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Behind the Wire

AN UPDATE TO *ENDING SECRET DETENTIONS*

March 2005

Written by Deborah Pearlstein and Priti Patel

About Us

For nearly 30 years, Human Rights First (formerly the Lawyers Committee for Human Rights) has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; help build a strong international system of justice and accountability; and make sure human rights laws and principles are enforced in the United States and abroad.

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I. Preface

When Human Rights First originally published its *Ending Secret Detentions* report last June, the Pentagon was just beginning a series of internal investigations related to allegations of torture and abuse by U.S. authorities in the course of global U.S. detention and interrogation operations. The Coalition Provisional Authority, established by the United States, still held power in Iraq. And the U.S. Supreme Court had heard but not yet ruled on the first three major terrorism-related cases to come before it.

The developments of the past nine months have yielded some significant insights about U.S. detention and interrogation operations around the world, and about the legality of the policies that have animated them. Almost a year since the photos from Abu Ghraib thrust U.S. detention operations into the international spotlight, this report updates our assessment of where U.S. operations stand.

The U.S. Government has taken several positive steps since last year in some effort to normalize detention operations overseas. The month after *Ending Secret Detentions* was published, and more than a year after U.S. military operations began in Iraq, the Pentagon announced the creation of a new Office of Detainee Affairs, charged with correcting basic problems in the handling and treatment of detainees, and with helping to ensure that senior Defense Department officials are alerted to concerns about detention operations raised by the International Committee of the Red Cross (Red Cross). While the effect of this new structure remains unclear, it has the potential to help bring U.S. detention policy more in line with U.S. and international legal obligations.

The Pentagon has also conducted a series of important investigations into abuses in detention and interrogation operations in Iraq, Afghanistan, and at the U.S. Naval Base at Guantanamo Bay. The reports that have been completed to date have helped to make clear that failures in planning and ambiguities in policy contributed to the confusion surrounding the U.S. system of global detentions. Legally suspect advice to the President that the key elements of the Geneva Conventions need not apply to the conflict in Afghanistan was not coupled with meaningful guidance to soldiers in the field about what rules or procedures did govern the capture and treatment of detainees. The Defense Department also used a rotating set of designations to describe the status of detainees in U.S. custody in Iraq — designations without clear meaning under the law of war or U.S. military doctrine. Pre-war planning for Iraq did not include adequate planning for detention operations, and no central agency existed to keep track of detainees in U.S. custody, as required by military regulations implementing the Geneva regime. The first step in correcting such failures is identifying their source, and while several investigations remain outstanding and others have proven incomplete, the reports to date have played some constructive role in this effort.

Perhaps most important among the positive developments, Congress enacted legislation in October 2004 requiring the Secretary of Defense to report regularly to the relevant committees in the U.S. House and Senate on the number and nationality of detainees in military custody, as well as on the number of detainees released from custody during the reporting period. The law, which tracks many of

the recommendations of the original *Ending Secret Detentions* report, requires the Secretary to report on the legal status of those detained – whether they are held as prisoners of war, civilian internees, or unlawful combatants – and to report whether detainees once held by the United States have been transferred to other countries. The legislation is, in many respects, declarative of existing law and policy. But its imposition of compliance deadlines – the first of which occurs on July 28, 2005 – provides an important opportunity for the Defense Department to make good on its statements in recent months that it is correcting the policy and operational failures it has identified.

Despite these welcome developments, the scrutiny of the past nine months has still failed to produce full answers to many of the most basic questions posed in our original report. How many individuals are held in U.S. custody – both by military and intelligence agencies – in connection with the “global war on terror,” and where are they held? Are “ghost detainees” still being held without access to visits from the Red Cross? Why are family members not promptly notified that their family member is in custody, or given information about their health or whereabouts? And significantly, what is the legal basis for these detentions, what limits exist on U.S. power to seize and detain, and what if any rights do the detainees have as a matter of law?

Far from diminishing in importance as U.S. missions in Afghanistan and Iraq mature, these questions are becoming more urgent as U.S. detention operations appear to be picking up permanence and pace. Last June, the Defense Department told Human Rights First that there were 358 individuals detained by the United States in Afghanistan. By January 2005, Combined Forces Command in Afghanistan reported the number was on the order of 500 – an increase of 40 percent. The numbers in Iraq are also increasing. The United States now maintains eight official detention facilities in Iraq – down from 11 at the height of the occupation last June. But in March 2005, the number of detainees officially reported held by U.S. forces in Iraq had risen to about 8,900 in permanent facilities and 1,300 in transient facilities – more than double the number in custody in October, and 60 percent more than the Coalition Press Information Center reported in custody nine months ago. In addition, the Pentagon has announced plans to build a new \$25 million prison facility at Guantanamo Bay, where the

rotation of detainees in and out continues, with new arrivals as recent as September 2004.

Beyond these well known facilities, and of particular concern, remain detentions in so-called “transient facilities” – field prisons designed to house detainees only for a short period until they can be released or transferred to a more permanent facility. Interviews conducted by Human Rights First with now-released detainees held by U.S. authorities in such facilities in Afghanistan and Iraq, consistent with the findings of official investigations, reveal conditions there that have been grossly inadequate. Many of the worst alleged abuses of detainees, including deaths in custody, have occurred in these facilities, where visits from the Red Cross are limited. Detainees are sometimes transferred from these facilities before they can be visited by the Red Cross, and deteriorating security conditions have compromised monitors’ ability to visit regularly or at all. While military officials have stated that detention in these facilities is now limited to 10-15 days maximum, the increasing numbers of detainees and deteriorating security conditions will make adhering to this commitment enormously challenging.

Finally, we have learned a great deal about the security policy consequences of U.S. detention operations. The Administration has argued that, faced with the unprecedented security threat posed by terrorist groups “of global reach,” it has had to resort to preventive detention and interrogation of those suspected to have information about possible terrorist attacks. According to the Defense and Justice Departments, a key purpose of these indefinite detentions is to promote national security by developing detainees as sources of intelligence. And while much of what goes on at these detention facilities is steeped in secrecy, some intelligence agents have insisted that “[w]e’re getting great info almost every day.”

But the past nine months have seen growing evidence of the adverse security consequences of the United States’ global detention system. As thirteen retired admirals and generals – including former head of the Joint Chiefs of Staff, General John Shalikashvili – noted in a letter to the Senate Judiciary Committee in January 2005, the United States’ equivocal observance of the Geneva Conventions and attendant procedures in U.S. military operations has put our own forces at greater risk, produced uncertainty and confusion in the field, and undermined the mission and morale of our troops. The lack of a central system for detainee information has

hindered U.S. efforts to obtain information from detainees. Pentagon investigations have also pointed to this confusion as contributing to the widespread torture and abuse now evident in U.S. detention operations; and the use of these tactics, in turn, has undermined intelligence and counterinsurgency efforts. As one U.S. Army intelligence officer now returned from Afghanistan has cautioned: “The more a prisoner hates America, the harder he will be to break. The more a population hates America, the less likely its citizens will be to lead us to a suspect.” Indeed, polling in Iraq suggests that U.S. detention practices have helped galvanize public opinion in Iraq against U.S. efforts there. And the Pakistani Sunni extremist group Lashkar-e-Tayba has used the internet to call for sending holy warriors to Iraq to take revenge for the torture at Abu Ghraib. Our detention practices abroad – which have inflamed our enemies and alienated potential allies – continue to run contrary to all of these security imperatives.

This report reviews these and other developments in U.S. global detention operations in the past nine months. Updated since the original report, Chapter 2 summarizes what is known about the nature and status of U.S. detention facilities and those held within them. With the critical exception of new statutory reporting requirements, the law governing U.S. detention operations, discussed in Chapter 3, is largely unchanged. The U.S. policy interests that led to these laws, discussed in Chapter 4, remain as or more salient than they were last year, and have been expanded below to discuss recent insights from members of the military and national security communities. These professionals have observed first-hand how abstract policies play out in practice, and how an abiding commitment to the rule of law serves both the security interests of Americans and the values America seeks to protect.

Michael Posner and Deborah Pearlstein
New York
March 30, 2005

II. The Known Unknowns

In all, roughly 65,000 people have been screened for possible detention, and about 30,000 of those were entered into the system, at least briefly, and assigned internment serial numbers.

Maj. Gen. Donald J. Ryder
Army Provost Marshal General
February 2005

While the United States has made it clear that it has arrested and detained tens of thousands of individuals in the “war on terrorism” since September 11, 2001, it has provided scant information about the nature of this global detention system – information critical to preventing incidents of illegality and abuse. Since the release of Human Rights First’s original report about this detention system in June 2004, the number of those held briefly declined as a result of an acceleration of detainee processing following the revelations at Abu Ghraib. But these numbers are now back on the rise – and official accounting of critical information continues to be minimal and conflicting.

As was the case last year, some detention facilities remain well known – such as the U.S. Naval Base at Guantanamo Bay, Abu Ghraib in Iraq, or the U.S. Air Force Base at Bagram, Afghanistan – but there is troubling information about inadequate provision of notice to families about detainees’ location and condition, or conflicting statements about detainees’ legal status. While the Red Cross has visited these facilities, their visits have in the past been undermined contrary to the letter and spirit of binding law.¹

In other cases, the existence of the detention facility is acknowledged by the United States – as in the case of transient detention facilities in Afghanistan – but very little else is known, particularly how many such facilities exist and the nature of the legal status and rights of those held there.

Finally, there remain cases in which the existence of the detention facility itself is not officially acknowledged but has been reported

by multiple sources – for example, Peshawar, Kohat and Alizai in Pakistan;² a U.S. detention facility in Jordan;³ and U.S. military ships, particularly the USS Bataan and the USS Peleliu.⁴ In the absence of official acknowledgment of such locations, there is of course no information on whether they are in use, how many might be held at such facilities, whether their families have been notified, why those detained there are held, or whether the Red Cross has access to them. Indeed, the Red Cross has stated publicly that it does not.⁵

U.S. concerns for the security of lawful detention facilities and for force protection are of course appropriate. But as the Secretary of Defense has acknowledged, it is contrary to U.S. law and policy that information be withheld or classified without a basis in law.⁶ And it remains unclear how disclosing, in a comprehensive and regular manner, the following basic information endangers legitimate U.S. missions abroad:

- How many individuals are currently held by the United States at military or intelligence detention facilities in connection with the “global war on terror;”
- What legal status have these detainees been accorded (e.g., prisoners of war, civilians who engaged directly in combat, or some other status) and what process is followed to determine this status;
- Have all detainees been afforded access to Red Cross officials;
- Have the immediate families of the detainees been notified of their loved ones’ location, status, and condition of health.⁷

Afghanistan

Bagram was a much more depressing environment [than Kandahar]. It was, in every sense of the word, a dungeon. . . . It was impossible to spend any amount of time inside that facility and not have it affect you psychologically.

Chris Mackey (pseudonym)
U.S. Army Interrogator in Afghanistan
The Interrogators
2004

Since November 2001, the United States has operated approximately 25 detention facilities at various times in Afghanistan.⁸ According to CENTCOM, the U.S. unified military command with operational control of U.S. combat forces in the region, there remain two main detention facilities in Afghanistan: the Collection Center at the U.S. Air Force Base in Bagram and a detention center at Kandahar Air Force Base.⁹ Since June 2004, the Defense Department has upgraded the detention facility at Kandahar Air Force Base from an intermediate site – where detainees awaited transportation to Bagram – to a main holding facility.¹⁰

Numerous sources continue to report an additional interrogation facility under CIA control at Bagram, reportedly known as “the Salt Pit.”¹¹ In early 2002, CIA officials refused military interrogators access to prisoners detained at the CIA facility; some prisoners were eventually transferred from the CIA facility to Bagram or Kandahar.¹² In November 2002, one Afghan detainee, held in the Salt Pit, was stripped, chained to the floor and left overnight without blankets in the cold.¹³ By morning he had frozen to death. The detainee was never registered on any detainee logs, including the CIA’s “ghost detainee” logs.¹⁴ The fate of others held at the CIA facility remains unknown, including that of Khalid Sheikh Mohammed, who in March 2003, was reportedly transferred from the CIA interrogation facility to an undisclosed location.¹⁵

In addition to these main detention facilities, CENTCOM acknowledges a series of “field detention or transient holding areas located at the forward operating bases” that are used to hold detainees until they may be transferred to a main holding facility – either to Kandahar or Bagram.¹⁶ The number of these transient facilities is not publicly available, and change as “units move and combat operations change.”¹⁷ Some press reports put the total number of

these facilities at 20.¹⁸

Press reports, as well as interviews of released detainees conducted by Human Rights First in August 2004, confirm that U.S. transient facilities include sites in or near Asadabad,¹⁹ Gereshk,²⁰ Jalalabad,²¹ Tycze,²² Gardez, and Khost.²³ These facilities have at times seen extensive use since early 2002,²⁴ with released detainees reporting stays of up to 30 days as recent as early 2004.²⁵ Several detainees held from fall 2003 to winter 2004 report being detained in small windowless rooms; toilets were in public places and provided no privacy.²⁶ Others report being detained in large areas without roofs, with intense heat or cold depending on the season.²⁷ More recently, in September 2004, the family of Sher Mohammed Khan traveled to a U.S. firebase near Khost to collect Khan’s body.²⁸ Mr. Khan, along with his cousin, was taken by U.S. forces during a raid on his house.²⁹ His brother was reportedly killed by U.S. forces during the raid.³⁰ Despite reports from the family that Mr. Khan’s body showed signs of abuse, U.S. officials contend that Mr. Khan was killed while in U.S. custody by a snake bite.³¹ His cousin’s whereabouts remain unknown.³²

Mehboob Ahmad lives in Afghanistan. In June 2003, he was detained by U.S. military forces in Afghanistan and taken to the U.S. run detention facility in Gardez and Bagram Air Force Base. Mr. Ahmad remained in U.S. custody for approximately five months. While in detention, U.S. officials threatened Mr. Ahmad with transferring him to Guantanamo Bay. The conditions of his detention were difficult. He charges that he was detained outside for a period of weeks without any protection from the intense cold or heat and interrogated for several hours every night in order to humiliate him. He also says that U.S. officials insulted his mother, wife, and sister and implied that they would rape his wife. He was eventually released in November 2003, with papers stating that he “pose[d] no threat to the United States Armed Forces.”

Human Rights First Interview with Mehboob Ahmad, August 18, 2004.

A report by the Army Inspector General released in July 2004 recognized that conditions in these transient facilities were inadequate for holding individuals for more than two weeks.³³

Combined Forces Command (CFC) in Afghanistan stated in October 2004 that by rule detainees were now to be held at these transient facilities for less than 10 days, and detention beyond this period requires the approval of a commander.³⁴ Human Rights First was unable to confirm whether U.S. personnel were complying with this rule.

In all events, the time limit may now be tested, as the number of detainees in Afghanistan has increased significantly over the last nine months. Prior to June 2004, the Defense Department had a policy of keeping the number of detainees in Afghanistan classified, citing “ongoing military operations and force protection concerns.”³⁵ In June 2004, however, the Defense Department told Human Rights First that there were 358 individuals detained by the United States in Afghanistan.³⁶ (Other reports at the time put the number slightly higher at about 380.³⁷) By October 2004, CFC officials reported the number of detainees held by the United States had increased to 550.³⁸ Despite recent statements by U.S. officials suggesting fewer detentions, the number of detainees in Afghanistan remained well above the number last summer, at approximately 500 in January 2005.³⁹ More recently, the Combined Forces Command has reimplemented its earlier policy of keeping the numbers of detainees in Afghanistan classified.⁴⁰ No reason was provided for this change in policy.⁴¹

It is unclear where among the known facilities the growing number of detainees is held. According to the Army Inspector General, the detention facility at Bagram can house up to 275 detainees.⁴² The number of detainees that can be held at Kandahar is uncertain due to ongoing construction, but the Army Inspector General reported that in August 2004 the facility at Kandahar “held anywhere from 23-40 detainees.”⁴³ In light of reported conditions at the transient sites, continued use of these facilities for extended periods of detention would raise serious concerns.

Red Cross access to detainees in Afghanistan has improved somewhat since the release of the *Ending Secret Detentions* report in June 2004, but it remains limited. The Red Cross continues to visit detainees in Bagram, but does not meet with detainees immediately after arrest.⁴⁴ The Red Cross had visited detainees at Kandahar early in the war, from December 2001 to June 2002.⁴⁵ As evidence emerged that the United States continued to hold some suspects for longer periods at Kandahar, the Red

Cross asked to be allowed to visit the facility again.⁴⁶ After considering the request for three weeks, the Pentagon agreed to begin making arrangements to allow the Red Cross access.⁴⁷

The United States officially allows Red Cross observers to visit all detainees held for more than 15 days.⁴⁸ But the time lag in Red Cross access to detention facilities is troubling in light of Pentagon findings that significant abuse has occurred in the first two weeks of detention while interrogations and screenings closer to the point of capture are conducted.⁴⁹ Among reported instances was one involving 18-year-old Afghan soldier, Jameel Naseer. Press reports indicate that he was detained at the U.S. firebase in Gardez along with seven other Afghan soldiers. All eight were tortured for approximately two weeks while in Gardez. Naseer died in U.S. custody in Gardez as a result of the torture he suffered.⁵⁰

Red Cross representatives, as well as some U.S. Army officials, have also publicly expressed concern that detainees in Afghanistan continue to have no clear legal status.⁵¹ The Red Cross has emphasized that even as the periods of detention at Bagram increase, “the U.S. authorities have not resolved the questions of [the detainees’] legal status and of the applicable legal framework.”⁵²

According to Pentagon investigations into allegations of torture and abuse by U.S. officials, the lack of clarity of detainees’ legal status stems from policy decisions early in the war in Afghanistan. In October 2001, CENTCOM Commander General Tommy Franks issued an appropriate order, following Army Regulations and decades of military practice, providing that the Geneva Conventions were applicable to all captured individuals in Afghanistan.⁵³ The first detainee was seized in Afghanistan in November 2001.⁵⁴ The CENTCOM policy remained in effect until February 7, 2002, when President Bush issued an order declaring that Al Qaeda detainees were not protected by the Geneva Conventions, and Taliban prisoners were not entitled to the protections of prisoner of war status under the Conventions.⁵⁵

Since then, detainees in Afghanistan have been defined variously as “unlawful combatants,” “enemy combatants,” or “unprivileged belligerents.”⁵⁶ According to the Army Inspector General, most detainees in Afghanistan are classified as civilian internees and subclassified in categories not provided for by Army doctrine, such as “Persons Under U.S. Control, Enemy Combatant, and Low-level Enemy

Combatant.”⁵⁷ The Army Inspector General noted that, “due to the suspension of the Geneva Conventions,” soldiers were no longer able to keep up with legal status determinations for “a large number of detainees in a short period of time as required in the Afghanistan theater.”⁵⁸ A separate Pentagon inquiry into torture and abuse concurred that the Administration’s policy regarding detainees was “vague and lacking.”⁵⁹ According to the Combined Forces Command, the United States is holding detainees in Afghanistan under UN “Security Council Resolutions 1368, 1373, and 1566 directing States to take necessary steps to prevent the commission of terrorist acts”; further guidance is reportedly provided by the President, Secretary of Defense, and the Joint Chiefs of Staff.⁶⁰ The Department of Defense has classified all “further guidance.”⁶¹ To date, the Administration has not publicly clarified the detainees’ legal status.

