

TRANSITIONING FROM ENEMY PRISONER OF WAR (EPW) OPERATIONS TO LONG-TERM DETAINEE OPERATIONS

BY

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USAWC STRATEGY RESEARCH PROJECT

**TRANSITIONING FROM ENEMY PRISONER OF WAR (EPW) OPERATIONS TO
LONG-TERM DETAINEE OPERATIONS**

by

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ABSTRACT

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Operations Enduring Freedom and Iraqi Freedom put a new face on EPW operations that our nation has not witnessed before. The Army's capability to conduct long-term detainee operations, versus the traditional short term EPW operations, was put to the test. Our nation saw a new category of prisoner emerge, commonly referred to as a "detainee." Detainee operations in the 21st century is a complex endeavor, multi-faceted and complicated by emerging national policy, numerous categories of detainees, recent Supreme Court decisions and the development of new military doctrine, all initiated to address the issues that arose out of the multiple investigations into the detainee abuses at Abu Ghraib. It is absolutely essential that we conduct detainee operations correctly in future wars to prevent the strategic and operational impact that the abuses at Abu Ghraib had on our nation. The intent of this paper is to explore the impact of long-term detainee operations and why it should be an important planning factor in future conflicts. Getting it right will prevent further damage to the United States' image and reputation abroad and ensure we are a nation committed to honoring the Geneva Conventions and other applicable laws of war.

TRANSITIONING FROM ENEMY PRISONER OF WAR (EPW) OPERATIONS TO LONG-TERM DETAINEE OPERATIONS

Throughout the 20th century, American forces engaged their adversaries in numerous conflicts throughout the entire spectrum of conflict. From the Banana Wars of the mid 1920s to World War II and Operation Desert Storm, American forces captured personnel that were classified and appropriately treated as criminals, insurgents or prisoners of war. Following the September 11, 2001 attacks on the United States, an enemy arose who has been described as all three.¹

Operations Enduring Freedom and Iraqi Freedom put a new face on Enemy Prisoner of War (EPW) operations that our nation has not witnessed before. The Army's capability to conduct long-term detainee operations, versus the traditional short term EPW operations, was put to the test. Our nation saw a new category of prisoner emerge, commonly referred to as a "detainee." Detainee operations in the 21st century is a complex endeavor, multi-faceted and complicated by emerging national policy, numerous categories of detainees, recent Supreme Court decisions and the development of new military doctrine, all initiated to address the issues that arose out of the multiple investigations into the abuses at Abu Ghraib. It is absolutely essential that we conduct detainee operations correctly in future conflicts to prevent the strategic and operational impact the abuses at Abu Ghraib had on our nation. Getting it right in the future will prevent further damage to the United States' image and reputation abroad and ensure we are a nation committed to honoring the Geneva Conventions and other applicable laws of war. The key component of political and strategic success is to understand that detainee operations are not an anomaly and we must plan and prepare for it in the future in every conflict involving the U.S. government.

Background

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, were and continue to be 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-Sharraf in November 2001.²

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 a prisoner of war status.³ This is possibly what started the confusion within our military with regard to the treatment of captured personnel. The Bush Administration, declaring a metaphorical “war” and implying that the usual legal restraints, check and balances did not apply, indirectly led to the abuse of enemy detainees. This was presaged by a statement made by Vice President Cheney on 16 September 2001: “We got to spend time in the shadows... so it’s going to be vital for us to use any means at our disposal, basically, to achieve our objectives.”⁴ In addition, Cofer Black, formerly of the Central Intelligence Agency (CIA), told Congress: “After 9/11, the gloves came off.”⁵ Nonetheless, the Secretary of State, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff were all in agreement that the 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.”⁶

The United States has been at the forefront of legally defining and treating humanely its enemies since the inception of the Lieber Code in 1863. *The Hague Conventions* of 1907 provided the first international attempt to codify the treatment of captured individuals. The first substantive treatment of captured personnel, however, was codified in the 1929 *Geneva Conventions Relative to Prisoners of War*. Following World War II, the international community came together to improve the 1929 POW conventions to address significant shortcomings that arose during World War II. The 1949 *Geneva Conventions* became the preeminent international standards for the treatment of POW and civilians in Conventions III and IV.⁷

