

## The Road to Abu Ghraib

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## Introduction

Since late April 2004, when the first photographs appeared of U.S. military personnel humiliating, torturing, and otherwise mistreating detainees at Abu Ghraib prison in Iraq, the United States government has repeatedly sought to portray the abuse as an isolated incident, the work of a few “bad apples” acting without orders. On May 4, U.S. Secretary of Defense Donald H. Rumsfeld, in a formulation that would be used over and over again by U.S. officials, described the abuses at Abu Ghraib as “an exceptional, isolated” case. In a nationally televised address on May 24, President George W. Bush spoke of “disgraceful conduct by a few American troops who dishonored our country and disregarded our values.”

In fact, the only exceptional aspect of the abuse at Abu Ghraib may have been that it was photographed. Detainees in U.S. custody in Afghanistan have testified that they experienced treatment similar to what happened in Abu Ghraib -- from beatings to prolonged sleep and sensory deprivation to being held naked -- as early as 2002. Comparable -- and, indeed, more extreme -- cases of torture and inhuman treatment have been extensively documented by the International Committee of the Red Cross and by journalists at numerous locations in Iraq outside Abu Ghraib.

This pattern of abuse did not result from the acts of individual soldiers who broke the rules. It resulted from decisions made by the Bush administration to bend, ignore, or cast rules aside. Administration policies created the climate for Abu Ghraib in three fundamental ways.

First, in the aftermath of the September 11 attacks on the United States, the Bush administration seemingly determined that winning the war on terror required that the United States circumvent international law. Senior administration lawyers in a series of internal memos argued over the objections of career military and State Department counsel that the new war against terrorism rendered “obsolete” long-standing legal restrictions on the treatment and interrogation of detainees.

The administration effectively sought to re-write the Geneva Conventions of 1949 to eviscerate many of their most important protections. These include the rights of all detainees in an armed conflict to be free from humiliating and degrading treatment, as well as from torture and other forms of coercive interrogation. The Pentagon and the Justice Department developed the breathtaking legal argument that the president, as

commander-in-chief of the armed forces, was not bound by U.S. or international laws prohibiting torture when acting to protect national security, and that such laws might even be unconstitutional if they hampered the war on terror. The United States began to create offshore, off-limits, prisons such as Guantánamo Bay, Cuba, maintained other detainees in “undisclosed locations,” and sent terrorism suspects without legal process to countries where information was beaten out of them.

White House legal counsel Alberto Gonzales, while suggesting that the Geneva Conventions be circumvented, did convey to President Bush the worries of military leaders that these policies might “undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat and could introduce an element of uncertainty in the status of adversaries.” Those warnings were ignored, but proved justified. In May 2004, a member of the 377th Military Police Company told the *New York Times* that the labeling of prisoners in Afghanistan as “enemy combatants” not subject to the Geneva Conventions contributed to their abuse. “We were pretty much told that they were nobodies, that they were just enemy combatants,” he said. “I think that giving them the distinction of soldier would have changed our attitudes toward them.”<sup>1</sup>

Second, the United States began to employ coercive methods designed to “soften up” detainees for interrogation. These methods included holding detainees in painful stress positions, depriving them of sleep and light for prolonged periods, exposing them to extremes of heat, cold, noise and light, hooding, and depriving them of all clothing. News reports describe a case where U.S. personnel with official approval tortured a detainee held in an “undisclosed location” by submerging him in water until he believed he would drown. These techniques, familiar to victims of torture in many of the world's most repressive dictatorships, are forbidden by prohibitions against torture and other cruel, inhuman or degrading treatment not only by the Geneva Conventions, but by other international instruments to which the U.S. is a party and by the U.S. military's own long-standing regulations.

It is not yet clear which techniques of ill-treatment or torture were formally approved at which levels of the U.S. government and the degree of severity allowed in their application, or whether they were informally encouraged. What is clear is that they were used systematically both in Afghanistan and then in Iraq, and that they were also used on some scale at Guantánamo. It is also clear that the purpose of these techniques is to inflict pain, suffering and severe humiliation on detainees. Once that purpose was

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<sup>1</sup> Douglas Jehl and Andrea Elliott, “Cuba base sent its interrogators to Iraqi prison,” *New York Times*, May 29, 2004.

legitimized by military and intelligence officials, it is not surprising that ordinary soldiers came to believe that even more extreme forms of abuse were acceptable. The brazenness with which some soldiers conducted themselves at Abu Ghraib, snapping photographs and flashing the “thumbs-up” sign as they abused prisoners, confirms that they felt they had nothing to hide from their superiors.

Third, until the publication of the Abu Ghraib photographs forced action, Bush administration officials took at best a “see no evil, hear no evil” approach to all reports of detainee mistreatment. From the earliest days of the war in Afghanistan and the occupation of Iraq, the U.S. government has been aware of allegations of abuse. Yet high-level pledges of humane treatment were never implemented with specific orders or guidelines to forbid coercive methods of interrogation. Investigations of deaths in custody languished; soldiers and intelligence personnel accused of abuse, including all cases involving the killing of detainees, escaped judicial punishment. When, in the midst of the worst abuses, the International Committee of the Red Cross complained to Coalition forces, Army officials apparently responded by trying to curtail the ICRC’s access.

Concern for the basic rights of persons taken into custody in Afghanistan and Iraq did not factor into the Bush administration's agenda. The administration largely dismissed expressions of concern for their treatment, from both within the government and without. This, too, sent a message to those dealing with detainees in the field about the priorities of those in command.

The severest abuses at Abu Ghraib occurred in the immediate aftermath of a decision by Secretary Rumsfeld to step up the hunt for “actionable intelligence” among Iraqi prisoners. The officer who oversaw intelligence gathering at Guantánamo was brought in to overhaul interrogation practices in Iraq, and teams of interrogators from Guantánamo were sent to Abu Ghraib. The commanding general in Iraq issued orders to “manipulate an internee's emotions and weaknesses.” Military police were ordered by military intelligence to “set physical and mental conditions for favorable interrogation of witnesses.” The captain who oversaw interrogations at the Afghan detention center where two prisoners died in detention posted “Interrogation Rules of Engagement” at Abu Ghraib, authorizing coercive methods (with prior written approval of the military commander) – such as the use of military guard dogs to instill fear – that violate the Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment.

Unlike U.S. actions in the global campaign against terrorism, the armed conflict in Iraq was justified in part on bringing democracy and respect for the rule of law to an Iraqi population long-suffering under Saddam Hussein. Abusive treatment used against terrorism suspects after September 11 came to be considered permissible by the United States in an armed conflict to suppress resistance to a military occupation.

The Bush administration apparently believed that the new wars it was fighting could not be won if it was constrained by “old” rules. The disturbing information coming to light points to an official policy of torture and cruel, inhuman or degrading treatment.

The Bush administration has denied having a policy to torture or abuse detainees. Human Rights Watch calls on the administration to demonstrate conclusively that its public disavowal of torture and other mistreatment of detainees in U.S. custody was in fact the policy of the U.S. government, and to make public all relevant government documents. The administration should also detail the steps being taken to ensure that these abusive practices do not continue, and to prosecute vigorously all those responsible for ordering or condoning this abuse.

Ironically, the administration is now finding that it may be losing the war for hearts and minds around the world precisely because it threw those rules out. Rather than advance the war on terror, the widespread prisoner abuse has damaged efforts to build global support for countering terrorism. Indeed, each new photo of an American soldier humiliating an Iraqi could be considered a recruiting poster for al-Qaeda. Policies adopted to make the United States more secure from terrorism have in fact made it more vulnerable.

## **I. A Policy to Evade International Law**

In the aftermath of the September 11 attacks on the United States, the Bush administration seemingly determined that winning the war on terror required that the United States circumvent international law. “There was a before-9/11 and an after-9/11,” said Cofer Black, former director of the CIA’s counterterrorist unit, in testimony to Congress. “After 9/11 the gloves came off.”<sup>2</sup>

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<sup>2</sup> John Barry, Michael Hirsh and Michael Isikoff, “The roots of terror,” *Newsweek*, May 24, 2004.

The first public manifestation of a policy to circumvent normal detention rules came in January 2002, when the United States began sending persons picked up during the armed conflict in Afghanistan to its naval base at Guantánamo Bay, Cuba. Ultimately Guantánamo would hold more than 700 detainees from forty-four countries, many apprehended far from any conflict zone. Guantánamo was deliberately chosen in an attempt to put the detainees beyond the jurisdiction of the U.S. courts. Indeed, in response to a legal challenge by several detainees, the U.S. government later argued that U.S. courts would not have jurisdiction over these detainees even if they were being tortured or summarily executed.<sup>3</sup>

### ***Circumventing the Geneva Conventions***

Ignoring the deeply rooted U.S. military practice of applying the Geneva Conventions broadly, U.S. Defense Secretary Donald H. Rumsfeld labeled the first detainees to arrive at Guantánamo on January 11, 2002 as “unlawful combatants,” automatically denying them possible status as prisoners of war (POWs). “Unlawful combatants do not have any rights under the Geneva Convention,” Mr. Rumsfeld said, overlooking that the Geneva Conventions provide explicit protections to all persons captured in an international armed conflict, even if they are not entitled to POW status. Rumsfeld signaled a casual approach to U.S. compliance with international law by saying that government would “for the most part, treat them in a manner that is reasonably consistent with the Geneva Conventions, to the extent they are appropriate.”<sup>4</sup> On February 7, Rumsfeld questioned the relevance of the Geneva Conventions to current U.S. military operations: “The reality is the set of facts that exist today with the al-Qaeda and the Taliban were not necessarily the set of facts that were considered when the Geneva Convention was fashioned.”<sup>5</sup>

At the same time, a series of legal memoranda written in late 2001 and early 2002 by the Justice Department helped build the framework for circumventing international law restraints on prisoner interrogation. These memos argued that the Geneva Conventions did not apply to detainees from the Afghanistan war.

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<sup>3</sup> See *Gherebi v. Bush* 9th Circuit, Dec. 18, 2003. The United States asserts the power “to do with [them] as it will, when it pleases, without any compliance with any rule of law of any kind, without permitting [them] to consult counsel, and without acknowledging any judicial forum in which its actions may be challenged. ... Indeed, at oral argument, the government advised us that its position would be the same even if the claims were that it was engaging in acts of torture or that it was summarily executing the detainees. To our knowledge, prior to the current detention of prisoners at Guantánamo, the U.S. government has never before asserted such a grave and startling proposition. ...a position so extreme that it raises the gravest concerns under both American and international law.”

