driver, who was at the 27 truck as a M249 gunner, stayed at the truck’s door because he was also hurt from the heat. All of our vehicles were about thirty feet apart at the site facing the opposite way from each other pulling security. I never once, that I saw, got off of the truck. I was on to do anything. I never saw anyone come around my truck after arriving back at Camp Marjor. He was a prior heat injury, so he really did not move out of his truck unless it benefitted him. I feel that both sides have had it out for me, since they both got moved from my squad.

Periodically we would go in the back entrance of the camp to see if we could catch looters in the back of the camp. On two occasions we detained looters. The first time, we took them to the CMOC. We attempted to hand them over to Building elements. Bulldog 6 told my platoon sergeant that he didn’t want them there. Then he told my platoon sergeant to take them out and beat the Fuck out of them. I thought he was serious because every sense we had crossed the barrier, it appeared that he had said it for the Iraqi people. We took the detainees to a building in back of the camp, and a team leader in the platoon told the platoon sergeant if he wanted to teach them, he should strip them and send them on their way. We could have shot them because they said that they were breaching the outer perimeter. At the time we were beyond the outer perimeter. We didn’t make the outer perimeter until the first week in August. The 2OS was to only shoot when you felt your life or another soldier’s life was threatened or when fired upon. The Building element was showing the looters I thought that was too extreme at the time. Therefore, the platoon sergeant didn’t want to shoot them and that is why they got stripped.

July 3, 2003 was the day that I was back a detainees to the warehouse where we lived. I don’t know why he did that, or what he was thinking when he brought him back. That day we went to go get colas for the 4th of July party at the camp. When we reached the camp we entered into the back gate. Because I believe the front gate was closed due to the threat of a car bomb. As we entered the back gate, there were Iraqi people running from the copper wire was at. As we started to chase them, I got a flat tire, so my truck stopped and we waited for the other trucks. We had to walk to the camp and I went to get the spare tire so my squad could fix the flat tire. When I came back, I had pulled in with a detainees in the back of his truck. We unloaded him and put him next to the wall. The platoon sergeant sent everyone to chow since it was about to be over. He said that he would watch him while we go to chow.
two soldiers of mine also stayed back that day as they changed the tire. When soldiers in the platoon found out that the detainee was going back there to take pictures, I told them to stop. I don't know what happened while I was at chow, but when we got done with chow we took the detainee to the CMUC. When you come in the way we enter into the building, you can not see the other half of the warehouse due to a camo net up between where we parked our trucks and where we live. So when I came back I couldn't see if anything was happening around the trucks.

I don't understand why only two people in the platoon said they saw me do something I didn't do. Everyone else in the platoon said they didn't see me do any of those things.

I admit to participating in the stripping of an Iraqi national. I know this was wrong. I am sorry for this and am fully prepared to take responsibility for my actions and the consequences. I have not hurt, kicked, or otherwise physically harmed Iraqi nationals at any point in time during my time in theater.

I have been in the Regiment for six of the seven years I have been in the Army. I deployed ahead of the Regiment with the 101st. Due in large part to my expertise in engineer operations and ability to make quick and sound judgments, I was selected as one of 10 engineers to accompany the squadron. My service to the country and Regiment is a source of great pride for me. I look forward to continuing to serve both as soon as possible.
b6 -1
b7C -1

From: Baid, Gary, BATTLE, FRANKIE, CUMMINGS, ARTHUR, ...

Date: Fri, Dec 5, 2003 9:53 AM
Subject: Fwd: Impersonating FBI at GTMO

b6 -1 Frank
b7C -1

I am forwarding this EC up the CTD chain of command. MLDU requested this information be documented to protect the FBI. MLDU has had a long standing and documented position against use of some of DOD's interrogation practices, however, we were not aware of these latest techniques until recently.

Of concern, DOD interrogators impersonating Supervisory Special Agents of the FBI told a detainee that these same interrogation teams then The detainee was also told by this interrogation team

These tactics have produced no intelligence of a threat neutralization nature to date and CITF believes that techniques have destroyed any chance of prosecuting this detainee.

If this detainee is ever released or his story made public in any way, DOD interrogators will not be held accountable because these torture techniques were done the "FBI" interrogators. The FBI will left holding the bag before the public.

b6 -1 SSA
b7C -1 CTD/MLDU

CC: 

b6 -1
b7C -1

ALL INFORMATION CONTAINED IN THIS MESSAGE IS UNCLASSIFIED.
Department of Defense (DoD) Interrogation Tactics

- BAU personnel witnessed sleep deprivation, and utilization of loud music/bright lights/growling dogs in the Detainee interview process by DoD representatives. These tactics were brought to the attention of the appropriate DoD legal personnel who requested that BAU members write out "statements" concerning these matters.

* BAU Vehicle

CIRG/RDLU provided the BAU with an eighteen (18) passenger van for transportation at GTMO. This van is too large for the small roadways/tight turns at GTMO, thereby making it extremely difficult to operate in a safe manner. Additionally, the air conditioner has been/is non-operational after three (3) different service attempts by Motor Pool personnel.
From: [Name]
To: [Name]
Date: 1/21/04 5:15PM
Subject: Fwd: Re: Impersonating FBI

When I was in the unit in December, I thought we agreed to take everything out of the EC that doesn't specifically pertain to the "impersonation" issue. All of that other information (including our suggestion that the detainee was threatened) is still there, which I think is totally inappropriate.

Regarding the "impersonation", I'm still not sure what our issue is here. It's fairly clear to me that the "FBI Agent" wasn't successful in gaining the detainee cooperation. Thereafter, (months later) carried the day with his ruse regarding. Once again, this technique, and all of those used in these scenarios, was approved by the Dep Sec Def. Additionally, the techniques specifically called into question in the EC were employed months after, and in a different environment from, the "FBI Agent" ruse.

I would request that Spike Bowman, or his designee, review this information and provide us with a definitive opinion before we make an issue of it.

Thanks.

CC: [Name]

DETAINNEES-3832

Annex B-8
DEPARTMENT OF DEFENSE
CRIMINAL INVESTIGATION TASK FORCE
FORT BELVOIR, VIRGINIA 22060-5505

MEMORANDUM FOR RECORD

15 Jan 93

SUBJECT: Aggressive Interrogation—Historical Record

1. Purpose: The purpose of this Memorandum and attached documents is to preserve critical correspondence concerning development of interagency policies involving aggressive interrogation techniques.

2. Overview: The Criminal Investigation Task Force (CITF) and its deployed elements in Afghanistan (CITF-A) and Guantanamo Bay, Cuba (CITF-G) conducted interrogations of detainees in Afghanistan. Given the perishable nature of documents and correspondence on this topic, the CITF/IAlA has directed assembly of an historical record in order to provide background knowledge on a legal/policy debate.

3. Position: Since its Charter in January 2002, CITF has maintained a consistent policy of not authorizing non-law enforcement interview/interrogation techniques. CITF agents and attorneys along with their deployed counterparts in the Federal Bureau of Investigation (FBI) have maintained that detainees at Guantanamo Bay, Cuba have been removed from the tactical theater of combat operations and into a military justice and long term detention environment. Consequently, CITF has maintained a consistent policy mandating law enforcement techniques. Deployed CITF personnel have coordinated closely with FBI representatives to ensure interview policies are consistent with a law enforcement mission.

4. Issue: The Secretary of Defense (Tab 2), Joint Chiefs of Staff, and Southern Command (Tab 3) authorities approved these techniques in early October 2002 and late November 2002. CITF policy precludes participation in these aggressive interrogation techniques and advocates proven rapport-building interview strategies consistent with a law enforcement mission.

5. Policy Debates

CITF/IAlA (Updated: 7/28/2003) Page 1 of 5
ATTORNEY WORK PRODUCT – CLOSE HOLD/FOID

Annex B-9
6. Legal Authorities: JTF-GTMO/JA issued a legal review of aggressive interrogation techniques on 15 Oct 2002. (Tab 4) SOUTHCOM/JA forwarded the approval with no comment. (Tab 5) Upon the direction of the Department of Defense General Counsel (DOD/GC), CJTF/JA assessed this legal review and... (Tab 6)

7. The Interagency Response to CJTF Objections:

8. Department of Defense Approval: SOUTHCOM issued an interim approval for use of the techniques in early November 2002. JTF-GTMO interrogations began implementing aggressive techniques in mid-November. The Joint Chiefs of Staff (JCS) and Secretary of Defense (SECDEF) formally approved the use of various levels of the techniques in early-December 2002.

9. Current Situation: All deployed CJTF personnel are instructed to disengage, stand clear, and report any questionable interrogation techniques. Deployed FBI agents participate in CJTF briefings and are in-line with CJTF instructions. CJTF maintains that its personnel will not utilize non-law enforcement techniques or participate, support, advise, or observe aggressive interrogation techniques or strategies. CJTF representatives are instructed to participate in interagency discussions, monitor developments on interrogations, and professionally voice...
objections where appropriate. Although deployed CTF/G and FBI personnel have often had to

[Redacted text]

...perspectives... Do not disclose all information concerning TFR/GTMO’s implementation of interrogation techniques.

10. Legal Considerations:

[Redacted text]

11. Attachments: The following documents provide a background on the correspondence and policy development involving aggressive interrogation. CTF/GA will maintain legal research material on the issue of aggressive interrogation and outline the current status of the law within a legal memorandum.

[Redacted text]

Capt. USB, USAFR
Assistant Legal Advisor

Attachments:
Timeline of Policy Development 2002
Classified Binder, Interrogation—Historical Record

CTF/GA (Updated: 7/28/2003) Page 3 of 5
ATTORNEY WORK PRODUCT—CLOSE HOLD FOUO

Annex B-11
From: (NSD) (FBI) 
To: Caproni, Valerie E. (OGC) (FBI) 
cc: 
Subject: FW GTMO

SENSITIVE BUT UNCLASSIFIED 
NON-RECORD

Here is the second summary. One more to go.

--- Original Message ---

From: (BS) (FBI) 
Sent: Monday, August 02, 2004 10:46 AM 
To: (NSD) (FBI) 
Subject: RE GTMO

--- Original Message ---

Mr. 

As requested, here is a brief summary of what I observed at GTMO.

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had unattended or defecated on themselves, and had been left there for 16-24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. When I asked the MPs what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night. On another occasion, not only was the temperature unbearably hot, but extremely loud 'rap' music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.

Any questions, feel free to call or ask via email.

--- Original Message ---

From: (NSD) (FBI) 
Sent: Thursday, July 29, 2004 10:58 AM 
To: (BS) (FBI) 
Subject: RE GTMO

--- Original Message ---
translated by

stated he had been beaten unconscious
approximately three or four weeks ago when he was still at Camp X-Ray. According to an unknown number of guards,
entered his cell, unprovoked, and started spitting and cursing at
him. The guards called him a "son of a bitch" and a "bastard,"
then told him he was crazy.

rolled onto his stomach to protect himself...

stated a
soldier named
jumped on his back and started beating him
in the face.

stated that
men choked him until he passed out

stated that
was beating him because

is
a Muslim, and

la Christian.

indicated there was
a female guard named
who was also beating him and
grabbed his head and beat it into the cell floor.

stated that all the soldiers were aware of
his
and he was taken to the hospital following
the beating where he received an IV and treatment for his facial
wounds.

claimed
who is a tall African
American male, visited him at the hospital and told the doctors
immediately return him to the camp.

reported the
aforementioned incident to two Red Cross representatives at Camp
Delta, who he identified as

stated
he did not do anything to cause the guards to enter his cell, and
did everything they instructed him to do.

had what
appeared to be a recent wound on the bridge of his nose.

stated that he was put in an isolation cell
after he was involved in a dispute over food given to him.

stated that he is unable to eat certain foods, and was
placed in isolation after arguing with a guard.

secret

DETAINEES-1722

1722

Annex B-15

5016
the reasons behind his apprehension

claimed to be unaware of
after the Trade Center disaster.
Major General Donald J. Ryder
Department of the Army
Criminal Investigation Command
6010 6th Street
Fort Belvoir, Virginia 22060-5506

Re: Suspected Mistreatment of Detainees

Dear General Ryder,

I appreciate the opportunity I had to meet with you last week. As part of a follow up on our discussion on detainee treatment, I would like to alert you to three situations observed by agents of the Federal Bureau of Investigation (FBI) of highly aggressive interrogation techniques being used against detainees in Guantanamo (GTMO). I refer them to you for appropriate action.

1. During late 2002, FBI Special Agent [Redacted] was present in an observation room at GTMO and observed [Redacted] (first name unknown) conducting an interrogation of an unknown detainee. [Redacted] was present to observe the interrogation occurring in a different interrogation room [Redacted] entered the observation room and complained that curtain movement at the observation window was distracting the detainee, although no movement of the curtain had occurred. She directed a marine to duct tape a curtain over the two-way mirror between the interrogation room and the observation room. [Redacted] characterized this action as an attempt to prohibit those in the observation room from witnessing her interrogation with the detainee. Through the surveillance camera monitor, [Redacted] then observed [Redacted] position herself between the detainee and the surveillance camera. The detainee was shackled and his hands were cuffed to his waist. [Redacted] observed [Redacted] apparently whispering in the detainee's ear, and caressing and applying lotion to his arms (this was during Ramadan when physical contact with a woman would have been particularly offensive to a Muslim male). On more than one occasion the detainee appeared to be groaning in pain, and [Redacted] hands appeared to be making some contact with the detainee. Although [Redacted] could not see her hands at all times, he saw them moving towards the detainee's lap. He also observed the detainee pulling away and against the restraints. Subsequently, the marine who had previously taped the curtain and had been in the interrogation room with [Redacted] during the interrogation re-entered the observation room.

66F-HQ-A1234210 DETAINNEE-3823

Annex B-22
General Donald J. Ryder

b6 -1,2 SA asked what had happened to cause the detainee to grimace in pain. The marine said he had grabbed the detainee’s thumbs and bent them backwards and indicated that she also grabbed his genitals. The marine also implied that her treatment of that detainee was less harsh than her treatment of others by indicating that he had seen her treatment of other detainees result in detainees curling into a fetal position on the floor and crying in pain.

b7C -1,2

2. Also in October 2002, FBI Special Agent [redacted] was observing the interrogation of a detainee when a civilian contractor, came into the observation room and asked SA [redacted] to come see something. SA [redacted] then saw an unknown handed, long haired detainee in another interrogation room.

b1

b6 -1,2,5 SA [redacted] asked Mr. [redacted] whether the detainee had spit at the interrogator. Mr. [redacted] laughed and stated that the detainee had been chanting the Koran and would not stop. Mr. [redacted] did not answer when SA [redacted] asked.

b7C -1,2,5

3. In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee [redacted] and in November 2002, FBI agents observed Detainee [redacted] after he had been subjected to intense isolation for over three months. During that time period, he was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, hearing voices, crouching in a corner of the cell covered with a sheet for hours on end). It is unknown to the FBI whether such extended isolation was approved by appropriate DoD authorities.

These situations were referenced in a May 30, 2003 electronic communication (EC) from the Behavioral Analysis Unit of the FBI to FBI Headquarters. That EC attached, among other documents, a draft Memorandum for the Record dated 15 January 2003 from Capt. [redacted] (USAFR), that refers to the first two events among others in a timeline of events related to discussions concerning the use of aggressive interrogation techniques. Marion Bowman of the FBI’s Office of General Counsel discussed the contents of those communications with Mr. Dietz, Deputy General Counsel (Intelligence) and Mr. Del’Orto, Deputy General Counsel of DoD, around the time the EC was received. Although he was assured that the general concerns expressed, and the debate between the FBI and DoD regarding the treatment of detainees was known to officials in the Pentagon, I have no record that our specific concerns regarding these three situations were communicated to DoD for appropriate action.

b6 -2

b7C -2

DETAINEES-3824

Annex B-23

4623
General Donald J. Ryder

If I can provide any further information to you, please do not hesitate to call.

Sincerely yours,

T. J. Harrington
Deputy Assistant Director
Counterterrorism Division
was interviewed at Camp Delta, United States Naval Base Guantanamo Bay, Cuba, by Special Agents of the Federal Bureau of Investigation and of the United States Army Criminal Investigations Division. Contract Linguist The following occurred during the course of the two-hour interview:

The first fifteen minutes of the interview were made some attempts at humor. He smiled frequently and said he had been interviewed by a man this morning. The interviewer would not say what agency he represented. After small talk, requested the interview continue.

became serious and said he learned after coming to Camp Delta that he believes people should be tried by civilian courts, not military courts. He also said he conducts operations such as bombings and blames them on Islamic groups to justify their actions against such groups.

said the accusations against him, such as are not true. He reasoned that, if these things were true,
SECRET

as a response to the September 11, 2001

On Page b6 -3,4

said he has found all the interrogators to be

liars. He does not trust any of them. He gave an example of the
behavior of Americans. A detainee returned from an interrogation
with blood on his face and head. He said a female interrogator,
after not getting cooperation from him, called four guards into
the room. While the guards held him, she removed her blouse, embraced
the detainee from behind and put her hand on his genitals. The
interrogator was on her menstrual period and she wiped blood from
her body on his face and head. He said he asked one guard, "Why do
you hate me?" The guard responded, "If I could, I would kill you."

complained no one has told him what he is

accused of doing. He is ready to be tried if there is evidence
against him. He offered that there are three possible outcomes for
him:

1. He will face a military tribunal
2. He will be returned where he will face life
   imprisonment and torture
3. He will be released to a country where he can claim
   political asylum

He said he understands the impact of the September 11
attacks. But he complained about the treatment he has received
during his arrest, transport, and detention. He said the prisons
are better than here. But he declined to say how he knew
the difference. He denied ever telling previous interrogators that
he had been tortured before by

According to before he was arrested, he
believed in the humane treatment of prisoners in the United States.
For this reason, when he was first interrogated, he cooperated
with interrogators. But he found his assumptions about treatment
in the U.S. system to be incorrect. He believes the United States
extends no rights to Arabs. He doubts anyone who interviews him
will be honest with him. He believes the U.S. intelligence
agencies override decisions of the U.S. military and that Jewish
people control the American media.

The interviewers explained to that he was
detained during a time of war and that he falls under a military
system of justice. This is why he is not being afforded the same
rights as people who face civil tribunals. asked what
would be done with him. He was told he will either be tried or
released. He said he believes he will be returned. He
was told the United States is not following the dictates of the
government, that the possibility of political asylum was
mentioned in his file, and that his fate was not certain. The
interviewers are trying to determine who is linked to the Taliban
and to Al Qaeda.

SECRET

DETAINNEES-4009

Annex B-26
He would not say how he knows these things.

He then asked, if the intention is to turn him back why not just turn him over now? He was told there are too many unanswered questions to let him go immediately. He said he believes from the interviewers' point of view, he is either associated with the Taliban and Al Qaeda, or he was just caught in the net, so why not get as much intelligence from him as possible. As soon as the interrogators get all they can from him, they will hand him over "on a plate".

This conversation was followed by a discussion of how trust could be developed between SA [Redacted] who would be at Camp Delta long enough to have repeated meetings, and [Redacted] An offer was made to hold more frequent interviews. In this way, perhaps some trust could be developed and [Redacted] would feel comfortable opening up and providing his complete history, which seemed willing to address this proposal. He then asked what time it was and asked if he could say his prayers. The interview was ended with the understanding that another interview would occur in two weeks, at which time this proposal could be discussed again.

DETAINEES-4010

Annex B-27
**SWORN STATEMENT**

For use of this form, see AR 190-45; the proponent agency is ODCSOPS.

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>DATE</th>
<th>TIME</th>
<th>FILE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>KANDAHAR DETENTION FACILITY</td>
<td>(b)(6)</td>
<td>(b)(6)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LAST NAME, FIRST NAME, MIDDLE NAME</th>
<th>SOCIAL SECURITY NUMBER</th>
<th>GRADE/STATUS</th>
</tr>
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<tbody>
<tr>
<td>(b)(6)</td>
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</tbody>
</table>

ORGANIZATION OR ADDRESS:  

TE 202 MI BN

I WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

AT 0149Z ON IFEBOZ, I, AND PFC (b)(6) Entered Booth 1 of the Joint Interrogation Facility to Question MP Number (b)(6). I noticed several cuts and bruises on MP Number (b)(6)'s face. He also complained of pain and soreness to ribs. MP Number (b)(6) stated that approximately four days ago he was beaten by three to four guards. MP Number (b)(6) stated that everyone in the pen was instructed to get up but he was unable due to numbness in his legs. That is when the guards approached him and began to beat him. The following two nights MP Number (b)(6) stated that three to four guards entered the pen and kicked him repeatedly and looked nothing follows.

EXHIBIT  

INITIALS OF PERSON MAKING STATEMENT  

PAGE 1 OF 2 PAGES  


DA FORM 2823, JUL 72  
SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

020557
I had spoken to MP number about a week prior to I February meet. At which time I do not recall any visible marks on his face. It is quite apparent that between my initial meet and of February meet that something had happened to MP number's face. Nothing follows.

No

(b)(6)

(6)(6)

Used

(b)(6)

affidavit

All (b)(6) below

I have read or have had read to me this statement which begins on page 1 and ends on page 2. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

WITNESSES:

[Redacted]

2034 MIB

ORGANIZATION OR ADDRESS

[Redacted]

20K MCFB

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT [Redacted] Page 2 of 2 Pages

[Redacted]

[Redacted]

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 18 day of February 2002 at KANDAHAR, AFGHANISTAN.

[Redacted] [Redacted]

Typed name of person administering oath

Judge Advocate

Authority to administer oath

Annex B-29
URGENT REPORT

DATE: JUNE 25, 2004

TO: THE DIRECTOR

CC: Deputy Director Bruce J. Gebhardt
    EAD Cassandra Chandler
    EAD John Pistole
    AD Grant Ashley
    AD Gary Bald
    SC Arthur Cummings

FROM: SACRAMENTO DIVISION

FOR FURTHER INFORMATION CONTACT: ASAC David A. Picard (Main Office)

PREPARER OF URGENT REPORT: SSA

PURPOSE: THE FOLLOWING INFORMATION PROVIDES INITIAL DETAILS FROM AN INDIVIDUAL WHO OBSERVED SERIOUS PHYSICAL ABUSES OF CIVILIAN DETAINEES IN IRAQ DURING THE PERIOD OF IT IS BEING FURNISHED TO THE DIRECTOR BASED UPON POTENTIAL SIGNIFICANT PUBLIC, MEDIA AND CONGRESSIONAL INTEREST WHICH MAY GENERATE CALLS TO THE DIRECTOR.

SUBJECT: PRELIMINARY STATEMENTS MADE BY AND

DESCRIPTION OF MATTER:

was advised that the Sacramento Field Office was not aware of any such report.

DETAINEES-1609

Annex B-30
URGENT REPORT

came into the Sacramento Field Office and provided the following:

observed numerous physical abuse incidents of Iraqi civilian detainees conducted in Iraq. He described that such abuses included strangulation, beatings, placement of lit cigarettes into the detainees ear openings, and unauthorized interrogations.

was providing this information to the FBI based on his knowledge that were engaged in a cover-up of these abuses. He stated these cover-up efforts included

an individual did, in fact, make a complaint with Sacramento FBI Office concerning Iraqi prisoner abuse.

DETAINNEES-1610

1610

4911

Annex B-31
The Sacramento Division is continuing to interview and will forward FBIHQ all details of his interview in future communications. Investigation in Sacramento is continuing.
From: Caproni, Valerie E (OGC) (FBI)  
To: BALD, GARY M (CTD) (FBI)  
Cc:  

Subject: RE: BOC E-mail, Priority  
06/29/2004, US Army CID request to interview FBI SA's re detainee abuse allegation

UNCLASSIFIED
NON-RECORD

Sorry for delay in responding

Original Message

From: BALD, GARY M (CTD) (FBI)
Sent: Monday, July 05, 2004 11:13 AM
To: Caproni, Valerie E (OGC) (FBI)
Cc: LUECKENHOFF, EDWARD H (DL) (FBI)

Subject: FW: BOC E-mail, Priority  
06/29/2004, US Army CID request to interview FBI SA's re detainee abuse allegation

UNCLASSIFIED
NON-RECORD

Val - Do not see that you received this. If you would like me to take further action, pls advise. Thx, Gary

Original Message

From: BALD, GARY M (CTD) (FBI)
Sent: Thursday, June 25, 2004 8:30 AM
To: LUECKENHOFF, EDWARD H (DL) (FBI), BRIESE, M C (CTD) (FBI), BALD, GARY M (CTD) (FBI), HARRINGTON, T J (CTD) (FBI)
Cc:  

Subject: BOC E-mail, Priority  
06/29/2004, US Army CID request to interview FBI SA's re detainee abuse allegation

Gentlemen,

Today, two representatives from the 76th MP Detachment (CID) visited the BOC to advise that a detainee at the Abu Ghurayb Prison alleged on 17 June that when he was initially detained in February, he was abused by the detaining unit. The CID representatives produced records indicating that on 04 March 2004, SA witnessed a WFO, "witnessed" the detaining unit against an Iraqi civilian suspected of attacks on Coalition forces, inasmuch as SA signed a Coalition Provisional Authority Forces Apprehension form indicating he witnessed the detainee being detained, and he dated it 3/14/04. The date of detention, according to military records, was either 26 February or 04 March, however, he is alleging abuse during his detention only on 26 February. Military records indicate the detainee as held as 25/0151 MP. However, there is no clear record on what unit initially apprehended the detainee. Also, a Detainee Tracking form bearing the name indicates he was apprehended on 26 February 2004, and arrived at the "interim detention facility" (likely a reference to the Abu Ghurayb Prison since it is referred to as such in other documents) on 11 March 2004.

In addition to the document indicating that SA witnessed apprehension, the CID

DETAINEES-1510

1510

4831

Annex B-33
representatives produced two DD Form 2708's, Receipt for Inmate or Detained Person, bearing the name of SA __________ also from WFO. One of the forms indicates that SA __________ turned over to a representative of the 2/501st MP at 01/11/040304,* very likely a reference to 04 March 2004 since the form requests that the date be presented as "YYYYMMDD." The form also has an annotation in the remarks column stating, "revised [sic] in good health with minor bruising/scatches" (Note, the annotation, "with minor bruising/scatches" appears in a different style of writing than the annotation, "received in good health." The second DD Form 2708 indicates that SA __________ received from the 2/501st MP on 20040305, at 07:16. This form contains the following annotation: "Received in good, FBI (unreadable) for question". Also, written below the space provided within the margins of the form is the annotation, "Cell __________

The CID representatives stated that detainee abuse investigations received their highest priority; therefore, they were seeking to expediously locate SA's __________ and __________ so that they may be interviewed. I advised the CID representatives that I would forward their request to FBIHQ. The CID representative in Iraq serving as the POC for this matter is __________, 78th MP Detachment (CID), Bldg 84, Camp Victory, DVNT __________ cell __________

The CID representatives only expressed an interest in interviewing SA __________ and SA __________ There are, however, two sworn statements in the detainee file, one signed by SA __________ WFO, and the other by __________. Both statements attest to the need to keep __________ in detention due to information indicating he is associated with a terrorist group (NFI) responsible for attacks on Coalition forces.

We searched ACS for references to __________ Results were negative __________

I will have a copy of __________'s detainee file faxed to FBIHQ; attention UC __________ ASAP __________

Please note that __________ has not mentioned the FBI or any of the agents discussed above in his abuse allegations. CID is pursuing interviews with our agents since their names appear on documents indicating they likely had contact with __________ while he was detained on the BIAP before he was transferred to the Abu Ghurayb Prison. __________ alleging abuse during this period. In a written statement __________ claims, "They tortured me and cuffed me in an act called the scorpion, and pouring cold water on me. They tortured me from the morning until the morning of the next day, and when I fell down from the severing torture I fell on the barbed wire, and then they dragged me from my feet and I was wounded and, and they punched me on my stomach." The statement was provided on 19 June __________

UNCLASSIFIED

UNCLASSIFIED

DETAINENES-1511

1511

4832

Annex B-34
SECTION IV - FINDINGS

The (investigating officer) (board), having carefully considered the evidence, finds:

This is a summary of the findings. For the complete detailed of findings, see enclosed.

1. [Redacted] was injured at approximately 0545 hours on 11 December 2003 while he was being detained in the 2nd BCT brigade holding area. He sustained a fractured mandible, or broken lower jaw.

2. Mr. [Redacted]'s injury was the result of intentional acts by coalition forces. He claims that he was struck by a US soldier and the US personnel involved claim that he fell, most likely the result of exhaustion from performing exercises. There is no direct evidence that anyone saw the injury take place. [Redacted] was closest to when the incident occurred. He claimed in his first statement that he was helping Mr. [Redacted] get up when he lost his balance and fell. In later statements, [Redacted] recanted this earlier statement and testified that he did not see Mr. [Redacted] fall. The greater weight of the evidence suggests that [Redacted]'s claim is the most plausible.

There is no direct evidence to the contrary.

SECTION V - RECOMMENDATIONS

In view of the above findings, the (investigating officer) (board) recommends:

See enclosed
SECTION VI - AUTHENTICATION
(para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VI below, indicate the reason in the space where his signature should appear.)

(Recorder)

(Investigating Officer) (President)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT
(para 3-19, AR 15-6)

To the extent indicated in inclusion, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclusion, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclusion.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY
(para 3-23, AR 15-6)

The findings and recommendations of the (investigating officer) board are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclusion.)

DAVID H. PETRAEUS
MG, USA
Commanding
JAN 10 2003

Page 4 of 4 pages, DA Form 1574, Mar 83

USAP

Annex B-36

001167
FACTS:
1. Detainee [REDACTED] was either struck or fell at about 11:05:30 DEC03, and broke his jaw.
2. The BHA was under the supervision of [REDACTED] at this time.
3. There were soldiers from 1/502, 3/327, 2/44, and 311 MI at the BHA at this time, serving as either guards or in other MI roles.
4. The detainees were being systematically and intentionally mistreated (heavy metal music, bullhorn, hit with water bottles, forced to perform repetitive physical exercises until they could not stand, having cold water thrown on them, deprived of sleep, and roughly grabbed off the floor when they could no longer stand).
5. The detainees had sand bags on their heads with “IED” written on them, the infantry soldiers they felt this was done to make them angry at the detainees, and it had exactly this effect.
6. The IO could determine if [REDACTED] was hit or simply fell to the ground.
7. The IO could not determine who might have struck [REDACTED] if he was struck.
8. The 3d & 4th Geneva Conventions were violated in regard to the treatment afforded to these detainees.
9. The IO made no recommendation as to potential disciplinary action.
10. All deficiencies at the Strike BHA have been corrected.

RECOMMENDATION: That [REDACTED] be issued a GOMOR.

SYNOPSIS OF WITNESS STATEMENTS:

[REDACTED] 1/502: We “always harassed the hell out of the detainees.” They always told us to “smoke the detainees, but to not physically harm them.”

I saw the Chief throw them down, put his knee in his neck and back and grind them into the floor. He would use a bull-horn and yell at them in Arabic and play heavy metal music extremely loud, they got so scared they would urinate on themselves. He was very aggressive and rough with the detainees.

We were told to only feed them crackers & water (may have been because of late hour)

[REDACTED] 1/502: They were setting it up to make the infantry guys angry by writing IED on the sand bags over their heads.

[REDACTED] of Guard Detail) 3/327: We would force them to stay awake, by banging on metal doors, playing loud music, screaming at them all night - those were our instructions. We were told to not strike them.

[REDACTED] & [REDACTED] 3/327: Our instructions were to keep them awake, smoke them, yell at them, but to not hurt them.
2/44: We “hazed” the detainees – we had a lot fall and hurt themselves.

1/592: I had IED on the sandbag over his head, the guards were all over him, screaming at him things like “you like to use IED’s motherfucker), and smoking him extra. They were smoking him really hard when I heard him cry in pain (he could have been hit or fell).

3/327: A lot of detainees had IED written on their bags. I was near when he fell and I helped him up. Interpreters (ICDC) blew cigarette smoke up their sand bag hoods. They also poured water on them to get them up, after they were exhausted from being smoked.

3/327: “We were yelling in a bullhorn at the detainees, making them do PT, things like flutter kicks, ups and downs, stuff like that.” We knew we were supposed to do these things because MI was already doing this stuff when we got there. He did not say it was part of the SOP. He stated, “we were briefed to keep them awake, do not let them talk, and to not hurt them.” I had seen “detainees collapse before because of the intensive physical training.”
SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is DDCSCOPS

LOCATION
231 Combat Support Hospital

LAST NAME, FIRST NAME, MIDDLE NAME

DATE
4 Jan 04

TIME
2000

FILE NUMBER

SOCIAL SECURITY NUMBER
Trig. Citizen

GRADE/STATUS

ORGANIZATION OR ADDRESS

Q: [redacted] A: [redacted]

Q: What do you want to make the following statement under oath?
A: Tell me, did you give a statement about what happened?
Q: Yes, to a Dr. [redacted], he said he knew what his name was, if he was in Baghdad.
Q: Tell me what happened.
A: I was studying in the morning because I was a student. It was around 0500. It was a Wednesday. There was a knock at my door so I answered it. American soldiers came in and took me outside and arrested me. They told me they were there for my father. They also arrested my brother and my father. I complained because my father is old and my brother is sick. My brother has many physical problems. My mother was crying.
Q: What happened after the arrest?
A: They put me in a truck, covered my face with my shirt, took me somewhere and took pictures and then took me to another place.
Q: How far from where they took pictures to where he got out?
A: [redacted] minutes.
Q: Anyone else in the truck with you?
A: Soldiers, my father, my brother, an interpreter, and that is all.
Q: What did they say when they took you to the place after the pictures, what was that like?
A: It was a room where I heard people shouting and crying.
Q: How long were you in that room?
A: [redacted] days.
Q: Did they tell you why you were arrested?
A: No, they said they came for my father.
Q: When did your father become a LT in the Fedayeen?
A: He is not a LT; he was a LT but he is not now.

EXHIBIT
INITIALS OF PERSON MAKING STATEMENT
PAGE 1 OF 3 PAGES


DA FORM 2823. JUL 72
SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

001170
Annex B-39
STATEMENT (Continued)

Q: How long?
A: He became a member of the army about 5 yrs ago but he is not a member now. He just stays at home.
Q: How old is your father?
A: He was born in 1954 or 1959, I forget.
Q: How old are you?
A: 20.
Q: Still in high school?
A: Yes, I failed 3 yrs because I had to work. We ate a poor family.
Q: Since the arrest, have you had contact with your father or brother?
A: No.
Q: How did your jaw get broken?
A: A soldier hit me.
Q: How do you know that if you had a bag over your head?
A: Not sure if it was a soldier but someone hit me.
Q: Then what?
A: The soldiers, one soldier, took the bag off my head, gave me water and told
  me to say I had fallen.
Q: What did he look like?
A: He was white, had a mustache, was handsome, young, had short hair, blonde, was
  about as tall as me (5'7"ish), not slender.
Q: Did you throw up or anything when they took the bag off your head?
A: No, just blood.

AFFIDAVIT

[Signature of Person Making Statement]

I declare that the foregoing is true and correct, and that I have read the whole thereof.

WITNESSES:

[Signatures of Witnesses]

Subscribed and sworn to before me, a person authorized by law to administer oaths, this day of , 19

[Signature of Person Administering Oath]

[Typed Name of Person Administering Oath]

[Authority To Administer Oath]

INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 3 PAGES
STATEMENT (Continued)

Q: Tell me what was happening in the room before your jaw broke?
A: At night they were throwing water on us and making us stand and squad. From the night to the next day, from Wed. to Thursday, they were beating us. I was hit on Thursday. Then they gave me water but I couldn’t really drink any. They then took me to a place for an X-ray. We walked there. Then they brought me back, I sat for a while, and told me I was going to Baghdad for surgery. I came here (21st CSH) and took another X-ray. Then a helicopter took me to Baghdad.

Q: What was happening one hour before you got hit?
A: They were hitting me.
Q: Where?
A: Stomach, neck, back.
Q: With what?
A: With hands and boots.
Q: Were people talking to you in Arabic?
A: Yes.
Q: What did he/they say?
A: One man said that I was crying. He asked me why I was crying like a woman.
Q: Before going to the room for your jaw, had you been taken there before?
A: No. It was the first time.

Q: Anything else?
A: I forgive the soldier who hit me. That is all.

AFFIDAVIT

I, ________________________________, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE ______. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

____________________

____________________

ORGANIZATION OR ADDRESS

____________________

____________________

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

PAGE 3 OF 3 PAGES

Subscribed and sworn before me, a person authorized by law to administer oaths, this 4th day of January, 2004, at 21st CSH, Mosul, Iraq.

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)
MEMORANDUM FOR

ADC(O), 101st ABN DIV (AASLT) Mosul, Iraq
Staff Judge Advocate, 101st ABN DIV (AASLT) Mosul, Iraq
Commander, 311th MI BN, 101st ABN DIV (AASLT) Mosul, Iraq

SUBJECT: Recommendation concerning

1. Recommendation. I recommend that no punitive action be taken with respect to Commander, B Company, 311th MI BN, 101st ABN DIV (AASLT) as a result of the injury to detainee that occurred on or about 10 December 2003 in the 2BCT detainee holding area.

2. Background. On the evening of 13 Jan 04 I was appointed by the SJA by direction of the ADC(O) to interview concerning the incident that occurred on or about 10 Dec 03 resulting in injury to a detainee at the 2BCT holding area. On 14 Jan 04 I advised of his right to interview him for approximately 3 hours and obtained a sworn statement from him. The rights waiver and sworn statement are attached to this memorandum as enclosures one and two. This memorandum is not a summary of the contents of the sworn statement.

3. The primary purpose of the interview with was to determine if he failed to exercise the appropriate level of supervision and leadership with respect to the operations of the 2BCT holding area. I conclude that he did. More could have been done, as is the case with any Commander in any position, but actions satisfied the minimum standards for supervision and leadership given the circumstances in this instance.

4. The AR 15-6 investigating officer concluded that jaw was broken by an intentional act, but was unable to determine the actual injury-causing event. jaw was broken either as a result of a fall or from a blow administered likely by

5. states that he checked on the 2BCT holding area 3-4 times per week and, on average, all of these checks but one per week would be unannounced. He states that he requested that 2BCT provide blankets, heaters, an entrance gate, latrines, running water and a shower and offered to provide a copy of the briefing he gave to Strike 5 and 3 making these requests. He states that when he requested heaters as the cooler weather moved in he was told by either Strike

Annex B-42
6.  The witness states that he never saw detainees with bags on their heads that had certain offenses listed on them and that he never saw any soldier strike a detainee with any object except, on one occasion, a soldier tapped a detainee on the top of the head with an empty water bottle and told him to "look at me" but the manner in which this was done was not inappropriate. Further, he believed that his ISG prepared a guard briefing and ensured that all guards were always briefed concerning their obligations and rules relating to the detainees before they were allowed to be a guard. This briefing included a statement that they were not allowed to strike a detainee and that their job was to PT the detainees and keep them moving. This is reflected in most of the statements in the report of investigation. The witness believed that the detainees were fed three times per day and that they were allowed to sleep between approximately 2300 and 0700 each evening (if interrogated during this time period he stated the detainees would be allowed to rest during the day).

7.  It is worth noting that the unit was responsible for a number of missions including GSS support to top gun, talon, BSA LLVI, Ears over Mosul, THT19, running source operations, ACT drafting, link diagrams and analysis at Strike Main, two prophet and seven prophet hammers as well as normal supply and administrative operations of a fifty-two soldier company with additional interpreter support. This is not to mention reading every interrogation report on every detainee processed. Further, it is against doctrine to have interrogators or MI units to operate a BHA, this is an MP function. MI officers and enlisted receive no such training and the first time had even read the Geneva Conventions applicable to prisoners was when he read the interrogation manual on his own initiative.

8.  This is not to say that is relieved of his obligation to supervise those soldiers in his charge. He is not. However, if what states is accurate, the Division and certainly the Brigade (until, notably, just after this incident) utterly failed to provide either logistical or personnel support to operate a proper Brigade Holding Area. Military intelligence assets were used in a fashion they were never trained to do, did not understand, and with neither the logistical or personnel support to perform this rather important mission. This combined with the increased aggressiveness (note seizures based on sole source reporting began in Nov 03) on the part of the Division following a number of CF casualties in November resulted, not surprisingly, in the incident under investigation.
AFZB-JA
SUBJECT: Recommendation concerning

9. Under the circumstances, the actions of [REDACTED] with respect to the matter under investigation do not warrant punitive or adverse administrative action against him.

10. POC is the undersigned at 581-0710.

2. Enels:
   1. DA-3881
   2. DA-2823

Annex B-44
BASIS FOR INVESTIGATION: Mr. [redacted] reported he witnessed Iraqi prisoner abuses while assigned to the 372nd MP Co, Cumberland, MD 21502.

At 1400, 11 May 04, SA [redacted] and SA [redacted] interviewed Mr. [redacted] who rendered a sworn statement wherein he detailed the abuse he witnessed. He stated his unit was assigned to the 1st Marine Expeditionary Force at Al-Hillah. Mr. [redacted] stated he observed US Marines place bags over Iraqi prisoner’s heads and strike them in the head with pick axe handles, in an effort to obtain information. When he reported the incident to Marine MAJ (NFI) he was informed the Marines were doing their job getting guns off the street which were meant to kill US service member. He related he also witnessed US Marines repeatedly pour peroxide and water over the open wounds of an Iraqi prisoner. He further related he witnessed soldiers from the 372nd MP Co, use slingshots against Iraqi children who were attempting to steal food from the base. Mr. [redacted] stated he saw numerous accounts of abuse from soldiers in the 372nd MP Co, and when he reported it up the chain of command and was told not worry about it (See Sworn Statement for details). ///LAST ENTRY///
I arrived at Abu Ghraib in mid December. I was assigned as a Screener, but for four weeks, I worked in the Hard Site with Interrogators. When I first arrived, we were told we needed to report any abuse and that if we did not report it, we were just as guilty. The CHIEF took us around the area and gave us a tour of the facilities. In reference to any detainee abuse, I knew the charges. I never witnessed the use of dogs during interrogations nor did I witness any detainee abuse. I did not witness any detainee that was stripped of all his clothes. The detainee was in one of the rooms. For about 15 minutes, no one touched him. There was a MP female who worked during the in-processing of detainees. The female would hit the detainee on his legs to make him open his legs. She would hit his left leg and then his right until he fell down. He was then pulled up and pushed to the wall. The MP's were rough and having a female screening the detainees, they would ask us, "Are they going to beat us here too?" In the medical facility, they would start talking. Some would have broken shoulders, others came in on crutches. They do not know who beat them. They said they were beat at ASAMIYA PALACE. The detainees said that even the linguists beat them. They didn't know if Americans were involved. They were abused with cigarette burns, and electric shocks. The doctor documented the bruises. I would say there were about 83 incident that took place in ASAMIYA PALACE. Some detainees would say they were beat by Iraqis. One detainee stated that a detainee who was beaten by Iraqi soldiers. He was accused of helping people for money and taking revenge on them. One detainee stated that the detainee who was beaten by Iraqis was a BAA'TH Party member who would gather people up. He would arrest the people and turn them over to coalition forces. The Iraqis said that he was killed by the Iraqis and his body was hung. They say they have no more fear of him. A detainee said he was tortured for 7 days at night at the palace. They submitted two sworn statements. I heard this January or February time frame. There was a group that had been taken to the palace. There were two sisters, two brothers, and two uncles. One of the ladies does not want to talk about what happened to them. There was a detainee who said that he was given cold showers and was under sleep management. They told cold showers was not abusive. The new unit that has taken over is much better and more organized. I spoke to every single woman and they said they were very busy with the soldiers. They would be taken out to get some sun. They were treated like brothers. Even detainees who are leaving say there were not abused here.

Q. Do you have anything else to add to this statement?

A. No.

DODDOACID-005506

Annex B-46
INFO MEMO

S-0517/DR  June 25, 2004

FOR: UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE

FROM: L. E. Jacoby, Vice Admiral, USN, Director, Defense Intelligence Agency

Subject: (S/NF) Alleged Detainee Abuse by TF 62-6 Personnel

(S/NI)(F) During the afternoon of 24 June 2004, we were notified that DIA personnel serving with TF 6-26 in Baghdad had informed their 1SG seniors of the following:

• (S/NI)(F) Two DIA, Directorate for Human Intelligence (DIA/DH) interrogators/debriefers assigned to support TF 6-26 (SOF) have observed:
  
  — Prisoners arriving at the Temporary Detention Facility in Baghdad with burn marks on their backs. Some have bruises, and some have complained of kidney pain.

