
**Final Report
of the
Independent Panel To Review
DoD Detention Operations**



August 2004

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Independent Panel to Review DoD Detention Operations

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The Honorable James R. Schlesinger

Panel Members

The Honorable Harold Brown

The Honorable Tillie K. Fowler

General Charles A. Horner (USAF-RET)

Executive Director

Dr. James A. Blackwell, Jr.



INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

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THE HONORABLE JAMES R. SCHLESINGER

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EXECUTIVE DIRECTOR

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August 24, 2004

To U.S. Secretary of Defense Donald Rumsfeld

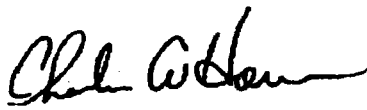
We, the appointed members of the Independent Panel to Review DoD Detention Operations, pursuant to our charter do hereby submit the results of our findings and offer our best recommendations.

Sincerely,


The Honorable James R. Schlesinger
Chairman


The Honorable Harold Brown
Panel Member


The Honorable Tillie K. Fowler
Panel Member


General Charles A. Horner
(USAF -Ret.)
Panel Member

**The Independent Panel to Review
Department of Defense
Detention Operations**

August 2004

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Executive Summary

OVERVIEW

The events of October through December 2003 on the night shift of Tier 1 at Abu Ghraib prison were acts of brutality and purposeless sadism. We now know these abuses occurred at the hands of both military police and military intelligence personnel. The pictured abuses, unacceptable even in wartime, were not part of authorized interrogations nor were they even directed at intelligence targets. They represent deviant behavior and a failure of military leadership and discipline. However, we do know that some of the egregious abuses at Abu Ghraib which were not photographed did occur during interrogation sessions and that abuses during interrogation sessions occurred elsewhere.

In light of what happened at Abu Ghraib, a series of comprehensive investigations has been conducted by various components of the Department of Defense. Since the beginning of hostilities in Afghanistan and Iraq, U.S. military and security operations have apprehended about 50,000 individuals. From this number, about 300 allegations of abuse in Afghanistan, Iraq or Guantanamo have arisen. As of mid-August 2004, 155 investigations into the allegations have been completed, resulting in 66 substantiated cases. Approximately one-third of these cases occurred at the point of capture or tactical collection point, frequently under uncertain, dangerous and violent circumstances.

Abuses of varying severity occurred at differing locations under differing circumstances and context. They were widespread and, though inflicted on only a small percentage of those detained, they were serious both in number and in effect. No approved procedures called for or allowed the kinds of abuse that in fact occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities. Still, the abuses were not just the failure of some individuals to follow known standards, and they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels.

Secretary of Defense Donald Rumsfeld appointed the members of the Independent Panel to provide independent professional advice on detainee abuses, what caused them and what actions should be taken to preclude their repetition. The Panel reviewed various criminal investigations and a number of command and other major investigations. The Panel also conducted interviews of relevant persons, including the Secretary and Deputy Secretary of Defense, other senior Department of Defense officials, the military chain-of-command and their staffs and other officials directly and indirectly involved with Abu Ghraib and other detention operations. However, the Panel did not have full access to information involving the role of the Central Intelligence Agency in detention operations; this is an area the Panel believes needs further investigation and review. It should be noted that information provided to the Panel was that available as of mid-August 2004. If additional information becomes available, the Panel's judgments might be revised.

POLICY

With the events of September 11, 2001, the President, the Congress and the American people recognized we were at war with a different kind of enemy. The terrorists who flew airliners into the World Trade Center and the Pentagon were unlike enemy combatants the U.S. has fought in previous conflicts. Their objectives, in fact, are to kill large numbers of civilians and to strike at the heart of America's political cohesion and its economic and military might. In the days and weeks after the attack, the President and his closest advisers developed policies and strategies in response. On September 18, 2001, by a virtually unanimous vote, Congress passed an Authorization for Use of Military Force. Shortly thereafter, the U.S. initiated hostilities in Afghanistan and the first detainees were held at Mazar-e-Sharrif in November 2001.

On February 7, 2002, the President issued a memorandum stating that he determined the Geneva Conventions did not apply to the conflict with al Qaeda, and although they did apply in the conflict with Afghanistan, the Taliban were unlawful combatants and

therefore did not qualify for prisoner of war status (see Appendix C). Nonetheless, the Secretary of State, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff were all in agreement that treatment of detainees should be consistent with the Geneva Conventions. The President ordered accordingly that detainees were to be treated “. . . humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.” Earlier, the Department of State had argued the Geneva Conventions in their traditional application provided a sufficiently robust legal construct under which the Global War on Terror could effectively be waged. The Legal Advisor to the Chairman, Joint Chiefs of Staff, and many of the military service attorneys agreed with this position.

In the summer of 2002, the Counsel to the President queried the Department of Justice Office of Legal Counsel (OLC) for an opinion on the standards of conduct for interrogation operations conducted by U.S. personnel outside of the U.S. and the applicability of the Convention Against Torture. The OLC responded in an August 1, 2002 opinion in which it held that in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain and suffering that is difficult to endure.

Army Field Manual 34-52 (FM 34-52), with its list of 17 authorized interrogation methods, has long been the standard source for interrogation doctrine within the Department of Defense (see Appendix D). In October 2002, authorities at Guantanamo requested approval of stronger interrogation techniques to counter tenacious resistance by some detainees. The Secretary of Defense responded with a December 2, 2002 decision authorizing the use of 16 additional techniques at Guantanamo (see Appendix E). As a result of concerns raised by the Navy General Counsel on January 15, 2003, Secretary Rumsfeld rescinded the majority of the approved measures in the December 2, 2002 authorization. Moreover, he directed the remaining more aggressive techniques could be used only with his approval (see Appendix D).

At the same time, he directed the Department of Defense (DoD) General Counsel to establish a working group to study interrogation techniques. The Working Group was headed by Air Force General Counsel Mary Walker and included wide membership from across the military legal and intelligence communities. The Working Group also relied heavily on the OLC. The Working Group reviewed 35 techniques and after a very extensive debate ultimately recommended 24 to the Secretary of Defense. The study led to the Secretary of Defense's promulgation on April 16, 2003 of a list of approved techniques strictly limited for use at Guantanamo. This policy remains in force at Guantanamo (see Appendix E).

In the initial development of these Secretary of Defense policies, the legal resources of the Services' Judge Advocates General and General Counsels were not utilized to their full potential. Had the Secretary of Defense had a wider range of legal opinions and a more robust debate regarding detainee policies and operations, his policy of April 16, 2003 might well have been developed and issued in early December 2002. This would have avoided the policy changes which characterized the Dec 02, 2002 to April 16, 2003 period.

It is clear that pressures for additional intelligence and the more aggressive methods sanctioned by the Secretary of Defense memorandum, resulted in stronger interrogation techniques that were believed to be needed and appropriate in the treatment of detainees defined as "unlawful combatants." At Guantanamo, the interrogators used those additional techniques with only two detainees, gaining important and time-urgent information in the process.

In Afghanistan, from the war's inception through the end of 2002, all forces used FM 34-52 as a baseline for interrogation techniques. Nonetheless, more aggressive interrogation of detainees appears to have been on-going. On January 24, 2003, in response to a data call from the Joint Staff to facilitate the Working Group efforts, the Commander Joint Task Force-180 forwarded a list of techniques being used in

Afghanistan, including some not explicitly set out in FM 34-52. These techniques were included in a Special Operation Forces (SOF) Standard Operating Procedures document published in February 2003. The 519th Military Intelligence Battalion, a company of which was later sent to Iraq, assisted in interrogations in support of SOF and was fully aware of their interrogation techniques.

Interrogators and lists of techniques circulated from Guantanamo and Afghanistan to Iraq. During July and August 2003, the 519th Military Intelligence Company was sent to the Abu Ghraib detention facility to conduct interrogation operations. Absent any explicit policy or guidance, other than FM 34-52, the officer in charge prepared draft interrogation guidelines that were a near copy of the Standard Operating Procedure created by SOF. It is important to note that techniques effective under carefully controlled conditions at Guantanamo became far more problematic when they migrated and were not adequately safeguarded.

Following a CJTF-7 request, Joint Staff tasked SOUTHCOM to send an assistance team to provide advice on facilities and operations, specifically related to screening, interrogations, HUMINT collection, and inter-agency integration in the short and long term. In August 2003, MG Geoffrey Miller arrived to conduct an assessment of DoD counter-terrorism interrogation and detention operations in Iraq. He was to discuss current theater ability to exploit internees rapidly for actionable intelligence. He brought the Secretary of Defense's April 16, 2003 policy guidelines for Guantanamo with him and gave this policy to CJTF-7 as a possible model for the command-wide policy that he recommended be established. MG Miller noted that it applied to unlawful combatants at Guantanamo and was not directly applicable to Iraq where the Geneva Conventions applied. In part as a result of MG Miller's call for strong, command-wide interrogation policies and in part as a result of a request for guidance coming up from the 519th at Abu Ghraib, on September 14, 2003 LTG Sanchez signed a memorandum authorizing a dozen interrogation techniques beyond Field Manual 34-52—five beyond those approved for Guantanamo (see Appendix D).