Mohammed Karim Shirullah was detained in Afghanistan by U.S. military personnel in December 2003 and remained in U.S. detention facilities in Afghanistan until his release in June 2004. Mr. Shirullah was imprisoned at the U.S.-run ‘transient facility’ in Gardez and at Bagram Air Force Base. While in detention, Mr. Shirullah says that he was placed in solitary confinement in a windowless room with limited access to other people for more than a month. At other times, he was forced to wear opaque goggles. Mr. Shirullah charges that he was severely beaten by U.S. forces. Because a resultant ear injury went untreated for six months, he lost hearing in one ear. He says that he now has difficulty sleeping without medication.

Human Rights First Interview with Mohammed Karim Shirullah, August 18, 2004.

From interviews with those released from detention facilities in Afghanistan (or interviews with their families), the United States does not appear to have followed a standard family notification policy there.⁶² For example, the family of one former detainee at Bagram Air Force Base, Saifullah Paracha (recently transferred to Guantanamo Bay), was notified of Saifullah’s detention at Bagram not by the United States, but by the Red Cross.⁶³ The family of Moazzam Begg (formerly detained at Kandahar) was also informed of Begg’s detention via the Red Cross.⁶⁴ A CFC official reached by Human

Rights First was unaware of any “official” policy on family notification.⁶⁵

Closely linked with the requirement of notifying families of the detention of their loved ones are Army Regulations mandating the establishment of a comprehensive detainee information database.⁶⁶ The required database is to include the personal information of each detainee, date and place of capture, “name and address of a person to be notified of the individual’s capture.”⁶⁷ As of December 2004, no such central database had been established for Afghanistan.⁶⁸ This apparent continuing failure comes despite military investigations finding that military personnel at points of capture and collection facilities have failed to adequately document detainees’ personal information. The Army Inspector General in particular concluded that the lack of a central system for detainee information exacerbates families’ difficulty in trying to locate their relatives and has hindered U.S. efforts to obtain information from the detainees.⁶⁹

Iraq

More aggressive U.S. military operations in Iraq over the past two months have generated a surge in detainees, nearly doubling the number held by U.S. forces.

Maj. Gen. Geoffrey Miller quoted in the *Washington Post*, November 27, 2004

The United States continues to maintain eight official detention facilities in Iraq – down from 11 at the height of the occupation last June.⁷⁰ This number includes three main facilities in Iraq: Camp Redemption and Camp Ganci both located at Abu Ghraib near Baghdad; Camp Cropper near the Baghdad Airport; and Camp Bucca near Umm Qasr close to the Kuwaiti border.⁷¹ In addition, five facilities are under division or brigade command, including the 1st Infantry Division DIF; 1st Marine Expeditionary Force DIF; 1st Cavalry Division DIF; Multi-National Division-Central; and Multi-National Brigade North. (An additional facility, Camp Sheba, is run by the Multi-National Division-Southeast under British command.⁷²) By policy, detainees may be held in brigade or division facilities for up to 14 days before being released or transferred to a main facility.⁷³

In November 2004, following an increase in U.S. military engagements in Iraq, the U.S. head of Iraqi detainee operations, Maj. Gen.

Geoffrey Miller, stated that the number of detainees held by or in connection with U.S. forces in Iraq had risen to about 8,300 – more than double the number in custody in October 2004.⁷⁴ Of the 8,300 detainees, according to Maj. Gen. Miller, about 4,600 were held at Camp Bucca, about 2,000 at Abu Ghraib, and about 1,700 remain in the custody of field commanders.⁷⁵ By March 2005, the total number of detainees had risen again – to at least 8,900 in permanent facilities and 1,300 others held at transient facilities throughout Iraq.⁷⁶ The number of total foreign detainees held in Iraq is approximately 330.⁷⁷ As of December 5, 2004, multi-national forces in Iraq held 65 children under the age of 16.⁷⁸ A spokesman for the multi-national forces indicated that child detainees are separated from the adult population in detention centers unless they have immediate family members detained in the same facility.⁷⁹

Arkan Mohammed Ali is an Iraqi citizen. U.S. military personnel detained him in Iraq over a period of almost one year, from July 2003 until June 2004. During the period of his imprisonment, he was transferred to a number of different detention facilities in Iraq, including a civil defense station and a military prison in Baghdad, and at Abu Ghraib. At least one of the detention centers in which Mr. Al-Hasnawi was detained had a “silent tent” where he says that detainees were prohibited from sleeping. According to Mr. Al-Hasnawi any individual detained in the “silent tent” appearing to fall asleep would be beaten by soldiers. In other instances, Mr. Al-Hasnawi says that he was severely beaten by U.S. officials, subjected to sleep deprivation, and threatened with transfer to Guantanamo, where he was told U.S. soldiers could kill detainees with impunity. Upon his release, Mr. Al-Hasnawi charges that a U.S. official threatened him, telling him that he would never see his family again if he spoke about the conditions of his detention.

Human Rights First Interview with Arkan Mohammed Ali, August 11, 2004.

The legal status accorded to U.S.-held detainees in Iraq has shifted repeatedly over the course of the conflict. In April 2003, shortly after the outset of armed conflict, the Defense Department stated flatly that the Geneva Conventions would govern detainees in Iraq – the Third Geneva Convention applying to prisoners of war and the Fourth Geneva Convention for

the protection of civilians to all others.⁸⁰ In May 2003, the U.S. Government seemed briefly to introduce a new category of detainees – “unlawful combatants” – a term that had been used at times to describe suspected Al Qaeda and Taliban fighters in Afghanistan.⁸¹ But the “unlawful combatant” designation was soon dropped, and on September 16, 2003, Brig. Gen. Janis Karpinski, commander of the 800th Military Police Brigade, announced that more than 4,000 people were being held as “security detainees.” This apparently new category, announced in September 2003, was separate from prisoners of war and criminal detainees. It applied to those believed to pose a threat to coalition forces in Iraq.⁸²

The “security detainee” designation is not mentioned in the Geneva Conventions, or in existing Army regulations. This contributes to the confusing, ambiguous – and in several respects, unlawful – procedures for the treatment and processing of detainees.⁸³ For example, under the Fourth Geneva Convention governing the treatment of civilians by an occupying power, there are two narrow bases on which an occupying power can detain civilians: (1) if it is “necessary, for imperative reasons of security,” or (2) for criminal prosecutions.⁸⁴ But, as the Army Inspector General’s report of July 2004 made clear, some fraction of those detained in Iraq were held for the purpose of intelligence collection – an impermissible basis, standing alone, for depriving Iraqis of liberty under the Geneva regime.⁸⁵ The failure to follow the letter of the law – or indeed any settled policy – governing detainees’ legal status contributed to severe problems of accountability, security, and reporting now well documented in official reports.⁸⁶

The legal status of nearly 4,000 members of the Mujahideen-e-Khlaq (MEK), an Iraqi-based organization seeking to overthrow the government in Iran (and listed as a terrorist organization by the U.S. State Department), was similarly unsettled. In early January 2004, Brigadier General Mark Kimmitt, Deputy Director for Coalition Operations, commented that the status of MEK detainees was being determined,⁸⁷ but when Human Rights First asked the Coalition Press Information Center for information on the detainees’ status six months later in June 2004, the CPIC refused to respond.⁸⁸ Then, in July 2004, immediately before the transfer of sovereignty, the Pentagon informed the MEK detainees that the MEK members were being designated “protected persons,” entitled to rights under the Fourth

Geneva Convention for the protection of civilians.⁸⁹ Since this general determination, however, it is unclear what if any steps have been taken to resolve the status of individual MEK members still held under U.S. control.⁹⁰

The use of novel status designations to avoid Geneva Convention obligations extended beyond military personnel to include CIA officials working in the region. A March 2004 memorandum by Jack L. Goldsmith III, then U.S. Assistant Attorney General, sought to establish a legal basis for the transfer by U.S. military and intelligence officials of certain “protected persons” seized in Iraq to locations outside of Iraq for interrogation.⁹¹ Article 49 of the Fourth Geneva Convention categorically prohibits the forcible transfer or deportation of “protected persons” outside occupied territory.⁹² Nonetheless, CIA officials had begun transferring detainees in April 2003, and reportedly transferred as many as a dozen people out of Iraq.⁹³ Among these was an Iraqi detainee known as Triple X, whose transfer and interrogation was authorized by Secretary of Defense Rumsfeld.⁹⁴ Triple X was eventually returned to Iraq for further detention, but the Red Cross was not informed of his whereabouts for eight months.⁹⁵

The ambiguity about the application of Geneva protections in Iraq extends beyond just a handful of high-value captives. Roughly 330 foreign fighters are currently in U.S. custody in Iraq and “have been deemed by the Justice Department not to be entitled to protections of the Geneva Conventions.”⁹⁶ The foreign detainees, whose numbers swelled by more than 140 after U.S. troops entered Fallujah in early November, may soon “be transferred out of the country for indefinite detention elsewhere.”⁹⁷

If the legal status of U.S.-held detainees in Iraq was unsettled during the invasion and occupation, it remains so following the United States’ June 28, 2004 transfer of sovereignty to the Interim Government of Iraq. The United States today asserts the power to detain individuals in Iraq not as an occupying force, but pursuant to UN Security Council Resolution (SCR 1546), which recognizes Iraq’s request for ongoing security assistance and gives multinational forces “the authority to take all necessary measures to contribute to the maintenance of security . . . in Iraq.”⁹⁸ In a letter to the President of the UN Security Council annexed to the UN Resolution, former Secretary of State Colin Powell seemed to adopt the Geneva Convention standard for detention by an occupying power, writing that the United States would

interpret SCR 1546 as authorizing “internment where . . . necessary for *imperative* reasons of security.”⁹⁹ He added that U.S. and allied forces in Iraq “remain committed at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.”¹⁰⁰

Despite this statement, the thousands still held in Iraq today remain governed by an ambiguous set of legal strictures. Of the approximately 8,000 prisoners of war the CPIC says were processed during the occupation, the CPIC stated in July 2004 that all had either been released, transferred to Iraqi custody to face criminal charges (as in the case of Saddam Hussein and eleven of his senior associates), or reclassified as “security detainees.”¹⁰¹ The United States itself now officially holds only “security detainees”¹⁰² – a category that may refer to those who may be held “for imperative reasons of security” under SCR 1546, but that remains unclear. At a minimum, the United States is bound in its detention operations by relevant U.S. law constraining government conduct, as well as by Common Article 3 of the Geneva Conventions and customary international law (barring torture and humiliation, and requiring a basic level of humane treatment).¹⁰³

Sherzad Kamal Khalid was detained by U.S. forces in Iraq for approximately two months. He was incarcerated in at least two separate detention facilities— at al-Qasr al-Jumhuri and al-Qasr al-Sujood. While in U.S. detention, he developed a stomach infection, which went untreated. Upon his release, he was diagnosed with a stomach illness caused by lack of medical attention to his stomach infection and may need stomach surgery.

Human Rights First Interview with Sherzad Kamal Khalid, August 11, 2004.

During the war and occupation, Red Cross access to detainees held in U.S.-run facilities in Iraq was incomplete. While the United States afforded Red Cross access to some facilities, it hid particular prisoners within those facilities from Red Cross monitors.¹⁰⁴ Some detainees were never registered on official logs as present in detention facilities at all.¹⁰⁵ General Paul J. Kern, commander of U.S. Army Materiel Command, has suggested that this practice of keeping “ghost detainees,” at least once authorized by the Secretary of Defense himself, extended beyond a handful of “high-value” de-

tainees to include as many as 100 held in U.S. custody.¹⁰⁶

Military personnel today deny the existence of ghost detainees in Iraq and state that all detainees in U.S. military custody are fully accounted for.¹⁰⁷ Pentagon officials indicated they were unable to answer whether ghost detainees were still held by other government agencies, such as the CIA.¹⁰⁸ It remains unclear whether the Red Cross has access to all detainees. Late last year, a U.S. public affairs officer with multinational forces in Iraq indicated that the Red Cross still had limited access to detainees in U.S. custody.¹⁰⁹ According to a spokesperson for the multi-national forces in Iraq, Red Cross access to detainees held at facilities under division and brigade command is often limited due to concerns regarding the security of Red Cross officials in specific areas of Iraq.¹¹⁰

Information on detainees held by the United States prior to the transfer of sovereignty on June 28, 2004, was poor – making it extremely difficult for families to find those detained. ‘Capture cards’ containing biographical information, required for prisoners of war under the Third Geneva Convention, were often incomplete, compounding the problems for the Red Cross to effectively notify families.¹¹¹ Official databases of detainees were neither comprehensive nor accurate.¹¹² They often did not contain detainees’ full names; translation rendered some names unrecognizable; and identification numbers for detainees did not correspond with lists of names.¹¹³ Inadequate procedures created situations where detainees could exchange identification tags with others while being moved from a collection point to a detention facility.¹¹⁴ The failure to establish a central location for detainee tracking led to confusion over the location of specific detainees.¹¹⁵

Today, Iraqi families have only limited access to a list of detainees in U.S. custody; the lists are generally not current and names are often wrongly recorded.¹¹⁶ A Coalition Provisional Authority website providing a list of detainees in Arabic ceased operations in June 2004.¹¹⁷ An official with the Multi-National Forces in Iraq (the entity called CJTF-7 before the transfer of sovereignty) indicates a list of detainees is available through the Iraqi Assistance Center, a military-run center in Baghdad providing assistance to Iraqis and non-governmental organizations. But the list of detainees available at the Iraqi Assistance Center’s website is infrequently updated. As of

March 2005, the list had last been updated on October 7, 2004.¹¹⁸

Guantanamo Bay

More is known about the detention facility at the U.S. Naval Base at Guantanamo Bay than virtually any other facility. Detention operations there began in early 2002, when the U.S. military transported to “Gitmo” several hundred individuals seized primarily in Afghanistan and Pakistan.¹¹⁹ Since then, Guantanamo Bay has become home to a rotating, multinational collection of detainees, including not only those seized during the Afghanistan war but also individuals seized in Bosnia, Zambia, Thailand, and elsewhere.¹²⁰

As of March 2005, Guantanamo Bay officially housed “approximately 540 detainees.”¹²¹ According to the Defense Department, 149 detainees have been released since the facility opened, and 65 others have been returned into the “control” of their home country.¹²²

Saifullah Paracha’s family understands that he was brought to Bagram Air Force Base in July 2003. Mr. Paracha is a Pakistani citizen who came to the United States for post-college studies in 1971. He lived in the United States until the mid-1980s, when he and his family decided to move back to Pakistan. According to Mr. Paracha’s wife, Mr. Paracha boarded an Air Thai plane on a business trip to Bangkok last summer, but the driver sent to collect Mr. Paracha at the Bangkok airport reported that Mr. Paracha had not deplaned. Air Thai confirmed that Mr. Paracha boarded the plane. Mr. Paracha’s family received a letter from the Red Cross in August 2003, more than six weeks after he went missing, informing them that he was at Bagram. Recently released government documents indicate that Mr. Paracha was held in isolation for several months while at Bagram.¹²³ The family was given his prisoner number. They received additional letters from him while he was at Bagram. In September 2004, the Red Cross informed Mr. Paracha’s family that he had been transferred from Bagram Air Force Base to Guantanamo Bay.¹²⁴

News reports also indicate the existence of a CIA-run detention facility at Guantanamo Bay.¹²⁵ The CIA facility is reportedly run out of Camp Echo. It is unclear whether the CIA-run facility at Guantanamo continues to be used.¹²⁶ Camp

Echo, until recently, also housed detainees on trial before military commissions under the purview of the Defense Department, including Salim Ahmed Hamdan.¹²⁷ The Defense Department has indicated plans to build a permanent detention facility on Guantanamo.¹²⁸ The new 200-cell facility, called Camp 6, would serve portions of the detainee population currently housed in the makeshift 1000-cell Camp Delta.¹²⁹

After a hiatus of announced prisoner transfers to Guantanamo, the Defense Department announced on September 22, 2004, the arrival of 10 new detainees from Afghanistan.¹³⁰ One of the new arrivals is believed to be Saifullah Paracha, whose family learned of his transfer from Afghanistan to Guantanamo Bay the same day as the Defense Department announcement of the transfer of 10 detainees. Mr. Paracha was originally detained at Bagram Air Force Base, following his July 2003 disappearance en route from Karachi, Pakistan to Bangkok, Thailand.¹³¹ On September 22, 2004, Mr. Paracha's family received a call from the Red Cross informing them that Mr. Paracha had been transferred to Guantanamo Bay.¹³² Mr. Paracha's wife recently filed a habeas corpus petition in U.S. federal court on her husband's behalf challenging his detention.¹³³

In June 2002, I was flown to Guantanamo Bay, Cuba. In Guantanamo Bay, Cuba, I was put in a large prison with many other men. I was held in a single cell in a cellblock of 48 men. . . . In December 2003, I was moved from Camp Delta, and put in a new cell, this cell was enclosed in a house, and from that time I have not been permitted to see the sun or hear other people outside the house or talk with other people. I am alone except for the guard in the house. They allow me to exercise three times per week but only at night and not in the day. They gave me the Quran only but not other books. When I asked why I had been moved to this place no one told me anything until I asked for a translator because I do not speak English and the guard does not speak Arabic. The translator is supposed to come twice a week but the translator did not come except when I demanded urgently. . . . I am alone and I do not talk with anyone in my cell because there is no one else to talk to. . . . Being held in the cell where I am now is very hard, much harder than Camp Delta. One month is like a year here, and I have considered pleading guilty in order to get out of here.