<sup>4</sup> “Geneva Convention doesn’t cover detainees,” Reuters, January 11, 2002.

<sup>5</sup> See Jim Garamone, DefenseLink News (US Military), American Forces Press Service, February 7, 2002.

Alberto R. Gonzales, the White House counsel, in a January 25, 2002 memorandum to President Bush, endorsed the Justice Department's (and Rumsfeld's) approach and urged the president to declare the Taliban forces in Afghanistan as well as al-Qaeda outside the coverage of the Geneva Conventions. This, he said, would preserve the U.S.'s "flexibility" in the war against terrorism. Mr. Gonzales wrote that the war against terrorism, "in my judgment renders obsolete Geneva's strict limitations on questioning of enemy prisoners." Gonzales also warned that U.S. officials involved in harsh interrogation techniques could potentially be prosecuted for war crimes under U.S. law if the Conventions applied.<sup>6</sup> Gonzales said that "it was difficult to predict with confidence" how prosecutors might apply the Geneva Conventions' strictures against "outrages against personal dignity" and "inhuman treatment" in the future, and argued that declaring that Taliban and al-Qaeda fighters did not have Geneva Convention protections "substantially reduces the threat of domestic criminal prosecution."<sup>7</sup>

Gonzales did convey to President Bush the worries of military leaders that these policies might "undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat and could introduce an element of uncertainty in the status of adversaries."<sup>8</sup>

The Gonzales memorandum drew a strong objection the next day from Secretary of State Colin L. Powell. Powell argued that declaring the conventions inapplicable would "reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops, both in this specific conflict and in general."<sup>9</sup>

On February 7, 2002, in the face of growing international criticism,<sup>10</sup> President Bush announced that the U.S. government would apply the "principles of the Third Geneva Convention" to captured members of the Taliban, but would not consider any of them to be POWs because, in the U.S. view, they did not meet the requirements of an armed

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<sup>6</sup> Gonzales was referring to prosecution under the War Crimes Act of 1996 (18 U.S.C. Section 2441), which punishes the commission of a war crime, including torture and humiliating or degrading treatment, by or against a U.S. national, including members of the armed forces.

<sup>7</sup> Memorandum from Alberto R. Gonzales to the President, January 25, 2002.

<sup>8</sup> *Ibid.*

<sup>9</sup> Memorandum from Colin L. Powell to Counsel to the President, January 26, 2002.

<sup>10</sup> See, e.g., Statement of High Commissioner for Human Rights on Detention of Taliban and al-Qaeda Prisoners at U.S. Base in Guantanamo Bay, January 16, 2002; Kieran Murray, "EU, Latin America condemn U.S. prison abuse in Iraq," Reuters, May 28, 2004. Rumsfeld dismissed the criticism as "isolated pockets of international hyperventilation." See "High Taliban official in U.S. custody," Associated Press, February 9, 2002.

force under that Convention. As for captured members of al-Qaeda, he said that the U.S. government considered the Geneva Conventions inapplicable but would nonetheless treat the detainees “humanely.”

These decisions essentially reinterpreted the Geneva Conventions to suit the administration’s purposes. Belligerents captured in the conflict in Afghanistan should have been treated as POWs unless and until a competent tribunal individually determined that they were not eligible for POW status. Taliban soldiers should have been accorded POW status because they openly fought for the armed forces of a state party to the Convention. Al-Qaeda detainees would likely not be accorded POW status, but the Conventions still provide explicit protections to all persons held in an international armed conflict, even if they are not entitled to POW status. Such protections include the right to be free from coercive interrogation, to receive a fair trial if charged with a criminal offense, and, in the case of detained civilians, to be able to appeal periodically the security rationale for continued detention.

Even after the Abu Ghraib scandal broke, Secretary Rumsfeld continued to take a loose view of the applicability of the Geneva Conventions. On May 5, 2004, he told a television interviewer the Geneva Conventions “did not apply precisely” in Iraq but were “basic rules” for handling prisoners.<sup>11</sup> Visiting Abu Ghraib on May 14, Rumsfeld remarked, “Geneva doesn’t say what you do when you get up in the morning.” In fact, the U.S. armed forces have devoted considerable energy over the years to making the Geneva Conventions fully operational by military personnel in the field. Various U.S. military operational handbooks and manuals provide the means for implementing Geneva Convention provisions, even where those provisions are vague. Decisions by foreign and international criminal courts and interpretations of customary international law provide other means for clarifying Geneva Convention requirements.

### ***Undermining the Rules Against Torture***

All the while, the Bush administration resisted publicly discussing the requirements for the treatment of detainees under international human rights law, in particular the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Convention Against Torture). That convention bars not only torture

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<sup>11</sup> United States Department of Defense News Transcript, Secretary Rumsfeld Interview with Matt Lauer NBC “Today,” <http://www.dod.gov/transcripts/2004/tr20040505-secdef1425.html>.

but “cruel, inhuman or degrading treatment or punishment which do not amount to torture.”<sup>12</sup>

After the first reports of so-called “stress and duress” tactics against detainees appeared in the *Washington Post* in December 2002,<sup>13</sup> Human Rights Watch called on President Bush to investigate and condemn allegations of torture and other cruel and inhuman treatment.<sup>14</sup> In response, Department of Defense General Counsel William J. Haynes II stated that “United States policy condemns torture,” but he did not acknowledge that the United States also had a legal obligation to refrain from cruel, inhuman or degrading treatment. He also failed to address whether the United States was using the “stress and duress” techniques reported in the press.<sup>15</sup> In June 2003, Senator Patrick Leahy wrote to National Security Advisor Condoleezza Rice asking if “stress and duress” techniques were being employed and urging the administration to issue a clear statement that cruel, inhuman, or degrading treatment of detainees will not be tolerated. Finally, in June 2003, in response to the Leahy letter, Haynes stated, correctly, that the Convention Against Torture prohibits (at the very least) interrogators overseas from using any technique that would be unconstitutional if employed in the United States.<sup>16</sup> There is no evidence, however, that this message was ever conveyed to U.S. commanders in the field.

Rather, at the same time that the administration was publicly rejecting the use of torture or cruel, inhuman, or degrading treatment, it was apparently laying the legal groundwork for the use of just such tactics. The *Washington Post* has reported that in August 2002, the Justice Department advised Gonzales, in response to a CIA request for guidance, that torturing al-Qaeda detainees in captivity abroad “may be justified,” and that international laws against torture “may be unconstitutional if applied to interrogations” conducted in the war on terrorism.<sup>17</sup> The memo added the doctrines of “necessity and

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<sup>12</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and open for signature, ratification and accession by General Assembly resolution 39/46 of December 10, 1984, article 16.

<sup>13</sup> Dana Priest and Barton Gellman, “U.S. decries abuse but defends interrogations,” *Washington Post*, December 26, 2002; see discussion *infra*.

<sup>14</sup> Human Rights Watch, “United States: Reports of Torture of Al-Qaeda Suspects,” December 27, 2002, <http://www.hrw.org/press/2002/12/us1227.htm>.

<sup>15</sup> <http://www.hrw.org/press/2003/04/dodltr040203.pdf>.

<sup>16</sup> The Haynes letter to Leahy followed an earlier exchange with U.S.-based human rights groups, including Human Rights Watch, in which Haynes stated that “United States policy condemns torture,” but did not acknowledge that the United States also had a legal obligation to refrain from cruel, inhuman or degrading treatment. See Human Rights Watch, “U.S. Sidesteps Charges of Mistreating Detainees,” <http://www.hrw.org/press/2003/04/us041703.htm>; Timeline of Detainee Abuse Allegations and Responses, <http://www.hrw.org/english/docs/2004/05/07/usint8556.htm>

<sup>17</sup> Dana Priest and R. Jeffrey Smith, “Memo Offered Justification for Use of Torture,” *Washington Post*, June 8, 2004.

self-defense could provide justifications that would eliminate any criminal liability” on the part of officials who tortured al-Qaeda detainees. The memo also took an extremely narrow view of which acts might constitute torture. It referred to seven practices that U.S. courts have ruled to constitute torture: severe beatings with truncheons and clubs, threats of imminent death, burning with cigarettes, electric shocks to genitalia, rape or sexual assault, and forcing a prisoner to watch the torture of another person. It then advised that “interrogation techniques would have to be similar to these in their extreme nature and in the type of harm caused to violate law.” The memo suggested that “mental torture” only included acts that resulted in “significant psychological harm of significant duration, e.g., lasting for months or even years.”

The legal reasoning of the Justice Department memo re-appeared in an April 2003 memorandum from a working group appointed by Pentagon legal counsel Haynes that was headed by Air Force General Counsel Mary Walker and included senior civilian and uniformed lawyers from each military branch, and which consulted the Justice Department, the Joint Chiefs of Staff, the Defense Intelligence Agency and other intelligence agencies, according to the *Wall Street Journal*.<sup>18</sup> They contended that the president was not bound by the laws banning torture. According to a draft of the classified memo, the lawyers argued that the president had the authority as commander in chief of the armed forces to approve almost any physical or psychological actions during interrogation, up to and including torture, in order to obtain “intelligence vital to the protection of untold thousands of American citizens.” The memo presented a number of legal doctrines, including the principles of “necessity” and “self-defense,” and the inherent powers of the president which could be used to evade the prohibition on torture. The memo advised that the president issue a “presidential directive or other writing” that subordinates charged with torture could use as evidence that their actions were authorized, since authority to set aside the laws in wartime is “inherent in the president.”

The Convention Against Torture provides, however, that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>19</sup> The International Covenant on Civil and Political Rights, which also bans torture and other mistreatment, considers the right to be free from torture and other cruel, inhuman or degrading treatment as nonderogable, meaning that it can never be suspended by a state, including during periods of public emergency.

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<sup>18</sup> Jess Bravin, “Pentagon Report Set Framework For Use of Torture,” *Wall Street Journal*, June 7, 2004.

<sup>19</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and open for signature, ratification and accession by General Assembly resolution 39/46 of December 10, 1984, article 16.