The United States has an interest in strengthening the Geneva Conventions so that protections apply to a broader range of conflicts. This will strengthen protections for Americans, and it will indicate that the United States practices what it proclaims, by providing security and protection for others caught up in conflicts.⁸

The main take-away for leaders and soldiers involved in detainee operations in today’s strategic and operational environment is that there will almost inevitably be some uncertainty related to the nature of armed conflicts. Thus, with regard to detainee issues, it is essential to emphasize the basic mandate to treat all detainees humanely.⁹

Traditional Enemy Prisoner of War Operations

Our national policy decision regarding the application of the Geneva Conventions has been pivotal during our past conflict and war experiences. Our mistake as a nation and military is not learning from history.

During World War II the United States military performed detainee operations in an excellent manner. The EPW population interned in the United States was a mere 32 in May of 1942. This figure grew to 435,000 prisoners held in the United States and a staggering 4.3 million in U.S. custody worldwide by May 1945.¹⁰ The U.S. Army operated numerous facilities across Europe, the Pacific and the continental United States. Based on doctrine from World War I, the Provost Marshal General and the military police units were responsible for detainee operations. Prisoner of War operations during WW II were based on Department of the Army field manuals. With regard to prisoner treatment FM 29-5, *Basic Field Manual: Military Police*, included general procedures regarding prisoner care and treatment to include reference to the Geneva Conventions of 1929.¹¹ United States prisoner of war treatment was very favorable during WW II. German prisoner in the United States wrote thousands of letters to their families and told them of the fair treatment they received. The experiences of WW II show that the U.S. military's POW doctrine and training served the country and its soldiers very well.¹²

Our nation faltered momentarily at the early stages of the Vietnam War by acting indifferently rather than establishing a firm policy on POWs.¹³ Initially the U.S. policy in Vietnam did not support the Geneva Conventions as the U.S. was simply detaining the enemy for tactical intelligence and then turning them over to the Vietnamese government for civil prosecution.¹⁴

What should we have learned from Vietnam? In Vietnam three lessons were predominant. First, poor planning for POW operations created many problems as the war progressed. Second, media attention to prisoner issues led to negative publicity and had the potential of negative impacts on national and international support for the war. And third, lack of foresight, muddled and ineffective policy resulted in decisions that were very difficult to change. These early policy decisions also undermined the U.S. position with regard to U.S. personnel held by the enemy and with the international community. A 1977 Department of the Army study on detainee operations clearly state "insufficient planning for the Detainee Program was the overriding cause of problems during the Vietnam conflict."¹⁵

Policy regarding detainees was less complicated for Grenada, Panama and the first Gulf War. Our military learned that affording all detainees, at least initially, prisoner of war status under the Geneva Conventions was the preferred policy. In Desert Storm, our nation took great effort to plan and execute detainee operations that met the provisions of the Geneva

Conventions. Just as in WW II, our military used this fair treatment as a psychological weapon against the enemy. Facilities and treatment were so good that the International Committee of the Red Cross lauded them as the best ever.¹⁶

In Korea and Grenada, the urgency of the situation precluded extensive planning for detainee operations. Our reluctance to establish a clear policy and direction in Vietnam caused a similar problem.¹⁷ The Vietnam War was viewed by many as an insurgency, early on the U.S. Government had to take a position on how and when to apply the Geneva Convention. The South Vietnamese Government regarded captured Viet Cong as political prisoners, not EPWs, and imprisoned them in civil jails, sometimes without due process. South Vietnamese military units also did not observe the Geneva Convention on the battlefield and often tortured or executed Viet Cong prisoners. Having made a policy decision at the highest levels of government to turn all detainees captured on the battlefield over to the custody of the South Vietnamese Government, and faced with the reality of more Americans becoming POWs as the level of troop commitment escalated, the U.S. announced in August 1965 it would apply the provisions of the Geneva Convention in Vietnam. The South Vietnamese Government followed suit.¹⁸

