

REPORT ON TORTURE AND CRUEL, INHUMAN, AND
DEGRADING TREATMENT OF PRISONERS
AT GUANTÁNAMO BAY, CUBA

July 2006

 centerforconstitutionalrights

“You are in a place where there is no law – we are the law.”

U.S. military intelligence officers¹



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PREFACE

The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and International Law.

Since 1966, CCR has been litigating on behalf of victims of torture and arbitrary detention. Our work began on behalf of civil rights activists, and over the last four decades CCR has played an important role in many popular movements for social justice. Through this work, CCR uses litigation proactively to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for constitutional and human rights.

Since the indefinite detentions at Guantánamo began, CCR has been at the forefront of the fight for justice on behalf of the prisoners. In the dark days after September 11, CCR was one of the first to call for humane treatment and due process for those the government had branded “the worst of the worst.” In addition, CCR has consistently challenged the U.S. government’s disregard for the rule of law and its attempts to evade judicial or public review of its detention and interrogation practices used to wage the “war on terror,” both at Guantánamo and abroad.

In February 2002, CCR filed a historic case against the U.S. government on behalf of the prisoners held at Guantánamo, *Rasul v. Bush*. In June 2004, the U.S. Supreme Court issued its landmark decision in *Rasul* upholding the principle that the prisoners held in Guantánamo have the right to challenge the legal and factual basis for their detention in U.S. courts.

In the two years since the Court’s decision, the U.S. government has employed every possible tactic to evade judicial review of its detention and interrogation practices in the “war on terror,” including allegations that U.S. personnel subject prisoners to torture and cruel, inhuman, and degrading treatment. During this time, CCR has responded by creating a network of hundreds of attorneys who work collaboratively to represent indi-



vidual prisoners imprisoned at Guantánamo. This report is a product of our united efforts.

This report uniquely recounts the experiences of prisoners inside Guantánamo Bay prison. Other reports, for the most part, rely on the statements of released prisoners who were willing to tell their stories. Appearing in this report are the accounts of torture and cruel, inhuman, and degrading treatment drawn directly from habeas counsels' unclassified notes. Prisoner statements were made to counsel during in-person interviews conducted at Guantánamo beginning in the fall of 2004. Information provided to counsel through client interviews is presumed secret until cleared. Such information must be provided to a Department of Defense (DoD) privilege team for review. Once cleared, the information carries no restriction. All of the information reported by prisoners in this report has been cleared for publication. Some information has been taken from public sources compiled in a separate report by the law firm of Shearman and Sterling LLP.²

The italicized block passages in this report are excerpts from attorney notes and summaries of prisoner accounts. In some cases, the passages are taken from documents submitted in public court filings. In most cases, the accounts are taken verbatim from attorney summaries; in a few instances, the accounts are paraphrased or combined from more than one document.

To the extent possible, reported incidents have been corroborated by other public, unclassified sources, including government documents. Those corroborated accounts are also cited in this report. Prisoners' statements of abuse generally correspond with descriptions of abuse recorded in government documents released through a Freedom of Information Act suit brought by the American Civil Liberties Union, CCR, Physicians for Human Rights, and Veterans for Peace.³ Sergeant Eric Saar, a former Guantánamo military intelligence linguist, corroborates specific accounts of abuse in his book *Inside the Wire: A Military Intelligence Soldier's Eyewitness Account of Life at Guantánamo*.⁴ Additional corroboration can also be found in the book *For God and Country: Faith and Patriotism Under Fire* written by Captain James Yee, a former Muslim chaplain at Guantánamo who was falsely accused of spying for Al Qaeda and later exonerated.⁵

Finally, given the limitations of access to the base, this report cannot provide a full accounting of the incidents of prisoner abuse at Guantánamo. Rather, by offering examples of the abuses described to attorneys and, in many cases, corroborated by independent government or other documents, this report compels the conclusion that a more detailed investigation must be conducted into the treatment of prisoners at Guantánamo.



INTRODUCTION:

THE ACCOUNTS FROM GUANTÁNAMO

In early 2002, Americans saw photos of hooded, goggled, and shackled men in bright orange jumpsuits kneeling before a wire mesh fence, their postures a grotesque parody of common Muslim prayer positions.

Some of these men had been picked up on or near the battlefields of Afghanistan. Others were turned over to U.S. forces from places far from any battlefield – Bosnia, Zambia, and The Gambia – torn from their families, careers, and communities. They were at Guantánamo Bay Naval Base, Cuba, in a place called Camp X-Ray.⁶

Currently, about 460 prisoners remain at Guantánamo (often referred to by the acronym “GTMO”).⁷ Approximately 200 habeas corpus petitions are pending in the U.S. District Courts and the Court of Appeals for the District of Columbia on behalf of nearly all of the prisoners now held at Guantánamo. Those petitions invoke habeas corpus rights, one of the most fundamental protections afforded by our Anglo-Saxon system of government. The writ of habeas corpus was first codified in the foundational document of English law, the Magna Carta, and later preserved in the U.S. Constitution.⁸ Habeas corpus protects the right of a person not to be detained by the Executive without a lawful basis.⁹ The original right is codified in U.S. statutory law, and it has been broadened to afford prisoners the right to challenge their custody as a violation of the laws, Constitution, or treaties of the United States.¹⁰

Petitions for habeas corpus for Guantánamo prisoners were filed after the Supreme Court’s 2004 decision in *Rasul v. Bush*, which held that aliens in military custody at Guantánamo are entitled to test the lawfulness of their detention in the federal courts.¹¹ In November 2004, District Court Judge Colleen Kollar-Kotelly ruled that counsel for the prisoners could meet with their clients at Guantánamo.¹² Since then, more than 450 pro-

bono attorneys from a wide range of practices have taken days from family and work and spent thousands of dollars to travel to Guantánamo to meet with their clients. Those meetings revealed not only facts suggesting many of the detentions were unlawful, but disturbing information about the conditions under which the prisoners were confined and the treatment to which they were subjected.

“Of the 550 [detainees] that we have, I would say most of them, the majority of them, will either be released or transferred to their own countries . . . Most of these guys weren’t fighting. They were running.”

Brigadier General Martin Lucenti

The U.S. military has openly acknowledged that many of the men at Guantánamo do not belong there. In October 2004, Brigadier General Martin Lucenti, then-deputy commander of the military task force that runs the detention center at Guantánamo, stated: “[o]f the 550 [detainees] that we have, I would say most of them, the majority of them, will either be released or transferred to their own countries . . . Most of these guys weren’t fighting. They were running.”¹³ General Lucenti’s comments reportedly have been

echoed by an active duty Guantánamo interrogator, who stated that “the U.S. is holding dozens of prisoners at the U.S. Navy Base at Guantánamo who have no meaningful connection to al-Qaida or the Taliban and is denying them access to legal representation. . . . There are a large number of people at Guantánamo who shouldn’t be there.”¹⁴ In January 2005, Brigadier



General Jay Hood, then base commander at Guantánamo, admitted, “[s]ometimes, we just didn’t get the right folks.”¹⁵ These statements, and other recent findings,¹⁶ contradict the sweeping pronouncements of high level U.S. officials, including President Bush and Secretary of Defense Donald Rumsfeld, that Guantánamo prisoners are the “worst of the worst.”¹⁷

Both present and former prisoners consistently have reported they suffered systematic abuse at the hands of U.S. military personnel. The government has tried to dismiss prisoner accounts of mistreatment by claiming that prisoners are hardened terrorists, trained to allege torture as part of their indoctrination by Al Qaeda, but these claims are belied by the mounting evidence.¹⁸

Many in the military have objected to decisions that resulted in prisoner abuse. Alberto J. Mora, former General Counsel of the Navy under President George W. Bush, made public a series of strenuous objections he raised within the Administration concerning its departure from both domestic and international law with respect to the detention, treatment, and interrogation of prisoners at Guantánamo.¹⁹ Echoing Mora’s concerns, Major General Jack L. Rives, Deputy Judge Advocate General for the Air Force, stated, “[T]he use of the more extreme interrogation techniques simply is not how the U.S. armed forces have operated in recent history. We have taken the legal and moral ‘high-road’ in the conduct of our military operations regardless of how others may operate.”²⁰

CCR calls for an immediate end to the use of any method or practice in connection with Guantánamo prisoners that constitutes torture. The disturbing accounts set forth in this report support our call for an independent commission to determine the full scope of the mistreatment at Guantánamo that has been relayed by the prisoners to their counsel. There is much at stake here. The world is watching. Many of our allies, as well as an increasing number of current and former U.S. officials, call for Guantánamo to be closed immediately. The facts paint a picture of practices that are not only unlawful and immoral, but are actively eroding our government’s commitment to the rule of law and human

“Sometimes, we just didn’t get the right folks.”

Jay Hood, Commanding General,
Joint Task Force

dignity, and potentially, the safety of all of us. Congress must act now to create an independent bipartisan commission that will engage in credible, effective fact-finding, end the practices of torture and cruel, inhuman and

degrading treatment, hold U.S. officials accountable for any unlawful conduct, make recommendations to guide U.S. officials in the future, and move with due speed to close the prison at Guantánamo.

Mohammed Nechla and five other Bosnians were taken into custody by Bosnian authorities in the Fall of 2001 at the demand of the U.S., based on unsubstantiated allegations by the U.S. embassy that they were part of a group planning an attack on the Embassy. Mohammed Nechla worked with orphans for the Red Crescent Society of the United Arab Emirates in Bihac, Bosnia as a social worker when he was arrested.

*The Bosnian Supreme Court ordered the six released after a three-month investigation, which included searches of documents, residences, and computers, yielded insufficient evidence to detain them.*²¹

On the night of January 18, 2002, Mr. Nechla and the other five Bosnians were taken to the courtyard of the Sarajevo jail. Mr. Nechla was given a document confirming that he was to be released. But he was not set free.

Instead, he was turned over to nine officers/soldiers, including at least one American soldier, in full riot gear. A hood was placed over his head and his wrists were bound extremely tightly. The six were taken to an airport, where they were handed over to Americans. The Americans removed Mr. Nechla’s hood, and placed sensory deprivation goggles on his eyes, a surgical-type mask on his mouth, and headphone-type coverings over his ears.

After spending hours sitting on the ground in sub-freezing temperatures, Mr. Nechla and the others were forced onto a plane. The pain from Mr. Nechla’s wrist restraints was excruciating because they were so tight; he was crying and screaming, “My hands, my hands!” He began to feel numbness in his hands and arms.

He was placed in a sitting position on the floor of the plane. If he slumped or fell, he was slammed back into the sitting

position by soldiers. The flight lasted about six hours. When the plane landed, they were in a place that was extremely cold (-20 C). Mr. Nechla believes it was Turkey or Germany.²² Mr. Nechla heard barking and snarling dogs very close to him, but he could not see because of the goggles. He was terrified that the dogs would bite him or kill him; the soldiers taunted him in the bitter cold.

Before boarding a second plane, Mr. Nechla was given a new article of clothing, but he could not see what it looked like. His hands remained in pain, and the numbness in his arms grew. He was given no food. The plane trip lasted many hours. Immediately before the plane landed at Guantánamo, he was given an apple—the only food he received during his nearly two-day journey.

After the plane landed, he was dragged to a bus, still wearing the goggles, mask, and headphones. The soldiers dragged him by his biceps, gripping him tightly and painfully. The bus had no seats. Soldiers were screaming at him in English, “Don’t move!” “Don’t talk!” repeatedly.

When the bus stopped, Mr. Nechla was pulled down the boarding stairs, again by the upper arms. There were several dogs barking very close to him, and he again feared he would be bitten and attacked. He was dragged to an area of gravel and placed in a painful position, with his legs placed straight out in front of him, shackled, and his wrists still shackled.

Soldiers were screaming insults at him and about his family. A soldier punched him around his head and shoulders. The sun pounded down on him and it was unbearably hot. He fainted. A soldier stepped forward, grabbed him, and shoved him back into the painful seated position. This occurred a few times. He was forced to sit in the intense heat for an extended period. He was having difficulty breathing through the mask and believed he was going to suffocate. He cried out for help. A soldier came and pulled the mask out and let it snap against his face. He began to cry.²³ He had arrived at Guantánamo.

O.K. was 15 years old when he was captured in July 2002.²⁴ Military officials at Bagram treated him roughly, despite his young age and his poor physical condition. He was interrogated repeatedly by military officials, and on many occasions was brought into the interrogation room on a stretcher. On one occasion, interrogators grabbed and pulled him, he fell and cut his left knee. On some occasions, interrogators brought barking dogs into the interrogation room while his head was covered with a bag. On other occasions, interrogators threw cold water on him. They also tied his hands above the door frame and made him dangle painfully for hours at a time. While his wounds were still healing, interrogators made O.K. clean the floors on his hands and knees. They forced him to carry heavy buckets of water, which hurt his left shoulder (where he had been



Second from the left: Mohammed Nechla

shot). When he was able to walk again, interrogators made him pick up trash, then emptied the trash bag and made him pick it up again. During the interrogation, he was not allowed to use the bathroom, and was forced to urinate on himself.

Around March of 2003, O.K. was taken out of his cell at Camp Delta at approximately 12:00 – 1:00 a.m., and taken to an interrogation room. An interrogator told O.K. that his brother was at Guantánamo, and that he should “get ready for a miserable life.” O.K. stated that he would answer the interrogator’s questions if they brought his brother to see him. The interrogator became extremely angry, then called in military police and told them to cuff O.K. to the floor. First they cuffed him with his arms in front of his legs. After approximately half an hour they cuffed him with his arms behind his legs. After another half hour they forced him onto his knees, and cuffed his hands behind his legs. Later still, they forced him on his stomach, bent his knees, and cuffed his hands and feet together. At some point, O.K. urinated on the floor and on himself. Military Police poured pine oil on the floor and on O.K., and then, with O.K. lying on his stomach and his hands and feet cuffed together behind him, the Military Police dragged him back and forth through the mixture of urine and pine oil on the floor. Later, O.K. was put back in his cell, without being allowed a shower or change of clothes. He was not given a change of clothes for two days.²⁵

Mustafa Ait Idir asked to speak with an officer after guards refused to turn down fans that were making prisoners cold. He was alone in his cell at about 2 p.m. when guards entered, saying they wanted to search his cell. He sat on the floor as he was instructed, and his hands were secured behind him.

Suddenly guards grabbed him and picked him up. They began to curse him and to say horrible things to him and about him and his family.

The bunk in that cell was on a 3-foot high steel shelf. The guards banged his body and his head into the steel bunk. The bunk and cell appear to be of a single piece or welded construction – much like a tub and wall unit – but made of steel.

The guards then threw him on the floor and continued to pound him and bang his head and body on the floor.

The guards then picked him up and banged his head on the foot stirrups of the toilet unit in his cell. Mustafa described the toilet as like a Turkish toilet – with a hole beneath it and a sturdy place to place one’s feet and from which to squat. They banged his head onto the foot holding apparatus.

He was taken to solitary confinement after that beating. Officers visited him twice that night to examine the bruises covering much of his upper body.²⁶



Mr. Ait Idir has been in Guantánamo since January 2002; he has not seen his son Muhamed in four years.

I. A LEGAL BLACK HOLE

Who are these men, and why have they been treated this way? What are the implications of the U.S. government's decision to classify them as "enemy combatants?" What has occurred at Guantánamo in the absence of public scrutiny, judicial review, and government accountability? The American people, and the global community, deserve answers to these questions. And answers will only come to light when Congress appoints an independent commission to investigate all accounts of torture and abuse at Guantánamo, to put an end to the practices of torture and cruel, inhuman and degrading treatment, to hold government officials accountable, to close the detention facility at Guantánamo, and to make recommendations to prevent abuses in the future.

A. Enemy Combatants?

The U.S. government claims that Guantánamo prisoners are so-called "enemy combatants," falling outside the historical protections provided individuals in U.S. military custody. A detention and interrogation system based upon ad hoc Executive rules renders prisoners particularly vulnerable to abuse in the absence of clear guidance for interrogators and prison guards. This new category of military prisoners, accompanied by the failure to adhere to traditional and long-established military law, increases the risk that some individuals imprisoned under these conditions may be wrongfully accused of engaging in hostilities against the U.S.

Since the "war on terrorism" began, the U.S. government has insisted that the Executive has the sole authority to determine "enemy combatant" status. What is an "enemy combatant?" The term "enemy combatant," taken literally, has the same meaning as "enemy soldier,"²⁷ but has no previously recognized legal significance. It is not a "term of art" in U.S. law. The U.S. has not used the term in any previous armed conflict. No international treaty, including the Geneva Conventions,

nor any international body uses the term "enemy combatant." "Enemy combatant" is solely a term coined by the U.S. government. The U.S. government's sleight of hand redefinition of the term used to describe captured war prisoners attempted to place Guantánamo prisoners outside the orbit of the laws of war and, more broadly, the rule of law.

Over the past four years, the Administration has modified the definition of "enemy combatant" to suit its objectives; for example, the government told the U.S. Supreme Court in the *Hamdi* case that an enemy combatant was a person fighting U.S. forces in Afghanistan.²⁸ That narrow definition would exclude many of the men at Guantánamo.²⁹

In *Rasul v. Bush*, the Supreme Court rejected the Administration's assertion of unre-

viewable power to designate prisoners as so-called "enemy combatants," although the Executive continues to resist any judicial oversight of its conduct in Guantánamo. In the wake of that decision, Deputy Secretary of Defense Paul Wolfowitz issued an order (Wolfowitz Order) in July 2004 expanding the term enemy combatant to include:

an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the U.S. or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.³⁰

The Wolfowitz definition is subject to criticism, at a minimum, because it fails to describe what it means to "support" Al Qaeda or be an "associated force." Before a federal judge, the U.S. government conceded that, under the Wolfowitz definition, a "little old lady in Switzerland" could be held as an enemy combatant if she – unknowingly – donated funds to a charity that funneled the money to Al Qaeda.³¹ In its efforts to combat terrorism, the U.S. government has claimed the right

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to pick up alleged “enemy combatants” in every corner of the world, on suspicion they are affiliated with a terrorist organization, and then to subject them to indefinite detention without judicial review. This extraordinary exercise of executive power has no precedent in U.S. history.

Though the Administration repeatedly asserts Guantánamo prisoners are hardened terrorists, the accounts provided to habeas counsel and the statements of several military officers suggest that many of the prisoners have no connection to terrorism. Rather, there is evidence that many simply were in the wrong place at the wrong time. The ABC News program *20/20* reported, “Afghanistan was showered with U.S. offers of money for turning in any al Qaeda and Taliban ‘murderers.’”³² Twelve Kuwaiti citizens (who also sought review of their detention before the U.S. Supreme Court with *Rasul*) were serving in humanitarian organizations in Pakistan and Afghanistan when they were picked up by local villagers who sought to recover bounties offered by


the United States.³³ Sami Al-Laithi, an Egyptian, was also sold for a bounty.³⁴

A recent report analyzed declassified records of certain military panels, the Combatant Status Review Tribunals (CSRT), mandated by the Wolfowitz Order to create a vehicle to confirm the prisoners’ status as enemy combatants. Even though the CSRT procedures lacked most fundamental due process protections, the records of those reviews still provide significant data. The report finds that, in fifty-five percent (55%) of the cases, prisoners were determined not to have committed any hostile act against the U.S. or its coalition allies. Eighty-six percent (86%) were arrested by either Pakistan or the Northern Alliance when the United States was paying large bounties for apprehension of suspected Al Qaeda or Taliban supporters.³⁵ Following the 2002 U.S. invasion of Afghanistan, the practice of “selling” foreign nationals arrested in or near Afghanistan to the U.S. military for thousands of dollars in bounty money was commonplace.³⁶

Psychological Operations (PsyOp)
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**GET WEALTH AND
POWER BEYOND
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HELP THE ANTI-
TALIBAN FORCE
RID AFGHANISTAN
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FRONT

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**YOU CAN RECEIVE MILLIONS OF DOLLARS
FOR HELPING THE ANTI-TALIBAN FORCE
CATCH AL-QAIDA AND TALIBAN MURDERERS
THIS IS ENOUGH MONEY TO TAKE CARE OF
YOUR FAMILY, YOUR VILLAGE, YOUR TRIBE
FOR THE REST OF YOUR LIFE -
PAY FOR LIVESTOCK AND DOCTORS
AND SCHOOL BOOKS AND HOUSING FOR
ALL YOUR PEOPLE**

*Pamphlet distributed by
U.S. Forces in Afghanistan*

Senior military officials, like Steve Rodriguez, the Head of Interrogations at Guantánamo, have questioned the intelligence value of the majority of Guantánamo prisoners. In 2004, Rodriguez maintained that “20, 30, 40, maybe even 50 [of the Guantánamo detainees] are providing critical information today.”³⁷ Lt. Col. Anthony Christino stated in 2004 “that there is a continuing intelligence value . . . for [s]omewhere a[round] a few dozen, a few score at the most” of the Guantánamo prisoners.³⁸ At peak, the U.S. imprisoned approximately 660 men at Guantánamo.³⁹

That innocent men may be arbitrarily imprisoned and mistreated at Guantánamo is an especially egregious miscarriage of justice. But even those who may have been involved in armed conflict against the United States or otherwise acted to harm U.S. interests should not be disgraced, tortured, or treated inhumanely. U.S. domestic laws and international treaties to which the U.S. is a signatory absolutely prohibit such treatment.

B. Extreme Interrogation Techniques

The extreme interrogation techniques that led to the abuses at Abu Ghraib were designed and implemented first at Guantánamo and then exported to Iraq.⁴⁰ The government deliberately chose Guantánamo as its prison site because it believed foreign citizens detained there stood beyond the reach of U.S. law, including U.S. international obligations under the Geneva Conventions and other international humanitarian and human rights law. The U.S. government calculated that, at Guantánamo, a prisoner would have no remedy to contest his incarceration in U.S.

courts.⁴¹ Legal memoranda from 2002 reveal that the White House and the DoD wanted to know how far they could “legally” go in interrogating alleged terrorists.⁴² Guantánamo was the perfect location to test these limits.

Prisoners being interrogated at Guantánamo have been:

- held in solitary confinement for periods exceeding a year;
- deprived of sleep for days and weeks and, in at least one case, months;

- exposed to prolonged temperature extremes;
- beaten;
- threatened with transfer to a foreign country, for torture;⁴³
- tortured in foreign countries or at U.S. military bases abroad before transfer to Guantánamo;
- sexually harassed and raped or threatened with rape;
- deprived of medical treatment for serious conditions, or allowed treatment only on the condition that they “cooperate” with interrogators; and
- routinely “short-shackled” (wrists and ankles bound together and to the floor) for hours and even days during interrogations.

