

Leadership Failure
Firsthand Accounts of Torture of Iraqi Detainees by the
U.S. Army’s 82nd Airborne Division

I. Summary 1
 Note on Presentation of the Soldiers’ Accounts..... 8

II. Account of Sergeant A, 82nd Airborne Division..... 8

III. Account of Sergeant B, 82nd Airborne Division..... 13

IV. Account of Officer C, 82nd Airborne Division..... 15
 On Conditions at FOB Mercury 15
 On Frustration Obtaining a Meaningful Response within the Military
 Chain of Command 16
 On Policy Confusion within the Ranks on Coercive Interrogation..... 19
 On the Implications of the Abu Ghraib Abuse Revelations in April 2004 21
 On Failure of the Officer Corps..... 22
 On the Role of “OGA” 24

V. Conclusion 25

On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent.¹ In a way it was sport. The cooks were all U.S. soldiers. One day [a sergeant] shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy's leg with a mini Louisville Slugger, a metal bat. He was the fucking cook. He shouldn't be in with no PUCs.

— 82nd Airborne sergeant, describing events at FOB Mercury, Iraq

If I as an officer think we're not even following the Geneva Conventions, there's something wrong. If officers witness all these things happening, and don't take action, there's something wrong. If another West Pointer tells me he thinks, "Well, hitting somebody might be okay," there's something wrong.

— 82nd Airborne officer, describing confusion in Iraq concerning allowable interrogation techniques

I. Summary

Residents of Fallujah called them “the Murderous Maniacs” because of how they treated Iraqis in detention. They were soldiers of the U.S. Army’s 82nd Airborne Division, 1st Battalion, 504th Parachute Infantry Regiment, stationed at Forward Operating Base Mercury (FOB Mercury) in Iraq. The soldiers considered this name a badge of honor.²

One officer and two non-commissioned officers (NCOs) of the 82nd Airborne who witnessed abuse, speaking on condition of anonymity, described in multiple interviews with Human Rights Watch how their battalion in 2003-2004 routinely used physical and mental torture as a means of intelligence gathering and for stress relief. One soldier raised his concerns within the army chain of command for 17 months before the Army agreed to undertake an investigation, but only after he had contacted members of Congress and considered going public with the story.

According to their accounts, the torture and other mistreatment of Iraqis in detention was systematic and was known at varying levels of command. Military Intelligence

¹ “Person Under Control” or PUC (pronounced “puck”) is the term used by U.S. military forces to refer to Iraqi detainees.

² FOB Mercury is located approximately 10 miles east of Fallujah, a center of the insurgency at the time. U.S. forces came under intense attacks in and around Fallujah, placing them under constant pressure and at high risk in daily combat. As soon as the 82nd pulled out of FOB Mercury in April 2004, the U.S. Marines that replaced the 82nd undertook a major offensive against insurgents in Fallujah.

personnel, they said, directed and encouraged army personnel to subject prisoners to forced, repetitive exercise, sometimes to the point of unconsciousness, sleep deprivation for days on end, and exposure to extremes of heat and cold as part of the interrogation process. At least one interrogator beat detainees in front of other soldiers. Soldiers also incorporated daily beatings of detainees in preparation for interrogations. Civilians believed to be from the Central Intelligence Agency (CIA) conducted interrogations out of sight, but not earshot, of soldiers, who heard what they believed were abusive interrogations.

All three soldiers expressed confusion on the proper application of the Geneva Conventions on the laws of armed conflict in the treatment of prisoners. All had served in Afghanistan prior to Iraq and said that contradictory statements by U.S. officials regarding the applicability of the Geneva Conventions in Afghanistan and Iraq (see Conclusion) contributed to their confusion, and ultimately to how they treated prisoners. Although none were still in Iraq when we interviewed them, the NCOs said they believed the practices continue.

The soldiers came forward because of what they described as deep frustration with the military chain of command's failure to view the abuses as symptomatic of broader failures of leadership and respond accordingly. All three are active duty soldiers who wish to continue their military careers. A fax letter, e-mail, and repeated phone calls to the 82nd Airborne Division regarding the major allegations in the report received no response.

When the Abu Ghraib scandal broke in April 2004, senior officials in the Bush administration claimed that severe prisoner abuse was committed only by a few, rogue, poorly trained reserve personnel at a single facility in Iraq. But since then, hundreds of other cases of abuse from Iraq and Afghanistan have come to light, described in U.S. government documents, reports of the International Committee of the Red Cross, media reports, legal documents filed by detainees, and from detainee accounts provided to human rights organizations, including Human Rights Watch.³ And while the military has

³ See Human Rights Watch, "Getting Away with Torture?: Command Responsibility for the U.S. Abuse of Detainees," *A Human Rights Watch Report*, April 2005, Section II (A World of Abuse), available at: hrw.org/reports/2005/us0405/4.htm#_Toc101408092. See also, International Committee of the Red Cross, "Report on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons, February 2004, available at: <http://www.health-now.org/mediafiles/mediafile50.pdf> (describing detainee abuse in locations across Iraq, including sites in Baghdad, Al-Khaim, Tikrit, Ramadi, and at Abu Ghraib, at p 7); Douglas Jehl and Eric Schmitt, "The Conflict in Iraq: Detainees; U.S. Military Says 26 Inmate Deaths May Be Homicide," *The New York Times*, March 16, 2005 (describing cases of detainee homicide occurring in areas across Afghanistan and Iraq). On Afghanistan-related abuses, see Human Rights Watch, "Enduring Freedom: Abuses by U.S. Forces in Afghanistan," *A Human Rights Watch Report*, March 2004, available at

launched investigations and prosecutions of lower-ranking personnel for detainee abuse, in most cases the military has used closed administrative hearings to hand down light administrative punishments like pay reductions and reprimands, instead of criminal prosecutions before courts-martial. The military has made no effort to conduct a broader criminal investigation focusing on how military command might have been involved in reported abuse, and the administration continues to insist that reported abuse had nothing to do with the administration's decisions on the applicability of the Geneva Conventions or with any approved interrogation techniques.

These soldiers' firsthand accounts provide further evidence contradicting claims that abuse of detainees by U.S. forces was isolated or spontaneous. The accounts here suggest that the mistreatment of prisoners by the U.S. military is even more widespread than has been acknowledged to date, including among troops belonging to some of the best trained, most decorated, and highly respected units in the U.S. Army. They describe in vivid terms abusive interrogation techniques ordered by Military Intelligence personnel and known to superior officers.