MG Miller had indicated his model was approved only for Guantanamo. However, CJTF-7, using reasoning from the President's Memorandum of February 7, 2002 which addressed "unlawful combatants," believed additional, tougher measures were warranted because there were "unlawful combatants" mixed in with Enemy Prisoners of War and civilian and criminal detainees. The CJTF-7 Commander, on the advice of his Staff Judge Advocate, believed he had the inherent authority of the Commander in a Theater of War to promulgate such a policy and make determinations as to the categorization of detainees under the Geneva Conventions. CENTCOM viewed the CJTF-7 policy as unacceptably aggressive and on October 12, 2003 Commander CJTF-7 rescinded his September directive and disseminated methods only slightly stronger than those in Field Manual 34-52 (see Appendix D). The policy memos promulgated at the CJTF-7 level allowed for interpretation in several areas and did not adequately set forth the limits of interrogation techniques. The existence of confusing and inconsistent interrogation technique policies contributed to the belief that additional interrogation techniques were condoned.

DETENTION AND INTERROGATION OPERATIONS

From his experience in Guantanamo, MG Miller called for the military police and military intelligence soldiers to work cooperatively, with the military police "setting the conditions" for interrogations. This MP role included passive collection on detainees as well as supporting incentives recommended by the military interrogators. These collaborative procedures worked effectively in Guantanamo, particularly in light of the high ratio of approximately 1 to 1 of military police to mostly compliant detainees. However, in Iraq and particularly in Abu Ghraib the ratio of military police to repeatedly unruly detainees was significantly smaller, at one point 1 to about 75 at Abu Ghraib, making it difficult even to keep track of prisoners. Moreover, because Abu Ghraib was located in a combat zone, the military police were engaged in force protection of the complex as well as escorting convoys of supplies to and from the prison. Compounding

these problems was the inadequacy of leadership, oversight and support needed in the face of such difficulties.

At various times, the U.S. conducted detention operations at approximately 17 sites in Iraq and 25 sites in Afghanistan, in addition to the strategic operation at Guantanamo. A cumulative total of 50,000 detainees have been in the custody of U.S. forces since November 2001, with a peak population of 11,000 in the month of March 2004.

In Iraq, there was not only a failure to plan for a major insurgency, but also to quickly and adequately adapt to the insurgency that followed after major combat operations. The October 2002 CENTCOM War Plan presupposed that relatively benign stability and security operations would precede a handover to Iraq's authorities. The contingencies contemplated in that plan included sabotage of oil production facilities and large numbers of refugees generated by communal strife.

Major combat operations were accomplished more swiftly than anticipated. Then began a period of occupation and an active and growing insurgency. Although the removal of Saddam Hussein was initially welcomed by the bulk of the population, the occupation became increasingly resented. Detention facilities soon held Iraqi and foreign terrorists as well as a mix of Enemy Prisoners of War, other security detainees, criminals and undoubtedly some accused as a result of factional rivalries. Of the 17 detention facilities in Iraq, the largest, Abu Ghraib, housed up to 7,000 detainees in October 2003, with a guard force of only about 90 personnel from the 800th Military Police Brigade. Abu Ghraib was seriously overcrowded, under-resourced, and under continual attack. Five U.S. soldiers died as a result of mortar attacks on Abu Ghraib. In July 2003, Abu Ghraib was mortared 25 times; on August 16, 2003, five detainees were killed and 67 wounded in a mortar attack. A mortar attack on April 20, 2004 killed 22 detainees.

Problems at Abu Ghraib are traceable in part to the nature and recent history of the military police and military intelligence units at Abu Ghraib. The 800th Military Police

Brigade had one year of notice to plan for detention operations in Iraq. Original projections called for approximately 12 detention facilities in non-hostile, rear areas with a projection of 30,000 to 100,000 Enemy Prisoners of War. Though the 800th had planned a detention operations exercise for the summer of 2002, it was cancelled because of the disruption in soldier and unit availability resulting from the mobilization of Military Police Reserves following 9/11. Although its readiness was certified by U.S. Army Forces Command, actual deployment of the 800th Brigade to Iraq was chaotic. The "Time Phased Force Deployment List," which was the planned flow of forces to the theater of operations, was scrapped in favor of piecemeal unit deployment orders based on actual unit readiness and personnel strength. Equipment and troops regularly arrived out of planned sequence and rarely together. Improvisation was the order of the day. While some units overcame these difficulties, the 800th was among the lowest in priority and did not have the capability to overcome the shortfalls it confronted.

The 205th MI Brigade, deployed to support Combined Joint Task Force-7 (CJTF-7), normally provides the intelligence capability for a Corps Headquarters. However, it was insufficient to provide the kind of support needed by CJTF-7, especially with regard to interrogators and interpreters. Some additional units were mobilized to fill in the gaps, but while these MI units were more prepared than their military police counterparts, there were insufficient numbers of units available. Moreover, unit cohesion was lacking because elements of as many as six different units were assigned to the interrogation mission at Abu Ghraib. These problems were heightened by friction between military intelligence and military police personnel, including the brigade commanders themselves.

ABUSES

As of the date of this report, there were about 300 incidents of alleged detainee abuse across the Joint Operations Areas. Of the 155 completed investigations, 66 have resulted in a determination that detainees under the control of U.S. forces were abused. Dozens of

non-judicial punishments have already been awarded. Others are in various stages of the military justice process.

Of the 66 already substantiated cases of abuse, eight occurred at Guantanamo, three in Afghanistan and 55 in Iraq. Only about one-third were related to interrogation, and two-thirds to other causes. There were five cases of detainee deaths as a result of abuse by U.S. personnel during interrogations. Many more died from natural causes and enemy mortar attacks. There are 23 cases of detainee deaths still under investigation; three in Afghanistan and 20 in Iraq. Twenty-eight of the abuse cases are alleged to include Special Operations Forces (SOF) and, of the 15 SOF cases that have been closed, ten were determined to be unsubstantiated and five resulted in disciplinary action. The Jacoby review of SOF detention operations found a range of abuses and causes similar in scope and magnitude to those found among conventional forces.

The aberrant behavior on the night shift in Cell Block 1 at Abu Ghraib would have been avoided with proper training, leadership and oversight. Though acts of abuse occurred at a number of locations, those in Cell Block 1 have a unique nature fostered by the predilections of the noncommissioned officers in charge. Had these noncommissioned officers behaved more like those on the day shift, these acts, which one participant described as “just for the fun of it,” would not have taken place.

Concerning the abuses at Abu Ghraib, the impact was magnified by the fact the shocking photographs were aired throughout the world in April 2004. Although CENTCOM had publicly addressed the abuses in a press release in January 2004, the photographs remained within the official criminal investigative process. Consequently, the highest levels of command and leadership in the Department of Defense were not adequately informed nor prepared to respond to the Congress and the American public when copies were released by the press.

POLICY AND COMMAND RESPONSIBILITIES

Interrogation policies with respect to Iraq, where the majority of the abuses occurred, were inadequate or deficient in some respects at three levels: Department of Defense, CENTCOM/CJTF-7, and Abu Ghraib Prison. Policies to guide the demands for actionable intelligence lagged behind battlefield needs. As already noted, the changes in DoD interrogation policies between December 2, 2002 and April 16, 2003 were an element contributing to uncertainties in the field as to which techniques were authorized. Although specifically limited by the Secretary of Defense to Guantanamo, and requiring his personal approval (given in only two cases), the augmented techniques for Guantanamo migrated to Afghanistan and Iraq where they were neither limited nor safeguarded.

At the operational level, in the absence of specific guidance from CENTCOM, interrogators in Iraq relied on Field Manual 34-52 and on unauthorized techniques that had migrated from Afghanistan. On September 14, 2003 CJTF-7 signed the theater's first policy on interrogation, which contained elements of the approved Guantanamo policy and elements of the SOF policy (see Appendix D). Policies approved for use on al Qaeda and Taliban detainees, who were not afforded the protection of the Geneva Conventions, now applied to detainees who did fall under the Geneva Convention protections.

CENTCOM disapproved the September 14, 2003 policy, resulting in another policy signed on October 12, 2003 which essentially mirrored the outdated 1987 version of the FM 34-52 (see Appendix D). The 1987 version, however, authorized interrogators to control all aspects of the interrogation, "to include lighting and heating, as well as food, clothing, and shelter given to detainees." This was specifically left out of the current 1992 version. This clearly led to confusion on what practices were acceptable. We cannot be sure how much the number and severity of abuses would have been curtailed

had there been early and consistent guidance from higher levels. Nonetheless, such guidance was needed and likely would have had a limiting effect.