These aggressive interrogation techniques, when coupled with the stress of indefinite, arbitrary detention, have caused the prisoners tremendous psychological and physical injury. At least one prisoner nearly died during an interrogation.⁴⁴

Most prisoners live in conditions that are debilitating. Many have serious, untreated medical problems, often caused by living conditions or physical punishment. Some have lost their sanity. Numerous prisoners have tried to commit suicide, some multiple times, one in October 2005 during a visit by his lawyer.⁴⁵

Prisoners have undertaken several hunger strikes to protest conditions at Guantánamo.⁴⁶ The longest and most serious hunger strike began in August 2005 and resulted in the military intranasally force-feeding over thirty prisoners.⁴⁷ When several hunger strikers reached a life-threatening stage, the military began using an “emergency restraint chair” during force-feedings.⁴⁸

On June 10, 2006, three prisoners were found dead in their cells. A hunger strike is underway in the prison, as this report goes to press.

The accounts collected in this report lead inexorably to only one conclusion: torture and cruel, inhuman, and degrading treatment is being

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Lt. Col. Anthony Christino

practiced routinely at the Guantánamo prison. To ensure that these practices are prohibited, the U.S. government must undertake a detailed, independent, and transparent investigation into all interrogation policies and practices in the war on terror, comprehensively collect and analyze the data on the incidents and nature of abusive practices, and act to prevent such actions from occurring in the future. Finally, it must end the practice of arbitrary, indefinite detention at Guantánamo.

On one occasion, while in the interrogation room, an MP trained a rifle directly on Mr. Al Dossari at close range, despite the fact that Mr. Al Dossari was shackled to the floor. On another occasion, an interrogator in civilian clothing threatened to send Mr. Al Dossari to a prison with murderers, where he said Mr. Al Dossari would be raped.

At a subsequent interrogation, Mr. Al Dossari was told that it was known that he was a low-level al Qaeda soldier and that if he admitted this, he would spend five to ten years in prison. If he did not confess, Mr. Al Dossari was told, he would spend 50 years or perhaps the rest of his life in jail.

During another interrogation, a woman Mr. Al Dossari believes was of Egyptian origin banged Mr. Al Dossari's head on a table. Mr. Al Dossari was shackled by a chain around his waist. The chain was pulled so tight that it caused him to vomit.⁴⁹

II. BEYOND THE LAW: GUANTÁNAMO, THE GENEVA CONVENTIONS, AND THE WAR CRIMES ACT

A. Abandoning the Geneva Conventions and International Humanitarian and Human Rights Law

Guantánamo has been a lightning rod for international and domestic criticism in large part because of the U.S. government's assertion that Guantánamo is not only beyond the reach of U.S. law, but that prisoners

The decision to strip Guantánamo prisoners of the protections of the Geneva Conventions laid the foundation for a prison beyond the law.

captured in the “war on terrorism” are not protected by the Geneva Conventions or any other international humanitarian or human rights law.

The decision to strip Guantánamo prisoners of the protections of the Geneva Conventions laid the

foundation for a prison beyond the law. The U.S. government intentionally pursued this course of action in order to avoid the specific protections those treaties afford. To understand why, we first have to understand what the Conventions are and what they do.

The four Geneva Conventions are among the most universal treaties in all of international law.⁵⁰ They derive from principles that constrain the conduct of belligerents to an armed conflict and make clear the duties that those belligerents owe to anyone “outside of combat,” whether they are civilians or prisoners of war.⁵¹ The four Geneva Conventions codify the protection of the customary international “laws of war.” The human rights component of this body of law is termed “international humanitarian law.”⁵² Parties to armed conflicts, including both state and nonstate actors, have observed the Geneva Conventions and the protections they codify for the past fifty years.

The Third Convention expressly guarantees POWs charged with crimes fair trial rights. These fair trial guarantees are considered so essential that “willfully depriving a [POW] of the rights of a fair and regular trial prescribed in this Convention” is deemed a “grave breach” of the convention – i.e., a war crime.

The Third Convention, addressing prisoner of war rights, and the Fourth Convention addressing civilian rights, contain numerous protections for persons captured during military hostilities. The Third Convention guarantees that members of the armed forces of a state party to an international armed conflict and members of affiliated militias are entitled to prisoner of war (POW) status upon capture. One of the central protections provided by the Third Convention is a detainee's right to be treated as a POW unless and until his status or innocence can be determined by a “competent tribunal.”⁵³ The

Third Convention also guarantees other basic dignities and fundamental procedural rights, including rights to (1) humane treatment including protection from violence, intimidation, insults, public curiosity, and coercive interrogation tactics;⁵⁴ (2) due process if subject to disciplinary or punitive sanctions;⁵⁵ (3) communication with protective agencies;⁵⁶ (4) proper medical attention.⁵⁷

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The Fourth Convention provides similar, and even more protective, guarantees, including fair trial protections to “protected persons.” “Protected persons” under the Fourth Convention include all those “in the hands of a Party to the conflict” who are not prisoners of war or wounded or sick.⁵⁹ This includes not only civilian bystanders to the conflict, but even those individuals who may be “definitely suspected of or engaged in activities hostile to the security of the State.”⁶⁰

Article 17 of the Third Convention illustrates how parties to the Convention intended to ensure a baseline of humane treatment for all persons even during times of international armed conflict. While Article 17 limits the manner and extent of interrogations of prisoners of war,⁶¹ it does not prohibit interrogation altogether. Rather, Article 17 forbids the use of “physical or mental torture” and “any other form of coercion” to secure “information of any kind whatever.”⁶² A country detaining prisoners of war is prohibited from threatening, insulting, or exposing to unpleasant or disadvantageous treatment of any kind “prisoners of war who refuse to answer” questions.⁶³

In addition to restricting the treatment of prisoners during interrogations, the Geneva Conventions obligate the U.S. to provide humane conditions of confinement. The majority of Third Convention provisions (such as Article 17) apply technically only to prisoners of war.

The provisions of the Fourth Convention, however, cover all other persons who may be captured during an armed conflict and provide even greater protections.

Common Article 3 (CA3) (so-called because it is common to all four Geneva Conventions) establishes a baseline of humane treatment for prisoners, civilians, and the sick and wounded seized during any form of armed conflict involving state or nonstate actors.⁶⁴ CA3 protects all persons, no matter who they are, to ensure they are treated humanely. It prohibits:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- outrages upon personal dignity, in particular, humiliating and degrading treatment;
- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.⁶⁵

Finally, CA3 requires that the “wounded and sick shall be collected and cared for...”⁶⁶

Along with the safeguards embodied in the Geneva Conventions, the Guantánamo prisoners, like other captured prisoners, are the beneficiaries of the protections of all other international human rights treaties to which the United States is a signatory,⁶⁷ as well as the protections of customary international law.

The decision to abandon the Geneva Conventions and other international legal requirements represented an unprecedented break with prior U.S. military policy. In previous armed conflicts, even those involving unconventional enemies, the U.S. military adhered to the Geneva Conventions, even when it had evidence that its adversaries were abusing captured U.S. soldiers.⁶⁸ The United States did so on the principle that it should lead through moral example as well as military might and that it was putting its own soldiers in jeopardy by doing otherwise.

B. The Army Field Manual

Since 1949, when the current version of the Conventions was adopted, the U.S. military has conducted its activities in accord with the Conventions. For many years, the Army’s Field Manual 34-52 (FM 34-52) governing interrogations has been consistent with Geneva’s prohibitions on torture and degrading treatment.⁶⁹

The interrogation techniques outlined in the current FM 34-52 are all psychological, not physical, methods that focus on developing an emotional rapport with the prisoner. Permissible techniques include:

- **Incentive Approach.** Giving and taking comfort items.
- **Emotional Approach.** Divining and playing upon the dominant emotions motivating a prisoner.
- **Fear-Up Approach.** Exploitation of a prisoner’s preexisting fear. May take “harsh” (“usually a dead-end”) or “mild” forms.⁷⁰
- **Fear-Down Approach.** Calming the prisoner and assuring him he will be properly and humanely treated “When used with a soothing, calm tone of voice, this often creates rapport and usually nothing else is needed to get the source to cooperate.”⁷¹
- **Pride and Ego Approach.** Goading or flattering.
- **Futility.** Convincing the source that resistance is futile, and that everyone “talks sooner or later.” Most effective when playing on doubts already in source’s mind.⁷²

FM 34-52 prohibits the use of force.⁷³ Indeed, Army interrogation experts “view the use of force as an inferior technique that yields information of questionable quality.”⁷⁴

FM 34-52 instructs U.S. personnel to consider two tests to determine whether an interrogation technique is permissible:

- **Given all the surrounding facts and circumstances, would a reasonable person in the place of the person being interrogated believe that his rights, as guaranteed under both international and US law, are being violated or withheld, or will be violated or withheld if he fails to cooperate.**
- **If your contemplated actions were perpetrated by the enemy against US POWs, you would believe such actions violate international or US law.**

FM 34-52 then instructs: **“If you answer yes to either of these tests, do not engage in the contemplated action.”**⁷⁵

The decision to abandon the Geneva Conventions and designate the prisoners as “enemy combatants” – rather than conducting the legally required Geneva Convention hearings to identify any prisoners of war and release noncombatants –

enabled DoD to evade the Field Manual’s stringent standards. The rules of engagement in Guantánamo for interrogating alleged enemy combatants are deliberately vague, go beyond the time and battle-tested standards of the Field Manual, and, as a result, contribute not only to confusion

on the ground but to the sanctioning of abusive methods of prisoner treatment.⁷⁶ By rejecting the Geneva Conventions and other protections, the United States sought to exempt itself from any limits on interrogation methods for individuals detained in the “war on terrorism.”

The U.S. government’s efforts to avoid its Geneva obligations continue.

For over a year, DoD has been drafting a new Army Field Manual modifying instructions for prisoner interrogations. DoD recently stated that the new Field Manual would omit a key tenet of the Geneva Convention that explicitly bans “humiliating and degrading treatment.” DoD has acknowledged that the State Department as well as a number of senators and senior generals vehemently oppose the change,⁷⁷ observing that the proposed standards of treatment in the new Field Manual would violate the anti-torture protections advanced by Sen. John McCain (R-Ariz.) last year and codified in The Detainee Treatment Act of 2005. These concerns have led to delay in publication of the new manual; as of this writing, it has not yet been issued.

As this report goes to press, the U.S. government has indicated that it is finalizing revisions to the Field Manual.

[T]he proposed standards of treatment in the new Field Manual would violate the anti-torture protections advanced by Sen. John McCain

Mr. Omar Deghayes, a prisoner from Libya, recounts an incident of abuse he witnessed: At the end of 2004, [another prisoner] was in my block, and he refused to give back his paper plate as a minor protest over something. Five [military guards] came in on him and three kned him in the stomach until they had knocked him to the floor. This ruptured his stomach and he suffered constant and increasing pain.

He asked for medical care for several months. Finally, on May 7, 2005, he saw a doctor, who said his situation was very dangerous. He has to undergo an operation as a result of this. He was kept at the hospital for only two days, and then returned to Camp V. We have heard his screams of pain whenever he uses the toilet.

One day he collapsed in his cell, and so we felt forced to conduct a joint protest on his behalf. Part of his problem is that he does not speak English, so that when he needs help, and when the MPs finally respond to his cries, they say that there is no translator. It is cruel. Finally, we were able to pressure the military into taking him back to the clinic. As they took him to the clinic, he was crying out in pain, and the guards – sad to say – were laughing at him. When he came back, he was put in the cell across from me, so I would hear each time he called for help from the MPs. The MPs often refuse to respond to him, walking directly by his cell. Last week [June 2005], he collapsed in his cell again and they took him back to the clinic. . . .

Beating him so badly was, in the first place, a vicious act for so minor a rule violation – a rule violation committed by someone who is being held without being proven guilty of any crime. He has received permanent injury from this.⁷⁸

C. Avoiding Liability Under the War Crimes Act

Parties to the Geneva Conventions are required to criminalize “grave breaches” of the Conventions through their domestic laws, which the United States did by enacting 18 U.S.C. § 2441, the War Crimes Act.⁷⁹ The War Crimes Act makes it a war crime to commit a “grave” breach of the Conventions.⁸⁰ “Grave breaches” of the Third Geneva Convention are defined as:

Willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power; or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.⁸¹

The War Crimes Act also makes it a war crime to violate CA3.⁸²

From the outset, the Department of Justice was concerned that Administration officials could be charged with violations of the War Crimes Act for carrying out government actions for the “war on terrorism” and looked for ways to avoid the reach of the Geneva Conventions.

“As they took him to the clinic, he was crying out in pain, and the guards – sad to say – were laughing at him.”

If a determination is made that Afghanistan was a failed State . . . and not a party to the [Geneva Convention III] treaty, various legal risks of liability, litigation, and criminal prosecution are minimized. . . . Thus, a Presidential determination against [Geneva

Convention III] treaty applicability would provide the highest assurance that no court would subsequently entertain charges that American military officers, intelligence officials, or law enforcement officials violated Geneva Convention rules relating to field conduct, detention conduct or interrogation of detainees. The War Crimes Act of 1996 makes violation of parts of the Geneva Convention a crime in the U.S.

Letter from Attorney General John Ashcroft to President George W. Bush (Feb. 1, 2002).⁸³

Other Presidential legal advisors offered similar advice.⁸⁴ Based on those recommendations, on February 7, 2002, President Bush issued a memorandum exempting alleged members of al Qaeda from all Geneva Convention protections.⁸⁵ President Bush determined that “none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world,” and specifically concluded that al Qaeda detainees “do not qualify as prisoners of war” and are not protected by CA3.⁸⁶ While confirming that the Geneva Conventions applied to the U.S. conflict with the Taliban in

Afghanistan, President Bush nevertheless found that CA3 also did not apply to Taliban detainees, and that “Taliban detainees are unlawful combatants,” therefore not qualifying as “prisoners of war under Article 4 of Geneva.”⁸⁷ As William H. Taft IV, former Legal Advisor, Department of State, commented last year at a conference on the Geneva Conventions, the conclusions in these memoranda “unhinged those responsible for the treatment of the detainees in Guantánamo from the legal guidelines for interrogation of detainees reflected in the Conventions and embodied in the Army Field Manual for decades.”⁸⁸ These conclusions, Taft asserted, created the conditions for abusive interrogations by placing prisoners (and thus their captors) outside the law.⁸⁹ According to former General Counsel of the Navy Alberto J. Mora, the interrogation techniques permitted at Guantánamo rose to the level of torture.⁹⁰

On June 29, 2006, the Supreme Court decided the question of CA3’s applicability to alleged members of al Qaeda in *Hamdan v. Rumsfeld*, a case challenging the legality of the military commissions established by President Bush to try prisoners accused of war crimes in the war on terror.⁹¹ Rejecting the Administration’s determination, the Supreme Court ruled that CA3 applies to prisoners detained in the conflict with al Qaeda. The significance of the Court’s ruling on this and the other issues on review in *Hamdan* cannot be overstated; commenting on the decision, former U.S. Solicitor General Walter Dellinger stated, “[t]wo years ago I [said] that the court’s 2004 enemy combatant cases were historic. And they were. But not like today’s. *Hamdan* is simply the most important decision on presidential power and the rule of law ever. Ever.”⁹² This is so, in large part, because the Court’s CA3 ruling confirms the unlawfulness of the U.S. government’s use of torture, cruel, humiliating and degrading treatment—all prohibited by CA3—on



Guantanamo prisoners, and recognizes that binding international law places a limit on the President’s power as Commander in Chief with respect to the treatment of war prisoners. Importantly, the ruling opens the door to criminal prosecutions under the War Crimes Act of those who participated in such conduct.

III. TORTURE AND CRUEL, INHUMAN, AND DEGRADING TREATMENT REPORTED AT GUANTÁNAMO

A. The Prison Camps

The chillingly-named Camp X-Ray exemplified a prison where every aspect of a prisoners’ life was under close observation. A temporary camp set up until more permanent facilities could be erected, Camp X-Ray housed prisoners, from January – April 2002, in cages (wire mesh units, with wood/metal covers and concrete floors). Without privacy, these units exposed prisoners to the elements and to the scorpions, spiders, and banana rats that populate the island.⁹³

More permanent facilities for prisoners were soon built, and, in April 2002, prisoners moved into the first buildings at Camp Delta. Camp Delta is referred to informally as “the Wire,” owing to the lengths of chain link fence and concertina that surround it.⁹⁴ At the camp’s main gate stands a 4 x 8 foot sign, displaying the words: “Honor Bound to Defend Freedom.”⁹⁵

The actual physical layout of Camp Delta is not easy to ascertain because access is tightly controlled by the military and its public affairs staff.⁹⁶ What seems clear is that Camp Delta includes five different facilities, numbering One through Five, with the numbers based on the order in which the camps were built.⁹⁷ Together, Camps One to Five have a capacity of over 1000.⁹⁸

Camp Echo is a separate camp where a small number of prisoners designated for military commissions once were



housed. It has a series of small huts with two isolation units in each hut. The units consist of a small cell containing a steel bed, toilet, and sink with a shower attached to the cell. The cells are subject to 24-hour video surveillance. A small slit window and air conditioning were not added until the middle of 2004. When attorneys began meeting with clients at the base and raised objections to the impact of these severe isolation conditions on the prisoners, the military moved those prisoners out of Camp Echo and into a special block in Camp Delta.⁹⁹ Camp Echo continues to be used for attorney-client meetings.¹⁰⁰

Camp Iguana has held juveniles¹⁰¹ and, as of June 2006, currently houses a few prisoners who DoD has admitted are not enemy combatants.¹⁰²

Camp Five, a separate state-of-the-art maximum security facility, comprises four wings of two stories, with 12 to 14 isolation cells each. Camp Five supervision is conducted from “a raised, glass-enclosed centralized control center that sits in the middle of the facility, giving the MPs a clear line of sight into both stories of each wing.”¹⁰³ Army National Guard Maj. Todd Berger calls it “the nerve center of the camp.” It contains touch-screen computers that monitor and control all prisoner movement.⁹⁸ The DoD claims that Camp Five houses prisoners deemed of greatest intelligence value.¹⁰⁵ Most continuing allegations of abuse involve prisoners housed in Camp Five.



“The female interrogator had grabbed the detainee’s genitals and bent back his thumbs. The marine then ‘implied that her treatment of that detainee was less harsh than her treatment of others by indicating that he had seen her treatment of other detainees result in detainees curling into a fetal position on the floor and crying in pain. . .’”

DoD is constructing an additional, reportedly permanent prison structure called Camp Six.

B. Types of Torture and Abuse

Prisoners in Guantánamo have reported being exposed to extraordinary psychological and physical abuse. In addition to abusive interrogation practices, prisoners report harsh disciplinary measures. These reports have been corroborated by military and news accounts. The United States has systematically applied the following techniques to prisoners, in connection with interrogation and disciplinary

measures, and in the context of conditions of arbitrary confinement and detention.

FBI Observations at Guantánamo, Fall 2002

1. An FBI agent witnessed a female interrogator “apparently whispering in the detainee’s ear, and caressing and applying lotion to his arms (this was during Ramadan when physical contact with a woman would have been particularly offensive to a Moslim [sic] male. On more than one occasion the detainee appeared to be grimacing in pain.” The view of the agent was obscured by a curtain fixed by duct tape at the request of the interrogator, over a two-way observation mirror. The agent watched the encounter through the surveillance camera and was given to understand by a marine that the female interrogator had grabbed the detainee’s genitals and bent back his thumbs. The marine then “implied that her treatment of that detainee was less harsh than her treatment of others by indicating that he had seen her treatment of other detainees result in detainees curling into a fetal position on the floor and crying in pain. . .”

2. “In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee [redacted] and, in November 2002, FBI agents observed Detainee [redacted] after he had been subjected to intense isolation for over three months. During that time period, [redacted] was totally isolated (with the exception of occasional interrogations)

in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end).”

Letter from T. J. Harrington, Deputy Assistant Director, FBI Counterterrorism Division to Major General Donald J. Ryder, Department of the Army, Criminal Investigation Command, July 14, 2004.¹⁰⁶

Mohammed al-Qahtani’s interrogation log indicates that, after the period of isolation described, he was subject to fifty days of interrogation involving severe sleep deprivation, solitary confinement, sexual assault, physical stress, and threats.¹⁰⁷

1. Psychological Abuse

Psychological abuse includes solitary confinement, light and sound manipulation, exposure to the elements and to temperature extremes (arguably also physical abuse), sleep deprivation, and threats of transfer for torture in another country. Though government memoranda rarely comment on the rationale for these techniques, the CIA’s notorious KUBARK manual on counterintelligence interrogation suggests such techniques are able to induce regression, psychic disintegration, and feelings of helplessness that lower prisoners’ defenses, goals which are consistent with the manipulation of the torture victim.¹⁰⁸

There are a variety of accounts – not only from the prisoners themselves, but also from government documents disclosed through FOIA and statements by former government personnel – indicating that psychological abuse at Guantánamo is unremitting and

has resulted in extraordinary damage to prisoners’ mental health.¹⁰⁹

In the first year and a half after the prison opened, eighteen individuals engaged in twenty-eight suicide attempts.¹¹⁰ Based on official U.S. government statements that have not been independently verified, in 2003 alone, there were 350 acts of “self-harm,” including 120 “hanging gestures.”¹¹¹ In August 2003, a mass suicide attempt took place in which twenty-three prisoners tried to take their lives.¹¹² Since that time, reports of prisoner suicide attempts have grown.

On October 8, 2005, during a visit with his attorney, Juma Al Dossari asked to use the bathroom. After a few moments, his attorney opened the door to check on his client (after hearing the toilet flush). He saw Mr. Al

Dossari hanging by his neck from the upper part of the mesh wall that separates the cell area from the meeting area. He had cut his arm and was bleeding. When Mr. Al Dossari was unresponsive, his lawyer called for help. Mr. Al Dossari was taken by military personnel to a hospital at Guantánamo. Mr. Al Dossari survived this attempt and has since been placed under close surveillance.¹¹³

On June 10, 2006, three prisoners were found dead in their cells. The DoD described the deaths as suicides, and the incident is currently under investigation by the Navy Criminal Investigative Services. At the time of this writing, an independent investigation had not begun.

Solitary Confinement. As reported by Physicians for Human Rights, individuals exposed to isolation for the first time develop a “predictable group of symptoms,” including “bewilderment, anxiety, frustration, dejection, boredom,

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Guantánamo prisoners have reported being held in solitary confinement for long periods, sometimes in excess of one year.