Most important, they demonstrate that U.S. troops on the battlefield were given no clear guidance on how to treat detainees. When the administration sent these soldiers to war in Afghanistan, it threw out the rules they were trained to uphold (embodied in the Geneva Conventions and the U.S. Army Field Manual on Intelligence Interrogation). Instead, President Bush said only that detainees be treated "humanely," not as a requirement of the law but as policy. And no steps were taken to define what humane was supposed to mean in practice.⁴ Once in Iraq, their commanders demanded that they extract intelligence from detainees without telling them what was allowed and what was

hrw.org/reports/2004/afghanistan0304/; Human Rights Watch to Secretary of Defense Donald Rumsfeld, open letter, December 13, 2004, available at: www.hrw.org/english/docs/2004/12/10/afghan9838.htm. On Iraq-related abuses, see Major General Antonio M. Taguba, "Article 15-6 Investigation of the 800th Military Police Brigade," March 2004 (describing "numerous incidents of sadistic, blatant, and wanton criminal abuses" at Abu Ghraib prison, constituting "systematic and illegal abuse of detainees," at p. 16); Major George R. Fay, "Article 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade," (Documenting 44 allegations of war crimes at Abu Ghraib). On Guantánamo-related abuses, see also Human Rights Watch, "Guantánamo: Detainee Accounts," *A Human Rights Watch Backgrounder*, October 2004, <http://www.hrw.org/backgrounder/usa/gitmo1004/>. See also, Paisley Dodds, "Guantánamo Tapes Show Teams Punching, Stripping Prisoners," *Associated Press*, February 1, 2005; Neil A. Lewis, "Red Cross Finds Detainee Abuse in Guantánamo," *The New York Times*, November 30, 2004.

⁴ See Timothy Flanigan, written responses to questions submitted by U.S. Senator Richard Durbin, following Flanigan's confirmation hearing to be Deputy Attorney General of the United States on July 26, 2005. Flanigan, who was Deputy White House Counsel when President Bush issued his order requiring "humane treatment" of detainees, stated: "I do not believe the term 'inhumane' treatment is susceptible to succinct definition." In a further exchange with Senator Durbin, Flanigan stated that: "I am not aware of any guidance provided by the White House specifically related to the meaning of 'inhumane treatment.'"

forbidden. Yet when abuses inevitably followed, the administration blamed only low-ranking soldiers instead of taking responsibility.

These soldiers' accounts show how the administration's refusal to insist on adherence to a lawful, long-recognized, and well-defined standard of treatment contributed to the torture of prisoners. It also shows how that policy betrayed the soldiers in the field—sowing confusion in the ranks, exposing them to legal sanction when abuses occurred, and placing in an impossible position all those who wished to behave honorably.

* * *

The officer and NCOs interviewed by Human Rights Watch say that torture of detainees took place almost daily at FOB Mercury during their entire deployment there, from September 2003 to April 2004. While two of the soldiers also reported abuses at FOB Tiger, near the Syrian border, the most egregious incidents allegedly took place at FOB Mercury. The acts of torture and other cruel or inhuman treatment they described include severe beatings (in one incident, a soldier reportedly broke a detainee's leg with a baseball bat), blows and kicks to the face, chest, abdomen, and extremities, and repeated kicks to various parts of the detainees' body; the application of chemical substances to exposed skin and eyes; forced stress positions, such as holding heavy water jugs with arms outstretched, sometimes to the point of unconsciousness; sleep deprivation; subjecting detainees to extremes of hot and cold; the stacking of detainees into human pyramids; and, the withholding of food (beyond crackers) and water.

According to Army Field Manual 19-4 covering enemy prisoner of war operations, Military Police have responsibility for safeguarding, accounting for, and maintaining captives. The soldiers interviewed by Human Rights Watch said that established procedure was violated by having frontline soldiers guard and prepare detainees for interrogation, instead of speeding detainees to a rear area where they would be looked after by trained Military Police.

Detainees in Iraq were consistently referred to as PUCs. This term was devised in Afghanistan to take the place of the traditional designation of Prisoner of War (POW), after President Bush decided that the Geneva Conventions did not apply there. It carried over to Iraq, even though the U.S. military command and the Bush administration have continually stated that the Geneva Conventions are in effect. Although not all persons captured on a battlefield are entitled to Prisoner of War (POW) status, U.S. military doctrine interprets the Geneva Conventions as requiring that all

captured persons be treated as POWs unless and until a “competent tribunal” determines otherwise.⁵

Detainees at FOB Mercury were held in so-called “PUC tents, which were separated from the rest of the base by concertina wire. Detainees typically spent three days at the base before being released or sent to Abu Ghraib. Officers in the Military Intelligence unit and officers in charge of the guards directed the treatment of detainees. Soldiers told us that detainees who did not cooperate with interrogators were sometimes denied water and given only crackers to eat, and were often beaten. There was little done to hide the mistreatment of detainees: one of the soldiers we interviewed observed torture when he brought newly captured Iraqis to the PUC tents.

The torture of detainees reportedly was so widespread and accepted that it became a means of stress relief for soldiers. Soldiers said they felt welcome to come to the PUC tent on their off-hours to “Fuck a PUC” or “Smoke a PUC.” “Fucking a PUC” referred to beating a detainee, while “Smoking a PUC” referred to forced physical exertion sometimes to the point of unconsciousness. The soldiers said that when a detainee had a visible injury such as a broken limb due to “fucking” or “smoking,” an army physician’s assistant would be called to administer an analgesic and fill out the proper paperwork. They said those responsible would state that the detainee was injured during the process of capture and the physician’s assistant would sign off on this. Broken bones occurred “every other week” at FOB Mercury.

“Smoking” was not limited to stress relief but was central to the interrogation system employed by the 82nd Airborne Division at FOB Mercury. Officers and NCOs from the Military Intelligence unit would direct guards to “smoke” the detainees prior to an interrogation, and would direct that certain detainees were not to receive sleep, water, or food beyond crackers. Directed “smoking” would last for the 12-24 hours prior to an interrogation. As one soldier put it: “[the military intelligence officer] said he wanted the PUCs so fatigued, so smoked, so demoralized that they want to cooperate.”

The soldiers believed that about half of the detainees at Camp Mercury were released because they were not involved in the insurgency, but they left with the physical and mental scars of torture. “If he’s a good guy, you know, now he’s a bad guy because of the way we treated him,” one sergeant told Human Rights Watch.

⁵ Maj. J. Berger, Maj Derek Grims, Maj Eric Jensen (Eds.) *Operational Law Handbook*, International and Operational Law Department, Judge Advocate General’s Legal Center and School, Charlottesville Virginia, 2004, p. 26.

The soldiers with whom Human Rights Watch spoke had served as guards in Afghanistan and had observed interrogations at FOB Tiger in Iraq, and said that civilian interrogators at those locations had also used coercive methods against prisoners. These interrogators were always referred to by the U.S. military abbreviation OGA, which stands for “Other Government Agencies.” It was assumed that such persons were with the CIA, but because OGA also includes other civilian agencies, the soldiers with whom Human Rights Watch spoke said they could not be sure.