  — One of the two DIA/DH interrogators/debriefers witnessed TF 6-26 officers punch a prisoner in the face to the point the individual needed medical attention. This record of treatment was not recorded by TF 6-26 personnel. In this instance, the debriefer was ordered to leave the room.

  — One DIA/DH interrogator/debriefer took pictures of the injuries and showed them to his TF 62-6 supervisor, who immediately confiscated them.

• (S/NI)(F) TF 6-26 personnel have taken the following actions with regards to DIA/DH interrogators/debriefers:
  
  — Confiscated vehicle keys

  — Instructed them not to leave the compound without specific permission, even to get a haircut at the PX

  — Threatened them

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Annex B-47

02596
- Informed them that their e-mails were being screened
- Ordered them not to talk to anyone in the US

• *(S/NF)* The two DH strategic debriefers assigned to TF 62-6 reported the above information to the Operations Officer. He immediately contacted DIA IG Forward and asked that both individuals be interviewed. The IG representative made the recommendation that VADM Church's group be immediately apprised in order to get this into official IG channels as the issue fell directly under its charter. The Church IG Team senior investigating officer is conducting interviews of the interrogators/debriefers today. The DIA IG was informed and concurred with this course of action.

• *(S/NF)* The ISG Operations Officer contacted and briefed the Director of the ISG, who was in Qatar attending a Commander's Conference. The ISG Director informed the Deputy Commander for Detainee Affairs, MNF-I. He subsequently contacted the Commander of TF 6-26 and directed him to investigate this situation. In turn the TF 6-26 Commander informed his superior, the Commander JSOC. The Commander, CENTCOM has also been informed of this situation.

• *(S/NF)* The two interrogators/debriefers were directed to return to the ISG compound at Camp Slayer due to these events.
SAIG-1D
SUBJECT: 4th Infantry Division Detainee Operations Assessment Trip Report (CONUS Team)

and the Scouts brought detainees directly from point of capture to the BDE cage. The only training for DO was basic skills (TCP) that covered searches, the 5S's, and handling of detainees. Law of war training was provided by SJA, but only classes given to large audiences. There was no scenario-based training or role playing to reinforce concepts. ROE cards were handed out at this training. There was no formal sustainment training on DO in theater, and replacements were brought up to speed by OJT by squad leaders or other experienced Soldiers. ROE was briefed daily (prior to missions and at guard mounts), with hot washes following each mission. Positive reinforcement of good actions and procedures was an important means of educating the Soldiers. (1.1, 1.2, 1.4)

The Engineers holding area was two rooms in a partially constructed monument on the grounds of a new palace site. Detainees would remain here from four days to four months, based on a sliding scale standard in a DIV FRAGO, but often exceeding the 14-day limit due to a clogged system. There were no MPs at this site, so the S2 was responsible for establishing and running this facility. The guard force was a rotating duty for all Soldiers, but mostly fell on HHC personnel. Food, water, and latrines were provided IAW division guidance. The Scouts transported detainees directly to the BDE cage. Initially, in-processing of detainees was fairly simple - one CPA form per individual and one sworn statement per group of detainees captured during the same mission. After new guidance from DIV, the paperwork became burdensome, requiring multiple forms and statements for every individual, taking 2-4 hours to complete. The consequence of this taxing requirement was increased screening (interrogation) at the point of capture in order to weed out those worthy of detention, i.e., those with potential intel value or participants in significant criminal activity. While this forced troops to be more selective in deciding who to detain, it required them to engage in questioning (performed by PLs and PSs at the objective) despite their lack of training on tactical interrogation techniques. (1.1, 1.2, 1.3, 1.4)

At the point of capture, detainees were zip-tied and blindfolded by whatever means handy. Vehicles for detainee transport that were readied prior to the mission were called in once the number of detainees was known (cargo HMMWV, LMTV, or 5-ton). There were adequate numbers of personnel and vehicles for transport of detainees. Captured contraband was inventoried and photographed. Depending on the items, they were either tagged and brought in to the BN TOC (evidence), destroyed on site (large weapons caches), kept for use by US or ICDC, or tossed in a river. (1.1, 1.2, 1.3, 1.5)

Interpreters were taken on all raids. THTs would only accompany the force on BDE-level missions (rare). To fill this void, officers and NCOs at point of capture engaged in interrogations using techniques they literally remembered from movies. There is clearly a need for THTs at forward units to perform point of capture interrogations. In the absence of these, Soldiers need to be trained in basic tactical interrogation techniques. It's going to be done one way or the other, why not the right way?

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DAIG - 389

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DOD-015973
SAIG-ID
SUBJECT: 4th Infantry Division Detainee Operations Assessment Trip Report (CONUS Team)

One of the interrogators received no law of war training; the other had some training at division in the first two weeks. Most training on ROE was OJT in theater. Soldiers conducting raids are not sufficiently trained on DO, specifically treatment of detainees IAW law of war – had to go to SJA many times about detainees arriving at the cage badly beaten. Many beatings occurred after the detainees were zip-tied by some units in 4ID. Some units wouldn’t take THTs on raids because they didn’t want oversight of activities that might cross the line during capture. (1.1, 1.2, 1.4)

MPs were excellent at completing the paperwork needed by MI and SJA. Unfortunately, there were very few of them. They should be used to train other units on handling and processing detainees at point of capture. Many people were conducting interrogations without any training. There were too many interrogations and not enough interrogators. The S2s were very good about using interrogators and respecting their control of the cages. BDEs were running and funding sources (not supposed to, but may have been useful). (1.1, 1.2, 1.3, 1.4, 1.7)

Medics had to clear sick or wounded before interrogation if they had medical complaints. MPs added medical screen before entering cage, but prior to that there was no such thing – detainees were only seen in the cage for complaints. Detainees were rarely restrained during interrogations. Interrogators did have access to personal property of detainees. Most documents collected during a raid were of little value. (1.1, 1.2)

ROE/ROI for cages included no physical contact with detainees, posting a guard inside the interrogation room, if space allowed, and proper use of proportional force if threatened. There was no SOP on interrogation times; they varied, but were almost always too short due to pressure of numbers. Few refused to talk (usu. foreign fighters). Holding deadlines were not enforced; detainees were kept as long as needed. Two or three days to DIV for those who are clearly criminals. Innocent people held long times (picked up in large sweeps) – they resist the detention and turn against the US. The longest was 40 days held without evidence. (1.1, 1.2)

Need interrogators & interpreters at every raid – THTs can screen, but they are not trained to pick out the proper people to detain. Never had B’s and E’s working together as designed – this is critical for proper collection of actionable intelligence. THTs need to have both B’s and E’s and be present on all raids to separate valuable detainees from those of little value who need not be detained. Similarly, having both MOSs represented in each cage would enhance intelligence gathering (B screens, E interrogates). Training needs to include area- and region-specific information as part of pre-deployment preparation. (1.1, 1.2, 1.3, 1.4, 1.7)

The interrogators had a very good relationship with OGA. There was never a case of a detainee being returned in worse condition from OGA (all were re-inprocessed when brought back from outside interrogations at 1BCT, but not 2BCT). OGA had great information, and the shared intelligence was valuable to both parties. In general, the interpreters were trustworthy.

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Annex B-50

DOD-015978
FYI - this is an update on the 2 Prisoner Abuse cases we have open. The military may be referring others but the large stack of documents we were forwarded distilled down to two cases. The statute cited by DOJ as the basis for our investigations is 18 USC Sec. 113. DOJ has delegated all abuse cases to the EDVA.

In a case referred to DOJ by Army CID, a woman is alleged to have raped an Iraq. The alleged rape was witnessed but it is unclear as to whether the crime was observed by was also reportedly present for abusive activities related to the detainees.

It was determined that this investigation would be more appropriately handled by Violent Crimes Section (VCS) since they handle Maritime investigations. VCS has advised ASAC A. J. Turner, WFO, they would be receiving a referral of this information via EC. The referral has not been completed to date. Chief Robert Spencer was advised of the new POCs.
the facts of the case.

This case will continue to be worked by the WFO PC Squad since it's opened as a 'false statements' investigation.

Chris Swecker

UNCLASSIFIED

SECRET

DETAINees-1582

1582

DOJFBI-002175

Annex B-52
MEMORANDUM FOR IG, 4th Infantry Division, Fort Hood Texas 76544

SUBJECT: Detainee Abuse by Taskforce Ironhorse Soldiers as Reported to CJTF-7

1. This report contains information on alleged detainee abuse by soldiers assigned to the Taskforce Ironhorse.

   a. On or about 8 September 2003, an Iraqi man was detained by the. He alleges that immediately after his arrest he was blindfolded and taken to a jail cell somewhere in the North Tikrit area. He alleges that American soldiers in civilian dress and an Iraqi interpreter named hit him repeatedly for two hours. He claims that they struck him all over his body but primarily his stomach using their fists and that at one point a rope was put around his neck and he was choked almost to the point of blacking out. He reported that he had blood in his urine and stool. He refused medical treatment but also reported he was feeling better. CID investigated the alleged abuse and obtained a written statement. However, while his statement emphasizes the event occurred, he refused to provide any details saying he was pending release and did not want to cooperate any further in the investigation. A brigade-level inquiry concluded that the description of the assailants did not match any 1st Brigade Combat Team personnel or Iraqi interpreter named No information on soldiers because no soldiers were identified. CID conducted an investigation (Report # 0174-03-CID469-60225) and was not able to identify any soldier suspects.

   b. On 11 September 2003, SPC was performing guard duty at the FOB Packhorse detention facility. A detainee was being held in an isolation cell in flexi cuffs. SPC was standing in the hallway of the isolation cell when he saw the detainee move toward the wire. He was informed that detainees were not to go near the concertina wire. SPC fired his weapon stating that he saw the detainee with his hands near the wire. First aid was administered and he was taken to the aid station. He died of a gunshot wound to his abdomen. On 7 October, SPC was charged with one violation of Article 119, UCMJ. Manslaughter. He submitted a Chapter 10 request, which was granted on 12 November 2003. SPC had no specialized training in handling detainees. He was acting in a law enforcement capacity as a guard in the isolation cell.

   c. On 13 July 2003, PFC and PFC through simple negligence, discharged a 9mm pistol in the B Co, 3-67 AR BN

020473

Annex B-54
d. On 13 August 2003, a 58 year-old male detainee died in the 4th MP detention facility. The detainee was provided with food, water and medical treatment. The detainee was complaining of his stomach and nose hurting, and of the heat. The detainee died after receiving CPR, IV, defibrillation of 200-300-360 joules, epinephrine, lidocaine and repeat defibrillation of 360 joules. No autopsy was performed and no cause of death determined. No abuse by American forces.

e. Two detainees, (b)(6) and (b)(6), were apprehended on 22 November 2003. After apprehension, the detainees sustained trauma to the head. Not all injuries were a direct result of the apprehension. (b)(6) sustained one of his injuries when he grabbed CPT (b)(6)'s weapon. His other injury happened when PFC (b)(6) kicked him in the back of the head while the unit was transporting him to the detention facility. (b)(6) was injured when PFC (b)(6) struck him in the back of the head when the unit was transporting him to the detention facility. One injury to (b)(6) that could not be accounted for was a cut on his lip. PFC (b)(6)'s and PFC (b)(6)'s received field grade Article 15 punishment. (b)(6)

f. On 20 August 2003, approximately five soldiers accompanied LTC (b)(6) to the Gunner Holding Area to interrogate a detainee. (b)(6) During the interrogation, the soldiers hit the detainee when he was not forthcoming with information. Specifically, they admitted they punched him with a closed fist in the stomach and torso, and one soldier punched him on the side of the head. Each of the soldiers (SFC (b)(6), SSG (b)(6), SPC (b)(6), SPC (b)(6), and PFC (b)(6), received field grade Article 15 punishment. LTC was present during the interrogation when the soldiers were punching the detainee and threatened the detainee that he would kill him. When the interrogation did not reveal the information the group was seeking, LTC took the detainee outside to the nearest clearing barrel and after shooting a warning shot, placed his 9mm weapon near the detainee's head and fired off a round. LTC was relieved from command and later charged with three violations of Article 128, UCMJ and one violation of Article 134, UCMJ for communicating a threat. The charges were investigated at an Article 32(b) hearing. The Investigating Officer recommended Article 15 punishment. On 12 December 2003, LTC received a general officer Article 15. The incident was investigated by CID, Report # 0152-03-CID469-602125C1A/5C2/5T1.

g. On or about 15 October 2003, three soldiers from A/3-29 guarding the Gunner Holding Area found a detainee trying to escape from his cell by 020474.
### CHARGE SHEET

#### I. PERSONAL DATA

<table>
<thead>
<tr>
<th>1. NAME OF ACCUSED (Last, First, Mi)</th>
<th>2. SSN</th>
<th>3. GRADE OR RANK</th>
<th>4. PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</table>

<table>
<thead>
<tr>
<th>5. UNIT OR ORGANIZATION</th>
<th>6. CURRENT SERVICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Armored Division</td>
<td></td>
</tr>
<tr>
<td><em>INITIAL DATE</em></td>
<td><em>TERM</em></td>
</tr>
<tr>
<td></td>
<td>48 months</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>7. PAY PER MONTH</th>
<th>8. NATURE OF RESTRAINT OF ACCUSED</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>BASIC</em></td>
<td><em>NONE</em></td>
</tr>
<tr>
<td><em>SEAFEORIGN DUTY</em></td>
<td><em>NONE</em></td>
</tr>
<tr>
<td>&quot;TOTAL&quot;</td>
<td>&quot;NONE&quot;</td>
</tr>
</tbody>
</table>

#### II. CHARGES AND SPECIFICATIONS

10. **CHARGE I:** VIOLATION OF THE UCMJ, ARTICLE 82

**SPECIFICATION 1:** In that [redacted] U.S. Army, who knew of his duties at or near [redacted] Iraq, on or about 20 June 2003, was derelict in the performance of those duties in that he willfully detoured his security patrol to an unsecured site and dismounted, when it was his duty not to do so.

**SPECIFICATION 2:** In that [redacted] U.S. Army, who knew of his duties at or near [redacted] Iraq, on or about 20 June 2003, was derelict in the performance of those duties in that he willfully failed to deliver a captured looter to the 1-13 AR Battalion holding area, as it was his duty to do.

**CHARGE II:** VIOLATION OF THE UCMJ, ARTICLE 93

**THE SPECIFICATION:** In that [redacted] U.S. Army, at or near [redacted] Iraq, on or about 20 June 2003, was cruel toward a young male civilian detained for looting materials from a factory site, a person subject to his orders, by staging his mock execution.

**CHARGE III:** VIOLATION OF THE UCMJ, ARTICLE 133

**THE SPECIFICATION:** In that [redacted] U.S. Army, did, at or near [redacted] Iraq, on or about 20 June 2003, while the officer in charge of a security patrol, wrongfully and dishonorably abandon a detainee in his custody.

#### III. PREFERRAL

<table>
<thead>
<tr>
<th>11a. NAME OF ACCUSER (Last, First, Mi)</th>
<th>11b. GRADE</th>
<th>11c. ORGANIZATION OF ACCUSER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ARMORED DIVISION</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11d. SIGNATURE OF ACCUSER</th>
<th>11e. DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>28 August 2003</td>
</tr>
</tbody>
</table>

**AFFIDAVIT:** Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 28th day of August, 2003, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

**Trial Counsel**

*Official Capacity to Administer Oath (See R.C.M. 301[b] - must be a commissioned officer)*

---

*D FORM 458. MAY 2000 PREVIOUS EDITION IS OBSOLETE.*

Annex B-56
12. On __________ 20________, the accused was informed of the charges against him/her and of the name(s) of
the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

<table>
<thead>
<tr>
<th>Name of Accuser(s)</th>
<th>Grade</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Name of Immediate Commander</th>
<th>Grade</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Name of Immediate Commander</th>
<th>Grade</th>
</tr>
</thead>
</table>

| Signature | |

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at _________ hours, ____________ 20________ at ___________.

<table>
<thead>
<tr>
<th>Designation of Command or Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOR THE 1</td>
</tr>
<tr>
<td>Commander</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Officer</th>
<th>Official Capacity of Officer Signing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade</td>
<td></td>
</tr>
</tbody>
</table>

| Signature | |

V. REFERRAL: SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY | b. PLACE | c. DATE

<table>
<thead>
<tr>
<th>Referred for trial to the court/martial convened by</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>20</td>
<td>03</td>
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</tbody>
</table>

subject to the following instructions:

<table>
<thead>
<tr>
<th>Command or Order</th>
<th>Of</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Name of Officer</th>
<th>Official Capacity of Officer Signing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade</td>
<td></td>
</tr>
</tbody>
</table>

| Signature | |

15. On __________ 20________, I (caused to be) served a copy hereof on (each of) the above named accused.

<table>
<thead>
<tr>
<th>Name of Trial Counsel</th>
<th>Grade or Rank of Trial Counsel</th>
</tr>
</thead>
</table>

| Signature | |

FOOTNOTES: S

DD FORM 458, (BACK) MAY 2000

Annex B-57
1AD ATTORNEY WORK PRODUCT

TC: ____________________________

DC: ____________________________ CIVILIAN

U.S. v. __________________________

UNIT: __________________________ MOS / POSITION: __________________________

AGE: □ 18 □ 21 □ 25 □ 30 □ 35 □ FGS □ BGD □ BTS: __________________________ PCS:

MARITAL STATUS: M / S / D CHILDREN: Y / N

NEXT OF KIN'S HOME OF RECORD / PHONE: __________________________

SPEEDY TRIAL DATE:

PRETRIAL CONFINEMENT: Y / N PTC DATE:

CERTIFIED OMPF ON HAND: Y / N CERTIFIED ORB / ERB ON HAND: Y / N

CERTIFIED SMIF FILE ON HAND: Y / N CERTIFIED LES ON HAND: Y / N

R.C.M. 306(b) ANALYSIS:

1. ACCUSED'S CHARACTER AND MILITARY SERVICE:

   DECORATIONS: __________________________

   PRIOR UCMJ: Y / N PRIOR ADVERSE ADMIN: Y / N

   FLAGGED: Y / N LEADERSHIP POSITION: Y / N

2. EFFECT ON MORALE, HEALTH, WELFARE, AND DISCIPLINE:

   MORALE: __________________________

   HEALTH: __________________________

   WELFARE: __________________________

   DISCIPLINE: __________________________

Annex B-58

007049

DOD 003111
3. APPROPRIATENESS OF AUTHORIZED PUNISHMENT:

CHARGE: Dereliction (92)          MAX: DD / 2 yrs. / Total $
CHARGE: Assault (128)             MAX: DD / 8 yrs. / Total $
CHARGE: Conduct Unbecoming (133)  MAX: Dismissal / 1 yr. / Total $
CHARGE: Solicitation (134)        MAX: DD / 5 yrs. / Total $

FACTS / MERITS:

DATE: 20 JUNE 03

LOCATION: [Redacted]

ACT / OMISSION: 1AD forces detained (trespassing) Iraqi boy (13 to 16 years old) for approximately 90 minutes. Drove him to a deserted field at the end of the patrol. Boy was placed into truck headlights and fired a 9mm shot to the side of the boy's head. The boy was not bound by flexi-cuffs or blinded by a sandbag. Took a picture of the boy (covering his head / face) and the patrol left. Said he was going to let the boy walk back (approximately 1.5 click from sector per)

PERPETRATOR: [Redacted]

WITNESS: [Redacted] Took the detainee to...

WITNESS: [Redacted] He heard a "pop" like a shot, saw thru NVGs holster his weapon, and saw detainee face down on the ground, hands over his head, sounded like he was crying, at a distance of about 10 feet. Did not hear or see anything like a dog.

WITNESS: [Redacted] Boy was flexi-cuffed and sandbagged into the truck. Patrol went into an unfamiliar back road. Boy was taken out of truck. SM pulled security and ducked when he heard a shot. Saw muzzle flash, boy crying and saw flexi-cuffs cut. Took picture. Saw and heard no dogs. Patrol mounted and left.

WITNESS: [Redacted] Unloaded the detainee boy. Saw them in front of the truck and... said something inaudible to detainee, then shot weapon close to detainee's person... released the prisoner.

DATE: 22 JUNE 03

LOCATION: [Redacted]

ACT / OMISSION: [Redacted] asked if old man and two kids were crying and told him to detain them. Old man asked that Not shoot his son.
old man no one would be shot. heard a shot and said the kid tried to run, so he fired a warning shot said to let them go.

PERPETRATOR: told him to scare the detainees, and let all three go after they cried. Admits discharging the round to scare the detainee. Says he reported completion and smiled. Says condoned the use of scare tactics to deter looters.

WITNESS: 

WITNESS: metallic trigger click, then saw SM charge M-16 handle and fire a single shot while pointing the weapon away from a boy’s (13 to 17 years old) head. He then released the boy to his father and brother.

WITNESS: said to make detainees cry. Saw take one of the (13 years old) boys behind the building.

WITNESS: told him he pointed his weapon at the family.

FACTS / MERITS - REBUTTAL:

1) 
2) 
3) 
4) 

FACTS / SENTENCING:

AGGRAVATION:

1) 
2) 
3) 

MITIGATION:

1) 
2) 
3) 

4. ACCUSER'S POSSIBLE IMPROPER MOTIVES:

RATER: Y/N NEGATIVE COUNSELINGS: Y/N

EO COMPLAINT: Y/N IG COMPLAINT: Y/N

CONGRESSIONAL: Y/N 138 COMPLAINT: Y/N

< WITNESS RELUCTANCE TO TESTIFY:

07051

Annex B-60

DOD 003113
1-325 Allegations of “Mock Executions”
232246June03, 3BCT Trial Counsel
TO: 3BCT CDR, SJA, DSJA, 1ad_sja_toc_ops@DMAINS.D1A.C5.ARMY.SMIL.MIL

I conducted a review of all statements pertaining to allegations of misconduct and maltreatment of detainees by member of C Company, 1-325 in the 3 BCT sector. These allegations originated from a statement made by PFC # that “mock executions” were taking place by members of his chain of command.

BLUF:

I reviewed statements from more than 30 soldiers taken by the company commander, CPT #, resulting from a commander’s inquiry. All soldiers were read their rights prior to giving statements. The primary suspects, LT # and SGT #, executed DA3881s (Rights Warning) prior to making statements.

The statements revolve around 2 primary incidents. On 20 June vicinity Zone 45 LT # allegedly took a detainee, a boy, from his truck and brought him to the front of the truck. SPC # states that he saw LT # put a gun to his head, whisper something in his ear, and then move the barrel to the right of his head and discharge his weapon. SPC # and several other witnesses confirm they heard a shot fired and then the boy was released. PFC # saw LT # fire a round next to the boy. LT # states he was firing at wild dogs that were threatening him. SGT # is the only soldier who reports hearing wild dogs in the area, whereas more than 6 soldiers denied hearing dogs in the immediate vicinity. Multiple witnesses have heard LT # fire warning shots in order to deter looters. SGT # reported that LT # “feels good when he scares people.” The company commander’s assessment is that LT # has been operating outside the sphere of his command guidance. For instance, he failed to maintain communication with the commander over a period of days although he apparently should have been able to maintain adequate communication with the company cp from zone 45. LT # apparent desire to administer “street justice” was evident from the statements of junior enlisted soldiers in the unit who stated they routinely fired warning shots. SPC # fired an M203 smoke around to the front of fleeing looters at the direction of his chain of command.

The second incident involves SGT # of B Co 70th Engineers. A father and his two sons were apprehended while looting. The man spoke English. SGT # proceeded to engage him in conversation and asked him such questions as, “What if one of your sons was killed” as a result of your criminal activity. SGT # took one of the boys around the side of a building outside of the view of the father and allegedly fired a shot in the air intending to scare the father. PFC # reported knowledge of such activity and implicated SGT #.


Annex B-61
in taking an Iraqi behind a building to scare him. SGT reports
that SGT had pointed a weapon at a family to scare them. SGT states that he saw SGT take a boy around the side of the building and then heard a
shot. SGT later appeared with the boy and said he fired a
warning shot. SGT states he fired a warning shot when the boy
attempted to flee. SPC reports that SGT told him (SPC) we should act like we are going to
shoot them (Iraqis).

SGT was present and directly involved during both incidents.
In regards to the 20 June alleged mock execution by LT, SGT
states that he took the detainee to LT who he thought
intended to release the boy. He turned away; heard a shot fired and ran
to LT who told him a dog tried to bite him. In regards to the 22
June incident, SGT reports that he reported to LT and asked him if he wanted the father and 2 sons released. LT replied, "Are they crying yet?" They were detained until LT
arrived onsite. Subsequently SGT took one of the boys
around the corner and then SGT heard a shot fired. When SGT returned he reported that he had fired a warning shot. The
three individuals statements ( ) bear a
remarkable consistency indicating that they are either instinctively
covering for each other or are telling the truth. There is probable
cause to believe that either SGT was directly involved in the
misconduct or perjuried himself in his statements.
STATEMENT OF [REDACTED] TAKEN AT Basra, Iraq DATED 20040922

on ideas for target folder development, then work with [REDACTED], developing specified interrogation plans, and then structure report formats for C2 approval.

After the 20 Sep 03 mortar attack, I realized that the soldiers at Abu Ghraib did not have an appropriate standard of living. There was no dedicated PX facilities, no weight room/gym/cardio facilities, minimal Internet connectivity, almost no telephone lines, no dedicated mail service, no dedicated dining facility other than the field kitchen, no hot showers, no washing facilities for clothes, etc. I spoke with COL PAPPAS about several problems with Abu Ghraib. I cited how civilian employees were being deployed without the appropriate force protection equipment, soldiers without weapons and/or ammunition, lack of basic office equipment and supplies, etc.

Following the memorial service, I believe on 26 September for two soldiers killed in mortar attack, COL PAPPAS offered me the JIDC Commander position. I initially accepted the role pending discussion with my rater who was on leave. However after a week or so, I discovered that there was no Command and Control (C2) associated with the position over soldiers, civilians, or policy. As I did not have any C2, I declined the JIDC Commander role. COL PAPPAS stated that he would have one of his Battalion Commanders assigned with their unit to run the JIDC. I agreed to stay and continue assisting COL PAPPAS. After declining the position, COL PAPPAS referred to himself as the JIDC Commanding/Chief. I decided I would best serve as some sort of executive officer, performing a military support role for all sustainment issues. I started serving in a Mayoral capacity at that point, around 20-25 October, about the time COL PAPPAS moved out to Abu Ghraib fulltime.

I advised [REDACTED] that I declined the JIDC Commander position, and I stated that COL PAPPAS would not have input on my CER and I continued supporting soldiers.

THE FIRST INCIDENT OF UNAUTHORIZED INTERROGATIONS:

Around 6 or 7 October 2003, I learned that three interrogators and a translator went into Tier 1B to interrogate two female detainees and possibly had been drinking alcohol. I reviewed the MPs written statements. I learned that the interrogators and one civilian linguist had the MPs release a female juvenile detainee (17) under the guise of an interrogation and moved her to an isolated cell area and purportedly asked her to remove her top and kissed her. They then asked to interrogate another female detainee that was an MP held for criminal activity. They moved this detainee as well to an isolated area and spoke with her and one held her hand. Both detainees separately identified all four individuals.

COL PAPPAS asked me investigate the matter more fully. When questioned, all three soldiers invoked their rights and requested an attorney. The civilian linguist indicated that they had gone for an interrogation and he just did translation as he was directed by the soldiers and denied any use of alcohol. I forwarded the statements to 05 MI Bde legal officer, and later spoke with CID. I do not know what happened with the matter after that.

The next day, [REDACTED] went over the Interrogation Rules of Engagement (IROE) with all military and civilian personnel.

OTHER INTERROGATOR MISCONDUCT

The only other incident of detainee misconduct I was aware of is that... [REDACTED] informed me that... an interrogator... and... an agent... had a detainee disrobe during an interrogation one evening and walked back to his area... stated that... already reassigned both soldiers to other duties.
STATEMENT OF ____________________ TAKEN AT ____________________ DATED ____________________

DETAINEE'S CLOTHING

When I arrived at Al Ubratib, some detainees had torn pants or tore and some were seen shirtless. In mid-September through late October, it was very warm and detainees would sometimes have their tops off. Even when detainees were washing their jumpsuits or clothes, they would wear their underwear or wrap a towel around themselves. When moving, I saw them put up shields over the metal bars for protection. The only male detainees I saw without any clothing where new arrivals who were unshaven; were being searched and a few who had mental problems and low

I never saw any male detainees wearing women's underwear on their body or head. I never saw any female detainees without clothing.

DOG AND TRUCK INCIDENT

I have no knowledge of ever saw any detainees being thrown off the back of a truck or any vehicle for that matter. I have no knowledge of dog(s) being used or approved for interrogations.

Dogs were used to sniff and inspect the area to ensure no weapons or explosives were on site. Dogs were also used at the COP to check vehicles for explosives. I never saw the dogs muzzled. It was common sense protection used.

THE HARD SITE

The only way to enter the Hard Site was through either locked or guarded gates from one end or through two to three manned gates to a final locked gate from another entrance. MP's were able to control the keys and access. MP's always escorted me in and around the site.

THE SHOOTING INCIDENT IN THE HARD SITE

On 24 June 2004, a female detainee at Camp Croft, MP's were reportedly attacked by detainees and a number of detainees were killed on the 24th, 25th and a few others wounded. I was on my third visit to Iraq at that time.

LTC. That we have its... **[Redacted]**. Your COMPANY was on the site and told me that the training site was closed for the moment. The MP's were trying to contain a cell which I don't think was effective. We were on the immediate detention.

The suspected detainee was at the rear end of the hallway. We helped the MP's control the area. MP's were trying to contain the area. They were going to enter the area and take control of the cell. The suspected detainee attacked the MP, and I think the MP was killed. The MP had his gun in his hand, and he was attempting to control the situation.

Some of the, I found detainee after he knocked in the cell. Another detainee detainee knocked in the cell, and we went to the door. We found the Cell. The detainee had his gun in his hand. The MP had his gun in his hand. We entered the cell, and we found the detainee with the gun in his hand. We entered the cell, and we found the detainee with the gun in his hand.

I heard the GDI PARAGS of the incident. GDI PARAGS disabled the facility locked down.

AG0000635

Annex B-66

DOD 000722
STATEMENT OF [Redacted] TAKEN AT Baghdad, Iraq DATED 2004/05/28

After the shooting, I remember going into the lower level of Tier 1A, looking for either OGA or the MP Company for assistance with the Iraqi police chain of command. The working dogs were not muzzled and were searching the cells in concert with the ORF. I believe there were two or three dogs present with their handlers. I saw no detainees abused or dogs being mishandled. I do not know if COL. PAPPAS received permission to use dogs during this time.

TF-121, OGA, and GHOST DETAINEEES

OGA and TF-121 routinely brought in detainees for a short period of time. The AVS10th soldiers would take the term "ghosts." They stated they used this term as the detainees were not in the process of being processed. However, the detainees were not categorized in the normal manner. I recall seeing many detainees and one other officer who recommended that a Memorandum of Understanding be written to govern between OGA, the 205th MI Bde, and the 808th MI Bde to establish procedures for a ghost detainee. I suggested an idea of processing them under an assumed name and fingerprinting them but COL. PAPPAS decided against it.

[Redacted] worked with OGA to train people on properly filling out the Detainee Coalition intake Form and sworn statements describing capture as two were required for the in-processing of each detainee.

Ghost detainees were referenced in the database with capture tag numbers. COL. PAPPAS began a formalized written MOU procedure I believe in late November between the 205th MI Bde, 808th MI Bde, and OGA. COL. PAPPAS introduced me to [Redacted], the senior representative for OGA and [Redacted] introduced me to various staff from TF-121. [Redacted] stated he had heard of me and that he would assist in processing the detainees with possible linguistic and logistics support. [Redacted] was usually accompanied by his staff when they dropped a detainee about two to three times a week.

Some of the OGA people I recall included [Redacted] and [Redacted]. I do not recall hearing MR. FAST or COL. BOLTZ on ghost detainees, but they used the term OGA detainee.

The only TF-121 personnel I remember by name were [Redacted] and [Redacted].

OGA personnel [Redacted] to move a detainee by himself from Site 6 to the Hard Site. I interrogated [Redacted] while transporting the detainee. I asked him what was happening and then served him his bed and sweets. After transporting the detainee, I spoke with [Redacted] and suggested that OGA should move their own detainees on a per se basis, but the term OGA detainees.

DETAINEE DEATH

At approximately 0715-0720 on a day in late Oct 2003, someone approached me and asked if I knew COL. PAPPAS' location. I asked what was going on because it was early in the morning Brigade Command Update. I learned that a detainee died in the Hard Site.

I walked over to the Hard Site and talked with [Redacted], an Iraqi prison medical doctor on site, who told me that the detainee was dead. The detainee was in the Tier 1B shower stall, face down, handcuffed with his hands to his back, wearing an orange jumpsuit from OGA. Various MPs, including the Hard Site OIC, and U.S. medical staff were on site. They handcuffed the detainee and he was turned over. I did not see any blood on the body, just the walls, floor, clothes, etc. There was a small spot where the detainee's...
head was touching the floor. I asked the MPs if they had notified the 320th MP Battalion and they had [redacted]. I said I would notify his superiors. I notified COL PAPPAS and [redacted]. COL PAPPAS stated he wanted to know when [redacted] arrived and to keep him abreast of everything.

When [redacted] arrived he stated that he had to call Washington and requested that we maintain the body until the next day. I contacted COL PAPPAS who agreed to hold the body. It was brought to the body bag and units were contacted for 102s to pack up the body. We had the body secured in the shower area.

CID was informed and the body was removed on a litter the following day making it appear as if the detainee was merely ill. This was because the Iraqi police were stationed in the immediate area and Intelligence reported that some officers might have been working for anti-Coalition forces. I had accompanied the body and CID staff from the Hard-Site to another area to ensure that the body was loaded into a government vehicle.

I heard that OGA brought the detainee to Abu Ghraib at approximately 0330 hours. JIDC operations were not notified of the detainee’s arrival. This was not in accordance with the verbal agreements with COL PAPPAS. Reportedly, a Seal Team captured the individual during one of their missions. The detainee was presumed to have been involved in the attack against the ICRC and apparently had several weapons with him. He was resisting arrest and allegedly a Seal Team member untied him on the side of the head.

In January 2004 I spoke with a case officer who indicated he wanted to speak to me. He told me that the detainee’s death was being investigated by OGA and asked me to speak to the CID officers. After speaking with the officers, I never heard anything again about the incident until I saw photos of the deceased on the news.

OTHER MISCONDUCT

Around 10 – 12 December 2004, four Titan linguists were seen departing Abu Ghraib without authorization. When they returned to Abu Ghraib, COL PAPPAS ordered the 185th MI BN Commander and me to wait for them and report when they returned. We learned that they had departed without authorization to go shopping and visit relatives in Baghdad. The linguists were removed from the base and allowed to transfer to further outlying areas or to lose their positions.

ICRC

The International Red Cross visited Abu Ghraib. COL PAPPAS told me that he and BG KARPINSKI received the final report. I did not see the report. COL PAPPAS asked me if I had ever seen the report. COL PAPPAS asked me if I had ever seen or heard rumors of any abuse. I replied no. I am not aware of COL PAPPAS doing anything about the allegations. This occurred in late October 2004 and I caused a formation and addressed these issues to the soldiers and civilians of the JIDC. Nobody indicated that they were aware of any such activity and again IRDC was stressed as well as the need to treat detainees with respect.

PHOTO IDENTIFICATION:

I identified [redacted] a Titan Linguist, possibly [redacted] an analyst, and another soldier I believe to be either an analyst or an interrogator. The photos were taken in the Hard-Site area and depicted detainees naked and all bunched up together. I also identified [redacted] a female Titan Linguist in three other photos. On one photo, Mr. [redacted] appeared to be interrogating a detainee who was sitting on two stacked plastic chairs facing back in a likely stressed position. [Redacted] was standing by the side. I also identified a photo of [redacted] an MP. Other photos were of Mr. [redacted] and [redacted] together. I saw other photos of dogs in the Hard-Site area.
STATEMENT OF [Redacted] TAKEN AT Baghdad, Iraq DATE: 2001/05/29

B. STATEMENT (Continued)

Q. Do you have anything else to add to this statement?

A. No

End of Statement

AFFIDAVIT

I, [Redacted], do hereby declare and affirm that I have read or have had read to me this statement which begins on page 1 and ends on page 7. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion or unlawful influence of any kind.

(Signature of Person Making Statement)

WITNESSES

[Redacted]

ORGANIZATION OR ADDRESS

[Redacted]

Organizational or Address

[Redacted]

Organizational or Address

[Redacted]

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 29th day of May 2004

[Signature of Person Administering Oath]

Typed Name of Person Administering Oath

(Authority To Administer Oath)

PAGE 7 OF 7 PAGES
I hereby declare under penalty of perjury that the following statement is true, complete, and correct to the best of my knowledge and belief.

From the end of Jul 03 to early Oct 03 I was deployed to Abu Ghraib (AG), Iraq with A Company, 519th MI BN. I am a 97B Countersniper/Intelligence Support Officer. My mission upon arrival to AG was to set up the MI Operations Cell and life support areas in support of a company operating near the borders of Iraq.

At approximately 0500 on 27 September 2003, I conducted an interrogations operation. I had just arrived at AG in a Humvee, and I was accompanied by my team leader, a 1st Lt, and a 1st Lt from the 2nd BN of the 519th MI BN. We were on our way to the AG facility when we received a call from the 2nd BN advising that they had detained a suspect named 'X'.

Upon arrival at the AG facility, we were met by a team of US ArmySpec Ops personnel who had apprehended the suspect. We were also met by a team of Iraqi police officers who had arrived to assist with the interrogation. The suspect, identified as 'Y', was brought into the interrogation room and seated in a chair.

The interrogation began with standard small talk to build trust and rapport. I conducted the interrogation in a professional and respectful manner, adhering to all relevant regulations and procedures. I was assisted by my team leader, who also observed the interrogation.

Throughout the interrogation, I maintained full control and ensured that all procedures were followed to the letter. The suspect was questioned about his activities and whereabouts during the period of interest.

At the conclusion of the interrogation, the suspect was released and advised to refrain from further contact with US forces. He was also informed of the legal proceedings and the possibility of imprisonment.

I conducted the interrogation in a professional and respectful manner, adhering to all relevant regulations and procedures. I was assisted by my team leader, who also observed the interrogation. The suspect was questioned about his activities and whereabouts during the period of interest.

At the conclusion of the interrogation, the suspect was released and advised to refrain from further contact with US forces. He was also informed of the legal proceedings and the possibility of imprisonment.

I certify that the information provided in this statement is true, complete, and correct to the best of my knowledge and belief. I understand that this statement is subject to review and investigation by appropriate authorities, and that any false or misleading statements may result in disciplinary or legal action.

I have read and understood the above statement and hereby declare it to be true, complete, and correct to the best of my knowledge and belief.

[Signature]

[Date]
STATEMENT OF

Q: DO YOU HAVE ANYTHING TO ADD TO THIS STATEMENT?
A: NO

END OF STATEMENT

AFFIDAVIT

I, [Name], hereby state that I have read this statement and fully understand the contents of the entire statement made by me. The statement is true, I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

WITNESSES

[Names]

ORGANIZATION OR ADDRESS

[Address]

INITIALED OF PERSON MAKING STATEMENT

[Signature of Person Administering Oath]

(TYPE NAME OF PERSON ADMINISTERING OATH)

PAGE 2 OF 2 PAGES

AG0000419

Annex B-71

DOD 000507
MEMORANDUM FOR Commander, 104th Military Intelligence Battalion, 4th Infantry Division (Mechanized), Tikrit, Iraq 09323-2628

SUBJECT: Rebuttal of ___ to Written Reprimand

1. I understand that I am being reprimanded for failure to properly supervise ___ and ____ during interrogations at the TF IH DCCP. I understand that, as NCOIC of the Interrogation Control Element (ICE), it is ultimately my responsibility to ensure that interrogations are conducted in adherence to guidelines established by the Department of the Army. I accept this responsibility. However, even after a very thorough 15-6 investigation, I feel that the incidents surrounding this reprimand are being oversimplified.

2. Paragraph one of the written reprimand states that I am responsible for ensuring that ___ and ____ were properly trained. I feel this is untrue. My element is conducting real-world interrogation operations; in a very active combat zone during a resistance movement by a well-funded, hostile, armed force in the early stages of a major insurgency; with very few assets. This being my fourth combat tour in twelve years, I can say with confidence that this is not the environment for training.

3. ____ has been assigned to the 104th Military Intelligence Battalion for over two years as a member of the Battalion S3. I am assigned to D Co. and ____ has never been under my supervision until approximately one month before the incident occurred. As the de facto senior Human Intelligence Collector (97E) for the 4th Infantry Division, and being aware of ____'s duty position in the Battalion S3, I made two attempts, in January 2001 to include ____ in Sergeant’s Time training with D Co. at Fort Hood (There was no MOS training in the S3 for a Human Intelligence Collector). Both of these attempts were unsuccessful due to resistance by his supervisors. These two years would have been the proper time to train ____ not during real-world operations.

4. Paragraph one of the reprimand states that I “...inadvertently led ____ to believe that...” I myself “...perhaps condoned certain practices that were outside the established regulations". Given specific phrases that I had said to ____ I recall a conversation that I had with ____ . However, the topic of this conversation was a contingency plan for a separate interrogation facility, in the event alternative interrogation techniques were authorized and ordered into effect at our echelon. At no point did the topic become the techniques themselves. The facility could not be manned by personnel from Mobile Interrogation Team (MIT) 91, as most did not have a sufficient level of competency. At the time, given my extremely limited assets, ____ was a prime candidate for this facility. As I recall, I made it clear to ____ that alternative techniques must be authorized by higher echelons, on a case-by-case basis, and then only at certain facilities. If ____ took my statements to

6595

Annex B-72
mean anything more than what I said, that was not my intention. I do not feel that I said anything to
that would lead a reasonable person to believe that I condoned any practices outside regulations.

5. [redacted] is a 98G Voice Interceptor, attached to the 104th Military Intelligence Battalion
as a linguist. He is neither trained, nor authorized to conduct interrogations. I trained
[redacted] on his duties as an interpreter during interrogation operations and he has always
performed admirably and with dedication. There was no reason, whatsoever, to think that
[redacted] would harm the detainee or allow him to be harmed. During the incident in question,
[redacted] was under the immediate supervision of the team leader of MT 91 and assistant
NCOIC of the ICE, [redacted] (223rd MI BN), who was supposed to be conducting the
interrogation. My duties are such that I cannot supervise more than a small fraction of the
interrogations or screenings carried out by my element. I am forced to delegate supervisory
responsibilities during the majority of operations.

6. Paragraph two of the reprimand states that I "...assigned a known difficult interrogation task
to a very junior and inexperienced interrogator". While this is true, the truth of it is rather
relative. All interrogations at the TF II CCP are difficult due to several factors that have been
brought up, through Tac HUMINT Ops, many times. Suggestions made to rectify these problems
have been, and continue to be, ignored. With the exception of myself, all interrogators at the TF
II ICE were, and most remain, inexperienced at actual interrogation. The intelligence
exploitation of detainees at the TF II CCP has been limited, largely, to cursory and in-depth
screenings of detainees due to insufficient personnel, time and resources. Relatively speaking,
few formal interrogations have been carried out, and all of these have been individuals targeted as
being of potentially high intelligence value. After two to three weeks of observation and
assessment of performance during joint screenings and interrogations, prior to the
incident, [redacted] was found to have a level of methodological proficiency above most of
the other interrogators at the ICE and had, in fact (as I noted to [redacted] on one occasion),
exhibited a preference for "soft" approaches. In short, [redacted], in reality, no less
proficient, and possibly more talented, than most of the other interrogators at the ICE.