- As of February 2004, Shaker Abdur-Raheem Aamer had spent eight months in solitary confinement.¹¹⁵
- Feroz Abbasi spent more than a year in solitary confinement in Camp Echo; while at Guantánamo, he has tried to kill himself.¹¹⁶
- David Hicks was in solitary for almost a year in Camp Echo.¹¹⁷
- As of late 2005, Mr. Al Murbati had been held in isolation in Camp Five since approximately May 2004.¹¹⁸
- As of late 2005, Mr. Al Dossari had been held in isolation in Camp Delta, India Block, and Camp Five since early 2004.¹¹⁹
- Saber Lahmar and Belkacem Bensayah each were held in an isolation cell in Camp Five from August 2004 until mid October 2005. Both suffered visual deterioration and psychological trauma as a result.¹²⁰

Perhaps the most egregious example is Moazzam Begg, who has stated that he was detained for a year in Bagram Air Force base in Afghanistan, where he was deprived of all natural light.¹²¹ He then was transferred to Guantánamo, where he was kept in solitary confinement for more than a year at Camp Echo.¹²² Asif Iqbal reports that he was put in isolation for writing “have a nice day” on a polystyrene cup because it was deemed to

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Mr. Al Dossari has been held in isolation in Camp Delta, India Block, and Camp Five since early 2004.

Asif Iqbal reports that he was put in isolation for writing “have a nice day” on a polystyrene cup because it was deemed to be “malicious damage to U.S. government property.”

Othman Abdurraheem Mohammad has lived under fluorescent lights twenty-four hours a day for the last three years.

be “malicious damage to U.S. government property.”¹²³ Among the other prisoners reporting solitary confinement are Mr. Latif, Mr. Alikhil, Mr. Haji, Mr. Sahgir, Mr. Ait Idir, Mr. Lahmar, and Mr. Boumediene.

Light and Sound Manipulation.

Othman Abdurraheem Mohammad has lived under fluorescent lights twenty-four hours a day for the last three years. Every morning he wakes up with eye pain and dizziness.¹²⁴ Belkacem Bensayah lived under similar conditions for seventeen straight months and can no longer look at anything for long because he sees black spots.¹²⁵ Mustafa Ait Idir was kept in isolation for two months, during which time the lights were either kept at maximum intensity, even during the night, or (occasionally and briefly) turned off completely.¹²⁶ Loud music is often blared during interrogation.¹²⁷ Mr. Abbasi, Mr. Al Harith, Mr. Uthman, Mr. Begg, Mr. Al Marri, Mr. Khan, and Mr. El-Meki are among the other prisoners that have experienced this form of mistreatment.

Exposure and Temperature

Extremes. Cells are often kept extremely hot or cold and prison-

ers are not given more than a single blanket at night. Saber Lahmar’s room was so cold on one occasion that ice formed on the vents.¹²⁸ Jamal Al Harith recalled sleeping under a metal bed to try and protect himself from the cold air blowing in.¹²⁹ Mustafa Ait Idir was left shackled in a room with the air conditioning on very high for 5 or 6 hours, exacerbating a kidney ailment he was known to have. He was then placed in a solid steel isolation cell (“very cold”), and his sleeping pad was taken away because he refused to cooperate with inter-

rogators.¹³⁰ The juvenile O.K. spent a month in isolation in a room “like a refrigerator.”¹³¹ An FBI interrogator has documented the use of cold temperatures and sleep deprivation by military guards:

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defecated on themselves, and had been left there for 18, 24 hours or more. On one occasion [sic], the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. When I asked the MP’s what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night.¹³²

Other prisoners exposed to temperature extremes are John Doe 1 (Afghani), Mr. Ahmed, Mr. Ahmad, Mr. Hassan, Mr. Boudella, Mr. Lamar, Mr. Kurnaz, twelve Kuwaiti prisoners, and Mr. Rasul.

Sleep Deprivation. Sleep deprivation causes deterioration in cognitive abilities, including “impairments in memory, learning, logical reasoning, arithmetic skills, complex verbal processing, and decision making.”¹³³ It has been used as a frequent tactic to disorient and mentally weaken prisoners at Guantánamo.

Prisoners have reported that they are prevented from sleeping by loud noises, fans, soldiers making banging noises, and even being moved from cell to cell or to other locations in the camp. When he first arrived at

Lakhdar Boumediene was deprived of sleep for 13 days during an intense interrogation period in early 2002.

Mohammed Al-Qahtani [], pursuant to a special “interrogation plan” approved by Secretary of Defense Donald Rumsfeld, was subjected to fifty days of sleep deprivation. Except for one day during this period, Mr. Al-Qahtani was permitted to sleep no more than four hours a day.

Guantánamo, Belkacem Bensayah was forced to get up and walk, and frequently moved from cell to cell during the night, at 30-minute intervals for a two-month period, which completely prevented him from sleeping.¹³⁴ Lakhdar

Boumediene was deprived of sleep for 13 days during an intense interrogation period in early 2002.¹³⁵ During his first month at Guantánamo, soldiers would wake Mohamed Nechla every hour and force him to place his shoes, brush, and soap in a certain order along the side of his cage. An hour later, they would force him to line up the shoes, brush, and soap in a new order. This would continue all night and was

designed to prevent him from sleeping. At times, instead of reordering the position of his shoes, brush, and soap, he was ordered to leave his cell while it was searched.¹³⁶ Saber Lahmar reported similar conduct over a period of several weeks. Perhaps one of the most severe examples of sleep deprivation is that of Mohammed Al-Qahtani who, pursuant to a special “interrogation plan” approved by Secretary of Defense Donald Rumsfeld,¹³⁷ was subjected to fifty days of sleep deprivation. Except for one day during this period, Mr. Al-Qahtani was permitted to sleep no more than four hours a day between the

hours of 7:00 a.m. and 11:00 a.m. Other prisoners who report experiencing sleep deprivation include Mr. Hicks, Mr. Abbasi, Mr. Habib, Mr. Esmail, and Mr. Abd al-Malik al-Wahab.

Threatened with Transfer to Another Country, for Torture. Interrogators have threatened to transfer prisoners to countries where torture is routinely practiced to intimidate prisoners into cooperating or to induce “confessions.” The juvenile O.K. stated that interrogators threatened to send him to Egypt, Israel, Jordan, or Syria if he did not cooperate.¹³⁸ Mr. Al Murbati stated he was told by an interrogator that if he did not cooperate he

would be transferred back to Bahrain to be imprisoned or sent to Saudi Arabia where “they have no mercy.”¹³⁹ Mr. Boumediene reported that on one occasion, he was choked by a Jordanian interrogator who then threatened to send Mr. Boumediene to Jordan where they could “make [him] talk.”¹⁴⁰

Within a few days of arriving at Guantánamo, two older interrogators dressed in civilian clothing showed Mr. Al Murbati a document. The interrogators told Mr. Al Murbati that the document was a transcription of an audiotape made of a high-ranking al Qaeda member from Kuwait that described potential targets. The interrogators asked Mr. Al Murbati where the next attack would occur. When Mr. Al Murbati was unable to respond he was put in solitary confinement and threatened with a transfer to Egypt where, he was told, he would be tortured.

Typically, Mr. Al Murbati’s interrogations in Camp Delta were conducted from approximately 6 a.m. until 4 p.m., or from 10 p.m. until 4 a.m. For the entirety of most sessions, Mr. Al Murbati was made to sit on the floor with his ankles shackled to the floor and with his hands pulled under his legs and also shackled to the floor.

During certain interrogations, the air conditioning was set very high, making the interrogation room quite cold. At other times, there would be no air conditioning, making the interrogation room very hot.

On multiple occasions, the floor of the interrogation room had been treated by what appeared to be a mixture of water and a powerful cleaning agent. This mixture would be thrown on Mr. Al Murbati’s face and body, causing great irritation. Because he would be shackled when this occurred, Mr. Al Murbati was unable to do anything to alleviate the irritation.

“There, in an interrogation room, he was shackled to the floor by his hands and feet, with his hands pulled underneath his legs. For approximately 12 hours, very loud music and white noise was played through six speakers arranged close to Mr. Al Murbati’s head.”

Especially when the air conditioning was turned off, the cleaning agent that was put on the floor would make breathing difficult. The cleaning agent also caused mucous discharges from Mr. Al Murbati’s nose.

Several days after a contentious interrogation, Mr. Al Murbati was taken from Camp Three to Camp One. There, in an interrogation room, he was shackled to the floor by his hands and feet, with his hands pulled underneath his legs. For approximately 12 hours, very loud music and white noise was played through six speakers arranged close to Mr. Al Murbati’s head.

This technique was used on multiple other occasions as well, most of which occurred in or around Ramadan 2003 (October and November). In certain sessions, multiple flashing strobe lights were used as well; these lights were so strong that Mr. Al Murbati had to keep his eyes closed. The interrogation rooms were always cold when the music and strobe lights were employed. Generally, Mr. Al Murbati was not asked any specific questions during these sessions, although sometimes he was told that he needed to cooperate generally.

When Mr. Al Murbati was not in the interrogation room during this period, he was moved from cell to cell ..., typically on an hourly basis. As such, Mr. Al Murbati was never able to sleep for more than short periods even when not in the interrogation rooms. Mr. Al Murbati knows of at least one other detainee (Faruk el Meki, a Saudi) who was subjected to similar treatment with respect to the use of music in the interrogation room and frequent moves among cells.

At other times, when Mr. Al Murbati was shackled and facing away from the door, someone would enter the room quietly and then blow a very loud horn in Mr. Al Murbati’s ear.¹⁴¹



2. Physical Abuse

Numerous reports of extreme physical abuse have emerged from Guantánamo. Physical abuse is often meted out systematically by the specially trained “Immediate Reaction Force” (IRF); at other times, soldiers have beaten prisoners for no apparent reason or in connection with an alleged violation of a camp disciplinary rule. Some prisoners have sustained permanent physical injury as a result.

Physical Beatings. Beatings are the most frequently reported form of mistreatment, with many prisoners providing details of such physical mistreatment. Prisoners assert that pretexts for physical punishment are frequently devised. Mr. Al-Harith said prisoners had been punished for keeping six packets of salt in their cell instead of five and for hanging their towels through their cages when they weren’t wet.¹⁴²

Military reports admit that many prisoners have been thrown or dropped on the ground or thrown against walls.¹⁴³ Several prisoners report that assailants jumped on their backs or shoved their heads into hard surfaces while they were incapacitated and lying on the ground.¹⁴⁴ For example, Yasein Khasem Mohammed Esmail claims that when he arrived in Guantánamo, while he was still shackled, he was thrown into the air and allowed to fall to the ground. When he lay on the ground, soldiers stomped on him.¹⁴⁵ A group of soldiers sprayed Mr. al-Wahab with “disorienting gas,” burst in his cell, handcuffed him, pulled him out of his cell, and pushed and rubbed his head against concrete until he lost consciousness.¹⁴⁶ Mustafa Ait Idir sat down on the floor when guards, angry because he had asked to see an officer, told him to; the vindictive guards tied his hands behind his back, picked him up and banged his body and head into the side of his steel bunk. They threw him down and pounded his head into the floor.¹⁴⁷

Many other prisoners describe frequent and vicious beatings. Lakhdar Boumediene described several occasions in early 2002 when guards returned him to his cell following interrogation, grabbed him under his armpits, lifted him up, and threw him to his cage floor repeatedly while his wrists were shackled to his waist and his feet were shackled to an anchor in the floor of his cage.¹⁴⁸ Mr. Boumediene also stated that on one occasion, a soldier pushed him to the ground, put his knee behind Mr.

Boumediene’s knee, and ground Mr. Boumediene’s knee into the floor. He now has a scar he attributes to that beating.¹⁴⁹

Sami Al-Laithi, a pro-democracy English teacher who was determined to be “no longer an enemy combatant” on May 10, 2005, and was later released, is now confined to a wheelchair as a result of beatings by the U.S. military.

Sami Al-Laithi was a teacher at Kabul University. He taught Arabic and English. Mr. Al-Laithi spent 17 years teaching English in Pakistan and Afghanistan, believing that he was helping the cause of the U.S. He has never been an opponent of the U.S., but says he has “always believed in U.S. ideology” of democracy and rule of law.

Mr. Al-Laithi is not, and never has been, an Islamic extremist. He was interested only in teaching and in playing football. He opposed the Taliban, because he believes in democracy, freedom, and open elections. These are the same reasons for his consistent opposition to the repressive regime of Egyptian President Hosni Mubarak.

As a result of his criticism of the Mubarak regime, he was pursued by Egyptian agents intent on kidnapping or murdering him. He then fled to Pakistan and Afghanistan where he has lived and worked for 17 years.¹⁵⁰

Though a healthy man when taken into U.S. custody, Mr. Al-Laithi is now confined to a wheelchair with two broken vertebrae. He attributes his current infirmity to severe beatings that he received soon after arriving at GTMO.

“Once they stomped my back,” Al-Laithi wrote [in an affidavit filed recently with the district court]. “An MP threw me on the floor, and they lifted me up and slammed me back down. A doctor said I have two broken vertebrae and I risk being paralyzed if the spinal cord is injured more.”¹⁵¹

Al-Laithi said his neck is also permanently damaged because IRF teams repeatedly forced him to bend over toward his knees. While many prisoners have had their anuses probed during strip searches, Mr. Al-Laithi also alleges that the military forced a large object into his anus on the pretext of doing a medical exam.

“I am in constant pain,” he continued. “I would prefer to be buried alive than continue to receive the treatment I receive. At least I would suffer less and die.”¹⁵²

A military spokesperson indicates that the military takes no responsibility for Mr. Al-Laithi's condition, saying that the fractured vertebrae are the result of a degenerative disease.¹⁵³

Short-Shackling and Stress Positions. Short-shackling – a very painful technique in which a prisoner's arms and legs are shackled together and to the ground, forcing him into a stooped position, often for many hours at a time – was routinely employed at Guantánamo until April 2003, but sporadic reports of its use persist. Reports of short-shackling include the following: Abdullah Majed Sayyah Hassan Al Noaimi was shackled for hours in a room that had been made frigid by an air conditioner.¹⁵⁴ Tarek Dergoul was short shackled in an interrogation room alone for eight hours and eventually urinated on himself.¹⁵⁵ Shafiq Rasul was also left short shackled for long periods of time and would often miss meals and

prayers.¹⁵⁶ Murat Kurnaz was short shackled to the floor for almost 24 hours and forced to urinate on himself.¹⁵⁷

As a result of being held in stress positions for extended periods of time in short-shackles or other restraints, prisoners have reported suffering from permanent back, knee, and other joint injuries.¹⁵⁸

The Immediate Reaction Force (IRF). Some of the most severe physical abuse reported at Guantánamo is attributed to the IRF.¹⁵⁹ Comparable to a riot squad, the IRF functions as a disciplinary force within the camps. As documented by the former military intelligence linguist, Sergeant Eric Saar, military police (MP) rotate on and off IRF duty and may not always be trained adequately for the job.¹⁶⁰ MPs carry Plexiglas shields and frequently use tear gas or pepper spray. Though domestic and international law forbid the use of physical force to punish, rather than restrain, prisoners, Guantánamo prisoners are frequently IRF'd as punishment.¹⁶¹ Because of the acronym IRF, "being IRF'd" is Guantánamo-speak for being beaten by a group of military guards.¹⁶²

These incidents are usually videotaped, but the U.S. military has closely guarded the tapes and so far asserts they are exempt from FOIA review.¹⁶³ However, in June 2004, the U.S. Southern Command issued a short report after viewing 20 of 500 hours of then-available IRF videos. The report concluded that the tapes raised questions about abuse and misconduct. In one video, the IRF punched a prisoner "on an area of his body that seemingly would be inconsistent with striking a pressure point." In another, an IRF guard repeatedly sprayed pepper spray on a prisoner and taunted him. In a third, guards tied a prisoner to a gurney for interrogation.¹⁶⁴

Mr. Al Dossari returned to his cell and saw that the few items that had been in his cell had been removed. The MP on duty, named Webster, pushed him to the ground of the cell and cursed at him. Mr. Al Dossari yelled in response. The MP called for the Immediate Reaction Force (IRF).

MEMORANDUM FOR RECORD

Date: 4/28/2003
To: [REDACTED]
From: [REDACTED]
Re: INCIDENT ON 22APR03

[Text omitted]

THE DETAINEE IN MY OPINION SEEMED INCOHERENT. (NOTE: AS AN INTERROGATOR I HAVE SEEN DETAINEES FEIGN INCOHERENCE TO AVOID INTERROGATION, BUT SUCH WAS NOT THE CASE HERE IN MY ESTIMATION.) [REDACTED] WAS REPEATING THE QUESTION OVER AND OVER, IN RAPID FIRE FASHION, SO QUICKLY THAT THE INTERPRETER WAS NOT KEEPING UP WITH THE QUESTIONING AND THE DETAINEE WOULD NOT HAVE BEEN ABLE TO ANSWER WITHOUT INTERRUPTING [REDACTED]. [REDACTED] THEN SHOUTED "DOWN" AND THE TWO DETAINEE ESCORTS PUSHED THE DETAINEE TO THE FLOOR. WHEN I SAY PUSHED TO THE FLOOR I MEAN THEY PUSHED IN THE BACK OF THE DETAINEE'S KNEES WITH THEIR KNEES, TAKING THE DETAINEE TO HIS KNEES. THEN HOLDING THE DETAINEE BY HIS UPPER ARMS THEY SLAMMED HIS UPPER BODY TO THE FLOOR. THIS SERIES OF MOTIONS WAS ALL DONE IN ONE SWIFT MOVEMENT, SO THAT THE DETAINEE WENT FROM A STANDING POSITION TO A PRONE POSITION ALL AT ONCE. THE FORCE WITH WHICH THE DETAINEE'S BODY HIT THE FLOOR WAS SUCH THAT [REDACTED] (b)(1) IT WAS INTERROGATING. IMMEDIATELY BEFORE THE DETAINEE WAS PUSHED TO THE FLOOR, [REDACTED] (b)(1) AND THE NAVY ANALYST WERE LAUGHING ABOUT THE TREATMENT OF THE DETAINEE. THE DETAINEE WAS SLAMMED TO THE FLOOR IN THIS

4/28/

MEMORANDUM FOR RECORD: INCIDENT ON 22APR03

MANNER SEVEN TO EIGHT TIMES. [REDACTED] WOULD YELL "DOWN" IMMEDIATELY PRECEDING EACH TIME THE DETAINEE WAS SLAMMED TO THE FLOOR. AFTER THE FIRST TWO SLAMS I TOOK OUT MY EARPIECE AND OBSERVED THE HAPPENINGS IN ROOM 6. [REDACTED] WAS ONCE AGAIN ASKING THE DETAINEE, "WHAT WERE YOU DOING IN PAKISTAN?" WHEN, AFTER 5 TO 10 MINUTES OF THIS IMPOSSIBLE TO ANSWER, RAPID FIRE QUESTIONING THE DETAINEE WOULD NOT ANSWER, [REDACTED] SHOUTED "DOWN," AND THE SLAMMING PROCESS TOOK PLACE APPROXIMATELY TEN TO TWELVE MORE TIMES. THE DETAINEE WAS BEING SLAMMED TO THE FLOOR SO HARD THAT I WAS CONCERNED FOR HIS SAFETY. THE FORCE WITH WHICH THE DETAINEE HIT THE FLOOR WAS, IN MY ESTIMATION, ADEQUATE TO CAUSE SEVERE INTERNAL INJURY. I LEFT THE MONITORING

[Text omitted]

THE PERSONNEL I COULD NOT IDENTIFY BY NAME, I WOULD BE ABLE TO IDENTIFY BY SIGHT.

[REDACTED]

INTERROGATOR, ACS DEFENSE

4/28/2003

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1329
233
1330

DoD internal investigation memorandum

When the IRF team arrived, it found Mr. Al Dossari lying on his stomach with his hands on his back.

Nonetheless, an MP named Smith burst into the cage and jumped on Mr. Al Dossari's back wearing full riot gear. According to other detainees who viewed this incident, Smith weighed approximately 240 pounds. At least two other men held Mr. Al Dossari by the legs. MP Smith began to choke him with his hands, while another repeatedly hit his head on the floor. While being beaten, Mr. Al Dossari lost consciousness.

Former Guantánamo detainees from the United Kingdom who witnessed the incident later told Mr. Al Dossari that the IRF team held his face on display for the video camera after he had lost consciousness.

When the cage was hosed down later, the water ran red with blood. Mr. Al Dossari later asked Smith why Smith had beaten him. Smith replied, "because I'm Christian."¹⁶⁵

The force used by the IRF is illustrated by an injury sustained by an American soldier who was ordered to act as a prisoner in a "training" exercise. Because the guards believed they were restraining an actual prisoner, not a U.S. soldier, they used the force regularly used against prisoners, slamming the soldier's head into the floor and grinding his temple into the steel. He suffered a traumatic brain injury and now has epilepsy, with up to 12 seizures a day. The U.S. military reports that the video of this episode is "missing."¹⁶⁶

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In July 2005, the New England Journal of Medicine published a report criticizing Guantánamo medical personnel for violating medical ethics by sharing confidential medical records with interrogators.

3. Medical Abuse

Doctors' Involvement in

Interrogations. Doctors and psychologists have reportedly been actively involved in abuse and interrogation at Guantánamo. In July 2005, the New England Journal of Medicine published a report criticizing Guantánamo medical personnel for violating medical ethics by sharing confidential medical records with interrogators.¹⁶⁷ The report noted that, while the "laws of war defer to medical ethics," the American military was requiring its medical personnel, as a matter of policy, to violate those ethics.¹⁶⁸ For example, the report documents that medical personnel shared prisoners' medical records with interrogators from the very beginning, though initially the ostensible purpose was to limit interrogation techniques based on prisoners' health status. An August 6, 2002, DoD memorandum expressly required military medical personnel at Guantánamo to breach patient confidentiality and communicate medical information to non-medical military personnel and to volunteer information considered of value.¹⁶⁹

Prisoners report that information is the camp currency, and interrogators control access to medical care based on prisoners' level of cooperation in interrogations. Othman Abdurhaheem Mohammad reported that he had a rash on his back and was told it would not be treated until he cooperated with interrogators.¹⁷⁰

Mr. Boumediene relayed that for an extended period, every time he made a request, for example, for medication, he was told to ask his interrogator. Interrogators controlled his access to medical treatment, and access to that treatment was granted or denied based on the interrogator's assessment of his level of cooperation.¹⁷⁰

Medical records obtained in FOIA litigation brought by counsel for the Bosnian prisoners confirm that medical staff were sometimes present during prisoner interrogations and authorized interrogations to proceed. On one occasion, Mr. Boumediene complained of stomach pain while being interrogated. Medical personnel entered the interrogation room, examined Mr. Boumediene, and "cleared" him for "interrogation and all other detainee things."¹⁷² Medical personnel monitored Mohammed al Qahtani's interrogation during a period of nearly two months of severe sleep deprivation and physical stress. At one point, they rushed him to the base hospital when his heart rate dropped dangerously low. After stabilizing him, they returned him for further interrogation the following day.¹⁷³

Withholding Medical Care or Conducting Unnecessary Medical Procedures. The military has been accused of withholding needed medical care that has resulted in permanent injuries and disabilities, in addition to furthering prisoners' pain or suffering. In other cases, prisoners have described doctors performing unnecessary procedures.