Soldiers generally had less direct access to OGA interrogations, in part because OGA personnel often took detainees to an isolated building and were generally more careful about being seen. But the soldiers who had watched OGA interrogations in Afghanistan said that soldiers applied in Iraq some of the techniques they learned from the OGA, including forced stress positions, sleep deprivation, and exposure. At FOB Tiger, the officer said, he heard the sounds of physical violence coming from rooms where OGA interrogations were being held, but without being present in the room could not know whether the sounds were real or simulated. The soldiers said that civilian interrogators sometimes removed prisoners from detention facilities and took the paperwork that indicated a detainee was being held, apparently “disappearing” that detainee.⁶

The officer who spoke to Human Rights Watch made persistent efforts to raise concerns he had with superior officers up the chain of command and to obtain clearer rules on the proper treatment of prisoners. When he raised the issue with superiors, he was consistently told to keep his mouth shut, turn a blind eye, or consider his career. When he sought clearer procedures from general officers, he was told merely to use his judgment.

Altogether this officer said he spent 17 months trying to clarify rules for prisoner treatment while seeking a meaningful investigation. He explained at length how he openly had brought his complaint directly up the chain-of-command, from his direct commanding officer, to the division commander, to the Judge Advocate General’s (JAG) office, and finally to members of the U.S. Congress. In many cases, he was encouraged to keep his concerns quiet; his brigade commander, for example, rebuffed him when he asked for an investigation into these allegations of abuse. He believes he was not taken

⁶ According to the U.N. Declaration on the Protection of All Persons from Enforced Disappearance (1992), enforced disappearances occur when:

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.

seriously until he began to approach members of Congress, and, indeed, just days before the publication of this report he was told that he would not be granted a pass to meet on his day off with staff members of U.S. Senators John McCain and John Warner. He said he was told that he was being naïve and that he was risking his career.

Human Rights Watch welcomes reports that the Army has agreed to investigate the abuses discussed in this report. We are concerned however those investigations will only focus on low-level soldiers and officers, instead of looking as far as necessary up the chain of command. We are also concerned that military personnel who come forward to report abuses will find their careers suffer, as their commanding officers implied they would, rather than be commended for doing their duty.

If FOB Mercury is not to become one more in an expanding series of U.S. detention facilities associated with brutality and degrading treatment, further tarnishing the reputation of the U.S. armed forces, the policy failures must be faced head-on and the most senior responsible officials held accountable.

Accordingly, Human Rights Watch urges the following:

- The U.S. Attorney General should appoint a special counsel to investigate any U.S. officials—no matter their rank or position—who have participated in, ordered, or had command responsibility for war crimes or torture, or other prohibited ill-treatment against detainees in U.S. custody.⁷
- The U.S. Congress should create a special commission, along the lines of the 9/11 commission, to investigate the issue of detainee abuse by U.S. military and civilians personnel abroad, including the incidents described here, as proposed in legislation sponsored by Senator Carl Levin.
- Congress should enact legislation along the lines proposed by Senators John McCain, Lindsay Graham, and John Warner, which would prohibit any forms of detainee treatment and interrogation not specifically authorized by the U.S. Army Field Manual on Intelligence Interrogation, and not consistent with the

⁷ To allow the special prosecutor to have full authority to investigate and prosecute both federal law and Uniform Code of Military Justice violations, the Secretary of Defense should appoint a consolidated convening authority for all armed services, to cooperate with the appointed civilian special prosecutor.

Convention Against Torture. Such legislation must cover not only military units but also civilian agencies involved in interrogations, such as the CIA.

- The U.S. Department of Defense should conduct a thorough investigation of the allegations made in this report at all levels of the chain of command. Such an investigation must not be limited to lower-ranking enlisted personnel and officers, but must include higher-ranking officers and civilian officials linked to policies that directed, encouraged or tolerated such abuse. Measures should be taken to ensure that soldiers who bring forward credible allegations of detainee abuse are not in any way punished for their actions.
- The 82nd Airborne Division should implement measures to ensure the immediate investigation of credible allegations of detainee abuse.

Note on Presentation of the Soldiers' Accounts

All three accounts below consist of direct quotes from the soldiers. Each of the soldiers was interviewed more than once. For the sake of clarity and to avoid repetition, Human Rights Watch has edited and rearranged specific passages in the accounts.

II. Account of Sergeant A, 82nd Airborne Division

Sergeant A served in Afghanistan from September 2002 to March 2003 and in Iraq from August 2003 to April 2004. Human Rights Watch spoke with him on four separate occasions in July and August 2005.

In retrospect what we did was wrong, but at the time we did what we had to do. Everything we did was accepted, everyone turned their heads.

We got to the camp in August [2003] and set up. We started to go out on missions right away. We didn't start taking PUCs until September. Shit started to go bad right away. On my very first guard shift for my first interrogation that I observed was the first time I saw a PUC pushed to the brink of a stroke or heart attack. At first I was surprised, like, this is what we are allowed to do? This is what we are allowed to get away with? I think the officers knew about it but didn't want to hear about it. They didn't want to know it even existed. But they had to.

On a normal day I was on shift in a PUC tent. When we got these guys we had them sandbagged and zip tied, meaning we had a sandbag on their heads and zip ties [plastic cuffs] on their hands. We took their belongings and tossed them in the PUC tent. We were told why they were there. If I was told they were there sitting on IEDs [Improvised Explosive Devices, homemade bombs] we would fuck them up, put them in stress positions or put them in a tent and withhold water.

The “Murderous Maniacs” was what they called us at our camp because they knew if they got caught by us and got detained by us before they went to Abu Ghraib then it would be hell to pay. They would be just, you know, you couldn’t even imagine. It was sort of like I told you when they came in it was like a game. You know, how far could you make this guy goes before he passes out or just collapses on you. From stress positions to keeping them up fucking two days straight, whatever. Deprive them of food water, whatever.

To “Fuck a PUC” means to beat him up. We would give them blows to the head, chest, legs, and stomach, pull them down, kick dirt on them. This happened every day.

To “smoke” someone is to put them in stress positions until they get muscle fatigue and pass out. That happened every day. Some days we would just get bored so we would have everyone sit in a corner and then make them get in a pyramid. This was before Abu Ghraib but just like it. We did that for amusement.