And, according to media accounts and Human Rights Watch interviews, senior officials in the Defense and Justice Departments and the Central Intelligence Agency approved a set of coercive interrogation techniques for use in Afghanistan and Iraq that violate the prohibition of cruel, inhuman, or degrading treatment and can amount to torture.<sup>20</sup> These techniques apparently include stripping detainees naked during interrogation, subjecting them to extremes of heat, cold, noise, and light, hooding them, depriving them of sleep, and keeping them in painful positions.<sup>21</sup>

The *New York Times*, citing current and former counterterrorism officials, reported that in one case CIA interrogators used graduated levels of force against Khalid Sheikh Mohammed, a detainee held in an “undisclosed location” (see *infra*), including a technique known as “water boarding,” in which a prisoner is strapped down, forcibly pushed under water and made to believe he might drown. According to the *Times*, “these techniques were authorized by a set of secret rules for the interrogation of some 12 to 20 high-level al-Qaeda prisoners that were endorsed by the Justice Department and the CIA.”<sup>22</sup>

## **Renditions**

The Bush administration facilitated or participated directly in the transfer of an unknown number of persons without extradition proceedings, a practice known as “irregular rendition,” to countries in the Middle East known to practice torture routinely. The *Washington Post* in December 2002 described the rendition of captured al-Qaeda suspects from U.S. custody to other countries, such as Syria, Uzbekistan, Pakistan, Egypt, Jordan, Saudi Arabia, and Morocco, where they were tortured or otherwise mistreated. Unnamed U.S. officials suggested that detainees were deliberately moved to countries known for

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<sup>20</sup> The *Washington Post* has reported that a “list of about 20 techniques was approved at the highest levels of the Pentagon and the Justice Department,” techniques for use at the Guantánamo Bay prison. Dana Priest and Joe Stephens, “Pentagon approved tougher interrogations,” *Washington Post*, May 9, 2004. Senior government officials had earlier told Human Rights Watch of the approval of a “72-point matrix.” It is possible that this 72-point list was reduced to 20 in the approval process.

<sup>21</sup> According to Physicians for Human Rights: “Prolonged periods of sleep deprivation can result in confusion and psychosis, physical symptoms including headaches and dizziness, and chronic disruption of normal sleep patterns.” Also, “deprivations or normal sensory stimulation (e.g. sound, light, sense of time, isolation, restrictions of sleep, food, water, toilet facilities bathing, motor activity, medical care, and social contacts) serve to disorient victims, to induce exhaustion and debility, difficulty concentrating, impair memory and instill fear, helplessness, despair, and, in some cases, can result in severe anxiety and hallucinations and other psychotic reactions.” Physicians for Human Rights, “Interrogations, Torture and Ill Treatment: Legal Requirements and Health Consequences,” May 14, 2004, at page 7-8, [http://www.phrusa.org/research/pdf/iraq\\_medical\\_consequences.pdf](http://www.phrusa.org/research/pdf/iraq_medical_consequences.pdf).

<sup>22</sup> James Risen, David Johnston and Neil A. Lewis, “Scrutiny worries CIA interrogators,” *New York Times*, May 13, 2004.

their use of torture to ease constraints on their interrogations. One official was quoted as saying, “We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them.” An official who had supervised the capture and transfer of accused terrorists said “If you don't violate someone's human rights some of the time, you probably aren't doing your job...I don't think we want to be promoting a view of zero tolerance on this.”<sup>23</sup>

Tarek Dergoul, a Briton released from Guantánamo in March 2004, said that during interrogation there he was threatened with being sent to Morocco or Egypt, “where I would be tortured.”

In one case, Maher Arar, a Syrian-born Canadian in transit from a family vacation through John F. Kennedy airport in New York, was detained by U.S. authorities. After holding him for nearly two weeks, U.S. authorities flew him to Jordan, where he was driven across the border and handed over to Syrian authorities, despite his repeated statements to U.S. officials that he would be tortured in Syria and his repeated requests to be sent home to Canada. Mr. Arar, whom the United States asserts has links to al-Qaeda, was released without charge from Syrian custody ten months later and has described repeated torture, often with cables and electrical cords, during his confinement in a Syrian prison.

In another case, Swedish television reported in May 2004 that in December 2001 a U.S. government-leased Gulfstream 5 jet airplane transported two Egyptian terrorism suspects who were blindfolded, hooded, drugged, and diapered by hooded operatives, from Sweden to Egypt. There the two men were tortured, including in Cairo's notorious Tora prison.<sup>24</sup> The plane was apparently the same one that had allegedly been used two months earlier to transport a Yemini suspect from Pakistan to Jordan.

In a third case, U.S. operatives reportedly managed the capture and transfer of Mohammed Haydar Zammar, a top al-Qaeda suspect and dual German-Syrian national, to Syria in June 2002, over the protests of the German government. The United States has reportedly provided questions to Syrian interrogators.<sup>25</sup>

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<sup>23</sup> Dana Priest and Barton Gellman, “U.S. decries abuse but defends interrogations,” *Washington Post*, December 26, 2002.

<sup>24</sup> Swedish TV4 Kalla Fakta Program: “The Broken Promise,” May 17, 2004. See English Transcript at <http://hrw.org/english/docs/2004/05/17/sweden8620.htm>.

<sup>25</sup> Murhaf Jouejati, Adjunct Professor at George Washington University, and an expert on Syria, told the National Commission on Terrorist Attacks Upon the United States that “Although US officials have not been able to interrogate Zammar, Americans have submitted questions to the Syrians.” Statement of Murhaf Jouejati

## **“Disappearances”**

Among the most disturbing cases, perhaps unprecedented in U.S. history, are the detainees who have simply been “disappeared.”<sup>26</sup> Perhaps out of concern that Guantánamo will eventually be monitored by the U.S. courts, certainly to ensure even greater secrecy, the Bush administration does not appear to hold its most sensitive and high-profile detainees there. Terrorism suspects like Khalid Sheikh Mohammed, accused architect of the September 11 attacks, and Abu Zubaydah, a close aide of Osama bin Laden, are detained by the United States instead in “undisclosed locations,” presumably outside the United States, with no access to the ICRC, no notification to families, no oversight of any sort of their treatment, and in most cases no acknowledgement that they are even being held. Human Rights Watch has pieced together information on 13 such detainees, apprehended in places such as Pakistan, Indonesia, Thailand, Morocco, and the United Arab Emirates, who have “disappeared” in U.S. custody.<sup>27</sup>

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to the National Commission on Terrorist Attacks Upon the United States, July 9, 2003, [http://www.9-11commission.gov/hearings/hearing3/witness\\_jouejati.htm](http://www.9-11commission.gov/hearings/hearing3/witness_jouejati.htm).

<sup>26</sup> According to the preamble of the Declaration on the Protection of all Persons from Enforced Disappearance, “enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, ... followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law...” [emphasis added]. General Assembly resolution 47/133 of December 18, 1992. “Enforced disappearance” has been defined by the Rome Statute of the International Criminal Court as the “arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” Article 7 (2) (1).

<sup>27</sup> They are :1) Abdul Rahim al-Sharqawi (aka Riyadh the facilitator), arrested before April 2002, al-Qaeda member, allegedly coordinated logistics for attacks; 2) Ibn Al-Shaykh al-Libi, arrested before April 2002, allegedly al-Qaeda training camp commander; 3) Abd al-Hadi al-Iraqi, arrested before April 2002, allegedly al-Qaeda training camp commander; 4) Abu Zubaydah (aka Zubeida, aka Zain al-Abidin Muhahhad Husain), arrested in March 2002 in Faisalabad, Pakistan, al-Qaeda member, Palestinian (born in Saudi Arabia), allegedly senior al-Qaeda operational planner, potential heir to Bin Laden; 5) Omar al Faruq, arrested in June 2002 in Indonesia, al-Qaeda member, Kuwaiti, allegedly planned large-scale attacks against U.S. interests in Indonesia, Malaysia, the Philippines, etc.; 6) Abu Zubair al-Haili, arrested in June 2002 in Morocco, al-Qaeda member, Saudi, allegedly operational and military chief (deputy to Abu Zubaydah); 7) Ramzi bin al-Shibh, arrested in September 2002, al-Qaeda member, Yemeni, alleged conspirator in Sept. 11 attacks (former Atta roommate), meant to be 20th hijacker; 8) Abd al-Rahim al-Nashiri (aka Abu Bilal al-Makki), arrested in November 2002 in the United Arab Emirates, al-Qaeda member, Saudi or Yemeni, allegedly chief of operations in Persian Gulf and mastermind of USS Cole bombing and recent attack on the French oil tanker Limburg; 9) Mustafa al-Hawsawi, arrested March 1, 2003 (together with Khalid Sheikh M.) in Rawalpindi, Pakistan, al-Qaeda member, Saudi, allegedly financier; 10) Khalid Sheikh Mohammed (aka Shaikh Mohammed), arrested March 1, 2003 in Rawalpindi, Pakistan, al-Qaeda member, Kuwaiti (Pakistani parents), alleged mastermind behind Sept. 11 attacks as well as Pearl killing, USS Cole attack, etc.; 11) Waleed Mohammed Bin Attash (aka Tawfiq bin Attash or Tawfiq Attash Khallad), arrested in late April 2003 in Karachi, Pakistan, al-Qaeda member, Saudi (of Yemeni descent), alleged “top al-Qaida operative suspected of playing crucial roles in both the bombing of the U.S. destroyer Cole in 2000 and the Sept. 11 terror attacks;” 12) Adil al-Jazeera, arrested June 17, 2003 in Peshawar, Pakistan, al-Qaeda member, alleged “leading member”; 13) Hambali (aka Riduan Isamuddin),

## II. Guantánamo: America's "Black Hole"

The secrecy surrounding detention practices at the U.S. Naval Base at Guantánamo Bay, Cuba, the U.S. government's refusal to grant POW status to the Taliban detainees there or to even recognize that al-Qaeda detainees are covered by the Geneva Conventions, the approval of harsh interrogation techniques, and the allegations of abuse by some released detainees combine to raise concerns about mistreatment of detainees at the base. While Human Rights Watch has no information of Abu-Ghraib-level abuses at Guantánamo, there is a lot that remains to be learned.

The United States has carefully controlled information about the detainees at Guantánamo, barring them from most contact with the outside world.<sup>28</sup> As a result, little is publicly known about the more than 700 detainees from forty-four countries, including children as young as 13, who have been held at Guantánamo.<sup>29</sup> Human Rights Watch, and others, have had access only to detainees *released* from U.S. custody – and those released thus far are people whom U.S. authorities did not consider to be a security risk or indictable for criminal offenses. That is, none of them are the sort of high value or important detainees who might have been treated more harshly. What the world has been allowed to see of the Guantánamo detention facility are highly controlled tours for journalists (who have not been able to talk to detainees), and occasional video material released by the U.S. Department of Defense. Guantánamo has been described as a "legal black hole" by Lord Johan Steyn, a judicial member of Britain's House of Lords.<sup>30</sup>

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arrested August 11, 2003 in Aytthaya, Thailand, Jemaah Islamiyah (and al-Qaeda) member, Indonesian, allegedly organized/financed Bali nightclub bombing, Jakarta Marriot Hotel bombing, preparations for Sept. 11.