Even minor conditions, if neglected, can develop into permanent or life-endangering illnesses, yet the United

States, at times, has refused to provide necessary treatment. Mr. Ruhel Ahmed, one of the British prisoners

who first called attention to abuse at Guantánamo, had a need for corrective lenses because of an eye problem that, left untreated, would cause permanent damage. He did not receive the lenses for one and a half years and, when he did, he was not given solution to rinse them. He now has permanent severe damage to his eyes.¹⁷⁴

In other instances, prisoners have reported that doctors forced, or attempted to force, unnecessary amputations.¹⁷⁵ Omar Deghayes describes how even prisoners who have had limbs removed do not receive the treatment they need.

The plight of the people who have had limbs amputated is among the saddest of the conditions of this ugly camp. I have twice been housed next to prisoners with prosthetic limbs. It was one of the most depressing experiences I have endured. The prisoners were effectively blackmailed by their interrogators who said that they had to cooperate in order to get their prosthetic devices back. They are denied the toilet chairs, the sticks they need to walk and even the cream they need to ensure that the wound will not become infected and inflamed. The pain is apparently particularly great when they are denied the necessary prosthetic socks, so that the wounds are exposed to the extreme cold of the cells.¹⁷⁶

BSCT Teams. In addition to participation in medical abuse and neglect, psychiatrists and psychologists also assisted in designing the extreme interrogation techniques discussed above, as part of the Behavioral Science Consultation Team (BSCT, pronounced "Biscuit").¹⁷⁷ In late 2002, BSCT was tasked

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with developing new strategies to “improve” the productivity of interrogations. Other medical personnel were apparently drawn into the execution of these extreme interrogation techniques. Mr. Ait Idir observed that medical personnel also have played a role in discipline. If the guards claimed a prisoner had misbehaved, regardless of whether the allegation of misbehavior was true, a medical staff member would “determine” that the prisoner had “mental problems.” After such a determination was made, everything, except underwear and the Qur’an, was removed from the cell as a way of punishing the prisoner.¹⁷⁸

Dr. Robert Jay Lifton, an authority on the participation of doctors in torture, says of the role Guantánamo and Abu Ghraib doctors have played: “The doctors thus brought a medical component to . . . an ‘atrocious-producing situation’ – one so structured, psychologically and militarily, that ordinary people can readily engage in atrocities. . . . [In such situations, t]he participation of doctors can confer an aura of legitimacy and can even create an illusion of therapy and healing.”¹⁷⁹

4. Sexual Provocation, Rape, and Harassment

Photographs of military personnel sexually abusing prisoners at Abu Ghraib published in 2004 sent shock waves around the world. The use of sexual degradation and humiliation techniques was developed at Guantánamo and then exported to Iraq. Prisoners report an alarming incidence of sexual abuse, particularly by interrogators. Mr. Al Noaimi said that female MPs frequently searched him and other prisoners, touching their bodies.¹⁸⁰ An incident where a female interrogator smeared fake menstrual blood on a prisoner has been widely reported in the press; the intent of this appalling treatment was to make the prisoner feel so unclean that he would not be able to pray.¹⁸¹ In many respects, this abuse has both a particular religious as well as a sexual component. After witnessing one such incident, former military intelligence linguist Sergeant Saar relates that he said to himself:

Had someone come to me before I left for Gitmo and told me that we would use women to sexually

When he pushed away a woman who placed her hand down his shirt, he was beaten by an IRF team and left shackled for about 20 hours.

torment detainees in interrogations to try to sever their relationship with God, I probably would have thought that sounded fine. And if someone had spelled out for me the details of the interrogation I had just participated in, I probably would have approved.

But I hated myself as I walked out of that room, even though I was pretty sure we were talking to a piece of shit in there. I felt as if I had lost something. We lost something. We lost the high road. We cashed in our principles in the hope of obtaining a piece of information. And it didn’t even fucking work.¹⁸²

A document produced pursuant to the FOIA includes a description of an interrogation that resembled a fraternity party.

At this point in time the session advanced into what can only be described as the proverbial “strip club lap dance.” The ICE personnel [redacted] removed her overblouse behind the individual and proceeded stroking his hair and neck while uttering sexual overtones and making comments about his religious affiliation. The session progressed to where she was seated on his lap making sexual affiliated movements with her chest and pelvis while again speaking sexual [sic] oriented sentences. This then progressed to the individual being placed on the floor with her straddling him, etc. Needless to say many inappropriate comments were made during this time concerning the session and the area had the atmosphere of a party. During this period, I became very uncomfortable and departed the monitoring area[a]. I went to the MP monitoring area where I found approximately 4-6 personnel watching the session as well. Again derogatory comments flourished. I witnessed [redacted] as well as a “guard” watching for any officer personnel. ACS Defense Analyst, Memorandum for Record re: Possible Inappropriate Activities (26 April 2003).¹⁸³

Prisoners report that sex frequently is used to harass them. Women wearing bikinis and lingerie sexually taunted Murat Kurnaz on two occasions and suggested they would do sexual favors in return for cooperation. When he pushed away a woman who placed her hand down his shirt, he was beaten by an IRF team and left shackled for about 20 hours.¹⁸⁴ Sexual provocations by

female interrogators carried this distinctly religious dimension, as Islam places restrictions on physical contact between unrelated men and women.¹⁸⁵

On another occasion . . . Al Dossari was taken to an interrogation room in the Orange Building in Camp Delta. Adjacent to this interrogation room was a computer room. The door to the computer room was open when Mr. Al Dossari was brought into the interrogation room and shackled to the floor. Through the door Mr. Al Dossari saw a man and woman who were naked and having sex on a table in the computer room. The MPs who brought Mr. Al Dossari into the interrogation room observed this as well although they quickly left after shackling Mr. Al Dossari. After several minutes, the man got up from the table and removed a condom that he had been wearing. He gave Mr. Al Dossari a “thumbs-up” gesture and asked “good?” The man and woman then dressed and came into the interrogation room. The man showed Mr. Al Dossari pictures of people wearing traditional Saudi dress. He asked if Mr. Al Dossari could tell him anything about the people in the pictures. He said that if Mr. Al Dossari provided any information Mr. Al Dossari could have sex with his “girlfriend” and indicated the woman. Mr. Al Dossari did not respond and after approximately 30 minutes of further questioning the man and woman left. Mr. Al Dossari had never seen these individuals before this incident and has not seen them since.¹⁸⁶

Not all sexual abuse occurs in connection with interrogation or is heterosexual. The released British prisoners allege that several young prisoners said they were taken to isolated sections of the prison and raped by guards.¹⁸⁷ These prisoners also said that an Algerian man was “forced to watch a video supposedly showing two prisoners dressed in orange, one sodomizing the other, and was told that it would happen to him if he didn’t cooperate.”¹⁸⁸ One of the twelve Kuwaiti prisoners was shown a packet of condoms and told that if he didn’t talk, the condoms would be used on him.¹⁸⁹ On one occasion, while Mr. Al Noaimi was in his cell, an MP from Unit 94 threatened to rape him and taunted him by winking and blowing kisses at him. The MP attempt-

ed to enter the cell while another MP stood lookout, but either due to a fear of detection or a change of mind, he left the cell and did not carry out his threat.¹⁹⁰ Mr. Boumediene reported that his interrogators threatened to send him to an American prison where he would be raped; they also threatened to shave his beard and apply lipstick to him.¹⁹¹

5. Religious and Cultural Abuse

Guantánamo techniques include conduct intended to “soften up” prisoners by abusing items or disrupting rituals known to have particular importance for Muslims.

Desecration of the Qur’an. The statements of prisoners to their attorneys indicate that desecration of the Qur’an is widespread. Many prisoners describe guards and interrogators as regularly defiling the Qur’an by touching it intentionally, dropping it, stepping on it, and throwing it on the ground. In the early days of Camp X-Ray, soldiers repeatedly threw copies of the Qur’an on the

ground.¹⁹² Mr. Ait Idir witnessed a guard throw a Qur’an on the ground and place underwear on top of it,¹⁸⁷ and he saw a supervisor order a soldier to search the Qur’an, even after the soldier said that he was not supposed to touch it.¹⁹⁴ The mass suicide attempted in the summer of 2003 was organized to protest abuse of the Qur’an after an interrogator had thrown a prisoner’s Qur’an on the floor, “stepped on it, and kicked it across the room.”¹⁹⁵

Abuse of the Qur’an also appears to be used to provoke the prisoners to anger, after which the IRF is called to forcibly punish them. James Yee, the former military chaplain at Guantánamo, describes MPs purposely treating the Qur’an with disrespect:

The most contentious issue . . . was the way many MPs handled the detainees’ Qur’ans. This is an extremely sensitive practice, as the Qur’an is the most respected book in Islam. Muslims believe that the Qur’an contains the actual words of God and therefore is to be treated with the utmost respect. Muslims keep the Qur’an in a high place inside our homes as a show of respect and would never allow it to touch the floor or any place that is even slightly dirty.

The released British prisoners allege that several young prisoners said they were taken to isolated sections of the prison and raped by guards.

Muslims also believe that a condition for handling the Qur'an is cleanliness and ritual purity. Some stricter interpretations of Islamic law even consider a non-Muslim handling the Qur'an as sacrilegious.

Guards understood this but didn't respect it. They claimed detainees might be hiding a weapon inside their Qur'an, and in plain view of the prisoners MPs would violently shake the Qur'an, looking for something to drop out. They'd break the binding and drop the Qur'an on the floor. I never heard of an incident where a detainee hid anything dangerous in the Qur'an – doing so would be considered an insult. The detainees would become outraged when the guards touched their holy books, and this behavior often led to some of the worst clashes on the blocks. Once a female MP was being particularly rough with a prisoner she was escorting to the showers. He spat at her and the IRF team was summoned. After he had been taken to MSU, she was assigned to clear out his cell and take away all of his personal items. With the other detainees watching, she took the prisoner's Qur'an and threw it forcefully down into the bag at her feet. She knew what she was doing. The detainees who saw this became enraged and a massive riot ensued, in which she was drenched with water. She later told Eke that she had deliberately provoked it. "You should have seen how nuts it got," she told him.

... I frequently had to replace Qur'ans when pages were ripped and bindings broken as the MPs searched them.¹⁹⁶

Religious Humiliation and

Interference with Religious Practices. Prisoners report additional abusive practices targeted specifically to humiliate them as Muslims or to interfere with their ability to practice Islam. For example, prisoners were frequently shaved as punishment. Lakhdar Boumediene said that growing a beard is a form of Muslim religious expression but "the U.S. thinks it marks a terrorist."¹⁹⁷ Fahmi Abdullah Ahmed Al Towlaqi has had his head

shaved three times by Military Personnel; one time he was shaved so that he was left with a cross-shaped patch of hair.¹⁹⁸ Other prisoners have stated that some guards mock the call to prayer by barking like dogs or donkeys.¹⁹⁹ An oft-reported form of punishment at Guantánamo also included transferring a prisoner to "Romeo" block where guards would remove the prisoner's pants.²⁰⁰ This prevented the prisoner from praying because a Muslim man cannot pray unless his waist and legs are covered.²⁰¹

Mustapha Ait Idir described in detail how he was severely injured trying to resist an orchestrated instance of collective religious-physical abuse that took place at Romeo Block.²⁰²

"With the other detainees watching, she took the prisoner's Qur'an and threw it forcefully down into the bag at her feet. She knew what she was doing. The detainees who saw this became enraged and a massive riot ensued, in which she was drenched with water. She later told Eke that she had deliberately provoked it. 'You should have seen how nuts it got,' she told him."

Knowing that Arab men are required to be clothed while praying, military police ordered all 48 prisoners in Romeo Block to give up their pants. Mr. Ait Idir told the guards that, as a Muslim, he would be unable to pray without his pants on, and so he begged them not to force him to undress. He offered them his shoes only. The guards threatened to use force.

A colonel – with a flower on his hat – spoke with him and demanded the pants. The officer told him the IRF would forcibly take the pants. The Colonel would make no accommodation to allow Mustafa to pray in his pants. Mr. Ait Idir offered to give up the pants if the officer promised to return them for prayers. The officer said the pants would not be returned for prayers.

When the officer left to summon the IRF, Mr. Ait Idir feared the soldiers would leave him naked. He tore off a portion of his pants and left it in a corner of his cell. He also put on his short pants underneath so he would not be left naked if they took his pants.

As threatened, the IRF came. Before entering, they sprayed tear gas into his cell. He shielded his face behind his sleeping pad. After the spraying stopped, the IRF – in full protective

gear – charged into the cell. He struck defensively at the first soldier – who carried a shield. Mr. Ait Idir, a former demonstration team Karate champion, knocked the soldier back, and all 5 IRF members retreated .

The colonel returned and again demanded the pants. Mr. Ait Idir pleaded that he could not give up his pants or he could not pray. A few minutes later the IRF resumed tear gas spraying. By then many internees near him . . . were yelling, encouraging him to surrender his pants so he would not be injured.

The IRF charged into his cell again. Mr. Ait Idir again assumed a defensive posture and managed to drive them out of his cell.

The officer again approached and asked Mustafa to surrender his pants. Other internees were by then pleading with him to give up his pants. Mr. Ait Idir again offered his pants, if he could have them back when he needed them to pray. He was told the pants would be taken away and he would not get them back to pray.

The third spray event was much more prolonged and intense than the first two. His cage was so filled with spray that he could not see. When the IRF entered, Mr. Ait Idir again defended his pants. He knocked the first IRF enforcer to the side. By then, a second IRF enforcer was in the cell. He and Mr. Ait Idir were wrestling with each other.

The second IRF enforcer grabbed Mr. Ait Idir's legs and wrapped them in a tight hug, trying to knock him over. Mr. Ait Idir struggled to knock the enforcer away. His eyes were blurry and stinging from the spray. The lead IRF enforcer ran back from the wall and grabbed Mr. Ait Idir's testicles and squeezed.

Mr. Ait Idir was in intense pain. He feared he would be crippled and lay down in a fetal position. The IRF

The second IRF enforcer grabbed Mr. Ait Idir's legs and wrapped them in a tight hug, trying to knock him over. Mr. Ait Idir struggled to knock the enforcer away. His eyes were blurry and stinging from the spray. The lead IRF enforcer ran back from the wall and grabbed Mr. Ait Idir's testicles and squeezed.

enforcers jumped on him. The first team member landed on his back while he was face down; the second did the same. Both landed on their padded knees. Mr. Ait Idir's hands now were behind his back, secured in restraints by the IRF enforcers.

While the two enforcers pinned him down – after he had stopped resisting and his hands were tied, and after he was fully in their control, one of the guards slowly bent his fingers back until one of them broke. The pain was excruciating, but he was afraid that if he

screamed the IRF would react by injuring him further.²⁰³ He was not given medical treatment for his fingers despite many requests and the clear deformity of his hand.

Religious abuse at Guantánamo is systematic, calculated, and part of the disciplinary system. Prisoners are punished for infractions, such as refusing to talk, by having their religious items taken from them. When a prisoner is “reclassified” from level one to level two, he loses his prayer mat; at level three, he loses his beads, and so on.²⁰⁴ Religious abuse has been used to coerce interrogations, including at Ramadan when guards have withheld food at the break of fast.²⁰⁵ Moazzam Begg observed: “it is the faith of the detainees that is targeted: the religion of Islam.”²⁰⁶

Then a soldier jumped on the left side of his head with full weight, forcing stones to cut into Mr. Ait Idir's face near his eye.

. . . As a result of this incident, the left side of Mr. Ait Idir's face became paralyzed for several months.

Mr. Ait Idir's resistance during the episode of religious-physical abuse described above led to a further, unprovoked attack, which ultimately resulted in partial facial paralysis and a life-long disability. One day shortly after the pants-related beating, guards told him they wanted to search his cell. There had been no intervening disciplinary issues. He sat on the floor as instructed. Despite his full cooperation, he was sprayed in the face with chemical irritant, and put into restraints. Guards then

slammed him head first into the cell floor, lowered him, face-first into the toilet and flushed the toilet – submerging his head. He was then carried outside and thrown onto the crushed stones that surround the cells. While he was down on the ground, his assailants stuffed a hose in his mouth and forced water down his throat. Then a soldier jumped on the left side of his head with full weight, forcing stones to cut into Mr. Ait Idir’s face near his eye. The guards twisted his middle finger and thumb on his right hand back almost to the point of breaking them. The knuckles were dislocated. As a result of this incident, the left side of Mr. Ait Idir’s face became paralyzed for several months. The symptoms from that attack continue to plague him two years later.²⁰⁷

Cultural Abuses. Cultural insult also is a feature of prisoner life at Guantánamo. Mr. Al Qosi saw prisoners being wrapped in Israeli flags during interrogations.²⁰⁸ FBI Deputy Director T.J. Harrington corroborates this account in a memo released through FOIA litigation.²⁰⁹

The U.S. Southcom report reviewing a small number of selected IRF videos confirms that on some occasions the IRF teams have been all-female. Stopping short of drawing the conclusion that military officials intended to offend Muslim men, who are forbidden to be touched by women who are not their wives, the report noted, “A detainee appears to be genuinely traumatized by a female escort securing the detainee’s leg irons,” and called the use of an all-female IRF team “inexplicabl[e].” Tellingly, the report recommended “talking points” to “refute or diminish the charge that we use women (against) the detainees’ culture or religion.”²¹⁰

6. Pre-Guantánamo Torture and Cruel, Inhuman and Degrading Treatment

Horrible as is the treatment alleged at Guantánamo, prisoners have reported that what happened to them before their arrival there was in many cases even worse.²¹¹ Mr. Al Dossari, the prisoner who recently tried to commit suicide during his lawyer’s visit, described exceptional abuse while in U.S. custody in Kandahar. He alleges that U.S. soldiers urinated on prisoners and burned them

Al Hela describes a detention facility in Kabul, where he says prisoners were kept completely isolated and deprived of light, in a place they called “prison of darkness.”

with cigarettes and that he was made to walk barefoot over broken glass and his head was pushed into the ground, into the glass. Mr. Al Dossari further reports that during an interrogation, interrogators shocked him with an electric device and poured a hot liquid over his head. When he asked for a doctor, they spat on him and replied, “We brought you here to kill you.” At night, he said the soldiers would line him up with other prisoners and threaten to shoot them if any moved. If they did move, though not shot, prisoners were beaten. In addition, he claims he saw an American soldier throw a Qur’an into a bucket used as a collective toilet for prisoners in his tent.²¹²

Murat Kurnaz reports that while in Kandahar, his head and upper body repeatedly were submerged in water to the point of near drowning, a practice called waterboarding,²¹³ and he had electric shocks applied to his feet. He was hung by his hands and left for days at a time, sometimes without food.²¹⁴ Also in Kandahar, a Kuwaiti prisoner was allegedly beaten by US forces, suspended upside down and beaten again. They squeezed his testicles, made him strip, and screamed, “You’re a member of Al Qaeda!”²¹⁵ Abdulsalam Ali Abdulrahman Al Hela describes a detention facility in Kabul, where he says prisoners were kept completely isolated and deprived of light, in a place they called “prison of darkness.”²¹⁶

Australian Mamdouh Habib, who was released from Guantánamo in January 2005, has alleged incidents of highly sophisticated methods of torture while he was held in Egypt and Pakistan, where U.S. authorities had taken him before they removed him to Guantánamo:

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On another occasion, Mr. Habib was suspended from hooks on the wall, with his feet resting on the side of a large cylindrical drum. Down the middle of this drum ran a metal rod, with wires attached at both ends. The wires ran to what appeared to be an electric battery. When Mr. Habib did not give the answers his interrogators wanted, they threw a switch and a jolt of electricity ran through the rod, electrifying the drum on which Mr. Habib stood. The

action of Mr. Habib “dancing” on the drum forced it to rotate, and his feet constantly slipped, leaving him suspended by only the hooks on the wall. The instinctive struggle to regain his balance forced him to place his feet back on the drum, which of course only sent another excruciating jolt of electricity into his feet. Eventually, Mr. Habib was forced to raise his legs, leaving him to hang by his outstretched arms until he could stand it no longer and, exhausted, he dropped his legs back onto the electrified drum. This ingenious cruelty lasted until Mr. Habib finally fainted.²¹⁷

IV. THE ABUSE CONTINUES

Abusive treatment continues at Guantánamo. Though some practices, such as short-shackling, may have been officially discontinued, manipulation of light and physical abuse remain severe problems.²¹⁸ Allegations of sexual humiliation and abuse of the Qur’an continue.²¹⁹ Sleep deprivation in Camp Five remains a serious issue.²²⁰

As recently as August 2005, Hisham Sliti, while in shackles, was severely abused during an “interrogation.” He reported that the interrogator threw a chair at him and severely injured his eye.²²¹ The interrogator also threw a mini-refrigerator at him, and then MPs appeared and beat Mr. Sliti further.²²²

In response to these abuses, prisoners began hunger strike protests in June 2005. Initially called off when camp officials negotiated with prisoners and promised to bring the camps into compliance with the Geneva Conventions, the hunger strike was reinstated in August 2005 after officials reneged on their promises.²²³ Prisoners who were designated as Prisoners Council in negotiations were put into isolation.²²⁴

Prisoners on the August 2005 hunger strike made four demands:

- Release or prosecution of real charges
- Immediate release of those determined to be innocent by CSRTs

- Removal of juveniles from Camp Five
- End of religious abuse²²⁵

The United States has maintained that hunger-striking prisoners received medical care, but attorneys for 21-year-old hunger-striker, Yousef Al-Shehri, described him as “visibly weak and frail,” wincing in pain from a nasal tube, and requiring the support of a “walker.”²²⁶ He had difficulty speaking because of lesions in his throat caused by involuntary force-feeding, administered without anesthesia.²²⁷ His sickening descriptions of how hunger-striking prisoners are treated, with the approval of medical personnel, allege disturbing, serious abuse.

These large tubes – the thickness of a finger, he estimated – were viewed by the detainees as objects of torture. They were forcibly shoved up the detainees’ noses and down into their stomachs. No anesthesia or sedative was provided to alleviate the obvious trauma of the procedure. Yousef said that he could not breath with this thick tube inserted into his nose (which was so large it caused his nostril to distend). When

the tube was removed, it was even more painful, and blood came gushing out of him. He fainted, and several of the other detainees also lost consciousness. The detainees were told by the guards: “we did this on purpose to make you stop the hunger strike.” They were told that this tube would be inserted and removed twice a day, every day until the hunger strike ended. Yousef described the pain as “unbearable.”