Guard shifts were four hours. We would stress them at least in excess of twelve hours. When I go off shift and the next guy comes we are already stressing the PUC and we let the new guy know what he did and to keep fucking him. We put five-gallon water cans and made them hold them out to where they got muscle fatigue then made them do pushups and jumping jacks until they passed out. We would withhold water for whole guard shifts. And the next guy would too. Then you gotta take them to the john if you give them water and that was a pain. And we withheld food, giving them the bare minimum like crackers from MREs [Meals Ready to Eat, the military’s prepackaged food]. And sleep deprivation was a really big thing.

Someone from [Military Intelligence] told us these guys don't get no sleep. They were directed to get intel [intelligence] from them so we had to set the conditions by banging on their cages, crashing them into the cages, kicking them, kicking dirt, yelling. All that shit. We never stripped them down because this is an all-guy base and that is fucked up shit. We poured cold water on them all the time to where they were soaking wet and we would cover them in dirt and sand. We did the jugs of water where they held them out to collapse all the time. The water and other shit... start[ed] [m]aybe late September, early October, 2003. This was all at Camp Mercury, close to the MEK base⁸ like 10 minutes from Fallujah. We would transport the PUCs from Mercury to Abu Ghraib.

None of this happened in Afghanistan. We had MPs [military police] attached to us in Afghanistan so we didn't deal with prisoners. We had no MPs in Iraq. We had to secure prisoners. [Military intelligence] wants to interrogate them and they had to provide guards so we would be the guards. I did missions every day and always came back with 10-15 prisoners. We were told by intel that these guys were bad, but they could be wrong, sometimes they were wrong. I would be told, "These guys were IED trigger men last week." So we would fuck them up. Fuck them up bad. If I was told the guy was caught with a 9mm [handgun] in his car we wouldn't fuck them up too bad – just a little. If we were on patrol and catch a guy that killed my captain or my buddy last week – man, it is human nature. So we fucked them up bad. At the same time we should be held to a higher standard. I know that now. It was wrong. There are a set of standards. But you gotta understand, this was the norm. Everyone would just sweep it under the rug.

What you allowed to happen happened. Trends were accepted. Leadership failed to provide clear guidance so we just developed it. They wanted intel. As long as no PUCs came up dead it happened. We heard rumors of PUCs dying so we were careful. We kept it to broken arms and legs and shit. If a leg was broken you call the PA – the physician's assistant – and told him the PUC got hurt when he was taken. He would get Motrin [a pain reliever] and maybe a sling, but no cast or medical treatment.

⁸ Iranian opposition group Mojahedin-e-Khalq, which has a base in Iraq.

In Afghanistan we were attached to Special Forces⁹ and saw OGA. We never interacted with them but they would stress guys. We learned how to do it. We saw it when we would guard an interrogation.

I was an Infantry Fire Team Leader. The majority of the time I was out on mission. When not on mission I was riding the PUCs. We should have had MPs. We should have taken them to Abu Ghraib [which] was only 15 fucking minutes drive. But there was no one to talk to in the chain – it just got killed. We would talk among ourselves, say, “This is bad.” But no one listened. We should never have been allowed to watch guys we had fought.

FOB Mercury was about as big as a football field. We had a battalion there with three or four companies and attachments. We lived in the buildings of an old Iraqi military compound that we built up with barriers, ACs [air conditioners], and stuff. We had civilian interpreters on post and contractors came every day to fix shit. The contractors were local Iraqis.

The PUCs lived in the PUC area about 200 meters away. It had a triple-strength circle concertina barrier with tents in the middle with another triple-strength concertina perimeter. Inside each was a Hesco basket that is wire that normally has cloth in it. We filled them with dirt to make barriers and some we emptied and buried to use as access points for the Iraqis. This was all inside the confines of the FOB. There was a guard tower behind the PUC tent with two guards. One was always looking at the PUC tent. We never took direct fire but did take regular rocket and mortar attacks. We did not lose anyone but had shrapnel injuries.

On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent. In a way it was sport. The cooks were all US soldiers. One day a sergeant shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy’s leg with a mini Louisville Slugger that was a metal bat. He was the fucking cook. He shouldn’t be in with no

⁹ The 82nd Airborne Division provided support to Special Operations Forces during operations in Afghanistan in 2002 and 2003.

PUCs. The PA came and said to keep him off the leg. Three days later they transported the PUC to Abu Ghraib. The Louisville Slugger [incident] happened around November 2003, certainly before Christmas.

People would just volunteer just to get their frustrations out. We had guys from all over the base just come to guard PUCs so they could fuck them up. Broken bones didn't happen too often, maybe every other week. The PA would overlook it. I am sure they knew.

The interrogator [a sergeant] worked in the [intelligence] office. He was former Special Forces. He would come into the PUC tent and request a guy by number. Everyone was tagged. He would say, "Give me #22." And we would bring him out. He would smoke the guy and fuck him. He would always say to us, "You didn't see anything, right?" And we would always say, "No, Sergeant."

One day a soldier came to the PUC tent to get his aggravation out and filled his hands with dirt and hit a PUC in the face. He fucked him. That was the communications guy.

One night a guy came and broke chem lights¹⁰ open and beat the PUCs with it. That made them glow in the dark which was real funny but it burned their eyes and their skin was irritated real bad.

If a PUC cooperated Intel would tell us that he was allowed to sleep or get extra food. If he felt the PUC was lying he told us he doesn't get any fucking sleep and gets no food except maybe crackers. And he tells us to smoke him. [Intel] would tell the Lieutenant that he had to smoke the prisoners and that is what we were told to do. No sleep, water, and just crackers. That's it. The point of doing all this was to get them ready for interrogation. [The intelligence officer] said he wanted the PUCs so fatigued, so smoked, so demoralized that they want to cooperate. But half of these guys got released because they didn't do nothing. We sent them back to Fallujah. But if he's a good guy, you know, now he's a bad guy because of the way we treated him.

¹⁰ Chem lights refer to chemical light sticks. While we do not know the exact composition of the ones allegedly used in Iraq, these lights are typically made of a hydrogen peroxide solution mixed with a phenyl oxalate ester and dye for color. Information available at <http://science.howstuffworks.com/light-stick2.htm>

After Abu Ghraib things toned down. We still did it but we were careful. It is still going on now the same way, I am sure. Maybe not as blatant but it is how we do things.

Each company goes out on a mission and you kick the door down and catch them red handed. We caught them with RPGs [rocket propelled grenades]. So we are going to give you special attention. We yank them off the truck and they hit the ground hard, maybe 5-6 feet down. We took everything and searched them. Then we toss him in the PUC tent with a sandbag on his head and he is zip tied. And he is like that all day and it is 100 degrees in that tent. Once paperwork was done we started to stress them. The five-gallon water can was full of water. We would have people hold out their arms on each side parallel to the ground. After a minute your arms get tired and shake. Then we would take some water out and douse them to get them cold. And the tent is full of dust and they get dirty and caked with it. Then we make them do pushups and jumping jacks. At the end of a guard shift they look like zombies.