7. Paragraph two of the reprimand also states that I "...failed to discern what techniques
would use during the interrogation". I do not feel that this is entirely accurate. When
discussing the pending interrogation with [redacted], he stated that he planned to use a "harsh
approach". This is a term used frequently among interrogators to refer to such hostile approach
techniques as "Fear-Up (harsh)" and "Pride and Ego-Down", or a combination thereof.
Considering the approaches used previously against MP2496, and their relative ineffectiveness, I
felt, and still feel, at that time, a "harsh approach" was in order. Additionally, interrogators are
never required to have individual approaches approved by the ICE. An interrogation is an
extremely fluid process that requires the interrogator to, in turn, be extremely flexible. While all
interrogators must inform me as to the general approach they plan to use, as [redacted] did,
limiting interrogators to specific, preplanned approaches and techniques is not feasible during a
proper interrogation. Some standard interrogation processes, which may be identified in FM 34-52
INTELLIGENCE INTERROGATION, are no longer applicable and may very well be
counterproductive, due to this FM's application being Major Theater War operations. In many
cases it is not applicable to the modern battlefield. I believe this is one of the reasons that it is no
longer printed. To my knowledge, no FM covers counterinsurgency interrogation operations.

8. I firmly believe that [redacted] took the actions he did, partially, due to his perception of
the command climate of the division as a whole. Comments made by senior leaders regarding
detainees such as “They are not EPWs. They are terrorists and will be treated as such” have caused a great deal of confusion as to the status of the detainees. Additionally, personnel at the ICE regularly see detainees who are, in essence, hostages. They are normally arrested by Coalition Forces because they are family of individuals who have been targeted by a brigade based on accusations that may or may not be true, to be released, supposedly, when and if the targeted individual surrenders to Coalition Forces. In reality, these detainees are transferred to Abu Ghraib prison and become lost in the Coalition detention system regardless of whether the targeted individual surrenders himself. I know that [redacted] has himself witnessed senior leaders at briefings, reporting that they have taken such detainees, with the command giving their tacit approval. In hindsight, it seems clear that, considering the seeming approval of these and other tactics by the senior command, it is a short jump of the imagination that allows actions such as those committed by [redacted] to become not only tolerated, but encouraged. This situation is made worse with messages from higher echelons soliciting lists of alternative interrogation techniques and the usage of phrases such as “...the gloves are coming off”. The theory becomes even more plausible when one considers the facts surrounding a detainee such as MP2496—a known terrorist, insurgent and killer of American soldiers. While I do not condone actions in any way, I am beginning to see how he might arrive at certain erroneous conclusions, despite my warnings that there is no detainee here worth any of my soldiers going to prison. I feel that this is a dangerous situation that should be confronted.

9. I agree that I am in a very delicate and perilous duty position. It is one for which none of my training has prepared me and was not supposed to exist. Additionally, numerous other issues inhibit our effective mission accomplishment. Our unit has never trained for detention facility operations because our unit is neither designed nor intended for this mission. Current detainee handling policies adversely affect operations in ways that eliminate any reasonable chance of successful interrogation. Other factors effecting mission accomplishment are more complicated. I spent over three years, between deployments, training my soldiers to operate in Tactical HUMINT Teams in a combat environment remarkably similar to the one in which our division is currently operating. Instead of allowing our soldiers to execute the mission which exists, for which they have trained, they are assigned a mission for which they have not trained, are not manned, are not equipped, are not supplied and, considering manpower and the current policies effecting interrogation operations, cannot effectively accomplish at division level regardless. Unfortunately, the element’s low production of HUMINT supports this.

10. I agree that I have made some mistakes since being assigned this duty position. However, I feel that I have carried out my duties as well as, and in many cases better than, could be expected. I have been given scant resources, few supplies, and some of the attached collection assets could have only been considered mediocre at best. I have considered, at length, what more I could have done to prevent the actions of [redacted] and [redacted] while still conducting the element’s assigned operations. Currently, I am still at a loss. [Redacted] was being supervised by a trained SSG Human Intelligence Collector, senior but subordinate to me, attached to the element, and supposedly in charge of his interrogation. [Redacted] is a Human Intelligence Collector whom I was not given the opportunity to properly train. However, due to limited organic assets, he was needed to help conduct operations. I feel I took what measures were available to me within the constraints of my mission and available support. I will continue to execute my assigned mission to the best of my ability.

SSG, USA
NCOIC, TF IH ICE

Annex B-74
INTERROGATOR QUESTIONS

Rank: B7L Branch: N2 C Date: 29 MAR Unit: 2101 in I
Duty Position: UNK How Long in Job: 30 months
Interviewer: How Long in Country: 15 months

1. What references/standards/publications/SOPs do you use to conduct interrogation Operations? (1.1, 1.2, 2.1, 4.1)
   D. Recipiency FM 27-10 3/94 and RTPs on D
   7-16 days training? I saw of war

2. What training have you received to ensure your knowledge of DO is IAW the provisions under the Geneva Convention? (1.1, 1.2, 1.3, 4.1)
   
3. Did your unit undergo Level B Law of War training prior to deployment? YES
   Explain what training occurred. Is there a plan to train new Soldiers (replacements) to the unit? Did this training include the treatment of Detainees? YES
   Explain. (1.1, 1.2, 1.4, 4.1)

4. What training did you unit receive on the established Rules of Engagement (ROE)? How often does this occur? Does this training include Rules of Interaction (ROI)? (1.4, 4.1) bad a lot of big on ROE - 1AT 1/138
   2.5 weeks in Kuwait were trained class
cultural files you have used talk to male & female,
   feet

5. What is the procedure on how to identify a detainee who may have intelligence information? Who performs this procedure? Are MPs involved in the decision-making? Are PIRs used as a basis for the identification of detainees of interest, personality lists used, etc? (1.1, 1.2, 2.1) screening B/C/C
   told who's doing what, who attempt to converse
   others

Annex B-75
What is the Rules of Engagement (ROE)/Rules of Interaction (ROI) when interrogating a detainee? (1.1, 1.2, 1.4, 1.6)

6. What is the maximum amount of time allowed a detainee could be interrogated during one session? Where is this standard located? (local SOP??) (1.1, 1.2, 4.1)

48 hours.

7. What is the procedure in determining how long to hold a detainee at this level for interrogation once he refuses to cooperate? (1.1, 1.2)

8. How many people are authorized to be present in the room when interrogating/screening a detainee? Under what circumstances are you required and authorized to have more people? (1.7)

9. Who may allow an interrogator to question a detainee if he is wounded or sick? (Medical personnel) (1.1, 1.2, 4.1)

Med

10. What types of restraining devices are authorized on the detainee during the interrogation? What type and/or amount of physical constraints are interrogators authorized to place on an unruly detainee during interrogation? (No standard to 2nd question, only when you are threatened or feel your life is in danger should an interrogator physically constrain a detainee) (1.1, 1.2, 4.1)

o hand cuffs
ounar talked about

as much as it would take to stop him.

Call guard.

Annex B-76
11. Where are your screening sites located (where detainees are interrogated and screened)? Are these facilities adequate for your needs? Do you have enough interrogators for your operation needs? What are your personnel shortfalls? (1.1, 1.2, 1.7, 1.8)

Yes. This is my first deployment, but yes.

12. Are you receiving sufficient information from the capture paperwork to properly conduct screenings and interrogations? Are the current requirements for documentation of a captured person sufficient or excessive? Did the changes in procedures as far as documenting captured person improve your ability to gather intelligence? (1.1, 1.2, 2.2, 4.1)

In the first 10 days in these weeks only 60% of detainees packed was good.

13. What are the procedures for the transfer of custody of detainees from the MP/Guard personnel to Military Intelligence personnel? When the detainee is returned to the guard force, what procedures occur? (what info is passed on to the Guard Force (type of reward?...observation report, paper trail audit) (1.1, 1.2, 4.1)

No process but to ask for D(I).

14. Are the personal effects of a detainee released to the interrogator or is the interrogator allowed to examine the items? DOCUMENT HANDLING (1.1, 1.2)

Yes/yes.

15. How are translators/linguists used during the screening/interrogation process? Do you trust the interpreter? How are MPs/Guards used during this process? (1.1, 1.2, 1.7, 2.1)

Yes. Guards are too far off.
16. What is your perception of the contract interrogators training and capabilities
to conduct proper interrogations of detainees? (No standard for perception)

17. What do you perceive to be doctrinal shortcomings pertaining to Interrogation
Operations? How would you fix/incorporate into updated doctrine/accomplish
differently? How about Force Structure to ensure Interrogation Operations can
be successfully accomplished? What are the shortcomings and how do we fix the
problem at the Army-level? (1.1, 1.3, 1.5, 1.7, 4.1)

18. Do you know of the procedures to get stress counseling (Psychiatrist,
Chaplain, Medical)? Do your Soldiers know of the procedures to get counseling
(Psychiatrist, Chaplain, Medical)? (1.1, 1.2, 1.6, 2.1, 4.1)

19. What is considered abuse to a detainee during interrogation? (1.1, 1.2)

20. Are you aware of your requirement to report abuse or suspected abuse of
detainees? (1.1, 1.2, 1.6, 4.1)

21. Do your subordinates know the reporting procedures if they observe or
become aware of a Detainee being abused? (1.2, 1.6, 4.1)
22. What steps would you take if a subordinate reported to you an incident of alleged Detainee abuse? (1.2, 1.6, 4.1)

23. Do you feel you can freely report an incident of alleged Detainee abuse outside Command channels (IG, CID) (1.6, 4.1)

   Yes

24. What procedures do you have to report suspected detainee abuse (IG, CID, Next Level Commander) (1.2, 1.6, 4.1)

   (APP) COC

25. What procedures are in place for Detainees to report alleged abuse? (1.2, 1.6, 4.1)

   Doc/Int

27. What do you perceive as the mission of your unit? Describe the importance of your role in that mission. (Insight to the Soldier's understanding and attitude concerning unit mission and their role)

   I am a large part of the mission.

28. Describe your working environment and living conditions since being in Theater. (Identify physical and psychological impact on Soldier's attitude) (1.2, 1.3, 1.4, 1.5, 1.6, 17) close to D Cope. Shipment went farther.

29. Describe the unit command climate and Soldier morale. Has it changed or evolved since you have been in Theater? (Identifies Soldier's perception of the unit and conditions)

   Not bad considering the situation.
chain of command and Soldier attitude. Does the Soldier feel supported? Do Soldiers feel the Command cares? Are they getting clear guidance? 

30. Are you aware of any incidences of detainee or other abuse in your unit? 

ADVISEMENT OF RIGHTS (For military personnel)

The text of Article 31 provides as follows. a. No person subject to this chapter may compel any person to incriminate himself or to answer any questions the answers to which may tend to incriminate him. b. No person subject to this chapter may interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him may be used as evidence against him in a trial by court-martial. c. No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him. d. No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement, may be received in evidence against him in a trial by court-martial. (1.2, 1.8)

I am ______(grade, if any, and name), a member of the (DAIG). I am part of a team inspecting detainee operations, this is not a criminal investigation. I am reading you your rights because of a statement you made causes me to suspect that you may have committed ____________, (specify offense, i.e. aggravated assault, assault, murder). Under Article 31, you have the right to remain silent, that is, say nothing at all. Any statement you make, oral or written, may be used as evidence against you in a trial by courts-martial or in other judicial or administrative proceedings. You have the right to consult a lawyer and to have a lawyer present during this interview. You have the right to military legal counsel free of charge. In addition to military counsel, you are entitled to civilian counsel of your own choosing, at your own expense. You may request a lawyer at any time during this interview. If you decide to answer questions, you may stop the questioning at any time. Do you understand your rights? Do you want a lawyer? (If the answer is yes, cease all questions at this point). Are you willing to answer questions?
I'm not clear on the context here, but it appears to be a military or combat-related document. For an example, I can provide the text as it is, or I can rephrase it into a more neutral form. Here's the text as it is:

31. Describe what you understand happened leading up to and during the incident(s) of abuse. (No applicable standard)

32. Describe Soldier morale, feelings and emotional state prior to and after these incidents? (Identifies unit and Soldier morale, atmosphere, mood, attitude, stress, retaliation, preemption, family crisis)

33. Was this incident reported to the chain of command? How, when & what was done? What would you have done? (Identifies compliance, procedure, timeliness, Soldier perception of action taken and effect on unit morale) (1.2.1.6)

34. How could the incident have been prevented? (Identifies root cause and perceived solution) (No applicable standard) Trained: Guidance from COC. Report to COC in dealing with stressful/rape.

35. Describe any unit training or other programs that you are aware of that teach leaders and Soldiers how to recognize and resolve combat stress.

36. What measures are in place to boost morale or to relieve stress? (Identifies perceived solution) Internet, recreation, TV.

Annex B-81
37. What measures could the command enact to improve the morale and command climate of your unit? (Identifies perceived solution.)
Narrative: On 11 Sep 03, 1LT and SPC were performing guard duty at the FOB Packhorse detention facility. 1LT, the Officer of the Guard, was standing less than twenty feet away from SPC in the breezeway portion of the facility facing into the facility’s back yard when he heard a shot fired (Exhibit A). SPC, a member of the guard force, was standing between 1LT and SPC when the shot was fired. SPC was standing in the hallway of the isolation cell portion of the facility. At some point, SPC looked away from the detainees in isolation in order to speak to SPC (Exhibit B). Within a few seconds of turning back to see the detainees, SPC raised his rifle, placed the selector on fire, and shot (Exhibit C). SPC was handcuffed with plastic “flexicuffs” at the time he was shot. Neither 1LT nor SPC saw pull the trigger. They were not in a position to see activity. The other detainee in the isolation cell, (brother), saw SPC fire his weapon, but did not see activity either (Exhibit D). Upon hearing the shot, 1LT moved to SPC to assess the situation. According to 1LT, he stated, “He was standing right up next to the wire.” Initially, 1LT did not see any blood on the fallen and asked if he had indeed shot the detainee. SPC stated again that he had shot because he was standing next to the wire (Exhibit A). When 1LT noticed that was bleeding, he moved to the radio in the breezeway and called the 4th FSB TOC (Packhorse Mike) for assistance. SPC, who was guarding prisoners at a building directly across from the detention facility entrance, left his position to assess the situation at the main detention facility. Upon arriving at the scene, SPC asked for a combat lifesaver’s bag and SPC went to the storage closet in the interview office to retrieve it (Exhibit E). SPC and SPC performed first aid on at this time. SPC went into the interview office and sat down. At around 2320, SSQ and SGT medics, arrived. They assessed ‘s condition and transported him by ambulance to the aid station (Exhibit F). Upon the physician’s assistant on duty at the time, declared dead at approximately 2330 hrs (Exhibit G). The body was photographed by CPT with 1LT assisting, as part of the 4th FSB’s initial inquiry.

Facts.

a. was a detainee at the FOB Ironhorse Detention Facility when he died of a gunshot wound to the abdomen on 11 Sep 01 at approximately 2315 hours. He had turned himself at FOB Arrow on 02 Sep 03 upon learning that he was a targeted individual from Operation Arrow Sky, conducted by TF 4-42 (Exhibit H). He and his brother, were in separate isolation cells at the detention facility. had been incarcerated in the isolation cell since 8 Sep 03. had been seen by

020495

1 except as noted (b)(6)
Report by AR 15-6 Investigating Officer on Shooting Death of Iraqi Detainee, FOB Packhorse, Tikrit Iraq, 11 Sep 03

medics earlier in the day on 11 Sep. He had complained of joint and back pain and couldn't sleep. The medics advised the guards, SPC [redacted] included, that the detainee should be allowed to get up and walk around in order to reduce his back and joint pain. Furthermore, the detainees in isolation had been told not to speak and to stay away from the concertina wire or they would be shot. According to 1LT [redacted], he did not see any indication that the concertina wire had been moved at the time of the shooting. According to INTSUM reporting, the brothers were alleged Saddam loyalists (Exhibit H).

b. SPC [redacted] D Co., 4th FSB, shot [redacted] standing and touching the single strand concertina wire at his cell. SPC [redacted] did not give a verbal warning prior to firing his weapon. A round had already been chambered in the weapon. SPC [redacted] was aware that the medics had suggested that the detainee be allowed to stand and walk around in his cell in order to relieve some of the joint and shoulder pain that he had been experiencing while being held in the cell (Exhibits A and B).

c. SPC [redacted] requested a lawyer before any questioning could be done. He provided a statement on DA Form 2823 during 4th FSB’s initial inquiry, but he was not read his rights (Exhibit B). In that statement, SPC [redacted] stated that the detainee had been fidgeting with his handcuffs earlier in the day. Furthermore, the detainee had been told not to speak. According to the statement, at about 2315 hours [redacted] said something in Arabic. SPC [redacted], who had been speaking with SPC [redacted], turned to look at the detainee and saw him standing near the wire and touching it. At that instant, SPC [redacted] raised his weapon and fired.

d. There are conflicting accounts about the training that the guards received prior to assuming their duties at the detention facility. SPC [redacted] and SPC [redacted] were on their second full day of detention guard duty. They had received a briefing from 1LT [redacted] on their duties, but SPC [redacted] did not recall any instructions with respect to graduated force IAW TF Ironhorse FRAGO 422 (Exhibit C). SPC [redacted] believed that they could shoot a detainee if the detainee approached the wire without permission. 1LT [redacted] stated that he gave that order but with the understanding that verbal warnings and other measures would first be considered before applying lethal force. No rehearsals or drills had been conducted.

e. The guard force had wooden clubs readily available in order to deal with belligerent detainees using less than lethal force (Exhibit J). Upon initial set-up of the detention facility, the guard force did not have weapons inside of the detention facility. At some point between the initial set-up of the facility and 11 Sep 03, the 1st BCT Commander instructed the 4th FSB to have guards carry weapons inside of the wire to ensure the presentation of authority (Exhibit K).

except as noted see (b)(6)(C) 2

2

020496

Annex B-84
f. The guard force has no written instructions and there is no written battalion guidance for the operation of the detention facility. Guards received their instructions verbally by the shift leader, in this case, 1LT [redacted] (Exhibit A).

g. TF Ironhorse FRAGO 422, Maintenance of Law and Order, dated 16 May 03, provides guidance for the use of graduated force and specifically identifies a "Shout, Show, Shove, Shoot, Shoot" methodology (Exhibit L).

h. Paragraph 3-2f, Army Regulation 190-14, The Carrying of Firearms by Law Enforcement Personnel and Personnel Performing Security Duties, states that, "Deadly force is justified only under conditions of extreme necessity and as a last resort when all lesser means have failed or cannot be reasonably employed." Furthermore, paragraph 3-2g requires that personnel give an order to halt before firing (Exhibit M).

i. [redacted] the other isolated detainee in the detention facility, stated that he received no warnings about what would happen if he tried to escape. He stated that none of the other prisoners provided the information. One prisoner held in the general population cell [redacted] stated he had received a briefing on what would happen if he tried to escape (Exhibit D).

j. SPC [redacted] was described as overly aggressive by 1LT [redacted]. The other guards, SPC [redacted] and PFC [redacted], described SPC [redacted] as being unnecessarily vulgar towards the detainees. Also, SPC [redacted] had banged wooden clubs on the cell doors unnecessarily and had used vulgar language toward the prisoners on 10 Sep. 1LT [redacted] had corrected that behavior (Exhibits A, E, and N).

k. There is no indication that the detainee had been physically abused prior to being fatally shot. He had adequate medical attention for his aching back and joints; the guards understood that the detainees could stand up and stretch in order to relieve some of the discomfort. Adequate food and water had been given to the detainee (Exhibit G and O).

Findings: The convergence of several conditions resulted in the shooting of [redacted] on the evening of 11 Sep 03.

a. Statements reveal that there is sufficient cause to believe that SPC [redacted], knowingly or not, was in violation of Army use of force policy and TF Ironhorse directives governing the use of deadly force. No verbal warning was given, and no lesser means of force was considered before applying deadly force. Furthermore, the fact that [redacted] was handcuffed and his position on the floor in his cell once he was shot provide sufficient doubt about [redacted] intent to escape (Exhibits A, B, C, and V).

Except as noted (b)(6) (b)(6)
b. There are insufficient instructions for guards in performing their duties. There are no written SOPs or post instructions for guards (Exhibits A and K). Instructions are given verbally by the shift leader, and the guards on-duty that evening had a different understanding of their responsibilities. For example, SPC [redacted] and PFC [redacted] did not have a round chambered in their weapons prior to the shooting—even though they were guarding isolated detainees—while SPC [redacted] and SPC [redacted] did. 1LT [redacted] did not have a round chambered in his weapon, either. SPC [redacted] and PFC [redacted] had an understanding of the use of force as it applied to the application of deadly force (Exhibit E and N). SPC [redacted] had not heard of graduated force or differing levels of force, nor did he remember receiving a briefing which covered verbal warnings prior to shooting an escaping detainee (Exhibit C).

c. The combination of loaded weapons within the confines of the detention facility, in addition to the inadequate number of guards on duty, created an environment conducive for the quick escalation to the use of deadly force. There were plenty of wooden clubs available to use in applying less than deadly force. SPC [redacted] had used a club before in order to rattle the cage doors. There were two guards on duty at two different buildings with 56 detainees on 11 September. While the majority of detainees were in the general population, incarcerated in a large open room, there were eight others held in isolation cells who required increased visual surveillance. It is difficult for guards to maintain adequate situational awareness over such a dispersed operation. Furthermore,

d. The isolation cells in which the [redacted] brothers were held were unkempt and had [redacted] barriers. There were full MRE boxes in the cells which could provide materials for... [redacted] used as the barrier in place of the cell doors could have been improved, thus making it more difficult for detainees to move or negotiate, and making it clearer for guards to determine a detainee's intent to escape. Without a witness who might have seen [redacted]'s actions which caused SPC [redacted] to shoot, it is difficult to determine [redacted]'s intent with respect to crossing the wire on the evening of the shooting.

e. Based on comments by the interviewees, the detention facility had been visited on numerous occasions by leaders in the chain of command. Shift leaders were either a senior NCO or an officer. The officer in charge of detainee operations was on site daily. The battalion commander had inspected on numerous occasions. The brigade commander had inspected the facility and provided guidance in handling the detainees. Detainees were adequately fed, had plenty of water, and received adequate medical attention. Detainees were allowed to conduct hygiene and had access to latrines.
Recommendations:

a. A criminal investigation should be initiated immediately in order to determine possible violations of the UCMJ by SPC. Statements from 1LT, SPC, and PFC indicate that SPC exhibited overly aggressive behavior when around the detainees. was handcuffed when he was shot, and SPC did not apply graduated force IAW established regulations and orders.

b. Clear the facility, especially holding cells, of MRE boxes, equipment, etc., that can be used as weapons or projectiles.

c. Improve the barrier system for the isolation cells. Two stacked strands of concertina wire would allow guards to better determine a detainee’s intent to breach the wire and escape.

d. Improve the facility’s wire perimeter entrance to ensure that the entrance is closed off when not in use.

e. Develop a written SOP and provide guards with post instructions to ensure that guards are aware of approved procedures for the use of force, detainee handling, briefing procedures, and security of special population/detainees.

f. Train the guard force on the SOP and ensure that rehearsals and drills are conducted to deal with special situations, such as medical emergencies, attempted escapes, and fights between prisoners.
This report of proceedings is complete and accurate. (If any voting member or the recorder fails to sign here or in section VII below, indicate the reason in the space where his signature should appear.)

JR, MAJ, MP

[Signature]

(Member)

(Member)

(Member)

(Member)

Section VII - Minority Report (Para 3-13, AR 15-6)

To the extent indicated in enclosure _______ the undersigned do(es) not concur in the findings and recommendations of the board. (In the enclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the enclosure.)

(Member)

(Member)

Section VIII - Action by Appointing Authority (Para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are approved (disapproved) (approved with following exceptional substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered enclosure.)

020500

Annex B-88
MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: CID REPORT OF INVESTIGATION – FINAL (C) / SSI – 0223-2004-CID259-80257-SC1/SY2D1

DATES/TIMES/LOCATIONS OF OCCURRENCES:
1. 1 NOV 2003, 0001–30 NOV 2003, 2400; KARBALA, IRAQ (IZ).

DATE/TIME REPORTED: 19 JUL 2004, 0900

INVESTIGATED BY:

SUBJECT: 1. MALE; OTHER: XZ; ALIEN REGISTRATION NUMBER: EGYPTIAN
PASSPORT NUMBER: ASSAULT (INSUFFICIENT EVIDENCE), CRUELTY AND MALTREATMENT (INSUFFICIENT EVIDENCE) (NFI).

VICTIM: 1. UNKNOWN; ASSAULT (INSUFFICIENT EVIDENCE), CRUELTY AND MALTREATMENT (INSUFFICIENT EVIDENCE) (NFI).

021029

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Annex B-89

DOD-044031
INVESTIGATIVE SUMMARY:

On 13 Jul 04, this investigation was initiated based upon receipt of Request for Investigation (RFI) (0345-04-CID001) from the U.S. Army Criminal Investigation Command, Fort Belvoir, VA, wherein Mr. [redacted] allegedly abused an unknown detainee during an interrogation in Karbala, IZ.

Investigation established there was insufficient evidence to prove or disprove Mr. [redacted] committed the listed offenses when he struck an unidentified detainee during an interrogation. Mr. [redacted], Baghdad, IZ, was interviewed and related he had witnessed Mr. [redacted] strike a detainee once across the face during an interrogation. Interviews of the interrogating unit’s supervisor, SSG [redacted], indicated Mr. [redacted] was verbally counseled concerning the incident and no further action was taken. Additional interviews of members of the interrogation teams revealed they denied having any knowledge of any detainee abuse.

Further, Mr. [redacted] was located in Alexandria, Egypt and was interviewed via phone and e-mail. Mr. [redacted] stated he never abused any detainee nor was he counseled by SSG [redacted] about any detainee abuse. In addition, all attempts to physically interview Mr. [redacted] through coordinating a trip to Egypt with the US Embassy, Baghdad, IZ, met with negative results. The Embassy authorities were unable to coordinate a trip to Cairo due to the restrictions and sensitivities of the Egyptian government regarding foreign government officials conducting investigation involving Egyptian citizens.

On 23 Jun 05, coordination was made with CPT [redacted], Staff Judge Advocate (SJA), Multi-National Corps-Iraq (MNC-I) (XVIII Airborne Corp), Camp Victory, Baghdad, IZ, who opined there was insufficient evidence to prove or disprove the allegations of Assault and Cruelty and Maltreatment occurred as alleged by Mr. [redacted]. CPT [redacted] stated the statement of SSG [redacted] in which he indicated of having verbally counseled Mr. [redacted] did not provide any evidence of guilt as it constituted a third party statement. Further, Mr. [redacted] denied in his interview being counseled by SSG [redacted] and abusing any detainee.

Finally, this investigation could not identify the unknown victim. Attempts through numerous interviews to identify the victim met with negative results.

STATUTES:

ARTICLE 128, UCMJ: ASSAULT (INSUFFICIENT EVIDENCE)
ARTICLE 93, UCMJ: CRUELTY AND MALTREATMENT (INSUFFICIENT EVIDENCE)

EXHIBITS/SUBSTANTIATION:

ATTACHED:
SWORN STATEMENT

LOCATION: 22D MP BN CID, BIAP, Baghdad
DATE: 26 Apr 04
TIME: 
FILE NUMBER: 

NAME: [Redacted]
SSN: [Redacted]
GRADE/STATUS: Civilian

ORGANIZATION/ADDRESS:
Titan Corporation, BIAP, Baghdad, Iraq, APO AE 09342

I, [Redacted], want to make the following statement under oath:

Approximately on the 2nd of September 2003, I was hired by the Titan Corporation to perform the duties of a Site Manager in Iraq. I arrived in the country of Kuwait on the 12th of September and was transferred to Iraq approximately three days later. I was then assigned to the An Najaf and Karbala sites to manage the CAT 1 and CAT 2 Linguists employed by Titan Corp.

For six months the operation and my management was uneventful. On or about the middle of January 2004 a CAT 2, US Citizen, Titan Linguist [Redacted] reported to me that one of the THT 106 team members observed the other Titan Linguist [Redacted] beating an Iraqi detainee while in the custody of the THT 106 team.

[Redacted] informed me that the THT 106 team member wanted the incident reported and was conveying the information through him to me for that purpose.

The same week I reported this information about what I felt was a Geneva Convention violation to my superior [Redacted]'s response was that "Maybe the unit won't report the incident". To my knowledge he never reported the incident to Titan management in Baghdad until I raised the issue with corporate in San Diego, California this month.

After reporting the incident to [Redacted] my career started taking a nose dive. I was transferred to Baghdad do to a complaint by the THT 106 team and [Redacted]. Upon [Redacted] my arrival in Baghdad I reported the incident to [Redacted], the assistant director for Titan Operations, Iraq, and had him sign a statement stating he had received the statement from me that I had reported this incident to and that I was covering myself by getting his signature confirming that I had reported the incident.
After I was fired from my position in An Najaf and Karbala, I received a cumulative six month counseling statement going back six months and was reassigned to the Central Region in Baghdad, Iraq. Subsequent to this counseling I have been in constant defense of my position with Titan and have been informed that I am to be fired and returned to the United States by the director Richard Inghram.

Additionally, I forwarded this information by email to the corporate offices in San Diego, California and received an email back stating that the incident had been reported, investigated and closed. The correspondence referred to the Abu Ghurub prison incident. I informed them that this was a completely separate incident and unconnected. To date I have not received any further response. However, I have been informed within the same email from corporate human resources that I will be counseled this week by a member of human resources and management here in Iraq.

Q: SA
A: Mr.

Q: Do you know the date of the alleged abuse incident?
A: I do not.

Q: Do you know the name of the alleged abused prisoner?
A: No, I don't.

Q: Do you know the names or ranks of any service member connected with this incident?
A: I believe there was an E-6, last name [redacted] who was in charge. There was also a CPT [redacted] who was superior to [redacted]. I believe it was an MP Company.

Q: What was the exact location of this incident?
A: It was in the city of Karbala, more than that I do not know.

Q: Was all the information you have provided here based on statements from the Titan interpreter named [redacted]?
A: Yes.

Q: Do you know the extent of the injuries, which were alleged to have been inflicted on the prisoner?
A: No.

Q: Is there anything else you wish to add?
A: No, I think that is pretty complete. ///END OF

Initials of Person Making Statement

Page 2 of 4 Pages

DA Form 2823 (Automated)

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EXHIBIT 2

Annex B-92
AFFIDAVIT

I, __________________________, have read or have read to me this statement which begins on page 1 and ends on page ____. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

Initials of Person Making Statement ________________

DA Form 2823 (Automated)

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LAW ENFORCEMENT SENSITIVE

Annex B-93
Statement of ____________________________

Taken at Mosul, Iraq Dated ____________________________

(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this ______ day of ____________________________, 2004 at ____________________________

(Signature of Person Administering Oath)

(Signature of Witness) ____________________________ (Signature of Witness) ____________________________

(Typed Name of Witness) ____________________________ (Typed Name of Witness) ____________________________

(Address of Witness) ____________________________ (Address of Witness) ____________________________

WITNESSES:

SA ____________________________ (b)(2) - 1

(Article 136 UCMJ)

Initials of Person Making Statement ____________________________

Page 4 of 4 Pages

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LAW ENFORCEMENT SENSITIVE

Annex B-94
U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

INVESTIGATIVE ACTION

I/NAS WHIDBEY ISLAND WA/ALLEGED ASSAULT OF IRAQI PRISONERS OF WAR

RESULTS OF INTERVIEW WITH

1. On 07OCT03,  was interviewed at the NCISRA Whidbey Island office in regards to his knowledge of the possible assault of Iraqi Enemy Prisoners of War (EPW). and five of his fellow corpsman were brought to the NCISRA Whidbey Island office and interviewed to determine if any of the corpsman had knowledge of the mistreatment of Iraqi EPWs while they were deployed to Iraq.

2.  recounted he and eight other corpsman from the Naval Hospital Oak Harbor (NHOH) were given about 36 hours notice they were to be deployed to Iraq. stated on 31JAN03 the group flew to Camp Pendleton, CA for three weeks of training/work-ups. stated on 21FEB03, the group left California bound for Iraq, via Kuwait. stated the group from NHOH was separated into different Marine Battalions in Kuwait. was assigned to the 15th MEU, Battalion 21, Platoon G.

3.  described his role as a corpsman assigned to the Marine Battalion was to administer aid to the Marines and get them back into the theater as soon as possible. stated the majority of his care was focused on injured Iraqi citizens (burn victims, chronic injuries, etc). recalled he dealt with EPWs during the course of his time in Iraq. noted he witnessed Marines throw down prisoners and conduct "rough" searches on them. cited after a big incident in Nasiria, about the end of MAY03, he witnessed the rough handling of EPWs by Marines. said he would walk away when he observed rough searches of EPWs.

4.  stated there was a lot of peer pressure to keep one's mouth shut and "do what they do", i.e., pt with the Marines (run) and shoot well. said he was one of the first members of the original deployed group of nine corpsman to return back to the United States (around 24MAY03). stated and stayed in Iraq the longest of the group. recently returned from his deployment to the Middle East. In closing, discussed some ill effects he had developed related to his deployment in Iraq (trouble sleeping, lethargic, apathy, etc.).

REPORTED BY:  Special Agent
OFFICE:  NCISRA Whidbey Island, WA

EXHIBIT (4)

Annex B-95
## Certificate of Death (Overseas)

**Name of Deceased:**

- Last Name: [Redacted]
- First Name: [Redacted]

**Organization:**

- Detainee in Iraq

**Race:**

- Caucasian

**Marital Status:**

- Single

**Religion:**

- Catholic

**Cause of Death:**

- Asphyxia due to smothering and chest compression

**Disease or Condition Directly Leading to Death:**

- Underlying cause: [Redacted]

**Antecedent Causes:**

- Underlying cause: [Redacted]

**Other Significant Conditions:**

- [Redacted]

**Mode of Death:**

- Natural

**Autopsy Performed:**

- Yes

**Major Findings of Autopsy:**

- [Redacted]

**Circumstances Surrounding Death Due to External Causes:**

- [Redacted]

**Date of Death:**

- 26 Nov 2003

**Place of Death:**

- Al Qaim, Iraq

**Deputy Medical Examiner:**

- MAJ, MC, USN

**Date of Appointment:**

- 12 May 2004

---

1. State disease, injury or complication which caused death or contributed to death, listed above.
2. Describe conditions contributing to the death, listed above.
3. Precise the nature of the disease, of the injury or of the complication which caused death, listed above.
4. Precise the condition which contributed to death, listed above.
ARMED FORCES INSTITUTE OF PATHOLOGY
Office of the Armed Forces Medical Examiner
1413 Research Blvd., Bldg. 102
Rockville, MD 20850
1-800-944-7912

AUTOPSY EXAMINATION REPORT

Name: [Redacted]
SSAN: [Redacted]
Date of Birth: 1947
Date/Time of Death: 26 Nov 2003
Date/Time of Autopsy: 2 Dec 2003
Autopsy No.: ME03-571
AFIP No.: 2901039
Rank: [Redacted]
Place of Death: Al Qaim, Iraq
Place of Autopsy: BIAP Mortuary, Baghdad, Iraq
Date of Report: 18 Dec 2003

Circumstances of Death: This Iraqi died while in U.S. custody. The details surrounding the circumstances at the time of death are classified.

Authorization for Autopsy: Armed Forces Medical Examiner, per 10 U.S. Code 1471

Identification: Visual by 3rd Armored Cavalry Regiment, postmortem fingerprint and DNA obtained

CAUSE OF DEATH: Asphyxia due to smothering and chest compression

MANNER OF DEATH: Homicide
FINAL AUTOPSY DIAGNOSES:

I. History of smothering and chest and abdominal compression

II. Blunt force trauma
   A. Contusions and abrasions of the skin and soft tissue of the chest
      and abdomen with patterned contusions
      1. Fractures of left ribs 3-7
   B. Extensive contusions and abrasions of the extremities with
      patterned contusions
   C. Minor contusion of the scalp

III. Cardiomyopathy (650 grams)
    A. Left ventricle hypertrophy (1.7 cm)
       1. Myocyte hypertrophy and interstitial and perivascular
          fibrosis
    B. Mild atherosclerosis of the aorta
    C. Pulmonary edema (combined weight = 1350 grams)

IV. Status post cholecystectomy
    A. Perihepatic and pericolonic adhesions

V. Hepatic steatosis (fatty change), microscopic

VI. Hepatitis B positive (DNA)

VII. Pleural and pulmonary adhesions

VIII. Perisplenic adhesions

IX. Nodular prostate

X. Early decomposition

XI. No displaced fractures or radiopaque projectiles on radiographs

XII. Toxicology negative
EXTERNAL EXAMINATION

The body is that of a well-developed, well-nourished appearing, obese, 71 1/2 inch tall, 250 pounds minimum (estimated) male whose appearance is consistent with the reported age of 56 years. Lividity is posterior and purple. There is facial suffusion and congestion of the conjunctival vessels but no petechiae of the eyes, face, or oral mucosa. Rigor is not apparent. There is early decomposition consisting of vascular marbling of the anterior chest.

The scalp is covered with gray-brown hair measuring 1 3/4 inch in length and in a normal distribution. There is a brown beard and mustache. The irides are brown and slightly obscured by corneal clouding. The ears and external auditory canals are unremarkable. The nares are patent and the lips are atraumatic. The nose and maxillae are palpably stable. The teeth appear natural and adequate in repair. There are no injuries of the oral cavity.

The neck is straight, and the trachea is midline and mobile. The chest is symmetric. The abdomen is protuberant. The genitalia are those of a normal adult male. The testes are descended and free of masses. Pubic hair is present in a normal distribution. The buttocks and anus are developmentally unremarkable.

The upper and lower extremities are symmetric and without clubbing or edema. Flexicuff wrist ties encircle each wrist but there are no associated abrasions or contusions.

Identifying marks and scars include an oblique 8 x ¼ inch scar and 2 adjacent oblique scars measuring ¾ x ¼ inch each on the right upper quadrant of the abdomen (cholecystectomy). On the skin of the right patella is a 1 ¼ inch linear scar and on the skin of the left patella is a 1 ½ inch linear scar. On the posterior right shoulder and arm are a 4 x 2 inch scar, a 1 ½ x 1 ½ inch scar, a 2 ¾ inch linear scar, a 3 ½ inch linear scar, and a 1 x ¼ inch scar.

Encircling the right wrist is a white plastic identification band with "3 ACR 76".

CLOTHING AND PERSONAL EFFECTS

The following clothing items and personal effects accompany the body at the time of autopsy:
- Long black shirt
- White undershirt
- Tan boxer style underpants

MEDICAL INTERVENTION
- Intravenous puncture marks in the right groin and right antecubital fossa
- A 1 ½ x 7/8 inch dried orange abrasion overlying the sternum (CPR artifact)
RADIOGRAPHS
A complete set of postmortem radiographs is obtained and demonstrates the following:
- No displaced fractures
- No radiopaque foreign objects (bullets or shrapnel)

EVIDENCE OF INJURY
The ordering of the following injuries is for descriptive purposes only, and is not intended to imply order of infliction or relative severity. All wound pathways are given relative to standard anatomic position.

DESCRIPTION OF BLUNT FORCE INJURIES:

Head and Neck:
On the right parieto-occipital scalp is a 1 ½ x 1 ¼ inch purple contusion without fracture of the underlying skull. There is a ½ x ¼ inch area of discoloration of the superior belly of the right omohyoid muscle without injury of the remaining anterior strap muscles. Dissection of the posterior neck and spinal cord is free of injury.

Chest and Abdomen:
On the anterior right side of the chest superior to the nipple is a 5 x 1 ¼ inch crescentic purple contusion and on the left side of the anterior chest is a 2 ¾ x 1 ¼ inch purple contusion. On the midline of the anterior abdominal wall are a 5 x 3 ½ inch purple contusion, a triangular 5 ½ x 2 inch purple contusion, and a triangular 6 ½ x 2 inch purple contusion. On the left lower quadrant of the abdomen is a 4 x 3 ¼ inch purple contusion. Adjacent to and admixed with the above contusions are numerous circular to ovoid reddish-purple contusions ranging from ¼ to ½ inch. On the midline of the upper back is a 3 ¼ x 2 inch purple contusion. On the left costovertebral angle is a 7 ½ x 3 inch purple contusion. On the postero-lateral left rib cage is a faint 6 x 3 ½ inch purple contusion. On the right costovertebral angle and lower back are a 4 ½ x 2 inch purple contusion and a 7 ½ x 1 ½ inch purple contusion.

Injuries within the chest include non-displaced fractures of the anterior aspect of the 5th-7th ribs on the left side and 3rd-6th ribs on the postero-lateral left side. Dissection of the parietal pleura from the rib cage reveals hemorrhage surrounding these fractures. There are no injuries of the lungs or remaining organs of the chest and abdominal cavities. Dissection of the skin of the back reveals scattered ¼ - ½ inch purple contusions of the soft tissue.

Pelvis and Buttocks:
On the right buttock and extending onto the anterior right hip is an irregularly shaped 13 ½ x 8 inch dark purple contusion with hemorrhage of the underlying subcutaneous tissue but without contusion or fracture of the underlying musculoskeletal system. Adjacent to this contusion is a patterned contusion consisting of two parallel oblique purple contusions measuring 3 ¾ x 1 inch and 4 x 1 ¾ inch with a ½ inch area of clearing between these contusions. On the left buttock and extending onto the posterior thigh are
an irregularly shaped 7 ¼ x 4 ¼ inch purple contusion and two oblique parallel purple contusions measuring 5 ½ inches and 6 ½ inches.

**Lower Extremities:**
On the anterior right thigh is an oblique 9 x 6 inch red-purple contusion. On the mid anterior right thigh are two parallel purple contusions occupying an area 6 x 3 inches with a 3/8-1/2 inch area of central clearing. Adjacent to these contusions are multiple pinpoint red abrasions. On the skin overlying the right patella is a 2 ½ x 1 ¼ inch purple contusion. On the right anterior shin is a 4 x 3 inch purple contusion. On the skin overlying the right lateral malleolus is a 5 ¼ x 2 ½ inch purple contusion and on the skin overlying the right medial malleolus is an 8 ¼ x 4 inch purple contusion. On the plantar surface of the right foot is a 2 x 1 ¼ inch purple contusion. In the right popliteal fossa is a 4 x 4 ½ inch purple contusion.

On the left inguinal area is a 1 ½ x 2 ¼ inch purple contusion. On the anterior left thigh are 2 purple contusions measuring 4 ¼ x 3 ½ inches and ¾ x ½ inch, respectively. On the anterior and lateral left thigh is a patterned contusion consisting of three parallel oblique purple contusions occupying an area 6 x 4 inches with ½ inch areas of clearing between contusions. On the skin overlying the left patella and anterior shin is a patterned contusion consisting of two parallel, horizontal purple contusions occupying an area 6 x 4 inches with ½ inch area of clearing between contusions. On the anterior left shin is a patterned contusion occupying an area 6 x 4 ¾ inches and consisting of an irregularly shaped contusion within which are two parallel purple contusions with a 3/16 inch area of clearing. On the medial left shin is a ¾ inch purple contusion. On the skin overlying the left medial malleolus is a 3 x 2 inch purple contusion. On the posterior left thigh is a 5 x 5 ½ inch purple contusion. On the left calf is an oblique 10 x 2 ¾ inch purple contusion with a ½ inch area of central clearing.

**Upper Extremities:**
On the anterior and posterior left arm, elbow, and forearm is a 13 ½ x 9 ¼ inch area of diffuse purple contusion without an apparent pattern. There is no injury of the underlying bones. On the anterior left shoulder is a 2 ¼ x 1 ¼ inch purple contusion. On the anterior right shoulder is a 3 ½ x ¾ inch purple contusion. On the posterior right arm is a 2 ½ x 2 inch purple contusion. On the posterior right elbow is a 10 x 9 inch purple contusion without injury of the underlying bones. There is no significant injury of either hand or wrist.

**INTERNAL EXAMINATION**

**HEAD:**
The galeal and subgaleal soft tissues of the scalp have the noted minor contusion. The calvarium is intact, as is the dura mater beneath it. Clear cerebrospinal fluid surrounds the 1250 gm brain, which has unremarkable gyri and sulci. Coronal sections demonstrate sharp demarcation between white and grey matter, without hemorrhage or contusive...
injury. The ventricles are of normal size. The basal ganglia, brainstem, cerebellum, and arterial systems are free of injury or other abnormalities. There are no skull fractures. The atlanto-occipital joint is stable.

NECK:
The anterior strap muscles of the neck are homogenous and red-brown, without hemorrhage. There is a focal area of discoloration of the superior belly of the right omohyoid muscle. The thyroid cartilage and hyoid are intact. The larynx is lined by intact white mucosa. The thyroid is symmetric and red-brown, without cystic or nodular change. The tongue is free of bite marks, hemorrhage, or other injuries.