Yousef explained that doctors were present as the Initial Reaction Force forcibly removed these [nasal gastric] tubes by placing a foot on one end of the tube and yanking the

detainee’s head back by his hair, causing the tube to be painfully ejected from the detainee’s nose. When the detainees saw this happening, they begged to have the tubes remain, but the guards refused and continued to forcibly remove the tubes.

Then, in front of the Guantánamo physicians – including the head of the detainee hospital – the guards took nasal

The United States has maintained that hunger-striking prisoners received medical care, but attorneys for 21-year-old hunger-striker, Yousef Al-Shehri, described him as “visibly weak and frail,” wincing in pain from a nasal tube, and requiring the support of a “walker.”

gastric tubes from one detainee, and with no sanitization whatsoever, re-inserted it into the nose of a different detainee. When these tubes were re-inserted, the detainees could see the blood and stomach bile from other detainees remaining on the tubes. A person the detainees only know as “Dr. [name redacted]” stood by and watched these procedures, doing nothing to intervene.²²⁸

Yousef, who was a juvenile at the time of capture, relayed that guards told him that a U.S. court had ordered the force-feeding and that was the only reason that he and other prisoners complied with the force-feeding. He was “greatly disturbed,” according to his attorneys, to find out that no such order had been given and that he had been lied to. When his attorneys tried to meet with him a second time, they were told that he had removed his nasal gastric tube and was encouraging other prisoners to do the same.²²⁹

In January 2006, the military subjected over thirty prisoners to intranasal force-feeding. When several prisoners reached a life-threatening stage, the military turned to the use of an “emergency restraint chair” to immobilize prisoners during several hours of force-feeding every day. According to one prisoner’s legal challenge to this practice, the military grossly misused the emergency restraint chair:

U.S. government officials immobilized the hunger strikers’ heads by strapping them in the restraint chair, restrained their hands, inserted feeding tubes in their noses, and force fed them large bags of liquid nutrients. The account further describe hunger strikers bleeding and vomiting from these actions, and urinating and defecating on themselves because Respondents had denied them access to a bathroom.²³⁰

Once the military began using the emergency restraint chair, all but three prisoners ended their hunger strike due to the pain and humiliation.

The U.S. courts have not addressed the prisoners’ request to ban the use of the emergency restraint chair. In June 2006, the military acknowledged that over eighty prisoners had begun another hunger strike and at least six were swiftly subjected to force-feeding.

V. AVOIDING JUDICIAL SCRUTINY OF TORTURE AND CRUEL, INHUMAN, AND DEGRADING TREATMENT

“U.S. government officials immobilized the hunger strikers’ heads by strapping them in the restraint chair, restrained their hands, inserted feeding tubes in their noses, and force fed them large bags of liquid nutrients.”

The government’s self-serving reliance on the conclusions of its own investigations highlights the urgent need for an independent investigation of prisoner treatment and conditions of confinement.

The U.S. government has steadfastly declared that the prisoners in Guantánamo are treated humanely, that any isolated incidents of abuse occurred long ago, and the individual soldiers involved reprimanded. The government points to the fact that none of the investigations undertaken so far “found that any governmental policy directed, encouraged or condoned these abuses.”²³¹ The government’s self-serving reliance on the conclusions of its own investigations highlights the urgent need for an independent investigation of prisoner treatment and conditions of confinement. The U.S. government has failed to provide the prisoners with any means to address and remedy their allegations of torture and cruel, inhuman and degrading treatment. Neither the military proceedings in Guantánamo nor the federal courts in the United States have

held the U.S. government accountable for the conduct in Guantánamo or prohibited these practices. As the prisoners enter their fifth year of detention, not a single federal habeas hearing has been held to challenge a prisoner’s “enemy combatant” status, and mistreatment in Guantánamo and continued arbitrary confinement.

CSRTs. In June 2004, the U.S. Supreme Court ruled in *Rasul v. Bush* that U.S. federal courts have jurisdiction to hear Guantánamo prisoners’ habeas cases. Within a week, the July 7, 2004 Wolfowitz Order established Combatant Status Review Tribunals (CSRTs) that purported to provide a process for confirming that each

prisoner correctly had been determined to be an enemy combatant. The CSRTs, however, provided nothing more than an administrative “rubberstamp” of previously made determinations. The CSRTs did not occur until some prisoners had already been in custody for two and one-half years, prisoners were denied access to counsel, and secret evidence frequently formed the basis for the CSRT determinations.

Despite complaints raised by numerous prisoners, the CSRTs failed to investigate and remedy allegations that statements obtained under torture or abuse were used against the prisoners by the U.S. military.

The government argues . . . that this Court must accept the validity of CSRTs without undertaking factual or evidentiary review. The government does not deny that the CSRTs would be inconsistent with due process if they relied on statements obtained by torture, but simply asserts as a factual matter that the CSRTs did not rely on coerced statements and asked this court to take it at its word.²³²

Detainee Treatment Act. On June 15, 2005, the U.S. Senate, in response to widespread criticism at home and abroad, including concerns about torture and abuse documented by the FBI,²³³ opened hearings regarding the Guantánamo prisoners.²³⁴ Six months later, Congress passed the Detainee Treatment Act (DTA), which is the first legislation explicitly related to the Guantánamo prisoners. The President signed the DTA into law on December 30, 2005.

The DTA expressly prohibits “cruel, inhuman, or degrading treatment” of American captives. However, an amendment introduced by Senators Lindsey Graham, Carl Levin, and Jon Kyl (Graham-Levin-Kyl amendment) deprives courts of the ability to enforce that ban on behalf of Guantánamo prisoners.²³⁵ The Graham-Levin-Kyl amendment provides that “no court, justice, or judge shall have jurisdiction to hear or consider” applications for habeas corpus or “*any other action against the U.S.*” brought by aliens detained at Guantánamo.

The Bush Administration has asserted the DTA as a defense against claims of torture by Guantánamo prisoners. In March 2006, Administration lawyers contended in federal court and in legal filings that Mohammed

Bawazir, a Yemeni national held since May 2002, cannot claim protection under the Act’s anti-torture provisions because that prohibition does not apply to people held at Guantánamo.²³⁶ Bawazir’s attorneys have contended that “extremely painful” new tactics used by the government to force-feed him and end his hunger strike amounted to torture. U.S. District Judge Gladys Kessler said in a hearing on March 2, 2006, that she found allegations of aggressive U.S. military tactics used to break the prisoner hunger strike “extremely disturbing” and possibly against U.S. and international law.²³⁷ However, government lawyers argued that even if the tactics did violate the Act’s anti-torture ban, under the DTA, prisoners at Guantánamo have no recourse to challenge that ban in court.²³⁸

Perhaps the most hotly contested issue concerning the DTA is whether it applies to deprive the courts of jurisdiction to hear pending habeas cases brought by the Guantánamo prisoners. The U.S. government contends that it does; through the DTA, the government once again is seeking to place prisoners in a legal black hole at Guantánamo, so it may continue its detention operations outside the supervision of U.S. courts. The U.S. Supreme Court’s June 29, 2006, decision in *Hamdan v. Rumsfeld* unambiguously rejected that position, holding that the DTA does not strip federal court jurisdiction to hear habeas claims in pending cases.²³⁹

VI. HAS THE U.S. BEEN COMMITTING TORTURE IN GUANTÁNAMO?

Only an independent commission can fully address the nature and extent of the use of torture against Guantánamo prisoners. Yet, the evidence assembled in this report clearly points to a pattern and practice of torture and cruel, inhuman, and degrading treatment that implicates a policy encouraging its use. Given the limitations on access to the prisoners and the extreme conditions at Guantánamo, the facts uncovered thus far demand immediate examination of these most serious allegations.

The definitions of torture and cruel, inhuman, and degrading treatment are found in several sources of statutory and treaty law. Foremost is the Convention Against Torture (CAT), which provides a definition of torture, requires state parties not to return a person to a place where he will be subject to torture and prohibits

the use of statements obtained under torture in legal proceedings.²⁴⁰ The United States was one of the main proponents of the treaty and is a signatory to it.

Article 1 of the CAT defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person . . .²⁴¹

The CAT flatly prohibits torture.

Article 2 provides:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture.²⁴²

The United States ratified the CAT in 1994, subject to certain conditions, known as Reservations, Declarations and Understandings (RUDs).²³⁷ For example, the United States limited its obligation under Article 16. Article 16 provides that “[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 . . . under color of law.²⁴⁴ The United States declared that “cruel, inhuman and degrading treatment” be consonant with the prohibition of “cruel, unusual and inhumane treatment or punishment” under the Fifth, Eighth, and/or Fourteenth Amendments of the U.S. Constitution.²⁴⁵ It also stated an understanding that torture is “an act . . . specifically intended to inflict severe physical or mental pain or suffering.”²⁴⁶ Finally, because the CAT did not define “mental pain or suffering,” the United States defined it in terms of its objective causes rather than its subjective qualities. Despite these RUDs the U.S. is bound by its treaty obligations not to engage in torture at any time.²⁴⁷

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture.”

The United States also refused to opt into CAT’s individual complaint mechanism that allows individual victims of torture, after exhausting domestic remedies, to file a complaint directly with the Committee Against Torture.²⁴⁸ The United States further declared that CAT was non-self-executing, which means that the United States must pass implementing legislation to codify certain provisions of the treaty. Further, it means that the treaty itself is not an independent basis to bring a lawsuit for violations of its provisions.²⁴⁹ To implement its obligation under CAT to criminalize torture, the United States passed 18 U.S.C. §§ 2340 – 2340A, which makes it a crime for a U.S. national to commit torture outside of the U.S.²⁸⁰

18 U.S.C. §§ 2340-2340A defines “torture” as:

an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;²⁵¹

“Severe mental pain and suffering” is further defined as:

prolonged mental harm caused by or resulting from –

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other

procedures calculated to disrupt profoundly the senses or personality.²⁵²

Plainly, many Guantánamo prisoners report being subject to treatment that falls within these definitions of

torture. The appendix included at the end of this report illustrates specific conduct, keyed to the definitions of torture banned by U.S. and binding international law. CCR believes that U.S. government conduct at Guantánamo has resulted in numerous violations of the prohibition against torture and cruel, inhuman and degrading treatment.

VII. UNITED NATIONS AND COMMITTEE ON THE CONVENTION AGAINST TORTURE FIND TORTURE COMMITTED AT GUANTÁNAMO

A. United Nations Special Rapporteurs' Report

After eighteen months of study, UN investigators released a report condemning U.S. treatment of prisoners held at Guantánamo and concluding that certain practices at Guantánamo amounted to torture.²⁵³ The fifty-four page report, released on February 16, 2006, disclosed an alarming number of practices at Guantánamo that violate human rights and international humanitarian treaties and standards to which the United States is a party, including the International Covenant on Civil and Political Rights (ICCPR), the CAT, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁵⁴

One of the UN's main human rights monitoring bodies, the United Nations High Commissioner on Human Rights (UNHCHR) first began monitoring the prisoners' situation in January 2002.²⁵⁵ After two and one-half years of continued allegations of human rights violations, a group led by five UNHCHR mandate holders (the Chairperson of the Working Group on Arbitrary Detention, and the Special Rapporteurs on the Independence of Judges and Lawyers; Torture and Other Cruel, Inhuman or Degrading Treatment or

After eighteen months of study, UN investigators released a report condemning U.S. treatment of prisoners held at Guantánamo and concluding that certain practices at Guantánamo amounted to torture.

The UN report concluded that the United States should close "the Guantánamo detention facilities without further delay."

Punishment; Freedom of Religion or Belief; and Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health) conducted an in-depth investigation and evaluation of U.S. treatment of Guantánamo prisoners. The investigators reviewed publicly available information and interviewed former Guantánamo prisoners. The investigators were denied the opportunity to interview current prisoners first hand.²⁵⁶

The UN report criticized the United States for denying Guantánamo prisoners many basic rights and, above all else, personal liberty.²⁵⁷ The report found that interrogation techniques, conditions of detention, the use of excessive violence, and transfer of prisoners to countries that pose a serious risk of torture violate the basic human right to be free from torture.²⁵⁸ The report criticized the United States for failing to provide trial by an independent tribunal and adequate healthcare and for persecuting prisoners because of their Muslim faith.²⁵⁹ The report concluded that the United States should close "the Guantánamo detention facilities without further delay."²⁶⁰

The response of world leaders to the UN Report was immediate; many called for the closure of Guantánamo, including British Prime Minister Tony Blair, German Chancellor Angela Merkel, UN Secretary-General Kofi Annan, and Archbishop Desmond Tutu.²⁶¹ Recently, British Attorney General Lord Goldsmith issued one of the strongest condemnations of the U.S. detention center at Guantánamo to date from a British government official:

The existence of Guantánamo remains unacceptable. It is time, in my view, that it should close. Not only would it, in my personal opinion, be right to close Guantánamo as a matter of principle, I believe it

would also help to remove what has become a symbol to many – right or wrong – of injustice. The historic tradition of the U.S. as a beacon of freedom, liberty and of justice deserves the removal of this symbol.²⁶²

B. United Nations’ Committee Against Torture Report

On May 19, 2006, the United Nations Committee Against Torture, the treaty body charged with monitoring contracting states’ compliance with the CAT, issued a scathing and thorough critique of the U.S. record on torture. The Committee called upon the United States to close all secret prisons, hold both military and civilian senior officials accountable for their role in acquiescing to acts of torture committed by their subordinates, and end its practice of transferring prisoners to countries with known torture records. Of particular note, the Committee expressly rejected the U.S. government’s contention that the CAT did not apply to U.S. personnel acting outside of the U.S. or during wartime, and called for the immediate cessation of the indefinite detention of prisoners at Guantánamo and closure of the facility.²⁶³

VIII. CONCLUSION

As William H. Taft, former Legal Advisor, Department of State in the George W. Bush Administration, has stated, “How our government treats people should never, at bottom, be a matter merely of policy, but a matter of law.”²⁶⁴ The government’s unilateral decision to abandon our obligations under the Geneva Conventions and international humanitarian and human rights law tarnishes the reputation of the U.S. as a country committed to the rule of law, sets a poor example for other nations, gives human rights abusing regimes justification to follow suit, and endangers U.S. troops abroad. Fundamentally, these practices cause substantial physical and psychological injury to the men imprisoned in

The lesson of this report is that widespread abuses have occurred, are now occurring, and will continue to occur at Guantánamo. The report reveals patterns and systematic practices that implicate not the idiosyncratic predilections of sadistic soldiers and interrogators but policies approved at the highest level of the U.S. government.

Guantánamo and have a ripple effect upon the lives of the men’s families throughout the world.

The lesson of this report is that widespread abuses have occurred, are now occurring, and will continue to occur at Guantánamo. The report reveals patterns and systematic practices that implicate not the idiosyncratic predilections of sadistic soldiers and interrogators but policies approved at the highest level of the U.S. government. Independent and transparent investigation into the sources and planning of these practices is a pre-requisite to answering the query: how could these abuses occur and how can they be stopped?

The abuses easily can give rise to rage and resentment in the Muslim world and elsewhere. The alleged use of religious and cultural abuse at Guantánamo, if not condemned in the strongest terms, may validate Muslim concerns that the United States is hostile to the religion of Islam. How the United States is treating prisoners in the “war on terrorism” should be the subject of a searching and self-reflective national debate.

Investigations conducted to date – largely by DoD itself – have failed to hold accountable those responsible for implicitly or explicitly authorizing torture and cruel, inhuman and degrading treatment at Guantánamo.²⁶⁵ This atmosphere of impunity only deepens the fear and psychological trauma of the prisoners.

The United States is violating the human rights of Guantánamo prisoners by holding them indefinitely without charge and without a fair process for determining whether their imprisonment is lawful. The accounts of torture and cruel, inhuman, and degrading treatment presented in this report show that the prisoners are subject to countless acts of mistreatment and abuse, both in interrogation and as part of their daily lives at Guantánamo.

All mistreatment of Guantánamo prisoners must immediately end. CCR calls on Congress to take all necessary steps to appoint an independent bipartisan commission, modeled on the 9/11 Commission, to investigate thoroughly all incidents of torture and abuse at Guantánamo and other detention facilities and to analyze the nature and extent of such practices. This commission should also be charged with holding government officials accountable who have violated domestic and international law in allowing these abuses to occur and with making specific policy recommendations designed to prevent any such abuses in the future.

APPENDIX

PRACTICES THAT RISE TO THE LEVEL OF TORTURE AT GUANTÁNAMO

The definitions in both the CAT and U.S. statute define the following practices, which routinely occur at Guantánamo, as torture.

PRACTICES	PRISONER ASSERTIONS
<p>“PHYSICAL PAIN OR SUFFERING”</p> <hr/>	<ul style="list-style-type: none">• David Hicks was beaten during interrogations and interrogated at gunpoint.²⁶⁶• IRF incidents, such as assaults on Messrs. Al-Laithi and Al Dosari.²⁶⁷
<p>“SEVERE MENTAL PAIN AND SUFFERING” defined as “prolonged mental harm caused by or resulting from-</p> <p>“(A) the intentional infliction or threatened infliction of severe physical pain or suffering;</p> <hr/>	<ul style="list-style-type: none">• IRF incidents, such as assaults on Messrs. Ait Idir and Al-Shehri.²⁶⁸
<p>“(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;</p> <hr/>	<ul style="list-style-type: none">• David Hicks was injected with unknown medications and struck while under the influence of sedations that were forced upon him.²⁶⁹• O.K. has found partially dissolved tablets and/or powder in the bottom of a glass given to him by his captors. The pills produce various effects: sleepiness, dizziness, alertness.²⁷⁰• Mr. Abd al-Malik al-Wahab states that detainees deemed uncooperative are injected with heavy tranquilizers that sedate them for a month and leave some addicted.²⁷¹• Other prisoners have had teeth broken for refusing injections, and then as punishment they are sedated.²⁷²• Instance of prolonged sleep deprivation, as reported by Messrs. Al-Qahtani, Boumediene, and Nechla.²⁷³• Instances of prolonged solitary confinement, as reported by Messrs. Lahmar and Bensayah.²⁷⁴

PRACTICES

PRISONER ASSERTIONS

“(C) the threat of imminent death; or

- Mr. Abd al-Malik al-Wahab was threatened with torture and execution.²⁷⁵
- Moazzam Begg was threatened with summary trial and execution.²⁷⁶
- In Afghanistan, an MP loaded a rifle and aimed it at Murat Kurnaz’s head.²⁷⁷

“(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.”

- Mr. Abd al-Malik al-Wahab was sleep deprived and forced to spend long hours in cold temperatures, while threatened with torture and execution and told harm would befall his family.²⁷⁸
- A female soldier informed Mr. Al Noaimi that she was from Virginia and had learned he had family members there. She threatened to kill them.²⁷⁹

Chronology of Events

September 11, 2001	Al Qaeda attacks the United States.
September 18, 2001	Congress passes the AUMF.
October 7, 2001	Ground war in Afghanistan begins.
November 13, 2001	President Bush authorizes trials by military commission.
December 27, 2001	Defense Secretary Rumsfeld announces plan to send prisoners to GTMO.
December 28, 2001	Legal advisors inform President Bush GTMO is probably beyond reach of federal courts.
January 6, 2002	Construction of temporary facility, Camp X-Ray, begins; first troops [JTF-160] arrive at GTMO.
January 9, 2002	Legal advisors inform William Haynes, Defense Department General Counsel, laws of war do not restrain President Bush, and Geneva Conventions do not protect prisoners seized during war on terror.
January 11, 2002	First planeload of 20 prisoners arrives at Camp X-Ray.
February 7, 2002	President declares Geneva Conventions do not apply to AQ, and Taliban fighters are not eligible for POW status.
February 18, 2002	U.S. Southern Command authorizes JTF-170 to conduct interrogations at GTMO.
February 19, 2002	Habeas litigation on behalf of GTMO prisoners commences.
February 27, 2002	Camp Delta expansion begins; prisoners begin first hunger strike.
April 5, 2002	First prisoner released from GTMO.
April 29, 2002	Prisoner transfer to Camp Delta completed; Camp X-Ray closed.
Summer 2002	Gen. Jack Keane, Vice Chief of Staff for the U.S. Army, visits GTMO; finds quality of intelligence gathered unsatisfactory; recommends intelligence and military functions be combined under unified command.
August 1, 2002	President Bush's legal advisors narrow definition of torture and conclude President Bush, as Commander in Chief, can authorize any interrogation technique, even if contrary to domestic statute against torture.
October 9, 2002	Brig. Gen. Rick Baccus leaves GTMO after being relieved of his duties as commander.
October 11, 2002	Maj. Gen. Michael Dunlavey, head of interrogations at GTMO, requests permission to use tougher interrogation techniques.
November 4, 2002	Maj. Gen. Geoffrey Miller takes over command at GTMO; JTF-160 and JTF-170 merge to form JTF- GTMO.
December 2, 2002	Rumsfeld formally approves use of coercive interrogation techniques, including stress positions; deprivation of light and auditory stimuli; isolation up to 30 days; hooding; forced grooming; removal of clothing; removal of comfort items (including religious items).
December 2002	Navy officials threaten to pull Navy interrogators out of GTMO after chief Navy psychologist calls the techniques used "abusive" and "coercive."
January 15, 2003	Rumsfeld rescinds 12/2/02 approval of coercive interrogation techniques and orders a working group to assess legal, policy, and operational issues relating to interrogations.
April 2, 2003	Medium-security prison completed.
April 4, 2003	Working Group on Detainee Interrogations issues final report recommending use of 35 interrogation techniques, including 9 to be used only subject to limits, including whether prisoner is "medically and operationally evaluated as suitable."
April 16, 2003	Rumsfeld approves 24 techniques and requires prior authorization for coercive techniques.
April 22, 2003	Department of Defense independent contractor reports witnessing MPs slamming prisoner violently into floor.
May 2, 2003	Maj. Gen. Miller discontinues use of "fear up" techniques.
July 3, 2003	Military commissions process commences.