At the tactical level we concur with the Jones/Fay investigation's conclusion that military intelligence personnel share responsibility for the abuses at Abu Ghraib with the military police soldiers cited in the Taguba investigation. The Jones/Fay Investigation found 44 alleged instances of abuse, some which were also considered by the Taguba report. A number of these cases involved MI personnel directing the actions of MP personnel. Yet it should be noted that of the 66 closed cases of detainee abuse in Guantanamo, Afghanistan and Iraq cited by the Naval Inspector General, only one-third were interrogation related.

The Panel concurs with the findings of the Taguba and Jones investigations that serious leadership problems in the 800th MP Brigade and 205th MI Brigade, to include the 320th MP Battalion Commander and the Director of the Joint Debriefing and Interrogation Center (JDIC), allowed the abuses at Abu Ghraib. The Panel endorses the disciplinary actions taken as a result of the Taguba Investigation. The Panel anticipates that the Chain of Command will take additional disciplinary action as a result of the referrals of the Jones/Fay investigation.

We believe LTG Sanchez should have taken stronger action in November when he realized the extent of the leadership problems at Abu Ghraib. His attempt to mentor BG Karpinski, though well-intended, was insufficient in a combat zone in the midst of a serious and growing insurgency. Although LTG Sanchez had more urgent tasks than dealing personally with command and resource deficiencies at Abu Ghraib, MG Wojdakowski and the staff should have seen that urgent demands were placed to higher headquarters for additional assets. We concur with the Jones findings that LTG Sanchez and MG Wojdakowski failed to ensure proper staff oversight of detention and interrogation operations.

We note, however, in terms of its responsibilities, CJTF-7 was never fully resourced to meet the size and complexity of its mission. The Joint Staff, CJTF-7 and CENTCOM took too long to finalize the Joint Manning Document (JMD). It was not finally approved until December 2003, six months into the insurgency. At one point, CJTF-7 had only 495 of the 1,400 personnel authorized. The command was burdened with additional complexities associated with its mission to support the Coalition Provisional Authority.

Once it became clear in the summer of 2003 that there was a major insurgency growing in Iraq, with the potential for capturing a large number of enemy combatants, senior leaders should have moved to meet the need for additional military police forces. Certainly by October and November when the fighting reached a new peak, commanders and staff from CJTF-7 all the way to CENTCOM to the Joint Chiefs of Staff should have known about and reacted to the serious limitations of the battalion of the 800th Military Police Brigade at Abu Ghraib. CENTCOM and the JCS should have at least considered adding forces to the detention/interrogation operation mission. It is the judgment of this panel that in the future, considering the sensitivity of this kind of mission, the OSD should assure itself that serious limitations in detention/interrogation missions do not occur.

Several options were available to Commander CENTCOM and above, including reallocation of U.S. Army assets already in the theater, Operational Control (OPCON) of other Service Military Police units in theater, and mobilization and deployment of additional forces from the continental United States. There is no evidence that any of the responsible senior officers considered any of these options. What could and should have been done more promptly is evidenced by the fact that the detention/interrogation operation in Iraq is now directed by a Major General reporting directly to the Commander, Multi-National Forces Iraq (MNFI). Increased units of Military Police, fully manned and more appropriately equipped, are performing the mission once assigned to a single under-strength, poorly trained, inadequately equipped and weakly-led brigade.

In addition to the already cited leadership problems in the 800th MP Brigade, there were a series of tangled command relationships. These ranged from an unclear military intelligence chain of command, to the Tactical Control (TACON) relationship of the 800th with CJTF-7 which the Brigade Commander apparently did not adequately understand, and the confusing and unusual assignment of MI and MP responsibilities at Abu Ghraib. The failure to react appropriately to the October 2003 ICRC report, following its two visits to Abu Ghraib, is indicative of the weakness of the leadership at Abu Ghraib. These unsatisfactory relationships were present neither at Guantanamo nor in Afghanistan.

RECOMMENDATIONS

Department of Defense reform efforts are underway and the Panel commends these efforts. They are discussed in more detail in the body of this report. The Office of the Secretary of Defense, the Joint Chiefs of Staff and the Military Services are conducting comprehensive reviews on how military operations have changed since the end of the Cold War. The Military Services now recognize the problems and are studying force compositions, training, doctrine, responsibilities and active duty/reserve and guard/contractor mixes which must be adjusted to ensure we are better prepared to succeed in the war on terrorism. As an example, the Army is currently planning and developing 27 additional MP companies.

The specific recommendations of the Independent Panel are contained in the Recommendations section, beginning on page 87.

CONCLUSION

The vast majority of detainees in Guantanamo, Afghanistan and Iraq were treated appropriately, and the great bulk of detention operations were conducted in compliance with U.S. policy and directives. They yielded significant amounts of actionable intelligence for dealing with the insurgency in Iraq and strategic intelligence of value in the Global War on Terror. For example, much of the information in the recently released 9/11 Commission's report, on the planning and execution of the attacks on the World Trade Center and Pentagon, came from interrogation of detainees at Guantanamo and elsewhere.

Justice Sandra Day O'Connor, writing for the majority of the Supreme Court of the United States in *Hamdi v. Rumsfeld* on June 28, 2004, pointed out that "The purpose of detention is to prevent captured individuals from returning to the field of battle and taking up arms once again." But detention operations also serve the key purpose of intelligence gathering. These are not competing interests but appropriate objectives which the United States may lawfully pursue.

We should emphasize that tens of thousands of men and women in uniform strive every day under austere and dangerous conditions to secure our freedom and the freedom of others. By historical standards, they rate as some of the best trained, disciplined and professional service men and women in our nation's history.

While any abuse is too much, we see signs that the Department of Defense is now on the path to dealing with the personal and professional failures and remedying the underlying causes of these abuses. We expect any potential future incidents of abuse will similarly be discovered and reported out of the same sense of personal honor and duty that characterized many of those who went out of their way to do so in most of these cases. The damage these incidents have done to U.S. policy, to the image of the U.S. among

populations whose support we need in the Global War on Terror and to the morale of our armed forces, must not be repeated.

INDEPENDENT PANEL TO REVIEW DoD DETENTION OPERATIONS

INTRODUCTION–CHARTER AND METHODOLOGY

The Secretary of Defense chartered the Independent Panel on May 12, 2004, to review Department of Defense (DoD) Detention Operations (see Appendix A). In his memorandum, the Secretary tasked the Independent Panel to review Department of Defense investigations on detention operations whether completed or ongoing, as well as other materials and information the Panel deemed relevant to its review. The Secretary asked for the Panel's independent advice in highlighting the issues considered most important for his attention. He asked for the Panel's views on the causes and contributing factors to problems in detainee operations and what corrective measures would be required.

Completed investigations reviewed by the Panel include the following:

- Joint Staff External Review of Intelligence Operations at Guantanamo Bay, Cuba, September 28, 2002 (Custer Report)
- Joint Task Force Guantanamo assistance visit to Iraq to assess intelligence operations, September 5, 2003 (Miller Report)
- Army Provost Marshal General assessment of detention and corrections operations in Iraq, November 6, 2003 (Ryder Report)
- Administrative investigation under Army Regulation 15-6 (AR 15-6) regarding Abu Ghraib, June 8, 2004 (Taguba Report)
- Army Inspector General assessment of doctrine and training for detention operations, July 23, 2004 (Mikolashek Report)

INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

- The Fay investigation of activities of military personnel at Abu Ghraib and related LTG Jones investigation under the direction of GEN Kern, August 16, 2004
- Naval Inspector General's review of detention procedures at Guantanamo Bay, Cuba and the Naval Consolidated Brig, Charleston, South Carolina (A briefing was presented to the Secretary of Defense on May 8, 2004.)
- Naval Inspector General's review of DoD worldwide interrogation operations, due for release on September 9, 2004
- Special Inspection of Detainee Operations and Facilities in the Combined Forces Command-Afghanistan AOR (CFC-A), June 26, 2004 (Jacoby Report).
- Administrative Investigation of Alleged Detainee Abuse by the Combined Joint Special Operations Task Force – Arabian Peninsula (Formica Report) Due for release in August, 2004. Assessment not yet completed and not reviewed by the Independent Panel
- Army Reserve Command Inspector General Assessment of Military Intelligence and Military Police Training (due for release in December 2004)

Panel interviews of selected individuals either in person or via video-teleconference:

June 14, 2004:

- MG Keith Dayton, Director, Iraq Survey Group (ISG), Baghdad, Iraq
- MG Geoffrey Miller, Director, Detainee Operations, CJTF-7, Baghdad, Iraq
- Hon Donald Rumsfeld, Secretary of Defense
- Hon Steve Cambone, Under Secretary of Defense for Intelligence
- MG Walter Wojdakowski, Deputy Commanding General, V Corps, USAREUR and 7th Army

- MG Donald Ryder, Provost Marshal, U.S. Army/Commanding General, U.S. Army Criminal Investigation Command, Washington, D.C.
- COL Thomas Pappas, Commander, 205th Military Intelligence Brigade, V Corps, USAREUR and 7th Army

June 24, 2004:

- LTG David McKiernan, Commanding General, Third U.S. Army, U.S. Army Forces Central Command, Coalition Forces Land Component Command
- MG Barbara Fast, CJTF-7 C-2, Director for Intelligence, Baghdad, Iraq
- MG Geoffrey Miller, Director, Detainee Operations, CJTF-7, Baghdad, Iraq
- LTG Ricardo Sanchez, Commanding General, CJTF-7, Commanding General, V Corps, USAREUR and 7th Army in Iraq
- Mr. Daniel Dell'Orto, Principal Deputy General Counsel, DoD
- LTG Keith Alexander, G-2, U.S. Army, Washington, D.C.
- LTG William Boykin, Deputy Undersecretary of Defense for Intelligence, Intelligence and Warfighting Support, Office of the Under Secretary of Defense for Intelligence
- Hon Douglas Feith, Under Secretary of Defense for Policy

July 8, 2004:

- COL Marc Warren, Senior Legal Advisor to LTG Sanchez, Iraq
- BG Janis Karpinski, Commander (TPU), 800th Military Police Brigade, Uniondale, NY
- Hon Paul Wolfowitz, Deputy Secretary of Defense
- Hon William Haynes, General Counsel DoD
- Mr. John Rizzo, CIA Senior Deputy General Counsel
- GEN John Abizaid, Commander, U.S. Central Command
- MG George Fay, Deputy to the Army G2, Washington, D.C.
- VADM Albert Church III, Naval Inspector General

July 22, 2004:

- Hon Donald Rumsfeld, Secretary of Defense

The Panel did not conduct a case-by-case review of individual abuse cases. This task has been accomplished by those professionals conducting criminal and commander-directed investigations. Many of these investigations are still on-going. The Panel did review the various completed and on-going reports covering the causes for the abuse. Each of these inquiries or inspections defined abuse, categorized the abuses, and analyzed the abuses in conformity with the appointing authorities' guidance, but the methodologies do not parallel each other in all respects. The Panel concludes, based on our review of other reports to date and our own efforts that causes for abuse have been adequately examined.

The Panel met on July 22nd and again on August 16th to discuss progress of the report. Panel members also reviewed sections and versions of the report through July and mid-August.

An effective, timely response to our requests for other documents and support was invariably forthcoming, due largely to the efforts of the DoD Detainee Task Force. We conducted reviews of multiple classified and unclassified documents generated by DoD and other sources.

Our staff has met and communicated with representatives of the International Committee of the Red Cross and with the Human Rights Executive Directors' Coordinating Group.

It should be noted that information provided to the Panel was that available as of mid-August 2004. If additional information becomes available, the Panel's judgments might be revised.

INDEPENDENT PANEL TO REVIEW DoD DETENTION OPERATIONS

THE CHANGING THREAT

The date September 11, 2001, marked an historic juncture in America's collective sense of security. On that day our presumption of invulnerability was irretrievably shattered. Over the last decade, the military has been called upon to establish and maintain the peace in Bosnia and Kosovo, eject the Taliban from Afghanistan, defeat the Iraqi Army, and fight ongoing insurgencies in Iraq and Afghanistan. Elsewhere it has been called upon to confront geographically dispersed terrorists who would threaten America's right to political sovereignty and our right to live free of fear.

In waging the Global War on Terror, the military confronts a far wider range of threats. In Iraq and Afghanistan, U.S. forces are fighting diverse enemies with varying ideologies, goals and capabilities. American soldiers and their coalition partners have defeated the armored divisions of the Republican Guard, but are still under attack by forces using automatic rifles, rocket-propelled grenades, roadside bombs and surface-to-air missiles. We are not simply fighting the remnants of dying regimes or opponents of the local governments and coalition forces assisting those governments, but multiple enemies including indigenous and international terrorists. This complex operational environment requires soldiers capable of conducting traditional stability operations associated with peacekeeping tasks one moment and fighting force-on-force engagements normally associated with war-fighting the next moment.

Warfare under the conditions described inevitably generates detainees—enemy combatants, opportunists, trouble-makers, saboteurs, common criminals, former regime officials and some innocents as well. These people must be carefully but humanely processed to sort out those who remain dangerous or possess militarily-valuable intelligence. Such processing presents extraordinarily formidable logistical, administrative, security and legal problems completely apart from the technical obstacles posed by communicating with prisoners in another language and extracting actionable intelligence from them in timely fashion. These activities, called detention operations,

are a vital part of an expeditionary army's responsibility, but they depend upon training, skills, and attributes not normally associated with soldiers in combat units.

Military interrogators and military police, assisted by front-line tactical units, found themselves engaged in detention operations with detention procedures still steeped in the methods of World War II and the Cold War, when those we expected to capture on the battlefield were generally a homogenous group of enemy soldiers. Yet this is a new form of war, not at all like Desert Storm nor even analogous to Vietnam or Korea.

General Abizaid himself best articulated the current nature of combat in testimony before the U.S. Senate Armed Services Committee on May 19, 2004:

Our enemies are in a unique position, and they are a unique brand of ideological extremists whose vision of the world is best summed up by how the Taliban ran Afghanistan. If they can outlast us in Afghanistan and undermine the legitimate government there, they'll once again fill up the seats at the soccer stadium and force people to watch executions. If, in Iraq, the culture of intimidation practiced by our enemies is allowed to win, the mass graves will fill again. Our enemies kill without remorse, they challenge our will through the careful manipulation of propaganda and information, they seek safe havens in order to develop weapons of mass destruction that they will use against us when they are ready. Their targets are not Kabul and Baghdad, but places like Madrid and London and New York. While we can't be defeated militarily, we're not going to win this thing militarily alone.... As we fight this most unconventional war of this new century, we must be patient and courageous.

In Iraq the U.S. commanders were slow to recognize and adapt to the insurgency that erupted in the summer and fall of 2003. Military police and interrogators who had previous experience in the Balkans, Guantanamo and Afghanistan found themselves, along with increasing numbers of less-experienced troops, in the midst of detention operations in Iraq the likes of which the Department of Defense had not foreseen. As Combined Joint Task Force-7 (CJTF-7) began detaining thousands of Iraqis suspected of

involvement in or having knowledge of the insurgency, the problem quickly surpassed the capacity of the staff to deal with and the wherewithal to contain it.

Line units conducting raids found themselves seizing specifically targeted persons, so designated by military intelligence; but, lacking interrogators and interpreters to make precise distinctions in an alien culture and hostile neighborhoods, they reverted to rounding up any and all suspicious-looking persons—all too often including women and children. The flood of incoming detainees contrasted sharply with the trickle of released individuals. Processing was overwhelmed. Some detainees at Abu Ghraib had been held 90 days before being interrogated for the first time.

Many interrogators, already in short supply from major reductions during the post-Cold War drawdown, by this time, were on their second or third combat tour. Unit cohesion and morale were largely absent as under-strength companies and battalions from across the United States and Germany were deployed piecemeal and stitched together in a losing race to keep up with the rapid influx of vast numbers of detainees.

As the insurgency reached an initial peak in the fall of 2003, many military policemen from the Reserves who had been activated shortly after September 11, 2001 had reached the mandatory two-year limit on their mobilization time. Consequently, the ranks of soldiers having custody of detainees in Iraq fell to about half strength as MPs were ordered home by higher headquarters.

Some individuals seized the opportunity provided by this environment to give vent to latent sadistic urges. Moreover, many well-intentioned professionals, attempting to resolve the inherent moral conflict between using harsh techniques to gain information to save lives and treating detainees humanely, found themselves in uncharted ethical ground, with frequently changing guidance from above. Some stepped over the line of humane treatment accidentally; some did so knowingly. Some of the abusers believed other governmental agencies were conducting interrogations using harsher techniques

than allowed by the Army Field Manual 34-52, a perception leading to the belief that such methods were condoned. In nearly 10 percent of the cases of alleged abuse, the chain of command ignored reports of those allegations. More than once a commander was complicit.

The requirements for successful detainee operations following major combat operations were known by U.S. forces in Iraq. After Operations Enduring Freedom and earlier phases of Iraqi Freedom, several lessons learned were captured in official reviews and were available on-line to any authorized military user. These lessons included the need for doctrine tailored to enable police and interrogators to work together effectively; the need for keeping MP and MI units manned at levels sufficient to the task; and the need for MP and MI units to belong to the same tactical command. However, there is no evidence that those responsible for planning and executing detainee operations, in the phase of the Iraq campaign following the major combat operations, availed themselves of these “lessons learned” in a timely fashion.