<sup>28</sup> Guantánamo detainees are visited by the ICRC, which does not report publicly, and some have been interviewed by representatives of their home governments.

<sup>29</sup> On January 29, 2004, the U.S. released three children believed to be between thirteen and fifteen years of age, but continued to hold an unspecified number of older children. For a more detailed discussion of the special risks to children held at Guantánamo see, Human Rights Watch, "Despite Releases, Children Still Held at Guantánamo," January 29, 2004, <http://www.hrw.org/english/docs/2004/01/29/usint7117.htm>, and Human Rights Watch, "Letter to Secretary Rumsfeld on Child Detainees at Guantanamo," April 24, 2003, <http://www.hrw.org/press/2003/04/us042403ltr.htm>.

<sup>30</sup> Johan Steyn, "Guantanamo: A monstrous failure of justice," *International Herald Tribune*, November 28, 2003.

Incommunicado detention has been consistently condemned by international human rights bodies as facilitating conditions under which torture and other mistreatment may take place.<sup>31</sup>

Statements by U.S. officials that the Geneva Conventions do not apply to al-Qaeda detainees -- indeed, the Bush administration's refusal to acknowledge that any law applies to them -- and that harsher methods of interrogation are therefore permissible, only heighten this concern. In his January 2002 memo to the president, for instance, White House counsel Gonzales endorsed not applying the Conventions to Guantánamo to avoid "Geneva's strict limitations on questioning of enemy prisoners."<sup>32</sup>

It was the failure to obtain sufficient information using non-coercive methods on Guantánamo detainees which reportedly led to the creation of the working group which informed Secretary Rumsfeld in April 2003 that the president, as commander in chief, could authorize torture notwithstanding domestic and international legal prohibitions.<sup>33</sup> According to the *Wall Street Journal*, a U.S. official who helped prepared the report said "We'd been at this for a year-plus and got nothing out of them [certain Guantánamo detainees] ... we need to have a less-cramped view of what torture is and is not." According to the official, interrogation techniques including drawing on prisoners' bodies, putting women's underwear on their heads, and threatening imminent harm to their families had not borne fruit and there was a need to "ratchet up the pressure."<sup>34</sup>

The *Washington Post* reported that in April 2003, officials at the highest levels of the Defense and Justice Departments approved a list of about twenty interrogation techniques for use at Guantánamo Bay that permit, among other things, reversing the normal sleep patterns of detainees and exposing them to heat, cold and "sensory assault," including loud music and bright lights, according to defense officials. The use of the techniques, according to the *Post*, must be justified as "militarily necessary," and must be accompanied by "appropriate medical monitoring," and requires the approval of

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<sup>31</sup> The Human Rights Committee, the expert body established to monitor compliance with the International Covenant on Civil and Political Rights, in its authoritative interpretation of Article 7 prohibiting torture and cruel, inhuman or degrading treatment or punishment, has stated: "To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends." General Comment 20, para. 11.

<sup>32</sup> See, e.g., John Yoo, "Terrorists have no Geneva rights," *Wall Street Journal*, May 26, 2004.

<sup>33</sup> Jess Bravin, Pentagon Report Set Framework For Use of Torture, *Wall Street Journal*, June 7, 2004

<sup>34</sup> *Ibid.*

senior Pentagon officials, and in some cases, of the Defense Secretary.<sup>35</sup> CBS News reported that Secretary Rumsfeld had approved such treatment for Mohammed Khatani, who in August 2001 allegedly tried unsuccessfully to enter the United States as part of the 9-11 plot. The treatment included reversing Khatani's sleep patterns, cutting off his beard, playing loud music and subjecting him to interrogation sessions lasting up to twenty hours. The head of U.S. Southern Command, General James Hill, whose responsibilities include Guantánamo Bay, said in June 2004 that Rumsfeld approved unspecified intensive interrogation techniques on two prisoners at Guantánamo.<sup>36</sup> The *Wall Street Journal* has reported that interrogation methods now used at Guantánamo include "limiting prisoners' food, denying them clothing, subjecting them to body-cavity searches, depriving them of sleep for as much as ninety-six hours and shackling them in so-called stress positions."<sup>37</sup>

Human Rights Watch has examined the accounts of over a dozen people released from Guantánamo concerning their incarceration there. These include nine persons directly interviewed by Human Rights Watch in Afghanistan and Pakistan, a sworn statement by a British former detainee provided to Human Rights Watch by his legal representative, and comments to media sources by several others. None of these accounts includes descriptions of the range of coercive interrogation techniques that reportedly had been authorized. As noted above, none of the detainees released to date have included "high value" detainees; most were apparently not even members of al-Qaeda or the Taliban. Thus, it cannot be determined if the methods used on the interviewees are representative or not of methods used on more important detainees. Nevertheless, some do describe degrading treatment, beatings and some sexual humiliation.

Describing his experience of being chained to the floor for long periods in an interrogation room without actually being interrogated, Briton Tarek Dergoul, who was released in March 2004, stated: "Eventually I'd need to urinate and in the end I would try to tilt my chair and go on the floor. They were watching through a one-way mirror. As soon as I wet myself, a woman MP [military police] would come in yelling, 'Look what you've done! You're disgusting.'"<sup>38</sup>

In a joint statement issued on May 13, 2004, Shafiq Rasul and Asif Iqbal, who were also released in March 2004 and repatriated to Britain, recounted: "Shortly before we left, a new practice was started. People would be taken to what was called the 'Romeo' block

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<sup>35</sup> Dana Priest and Joe Stephens, "Pentagon approved tougher interrogations," *Washington Post*, May 9, 2004.

<sup>36</sup> Josh White, "Methods used on 2 at Guantanamo," *Washington Post*, June 4, 2004.

<sup>37</sup> Jess Bravin, "Pentagon Report Set Framework For Use of Torture," *Wall Street Journal*, June 7, 2004

<sup>38</sup> David Rose, "They tied me up like a beast and began kicking me," *The Observer*, May 16, 2004.

where they would be stripped completely. After three days they would be given underwear. After another three days they would be given a top, and then after another three days given trouser bottoms. Some people only ever got underwear. This was said to be for ‘misbehaving.’”<sup>39</sup>

One detainee, “A.,” in Afghanistan, told Human Rights Watch that he was threatened with electric shocks. Human Rights Watch is not aware, however, of any instances in which shocks were actually administered.

A number of those interviewed described physical duress, particularly being subjected to extreme cold in the camp’s isolation wing. Former detainee Shah Mohammed Alikhil told Human Rights Watch: “It had a cold environment and cold weather [air conditioning] was blowing. Sometimes I was freezing cold, but we were denied blankets except during the night we were given blankets.”<sup>40</sup> Mohammad Saghir from Pakistan,<sup>41</sup> also complained of the very cold conditions in the punishment cells, where he was twice held, caused by air conditioning. Former detainee A., from Afghanistan, stated: “The isolation room was for punishment. It was a dark room and cold air was blowing. I had two blankets but still I was feeling cold. I was there for a month each time.”<sup>42</sup> Tarek Dergoul described being chained to a ring in the floor and left alone for up to eight hours each day for a month. He stated: “The air conditioning would really be blowing – it was freezing, which was incredibly painful on my amputation stumps.” (Dergoul had his left arm amputated above the elbow and a big toe was amputated because of frostbite.)<sup>43</sup>

Many described being chained or shackled. Dergoul described restraint equipment referred to as the “short shackle” - steel bonds pulled tight to keep the subject bunched up, then chained to the floor: “After a while, it was agony.”<sup>44</sup> Shafiq Rasul and Asif Iqbal, British detainees at Guantánamo, described interrogation practices as follows:

“Our interrogations in Guantánamo... were conducted with us chained to the floor for hours on end in circumstances so prolonged that it was practice to have plastic chairs...

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<sup>39</sup> Shafiq Rasul and Asif Iqbal, Open letter to the U.S. Senate Armed Services Committee, May 13, 2004.

<sup>40</sup> Human Rights Watch interview with Shah Mohammed Alikhil, January 3, 2004.

<sup>41</sup> Human Rights Watch interview with Mohammad Saghir, January 17, 2004.

<sup>42</sup> Human Rights Watch interview with A. [name withheld], February 6, 2004.

<sup>43</sup> David Rose, “They tied me up like a beast and began kicking me,” *The Observer*, May 16, 2004.

<sup>44</sup> David Rose, “They tied me up like a beast and began kicking me,” *The Observer*, May 16, 2004.

that could be easily hosed off because prisoners would be forced to urinate during the course of them and were not allowed to go to the toilet.

“One practice ... was ‘short shackling’ where we were forced to squat without a chair with our hands chained between our legs and chained to the floor. If we fell over, the chains would cut into our hands. We would be left in this position for hours before an interrogation, during the interrogations (which could last as long as 12 hours), and sometimes for hours while the interrogators left the room. The air conditioning was turned up so high that within minutes we would be freezing. There was strobe lighting and loud music played that was itself a form of torture. Sometimes dogs were brought in to frighten us... Sometimes detainees would be taken to the interrogation room day after day and kept short-shackled without interrogation ever happening, sometimes for weeks on end.”<sup>45</sup>

Other detainees interviewed by Human Rights Watch, however, did not describe any abuse during interrogations. For example, Abdul Razak told Human Rights Watch that

“In the thirteen months I was in Cuba, I was interrogated 10-12 times. I was interrogated in a separate room and always alone. I would be brought there and my legs would be shackled to a chair. One or two Americans in plain clothes interviewed me. A typical interrogation consisted of questions about my family, education record, language skills, background...what I intended to do in the future...Purpose of my missionary activity...who funded it...what I was doing in Afghanistan...The sessions lasted between one and two hours each and I was asked questions the whole time.”<sup>46</sup>

Several detainees talked about beatings, although only one had been assaulted himself. The Afghan former detainee A. told Human Rights Watch: “I saw some other prisoners who were beaten and blood was running from their heads. Specifically I saw two Arabs who were acting obstinately who were beaten.”<sup>47</sup> Mohammad Saghir, from Pakistan, says he witnessed the beating by seven guards of an Arab prisoner for spitting at a guard: “They all went into the cell and were beating him and kicking him.”<sup>48</sup> Shafiq Rasul and Asif Iqbal reported witnessing a number of assaults on prisoners by U.S. personnel, and that soldiers had spoken openly of conducting beatings in cells, boasting “we can do anything we want.” Abdul Razak stated, “though I was never beaten, I heard from other

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<sup>45</sup> Shafiq Rasul and Asif Iqbal, Open letter to the U.S. Senate Armed Services Committee, May 13, 2004.