Incision and dissection of the posterior neck demonstrates no deep paracervical muscular injury and no cervical spine fractures or ligament injury. Sections of the cervical spinal cord are unremarkable.

BODY CAVITIES:
There are the noted rib fractures. No excess fluid is in the pleural, pericardial, or peritoneal cavities. The organs occupy their usual anatomic positions with surgical absence of the gallbladder and perihepatic adhesions. There are bilateral fibrous pleural, perisplenic, and pericolonic adhesions.

RESPIRATORY SYSTEM:
The right and left lungs weigh 650 and 700 gm, respectively. The external surfaces are deep red-purple and have the noted adhesions. The pulmonary parenchyma is diffusely congested and edematous. No mass lesions or areas of consolidation are present.

CARDIOVASCULAR SYSTEM:
The 650 gm heart is contained in an intact pericardial sac. The epicardial surface is smooth, with extensive fat investment. The coronary arteries are present in a normal distribution, with a right-dominant pattern. Cross sections of the vessels show no significant atherosclerosis. The myocardium is homogenous, red-brown, and firm. The valve leaflets are thin and mobile. The walls of the left and right ventricles are 1.7 and 0.6-cm thick, respectively. The endocardium is smooth and glistening. The aorta gives rise to three intact and patent arch vessels. The renal and mesenteric vessels are unremarkable.

LIVER & BILIARY SYSTEM:
The 1900 gm liver has an intact capsule and a sharp anterior border. The parenchyma is tan-brown and congested, with the usual lobular architecture. No mass lesions or other abnormalities are seen. The gallbladder is surgically absent.

SPLIEEN:
The 275 gm spleen has the noted perisplenic adhesions. The parenchyma is maroon and congested, with distinct Malpighian corpuscles.

PANCREAS:
AUTOPSY REPORT ME03-571

The pancreas is firm and yellow-tan, with the usual lobular architecture. No mass lesions or other abnormalities are seen.

ADRENALS:
The right and left adrenal glands are symmetric but autolysed. No masses or areas of hemorrhage are identified.

GENITOURINARY SYSTEM:
The right and left kidneys weigh 180 gm each. The external surfaces are intact and smooth. The cut surfaces are red-tan and congested, with uniformly thick cortices and sharp corticomedullary junctions. The pelves are unremarkable and the ureters are normal in course and caliber. White bladder mucosa overlies an intact bladder wall. The bladder is empty. The prostate is normal in size, with lobular, yellow-tan parenchyma and nodular. The seminal vesicles are unremarkable. The testes are free of mass lesions, contusions, or other abnormalities.

GASTROINTESTINAL TRACT:
The esophagus is intact and lined by smooth, grey-white mucosa. The stomach contains approximately 30 ml of brown liquid. The gastric wall is intact. The duodenum, loops of small bowel, and colon are unremarkable. The appendix is present and unremarkable.

ADDITIONAL PROCEDURES
- Documentary photographs are taken by TSGT [signature]
- Special Agent [signature] of Army Criminal Investigative Division (CID) attended the autopsy
- Specimens retained for toxicologic testing and/or DNA identification are: blood, spleen, liver, lung, kidney, brain, gastric, and psoas
- The dissected organs are forwarded with body
- Personal effects are released to the appropriate mortuary operations representatives

MICROSCOPIC EXAMINATION
Heart: Sections show mild – moderate myocyte hypertrophy, perivascular and interstitial fibrosis, and fatty infiltration of the right ventricle. Postmortem overgrowth of bacteria without an inflammatory response is noted.

Lungs: Sections show intra-alveolar edema fluid, perivasculat anthracosis, congestion, and postmortem overgrowth of bacteria without an inflammatory response. No polarizable foreign material is identified.

Kidney: Section shows vascular congestion and autolysis. No polarizable foreign material is identified.

Liver: Sections show moderate predominantly macrovesicular steatosis, mild periportal fibrosis, and no significant inflammation.
AUTOPSY REPORT ME03-571

Brain: Section shows no significant pathologic abnormality.

Right omohyoid muscle: Section shows no significant pathologic abnormality.

Contusion of the right buttock: Sections shows extravasation of erythrocytes without a significant inflammatory response and no significant hemosiderin deposition by H and E stain.

SEROLOGY
Postmortem serologic testing for antibodies to human immunodeficiency virus (HIV) and hepatitis C virus were non-reactive (negative).

Spleen was positive for hepatitis B DNA by PCR.

TOXICOLOGY
Toxicologic analysis of blood and liver was negative for carbon monoxide, cyanide, ethanol (alcohol), and illicit substances (drugs).

OPINION
This 56 year-old Iraqi detainee died of asphyxia due to smothering and chest compression. Significant findings of the autopsy included rib fractures and numerous contusions (bruises), some of which were patterned due to impacts with a blunt object(s). Another finding of the autopsy was an enlarged heart, the etiology of which is uncertain. Other findings included a fatty liver, which can be seen most commonly with obesity or alcohol abuse. The spleen was positive for hepatitis B DNA by polymerase chain reaction (PCR). There were scars in the chest cavity most likely due to an old infection. Scars were noted in the abdominal cavity due to prior surgical removal of the gallbladder.

Although an enlarged heart may result in sudden death, the history surrounding the death along with patterned contusions and broken ribs support a traumatic cause of death and therefore the manner of death is best classified as homicide.

Maj, MC, USA
Deputy Medical Examiner

MEDCOM--100

Annex B-104
Occurrence: 0001/5 Jan 04-2359/5 Jan 04
Location: Unknown location, BIAP, Baghdad, IZ, APO AE 09342
Subject: Unknown, (MT)
Victim: [Redacted] Civilian, Internment Serial Number (ISN)
Offense: Aggravated Assault, Cruelty and Maltreatment

This investigation was initiated upon receipt of RFI 0332-04-CID001, from HQUSACIDC, which indicated a review of interrogation reports revealed he was allegedly abused while detained by us Coalition Forces.

A review of this case file and investigative reports revealed this detainee was captured and detained by Task Force 6-26. Task Force 6-26 is stationed out of Fort Bragg, NC. A Request for Assistance was sent to the CID assest with this Task Force. An Information Report was provided to this office which stated fake names were used by the 6-26 members. The only names identified by this investigation were determined to be fake names utilized by the capturing soldiers; however, the abuse allegedly occurred during the interrogation of the detainee. The 6-26 CID agent related that the capturing soldiers would not know who the interrogators were. 6-26 also had a major computer malfunction which resulted in them losing 70 percent of their files; therefore, they can't find the cases we need to review.

This investigation meets the necessary requirements and does not need to be reopened. Hell, even if we reopened it we wouldn't get anymore information then we already have.
RECOI OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is TJAG.

<table>
<thead>
<tr>
<th>NAME</th>
<th>GRADE</th>
<th>SSN</th>
<th>UNIT</th>
<th>HHC, 1-38 IN, 3BCT</th>
<th>PAY (Basic &amp; Seal/Foreign)</th>
<th>APO AE 09391</th>
<th>$6489.70</th>
</tr>
</thead>
</table>

considering whether you should be punished under Article 15, UCMJ, for the following misconduct: In that you, did, at or
Samarra, Iraq, on or between 3 January 2004 and 16 January 2004, wrongfully endeavored to impede an investigation by influencing the sworn statements of First Lieutenant, Sergeant First Class.

You are not required to make any statements, but if you do, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand that I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished at all (matters of defense) or why punishment should be very light (matters of extenuation and mitigation). I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial by court-martial instead. In deciding what you want to do you have the right to consult with legal counsel located at [CPT DSN 318 us.army.mil]. You now have 48 hours to decide what you want to do.

DATE: 13 Mar 04
NAME, GRADE, AND ORGANIZATION OF COMMANDER:
RAYMOND T. ODIERNO, MG, 4th IN DIV (MECH)
SIGNATURE:

a. I demand trial by court-martial.
b. I do not demand trial by court-martial and in the Article 15 proceedings:
(1) I request the hearing be Open  Closed. (2) A person to speak in my behalf is not requested.
(3) Matters in defense, mitigation, and/or extenuation: Are not presented Will be presented in person.

DATE: 13 Mar 04
NAME AND GRADE OF SERVICE MEMBER:
LTC
SIGNATURE:

In (a) Open  Closed hearing all matters presented in defense, mitigation, and/or extenuation, having been considered, the following punishment is imposed: 2 yrs

I request the original DA Form 2627 be filed in the Performance file Restricted file of the OMPF.

You are advised of your right to appeal to the Cdr, CJTF-7 within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.

DATE: 13 Mar 04
NAME, GRADE, AND ORGANIZATION OF COMMANDER:
RAYMOND T. ODIERNO, MG, 4th IN DIV (MECH)
SIGNATURE:

a. I do not appeal
b. I appeal and do not submit additional matters 2 yrs
c. I appeal and submit additional matters

DATE: 13 Mar 04
NAME AND GRADE OF SERVICE MEMBER:
LTC
SIGNATURE:

I have considered the appeal and it is my opinion that:

DATE: 13 Mar 04
NAME AND GRADE OF JUDGE ADVOCATE:
SIGNATURE:

After consideration of all matters presented in appeal, the appeal is:

Denied  Granted as follows: 2 yrs

DATE: 13 Mar 04
NAME, GRADE, AND ORGANIZATION OF COMMANDER:
SIGNATURE:

I have seen the action taken on my appeal.

DATE: 13 Mar 04
SIGNATURE OF SERVICE MEMBER:

DOCUMENTS AND/OR COMMENTS:
1. Formal Commander's Inquiry containing 78 pages
2. ORB

DA FORM 2627, AUG 84 (EG) EDITION OF NOV 82 IS OBSOLETE

Annex B-106

DOD-043558
Sergeant [redacted], Specialist [redacted] and Specialist [redacted] to deny that Mr. [redacted] and Mr. [redacted] were pushed into the Tigris River, near Samarra, Iraq, and that they instead were left at the side of the roadway. This is a violation of Article 134, UCMJ.
<table>
<thead>
<tr>
<th>Case Number</th>
<th>Data Source</th>
<th>Date of Incident</th>
<th>Service</th>
<th>Interrogation (Yes/No)</th>
<th>Unit Involved</th>
<th>Active/Reservist</th>
<th>National Guard</th>
<th>Location</th>
<th>Location Code</th>
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<tr>
<td>1</td>
<td>None</td>
<td>9-Jul-03</td>
<td>Army</td>
<td>Yes</td>
<td>1 Troop, 3d Squadron, 3d Armored Cavalry Regiment</td>
<td>Active</td>
<td>LTC</td>
<td>Ar Rubaah</td>
<td>Police Station</td>
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<td>2</td>
<td>None</td>
<td>13-Jul-03</td>
<td>Army</td>
<td>Yes</td>
<td>1 Troop, 3d Squadron, 3d Armored Cavalry Regiment</td>
<td>Active</td>
<td>LTC</td>
<td>Ar Rubaah</td>
<td>1540 km outside of town, towards FOB Buzz along FS-06 East-West Route</td>
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<td>3</td>
<td>None</td>
<td>8-Oct-03</td>
<td>Army</td>
<td>No</td>
<td>A Battery, 3-29th Field Artillery, 3d Brigade Combat Team</td>
<td>Active</td>
<td>MAJ</td>
<td>FOB Gunner</td>
<td>Gunner Holding Area</td>
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<td>4</td>
<td>None</td>
<td>18-Nov-03</td>
<td>Army</td>
<td>No</td>
<td>8 Troop, 1st Squadron, 3d Armored Cavalry Regiment</td>
<td>Active</td>
<td>CPT</td>
<td>Rifles Base</td>
<td>Checkpoint</td>
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<td>5</td>
<td>None</td>
<td>3-18 Jan 04</td>
<td>Army</td>
<td>No</td>
<td>Headquarters and Headquarters Company, 1-8th Infantry, 3d Brigade Combat Team</td>
<td>Active</td>
<td>Major General Raymond T. Odema</td>
<td>Sammar</td>
<td>Unknown</td>
</tr>
<tr>
<td>6</td>
<td>None</td>
<td>3-18 Jan 04</td>
<td>Army</td>
<td>No</td>
<td>Headquarters and Headquarters Company, 1-8th Infantry, 3d Brigade Combat Team</td>
<td>Active</td>
<td>Major General Raymond T. Odema</td>
<td>Sammar</td>
<td>Unknown</td>
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<td>Cetainee Full Name</td>
<td>Database Tag ID</td>
<td>Autopsy Date Completed</td>
<td>Offense Type (If Specified)</td>
<td>Adjudication Range of Punishment</td>
<td>Adjudication Authority</td>
<td>Investigation Status</td>
<td>Further Communication Details</td>
<td>Point of Contact</td>
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<tr>
<td>Unknown*</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Assault - Detainee was hit repeatedly with closed fists during questioning</td>
<td>Field Grade Article 15: Forfeiture of $1,238.00 per month for one month.</td>
<td>Squadron Commander</td>
<td>Closed</td>
<td>Action is pending for a pending incident.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
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<tr>
<td>Unknown*</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Assault - Detainee was hit to the stomach with a fist after an escape attempt.</td>
<td>Field Grade Article 15: Forfeiture of $1,238.00 per month for one month.</td>
<td>Squadron Commander</td>
<td>Closed</td>
<td>This involves the same incident as the previous entry.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
<td></td>
</tr>
<tr>
<td>Unknown*</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Assault - Detainee was hit to the stomach with a fist after an escape attempt.</td>
<td>Field Grade Article 15: Reduction from E4 to E3, suspended. Forfeiture of $292.00 per month for two months, the portion of the punishment is excess of $100.00 suspended; extra duty for 15 days.</td>
<td>Battalion Commander</td>
<td>Closed</td>
<td>None.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
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<tr>
<td>Unknown*</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Assault - Detainee was hit to the stomach with a fist after an escape attempt.</td>
<td>Summarized Article 15: Extra duty for 14 days suspended.</td>
<td>Battery Commander</td>
<td>Closed</td>
<td>This involves the same incident as the previous entry.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
<td></td>
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<tr>
<td>Unknown*</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Larceny (wrongful appropriation) - A call to the United States was made on a detainee's cell phone.</td>
<td>Company Grade Article 15: Forfeiture of $426.00 per month for one month and extra duty for 14 days.</td>
<td>Troop Commander</td>
<td>Closed</td>
<td>None.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
<td></td>
</tr>
<tr>
<td>Mr. X and Mr. Y</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Obstructing Justice - Influenced witness to lie on sworn statements in an effort to cover-up the pushing of detainees of the Samarra bridge.</td>
<td>Commanding General Article 15: Written Reprimand</td>
<td>Commanding General</td>
<td>Closed</td>
<td>There are four court-martials currently pending for the Samarra bridge incident.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
<td></td>
</tr>
<tr>
<td>Mr. Z</td>
<td>Unknown*</td>
<td>N/A</td>
<td>Obstructing Justice - Influenced witness to lie on sworn statements in an effort to cover-up the pushing of detainees of the Samarra bridge.</td>
<td>Commanding General Article 15: Written Reprimand</td>
<td>Commanding General</td>
<td>Closed</td>
<td>This involves the same incident as the previous entry.</td>
<td>MAJ (Criminal Law, OIC) (719)626-1424</td>
<td></td>
</tr>
</tbody>
</table>

*Names and Tag ID not recorded on the documents included with the Article 15a.
FACTS:
1. Detainee [BL] was either struck or fell at about 110530DEC03, and broke
   his jaw.
2. The BHA was under the supervision of [BL] at this time.
3. There were soldiers from 1/502, 3/327, 2/44, and 311 MI at the BHA at this
   time, serving as either guards or in other MI roles.
4. The detainees were being systematically and intentionally mistreated (heavy
   metal music, bullhorn, hit with water bottles, forced to perform repetitive
   physical exercises until they could not stand, having cold water thrown on
   them, deprived of sleep, and roughly grabbed off the floor when they could
   no longer stand).
5. The detainees had sand bags on their heads with “IED” written on them, the
   infantry soldiers stated they felt this was done to make them angry at the
   detainees, and it had exactly this effect.
6. The IO could determine if [BL] was hit or simply fell to the ground.
7. The IO could not determine who might have struck [BL] if he was struck.
8. The 3d & 4th Geneva Conventions were violated in regard to the treatment
   afforded to these detainees.
9. The IO made no recommendation as to potential disciplinary action.
10. All deficiencies at the Strike BHA have been corrected.

RECOMMENDATION: That [BL] be issued a GOMOR.

SYNOPSIS OF WITNESS STATEMENTS:

[BL] 1/502: We “always harassed the hell out of the detainees.” They
always told us to “smoke the detainees, but to not physically harm them.”

I saw the Chief throw them down, put his knee in his neck and back and grind
them into the floor. He would use a bull-horn and yell at them in Arabic and play heavy
metal music extremely loud, they got so scared they would urinate on themselves. He
was very aggressive and rough with the detainees.

We were told to only feed them crackers & water (may have been because of late
hour)

[BL] 1/502: They were setting it up to make the infantry guys angry by
writing IED on the sand bags over their heads.

[BL] (of Guard Detail) 3/327: We would force them to stay
awake, by banging on metal doors, playing loud music, screaming at them all night -
those were our instructions. We were told to not strike them.

[BL] & [BL] 3/327: Our instructions were to keep them awake,
smoke them, yell at them, but to not hurt them.
2/44: We “hazed” the detainees – we had a lot fall and hurt themselves.

1/502: I had IED on the sandbag over his head, the guards were all over him, screaming at him things like “you like to use IED’s motherfucker), and smoking him extra. They were smoking him really hard when I heard him cry in pain (he could have been hit or fell).

3/327: A lot of detainees had IED written on their bags. I was near when he fell and I helped him up. Interpreters (ICDC) blew cigarette smoke up their sand bag hoods. They also poured water on them to get them up, after the were exhausted from being smoked.

3/327: “We were yelling in a bullhorn at the detainees, making them do PT, things like flutter kicks, ups and downs, stuff like that.” We knew we were supposed to do these things because MI was already doing this stuff when we got there. He did not say it was part of the SOP. He stated, “we were briefed to keep them awake, do not let them talk, and to not hurt them.” I had seen “detainees collapse before because of the intensive physical training.”
MEMORANDUM FOR

ADC(O), 101st ABN DIV (AASLT) Mosul, Iraq
Staff Judge Advocate, 101st ABN DIV (AASLT) Mosul, Iraq
Commander, 311th MI BN, 101st ABN DIV (AASLT) Mosul, Iraq

SUBJECT: Recommendation concerning [redacted]

1. Recommendation. I recommend that no punitive action be taken with respect to [redacted] Commander, B Company, 311th MI BN, 101st ABN DIV (AASLT) as a result of the injury to detainee [redacted] that occurred on or about 10 December 2003 in the 2BCT detainee holding area.

2. Background. On the evening of 13 Jan 04 I was appointed by the SJA by direction of the ADC(O) to interview [redacted] concerning the incident that occurred on or about 10 Dec 03 resulting in injury to a detainee at the 2BCT holding area. On 14 Jan 04 I advised [redacted] of his right to interview him for approximately 3 hours and obtained a sworn statement from him. The rights waiver and sworn statement are attached to this memorandum as enclosure one and two. This memorandum is not a summary of the contents of the sworn statement.

3. The primary purpose of the interview with [redacted] was to determine if he failed to exercise the appropriate level of supervision and leadership with respect to the operations of the 2BCT holding area. I conclude that he did. More could have been done, as is the case with any Commander in any position, but the actions satisfied the minimum standards for supervision and leadership given the circumstances in this instance.

4. The AR 15-6 investigating officer, [redacted], concluded that [redacted] jaw was broken by an intentional act, but was unable to determine the actual injury-causing event. [redacted] jaw was broken either as a result of a fall or from a blow administered likely by [redacted]

5. [redacted] states that he checked on the 2BCT holding area 3-4 times per week and, on average, all of these checks but one per week would be unannounced. He states that he requested that 2BCT provide blankets, heaters, an entrance gate, latrines, running water and a shower and offered to provide a copy of the briefing he gave to Strike 5 and 3 making these requests. He states that when he requested heaters as the cooler weather moved in he was told by either Strike
AFZB-JA
SUBJECT: Recommendation concerning

5 or 3 "fuck 'em, they can freeze." and his soldiers paid for the lighting, wiring, and some other items out of his and their personal funds to attempt to make the holding area meet what they believed to be minimum standards. Since he was attached to 2nd BCT, believed he was required to go to 2BCT for fiscal and logistical support. He had prior experience as a field ordering officer. This briefing was provided after 9 Nov 03 when the BHA moved from a temporary facility to one in which the detainees would be kept overnight and for longer periods.

6. states that he never saw detainees with bags on their heads that had certain offenses listed on them and that he never saw any soldier strike a detainee with any object except, on one occasion, a soldier tapped a detainee on the top of the head with an empty water bottle and told him to "look at me" but the manner in which this was done was not inappropriate. Further, he believed that his ISG prepared a guard briefing and ensured that all guards were always briefed concerning their obligations and rules relating to the detainees before they were allowed to be a guard. This briefing included a statement that they were not allowed to strike a detainee and that their job was to PT the detainees and keep them moving. This is reflected in most of the statements in the report of investigation. believed that the detainees were fed three times per day and that they were allowed to sleep between approximately 2300 and 0700 each evening (if interrogated during this time period he stated the detainees would be allowed to rest during the day).

7. It is worth noting that unit was responsible for a number of missions including GSS support to top gun, talon, BSA LLVI, Ears over Mosul, THT19, running source operations, ACT drafting, link diagrams and analysis at Strike Main, two prophets and seven prophet hammers as well as normal supply and administrative operations of a fifty-two soldier company with additional interpreter support. This is not to mention reading every interrogation report on every detainee processed. Further, it is against doctrine to have interrogators or MI units to operate a BHA, this is an MP function. MI officers and enlisted receive no such training and the first time had ever read the Geneva Conventions applicable to prisoners was when he read the interrogation manual on his own initiative.

8. This is not to say that is relieved of his obligation to supervise those soldiers in his charge. He is not. However, if what states is accurate, the Division and certainly the Brigade (until, notably, just after this incident) utterly failed to provide either logistical or personnel support to operate a proper Brigade Holding Area. Military intelligence assets were used in a fashion they were never trained to do, did not understand, and with neither the logistical or personnel support to perform this rather important mission. This combined with the increased aggressiveness (note seizures based on sole source reporting began in Nov 03) on the part of the Division following a number of CF casualties in November resulted, not surprisingly, in the incident under investigation.
AFZB-JA

SUBJECT: Recommendation concerning

9. Under the circumstances, the actions of [redacted] with respect to the matter under investigation do not warrant punitive or adverse administrative action against him.

10. POC is the undersigned at 581-0710.

2 Encls:
1. DA-3881
2. DA-2823

001175

Annex B-114
SWORN STATEMENT

LOCATION
30th Military Police Detachment (CID), Fort Stewart, GA

DATE
14 Nov 03

TIME
12:23

FILE NUMBER

NAME

SSN

GRADE/STATUS

ORGANIZATION/ADDRESS:

I, [Redacted], want to make the following statement under oath:

BETWEEN 25 APR 03 - 15 AUG 03, I WAS DEPLOYED TO IRAQ. WHILE IN IRAQ, I SAW WHAT I THINK WERE WAR CRIMES ON THE PEOPLE OF IRAQ. IN MY MIND, MY CHAIN OF COMMAND DID NOTHING TO STOP THESE WAR CRIMES, AND ALLOWED THEM TO HAPPEN. MANY TIMES HARSH TREATMENT WAS GIVEN WITH MY I SG THERE WATCHING OVER. ONE PLACE I ALWAYS SAW THE TREATMENT WAS IN THE AREA 1ST PLT'S (CAMP RED) WAS. I'D SEE IRAQI CITIZENS MISTREATED. SOMETIMES THERE WOULD BE PRISONER'S WITH SAND BAGS ON THEIR HEADS, STANDING ON A BRICK WITH THEIR HANDS BEHIND THEIR HEAD, AND CONCERTINA WIRE AROUND THEM. IF THEY GOT OFF THE BRICK THEY WERE MANHANDLED. A LOT OF PICTURES WERE TAKEN AT THE TIME THAT 1ST PLT WAS AT CAMP RED. MANY SHOW THE MISTREATMENT OR CRIMES AGAINST THE PEOPLE THAT WERE CAUGHT AT CAMP RED. WHEN PRISONERS WERE WITH HEADQUARTERS PLATOON, THEY WERE PUT IN THE OPEN AREA WHERE THEY WOULD BE MADE TO SIT FOR 6 TO 12 HOURS AT A TIME IN THE HEAT AND SUN. THEIR HANDS WOULD BE TIED BEHIND THEIR BACKS, SOMETIMES TURNING THEIR HANDS PURPLE. WE WERE TOLD BY OUR I SG NOT TO GIVE THEM FOOD OR WATER BECAUSE THEY WOULD JUST KEEP COMING BACK FOR IT. IF WE DID GIVE THEM ANYTHING BY THE I SG, HE WOULD YELL AT US.

Q. Where is Camp Red located?
   A. Baghdad, Iraq.

Q. Who was the person in charge at Camp Red?
   A. CPT [Redacted] is the Battalion Maintenance Officer for 3/7 Infantry.

Q. How long were you at Camp Red?
   A. I was not actually at Camp Red, I just went there everyday.

Q. These people you feel were mistreated, were they military or civilians?
   A. I don't know for sure.

Q. Why were these people being detained at Camp Red?
   A. For trespassing. If they were caught inside 1st Platoons area, they were detained.

Q. What exactly did you see happen to these people?
   A. I saw them get pushed and kicked by soldiers in 1st Platoon.

Q. How many times did you see these people being pushed and kicked?
   A. Every day I went down there.

Q. Why were sandbags placed on the heads of the detainees?
   A. I have no idea.

Q. When you say the detainees were manhandled if they got off the bricks, what do you mean by that statement?
   A. They were jerked up.

Q. Who was the person in charge of the detainees?
   A. SFC [Redacted] is the Platoon Sergeant of 1st Platoon.

Q. Was he aware the detainees were being pushed and kicked?
   A. Yes.

Q. How do you know he was aware?
   A. I saw him there.

Q. Did you see him push or kick the detainees?

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Initials of Person Making Statement [Redacted]

Page 1 of 5 Pages

DA Form 2823 (Automated)

Annex B-115

DOD-DOACID000713
Statement of [redacted], taken at the 30th Military Police Detachment (CID), Fort Stewart, GA 31314, dated 14 Nov 02, Continued:

A. Yes, I saw him push their heads down while they were sitting on the ground. Sometimes the detainees would look up at him and he would push their heads down.
Q. What would happen to the detainees after being at Camp Red?
A. After 72 hours they would release them.
Q. You have provided three pictures to this office, where did these pictures come from?
A. They were given to me by other soldiers in 1st Platoon.
Q. I am showing you one of the pictures of a building, what does this picture depict?
A. That is the main building at Camp Red. This is where 1st Platoon stayed and where they kept the detainees.
Q. I am showing you one of the pictures of a soldier standing between two detainees, what does this picture depict?
A. It shows how the detainees were put inside the wired in area with bags over their heads.
Q. I am showing you one of the pictures of individuals lying on the ground, what does this picture depict?
A. That is what I was told the detainees were put on the ground and then a Bradley was backed up on the sidewalk to spook the people on the ground.
Q. Were you at Camp Red when the Bradley was backed up on the sidewalk while detainees were lying on the ground?
A. No.
Q. In the picture you can see what appears to rucksacks in the upper right hand corner. Is this correct?
A. Yes.
Q. Was it common for rucksacks to be hung on the outside of the Bradleys?
A. Yes.
Q. Do you know if there is a Bradley parked in the upper right hand corner of the picture?
A. Yes there is.
Q. Was this a common area for the Bradleys to be parked?
A. Yes.
Q. Could this Bradley have been parked prior to the individuals being placed on the ground beside it?
A. I have no idea.
Q. Do you know why the Bradley was backed up on the sidewalk?
A. I was told it was to spook the detainees.
Q. Were the detainees given food and water?
A. I saw them with water. I never saw them eat.
Q. Did you see any soldiers shoot any of the detainees?
A. No.
Q. Did you see any soldiers stab any of the detainees?
A. No.
Q. Did you see any soldiers cut any of the detainees?
A. No.
Q. Did you see any soldiers choke any of the detainees?
A. No.
Q. Did you see any soldiers place a noose around the necks of detainees?
A. No.
Q. Did you see any soldiers sexually assault any of the detainees?
A. No.
Q. Did you see any soldiers throw urine or feces on any of the detainees?
A. No.
Q. Did you see any of the detainees being dragged by a vehicle?
A. No.
Q. Did you see any of the detainees being physically harmed?
A. No.
Q. How were the hands of the detainees cuffed behind their backs?
A. Sometimes with zip-ties or 550 cord.
Q. Were zip-ties or 550 cord the only means of restraining detainees by your unit?
A. Yes.
Q. Is there anything you would like to add to this statement?

Initials of Person Making Statement [redacted]

DA Form 2823 (Automated) FOR OFFICIAL USE ONLY

Annex B-116 DOD-DOACID000714
Statement of [redacted] taken at the 30th Military Police Detachment (CID), Fort Stewart, GA 31314, dated 14 Nov 03, Continued:

A. No.///END OF STATEMENT///

AFFIDAVIT

I, [redacted] have read or had read to me this statement, which begins on page 1 and ends on page 3. I fully understand the contents of the entire statement made by me. The statement is true and I have initialed all corrections and the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

WITNESS:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 14th day of November at the 30th Military Police Detachment, Fort Stewart, GA 31314

(Signature of Witness)

(Typed Name of Witness)

(Organization of Witness)

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ART 136, UCMJ

(Authority To Administer Oath)

Initials of Person Making Statement

Page 7 of 7 Pages

DA Form 2823 (Automated)

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Annex B-117

DOD-DOACID000715
DEPARTMENT OF THE ARMY
UNITED STATES ARMY CRIMINAL INVESTIGATION COMMAND
9TH MILITARY POLICE GROUP (CID)
78TH MILITARY POLICE DETACHMENT (CID) (FWD)
BAGHDAD, IZ
APC AE 0934Z

CIMPR-FR

3 Aug 04

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: CID REPORT OF INVESTIGATION – FINAL (C)/SSI -0177-04-CID259-8259-
/5C2B/5Y2E/5X1

DATES/TIMES/LOCATIONS OF OCCURRENCES:
1. UNKNOWN DATE AND TIME; AL-BAGHDADI AIR BASE, IZ

DATE/TIME REPORTED: 23 Jul 2004, 0900 HRS

INVESTIGATED BY: SA, SA, SA

SUBJECT: 1. (UNKNOWN); (NFI); [AGGRAVATED ASSAULT (INSUFFICIENT EVIDENCE)]
[CRUELTY AND MALTREATMENT (INSUFFICIENT EVIDENCE)] [CONSPIRACY (INSUFFICIENT EVIDENCE)]

5. VICTIM: 1. (UNKNOWN); (NFI); [AGGRAVATED ASSAULT (INSUFFICIENT EVIDENCE)] [CRUELTY AND MALTREATMENT (INSUFFICIENT EVIDENCE)] [CONSPIRACY (INSUFFICIENT EVIDENCE)]

INVESTIGATIVE SUMMARY:

On 21 Jun 04, this office received Request for Investigation (RFI) 0290-04-CID001 from the United States Army Criminal Investigation Command, 6010 6th Street, Fort Belvoir, VA 22050-5506 (USACIDC), which requested this office investigate allegations documented in an excerpt from the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation, dated Feb 04.

The conduct of this investigation could not determine if the offenses of Aggravated Assault, Cruelty and Maltreatment, and Conspiracy occurred. During the course of this investigation, the identity of the victim could not be ascertained.

STATUTES:

Article 128, UCMJ: Aggravated Assault (Insufficient Evidence)
Article 93, UCMJ: Cruelty and Maltreatment (Insufficient Evidence)
Article 81, UCMJ: Conspiracy (Insufficient Evidence)

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Annex B-118
EXHIBITS/SUBSTANTIATION:

Attached:

1. Agent's Investigation Report (AIR) of SAI, 29 Jul 04, detailing the receipt of RFI; coordination with CPT [redacted] of the 3rd Command Support Group (CSG); and the 22nd Military Police Battalion.

2. AIR of SAI, 23 Jul 04, detailing coordination with the 22nd Military Police Battalion, Camp Victory, IZ.

3. International Committee of the Red Cross Report, 10 Feb 04.

Not Attached:

None.

The originals of Exhibits 1 and 2 are forwarded with USACRC copy of this report. The location of the original of Exhibit 3 is unknown.

STATUS: This is a Final Report. Commander's Report of Disciplinary Action Taken is not required.

Report Prepared By:

[Signature]

Special Agent

Distribution:

1-DIR, USACRC, 6010, 6th Street, Fort Belvoir, VA 22060-5506 (original)
1-Thru: CDR, 22rd MP BN (CID), APO AE 09342
   Thru: CDR, 3rd MP Group (CID)
   To: CDR, USACIDD, ATTN: CIOP-ZA, Fort Belvoir, VA 22080
1-USACIDD, ATTN: Ms [redacted] (email only)
1-PMO, MNF-I (email only)
1-CID LNO, MNF-I, APO AE 09335 (email only)
1-Office of the Staff Judge Advocate, III Corps, ATTN: CPT [redacted] (email only)
1-File

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LAW ENFORCEMENT SENSITIVE
Annex B-119
BASIS FOR INVESTIGATION: About 0900, 21 Jun 04, this office received Request for Investigation (RFI) 0290-04-CID001 from the United States Army Criminal Investigation Command, 6010 6th Street, Fort Belvoir, VA 22060-5506 (USACIDC), which requested this office investigate allegations documented in an excerpt from the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation, date Feb 04.

About 1300, 21 Jun 04, SA reviewed the excerpt included in RFI 0290-04-CID001, which reflected 25 detainees alleged they were abused while detained at the Al-Baghdadi Air Base. These detainees alleged they were forced to sit on their knees with their hand cuffed behind their backs for long periods of time; they endured frequent beatings on various parts of their bodies; and were subjected to sleep deprivation; and other types of maltreatment. (See excerpt for details)

About 1300, 23 Jun 04, SA and SA coordinated with CPT, Office of the Staff Judge Advocate, Multi-National Force - Iraq (MNF-I), Baghdad, Iraq, who reviewed the files maintained by his office. The review did not disclose any information pertaining to this investigation. CPT stated ICRC has never released names of alleged victims, due to possible repercussions directed toward the detainees. CPT provided a copy the ICRC report on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation, date Feb 04. A review of the report did not disclose any names relative to this investigation. (See report for details)

About 1330, 23 Jun 04, SA and SA coordinated with COI, Staff Judge Advocate, MNF-I, Baghdad, Iraq, who advised no contact should be made with the ICRC due to the sensitive relationship they have with the Coalition Forces. Also, the ICRC respects the confidentiality of the detainees and will not provide any names of the victims due to the fear of possible repercussions directed towards the detainee.

About 1315, 29 Jul 04, SA coordinated with 22nd MP BN (CID), Camp Victory, Iraq and obtained the full identity of MA, Office of the Staff Judge Advocate, CENTCOM, MacDill AFB, FL ///LAST ENTRY///
During administrative review by 22nd Military Police (MP) Battalion (BN), (CID) (FWD), APO AE 09342 it was determined this office needed to re-open this investigation as a Report of Investigation (ROI) to complete additional investigative activity. This office needs to locate, fully identify, and interview Maj [Redacted] Chief, International Law, CENTCOM-CCJA (NFI) to obtain additional information to assist this investigation.///LAST ENTRY///

DODDOACID-004136

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<td>23 Jul 04</td>
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DODDOACID-004136

PROTECTIVE MARKING IS EXCLUDED FROM AUTOMATIC TERMINATION (Para i3, AR 340-16) (When Data Is Entered)

Annex B-121
Referred to:

U.S. CENTRAL COMMAND
7115 SOUTH BOUNDARY BLVD
ATTN: CCJ6-DM
MACDILL AIR FORCE BASE
FLORIDA 33621-5101

MS. JACQUELINE SCOTT
scottj@centcom.smil.mil
(813) 827-5341/2830
DATE: 26 JULY 2004

FROM: SAC, 78TH MILITARY POLICE DET (CID) (FWD)
TO: DIRECTOR, USACRC, USACIDC, FORT BELVOIR, VA
    CDR, HQUSACIDC ATTN: CIOP-2A, FORT BELVOIR, VA
    CDR, 22ND MILITARY POLICE BATTALION (CID) (FWD)
    CDR, 3D MILITARY POLICE GROUP (CID)
    CDR, 78TH MILITARY POLICE DET (CID) (FWD)
    MNF-I, CHIEF OF STAFF, DETAINEE OPS
    PROVOST MARSHAL, MNF-I
    LNO CID, MNF-I (FOR FURTHER DISTRIBUTION)

SUBJECT: CID REPORT -INITIAL/SSI - 0177-04-CID259-80266-
        /5C2B/5Y2E/SX1

DRAFTER: SA
RELEASE: SA 67C-166-1

1. DATES/TIMES/LOCATIONS OF OCCURRENCES:
   UNKNOWN DATE AND TIME; AL BAGHDADI AIR BASE, IZ

2. DATE/TIME REPORTED: 23 JUL 2004, 0900 HRS

3. INVESTIGATED BY: SA
   SA
   67C-166-1

4. SUBJECT: 1. (UNKNOWN); (NFI); [AGGRAVATED ASSAULT]
   [CRUELTY AND MALTREATMENT] [CONSPIRACY]

5. VICTIM: 1. (UNKNOWN); (NFI); [AGGRAVATED ASSAULT]
   [CRUELTY AND MALTREATMENT] [CONSPIRACY]

6. INVESTIGATIVE SUMMARY: THE INFORMATION IN THIS REPORT
   IS BASED UPON AN ALLEGATION OR PRELIMINARY INVESTIGATION
   AND MAY CHANGE PRIOR TO THE COMPLETION OF THE
   INVESTIGATION.

   THIS IS AN "OPERATION IRAQI FREEDOM" INVESTIGATION.

ON 21 JUN 04, THIS OFFICE RECEIVED REQUEST FOR
INVESTIGATION (RFI) 0290-04-CID001 FROM THE UNITED STATES
ARMY CRIMINAL INVESTIGATION COMMAND, 6010 6TH STREET, FORT
BELVOIR, VA 22060-5506 (USACIDC), WHICH REQUESTED THIS
OFFICE INVESTIGATE ALLEGATIONS DOCUMENTED IN AN EXCERPT
FROM THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) ON
THE TREATMENT BY THE COALITION FORCES OF PRISONERS OF WAR
AND OTHER PROTECTED PERSONS BY THE GENEVE CONVENTIONS IN

UNCLASSIFIED - FOR OFFICIAL USE ONLY

DODDOACID-004138 51

Annex B-123
IRAQ DURING ARREST, INTERNMENT AND INTERROGATION, DATED FEB 04.

PRELIMINARY INVESTIGATION REVEALED NUMEROUS DETAINEES AT CAMP VIGILANT, BAGHDAD CENTRAL CONFINEMENT FACILITY, ABU GHRAIB, IZ (BCCF) ALLEGED THEY WERE ABUSED WHILE DETAINED AT THE AL-BAGHDADI AIR BASE. THE DETAINEE'S ALLEGED THEY WERE FORCED TO SIT ON THEIR KNEES WITH THEIR HAND RESTRAINED—BEHIND-THEIR BACKS FOR LONG PERIODS OF TIME; THEY ENDURED FREQUENT BEATINGS ON VARIOUS PARTS OF THEIR BODIES; WERE SUBJECT TO SLEEP DEPRIVATION; AND OTHER TYPES OF MALTREATMENT.

ON 23 JUN 04, COORDINATION WITH THE OFFICE OF THE STAFF JUDGE ADVOCATE, MULTINATIONAL FORCE - IRAQ, BAGHDAD, IZ, DISCLOSED THE ICRC HAS NOT RELEASED THE NAMES OF THE VICTIMS DUE TO POSSIBLE REPRERCUSSIONS DIRECTED TOWARD THE DETAINEE'S.

ON 23 JUN 04, A REVIEW OF THE COMPLETE REPORT GENERATED BY THE ICRC DISCLOSED NO FURTHER INFORMATION REGARDING THE IDENTITIES OF THE ALLEGED VICTIMS.

ON 24 JUN 04, THIS INVESTIGATION WAS CLOSED IN THE FILES OF THIS OFFICE.

ON 23 JUL 04, DURING AN ADMINISTRATIVE REVIEW OF THIS CASE FILE, IT WAS DETERMINED A REPORT OF INVESTIGATION SHOULD BE INITIATED AND FURTHER INVESTIGATIVE ACTIVITY CONDUCTED.

EFFORTS ARE ON GOING TO LOCATE, FULLY IDENTIFY, AND INTERVIEW THE UNKNOWN SUBJECT(S) AND UNKNOWN VICTIMS.

INVESTIGATION CONTINUES BY USACIDC.

7. COMMANDERS ARE REMINDED OF THE PROVISIONS OF AR 600-8-2 PERTAINING TO SUSPENSION OF FAVORABLE PERSONNEL ACTIONS AND AR 380-67 FOR THE SUSPENSION OF SECURITY CLEARANCES OF PERSONS UNDER INVESTIGATION.