Almost a year after the U.S. involvement began in Vietnam the Military Assistance Command Vietnam (MACV) began planning and preparation with the South Vietnamese Government to construct five camps to detain captured EPWs. U.S. Army Military Police (MP) advisory teams were assigned to these camps to ensure the South Vietnamese observed the provisions of the Geneva Conventions. By December 1971, the South Vietnamese held over 35,000 prisoners, almost a third of those captured by U.S. forces.¹⁹

The result in all three cases (Korea, Grenada and Vietnam) was very similar. Our military spent an extraordinary effort trying to recover from the lack of planning and preparation. In Panama and the first Gulf War, selecting the units and allowing them to participate in the planning process paid huge dividends. Both Joint Task Force commanders of these operations made detainee operations a key part of their crisis planning, and it showed.²⁰

Detainee Operations in Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF)

During Operation Desert Storm over 70,000 Iraqi Enemy Prisoners of War (EPW) were processed. During this conflict, the lines of battle were easily distinguishable. The boundaries separating brigades, divisions, and corps operations in theater were clear, providing commanders with a simple battle space to conduct their operations. Accordingly, the flow of captured prisoners proceeded almost seamlessly to the rear.²¹

In the opening months of OEF and OIF there was much confusion surrounding detainee operations in the contemporary operating environment (COE).

One of the other major differences between Desert Storm and OEF/OIF was the short amount of time Desert Storm lasted and the amount of time EPWs were detained by U.S. forces prior to being repatriated. There was no issue with the category of EPW, nor the issue of long term detention. During Desert Storm the identification of the enemy was very clear, thus the guidelines for treatment was very simple, they were treated in accordance with the Geneva Conventions.

In contrast, OEF and OIF changed the complexity of the entire EPW mission based on the “noncontiguous battlefield” which quickly became a part of the military’s language as well as the beginning of long term detention for captured detainees. The definition of the COE as it relates to detainees became clouded and confused. At the center of the confusion were the following unsettled questions:

- Are these detainees entitled to the rights and privileges afforded by the Geneva Conventions?
- Should detainees be referred to as persons under control, unprivileged belligerents, or enemy combatants?²²

In the simplest of terms, the Geneva Conventions indicate that an EPW must meet the following criteria:

- Is under the command of a person responsible for his subordinates.
- Has fixed, distinctive signs that are recognizable at a distance.
- Carries arms openly.
- Conducts operations according to the laws and customs of war.²³

To complicate matters the Global War on Terrorism (GWOT) is best described as the American and allied effort to defeat Al-Qaida and its loose affiliation of terrorists. Within the framework of the GWOT are examples of both international and internal armed conflict²⁴, thus leading to the beginning of the confusion on the modern day battlefield and within our government on the treatment of combatants under U.S. custody. The full body of customary international law, as well as the Geneva Conventions of 1949, are triggered when an international armed conflict arises between two high contracting parties to the convention.²⁵ Combatants are commonly referred to as POWs and afforded the protections of the Geneva Conventions.²⁶

The U.S. military makes a conscious effort to train every Soldier, Sailor, Airman and Marine on the proper treatment of POWs in this regard. Many other conflicts that the U.S. has

fought are considered internal armed conflicts. They do not involve two belligerent states fighting each other. Rather they involve one nation fighting indigenous forces and may involve another state assisting the current governments' attempt to retain its sovereignty. These conflicts have significantly lessened protections for its combatants.²⁷

In February 2002, President Bush determined that "...Common Article 3 of Geneva (12 August 1949) 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." However, the President emphasized that it is the policy of this nation "...to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."²⁸

In both OEF and OIF the U.S. military discovered that no detained persons could be classified as EPWs, especially after 1 May 2003 when the President declared that major combat operations were over. The 2001 version of the Military Police Field Manual 3-19.40, *Military Police Interment and Resettlement Operations*, did not clearly define individuals such as members of Al Qaeda or the Taliban, nor did it indicate in which category such individuals should be placed.²⁹