<sup>46</sup> Human Rights Watch interview with Abdul Razak, June 3, 2004.

<sup>47</sup> Human Rights Watch interview with A. [name withheld], February 6, 2004.

<sup>48</sup> Human Rights Watch interview with Mohammad Saghir, January 17, 2004.

prisoners that they had been. And I saw one prisoners with serious head injuries...gashes and congealed blood...who said the guards had done it.”<sup>49</sup> Rasul and Iqbal recounted one beating in particular, of Bahraini prisoner Jummah Al-Dousari, who they described as having become “psychiatrically disturbed”:

“[Jummah Al-Dousari] was lying on the floor of his cage immediately near to us when a group of eight or nine guards known as the ERF team (Extreme Reaction Force) entered his cage... They stamped on his neck, kicking him in the stomach even though he had metal rods there as a result of an operation, and they picked up his head and smashed his face into the floor. One female officer was ordered to go into the cell and kick him and beat him which she did, in his stomach. This is known as “ERFing.”<sup>50</sup>

Briton Tarek Dergoul alleges that he was himself beaten, and had a chemical spray administered when he refused to comply with cell searches. He also said the cell searches were sometimes staged when prisoners were praying. He has stated:

“If I refused a cell search MPs would call the Extreme Reaction Force who came in riot gear with plastic shields and pepper spray. The Extreme Reaction Force entered the cell, ran in and pinned me down after spraying me with pepper spray and attacked me. The pepper spray caused me to vomit on several occasions. They poked their fingers in my eyes, banged my head on the floor and kicked and punched me and tied me up like a beast. They often forced my head into the toilet.”<sup>51</sup>

The detainee accounts of excessive or malicious force centered primarily around the use of these special squads, which according to a Guantánamo spokesman are actually known as the “Initial Response Force.”<sup>52</sup> As is common in U.S. prisons, Guantánamo apparently used specially outfitted groups of guards to enter the cells of detainees disobeying orders in order to secure compliance or subdue them as necessary. Standard use of force requirements mandate that no more force should ever be used against prisoners than necessary to achieve legitimate security or safety objectives.<sup>53</sup> In U.S. prisons, however, the special teams often use unnecessary or excessive force – using the

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<sup>49</sup> Human Rights Watch interview with Abdul Razak, June 3, 2004.

<sup>50</sup> Shafiq Rasul and Asif Iqbal, Open letter to the U.S. Senate Armed Services Committee, May 13, 2004.

<sup>51</sup> Statement by Tarek Dergoul made available to Human Rights Watch.

<sup>52</sup> “Videos Of Prisoner Treatment At Guantanamo Held By US,” Dow Jones International News, May 21, 2004.

<sup>53</sup> See, e.g., U.N. Standard Minimum Rules for the Treatment of Prisoners (1955), Art. 54. (1) “Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary.”

confrontation with a detainee as an opportunity to “teach him a lesson” or to engage in malicious beatings. A similar phenomenon may have happened at Guantánamo, despite military insistence that the IRF squads used the minimal force necessary. Under the rules of the prison, every use of the IRF squad is apparently videotaped. A review of all those tapes could confirm or disprove detainees’ allegations of beatings by the IRF. Navy Vice Admiral Albert Church apparently reviewed some of the tapes in early May 2004.

The U.S. military has denied any serious abuse at Guantánamo. Following the release of the photographs showing the abuses at Abu Ghraib prison, Secretary of Defense Donald Rumsfeld sent the Navy’s inspector general, Vice Adm. Albert T. Church, to Guantánamo in early May to undertake a review of possible abuses. According to Church, he found only eight instances of minor infractions involving contact dating back to 2002. Two guards were demoted in rank and a third was acquitted in a court martial. Church’s findings were based on interviews with interrogators, guards, military civilians, and contractors. Somewhat surprisingly, he did not interview any detainees.

Following the emergence of the photographs from Abu Ghraib, some former Guantánamo detainees have also insisted that photographs and videotapes of practices inside Guantánamo exist. Britons Shafiq Rasul and Asif Iqbal stated: “[T]here were and no doubt still are cameras everywhere in the interrogation areas. We are aware that evidence that could contradict what is being said officially is in existence. We know that CCTV cameras, videotapes and photographs exist since we were regularly filmed and photographed during interrogations and at other times.”<sup>54</sup>

### **III. Afghanistan: Impunity for Systematic Abuse**

Since the fall of the Taliban government in Afghanistan, U.S.-led forces have arrested and detained at least one thousand Afghans and other nationals, some during military operations, others with no apparent connection to ongoing hostilities. The U.S. also used its facilities in Afghanistan as staging points for the transfer of detainees captured in Pakistan and, reportedly, Southeast Asia. U.S. officials have told journalists and Human Rights Watch that U.S. military and intelligence personnel in Afghanistan employ

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<sup>54</sup> Shafiq Rasul and Asif Iqbal, Open letter to the U.S. Senate Armed Services Committee, May 13, 2004.

an interrogation system that includes the use of sleep deprivation, sensory deprivation, and forcing detainees to sit or stand in painful positions for extended periods of time.<sup>55</sup>

Among the earliest images of the treatment of prisoners from the Afghan war were pictures of John Walker Lindh, a young American captured in December, 2001, held naked, bound by duct tape to a stretcher. According to an affidavit filed in U.S. court by his attorney, U.S. soldiers “blindfolded Mr. Lindh, and took several pictures of Mr. Lindh and themselves with Mr. Lindh. In one, the soldiers scrawled ‘shithead’ across Mr. Lindh’s blindfold and posed with him. . . . Another told Mr. Lindh that he was ‘going to hang’ for his actions and that after he was dead, the soldiers would sell the photographs and give the money to a Christian organization.”<sup>56</sup> According to legal documents filed on his behalf, Lindh was flown to a Marine airbase in the Afghanistan high desert dubbed Camp Rhino. According to a statement provided in government discovery, a Navy doctor claims that a U.S. Special Forces officer told him at Camp Rhino that “sleep deprivation, cold and hunger might be employed” while Lindh was interrogated.<sup>57</sup>

The United States has failed to adequately address charges of mistreatment of detainees by U.S. military and intelligence personnel in Afghanistan. Human Rights Watch warned U.S. officials repeatedly about these problems in 2003 and 2004. In a March report, *Enduring Freedom: Abuses by U.S. Forces in Afghanistan*, Human Rights Watch documented numerous cases of mistreatment of detainees at various detention sites in Afghanistan, including extreme sleep deprivation, exposure to freezing temperatures, and severe beatings.<sup>58</sup> Detainees complained about being stripped of their clothing and photographed while naked. Some of these abusive practices during interrogation were similar to those recently reported in Iraq. These allegations are consistent with other allegations received by the Afghan Independent Human Rights Commission, the United Nations Assistance Mission in Afghanistan, and numerous international journalists.<sup>59</sup>

As early as December 2002, the *Washington Post* had reported that persons being held in the CIA interrogation center at Bagram airbase who refuse to cooperate “are sometimes kept standing or kneeling for hours in black hoods or spray-painted goggles, according

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<sup>55</sup> U.S.: Systemic Abuse of Afghan Prisoners, <http://www.hrw.org/english/docs/2004/05/13/afghan8577.htm>.

<sup>56</sup> Seymour M. Hersh, “Chain of command; How the Department of Defense mishandled the disaster at Abu Ghraib,” *The New Yorker*, May 17, 2004.

<sup>57</sup> [http://www.lindhdefense.info/20020613\\_FactsSuppSuppress.pdf](http://www.lindhdefense.info/20020613_FactsSuppSuppress.pdf), p.18

<sup>58</sup> See Human Rights Watch Report, *Enduring Freedom: Abuses by U.S. Forces in Afghanistan* <http://hrw.org/reports/2004/afghanistan0304/>.

<sup>59</sup> For testimony from Afghan detainees gathered by Human Rights Watch, see <http://hrw.org/english/docs/2004/05/13/afghan8577.htm>.

to intelligence specialists familiar with CIA interrogation methods. At times they are held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights—subject to what are known as ‘stress and duress’ techniques.”<sup>60</sup>

Many of those arrested by U.S. forces in Afghanistan have been detained for indefinite periods at U.S. military bases or outposts. While held, these detainees have no contact with relatives or others, although some detainees receive visits from the ICRC. Detainees have no opportunity to challenge the basis for their detention. Some detainees were sent to the U.S. detention center at Guantánamo Bay Naval Base in Cuba, while others have been kept in Afghanistan. Many have ultimately been released without being charged; but some detainees in Afghanistan have been held for over two years.

The U.S. military maintains some twenty detention facilities throughout Afghanistan. The main U.S. detention facility in Afghanistan is at the Bagram airbase, north of the capital Kabul. Other detention facilities in the country include bases in Kandahar, Jalalabad, and Asadabad. The U.S. Central Intelligence Agency (CIA) is also holding an unknown number of detainees, both at Bagram airbase and at other locations in Afghanistan, including in Kabul.

Afghans detained at Bagram airbase in 2002 have described being held in detention for weeks, continuously shackled, intentionally kept awake for extended periods of time, and forced to kneel or stand in painful positions for extended periods. Some say they were kicked and beaten when arrested, or later as part of efforts to keep them awake. Some say they were doused with freezing water in the winter. Similar allegations have been made about treatment in 2002 and 2003 at U.S. military bases in Kandahar and in U.S. detention facilities in the eastern cities of Jalalabad and Asadabad.