We had these new high-speed trailer showers. One guy was the cleaner. He was an Iraqi contractor working on base. We were taking pretty accurate mortar fire and rockets and we were getting nervous. Well one day we found him with a GPS¹¹ receiver and he is like calling in strikes on us! What the fuck!? We took him but we are pissed because he stabbed us in the back. So we gave him the treatment. We got on him with the jugs and doused him and smoked and fucked him.

III. Account of Sergeant B, 82nd Airborne Division

Sergeant B served in Afghanistan from September 2002 to March 2003 and in Iraq from August 2003 to April 2004. Human Rights Watch spoke with him on two separate occasions in August 2005.

I was an infantry squad leader doing mounted patrols and conducting raids in Iraq. I would catch the bad guys. You heard a lot of stuff as a

¹¹ A GPS, or Global Positioning System receiver, provides the user with location data derived from satellites. This data may be used to target weapons, as the soldier alleges.

squad leader in charge of guys watching PUCs about guys mistreating PUCs.

We got to Mercury on the 6th of September. We came from working in al-Qaim. In late September we started to take on PUCs as part of our mission. Since we were capturing them we would detain them for no more than three days, three days max, to interrogate them for intel. We had a mechanized company attached to us which took us up to about battalion strength, maybe 750 people when you include the HHC [headquarters].

PUCs were placed in a GP [general purpose] medium or small tent, about 20x15, and that is being generous. We had 2-3 tents with no more than 10-15 PUCs per tent with a couple guards to a tent. You added guards if you had more PUCs. We would immediately put these guys in stress positions. PUCs would be holding hands behind their backs and be cuff tied and we would lean their forehead against a wall to support them.

As far as abuse goes I saw hard hitting. I heard a lot of stories, but if it ain't me I wouldn't care. I was busy leading my men. I did hear about [a sergeant] breaking PUC bones. Stories came out on mission. Guys were always talking about what they did to the PUCs. Guys mentioned stuff but I couldn't care less what happened at the PUC tent a week ago. Putting guys with frustration in charge of prisoners was the worst thing to do.

I also saw smoking. They would get the PUCs to physically exert themselves to the limit. Feeding was a huge issue and it was brought up. The PUCs wouldn't eat what we were feeding them as they were against Americans and MREs, so all I saw them eat were crackers. [Sergeant A told Human Rights Watch that PUCs were often only fed crackers. It is unclear why Sergeant B believes the detainees had a choice.]

Rest was also an issue. We were told they could be interrogated 45 minutes on, 15 minutes off for sleep and whatever, but I was not regularly in the PUC tents. I brought the PUCs in for interrogation. That is when I saw whatever I saw. Intel had some bad guys and we all know sleep deprivation is a powerful tool.

In Iraq, from the beginning, we messed up on the treatment soldiers had to endure while guarding prisoners. There are five “S’s” [Search, Silence, Segregate, Speed (to the rear), Safeguard] and we blew Speed and Security. Speed was the biggest problem. Speed means you get them to the rear to process them. You need to get them away from the troops they are trying to kill.

The Geneva Conventions is questionable and we didn’t know we were supposed to be following it. In Afghanistan you were taught to keep your head down and shoot.... You never thought about the Geneva Conventions. There was an ROE [Rules of Engagement] and it was followed, same in Iraq. But we were never briefed on the Geneva Conventions. These guys are not soldiers. If we were to follow the Geneva Conventions we couldn’t shoot at anyone because they all look like civilians.

IV. Account of Officer C, 82nd Airborne Division

C is an officer with the 82nd Airborne Division and West Point graduate who served in Afghanistan from August 2002 to February 2003 and in Iraq from September 2003 to March 2004. HRW spoke with him more than two dozen times in July, August, and September 2005. Below are excerpts from those interviews grouped by subject matter (the subject headings were supplied by Human Rights Watch).

At FOB Mercury, he was not in charge of interrogations but saw several interrogations in progress and received regular reports from NCOs on ill-treatment of detainees. He felt strongly that abuses there reflected larger policy confusion about what was permitted, and that the officer corps in particular has a duty to come forward and take responsibility.

On Conditions at FOB Mercury

When we were at FOB Mercury, we had prisoners that were stacked in pyramids, not naked but they were stacked in pyramids. We had prisoners that were forced to do extremely stressful exercises for at least two hours at a time which personally I am in good shape and I would not be able to do that type of exercises for two hours.... There was a case where a prisoner had cold water dumped on him and then he was

left outside in the night. Again, exposure to elements. There was a case where a soldier took a baseball bat and struck a detainee on the leg hard. This is all stuff that I'm getting from my NCOs.

In the PUC holding facility you could have had people that could have been in the wrong house at the wrong time brought in an all of a sudden they are subjected to this. So that's a big problem, obviously a huge human rights issue.

It's army doctrine that when you take a prisoner, one of the things you do is secure that prisoner and then you speed him to the rear. You get him out of the hands of the unit that took him. Well, we didn't do that. We'd keep them at our holding facility for I think it was up to seventy-two hours. Then we would place him under the guard of soldiers he had just been trying to kill. The incident with the detainee hit with baseball bat; he was suspected of having killed one of our officers.

[At FOB Mercury] they said that they had pictures that were similar to what happened at Abu Ghraib, and because they were so similar to what happened at Abu Ghraib, the soldiers destroyed the pictures. They burned them. The exact quote was, "They [the soldiers at Abu Ghraib] were getting in trouble for the same things we were told to do, so we destroyed the pictures."

On Frustration Obtaining a Meaningful Response within the Military Chain of Command

I witnessed violations of the Geneva Conventions that I knew were violations of the Geneva Conventions when they happened but I was under the impression that that was U.S. policy at the time. And as soon as Abu Ghraib broke and they had hearings in front of Congress, the Secretary of Defense testified that we followed the spirit of the Geneva Conventions in Afghanistan, and the letter of the Geneva Conventions in Iraq and as soon as he said that I knew something was wrong. So I called some of my classmates [from West Point], confirmed what I was concerned about and then on that Monday morning I approached my chain of command.

I talked to an officer in the Ranger regiment¹² and his response was, he wouldn't tell me exactly what he witnessed but he said "I witnessed things that were more intense than what you witnessed," but it wasn't anything that exceeded what I had heard about at SERE school.¹³

After that I called the chaplain at West Point who I respected a lot and I talked to him about some things and we were on the same page. Then I had said well, "I'm going to talk to my company commander and then my battalion commander on Monday."

My company commander said, "I see how you can take it that way, but..." he said something like, "remember the honor of the unit is at stake" or something to that effect and "Don't expect me to go to bat for you on this issue if you take this up," something to that effect.