Sworn Affidavit of Salim Ahmed Salim Hamdan,
February 9, 2004, as translated by Dr. Charles P. Schmitz.

The legal status of those held at Guantanamo remains the subject of active review and dispute in an eclectic collection of military and judicial proceedings. Shortly after the first detainees' arrival in 2002, President Bush issued a blanket statement designating those detained at Guantanamo as "enemy" or "unlawful combatants," a status with unclear legal meaning.¹³⁴ In February 2002, a number of family members of the detainees filed petitions for habeas corpus in U.S. federal court, challenging the government's authority to detain prisoners indefinitely at Guantanamo Bay.¹³⁵ In late June 2004, the U.S. Supreme Court ruled that U.S. courts indeed had jurisdiction to review the habeas challenges to the legality of the detentions.¹³⁶ The cases were remanded to the federal district court in Washington, D.C. for consideration of the detainees' claims on the merits.¹³⁷ District courts hearing detainees' habeas petitions reached opposite conclusions about the detainees' rights on the merits.¹³⁸ Those decisions are now on appeal and the cases are certain to be again before the Supreme Court in the coming year. Since the Supreme Court decision, more than 60 detainees have filed habeas corpus petitions in U.S. courts raising similar challenges, arguing in some cases that they are innocent victims, being in the wrong place at the wrong time.¹³⁹

While continuing actively to dispute the detainees' right to full habeas proceedings in the federal courts, the Defense Department responded to the Supreme Court's ruling by creating novel Combatant Status Review Tribunals (CSRTs) at Guantanamo Bay.¹⁴⁰ According to the Defense Department, the CSRTs determine whether detainees are in fact "enemy combatants."¹⁴¹ Once the tribunal reaches a decision, the decisions are then referred to an Admiral for approval. As of March 2005, the tribunal decided on 487 cases and 71 cases are pending review by Rear Admiral J.M. McGarrah.¹⁴² After spending several years in detention, twenty-two individuals so far have been determined not to be enemy combatants through this process.¹⁴³

Third, and separate from the CSRTs, the Pentagon has also launched annual status review tribunals – announced by the Secretary of Defense shortly before the Supreme Court heard oral arguments in the habeas case – to revisit the status each year of those who continue to be held at Guantanamo.¹⁴⁴ Announced in May 2004, the annual review tribunals commenced on December 14, 2004.¹⁴⁵ As of December 20,

2004, the Defense Department had completed four annual review tribunals.¹⁴⁶

Finally, military commission war crimes trials for a handful of detainees – first announced in November 2001 – began proceedings in four cases in August 2004.¹⁴⁷ Human Rights First was permitted to observe proceedings in the cases during the late summer and fall of 2004, before a federal court in Washington, D.C. stayed the trials indefinitely based on the Pentagon's failure to provide Guantanamo detainees Article 5 hearings as required by the Geneva Conventions. The federal court also cited the commissions' failure to comply with U.S. and international fair trial standards.¹⁴⁸ That court's decision, too, is now pending appeal.¹⁴⁹

Dear Mom, Farhat, Muneeza, Mustafa and Zahra, Assalam o Alaikum. I pray to Almighty God for your health and well being. May God always keep you safe and sound. I received your two letters dated Feb. 14 and 27. Happy Valentine's Day to you too. Here all days are same. By blessing of God my health is good, but you don't mention about your health. Please write in detail. Whenever you write place a carbon paper for your own record, I put you (sic) letters in front of me and reply, so you can also refer back to your copies in you (sic) record. I have replies (sic) Eid Activities, you must have received by now. Happy to know about kids are doing fine in their studies and other activities. Zahra's sport noted. It is good to know her participation. Zahra, keep it up! Delays in letters is not in our control, we have to live with it. But now it is getting efficient some what. . . . May God keep you happy healthy, wealthy and long life.

*Allah Hafiz.
Best Regards,
Ma-Assalam*

Letter of March 24, 2003 from **Saifullah Paracha** to his family, as transmitted through the International Committee of the Red Cross.

The existing patchwork of proceedings seems unlikely to produce a resolution of the legal status of the 500-plus Guantanamo detainees anytime soon. In the meantime, the three varieties of military proceedings putatively underway – the CSRTs, annual review tribunals, and military commission trials – fail to bring the United States in line with Geneva Convention requirements, or with the standards set forth by the Supreme Court in its ruling last summer. Under the Geneva Conventions, individuals captured during an armed conflict are either prisoners of

war or civilians; both categories come with specific protections delineated in the Geneva Conventions.¹⁵⁰ Prisoners of war are entitled, for example, to be treated humanely at all times, send and receive letters, and be free from physical or mental torture in the course of interrogations.¹⁵¹ Civilians who engage *directly* in combat but do not follow the laws of war are not entitled to prisoner of war protections, but are entitled to basic protections such as the right to be treated humanely; they may be prosecuted for crimes under the domestic laws of the captor, or for war crimes under international law.¹⁵² If there is any doubt as to the status to which a detainee is entitled, he must be afforded an Article 5 hearing (referring to Article 5 of the Third Geneva Convention) to determine, on an individual basis, the rights to which he is entitled.¹⁵³

None of the detainees currently held at Guantanamo has been afforded a standard Article 5 hearing. The CSRTs, which Human Rights First became the first independent non-governmental organization to observe this past November, are held in many cases almost three years after the initial detention, making it close to impossible for detainees to advance witnesses and evidence in support of their positions. The annual review tribunals recently began meeting. And the military commission trials – which have been plagued by translation problems, the removal of several panel members for the appearance of bias, and unequal rules for prosecution and defense – have now been suspended in part because of the same failure to hold Article 5 hearings.¹⁵⁴

Finally, while the Red Cross continues to be afforded access to those held in military custody at Guantanamo Bay, it has issued at least one confidential report to the U.S. Government expressing serious concerns about interrogation techniques used for some of those detained.¹⁵⁵ According to press accounts of a confidential June 2004 Red Cross report, the Red Cross expressed concern that detainees had been subject to treatment that was “tantamount to torture.” The treatment detailed in press accounts of the confidential report included prolonged solitary confinement, exposure to loud and persistent noise, prolonged cold, and beatings.¹⁵⁶ The account also indicated that medical personnel at Guantanamo aided military interrogations by releasing prisoners' medical records to the interrogators.¹⁵⁷ Immediately following press accounts of the Red Cross report, General Myers, the chairman of the Joint Chiefs of Staff, rejected concerns that interroga-

tion tactics used at Guantanamo were “tantamount to torture.”¹⁵⁸

At the same time, there still does not appear to be an official family notification policy for detainees held at Guantanamo Bay.¹⁵⁹ Rear Admiral J.M. McGarrah, Director of the Combatant Status Review Tribunals at Guantanamo Bay, refused to confirm or deny whether Saifullah Paracha was detained at Guantanamo Bay when asked by Mr. Paracha’s lawyer.¹⁶⁰ The Red Cross has largely played the role of informing families of detainees. In Mr. Paracha’s case, his wife was informed of her husband’s transfer from Bagram Air Force Base to Guantanamo Bay by the Red Cross.¹⁶¹

U.S. policy on communication between family members and detainees has compounded families’ fears for the health of their loved ones. Lawyers for Guantanamo detainees report that communications from detainees to family members take almost six months.¹⁶² Incoming and outgoing mail are reportedly blocked for detainees determined to be recalcitrant.¹⁶³ Family members cite to communication with detainees as essential; the family of Fawzi al-Odah, a detainee at Guantanamo, reports that the messages from their son give them “an indication that [their] son is still alive.”¹⁶⁴

Jordan

Following the release of *Ending Secret Detentions* in June describing a U.S. detention facility in Jordan,¹⁶⁵ a Jordanian government spokeswoman, Asma Khader, flatly denied the report, stating that “[t]here are no American detention centers in Jordan.”¹⁶⁶ CENTCOM likewise denies any knowledge of U.S.-run detention facilities in Jordan,¹⁶⁷ and the CIA has not responded to Human Rights First’s requests that it clarify whether there is a CIA-run facility in Jordan. Despite this, Yossi Melman, a well-known military and security reporter, in an October 2004 article in *Ha’aretz* described the CIA’s holding of 11 high-level Al Qaeda prisoners at a CIA-run interrogation facility in Jordan.¹⁶⁸ And investigative reporters who identified the Al Jafr Prison in the southern Jordanian desert as a CIA interrogation facility continue to stand by their story.¹⁶⁹

Pakistan

Nine months ago, Human Rights First documented the existence of detention facilities in the border region between Pakistan and Af-

ghanistan. At the time, the report identified two facilities — one in Kohat and the other in Alizai — both near the Pakistani city of Peshawar. The Department of Defense and the CIA refused to confirm or deny the existence of these facilities. Yet at least one recently released report from the U.S. Army Criminal Investigation Command (received by Human Rights First in response to a FOIA request), reflects the existence of a U.S. detention facility in Peshawar, Pakistan, as late as July 2002.¹⁷⁰ The report describes an inquiry into the abuse of an Afghan while in U.S. custody in Peshawar. The detainee alleged that he was beaten on his hands, feet and chest by U.S. forces while he was incarcerated in the Peshawar detention facility.¹⁷¹ Army investigators could not subsequently locate the detainee to verify his story, and the investigation was closed as inconclusive.¹⁷²

United States

Of the three known individuals held by the U.S. Government as “enemy combatants” on U.S. soil last June, two remain in military custody at the U.S. Naval Consolidated Brig in Charleston, South Carolina: U.S. citizen Jose Padilla and Qatari national Ali Saleh Kahliah al-Marri.¹⁷³ The third designated “enemy combatant” held in Charleston, U.S. citizen Yaser Esam Hamdi, was released to Saudi Arabia after negotiations between his lawyer and the U.S. Government spurred by a U.S. Supreme Court decision (discussed below) against the Government in late June 2004.¹⁷⁴

Both Mr. Padilla and Mr. al-Marri were abruptly removed from the U.S. criminal justice system — Mr. Padilla from the Metropolitan Correctional Center in New York and Mr. al-Marri from the custody of U.S. Marshals at a federal prison in Peoria, Illinois — to military custody in June 2002 and June 2003, respectively.¹⁷⁵ Jose Padilla was originally provided a public defense attorney, and his case entered into the U.S. criminal justice system. While proceedings were pending, the President declared Mr. Padilla an “enemy combatant” and ordered him transported to a military brig in South Carolina — without informing his lawyer.¹⁷⁶ Mr. al-Marri was originally detained as a material witness, later charged with credit card fraud in Illinois, and declared an “enemy combatant” shortly before his criminal case was to come to trial in U.S. courts.¹⁷⁷

The designation “enemy combatant” continues to have unclear meaning in law. In addressing

the Government's use of the term in the cases of Messrs. Padilla and Hamdi late last June, the Supreme Court stated that "[t]here is some debate as to the proper scope of ['enemy combatant'], and the Government has never provided any court with the full criteria that it uses in classifying individuals as such."¹⁷⁸ In the case of Mr. Padilla, the Supreme Court failed to reach the merits of his claim challenging the legality of his detention; the Court ruled instead on the technical ground that his lawyers should have filed their case in South Carolina, not New York.¹⁷⁹ A similar result was reached in the case of Mr. al-Marri, and his lawyers filed a habeas petition on his behalf in July 2004 in South Carolina.¹⁸⁰ In February 2005, the federal court in South Carolina hearing Mr. Padilla's case ordered the Government to bring criminal charges against Padilla, hold him as a material witness, or release him within 45 days.¹⁸¹

In the case of Mr. Hamdi, the Supreme Court held by a vote of 8-1 that U.S. citizens seized in Afghanistan have some due process rights to challenge the factual basis for their detention before a "neutral" official.¹⁸² The negotiated release of Mr. Hamdi followed soon after this ruling was handed down. Under his signed release agreement, Mr. Hamdi was required to renounce his U.S. citizenship and is restricted from visiting Afghanistan, Pakistan, Iraq, Israel, Syria, the Gaza Strip, or the West Bank.¹⁸³ In addition, he is restricted from traveling to the United States for ten years.¹⁸⁴

Mr. Padilla's ability to communicate with the outside world improved somewhat as his case made its way through the courts. After almost two years in incommunicado detention, Mr. Padilla was granted a visit with his lawyers in March 2004 (following the Supreme Court's decision to hear his case).¹⁸⁵ Since then, Mr. Padilla has had limited meetings with his counsel, and the U.S. Government continues to permit Mr. Padilla access to his lawyers only on a discretionary basis.¹⁸⁶ The government has also afforded the Red Cross access to Mr. Padilla.¹⁸⁷

Following his removal from the criminal justice system, Mr. al-Marri was denied access to his lawyer from May 29, 2003, until October 14, 2004.¹⁸⁸ Mr. al-Marri's lawyer was required to sign an agreement allowing the government to electronically monitor all meetings, review all mail, and restrict telephone access.¹⁸⁹ The first meeting with Mr. al-Marri was electronically monitored, and two military personnel were present in the room the entire time.¹⁹⁰ The Red

Cross has also been granted access to Mr. al-Marri.¹⁹¹

There appears to be no clear procedure for the Government to inform families that their loved one has been designated an "enemy combatant." Both Mr. Padilla's and Mr. al-Marri's lawyers informed their respective families of their detention while they were still in the criminal justice system.¹⁹² As far as lawyers for Mr. Padilla and Mr. al-Marri are aware, the U.S. Government did not officially inform their respective families.¹⁹³

Other Suspected Locations

In June 2004, Human Rights First reported that detainees were suspected to have been held by the United States in locations on the island of Diego Garcia¹⁹⁴ and on U.S. ships, particularly the USS Peleliu and the USS Bataan.¹⁹⁵ In early 2002, at least eight known detainees were held on the USS Bataan.¹⁹⁶ The whereabouts of the majority of those detainees remains unknown. In January 2004, the U.S. Navy seized vessels carrying drugs, including one with fifteen individuals "with possible links to Al Qaeda," and reportedly held "ten of the individuals ... [seized in]... a secure, undisclosed location for further questioning by U.S. officials."¹⁹⁷

Recent news reports support the existence of a CIA-run facility on Diego Garcia.¹⁹⁸ There is also growing evidence of U.S. officials using Thailand as a way station for high-level detainees en route to undisclosed locations.¹⁹⁹ Despite these new reports, the U.S. Government has provided no additional information on these sites since June 2004. The Defense Department continues to evade questions regarding the existence of these facilities. For example, when asked last July following the release of the *Ending Secret Detentions* report whether there were detainees held on Diego Garcia, Lawrence DiRita, Deputy Assistant Secretary of Defense for Public Affairs, stated: "I don't know. I simply don't know."²⁰⁰

III. The Law

[There] may be instances arising in the future where persons are wrongfully detained in places unknown to those who would apply for habeas corpus on their behalf. . . . These dangers may seem unreal in the United States. But the experience of less fortunate countries should serve as a warning.

Ahrens v. Clark, 335 U.S. 188 (1948) (Rutledge, J., dissenting)

In its recently released Country Reports on human rights conditions abroad, the U.S. Department of State once again criticized the practice of holding individuals incommunicado in secret detention facilities.²⁰¹ For a nation founded on the principle of limited government, the reason for the criticism is not difficult to understand. As one federal court put it, rejecting efforts to secretly deport individuals from the United States: “The Executive Branch seeks to uproot people’s lives, outside the public eye, and behind a closed door. Democracies die behind closed doors.”²⁰²

For this reason, the major international treaties that govern the use of detention by the United States recognize the fundamental necessity of maintaining openness in government detention – whether of civilians or of prisoners of war, and whether they are detained in the course of international armed conflict or not. Longstanding U.S. law and policy reflect adherence to these obligations.

Under the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR), which the United States ratified more than a decade ago, makes clear that all state parties have a duty to institute procedures that will minimize the risk of torture.²⁰³ At the top of the list of required procedures are: maintaining officially recognized places of detention, keeping registers of all in custody, and disclosing the names of all individuals detained to their families and friends.²⁰⁴

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. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.²⁰⁵

Such requirements are imposed because prisoners are “particularly vulnerable persons,” who can easily become subject to abuse. In fact, incommunicado detention, especially by denying individuals contact with family and friends, violates the ICCPR obligation to treat prisoners with humanity.²⁰⁶ States are thus required to implement provisions “against incommunicado detention” that deter violations and ensure accountability.²⁰⁷

The Human Rights Committee (HRC), the independent ICCPR monitoring body (whose members are human rights experts elected by state parties), has consistently recognized the import of these obligations. For example, in *El-Megreisi v. Libya*, the HRC found that the Libyan government in detaining an individual for six years, the last three of which were incommunicado and at an unknown location, had violated the ICCPR’s prohibition of torture and its requirement that prisoners be treated with dignity.²⁰⁸ This, despite the fact that the family

knew that the detainee was alive and his wife had been allowed to visit him once. The HRC nonetheless found that the detainee's prolonged incommunicado imprisonment, as well as the government's refusal to disclose El-Megreisi's whereabouts, amounted both to arbitrary detention and to a state failure to minimize the risks of torture.²⁰⁹

Under the Geneva Conventions

The Geneva Conventions of 1949, which the United States has also signed and ratified, are the primary instruments of international humanitarian law protecting all those caught up in the course of armed conflict. The U.S. Government has generally taken the position that the Geneva Conventions apply in the U.S. armed conflict in Iraq.²¹⁰ Since the transfer of power to the Interim Government of Iraq, former Secretary of State Colin Powell has asserted the continuing application of the Geneva Conventions to the actions of U.S. forces in Iraq.²¹¹ Despite this, both conflicting public statements, discussed in Chapter 2, and internal Administration dispute over the applicability of these treaties, have left the Conventions' role in these conflicts deeply unclear.²¹²

The Administration's position regarding the applicability of the Geneva regime in Afghanistan has been even less clear. In press statements in early January 2002, Defense Secretary Donald Rumsfeld stated that as a matter of policy, but not of legal obligation, the United States intended to treat detainees from Afghanistan in a manner "reasonably consistent with the Geneva Conventions," and would "generally" follow the Geneva Conventions, though only to "the extent that they are appropriate," as "technically unlawful combatants do not have any rights under the Geneva Convention."²¹³ Following an internal review of this position at the urging of former Secretary of State Colin Powell (concerned about the potential effect on U.S. forces of a blanket renunciation of the Geneva Conventions), the Administration modified its position slightly.²¹⁴ On February 7, 2002, White House Spokesman Ari Fleischer announced President Bush's decision "that the Geneva Convention applies to members of the Taliban militia, but not to members of the international al-Qaida terrorist network."²¹⁵ Despite the stated application of the Conventions, however, the Administration determined that Taliban fighters were not eligi-

ble for prisoner of war status because the government had violated international humanitarian law; this allegation had never previously stopped the United States from affording enemy government forces prisoner-of-war protections.