The United States has still not provided any adequate explanation for four, and possibly five, suspicious deaths of detainees that took place in Afghanistan in 2002 and 2003. The first two deaths, which took place at Bagram airbase in December 2002, were ruled homicides by U.S. military doctors who performed autopsies. In the case of 22-year-old detainee Dilawar, the military maintained for months that he had died of a heart attack. However, the military changed its position when the *New York Times* obtained copy of Dilawar’s autopsy report, prepared by U.S. military physicians, concluding he died from “blunt force injuries to lower extremities complicating coronary artery disease.” The

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<sup>60</sup> Dana Priest and Barton Gellman, “U.S. decries abuse but defends interrogations,” *Washington Post*, December 26, 2002.

mode of death was determined to be “homicide.” Two Afghans arrested with Dilawar told the *New York Times* that they were held in isolation cells, black hoods were placed over their heads, and their hands at times were chained to the ceiling. They also alleged that they were forced to strip naked in the presence of female soldiers. A military spokesman at Bagram told the *New York Times* that the death of the other detainee, 30-year-old Habibullah, was ruled a homicide by a military pathologist, the cause being “pulmonary embolism [blood clot in the lungs] due to blunt force injury to the legs.”<sup>61</sup>

Military officials in the Army Criminal Investigative Division told Human Rights Watch in late 2003 and early 2004 that investigations into the two homicides were “ongoing.” But in April 2004, Human Rights Watch received credible information that preliminary results of a military investigation into the two deaths were in fact completed in early 2003, and that some disciplinary actions were taken against U.S. personnel, although no prosecutions were initiated. U.S. military officials have repeatedly refused to explain to Human Rights Watch the circumstances of the third detainee death, which took place in Asadabad, in eastern Afghanistan, in June 2003.

In March of this year, Human Rights Watch again called on the United States to release the results of its investigations into the three deaths. These requests have been ignored. The deaths of two other detainees in Afghanistan are under investigation. On June 21, 2003, Abdul Wali, held at Asadabad died under suspicious circumstances; according to the Associated Press, his death is under investigation by the C.I.A.’s inspector general.

On November 6, 2003, detainee Abdul Wahid died while in U.S. custody in Afghanistan. His death is attributed to multiple blunt force injuries that were complicated by a muscle condition. According to military death certificates released by the Pentagon, his death was ruled a “medical homicide,” which means that the person died in connection with the actions or influence of another person. It does not necessarily mean a crime occurred.

A fifth incident, in which an Afghan detainee died due to hypothermia after he was doused with cold water and left shackled in an unheated cell overnight, has emerged in the press. According to the Los Angeles Times, this case was referred by the CIA to the Justice Department, but no investigation results have been made public.<sup>62</sup> While conditions at Bagram seem to have improved, especially in the last few months, serious

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<sup>61</sup> See Human Rights Watch, “Enduring freedom: Abuses by U.S. forces in Afghanistan,” March 2004, <http://hrw.org/reports/2004/afghanistan0304/>.

<sup>62</sup> Bob Drogin, “Abuse Brings Deaths of Captives Into Focus,” *Los Angeles Times*, May 16, 2004.

concerns remain about other U.S. detention facilities in Afghanistan. The Afghan Independent Human Rights Commission (AIHRC)—an autonomous institution within the Afghan government—has collected complaints alleging torture and mistreatment made by recently released detainees and families of persons still detained. The AIHRC also received numerous complaints about abuses by U.S. troops in 2003 and 2004 at its local offices in southern and eastern Afghanistan, where U.S. military operations occur regularly. The commission repeatedly raised concerns about abuses with U.S. officials in 2003 and 2004, as did local government representatives and officials with the United Nations Assistance Mission in Afghanistan.

The violations of detainees' rights are exacerbated by the almost complete opacity maintained by U.S. officials about the Bagram facility and other detention facilities in Afghanistan. The United States refuses to allow access to detainees' families, lawyers, or advocates, or to journalists or representatives of nongovernmental organizations (other than the ICRC). While the ICRC has access to the Bagram facility, none of the other U.S. facilities are currently monitored by outside observers. On May 10, 2004, the AIHRC formally requested access to U.S. detention sites in Afghanistan. Human Rights Watch has also made formal requests to visit U.S. detention sites in Afghanistan through 2003 and 2004, none of which received any response.

Almost nothing is known about U.S. investigations or prosecutions of U.S. military personnel for alleged violations of international humanitarian law in Afghanistan. Simply put, the United States operates its detention facilities in Afghanistan in a climate of almost total impunity. As noted, the Department of Defense has not even released the results of its investigations into the deaths of Afghan detainees at Bagram and Asadabad and has yet to explain adequately the circumstances of these deaths. Nor have U.S. officials adequately responded to inquiries about alleged mistreatment and torture by U.S. forces in Afghanistan.

The military intelligence unit that oversaw interrogations at the Bagram detention center where at least two prisoners' deaths were ruled homicides was later placed in charge of questioning at Abu Ghraib prison in Iraq.<sup>63</sup> Capt. Carolyn A. Wood, who served at Bagram from July 2002 to December 2003, brought to Iraq interrogation procedures developed during service in Afghanistan, according to Congressional testimony.<sup>64</sup> It was

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<sup>63</sup> Douglas Jehl and David Rohde, "Afghan deaths linked to unit at Iraq prison," *New York Times*, May 24, 2004.

<sup>64</sup> A senior Army lawyer, Col. Marc Warren, stated at a Senate Armed Services Committee hearing on May 19, 2004, that members of the 519<sup>th</sup> Military Intelligence Battalion from Fort Bragg, NC, including Carolyn Wood, "had served as interrogators in Afghanistan, where the American military runs detention centers at Bagram Air Base and at a site in Kandahar, in southern Afghanistan," and that the 519th was one of the several units that

apparently Capt. Wood who wrote the interrogation rules posted on the wall at Abu Ghraib.

One member of the 377th Military Police Company told the *New York Times* that the fact that prisoners in Afghanistan had been labeled as “enemy combatants” not subject to the Geneva Conventions had contributed to the abuse. “We were pretty much told that they were nobodies, that they were just enemy combatants,” he said. “I think that giving them the distinction of soldier would have changed our attitudes toward them. A lot of it was based on racism, really. We called them hajjis, and that psychology was really important.”<sup>65</sup>

Military (but not necessarily CIA) detention facilities in Afghanistan are the subject of a “top-to-bottom” review by Brigadier General Charles Jacoby, the deputy operational commander of Bagram airbase. Gen. Jacoby’s mandate is to ensure that procedures at all coalition detention facilities in Afghanistan “are in accordance with the spirit of the Geneva Conventions,” according to the official CENTCOM press release announcing his assignment on May 24. The U.S. military has announced that only “some of the key conclusions” of Gen. Jacoby’s report would be made public, but that findings regarding specific techniques and incarceration practices would be kept classified.<sup>66</sup>

#### **IV. Iraq: Applying Counter-Terrorism Tactics during a Military Occupation**

The United States, as an Occupying Power in Iraq under the Geneva Conventions, may deprive civilians in Iraq of their liberty in only two situations: for “imperative reasons of security,” or for prosecution.<sup>67</sup> Since President Bush declared the end of major combat in Iraq in May 2003, more than 12,000 Iraqis have been taken into custody by U.S. forces and detained for weeks or months. Until very recently, the U.S. has failed to ensure that so-called security detainees received a proper review of their cases as is

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brought to Iraq “their own policies that had been used in other theaters.” Douglas Jehl and Eric Schmitt, “The reach of war: The interrogators; Afghan policies on questioning landed in Iraq,” *New York Times*, May 21, 2004.

<sup>65</sup> Douglas Jehl and Andrea Elliott, “Cuba base sent its interrogators to Iraqi prison,” *New York Times*, May 29, 2004.

<sup>66</sup> Associated Press, “U.S. General: Details in probe of Afghan jails to stay secret,” June 1, 2004.

<sup>67</sup> See Letter on HRW’s Concerns About the Rights of Iraqi Detainees, February 10, 2004, <http://hrw.org/english/docs/2004/02/10/iraq8471.htm>.

required under the Geneva Conventions.<sup>68</sup> In its February 2004 report to Coalition forces, the International Committee of the Red Cross reported that military intelligence officers told the ICRC that 70 to 90 percent of those in custody in Iraq last year had been arrested by mistake.<sup>69</sup>

The U.S.'s treatment of detainees in Iraq was shrouded in secrecy from the beginning of the occupation. What is clear is that abusive treatment used after September 11 on suspects in the "war on terror" came to be considered permissible as well in an armed conflict to suppress resistance to a military occupation. Procedures used in Afghanistan and Guantánamo were imported to Iraq, including the use of "stress and duress" tactics and the use of prison guards to set the conditions for the interrogation of detainees.<sup>70</sup>

In the aftermath of the Abu Ghraib scandal, information has come to light which suggests that harsh and coercive interrogation techniques such as subjecting detainees to painful stress positions and extended sleep deprivation have been routinely used in detention centers throughout Iraq. Department of Defense officials said that military intelligence "Human Exploitation Teams" regularly used so called "50/10 tactics": 50 minutes in sun with a bag over the head in stressful positions followed by 10 minutes of rest.<sup>71</sup>

In its February 2004 report, the ICRC found that "methods of physical and psychological coercion were used by the military intelligence in *a systematic way* to gain confessions and extract information" (emphasis added). The methods cited by the ICRC included:

- hooding to disorient and prevent detainees from breathing freely
- being forced to remain for prolonged periods in painful stress positions

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<sup>68</sup> Douglas Jehl and Kate Zernike, "Scant evidence cited in long detention of Iraqis," *New York Times*, May 30, 2004.

<sup>69</sup> "Report of the International Committee of the Red Cross (ICRC) on the treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during arrest, internment and interrogation," February 2004; Hereafter "ICRC report."

<sup>70</sup> As Maj. General Antonio Taguba noted in his report, recent intelligence collection in support of Operation Enduring Freedom [the war in Afghanistan] posited a template whereby military police actively set favorable conditions for subsequent interviews. Investigative report, on alleged abuses at U.S. military prisons in Abu Ghraib and Camp Bucca, Iraq by Maj. Gen. Antonio M. Taguba: "Article 15-6 Investigation of the 800<sup>th</sup> Military Police Brigade." Hereafter "Taguba report."

<sup>71</sup> Matt Kelley, "Military intelligence troops accused of abuses in four camps outside Abu Ghraib," May 29, 2004.