8. CID REPORTS ARE EXEMPT FROM AUTOMATIC TERMINATION OF PROTECTIVE MARKING IN ACCORDANCE WITH CHAPTER 3, AR 25-55.
## INVESTIGATIVE PLAN

<table>
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<tr>
<th>DATE NOTED</th>
<th>PLANNED ACTIVITY</th>
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<tr>
<td>21 Jun 04</td>
<td>Locate, fully identify, and interview unknown victims</td>
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</tr>
<tr>
<td>21 Jun 04</td>
<td>Determine location of Al-Baghdadi Air Base</td>
<td></td>
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<tr>
<td>21 Jun 04</td>
<td>Obtain complete copy of ICRC Report</td>
<td></td>
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<tr>
<td>21 Jun 04</td>
<td>Determine what unit manned the holding facility at Al-Baghdadi Air Base</td>
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<tr>
<td>21 Jun 04</td>
<td>Locate, fully ID, and interview ICRC Doctor who examined unidentified victim</td>
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<tr>
<td>21 Jun 04</td>
<td>Determine identity of detainees who died in Saddam Hussein Islamic School</td>
<td></td>
</tr>
<tr>
<td>21 Jun 04</td>
<td>Coordinate with MAJ [REDACTED]</td>
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### MISCELLANEOUS ACTIVITY

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<td>INITIAL SRC REVIEW</td>
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### CONTACTS/PHONE NUMBERS

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### INVESTIGATIVE STANDARDS

- **Victims Interviewed**
  - 24 hours
- **Eye Witnesses**
  - 24 hours
- **Interviewed Evidence**
  - 1 duty day
- **Evidence Deposited**
  - 5 duty days
- **Lab Requests**
  - 5 duty days
- **RFA's Sent Out**
  - 10 duty days
- **Meaningful Inv. Activity**
  - 15 duty days
- **RFA Follow Up**
  - 15 duty days
- **Known Subj. Finals**
  - 15 duty days
- **Unfounded Finals**
  - 15 duty days
- **Unknown Subj. Finals**
  - 30 cal days
- **Action Taken**
  - 30 cal days

---

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Annex B-125

DODDOACID-004140
TIME, DATE, AND AGENT

SUMMARY OF INVESTIGATIVE ACTIVITIES

8902-21 Jul 04
67c-1,66-1

992-22 Jul 04
67c-1,66-1

MC-23 Jun 04

21 Jun 04
67c-1,66-1

23 Jun 04
67c-1,66-1

22 Jun 04

23 Jun 04
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23 Jun 04
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23 Jun 04
67c-1,66-1

28 Jun 04
67c-1,66-1

23 Jun 04
67c-1,66-1

24 Jun 04

67c-1,66-1

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LAW ENFORCEMENT ATTORNEY

PREVIOUS EDITIONS OF THIS FORM WILL BE USED UNTIL EXHAUSTED

Annex B-126
DURING ADMINISTRATIVE REVIEW BY 25TH MILITARY POLICE (MP) BATTALION (BN), (CID) (FDG), AE 08342 IT WAS DETERMINED THIS OFFICE NEEDED TO RE-OPEN THIS INVESTIGATION AS A REPORT OF INVESTIGATION (ROI) TO COMPLETE ADDITIONAL INVESTIGATIVE ACTIVITY. THIS OFFICE NEEDS TO LOCATE, FULLY IDENTIFY, AND INTERVIEW MAJ [REDACTED], CHIEF, INTERNATIONAL LAW, 57C-1, 66-3, CENTCOM-COMA (AFR) TO OBTAIN ADDITIONAL INFORMATION TO ASSIST THIS INVESTIGATION

TO SA [REDACTED] FOR RE-ASSIGNMENT 67C-1, 66-1

26 JUL 04 57C-1, 66-1
DRAFTED 26 JUL 04 TO SAC FOR REVIEW

26 JUL 04
IN/OUT DISPATCHED

1) CONTACT RIO
2) CONTACT W/ SAC FOR ASSISTANCE 57C-1, 66-1
3) CONTACT W/ SA [REDACTED] FOR ASSISTANCE 67C-1, 66-1

27 JUL 04
RESPONSE TO SAC REVIEW
1. AND
2. WILL DO
3. WILL DO

27 JUL 04
67C-1, 66-1

29 JUL 04
67C-1, 66-1

DISCUSSED W/ SAC WILL DRAFT FINAL AS NO INFORMATION IS

29 JUL 04
OBTAIN SOCIAL SECURITY NUMBER OF MAJ [REDACTED]

29 JUL 04 67C-1, 66-1

DISCUSSED W/ SAC WILL DRAFT FINAL AS NO INFORMATION IS

Annex B-127
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<td>2. Riser on required.</td>
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<td>3. No evidence collected.</td>
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<td>Original Files returned</td>
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<td>to AEC.</td>
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<td>67C-3,663</td>
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<td>Sent email to MAB concerning information retained by</td>
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<td>ICRC to be forwarded to this office</td>
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<td>On 18 Aug 04, this file was reopened to make contact w/ MAB for an effort to possibly</td>
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<td>ID victims.</td>
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<td>File back to case agent.</td>
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<td>Sent email to MAB.</td>
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<td>Coordinated w/ MNF-I SSA who related COL email:</td>
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PREVIOUS EDITIONS OF THIS FORM WILL BE USED UNTIL EXHAUSTED

Annex B-128
21. In Camp Vigilant, the section of Abu Ghraib prison were most persons deprived of their liberty held for security reasons were confined, the ICRC interviewed persons deprived of their liberty who alleged to have been ill-treated by CF soldiers while temporary held in Al-Baghdadi Air Base. Out of the 70-80 persons deprived of their liberty that reported to have been held there, 25 alleged to have suffered ill-treatment. They stated that they had been made to sit on their knees for long hours while handcuffed in the back, that they had endured frequent beating on various parts of the body, including the genitals, while hooded, and that they had been subjected to sleep deprivation. A method described in the allegations consisted in forcing persons deprived of their liberty to lie face down, their hands cuffed behind their back and shackled to their ankles for two to three hours. While in this position, soldiers would allegedly insert in their mouths cloths full of dust and hot pepper. One person deprived of his liberty arrested on 21 August alleged that he had been hooded, beaten and placed naked in front of an air conditioning machine while cold water was thrown on his body. A dog, initially with a muzzle, attached him with its paws and then bit him on the right thigh (according to the examination of the ICRC doctor, he had marks compatible with a dog bite). In the right shoulder he had a hematoma and linear marks compatible with repeated whipping or beating. He had wrist marks compatible with tight flexi-cuffs. The ICRC also collected allegations of deaths as a result of harsh internment conditions, ill-treatment, lack of medical attention, or the combination thereof, notably in Tikrit holding area formerly known as the Saddam Hussein Islamic School.
<table>
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LAW ENFORCEMENT SENSITIVE

Annex B-130

DODDOACID-004145
CID has been tasked to investigate all allegations of Detainee Abuse within the Theater of Operations for Iraq. We currently have approximately 50 open actions, ranging from a slap in the face to deaths. We are required on a weekly basis to provide investigative updates to CID Command, who in turn briefs the SECDEF, at the end of the week. It has been nothing less than a great challenge identifying whether or not the detainees are providing false information, as you can probably imagine. Our office consists of five agents. We do some traveling in the local area, but are limited.

Currently, we have two allegations of abuse that have originated from the International Committee of the Red Cross. One of the victims has been identified as Mr. [REDACTED]. The other victim is purely identified as an Iraqi Detainee at the Al-Balad Air Base during the time frame of 23 Jul 04. Further identifying information pertaining to these victims would greatly assist this office in investigating these allegations of abuse by Coalition Forces.

Any assistance provided is greatly appreciated.

SA
Detainee Abuse Task Force
DSN 822
MEMORANDUM FOR Commander, 3rd Military Police Group (CID), USACIDC
(ATTN: CIOP-COP), 4699 North 1st Street, Forest Park, GA 30297

SUBJECT: Request for Investigation (0290-04-CID001)

1. On 2 Jun 04, this headquarters received information from the Detainee Assessment Task Force, USACIDC, Ft Belvoir, VA, regarding excerpts from the Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation, dated Feb 04, wherein a detainee reported being abused while detained at Al-Baghdadi Air Base, to include a dog bite.

2. Coordination was made with MAJ [redacted] Chief, International Law, CENTCOM CCJA, who related the Multinational Force-Iraq (MNF-I), has overall responsibility for the Iraq theater of operations and is the senior headquarters to CJTF-7. According to MAJ [redacted] the MNF-I would be the responsible party to make both policy and legal determination concerning allowing USACIDC access to ICRC employees. As such, this headquarters was unable to obtain additional information concerning the referenced ICRC allegation. A search of all available USACIDC data failed to disclose the initiation of a USACIDC investigation concerning the referenced ICRC allegation.

3. Request a Report of Investigation be initiated concerning the information reflected above.

4. Request acknowledgment of this RFI no later than 24 Jun 04. Further, request the sequence/report of investigation (ROI) number of the investigation no later than 1 Jul 04. A response to this RFI, to include sequence/ROI number and the status of the investigation, will be forwarded to this headquarters, ATTN: CIOP-COP, no later than the above suspense date. If no ROI is initiated, that information will be provided to this headquarters. All correspondence will clearly identify the HQUUSACIDC control number.

FOR OFFICIAL USE ONLY LAW ENFORCEMENT SENSITIVE

Annex B-132

DODDOACID-004147

077-04-CID0279
SUBJECT: Request for Investigation (0287-04-CID001)

2. Point of contact for this action is CW2 [redacted] at (703) 806-XXXX or [redacted]@elvoir.army.mil.

FOR THE DEPUTY CHIEF OF STAFF, G-3:

[Signature]

1 Encl as

CWO, MP
Chief, Investigative Operations Division

Annex B-133
From: [REDACTED]
Sent: Thursday, September 09, 2004 11:55 PM
To: [REDACTED]
CC: [REDACTED]
Subject: FW: Abuse Allegations

Chief 67C-4,66-1

Glad to meet you. I'm the legal representative to the CENTCOM Detainee Tiger Team. We also maintain a detainee abuse database. I'll try to help.

To restate your questions:

1) do we have any information concerning alleged abuse to Mr. [REDACTED] as reported by the ICRC?
   a. Do you know where the abuse took place?
   b. What type of abuse was it? (presumably physical to some extent but could also be mental/emotional)
   c. Any indication of when the abuse took place or at what point of capture, transfer, or detention?

2) do we have any information concerning alleged abuse at Al-Baghdadi Air Base to an unknown victim as reported by the ICRC?
   a. What type of abuse was it? (presumably physical to some extent but could also be mental/emotional)
   b. Any indication of when the abuse took place or at what point of capture, transfer, or detention?

COL [REDACTED]

Sir. Request your assistance by finding the ICRC reports concerning the allegations above.

R

Do these ring any bells? Please check the database.

Original Message:

From: [REDACTED]
Sent: Thursday, September 09, 2004 1:45 AM
To: [REDACTED]
Subject: FW: Abuse Allegations

Sir.

We would like to get your assistance in identifying a possible abuse victim. The case agent has tried to make contact with MAJ [REDACTED] but has been unsuccessful. Please see the email traffic below.

Thanks

Chief 67C-4,66-1

Annex B-134
SSG MNC-I CID Special Agent

From: Special Agent @vcmain.hq.soc.army.mil on behalf of SSG MNC-I CID

Sent: Friday, September 24, 2004 12:10 AM

To: centcom.army.mil

Subject: ICRC Information

Dear Sirs,

Two weeks ago, SWD coordinated with you concerning obtaining information related to detainee abuse allegations reported by the ICRC. In order for this office to conduct a fair, thorough, and timely investigation, there is more information needed about the victims of the allegations. This information is being sought for investigative purposes only. There is an allegation made by a Mr. [Redacted] of abuse allegations at Al Baghdadi Air Base, and other allegations where the identification of subjects in the ICRC reports is simply "the victim."

v/r

[Redacted]

Detainee Abuse Task Force
22nd NE EN (CID) (PKD)
APO AE 09542

"The sword of justice has no scabbard" - Antoine De Riveral

Annex B-135
Greetings. Last week, CW2 [redacted] coordinated with you concerning obtaining information related to detainee abuse allegations reported by the ICRC. The allegations that have been mentioned pertain to a Mexican Internment Serial Number [redacted], abuse allegations at the Al Bregadi Air Base, and other various locations involving an unknown victim(s).

You continued assistance is appreciated.

Sincerely,

Defense Abuse Task Force
231st MP BN (CID); PWD
APO, AE 99342
DSN: 316-822
EMAIL: [redacted]

"Heaven is where I am. - Voltaire"
To: CW2 MNC-I Special Agent
Subject: RE: Abuse Allegations

Maj 67C-366-8

Currently, we have two allegations of abuse that have originated from the International Committee of the Red Cross. One of the victims has been identified as Mr. The other victim is purely identified as an Iraqi Detainee at the Al-Baghdadi Air Base during the time frame of 23 Jul 04. Further identifying information pertaining to these victims would greatly assist this office in investigating these allegations of abuse by Coalition Forces.

I had previously coordinated with you last week regarding the above persons. I was wondering if you had a chance to review my previous correspondence.

Any assistance provided is greatly appreciated.

Sgt
Detainee Abuse Task Force
DSN 822

Annex B-137
AUTOPSY EXAMINATION REPORT

Name: [BLANK]
SSAN: [BLANK]

Date of Birth: Unknown, age approx. 35 yrs.
Date/Time of Death: 10 Dec 2002/0200z
Date/Time of Autopsy: 13 Dec 2002/1000
Date of Report: 25 Feb 2003

Circumstances of Death: Approximately 35 year old Afghan male detainee who was found unresponsive restrained in his cell in the Bagram Collection Point, and pronounced dead on arrival at the 339th CSH, Bagram Air Field, Afghanistan.

Authorization for Autopsy: The Armed Forces Medical Examiner, IAW 10 USC 1471.

Identification: Visual; Post mortem dental examination performed; Fingerprints and DNA specimen obtained.

CAUSE OF DEATH: Blunt force injuries to lower extremities complicating coronary artery disease

MANNER OF DEATH: Homicide

FINAL AUTOPSY DIAGNOSES:

1. Blunt force injuries to bilateral lower extremities with rhabdomyolysis
   a. Extensive soft tissue hemorrhage with muscle necrosis
      i. Involving bilateral legs, extending from upper thighs to upper calves and bilateral inguinal regions
      ii. Nearly circumferential muscle damage, from subcutis to level of periosteum of femurs
      iii. Histologically, extensive muscle destruction with necrosis
b. Rhabdomyolysis
   i. Urine and serum positive for myoglobin
   ii. Brown discoloration of urine

c. Hemorrhage of bilateral knee joint capsules

d. Diffuse erythema and contusions of skin of posterior and lateral thighs and upper calves, and bilateral inguinal regions

II. Coronary artery disease
   a. Atherosclerotic plaque of proximal left anterior descending coronary artery with 70-80% luminal occlusion; 50% mid LAD luminal occlusion
   b. Histologically, myocardial sections show no significant histopathologic changes (Cardiovascular pathology consultation)

III. Multiple superficial abrasions, contusions, and crusts of bilateral wrists, anterior ankles, nose, and ears

IV. Toxicology, Armed Forces Institute of Pathology
   a. Heart blood and vitreous fluid negative for ethanol
   b. Urine negative for drugs of abuse
EXTERNAL EXAMINATION

The body is that of a thin, normally developed, unclad Afghan male. The body is 69" in height, appears consistent with a weight of 122 pounds as reported in the medical record, and appears compatible with the reported age of 35 years. The body is cold. Rigor is present to an equal degree in all extremities. Lividity is present and fixed on the posterior surface of the body, except in areas exposed to pressure. The skin is moderately pigmented. The head is normocephalic. The scalp hair is dark and shaved close, <2mm in length. Facial hair consists of a dark brown beard and mustache. The irides are brown. The corneae are clear. The conjunctivae are pale and dry. The sclerae are white and free of petechia. The external auditory canals, external nares and oral cavity are free of foreign material and abnormal secretions. The nasal skeleton is palpably intact. The lips are without evident injury, and both the upper and lower frenulum are intact. There are approximately 8 small petechia on the upper gingiva. The teeth are natural and in good condition. The chest is unremarkable. The abdomen is flat and soft. On the back of the head in the occipital scalp, there is a well-healed 2 cm curvilinear scar. There is a well-healed circular 1 cm diameter scar on the lateral upper right arm, and there is a 3 cm linear scar on the palmer base of the right thumb. On the back of the left elbow, there is a 1 cm diameter scar. Across the upper back, there are multiple punctate scars. The extremities show normal development and range of motion. The fingernails are short and intact. The external genitalia are those of a normal adult uncircumcised male with both testes descended. The posterior torso is without note.

EVIDENCE OF THERAPY

There is a nasogastric tube and an endotracheal tube secured with white tape, both appropriately placed. There are four EKG tabs on the upper right chest, upper left chest, mid chest, and lower left abdomen. Over the sternum, there is a 5 x 3 cm contusion, consistent with resuscitation efforts.

EVIDENCE OF INJURY

HEAD AND NECK: On the upper right forehead, there are two linear abrasions, 0.3 and 0.5 cm in length. On the upper left forehead, there is a 0.5 x 0.2 cm abrasion. Down the bridge of the nose, there is a vertically oriented 2 x 1.3 cm abrasion with crust formation. On the back of head in the upper central occipital scalp, there are three crusted abrasions, 0.3 cm, 0.2 cm, and 0.2 cm in diameter. Behind the pinna of the left ear, there are multiple curvilinear abrasions with crust formation and focal contusion, forming two vertically oriented parallel lines, 1.5 x 0.3 cm laterally and 1.0 x 0.2 cm medially. Behind the pinna of the right ear, there are two crusted abrasions, 0.5 x 0.2 cm and 0.3 x 0.2 cm. On the right anterior aspect of the neck, there is a faint, irregular contusion with focal excoriation and fine linear crust formation, 4 x 5 cm in aggregate dimension. On the left anterior neck, there is a 0.5 x 0.3 cm abrasion.
CHEST: Upon reflection of the skin of the right lateral chest, there is a 15 x 7 cm area of hemorrhage within the superficial aspect of the intercostal muscles at the level of the 5-6th ribs. On dissection, there is no deep muscular hemorrhage, and there are no rib fractures or any evidence of any intrathoracic trauma.

ABDOMEN and BACK: On the lower right abdomen, there is a 0.4 x 0.2 cm abrasion with crust formation. On the lateral upper left buttock, there is a 6 x 0.2 cm linear abrasion with crust formation.

UPPER EXTREMITIES: On the back of the right elbow on the medial aspect, there is a 2 x 1.5 cm brown contusion. Around the ventral (palmar) and lateral (radial) right wrist, there is a 12 x 2 cm band of erythema and red-brown contusion, which is the widest at the lateral aspect. Within the lateral aspect of the contusion, there is focal superficial abrasion, up to 0.3 cm in diameter. On the back of the hand, there is a 0.3 cm diameter crusted abrasion.

On the back of the left elbow, there is a lateral 2 x 2 cm brown contusion and a medial 0.6 x 0.5 cm crust. Around the ventral and lateral left wrist, there is a 8 x 2 cm band of erythema and red-brown contusion. The contusion is widest at the lateral aspect, and there is a 0.3 cm diameter abrasion within the ventral lateral region. On the back of the left hand, beneath the index finger, there is a 0.5 x 0.3 cm crusted abrasion.

LOWER EXTREMITIES: There is bilateral contusion of inguinal regions. In the right inguinal region, there is a 30 x 7 cm region of erythema and red-brown contusion, extending from the lower abdomen down the medial thigh. In the left inguinal region, there is a 30 x 15 cm region of erythema and red-brown contusion, extending from the lower abdomen down the anterior and medial thigh. Upon reflection of the skin, there is underlying diffuse, superficial and deep intramuscular hemorrhage bilaterally. There is no apparent contusion of the scrotum, and no evidence of testicular hemorrhage.

Over the lateral and posterior right leg, extending from the upper thigh down to just below the knee, there is a ill defined band of erythema and red-brown contusion. On the posterior aspect of the knee, the discoloration is the darkest, forming a more discrete brown-purple contusion. On the anterior right ankle, there is a 1.3 x 1 cm crusted abrasion.

Over the lateral and posterior left leg, extending from the upper thigh down to just below the knee, there is a similar ill defined band of erythema and red-brown contusion, which is most pronounced on the posterior knee. On the lateral left knee, there is also a 3 x 5 cm abrasion. Beneath the left knee, there is a 7 x 2 cm red-brown contusion. On the anterior left ankle, there is a 1.5 x 1 cm crusted abrasion. On the top of the right foot, at the base of the first toe, there is a 0.5 x 0.2 cm crusted abrasion.

Upon reflection of the skin of the legs, there is bilateral diffuse hemorrhage from the subcutis, through all of the muscle layers, extending to the periosteum. On the right, the hemorrhage extends over the entire posterior and lateral aspect of the leg from the upper thigh, just beneath the buttock, to the mid calf. On the left, the hemorrhage is nearly circumferential, with only slight sparing of the medial thigh, and extends from the upper thigh, just beneath the buttock, to the mid calf. Bilaterally, there is extensive muscle breakdown and grossly visible necrosis with focal crumbling of the tissue.

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Annex B-141

DOD 003159
is bilateral intracapsular hemorrhage of the knee joints, but both knees are palpably stable.

INTERNAL EXAMINATION

BODY CAVITIES:
The body is opened by the usual thoraco-abdominal incision and the chest plate is removed. No adhesions or abnormal collections of fluid are present in any of the body cavities. All body organs are present in the normal anatomical position. The subcutaneous fat layer of the abdominal wall is 1/4" thick. There is no internal evidence of penetrating injury to the thoraco-abdominal region.

HEAD: (CENTRAL NERVOUS SYSTEM)
The scalp is reflected. The calvarium of the skull is removed. The dura mater and falx cerebri are intact. There is no epidural, subdural or subarachnoid hemorrhage present. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical, and the gyri demonstrate the usual orientation and configuration. The structures at the base of the brain, including cranial nerves and blood vessels, are intact. Coronal sections through the cerebral hemispheres revealed no lesions. The ventricles are normal. Transverse sections through the brain stem and cerebellum are unremarkable. The brain is of normal size, and there is no evidence of any brain swelling or herniation. The posterior fossa is unremarkable. The upper portion of the spinal cord viewed through the foramen Magnum is unremarkable.

NECK:
Examination of the soft tissues of the neck, including strap muscles, thyroid gland and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact. A posterior neck dissection reveals no evidence of hemorrhage or trauma.

CARDIOVASCULAR SYSTEM:
The pericardial surfaces are smooth, glistening and unremarkable; the pericardial sac is free of significant fluid and adhesions. The heart appears to be of normal size and weight. The coronary arteries arise normally and follow the usual distribution. There is an atherosclerotic plaque within the proximal left anterior descending coronary artery, with approximately 70-80% occlusion and focal 50% occlusion of the mid LAD, but with no evidence of thrombus formation. The other coronary arteries are widely patent, without evidence of significant atherosclerosis or thrombosis. The chambers and valves exhibit the usual size-position relationship and are unremarkable. The myocardium is dark red-brown, firm and unremarkable; the atrial and ventricular septa are intact. The aorta and its major branches arise normally, follow the usual course, are widely patent with scattered fatty intimal streaks, and are free of any other abnormality. The venae cavae and their major tributaries return to the heart in the usual distribution and are free of thrombi. The left ventricle is 1.3 cm in thickness, and the right ventricle is 0.4 cm in thickness. (See Cardiovascular Pathology report)

RESPIRATORY SYSTEM:
The upper airway is clear of debris and foreign material; the mucosal surfaces are smooth, yellow-tan and unremarkable. The pleural surfaces are smooth, glistening and unremarkable bilaterally. The pulmonary parenchyma is red-purple, exuding slight amounts of bloody fluid; no focal lesions are noted. The pulmonary arteries are normally developed, patent and without thrombus or embolus.

**LIVER & BILIARY SYSTEM:**
The hepatic capsule is smooth, glistening and intact, covering dark red-brown, moderately congested parenchyma with no focal lesions noted. The liver is of normal size. The gallbladder contains 3 ml. of green-brown, mucoid bile; the mucosa is velvety and unremarkable. The extrahepatic biliary tree is patent, without evidence of calculi.

**ALIMENTARY TRACT:**
The tongue exhibits no evidence of recent injury. The esophagus is lined by gray-white, smooth mucosa. The gastric mucosa is arranged in the usual rugal folds and the lumen is essentially empty, containing only a film of dark fluid. The small and large bowel are unremarkable. The pancreas has a normal pink-tan lobulated appearance and the ducts are clear. The appendix is present and unremarkable.

**GENITOURINARY SYSTEM:**
The renal capsules are smooth and thin, semi-transparent and strip with ease from the underlying smooth, red-brown cortical surfaces. The kidneys are of normal size. The cortices are sharply delineated from the medullary pyramids, which are red-purple to tan and unremarkable. The calyces, pelves and ureters are unremarkable. The urinary bladder is distended, containing approximately 200 ml of dark brown urine. The bladder mucosa is gray-tan and unremarkable. The prostate is small and unremarkable, and the testes are free of hemorrhage or masses.

**RETICULOENDOTHELIAL SYSTEM:**
The spleen has a smooth, intact capsule covering red-purple, moderately firm parenchyma; the lymphoid follicles are unremarkable. The spleen is of normal size. The regional lymph nodes appear normal. There is minimal residual thymus present.

**ENDOCRINE SYSTEM:**
The pituitary, thyroid and adrenal glands are unremarkable.

**MUSCULOSKELETAL SYSTEM:**
See “Evidence of Injury”. Otherwise, no bone or joint abnormalities are noted, and muscle development is normal.

**MICROSCOPIC EXAMINATION**

**SKELETAL MUSCLE, LOWER EXTREMITIES:** Multiple sections of skeletal muscle show extensive interstitial hemorrhage, widespread disruption of the myocytes, and focal areas of confluent muscle necrosis, with minimal inflammatory response.
HEART: Sections of the myocardium reveal intact striated muscle fibers. There is no evidence of atrophy, hypertrophy, and recent or old myocardial infarction. (See Cardiovascular Pathology consult)

LUNGS: The alveolar spaces and small air passages are expanded and contain no significant inflammatory component or edema fluid. The alveolar walls are thin and not congested. The arterial and venous vascular systems are normal. The peribronchial lymphatics are unremarkable.

LIVER: The hepatic architecture is intact. The portal areas show no increased inflammatory component or fibrous tissue. The hepatic parenchymal cells are well preserved with no evidence of cholestasis, fatty metamorphosis, or sinusoidal abnormalities.

Spleen: The capsule and white pulp are unremarkable. There is minimal congestion of the red pulp.

Adrenals: The cortical zones are distinctive and well supplied with lipid. The medullae are not remarkable.

Kidneys: The subcapsular zones are unremarkable. The glomeruli are mildly congested without cellular proliferation, mesangial prominence, or sclerosis. The tubules are unremarkable. There is no interstitial fibrosis or significant inflammation. There is no thickening of the walls of the arterioles or small arterial channels.

BRAIN: Multiple sections of brain demonstrate an unremarkable configuration of gray and white matter, which is appropriate for age. There is no evidence of atrophy, inflammation, hemorrhage, or neoplasm.

OTHER PROCEDURES:

1. Blood, urine, vitreous, and tissue samples were submitted for toxicologic examination.
2. Tissue was retained for possible histological examination and DNA identification.
3. Documentary photographs and dental radiographs were taken.
4. The dissected organs were returned to the body.
5. Portions of heart and histological sections of myocardium submitted to Cardiovascular Pathology, AFIP, report below:

AFIP Cardiovascular Pathology Consultation, Dr. [Name]

"Heart: Heart weight unknown (received in fragments); closed foramen ovale; normal valves; normal atrial and ventricular cavity dimensions; left ventricular free wall thickness
AUTOPSY REPORT A02-95

1.3 cm; interventricular septum thickness 1.2 cm; right ventricle thickness 0.4 cm; grossly unremarkable myocardium; myocardial sections demonstrate no significant histopathologic changes.

Coronary arteries: Normal ostia; right dominant circulation; focal moderate-to-severe atherosclerosis; remaining gross arteries demonstrate 35% lumen area narrowing of the left main and 25% lumen area narrowing of the proximal left anterior descending; submitted histologic sections demonstrate 70% lumen area narrowing of the proximal left anterior descending."

OPINION: This approximately 35-year-old Afghan male detainee died of blunt force injuries to the lower extremities, complicating underlying coronary artery disease. The blunt force injuries to the legs resulted in extensive muscle damage, muscle necrosis, and rhabdomyolysis. Electrolyte disturbances, primarily hyperkalemia (elevated blood potassium level) and metabolic acidosis can occur within hours of muscle damage. Massive sodium and water shifts occur, resulting in hypovolemic shock and vasodilatation, and later, acute renal failure. The decedent’s underlying coronary artery disease would compromise his ability to tolerate the electrolyte and fluid abnormalities, and his underlying malnutrition and likely dehydration would further exacerbate the effects of the muscle damage. The manner of death is homicide.

MAJ, USAF, MC, FS
Assistant Medical Examiner

LTC, MC, USA
Regional Medical Examiner

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Annex B-145
Office of the Armed Forces Regional Medical Examiner  
Landstuhl Regional Medical Center  
Landstuhl, GE - APO AE 09180  
DSN (314) 486-6781/7492  
Comm 001 49 (0) 6371 86 6781/7492

FINAL AUTOPSY REPORT  
(Addendum)

Name:  
SSAN:  
Date of Birth: UNK  
Date of Death: 6 JUN 03  
Date of Autopsy: 10 JUN 03  
Date of Report: 22 OCT 03  
Autopsy No.: A03-51  
Rank/SVC: CIV Detainee  
Org: EPW  
Place of Death: Nasiriyah, Iraq  
Place of Autopsy: Talil, Iraq  
Investigative Agency: NCIS

Circumstances of Death: Decedent is a reported 52 y/o Iraqi Male, Civilian Detainee, who was found unresponsive outside in isolation at Whitehorse detainment facility; Nasiriyah, Iraq. He was pronounced at 1230 hours.

Authorization for Autopsy: Office of the Armed Forces Medical Examiner, IAW 10 USC 1471

Identification: Visual recognition; fingerprints and specimens for DNA obtained

Cause of Death: Strangulation

Manner of Death: Homicide

Autopsy Diagnoses:

Head, neck and torso injuries:
1. Right hyoid bone fracture with associated recent hemorrhage
2. Rib fractures; right anterior 4-7, left anterior 4-5
3. Contusions; mid abdomen, back and buttocks extending to the left flank
4. Abrasions, lateral buttocks

Extremity injuries:
1. Contusions, back of legs and knees
2. Abrasions; knees, left fingers and encircling left wrist
3. Lacerations and superficial cuts, right 4th and 5th fingers

Toxicology: Negative
Opinion: Based on these autopsy findings and the investigative and historical information available to me, this believed to be 52 year old Male died as a result of asphyxia (lack of oxygen to the brain) due to strangulation as evidenced by the recently fractured hyoid bone in the neck with soft tissue hemorrhage extending downwards to the level of the right thyroid cartilage. Although the right superior horn of the thyroid cartilage was palpably intact prior to excision, an underlying hairline fracture cannot be entirely ruled out. Additional findings at autopsy include blunt force injuries, predominantly recent contusions (bruises), on the torso and lower extremities. The abrasions encircling the left wrist are consistent with the use of restraints. There is no evidence of defense injuries or natural disease. The alcohol detected on toxicologic analysis is most likely due to postmortem production. The manner of death in my opinion is homicide.

This is the second addendum report. The first addition has been made to reflect the presence of a second Forensic Pathologist at autopsy who concurs with the findings and opinions listed in this report. On the second addendum report, changes are made to clarify the descriptions of the larynx in the Internal Examination and Evidence of Injury Sections.

Original signed, on file

LTC(P), MC, USA
ARMED FORCES REGIONAL MEDICAL EXAMINER
I. POSTMORTEM EXAMINATION:

A. GENERAL: The postmortem examination is performed at Talil Air Base, Iraq. The autopsy is performed by Forensic Pathologist, LTC(P), MC, USA, the Armed Forces Regional Medical Examiner (AFRME). Assisting in the autopsy procedures is SSGT, MC, USAF, Forensic Assistant.

The autopsy is witnessed by Special Agent Naval Criminal Investigation Service. Additional witnesses at autopsy include COL MC USAF, Forensic Pathologist.

The autopsy is started at approximately 0500 hours.

B. PHOTOGRAPHY: Photographs are taken by SSGT and COL and are on file in the Medical Photography Section, Landstuhl Regional Medical Center, Landstuhl, Germany.

C. AUTHORIZATION: The autopsy is authorized by the Armed Forces Medical Examiner under Title 10 U.S. Code, Section 1471, with an SF 523 signed by the Armed Forces Regional Medical Examiner, appointed representative.

D. IDENTIFICATION: The remains are presumptively identified visually by Naval Criminal Investigation Agents and authorities at the Whitehorse detention facility. Specimens for DNA analysis are obtained.

E. MEDICAL RECORD REVIEW: Medical and dental records are not available for review.

II. GROSS AUTOPSY FINDINGS:

A. CLOTHING AND PERSONAL EFFECTS: The remains are presented for autopsy unclothed with no accompanying clothing or personal effects.

B. EXTERNAL EXAMINATION: The remains are those of a well developed, well nourished apparent middle eastern male of average build that appears compatible with the listed age of 52 years. Length is approximately 69 inches. The body shows signs of moderate decomposition as evidenced by greening and darkening of the skin, bloating, marbling, skin slippage and severe visceral autolysis. Injuries are described below in the Evidence of Injury Section.

RIGOR: Passed.

LIVIDITY: Fixed, faintly visible on the posterior dependent surfaces.

TEMPERATURE: That of the refrigeration unit.
SKIN: Unremarkable except for decomposition changes and evidence of injury described below in the Evidence of Injury Section.

HAIR: Straight black-gray hair, up to ½ inches in length covers the head. Facial hair consists of a short gray beard. The remaining body hair, the color of the black head hair, is in a normal adult male distribution.

HEAD/SCALP/FACE: The head is normocephalic, and except for decomposition changes including slippage, the scalp is intact and the facial features are normally developed.

EARS: Unremarkable.

EYES: Brown irides surround 4 mm pupils. The globes are dried and flattened. The cornea are mildly clouded and the sclerae are predominantly white. The conjunctivae are unremarkable. There is no evidence of petechiae.

NOSE: Well formed and unremarkable except for postmortem artifact.

MOUTH/LIPS: Unremarkable.

TEETH: Dentition is in fair repair.

NECK/ CHEST/ ABDOMEN/ BACK/ ANUS: Except for injuries described below in the Evidence of Injury Section and decomposition changes, unremarkable. The abdomen is bloated and protuberant.

EXTERNAL GENITALIA: Normal adult circumcised male with bilaterally descended testes. There is prominent scrotal bloating.

ARMS/HANDS/FINGERNAILS: Unremarkable except for injuries described below in the Evidence of Injury Section and decomposition changes. The fingernails are short, irregular yet intact.

LEG/FEET/TOENAILS: Unremarkable, except for injuries described below in the Evidence of Injury Section and decomposition changes.
C. INTERNAL EXAMINATION:

BODY CAVITIES: The body is opened by the usual Y-shaped incision. The pleural and peritoneal surfaces are smooth and dusky. The pericardium is unremarkable. There are no fibrovascular adhesions or abnormal collections of fluid except for a moderate amount of decomposition fluid. The mediastinum and retroperitoneum show no antemortem abnormalities. The leaves of the diaphragm are intact and the organs are normally disposed.

HEAD/CENTRAL NERVOUS SYSTEM: Reflection of the scalp shows the usual scattered reflection petechiae. The calvarium is intact. Removal of the calvarium shows the epidural space to be normal. No collections of subdural or subarachnoid blood are evident. The brain is removed in the usual manner. Marked softening and discoloration due to decomposition precludes definitive evaluation. No abnormalities are otherwise identified. The base of the skull is unremarkable.

NECK: Examination of the soft tissues of the neck and internal structures by a separate, bloodless layerwise dissection reveals the hyoid bone fracture and associated soft tissue hemorrhage described below in the Evidence of Injury Section. No non-traumatic abnormalities are identified.

CARDIOVASCULAR SYSTEM: The heart is of normal size and shape. The epicardium is intact and unremarkable. The chambers demonstrate the usual shape and configuration with no gross hypertrophy. The coronary arteries are normally disposed and there is no atherosclerosis. Marked autolytic changes preclude definitive evaluation. No evidence of natural disease or injury is identified. The aorta follows the usual course and exhibits no atherosclerosis. The origins of the major vessels are normally disposed and unremarkable. The great vessels of venous return are in the usual position and unremarkable.

RESPIRATORY SYSTEM: The larynx, trachea, and bronchi show no non-traumatic abnormalities. Injuries are described below in the Evidence of Injury Section. The right and left lungs are normally shaped with no evidence of natural disease on cut sections. Marked autolytic changes preclude definitive evaluation.

HEPATOBIILARY SYSTEM: The liver is of normal size and shape. It has a smooth, dusky capsule. Cut surfaces show the usual anatomic landmarks with a dark brown-green parenchyma. Marked decomposition and autolytic changes preclude definitive evaluation. The gallbladder is empty. Except for decomposition changes no abnormalities are identified.

INTESTINAL TRACT: The pharynx and esophagus are unremarkable. The stomach lies in the normal position and contains approximately 20 ml of dark brown fluid without food particles, tablets, capsules or residues. Except for decomposition changes, the small bowel and large bowel are unremarkable. The appendix is unremarkable.
LYMPHORETICULAR SYSTEM: The spleen is of normal size and weight and is unremarkable except for decomposition changes. The thymus is not identified. Lymph nodes where visualized show no notable pathologic change.

URINARY SYSTEM: The right and left kidneys are of normal size and weight. The cortical surfaces are smooth and dull with marked decompositional changes precluding definitive evaluation of the parenchyma. The pelves and ureters are unremarkable. The bladder is empty.

INTERNAL GENITALIA: The prostate is palpably unremarkable. On cut sections, the testes show no abnormal masses or evidence of injury.

ENDOCRINE SYSTEM: Except for marked autolysis the pituitary, thyroid, adrenals, and pancreas show the usual anatomic features without evidence of natural disease or injury.

MUSCULOSKELETAL SYSTEM: Fractures are described below in the Evidence of Injury section. Except for autolysis, skeletal muscle demonstrates the normal appearance. The bone and bone marrow, where visualized, is unremarkable.

D. EVIDENCE OF MEDICAL TREATMENT: None.

E. EVIDENCE OF INJURY: Multiple blunt and sharp force injuries:

(1) HEAD AND NECK INJURIES:
   a. On internal examination the distal right portion of the hyoid bone is palpably and visibly fractured with prominent associated recent hemorrhage extending downwards to the soft tissues of the right thyroid cartilage. The right superior horn of the thyroid cartilage is palpably intact.

(2) TORSO INJURIES:
   a. External examination: An 8 x 6 inch irregular red-purple contusion is centered over the umbilicus on the mid lower abdomen. On the mid lower back is a 3 x ¼ inch elongated red-purple contusion. A 2 x 1 inch irregular abrasion is on the left flank. On the right lateral buttock, is a 4 x 4 inch irregular abrasion with the suggestion of a “brush burn” pattern. A 4 ¼ x 3 inch irregular red-purple contusion is on the left posterolateral buttock. On the left lower posterior-lateral buttock is a ¼ inch greatest dimension abrasion.

   b. On internal examination the ribs are fractured with associated hemorrhage as follows: Right anterior 4-7; left anterior 4-5.

(3) EXTREMITY INJURIES: A 2 x 1 inch red-blue irregular contusion is on the left anterior arm just above the elbow. On the left wrist, a discontinuous focally ½ inch thick abrasion encircles the wrist. Small ¼ inch irregular abrasions are on the prominences of the distal left phalangeal joints of the first and second fingers.
Superficial, predominantly linear cuts and irregular healing lacerations, ½ to 1” greatest dimension, are on the 4th and 5th fingers of the right hand. Multiple irregular abrasions in association with red-purple contusions cover both anterior knees. The back of the left knee has patchy, irregular blue-purple contusions in association with a 3” greatest dimension irregular dark blue-purple contusion. On the back of the left upper thigh is a 7 x 7 inch red-purple contusion with prominent subcutaneous and perimuscular hemorrhage. On the back of the mid thigh is a 3 x 1 inch irregular red-purple contusion with associated subcutaneous hemorrhage. The right upper thigh has a 6 inch greatest dimension irregular-purple contusion with associated subcutaneous hemorrhage extending to the perimuscular area. Beneath this just above the back of the right knee is a 3 x 2 inch irregular red-purple contusion. On the back of the right lateral ankle is a ½ inch irregular slightly crusted abrasion.

III. MICROSCOPIC EXAMINATION: Not performed due to damage resulting from decompositional gases and severe thermal artifact during transport.

IV. TOXICOLOGY: Samples of blood, urine and tissue samples of liver and kidneys are submitted for toxicologic analysis at the Armed Forces Medical Examiner’s Forensic Toxicology Laboratory, Armed Forces Institute of Pathology (AFIP), Washington, DC:


See attached report.

V. OTHER PROCEDURES AND SPECIAL STUDIES: None performed.

VI. EVIDENCE: None collected.
CERTIFICATE OF DEATH (OVERSEAS)
Acta de décès (D'Outre-Mer)

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<td>10 JUN 2003</td>
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I HAVE VIEWED THE REMAINS OF THE DECEDENT AND DEATH OCCURRED AT THE TIME INDICATED AND FROM THE CAUSES AS STATED ABOVE.

J'ai exécuté les examens médicaux du décès et je constate que le décès est survenu à l'heure indiquée et à l'issue des causes énumérées ci-dessus.

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DD FORM 2064, APR 1977
REPLACES DA FORM 3565, 1 JAN 1972 AND DA FORM MSE-PBRP, 29 SEP 1973, WHICH ARE OBSOLETE.

USAFAV 1/200

MEDCOM - 174

Annex B-153
ARMED FORCES INSTITUTE OF PATHOLOGY
Office of the Armed Forces Medical Examiner
1413 Research Blvd., Bldg. 102
Rockville, MD 20850
1-800-944-7912

AUTOPSY EXAMINATION REPORT

Name: [Redacted]
SSAN: [Redacted]
Date of Birth: unknown
Date of Death: 13 June 2003
Date of Autopsy: 17 June 2003
Date of Report: 11 May 2004

Autopsy No.: ME03-273
AFIP No.: 2882655
Rank: Civilian, Iraqi national
Place of Death: Iraq
Place of Autopsy: Baghdad
International Airport, Baghdad, Iraq

Circumstances of Death: This approximately 45 year-old civilian Iraq male detainee died in U.S. custody approximately 12 hours after a reported escape attempt by the decedent. Physical force was required to subdue the detainee, and during the restraining process, his forehead hit the ground.

Authorization for Autopsy: The Armed Forces Medical Examiner, IAW 10 USC 1471.

Identification: Visual; Fingerprints and DNA samples obtained

CAUSE OF DEATH: Closed Head Injury with a Cortical Brain Contusion and Subdural Hematoma

MANNER OF DEATH: Homicide
FINAL AUTOPSY DIAGNOSES:

I. Closed Head Injury
   a. Subarachnoid hemorrhage over brain
   b. Cortical brain contusion, right occipital region, 4 x 4 x 3 cm
      i. Intracortical hemorrhage with fresh erythrocytes, fibrin, and polymorphonuclear leukocytes
      ii. Negative for fibroblasts, macrophages, capillary proliferation, hemosiderin or iron
   c. Right subdural hematoma, 20 ml
      i. Fresh erythrocytes, fibrin, and polymorphonuclear leukocytes
      ii. Negative for fibroblasts, macrophages, capillary proliferation, hemosiderin or iron
   d. No skull fractures
   e. Left frontal subgaleal hemorrhage with scalp laceration
      i. Status post suturing of laceration

II. Additional Injuries
    a. Fracture right lateral 8th rib with soft tissue hemorrhage
    b. Multiple contusions, abrasions, and minor lacerations of head, torso, and extremities
    c. Abrasions and contusions around wrists and ankles, consistent with restraint
    d. Hemorrhage of right sternocleidomastoid muscle of neck
       i. Hyoid bone intact without hemorrhage or fracture

III. No evidence of natural disease within the limitations of the examination

IV. Toxicology: AFIP
    a. Volatiles: Blood and urine negative for ethanol
    b. Drugs: Urine positive for lidocaine; negative for all other screened medications and drugs of abuse
EXTERNAL EXAMINATION

The body is that of a well developed, well nourished unclothed adult male, received in a black body bag labeled with tag [Tag Number]. The body weighs approximately 150 lbs, is 66” in height and appears compatible with the reported age of approximately 45 years. The body temperature is that of the refrigeration unit. Rigor is present to an equal degree in all extremities. Lividity is present and fixed on the posterior surface of the body, except in areas exposed to pressure.

The scalp is covered with black hair averaging 2 cm in length. There is a black mustache and black facial stubble. The irides are brown, and the cornea are clear. The sclerae and conjunctivae are pale and free of petechiae. The ear lobes are not pierced. The external auditory canals and external nares are free of foreign material and abnormal secretions. The nasal skeleton is palpably intact. The lips are without evident injury. There is bloody fluid within the mouth, but no injuries are identified within the oral cavity. The teeth are natural and in good condition. Below the chin is a 1.5 cm well healed linear scar.

The neck is straight and the trachea is midline and mobile. The chest is symmetric and well developed. The abdomen is flat and soft. The extremities are well developed with normal range of motion. The fingernails are intact. No tattoos are evident. The external genitalia are those of a normal adult circumcised male. The testes are descended and free of masses. Pubic hair is present in a normal distribution. The buttocks and anus are unremarkable.

CLOTHING AND PERSONAL EFFECTS

No clothing items or personal effects are present on the body at the time of autopsy.

EVIDENCE OF THERAPY

There is an endotracheal tube appropriately placed. There is white tape with gauze in both antecubital fossae, overlying needle puncture marks and associated ecchymoses. There are needle puncture marks with associated ecchymoses on the upper anterior forearm. There are three EKG adhesive pads, two on the upper chest and one on the mid abdomen. There are three stitches placed in a laceration of the left forehead. In the left inguinal region, there is a 1 cm incised wound, consistent with a venous access attempt.

EVIDENCE OF INJURY

The ordering of the following injuries is for descriptive purposes only and is not intended to imply order of infliction or relative severity.

Head and Neck:

On the upper midline of the forehead, just below the hairline is a horizontally oriented 4 x 2 cm abrasion. On the upper left aspect of the forehead, there is a 1.5 cm previously sutured incision with a surrounding 3 x 2 cm abrasion. On the upper right aspect of the...
forehead, there is a 3 x 2 cm abrasion. At the right lateral edge of the right eye, extending up to the eyebrow and laterally along the orbital ridge, there is a 6 x 5 cm red contusion with focal abrasion along the bony prominence. On the right cheek, there is a central horizontally oriented 3 x 1 cm red contusion. On the upper lateral aspect of the left cheek, there is a horizontally oriented 3 x 1.5 cm abrasion. On the lower medial aspect of the right cheek, there are two 0.3 cm abrasions.