The U.S. obligation to record and account for all wartime detainees is clear. Under the Third Geneva Convention, prisoners of war are to be documented, and their whereabouts and health conditions made available to family members and to the country of origin of the prisoner.²¹⁶ The Fourth Geneva Convention (governing the treatment of civilians) establishes virtually identical procedures for the documentation and disclosure of information concerning civilian detainees.²¹⁷ These procedures are meant to ensure that "[i]nternment . . . is not a measure of punishment and so the persons interned must not be held incommunicado."²¹⁸

The disclosure required by the Geneva Conventions is done in the first instance through a system of capture cards. "Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card . . . informing his relatives of his *capture, address and state of health*. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner."²¹⁹ The United States' failure to observe the capture card system in Iraq was the subject of Red Cross criticism in its 2004 report.²²⁰

The Central Agency described in Article 123 is a body meant to be established in a neutral country whose purpose is "to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend."²²¹ The Red Cross has historically established the Central Agency and "[w]henver a conflict has occurred since the Second World War, the International Committee has placed the Agency at the disposal of the belligerents, and the latter have accepted its services."²²²

U.S. Domestic Law and Policy

[T]he Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the

House of Representatives a report for the preceding 12-months containing the following . . . (A) The best estimate of the Secretary of Defense of the total number of detainees in the custody of the Department as of the date of the report. (B) The best estimate of the Secretary of Defense of the total number of detainees released from the custody of the Department during the period covered by the report. (C) An aggregate summary of the number of persons detained as enemy prisoners of war, civilian internees, and unlawful combatants, including information regarding the average length of detention for persons in each category. (D) An aggregate summary of the nationality of persons detained. (E) Aggregate information as to the transfer of detainees to the jurisdiction of other countries, and the countries to which transferred.

Ronald W. Reagan National Defense Authorization Act, Pub. L. No. 108-375, § 1093(c)
Enacted October 28, 2004

U.S. domestic law and policy have long required clear accounting and processing of detainees captured by U.S. Armed Forces, as well as the provision of Red Cross access to prisoners, in order to ensure that U.S. Geneva Convention obligations have been fulfilled. These principles are enshrined in binding military regulations and field manuals dating back half a century. In addition, in response to revelations of a disturbing pattern of noncompliance with these principles in U.S. global detention operations since September 11, the past nine months have seen both Congress and the U.S. Army take steps to reaffirm these obligations. Detainee accounting and reporting requirements are clear.

Army regulations in place before the start of the war in Afghanistan provide detailed procedures for accounting for detainees in U.S. custody. Defense Department Directive 2310.1 – currently in force – affirms the United States’ obligation to comply with the Geneva Conventions and establishes a framework for information disclosure.²²³ Under this Directive, the Secretary of the Army must develop plans for “the treatment, care, accountability, legal status, and administrative procedures to be followed about personnel captured or detained by, or transferred from the care, custody, and control of, the U.S. Military Services.”²²⁴ In par-

ticular, the Secretary of the Army is required to plan and operate a prisoner-of-war and civilian internment information center to comply with the United States’ Geneva Convention obligations (described above), and “serve to account for all persons who pass through the care, custody, and control of the U.S. Military Services.”²²⁵ The Undersecretary of Defense for Policy (a position currently held by Douglas Feith) has “primary staff responsibility” for overseeing the detainee program.²²⁶

To implement its obligations under Article 122 of the Third Geneva Convention, requiring each detaining power to establish a national information bureau,²²⁷ and to fulfill Directive 2310.1, the Army established the National Prisoner of War Information Center (NPWIC).²²⁸ According to binding Army Regulation 190-8, the NPWIC is charged with maintaining records for both POWs and detained civilians.²²⁹ The center functioned during the 1991 Gulf War, and has been used in subsequent U.S. military operations. As an information processor, the NPWIC ensures full accounting of persons who fall into U.S. hands. It does not make decisions regarding whether an individual is entitled to prisoner of war or other legal status.²³⁰

In April 2003, W. Hays Parks, Special Assistant to the Army JAG, maintained that the NPWIC would be employed in Iraq: “Once the theater processing is accomplished, those reports are sent back here to the National Prisoner of War Information Center, which is run under the Army Operations Center. Those lists are all collated, put together and we ensure that we have proper identification, the best information we can get from that. And thereafter, that information is forwarded by the United States government to the International Committee of the Red Cross.”²³¹

But in his investigative report, Major General Antonio Taguba noted that such regulations had not been fully complied with, since the reporting systems – such as the National Detainee Reporting System (NDRS) and the Biometric Automated Toolset System (BATS) – which traditionally provide information to the NPWIC were “underutilized and often [did] not give a ‘real time’ accurate picture of the detainee population due to untimely updating.”²³² An investigative report into prisoner abuse in Iraq by former Secretary of Defense James Schlesinger also found that the failure to implement a comprehensive detainee collection database created a large backlog where “some detainees had been held 90 days before being

interrogated for the first time.²³³ In some cases, the release of innocent detainees took significantly longer because of inadequate accounting systems and general backlogs.²³⁴

More than a year after military operations began in Iraq, on July 16, 2004, the Pentagon announced the creation of an Office of Detainee Affairs (ODA) within the Office of the Undersecretary of Defense for Policy to advise the Secretary of Defense on policy and strategy in the area.²³⁵ The ODA is charged with correcting such basic operational problems for detainees, working with policy makers on torture and interrogation policy, and building relationships with Congress, other countries, and non-governmental organizations. According to an ODA official, the ODA has instituted new policies and procedures for addressing concerns raised in Red Cross reports to higher levels of the Defense Department.²³⁶ The effectiveness of these new procedures is now being tested.

In addition, in the wake of rising counterinsurgency activities in Iraq, the U.S. Army published a new, interim field manual on counterinsurgency operations in October 2004.²³⁷ The interim manual explains that it “establishes doctrine (fundamental principles and [tactics, techniques, and procedures]) for military operations in a counterinsurgency environment. It is based on existing doctrine and lessons learned from recent combat operations.”²³⁸ Among other things, the interim manual affirms the obligation to account for all in U.S. custody – whatever their legal status. “Detaining personnel carries with it the responsibility to guard, protect, and *account* for them.”²³⁹ For this and other purposes, the interim manual specifies as “critical” the need for “[c]learly documenting the details surrounding the initial detention and preserving evidence.”²⁴⁰ Documentation to be recorded must be “detailed and answer the six W’s – who, what, when, where, why, and witnesses.”²⁴¹

Congress also took action in October 2004, enacting as part of the Ronald W. Reagan National Defense Authorization Act provisions requiring the Secretary of Defense to report to Congress on U.S. compliance with these basic standards. The statute requires the Secretary, by the end of March 2005, to prescribe detailed regulations for Defense Department personnel, including contractors, to ensure that all detainees held in Defense Department custody receive humane treatment in accordance with U.S. and international law. Among other things, the regulations must provide for training in the

applicable law of war, including the Geneva Conventions; establish standard operating procedures for detainee treatment; ensure that all detainees receive information in their own language regarding the protections due them under the Geneva Conventions; and provide for periodic announced and unannounced inspections of detention facilities.²⁴² The new law also requires the Secretary to provide to the Senate and House Armed Services Committees, by July 28, 2005, and annually thereafter, a report disclosing investigations into violations of domestic or international law regarding detainee treatment; and general information on foreign national detainees in Defense Department custody, including the numbers, nationalities, and average length of detention of such detainees, as well as information regarding detainees who have been released during the year and detainees transferred to the jurisdiction of other countries.²⁴³

Finally, since 1956, the Army’s field manual has explicitly recognized the Red Cross’s right to detainee information and access, and its special role in ensuring Geneva Conventions compliance. The manual stipulates: “The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.”²⁴⁴ The Navy’s operations handbook likewise authorizes the Red Cross to monitor “the treatment of prisoners of war, interned civilians, and the inhabitants of occupied territory.”²⁴⁵ It describes the Red Cross’s special status and access to detainees:

[The Red Cross’s] principal purpose is to provide protection and assistance to the victims of armed conflict. The Geneva Conventions recognize the special status of the Red Cross and have assigned specific tasks for it to perform, including visiting and interviewing prisoners of war, providing relief to the civilian population of occupied territories, searching for information concerning missing persons, and offering its “good offices” to facilitate the establishment of hospital and safety zones.²⁴⁶

Army regulations make even more explicit the rights of detainees, both civilians and combatants, to contact the Red Cross and ensure adequate access and disclosure. With respect to detained combatants, prisoner representatives have the right to correspond with the Red Cross.²⁴⁷ Similar internee committees representing detained civilians also have rights to unlimited correspondence with the Red Cross.

“Members of the Internee Committee will be accorded postal and telegraphic facilities for communicating with . . . the International Committee of the Red Cross and its Delegates. . . . These communications will be unlimited.”¹²⁴⁸

IV. The Purpose Behind the Law

It will 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.

Former Secretary of State Colin Powell
Internal Memo on Disregarding Geneva Conventions in Afghanistan
January 26, 2002

The U.S. global detention practices described above have undermined both the protection of human rights, and the U.S. interest in national security. The United States has failed to meet its obligation to keep registers of all in custody, and to disclose the names of all individuals detained to their families and friends.²⁴⁹ The United States has also failed to fulfill its obligation under longstanding U.S. policy and law to afford the Red Cross access to all detainees held in the course of armed conflict.²⁵⁰ And the United States has failed to afford every individual in its custody some recognized legal status – some human rights – under law.²⁵¹

The laws requiring these protections were enacted in part to meet essential policy interests – and our failure to adhere to them has jeopardized these interests. The revelations of torture at Abu Ghraib and elsewhere in Iraq and Afghanistan have made clear anew, for example, that unregulated and unmonitored detention and interrogation practices invite torture and abuse. Moreover, as military leaders have emphasized in the wake of these revelations, these abuses put the United States' own forces abroad at greater risk of suffering abuses even more serious than those they already face at the hands of a violent enemy. Perhaps most important to U.S. national security, the secrecy surrounding the U.S. global detention system and the abuses it has produced have also seriously undermined the United States' ability to "win the hearts and minds" of the global community – a goal essential to effective intelligence gathering in the short term, and to defeating terrorism over the long term. This

chapter discusses these policy interests that underlie the law on detention.

Current Practice Sets Conditions for Torture & Abuse

The U.S. government and military capitalizes on the dubious status [as sovereign states] of Afghanistan, Diego Garcia, Guantanamo Bay, Iraq and aircraft carriers, to avoid certain legal questions about rough interrogations. Whatever humanitarian pronouncements a state such as ours may make about torture, states don't perform interrogations, individual people do. What's going to stop an impatient soldier, in a supralegal location, from whacking one nameless, dehumanized shopkeeper among many?

Unnamed U.S. Intelligence Officer, as quoted in
Newsweek
May 17, 2004

When governments cloak detention in a veil of secrecy, by holding prisoners incommunicado or at undisclosed locations, the democratic system of public accountability cannot function. As former UN Special Rapporteur on Torture Nigel Rodley has written, the more hidden detention practices there are, the more likely that "all legal and moral constraint on official behavior [will be] removed."²⁵²

These concerns produced a series of international standards governing detention, expressed in the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). In order to maintain public accountability and minimize the chance for abuse, international law requires families to be notified of both arrest and detainee whereabouts.²⁵³ For the same reason, governments must hold detainees only in publicly recognized detention centers and maintain updated registers of all prisoners.²⁵⁴ By ensuring that state detention practices are subject to public scrutiny, these disclosure requirements constrain state violence and provide basic safeguards for prisoner treatment.

Without these protections, the safety and dignity of prisoners are left exclusively to the discretion of the detaining power – circumstances that have repeatedly produced brutal consequences. For instance, during Saddam Hussein's rule of Iraq, secrecy was an essential component of detention practices. Individuals were arbitrarily arrested; tracing their whereabouts was a virtual impossibility. As Amnesty International reported in 1994: "Usually families of the 'disappeared' remain[ed] ignorant of their fate until they [were] either released or confirmed to have been executed."²⁵⁵ Thus, in the March 1991 uprising after the first Gulf War, "opposition forces broke into prisons and detention centres" across northern and southern Iraq and released hundreds of prisoners "held in secret underground detention centres with no entrance or exit visible."²⁵⁶

The United States' own recent experiences provide a more apt case in point. U.S. detention officials have used various unlawful interrogation techniques on Iraqi, Afghan, and Guantanamo prisoners, including severe beatings, humiliation, nudity, manipulating detainees' diets, imposing prolonged isolation, military dogs for intimidation, exposure to extreme temperatures, sensory deprivation, and forcing detainees to maintain "stress positions" for prolonged periods.²⁵⁷ More than 130 U.S. soldiers have been charged or punished in cases involving abuse of prisoners in Iraq, Afghanistan or Guantanamo Bay, with scores of allegations still under investigation.²⁵⁸ The Red Cross reported in June 2004 that detention and interrogation practices at Guantanamo Bay were "tantamount to torture."²⁵⁹ Through FOIA litigation, the public has gained access to hundreds of documents detailing abuses including

food deprivation, gagging, and sexual abuse from as recently as July 2004.²⁶⁰ In a number of documented instances, joint task forces comprising different military branches and government agencies have threatened military members who sought to report or document abuses.²⁶¹

Policies of secrecy and non-disclosure have also made subsequent investigations into wrong-doing – and efforts to hold violators accountable – more difficult. Investigations into reports of abuse and even deaths of detainees in custody have been scattered and insufficient.²⁶² For example, the *New York Times* reported on two deaths in U.S. custody at Bagram Air Force that occurred in December 2002; according to the *Times*, the Army pathologist's report indicated the cause of death was "homicide," a result of "blunt force injuries to lower extremities complicating coronary artery disease."²⁶³ The U.S. Army Criminal Investigation Command completed its investigations into the deaths almost two years after the deaths occurred.²⁶⁴ The investigation identified 28 military personnel with possible culpability. As of March 2005, only two U.S. soldiers had been charged for the death of the two men in U.S. custody.²⁶⁵ And none of the released investigations has examined the role the CIA played in detention operations.²⁶⁶

The limits on oversight by the Red Cross also help set conditions for torture and abuse. The Red Cross meets with detainees and monitors general prison conditions, bringing to the attention of senior officials conditions or treatment that violate U.S. legal obligations. The Red Cross specifically alerted military authorities in Iraq to the abusive treatment of detainees, indicating the role military intelligence played in the abuses in Abu Ghraib.²⁶⁷ This notification led to some of the military's first disciplinary actions regarding detainee treatment. Limiting Red Cross access to detainees increases the likelihood that mistreatment will continue.

Such experiences underscore the urgency of adhering to disclosure requirements regarding detention practices. They also make the reticence of the United States to disclose detainees' whereabouts or numbers particularly disconcerting. By keeping its practices hidden from view, the United States creates conditions ripe for the torture and abuse now in evidence.

Current Practice Undermines Protections for Americans Abroad

It is critical to realize that the Red Cross and the Geneva Conventions do not endanger American soldiers, they protect them. Our soldiers enter battle with the knowledge that should they be taken prisoner, there are laws intended to protect them and impartial international observers to inquire after them.

Senator John McCain
Wall Street Journal Commentary
 June 1, 2004

The United States' official compliance with the Geneva Conventions since World War II has been animated by several powerful concerns that remain equally important in the struggle against terror. First and foremost is the belief that American observance of rule-of-law protections drives our enemies to reciprocate in their treatment of American troops and civilians caught up in conflicts overseas. As the U.S. Senate recognized in ratifying the Conventions:

If the end result [of ratification] is only to obtain for Americans caught in the maelstrom of war a treatment which is 10 percent less vicious than what they would receive without these conventions, if only a few score of lives are preserved because of the efforts at Geneva, then the patience and laborious work of all who contributed to that goal will not have been in vain.²⁶⁸

Secretary of State John Foster Dulles agreed that American "participation is needed to . . . enable us to invoke [the Geneva Conventions] for the protection of our nationals."²⁶⁹ And Senator Mike Mansfield added that while American "standards are already high:"

The conventions point the way to other governments. Without any real cost to us, acceptance of the standards provided for prisoners of war, civilians, and wounded and sick will insure improvement of the condition of our own people.²⁷⁰

The fundamental self-interest behind ratification of the Geneva Conventions has proven salient in conflicts preceding the "war on terrorism." General Eisenhower, for example, explained that the Western Allies treated German prison-

ers in accordance with the principles of international humanitarian law because "the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing."²⁷¹

During the Vietnam War, North Vietnam publicly asserted that all American prisoners of war were war criminals, and thus not entitled to the protections of the Geneva Conventions.²⁷² Still, the United States applied the Geneva Conventions' principles to all enemy prisoners of war – both North Vietnamese regulars and Viet Cong – in part to try to ensure "reciprocal benefits for American captives."²⁷³ U.S. military experts have made clear their belief that American adherence to the Geneva Conventions in Vietnam saved American lives:

[A]pplying the benefits of the Convention to those combat captives held in South Vietnam did enhance the opportunity for survival of U.S. service members held by the Viet Cong and North Vietnamese. While the enemy never officially acknowledged the applicability of the Geneva Convention, and treatment of American POWs continued to be brutal, more U.S. troops were surviving capture. Gone were the days when an American advisor was beheaded, and his head displayed on a pole by the Viet Cong. On the contrary, the humane treatment afforded Viet Cong and North Vietnamese Army prisoners exerted constant pressure on the enemy to reciprocate, and the American POWs who came home in 1973 survived, at least in part, because of [that].²⁷⁴

The U.S. government's allegiance to basic international law obligations continued during the 1991 Gulf War, in which the U.S. Armed Forces readily afforded full protection under the Geneva Conventions to the more than 86,000 Iraqi prisoners in its custody.²⁷⁵

It is in large measure for the Conventions' role in protecting America's own that many former American prisoners of war today support the U.S. government's adherence to the principles of the Geneva Conventions. As Senator (and former prisoner of war) John McCain has explained:

The Geneva Conventions and the Red Cross were created in response to the stark recognition of the true horrors of unbounded

war. And I thank God for that. I am thankful for those of us whose dignity, health and lives have been protected by the Conventions . . . I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war.²⁷⁶

Even in the context of the recent violence, Senator McCain reaffirmed this belief that our failure to abide by our own obligations puts our troops in danger abroad: “While our intelligence personnel in Abu Ghraib may have believed that they were protecting U.S. lives by roughing up detainees to extract information, they have had the opposite effect. Their actions have increased the danger to American soldiers, in this conflict and in future wars.”²⁷⁷

Commenting on recent events in the “war on terrorism,” former U.S. Ambassador to Vietnam (and former prisoner of war) Pete Peterson agreed, explaining: “There can be no doubt that the Vietnamese while consistently denying any responsibility for carrying out the provisions of the Geneva Accords, nevertheless tended to follow those rules which resulted in many more of us returning home than would have otherwise been the case.”²⁷⁸

Current Practice Undermines U.S. Intelligence and Counterinsurgency Efforts

The abuses at Abu Ghraib are unforgivable not just because they were cruel, but because they set us back. The more a prisoner hates America, the harder he will be to break. The more a population hates America, the less likely its citizens will be to lead us to a suspect.