I went and talked to my battalion commander. Again, he clearly thinks he has done the right things and that what I am bringing attention to is within the standards and that he is okay. He didn't dismiss me. He just said "Go talk to JAG. We'll work this out." It wasn't alarming to him in any way, shape or form that these things had happened.

So I went to JAG and ... he says, "Well the Geneva Conventions are a gray area." So I mentioned some things that I had heard about and said, "Is it a violation to chain prisoners to the ground naked for the purpose of interrogations?" and he said, "That's within the Geneva Conventions." So I said, "Okay. That is within the Geneva Conventions." And then there is the prisoner on the box with the wires attached to him, and to me, as long as electricity didn't go through the wires, that was in accordance with what I would have expected US policy to be and that he wasn't under the threat of death. And he said,

¹² The Rangers are "rapidly deployable airborne light infantry organized and trained to conduct highly complex joint direct action operations in coordination with or in support of other special operations units of all Services. Rangers also can execute direct action operations in support of conventional nonspecial operations missions conducted by a combatant commander and can operate as conventional light infantry when properly augmented with other elements of combined arms." Department of Defense Dictionary of Military Terms, available at <http://www.dtic.mil/doctrine/jel/doddict/>

¹³ SERE stands for "Survival, Evasion, Resistance, Escape," and is a military course of training "encompassing those basic skills necessary for world-wide survival; expedite search and rescue efforts; evade capture by hostile forces; resistance to interrogation, exploitation and indoctrination; and escape from detention by enemy forces." Available at <http://www.fasolant.navy.mil/brunssere.htm>

“Well, that is a clear violation of the Geneva Conventions.” And I said, “Okay, but I’m looking for some kind of standard here to be able to tell what I should stop and what I should allow to happen.” And he says, “Well, we’ve had questions about that at times.”

Then he said, “There was a device that another battalion in the 82nd had come up with that you would put a prisoner in. It was uncomfortable to sit in.” And he went to test it out by sitting in it and he decided that it wasn’t torture. I hear this and I am flabbergasted that this is the standard the Army is using to determine whether or not we follow the Geneva Conventions. If I go to JAG and JAG cannot give me clear guidance about what I should stop and what I should allow to happen, how is an NCO or a private expected to act appropriately?

When I talked to [an official in the Inspector General’s office about the policy confusion on what was permitted] he says, “You obviously feel very upset about this, but—I don’t think you’re going to accomplish anything because things don’t stick to people inside the Beltway [Washington, D.C.]” He says, “I worked at the Pentagon and things don’t stick to people inside the Beltway.”

When the Secretary of the Army came [to my training], I addressed him on numerous issues, which I don’t want to go into. One of those issues was treatment of prisoners. I mentioned that I didn’t have clear guidance, and the Secretary of the Army said, “Well, we realized that that was a problem but you are a little bit behind the times. We’ve solved that matter. And I didn’t get a chance to respond to that. I should have, I should have pressed that issue a lot harder. That’s one of my regrets. Just bringing up the issue at all was stressful, but it hasn’t been resolved because there is no clear guidance. And through discussions with other officers the problem is not taken care of. It really is multiple problems. It’s two problems. One is the Army handling interrogations and the other is the relationship between OGA and prisoners and what they can and can’t do.

The officer also spoke with multiple experts on the U.S. military Law of Land Warfare, his peers, and his soldiers, all of whom, he said, expressed concern that the Geneva Conventions were not being applied in Iraq. He decided to bring his concerns to the Congress since he felt they were not being adequately addressed by his chain of

command. Days before this report was published his brigade commander told him to stop his inquiries; his commanding officer told him that he could not leave the base to visit with staff members of Senators McCain and Warner without approval and that approval was being denied because his commanding officer felt the officer was being naïve and would do irreparable harm to his career.

On Policy Confusion within the Ranks on Coercive Interrogation

[In Afghanistan,] I thought that the chain on command all the way up to the National Command Authority¹⁴ had made it a policy that we were going to interrogate these guys harshly.

[The actual standard was] “we’re not going to follow the Geneva Conventions but we are going to treat you humanely.” Well, what does humane mean? To me humane means I can kind of play with your mind, but I cannot hit you or do anything that is going to cost you permanent physical damage. To [another officer I spoke with] humane means it’s okay to rough someone up and to do physical harm. Not to break bones or anything like that but to do physical harm as long as you’re not humiliating him, which was the way he put it. We’ve got people with different views of what humane means and there’s no Army statement that says this is the standard for humane treatment for prisoners to Army officers. Army officers are left to come up with their own definition of humane treatment.

I don’t know for sure [how high up the hierarchy responsibility for the abusive treatment lies]. What I know is that it’s widespread enough that it’s an officer problem. It’s at least an officer problem. You make the standard, and that is what goes up to the executive branch. You communicate the standard, that’s when it’s somewhat the executive branch, but then it comes more into the officer branch, and enforcing the standard is the officer branch... And in the Schlesinger report¹⁵ it even says that when the President made the decision that al-Qaeda wasn’t going to be covered by the Geneva Conventions, there was a

¹⁴ The President of the United States and the Secretary of Defense.

¹⁵ The Schlesinger Report, issued in August 2004, was one of seven U.S. military inquiries into detainee abuse by U.S. forces. The panel that produced the Schlesinger report was chosen by Secretary of Defense Rumsfeld and determined that leadership failures led to detainee abuse in Iraq.

clear danger that it was going to undermine the culture in the United States Army that enforces strict adherence to the law of land warfare. That's in the Schlesinger report.

But anyway, the President makes that decision, and decides that we're not going to cover them by the Geneva Conventions, which according to the letter of the law, I think there's a strong argument for that.... [But] then that lack of standard migrates throughout the Army. It filters throughout the Army, so that now the standard, this convoluted, "You'll know what's right when you see it," filters through the whole Army.

If you draw a hard line and you say "Don't do anything bad to prisoners," like you bring them in, you give them food, you give them water, and then you leave them alone. If that happens then, yeah, that is an easy line to draw, but when you start drawing shades of gray and you start stripping prisoners, or you start making prisoners do humiliating things and then you tell a soldier to draw the line somewhere, then no. A soldier is not going to be able to draw that line because as soon as you cross that line and as soon as you start stripping prisoners or you start making people do vigorous exercise, or you start basically putting yourself in a position of authority where you are subjecting someone else to harsh treatment, things are going to get out of hand because everyone is going to draw the line at a different place. Just like the discussion between me and the other officer, where's the line? What is acceptable and what is not acceptable? People don't know. The West Point officers knew the line coming out of West Point. We knew where the Geneva Conventions drew the line, but then you get that confusion when the Sec Def [Secretary of Defense] and the President make that statement. And we were confused.