Above the left ear, at the crease between the pinna and the scalp, there is a 1 cm laceration. Behind the left ear, there is a 3 x 2 cm purple contusion. On the left lateral aspect of the neck, extending from behind the left ear anteriorly along the edge of the mandible, there is a 15 x 13 cm red contusion. Behind the right ear, there is diffuse erythema of the posterior aspect of the pinna and a 4 x 3 cm dark contusion. On the right lateral aspect of the neck, extending from behind the right ear anteriorly along the edge of the mandible, there is a 14 x 10 cm area with multiple small curvilinear abrasions and contusions, up to 0.5 cm in length. On the left anterior aspect of the neck, there is a diagonal 13 x 1.5 cm linear abrasion.

Across the back of the neck, there is a 25 x 10 cm area of diffuse erythema. Within this area, on the right lateral aspect of the neck, there are three horizontally oriented linear abrasions; a 2 x 2 cm superior abrasion, a mid 3 x 2 cm abrasion, and a 3 x 1 cm lower abrasion.

Upon reflection of the scalp, there is a 3 x 2 cm area of subgaleal hemorrhage of the left frontal region, surrounding the laceration. Upon removal of the calvarium, there is approximately 20 ml of clotted but soft and non-adherent subdural hemorrhage over the right side of the brain. There is diffuse subarachnoid hemorrhage over the brain. Serial sectioning of the brain reveals a 4 x 4 x 3 cm area of intracortical brain hemorrhage in the right occipital brain.

On internal examination of the neck, there is diffuse hemorrhage of the right sternocleidomastoid muscle. However, there is no hemorrhage of the anterior strap muscles of the neck, and the hyoid bone is intact and free of hemorrhage.

Chest and Abdomen:

On the anterior and lateral aspect of the right shoulder, there is a 10 x 13 cm irregular area of abrasion. Over the right clavicle, there are two diagonal 7 x 0.3 cm linear abrasions. Just below the left clavicle, there is a 4 x 2 cm irregular abrasion. On the anterior left shoulder, there is a 3 x 3 cm red contusion.

Over the mid chest, there is a 30 x 20 cm area of mottled erythema and red contusion. Within this area, over the sternum, there is a 7 x 5 cm red abrasion with focal linearity. On the lower left aspect of the chest, there is a diagonal 7 x 0.2 cm linear abrasion.
On the mid abdomen, just above the umbilicus, there is a healing 5 x 0.1 cm abrasion. On the lower abdomen, just to the right of midline, there is a 1.5 x 1 cm abrasion. On the lower left abdomen, there is a 1.5 x 1 cm abrasion.

On internal examination of the chest, there is a fracture of the lateral aspect of the right 8th rib with associated soft tissue hemorrhage.

Back:

Across the upper back, there is a horizontal 45 x 5 cm linear red contusion. At the left lateral edge of this band, there is a 4 x 2 cm abrasion on the posterior aspect of the shoulder. On the left lateral aspect of the upper back, there are two linear abrasions, 2 x 0.2 cm each.

Upper Extremities:

On the lower anterior aspect of the right upper arm, there are two linear abrasions, 2 x 0.2 cm each. On the back of the right elbow, there is a 9 x 4 cm red contusion.

Around the right wrist, there is a complex nearly circumferential abrasion. On the radial aspect (base of the thumb) of the wrist, there is a 4 x 8 cm abrasion. On the ulnar aspect (below the 5th finger) of the wrist, there is a 5 x 1.5 cm abrasion. Connecting these two abrasions and extending around the palmar aspect of the wrist are two linear bands of contusion with focal abrasion, 0.5 cm in width each. On the back of the right hand, below the 4th and 5th fingers, there is a diagonal 3 x 0.2 cm abrasion and a 3 x 0.1 cm abrasion.

On the lower anterior aspect of the left upper arm, there is a 1 x 1 cm abrasion. On the back of the left elbow, there is an 8 x 7 cm red purple contusion. On the anterior mid left forearm, there is a 1 x 1 cm abrasion.

Around the left wrist, there is nearly circumferential contusion. On the radial aspect (base of the thumb) of the wrist, there is a 3 x 4 cm abrasion. On the ulnar aspect (below the 5th finger) of the wrist, there is a 4 x 4 cm abrasion. Connecting these two abrasions, extending around the dorsal aspect of the wrist are two linear bands of contusion with focal abrasion, 0.3 cm in width each.

Lower Extremities:

On the anterior medial aspect of the mid right thigh, there is a 3 x 3 cm triangular shaped abrasion. On the anterior aspect of the lower right thigh, just above the knee, there is a 1 x 1 cm abrasion and a medial 7 x 5 cm red contusion. On the medial aspect of the knee there is a 1 x 1 cm abrasion. Just below the right knee, there is a 2 x 2 cm abrasion. Over the right popliteal fossa (back of the knee), there is a 15 x 10 cm red contusion.
Extending down the anterior aspect of the right lower leg, there is a vertically oriented 20 x 5 cm red contusion. Around the right ankle is a circumferential abrasion, ranging in width from 1 to 1.5 cm.

Just above the left knee, there is a 5 x 4 cm red contusion. On the lateral aspect of the left knee, there are three 1 cm abrasions, and on the lower mid aspect of the knee, there is a 3 x 2 cm abrasion. Just below the knee, there is a 2 x 1 cm abrasion. Over the left popliteal fossa (back of the knee), there is a 15 x 5 cm red contusion with a 3 x 4 cm abrasion at the lower edge.

Extending down the anterior aspect of the left lower leg, there is a vertically oriented 17 x 5 cm red contusion. Around the left ankle, there are two circumferential abrasions, 1 cm in width each and 1 cm apart. On the medial aspect of the left ankle, there is a 1 x 1.5 cm abrasion.

INTERNAL EXAMINATION

BODY CAVITIES:
The body is opened by the usual thoraco-abdominal incision and the chest plate is removed. No adhesions or abnormal collections of fluid are present in any of the body cavities. All body organs are present in the normal anatomical position. The vertebral bodies are visibly and palpably intact. The subcutaneous fat layer of the abdominal wall is 3 cm thick. There is no internal evidence of blunt force or penetrating injury to the thoraco-abdominal region.

HEAD: (CENTRAL NERVOUS SYSTEM)
The head has the previously described injuries. The scalp is reflected, and there are no skull fractures found. The calvarium of the skull is removed. The dura mater and falx cerebri are intact. There is no epidural hemorrhage present. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels, are intact. Coronal sections through the cerebral hemispheres reveal no evidence of infection or tumor. The ventricles are of normal size. Transverse sections through the brain stem and cerebellum are unremarkable. The dura is stripped from the basilar skull, and no fractures are found. The atlanto-occipital joint is stable. The brain weighs 1400 grams. (see “Neuropathology Report”).

NECK:
The neck has the previously described hemorrhage of the right sternocleidomastoid muscle. Examination of the other soft tissues of the neck, including strap muscles, thyroid gland and large vessels, reveals no abnormalities. All other anterior strap muscles of the neck are homogeneous and red-brown, without hemorrhage. The thyroid cartilage and hyoid bone are intact. The larynx is lined by intact white mucosa and is unobstructed. The thyroid gland is symmetric and red-brown, without cystic or nodular change. There is no evidence of infection or tumor, and the airway is patent. Incision and dissection of the posterior neck
demonstrates no deep paracervical muscular injury, hemorrhage, or fractures of the dorsal spinous processes.

**CARDIOVASCULAR SYSTEM:**
The pericardial surfaces are smooth, glistening and unremarkable; the pericardial sac is free of significant fluid and adhesions. A moderate amount of epicardial fat is present. The coronary arteries arise normally, follow a right dominant distribution and are widely patent, without evidence of significant atherosclerosis or thrombosis. The chambers and valves exhibit the usual size-position relationship and are unremarkable. The myocardium is dark red-brown, firm and unremarkable; the atrial and ventricular septa are intact. The left ventricle is 1.5 cm in thickness and the right ventricle is 0.4 cm in thickness. The aorta and its major branches arise normally, follow the usual course and are widely patent, free of significant atherosclerosis and other abnormality. The venae cavae and their major tributaries return to the heart in the usual distribution and are free of thrombi. The heart weighs 375 grams.

**RESPIRATORY SYSTEM:**
The upper airway is clear of debris and foreign material; the mucosal surfaces are smooth, yellow-tan and unremarkable. The pleural surfaces are smooth, glistening and unremarkable bilaterally. The pulmonary parenchyma is red-purple, exuding a moderate amount of bloody fluid; no focal lesions are noted. The pulmonary arteries are normally developed, patent and without thrombus or embolus. The right lung weighs 650 grams; the left 600 grams.

**LIVER & BILIARY SYSTEM:**
The hepatic capsule is smooth, glistening and intact, covering dark red-brown, moderately congested parenchyma with no focal lesions noted. The gallbladder contains 10 ml of green-brown, mucoid bile; the mucosa is velvety and unremarkable. The extrahepatic biliary tree is patent, without evidence of calculi. The liver weighs 2,000 grams.

**ALIMENTARY TRACT:**
The tongue is free of bite marks, hemorrhage, or other injuries. The esophagus is lined by grey-white, smooth mucosa. The gastric mucosa is arranged in the usual rugal folds, and the lumen contains approximately 20 ml of dark fluid. The small and large bowel are unremarkable. The pancreas has a normal pink-tan lobulated appearance and the ducts are clear. The appendix is present and is unremarkable.

**GENTOURINARY SYSTEM:**
The renal capsules are smooth and thin, semi-transparent and strip with ease from the underlying smooth, red-brown cortical surfaces. The cortices are sharply delineated from the medullary pyramids, which are red-purple to tan and unremarkable. The calyces, pelves and ureters are unremarkable. White bladder mucosa overlies an intact bladder wall. The urinary bladder contains 50 ml of dark yellow urine. The prostate gland is normal in size, with lobular, yellow-tan parenchyma. The seminal vesicles are unremarkable. The testes are free of mass lesions, contusions, or other abnormalities. The right and left kidneys each weigh 175 grams.
RETICULOENDOTHELIAL SYSTEM:
The spleen has a smooth, intact capsule covering red-purple, moderately firm parenchyma; the lymphoid follicles are unremarkable. The regional lymph nodes appear normal. The spleen weighs 300 grams.

ENDOCRINE SYSTEM:
The pituitary, thyroid and adrenal glands are unremarkable.

MUSCULOSKELETAL SYSTEM:
Muscle development is normal. No bone or joint abnormalities are noted.

MICROSCOPIC EXAMINATION

BRAIN: See “Neuropathology Report” below.

HEART: Sections of the myocardium reveal intact striated muscle fibers. There is no evidence of atrophy, hypertrophy, or recent or old myocardial infarction.

LUNGS: The alveolar spaces and small air passages are expanded and contain no significant inflammatory component or edema fluid. The alveolar walls are thin and not congested. The arterial and venous vascular systems are normal. The peribronchial lymphatics are unremarkable.

LIVER: The hepatic architecture is intact. The portal areas show no increased inflammatory component or fibrous tissue. The hepatic parenchymal cells are well-preserved with mild microvesicular and macrovesicular steatosis and focal cholestasis. There is focal benign nodule formation, and there are no sinusoidal abnormalities.

SPLEEN: The capsule and white pulp are unremarkable. There is minimal congestion of the red pulp.

KIDNEYS: The subcapsular zones are unremarkable. The glomeruli are mildly congested without cellular proliferation, mesangial prominence, or sclerosis. The tubules are well preserved. There is no interstitial fibrosis or significant inflammation. There is no thickening of the walls of the arterioles or small arterial channels. The transitional epithelium of the collecting system is normal.

Neuropathology Report (AFIP, Department of Neuropathology, Washington, D.C.)

“"The principle neuropathologic findings are subarachnoid, subdural, and intracortical hemorrhage. The hemorrhages consist of fresh erythrocytes, fibrin, and polymorphonuclear leukocytes. We do not identify fibroblasts, macrophages, capillary proliferation, or hemosiderin on H&E. An iron stain is also negative for hemosiderin."
The histologic features in this case indicate a hemorrhage of less than 48 hours duration. It is not possible histologically to be more specific.

The gross description of a left frontal skull lesion combined with a right occipital cortical lesion is consistent with a contrecoup contusion; the intracortical hemorrhages are also indicative of a contusion. We identify no other significant neuropathological changes.

**ADDITIONAL PROCEDURES**

- Documentary photographs are taken by OAFME photographers
- Specimens retained for toxicologic testing and/or DNA identification are: vitreous fluid, heart blood, urine, bile, and psoas muscle
- The dissected organs are forwarded with the body

**OPINION**

This approximately 45 year-old male civilian Iraqi detainee died of a closed head injury with a cortical brain contusion and a subdural hematoma while in U.S. custody. These injuries reportedly occurred when he hit his forehead while being subdued following an escape attempt, and the right occipital cortical brain hemorrhage is consistent with a recent contrecoup contusion.

The manner of death is homicide.

LTC, USAF, MC, FS
First Chief Deputy Medical Examiner
CERTIFICATE OF DEATH (OVERSEAS)
Dettee in Iraq

ORGANIZATION
Detainee in Iraq

NATION
Iraq

DATE OF BIRTH

SEX

RACE

MARRITAL STATUS

RELIGION

CAUSALITY

DISEASE OR CONDITION DIRECTLY LEADING TO DEATH
Closed Head Injury with a Cortical Brain Contusion and Subdural Hematoma

ANTICIPATORY CAUSES

OTHER SIGNIFICANT CONDITIONS

MODE OF DEATH
Natural

MANNER OF DEATH
Natural

DATE OF DEATH
13 Jun 2003

NAME OF PATHOLOGIST
LiCol, MC, USAF

DATE OF AUTOGRAPH
17 Jun 2003

AVIATION ACCIDENT
No

NAME OF MEDICAL OFFICER
First Chief Deputy Medical Examiner

GRADE
LiCol

INSTALLATION OR ADDRESS
Dover AFB, DE 19902

DATE
13 Jun 2003

SIGNATURE

1. Some diseases, injury or complication which caused death, but not alone or singly such as heart failure, etc.
2. Some conditions contributing to the death, but not related to the disease or condition causing death.
3. Principal cause of death, disease or condition which contributed to the death, but did not cause it, such as an arterial ulcer, etc.
4. Principal cause of death, disease or condition which contributed to the death, but did not cause it, such as an arterial ulcer, etc.
Narrative: On 11 Sep 03, 1LT SPC were performing guard duty at the FOB Packhorse detention facility. 1LT the Officer of the Guard, was standing less than twenty feet away from SPC on the breezeway portion of the facility facing into the facility's back yard when he heard a shot fired (Exhibit A). SPC a member of the guard force, was standing between 1LT and SPC when the shot was fired. SPC was standing in the hallway of the isolation cell portion of the facility. At some point, SPC looked away from the detainees in isolation in order to speak to SPC (Exhibit B). Within a few seconds of turning back to see the detainees, SPC raised his rifle, placed the selector on fire, and shot (Exhibit C). He was handcuffed with plastic “flexicuffs” at the time he was shot. Neither 1LT nor SPC saw pull the trigger. They were not in a position to see activity. The other detainee in the isolation cell, (Exhibit D). Upon hearing the shot, 1LT moved to SPC to assess the situation. According to 1LT stated, “He was standing right up next to the wire.” Initially, 1LT did not see any blood on the fallen and asked if he had indeed shot the detainee. SPC stated again that he had shot because he was standing next to the wire (Exhibit A). When 1LT noticed that was bleeding, he moved to the radio in the breezeway and called the 4th FSB TOC (Packhorse Mike) for assistance. SPC, who was guarding prisoners at a building directly across from the detention facility entrance, left his position to assess the situation at the main detention facility. Upon arriving at the scene, SPC asked for a combat lifesaver's bag and SPC went to the storage closet in the interview office to retrieve it (Exhibit E). SPC and SPC performed first aid on at this time. SPC went into the interview office and sat down. At around 2320, SSG and SGT medics, arrived. They assessed’s condition and transported him by ambulance to the aid station (Exhibit F). Upon arrival at the aid station, more life-saving steps were taken. 1LT the physician’s assistant on duty at the time; declared dead at approximately 2330 hrs (Exhibit G). The body was photographed by CPT assisting, as part of the 4th FSB’s initial inquiry.

Facts.

a. was a detainee at the FOB Ironhorse Detention Facility when he died of a gunshot wound to the abdomen on 11 Sep 03 at approximately 2315 hours. He had turned himself at FOB Arrow on 02 Sep 03 upon learning that he was a targeted individual from Operation Arrow Sky, conducted by TF 4-42 (Exhibit H). He and his brother were in separate isolation cells at the detention facility, he had been incarcerated in the isolation cell since 8 Sep 03. had been seen by

020495

except as noted (b)(6)
medics earlier in the day on 11 Sep. He had complained of joint and back pain and couldn’t sleep. The medics advised the guards, SPC D Co., 4th FSB, shot a guard once when he observed SPC E standing and touching the single strand concertina wire at his cell. SPC D Co., 4th FSB, did not give a verbal warning prior to firing his weapon. A round had already been chambered in the weapon. SPC D Co., 4th FSB, was aware that the medics had suggested that SPC demanded to stand and walk around in his cell in order relieve some of the joint and shoulder pain he had been experiencing while being held in the cell (Exhibit A and B). SPC D Co., 4th FSB, requested a lawyer before any questioning could be done. He provided a statement on DA Form 2823 during 4th FSB’s initial inquiry, but he was not read his rights (Exhibit B). In that statement, SPC D Co., 4th FSB, stated that the detainee had been fidgeting with his handcuffs earlier in the day. Furthermore, the detainee had been told not to speak. According to the statement, at about 2315 hours, SPC D Co., 4th FSB, said something in Arabic. SPC D Co., 4th FSB, who had been speaking with SPC D Co., 4th FSB, turned to look at the detainee and saw him standing near the wire and touching it. At that instant, SPC raised his weapon and fired.

d. There are conflicting accounts about the training that the guards received prior to assuming their duties at the detention facility. SPC D Co., 4th FSB, and SPC D Co., 4th FSB, were on their second full day of detention guard duty. They had received a briefing from 1LT on their duties, but SPC D Co., 4th FSB, did not recallany instructions with respect to graduated force IAW TF Ironhorse FRAGO 422 (Exhibit C). SPC D Co., 4th FSB, believed that they could shoot a detainee if the detainee approached the wire without permission. 1LT stated that he gave that order but with the understanding that verbal warnings and other measures would first be considered before applying lethal force. No rehearsals or drills had been conducted.

e. The guard force had wooden clubs readily available in order to deal with belligerent detainees using less than lethal force (Exhibit J). Upon initial set-up of the detention facility, the guard force did not have weapons inside of the detention facility. At some point between the initial set-up of the facility and 11 Sep 03, the 1st BCT Commander instructed the 4th FSB to have guards carry weapons inside of the wire to ensure the presentation of authority (Exhibit K).
The guard force has no written instructions and there is no written battalion guidance for the operation of the detention facility. Guards received their instructions verbally by the shift leader, in this case, 1LT (Exhibit A).

y. TF Ironhorse FRAGO 422, Maintenance of Law and Order, dated 16 May 03, provides guidance for the use of graduated force and specifically identifies a "Shout, Show, Shove, Shoot, Shoot" methodology (Exhibit L).

h. Paragraph 3-2f, Army Regulation 190-14, The Carrying of Firearms by Law Enforcement Personnel and Personnel Performing Security Duties, states that, "Deadly force is justified only under conditions of extreme necessity and as a last resort when all lesser means have failed or cannot be reasonably employed." Furthermore, paragraph 3-2g requires that personnel give an order to halt before firing (Exhibit M).

i. [redacted] stated that he received no warnings about what would happen if he tried to escape. He stated that none of the other prisoners provided the information. One prisoner held in the general population cell stated he had received a briefing on what would happen if he tried to escape (Exhibit D).

j. SPC [redacted] was described as overly aggressive by 1LT [redacted]. The other guards, SPC [redacted] and PFC [redacted], described SPC [redacted] as being unnecessarily vulgar towards the detainees. Also, SPC [redacted] had banged wooden clubs on the cell doors unnecessarily and had used vulgar language toward the prisoners on 10 Sep. 1LT [redacted] had corrected that behavior (Exhibits A, E, and N).

k. There is no indication that the detainee had been physically abused prior to being fatally shot. He had adequate medical attention for his aching back and joints; the guards understood that the detainees could stand up and stretch in order to relieve some of the discomfort. Adequate food and water had been given to the detainee (Exhibit G and F).

Findings: The convergence of several conditions resulted in the shooting of [redacted] on the evening of 11 Sep 03.

a. Statements reveal that there is sufficient cause to believe that SPC [redacted], knowingly or not, was in violation of Army use of force policy and TF Ironhorse directives governing the use of deadly force. No verbal warning was given, and no lesser means of force was considered before applying deadly force. Furthermore, the fact that [redacted] was handcuffed and his position on the floor in his cell once he was shot provide sufficient doubt about [redacted] intent to escape (Exhibits A, B, C, and V).

Except as noted

Annex B-166
b. There are insufficient instructions for guards in performing their duties. There are no written SOPs or post instructions for guards (Exhibits A and K). Instructions are given verbally by the shift leader, and the guards on-duty that evening had a different understanding of their responsibilities. For example, SPC [redacted] and PFC [redacted] did not have a round chambered in their weapons prior to the shooting—even though they were guarding isolated detainees—while SPC [redacted] and SPC [redacted] did. 1LT [redacted] did not have a round chambered in his weapon, either. SPC [redacted] and PFC [redacted] had an understanding of the use of force as it applied to the application of deadly force (Exhibit E and N). SPC [redacted] had not heard of graduated force or differing levels of force, nor did he remember receiving a briefing which covered verbal warnings prior to shooting an escaping detainee (Exhibit C).

c. The combination of loaded weapons within the confines of the detention facility, in addition to the inadequate number of guards on duty, created an environment conducive for the quick escalation to the use of deadly force. There were plenty of wooden clubs available to use in applying less than deadly force. SPC [redacted] had used a club before in order to rattle the cage doors. There were guards on duty at two different buildings with 56 detainees on 11 September. While the majority of detainees were in the general population, incarcerated in a large open room, there were eight others held in isolation cells who required increased visual surveillance. It is difficult for guards to maintain adequate situational awareness over such a dispersed operation. Furthermore,

d. The isolation cells in which the [redacted] brothers were held were unkempt and had [redacted] barriers. There were full MRE boxes in the cells which could provide materials for use as the barrier in place of the cell doors could have been improved, thus making it more difficult for detainees to move or negotiate, and making it clearer for guards to determine a detainee’s intent to escape. Without a witness who might have seen [redacted]’s actions which caused SPC [redacted] to shoot, it is difficult to determine his intent with respect to crossing the wire on the evening of the shooting.

e. Based on comments by the interviewees, the detention facility had been visited on numerous occasions by leaders in the chain of command. Shift leaders were either a senior NCO or an officer. The officer in charge of detainee operations was on site daily. The battalion commander had inspected on numerous occasions. The brigade commander had inspected the facility and provided guidance in handling the detainees. Detainees were adequately fed, had plenty of water, and received adequate medical attention. Detainees were allowed to conduct hygiene and had access to latrines.
Recommendations:

a. A criminal investigation should be initiated immediately in order to determine possible violations of the UCMJ by SPC [redacted]. Statements from 1LT [redacted], SPC [redacted], and PFC [redacted] indicate that SPC [redacted] exhibited overly aggressive behavior when around the detainees. The detainee was handcuffed when he was shot, and SPC [redacted] did not apply graduated force IAW established regulations and orders.

b. [Redacted]

c. [Redacted]

d. Clear the facility, especially holding cells, of MRE boxes, equipment, etc., that can be used as weapons or projectiles.

e. Improve the barrier system for the isolation cells. Two stacked strands of concertina wire would allow guards to better determine a detainee's intent to breach the wire and escape.

f. Improve the facility’s wire perimeter entrance to ensure that the entrance is closed off when not in use.

g. Develop a written SOP and provide guards with post instructions to ensure that guards are aware of approved procedures for the use of force, detainee handling, briefing procedures, and security of special population/isolated detainees.

h. Train the guard force on the SOP and ensure that rehearsals and drills are conducted to deal with special situations, such as medical emergencies, attempted escapes, and fights between prisoners.

FRANK Y. RANGEL, JR.
MAJ, MP
Investigating Officer
SECTION VI - AUTHENTICATION  (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE.  (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

_________________________________________
(Recorder)

_________________________________________
(Member)

_________________________________________
(Member)

_________________________________________
(Member)

_________________________________________
(Member)

SECTION VII - MINORITY REPORT  (para 3-13, AR 15-6)

To the extent indicated in inclusion , the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclusion, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclusion.)

_________________________________________
(Member)

_________________________________________
(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY  (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach a summary, if oral, as a numbered inclusion.)

_________________________________________

020500

Annex B-169
FINAL AUTOPSY REPORT

Name: [redacted]
SSAN: [redacted]
Date of Birth: Unk
Date Found: 04 NOV 2003
Date of Autopsy: 09 NOV 2003
Date of Report: 09 JAN 2004

Autopsy No.: ME 03-504
AFIP No.: 2903283
Rank: CIV, Iraqi National
Place of Death: near Baghdad, Iraq
Place of Autopsy: Mortuary Affairs, Camp Sayther, Baghdad International Airport

Circumstances of Death: This Iraqi National male was captured by Navy SEAL Team #7 and died while detained at Abu Ghraib Prison in Iraq.

Authorization for Autopsy: Office of the Armed Forces Medical Examiner, IAW 10 USC 1471

Identification: Visual Identification as per Investigating Agency

CAUSE OF DEATH: Blunt Force Injuries Complicated by Compromised Respiration

MANNER OF DEATH: Homicide
FINAL AUTOPSY DIAGNOSES:

I. Blunt Forces Injuries:
   A. Head:
      i. Right periorbital contusion and subconjunctival hemorrhage
      ii. Contusions of the right side of the face and nose
      iii. Parietal subgaleal and temporalis muscle contusions
      iv. Lower lip and buccal mucosa contusions
   
   B. Torso:
      i. Multiple cutaneous contusions and abrasions
      ii. Anterior and posterior chest wall contusions
      iii. Sternal contusion
      iv. Fractures of right anterior ribs 5&6 and left anterior ribs 3-6
      v. Left lung contusion
   
   C. Extremities:
      i. Multiple cutaneous abrasions and contusions

II. Ligature marks of the wrists and ankles

III. Remote Gunshot Wound of Torso (projectile removed from spleen)

IV. No significant natural diseases identified, within limitations of examination

V. Toxicology: negative
EXTERNAL EXAMINATION

The body is that of a well-developed, well-nourished 5ft 10-inch tall, 165-pound (estimated) Caucasian male. Lividity is fixed on the posterior aspect of the body. Rigor is present and symmetric on all extremities. The temperature is cold, that of the refrigeration unit.

The scalp is covered with brown hair with temporal graying and frontal balding. Facial hair consists of a close trimmed brown and grey beard and mustache. The irides are brown and the pupils are round and equal in diameter. Petechial hemorrhages of the sclera are not present. The external auditory canals are free of secretions and blood. The ears are unremarkable. The nare are patent. Injuries to the face will be described below in the "evidence of injury section". The nose and maxillae are palpably stable. The teeth are natural. Petechiae of the buccal mucosa are not present.

The neck is straight, and the trachea is midline and mobile. The chest is symmetric. The abdomen is flat. There is a well-healed 2 x ¼-inch oblique scar on the left lower quadrant of the abdomen. There is a jagged irregular well-healed 6 x 2-inch horizontal scar extending from the lower left quadrant of the abdomen across the anterior lateral aspect of the left thigh. The genitalia are those of a normal adult male. The testes are descended and free of masses. Pubic hair is present in a normal distribution. Ano-genital trauma is not present and the buttocks and anus are otherwise unremarkable.

On the posterior torso there is a well-healed vertical 3 x ¼-inch scar in the midline over the thoracic spine. There is a 3 x 2-inch vertical scar in the midline of the lumbar spine. A well-healed 3 x ¼-inch irregularly shaped scar is on the left lower back. A vertical ¾ x ¼-inch scar is on the upper aspect of the right buttock. A 1 x ¼-inch vertical scar is present on the left buttock. There is an oblique 3 x ¼-inch scar on the lower aspect of the left buttock. Injuries to the torso will be described below in the "evidence of injuries" section.

The upper and lower extremities are symmetric without clubbing or edema. Injuries to the palms of the hands and soles of the feet are not noted. There is a vertical 6 x ¼-inch scar on the medial aspect of the distal left thigh, which extends to the upper left leg. On the dorsum of the right foot is a 1 x ¼-inch scar. On the dorsal aspect of the left foot is a 1 x ¼-inch scar. Injuries to the extremities will be described below in the "evidence of injury section".

CLOTHING AND PERSONAL EFFECTS

The deceased is unclad and personal effects are not present with body at the time of autopsy.
MEDICAL INTERVENTION

None.

RADIOGRAPHS

Postmortem radiographs are obtained and support the clinical diagnoses.

EVIDENCE OF INJURY

I. BLUNT FORCE INJURIES:

A. Head and Neck:
Externally, a circumferential periorbital contusion surrounds the right eye with associated subconjunctival hemorrhage of the eyeball. A ¼ x ¼-inch contusion is on the right side of the face, lateral to right eye. There is a ¾ x ½-inch contusion on the left side of the nose, immediately adjacent to the left medial canthus. A ¼ x ¼-inch round contusion is on the right lower lip. There is a 1 x ½-inch contusion on the buccal mucosa of the lower lip. Reflection of the scalp reveals bilateral subgaleal hemorrhages of the parietal scalp with contusions of the right and left temporalis muscles. Injury to the skull is not identified. The brain and spinal cord are without injury. Incision and layerwise dissection of the anterior and posterior neck demonstrates no injury of the anterior neck and deep paracervical muscular tissues and no cervical spine fractures.

B. Torso:
On the upper lateral aspect of the left side of the chest is a 5 x 2-inch contusion. On the upper quadrant of the left side of the abdomen is an oblique 5 x 1-inch contusion. Just inferior to this contusion is an oval 3 x 2-inch contusion. On the posterior lateral aspect of the left buttock is a 3 x 1-inch linear contusion. On the mid aspect of the left buttock is an oval 3 x 2-inch contusion.

Internally, there are contusions of the muscles of the upper right and left chest walls. Posteriorly, there are muscle contusions of the right upper back. There are fractures of left anterior ribs three through six and right anterior ribs five and six. There are contusions over the mid aspect of the sternum. The left lung is involved by a 5 x 3-cm contusion of the anterior aspect of the upper lobe of the left lung.

C. Extremities:
On the posterior aspect of the right forearm is a linear 6 x 2-inch contusion with a 3 x ¼-inch abrasion in its center. On the dorsum of the right hand is a 3 x 2-inch contusion and smaller contusions overlay the dorsal aspect of the second and third right digits. On the anterior aspect of the left upper arm is a ¾ x ¾-inch contusion. This contusion is continuous with the previously described injury on the lateral aspect of the upper left chest. There is a 2 x 1-inch contusion on the medial aspect of the left elbow. On the posterior aspect of the left elbow is a 2 x 2-inch contusion. There are contusions
overlying the dorsum of the left hand centered over the fourth and fifth metacarpal joints. On the anterior aspect of the right thigh are three linear horizontal contusions. The most proximal contusion measures 3 x ½ inches. Immediately inferior to this is a 2 ¼ x ½-inch contusion and the most inferior contusion, located at the mid anterior thigh, measures 4 x ½-inches. A vertical 6 x 3-inch contusion is located on the anterior-lateral aspect of the mid right thigh. A 4 x 3-inch contused-abrasion overlies the anterior aspect of the right knee. On the anterior mid left thigh is a 1 ½ x 1-inch contusion. The left knee is covered by a 3 x 1-inch vertical contused-abrasion. On the anterior aspect of the left leg is a 7 x 2 ¼-inch irregularly shaped contusion. On the posterior aspect of the distal left thigh, in the midline, is a 2 x 2-inch oval contusion. On the dorsal aspect of the left foot are ¾-inch oval contusions overlying the second, third, fourth, and fifth metacarpophalangeal joints.

II. LIGATURE INJURIES:

The wrists and ankles show evidence of binding ligature injuries. On the anterior aspect of the right wrist is a 2 x ¼-inch linear horizontal contusion and on the back of the right wrist is 2 x ¼-inch linear horizontal contusion. Cut sections into these wounds show hemorrhage into the superficial subcutaneous tissue. On the front of the left wrist on the lateral aspect is a 1 x ¼-inch contusion, extending to the left thumb. On the back of the left wrist is a 2 ¼ x ½-inch contusion, which extends across the diameter of the wrist. Cut sections into these wrist wounds show hemorrhage into the superficial aspects of the subcutaneous tissue. On the lateral aspect of the anterior right ankle is a 3 x 3-inch contused-abrasion and on the posterior-lateral aspect of the right ankle is a 2 x 1-inch contused-abrasion. On the anterior aspect of the left ankle is 3 ¼ x 1-inch linear contusion extending from the lateral to mid aspect of the left ankle. Incision into these ankle wounds show hemorrhage into the superficial subcutaneous tissue.

III. REMOTE GUNSHOT WOUND OF THE TORSO:

Dissection of the spleen reveals a minimally deformed medium caliber jacketed projectile within the splenic parenchyma. The projectile is surrounded by dense fibrous tissue.

INTERNAL EXAMINATION

HEAD:
Injuries to the subgaleal soft tissues of the scalp have been described. The remainder of the galeal and subgaleal soft tissues are free of injury. The calvarium is intact, as is the dura mater beneath it. Clear cerebrospinal fluid surrounds the 1400 gm brain, which has unremarkable gyri and sulci. Coronal sections demonstrate sharp demarcation between white and grey matter, without hemorrhage or contusive injury. The ventricles are of normal size. The basal ganglia, brainstem, cerebellum, and arterial systems are free of
injury or other abnormalities. There are no skull fractures. The atlanto-occipital joint is stable.

NECK:
The anterior strap muscles of the neck are homogenous and red-brown, without hemorrhage. The thyroid cartilage and hyoid are intact. The larynx is lined by intact white mucosa. The thyroid is symmetric and red-brown, without cystic or nodular change. The tongue is free of bite marks, hemorrhage, or other injuries.

BODY CAVITIES:
Injuries to the chest have been described. The vertebral bodies are visibly and palpably intact. No excess fluid is in the pleural, pericardial, or peritoneal cavities. The organs occupy their usual anatomic positions.

RESPIRATORY SYSTEM:
Injury to the left lung has been described. The right and left lungs weigh 650 and 485 gms, respectively. The uninjured external surfaces are smooth and deep red-purple. The pulmonary parenchyma is diffusely congested and edematous. No mass lesions or areas of consolidation are present.

CARDIOVASCULAR SYSTEM:
The 425 gm heart is contained in an intact pericardial sac. The epicardial surface is smooth, with minimal fat investment. The coronary arteries are present in a normal distribution, with a right-dominant pattern. Cross sections of the vessels show no significant atherosclerosis. There is 30% stenosis of the proximal left anterior descending coronary artery. Otherwise, the remaining coronary arteries are widely patent. The myocardium is homogenous, red-brown, and firm. The valve leaflets are thin and mobile. The walls of the left and right ventricles are 1.4 and 0.4-cm thick, respectively. The endocardium is smooth and glistening. The aorta gives rise to three intact and patent arch vessels. The renal and mesenteric vessels are unremarkable.

LIVER & BILIARY SYSTEM:
The 1500 gm liver has an intact, smooth capsule and a sharp anterior border. The parenchyma is tan-brown and congested, with the usual lobular architecture. No mass lesions or other abnormalities are seen. The gallbladder contains 10 cc of green-black bile and no stones. The mucosal surface is green and velvety. The extrahepatic biliary tree is patent.

SPLEEN:
Recovery of a remote projectile has been discussed. The 130 gm spleen has a smooth, intact, red-purple capsule. The parenchyma is maroon and congested, with distinct Malpighian corpuscles.
AUTOPSY REPORT ME03-504

PANCREAS:
The pancreas is firm and yellow-tan, with the usual lobular architecture. No mass lesions or other abnormalities are seen.

ADRENALS:
The right and left adrenal glands are symmetric, with yellow cortices and grey medullae. No masses or areas of hemorrhage are identified.

GENITOURINARY SYSTEM:
The right and left kidneys weigh 115 and 120 gms, respectively. The external surfaces are intact and smooth. The cut surfaces are red-tan and congested, with uniformly thick cortices and sharp corticomedullary junctions. The pelves are unremarkable and the ureters are normal in course and caliber. White bladder mucosa overlies an intact bladder wall. The bladder contains approximately 300 cc of yellow urine. The prostate is normal in size, with lobular, yellow-tan parenchyma. The seminal vesicles are unremarkable. The testes are free of mass lesions, contusions, or other abnormalities.

GASTROINTESTINAL TRACT:
The esophagus is intact and lined by smooth, grey-white mucosa. The stomach contains approximately 200 cc of dark brown partially digested food. The gastric wall is intact. The duodenum, loops of small bowel, and colon are unremarkable. The appendix is present.

ADDITIONAL PROCEDURES
- Documentary photographs are taken by Sgt. OAFME
- Attending the autopsy is Special Agent Army CID.
- Specimens retained for toxicologic testing and/or DNA identification are: vitreous, blood, urine, spleen, liver, lung, brain, bile, gastric, and psoas muscle
- The dissected organs are forwarded with body

MICROSCOPIC EXAMINATION
Selected portions of organs are retained in formalin, without preparation of histologic slides.

TOXICOLOGY

AFIP Accession # 035228, dated 24 Nov 2003
Volatile: Blood-negative for ethanol
Cyanide: Blood- negative
Drugs of abuse: Blood-negative
OPINION

[Redacted], an Iraqi National, died while detained at the Abu Ghraib prison where he was held for interrogations by government agencies. According to an investigative report, Mr. [Redacted] was captured by Navy Seal team #7 and resisted apprehension. External injuries are consistent with injuries sustained during apprehension. Ligature injuries are present on the wrists and ankles. Fractures of the ribs and a contusion of the left lung imply significant blunt force injuries of the thorax and likely resulted in impaired respiration. According to investigating agents, interviews taken from individuals present at the prison during the interrogation indicate that a hood made of synthetic material was placed over the head and neck of the detainee. This likely resulted in further compromise of effective respiration. Mr. [Redacted] was not under the influence of drugs of abuse or ethanol at the time of death. The cause of death is blunt force injuries of the torso complicated by compromised respiration. The manner of death is homicide.

CDR MC USN (FS)
Deputy Armed Forces
Medical Examiner
**CERTIFICATE OF DEATH (OVERSEAS)**

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<tr>
<td></td>
<td>Parent or child in care</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STREET ADDRESS</th>
<th>CITY OR TOWN AND STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Donelde 3 (Rue)</td>
<td></td>
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</tbody>
</table>

**MEDICAL STATEMENT**

**CAUSE OF DEATH**

Blunt force injuries complicated by compromised respiration

**ANTECEDENT CAUSES**

Malignant condition, if any, leading to primary cause
Condition metastatic, if any, occurring in the cause primary

**OTHER SIGNIFICANT CONDITIONS**

**DATE OF DEATH**

09 Nov 2003

**PLACE OF DEATH**

Baghdad, Iraq

**NAME OF MEDICAL OFFICER**

Deputy Medical Examiner

**DD FORM 2064**

Replaces DA Form 3565, 1 Jan 72, and DA Form 3565-RPA65, 24 Sep 76, which are obsolete.
## Detainee Autopsy Summary

**Date Autopsy**: 8/30/2004  
**Med. Examiner**:  
**Location**: Abu Ghraib  
**Autopsy Report**: Prelim  
**Death**: 8/18/2004  
**Date DC Signed**: 8/30/2004  
**Manner**: Homicide  
**COD**: Shotgun wound of the head  
**Circumstances**: A group of prisoners at Abu Ghraib became unruly and the guards used lethal force to subdue the crowd. A shotgun was fired, killing the detainee.

---

**Date Autopsy**: 8/30/2004  
**Med. Examiner**:  
**Location**: Abu Ghraib  
**Autopsy Report**: Prelim  
**Death**: 8/18/2004  
**Date DC Signed**: 8/30/2004  
**Manner**: Homicide  
**COD**: Shotgun wound of the chest  
**Circumstances**: A group of prisoners at Abu Ghraib became unruly and the guards used lethal force to subdue the crowd. A shotgun was fired, killing the detainee.

---

**Date Autopsy**: 6/19/2004  
**Med. Examiner**:  
**Location**: Abu Ghraib  
**Autopsy Report**: Pending  
**Death**: 6/14/2004  
**Date DC Signed**: 6/23/2004  
**Manner**: Pending  
**COD**: Pending  
**Circumstances**: Made gasping sounds, found unconscious with no pulse.

---

**Date Autopsy**: 6/19/2004  
**Med. Examiner**:  
**Location**: Abu Ghraib  
**Autopsy Report**: Pending  
**Death**: 6/10/2004  
**Date DC Signed**: 6/23/2004  
**Manner**: Natural  
**COD**: Atherosclerotic cardiovascular disease  
**Circumstances**: Collapsed while speaking to other detainees.
Detainee Autopsy Summary

04-386  
Death: 5/22/2004
Date Autopsy: 6/1/2004
Med. Examiner:  
Location: Abu Ghraib
Autopsy Report: Prelim
Date DC Signed: 6/7/2004

Manner: Natural
COD: Atherosclerotic cardiovascular disease
Circumstances: Died in US custody

04-387  
Death: 5/10/2004
Date Autopsy: 6/1/2004
Med. Examiner:  
Location: Abu Ghraib
Autopsy Report: Prelim
Date DC Signed: 6/14/2004

Manner: Natural
COD: Peritonitis of undetermined etiology
Circumstances:  

04-388  
Death: 5/24/2004
Date Autopsy: 6/1/2004
Med. Examiner:  
Location: Balad, Iraq
Autopsy Report: Prelim
Date DC Signed: 6/16/2004

Manner: Homocide (Combat-related)
COD: Gunshot wound of abdomen
Circumstances: Iraqi male was shot in a firefight and died of wounds.