Judged in a broader context, U.S. detention operations were both traditional and new. They were traditional in that detainee operations were a part of all past conflicts. They were new in that the Global War on Terror and the insurgency we are facing in Iraq present a much more complicated detainee population.

Many of America’s enemies, including those in Iraq and Afghanistan, have the ability to conduct this new kind of warfare, often referred to as “asymmetric” warfare. Asymmetric warfare can be viewed as attempts to circumvent or undermine a superior, conventional strength, while exploiting its weaknesses using methods the superior force neither can defeat nor resort to itself. Small unconventional forces can violate a state’s security without any state support or affiliation whatsoever. For this reason, many terms in the orthodox lexicon of war—e.g., state sovereignty, national borders, uniformed combatants, declarations of war, and even war itself, are not terms terrorists acknowledge.

Today, the power to wage war can rest in the hands of a few dozen highly motivated people with cell phones and access to the Internet. Going beyond simply terrorizing individual civilians, certain insurgent and terrorist organizations represent a higher level of threat, characterized by an ability and willingness to violate the political sovereignty and territorial integrity of sovereign nations.

Essential to defeating terrorist and insurgent threats is the ability to locate cells, kill or detain key leaders, and interdict operational and financial networks. However, the smallness and wide dispersal of these enemy assets make it problematic to focus on signal and imagery intelligence as we did in the Cold War, Desert Storm, and the first phase of Operation Iraqi Freedom. The ability of terrorists and insurgents to blend into the civilian population further decreases their vulnerability to signal and imagery intelligence. Thus, information gained from human sources, whether by spying or interrogation, is essential in narrowing the field upon which other intelligence gathering resources may be applied. In sum, human intelligence is absolutely necessary, not just to fill these gaps in information derived from other sources, but also to provide clues and leads for the other sources to exploit.

Military police functions must also adapt to this new kind of warfare. In addition to organizing more units capable of handling theater-level detention operations, we must also organize those units, so they are able to deal with the heightened threat environment. In this new form of warfare, the distinction between front and rear becomes more fluid. All forces must continuously prepare for combat operations.

INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

THE POLICY PROMULGATION PROCESS

Although there were a number of contributing causes for detainee abuses, policy processes were inadequate or deficient in certain respects at various levels: Department of Defense (DoD), CENTCOM, Coalition Forces Land Component Command (CFLCC), CJTF-7, and the individual holding facility or prison. In pursuing the question of the extent to which policy processes at the DoD or national level contributed to abuses, it is important to begin with policy development as individuals in Afghanistan were first being detained in November 2001. The first detainees arrived at Guantanamo in January 2002.

In early 2002, a debate was ongoing in Washington on the application of treaties and laws to al Qaeda and Taliban. The Department of Justice, Office of Legal Counsel (OLC) advised DoD General Counsel and the Counsel to the President that, among other things:

- Neither the Federal War Crimes Act nor the Geneva Conventions would apply to the detention conditions of al Qaeda prisoners,
- The President had the authority to suspend the United States treaty obligations applying to Afghanistan for the duration of the conflict should he determine Afghanistan to be a failed state,
- The President could find that the Taliban did not qualify for Enemy Prisoner of War (EPW) status under Geneva Convention III.

The Attorney General and the Counsel to the President, in part relying on the opinions of OLC, advised the President to determine the Geneva Conventions did not apply to the conflict with al Qaeda and the Taliban. The Panel understands DoD General Counsel's position was consistent with the Attorney General's and the Counsel to the President's position. Earlier, the Department of State had argued that the Geneva Conventions in their traditional application provided a sufficiently robust legal construct under which the Global War on Terror could effectively be waged.

The Legal Advisor to the Chairman, Joint Chiefs of Staff and many service lawyers agreed with the State Department's initial position. They were concerned that to conclude otherwise would be inconsistent with past practice and policy, jeopardize the United States armed forces personnel, and undermine the United States military culture which is based on a strict adherence to the law of war. At the February 4, 2002 National Security Council meeting to decide this issue, the Department of State, the Department of Defense, and the Chairman of the Joint Chiefs of Staff were in agreement that all detainees would get the treatment they are (or would be) entitled to under the Geneva Conventions.

On February 7, 2002, the President issued his decision memorandum (see Appendix B). The memorandum stated the Geneva Conventions did not apply to al Qaeda and therefore they were not entitled to prisoner of war status. It also stated the Geneva Conventions did apply to the Taliban but the Taliban combatants were not entitled to prisoner of war status as a result of their failure to conduct themselves in accordance with the provisions of the Geneva Conventions. The President's memorandum also stated: "As a matter of policy, United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

Regarding the applicability of the Convention Against Torture and Other Cruel Inhumane or Degrading Treatment, the OLC opined on August 1, 2002 that interrogation methods that comply with the relevant domestic law do not violate the Convention. It held that only the most extreme acts, that were specifically intended to inflict severe pain and torture, would be in violation; lesser acts might be "cruel, inhumane, or degrading" but would not violate the Convention Against Torture or domestic statutes. The OLC memorandum went on to say, as Commander in Chief exercising his wartime powers, the President could even authorize torture, if he so decided.

Reacting to tenacious resistance by some detainees to existing interrogation methods, which were essentially limited to those in Army Field Manual 34-52 (see Appendix E), Guantanamo authorities in October 2002 requested approval of strengthened counter-interrogation techniques to increase the intelligence yield from interrogations. This request was accompanied by a recommended tiered list of techniques, with the proviso that the harsher Category III methods (see Appendix E) could be used only on “exceptionally resistant detainees” and with approval by higher headquarters.

This Guantanamo initiative resulted in a December 2, 2002 decision by the Secretary of Defense authorizing, “as a matter of policy,” the use of Categories I and II and only one technique in Category III: mild, non-injurious physical contact (see Appendix E). As a result of concern by the Navy General Counsel, the Secretary of Defense rescinded his December approval of all Category II techniques plus the one from Category III on January 15, 2003. This essentially returned interrogation techniques to FM 34-52 guidance. He also stated if any of the methods from Categories II and III were deemed warranted, permission for their use should be requested from him (see Appendix E).

The Secretary of Defense directed the DoD General Counsel to establish a working group to study interrogation techniques. The working group was headed by Air Force General Counsel Mary Walker and included wide membership from across the military, legal and intelligence communities. The working group also relied heavily on the OLC. The working group reviewed 35 techniques, and after a very expansive debate, ultimately recommended 24 to the Secretary of Defense. The study led to the Secretary’s promulgation on April 16, 2003 of the list of approved techniques. His memorandum emphasized appropriate safeguards should be in place and, further, “*Use of these techniques is limited to interrogations of unlawful combatants held at Guantanamo Bay, Cuba.*” He also stipulated that four of the techniques should be used only in case of military necessity and that he should be so notified in advance. If additional techniques were deemed essential, they should be requested in writing, with “recommended safeguards and rationale for applying with an identified detainee.”

In the initial development of these Secretary of Defense policies, the legal resources of the Services' Judge Advocates and General Counsels were not utilized to their fullest potential. Had the Secretary of Defense had the benefit of a wider range of legal opinions and a more robust debate regarding detainee policies and operations, his policy of April 16, 2003 might well have been developed and issued in early December 2002. This could have avoided the policy changes which characterized the December 2, 2002 to April 16, 2003 period.

It is clear that pressure for additional intelligence and the more aggressive methods sanctioned by the Secretary of Defense memorandum resulted in stronger interrogation techniques. They did contribute to a belief that stronger interrogation methods were needed and appropriate in their treatment of detainees. At Guantanamo, the interrogators used those additional techniques with only two detainees, gaining important and time-urgent information in the process.

In Afghanistan, from the war's inception through the end of 2002, all forces used FM 34-52 as a baseline for interrogation techniques. Nonetheless, more aggressive interrogation of detainees appears to have been ongoing. On January 24, 2003, in response to a data call from the Joint Staff to facilitate the Secretary of Defense-directed Working Group efforts, the Commander Joint Task Force-180 forwarded a list of techniques being used in Afghanistan, including some not explicitly set out in FM 34-52. These techniques were included in a Special Operations Forces (SOF) Standard Operating Procedures document published in February 2003. The 519th Military Intelligence Battalion, a Company of which was later sent to Iraq, assisted in interrogations in support of SOF and was fully aware of their interrogation techniques.

In Iraq, the operational order from CENTCOM provided the standard FM 34-52 interrogation procedures would be used. Given the greatly different situations in Afghanistan and Iraq, it is not surprising there were differing CENTCOM policies for the

two countries. In light of ongoing hostilities that monopolized commanders' attention in Iraq, it is also not unexpected the detainee issues were not given a higher priority.

