

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

AMNESTY INTERNATIONAL USA, CENTER  
FOR CONSTITUTIONAL RIGHTS, INC. and  
WASHINGTON SQUARE LEGAL SERVICES,  
INC.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,  
DEPARTMENT OF DEFENSE, DEPARTMENT  
OF HOMELAND SECURITY, DEPARTMENT  
OF JUSTICE, DEPARTMENT OF STATE, AND  
THEIR COMPONENTS,

Defendants.

ECF CASE

07 CV 5435 (LAP)

**DECLARATION OF GITANJALI S. GUTIERREZ**

Gitanjali S. Gutierrez, pursuant to penalty of perjury under 28 U.S.C. § 1746, does hereby state the following:

1. I am an attorney with the Center for Constitutional Rights (“CCR”), one of three co-Plaintiffs in the above-captioned matter. The other co-Plaintiffs are Amnesty International USA (“AIUSA”) and Washington Square Legal Services (“WSLS”).

**PROCEDURAL HISTORY**

2. Collectively, Plaintiffs filed four requests under the Freedom of Information Act (“FOIA”), all of which are now subject to this litigation. As is relevant to this motion, Plaintiffs directed three requests to multiple government agencies, including the Department of Justice

(“DOJ”) Office of Intelligence and Policy Review (“OIPR”), and filed a fourth exclusively with the Central Intelligence Agency (“CIA”).

3. In sum, Plaintiffs sought through their four requests (“Plaintiffs’ Requests”) records concerning (1) the “apprehension, transfer, detention, and interrogation” of persons who have been detained by the United States under secret or irregular conditions, (2) the locations that have been used for such detention, and (3) the names and identities of detainees.

#### **FOIA Requests with DOJ OIPR**

##### *Requests of AIUSA and WSLS*

4. Plaintiffs AIUSA and WSLS sent two requests (“AIUSA and WSLS Requests”) to DOJ OIPR on April 25, 2006. One request sought the locations and identities of secret or irregular detainees, and records related to their “apprehension, transfer, detention, and interrogation.” The other request sought memoranda of understanding, reports, and documents created related to U.S. reports to various international bodies related to ghost or unregistered detainees. A true and correct copy of these letters from AIUSA Deputy Director Curt Goering and WSLS Co-Director of the International Human Rights Clinic Margaret L. Satterthwaite to GayLa D. Sessoms, FOIA Coordinator, OIPR, DOJ, are attached hereto as Exhibits A and B, respectively.

5. In a letter dated May 12, 2006, from Ronald Deacon, Director of Facilities and Administrative Services Staff, Justice Management Division, DOJ to Catherine K. Ronis, Wilmer Hale Attorney and formerly Counsel to AIUSA and WSLS, DOJ acknowledged receipt of the AIUSA and WSLS Requests and informed the requesters that their requests were referred to various DOJ offices, including OIPR. A true and correct copy of this letter is attached hereto as Exhibit C.

6. In a letter dated June 7, 2006, from GayLa D. Sessoms, FOIA Coordination, OIPR to Catherine K. Ronis, Wilmer Hale Attorney and formerly Counsel to AIUSA and WSLA, OIPR acknowledged receipt of AIUSA and WSLA's requests and informed the requesters that their request for expedited processing was granted. A true and correct copy of this letter is attached hereto as Exhibit D.

7. In a letter dated October 30, 2006, from James Baker, Counsel for Intelligence Policy, National Security Division, DOJ to Catherine K. Ronis, Wilmer Hale Attorney and formerly Counsel to AIUSA and WSLA, the National Security Division advised that OIPR had become the Office of FISA Operations and Intelligence Oversight, and refused to confirm or deny the existence of the records requested, and averred that no responsive records were located in OIPR's policy files or in the e-mail and office files of senior management. A true and correct copy of this letter is attached as Exhibit E.

8. In a letter dated December 22, 2006, WSLA and AIUSA appealed. A true and correct copy of this letter is attached as Exhibit F.

*Request of CCR*

9. Plaintiff CCR sent a FOIA request ("CCR Request") to DOJ OIPR on December 21, 2004. The CCR Request sought records related to various aspects of the CIA program of secret detention, including proxy detention, enhanced interrogation, and extraordinary rendition. A true and correct copy of the request from then CCR Deputy Legal Director Barbara Olshansky to GayLa D. Sessoms, FOIA Coordinator, OIPR, DOJ, is attached hereto as Exhibit G.