[In Iraq, my understanding of how we should treat prisoners] didn't change. There are a couple of reasons for that. Pre-deployment training was minimal going to Iraq because we deployed on short notice from West Point through Fort Bragg to Iraq. So there might be some disconnect there, but also none of the unit policies changed. Iraq was cast as part of the War on Terror, not a separate entity in and of itself but a part of a larger war.

[I didn't discuss abuse of detainees with my superiors in Iraq because] to me, it was obviously part of the system and the reasons had been laid out about why we're not following the Geneva Conventions in respect to the detainees. We did follow them in other aspects and once that was laid out I thought it was pretty clear cut.... That was just the way I thought we were running things.

Another officer approached me and was like "I'm not sure this is the way you should be treating someone." It was almost like an off-hand, kind of like...just a conversation like making a comment. He said something like "I don't know if this is right" and my response was "Hey, it's out in the open and we've said that we are doing this. It's not like we're doing it on the sly."

If I as an officer think we're not even following the Geneva Conventions, there's something wrong. If officers witness all these things happening, and don't take action, there's something wrong. If another West Pointer tells me he thinks, "Well, hitting somebody might be okay," there's something wrong.

What I'm saying is had I thought we were following the Geneva Conventions as an officer I would have investigated what was clearly a very suspicious situation.

On the Implications of the Abu Ghraib Abuse Revelations in April 2004

Someone mentioned to me in passing that there was a really bad prisoner abuse scandal and I took note of it and I thought, "that is horrible. That is going to be bad PR [public relations] for the Army" and I thought, "Okay, rogues did something." And then as the week progressed I watched on the news and they showed some of the pictures -- not all of them -- a large portion of the pictures were in accordance with what I perceived as U.S. policy. Now all the stuff with sodomy with the chem light and all that was clearly beyond what I would have allowed to happen on a personal moral level and what I thought policy was. But the other stuff, guys handcuffed naked to cells in uncomfortable positions, guys placed in stress positions on boxes,

people stripped naked. All that was...if I would have seen it, I would have thought it was in accordance with interrogation procedures.

I listened to the congressional hearings and when the Secretary of Defense testified that we followed the spirit of the Geneva Conventions in Afghanistan and the letter of the Geneva Conventions in Iraq... that went against everything that I [understood about US policy]. That's when I had a problem.

The first concern when this originally happened was loyalty to the Constitution and separation of powers, and combined with that is the honor code: "I will not lie, cheat or steal or tolerate those who do." The fact that it was systematic, and that the chain of command knew about it was so obvious to me that [until that point] I didn't even consider the fact that other factors might be at play, so that's why I approached my chain of command about it right off the bat and said, "Hey, we're lying right now. We need to be completely honest."

Congress should have oversight of treatment of prisoners. That is the way; the Army should not take it upon itself to determine what is acceptable for America to do in regards to treatment of prisoners. That's a value... that's more than just a military decision, that's a values decision, and therefore Congress needs to know about it, and therefore the American people need to have an honest representation of what's going on presented to them so that they can have a say in that.

On Failure of the Officer Corps

It's unjust to hold only lower-ranking soldiers accountable for something that is so clearly, at a minimum, an officer corps problem, and probably a combination with the executive branch of government.

It's almost infuriating to me. It is infuriating to me that officers are not lined up to accept responsibility for what happened. It blows my mind that officers are not. It should've started with the chain of command at Abu Ghraib and anybody else that witnessed anything that violated the Geneva Conventions or anything that could be questionable should've been standing up saying, "This is what happened. This is why I allowed

it to happen. This is my responsibility,” for the reasons I mentioned before. That’s basic officership, that’s what you learn at West Point, that’s what you should learn at any commissioning source.

That’s basic Army leadership. If you fail to enforce something, that’s the new standard. So I guess what I’m getting at is the Army officers have overarching responsibility for this. Not privates, not the Sergeant Jones, not Sergeant Smith. The Army officer corps has responsibility for this. And it boggles my mind that there aren’t officers standing up saying, “That’s my fault and here’s why.” That’s basic army leadership.

Look, the guys who did this aren’t dishonorable men. It’s not like they are a bunch of vagabonds. They shown more courage and done more things in the time that I’ve spent with them than I could cover in probably a week of talking to you. They are just amazing men, but they’re human. If you put them in a situation, which is the officer’s responsibility, where they are put in charge of somebody who tried to kill them or maybe killed their friend, bad things are going to happen. It’s the officer’s job to make sure bad things don’t happen.

[Another important] thing is making sure this doesn’t happen again... [We need] to address the fact that it was an officer issue and by trying to claim that it was “rogue elements” we seriously hinder our ability to ensure this doesn’t happen again. And, that has not only moral consequences, but it has practical consequences in our ability to wage the War on Terror. We’re mounting a counter-insurgency campaign, and if we have widespread violations of the Geneva Conventions, that seriously undermines our ability to win the hearts and minds of the Muslim world.

[I]f America holds something as the moral standard, it should be unacceptable for us as a people to change that moral standard based on fear. The measure of a person or a people’s character is not what they do when everything is comfortable. It’s what they do in an extremely trying and difficult situation, and if we want to claim that these are our ideals and our values then we need to hold to them no matter how dark the situation.

On the Role of “OGA”

In Afghanistan we were attached to Special Forces and saw OGA. We never interacted with them but they would stress guys. We learned how to do it. We saw it when we would guard an interrogation.

They [OGA interrogators in Afghanistan] had a horn. In this case they would involve U.S. soldiers. There was a really loud horn and any time the detainee would fall asleep they would blare the horn in his ear so that he had to wake up and they would do that until he stood up again and stayed awake.

[A]t FOB Tiger [near the Syrian border] there were a lot of high value targets and ...there was a Special Forces [SF] team nearby and I was going to talk to them just about career stuff and as I was going out I saw someone who I thought was OGA... go into the prisoner detainee holding facility and take one of the detainees out. And then they took infantry guards and they went into an unoccupied building that they could seal off, closed the door, and they gave orders to the infantry guards not to let anyone in. The reason I know this is because I was trying to talk to the SF guys and I asked them “Hey, do you know where the SF guys are?” and they were like “Well, maybe some of them are in here but you can’t go in there right now. They are with a prisoner.” And there were noises coming out of there. There could have been physical violence but [they were at least] threatening the prisoner,... doing things that weren’t actually causing bodily harm but threatening to do that.

I talked to an MP who said that he was in charge of holding detainees and that the CIA would just come and take the detainees away. They would be like, “How many detainees do you have?” and he knew he has seventeen detainees but the OGA would be like, “No, you have sixteen,” so he’d be like “Alright. I have sixteen.” And who knows where that detainee went.