The most recent edition of the *Department of Defense Directive 2310.1* indicates that all categories of persons who fall under Department of Defense (DOD) control are called detainees. Under the definition portion of this directive, we find the three traditional Geneva categories of EPW, civilian internee, and retained persons, plus another category-enemy combatant. Thus, the term enemy combatant describes individuals detained during the GWOT. Specifically, the directive defines an enemy combatant as a person that U.S. or allied force could properly detain under the laws and customs of war. For the purpose of the war on terror, the term enemy combatant shall mean an individual who was part of or supporting Taliban or Al Qaeda forces or associated forces that are engaging in hostilities against the U.S. or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.³⁰

The Asymmetric Enemy

Sun Tzu stated, "If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle."³¹ As young officers and soldiers, we are taught to fight combatants who obey the same rules we do – the rules of the Geneva Convention and the general laws of war. But here we are dealing

with people who will systematically leverage our compliance with these rules of war into an advantage for their side. That is the fundamental moral dilemma of a war against terror. This is essentially the asymmetry between the morality of the “warrior” and the morality of the terrorist. What distinguishes a warrior is not the uniform that we wear, or our complex chain of command, or our formal training in the use of arms. It is our ethical discrimination. That is what distinguishes a warrior from a terrorist or insurgent. A warrior uses violence according to certain rules. Warriors distinguish between civilians and non-civilians. A terrorist does not. Military organizations tend to protect military targets, so the terrorist pursue civilian targets. Warriors keep violence proportional to objectives. Terrorists do not. Warriors observe reciprocity towards prisoners and wounded enemy soldiers. Terrorists do not. Warriors use violence to secure political objectives, while terrorists use violence in order to terrify.³²

National Policy (Treatment versus Status)

One could assume, the simpler the policy or guidance the easier it is to promulgate and execute. Emerging detainee policy has been an absolute nightmare for commanders and soldiers in the field during the past several years, primarily due to the confusion over the status/category of captured personnel and how to treat them.

U.S. policy now and in all future conflicts should be exactly what it was during the initial stages of OIF, very direct and simple, treat every captured person in accordance with the Geneva Convention. This would eliminate all of the grey areas and misinterpretation for commanders and soldiers in the field conducting combat operations and for those responsible for custody and control of detainees.

Experience has shown that if we stick to simple policy and treat captured personnel humanely we will be successful and not have to suffer the scrutiny of the international community when inappropriate treatment occurs.

The following paragraphs depict the multiple emerging policy directives that likely, did not in every occasion, make its way down to the tactical level. One can only imagine how confused the leaders and soldiers were in the field.

On January 19, 2002 the Secretary of Defense transmitted to DOD the official U.S. government position on the status of Taliban and Al-Qaida individuals under U.S. control. This policy was backed by a memorandum from Alberto Gonzales, Legal Counsel to the President and William Haynes, General Counsel to DOD. The memorandum laid out the legal rationale for the denial of POW status for Taliban and Al-Qaida detainees.³³

The advice provided to the President and subsequently passed to DOD was formally mandated by Presidential memorandum dated February 7, 2002, and publicized by a press conference on the same day. The presidential memorandum did not take as expansive of view of Afghanistan as a failed state, but it did end up with the same conclusions relative to the Taliban and Al-Qaida.³⁴ It articulated that:

- Al-Qaida is a trans-national criminal organization. It is not party to the Geneva Conventions and, therefore, its members derive no protections from the Conventions.
- The memo accepted that Afghanistan was party to the Geneva Conventions. The Taliban were the de facto head of the government of Afghanistan at the onset of international armed conflict with the U.S. However, Taliban soldiers did not satisfy the criteria of GPW Article 4(a)(2) mandating that a militia or volunteer corps: (1) be commanded by a person responsible for his subordinates; (2) have a fixed distinctive sign recognizable from a distance; (3) carry their arms openly; and (4) conduct their operations in accordance with the law of war.³⁵

The February 7, 2002, memorandum stated that the Taliban and Al-Qaida detainees would be treated humanely and, to the extent appropriate and consistent military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949.³⁶

American forces, with their coalition allies, began combat operations against Iraq in March 2003. The U.S. government announces that the entire body of the law of war, including the Geneva Conventions, would apply to American forces during OIF.³⁷