Chris Mackey (pseudonym), U.S. Army Interrogator in Afghanistan
The Interrogators
2004

The Interim Field Manual on mounting a counterinsurgency published by the U.S. Army in October 2004 highlights the detrimental effect of perceived lawlessness on efforts to quell an insurgency: “Those who conduct counterinsurgency operations while intentionally or

negligently breaking the law defeat their own purpose and lose the confidence and respect of the community in which they operate.”²⁷⁹ Indeed, few would argue that obtaining intelligence is essential to a successful counterinsurgency operation, and cultivating strong ties in a local population helps secure that intelligence.

Yet the effect of the secrecy and uncertainty surrounding U.S. detention operations has been to deeply undermine these efforts. As Brigadier General Mark Kimmitt, spokesman for the U.S. military in Iraq, acknowledged last May: “The evidence of abuse inside Abu Ghraib has shaken public opinion in Iraq to the point where it may be more difficult than ever to secure cooperation against the insurgency, that winning over Iraqis before the planned handover of some sovereign powers next month had been made considerably harder by the photos.”²⁸⁰ For the thousands who have been held in U.S. custody and then released, for their families and communities, the conduct of detention operations is inconsistent with this security interest.

For the detainees themselves, many of whom are eventually released back into the general population, it has been long understood by U.S. courts and psychiatric experts that indefinite detention and prolonged isolation can produce devastating mental and physical health effects. Experience in both criminal punishment and wartime internment over the past two centuries has shown that prolonged solitary confinement can produce confusion, paranoia, and hallucinations, as well as severe agitation and impulsive violence (including suicide) – effects that can be long term.²⁸¹ Uncertainty while awaiting punishment, and the mental anxiety that accompanies an indeterminate fate, can be similarly destructive.²⁸² It was for precisely this reason – the effectiveness of indefinite detention in provoking anxiety and psychiatric instability – that the CIA included them among its principal techniques of coercion in now repudiated manuals on interrogation from the 1960s.²⁸³

Many released detainees claim to continue to suffer from severe psychological symptoms due to their imprisonment.²⁸⁴ Detainees released from Guantanamo Bay also report debilitating physical conditions, including chronic pain in the knees and back due to treatment while in detention.²⁸⁵ Released British detainee, Rhuhel Ahmed, suffers from “permanent deterioration of his eyesight.”²⁸⁶

The effects of such detention on the families of those held have been similarly severe. For example, the *New York Times* reported of some of the families of Iraqi detainees:

Sabrea Kudi cannot find her son. He was taken by American soldiers nearly nine months ago, and there has been no trace of him since. "I'm afraid he's dead," Ms. Kudi said. Lara Waad cannot find her husband. He was arrested in a raid, too. "I had God – and I had him," she said. "Now I am alone." ... Ms. Kudi, whose son, Muhammad, was detained nearly nine months ago, has been to Abu Ghraib more than 20 times. The huge prison is the center of her continuing odyssey through military bases, jails, assistance centers, hospitals and morgues. She said she had been shoved by soldiers and chased by dogs. "If they want to kill me, kill me," Ms. Kudi said. "Just give me my son."²⁸⁷

Indeed, the Army Inspector General concluded late last year that the lack of a central system for detainee information had exacerbated families' difficulty in trying to locate their relatives and hindered U.S. efforts to obtain information from the detainees.²⁸⁸

For a conflict in which winning the trust of the local population is a critical security imperative, the phenomena of prolonged detention and disappeared family members are catastrophic for U.S. security interests.

Current Practice Weakens American "Soft Power" in the World

We are a nation of laws. And to the extent that people say, "Well, America is no longer a nation of laws," that does hurt our reputation. But I think it's an unfair criticism.

President George W. Bush,
quoted in *The Washington Post*
December 21, 2004

The final report of the National Commission on Terrorist Attacks Upon the United States emphasized that military power is only one of a set of critical tools in the nation's toolbox to reduce the chances of more terrorist attacks on U.S. soil.²⁸⁹ Other means – what some have called "soft power" – include diplomatic and economic measures, cultural and educational exchange,

and the ability to credibly leverage moral and popular authority.²⁹⁰ Former Secretaries of State James Baker and Warren Christopher wrote together to highlight the security relevance of these tools in the *Washington Post*: "[A]ctivities such as economic development and democratization abroad are not simply good things to do as members of the international community; they are strategic imperatives that address the link between a failed state and our own country's vulnerability to foreign threats."²⁹¹

And indeed, the United States has devoted substantial resources to so-called public diplomacy in Muslim-majority countries thought to be strategically important in the "war on terrorism." Since September 11, 2001, both the State Department and the U.S. Broadcasting Board of Governors (BBG) – the agency responsible for non-military U.S. international broadcasting – have expanded their efforts in the Middle East. BBG's budget for fiscal year 2004, for example, includes more than \$42 million for radio and television broadcasting to the Middle East. Since 1999, the BBG has reduced the scope of operations of more than 25 language services and reallocated about \$19.7 million toward Central Asia and the Middle East, including \$8 million for Radio Farda service to Iran.²⁹²

The United States' ability to deploy these tools effectively depends critically on visible demonstration that the United States' deeds match its words in supporting democracy and human rights. Responding to the State Department's recently released human rights country reports, China, Russia, Venezuela, and Mexico all questioned the United States' standing to criticize other countries in light of the torture and abuse in U.S. detention facilities.²⁹³ In Indonesia, a spokesman for the Foreign Affairs Ministry stated: "The U.S. government does not have the moral authority to assess or act as a judge of other countries, including Indonesia, on human rights, especially after the abuse scandal at Iraq's Abu Ghraib prison."²⁹⁴ The extent to which the United States' detention practices represent a failure in this regard is also painfully evident when one compares the Administration's statements to revelations about acts of torture by U.S. personnel:

- On March 23, 2003, after American soldiers were captured and abused in Iraq, the United States condemned Iraqi treatment of American prisoners as violating the Geneva Conventions and contrasted it to the United States' own treatment of prisoners it had taken. President Bush

demanded that American prisoners “be treated humanely . . . just like we’re treating the prisoners that we have captured humanely.”²⁹⁵

- On June 26, 2003, President Bush affirmed the United States’ commitment not to torture security suspects or interrogate them in a manner that would constitute “cruel and unusual punishment.”²⁹⁶ In June 2004, the Red Cross reported that U.S. treatment of some detainees at Guantanamo Bay was “tantamount to torture.”²⁹⁷
- On April 28, 2004, Supreme Court Justice Ruth Bader Ginsburg asked U.S. Deputy Solicitor General Paul Clement how the Court could be sure that government interrogators were not torturing detainees in U.S. custody. Clement insisted that the Court would just have to “trust the executive to make the kind of quintessential military judgments that are involved in things like that.”²⁹⁸ That evening, CBS News aired the first photographs of torture from Abu Ghraib.
- On June 22, 2004, then White House Counsel, Alberto Gonzales reiterated at a press conference that “in the war against al Qaeda and its supporters, the United States will follow its treaty obligations and U.S. law, both of which prohibit the use of torture. And this has been firm U.S. policy since the outset of this administration and it remains our policy today.”²⁹⁹ At Mr. Gonzales’ confirmation hearings for his nomination to be Attorney General, he refused to acknowledge that the President was invariably bound by federal laws banning torture and other cruel treatment.³⁰⁰

Unsurprisingly, U.S. detention operations appear to be inflaming those whose aid we most need. As a CATO Institute military analyst explained, “[a]fter Abu Ghraib, [the U.S.] do[es not] have a level of trust and credibility with many people inside the Arabic and Islamic world. This certainly doesn’t help us make our case with them.”³⁰¹ Polling in Iraq last summer confirms this, finding that U.S. detention practices have helped galvanize public opinion in Iraq against U.S. efforts there.³⁰² Muslim clerics have railed against the United States for the abuse of Iraqi captives at Abu Ghraib prison. As one Muslim preacher was quoted saying: “No one can ask them what they are doing, because they are protected by their freedom...

No one can punish them, whether in our country or their country. The worst thing is what was discovered in the course of time: abusing women, children, men, and the old men and women whom they arrested randomly and without any guilt. They expressed the freedom of rape, the freedom of nudity and the freedom of humiliation.”³⁰³ And our enemies are perhaps more emboldened than ever. The Pakistani Sunni extremist group Lashkar-e-Tayba has used the internet to call for sending holy warriors to Iraq to take revenge for the torture at Abu Ghraib.³⁰⁴

Instead of being able to deploy U.S. power to promote democracy abroad, U.S. policies that promote secrecy and lack of accountability have encouraged authoritarian regimes around the globe to commit abuses in the name of counterterrorism – abuses that undermine efforts to promote democracy and human rights. These regimes self-consciously invoke the very language the United States uses to justify such security policies in order to suppress lawful dissent and quell political opposition in their own countries. To cite a few examples:

- In Georgia (where Former President of Georgia, Eduard Shevardnadze stated in December 2002, after coming under criticism for colluding with Russia in the violation of the human rights of Chechens, that “international human rights commitments might become pale in comparison with the importance of the anti-terrorist campaign”);³⁰⁵
- In Colombia (where the government of President Alvaro Uribe has stated that its struggle against guerrilla forces is “working to the same ends” as the U.S.- led global war on terrorism. President Uribe has accused human rights defenders of “serving terrorism and hiding in a cowardly manner behind the human rights flag”);³⁰⁶
- In Malaysia (where in September 2003, Justice Minister Dr. Rais Yatim, justified the detention of more than 100 alleged terrorists held without trial by citing the U.S. government’s detention of individuals at Guantanamo Bay);³⁰⁷
- In Zimbabwe (where President Robert Mugabe, voicing agreement with the Bush Administration’s policies in the “war on terrorism,” declared foreign journalists and others critical of his regime “terrorists” and suppressed their work);³⁰⁸ and

- In Eritrea (where the governing party arrested 11 political opponents, has held them incommunicado and without charge, and defended its actions as being consistent with United States' actions after September 11).³⁰⁹

That we are now used as an example of unchecked government power by the most repressive regimes in the world does not make the United States responsible for those regimes' repression. But it is one of the surest signs that the United States is losing the critical moral high ground that is essential to achieving success against terrorism. And all the advertising dollars in the world will not be able to restore our moral authority once it is lost.

V. Recommendations

The past nine months have revealed a fair amount about U.S. policy and practice of detention and interrogation in the “war on terrorism.” Despite a number of positive steps taken by the U.S. Government, there remain outstanding questions regarding the status of those held in U.S. detention facilities around the world. The U.S. Government needs to provide a baseline accounting to the Red Cross and the families of those detained of the number, nationality, legal status, and general location of all those the United States currently holds. And it must establish the legal basis for continuing to hold the thousands detained, and identify and protect those detainees’ rights under law.

Human Rights First thus calls on the Bush Administration to take the following steps:

1. Disclose to Congress as required under recently enacted legislation the location of all U.S.-controlled detention facilities worldwide, and provide a full and regular accounting of the number of detainees, their nationality, and the legal basis on which they are being held.
2. Order a thorough, comprehensive, and independent investigation of all U.S.-controlled detention facilities, and submit the findings of the investigation to Congress.
3. Take all necessary steps to inform the immediate families of those detained of their loved ones’ capture, location, legal status, and condition of health.
4. Immediately grant the Red Cross access to all detainees being held by the United States in the course of the “global war on terrorism.”
5. Publicly reject suggestions by Administration lawyers that domestic and international prohibitions on torture and cruelty do not apply to the President in the exercise of his commander-in-chief authority.
6. Investigate and prosecute all those who carried out acts of torture and other cruel, inhuman or degrading treatment in violation of U.S. and international law, as well as those officials who ordered, approved or tolerated these acts.
7. Publicly disclose the status of all pending investigations into allegations of mistreatment of detainees and detainee deaths in custody.

IV: Partial List of Letters

Since June 2004

8. January 4, 2005, Human Rights First letter to Gordon England, Secretary of the Navy, re: 'know your rights' habeas notification to Guantanamo detainees.
9. October 5, 2004, Human Rights letter to Gordon England, Secretary of the Navy, re: access to Combatant Status Review Tribunals.
10. July 26, 2004, Human Rights First letter to Paul Wolfowitz, Deputy Secretary of Defense, re: need to address systemic problems at U.S.-controlled detention and interrogation facilities.
11. July 19, 2004, Human Rights First letter to Donald H. Rumsfeld, Secretary of Defense, re: U.S. security detainees, especially ICRC access, family notification and Department of Defense information-sharing with Congress.
12. July 9, 2004, Human Rights First letter to Sen. John Warner, Senate Armed Services Committee, urging conferees to retain amendment to the National Defense Authorization Act reaffirming U.S. commitment to abide by its obligations under the Convention Against Torture.
13. July 9, 2004, Human Rights First letter to Sen. Carl Levin, Senate Armed Services Committee, urging conferees to retain amendment to the National Defense Authorization Act reaffirming U.S. commitment to abide by its obligations under the Convention Against Torture.
14. July 7, 2004, Human Rights First letter to Brigadier General Thomas L. Hemingway, Legal Advisor to the Appointing Authority, Office of Military Commissions, Dep't of Defense, Office of General Counsel at the Pentagon, re: access to observe proposed military commissions at Guantanamo Bay.
15. July 7, 2004, Human Rights First letter to Major General John T. Altenburg, Jr., Appointing Authority, Office of Military Commissions, Dep't of Defense, Office of General Counsel at the Pentagon, re: access to observe proposed military commissions at Guantanamo Bay.
16. July 7, 2004, Human Rights First letter to Major Lt. Colonel John Hall, re: access to observe proposed military commissions at Guantanamo Bay.

Endnotes

¹ For example in January 2004, military personnel denied the Red Cross access to eight prisoners in the interrogation section of the Abu Ghraib detention facility. See Maj. Gen. George R. Fay, AR 15-6 INVESTIGATION OF INTELLIGENCE ACTIVITIES AT ABU GHRAIB, Aug. 25, 2004, at 66 [hereinafter FAY REPORT].

² Carlotta Gall and Mark Lander, *A Nation Challenged: The Captives*, N.Y. TIMES, Jan. 5, 2002, at A5; Roy Gutman, Christopher Dickey and Sami Yousafzai, *Guantanamo Justice?*, NEWSWEEK, July 8, 2003, available at http://www.cageprisoners.com/pr_articles.php?aid=41 (accessed Jan. 20, 2005).

³ Yossi Melman, *CIA Holding Al-Qaida Suspects in Secret Jordanian Lockup*, HAARETZ, Oct. 13, 2004, available at <http://www.informationclearinghouse.info/article7066.htm> (accessed Jan. 19, 2005); David Kaplan and Ilana Ozernoy, *Al Qaeda's Desert Inn*, U.S. NEWS AND WORLD REP., June 2, 2003, at 22-3.

⁴ See Expeditionary Strike Force One, U.S. Naval Special Operations Command Office of Public Affairs, *ESG 1 Strikes From the Sea*, Jan. 5, 2004 (reporting coalition force "takedowns" of vessels carrying drugs, including one with 15 individuals "with possible links to Al Qaeda," and reporting: "Ten of the individuals from . . . two takedowns have been transferred to a secure, undisclosed location for further questioning by U.S. officials."), available at <http://www.navsoc.navy.mil/esg1/pdf/dhowtakedown.pdf> (accessed Jan. 20, 2005); Grant Holloway, *Australia to Question al Qaeda Fighter*, CNN.COM, Dec. 19, 2001, available at <http://www.cnn.com/2001/WORLD/asiapcf/auspac/12/19/aust.talbandit20.12/> (accessed Jan. 20, 2005); *Australian Taliban Fighter Handed Over to U.S. Military Forces in Afghanistan*, ASSOC. PRESS, Dec. 17, 2001, available at <http://multimedia.belointeractive.com/attack/military/1217australia.html> (accessed Jan. 20, 2005); *Walker Arrives in U.S. to Face Charges Thursday*, CNN.COM, Jan. 23, 2002, <http://archives.cnn.com/2002/US/01/23/ret.walker.transfer/> (accessed Jan. 20, 2005).

⁵ Int'l Comm. of the Red Cross, *U.S. Detention Related to the Events of 11 Sept. 2001 and its Aftermath*, Nov. 5, 2004 [hereinafter Red Cross statement], available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwplList454/593709C3D0B1296DC1256F430044235D> (accessed Nov. 16, 2004).

⁶ Memorandum from Secretary of Defense Donald Rumsfeld to All Dep't of Defense Agencies (Sept. 16, 2004), available at <http://www.fas.org/sgp/bush/secdef091604.pdf> (accessed Jan. 20, 2005). The memo acknowledged that information cannot be classified "to conceal violations of law" or "to prevent embarrassment to a person, organization or agency." The Secretary's memorandum followed charges by the Federation of American Scientists that General Taguba's Abu Ghraib report had been inappropriately classified. Letter from Federation of American Scientist to Director J. William Leonard, Information Security Oversight Office (May 6, 2004) available at <http://www.fas.org/sgp/news/2004/05/sa050604.pdf> (accessed Jan. 20, 2005).