August 18-26, 2003	23 prisoners undertake mass suicide attempt to protest Koran abuse; military does not confirm until January 24, 2005.
August 31 – September 9, 2003	Miller sent to Iraq to review interrogation and prison operations; conducts assessment using JTF-GTMO procedures and interrogation authorities as baseline.
March 24, 2004	Brig. Gen. Jay Hood assumes command at GTMO.
April 2004	Construction of Camp Five completed.
June 28, 2004	Supreme Court holds in <i>Rasul v. Bush</i> that GTMO prisoners are entitled to a hearing on the merits of their habeas claims in U.S. federal court.
June 28, 2004	Supreme Court holds in <i>Hamdi v. Rumsfeld</i> that alleged enemy combatants entitled to minimum due process rights.
July 7, 2004	Deputy Secretary of Defense Wolfowitz establishes Combatant Status Review Tribunals (CSRTs)
July 26, 2004	3 released British prisoners issue lengthy statement accusing United States of severe mistreatment.
July 31, 2004	13 habeas petitions, representing 60 prisoners, pending in federal court.
August 31, 2004	First habeas counsel visits base.
October 4, 2004	Government moves to dismiss habeas cases arguing prisoners have no rights.
December 20, 2004	ACLU releases FBI e-mails concerning torture and abuse during interrogations.
January 11, 2005	Government announces Australian Mamdouh Habib will be released, five days after his allegations of torture are made public in court proceedings.
January 19, 2005	Judge Leon rules prisoners have no constitutional rights and dismisses two habeas cases.
January 26, 2005	Prisoner Habib freed and returned to Australia.
January 31, 2005	Judge Green rules prisoners have constitutional rights, and CSRTs violate due process.
February 9, 2005	Government notices appeal of Judge Green's ruling.
February 22, 2005	Petitioners notice appeal of Judge Leon's ruling.
June 3, 2005	Brig. Gen. Hood concludes inquiry on Koran abuse at GTMO.
June 9, 2005	Pentagon releases "Schmidt Report" on interrogations at GTMO confirming most FBI allegations of abuse, concluding interrogation of Mohammed al Qahtani was "abusive and degrading," and recommending reprimand of Maj. Gen. Geoffrey Miller for failing to supervise the interrogation. Recommendation overruled by General Bantz Craddock, Commander of the U.S. Southern Command.
Late June 2005	Hunger strike begins.
July 28, 2005	Prison officials agree to bring GTMO into compliance with Geneva Conventions; hunger strike ends.
August 8, 2005	Hunger strike resumes when GTMO officials fail to honor agreement with prisoners and place prisoners' representatives in segregation.
September 8, 2005	Oral Argument before DC Court of Appeals in consolidated Green/Leon appeals.
November 7, 2005	Supreme Court decides to rule on the constitutionality of the military commissions process in <i>Hamdan v. Rumsfeld</i> .
November 10, 2005	Senate passes amendment by Senator Lindsey Graham stripping the federal courts of jurisdiction to hear habeas petitions.
December 21, 2005	Congress passes a compromise amendment sponsored by Senators Graham, Levin, and Kyl and an amendment sponsored by Senator McCain, banning cruel, inhuman, and degrading treatment of anyone in United States custody.
December 30, 2005	President Bush signs into law the Graham-Levin-Kyl and McCain amendments, together known as the Detainee Treatment Act of 2005, with qualification that he will construe the McCain amendment "in a manner consistent with constitutional authority of the President . . . as Commander in Chief."

Glossary

ACLU – American Civil Liberties Union

ACS Defense – an independent defense contractor working with the Department of Defense.

Abu Ghraib – prison in Iraq where American soldiers abused imprisoned Iraqis.

Al Qaeda – terrorist group headed by Osama Bin Laden that attacked the U.S. on September 11, 2001.

Article 17 – article of Third Geneva Convention prohibiting torture and coercion during interrogation of prisoners of war.

BSCT – Behavioral Science Consultation Team.

Bagram – as used in this report, U.S. Air Force Base in Afghanistan.

CA3 – Common Article Three of the Geneva Conventions, providing for a baseline of humane treatment for any person detained during military conflict.

CAT – Convention Against Torture; international treaty U.S. has signed prohibiting torture and cruel, inhuman, and degrading treatment of persons in custody.

CIA – Central Intelligence Agency.

Camp Echo – special prison at GTMO housing prisoners to be tried before military commissions if the Supreme Court finds the military commissions process constitutional.

Camp Delta – main prison at GTMO; Camp Delta includes Camps 1-4.

Camp Five – maximum security prison at GTMO.

Camps 1-4 – (see Camp Delta).

Camp X-Ray – original, temporary facility composed of wire cages for GTMO prisoners.

DoD – Department of Defense.

Detainee – government’s term for prisoners held indefinitely at GTMO.

Detainee Levels 1-4 – government designation of detainees based on level of cooperation with military, 1 being most cooperative, 4 being least.

Donald Rumsfeld – Secretary of Defense.

Enemy Combatant – in general, the government’s term for persons not belonging to the regular army of any nation who allegedly have harmed, or intend to harm, U.S. persons or interests. The government’s definition of the term has been inconsistent since 2002. It was most recently and broadly re-defined in Secretary of Defense Paul Wolfowitz’s order establishing the Combat Atatus Review Tribunals (CSRTs).

Eric Saar – former soldier in military intelligence at Guantanamo.

FBI – Federal Bureau of Investigation.

FM 34-52 – Field Manual 34-52; army guidelines on interrogation.

FOIA – Freedom of Information Act.

Geneva Conventions – international humanitarian treaties signed in 1949, in part successors to the Hague Convention, codifying the laws of war regarding treatment of captured persons.

George W. Bush – President of the United States.

GTMO (or Gitmo) – acronym for Guantánamo Bay, Cuba.

Habeas corpus – fundamental right requiring the Executive to demonstrate the legal grounds for imprisoning a person; empowers courts to order release if detention is unlawful.

Hamdi v. Rumsfeld – Supreme Court decision holding that a U.S. citizen “enemy combatant” has right of due process.

Hunger strike – refusal to take in nourishment, often undertaken by prisoners to protest detention or conditions.

ICE – Interrogation Control Element.

Interrogation – formal process of questioning prisoners for information, in the past conducted according to Army Field Manual 34-52 guidelines.

IRF – Immediate Reaction Force (sometimes referred to as “Extreme Reaction Force”), team of military guards trained to respond to disturbances with force.

IRF'd – GTMO slang for being “worked over” by the IRF.

JTF-GTMO -- Joint Task Force, Guantánamo; name of military task force in charge of overseeing detention and interrogation operations in GTMO; joint because it is composed of units from the different armed services .

James Yee – former Muslim chaplain at GTMO; accused of spying for Al Qaeda and later exonerated.

Koran (or Qu’ran) – Muslim holy book.

KUBARK – CIA cryptonym (code name) for CIA itself.

Kandahar – as used in this report, U.S. Air Force Base in Southern Afghanistan.

MP – military police.

NG – nasal-gastric; tubes used for force-feeding hunger strikers.

NLEC – No Longer Enemy Combatant; a status classification assigned to prisoners whose CSRTs determined them not to be enemy combatants.

PHR – Physicians for Human Rights.

POW, PW – prisoner of war.

Paul Wolfowitz – former Deputy Secretary of Defense (see Wolfowitz Order).

Prisoner – detainee whose detention is potentially indefinite.

Rasul v. Bush – Supreme Court decision holding that writ of habeas corpus extends to prisoners in Department of Defense custody at GTMO and that prisoners are entitled to a hearing on the merits of their claims.

Reservation – (see interrogation) military slang for interrogation.

Sensory deprivation – coercive interrogation technique involving isolation.

Short-shackling – stress position in which a prisoner’s arms and legs are shackled together and to the ground, forcing him into a stooped position.

Sleep deprivation – coercive interrogation technique usually accomplished through use of light and sound disturbances or by moving the prisoner repeatedly from cell to cell during the night.

Solitary confinement – isolation of prisoner as form of extreme interrogation technique.

Taliban – conservative Muslim political-religious group controlling government of Afghanistan when Al Qaeda attacked the U.S.

Qu’ran (see Koran).

War Crimes Act – U.S. law making certain violations of Geneva Conventions a criminal offense.

Wolfowitz Order – directive from Deputy Secretary of Defense Wolfowitz on July 7, 2004 that established CSRT process and defined “enemy combatant” in broad terms; set down just two weeks after the Supreme Court’s decision in *Rasul v. Bush* that federal courts consider prisoners’ claims.

¹ Robert Kirsch, Unclassified Attorney Notes Regarding Hadj Boudella (on file with author) (statement made by U.S. military intelligence officers to prisoner Hadj Boudella).

² See Cecili Thompson Williams & Kristine A. Huskey, Detention, Interrogation, and Torture at Guantánamo Bay: Materials and Case Files (Oct. 2005) [hereinafter Shearman Sterling Report] (on file with author).

³ *ACLU v. Dep't of Def.* 406 F.Supp.2d 330 (S.D.N.Y. 2005). Documents produced as a result of this litigation will be referred to as “FOIA Documents.”

⁴ See ERIC SAAR & VIVECA NOVAK, *INSIDE THE WIRE: A MILITARY INTELLIGENCE SOLDIER'S EYEWITNESS ACCOUNT OF LIFE AT GUANTÁNAMO* (2005).

⁵ JAMES YEE & AIMEE MOLLOY, *FOR GOD AND COUNTRY: FAITH AND PATRIOTISM UNDER FIRE* (2005). For a review, see Joseph Lelyveld, *The Strange Case of Chaplain Yee*, N.Y. REV. OF BOOKS, Dec. 15, 2005, available at www.nybooks.com/articles/18550 (last visited June 20, 2006). The formal charges against Mr. Yee included mishandling of classified documents and adultery.

⁶ The United States originally acquired Guantánamo in 1898 when it militarily occupied Cuba during the Spanish-American War. When Cuba became independent in 1903, the United States was “granted” a perpetual lease on the land occupied by the Base. The terms of the treaty provided that the United States “shall exercise complete jurisdiction and control,” while Cuba retains “ultimate sovereignty.” Lease of Lands for Coaling and Naval Stations, art. III, T.S. 418. A subsequent treaty in 1934 continued the terms of the lease agreement signed in 1903 and provided that “[s]o long as the United States of America shall not abandon the said naval station of Guantánamo or the two Governments shall not agree to a modification of its present limits,” the arrangement could continue. Treaty Between the United States of America and Cuba Defining Their Relations art. 3, U.S.-Cuba, May 29, 1934, 48 Stat. 1682 (1934).

⁷ See Press Release, U.S. Dep't of Def., Office of Public Affairs *Detainee Transfer Announced* (May 18, 2006) available at <http://www.defenselink.mil/releases/2006/nr20060518-13076.html> (last visited June 20, 2006).

⁸ MAGNA CARTA [CONSTITUTION], paras. 38-39 (Eng.); U.S. CONST. art. 1, § 9, cl.2.

⁹ See *id.*

¹⁰ 28 U.S.C. § 2241(c)(1)(c)(3).

¹¹ 542 U.S. 466 (2004). The litigation before the Supreme Court involved two consolidated cases; *Rasul v. Bush*, No. 03-334, was spearheaded by Joseph Margulies and the Center for Constitutional Rights and *Al Odah v. United States*, No. 03-343, by the law firm of Shearman and Sterling. Anticipating the litigation culminating in *Rasul v. Bush* in December 2001, the DoD asked the Department of Justice (DOJ) for its legal opinion concerning the question of whether federal courts would have jurisdiction to hear *habeas* petitions from aliens held at Guantánamo. See Memorandum from Patrick F. Philbin, Deputy Assistant Att’y Gen. Dep’t of Justice & John Yoo, Deputy Assistant Att’y Gen. Dep’t of Justice, to William J. Haynes II, General Counsel, Dep’t of Def. (Dec. 28, 2001), in *THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB* 29 (Karen J. Greenberg & Joshua L. Dratel eds., 2005) [hereinafter *THE TORTURE PAPER*] (concluding federal courts probably could not assert jurisdiction but some litigation risk existed).

¹² *Al Odah v. United States*, 346 F. Supp.2d 1 (D.D.C. 2004).

¹³ Mark Huband, *U.S. Officer Predicts Guantánamo Releases*, FIN. TIMES (LONDON), Oct. 4, 2004.

¹⁴ Samara Kalk Derby, *How Expert Gets Detainees to Talk* THE CAPITAL TIMES (Madison, Wis.), Aug. 16, 2004, at 1A; see also SAAR, *supra* note 4, at 149 (“From what I was seeing in the files . . . detainees with valuable information weren’t the norm. I was amazed that some of the files I was looking at were so thin – sometimes just a mug shot, an ID number from Bagram, and a summary of the detainee’s initial interrogation, which might say that he had maintained he was a farmer, that he denied any connection to terrorism, and claimed to have been picked up by the Northern Alliance or the Pakistanis.”).

¹⁵ Christopher Cooper, *Detention Plan: In Guantánamo, Prisoners Languish in a Sea of Red Tape*, WALL ST. J., Jan. 26, 2005.

¹⁶ See *infra* Part I.A (discussing study of the Combatant Status Review Tribunals’ records).

¹⁷ For a selection of statements made by U.S. officials in early 2002 about the prisoners in Guantánamo, see DAVID ROSE, *GUANTÁNAMO: THE WAR ON HUMAN RIGHTS* 8 (2004) quoting Vice-President Dick Cheney: “These are the worst of a very bad lot. They are very dangerous. They are devoted to killing millions of Americans, innocent Americans, if they can, and they are perfectly prepared to die in the effort” Cheney’s remarks were made on Fox News Sunday, Fox News, Transcript: Cheney on Guantánamo Detainees (Jan. 27, 2002), available at <http://www.foxnews.com/story/0,2933,44082,00.html> (last visited June 20, 2006).

¹⁸ The excerpt from the Al Qaeda training manual posted on the DOJ website does call for torture to be brought to the attention of the court if a “brother” is on trial. It does not instruct members to make up allegations of torture but appears to assume that torture will occur as a matter of course, perhaps because terrorism suspects were likely to be handed over to human rights abusing regimes where prisoners are routinely tortured. See Al Qaeda Training Manual, Lesson Eighteen, available at www.fas.org/irp/world/para/manualpart1.html (last visited June 20, 2006).

¹⁹ Jane Mayer, *The Memo*, NEW YORKER (Feb. 27, 2006), available at http://www.newyorker.com/fact/content/articles/060227fa_fact (last visited June 20, 2006). The original memo is available at <http://www.newyorker.com/images/pdfs/moramemo.pdf> (last visited June 20, 2006).

²⁰ See, e.g., Memorandum from Maj. Gen. Jack L. Rives, Deputy Judge Advocate General of the U.S. Air Force, on Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism (Feb. 5, 2003) (on file with author). This memorandum was made public by Senator Lindsey Graham on July 25, 2005.

²¹ Decision and Order of the Supreme Court of the Federation of Bosnia and Herzegovina, No. Ki-1001/01 (Sarajevo, Jan. 17, 2002) (emphasis supplied).

[The] Office of Federal [sic] prosecutor has with document no. KT-115/01 from 17 January 2002 informed [the] investigative judge that [his] opinion is that there are no further reasons or circumstances based upon which this measure for ensuring [the] presence of [the] accused in criminal procedure was ordered. Therefore[,] the measure of the detention can be terminated to all accused persons and they can be released from detention.

Reviewing [the] suggestion of [the] Deputy Federal prosecutor and [the] status of [the] investigation [sic] case, [the] investigative judge agreed with this suggestion and *since the reasons based upon which [the] detention was ordered and extended, article 189, para [.] 1 and 2 of the Law on Criminal Procedure, do not exist any more, it has been decided as in declaration of this decision.*

In 2004, the Federal Prosecutor dropped all charges related to the alleged plot and closed the criminal investigation. See Letter from Zdravko Knezevic, Federal Chief Prosecutor, to UN High Commission for Human Rights (Nov. 8, 2004) (on file with author).

²² Documents produced by the U.S. government in FOIA litigation have subsequently confirmed that the plane took off from the Tuzla Air Force base in Bosnia and landed at the U.S. Air Force base at Incirlik, Turkey, en route to Guantánamo. FOIA Documents 3506-3562 (on file with the author).

²³ Melissa Hoffer, Unclassified Attorney Notes Regarding Mohammed Nechla (on file with author).

²⁴ *O.K. v. Bush*, 377 F. Supp.2d 102, 103 (D.D.C. 2005).

²⁵ Exhibit A to Motion for Preliminary Injunction at 4, *O.K. v. Bush*, 377 F. Supp.2d (D.D.C. 2005) (No. 04-1136).

²⁶ Robert Kirsch, unclassified attorney notes regarding Mustafa Ait Idir (on file with author).

²⁷ See, e.g., *Ex Parte Quirin*, 317 U.S. 1 (1942); *Madsen v. Kinsella*, 343 U.S. 341 (1952).

²⁸ *Hamdi v. Rumsfeld*, 542 U.S. 507, 516 (2004).

²⁹ Compare News Briefing on Military Commission by Donald H. Rumsfeld, Sec’y of Def., Gen. Peter Pace, Vice Chairman, Joint Chiefs of Staff, Douglas Feith, Under Sec’y of Def., and William J. Haynes II, General Counsel of the Dep’t of Def. (March 21, 2002), http://www.defenselink.mil/transcripts/2002/t03212002_t0321sd.html (last visited June 23, 2006) (Guantánamo prisoners are “enemy combatants that we captured on the battlefield seeking to harm U.S. soldiers or allies”), with Memorandum from William J. Haynes II, General Counsel, Dep’t of Def., to Members of the ASIL-CFR Roundtable (Dec. 12, 2002), http://www.cfr.org/pub5312/william_j_haynes/enemy_combatants.php# (last visited June 23, 2006) (“An ‘enemy combatant’ is an individual who, under the laws and customs of war, may be detained for the duration of an armed conflict. In the current conflict with al Qaeda [sic] and the Taliban, the term includes a member, agent, or associate of al Qaeda or the Taliban”) (emphasis added).

³⁰ Memorandum to the Sec’y of the Navy from Paul Wolfowitz, Deputy Sec’y of Def. (Jul. 7, 2004), <http://www.defenselink.mil/news/Jul2004/d20040707review.pdf> (last visited June 23, 2006).

³¹ Transcript of Oral Argument at 25-26, *In re Guantánamo Detainee Cases*, 355 F. Supp.2d 443 (D.D.C. 2005) (Nos. 02-CV-0299, et al.). At that hearing, counsel for the government also admitted that the definition was broad enough to include “a resident of Dublin, England [sic] who teaches English to the son of a person the CIA knows to be a member of Al-Qaeda,” or “a Wall Street Journal reporter, working in Afghanistan, who knows the exact location of Osama bin Laden but does not reveal it to the U.S. government in order to protect her source.” *Id.* at 27, 29-30.

³² Transcript, ABC NEWS, 20/20, *Guantánamo*, June 25, 2004, at 2 [hereinafter ABC News] (on file with author).

³³ *Rasul v. Bush*, Nos. 03-334 & 03-343, slip op. at 3 n.4 (D.C. Cir. June 28, 2004).

³⁴ Motion for a Preliminary Injunction Barring the Government from Rendering Sami Al-Laithi to Egypt to Face Persecution, or Revealing to the Egyptian Government Additional Facts Concerning His Opposition to the Repressive and Undemocratic Regime of Hosni Mubarak at 5, *Slti v. Bush*, (D.D.C. 2005).

³⁵ *Id.* at 2-3.

³⁶ See, e.g., Nancy Gibbs with Viveca Novak, *Inside “The Wire” Security breaches. Suicidal detainees. A legal challenge heading to the Supreme Court. Welcome to Guantánamo*, TIME December 8, 2003, at 40. (“U.S. officials concluded that some detainees were there because they had been kidnapped by Afghan warlords and sold for the bounty the U.S. was offering for al-Qaeda and Taliban fighters. ‘Many would not have been detained under the normal rules of engagement,’ the source concedes”).

³⁷ ABC NEWS, *supra* note 32 at 13.

³⁸ *Id.* Lt. Col. Christino has also said that President Bush and Secretary Rumsfeld have “wildly exaggerated” the intelligence value of Guantánamo prisoners and that the “screening process” in Afghanistan for deciding which prisoners to send to Guantánamo was “hopelessly flawed from the get-go.” Martin Bright, *Guantánamo Has Failed to Prevent Terror Attacks*, OBSERVER (U.K.), Oct. 3, 2004, available at http://observer.guardian.co.uk/uk_news/story/0,6903,1318633,00.htm (last visited June 23, 2006).

³⁹ Based on government figures, CCR estimates this was the peak number. See Press Release, U.S. Dep’t of Def., Transfer of Guantánamo Detainees Complete (Nov. 24, 2003), <http://www.defenselink.mil/releases/2003/nr20031124-0685.html> (last visited June 23, 2006). As of October 1, 2005, the total number of men who have ever been detained in GTMO according to DoD figures was approximately 752. See Press Release, U.S. Dep’t of Def., Detainee Transfer Announced (Oct. 1, 2005), <http://www.defenselink.mil/releases/2005/nr20051001-4826.html> (last visited June 23, 2006). The United States has made it difficult, if not impossible, to compile accurate statistics about the number of individuals detained in Guantánamo. The DoD and other agencies have refused to release publicly the name, citizenship, or place of seizure of anyone in Guantánamo. It is only through sporadic letters from prisoners to their families and meetings between prisoners and their habeas attorneys that any specific details about the prisoners are made public. The DoD limits its public statements to the approximate number of prisoners detained at any given time. However, as a result of a lawsuit brought by the Associated Press, the DoD released two list of names: the first was of all Guantánamo prisoners who were the subjects of Combatant Status Review Tribunals. This included approximately 560 names. The second was a list of all persons ever incarcerated on Guantánamo. It included over 700 names. The absolute reliability of these two lists is not known. Even less information is available about the Central Intelligence Agency’s (CIA) activity at Guantánamo. The CIA has refused to confirm or deny allegations that at Guantánamo it was holding individuals as “ghost” prisoners, or prisoners unlisted on any prisoner records, and it has denied access to International Committee of the Red Cross inspectors. John Hendren & Mark Mazzetti, *Pentagon Reportedly Aimed to Hold Detainees in Secret*, L.A. TIMES, July 9, 2004 (noting that only prisoners in DoD custody are required, under the Wolfowitz Order, to have yearly reviews of their status).

⁴⁰ See, e.g., SEYMOUR M. HERSH, CHAIN OF COMMAND: THE ROAD FROM 9/11 TO ABU GHRAIB 1-20 (2004); Josh

White, *Abu Ghraib Tactics Were First Used at Guantánamo*, WASH. POST, July 14, 2005, at A1.

⁴¹ See Col. Daniel F. McCallum, *Why GTMO?* 6, available at http://www/justicescholars.org/pegc/archive/Journals/McCallum_why_gtmo.pdf (last visited June 25, 2006).