04-357  
Death: 4/28/2004
Date Autopsy: 5/16/2004
Med. Examiner:  
Location: Baghdad, Iraq
Autopsy Report: Prelim
Date DC Signed: 6/2/2004

Manner: Homicide
COD: Multiple gunshot wounds
Circumstances: Pending
### Detainee Autopsy Summary

<table>
<thead>
<tr>
<th>Rpt No</th>
<th>Det Death</th>
<th>Date of Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date of DC Signed</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Natural</td>
<td>COD:</td>
<td>Suspected MI</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Severe atherosclerotic cardiovascular disease</td>
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</table>

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<tr>
<th>Rpt No</th>
<th>Det Death</th>
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<th>Med. Examiner</th>
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<th>Autopsy Report</th>
<th>Date of DC Signed</th>
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<tr>
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<td></td>
<td>Pending</td>
<td>COD:</td>
<td>Pending</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Q by NSWT, struggled/interrogated/died sleeping</td>
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<thead>
<tr>
<th>Rpt No</th>
<th>Det Death</th>
<th>Date of Autopsy</th>
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<th>Location</th>
<th>Autopsy Report</th>
<th>Date of DC Signed</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Natural</td>
<td>COD:</td>
<td>ASCVD</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reported to medic with chest pain</td>
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<table>
<thead>
<tr>
<th>Rpt No</th>
<th>Det Death</th>
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<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date of DC Signed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Natural</td>
<td>COD:</td>
<td>ASCVD</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Found in bed during headcount unresponsive</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Detainee Autopsy Summary

#### 04-101
- **Date of Autopsy:** 2/28/2004
- **Med. Examiner:** [Redacted]
- **Location:** Abu Ghraib
- **Autopsy Report:** Prelim
- **Date DC Signed:** 5/13/2004
- **Manner:** Natural
- **COD:** Acute Peritonitis secondary to gastric ulcer
- **Circumstances:** Other detainees reported him in distress, unresponsive

#### 04-038
- **Date of Autopsy:** 2/2/2004
- **Med. Examiner:** [Redacted]
- **Location:** Abu Ghraib
- **Autopsy Report:** Final
- **Date DC Signed:** 5/14/2004
- **Manner:** Natural
- **COD:** Myocarditis
- **Circumstances:** Collapsed during morning prayers

#### 04-012
- **Date of Autopsy:** 1/11/2004
- **Med. Examiner:** [Redacted]
- **Location:** Abu Ghraib
- **Autopsy Report:** Final
- **Date DC Signed:** 5/13/2004
- **Manner:** Natural
- **COD:** CV Disease
- **Circumstances:** Brought to MPs by other inads unresponsive

#### 04-014
- **Date of Autopsy:** 1/11/2004
- **Med. Examiner:** [Redacted]
- **Location:** FOB Rifles
- **Autopsy Report:** Final
- **Date DC Signed:** 5/13/2004
- **Manner:** Homicide
- **COD:** Blunt force injuries & asphyxia
- **Circumstances:** Q by OGA, gagged in standing restraint
## Detainee Autopsy Summary

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Death Date</th>
<th>Date Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date DC Signed</th>
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<td></td>
</tr>
<tr>
<td>Manner:</td>
<td>Homicide</td>
<td>COD: Asphyxia due to smothering &amp; chest compression</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circumstances:</td>
<td>Q by MI, died during interrogation</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Death Date</th>
<th>Date Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date DC Signed</th>
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<td></td>
<td></td>
</tr>
<tr>
<td>Manner:</td>
<td>Homicide</td>
<td>COD: Blunt force injuries complicated by rhabdomyolysis</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circumstances:</td>
<td>Found unresponsive while under guard by Afghan Mil forces</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Death Date</th>
<th>Date Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date DC Signed</th>
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<tbody>
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<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manner:</td>
<td>Homicide</td>
<td>COD: Blunt Force Injury complicated by compromised respiration</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circumstances:</td>
<td>Q by OGA and NSWT died during interrogation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Death Date</th>
<th>Date Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date DC Signed</th>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manner:</td>
<td>Accident</td>
<td>COD: Heat Stroke</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circumstances:</td>
<td>Found on ground in EPW Camp, Body temp 102</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
### Detainee Autopsy Summary

**03-368**  
**Date Autopsy:** 8/25/2003  
**Med. Examiner:** [Redacted]  
**Location:** Abu Ghraib  
**Autopsy Report:** Final  
**Date DC Signed:** 5/12/2004

**Manner:** Natural  
**COD:** ASCVD  
**Circumstances:** Brought to MPs by other Iraqis unresponsive

### 03-385

**Date Autopsy:** 8/24/2003  
**Med. Examiner:** [Redacted]  
**Location:** Diwania, Iraq  
**Autopsy Report:** Final  
**Date DC Signed:** 5/14/2004

**Manner:** Natural  
**COD:** Undetermined atraumatic cause  
**Circumstances:** Distress during transport by 115th MP - later died

### 03-386

**Date Autopsy:** 8/24/2003  
**Med. Examiner:** [Redacted]  
**Location:** Abu Ghraib  
**Autopsy Report:** Final  
**Date DC Signed:** 5/14/2004

**Manner:** Natural  
**COD:** ASCVD/Diabetes  
**Circumstances:** Chest pain following a fast.

### 03-369

**Date Autopsy:** 8/22/2003  
**Med. Examiner:** [Redacted]  
**Location:** Abu Ghraib  
**Autopsy Report:** Final  
**Date DC Signed:** 5/12/2004

**Manner:** Natural  
**COD:** ASCVD  
**Circumstances:** Taken to medic; gasping for air

---

*Thursday, September 25, 2004*

**Annex B-184**
# Detainee Autopsy Summary

**Date Autopsy** | **Med. Examiner** | **Location** | **Autopsy Report** | **Date DC Signed**
--- | --- | --- | --- | ---
03-366B | | | 8/11/2003

**Manner:** Natural  
**COD:** ASCVD

**Circumstances:** No history

---

03-349B | | | 7/12/2003
7/13/2003 | | Camp Cropp | Final | 5/14/2004

**Manner:** Natural  
**COD:** Massive hemoptysis due to tuberculosis

**Circumstances:** Pulmonary hemorrhage from TB

---

03-273 | | | 6/13/2003
6/17/2003 | | Abu Ghraib | Final | 5/14/2004

**Manner:** Homicide  
**COD:** Closed head injury; Cortical brain contusion and subdural hematoma

**Circumstances:** Died 12 hrs post escape attempt - subdued by force

---

A03-051 | | | 6/6/2003
6/10/2003 | | Nasiriyah, Jr | Final | 6/10/2003

**Manner:** Homicide  
**COD:** Strangulation

**Circumstances:** Found unresponsive outside isolation unit

---

*Thursday, September 23, 2004*  
*Page 7 of 8*
# Detainee Autopsy Summary

**A02-095**

<table>
<thead>
<tr>
<th>Date Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date DC Signed</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/13/2002</td>
<td></td>
<td>Bagram, Afg</td>
<td>Final</td>
<td>12/13/2002</td>
</tr>
</tbody>
</table>

**Manner:** Homicide  
**COD:** Blunt force injuries to lower extremities complicating coronary artery disease

**Circumstances:** Found unresponsive in his cell.

---

**A02-093**

<table>
<thead>
<tr>
<th>Date Autopsy</th>
<th>Med. Examiner</th>
<th>Location</th>
<th>Autopsy Report</th>
<th>Date DC Signed</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/8/2002</td>
<td></td>
<td>Bagram, Afg</td>
<td>Final</td>
<td>12/14/2002</td>
</tr>
</tbody>
</table>

**Manner:** Homicide  
**COD:** Pulmonary embolism due to blunt force injuries to the legs

**Circumstances:** Found unresponsive, restrained in his cell.
## 6 "Unnatural Causes"

<table>
<thead>
<tr>
<th>Case #</th>
<th>Circumstances</th>
<th>Autopsy Done?</th>
<th>Investigation / Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A03-51</td>
<td>1 strangulation</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Found outside isolation unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03-273</td>
<td>1 closed head injury; Died 12 hrs after escape attempt</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>03-504</td>
<td>1 blunt force trauma and choking</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Died during interrogation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03-571</td>
<td>1 blunt force trauma and choking</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Died during interrogation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>04-014</td>
<td>1 blunt force trauma and choking</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gagged in standing restraint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>1 gunshot wound to abdomen: &quot;Shot without provocation&quot;</td>
<td>No/not reported</td>
<td></td>
</tr>
</tbody>
</table>
A) Death Certificates: Natural / Iraq 11
B) Death Certificates: Accident / Iraq 1
C) Death Certificates: Homicide / Iraq 5
D) Death Certificates: Pending / Iraq 1
E) Death Certificates: Homicide / Afghanistan 3
F) Autopsy Reports: Natural / Iraq 11
G) Autopsy Reports: Accident / Iraq 1
H) Autopsy Reports: Homicide / Iraq 5
I) Autopsy Reports: Homicide / Afghanistan 3
Office of the Armed Forces Regional Medical Examiner
Landstuhl Regional Medical Center
Landstuhl, GE - APO AE 09180
DSN (314) 486-6781/7492
Comm 001 49 (0) 6371 86 6781/7492

FINAL AUTOPSY REPORT

Name: [Redacted]
SSAN: [Redacted]
Date of Birth: N/A
Date of Death: 6 NOV 03
Date of Autopsy: 13 NOV 03
Date of Report: 13 NOV 03

Autopsy No.: A03-144
Rank/SVC: Afghan Civilian
Org: Afghanistan Local National
Place of Death: Helmand Prov, Afghanistan
Place of Autopsy: Bagram AF, Afghanistan
Investigative Agency: USACIDC

Circumstances of Death: The decedent, an Afghan local national civilian, was found unresponsive while under guard by the Afghanistan Militia Forces at the FOB Gereshk, Afghanistan, approximately 1430 hours. An initial autopsy was performed by a FST, TF Warrior, KAF General Surgeon on orders of the local command.

Authorization for Autopsy: Office of the Armed Forces Medical Examiner, IAW 10 USC 1471

Identification: Visual recognition; fingerprints and specimens for DNA obtained

Cause of Death: Multiple Blunt Force Injuries Complicated by Rhabdomyolysis

Manner of Death: Homicide

Autopsy Diagnoses:
1. Multiple blunt force injuries
   a. Head injuries:
      i. Multiple abrasions, bilateral forehead and temporal areas
      ii. Bilateral scleral hemorrhages
      iii. Focal subgaleal hemorrhages, bilateral fronto-parietal areas
   b. Torso and extremity injuries:
      i. Crusted abrasions; anterior chest and abdomen, right upper arm and elbow, left knee and proximal lower leg
      ii. Focal contusions; left lateral shoulder, right posterior thigh and scrotum
      iii. Confluent contusions with subcutaneous and peri-muscular hemorrhages; lower back (L>R), buttocks, posterior thighs and knees, anterior thighs and both groin areas
      iv. Intramuscular hemorrhage with associated necrosis, left lower back
      v. Peri-testicular hemorrhage
2. Moderate pulmonary congestion and edema
3. Moderate pulmonary anthracosis
4. Moderate pulmonary hilar anthracotic lymphadenopathy
5. Mild cerebral edema with bilateral uncal and cerebellar tonsil herniation
6. Moderated hepatic fatty change
7. Moderate visceral autolysis

Toxicology: Negative

Special Studies: Urine chemistry positive for myoglobin

SUBSTITUTE FOR SF 503

MEDCOM - 44

Annex B-189

DOD 003171
Opinion: Based on these autopsy findings and the investigative and historical information available to me, the cause of death of this Afghan male believed to be \[\text{multiple blunt force injuries of the lower torso and legs complicated by rhabdomyolysis (release of toxic byproducts into the system due to destruction of muscle). The manner of death, in my opinion, is homicide. The decedent was not under the pharmacologic effect of drugs or alcohol at the time of death.}\]

\[\text{LTC(P), MC, USA} \]
\[\text{Armed Forces Regional Medical Examiner} \]
I. POSTMORTEM EXAMINATION:

GENERAL: The postmortem examination is performed at Bagram Airfield, Afghanistan, on 13 November 2003. The autopsy is performed by Forensic Pathologist, LTC(P), MC, USA, the Armed Forces Regional Medical Examiner (AFRME). Assisting in the autopsy procedures is Mr. DAC GS-11, Forensic Pathologist Assistant and CPT, DC USA.

The autopsy is witnessed by SAs Bagram AF, U.S. Army Criminal Investigation Command (USACIDC), SSI #0174-03-CID369-49232-5H9B.

The autopsy is started at approximately 0430 hrs.

B. PHOTOGRAPHY: Photographs are taken by DAC GS-11, Forensic Pathologist Assistant, and are on file in the Office of the Armed Forces Regional Medical Examiner, Landstuhl Regional Medical Center, Landstuhl, Germany.

C. AUTHORIZATION: The autopsy is authorized by the Armed Forces Medical Examiner under Title 10 U.S. Code, Section 1471, with an SF 523 signed by the Armed Forces Regional Medical Examiner, appointed representative.

D. IDENTIFICATION: The remains are identified visually by the Afghan Militia Forces guarding the decedent at FOB Gereshk AF. Postmortem dental examination including dental X-rays is performed by CPT, DC USA, Forensic Odontologist. Specimens are obtained and submitted for potential DNA analysis. Fingerprints are obtained.

E. MEDICAL RECORD REVIEW: Outpatient Dental and Medical Records are not available at autopsy.

II. GROSS AUTOPSY FINDINGS:

A. CLOTHING AND PERSONAL EFFECTS: The remains are presented for autopsy unclothed wrapped in a blanket. No clothing or personal effects accompany the remains at autopsy.

B. EXTERNAL EXAMINATION: The remains are those of a well developed, well nourished Afghan male of average build that has been previously, partially autopsied. The prior autopsy incision is sutured. The body is moderately well preserved and shows signs of early decomposition as evidenced by “greening” of the chest and abdomen. It has not been embalmed. Injuries are described below in the Evidence of Injury Section.

RIGOR: Passing in the jaw and extremities.

LIVIDITY: Fixed on the posterior dependent surfaces.
TEMPERATURE: That of the refrigeration unit.

SKIN: Multiple irregular crusted abrasions, each averaging ½” in greatest dimension, are scattered over the lower anterior chest and left upper abdomen. Both buttocks have focal areas of skin slippage. Recent injuries are described below in the Evidence of Injury Section. No non-traumatic abnormalities are identified.

HAIR: Straight black hair, up to 4”, covers the head. Facial hair consists of a reddish-brown beard and mustache. The remaining body hair, the color of the head hair, is in a normal adult male distribution.

HEAD/SCALP/FACE: Dried blood, secretions and dust cover the face. The head is normocephalic, the scalp is intact and the facial features are normally developed. Injuries are described below in the Evidence of Injury Section. No non-traumatic abnormalities are identified.

EARS: Unremarkable.

EYES: Brown irides surround equal pupils partially obscured by mild corneal clouding. The sclerae are white with bilateral lateral and medial hemorrhages. The conjunctivae are injected most prominent on the right.

NOSE: Unremarkable.

MOUTH/LIPS: Blood is in the mouth which is otherwise unremarkable.

TEETH: Dentition is in good repair.

NECK: Unremarkable with no evidence of injury.

CHEST/ABDOMEN/BACK/ANUS: Injuries are described below in the Evidence of Injury Section. No non-traumatic abnormalities are identified. The abdomen is flat.

EXTERNAL GENITALIA: Normal adult circumcised male with bilaterally descended testes.

ARMS/HANDS/FINGERNAILS: Unremarkable except for injuries described below in the Evidence of Injury Section. The palmar surfaces of the fingers have black ink. The fingernails are short, irregular and intact.

LEGS/FEET/TOENAILS: Unremarkable except for injuries described below in the Evidence of Injury Section.
C. INTERNAL EXAMINATION:

BODY CAVITIES: The body is opened by the usual Y-shaped incision. The pleural and peritoneal surfaces are smooth and glistening and the pericardium is unremarkable. There are no fibrovascular adhesions or abnormal collections of fluid. The mediastinum and retroperitoneum show no abnormalities. The leaves of the diaphragm are intact and the organs are normally disposed. There is moderate visceral autolysis and no evidence of injury.

HEAD/CENTRAL NERVOUS SYSTEM: Reflection of the scalp shows the usual scattered reflection petechiae. Focal subgaleal injury is described below in the Evidence of Injury Section. The calvarium is intact. Removal of the calvarium shows the epidural space to be normal. No collections of subdural blood are present. The brain is removed in the usual manner and is mildly heavy. The leptomeninges are smooth and glistening and the gyri demonstrate the usual orientation and configuration with mild flattening and sulcal narrowing. There is mild uncal and cerebellar tonsillar herniation. The vessels at the base of the brain are normally disposed and no anomalies or significant atherosclerosis is identified. Serial sections of the brain show the cerebral cortical ribbon to be intact. The lateral ventricles are normal. The usual anatomical landmarks of the cerebrum, basal ganglia, thalamus, mid brain, pons, medulla, and cerebellum demonstrate no abnormalities. The pituitary fossa is unremarkable. The Foramen Magnum demonstrates the normal orientation and the first portion of the spinal cord viewed through the Foramen Magnum is unremarkable.

NECK: Examination of the soft tissues of the neck, including strap muscles, thyroid gland and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact.

CARDIOVASCULAR SYSTEM: The heart is of normal size and shape. The epicardium is intact and unremarkable. The chambers demonstrate the usual shape and configuration with no gross hypertrophy. The coronary arteries are normally disposed and there is no atherosclerosis. Cut surfaces of the myocardium show a normal color slightly darkened by autolysis. The valves are intact with the usual anatomic relationships. The aorta follows the usual course and exhibits no significant atherosclerosis. The origins of the major vessels are normally disposed and unremarkable. The great vessels of venous return are in the usual position and unremarkable.

RESPIRATORY SYSTEM: The larynx, trachea, and bronchi show no abnormalities. The right and left lungs are mildly heavy. Marked diffuse anthracosis is scattered over the pleural surfaces. Cut surfaces show an autolytic deep red parenchyma exuding a moderate amount of blood and frothy fluid with no identifiable evidence of natural disease or injury.
HEPATOBILIARY SYSTEM: The liver is of normal weight and has a smooth, glistening capsule. Cut surfaces show the usual anatomic landmarks with a deep red-brown unremarkable parenchyma with focally interspersed small tan-yellow patches. The gallbladder contains 10 ml of bile. No abnormalities are present in the mucosal lining. The biliary tree is normally disposed and no abnormalities are demonstrated.

INTESTINAL TRACT: The pharynx and esophagus are unremarkable. The stomach lies in the normal position and contains approximately 60 ml thick brown-gold fluid without food particles. No tablets, capsules or residues are identified. The mucosal lining is intact. The small bowel and large bowel are unremarkable. The appendix is unremarkable.

LYMPHORETICULAR SYSTEM: The spleen is of normal weight and shape and has a smooth glistening capsule with an autolytic parenchyma. The thymus is not identified. Except for bilateral anthracotic pulmonary hilar lymph adenopathy, the lymph nodes show no notable pathologic change.

URINARY SYSTEM: The right and left kidneys are of normal size and weight. The cortical surfaces are smooth with moderately good preservation of the cortex and good cortico-medullary differentiation. The pelves and ureters are unremarkable. The bladder is unremarkable and contains 50 ml of yellow urine.

INTERNAL GENITALIA: The prostate is palpably unremarkable. On cut sections, the testes show no abnormal masses and injuries described below.

ENDOCRINE SYSTEM: The pituitary, thyroid, adrenals, and pancreas show the usual anatomic features without evidence of natural disease or injury.

MUSCULOSKELETAL SYSTEM: No fractures are identified and the skeletal muscle demonstrates the normal appearance. The bone marrow, where visualized, is unremarkable.

MISCELLANEOUS: The abdominal fat measures approximately 1-2 cm in thickness and is without abnormalities. No hernias are identified.

D. EVIDENCE OF MEDICAL TREATMENT: None.

E. EVIDENCE OF INJURY: Multiple Blunt Force Injuries

(1) HEAD AND NECK INJURIES: Externally, patchy irregular abrasions cover an area of 1 x ½” on the left lower forehead and 1 x ¼” on the right lower forehead. A ¼” greatest dimension irregular abrasion is on the left temporal area and on the right upper check, beneath the lateral eye, is a ¼ x 1/8” irregular abrasion. On internal examination, there are focal bilateral fronto-parietal subgaleal hemorrhages.
(2) TORSO & EXTREMITY INJURIES: Confluent dark blue-purple contusions, focally dark blue-black, cover the left lower flank, bilateral buttocks, bilateral posterolateral thighs, bilateral posterior knees and posterior upper left lower leg with underlying subcutaneous and peri-muscular hemorrhage. Focal intra-muscular hemorrhage with associated necrosis covers areas of 12 x 8 cm on the left lower back and 6 x 2 cm on the left posterior knee. On the left antero-lateral lower flank extending across the groin to the mid antero-lateral left thigh is a confluent 23 x 6" dark blue-purple contusion. A 15 x 10" confluent red-purple contusion covers the right groin and upper right anterior thigh. Blue-purple contusion covers the anterior scrotum. A 4 x 3" irregular red-purple contusion covers the left antero-lateral shoulder. Multiple irregular abrasions from 2 x 1" to ¼ x ½" are scattered down the postero-lateral right upper arm and elbow. A 4 ½ x 3" irregular red-purple contusion covers the right lateral back of the hand extending to the upper 1st and 2nd fingers. On the prominence of the left anterior knee and upper leg are multiple irregular crusted abrasions each averaging from 1 to ¼" in greatest dimension.

III. MICROSCOPIC EXAMINATION: Not performed. Representative sections of all major organs are retained in formalin for storage.

IV. TOXICOLOGY: Samples of blood, vitreous fluid, bile, urine, and tissue samples of muscle, liver, and kidneys are submitted for toxicologic analysis at the Armed Forces Medical Examiner's Forensic Toxicology Laboratory, Armed Forces Institute of Pathology (AFIP), Washington, DC:

AFIP Accession No.: 2900827/Tox No. 035410, dated 15 DEC 03.

See attached report.

V. EVIDENCE COLLECTED/OTHER PROCEDURES AND SPECIAL STUDIES: Special chemistry performed on sample of urine is positive for myoglobin 4250 micrograms/L. The test was performed by Quest Diagnostics Inc.: Accn No. B15398091893A.

LTC(P), MC, USA
ARMED FORCES REGIONAL MEDICAL EXAMINER

DATE: 9 FEB 04

Annex B-195
# 424

## Certificate of Death (Overseas)

<table>
<thead>
<tr>
<th>Name of Deceased</th>
<th>Date of Birth</th>
<th>Gender</th>
<th>Social Security Number</th>
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<tr>
<td>Karim Abdul Ridha, Abdul Ali</td>
<td>Potus</td>
<td>Male</td>
<td>001333</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Race</th>
<th>Marital Status</th>
<th>Religion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middle Eastern</td>
<td>Married</td>
<td>Protestant</td>
</tr>
</tbody>
</table>

### Medical Statement

**Cause of Death:** Unknown

**Interval Between Death and Autopsy:** 6 hours in sleep

**Antecedent Causes:** None known

**Underlying Cause:** None known

### Other Significant Conditions

None known

---

**Mode of Death:** Natural

**Autopsy Performed:** Yes

**Circumstances Surrounding Death:** None

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**Date of Death:** 9 Dec 2003

**Place of Death:** Mosul, Iraq

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I have viewed the remains of the deceased and death occurred at the time indicated.

---

**Grade:**

**Installation or Address:** B.E.D., Mosul, Iraq Ex - 001333

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Annex B-196
INFORMATION PAPER

SUBJECT: Current Status of Courts-Martial: Samarra Bridge Incident

1. **Purpose.** To provide updated information on the courts-martial involving allegations of abuse against detainees near the Samarra Bridge in the Tigris River.

2. **Background.** This document outlines the current case status of the courts-martial of four soldiers including one officer, one noncommissioned officer, and two enlisted soldiers charged with abuse of detainees.

3. **Summary.**
   
   a. Court-martial charges were preferred against four soldiers assigned to [REDACTED], 3rd Brigade, 4th Infantry Division at Ft. Carson, CO. The charges stem from an alleged incident where an Iraqi detainee drowned and another was assaulted vicinity the Tigris River on Jan. 3, 2004, in the city of Samarra, Iraq.

   b. First Lt. [REDACTED] and Sgt. 1st Class [REDACTED] were formally charged in June 2004 with manslaughter, assault, conspiracy, false statements and obstruction of justice.

   c. Sergeant [REDACTED] and Spec. [REDACTED] were charged June 28, 2004. [REDACTED] is charged with manslaughter and [REDACTED] is charged with assault. Both are also charged with making a false official statement.

   d. The Article 32 investigation for all of the soldiers except LT [REDACTED] was held last week at Fort Carson. 4th Infantry Division officials are currently waiting for an Article 32 Investigating Officer to complete his recommendation and report. LT [REDACTED]'s Article 32 Investigation is scheduled for 8 Sep 04 at Fort Hood, TX. LT [REDACTED] has retained Mr. [REDACTED] as his civilian defense counsel.

   e. The 4th Infantry Division Commander is the General Court-Martial Convening Authority. The 4th Infantry Division Office of the Staff Judge Advocate is prosecuting all of the cases.

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8097

Annex B-197

DOD 006755
ARMED FORCES INSTITUTE OF PATHOLOGY
Office of the Armed Forces Medical Examiner
1413 Research Blvd., Bldg. 102
Rockville, MD 20850
1-800-944-7912

FINAL AUTOPSY REPORT

Name: [Redacted]
SSAN: [Redacted]
Date of Birth: 7 JAN 1957
Date of Death: 9 JAN 2004
Date of Autopsy: 11 JAN 2004
Date of Report: 30 APR 2004

Autopsy No.: ME04-14
AFIP No.: 2909185
Rank: [Redacted] Iraqi Army
Place of Death: Al Asad, Iraq
Place of Autopsy: DIAP Mortuary, Baghdad, Iraq

Circumstances of Death: Iraqi detainee died while in U.S. custody.

Authorization for Autopsy: Office of the Armed Forces Medical Examiner, IAW 10 USC 1471

Identification: Identification by accompanying paperwork and wristband, both of which include his name and a detainee number, 3ACR1582

CAUSE OF DEATH: Blunt Force Injuries and Asphyxia

MANNER OF DEATH: Homicide
FINAL AUTOPSY DIAGNOSES:

I. Multiple Blunt Force Injuries
   A. Cutaneous abrasions and contusions of the scalp, torso, and extremities
   B. Deep contusions of the chest wall musculature and abdominal wall
   C. Multiple, bilateral, displaced and comminuted rib fractures, with lacerations of the pleura
   D. Bilateral lung contusions
   E. Bilateral hemothoraces
   F. Hemorrhage into the mesentery of the small and large bowel
   G. Hemorrhage into the left sternohyoid muscle with associated fractures of the thyroid cartilage and hyoid bone

II. History of Asphyxia, Secondary to Occlusion of the Oral Airway

III. Pleural and Pulmonary Adhesions

IV. Hypertensive Cardiovascular Disease
   A. Hypertrophy of the left ventricle of the heart (2.0-centimeters)
   B. Cardiomegaly (450-grams)

V. Enlarged, Nodular Prostate Gland

VI. Toxicology is negative for ethanol, drugs of abuse, select therapeutic medications, and cyanide
EXTERNAL EXAMINATION

The remains are received clad in a white shirt, white pajama type pants, and white undershorts. Feces covers the clothing from the waist down. The body is that of a well-developed, well-nourished appearing, 68-inches, 195-pounds (estimated), White male, whose appearance is consistent with the reported age of 47-years. Lividity is posterior and fixed, except in areas exposed to pressure. Rigor is present but passing. The temperature of the body is that of the refrigeration unit.

The scalp is covered with medium length, curly black hair with some graying and frontal balding. The irides are brown and the pupils are round and equal in diameter. The external auditory canals are free of abnormal secretions or foreign material. The ears are unremarkable. The nares are patent and the lips are atraumatic. The nose and maxillae are palpably stable. The teeth are natural and in poor repair, with several missing. Facial hair consists of a gray-black beard and mustache.

The neck is straight and the trachea is midline and mobile. The chest is symmetric. The abdomen is protuberant. The external genitalia are those of a normal adult, circumcised, male. The testes are descended and free of masses. Pubic hair is present in a normal distribution. The buttocks and anus are unremarkable.

The upper and lower extremities are symmetric and without clubbing or edema. A ½-inch scar is on the lateral aspect of the proximal left arm. Multiple small scars are on the dorsal aspect of both hands. A 1-inch scar is on the anterior right ankle. No tattoos or other significant identifying marks are noted.

MEDICAL INTERVENTION

There is gauze dressing on the left wrist. No other evidence of medical intervention is noted.

RADIOGRAPHS

A complete set of postmortem radiographs is obtained and demonstrates the injuries as described.

EVIDENCE OF INJURY

The ordering of the following injuries is for descriptive purposes only and is not intended to imply order of infliction or relative severity. All wound pathways are given relative to standard anatomic position.

I. Blunt Force Injuries
A. Injuries of the head and Neck

No cutaneous injuries are noted on the face or neck. Reflection of the scalp reveals a 1 ½ x ¾-inch contusion on the right frontal scalp and a 1 ½ x 1-inch contusion on the left parietal scalp. There are no associated skull fractures, epidural, subdural, or subarachnoid hemorrhages or other injuries to the brain.
A detailed examination of the anterior neck structures reveals a $$\frac{3}{4}$$ x $$\frac{3}{4}$$-inch hemorrhage into the left sternohyoid muscle. There is a linear fracture through the left side of the thyroid cartilage and a fracture through the left side of the hyoid bone. The cervical spine is free of injury.

B. Injuries of the Torso
There is a confluence of red-purple-black contusions surrounding the torso between the breasts and the costal margin, with some sparing of the mid back. A few satellite contusions, up to 2-inches in greatest dimension are associated with this large area of contusion. The posterior aspect of this large area of contusion is deep purple in color and the upper posterior-lateral aspect of this area is yellow-black in color. A distinct 5 x 4-inch area of ecchymosis is on the lateral aspect of the left mid chest. Two distinct 1 $$\frac{1}{2}$$ x 1-inch contusions are at the right posterior-lateral edge of the large area of contusion. Two linear abrasions, 1/8-inch and 1/4-inch in length, are on the upper posterior left shoulder. There is a 1 $$\frac{1}{4}$$-inch abrasion on the posterior upper right shoulder. A 1 $$\frac{1}{2}$$ x 1 $$\frac{1}{2}$$-inch purple contusion is over the left lower quadrant of the abdomen. A 2 $$\frac{1}{2}$$ x 1-inch area of ecchymosis is over the right inguinal area.

There is abundant hemorrhage into the muscle and adipose tissue of the anterior chest wall. The right chest wall has fractures of ribs three through seven anteriorly and ribs six through twelve posteriorly. The left chest wall has fractures of ribs two through nine anteriorly and ribs seven through twelve posteriorly. There are fractures of the lateral aspect of ribs nine and ten on the left side. Fifty-milliliters of blood are in each pleural cavity and many of the rib fractures are displaced and associated with pleural lacerations. Both lungs have scattered contusions but no lacerations are noted. There is a horizontal fracture through the mid portion of the body of the sternum.

A small area of hemorrhage is present in the left adrenal gland. No injuries to the kidneys are noted. Scattered areas of hemorrhage are noted in the mesentery of the large and small bowel.

C. Injuries of the Extremities
A 1 $$\frac{1}{2}$$-inch abrasion is on the anterior aspect of the right wrist. Multiple superficial linear abrasions are on the posterior aspect of the right hand. Three linear abrasions, $$\frac{1}{4}$$ to $$\frac{1}{2}$$-inch in length, are on the proximal lateral right arm. A 2 $$\frac{1}{2}$$-inch wide, weeping abrasion with some desquamation of skin is circumferentially present around the left wrist. There is a 1 x $$\frac{1}{4}$$-inch contusion on the proximal posterior left arm. Two abrasions, $$\frac{1}{4}$$ x 3/8-inches and 1 x $$\frac{1}{4}$$-inches, are on the posterior aspect of the left upper extremity near the elbow. Two fine linear abrasions, 3-inches and 1 $$\frac{1}{2}$$-inches in length, are on the posterior left forearm.

A 2 x 1 $$\frac{1}{2}$$-inch contusion is on the anterior right leg just distal to the knee. There is a 3 x 2-inch contusion on the proximal half of the anterior right leg. A 2 x 2-inch light purple contusion is on the medial aspect of the distal right leg. There is a 2 x 1 $$\frac{1}{2}$$-inch contusion and two $$\frac{1}{2}$$-inch in length linear abrasions over the right lateral malleolus. A $$\frac{1}{2}$$ x $$\frac{1}{4}$$-inch abrasion is on the anterior left knee. There is a 5 x 3-inch
light purple contusion on the anterior left leg. A 1 x ¼-inch contusion is on the anterior left ankle.

INTERNAL EXAMINATION

HEAD:
The calvarium is intact, as is the dura mater beneath it. Clear cerebrospinal fluid surrounds the 1380-gram brain, which has unremarkable gyri and sulci. Coronal sections demonstrate sharp demarcation between white and grey matter, without hemorrhage or contusive injury. The ventricles are of normal size. The basal ganglia, brainstem, cerebellum, and arterial systems are free of injury or other abnormalities. There are no skull fractures. The atlanto-occipital joint is stable.

NECK:
The neck structures have the previously described injuries. The larynx is lined by intact white mucosa. The thyroid gland is symmetric and red-brown, without cystic or nodular change. The tongue is free of bite marks, hemorrhage, or other injuries. The cervical spine is free of injuries.

BODY CAVITIES:
The vertebral bodies are visibly and palpably intact. No excess fluid is in the peritoneal and pericardial cavities. Scattered adhesions involve both lungs and the chest wall. The organs occupy their usual anatomic positions.

RESPIRATORY SYSTEM:
The right and left lungs weigh 790 and 590-grams, respectively. The external surfaces are smooth and deep red-purple, with heavy anthracotic pigmentation. The pulmonary parenchyma is congested and has the previously described injuries. No mass lesions or areas of consolidation are present.

CARDIOVASCULAR SYSTEM:
The 450-gram heart is contained in an intact pericardial sac. The epicardial surface is smooth, with minimal fat investment. The coronary arteries are present in a normal distribution, with a right-dominant pattern. Cross sections of the vessels show no significant atherosclerosis. The myocardium is homogenous, red-brown, and firm. The valve leaflets are thin and mobile. The walls of the left and right ventricles are 2.0 and 0.5-centimeters thick, respectively. The interventricular septum is 2.0-centimeters thick. The endocardium is smooth. The aorta gives rise to three intact and patent arch vessels. There is mild atherosclerosis involving the arch of the aorta. The renal and mesenteric vessels are unremarkable.

LIVER & BILIARY SYSTEM:
The liver weighs 2350-grams and is free of injury. The parenchyma is tan-brown and congested, with the usual lobular architecture. No mass lesions or other abnormalities are seen. The gallbladder contains 10-milliliters of green-black bile and no stones. The mucosal surface is green and velvety. The extrahepatic biliary tree is patent.
SPLEEN:
The 90-gram spleen has a smooth, intact, red-purple capsule. The parenchyma is maroon and congested, with distinct Malpighian corpuscles.

PANCREAS:
The pancreas is firm and yellow-tan, with the usual lobular architecture. No mass lesions or other abnormalities are seen.

ADRENAL GLANDS:
The right and left adrenal glands are symmetric, with yellow-orange cortices and gray medullae. Hemorrhage into the left adrenal gland has been previously noted. No masses are identified.

GENITOURINARY SYSTEM:
The right and left kidneys weigh 210 and 230-grams, respectively. The external surfaces are intact, smooth, and without evident injury. The cut surfaces are red-tan and congested, with uniformly thick cortices and sharp corticomedullary junctions. The pelvis are unremarkable and the ureters are normal in course and caliber. White bladder mucosa overlies an intact bladder wall. The bladder contains approximately 20-milliliters of dark yellow urine. The prostate gland is enlarged, with yellow-tan, nodular parenchyma. The seminal vesicles are unremarkable. The testes are free of mass lesions, contusions, or other abnormalities.

GASTROINTESTINAL TRACT:
The esophagus is intact and lined by smooth, gray-white mucosa. The stomach contains approximately 30-milliliters of dark green fluid. The gastric wall is intact, with evidence of mild, diffuse gastritis. The duodenum, loops of small bowel, and colon are remarkable for the previously described injuries. The appendix is present.

ADDITIONAL PROCEDURES
- Documentary photographs are taken by OAFME Photographer PH3
- Specimens retained for toxicologic testing and/or DNA identification are: vitreous fluid, cavity blood, spleen, liver, urine, brain, bile, lung, kidney, and psoas muscle
- The dissected organs are forwarded with body
- Clothing and personal effects are released to the Army CID agents present at the autopsy

MICROSCOPIC EXAMINATION
Selected portions of organs are retained in formalin, without preparation of histologic slides.
OPINION

This 47-year-old White male, died of blunt force injuries and asphyxia. The autopsy disclosed multiple blunt force injuries, including deep contusions of the chest wall, numerous displaced rib fractures, lung contusions, and hemorrhage into the mesentery of the small and large intestine. An examination of the neck structures revealed hemorrhage into the strap muscles and fractures of the thyroid cartilage and hyoid bone. According to the investigative report provided by U.S. Army CID, the decedent was shackled to the top of a doorframe with a gag in his mouth at the time he lost consciousness and became pulseless.

The severe blunt force injuries, the hanging position, and the obstruction of the oral cavity with a gag contributed to this individual’s death. The manner of death is homicide.

CDR, MC, USN, DMO/F8
Chief Deputy Medical Examiner
ARMED FORCES INSTITUTE OF PATHOLOGY
Office of the Armed Forces Medical Examiner
1413 Research Blvd., Bldg. 102
Rockville, MD 20850
1-800-944-7912

FINAL AUTOPSY REPORT

Name: [redacted]
Alternate spellings: [redacted]
Date of Birth: unknown
Date of Death: 5 April 2004
Date of Autopsy: 26 April 2004
Date of Report: 22 November 2004

Autopsy No.: ME 04-309
AFIP No.: 2924040
Rank: Civilian, Iraqi National
Place of Death: Mosul, Iraq
Place of Autopsy: Mosul, Iraq

Circumstances of Death: This approximately 27 year-old male civilian, presumed Iraqi
national, died in US custody approximately 72 hours after being apprehended. By report,
physical force was required during his initial apprehension during a raid. During his
confinement, he was hooded, sleep deprived, and subjected to hot and cold environmental
conditions, including the use of cold water on his body and hood.

Authorization for Autopsy: Office of the Armed Forces Medical Examiner, IAW 10
USC 1471

Identification: Visual, per detention facility records; postmortem fingerprints and DNA
profile obtained

CAUSE OF DEATH: Undetermined

MANNER OF DEATH: Undetermined

MEDCOM - 6067

Annex B-205

DOD 13279
FINAL AUTOPTSY DIAGNOSES:

I. Evidence of restraint
   a. White plastic "Flex cuffs" around each wrist
   b. Abrasions and contusions around wrists

II. Evidence of injury
   a. Minor abrasions and contusions of extremities
   b. Laceration above right eyebrow, 1 cm
   c. Contusion of right side of neck
   d. Minor abrasions of left side of forehead
   e. Subgaleal hemorrhage of bilateral frontal regions of scalp
   f. Intramuscular hemorrhage of anterior aspect of right shoulder
   g. No internal evidence of trauma

III. No evidence of significant natural disease within the limitations of the examination
   a. Cardiovascular System: No specific pathologic changes (AFIP Cardiovascular Pathology consultation)
      i. Heart weight, 450 gm
      ii. Histologically, left ventricular myocyte hypertrophy with focal mild subendocardial interstitial fibrosis
      iii. Contraction band necrosis, anterior right ventricle
      iv. Mildly thickened intramural coronary arteries
      v. Mild medial thickening of the sinus nodal artery
      vi. Focal mild dysplasia of penetrating branches of the AV nodal artery without increased fibrosis in the crest of the ventricular septum
   b. Neuropathology System: (AFIP Neuropathology Consultation)
      i. Cerebral edema, brain 1400 gm
      ii. Early acute neuronal injury
   c. Liver (AFIP Hepatic Pathology Consultation)
      i. Microvesicular steatosis, etiology undetermined
      ii. Marked congestion, likely agonal
   d. Pulmonary edema; right lung 700 gm, left lung 900 gm

IV. Early to moderate decomposition
   a. Green discoloration of abdomen
   b. Focal skin slippage

V. Evidence of medical intervention
   a. Endotracheal tube in place
   b. Intravenous catheter in the left antecubital fossa
   c. Intravenous catheter in the right inguinal region
   d. Three adhesive EKG tabs on anterior torso
   e. Pulse oximeter on left index finger
f. Curvilinear abrasion on upper chest, consistent with defibrillation

g. Fractures of anterior aspect of left 3rd rib and right 2nd-4th and 6th ribs, consistent with CPR efforts

VI. Toxicology (AFIP)
a. Volatiles: Mixed volatiles consistent with postmortem production; mg/dL
   i. Blood: acetone 20, 2-propanol 7
   ii. Urine: acetone 67, 2-propanol 3

b. Drugs: Consistent with resuscitation efforts
   i. Lidocaine detected in the urine
   ii. Urine negative for other screened medications and drugs of abuse
EXTERNAL EXAMINATION

The body is that of an unclad well-developed, well-nourished male. The body weighs approximately 190 pounds, is 72” in height and appears compatible with the reported age of 27 years. The body temperature is cold, that of the refrigeration unit. Rigor has dissipated, and the body is flaccid. Lividity is present and fixed on the posterior surface of the body, except in areas exposed to pressure.

There is early to moderate decomposition consisting of focal skin slippage of the arms, green discoloration of the abdomen, and early corneal clouding.

The scalp is covered with dark brown hair averaging 7 cm in length. Facial hair consists of a dark mustache and dark facial stubble. The irides are brown, and the corneae are slightly cloudy. The sclerae and conjunctivae are pale and free of petechiae. The earlobes are not pierced. The external auditory canals, external nares and oral cavity are free of foreign material and abnormal secretions. The nasal skeleton is palpably intact. The lips are without evident injury. The teeth are natural and in good condition.

The neck is straight and the trachea is midline and mobile. The chest is symmetric and well developed. No injury of the ribs or sternum is evident externally. The abdomen is flat and soft. Healed surgical scars are not noted. The extremities are well developed with normal range of motion. The fingernails are intact. Tattoos are not noted, and needle tracks are not observed. The external genitalia are those of a normal adult circumcised male. The testes are descended and free of masses. The pubic hair is shaved but is present in a normal distribution. The buttocks and anus are unremarkable.

A tag with the name of the decedent is secured to the right first toe.

EVIDENCE OF THERAPY

There is an endotracheal tube in place, and there are three adhesive EKG tabs on the body, two on the upper chest and one on the lower left side of the abdomen. There is an intravenous catheter in the left antecubital fossa, and there is an intravenous catheter in the right inguinal region. There is a 12 x 6 cm oval curvilinear abrasion on the upper right side of the chest, consistent with defibrillation attempts. There is a pulse oximeter taped over the end of the left index finger. There are fractures of the anterior aspect of the right 3rd rib and left 2nd-4th and 6th ribs, consistent with CPR efforts.

EVIDENCE OF INJURY

The ordering of the following injuries is for descriptive purposes only and is not intended to imply order of infliction or relative severity. All wound pathways are given relative to standard anatomic position.

There is bilateral periorbital ecchymosis, more pronounced over the lower lids and slightly more prominent on the left side. On the left side of the forehead, there are two
diagonally oriented parallel, linear abrasions. The medial one measures 4 x 0.2 cm and
the lateral one is 3 x 0.1 cm. There are multiple small, ill-defined areas of excoriation and
superficial abrasion over the central forehead and bridge of the nose. There is a 1 cm
laceration just above the lateral aspect of the right eyebrow. There is a 6 x 6 cm red
brown contusion on the right lateral aspect of the neck, just below the angle of the
mandible.

Upon reflecting the scalp, there is bilateral frontal subgaleal scalp hemorrhage. The most
prominent area is 3 x 2 cm, surrounding the laceration near the left eyebrow.

There is an 8 x 1 cm faint abrasion of the anterior aspect of the right shoulder, and there
is a faint 3 x 3 cm red contusion of the anterior aspect of the left shoulder. There is a 9 x
0.2 cm curved linear abrasion just to the left of the umbilicus. There is a 1 x 0.3 cm
abrasion of the lower left aspect of the abdomen.

Upon opening the chest, there is intramuscular hemorrhage of the anterior aspect of the
right shoulder.

There is a 12 x 8 cm area of contusion and faint abrasion on the anterior lateral aspect of
the right upper arm. There is a 6 x 2 cm red contusion on the anterior medial aspect of the
right upper arm. There are three ill-defined bands of erythema and red contusion over the
back of the left wrist, 7 x 3 cm in aggregate.

**INTERNAL EXAMINATION**

**BODY CAVITIES:**
The body is opened by the usual thoraco-abdominal incision and the chest plate is removed.
No adhesions are present in any of the body cavities. There is 100 ml of serosanguinous
fluid in each pleural space. There is no significant pericardial or peritoneal fluid. All body
organs are present in the normal anatomical position. The vertebral bodies are visibly and
palpably intact. The subcutaneous fat layer of the abdominal wall is 2 cm thick. There is no
internal evidence of blunt force or penetrating injury to the abdominal region.

**HEAD: (CENTRAL NERVOUS SYSTEM)**
The scalp is reflected, and no skull fractures are found. The calvarium of the skull is
removed. The dura mater and falx cerebri are intact. There is no epidural or subdural
hemorrhage present. The leptomeninges are thin and delicate. The cerebrospinal fluid is
clear. The cerebral hemispheres are symmetrical. The structures at the base of the brain,
including cranial nerves and blood vessels, are intact. Coronal sections through the cerebral
hemispheres revealed no lesions, and there is no evidence of infection, tumor, or trauma.
The ventricles are of normal size. Transverse sections through the brain stem and
cerebellum are unremarkable. The dura is stripped from the basilar skull, and no fractures
are found. The atlanto-occipital joint is stable. The brain weighs 1400 grams.
NECK:
Examination of the soft tissues of the neck, including strap muscles, thyroid gland and large vessels, reveals no abnormalities. The anterior strap muscles of the neck are homogeneous and red-brown, without hemorrhage. The thyroid cartilage and hyoid bone are intact. The larynx is lined by intact white mucosa and is unobstructed. The thyroid gland is symmetric and red-brown, without cystic or nodular change. There is no evidence of infection, tumor, or trauma, and the airway is patent. Incision and dissection of the posterior neck demonstrates no deep paracervical muscular injury, hemorrhage, or fractures of the dorsal spinous processes.