⁷ Human Rights First included this list in a request for information sent to Secretary of Defense Donald Rumsfeld on May 13, 2004. Letter from Human Rights First to Secretary of Defense Donald Rumsfeld (May 13, 2004) available at http://www.humanrightsfirst.org/iraq/posner_let_dod_051304.pdf (accessed Jan. 20, 2005). To date, Human Rights First has received no response to its inquiry.

⁸ FINAL REPORT OF THE INDEP. PANEL TO REVIEW DOD DETENTION OPERATIONS, August 2004 [hereinafter SCHLESINGER REPORT], at 11.

⁹ E-mail from LTC Pamela Keeton, Public Affairs Officer, Combined Forces Command to Priti Patel, Human Rights First (Oct. 25, 2004, 10:51 EST) (on file with Human Rights First) [hereinafter Email Interview with CFC-1].

¹⁰ Email Interview with CFC-1, *supra* note 9; E-mail from LTC Michele Dewerth, Combined Forces Command to Priti Patel, Human Rights First (June 9, 2004, 13:36 EST) (on file with Human Rights First). The facility at Kandahar was initially conceived of as a short-term holding facility, but in the immediate aftermath of the war in Afghanistan it became quickly overcrowded. It has since been re-envisioned as an intermediate site, and more recently as a main holding facility.

¹¹ See Dana Priest and Joe Stephens, *Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons is Coming to Light*, WASH. POST, May 11, 2004, at A1; CHRIS MACKEY AND GREG MILLER, THE INTERROGATORS: INSIDE THE SECRET WAR AGAINST AL QAEDA 149 (2004); Human Rights Watch, ENDURING FREEDOM: ABUSES BY U.S. FORCES IN AFGHANISTAN 3, 30-1 (2004) [hereinafter ENDURING FREEDOM REPORT], available at <http://hrw.org/reports/2004/afghanistan0304/afghanistan0304.pdf> (accessed Jan. 20, 2005); Dana Priest and Scott Higham, *At Guantanamo, a Prison Within a Prison*, WASH. POST, Dec. 17,

2004, at A1; Dana Priest, *Long-Term Plan Sought For Terror Suspects*, WASH. POST, Jan. 2, 2005, at A1; Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, WASH. POST, Mar. 3, 2005, at A1.

¹² MACKEY AND MILLER, *supra* note 11, at 149.

¹³ Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, WASH. POST, Mar. 3, 2005, at A1.

¹⁴ *Id.*

¹⁵ Mark Bowden, *The Dark Art of Interrogation*, ATLANTIC MONTHLY, Oct. 2003, at 51.

¹⁶ Email Interview with CFC-1, *supra* note 9; See also, Report of the Independent Expert of the Commission on Human Rights on the Situation of Human Rights in Afghanistan, Sept. 21, 2004, A/59/370, at 9(b) available at http://ap.ohchr.org/documents/dpage_e.aspx?c=2&su=14 (accessed Jan. 20, 2005).

¹⁷ Email Interview with CFC-1, *supra* note 9.

¹⁸ *U.S. Military to Allow Red Cross to Visit Second Afghan Prison*, ASSOC. PRESS, June 9, 2004, available at <http://news.bostonherald.com/international/view.bg?articleid=31223&format=> (accessed Jan. 20, 2005); *Prisoner Abuse Claim Emerges in Afghanistan*, AGENCE FRANCE PRESSE, July 6, 2004, available at <http://www.aljazeera.com/News%20archives/2004%20News%20archives/July/4%20n/Prisoner%20Abuse%20Claim%20Emerges%20in%20Afghanistan.htm> (accessed Nov. 17, 2004); Other news sources list the number of outlying facilities to be 30. See Declan Walsh, *Frustrated US Forces Fail to Win Hearts and Minds: Troops Hunting Taliban Run Into Wall of Silence*, GUARDIAN, Sept. 23, 2004, available at <http://www.guardian.co.uk/afghanistan/story/0,1284,1310564,00.html> (accessed Jan. 20, 2005).

¹⁹ Reports indicate that at least one detainee was killed at the detention facility near Asadabad. See Priest and Stephens, *supra* note 11.

²⁰ DEP'T OF THE ARMY, THE INSPECTOR GEN., DETAINEE OPERATIONS INSPECTION, July 21, 2004 [hereinafter DAIG REPORT], at Appendix C; Carlotta Gall, *Afghan Man's Death at U.S. Outpost is Investigated*, N.Y. TIMES, July 5, 2004, at A9.

²¹ ENDURING FREEDOM REPORT, *supra* note 11, at 3.

²² Larry Neumeister, *Army Destroyed Mock Execution Pictures*, ASSOC. PRESS, Feb. 18, 2005 available at <http://abcnews.go.com/Politics/wireStory?id=511104> (accessed Mar. 7, 2005).

²³ Priest and Stephens, *supra* note 11; John Daniszewski, *Afghans Report Abuse in Jails*, L.A. TIMES, May 23, 2004, at A10; DAIG REPORT, *supra* note 20, at 73; Interview with released Afghan detainee-1 in Kabul, Afghanistan (Aug. 16, 2004) [hereinafter Interview with detainee 1]; Interview with released Afghan detainee-2 in Kabul, Afghanistan (Aug. 18, 2004) [hereinafter Interview with detainee 2]; Interview with released Afghan detainee-3 in Kabul, Afghanistan (Aug. 18, 2004) [hereinafter Interview with detainee 3].

²⁴ See Laura King, *Warlords Battle for Strategic Town, Driving Home Fears of Widespread Factional Fighting*, ASSOC. PRESS, Jan. 31, 2002, available at <http://63.147.65.31/socal/terrorist/0202/01/terror05.asp> (accessed Jan. 20, 2005); *Checkpoint Near US Base Attacked in Eastern Afghanistan*, AGENCE FRANCE PRESSE, March 9, 2002, available at LEXIS, News Library.

²⁵ See generally DAIG REPORT, *supra* note 20, at 28; Interview with detainee 1, *supra* note 23; Interview with detainee 2, *supra* note 23.

²⁶ Interview with detainee 1, *supra* note 23; Interview with detainee 2, *supra* note 23.

²⁷ Interview with detainee 1, *supra* note 23; Interview with detainee 3, *supra* note 23.

²⁸ Telephone Interview with Afghanistan Human Rights Commission, Gardez (Dec. 16, 2004).

²⁹ *Id.*

³⁰ Stephen Graham, *Official: Dead Afghan Wasn't Mistreated*, ASSOC. PRESS, Jan. 3, 2004, available at <http://www.sacbee.com/24hour/world/story/1965967p-9980739c.html> (accessed Jan. 5, 2005).

³¹ *Id.*

³² Telephone Interview with Afghanistan Human Rights Commission, Gardez, Afghanistan (Dec. 16, 2004).

³³ DAIG REPORT, *supra* note 20, at 30.

³⁴ E-mail from LTC Pamela Keeton, Combined Forces Command Press Center to Priti Patel, Human Rights First (Oct. 25, 2004, 11:13 EST) (on file with Human Rights First) [hereinafter Email Interview with CFC-2].

³⁵ E-mail from Dan Philbin, Office of the Ass't Sec'y of Defense, Public Affairs, to Priti Patel, Human Rights First (March 27, 2004, 2:30 EST) (on file with Human Rights First).

³⁶ Telephone Interview with Dep't of Defense, Press Office (June 7, 2004); see also Priest and Stephens, *supra* note 11.

³⁷ Sayed Salahuddin, *U.S. Military to Allow ICRC to Visit Afghan Jail*, REUTERS, June 9, 2004, available at <http://afghannews.net/index.php?action=show&type=news&id=491> (accessed Jan. 21, 2005).

³⁸ Email Interview with CFC-1, *supra* note 9.

³⁹ See *U.S. Taking Fewer Prisoners in Afghanistan*, ASSOC. PRESS, Jan. 3, 2005, available at <http://www.nytimes.com/aponline/international/AP-Afghan-US-Prisoner-Abuse.html?pagewanted=print&position=> (accessed

Jan. 3, 2005); see also E-mail from LTC Pamela Keeton, Public Affairs Officer, Combined Forces Command to Priti Patel, Human Rights First (Jan. 6, 2005 1:00 EST) (on file with Human Rights First).

⁴⁰ Email from Col. Tom MacKenzie, CFC-A Public Affairs Office, to Priti Patel, Human Rights First (March 7, 2005, 9:40 EST) (on file with Human Rights First) [hereinafter Email from MacKenzie]

⁴¹ *Id.*

⁴² DAIG REPORT, *supra* note 20, at 52.

⁴³ *Id.*

⁴⁴ Red Cross statement, *supra* note 5; Email Interview with CFC-2, *supra* note 34.

⁴⁵ Salahuddin, *supra* note 37.

⁴⁶ *Red Cross Afghan Jail Abuse Probe*, BBC NEWS, June 9, 2004, available at http://news.bbc.co.uk/2/hi/south_asia/3791683.stm (accessed Jan. 21, 2005).

⁴⁷ Salahuddin, *supra* note 37.

⁴⁸ Email Interview with CFC-1, *supra* note 9; Email Interview with CFC-2, *supra* note 34.

⁴⁹ DAIG REPORT, *supra* note 20, at 28; Interviews by Human Rights First found mistreatment (including beatings, stress and duress techniques, and sensory deprivation) in 'transient facilities' during first weeks of detention. Interview with detainee-1, *supra* note 23; Interview with detainee-3, *supra* note 23.

⁵⁰ Craig Pyes and Mark Mazzetti, *U.S. Probing Alleged Abuse of Afghans*, L.A. TIMES, Sept. 21, 2004, available at <http://www.commondreams.org/headlines04/0921-27.htm> (accessed Jan. 21, 2005).

⁵¹ DAIG REPORT, *supra* note 20, at 30; Red Cross statement, *supra* note 5.

⁵² Red Cross statement, *supra* note 5.

⁵³ SCHLESINGER REPORT, *supra* note 8, at 80.

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*; Memorandum from President George W. Bush to Vice President Richard Cheney et al. (Feb. 7, 2002), available at http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/dir_20020207_Bush_Det.pdf (accessed Jan. 21, 2005).

⁵⁶ SCHLESINGER REPORT, *supra* note 8, at 81.

⁵⁷ DAIG REPORT, *supra* note 20, at 14; A number of reports indicate that early in the war in Afghanistan, from November 2001 until mid-2002, there were two categories of detainees: Persons under U.S. Control (PUC) and the amorphous "detainee." See MACKAY and MILLER, *supra* note 11, at 250-1; Center for Law and Military Operations, *Legal Lessons Learned From Afghanistan and Iraq*, at 54-5, available at http://www.globalsecurity.org/military/library/report/2004/oef_oif_volume_1.pdf (accessed Jan. 21, 2005).

⁵⁸ DAIG REPORT, *supra* note 20, at 30.

⁵⁹ SCHLESINGER REPORT, *supra* note 8, at 81.

⁶⁰ Email from MacKenzie, *supra* note 40.

⁶¹ *Id.*

⁶² Telephone Interview with Family of Saifullah Paracha (June 9, 2004) [hereinafter "Paracha Interview"]; See generally, ENDURING FREEDOM REPORT, *supra*, note 11.

⁶³ Paracha Interview, *supra* note 62.

⁶⁴ Petition for Writ of Habeas Corpus, *Begg v. Bush, et al.*, No. 04 Civ. 1137, ¶ 24 (D.D.C. filed July 2, 2004), available at <http://www.ccr-ny.org/v2/legal/docs/DC%20Dist%20Begg%20Petition%207%202%2004.pdf> (accessed Jan. 21, 2005).

⁶⁵ Email Interview with CFC-2, *supra* note 34.

⁶⁶ DAIG REPORT, *supra* note 20, at 56; Army Reg. 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, § 1-7(b) (1997) [hereinafter Army Reg.].

⁶⁷ Army Reg, *supra* note 66, at § 1-7(b)(17).

⁶⁸ Telephone Interview with LTC Wallace, CENTCOM Public Affairs Office (Dec. 10, 2004).

⁶⁹ DAIG REPORT, *supra* note 20, at 46, 56-8.

⁷⁰ Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Oct. 20, 2004) [hereinafter Phone Interview with Johnson].

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Bradley Graham, *Offensives Create Surge of Detainees*, WASH. POST, Nov. 27, 2004, at A1.

⁷⁵ *Id.* Eight days after Maj. Gen. Miller's statement, the number of detainees at Camp Bucca and Abu Ghraib rose to 4,900 and 2,200 respectively. Detainees held in the custody of field commanders was 950. Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Dec. 10, 2004).

- ⁷⁶ Edward Wong, *American Jails in Iraq Are Bursting with Detainees*, N.Y. TIMES, Mar. 4, 2005, available at <http://www.nytimes.com/2005/03/04/international/middleeast/04detain.html?pagewanted=all&position=> (accessed March 7, 2005).
- ⁷⁷ *Id.*
- ⁷⁸ Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Dec. 10, 2004).
- ⁷⁹ *Id.*
- ⁸⁰ News Transcript, Dep't of Defense, Briefing on Geneva Convention, EPW's and War Crimes (Apr. 7, 2003), available at http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html (accessed Jan. 21, 2005).
- ⁸¹ News Release, Dep't of Defense, Enemy Prisoner of War Briefing from Kuwait City (May 8, 2003), available at <http://www.defenselink.mil/transcripts/2003/tr20030508-0160.html> (accessed Jan. 21, 2005); see also SCHLESINGER REPORT, *supra* note 8, at 6; Memorandum from President George W. Bush to Vice President Richard Cheney et al., *supra* note 55.
- ⁸² *US Holding 4,000 'Extra' Detainees*, DAWN, Sept. 17, 2003, available at <http://dawn.com/2003/09/17/int6.htm> (accessed Jan. 21, 2005) (Dawn is a leading English language newspaper in Pakistan).
- ⁸³ DAIG REPORT, *supra* note 20, at 45.
- ⁸⁴ See Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 Aug. 1949, 75 U.N.T.S. 135, arts 42, 43, 69-76, 78 [hereinafter Fourth Geneva Convention].
- ⁸⁵ DAIG REPORT, *supra* note 20, at 45-46; News Transcript, Dep't of Defense, Coalition Provisional Authority Briefing from Baghdad (Jan. 8, 2004), available at <http://www.defenselink.mil/transcripts/2004/tr20040108-1121.html> (accessed Jan. 21, 2005).
- ⁸⁶ DAIG REPORT, *supra* note 20, at 45-46.
- ⁸⁷ Douglas Jehl, *U.S. Sees No Basis to Prosecute Iranian Opposition 'Terror' Group Being Held in Iraq*, N.Y. TIMES, July 27, 2004, at A8.
- ⁸⁸ Telephone Interview with Coalition Press Information Center (June 9, 2004).
- ⁸⁹ Jehl, *supra* note 87.
- ⁹⁰ According to the Department of Defense Public Affairs Office, MEK detainees remain generally protected persons. Telephone Interview with Maj. Michael Shavers, Department of Defense, Public Affairs Office (Dec. 9, 2004). There are approximately 3,800 MEK detainees currently held by the United States. Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Dec. 10, 2004).
- ⁹¹ See Memorandum from Assistant Attorney General, Jack L. Goldsmith for Alberto R. Gonzales, Counsel to the President, (Mar. 19, 2004), available at http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/memo_20040319_Golds_Gonz.pdf (accessed Jan. 21, 2005); see also Dana Priest, *Memo Lets CIA Take Detainees Out of Iraq Practice Called Serious Breach of Geneva Conventions*, WASH. POST, Oct. 25, 2004, at A1; Douglas Jehl, *U.S. Action Bars Right of Some Captured in Iraq*, N.Y. TIMES, Oct. 26, 2004, at A1.
- ⁹² Priest, *supra* note 91 ("Some specialists in international law say the opinion amounts to a reinterpretation of one of the most basic rights of Article 49 of the Fourth Geneva Convention, which protects civilians during wartime and occupation, including insurgents who were not part of Iraq's military. The treaty prohibits the "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory...regardless of their motive.")
- ⁹³ Jehl, *supra* note 87.
- ⁹⁴ See SCHLESINGER REPORT, *supra* note 8, at 87; *Rumsfeld Ordered Prisoner Hidden*, CBS NEWS, June 17, 2004, at <http://www.cbsnews.com/stories/2004/06/17/iraq/main624411.shtml> (accessed Jan. 21, 2005); Priest, *supra* note 91.
- ⁹⁵ *Rumsfeld Ordered Prisoner Hidden*, *supra* note 94.
- ⁹⁶ Douglas Jehl and Neil A. Lewis, *U.S. Said to Hold More Foreigners in Iraq Fighting*, N.Y. TIMES, Jan. 8, 2005, at A1.
- ⁹⁷ *Id.*
- ⁹⁸ S.C. Res. 1546, U.N. SCOR, 4987th meeting, ¶ 10, U.N. Doc. S/RES/1546 (2004), available at http://www.un.org/Docs/sc/unsc_resolutions04.html (accessed Jan. 21, 2005) [hereinafter SCR 1546].
- ⁹⁹ *Letter from former Secretary of State Colin Powell to President of the Security Council, Lauro Baja, Jr.*, June 5, 2004, U.N. SCOR, 4987th meeting, Annex, at 10 [hereinafter Letter from Powell] (emphasis added).
- ¹⁰⁰ *Id.*
- ¹⁰¹ E-mail from Lt. Col. Barry Johnson to Ayumi Kusafuka, Human Rights First (July 15, 2004, 19:05 EST).
- ¹⁰² *Id.*
- ¹⁰³ See Fourth Geneva Convention, *supra* note 84; see also Int'l Comm. of the Red Cross, *Iraq Post 28 June 2004: Protecting Persons Deprived of Freedom Remains a Priority* (Aug. 5, 2004), <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwplList74/89060107D77D7299C1256EE7005200E8> (accessed Jan. 21, 2005).