- being attached repeatedly over several days, for several hours each time to the bars of cell doors naked or in positions causing physical pain
- being held naked in dark cells for several days and paraded naked, sometimes hooded or with women's underwear over their heads
- sleep, food, and water deprivation
- prolonged exposure while hooded to the sun during the hottest time of day

The classified investigative military report of Maj. Gen. Antonio Taguba confirmed these findings. Taguba reported that “numerous incidents of sadistic, blatant, and wanton criminal abuses” were inflicted on several detainees. His catalogue was even longer than the ICRC’s:

- Punching, slapping and kicking detainees; jumping on their naked feet;
- Videotaping and photographing naked male and female detainees;
- Forcibly arranging detainees in various sexually explicit positions for photographing;
- Forcing groups of male detainees to masturbate themselves while being photographed and videotaped;
- Arranging naked detainees in a pile and then jumping on them;
- Positioning a naked detainee on a box, with a sandbag on his head, and attaching wires to his fingers, toes and penis to simulate electric torture;
- Writing “I am a Rapist” (sic) on the leg of a detainee alleged to have forcibly raped a 15-year-old fellow detainee, and then photographing him naked;
- Placing a dog chain or strap around a naked detainee’s neck and having a female soldier pose with him for a picture;
- A male military police guard having sex with a female detainee;<sup>72</sup>
- Breaking chemical lights and pouring the phosphoric liquid on detainees;
- Threatening detainees with a loaded 9-mm pistol;
- Pouring cold water on naked detainees;
- Beating detainees with a broom handle and a chair;
- Threatening male detainees with rape;

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<sup>72</sup> Interestingly, this was not referred to as “rape,” although the threat to forcibly have sex with male detainees was referred to as rape.

- Allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell;
- Sodomizing a detainee with a chemical light and perhaps a broom stick;
- Using military working dogs (without muzzles) to frighten and intimidate detainees with threats of attack, and in at least one case biting and severely injuring a detainee;
- Forcing detainees to remove their clothing and keeping them naked for several days at a time;
- Forcing naked male detainees to wear women's underwear;
- Taking pictures of dead Iraqi detainees.<sup>73</sup>

There is additional evidence that interrogation methods in violation of international human rights and humanitarian law were commonplace in Iraq. According to a transcript obtained by the *New York Times*, Col. Thomas Pappas, commander of the 205<sup>th</sup> Military Intelligence Brigade, told Maj. General Antonio Taguba that intelligence officers sometimes instructed military police to strip detainees naked and to shackle them in preparation for interrogation when there was a "good reason" to do so. Lt. Col. Jerry Phillabaum, the former top military police commander in Abu Ghraib, said in a written statement that military interrogators routinely used sleep deprivation and other forms of psychological intimidation to elicit information from prisoners. "The purpose of that wing of the prison was to isolate prisoners with intelligence, so that they would provide it during MI [military intelligence] interrogations," Phillabaum said.<sup>74</sup> The Reuters news agency reported that three of its Iraqi employees were detained near Fallujah in January 2004 and subjected to sleep deprivation with bags over their heads, forced to remain stress positions for long periods, and beaten. A summary of the U.S. Army's 82<sup>nd</sup> Airborne Division's investigation provided to Reuters conceded that the detainees were "purposefully and carefully put under stress, to include sleep deprivation, in order to facilitate interrogation."<sup>75</sup>

### ***Cases under Investigation***

From the earliest days of the U.S. occupation of Iraq, the U.S. government has been aware of allegations of abuses, including the death of some 30 persons in detention. Yet soldiers accused of abuse have – until after the Abu Ghraib scandal broke – escaped

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<sup>73</sup> Taguba report.

<sup>74</sup> Sewell Chan and Thomas E. Ricks, "Iraq prison supervisors face army reprimand," *Washington Post*, May 4, 2004.

<sup>75</sup> Andrew Marshall, "Reuters staff abused by U.S. in Iraq," Reuters, May 18, 2004.

judicial punishment.<sup>76</sup> Several cases are still being investigated as possible homicides. To date, no one has been criminally charged in any of the cases.

Among the cases:

### ***Camp Bucca***

In one case dating from the first days of the occupation, three Army reserve MPs allegedly beat prisoners and encouraged others to do so at Camp Bucca in the southern city of Um Qasr on May 12, 2003. The commanding officer at Camp Bucca was Lt. Col. Jerry Phillabaum, later implicated in the Abu Ghraib abuses. Charges were brought against the military police but were ended with only their demotion and discharge. In his report, Maj. Gen. Taguba noted that “Following the abuse of several detainees at Camp Bucca in May 2003, I could find no evidence that BG [Brig. Gen.] Karpinski ever directed corrective training for her soldiers or ensured that MP Soldiers throughout Iraq clearly understood the requirements of the Geneva Conventions relating to the treatment of detainees.”

### ***Abed Hamed Mowhoush***

Captured in October 2003, the former chief of Iraqi air defenses, Maj. Gen. Abed Hamed Mowhoush, died November 26, 2003, at a detention facility at Al Qaim. The Pentagon first released a death certificate reporting that Mowhoush had died “of natural causes” -- a news release added that “he did not feel well and subsequently lost consciousness.” But following a report in the *Denver Post*<sup>77</sup> after the Abu Ghraib scandal erupted, the Pentagon acknowledged that, according to an autopsy report, Mowhoush died of “asphyxia due to smothering and chest compression” showing “evidence of blunt force trauma to the chest and legs” and said that a homicide investigation was underway. Reportedly, Chief Warrant Officer Lewis Welshofer and another officer slid a sleeping bag over Mowhoush’s head and rolled him over and over while asking questions. Welshofer is accused of sitting on Mowhoush’s chest and placing his hands over his mouth. According to the investigative summary, “approximately 24 to 48 hours prior to (Mowhoush’s death), Mowhoush was questioned by ‘other governmental agency

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<sup>76</sup> Under the U.S. Uniform Code of Military Justice, military personnel may be subject to so-called non-judicial punishment via an article 15 administrative hearing or to prosecution by court martial. Article 15 punishments include up to one-year imprisonment, fines, loss of rank, and discharge from the military.

<sup>77</sup> Arthur Kane and Miles Mofeit, “Carson GI eyed in jail death Iraqi general died in custody,” *Denver Post*, May 28, 2004.

officials,' [i.e. the CIA] and statements suggest that he was beaten during that interrogation."<sup>78</sup>

### ***Karim 'Abd al-Jalil***

A former lieutenant colonel in the Iraqi army, Kareem 'Abd al-Jalil died on January 9, 2004, at Forward Operating Base Rifles near al-Asad where he was being interrogated by Special Forces since January 4. The original death certificate stated that he died of "natural causes... during his sleep." But pictures taken by 'Abd al-Jalil's cousin of his body before burial seem to depict severe bruises on his abdomen as well as marks and cuts on his arms and legs, especially around the wrists. Spiegel TV, a German news organization, interviewed another detainee held with 'Abd al-Jalil who stated that during interrogation, American soldiers "would kick him ['Abd al-Jalil] a lot, cuff his hands and place them behind his neck. And they would also cuff his feet, then one of them would hold his feet up while the other pulled down his head. They tossed him on his back and stepped on him. They danced on his belly and poured cold water all over him."<sup>79</sup> A Pentagon memo obtained by the *Denver Post* and reported by NBC says 'Abd al-Jalil was held in isolation, his hands tied to a pipe that ran along the ceiling. When he was untied, he attacked his interrogators and later tried to escape. When recaptured, his hands were tied to the top of his cell door and his mouth gagged.<sup>80</sup> Five minutes later, a guard noticed 'Abd al-Jalil dead, hanging by his shackles. After these revelations, the Pentagon released another certificate calling 'Abd al-Jalil's death a homicide from "blunt force injuries and asphyxia."<sup>81</sup> The Pentagon also said those who interrogated him included members of an elite special forces unit, some of the most highly trained personnel in the U.S. military.<sup>82</sup>

### ***Nagm Sadoon Hatab***

Former Baath Party official Nagm Sadoon Hatab was found dead at Camp Whitehorse detention facility near the southern Iraqi city of Nasiriyah on June 6, 2003.<sup>83</sup> The autopsy

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<sup>78</sup> Robert Weller, "Soldier investigated in Iraqi general's death: Officer at Fort Carson says there is an 'agenda,'" Associated Press, May 29, 2004.

<sup>79</sup> Chris Hansen, "Profile: death in custody; investigation into death of Iraqi detainee Kareem Abdul Jaleel reveals more prison atrocities, NBC News Transcripts, May 23, 2004. Also see: "US troops tortured Iraqi prisoner to death: report," Agence France Presse, May 14, 2004.

<sup>80</sup> Editorial, "The Homicide Cases," *Washington Post*, May 28, 2004.

<sup>81</sup> Chris Hansen, "Profile: death in custody; investigation into death of Iraqi detainee Kareem Abdul Jaleel reveals more prison atrocities, NBC News Transcripts, May 23, 2004.

<sup>82</sup> Chris Hansen, "Profile: death in custody; investigation into death of Iraqi detainee Kareem Abdul Jaleel reveals more prison atrocities, NBC News Transcripts, May 23, 2004.

<sup>83</sup> Tom Squitieri and Dave Moniz, "3rd of detainees who died were assaulted; Shot, strangled, beaten, certificates show," *USA Today*, June 1, 2004.

record said he died from “strangulation.” Military records state that Hatab was asphyxiated when a Marine guard grabbed his throat in an attempt to move him, accidentally breaking a bone that cut off his air supply. Another Marine is charged with kicking Hatab in the chest in the hours before his death - several of his ribs were broken.<sup>84</sup> Hatab was also covered with feces and left under the sun for hours. The Marines believed Hatab had taken part in the ambush of Pfc. Jessica Lynch’s unit and reportedly were instituting some form of vigilante justice. Eight Marines were initially charged with various offenses related to Hatab’s death; six later had the charges dropped or reduced to administrative punishment. The two men to be tried are Maj. Clarke Paulus, who commanded Camp Whitehorse when Hatab died, and Sgt. Gary Pittman, who was a guard there. They will be tried at Camp Pendleton in August and September 2004, respectively.<sup>85</sup>

### ***Reports of Abuse Ignored***

Prior to the publication of the Abu Ghraib photos, the U.S. government had multiple opportunities to take all necessary action to address what officials should have recognized was a serious and widespread problem. In fact, the ICRC report states that it alerted U.S. authorities to abuses orally and in writing throughout 2003. In May 2003, the ICRC sent a memorandum based on over 200 allegations of ill-treatment of prisoners of war during capture and interrogation at collecting points, battle group stations and temporary holding areas. That same month, the Special Representative of the United Nations Secretary-General, Mr. Sergio Vieira de Mello raised concerns about the treatment of detainees with the Coalition Administrator, Ambassador Paul Bremer.<sup>86</sup> In early July 2003, the ICRC presented a paper detailing approximately 50 allegations of ill-treatment in the military intelligence section of Camp Cropper, at Baghdad International Airport.