10. In a letter dated March 4, 2005, from Ronald Deacon, Director of Facilities and Administrative Services Staff, Justice Management Division, DOJ to Barbara Olshansky, former CCR Deputy Legal Director, DOJ acknowledged receipt of the CCR Request and informed CCR

that its request was referred to OIPR, and other DOJ offices. A true and correct copy of this letter is attached hereto as Exhibit H.

11. In a letter dated March 29, 2005, from James A. Baker, OIPR Counsel for Intelligence Policy to Barbara Olshansky, former CCR Deputy Legal Director, the OIPR acknowledged receipt of the CCR request, conveyed that expedited processing was granted per CCR's request, and asserted that the office could "neither confirm nor deny the existence of" responsive records. A true and correct copy of this letter is attached hereto as Exhibit I.

12. In a letter dated May 31, 2005, CCR Staff Attorney Rachel Meeropol appealed OIPR's *Glomar* response. A true and correct copy of this letter is attached hereto as Exhibit J.

#### **Filing Suit**

13. Co-Plaintiffs CCR, AIUSA and WSLC filed a joint complaint on June 7, 2007 against, *inter alia*, DOJ and the CIA.

#### **Co-Plaintiffs' CIA FOIA Request and Amendment of Complaint**

14. During negotiations subsequent to the commencement of litigation, co-Plaintiffs submitted a list of specific documents known to exist and likely to be in the CIA's possession and asked that these documents be included in the *Vaughn* index but remain outside the sample. After the CIA refused to do so, on December 28, 2007, Plaintiffs jointly filed a separate FOIA request for these documents ("Supplementary CIA FOIA Request"). The Supplementary CIA FOIA Request sought seventeen specific records known or believed to exist and be in the CIA's possession, and believed to be responsive to Plaintiffs' original FOIA requests. A copy of the letter from WSLC Co-Director of the International Human Rights Clinic Margaret L. Satterthwaite to the CIA Information and Privacy Coordinator is attached hereto as Exhibit K.

15. In a letter dated January 30, 2008, from Scott Koch, CIA Information and Privacy Coordinator to Margaret L. Satterthwaite, WSLC Co-Director of the International Human Rights Clinic, the CIA approved the fee waiver request and denied expedited processing for Plaintiffs' Supplementary CIA FOIA Request request. A copy of this letter is attached hereto as Exhibit L.

16. After receiving no substantive response to the Supplementary CIA FOIA Request despite numerous inquiries, Plaintiffs' amended their Complaint on June 6, 2008 to include this request in the above-captioned litigation, with consent from the CIA. April 21, 2008 Stipulation and Order Between Plaintiffs and the Central Intelligence Agency Regarding Procedures for Adjudicating Summary Judgment Motions ("Stipulation"), ¶ 19, attached as Exhibit H to Declaration of Ralph J. DiMaio, CIA Motion for Summary Judgment.

17. The CIA failed to provide any response to the Supplementary CIA FOIA Request until after Plaintiffs filed their July 18, 2008, Motion for Preliminary Injunction, almost seven months after Plaintiffs filed the request.

18. In its letter opposing Plaintiffs' Motion for Preliminary Injunction, the government stated that it intended to issue a *Glomar* response to Categories 3-10 and 15-17 of the Supplementary CIA FOIA Request; that the document requested via Category 1 was produced, with redactions litigated, in *American Civil Liberties Union v. Dep't of Defense*, 04 Civ. 4151 (AKH) (S.D.N.Y.), and therefore pursuant to the Stipulation was not subject to the instant suit; that searches were ongoing for 5 categories; and that it intended to seek a stay as to Categories 11 and 13 due to the Department of Justice's investigation, conducted by John H. Durham, into the CIA's destruction of tapes documenting the interrogations of Abu Zubaydah and other individuals subject to the CIA's rendition, secret detention, and coercive interrogation program.

19. Plaintiffs' Motion for Preliminary Injunction was partially resolved by negotiation, including the establishment of the briefing schedule for OIPR and the Supplementary CIA FOIA Request, which was so ordered by this Court on August 20, 2008, and then modified upon the government's request for an extension of time, so ordered by this Court on October 30, 2008.

20. On August 12, 2008, the CIA applied for a four-month stay of Categories 11 and 13 of the Supplementary CIA FOIA Request. On August 21, 2008, Plaintiffs opposed this request. On August 26, 2008, the CIA replied. On August 29, 2008, after oral argument, this Court granted the CIA's request for a stay on the record, which was memorialized in a court order dated September 24, 2008.

#### **DOCUMENTS ATTACHED**

21. Attached hereto as Exhibit M is a true and correct copy of Robert S. Mueller, III, Director, FBI Before the National Commission on Terrorist Attacks upon the U.S., April 14, 2004, *available at* <http://www.fbi.gov/congress/congress04/mueller041404.htm>.