There has not only been confusion at the tactical and operational level when classifying detainees. At the national level, “last fall (2005) White Houses aides were grappling with a seemingly simple question that had eluded them for years: what should the president, in his many speeches on the GWOT, call the enemy? They were searching for a single clean phrase that could both define the foe and reassure Americans who were confused by a conflict that had grown much bigger than Osama bin Laden. But the answer was anything but simple. Some academics preferred the term, Islamism, but the aides thought that sounded too much as if America were fighting the entire region. Another option: Jihadism. But to many Muslims, it’s a positive word that doesn’t necessarily evoke bloodshed. Some preferred the conservative buzzword Islamofascism, which was catchy and tied neatly into President Bush’s historical view of the struggle. In the end the administration decided to not use one definitive word, because there wasn’t a perfect word to describe the enemy.”³⁸

What do we call our enemy? The following are defined persons that can be found in Geneva Conventions III (GPW) and IV (GC):

- Prisoner of War – traditionally members of the armed forces or militias. The term Enemy Prisoner of War (EPW) is also used. There is no legal difference in either of the names. In practice, EPW refers to POWs that Americans capture in international armed conflict. POW is the term for U.S. service members captured by our enemy.
- Protected Person – a person protected by the Convention at a given moment and in any manner whatsoever who finds himself, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power, of which he is not a national.
- Detainee – any person captured or otherwise detained by an armed force. It includes any person held during operations other than war. This is the default term to use when discussing persons who are in custody of U.S. forces. They may be later classified for example as a POW once status has been determined.
- Civilian Internee – a civilian who is interned during armed conflict for security reasons, or for protection, or because he has committed an offense against the detaining power.³⁹

Other terms used in the GWOT to describe detainees – some of these terms have no legal background, while others are used to describe persons who did not appear to fit neatly into the recognized framework of the Geneva Conventions:

- Unlawful Combatant
- Unlawful Belligerent
- Person of Interest
- Security Detainee
- Unprivileged Belligerent
- Terrorist⁴⁰

This is another part of the overall problem. These different categories of “detainees” complicate matters on the battlefield in regard to rights and protections of combatants and may have possibly contributed to the abuses at Abu Ghraib.

We do not need “grey” areas on the battlefield with regard to the treatment of the enemy, no matter what category they may eventually attain. Pure and simple, leaders need to demand that U.S. personnel treat detainees in accordance to the training they have received and based on the values of the U.S. military and our society.

A previous example of these “grey” areas can be found with the Canadian Army’s experience in Somalia in 1992. These “grey” areas are exactly what led to extensive

investigations of the Canadian Army with regard to the treatment of detained personnel. In 1992, as part of a peacekeeping operation in Somalia events transpired that impugned the reputations of individuals, Canada's military and, indeed, the nation itself. Those events, most of them now known to most Canadians, included the beating death of a captured teenager in the custody of soldiers from the Canadian Airborne Regiment (CAR). This event along with some of the other inappropriate actions carried out by the military, led the Government to call for an inquiry.⁴¹ The principal conclusion of the inquiry was that the mission went badly wrong: systems broke down and organizational failure ensued. The inquiry canvassed a broad array of issues and events and a massive body of documentation and testimony to reach a disappointing conclusion. The main findings and recommendations sound remarkably like those found in the investigations that resulted from the Abu Ghraib investigations. Systemic or institutional faults cannot be divorced from leadership responsibility, and the leadership errors in the Somalia mission were numerous and fundamental.⁴²

The Canadian Army discovered that one standard policy that was simple to understand and simple to apply avoided confusion and avoided putting soldiers in a dilemma.