Interrogators and lists of techniques circulated from Guantanamo and Afghanistan to Iraq. During July and August 2003, a Company of the 519th MI Battalion was sent to the Abu Ghraib detention facility to conduct interrogation operations. Absent guidance other than FM 34-52, the officer in charge prepared draft interrogation guidelines that were a near copy of the Standard Operating Procedure created by SOF. It is important to note that techniques effective under carefully controlled conditions at Guantanamo became far more problematic when they migrated and were not adequately safeguarded.

In August 2003, MG Geoffrey Miller arrived to conduct an assessment of DoD counterterrorism interrogation and detention operations in Iraq. He was to discuss current theater ability to exploit internees rapidly for actionable intelligence. He brought to Iraq the Secretary of Defense's April 16, 2003 policy guidelines for Guantanamo—which he reportedly gave to CJTF-7 as a potential model—recommending a command-wide policy be established. He noted, however, the Geneva Conventions did apply to Iraq. In addition to these various printed sources, there was also a store of common lore and practice within the interrogator community circulating through Guantanamo, Afghanistan and elsewhere.

At the operational level, in the absence of more specific guidance from CENTCOM, interrogators in Iraq relied on FM 34-52 and on unauthorized techniques that had migrated from Afghanistan. On September 14, 2003, Commander CJTF-7 signed the theater's first policy on interrogation which contained elements of the approved Guantanamo policy and elements of the SOF policy. Policies approved for use on al Qaeda and Taliban detainees who were not afforded the protection of EPW status under the Geneva Conventions now applied to detainees who did fall under the Geneva Convention protections. CENTCOM disapproved the September 14, 2003 policy resulting in another policy signed on October 12, 2003 which essentially mirrored the

outdated 1987 version of the FM 34-52. The 1987 version, however, authorized interrogators to control all aspects of the interrogation, “to include lighting and heating, as well as food, clothing, and shelter given to detainees.” This was specifically left out of the 1992 version, which is currently in use. This clearly led to confusion on what practices were acceptable. We cannot be sure how much the number and severity of abuses would have been curtailed had there been early and consistent guidance from higher levels. Nonetheless, such guidance was needed and likely would have had a limiting effect.

At Abu Ghraib, the Jones/Fay investigation concluded that MI professionals at the prison level shared a “major part of the culpability” for the abuses. Some of the abuses occurred during interrogation. As these interrogation techniques exceeded parameters of FM 34-52, no training had been developed. Absent training, the interrogators used their own initiative to implement the new techniques. To what extent the same situation existed at other prisons is unclear, but the widespread nature of abuses warrants an assumption that at least the understanding of interrogations policies was inadequate. A host of other possible contributing factors, such as training, leadership, and the generally chaotic situation in the prisons, are addressed elsewhere in this report.

PUBLIC RELEASE OF ABUSE PHOTOS

In any large bureaucracy, good news travels up the chain of command quickly; bad news generally does not. In the case of the abuse photos from Abu Ghraib, concerns about command influence on an ongoing investigation may have impeded notification to senior officials.

Chronology of Events

On January 13, 2004, SPC Darby gave Army criminal investigators a copy of a CD containing abuse photos he had taken from SPC Graner's computer. CJTF-7, CENTCOM, the Chairman of the Joint Chiefs of Staff and the Secretary of Defense were all informed of the issue. LTG Sanchez promptly asked for an outside investigation, and MG Taguba was appointed as the investigating officer. The officials who saw the photos on January 14, 2004, not realizing their likely significance, did not recommend the photos be shown to more senior officials. A CENTCOM press release in Baghdad on January 16, 2004 announced there was an ongoing investigation into reported incidents of detainee abuse at a Coalition Forces detention facility.

An interim report of the investigation was provided to CJTF-7 and CENTCOM commanders in mid-March 2004. It is unclear whether they saw the Abu Ghraib photos, but their impact was not appreciated by either of these officers or their staff officers who may have seen the photographs, as indicated by the failure to transmit them in a timely fashion to more senior officials. When LTG Sanchez received the Taguba report, he immediately requested an investigation into the possible involvement of military intelligence personnel. He told the panel that he did not request the photos be disseminated beyond the criminal investigative process because commanders are prohibited from interfering with, or influencing, active investigations. In mid-April, LTG McKiernan, the appointing official, reported the investigative results through his chain of

command to the Department of the Army, the Army Judge Advocate General, and the U.S. Army Reserve Command. LTG McKiernan advised the panel that he did not send a copy of the report to the Secretary of Defense, but forwarded it through his chain of command. Again the reluctance to move bad news farther up the chain of command probably was a factor impeding notification of the Secretary of Defense.

Given this situation, GEN Richard Myers, the Chairman of the Joint Chiefs of Staff, was unprepared in April 2004 when he learned the photos of detainee abuse were to be aired in a CBS broadcast. The planned release coincided with particularly intense fighting by Coalition forces in Fallujah and Najaf. After a discussion with GEN Abizaid, GEN Myers asked CBS to delay the broadcast out of concern the lives of the Coalition soldiers and the hostages in Iraq would be further endangered. The story of the abuse itself was already public. Nonetheless, both GEN Abizaid and GEN Myers understood the pictures would have an especially explosive impact around the world.

Informing Senior Officials

Given the magnitude of this problem, the Secretary of Defense and other senior DoD officials need a more effective information pipeline to inform them of high-profile incidents which may have a significant adverse impact on DoD operations. Had such a pipeline existed, it could have provided an accessible and efficient tool for field commanders to apprise higher headquarters, the Joint Chiefs of Staff, and the Office of the Secretary of Defense, of actual or developing situations which might hinder, impede, or undermine U.S. operations and initiatives. Such a system could have equipped senior spokesmen with the known facts of the situation from all DoD elements involved. Finally, it would have allowed for senior official preparation and Congressional notification.

Such a procedure would make it possible for a field-level command or staff agency to alert others of the situation and forward the information to senior officials. This would not have been an unprecedented occurrence. For example, in December 2002, concerned Naval Criminal Investigative Service agents drew attention to the potential for abuse at Guantanamo. Those individuals had direct access to the highest levels of leadership and were able to get that information to senior levels without encumbrance. While a corresponding flow of information might not have prevented the abuses from occurring, the Office of the Secretary of Defense would have been alerted to a festering issue, allowing for an early and appropriate response.

Another example is the Air Force Executive Issues Team. This office has fulfilled the special information pipeline function for the Air Force since February 1998. The team chief and team members are highly trained and experienced field grade officers drawn from a variety of duty assignments. The team members have access to information flow across all levels of command and staff and are continually engaging and building contacts to facilitate the information flow. The information flow to the team runs parallel and complementary to standard reporting channels in order to avoid bypassing the chain of command but yet ensures a rapid and direct flow of relevant information to Air Force Headquarters.

A proper, transparent posture in getting the facts and fixing the problem would have better enabled the DoD to deal with the damage to the mission of the U.S. in the region and to the reputation of the U.S. military.

INDEPENDENT PANEL TO REVIEW DoD DETENTION OPERATIONS

COMMAND RESPONSIBILITIES

Although the most egregious instances of detainee abuse were caused by the aberrant behavior of a limited number of soldiers and the predilections of the non-commissioned officers on the night shift of Tier 1 at Abu Ghraib, the Independent Panel finds that commanding officers and their staffs at various levels failed in their duties and that such failures contributed directly or indirectly to detainee abuse. Commanders are responsible for all their units do or fail to do, and should be held accountable for their action or inaction. Command failures were compounded by poor advice provided by staff officers with responsibility for overseeing battlefield functions related to detention and interrogation operations. Military and civilian leaders at the Department of Defense share this burden of responsibility.

Commanders

The Panel finds that the weak and ineffectual leadership of the Commanding General of the 800th MP Brigade and the Commanding Officer of the 205th MI Brigade allowed the abuses at Abu Ghraib. There were serious lapses of leadership in both units from junior non-commissioned officers to battalion and brigade levels. The commanders of both brigades either knew, or should have known, abuses were taking place and taken measures to prevent them. The Panel finds no evidence that organizations above the 800th MP Brigade- or the 205th MI Brigade-level were directly involved in the incidents at Abu Ghraib. Accordingly, the Panel concurs in the judgment and recommendations of MG Taguba, MG Fay, LTG Jones, LTG Sanchez, LTG McKiernan, General Abizaid and General Kern regarding the commanders of these two units. The Panel expects disciplinary action may be forthcoming.