According to the ICRC these incidents included:

“a combination of petty and deliberate acts of violence aimed at securing the co-operation of the persons deprived of their liberty with their interrogators; threats (to intern individuals indefinitely, to arrest

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<sup>84</sup> “Did abuses go beyond Abu Ghraib?” CBS News, May 29, 2004.

<sup>85</sup> Alex Roth and Jeff McDonald, “Iraqi detainee’s death hangs over Marine unit,” *San Diego Union-Tribune*, May 30, 2004; and Rick Rogers, “Abuse charges against Marine reservist are dismissed,” *San Diego Union-Tribune*, April 13, 2004.

<sup>86</sup> See Report of the Secretary-General to the U.N. Security Council, July 17, 2003, S/2003/715, para. 47.

other family members,<sup>87</sup> to transfer individuals to Guantánamo) against persons deprived of their liberty or against members of their families (in particular wives and daughters); hooding; tight handcuffing; use of stress positions (kneeling, squatting, standing with arms raised over the head) for three or four hours; taking aim at individuals with rifles, striking them with rifle butts, slaps, punches, prolonged exposure to the sun, and isolation in dark cells. ICRC delegates witnessed marks on the bodies of several persons deprived of their liberty consistent with their allegations.”

In one case, a detainee:

“alleged that he had been hooded and cuffed with flexi-cuffs, threatened to be tortured and killed, urinated on, kicked in the head, lower back and groin, force-fed a baseball which was tied into the mouth using a scarf and deprived of sleep for four consecutive days. Interrogators would allegedly take turns ill-treating him. When he said he would complain to the ICRC he was allegedly beaten more. An ICRC medical examination revealed haematoma in the lower back, blood in urine, sensory loss in the right hand due to tight handcuffing with flexi-cuffs, and a broken rib.”

During a visit to Abu Ghraib prison in October 2003, ICRC delegates witnessed “the practice of keeping persons deprived of their liberty completely naked in totally empty concrete cells and in total darkness,” the report said. “Upon witnessing such cases, the ICRC interrupted its visits and requested an explanation from the authorities. The military intelligence officer in charge of the interrogation explained that this practice was ‘part of the process.’”<sup>88</sup>

Rather than responding to these warning signals, however, according to one senior U.S. Army officer who served in Iraq, Army officials responded to the report of abuses at Abu Ghraib prison by trying to

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<sup>87</sup> In November 2003, Coalition Forces arrested the wife and daughter of General Izzat Ibrahim al-Douri, former vice-chair of Iraq’s Revolutionary Command Council and a top Saddam Hussein associate, apparently as hostages, in violation of the Geneva Conventions. See Human Rights Watch Letter to Defense Secretary Donald Rumsfeld, January 12, 2004, [http://www.hrw.org/english/docs/2004/01/12/usint6921\\_txt.htm](http://www.hrw.org/english/docs/2004/01/12/usint6921_txt.htm).

<sup>88</sup> “Red Cross: Iraq abuse ‘tantamount to torture’: Agency says U.S. was repeatedly given details of mistreatment,” MSNBC News, May 11, 2004.

curtail the ICRC's spot inspections, insisting that the ICRC should make appointments before visiting the cellblock.<sup>89</sup>

### ***Guantánamo meets Afghanistan at Abu Ghraib***

In August 2003, Defense Secretary Rumsfeld, through his top intelligence aide, Stephen A. Cambone, sent Maj. Gen. Geoffrey D. Miller, who oversaw the interrogation efforts at the U.S. military base at Guantánamo Bay, Cuba, to, in the words of Maj. Gen. Taguba, “review current Iraqi Theater ability to rapidly exploit internees for actionable intelligence.”<sup>90</sup> Miller was tasked in essence with “Gitmo-izing” interrogation practices in Iraq, although the Bush administration recognizes that the Geneva Conventions are “fully applicable” in Iraq<sup>91</sup> while it has said that they do not cover al-Qaeda detainees Guantánamo.<sup>92</sup>

As Taguba highlighted in his report, Miller recommended that “the guard force be actively engaged in setting the conditions for successful exploitation of the internees.”<sup>93</sup> There is little clarity regarding what else Miller recommended.<sup>94</sup>

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<sup>89</sup> Douglas Jehl and Eric Schmitt, “Army tried to limit Abu Ghraib access,” *New York Times*, May 20, 2004. The article also quotes Brigadier General Janis Karpinski, commander of the 800th Military Police Brigade, whose soldiers guarded the prisoners, as saying that senior officers in Baghdad had treated the ICRC report in “a light-hearted manner.”

<sup>90</sup> Taguba later decried Miller's idea of transporting interrogation techniques from Guantánamo to Iraq, noting that there were major differences between the status of the detainees in the two locations.

<sup>91</sup> Douglas Jehl and Neil A. Lewis, “US disputed protected status of Iraq inmates,” *New York Times*, May 23, 2004. See also, Alberto R. Gonzales, “The Rule of Law and the Rules of War,” *New York Times*, May 15, 2004 (“Both the United States and Iraq are parties to the Geneva Conventions. The United States recognizes that these treaties are binding in the war for the liberation of Iraq. There has never been any suggestion by our government that the conventions do not apply in that conflict.”)

<sup>92</sup> Miller testified that “no program” at Guantánamo “has any of those techniques that are prohibited by the Geneva Convention.” But Sanchez, said that the procedures Miller brought from Guantánamo to Iraq “have to be modified” because “the Geneva Convention was fully applicable” in Iraq, in contrast to Guantánamo. Editorial, “Reveal the Rules,” *Washington Post*, May 23, 2004.

<sup>93</sup> Taguba took issue with this proposal and noted that it would be “in conflict with” the recommendations of the Ryder Report, a previous review of Iraqi prisons which stated that the engagement of military police in military interrogations to “actively set the favorable conditions for subsequent interviews runs counter to the smooth operation of a detention facility.”

<sup>94</sup> According to Thomas Pappas, the U.S. army officer in charge of the prison cells at Abu Ghraib, one of Miller's recommendations was the use of military guard dogs in interrogations. Pappas also stated that the recommendation was approved by Lt. Gen. Ricardo S. Sanchez, the top U.S. military official in Iraq. Both Miller and Sanchez deny this. R. Jeffrey Smith, “General is Said to Have Urged Used of Dogs,” *Washington Post*, May 26, 2004; Scott Higham, Joe Stephens and Josh White, “Prison Visits by General Reported in Hearing; Alleged Presence of Sanchez Cited by Lawyer,” *Washington Post*, May 23, 2004.

On October 12, Sanchez implemented Miller's proposals, issuing a classified memorandum calling for interrogators at Abu Ghraib to work with military police guards to "manipulate an internee's emotions and weaknesses" and to assume control over the "lighting, heating . . . food, clothing, and shelter" of those they were questioning.<sup>95</sup> The full contents of the Sanchez memo have not been made public.

In addition, between three and five interrogation teams were sent in October from Guantánamo to the American command in Iraq "for use in the interrogation effort" at Abu Ghraib.<sup>96</sup>

Capt. Carolyn A. Wood, who oversaw interrogations at the Bagram detention center in Afghanistan where two prisoners died, apparently prepared the document titled "Interrogation Rules of Engagement" that was posted at Abu Ghraib. According to the document, certain interrogation methods could be undertaken, but only if the "CG's" (Sanchez's) approval was sought and obtained in writing. Depending on their actual application, these methods would violate the Geneva Conventions prohibitions against abusive and coercive treatment of detainees. They included:

- Change of scenery down (moving to a more barren cell)
- Dietary manipulation
- Environmental manipulation
- Sleep adjustment (reverse schedule)
- Isolation for longer than 30 days
- Presence of military working dogs
- Sleep management (72 hours maximum)
- Sensory deprivation (72 hours maximum)
- Stress positions (no longer than 45 minutes)

The document also cautions that detainees "will NEVER be touched in a malicious or unwanted manner" and that the Geneva Conventions apply in Iraq.

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<sup>95</sup> See R. Jeffrey Smith, "Memo gave intelligence bigger role: increased pressure sought on prisoners," *Washington Post*, May 21, 2004.

<sup>96</sup> Douglas Jehl and Andrea Elliott, "Cuba base sent its interrogators to Iraqi prison, *New York Times*, May 29, 2004.

Even though his title appears on the document, which also carried the logo of Combined Joint Task Force-7, the U.S.-led coalition force in Iraq, General Sanchez denies having seen or approved the rules of engagement posted at Abu Ghraib (although he acknowledged that in twenty-five separate instances, he approved holding Iraqi prisoners in isolation for longer than thirty days, one of the methods listed in the posted rules). Keith B. Alexander, the head of the Army intelligence, however, said that they were the approved policy for interrogations of detainees in Iraq.<sup>97</sup>

What is clear is that U.S. military personnel at Abu Ghraib felt empowered to abuse the detainees. The brazenness with which the soldiers at the center of the scandal conducted themselves, snapping photographs and flashing the “thumbs-up” sign as they abused prisoners, suggests they felt they had nothing to hide from their superiors. The abuse was so widely known and accepted that a picture of naked detainees forced into a human pyramid was reportedly used as a screen saver on a computer in the interrogation room.<sup>98</sup> According to Maj. Gen. Taguba, “interrogators actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses. . . . [The] MP Brigade [was] directed to change facility procedures to “set the conditions” for military intelligence interrogations. Taguba cited the testimony of several military police: “One said the orders were ‘Loosen this guy up for us. Make sure he has a bad night. Make sure he gets the treatment.’” Another stated that “the prison wing belongs to [Military Intelligence] and it appeared that MI personnel approved the abuse.” That MP also noted that “[t]he MI staffs, to my understanding, have been giving Graner [an MP in charge of night shifts at Abu Ghraib] compliments on the way he has been handling the MI [detainees]. Example being statements like ‘Good job, they're breaking down real fast.’”

General Sanchez announced on May 14, 2004, that he had barred the use of coercive interrogation techniques including “stress positions,” “sleep deprivation,” and the use of hoods, that had previously been available, though it is still not clear what he had previously approved.

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<sup>97</sup> Editorial, “Reveal the rules,” *Washington Post*, May 23, 2004.

<sup>98</sup> Kate Zernike, “Only a few spoke up on abuse as many soldiers stayed silent,” *New York Times*, May 22, 2004.

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