¹⁰⁴ See Maj. Gen. Antonio Taguba, AR 15-6, INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE, Feb. 2004 (stating the “320th MP Battalion... held a handful of ‘ghost detainees’...that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team.”), at ¶ 33, *available at* http://www.humanrightsfirst.org/us_law/800th_MP_Brigade_MASTER14_Mar_04-dc.pdf (accessed Jan. 21, 2005) [hereinafter TAGUBA REPORT]; see also FAY REPORT, *supra* note 1, at 66.

¹⁰⁵ *Rumsfeld Ordered Prisoner Hidden*, *supra* note 94.

¹⁰⁶ *Rumsfeld Ordered Prisoner Hidden*, *supra* note 94; *Investigation of the 205th Military Intelligence Brigade At Abu Ghraib Prison: Hearing Before the Senate Armed Services Comm.*, 108th Cong. (2004) (statement of Gen. Paul Kern, Commanding General, United States Army Material Command).

¹⁰⁷ Press Briefing, Dep’t of Army, Transcript of Detainee Operations Update (Feb. 24, 2005) *available at* http://www4.army.mil/ocpa/read.php?story_id_key=6913 (accessed Mar. 11, 2005).

¹⁰⁸ *Id.*

¹⁰⁹ Interview with Office for Detainee Affairs, in Washington D.C. (Sept. 17, 2004).

¹¹⁰ Phone Interview with Johnson, *supra* note 70.

¹¹¹ Int’l Comm. of the Red Cross, Report On The Treatment By The Coalition Forces Of Prisoners Of War And Other Protected Persons By The Geneva Conventions In Iraq During Arrest, Internment And Interrogation (Feb. 2004), at §1.1.9, *available at* http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.htm (accessed Jan. 21, 2005) [hereinafter ICRC Iraq Report].

¹¹² *Id.*, at § 1.1; DAIG REPORT, *supra* note 20, at 56-58; SCHLESINGER REPORT, *supra* note 8, at 60-61.

¹¹³ Report of High Commissioner: The Present Situation of Human Rights in Iraq (advanced edited version), Submission from the United States of America: Treatment of Persons in Detention in Iraq, Annex II, *available at* <http://www.unhchr.ch/html/hchr/docs/annexII.doc> (accessed Jan. 21, 2005); ICRC Iraq Report, *supra* note 111, at § 1.1; Hannah Allam, *Missing Iraqis Believed to be Lost in Abu Ghraib Prison*, KNIGHT RIDDER, June 11, 2004, *at* <http://www.kansascity.com/mld/kansascity/news/world/8891600.htm?1c> (accessed Jan. 21, 2005).

¹¹⁴ SCHLESINGER REPORT, *supra* note 8, at 60-61.

¹¹⁵ SCHLESINGER REPORT, *supra* note 8, at 60-61, 73; DAIG REPORT, *supra* note 20, at 56-58.

¹¹⁶ Phone Interview with Johnson, *supra* note 70.

¹¹⁷ *Id.*

¹¹⁸ Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Dec. 10, 2004). The list of detainees in coalition facilities can be found at http://www.iac-baghdad.org/documents_english.htm (accessed Mar. 7, 2005).

¹¹⁹ Press Briefing, White House (Jan. 9, 2002), *available at* <http://www.whitehouse.gov/news/releases/2002/01/20020109-5.html> (accessed Jan. 21, 2005).

¹²⁰ See Vikram Dodd, *The UK Businessmen Trapped in Guantánamo*, GUARDIAN, July 11, 2003, *available at* <http://www.guardian.co.uk/alqaida/story/0,12469,995989,00.html> (accessed Jan. 21, 2005); Helen Barnes, *Family Fears for Life of Terror Suspect*, GUARDIAN, July 18, 2003, *available at* <http://www.thisislocalondon.co.uk/news/business/display.var.394421.0.0.php> (accessed Jan. 21, 2005); Michael Isikoff and Mark Hosenball, *America’s Secret Prisoners*, NEWSWEEK ONLINE, June 18, 2003, *available at* <http://www.msnbc.com/news/928428.asp> (accessed Jan. 21, 2005); *Detainees Sue U.S. Government*, ASSOC. PRESS, July 14, 2004, *available at* http://www.heraldsun.news.com.au/common/story_page/0,5478,10134022%255E1702,00.html (accessed Jan. 21, 2005).

¹²¹ News Release, Dep’t of Defense, Detainee Transfer Announced (Mar. 12, 2005), *available at* <http://www.defenselink.mil/releases/2005/nr20050312-2226.html> (accessed Mar. 12, 2005).

¹²² *Id.* Those transferred to the control of other governments include twenty-nine to Pakistan, four to Saudi Arabia, seven to Russia, five to Morocco, nine to Great Britain, seven to France, and one each to Spain, Sweden, Australia, and Kuwait.

¹²³ Memorandum from FBI Counterterrorism, Bagram, Afghanistan to Counterterrorism, Islamabad and New York (May 2, 2004), *available at* http://www.aclu.org/torturefoia/released/t493_3496.pdf (accessed Jan. 21, 2005).

¹²⁴ Letter from Farhat Paracha, *supra* note 132; Petition for Habeas Corpus, Paracha v. Bush at al., No. 04 Civ. 2022 PLF (D.D.C. filed Nov. 17, 2004).

¹²⁵ Priest and Higham, *supra* note 11.

¹²⁶ Dana Priest, *Long-Term Plan Sought For Terror Suspects*, WASH. POST, Jan. 2, 2005, at A1.

¹²⁷ *Hamdan v. Rumsfeld*, No. 04-1519, 2004 U.S. Dist. LEXIS 22724, at *4 (D.D.C. Nov. 8, 2004).

¹²⁸ Carol Rosenberg, *Permanent Jail Set for Guantánamo*, MIAMI HERALD, Dec. 9, 2004, *available at* <http://www.miami.com/mld/miamiherald/news/nation/10372662.htm> (accessed Jan. 21, 2005).

¹²⁹ *Id.*; Dana Priest, *Long-Term Plan Sought For Terror Suspects*, WASH. POST, Jan. 2, 2005, at A1.

¹³⁰ News Release, Dep’t of Defense, Transfer of Detainees Completed (Sept. 22, 2004), *available at* <http://www.defenselink.mil/releases/2004/nr20040922-1310.html> (accessed Jan. 21, 2005).

¹³¹ Petition for Habeas Corpus, Paracha v. Bush et al., No. 04 Civ. 2022 PLF (D.D.C. filed Nov. 17, 2004).

¹³² Letter from Farhat Paracha, wife of Saifullah Paracha to Priti Patel, attorney at Human Rights First (Sept. 22, 2004) [hereinafter Letter from Farhat Paracha] (on file with Human Rights First).

¹³³ Petition for Habeas Corpus, Paracha v. Bush et al., No. 04 Civ. 2022 PLF (D.D.C. filed Nov. 17, 2004).

¹³⁴ News Briefing, Dep't of Defense, Secretary Rumsfeld and Gen. Myers (Jan. 11, 2002), available at http://www.defenselink.mil/news/Jan2002/t01112002_t0111sd.html (accessed Jan. 21, 2005); see also Order of Deputy Secretary of Defense, Administrative Review Procedures for Enemy Combatants in the Control of the Department of Defense at Guantanamo Bay Naval Base, Cuba § 1.A (May 11, 2004), available at <http://www.defenselink.mil/news/May2004/d20040518gtmreview.pdf> (accessed Jan. 21, 2005).

¹³⁵ Rasul v. Bush, 215 F.Supp.2d. 55, 57 (D.D.C. 2002).

¹³⁶ Rasul v. Bush, 542 U.S. ___, 124 S. Ct. 2686, 2699 (2004).

¹³⁷ *Id.* See Khalid et al. v. Bush et al., 04-1142 (Jan. 19, 2005 D.D.C.), available at <http://www.dcd.uscourts.gov/04-1142.pdf> (accessed Jan. 21, 2005) (holding that detainees did not have a substantive right to challenge the legality of their detention, making a technical distinction between the right to file a claim in court and the right to have the claim heard); In Re Guantanamo Detainee Cases, 02-0299 (Jan. 31, 2005), available at <http://www.dcd.uscourts.gov/02-299b.pdf> (accessed Jan. 31, 2005) (holding that the due process requirement of the Fifth Amendment of the U.S. Constitution applies to detainees at Guantanamo Bay and rejecting that the Combatant Status Review Tribunals meet due process requirements.)

¹³⁸ See *In Re Guantanamo Detainees*, No. 02 Civ. 0299 (D.D.C. Jan. 31, 2005); see also Khalid et al v Bush et al, No. 04 Civ. 1142 (D.D.C. Jan. 21, 2005).

¹³⁹ United States District Court for the District of Columbia, Resolution of the Executive Session, September 15, 2004, available at <http://www.dcd.uscourts.gov/GuantanamoResolution.pdf> (accessed Jan. 21, 2005); see also Carol Leonnig, *U.S. Defends Detentions*, WASH. POST, Oct. 5, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A7587-2004Oct5.html> (accessed Jan. 21, 2005); See Petition for a Writ of Habeas Corpus, Boumediene v Bush et al., No. 04 Civ. 1166 (D.D.C. filed July 8, 2004), available at http://www.ccr-ny.org/v2/legal/september_11th/docs/Boumediene%20HabeasPetitionDCDist_7_9_04.pdf (arguing he was an aid worker in Bosnia) (accessed Jan. 21, 2005); *Lawsuits by Foreign Guantanamo Detainees*, ASSOC. PRESS, Dec. 29, 2004, available at http://www.lancasteronline.com/pages/news/ap/4/detainees_lawsuits (accessed Jan. 21, 2005).

¹⁴⁰ News Release, Dep't of Defense, Combatant Status Review Tribunal Order Issued (July 7, 2004) available at <http://www.defenselink.mil/releases/2004/nr20040707-0992.html> (accessed Jan. 21, 2005); Background Briefing, Dep't of Defense, Defense Department Background Briefing on Combatant Status Review Tribunal (July 7, 2004), available at <http://www.defenselink.mil/transcripts/2004/tr20040707-0981.html> (accessed Jan. 21, 2005).

¹⁴¹ News Release, Dept' of Defense, Combatant Status Review Tribunal Order Issued (July 7, 2004), available at <http://www.defenselink.mil/releases/2004/nr20040707-0992.html> (accessed Jan. 21, 2005).

¹⁴² News Release, Dep't of Defense, Combatant Status Review Tribunal Summary (Mar. 2005), available at <http://www.defenselink.mil/news/Mar2005/d20050301csrt.pdf> (accessed Mar. 7, 2005).

¹⁴³ *Id.*

¹⁴⁴ Press Release, Dep't of Defense, Transfer of Detainees Completed (Sept. 18, 2004), available at <http://www.defenselink.mil/releases/2004/nr20040918-1363.html> (accessed Jan. 21, 2005).

¹⁴⁵ *Officials Set Up Review Procedure for Guantanamo Detainees*, ARMS FORCES PRESS SERVICE, May 19, 2004) available at http://www.defenselink.mil/srch/docView?c=A3B245203F9EBEC5FC8C306E4AAF152F&dk=http://www.defenselink.mil/news/May2004/n05192004_200405194.html&q=annual+%3Cand%3E+review+%3Cand%3E+board+%3Cand%3E+guantanamo&p=Simple (accessed Jan. 21, 2005); News Release, Dep't of Defense, Defense Department Conducts First Administrative Review Board (Dec. 14, 2004), available at <http://www.defenselink.mil/cgi-bin/dlprint.cgi?http://www.defenselink.mil/releases/2004/nr20041214-1830.html> (accessed Jan. 21, 2005).

¹⁴⁶ Press Briefing by Secretary of the Navy, Gordon England, Dep't of Defense, Special Defense Dep't Briefing on Status of Military Tribunals (Dec. 20, 2004), available at <http://www.defenselink.mil/transcripts/2004/tr20041220-1841.html> (accessed Jan. 21, 2005).

¹⁴⁷ See Charging Statement for David Matthews Hicks, *United States v. Hicks*, available at http://www.humanrightsfirst.org/us_law/PDF/detainees/hicks-charges.pdf (accessed Jan. 21, 2005); see also Charging Statement for Ibrahim Ahmed Mahmoud al Qosi, *United States v. al Qosi*, available at http://www.humanrightsfirst.org/us_law/PDF/detainees/al_Qosi_referral.pdf (accessed Jan. 21, 2005); Charging Statement for Ali Hamza Ahmad Sulayman al Bahlul, *United States v. al Bahlul*, http://www.humanrightsfirst.org/us_law/PDF/detainees/al_Bahlul_referral.pdf (accessed Jan. 21, 2005); Charging Statement Salim Ahmed Hamdan, *United States v. Hamdan*, <http://www.defenselink.mil/news/Jul2004/d20040714hcc.pdf> (accessed Jan. 21, 2005).

¹⁴⁸ *Hamdan v. Rumsfeld*, No. 04-1519, 2004 U.S. Dist. LEXIS 22724, at *13-53 (D.D.C. Nov. 8, 2004).

¹⁴⁹ On Petition for Writ of Certiorari Before Judgment to the United States Court of Appeals For the District of Columbia Circuit, *Hamdan v. Rumsfeld*, (No. 04 Civ. 702) (U.S. 2004); Order, *Hamdan v. Rumsfeld* (No. 04 Civ. 1519) (D.C. Cir. 2004) (granting the Government's motion for expedition of appeal).

¹⁵⁰ THE GENEVA CONVENTIONS OF AUG. 12, 1949: COMMENTARY IV GENEVA CONVENTION 51 (Jean Pictet ed. 1994).

¹⁵¹ Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949, 75 U.N.T.S. 135, arts. 13, 17, 71, available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68> (accessed Jan. 21, 2005) [hereinafter Third Geneva Convention].

¹⁵² THE GENEVA CONVENTION OF AUG. 12, 1949: COMMENTARY IV, *supra* note 150, at 57-58.

¹⁵³ Third Geneva Convention, *supra* note 151, at art. 5.

¹⁵⁴ See Posting of Deborah Pearlstein, Human Rights First, observations of military commissions, Aug. 23-27, 2004, at http://www.humanrightsfirst.org/us_law/detainees/military_commission_diary.htm (accessed Jan. 21, 2005); see also Posting of Ken Hurwitz, Human Rights First, observations of military commissions, Nov. 1-3, 2004, at http://www.humanrightsfirst.org/us_law/detainees/military_commission_diary_02.htm (accessed Dec. 9, 2004); Posting of Avi Cover, Human Rights First, observations of military commissions, Nov. 8, 2004, at http://www.humanrightsfirst.org/us_law/detainees/military_commission_diary_03.htm#day1 (accessed Jan. 21, 2005); *Hamdan v. Rumsfeld*, No. 04-1519, 2004 U.S. Dist. LEXIS 22724, at *34 (D.D.C. Nov. 8, 2004); See generally, HUMAN RIGHTS FIRST, TRIALS UNDER MILITARY ORDER: A GUIDE TO THE FINAL RULES FOR MILITARY COMMISSIONS (2004), available at http://www.humanrightsfirst.org/us_law/PDF/detainees/trials_under_order0604.pdf (accessed Jan. 21, 2005).

¹⁵⁵ Neil A. Lewis, *Red Cross Finds Detainee Abuse in Guantanamo*, N.Y. TIMES, Nov. 30, 2004, at A1.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Jon Murray, *Gen. Myers: No Torture at Guantanamo Bay*, INDIANAPOLIS STAR, Nov. 30, 2004, available at <http://scoop.agonist.org/story/2004/11/29/215637/05> (accessed Jan. 21, 2005).

¹⁵⁹ Human Rights First was unable to ascertain whether an official family notification policy exists for detainees at Guantanamo despite repeated attempts. Telephone interview with Department of Defense Public Affairs Office (Dec. 9, 2004); Telephone Interview with SOUTHCOM Public Affairs office (Dec. 9, 2004).

¹⁶⁰ Letter from Rear Admiral J.M. McGarrah, Director of Combatant Status Review Tribunal to Gaillard Hunt, lawyer for Saifullah Paracha (Oct. 27, 2004). A copy of the letter is at Petition for Habeas Corpus, *Paracha v. Bush et al.*, No. 04 Civ. 2022 PLF (D.D.C. filed Nov. 17, 2004), at Ex. D.

¹⁶¹ Letter from Farhat Paracha, *supra* note 132.

¹⁶² Interview with attorneys for Guantanamo detainee (December 14, 2004).

¹⁶³ See Interview with Bernhard Docke (Apr. 28, 2004), available at www.cageprisoners.com/interviews.php?aid=2547 (accessed Jan. 21, 2005).

¹⁶⁴ On-line Chat Session with Khalid al-Odah, father of Fawzi al-Odah, Washingtonpost.com, Nov. 22, 2004.

¹⁶⁵ Human Rights First, ENDING SECRET DETENTIONS 16 (June 2004), available at http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf (accessed Dec. 9, 2004); Letter from Farhat Paracha, *supra* note 132.

¹⁶⁶ *Jordan Denies It Has US Prisons On Its Territory*, AGENCE FRANCE PRESSE, June 18, 2004, available at http://www.keepmedia.com/ShowItemDetails.do?item_id=491220&extID=10026 (accessed Jan. 21, 2005).

¹⁶⁷ Telephone Interview with CENTCOM Public Affairs Office, Florida, USA (Nov. 15, 2004).

¹⁶⁸ Melman, *supra* note 3.

¹⁶⁹ David Kaplan and Ilana Ozeroy, *Al Qaeda's Desert Inn*, U.S. NEWS AND WORLD REPORT, June 2, 2003, at 22-23.

¹⁷⁰ Memorandum from Dep't of Army, U.S. Army Crim. Investigation Command, Afghanistan (July 2, 2004), re: CID Report of Investigation – Final (C)/SSI – 0061-2004-CID369-69277-5C1J (on file with Human Rights First)

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See generally Memorandum in Support of Motion for Unmonitored Attorney-Client Meetings and Correspondence Between Petitioner and Counsel, *Al-Marri v. Hanft*, No. 04 Civ. 2257 (D.S.C. Oct. 28, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005); Petitioner's Memorandum of Law in Support of Motion for Summary Judgment, *Padilla v. Hanft*, No. 04 Civ. 2221 (D.S.C. Oct. 20, 2004), available at <http://www.scd.uscourts.gov/Padilla/docket.asp> (accessed Jan. 21, 2005); *Rumsfeld v. Padilla*, 542 U.S. ___, 124 S.Ct. 2711 (2004).