⁴² The two most notorious discussions were addressed to Alberto R. Gonzales, Counsel to the President. 9 Memorandum from Jay S. Bybee, Assistant Att’y Gen., U.S. Dep’t of Justice, to Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002), in *THE TORTURE PAPERS*, *supra* note 11, at 172; Letter from John C. Yoo, Deputy Assistant Att’y Gen., U.S. Dep’t of Justice, Office of Legal Counsel, to Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002), in *id.* at 218.

⁴³ “Extraordinary rendition” refers to transferring a prisoner without legal process to another country for interrogation, often where the transferee country has a dubious human rights record. See, e.g., Jane Mayer, *Outsourcing Torture*, NEW YORKER, Feb. 14, 2005, available at http://newyorker.com/printables/facts/050214fa_fact6 (last visited June 23, 2006).

⁴⁴ This was Mohammed al-Qahtani, the alleged twentieth hijacker. See Adam Zagorin & Michael Duffy, *Inside the Interrogation of Detainee 063*, TIME, June 20, 2005. It appears that Mr. al-Qahtani nearly died while undergoing interrogation in early December 2002. His heart rate slowed to 35 beats per minute and he was taken to the military hospital for a CT scan and stabilizing. For this story, *Time* obtained a leaked copy of the interrogation log for al-Qahtani. Personal communication from Adam Zagorin. This was not the first time al-Qahtani had been taken to the hospital during his interrogations. Gitanjali Gutierrez, Unclassified Attorney Notes (on file with author).

⁴⁵ Josh White, *Guantánamo Desperation Seen in Suicide Attempts*, WASH. POST, Nov. 1, 2005, at A1 (recounting suicide attempt two weeks earlier and quoting Lt. Col. Jeremy Martin, spokesman for Joint Task Force Guantánamo, on the total number of attempts (36 by 22 different prisoners)). The government’s estimates have not been independently corroborated.

⁴⁶ See Center for Constitutional Rights, *The Guantánamo Prisoner Hunger Strikes & Protests: February 2002 – August 2005*, September 2005, available at http://www.ccr-ny.org/v2/legal/september_11th/docs/Gitmo_Hunger_Strike_Report_Sept_2005.pdf (last visited June 23, 2006).

⁴⁷ See *infra* Part IV (detailing treatment of prisoners during hunger strike).

⁴⁸ See *id.*

⁴⁹ Guantánamo Bay Detainee Statements, Jum’ah Mohammed AbdulLatif Al Dossari, Isa Ali Abdulla Al Murbati, Abdullah Al Noaimi and Adel Kamel Abdulla Haji 5 (May 2005) (Joshua Colangelo-Bryan) [hereinafter Guantánamo prisoner Statements].

⁵⁰ See International Committee of the Red Cross (ICRC), 1949 Conventions & Additional Protocols, <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView> (last visited June 25, 2006).

⁵¹ Geneva Convention (no. III) relative to the treatment of prisoners of war, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter GC III]

⁵² See International Committee of the Red Cross, *supra* note 50.

⁵³ See GC III, *supra* note 51, art. 5.

⁵⁴ *Id.* arts. 13, 17, 18 & 19.

⁵⁵ *Id.* arts. 99-108.

⁵⁶ *Id.* arts. 8-11.

⁵⁷ *Id.* art. 15.

⁵⁸ *Id.* arts. 99 and 103-07 guarantee the rights not to be tried or sentenced for acts not forbidden by law at the time; not to give coerced confessions; the right to a defense and to assistance of a qualified advocate or counsel; the right to a speedy trial; limits on pretrial confinement; timely notice of charges; the right to call witnesses; the right to an interpreter if necessary; the right to private communications between advocate or counsel and the accused; and the right of appeal in the same manner as for members of the armed forces of the detaining power. *Id.* arts. 99, 103-107.

⁵⁹ Geneva Convention (No. IV) Relative to the Protection of Civilian Persons in Time of War art. 4, Aug. 12, 1949.

⁶⁰ *Id.* art 5.

⁶¹ GC III, *supra* note 51, art. 17.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ CA3 provides that “[p]ersons taking no active part in the hostilities, including: . . . those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria” (emphasis added). *E.G.*, GC III, *supra* note 51, art. 3(1).

⁶⁵ *Id.* art. 3(1)(a),(c)-(d).

⁶⁶ *Id.* art. 3(2).

⁶⁷ These include the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention Against All Forms of Racial Discrimination.

⁶⁸ JOSEPH MARGULIES, *Guantánamo and the Abuse of Presidential power* (2006).

⁶⁹ U.S. Army, Field Manual 34-52: Intelligence Interrogation at iv.-v. (1992) [hereafter FM 34-52] (“These principles and techniques of interrogation are to be used within the constraints established by the following: . . . Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, . . . Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, . . . Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949...”).

⁷⁰ *Id.* at 3-14 to 3-17.

⁷¹ *Id.*

⁷² *Id.* at 3-18 to 3-19. Other techniques in FM 34-52 include both psychological ruses and varied forms of questioning: “We Know All” (appearing to know everything a source might be concealing); “File and Dossier” (appearing to have all information about a source); “Establish Your Identity” (convincing the source you have mistaken him for someone else); “Repetition” (repeating a question over and over again); “Rapid Fire” (interrupting the source with unrelated questions); “Silent” (maintaining eye contact while not speaking); “Change of Scene” (getting source away from atmosphere of interrogation room). *Id.* at 3-19 to 3-20.

73 *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations, Draft* (Mar. 6, 2003), in THE TORTURE PAPERS, *supra* note 11, at 241, 285.

74 *Id.*

75 FM 34-52, *supra* note 69, at 1-9 (emphasis added).

76 Capt. Ian Fishback, Op-Ed, *A Matter of Honor*, WASH. POST, Sept. 28, 2005, at A21; *see also* SAAR, *supra* note 4, at 225 (“[I]f we felt queasy about what was happening, it wasn’t because we thought we were breaking any rules. That Geneva Convention meeting had blurred all the lines”).

77 Eric Schmitt, *Pentagon Rethinking Manual with Interrogation Methods*, N.Y. Times, June 14, 2006.

78 Motion for a Preliminary Injunction Concerning Conditions of Confinement at 17, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing Unclassified Memorandum re: Omar Deghayes (July 19, 2005), at 3-4).

79 18 U.S.C. § 2441. The statute also criminalizes violations of certain other treaties related to the laws of war. *See* 18 U.S.C. § 2441(c)(2).

80 18 U.S.C. § 2441(c)(1).

81 GC III, *supra* note 51, art. 130.

82 18 U.S.C. § 2441(c)(3).

83 Letter from John Ashcroft, Att’y Gen. to George W. Bush, President (Feb. 1, 2002), in THE TORTURE PAPERS, *supra* note 11, at 126, *available at* <http://news.findlaw.com/wp/docs/torture/jash20102ltr.html> (last visited June 23, 2006).

84 *See* Draft Memorandum from John Yoo, Deputy Assistant Att’y Gen., Dep’t of Justice & Robert J. Delabunty, Special Counsel, Dep’t of Justice, to William J. Haynes II, General Counsel, Dep’t of Def. (Jan. 9, 2002), in THE TORTURE PAPERS, *supra* note 11, at 38, 50; Memorandum from Jay S. Bybee, Assistant Att’y Gen., Dep’t of Justice, to Alberto R. Gonzales, Counsel to the President & William J. Haynes, II, General Counsel, Dep’t of Def. (Jan. 22, 2002), in THE TORTURE PAPERS, *supra* note 11 at 81, 95.

85 Memorandum from George W. Bush, President, to the Vice President of the United States Sec’y of State, et al. (Feb. 7, 2002), in THE TORTURE PAPERS, *supra* note 11 at 134-35 (asserting the Geneva Conventions did not apply to terrorist organizations like Al Qaeda and that the Taliban were unlawful combatants). [Memorandum from Sec. of Def. to Chairman of the Joint Chiefs of Staff (Jan. 19, 2002) (“The United States has determined that Al Qaida and Taliban individuals . . . are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949.”)]

86 *Id.*

87 *Id.*

88 Taft Speech, *available at* <http://www.humanrightsfirst.org/uslaw/pdf/taft-amer-uni-32405.pdf> (last visited June 23, 2006).

89 Taft Speech *supra* notes 88.

90 Memorandum from Dep’t of the Navy to the Inspector General, Dep’t of the Navy, Statement for the Record: Office of General Counsel, Involvement in Interrogation Issues (July 7, 2004) *available at* <http://www.newyorker.com/images/pdfs/moramemo.pdf> (last visited

June 23, 2006).

91 *Hamdan v. Rumsfeld*, -S.Ct. -, 2006 WL1764793 at *7-11.

92 Walter Dellinger, *A Supreme Court Conversation*, SLATE, <http://www.slate.com/id/244476/entry/2144826/> (last visited July 5, 2006).

93 Guantánamo Prisoner Statements, *supra* note 49 at 3.

94 Ted Conover, *In the Land of Guantánamo*, N.Y. TIMES, June 29, 2003.

95 *Id.*

96 *See* ROSE, *supra* note 17 at 54-55 (comparing the GTMO that reporters see with a “Potemkin” village).

97 *See* U.S. Army, Joint Task Force Guantánamo Bay Press Kit Commissions [hereinafter JTF-GTMO Press Kit], *available at* www.defenselink/mil/news/Aug2004/d20040818PK.pdf.

98 *Id.*

99 *Hamdan v. Rumsfeld*, 344 F. Supp. 2d 152, 152, 172 (D.D.C. 2004).

100 JTF-GTMO Press Kit, *supra* note 97.

101 The youngest prisoner detained at Guantánamo was approximately ten-years-old. Alex Belida, *3 Afghan Children Released from Guantánamo Bay Detention Camp*, VOICE OF AMERICA NEWS, <http://www.globalsecurity.org/security/library/news/2004/01/sec-040129-voa03.htm>.

102 Conover, *supra* note 94 (“The juvenile enemy combatants live in a prison called Camp Iguana”). Current information provided by Sabin Willett after a January 2006 visit to that camp.

103 Kathleen T. Rhem, *Detainees Living in Varied Conditions at Guantánamo*, American Forces Information Service (Feb. 16, 2005), *available at* http://www.defenselink.mil/news/Feb2005/n02162005_2005021604.html (last visited June 23, 2006).

104 *Id.*

105 *Id.*

106 FOIA Documents 4622-24, http://www.aclu.org/torturefoia/released/FBI_4622_4624.pdf (last visited June 25, 2006).

107 Zagorin & Duffy, *supra* note 44.

108 CENTRAL INTELLIGENCE AGENCY, KUBARK COUNTER-INTELLIGENCE INTERROGATION (1963), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/#kubark> (last visited June 25, 2006); *Id.* at 88 (“[A] person cut off from external stimuli turns his awareness inward, upon himself, and then projects the contents of his own unconscious outwards, so that he endows his faceless environment with his own attributes, fears, and forgotten memories.”); *Id.* at 103 (“The interrogatee’s mature defenses crumbles [sic] as he becomes more childlike.”).

109 For a more detailed summary of psychological abuse at Guantánamo (as well as Afghanistan), *see* PHYSICIANS FOR HUMAN RIGHTS, BREAK THEM DOWN: SYSTEMATIC USE OF PSYCHOLOGICAL TORTURE BY U.S. FORCES (2005) [hereinafter PHR], *available at* http://www.phrusa.org/research/torture/pdf/psych_torture.pdf (last visited June 25, 2006).

110 Carlotta Gall & Neil A. Lewis, *Threats and Responses: Captives –*

Tales of Despair from Guantanamo, N.Y. TIMES, June 17, 2003, at A1.

111 PHR, *supra* note 109, at 53-54 n.293 (citing BBC News, *Mass Guantánamo Suicide Protest* Jan. 25, 2005, <http://news.bbc.co.uk/2/hi/americas/420427.stm> (last visited June 25, 2006) (quoting Army spokesman Lt. Col. Sumpster)).

112 *Id.*

113 White, *supra* note 45, at A1.

114 PHR, *supra* note 109, at 10 (quoting Brief of Professors and Practitioners of Psychology and Psychiatry as *Amicus Curiae* in Support of Respondent at 12-13, *Wilkinson v. Austin*, 545 U.S. 209 (2005) (No. 04-495)).

115 Shearman Sterling Report, *supra* note 2 at 8.

116 Shearman Sterling Report, *supra* note 2 at 9.

117 Hicks Aff. at 4-5, *Hicks v. Bush*, 397 F. Supp.2d 36 (D.D.C. 2005) (No. 02-299).

118 Joshua Colangelo-Bryan, Unclassified Attorney Notes Regarding Isa Ali Abdulla Al Murbati (on file with author).

119 Joshua Colangelo-Bryan, Unclassified Attorney Notes Regarding Jum'ah Mohammed Abdullatif Al Dossari (on file with author).

120 Stephen Oleskey, Unclassified Attorney Notes Regarding Saber Lahmar (Dec. 2004, Oct. 2005) (on file with author); Robert Kirsch & Stephen Oleskey, Unclassified Attorney Notes Regarding Belkacem Bensayah (Dec. 2004 and Oct. 2005, respectively) (on file with authors).

121 Letter from Moazzam Begg to U.S. Forces Administration (July 12, 2004), *available at* http://news.bbc.co.uk/nol/chared/bsp/hi/pdfs/01_10_04.pdf (last visited June 25, 2006).

122 *Id.*

123 Shearman Sterling Report, *supra* note 2 at 40.

124 Mark Falkoff, Unclassified Attorney Notes Regarding Othman Abdullaheem Mohammad (on file with author); *see also* FOIA Document 4585, http://www.aclu.org/torturefoia/released/FBI_4585.pdf (last visited June 25, 2006) (“BAU personnel witnessed sleep deprivation [sic] . . . and utilization of loud music/bright lights/growling dogs in the Detainee interview process by DoD representatives”).

125 Robert Kirsch, Unclassified Attorney Notes Regarding Belkacem Bensayah (on file with author).

126 Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author).

127 According to Sergeant Saar, Mr. Al-Qahtani “was subjected to strobe lights; a loud, insistent tape of cats meowing (from a cat food commercial) interspersed with babies crying; and deafening loud music,” often with repeated violent lyrics. SAAR, *supra* note 4 at 164. Dogs were also used to threaten Mr. Al-Qahtani. *Id.*

128 Robert Kirsch, Unclassified Attorney Notes Regarding Saber Lahmar (on file with author).

129 Shearman Sterling Report, *supra* note 2 at 16.

130 Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author).

131 Richard J. Wilson & Muneer Ahmad, Unclassified Attorney Notes

Regarding O.K. (on file with authors).

132 FOIA Document 5053, http://www.aclu.org/torturefoia/released/FBI_5053_5054.pdf (last visited June 25, 2006).

133 PHR, *supra* note 109 at 11. Menachem Begin, a former Israeli Prime Minister, describes his experience with sleep deprivation while being held in a Soviet prison:

In the head of the interrogated prisoner a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep, to sleep just a little, not to get up, to lie, to rest, to forget. . . . Anyone who has experienced this desire knows that not even hunger or thirst are comparable with it. . . . I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them. He did not promise them their liberty. He promised them—if they signed—uninterrupted sleep!

Tom Malinowski, *The Logic of Torture*, WASH. POST, June 27, 2004, at B7.

134 Robert Kirsch, Unclassified Attorney Notes Regarding Belkacem Bensayah (Feb. 2005) (on file with author); Sergeant Saar witnessed prisoners being taken on late-night “walkabouts.” SAAR, *supra* note 4, at 174, 217.

135 Melissa Hoffer, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with author).

136 Melissa Hoffer, Unclassified Attorney Notes Regarding Mohammed Nechla (on file with author).

137 Michael Scherer & Mark Benjamin, *What Rumsfeld Knew?* SALON.COM Apr. 14, 2006, <http://www.salon.com/news/feature/2006/04/14/rummy> (last visited June 25, 2006).

138 *O.K. v. Bush*, 377 F. Supp.2d 102, 107 (D.D.C. 2005).

139 Guantánamo Prisoner Statements (Colangelo-Bryan) *supra* note 49, at 14.

140 Stephen Oleskey, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with author).

141 Guantánamo Prisoner Statements, *supra* note 49 at 11-12.

142 Shearman Sterling Report, *supra* note 2 at 16.

143 An “ACS Interrogator” filed an allegation of inhumane treatment regarding an incident that occurred on April 22, 2003, in which the use of military guards during interrogations was described in some detail. In a memorandum for Maj. Gen. Geoffrey D. Miller regarding the results of an inquiry into an allegation of inhumane treatment of [name of prisoner redacted], the staff JAG lawyer quoted from the allegation: “. . . they [MPs] pushed in the back of the detainee’s knees with their knees, taking the detainee to his knees. Then holding the detainee by his upper arms they slammed his upper body to the floor.” FOIA Documents 1318-22, <http://action.aclu.org/torturefoia/released/072605> (last visited June 25, 2006). The memorandum said further that the complaining interrogator stated that this procedure was repeated 25-30 times and with such force that the floor and a booth next door were shaking. The interrogator stated that when the prisoner was pushed to the floor, he turned his head so that the side of his face was hitting the floor and that such force was used the interrogator feared for the prisoner’s safety. The complaining interrogator’s supervisor (the name is redacted) corroborated the details of this allegation and the degree of force and moreover added that either the MPs or the military interrogators (the names are redacted) were laughing while this activity was taking place.

Id. at 1319. The military downplayed these concerns by saying that the shaking of the floor was caused by guards stomping on the floor with their boots as they pushed the prisoner down and that the guards had “constant control” of the prisoner at all times. *Id.* at 1319-20. In a memorandum from an ACS defense analyst, the April 22 incident is described as one that was “totally inappropriate and bordered on criminal.” FOIA Document 1333, <http://action.aclu.org/torturefoia/released/072605> (last visited June 25, 2006).

¹⁴⁴ A FOIA Document recording a “Narrative Medical Summary” for a prisoner says that the prisoner “reports that Reservation has ‘dragged me across the floor’ resulting in scrapes on his feet, jerked on the chains which have caused marks on his wrists, gripped the cuffs so that they tightened excessively causing marks on his wrists, lifted him up then ‘slammed’ him down on his knees, made his mouth such that he was spitting up blood, made a tooth loose, bruised several areas of his upper arms and torso, and created pain on his lower ribs. He denies trauma to the rib area but does not know how that area is causing him so much pain. He felt so bad last night that he tried to ‘cut’ the artery in his neck with his fingernails.” FOIA Documents 1347-50, http://action.aclu.org/torturefoia/released/072605/1243_1381.pdf (last visited June 25, 2006). The author of the medical summary noted: “Stated source of injury for the various areas is consistent with the injuries noted today.” *Id.* at 1349. Reservation is the term used within the camps in Guantánamo to refer to interrogations. Cf. YEE, *supra* note 5 at 77 (“We never used the word ‘interrogation’ on the blocks, saying instead that the detainees were going to ‘reservation.’”).

¹⁴⁵ Mark Falkoff, Unclassified Attorney Notes Regarding Yasein Khasem Mohammed Esmail (on file with author).

¹⁴⁶ Mark Falkoff, Unclassified Attorney Notes Regarding Abd al-Malik al-Wahab (on file with author).

¹⁴⁷ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author).

¹⁴⁸ Melissa Hoffer, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with author).

¹⁴⁹ *Id.*

¹⁵⁰ Motion for a Preliminary Injunction Barring the Government from Rendering Sami Al-Laithi to Egypt to Face Persecution, or Revealing to the Egyptian Government Additional Facts Concerning His Opposition to the Repressive and Undemocratic Regime of Hosni Mubarak at 2-3, *Slit v. Bush*, No. 05-CV-0429 (D.D.C. 2005).

¹⁵¹ Carol D. Leonnig, *Guantánamo Detainee Says Beating Injured Spine*, WASH. POST, Aug. 13, 2005, at A18.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Shearman Sterling Report, *supra* note 2 at 21.

¹⁵⁵ Shearman Sterling Report, *supra* note 2 at 29.

¹⁵⁶ Shearman Sterling Report, *supra* note 2 at 50.

¹⁵⁷ Baher Azmy, Unclassified Attorney Notes Regarding Murat Kurnaz (on file with author).

¹⁵⁸ SHAFIQ RASUL, ASIF IQBAL, & RHUHEL AHMED, COMPOSITE STATEMENT: DETENTION IN AFGHANISTAN AND GUANTANAMO BAY (2004), http://www.ccr-ny.org/v2/legal/september_11th/docs/Guantanamo_composite_statement_FINAL.pdf (last visited June 25, 2006).

¹⁵⁹ The designation ERF (Extreme Reaction Force) is sometimes also used.

¹⁶⁰ SAAR, *supra* note 4 at 96-99.

¹⁶¹ See YEE, *supra* note 5 at 109 (“IRFing should have been kept to the bare minimum and carried out only when necessary, but there were weeks when it occurred every day”).

¹⁶² See SAAR, *supra* note 4 at 102.

¹⁶³ Paisley Dodds, *Tapes Show Guantánamo Squads’ Tactics*, ASSOC. PRESS, Feb. 1, 2005.

¹⁶⁴ *Id.*

¹⁶⁵ Guantánamo Prisoner Statements, *supra* note 49 at 3-4. This incident is corroborated by several sources. A substantially similar description is reported by Shafiq Rasul, Asif Iqbal, and Rhuhel Ahmed. SHAFIQ RASUL, ASIF IQBAL, & RHUHEL AHMED, *supra* note 158 ¶ 167. What appears to be the same incident is also the subject of an FBI memo (dated June 7, 2002, but referring to an incident that occurred “three or four weeks ago”). The FBI memo notes that the prisoner “had what appeared to be a recent wound on the bridge of his nose.” FOIA Document 3855, <http://aclu.org/torturefoia/released/05/25/05> (last visited June 25, 2006). Mr. Al Dossari’s lawyer corroborates that the prisoner has “a prominent scar” on his nose that is consistent with his account.

¹⁶⁶ CBS News, *G.I. Attacked During Training*, Nov. 3, 2004.

¹⁶⁷ M. Gregg Bloche & Jonathan H. Marks, *Doctors and Interrogators at Guantánamo Bay*, 353 NEW ENG. J. MED. 6, 6-8 (2005).

¹⁶⁸ See *id.* at 7 (“Additional Protocol I to the Geneva Conventions provides that medical personnel ‘shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics.’ Although the protocol has not been ratified by the U.S., this principle has attained the status of customary international law.”).

¹⁶⁹ *Id.* at 6 (“[C]ommunications from ‘enemy persons under U.S. control’ at Guantánamo ‘are not confidential and are not subject to the assertion of privileges’ by detainees.”) (quoting Memorandum from Richard A. Huck, Chief of Staff, U.S. Southern Command, on U.S. Southern Command Confidentiality Policy for Interactions Between Health Care Providers and Enemy Persons (Aug. 6, 2002)).