V. Conclusion

The abuses alleged in this report can be traced to the Bush administration's decision to disregard the Geneva Conventions in the armed conflict in Afghanistan.

On February 7, 2002, President George W. Bush announced that the Geneva Conventions concerning the treatment of prisoners did not apply at all to al-Qaeda members or to Taliban soldiers because they did not qualify as members of the armed forces. He insisted that detainees would nonetheless be treated "humanely." Defense Secretary Donald Rumsfeld told journalists that day: "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 Conventions was fashioned."

The accounts presented in this report are further evidence that this decision by the Bush administration was to have a profound influence on the treatment of detained persons in military operations in Iraq as well as in the "global war on terror." In short, the refusal to apply the Geneva Conventions to Guantánamo Bay and Afghanistan was to undermine long-standing adherence by the U.S. armed forces to federal law and the laws of armed conflict concerning the proper treatment of prisoners.

Public statements by the Bush administration prior to the February 2002 decision set the tone for effectively rejecting the Geneva Conventions. After the first detainees arrived at Guantánamo in January 2002, Defense Secretary Rumsfeld declared them all to be unlawful combatants who "do not have any rights" under the Geneva Conventions. He said that the United States would "for the most part, treat them in a manner that is reasonably consistent with the Geneva Conventions, to the extent they are appropriate." Later that month, then White House counsel Alberto Gonzales wrote President Bush that the Geneva Conventions provisions on questioning enemy prisoners were "obsolete" and argued, among other things, that rejecting the applicability of the Geneva Conventions "[s]ubstantially reduces the threat of domestic criminal prosecution" of U.S. officials for war crimes.

Then Secretary of State Colin Powell and senior military leaders privately objected to the administration's position. Secretary 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."

The administration's policy opened the door for the since-discredited legal theories put forward by the Justice Department in the infamous "torture memo" of August 2002. This memo provided contorted rationalizations for the use of clearly unlawful interrogation methods. The conclusions of these memos were opposed, without success, by senior members of the Judge Advocate General's office in all four services. Air Force Major General Jack Reves wrote in a recently released memo from 2003: "[T]he use of the more extreme interrogation techniques simply is not how the U.S. armed forces have operated in recent history. We have taken the legal and moral 'high-road' in the conduct of our military operations regardless of how others may operate. Our forces are trained in this legal and moral mindset beginning the day they enter active duty."

And Army Major General Thomas Romig wrote that the Justice Department's view on the laws of war "runs contrary to the historic position taken by the United States Government concerning such laws and, in our opinion, could adversely impact [Pentagon] interests worldwide [including by] putting our service personnel at far greater risk and vitiating many of the POW/detainee safeguards the U.S. has worked hard to establish over the past five decades."

According to the 2004 Schlesinger Commission report, coercive interrogation methods approved by Defense Secretary Rumsfeld for use on prisoners at Guantánamo — including the use of guard dogs to induce fear in prisoners, stress techniques such as forced standing and shackling in painful positions, and removing their clothes for long periods — "migrated to Afghanistan and Iraq, where they were neither limited nor safeguarded," and contributed to the widespread and systematic torture and abuse at U.S. detention centers there.

Even after the abuses at Abu Ghraib prison in Iraq became public, Secretary Rumsfeld continued to dismiss the applicability of the Geneva Conventions. On May 5, 2004, he told a journalist the Geneva Conventions "did not apply precisely" in Iraq but were "basic rules" for handling prisoners. 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, such as Field Manual 27-10 on the Law of Land Warfare and Field Manual 34-52 on Intelligence Interrogation, provide the means for implementing Geneva Conventions provisions, even where those provisions are vague.

Effectively throwing out military manuals based on the laws of armed conflict was a prescription for the abuse that followed. Field Manual 34-52 for instance, does not merely restate the requirements of the Geneva Conventions, but it provides useful advice for soldiers to apply the standards in practice. For instance, the manual states: “Experience indicates that the use of force is not necessary to gain the cooperation of sources for interrogation. Therefore, the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear.”

Torture and other cruel and inhumane treatment alleged in this report do not fall into the “gray areas” in the law. Common article 3 to the four Geneva Conventions of 1949, which is accepted as the minimal standard of treatment for persons in custody during any armed conflict, prohibits “at any time and in any place whatsoever, . . . violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, [and] outrages upon personal dignity, in particular, humiliating and degrading treatment.” Further protections can be found in the fundamental guarantees under article 75 of the Protocol I of 1977 to the Geneva Conventions, which is accepted as reflecting customary laws of armed conflict.

Even if the Geneva Conventions were not applicable, various provisions of the U.S. Uniform Code of Military Justice subjects soldiers to court-martial or disciplinary measures for mistreating prisoners. Applicable UCMJ criminal provisions include article 93 (cruelty and maltreatment), article 128 (assault), and articles 118 and 119 (murder and manslaughter), as well as article 120 (rape and carnal knowledge), article 124 (maiming), and, for officers, article 133 (conduct unbecoming an officer). Superior officers who order the mistreatment of prisoners or who knew or should have known that such mistreatment was occurring and did not take appropriate measures can be prosecuted as a matter of command responsibility.

The treatment of prisoners alleged here also violates U.S. obligations under international human rights law. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.” The International Covenant on Civil and Political Rights, which also bans torture and other mistreatment, ensures that the right to be free from torture and other cruel, inhuman or degrading treatment can never be suspended by a state, including during periods of public emergency.

These standards have largely been incorporated into U.S. law that is applicable to members of the armed services. The War Crimes Act of 1996 (18 U.S.C. § 2441) makes it a criminal offense for U.S. military personnel and U.S. nationals to commit war crimes as specified in the Geneva Conventions. The federal anti-torture statute (18 U.S.C. § 2340A), enacted in 1994, provides for the prosecution of a U.S. national or anyone present in the United States who, while outside the United States, commits or attempts to commit torture.

Human Rights Watch calls for investigations into all allegations of mistreatment of prisoners in U.S. custody. Appropriate disciplinary or criminal action should be undertaken against all those implicated in torture and other abuse, whatever their rank. As we have reported elsewhere, there is increasing evidence that high-ranking U.S. civilian and military leaders made decisions and issued policies that facilitated serious and widespread violations of the law. The circumstances strongly suggest that they either knew or should have known that such violations took place as a result of their actions. There is also mounting information that, when presented with evidence that abuse was in fact occurring, they failed to act to stop it.

Human Rights Watch reiterates its call for the appointment of a special counsel to investigate any U.S. officials — no matter their rank or position — who participated in, ordered, or had command responsibility for war crimes or torture, or other prohibited ill-treatment against detainees in U.S. custody.