We can learn from the Canadian Army. In simple terms every single Soldier in the U.S. military should know three basic rules in dealing with captured personnel; this leaves no room for interpretation and is clear and concise:

- Give humane treatment without distinction based on race, color, religion, gender, birth, wealth or similar criteria;
- Provide adequate food, drinking water, shelter, clothing and medical treatment;
- Give free exercise of religion consistent with requirements for detention⁴³

Strategic Impact of the Abuses at Abu Ghraib

In light of what happened at Abu Ghraib, a series of comprehensive investigations were conducted by various components within Iraq by the military chain of command and at the national level.⁴⁴ LTG Ricardo Sanchez, the overall military commander in Iraq, appointed a high-level investigation, headed by MG Antonio Taguba. In addition, the Secretary of Defense (SECDEF) appointed members of an Independent Panel to provide professional advice on detainee abuses, to look at what caused them and what actions should be taken to preclude their repetition.⁴⁵ Other investigations were led by LTG Anthony Jones, MG George Fay as well as the Army Inspector General. As a result of these investigations over 250 recommendations were made to the SECDEF in order to keep these actions from happening in the future.

The events of October through December 2003 on the night shift of Tier I 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 abuses, unacceptable even in wartime, were not part of authorized procedures. They represent deviant behavior and a failure of military leadership and discipline.⁴⁶ The photographs did not lie. American Soldiers, male and female, grinning and pointing at the genitals of naked, frightened Iraqi prisoners; an Iraqi man, unclothed and leashed like a dog, groveling on the floor in front of his female guard; a prisoner standing on a box with a sandbag over his head and wires attached to his body beneath a poncho. These were not enemy propaganda pictures; these showed real atrocities actually inflicted by Americans.⁴⁷

The damage to the reputation of the United States in the world and to the reputation of American forces in Iraq was incalculable, as was the threat to the security of those forces from the swelling ranks of anti-occupation insurgents.⁴⁸ Not since My Lai in 1968 had Americans felt such reason to question the fundamental decency of American troops in wartime.⁴⁹

The abuses at Abu Ghraib resulted in not only multiple investigations but intense media coverage and international scrutiny. The focus on detention operations points to one unequivocal fact. Detainee operations have a profound impact across the strategic, operational and tactical levels of war.⁵⁰

The Impact of Long Term Detainee Operations versus Short Term EPW Operations

The absolute best approach to preparing for future detainee operations is to plan for long term versus short term. The enemy we face today, and in the foreseeable future, forces us into this corner. There are those in both the military and our civilian leadership that would like to avoid the term “confinement,” but the grim reality is we are confining detainees on a large scale in both Iraq and Afghanistan, just as we do in our very own United States prison/correctional system. We would do well to learn from lessons from our very own confinement experts at the U.S. Army Disciplinary Barracks, as well as from state and federal correctional institutions on how to plan, prepare and implement long term confinement. Having a long term confinement mentality versus a hope of quick repatriation would serve commanders and planners well in the future and ensure we are prepared and ready to execute detainee operations.

If we want to avoid another Abu Ghraib, then our nation must be committed to the resources it will take to establish Theater Internment Facilities (TIF) that closely mirror CONUS models. Guantanamo Bay, Cuba (GTMO) is a perfect example of what we can do given the appropriate level of interest, attention and resources to detain captured persons in an

appropriate confinement environment. Maybe we should think "out of the box," why can't we confine all prisoners captured by the United States during the GWOT, on U.S. soil and/or our territories? We did this very successfully during WW II, where the numbers were vastly greater than they are today. We should continue to think "outside of the box" by asking a couple of other related key questions, for example, why can't we build permanent in-theater confinement facilities like the one at GTMO in each Combatant Commander (COCOM's) Area of Operation (AOR) and why can't we evacuate prisoners out of the AOR to alleviate the additional burden on commanders to maintain long term detainees? Traditional EPW policy, doctrine and training will not work on the asymmetric battlefield with the enemy we are dealing with today. Detainee operations today is truly an evolving paradigm and we would be well served to learn the valuable lessons from our forefathers.

In order to effectively plan for detainee operations for future conflicts commanders should demand that their planners use the policy and strategy formulation model. The results of our strategy formulation must be integrated into theater strategic level war plans to ensure detainee operations is not an afterthought, but proactively planned for at the operational and strategic level, in accordance to our national policy. When formulating plans we should keep in mind the United States' overall national purpose and policy of promoting human rights abroad. Planners should ensure that the appropriate ends (how detainee operations supports the national/military strategic objectives), ways (what specific strategic concepts/courses of action/ guidance do we give in order for those who must implement and resource detainee operations), and means (what are the appropriate resources to plan for in order to properly care, safeguard and sustain long term detainee operations) are articulated in the plan. Based on lessons learned in OEF/OIF one can assume that if we do not have an effective detainee operations strategy that there will be second and third order effects and once again negatively impact our leaders and nation.