¹⁷⁴ Press Release, Dep't of Defense, Transfer of Detainee Control Completed (Oct. 11, 2004), available at <http://www.defenselink.mil/releases/2004/nr20041011-1371.html> (accessed Jan. 21, 2005).

¹⁷⁵ *Padilla*, 142 S.Ct. at 2730; Petition for Writ of Habeas Corpus, *Al-Marri v. Hanft*, No. 04 Civ. 2257 ¶¶ 28-29 (D.S.C. filed July 8, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005).

¹⁷⁶ *Padilla*, 142 S.Ct. at 2730.

- ¹⁷⁷ Petition for Writ of Habeas Corpus, *Al-Marri v. Hanft*, No. 04 Civ. 2257 ¶¶ 20-29 (D.S.C. filed July 8, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005).
- ¹⁷⁸ *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2639 (2004).
- ¹⁷⁹ *Padilla*, 124 S.Ct. at 2714.
- ¹⁸⁰ See Petition for Writ of Habeas Corpus, *Al-Marri v. Hanft*, No. 04 Civ. 2257 (D.S.C. filed July 8, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005).
- ¹⁸¹ *Padilla v. Hanft*, No. 2:04-2221-26AJ (S.C. Feb. 28, 2005).
- ¹⁸² *Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2634(2004) (O'Connor J., plurality).
- ¹⁸³ Settlement Agreement, *Hamdi v. Rumsfeld*, September 17, 2004, ¶ 10, available at <http://news.findlaw.com/hdocs/docs/hamdi/91704stlagrmt3.html> (accessed Jan. 21, 2005) [hereinafter Settlement Agreement].
- ¹⁸⁴ *Id.* at ¶ 10.
- ¹⁸⁵ Stevenson Swanson, *Padilla Gets to Talk with His Lawyers*, CHICAGO TRIB., Mar. 4, 2004, at 1; Jerry Markon, *Terror Suspect, Attorneys Meet for 1st Time*, WASH. POST, Feb. 4, 2004, at B3.
- ¹⁸⁶ Petition for Writ of Habeas Corpus, *Padilla v. Hanft*, No. 04 Civ. 2221, ¶ 14 (D.S.C. filed July 2, 2004), available at <http://www.scd.uscourts.gov/Padilla/docket.asp> (accessed Jan. 21, 2005).
- ¹⁸⁷ E-mail from Andrew Patel, Lawyer for Jose Padilla, to Human Rights First (June 11, 2004, 10:50 EST) [hereinafter Email from Patel]; E-mail from Mark Berman, Lawyer for Ali Saleh Kahleh Al-Marri, Gibbons Del Deo, to Priti Patel, Human Rights First (Nov. 1, 2004, 16:04 EST) [hereinafter Email from Berman].
- ¹⁸⁸ Petition for Writ of Habeas Corpus, *Al-Marri v. Hanft*, No. 04 Civ. 2257, ¶ 15 (D.S.C. filed July 8, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005); Memorandum in Support of Motion for Unmonitored Attorney-Client Meetings and Correspondence Between Petitioner and Counsel, *Al-Marri v. Hanft*, No. 04 Civ. 2257, 2 (D.S.C. filed Oct. 28, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005).
- ¹⁸⁹ Email from Berman, *supra* note 187.
- ¹⁹⁰ Memorandum in Support of Motion for Unmonitored Attorney-Client Meetings and Correspondence Between Petitioner and Counsel, *Al-Marri v. Hanft*, No. 04 Civ. 2257, 2 (D.S.C. filed Oct. 28, 2004), available at <http://www.scd.uscourts.gov/Noteworthy/AlMarri/docket.asp> (accessed Jan. 21, 2005).
- ¹⁹¹ Email from Patel, *supra* note 187; E-mail from Berman, *supra* note 187.
- ¹⁹² E-mail from Patel, *supra* note 187; E-mail from Mark Berman, Lawyer for Ali Saleh Kahleh Al Marri, Gibbons Del Deo to Priti Patel, Human Rights First (June 11, 2004, 11:21 EST).
- ¹⁹³ Email from Patel, *supra* note 187; E-mail from Mark Berman, Lawyer for Ali Saleh Kahleh Al Marri, Gibbons Del Deo to Priti Patel, Human Rights First (June 11, 2004, 11:21 EST).
- ¹⁹⁴ Gadi Dechter, *Britain: No U.S. Interrogations on Our Soil*, UPI, May 19, 2004, available at LEXIS, News Library; Hansard Parliamentary Debates, Jan. 8, 2003, Col. 1020, available at <http://www.parliament.the-stationery-office.co.uk/pa/ld199900/ldhansrd/pdvn/lds03/text/30108-04.htm> (accessed Jan. 21, 2005); Hansard Parliamentary Debates, March 3, 2003, Col. 603, available at http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030303/debtext/30303-11.htm#30303-11_spnew0 (accessed Jan. 21, 2005); Dana Priest and Barton Gellman, *U.S. Decries Abuse but Defends Interrogations: 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities*, WASH. POST, Dec. 26 2002, at A1; Mark Seddon, *Is There Another Guantanamo Bay on British Soil*, INDEPENDENT (LONDON), Dec. 13, 2003, at 21; Dana Priest, *Long-Term Plan Sought For Terror Suspects*, WASH. POST, Jan. 2, 2005, at A1.
- ¹⁹⁵ See generally, ENDING SECRET DETENTIONS, *supra* note 165; Trista Talton, *Marines Finish Mission, Wait For Next Assignment*, MORNING STAR (Wilmington, NC), Jan. 3, 2002, at 5A; Krista Hughes and Denis Peters, *Aussie Al-Qaeda Fighter Moved To Another Ship*, DAILY TELEGRAPH (AUS.), Jan. 3, 2002, at 11; Government's Opposition to Defendant's Motion to Compel Discovery of Documents in Camera, *U.S. v. Lindh*, No. 02 Crim. 37A, (E.D.Va. filed Mar. 29, 2002), available at <http://news.findlaw.com/cnn/docs/terrorism/us032902opp2licmot.pdf> (accessed Jan. 21, 2005); Grant Holloway, *Australia to Question al Qaeda Fighter*, CNN.COM, Dec. 19, 2001, available at <http://archives.cnn.com/2001/WORLD/asiapcf/auspac/12/19/aust.talbandit20.12/> (accessed Jan. 21, 2005); *Australian Taliban Fighter Handed Over to U.S. Military Forces in Afghanistan*, ASSOC. PRESS, Dec. 17, 2001, available at <http://multimedia.belointeractive.com/attack/military/1217australia.html> (accessed Jan. 21, 2005); *Hicks' Ship Docks In Fremantle On Rest Visit*, AAP NEWSFEED, Jan. 27, 2002, available at LEXIS, News Library; *Walker Arrives In U.S. To Face Charges Thursday*, CNN.COM, Jan. 23, 2002, available at <http://www.cnn.com/2002/US/01/23/ret.walker.transfer/> (accessed Jan. 21, 2005); Dana Priest, *Long-Term Plan Sought For Terror Suspects*, WASH. POST, Jan. 2, 2005, at A1.
- ¹⁹⁶ ENDING SECRET DETENTIONS, *supra* note 165, at 17.
- ¹⁹⁷ Expeditionary Strike Force One, U.S. Naval Special Operations Command Office of Public Affairs, *supra* note 5.
- ¹⁹⁸ Priest and Higham, *supra* note 11.

¹⁹⁹ See *Thailand PM: Hambali Was Plotting*, CBSNEWS.COM, Aug. 16, 2003, at <http://www.cbsnews.com/stories/2003/08/17/attack/main568735.shtml> (accessed Jan. 30, 2005) (reporting the detention of Hambali, the alleged Bali bomber, by CIA and Thai authorities in Thailand and his subsequent transfer to an undisclosed location after at least one day in U.S. custody in Thailand); Don Van Natta, *Questioning Terror Suspects in a Dark and Surreal World*, N.Y. TIMES, Mar. 9, 2003, at A1 (reporting the detention of Ramzi bin al-Shibh in a secret CIA facility in Thailand); Human Rights Watch, THE UNITED STATES' DISAPPEARED: THE CIA'S LONG-TERM GHOST DETAINEES 31 (Oct. 2004), available at <http://www.hrw.org/backgrounders/usa/us1004/us1004.pdf> (accessed Jan. 30, 2005); Saifullah Paracha is believed to have been captured by U.S. officials while flying from Karachi to Bangkok, Thailand.

²⁰⁰ News Release, Dep't of Defense, Defense Department Operational Update Briefing (July 14, 2004), available at <http://www.defenselink.mil/transcripts/2004/tr20040714-1002.html> (accessed Jan. 21, 2005).

²⁰¹ See, e.g., U.S. STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SYRIA (2004), available at <http://www.state.gov/drl/rls/hrrpt/2004/41732.htm> (accessed Mar. 7, 2005); U.S. STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SRI LANKA (2001), available at <http://www.state.gov/r/pa/ei/rls/c2671.htm> (accessed Jan. 20, 2004) (criticizing Sri Lanka for not closing all secret detention centers and for holding individuals for short periods of time in transit locations for interrogation before "transferring them to declared places of detention."); See also U.S. STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SRI LANKA (1993), available at <http://www.state.gov/r/pa/ei/rls/c2671.htm> (accessed Jan. 20, 2004); U.S. STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SRI LANKA (1994), available at <http://www.state.gov/r/pa/ei/rls/c2671.htm> (accessed Jan. 20, 2004).

²⁰² *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002).

²⁰³ International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, art. 7, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), available at http://www.unhchr.ch/html/menus/b/a_ccpr.htm (accessed Jan. 20, 2005) [hereinafter ICCPR] ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

²⁰⁴ UN Human Rights Comm., General Comment No. 20, Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7), at ¶ 11, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) (accessed Jan. 20, 2005) [hereinafter ICCPR General Comment 20].

²⁰⁵ *Id.*

²⁰⁶ *Estrella v. Uruguay*, Comm. No. 74/1980, U.N. GAOR Hum. Rts. Comm., 18th Sess., U.N. Doc. CCPR/C/18/D/74/1980 (1980), at ¶ 9.2, (the HRC held that "prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving mail.")

²⁰⁷ ICCPR General Comment 20, *supra* note 204, at ¶ 11.

²⁰⁸ *El-Megreisi v. Libya*, Comm. No. 440/1990, U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/C/50/D/440/1990 (1994); ICCPR, *supra* note 203, at arts. 7, 10. Paragraph 1 of Article 10 reads, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The HRC has also held that incommunicado detention of longer than eight months amounts to inhumane treatment that breaches Article 7. *Shaw v. Jamaica*, Comm. No. 704/1996, U.N. GAOR Hum. Rts. Comm., 62nd Sess., U.N. Doc. CCPR/C/62/D/704/1996 (1998).

²⁰⁹ Likewise, the HRC has found that because the state had failed to take disclosure measures that would have prevented the disappearance of the victim, the Comm. would assume a strong likelihood that torture or ill-treatment had occurred. "The State party has not denied that Rafael Mojica (a) has in fact disappeared and remains unaccounted for . . . and (b) that his disappearance was caused by individuals belonging to the Government's security forces." *Mojica v. Dominican Republic*, Comm. No. 449/1991, U.N. GAOR Hum. Rts. Comm., 51st Sess., U.N. Doc. CCPR/C/51/D/449/1991 (1994), at ¶ 5.6.

²¹⁰ On April 7, 2003, W. Hays Parks, Special Assistant to the Army JAG, remarked: "We are providing and will continue to provide captured Iraqi combatants with the protections of the Geneva conventions and other pertinent international laws. In addition, arrangements are in place to allow for representatives from the International Committee of the Red Cross to meet [sic] with Iraqi prisoners of war." News Transcript, Dep't of Defense, Briefing on Geneva Convention, EPWs and War Crimes (Apr. 7, 2003), available at http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html (accessed Jan. 20, 2005). More recently, during a background briefing, a senior military official reiterated the applicability of the Conventions. "From the very beginning of the conflict, the Geneva Conventions have been fully applicable. There's never been any dispute about that, never any doubt." News Transcript, Dep't of Defense, Defense Department Background Briefing (May 14, 2004), available at <http://www.defenselink.mil/transcripts/2004/tr20040514-0752.html> (accessed Jan. 20, 2005).

²¹¹ Letter from Colin Powell, *supra* note 99.

²¹² In September 2003, Brig. Gen. Karpinski said that the United States was holding thousands of prisoners in Iraq who did not "fit into any category," and that "We got an order from the secretary of defence (Donald Rumsfeld) to categorise" them. As a result, the label of "security detainee" was created. *U.S. Holding 4,000 'Extra' Detainees*, AGENCE FRANCE-PRESSE, Sept. 16, 2003, available at <http://dawn.com/2003/09/17/int6.htm> (accessed Jan. 15, 2005). According to the AFP, "Asked if they had any rights or had access to their families or legal help while they were being 'secured,' she said: 'It's not that they don't have rights ... They have fewer rights than EPWs (enemy prisoners of war).'" *Id.*

²¹³ News Briefing, Dep't of Defense, Secretary Rumsfeld and Gen. Myers (Jan. 11, 2002), available at http://www.defenselink.mil/transcripts/2002/t01112002_t0111sd.html (accessed Jan. 15, 2005).

²¹⁴ David E. Sanger, *Prisoners Straddle an Ideological Chasm*, N.Y. TIMES, Jan. 27, 2002, at A16.

- ²¹⁵ News Release, U.S. Embassy, Islamabad, Bush Says Geneva Conventions Applies to Taliban not al-Qaida (Feb. 8, 2002), available at <http://usembassy.state.gov/islamabad/www02020803.html> (accessed Jan. 20, 2005).
- ²¹⁶ Third Geneva Convention, *supra* note 151, at art. 70.
- ²¹⁷ Fourth Geneva Convention, *supra* note 84, at art. 106.
- ²¹⁸ THE GENEVA CONVENTIONS OF AUG. 12, 1949: COMMENTARY IV GENEVA CONVENTION 446-47 (Jean Pictet ed. 1994).
- ²¹⁹ Third Geneva Convention, *supra* note 151, at art. 70 (emphasis added).
- ²²⁰ ICRC Iraq Report, *supra*, note 111, at § 1.1.9, (discussing the U.S. government's failure to adequately maintain the system of capture cards).
- ²²¹ Third Geneva Convention, *supra* note 151, art. 143.
- ²²² THE GENEVA CONVENTIONS OF AUG. 12, 1949: COMMENTARY III GENEVA CONVENTION 583 (Jean Pictet ed. 1994).
- ²²³ Dep't of Defense, Directive No. 2310.1, Department of Defense Program for Enemy Prisoners of War and Other Detainees (Aug. 18, 1994), available at <http://www.dtic.mil/whs/directives/corres/text/d23101p.txt> (accessed Jan. 20, 2005).
- ²²⁴ *Id.* at § 4.2.1.
- ²²⁵ *Id.*, at §§ 4.2.3, 4.2.4. The Secretary is also required to report to the Defense Secretary, the Chairman of the Joint Chiefs of Staff, other U.S. Government Agencies, and the ICRC on compliance with the Geneva Conventions. *Id.* at § 4.2.5.
- ²²⁶ *Id.* at § 4.1.1.
- ²²⁷ Third Geneva Convention, *supra* note 151, at art. 122.
- ²²⁸ Dep't of Defense, Directive No. 2310.1, *supra* note 223, at § 4.2.4.
- ²²⁹ Army Reg., *supra* note 66, at § 1-7.
- ²³⁰ *National Prisoner of War Information Center, (NWPIC)*, JUDGE ADVOC. NEWSL., (Staff Judge Advoc., Washington D.C.) Dec. 2001, available at http://sja.hqmc.usmc.mil/newsletter/2001/12_01/12_01.htm#NATIONAL%20PRISONER%20OF%20WAR%20INFORMATION%20CENTER%20 (accessed Jan. 20, 2005).
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- ²³⁹ *Id.* at I-4 (emphasis added)..
- ²⁴⁰ *Id.* at I-3.
- ²⁴¹ *Id.*
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- ²⁴³ *Id.* at § 1093(c), 118 Stat. 2070-71.
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- ²⁴⁶ *Id.*, at 6.2.2.
- ²⁴⁷ Army Reg., *supra* note 66, at § 3-5(d)1(b).
- ²⁴⁸ *Id.*, at § 6.4(f).
- ²⁴⁹ Paracha Interview, *supra* note 62; ENDURING FREEDOM REPORT, *supra*, note 11; Interview with the Wife of Shaker Abdur-Raheem Aamer, a detainee at Guantanamo, available at <http://www.cageprisoners.com/interviews.php?aid=1410>; Interview by CagePrisoners with Wife of Ahcene Zemiri, a detainee at Guantanamo, available at

<http://www.cageprisoners.com/interviews.php?aid=125>; Interview by CagePrisoners with Maha Habib, wife of Guantanamo detainee, *available at* <http://www.cageprisoners.com/interviews.php?aid=1948>; Human Rights First, ASSESSING THE NEW NORMAL: LIBERTY AND SECURITY FOR THE POST-SEPTEMBER 11 UNITED STATES (2003) *available at* http://www.humanrightsfirst.org/us_law/loss/assessing/assessingnewnormal.htm; ICRC Iraq Report, *supra* note 10; Report of High Commissioner: The Present Situation of Human Rights in Iraq (advanced edited version), Submission from the United States of America: Treatment of Persons in Detention in Iraq, Annex II, *available at* <http://www.unhchr.ch/html/hchr/docs/annexII.doc>; Hannah Allam, *Missing Iraqis Believed to be Lost in Abu Ghraib Prison*, KNIGHT RIDDER, June 11, 2004; Interview with CIA Public Affairs Officer (June 11, 2004); Interview with Duty Officer, DOD Press Office (June 11, 2004); Interview with Molly Hale, CIA Public Affairs Officer (June 11, 2004).

²⁵⁰ Fourth Geneva Convention, *supra* note 84, at art. 143; ICCPR, *supra* note 203, at art. 9; ENDURING FREEDOM REPORT, *supra*, note 11, at 51; Red Cross Statement, *supra* note 5; Salahuddin, *supra* note 37; TAGUBA REPORT, *supra*, note 104 (stating the “320th MP Battalion held a handful of ‘ghost detainees’...that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team.”).

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