¹⁷⁰ Mark Falkoff, Unclassified Attorney Notes Regarding Othman Abulraheem Mohammad (on file with author).

¹⁷¹ Melissa Hoffer, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with author).

¹⁷² Chronological Medical Record for Lakhdar Boumediene (Feb. 20, 2003), Bates No. OLE 00826 (released as a result of FOIA litigation by Boumediene petitioners, *Oleskey v. U.S. Dept. of Defense, U.S. Dept. of Justice*, No. 05-10739 (D. Mass 2005)).

¹⁷³ *Interrogation Log for Detainee 063*, TIME, <http://www.time.com/time/2006/log/log.pdf> (last visited June 25, 2006).

¹⁷⁴ Shearman Sterling Report, *supra* note 2 at 11.

¹⁷⁵ Motion for a Preliminary Injunction Requiring that Respondents Provide His Counsel with a Complete Copy of His Own Medical Records, and Cease Their Practice of Intentional Medical Malpractice Against Him at 20, *Slit v. Bush*, No. 05-CV-0429 (D.D.C. 2005).

¹⁷⁶ Motion for a Preliminary Injunction Concerning Conditions of Confinement at 24, *Slit v. Bush*, No. 05-CV-429 (D.D.C. Aug. 9,

2005) (citing Unclassified Memorandum re: Omas Deghayes (July 19, 2005). Lawyers for Abdulla Thani Faris Al-Anazi, a double amputee, believe he is receiving “inadequate medical care”; his lawyers have requested that his defective prostheses be repaired and that he be given treatment for the lesions they cause. See Letter to Lt. Comdr. De Alicante on Medical Treatment for Prisoner Abdulla Thani Faris Al-Anazi (Aug. 29, 2005) (Anant Raut).

¹⁷⁷ *New Yorker* reporter Jane Mayer has detailed efforts of military behavioral scientists to “reverse-engineer” harsher interrogation techniques drawn from a classified military program called Survival, Evasion, Resistance, and Escape (SERE). During the SERE program, U.S. military personnel are taught to survive extreme and aggressive interrogation tactics. Behavioral scientists have drawn from the SERE program to develop tactics that prisoners cannot withstand. See Jane Mayer, *The Experiment*, NEW YORKER, July 11 & 18, 2005; see also Bloche & Marks, *supra* note 166 at 7-8.

¹⁷⁸ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author).

¹⁷⁹ Robert Jay Lifton, *Doctors and Torture*, 351 NEW ENG. J. MED. 415, 416 (2004).

¹⁸⁰ Joshua Colangelo-Bryan, Unclassified Attorney Notes Regarding Al Noaimi (on file with author); see also FOIA Document 00002, <http://action.aclu.org/torturefoia/released/062405> (last visited June 25, 2006) (stating that a female interrogator who wiped dye from red magic marker on prisoner’s shirt after prisoner spit on her “received a verbal reprimand for inappropriate contact/interrogation technique”).

¹⁸¹ One prisoner reported that menstrual blood was smeared on a prisoner’s chest during interrogation. Mark Falkoff, Unclassified Attorney Notes (on file with author); see also SAAR, *supra* note 4 at 225-28 (describing an incident corresponding to this allegation).

¹⁸² SAAR, *supra* note 4 at 228.

¹⁸³ FOIA Document 1333, <http://action.aclu.org/torturefoia/released/072605> (last visited June 25, 2006).

¹⁸⁴ Baher Azmy, Unclassified Attorney Notes Regarding Murat Kurnaz (on file with author).

¹⁸⁵ Cf. YEE, *supra* note 5 at 110 (“Female guards were often used to provoke the detainee. Knowing that physical contact between unrelated men and women is not allowed under Islamic law, the female MPs would be exceptionally inappropriate in how they patted down the prisoners and how they touched them on the way to the showers or recreation. Detainees often resisted and then were IRFed.”).

¹⁸⁶ Guantánamo Prisoner Statements, *supra* note 49 at 7-8.

¹⁸⁷ Carol D. Leonnig, *Further Detainee Abuse Alleged*, WASH. POST, Dec. 26, 2004, at A01.

¹⁸⁸ *Id.*

¹⁸⁹ Thomas B. Wilner, Neil Koslowe, Kristine Huskey, Jared Goldstein, Unclassified Attorney Notes Regarding 12 Kuwaiti Prisoners (on file with authors).

¹⁹⁰ Guantánamo Prisoner Statements *supra* note 49 at 17.

¹⁹¹ Stephen Oleskey, Melissa Hoffer, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with authors).

¹⁹² Melissa Hoffer & Robert Kirsch, Unclassified Attorney Notes Regarding Hadj Boudella (on file with authors).

¹⁹³ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait

Idir (on file with author).

¹⁹⁴ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author).

¹⁹⁵ YEE, *supra* note 5 at 115.

¹⁹⁶ *Id.*

¹⁹⁷ Stephen Oleskey, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with author).

¹⁹⁸ Neha Gohil, Unclassified Attorney Notes Regarding Fahmi Abdullah Ahmed Al Towlaqi (on file with author); see also FOIA Document 1379, available at <http://action.aclu.org/torturefoia/released/072605> (last visited June 15, 2006) (“documenting case in which a Camp barber intentionally gave two unusual haircuts, in an effort to frustrate detainee requests for similar haircuts, as a sign of detainee unity”).

¹⁹⁹ Neha Gohil, Unclassified Attorney Notes Regarding Fahmi Abdullah Ahmed Al Towlaqi (on file with author).

²⁰⁰ See *infra* note 202 and accompanying text.

²⁰¹ Fiqh-us-Sunnah, Volume 5: Tawaf or Circumambulation around Ka’bah, http://www.usc.edu/dept/MSA/law/fiqhussunnah/fus5_76.html (last visited June 25, 2006).

²⁰² Motion for a Preliminary Injunction Concerning Conditions of Confinement at 22, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing Unclassified Memorandum re: Omar Deghayes (July 19, 2005) at 5). The memo describes Camp Romeo Block as a special disciplinary block where prisoners are frequently made to strip and are held only in their shorts.

²⁰³ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (Feb. 2004) (on file with author). This account is corroborated by Fahmi Abdullah Ahmed Al Towlaqi, who states that he witnessed MPs bend back a prisoner’s finger so far that it broke. Neha Gohil, Unclassified Attorney Notes Regarding Fahmi Abdullah Al Towlaqi (on file with author). Mr. Ait Idir’s GTMO medical records confirm that his finger was broken. The records fail to reflect that it was the IRF that broke his finger. Lakhdar Boumediene also witnessed Mustafa Ait Idir’s finger being bent back. Stephen Oleskey, Unclassified Attorney Notes Regarding Lakhdar Boumediene (Feb. 2005) (on file with author). See also FOIA Documents 4622-24, http://www.aclu.org/torturefoia/released/FBI_4622_4624.pdf (last visited June 15, 2006) (describing a similar incident in which a female interrogator bent back prisoner’s thumbs).

²⁰⁴ Interview with Marc Falkoff, Attorney, Covington & Burling, broadcast by Nasseb Vibes (Feb. 15, 2005), available at www.naseeb.com/naseebvibes/interview-detail.php?aid=3526 (last visited June 21, 2006).

²⁰⁵ Hicks Aff., *supra* note 117 at 3:20.

²⁰⁶ REPORT INTO THE SYSTEMATIC AND INSTITUTIONALIZED U.S. DESECRATION OF THE QUAR’AN AND OTHER ISLAMIC RITUALS: TESTIMONIES FROM FORMER GUANTÁNAMO BAY DETAINEES 2, www.cageprisoners.com/downloads/USQuranDesecration.pdf (last visited June 15, 2006) (statement by Moazzam Begg).

²⁰⁷ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author).

²⁰⁸ Shearman Sterling Report, *supra* note 2, at 13; see also FOIA Document 4737.

http://www.aclu.org/torturefoia/released/FBI_4737_4738.pdf (last visited June 15, 2006); Othman Abdulraheem Mohammed describes interrogators wrapping Qur'ans in Israeli flags, throwing them on the ground, and stomping on them. Mark Falkoff, Unclassified Attorney Notes Regarding Othman Abdulraheem Mohammed (on file with author).

²⁰⁹ FOIA Document 4737-38,

<http://www.aclu.org/torturefoia/released/FBI.121504.4737-1738.pdf> (last visited June 30, 2006).

²¹⁰ CBS News *Video Shows Gitmo Abuse* Feb. 1, 2005

www.cbsnews.com/stories/2005/02/04/terror/main671682.shtml (last visited June 15, 2006).

²¹¹ The heightened severity of pre-Guantánamo abuse accounts is probative of the truth of prisoner allegations, since it may be reflective of an awareness on the military's part that, whatever the precise status of Guantánamo, its actions there are more constrained.

²¹² Joshua Colangelo-Bryan, Unclassified Attorney Notes Regarding Jum'ah Mohammed Abdul Latif Al Dossari (on file with author).

²¹³ "Waterboarding" entails the use of a "wet towel and dripping water to induce the misperception of suffocation." Memorandum from Dept. of Def. on Counter-Resistance Techniques at 6 (Nov. 27, 2002). Typically, "The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner's face and water is poured over him." Brian Ross & Richard Esposito, CIA Harsh Interrogation Techniques Described, ABC NEWS, May 19, 2006.

²¹⁴ Baher Azmy, Unclassified Attorney Notes Regarding Murat Kurnaz (on file with author).

²¹⁵ Thomas B. Wilner, Neil Koslowe, Kristine Huskey, Jared Goldstein, Unclassified Attorney Notes Regarding 12 Kuwaiti Prisoners (on file with authors).

²¹⁶ Mark Falkoff, Unclassified Attorney Notes Regarding Abdulsalam Ali Abdulrahman Al-Hela (on file with author).

²¹⁷ Decl. of Joseph Margulies at para. 12, *Habib v. Bush*, (D.D.C. Apr 27, 2005) (No. 02-CV-1130).

²¹⁸ Motion for a Preliminary Injunction Concerning Conditions of Confinement 16-17, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing Unclassified Memorandum re: Omar Deghayes (July 19, 2005) at 3-4).

²¹⁹ *Id.* at 5, 7 (cited in *id.* at 22-23, 26).

²²⁰ Motion for a Preliminary Injunction Concerning Conditions of Confinement 16, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing Unclassified Memorandum re: Omar Deghayes (July 19, 2005) at 3). "The lights are some of the worst tools used against us. They are neon, two and a half metres long, glaring 24 hours a day. They are fitted directly above the concrete tomb that is meant to be our bed. They are never dimmed. Have you ever lived in bright lights for 24 hours a day, every day? It is a constant struggle to get any sleep at all. Many in the camp suffer mentally from sleep deprivation." *Id.*

²²¹ Motion for a Preliminary Injunction Concerning Conditions of Confinement at 12-13, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing *Memo on Conditions in Guantánamo Bay* 3 (Aug. 13, 2005)). The incident was corroborated by Saber Lahmar. Melissa Hoffer, Unclassified Attorney Notes Regarding Saber Lahmar (Aug. 2005) (on file with author).

²²² *Id.*

²²³ See Motion for a Preliminary Injunction Concerning Conditions of Confinement 3-4, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing unclassified statement of Binyam Mohammed).

²²⁴ Motion for a Preliminary Injunction Concerning Conditions of Confinement 13, *Sliti v. Bush* (D.D.C. 2005) (No. 05-CV-429) (citing Shaker Aamer Statement).

²²⁵ *Id.* at 14-15.

²²⁶ Decl. of Julia Tarver, *Majid Abdulla Al Jouidi v. Bush*, Civ. No. 05-0301, at para. 7 (Oct. 14, 2005).

²²⁷ *Id.*

²²⁸ *Id.* at paras. 14-16.

²²⁹ *Id.* at para. 9, n 1.

²³⁰ Emergency Motion for Injunction Against Further Torture of Mohammed Bawazir, *Al-Adabi v. Bush* (D.D.C. No. 05-280 (GK)) (citation omitted).

²³¹ U.S. DEPARTMENT OF STATE, SECOND PERIODIC REPORT OF THE U.S. OF AMERICA TO THE COMMITTEE AGAINST TORTURE, Annex I, Part I (2005), available at www.state.gov/g/drl/rls/45738.htm (last visited June 23, 2006). The Second Periodic Report substantiates only 10 minor episodes of misconduct at GTMO, such as: a female interrogator sitting in a prisoner's lap and running her fingers through his hair; an interrogator using duct tape to tape shut the mouth of a prisoner who was not cooperating; an interrogator bruising a prisoner's knees by repeatedly directing MPs to force him into and out of a prone position; and an MP assaulting a prisoner by spraying him with a hose after the prisoner had thrown a foul-smelling liquid on the MP. *Id.*

²³² Brief of Petitioner-Appellees/Cross-Appellants at 14-15, *Fawzi Khalid A.F. Al Odah v. U.S.*, 05-5064, 05-5095-05-5116 (Cir. C.D. June 28, 2005).

²³³ See generally FBI documents released under the Freedom of Information Act, available at <http://action.aclu.org/site/PageServer?pagename=torturefoia> (last visited June 23, 2006).

²³⁴ See U.S. Senate Committee on the Judiciary, Notice of Committee Hearing (June 8, 2005), available at <http://judiciary.senate.gov/hearing.cfm?id=1542> (last visited June 22, 2006).

²³⁵ See Judith Resnik, *Opening the Door, Court Stripping: Unconscionable and Unconstitutional?*, SLATE <http://www.slate.com/id/2135240> (last visited June 23, 2006).

²³⁶ See Josh White & Carol Leonnig, *U.S. Cites Exception in Torture Ban; McCain Law May Not Apply to Cuba Prison*, WASH. POST, Mar. 2006, at A04.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ - S.Ct. - , 2006 WL 176473.

²⁴⁰ See *infra* notes 241-252 and accompanying text.

²⁴¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 1, Dec. 10, 1984, Senate Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 [hereinafter CAT].

²⁴² *Id.* art. 2(2). The CAT prohibits not only torture but "cruel, inhuman or degrading treatment or punishment." *Id.* art. 16(1). Article 16 provides that "[e]ach State Party shall undertake to prevent in any ter-

ritory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1..." under color of law. *Id.* The CAT does not define "cruel, inhuman or degrading treatment or punishment."

²⁴³ U.S. Reservations, Declarations and Understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (Oct. 27, 1990) (establishing those reservations that modify the CAT). A reservation modifies the terms of a treaty with respect to the country making the Reservation; the Reservation will be deemed invalid if deviates from the object, purposes and substance of the treaty term. An understanding announces how a ratifying country "understands" or interprets a treaty.

²⁴⁴ *Id.* art. 16.

²⁴⁵ *Id.* at I(1). This understanding arguably binds the United States to the same standards of behavior as those adhered to in its domestic criminal justice system. Through this understanding, the Constitution and its judicial interpretation appear to become the measure by which U.S. compliance with its treaty obligations under Article 16 of the CAT will be judged. At a minimum, violations of the Eighth Amendment prohibition against cruel and unusual punishment are deemed by the U.S. as equivalent to an Article 16 violations. However, U.S. officials conducting the "war on terrorism" appear to disagree about the precise reach of this prohibition. Compare U.S. DEPT. OF DEF., WORKING GROUP REPORT ON DETAINEE INTERROGATIONS IN THE GLOBAL WAR ON TERRORISM: ASSESSMENT OF LEGAL, HISTORICAL, POLICY, AND OPERATIONAL CONSIDERATIONS 36 (2003), available at <http://www.washingtonpost.com/wp-srv/nation/documents/040403dod.pdf> (last visited June 22, 2006) ("The standards of the Eighth Amendment, however, are relevant because of the U.S. Reservation to the Torture Convention's definition of cruel, inhuman, and degrading treatment"), with Gonzales testimony, Hearing Before the Committee on The Judiciary, U.S. Senate, 109th Cong. 10 (2005) (Statement of Alberto R. Gonzales) ("as a direct result of the reservation the Senate attached to the CAT, the Department of Justice has concluded that under Article 16 there is no legal prohibition under the CAT on cruel, inhuman or degrading treatment with respect to aliens overseas").

²⁴⁶ U.S. RUDs, *supra* note 243, at II(1)(a).

²⁴⁷ *See id.*

²⁴⁸ *See* CAT, *supra* note 241, art. 22(4)(b). The Committee Against Torture is the treaty body, created by the CAT, tasked with overseeing the implementation of the treaty.

²⁴⁹ U.S. RUDs, *supra* note 243, at III(1) and (2).

²⁵⁰ 18 U.S.C. 2340, 2340A. The United States later passed another crucial piece of implementing legislation. The CAT requires that "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." CAT, *supra* note 241, art. 3. The Congress required the Immigration and Naturalization Service to promulgate regulations to insure U.S. compliance with this proscription. *See* Foreign Affairs, Reform and Restructuring Act of 1998, P.L. 105-227, 112 Stat. 2681-82. The regulations were issued and went into effect in 1999. They elaborate the definition of torture, as understood by the United States on signing the CAT. *See* 8 CFR § 208.18 et. seq.

²⁵¹ 18 U.S.C. 2340.

²⁵² *Id.*

²⁵³ U.N. Econ. & Soc. Council [ECOSOC], *Situation of Detainees at Guantánamo Bay* at 6, U.N. Doc., Future E/CN.4/2006/120 (Feb. 15, 2006)

http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.12_0_.pdf. (last visited June 25, 2006).

²⁵⁴ *Id.* at 7-8.

²⁵⁵ The UNCHR is supported, in large part, by U.S. funding. Between January 1, 2006 and April 30, 2006, the United States donated \$216,796,577 to the UNCHR. Government of the United States of America – UNHCR Donor Profile and Donor History <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.htm?tbl=PARTNERS&page=home&cid=3b9f6316a> (last visited June 23, 2006).

²⁵⁶ ECOSOC, *supra* note 253.

²⁵⁷ *Id.* at 11-21.

²⁵⁸ *Id.* at 21-27.

²⁵⁹ *Id.* at 11-21 27-38.

²⁶⁰ *Id.* at 38-39.

²⁶¹ DemocracyNow.org, *Archbishop Desmond Tutu on Guantánamo, President Bush and the Invasion of Iraq* Oct. 5th, 2004 <http://www.democracynow.org/article.pl?sid=04/10/05/1411259>.

²⁶² BBC News, *UK calls for Guantánamo Closure* May 10, 2006 http://news.bbc.co.uk/2/hi/uk_news/politics/4759317.stm (last visited June 25, 2006).

²⁶³ Sam Cage, *UN Urges US to Shut Guantánamo Prison* ASSOC. PRESS May 19, 2006.

²⁶⁴ Taft Speech, *supra* note 88. When asked during his tenure at the U.S. State Department to comment on prisoner status, Taft recommended that prisoners be treated in accordance with the Geneva Conventions. *See* William H. Taft IV, Memorandum Regarding President Counsel's Paper on the Geneva Convention (Feb. 2, 2002), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.02.02%20DOS%20Geneva.pdf> (last visited June 22, 2006) (noting that "the U.S. bases its conduct not just on its policy preferences but on its international legal obligations").

²⁶⁵ *See* VICE ADM. ALBERT T. CHURCH, NAVAL INSPECTOR GEN., EXECUTIVE SUMMARY OF REPORT TO SEC. OF DEFENSE ON INTERROGATION OPERATIONS (2005) www.defenselink.mil/news/Mar2005/d20050310exe.pdf (last visited June 25, 2006). This report into abuse at Guantánamo, as well as Iraq and Afghanistan, found that, as of September 30, 2004, only eight incidents occurred at Guantánamo and "all . . . were relatively minor in their physical nature." *Id.* Only three of these incidents were related to interrogation, and two of the three involved sexually provocative behavior. *Id.* at 14. According to the Executive Summary, the report only looked at interrogation technique policy and not at the overall climate of misbehavior fostered by the abrogation of the Geneva Conventions. *See also* ARMY REGULATION 15-6, EXECUTIVE SUMMARY OF FINAL REPORT, INVESTIGATION INTO FBI ALLEGATIONS OF DETAINEE ABUSE AT GUANTÁNAMO BAY, CUBA DETENTION FACILITY (2005) www.defenselink.mil/news/Jul2005/d20050714report.pdf (last visited June 25, 2006) (reporting the results of another investigation into FBI allegations of abuse at Guantánamo and finding that interrogators had creatively interpreted FM 34-52 interrogation technique guidelines to include rubbing perfume on a prisoner and impersonating officials from the FBI).

- ²⁶⁶ Hicks Aff., *supra* note 117 at paras. 5-6.
- ²⁶⁷ Guantánamo Prisoner Statements, *supra* note 49 at 3-4.
- ²⁶⁸ Robert Kirsch, Unclassified Attorney Notes Regarding Mustafa Ait Idir (on file with author), Decl. of Julia Tarver, *supra* note 226.
- ²⁶⁹ Hicks Aff., *supra* note 117 at paras. 13.
- ²⁷⁰ Richard J. Wilson & Muneer Ahmad, Unclassified Attorney Notes Regarding O.K. (on file with authors).
- ²⁷¹ Mark Falkoff, Unclassified Attorney Notes Regarding Abd al-Malik al-Wahab (on file with author).
- ²⁷² See Motion for a Preliminary Injunction Requiring that Respondents Provide His Counsel with a Complete Copy of His Own Medical Records, and Cease Their Practice of Intentional Medical Malpractice Against Him at 11-12, *Sliti v. Bush* (No. 05-CV-0429) (D.D.C. 2005).
- ²⁷³ Melissa Hoffer, Unclassified Attorney Notes Regarding Lakhdar Boumediene (on file with author), Melissa Hoffer, Unclassified Attorney Notes Regarding Mohammed Nechla (on file with author).
- ²⁷⁴ Stephen Oleskey, Unclassified Attorney Notes Regarding Saber Lahmar (Dec. 2004, Oct. 2005) (on file with author); Robert Kirsch & Stephen Oleskey, Unclassified Attorney Notes Regarding Belkacem Bensayah (Dec. 2004 and Oct. 2005, respectively) (on file with authors).
- ²⁷⁵ Mark Falkoff, Unclassified Attorney Notes Regarding Abd al-Malik al-Wahab (on file with author).
- ²⁷⁶ Letter from Moazzam Begg to U.S. Forces Administration, *supra* note 121.
- ²⁷⁷ Baher Azmy, Unclassified Attorney Notes Regarding Murat Kurnaz (on file with author).
- ²⁷⁸ Mark Falkoff, Unclassified Attorney Notes Regarding Abd al-Malik al-Wahab (on file with author).
- ²⁷⁹ Joshua Colangelo-Bryan, Unclassified Attorney Notes Regarding Abdullah Al Noaimi (on file with author).