A Work in Progress

The military is committed to ensuring all personnel live up to American values and the law of war, regardless of the environment or circumstances, and are equally committed to ensuring that those responsible for detainee abuse are held accountable. Over the past three years of intense domestic and international public scrutiny, no other institution in the world has taken a more critical look at itself, or been more transparent in pursuit of the truth, than the United States Army.⁵¹

In the Army's review of the findings of the 12 separate investigations, inspections and reviews, in many cases, the 250 corrective actions cross multiple areas such as policy, doctrine, training and force structure, and require significant time to implement. To date, the Army as the Department of Defense Executive Agent for EPW and detainee operations, initiated work on 100 percent of the corrective actions with over fifty percent complete.⁵²

As doctrine, policy and new training emerge, we must not forget the outstanding work and commitment made by the many thousands of Soldiers, Sailors, Airmen and Marines that are conducting professional day to day detainee operations. What happened at Abu Ghraib is without question deplorable, but goodness can come out of bad situations. This incident, along with the multitude of investigations, forced the military and the nation to relook doctrine, policy and training. Many efforts are completed and others underway to address over 250 recommendations made by the multitude of investigations in regard to improving detainee operations.

As an example, one of the major recommendations made by the investigations had to do with ensuring clarity of command and control; clearly leaders need to know who is in charge. The relationship between military police and military intelligence personnel has drawn much attention.⁵³ There was considerable uncertainty between both branches about each other's roles, limitations, and command authority across detainee operations.⁵⁴ In an effort to fix the situation, multiple interim changes and revisions were made to doctrine and policy, culminating with the publication of FMI 3-63.6, *Command and Control of Detainee Operations*.⁵⁵ Among other things, FMI 3-63.6 stipulates that the senior military police officer at each echelon will be in charge of all assets and operations within the Initial Detainee Collection Point (IDCP), Detainee Holding Area (DHA), or Theater Internment Facility (TIF).⁵⁶ Another important change was the development in doctrine of the Commander, Detainee Operations (CDO). The CDO is the single authority who has responsibility over all echelons where detainee operations occur. He writes the policy and enforces the standards for the Army forces or joint task force commander. A CDO can be placed at essentially any echelon, depending on the size of the operation. The Office of the Provost Marshal General and the Military Intelligence Center, and many others have made critical contributions to the completion of FMI 3-63.6. Their collective interest is that it meets the needs of the military police officer and intelligence officers in the field conducting detainee operations.⁵⁷

Conclusion

National and international media attention will always focus on the United States' treatment of detainees regardless of the credibility of allegations of maltreatment or enemy atrocities against American service personnel. This point may not be equitable but it is a fact of our international position and the transparency of a democratic society. The media focused on allegations of mistreatment of enemy prisoners during Vietnam and Korea while captured American service personnel suffered atrociously. The focus is on the United States because our nation goes to war based on a just cause. How can the U.S. wear the white hat if we abuse prisoners? This is not to say that all the allegations of maltreatment are true but it emphasizes the strategic importance of detainee operations. Our enemies will continue to use allegations of abuse and torture against us and if possible will use this tactic to undermine our effort to achieve our national objectives.⁵⁸

In the future the keys to success in conducting detainee operations is effective planning, appropriate resourcing and a continuation of efforts in modifying policy, doctrine, training and force structure based on lessons learned and the results of the multiple investigations.

As we continue to confine detainees for the long-term we must think out of the box and explore options used in past conflicts as well as developing innovative ideals for the future.

When sending Americas sons and daughters to war, as leaders we can serve them well by portraying to them that "a detainee, is a detainee, is a detainee."⁵⁹ This mentality will ensure that we forget about the status issue and treat every person captured in accordance with the Geneva Convention. With this philosophy we have everything to gain and nothing to lose. It takes out all of the grey areas and makes it very easy to pass this guidance up and down the chain of command.