The Independent Panel concurs with the findings of MG Taguba regarding the Director of the Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib. Specifically, the Panel notes that MG Taguba concluded that the Director, JIDC made material misrepresentations to MG Taguba's investigating team. The panel finds that he failed to properly train and control his soldiers and failed to ensure prisoners were afforded the protections under the relevant Geneva Conventions. The Panel concurs with MG Taguba's recommendation that he be relieved for cause and given a letter of reprimand and notes that disciplinary action may be pending against this officer.

The Independent Panel concurs with the findings of MG Taguba regarding the Commander of the 320th MP Battalion at Abu Ghraib. Specifically, the Panel finds that he failed to ensure that his subordinates were properly trained and supervised and that he failed to establish and enforce basic soldier standards, proficiency and accountability. He was not able to organize tasks to accomplish his mission in an appropriate manner. By not communicating standards, policies and plans to soldiers, he conveyed a sense of tacit approval of abusive behavior towards prisoners and a lax and dysfunctional command climate took hold. The Panel concurs with MG Taguba's recommendation that he be relieved from command, be given a General Officer Memorandum of reprimand, and be removed from the Colonel/O-6 promotion list.

The Independent Panel finds that BG Karpinski's leadership failures helped set the conditions at the prison which led to the abuses, including her failure to establish appropriate standard operating procedures (SOPs) and to ensure the relevant Geneva Conventions protections were afforded prisoners, as well as her failure to take appropriate actions regarding ineffective commanders and staff officers. The Panel notes the conclusion of MG Taguba that she made material misrepresentations to his investigating team regarding the frequency of her visits to Abu Ghraib. The Panel concurs with MG Taguba's recommendation that BG Karpinski be relieved of command and given a General Officer Letter of Reprimand.

Although LTG Sanchez had tasks more urgent than dealing personally with command and resource deficiencies and allegations of abuse at Abu Ghraib, he should have ensured his staff dealt with the command and resource problems. He should have assured that urgent demands were placed for appropriate support and resources through Coalition Forces Land Component Command (CFLCC) and CENTCOM to the Joint Chiefs of Staff. He was responsible for establishing the confused command relationship at the Abu Ghraib prison. There was no clear delineation of command responsibilities between the 320th MP Battalion and the 205th MI Brigade. The situation was exacerbated by CJTF-7 Fragmentary Order (FRAGO) 1108 issued on November 19, 2003 that appointed the commander of the 205th MI Brigade as the base commander for Abu Ghraib, including responsibility for the support of all MPs assigned to the prison. In addition to being contrary to existing doctrine, there is no evidence the details of this command relationship were effectively coordinated or implemented by the leaders at Abu Ghraib. The unclear chain of command established by CJTF-7, combined with the poor leadership and lack of supervision, contributed to the atmosphere at Abu Ghraib that allowed the abuses to take place.

The unclear command structure at Abu Ghraib was further exacerbated by the confused command relationship up the chain. The 800th MP Brigade was initially assigned to the Central Command's Combined Forces Land Component Commander (CFLCC) during the major combat phase of Operation Iraqi Freedom. When CFLCC left the theater and returned to Fort McPherson Georgia, CENTCOM established Combined Joint Task Force-Seven (CJTF-7). While the 800th MP Brigade remained assigned to CFLCC, it essentially worked for CJTF-7. LTG Sanchez delegated responsibility for detention operations to his Deputy, MG Wojdakowski. At the same time, intelligence personnel at Abu Ghraib reported through the CJTF-7 C-2, Director for Intelligence. These arrangements had the damaging result that no single individual was responsible for overseeing operations at the prison.

The Panel endorses the disciplinary actions already taken, although we believe LTG Sanchez should have taken more forceful action in November when he fully comprehended the depth of the leadership problems at Abu Ghraib. His apparent attempt to mentor BG Karpinski, though well-intended, was insufficient in a combat zone in the midst of a serious and growing insurgency.

The creation of the Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib was not an unusual organizational approach. The problem is, as the Army Inspector General assessment revealed, joint doctrine for the conduct of interrogation operations contains inconsistent guidance, particularly with regard to addressing the issue of the appropriate command relationships governing the operation of such organizations as a JIDC. Based on the findings of the Fay, Jones and Church investigations, SOUTHCOM and CENTCOM were able to develop effective command relationships for such centers at Guantanamo and in Afghanistan, but CENTCOM and CJTF-7 failed to do so for the JIDC at Abu Ghraib.

Staff Officers

While staff officers have no command responsibilities, they are responsible for providing oversight, advice and counsel to their commanders. Staff oversight of detention and interrogation operations for CJTF-7 was dispersed among the principal and special staff. The lack of one person on the staff to oversee detention operations and facilities complicated effective and efficient coordination among the staff.

The Panel finds the following:

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

Failure of the Combatant Command to Adjust the Plan

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

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

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

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

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

We note that CJTF-7 Headquarters was never fully resourced to meet the size and complexity of its mission. The Joint Staff, CJTF-7 and CENTCOM took too long to finalize the Joint Manning Document (JMD) which was not finally approved until December 2003—six months into the insurgency. At one point, CJTF-7 Headquarters had only 495 of the 1,400 personnel authorized. The command was burdened with additional complexities associated with its mission to support the Coalition Provisional Authority.

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

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

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

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

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

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

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

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

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

MILITARY POLICE AND DETENTION OPERATIONS

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

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

Mobilization and Training

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

Mobilization and Deployment

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

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

Inadequate Training for the Military Police Mission

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

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

Force Structure Organization

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

Current Military Police Structure

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

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

New Force Structure Initiatives

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

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

Doctrine and Planning

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

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

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

Equipment Shortfalls

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

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

Detention Operations and Accountability

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

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

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

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

Detention

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

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

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

Detainee Accountability and Classification

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

Detainee Reporting

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

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

Release Procedures

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

INTERROGATION OPERATIONS

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

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

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

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

The Threat Environment

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

Human Intelligence from Interrogations

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

The interrogation of al Qaeda members held at Guantanamo has yielded valuable information used to disrupt and preempt terrorist planning and activities. Much of the 9/11 Commission's report on the planning and execution of the attacks on the World Trade Center and Pentagon came from interrogation of detainees. In the case of

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

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

Pressure on Interrogators to Produce Actionable Intelligence

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

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

Interrogation Operations Issues

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

Inadequate Resources

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

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

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

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

Leadership and Organization Shortfalls at Abu Ghraib

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

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

Interrogation Techniques

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

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

Use of Contractors as Interrogators

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

Doctrinal Deficiencies

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

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

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

Role of CIA

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

THE ROLE OF MILITARY POLICE AND MILITARY INTELLIGENCE IN DETENTION OPERATIONS

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

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

GUANTANAMO

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

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

AFGHANISTAN

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

ABU GHRAIB, IRAQ

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

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

Request for Assistance

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

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

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

Prevailing Conditions

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

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

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

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

Leadership Shortfalls

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

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

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

Military Working Dogs at Abu Ghraib

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

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

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

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

MP/MI Relationship

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

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

INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

LAWS OF WAR/GENEVA CONVENTIONS

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

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

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

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

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

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

Operation Enduring Freedom

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

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

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

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

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

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

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

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

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

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

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

Operation Iraqi Freedom

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

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

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

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

INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

THE ROLE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

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

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

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

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

One important difference in approach between the U.S. and the ICRC is the interpretation of the legal status of terrorists. According to a Panel interview with CJTF-7 legal counsel, the ICRC sent a report to the State Department and the Coalition Provisional Authority in February 2003 citing lack of compliance with Protocol 1. But the U.S. has specifically rejected Protocol 1 stating that certain elements in the protocol, that provide legal protection for terrorists, make it plainly unacceptable. Still the U.S. has worked to preserve the positive elements of Protocol 1. In 1985, the Secretary of Defense noted that “certain provisions of Protocol 1 reflect customary international law, and others appear to be positive new developments. We therefore intend to work with our allies and others to develop a common understanding or declaration of principles incorporating these positive aspects, with the intention they shall, in time, win recognition as customary international law.” In 1986 the ICRC acknowledged that it and the U.S. government had “agreed to disagree” on the applicability of Protocol 1. Nevertheless, the ICRC continues to presume the United States should adhere to this standard under the guise of customary international law.

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

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

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

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

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

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

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

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

RECOMMENDATIONS

Department of Defense reform efforts are underway and the Panel commends these efforts. The Office of the Secretary of Defense, the Joint Chiefs of Staff and the Military Services are conducting comprehensive reviews on how military operations have changed since the end of the Cold War. The military services now recognize the problems and are studying how to adjust force compositions, training, doctrine and responsibilities for active/reserve/guard and contractor mixes to ensure we are better prepared to succeed in the war on terrorism.