CARDIOVASCULAR SYSTEM:
The pericardial surfaces are smooth, glistening and unremarkable; the pericardial sac is free of significant fluid and adhesions. A moderate amount of epicardial fat is present. The coronary arteries arise normally, follow the usual distribution and are widely patent, without evidence of significant atherosclerosis or thrombosis. The chambers and valves exhibit the usual size-position relationship and are unremarkable. The myocardium is dark red-brown, firm and unremarkable; the atrial and ventricular septa are intact. The left ventricle is 1.3 cm in thickness and the right ventricle is 0.4 cm in thickness. The aorta and its major branches arise normally, follow the usual course and are widely patent, free of significant atherosclerosis and other abnormality. The venae cavae and their major tributaries return to the heart in the usual distribution and are free of thrombi. The heart weighs 450 grams. See “Cardiovascular Pathology Report” below.

RESPIRATORY SYSTEM:
The upper airway is clear of debris and foreign material; the mucosal surfaces are smooth, yellow-tan and unremarkable. The pleural surfaces are smooth, glistening and unremarkable bilaterally. The pulmonary parenchyma is red-purple, exuding moderate amounts of bloody fluid; no focal lesions are noted. The pulmonary arteries are normally developed, patent and without thrombus or embolus. The right lung weighs 700 grams; the left 900 grams.

LIVER & BILIARY SYSTEM:
The hepatic capsule is smooth, glistening and intact, covering dark red-brown, moderately congested parenchyma with no focal lesions noted. The gallbladder contains 10 ml of green-brown, mucoid bile; the mucosa is velvety and unremarkable. The extrahepatic biliary tree is patent, without evidence of calculi. The liver weighs 1450 grams.

ALIMENTARY TRACT:
The tongue is free of bite marks, hemorrhage, or other injuries. The esophagus is lined by gray-white, smooth mucosa. The gastric mucosa is arranged in the usual rugal folds and the lumen is essentially empty with only a film of mucus. The small and large bowel are unremarkable. The pancreas has a normal pink-tan lobulated appearance and the ducts are clear. The appendix is present and is unremarkable.
GENITOURINARY SYSTEM:
The renal capsules are smooth and thin, semi-transparent and strip with ease from the underlying smooth, red-brown cortical surfaces. The cortices are sharply delineated from the medullary pyramids, which are red-purple to tan and unremarkable. The calyces, pelves and ureters are unremarkable. White bladder mucosa overlies an intact bladder wall. The urinary bladder contains 200 ml of clear, yellow urine. The prostate gland is normal in size, with lobular, yellow-tan parenchyma. The seminal vesicles are unremarkable. The testes are free of mass lesions, contusions, or other abnormalities. The right kidney weighs 150 grams; the left 160 grams.

RETICULOENDOTHELIAL SYSTEM:
The spleen has a smooth, intact capsule covering red-purple, moderately firm parenchyma; the lymphoid follicles are unremarkable. The regional lymph nodes appear normal. The spleen weighs 160 grams.

ENDOCRINE SYSTEM:
The pituitary, thyroid and adrenal glands are unremarkable.

MUSCULOSKELETAL SYSTEM:
Muscle development is normal. No bone or joint abnormalities are noted.

MICROSCOPIC EXAMINATION

HEART: See "Cardiovascular Pathology Report" below.

LUNGS: The alveolar spaces and small air passages are expanded and contain no significant inflammatory component or edema fluid. The alveolar walls are thin and slightly congested. The arterial and venous vascular systems are normal. The peribronchial lymphatics are unremarkable.

LIVER: The hepatic architecture is intact. The portal areas show no increased inflammatory component or fibrous tissue. The hepatic parenchymal cells are well-preserved with no evidence of cholestasis or sinusoidal abnormalities. See "Hepatic Pathology Report" below.

SPLEEN: The capsule and white pulp are unremarkable. There is minimal congestion of the red pulp.

TESTES: Unremarkable.

THYROID GLAND: Unremarkable.

ADRENALS: The cortical zones are distinctive, and the medullae are not remarkable.
KIDNEYS: There is moderate autolysis. The subcapsular zones are unremarkable, and the glomeruli are mildly congested without cellular proliferation, mesangial prominence, or sclerosis. There is no interstitial fibrosis or significant inflammation. There is no thickening of the walls of the arterioles or small arterial channels.

BRAIN: See “Neuropathology Report” below.

CARDIOVASCULAR PATHOLOGY REPORT

Department of Cardiovascular Pathology, AFIP:

"AFIP DIAGNOSIS: ME-04-309 No specific pathologic changes

History: Arab male detainee, death in custody

Heart: 450 grams; normal epicardial fat; closed foramen ovale; normal cardiac chamber dimensions: left ventricular cavity diameter 30 mm, left ventricular free wall thickness 13 mm, ventricular septum thickness 15 mm; right ventricular dilatation; right ventricle thickness 4 mm, without gross scars or abnormal fat infiltrates; grossly normal valves and endocardium; no gross myocardial fibrosis or necrosis; histologic sections show left ventricular myocyte hypertrophy with focal mild subendocardial interstitial fibrosis; contraction band necrosis, anterior right ventricle; mildly thickened intramural coronary arteries

Coronary arteries: Normal ostia; right dominance; no gross atherosclerosis

Conduction system: The sinoatrial node is histologically unremarkable, but there is mild medial thickening of the sinus nodal artery. The compact atrioventricular (AV) node shows mild fragmentation (Mahaim fibers) within the central fibrous body, but is otherwise unremarkable. The penetrating bundle is centrally located without inflammation, increased fat, vascularity or proteoglycan. The proximal bundle branches are intact and unremarkable. There is focal mild dysplasia of penetrating branches of the AV nodal artery, but no significantly increased fibrosis in the crest of the ventricular septum.

Comment: The heart weight of 450 grams may reflect some degree of left ventricular hypertrophy, depending on the subject’s body weight."

NEUROPATHOLOGY REPORT

Department of Neuropathology and Ophthalmic Pathology, AFIP:

"Neuropathology consult (2924040-01; ME04-309): We reviewed the five H&E stained microscopic sections submitted in reference to this case. Microscopic sections demonstrate multiple sections of grey and white matter, cerebellum and spinal cord/medulla. Sections show widened pericellular and perivascular spaces and
scattered neurons with cytoplasmic eosinophilia and shrunken, pyknotic nuclei, most prominent in the dentate nucleus and cerebellum. These morphologic features represent cerebral edema and early acute neuronal injury. This material was reviewed in conference by the staff of the Department of Neuropathology and Ophthalmic Pathology.”

HEPATIC PATHOLOGY REPORT

Division of Hepatic Pathology, AFIP:

“Liver: (1) Microvesicular steatosis, etiology undetermined
(2) Marked congestion

Some toxins can cause microvesicular fat, usually associated with profound metabolic disturbances, but it can also be stress-related. There is no way to distinguish between these by histology alone. The congestion is presumably agonal. There is some lipofuscin pigment in centrilobular hepatocytes, but no bile stasis. The Masson stain shows no fibrosis to suggest underlying chronic liver disease. The PASD and iron stains show no lipofuscin or hemosiderin laden macrophages to suggest hepatocellular necrosis.”

ADDITIONAL PROCEDURES

- Documentary photographs are taken by OAFME photographers
- Specimens retained for toxicologic testing and/or DNA identification are: vitreous fluid, heart blood, urine, bile, spleen, liver, lung, brain, kidney, and psoas muscle
- The dissected organs are forwarded with the body
OPINION

Based on available investigation and complete autopsy examination, no definitive cause of death for this approximately 27 year-old male Iraqi civilian in US custody in Iraq could be determined. There is evidence of multiple minor injuries; however, there is no definitive evidence of any trauma significant enough to explain the death. The injuries include bilateral periorbital ecchymoses ("blackeyes"); abrasions and contusions of the face, torso, and extremities; contusion of the side of the neck; and subgaleal hemorrhage of the scalp.

There is evidence of restraint, consisting of "flexicuffs" around the wrists with associated minor contusions, and asphyxia from various means cannot be completely excluded in a restrained individual.

There are non-specific cardiac findings, including mild medial thickening of the sinus nodal artery and focal mild dysplasia of the penetrating branches of the atrioventricular nodal artery. However, there is no associated increased septal fibrosis, which can be a potential substrate for cardiac arrhythmia. There is no gross evidence of atherosclerosis of the coronary arteries. A cardiac arrhythmia related to various ion channelopathies or coronary vasospasm cannot be excluded.

The decedent was also subjected to cold and wet conditions, and hypothermia may have contributed to his death.

Therefore, the cause of death is best classified as undetermined, and the manner of death is undetermined.
Name: [Redacted]
SSAN: [Redacted]

Date of Birth: Unknown
Date of Death: 18 AUG 2004
Date of Autopsy: 30 AUG 2004
Date of Report: 30 AUG 2004

Autopsy No.: ME04-629
AFIP No.: Pending
Rank: Detainee in U.S. Custody
Place of Death: Iraq
Place of Autopsy: BIAP Mortuary, Baghdad, Iraq

Circumstances of Death: This Iraqi male was a detainee in U.S. custody at Abu Ghraib prison in Baghdad, Iraq. A group of prisoners became unruly and the guards used lethal force to subdue the crowd. A shotgun was fired and this detainee was struck and killed.

Authorization for Autopsy: Armed Forces Medical Examiner, per 10 U.S. Code 1471

Identification: Circumstantial identity is established by paperwork accompanying the detainee and his designation as detainee number [Redacted]

CAUSE OF DEATH: Shotgun Wound of the Head

MANNER OF DEATH: Homicide

These findings are preliminary, and subject to modification pending further investigation and laboratory testing.

MEDCOM - 163

Annex B-215
Preliminary Autopsy Diagnoses:

I. Shotgun Wound of the Head
   A. Penetrating Shotgun Wound of the Head
      1. Entrance: Right side of the back of the head; no evidence of
         close-range discharge of a firearm on the surrounding scalp
      2. Wound Path: Right parietal-occipital scalp, parietal-occipital
         skull, right cerebrum, left cerebrum
      3. Recovered: Deformed metallic foreign body located between
         the medial aspect of the left frontal lobe and the overlying dura
      4. Wound Direction: Right to left, back to front, and upward
      5. Associated Injuries: Subdural and subarachnoid
         hemorrhages, bilateral basilar skull fractures, cerebral
         contusions, and bone fragments along the hemorrhagic wound
         path

II. No evidence of significant natural disease processes, within the limitations
     of the examination

III. Evidence of medical therapy
    A. Vascular access devices in the left arm, both antecubital fossae,
       and the left subclavian area
    B. Oral-gastric intubation
    C. Endotracheal intubation
    D. Foley catheterization
    E. Electrocardiogram monitoring pads on the upper right chest and
       the left hip
    F. Contusion over the sternum, consistent with cardiopulmonary
       resuscitation

IV. Changes of early to moderate decomposition

V. The recovered projectile is placed in a labeled container and given to the
   investigating agent who was present at the autopsy

VI. Toxicology is pending

MEDCOM - 164

Annex B-216

DOD 003291
ADDITIONAL PROCEDURES/REMARKS

- Documentary photographs are taken by OAFME staff photographer, HMI

- Specimens retained for toxicologic testing and/or DNA identification are: heart, blood, spleen, liver, brain, bile, lung, kidney, and psoas muscle.

- Full body radiographs are obtained and demonstrate the metallic foreign body subsequently recovered from the brain.

- Selected portions of organs are retained in formalin, without preparation of histologic slides.

- The dissected organs are forwarded with body.

CDR MC USN
Chief Deputy Medical Examiner
SAIG-ID
SUBJECT: 4th Infantry Division Detainee Operations Assessment Trip Report (CONUS Team)

forms. Because of the confusion with recording of names, some detainees were released unintentionally. Part of the reason for excessive paperwork and evidence collection was the fact that SJA was applying American legal standards to a combat theater. This is not appropriate in the eyes of this officer. Excel spreadsheets were used for tracking detainees; NDRS and BATS were not available. (1.1, 1.2)

Training on force protection and use of deadly force was inadequate. Without scenario-based training, situations arose for which Soldiers (including MPs) were not prepared. MPs also did not follow the SS's strictly enough. Detainees were not segregated nor prevented from talking prior to interrogation, something that the MPs should have strictly enforced. This had significant detrimental effects on intelligence gathering. Release of detainees by higher HQ without clearing this with the capturing/lower echelon unit resulted in criminals back on the streets, only to be recaptured later—the higher HQ simply didn't know the detainee as well as the unit more in touch with the local AO. Higher HQ should clear all prospective releases with the local unit responsible for the AO in which the detainee was captured. (1.1, 1.2, 1.4)

Other than the shooting mentioned by the XO, this officer was unaware of any detainee abuse in the facility. There were times when detainees were in-processing with wounds, but there was never any explanation (legitimate resistance?) provided by the line units. Suspected abuse was reported through the chain of command. (1.1, 1.2)

(21) Observation 21: PLT Leader, This ILT was a PL for two years, and was in theater for one year. Since DO is usually (and expected to be) handled by RC units, there was no planning for DO prior to deployment. The expected mission was one of security and escort, not running detainee facilities. An SOP was in place when this MP unit took over the IBCT cage, and no additional references were used. Although DO is one of the five core functions of MPs, this area gets the lowest priority when it comes to training and skill development. Law of war and ROE was briefed initially by SJA (class), with changes in theater briefed at the PLT level. Some scenario-based and role playing training was conducted in theater. There was no specific training on treatment of detainees; the MPs relied on their common knowledge in this area. On-the-spot corrections of inappropriate procedures were made by team, squad, and platoon leaders. Home station training focuses on garrison missions (force protection) and individual competencies. Furthermore, training is focused on those missions where Soldiers are at risk of getting killed (security, convoy escorts, L&Q) as opposed to DO, where Soldiers are not in a lethal environment. This unit has not been at NTC or JRTC in three years, and when in the field there is no mount training (even though that is what is practiced in the most recent operations). The guard force did not receive any special training; they relied on basic MP skill training from past. Replacements were given one day of observation/OJT with an experienced MP, and they were initially assigned to guard towers and escort duties where handling of detainees was rare. (1.1, 1.2, 1.4)

The detainee facility was an old stable. The stable stalls were used to segregate detainees as much...
AGENT'S INVESTIGATIVE REPORT

CID Regulation 195-1

0374-04-CID093-65446

Page 1 of 2

DETAILS

About 0945, 3 Aug 04, SA coordinated with CPT, who stated he did not possess the mission logs as he had previously believed. CPT stated he would review the documentation at WPBF during the upcoming drill (6-8 Aug 04) and would attempt to obtain the ID of the victim and the date the assault occurred. Further, CPT stated he had received e-mail correspondence from SGT and would attempt to have him contact this office for interview.

About 1140, 5 Aug 04, SA interviewed SGT, B Co, 1/124th INF, WPBF, who stated he created the "Ramadi Madness" video while in Iraq sometime near the end of January, 2004. Further, SGT stated he had used SPC computer to create the video. According to SGT, he obtained the video tapes used to compile the video from SGT and had returned them to him after making the video. SGT stated he had only made two copies of the video, one was used to copy the video to the hard drive of the orderly room computer. SGT stated he destroyed both compact disks containing the video (allegedly to avoid the video being released to the media) once he found out this matter was under investigation. SGT stated he was not present during the assault of the detainee and had no knowledge of any other detainee abuse.

About 1015, 11 Aug 04, SA coordinated with CPT, who stated he was unable to identify the victim of this investigation or determine the timeframe the assault occurred.

About 1100, 18 Aug 04, SA coordinated with Mr. USACIL, who stated no additional videos or still photographs depicting detainee abuse were discovered on the computer or hard drive sent to the lab as evidence. Further, Mr. stated he had been able to open and view all of the images and videos on the above items of evidence. Mr. stated a report detailing his negative findings would be dispatched as soon as possible. Further, Mr. stated the video clip depicting the assault on the wounded detainee was able to be slightly enhanced and revealed the assailant appeared to be SFC.

About 0900, 1 Sep 04, this office received the USACIL examination report which revealed negative findings for the presence of additional video or still images depicting detainee abuse (see USACIL examination report for details).

About 1500, 9 Sep 04, SA coordinated with CPT, Trial Counsel, Staff Judge Advocate (SJA), Fort Stewart, GA, who viewed the "Ramadi Madness" video and the assault of the wounded detainee. CPT opined there was not sufficient probable cause or evidence to believe SFC committed the offense of Assault, based on the circumstances surrounding the kicking of the wounded detainee.

TYPED AGENT'S NAME AND SEQUENCE NUMBER

SIGNATURE

DATE

EXHIBIT

CID FORM 94

LAW ENFORCEMENT SENSITIVE

FOR OFFICIAL USE ONLY

DODDOACID 008684

Annex B-219
UNCLASSIFIED

DEPARTMENT OF THE ARMY
HEADQUARTERS, COMBINED JOINT TASK FORCE SEVEN
CAMP VICTORY, BAGHDAD, IRAQ
AND AE RABBD

CJTTF-CG

14 SEP 2001

MEMORANDUM FOR Commander, U.S. Central Command, 7115 South Boundary Boulevard,
MacDill Air Force Base, Florida 33621-5101

SUBJECT: CJTF-7 Interrogation and Counter-Resistance Policy

Enclosed is the CJTF-7 Interrogation and Counter-Resistance Policy, modeled on the one
implemented for interrogations conducted at Guantánamo Bay, but modified for applicability to
a theater of war in which the Geneva Conventions apply. Unless otherwise directed, my intent is
to implement this policy immediately.

[Signature]
RICARDO S. SANCHEZ
Lieutenant General, U.S. Army
Commanding

Annex B-220
MEMORANDUM FOR
Cl. Combined Joint Task Force Seven, Baghdad, Iraq 09335
Cl. Combined Joint Task Force Seven, Baghdad, Iraq 09335
Commander, 365th MI Brigade, Baghdad, Iraq 09335

SUBJECT: CJTF-7 Interrogation and Counter-Resistance Policy

1. (SU) This memorandum establishes the interrogation and counter-resistance policy for CJTF-7.

2. (SU) I approve the use of specified interrogation and counter-resistance techniques A-DD, as described in enclosure 1, subject to the following:
   a. (SU) These techniques must be used within safeguards described in enclosure 2.
   b. (SU) Use of these techniques is limited to interrogations of detainees, enemy soldiers and enemy prisoners of war under the control of CJTF-7.
   c. (SU) Use of techniques B, L, O, X, Y, AA, BB, CC on enemy prisoners of war must be approved by me personally prior to use. Submit written requests for use of these techniques, with supporting rationale, to me through the CJTF-7 C2. A legal review from the CJTF-7 STA must accompany each request.

3. (SU) CJTF-7 is operating in a theater of war in which the Geneva Conventions are applicable. Coalition forces will continue to treat all persons under their control humanely.

4. (SU) Requests for use of techniques not listed in enclosure 1 will be submitted to me through the CJTF-7 C2, and include a description of the proposed techniques and recommended safeguards. A legal review from the CJTF-7 STA must accompany each request.

5. (SU) Nothing in this policy limits existing authority for maintenance of good order and discipline among detainees.

6. (SU) POC is __________________________, DNYT __________, DSN _____________

2 Enclosures
1. Interrogation Techniques
2. General Safeguards

CF: Commander, US Central Command

REGARDO: D. SANCHEZ
Lieutenant General, USA
Commanding

UNCLASSIFIED

Annex B-221
INTERROGATION TECHNIQUES

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**A. Direct:** Asking straightforward questions.

**B. Incentive/Removal of Incentive:** Providing a reward or removing a privilege, above and beyond those that are required by the Geneva Convention, from detainees. [Caution: Other nations that believe detainees are entitled to POW protections may consider that provision and retention of religious items (e.g., the Koran) are protected under international law (see, Geneva III, Article 34).]

**C. Emotional Love:** Playing on the love a detainee has for an individual or group.

**D. Emotional Hate:** Playing on the hatred a detainee has for an individual or group.

**E. Fear Up Harsh:** Significantly increasing the fear level in a detainee.

**F. Fear Up Mild:** Moderately increasing the fear level in a detainee.

**G. Reduced Fear:** Reducing the fear level in a detainee.

**H. Pride and Ego Up:** Boosting the ego of a detainee.

**I. Pride and Ego Down:** Attacking or insulting the ego of a detainee, not beyond the limits that would apply to an POW. [Caution: Article 17 of Geneva III provides, “Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.” Other nations that believe detainees are entitled to POW protections may consider this technique inconsistent with the provisions of Geneva.]

**J. Guilt:** Invoking the feeling of guilt of a detainee.

**K. We Know All:** Convincing the detainee that the interrogator already knows the answers to questions he asks the detainee.

**L. Establish Your Identity:** Convincing the detainee that the interrogator has mistaken the detainee for someone else.

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Annex B-222
M. (S听取) Repetition: Continuously repeating the same question to the detainee within interrogation periods of normal duration.

N. (S听取) File and Dossier: Convincing detainees that the interrogator has a damning and inaccurate file, which must be fixed.

O. (S听取) Must and Jeff: A team consisting of a friendly and harsh interrogator. The harsh interrogator might employ the Pride and Ego Down technique. (Caution: Other nations that believe that IHWs practices apply to detainees may view this technique as inconsistent with Geneva III, Article 13 which provides that IHWs must be protected against acts of intimidation. Consideration should be given to these views prior to application of the technique.)

P. (S听取) Rapid Fire: Questioning in rapid succession without allowing detainees to answer.

Q. (S听取) Silence: Staring at the detainees to encourage discomfort.

R. (S听取) Change of Scenery Up: Removing the detainees from the standard interrogation setting (generally in a location more pleasant, but no worse).

S. (S听取) Change of Scenery Down: Removing the detainees from the standard interrogation setting and placing them in a setting that may be less comfortable, would not constitute a substantial change in environmental quality.

T. (S听取) Dietary Manipulation: Changing the diet of a detainee; so induced deprivation of food or water; no adverse medical or cultural effect and without intent to deprive subject of food or water, e.g., hot meals to MREs.

U. (S听取) Environmental Manipulation: Altering the environment to create increased discomfort (e.g., adjusting temperature or introducing an unpleasant smell). Conditions may not be such that they injure the detainees. Detainees is accompanied by interrogator at all times. (Caution: Based on court cases in other countries, some nations may view application of this technique in certain circumstances to be inhuman. Consideration of these views should be given prior to use of this technique.)

V. (S听取) Sleep Adjustment: Adjusting the sleeping times of the detainees (e.g., reversing sleep cycles from night to day). This technique is NOT sleep deprivation.

W. (S听取) Faint Flag: Convincing the detainees that individuals from another country other than the United States are interrogating him.

X. (S听取) Isolation: Isolating the detainees from other detainees while still complying with basic standards of treatment. (Caution: The use of isolation as an interrogation technique requires detailed implementation instructions, including specific guidelines regarding the length of isolation, medical and psychological review, and approval for extensions of the length of isolation by the 205th MI BDE Commander. Use of this technique for more than 30 days, whether continuous or not, must be briefed to 205th MI BDE Commander prior to implementation.)

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Annex B-223
Y. (S/NI) Presence of Military Working Dogs: exploits Arab fear of dogs while maintaining security during interrogations. Dogs will be unlined and under control of MWD handler at all times to prevent contact with detainee.

Z. (S/NI) Sleep Management: Detainee provided minimum 4 hours of sleep per 24 hour period, not to exceed 72 continuous hours.

AA. (S/NI) Yelling, Loud Music, and Light Control: Used to create fear, disrupt detainee and prolong capture shock. Volume controlled to prevent injury.

BB. (S/NI) Deception: Use of falsified representations including documents and reports.

CC. (S/NI) Stress Positions: Use of physical postures (sitting, standing, kneeling, prone, etc.) for no more than 1 hour per use. Use of technique(s) will not exceed 4 hours and adequate rest between use of each position will be provided.

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Annex B-224
Enclosure 2

GENERAL SAFEGUARDS

Application of these interrogation techniques is subject to the following general safeguards:
(i) limited to use at interrogation facilities only; (ii) there is a reasonable basis to believe that the detainee possesses critical intelligence; (iii) the detainee is medically and operationally evaluated as suitable (considering all techniques to be used in combination); (iv) interrogators are specifically trained for the technique(s); (v) a specific interrogation plan (including reasonable safeguards, limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel) has been developed; (vi) there is appropriate supervision; and (vii) there is appropriate specified and/or approval as identified by 205th MI BDE Commander for use with any specific detainee (after considering the foregoing and seeking legal advice).

(5) The purpose of all interrogations is to gain the most information from a detainee with the least intrusive method; always applied in a humane and lawful manner with sufficient oversight by trained investigators or interrogators. Operating instructions must be developed based on command policies to instill uniform, careful, and safe application of interrogations of detainees.

(5A) Interrogations must always be planned, deliberate actions that take into account factors such as a detainee’s current and past performance in both detention and interrogation; a detainee’s emotional and physical strengths and weaknesses; assessment of potential approaches that may work on a certain detainee in an effort to gain the trust of the detainee; strengths and weaknesses of interrogators; and augmentation by other personnel for a certain detainee based on other factors.

(5B) Interrogation approaches are designed to manipulate the detainee’s emotions and weaknesses to gain his willing cooperation. Interrogation operations are never conducted in a vacuum; they are conducted in close cooperation with the units detaining the individuals. The policies established by the detaining units that pertain to searching, designing and improving play a role in the interrogation of the detainee. Detainee interrogation involves developing a plan tailored to an individual and approved by senior interrogators. Strict adherence to policies and standard operating procedures governing the administration of interrogation techniques and oversight is essential.

(5C) It is important that interrogators be provided reasonable latitude to vary techniques depending on the detainee’s culture, strength, weaknesses, environment, extent of training in resistance techniques as well as the urgency of obtaining information that the detainee is believed to have.

(5D) While techniques are considered individually within this analysis, it must be understood that in practice, techniques are usually used in combination. The cumulative effect of all techniques to be employed must be considered before any decisions are made regarding approval for particular situations. The side of a particular technique is not always fully descriptive of a particular technique. 205th MI BDE Commander is responsible for oversight of all techniques involving physical contact.
MEMORANDUM FOR

C2, Combined Joint Task Force Seven, Baghdad, Iraq 09335
C3, Combined Joint Task Force Seven, Baghdad, Iraq 09335
Commander, 20th Military Intelligence Brigade, Baghdad, Iraq 09335

SUBJECT: CJTF-7 Interrogation and Counter-Resistance Policy

1. (SECRET/NOFORN) This memorandum establishes the interrogation and counter-resistance policy for security internees under the control of CJTF-7. Security internees are civilians who are detained pursuant to Articles 5 and 80 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereinafter, Geneva Convention).

2. (SECRET) I approve the use of specified interrogation and counter-resistance approaches A-Q, as described in Enclosure 1, relating to security internees, subject to the following:

   a. (SECRET) Use of these approaches is limited to interrogations of security internees under the control of CJTF-7.

   b. (SECRET) These approaches must be used in combination with the safeguards described in Enclosure 2.

   c. (SECRET) Segregation of security internees will be required in many instances to ensure the success of interrogations and to prevent the sharing of interrogation methods among internees. Segregation may also be necessary to protect sources from other detainees or otherwise provide for their security. Additionally, the Geneva Convention provides that security internees under definite suspicion of activity hostile to the security of Coalition forces shall, where absolute military necessity requires, be regarded as having forfeited rights of communication. Accordingly, these security internees may be segregated. I must approve segregation in all cases where such segregation will exceed 30 days in duration, whether consecutive or nonconsecutive. Submit written requests with supporting rationale to me through the CJTF-7 C2. A legal review from the CJTF-7 SJA must accompany each request.

   d. (SECRET) In employing each of the authorized approaches, the interrogator must maintain control of the interrogation. The interrogator should appear to be the one who controls all aspects of the interrogation, to include the lighting, heating and configuration of the interrogation room, as well as the food, clothing and shelter given to the security internee.

UNCLASSIFIED

Annex B-226
UNCLASSIFIED

SECRET/NOFOR/NX-1

CJTF-7-OG
SUBJECT: CJTF-7 Interrogation and Counter-Resistance Policy

3. (SAP) Requests for use of approaches not listed in Enclosure 1 will be submitted to me through CJTF-7 C2, and will include a description of the proposed approach and recommended safeguards. A legal review from the CJTF-7 SJA will accompany each request.

4. (SAP) Nothing in this policy limits existing authority for maintenance of good order and discipline among persons under Coalition control.

5. (SAP) This policy supersedes the CJTF-7 Interrogation and Counter-Resistance Policy signed on 14 September 2003.

6. (SAP) POC: ____________________, DNVT ____________, DSN ____________

2 Enclos
1. Interrogation Approaches (SI)
2. General Safeguards

CP: Commander, US Central Command

RICARDO S. SANCHEZ
Lieutenant General, USA
Commanding

Annex B-227
SECRET/CONFIDENTIAL INTERROGA TION APPROACHES (Security Internees)

(A) Use of the following types is subject to the application of the general safeguards provided in enclosure (2). Specific implementation guidance with respect to approaches A-Q is provided in U.S. Army Field Manual 34-52. Brigade Commanders may provide additional implementation guidance.

A. Direct: Asking straightforward questions. The most effective of all approaches, it is the most simple and efficient approach to utilize.

B. Incentive Removal: Removing an incentive. Providing a reward or removing a privilege, above and beyond those required by the Geneva Convention. Possible incentives may include favorite food items, changes in environmental quality, or other traditional or regional comforts not required by the Geneva Convention.

C. Emotional Love: Playing on the love a security intern has for an individual or group. May involve an incentive, such as allowing communication with the individual or group.

D. Emotion Haunt: Playing on the genuine hatred or desire for revenge a security intern has for an individual or group.

E. Fear Up Hard: Significantly increasing the fear level in a security intern. E. Fear Up Mild: Moderately increasing the fear level in a security intern.

F. Reduced Fear: Reducing the fear level in a security intern or calming him by convincing him that he will be properly and humanely treated.

G. Pride and Ego Up: Plotting or boosting the ego of a security intern.

H. Pride and Ego Down: Attacking or insulting the pride or ego of a security intern.

J. Futility: Invoking the feeling in a security intern that it is useless to resist by playing on the doubts that already exist in his mind.

K. We Know: All: Convincing the security intern that the interrogator already knows the answers to questions being asked.

L. Establish Your Identity: Convincing the security intern that the interrogator has mistaken the security intern for someone else. The security intern is encouraged to "clear his name."

M. Repetition: Continuously repeating the same question to the security intern during an interrogation to encourage full and candid answers to questions.

N. File and Deadline: Convincing security intern that the interrogator has a voluminous, damning and inaccurate file, which must be corrected by the security intern.
SECRET/UNCLASSIFIED
GENERAL SAFEGUARDS

Application of these interrogation approaches is subject to the following general safeguards:
(i) limited to use by trained interrogation personnel; (ii) there is a reasonable basis to believe that the security
interest possesses information of intelligence value; (iii) the security interest is medically evaluated as a suitable
candidate for interrogation (considering all approaches to be used in combination); (iv) interrogators are specifically trained for the approaches; (v) a specific
interrogation plan, including reasonable safeguards, limits on duration, intervals between
applications, termination criteria, and the presence or availability of qualified medical personnel has been developed; and (vi) there
is appropriate supervision.

The purpose of all interviews and interrogations is to get the most information from a security interest with the least intrusive
method applied in a humane and lawful manner with sufficient oversight by trained investigators or interrogators. Interrogators
and supervisory personnel will ensure uniform, careful, and safe conduct of interrogations.

Interrogations must always be planned, deliberate actions that take into account factors such as a security interest’s
current and past performance in both detention and interrogation: a security interest’s emotional and physical strengths and
weaknesses; assessment of approaches and
individual techniques that may be effective; strengths and weaknesses of interrogators; and factors which may necessitate the
augmentation of personnel.

Interrogation approaches are designed to manipulate a security interest’s emotions and, weaknesses to gain his willing
cooperation. Interrogations operations are never conducted in a vacuum; they are conducted in close cooperation with the
concern entities. Detrimental regulations and policies established by detaining units should be harmonized to ensure consistency with the
interrogation policies of the intelligence collection unit. Such consistency will help to maximize the credibility of the interrogation
team and the effectiveness of the interrogation. Strict adherence to such regulations, policies and standard operating procedures is
essential.

Interrogators must appear to completely control the interrogation environment. It is important that interrogators be
provided reasonable latitude to vary approaches depending on the
security interest’s cultural background, strengths, weaknesses, environment, extent of resistance training, as well as the urgency

with which information believed in the possession of the security interest must be obtained.

Interrogators must ensure the safety of security interests, and approaches must in no way endanger them. Interrogators
will ensure that security interests are allowed adequate sleep and that they provide adequate food and water and ensure
adequate medical or psychological care. Where segregation is necessary, security interests must be monitored for adverse medical or
psychological reactions. Should military working dogs be present during interrogations, they will be muzzled and under control of
a handler at all times to ensure safety.

While approaches are considered individually within this analysis, it must be understood
that in practice, approaches are usually used in combination. The title of a particular approach is not always fully descriptive of a
particular approach. The cumulative effect of all approaches to be employed must be considered before any decision is made
regarding approval of a particular interrogation plan.

Annex B-229
O. (LIGHT): Mau and Jeff. An interrogation team consisting of a friendly and a harsh interrogator. This approach is designed to cause the security internee to have a feeling of hostility toward one interrogator and a feeling of gratitude toward the other.

P. (LIGHT): Rapid Fire. Questioning in rapid succession without allowing security internee to answer questions fully.

Q. (LIGHT): Silence. Staring at the security internee to encourage discomfort.
ANNEX C

Summaries of U.S.
Investigations of Abuse
Annex C: Summaries of U.S. Investigations of Abuse

Taguba Report

Maj. Gen. Antonio M. Taguba was appointed by Commander, Coalition Forces Land Component Command, Lt. Gen. David D. McKiernan, at the request of Lt. Gen. Ricardo Sanchez, Commander of the Coalition Joint Task Force in Iraq, to investigate the performance of the 800th Military Police Brigade, some of whom staffed Abu Ghraib.¹ Gen. Taguba reported on the criminal abuses inflicted on detainees and described these abuses as “systemic.”² Notably, Gen. Taguba traced the abuses in part to the recommendation of Maj. Gen. Geoffrey Miller, who was then Commander of the U.S. military joint task force at Guantánamo. Miller visited Iraq in August and September 2003 and recommended that “the guard force be actively engaged in setting the condition for successful exploitation of internees.”³

The report cited the presence of other government agencies who “actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses.”⁴ It also identified as problematic the practice of holding “ghost detainees”—detainees kept off official records and secret from the ICRC—as “deceptive, contrary to Army Doctrine, and in violation of international law.”⁵

Schlesinger Report

The Schlesinger panel, chosen by Secretary Rumsfeld on May 7, 2004, was asked to review Department of Defense detention operations, to advise the Secretary of Defense on the cause of the problems, and to recommend solutions. The panel was comprised of former Secretary of Defense, James Schlesinger; Tillie Flower, who formerly served in the U.S. House of Representatives from Florida; retired Air Force Gen. Charles Horner; and Harold Brown, former Secretary of Defense.

The panel found that the interrogation techniques authorized by Secretary Rumsfeld “migrated” from Guantánamo to Afghanistan and Iraq.⁶ The report noted that when Gen. Geoffrey Miller went to Iraq to set up methods for “actionable intelligence” he “brought

² Id. at “Regarding Part One of the Investigation” ¶ 5.
³ Id. at “Assessment of DoD Counter-Terrorism Interrogation and Detention Operations in Iraq (MG Miller’s Assessment)” ¶ 2.
⁴ Id. at “Regarding Part One of the Investigations” ¶ 10.
⁵ Id. at Regarding Part Two of the Investigations” ¶ 33.
to Iraq the Secretary of Defense’s April 16, 2003 policy guidelines for Guantánamo . . . as a potential model” which he gave to Gen. Sanchez.\(^7\)

The report also noted that when Gen. Sanchez on September 14, 2003 “signed a memorandum authorizing a dozen interrogation techniques beyond” the standard Army practice under the Geneva Conventions and Army Field Manual FM 34-52, including “five beyond those approved for Guantánamo,” he did so “using reasoning from the President’s memorandum of February 7, 2002,” which he believed justified “additional, tougher measures.”\(^8\) Although the panel interviewed top military and Pentagon officials, it conducted no independent research.

Despite making such links between interrogation policies approved by top government officials, the report did not find that such policies were linked to the abuse in the detention centers. In fact the chairman of the Schlesinger panel showed his bias when he suggested that the resignation of Secretary of Defense “would be a boon to all of America’s enemies” and that “his conduct with regard to [the issue of interrogation policy] has been exemplary.”\(^9\)

**Fay-Jones Report**

In April 2004, U.S. Army Maj. Gen. George G. Fay, deputy chief of staff of Army intelligence, was appointed by Gen. Sanchez to examine the alleged misconduct of personnel assigned to the 205\(^{th}\) Military Intelligence Brigade, which was in charge of Abu Ghraib.\(^10\) Gen. Anthony R. Jones was brought into the investigation in June 2004 to question Gen. Sanchez.

The report, released in August 2004, found that “inadequate interrogation doctrine and training, an acute shortage of MP [military police] and MI [military intelligence] soldiers, the lack of clear lines of responsibility between the MP and MI chains of command, the lack of a clear interrogation policy for the Iraq Campaign, and intense pressure felt by the personnel on the ground to produce actionable intelligence from detainees” resulted in the abuse of detainees in Iraq.\(^11\)

The reports also found that the techniques authorized by Secretary Rumsfeld for use in Guantánamo were being used in Afghanistan, where interrogators were “removing

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\(^7\) *Id.* at 37.

\(^8\) *Id.* at 9-10.


\(^11\) *Id.* at 8.
clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation.”

**Mikolashek Report**

In February 2004, the Acting Secretary of the Army directed the Department of the Army Inspector General to conduct an assessment of detainee operations in Iraq and Afghanistan. Gen. Paul T. Mikolashek did not investigate actions taken high up the chain of command or consider sources of information outside the military. The inspector general’s team chose not to investigate “ghost detainees,” nor did it investigate the handling of ICRC reports by the staff of Gen. Sanchez.

The inspector general identified ninety-four cases of confirmed or possible abuse, including twenty prisoner deaths, but concluded that that the abuses were “unauthorized actions taken by a few individuals,” and not the result of policy. The report blames low-ranking soldiers for abuse even though the summary identifies problems rooted in decisions by senior officials. For example the report states:

- Troops received “ambiguous guidance from command on the treatment of detainees”,
- The decision by senior commanders to rely on the Guantánamo guidelines “appears to contradict” the terms of Rumsfeld’s decision, which explicitly stated that the guidelines were applicable only to interrogations at Guantánamo; and this led to the use of “high risk” interrogation techniques that “left considerable room for misapplication, particularly under high-stress combat conditions.”

The report contradicted the conclusion of the earlier Taguba report, which found abuses to be “systemic,” and that of the February 2004 ICRC report which concluded that widespread “use of ill treatment” could be considered a “practice tolerated” by the coalition forces because it continued after the ICRC warned U.S. military and government officials.

**Church Report**

In May 2004, Secretary of Defense Donald Rumsfeld ordered Vice Admiral Albert T. Church to investigate prisoner operations and intelligence gathering practices in

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12 Id. at 29.
14 Id. at 19.
15 Id. at 40.
Guantánamo Bay, the Naval Consolidated Brig in Charleston, South Carolina, and Iraq and Afghanistan. The report was completed in late 2004, but was classified and given only to the U.S. Senate Armed Forces Committee. Only in March 2005 was an unclassified twenty-one page executive summary made public.\footnote{Dep’t of Defense, \textit{Review of DoD Detention Operations and Detainee Interrogation Techniques, Executive Summary}, at 3 (Mar. 2005) (hereinafter “Church Report”), available at \url{http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf}.}

This was the only government report on the development of interrogation techniques and detainee abuse in response to the “global war on terrorism,” but it was not thorough or exhaustive because investigators did not interview any current or former detainees. Nor did Vice Admiral Church interview Sec. Rumsfeld because, according to Vice Admiral Church, he “had no more questions . . . [and] had no need to go any further.”\footnote{Dep’t of Defense, \textit{Department of Defense Briefing on Detention Operations and Interrogation Techniques} (Mar. 10, 2005), available at \url{http://www.pentagon.mil/transcripts/2005/tr20050310-2262.html}.}

The report makes unsupported conclusions. For example, the report states that “it is clear that none of the pictured abuses at Abu Ghraib bear any resemblance to approved policies at any level, in any theater,” and “interrogators clearly understood that abusive practices and techniques—such as terrorizing detainee with unmuzzled dogs . . . — were at all times prohibited.”\footnote{Church Report, at 3, 10.} Yet Secretary Rumsfeld in December 2002 approved techniques for Guantánamo detainees that violated the prohibition of cruel, inhuman or degrading treatment.\footnote{See Memorandum from William J. Haynes II, General Counsel, Dep’t of Defense to Donald Rumsfeld, Sec’y of Defense, \textit{Re: Counter-Resistance Techniques} (Nov. 27, 2002), available at \url{http://www.slate.com/features/whatistorture/pdfs/020927.pdf}. Haynes’ recommendations were approved by Rumsfeld on Dec. 2, 2002. \textit{Id}.} In addition, Gen. Sanchez in September 2003 authorized the use of dogs, stress positions, yelling, and sensory deprivation.\footnote{Annex B220-225, Memorandum from Lieutenant General Sanchez to Commander, U.S. Central Command, \textit{Re: CJTF-7 Interrogation and Counter-Resistance Policy} (Sept. 14, 2003).} In October 2003, Gen. Sanchez modified some techniques but continued to authorize interrogators to control lighting, heating, food, shelter, clothes, and required muzzle on dogs during interrogation.\footnote{Annex B226-230. Memorandum from Lieutenant General Sanchez to Commander, Combined Joint Task Force Seven, \textit{Re: CJTF-7 Interrogation and Counter-Resistance Policy} (Oct. 12, 2003).}

\textbf{Schmidt Report}

In January 2005, U.S Southern Command headquarters appointed Army Brigadier Gen. John Furlow to conduct “an internal investigation into recently disclosed allegations” by members of the FBI about detainee abuse in Guantánamo. In February 2005, following criticism that a one-star brigadier general would be unable to question senior officers, Air Force Lt. Gen. Randall Schmidt took over the investigation.\footnote{News Release, U.S. Southern Command, Three-Star General Appointed to Lead Investigation (Feb. 28, 2005), available at \url{http://www.southcom.mil/pa/Media/Releases/PR050228.pdf}.} Despite striking evidence regarding the mistreatment of detainees (as noted above) and widespread use of approved

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\textsuperscript{19} Church Report, at 3, 10.  
\textsuperscript{20} See Memorandum from William J. Haynes II, General Counsel, Dep’t of Defense to Donald Rumsfeld, Sec’y of Defense, \textit{Re: Counter-Resistance Techniques} (Nov. 27, 2002), available at \url{http://www.slate.com/features/whatistorture/pdfs/020927.pdf}. Haynes’ recommendations were approved by Rumsfeld on Dec. 2, 2002. \textit{Id}.  
harsh and abusive interrogation methods, Schmidt concluded that abuses have not “crossed the threshold of being inhumane.”

The classified report, from which only the executive summary has been released, found that U.S. interrogators’ application of techniques including the use of dogs, the use of extreme heat and cold, and sleep deprivation was not improper because the Secretary of Defense had specifically approved these techniques. While the report did not examine the legal validity of interrogation techniques, it found that techniques used by U.S. interrogators, including interrogation for eighteen to twenty hours per day for forty-eight out of fifty-four consecutive days, forcing a detainee to wear a woman’s bra and placing a thong on his head, and tying a leash to a detainee and forcing him to perform “a series of dog tricks” were not improper because they had been authorized by the Secretary of Defense.

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25 Id. at 27-28.

26 Id. at 19-20 (the report did conclude that the cumulative effect was abusive and degrading when done in the context of forty-eight days of interrogation but nevertheless concluded that “this treatment did not rise to the level of prohibited inhumane treatment”). See also Memorandum from Donald Rumsfeld, Sec’y of Defense to Commander, US Southern Command, Re: Counter-Resistance Techniques in the War on Terrorism (Apr. 16, 2003), available at http://www.washingtonpost.com/wp-srv/nation/documents/041603rumsfeld.pdf. (The techniques approved included isolation for up to thirty days, dietary manipulation, environmental manipulation, “sleep adjustment,” and “false flag”—leading detainees to believe that they were being interrogated by people from outside the U.S.—none of which is consistent with the authorized interrogation techniques in Army Field Manual 34-52). See also Annex B220-225.