In the execution of this research it is very apparent that as a military institution we clearly learn from mistakes. Literally thousands of man hours and millions of dollars were put forward in a concerted effort to make positive changes based on the 250 plus recommended changes from the multiple inquiries and investigations conducted. One can clearly conclude that our nation, the DOD, and the U.S. military have made significant changes in policy, doctrine, training and are conducting detainee operations today in a very professional manner.

Endnotes

¹ The Judge Advocate General's Legal Center and School, International and Operational Law Department, *Operational Law Handbook* (Charlottesville, VA 2006), 533.

² Steven Strasser and Craig R. Whitney, *The Abu Ghraib Investigations* (New York: Perseus Book Group, 2004), 3-4.

³ *Ibid.*, 4.

⁴ David P. Forsythe, "United States Policy toward Enemy Detainees in the War on Terrorism," *Human Rights Quarterly* (May 2006): 471.

⁵ *Ibid.*

⁶ Strasser and Whitney, 4.

⁷ *Operational Law Handbook*, 533.

⁸ Renee De Nevers, "The Geneva Conventions and New Wars," *Political Science Quarterly* (Fall 2006): 395.

⁹ *Operational Law Handbook*, 534.

¹⁰ Robert H. Cole, *A Survey of United States Detainee Doctrine and Experience Since World War II*, Strategy Research Project (Carlisle Barracks: U.S. Army War College, 6 March 2006), 1.

¹¹ *Ibid.*, 2.

¹² *Ibid.*, 3-4.

¹³ *Ibid.*, 13.

¹⁴ *Ibid.*, 7-8.

¹⁵ *Ibid.*, 10.

¹⁶ *Ibid.*, 13-14.

¹⁷ *Ibid.*, 14.

¹⁸ James F. Gebhardt, "The Road to Abu Ghraib: U.S. Army Detainee Doctrine and Experience," *Military Review* (January-February, 2005): 45.

¹⁹ *Ibid.*

²⁰ Cole, 14.

²¹ Ed Lowe and Joseph Crider, "Detainee Operations: An Evolving Paradigm," *Military Police Bulletin* (October 2005): 1.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Operational Law Handbook*, 534.

²⁵ *Ibid.*, 533.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Lowe and Crider, 1.

²⁹ *Ibid.*

³⁰ *Ibid.*, 1-2.

³¹ Samuel B. Griffith, *Sun Tzu The Art of War* (New York: Oxford University Press, 1963), 129.

³² Michael Ignatieff, "Ethics and the New War," *Canadian Military Journal* (Winter 2001-2002): 7.

³³ *Operational Law Handbook*, 536.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*, 537.

³⁸ Richard Wolffe and Holly Bailey, "The 'Islamofascists,'" *Newsweek* (11 September, 2006): 24.

³⁹ *Operational Law Handbook*, 534-535.

⁴⁰ *Ibid.*, 535.

⁴¹ National Defense and the Canadian Forces, "Report of the Somalia Commission of Inquiry," available from http://www.forces.gc.ca/site/home_e.asp; Internet; accessed 21 December 2006.

⁴² *Ibid.*

⁴³ *Operational Law Handbook*, 535.

⁴⁴ *Ibid.*, 2.

⁴⁵ *Ibid.*, 2-3.

⁴⁶ Strasser and Whitney, 1.

⁴⁷ Ibid., VII.

⁴⁸ Ibid., VIII.

⁴⁹ Ibid., X.

⁵⁰ Cole, 1.

⁵¹ Francis J. Harvey and Peter J. Schoomaker, "Detainee Details," *National Review Online*, September 2005 [journal on line]; available from <http://www.nationalreview.com/comment/harveyschoomaker200509220821.asp>; Internet; accessed 19 December 2006.

⁵² Ibid.

⁵³ Lowe and Crider, 3.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Cole, 14.

⁵⁹ Guy J. Maillet, "The Canadian Army in Somalia," lecture, U.S. Army War College, Carlisle Barracks, PA, 5 December 2006.