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

The Independent Panel provides the following additional recommendations:

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

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

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

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

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

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

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

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

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

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

10. The Department of Defense should continue to foster its operational relationship with the International Committee of the Red Cross. The Panel believes the International Committee of the Red Cross, no less than the Defense Department, needs to adapt itself to the new realities of conflict which are far different from the Western European environment from which the ICRC's interpretation of Geneva Conventions was drawn.
11. The assignment of a focal point within the office of the Under Secretary for Policy would be a useful organizational step. The new focal point for Detainee Affairs should be charged with all aspects of detention policy and also be responsible for oversight of DoD relations with the International Committee of the Red Cross.
12. The Secretary of Defense should ensure the effective functioning of rapid reporting channels for communicating bad news to senior Department of Defense leadership without prejudice to any criminal or disciplinary actions already underway. The Panel recommends consideration of a joint adaptation of procedures such as the Air Force special notification process.
13. The Panel notes that the Fay investigation cited some medical personnel for failure to report detainee abuse. As noted in that investigation, training should include the obligation to report any detainee abuse. The Panel also notes that the Army IG found significant shortfalls in training and force structure for field sanitation, preventive medicine and medical treatment requirements for detainees. As the DoD improves detention operations force structure and training, it should pay attention to the need for medical personnel to screen and monitor the health of detention personnel and detainees.
14. The integration of the recommendations in this report and all the other efforts underway on detention operations will require further study. Analysis of the dynamics of program and resource implications, with a view to assessing the trade-offs and opportunity costs involved, must be addressed.

Appendices

GLOSSARY

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

GLOSSARY

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

GLOSSARY

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

GLOSSARY

Tactical Human Intelligence Team	THT	Forward deployed intelligence element providing human intelligence support to maneuver units.
Time Phased Force Deployment List	TPFDL	Identifies the units needed to support an operational plan and specifies their order and method of deployment.
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Geneva Conventions	GC	The international treaties brought into force in August 1949. These conventions extend protections to, among others, prisoners of war and civilians in time of war.
Global War on Terror	GWOT	Worldwide operation to eradicate individuals and groups that participate in and sponsor terrorism.
Internment/Resettlement	I/R	Internment/resettlement mission assigned to specific US Army Military Police units who are responsible for the detention of Enemy Prisoners of War during armed conflict.
International Committee of the Red Cross	ICRC	Nongovernmental organization that seeks to help victims of war and internal violence.
In Lieu Of	ILO	When used in reference to manning, indicates that forces were used in a manner other than originally specified.
Initial Point of Capture	IPOC	Location where an enemy prisoner or internee is captured.
Iraq Survey Group	ISG	Organization located in Iraq with the mission to find weapons of mass destruction.
Joint Manning Document	JMD	Master document covering personnel requirements for the joint theater.

GLOSSARY

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

GLOSSARY

**Tactical Human
Intelligence Team**

THT Forward deployed intelligence element providing human intelligence support to maneuver units.

**Time Phased Force
Deployment List**

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

GLOSSARY

Guantanamo

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

Afghanistan

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

Iraq

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

GLOSSARY

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



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

MAY 12 2004

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

SUBJECT: Independent Panel to Review DoD Detention Operations

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

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

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

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



OSD 06804-04

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

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

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

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



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

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

THE WHITE HOUSE
WASHINGTON

February 7, 2002

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

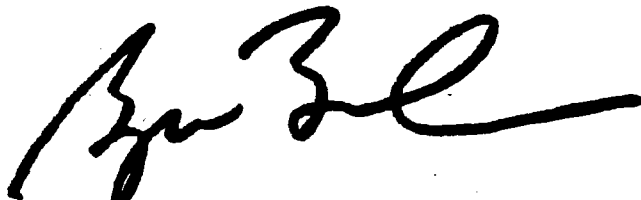
SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

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

[REDACTED]

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

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

A large, stylized handwritten signature in black ink, appearing to be 'B. J. ...', is written over the bottom right portion of the page.

Interrogation Policies in Guantanamo, Afghanistan and Iraq

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

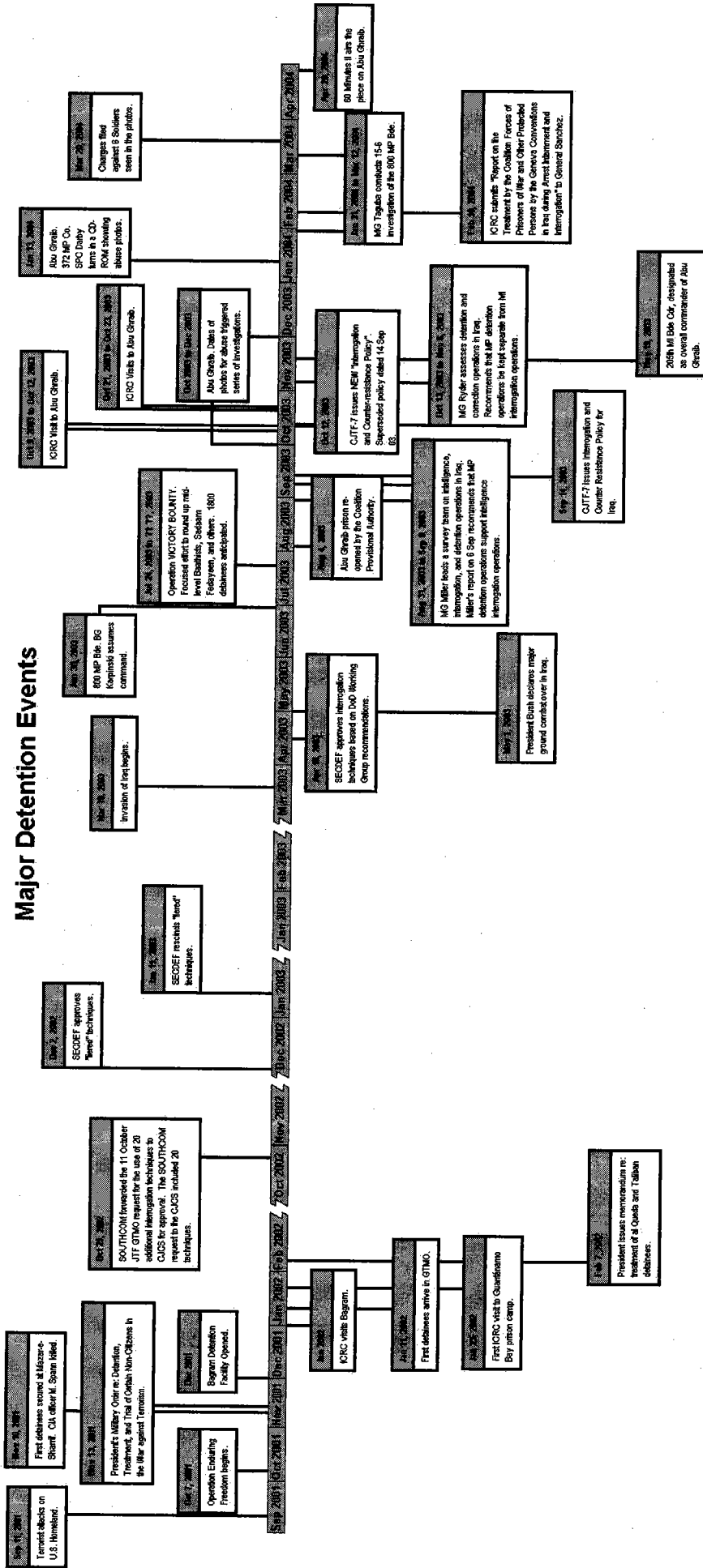
- 1 Some techniques specifically delineated in this memo are inherent to techniques contained in FM 34-52, e.g. Yelling as a component of Fear Up
- 2 Five Approved Techniques require SOUTHCOM approval and SECDEF notification.
- 3 Figure includes techniques that were not in current use but requested for future use.
- 4 Figure includes one technique which requires CG approval.
- 5 Memorandum cited for Afghanistan and Iraq are classified.
- 6 Figure includes the 17 techniques of FM-34-52, although they are not specified in the Memo.

Evolution of Interrogation Techniques - GTMO

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

*Techniques require SOUTHCOM approval and SECDEF notification.

Major Detention Events



PSYCHOLOGICAL STRESSES

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

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

The Stanford Prison Experiment

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

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

INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS

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

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

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

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

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

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

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

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

Social Psychology: Causes of Aggression and Inhumane Treatment

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

Human Aggression

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

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

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

Abusive Treatment

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

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

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

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

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

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

Abuse and Inhumane Treatment in War

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

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

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

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

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

Environmental Factors

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

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

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

INDEPENDENT PANEL TO REVIEW DoD DETENTION OPERATIONS

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

ETHICAL ISSUES

Introduction

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

Ethical Foundations of Detention and Interrogation

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

Permissions and Limits on Detentions

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

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

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

Permissions and Limits on Interrogation Techniques

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

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

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

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

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

Ethics Education

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

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

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

Independent Panel to Review DoD Detention Operations

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