22. Attached hereto as Exhibit N is a true and correct copy of ABC News, *Transcript: Cheney Defends Hard Line Tactics*, ABC News Dec. 15, 2008, *available at* <http://abcnews.go.com/Politics/story?id=6464697&> (last visited Dec. 21, 2008).

23. Attached hereto as Exhibit O is a true and correct copy of *Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the Comm. on the Judiciary H.R.*, 110<sup>th</sup> Cong. 17 (2008) (testimony of Steven Bradbury, Principal Deputy Assistant Attorney General of the OLC).

24. Attached hereto as Exhibit P is a true and correct copy of *The Origins of Aggressive Interrogation Techniques: Hearing Before the S. Armed Services Comm.*, 110<sup>th</sup> Cong. 4 (2008) (statement of Sen. Carl Levin (Michigan), chair of the Armed Services Comm.).

25. Attached hereto as Exhibit Q is a true and correct copy of OFFICE OF THE INSPECTOR GEN. OF THE DEP'T OF DEF., REVIEW OF DOD-DIRECTED INVESTIGATIONS OF DETAINEE ABUSE (U) (2006), *available at*, <http://www.dodig.osd.mil/fo/Foia/ERR/06-INTEL-10-part%201.pdf>.

26. Attached hereto as Exhibit R is a true and correct copy of Mark Benjamin, The CIA's Torture Teachers: Psychologists helped the CIA exploit a secret military program to develop brutal interrogation tactics -- likely with the approval of the Bush White House, Salon.com News, June 21, 2007, available at [http://www.salon.com/news/feature/2007/06/21/cia\\_sere/print.html](http://www.salon.com/news/feature/2007/06/21/cia_sere/print.html).

27. Attached hereto as Exhibit S is a true and correct copy of Brian Ross & Richard Esposito, *CIA's Harsh Interrogation Techniques Described*, ABC News, Nov. 18, 2005, *available at* <http://abcnews.go.com/WNT/Investigation/story?id=1322866>.

28. Attached hereto as Exhibit T is a true and correct copy of Richard Esposito & Brian Ross, *Coming in From the Cold: CIA Spy Calls Waterboarding Necessary But Torture, Former Agent Says the Enhanced Technique Was Used on Al Qaeda Chief Abu Zubaydah*, ABC News, Dec. 10, 2007, Part 1 of Transcript, *available at* [http://abcnews.go.com/images/Blotter/brianross\\_kiriakou\\_transcript1\\_blotter071210.pdf](http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf) (last visited December 22, 2008).

29. Attached hereto as Exhibit U is a true and correct copy of Exhibit G to the Declaration of Mohamed Farag Ahmad Bashmilah in Support of Plaintiffs' Opposition to the

United States' Motion to Dismiss or, in the Alternative, for Summary Judgment, *Mohamed et. al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (N.D. Cal. filed Aug. 1, 2007) ("Bashmilah Decl."), Letter from Embassy of the Republic of Yemen in France to Mr. Dick Marty, Council of Europe (March 27, 2007).

30. Attached hereto as Exhibit V is a true and correct copy of Ex. U to Bashmilah Decl., Opinions Adopted by the United Nations Working Group on Arbitrary Detention 1-3.41-44 (Feb. 2, 2007).

31. Attached hereto as Exhibit W is a true and correct copy of Ex. V to Bashmilah Decl., Letter from the Permanent Mission of the Republic of Yemen to the United Nations Office and Other International Organizations to the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, and the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 20, 2005).

32. Attached hereto as Exhibit X is a true and correct copy of Ex. C to Bashmilah Decl., Note Verbale from the Permanent Mission of Jordan to the United Nations Office of Geneva Addressed to the Office of the High Commissioner for Human Rights (Mar. 22, 2007).

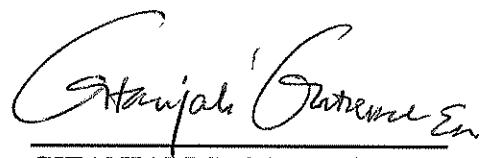
33. Attached hereto as Exhibit Y is a true and correct copy of Extracts from Yemeni Court Decision (Feb. 27, 2006).

34. Attached hereto as Exhibit Z is a true and correct copy of Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Wash. Post, Dec. 4, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/03/AR2005120301476.html> (last visited Dec. 21, 2008).

35. Attached hereto as Exhibit AA is Jane Mayer, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* 287-288 (2008).

36. Attached hereto as Exhibit BB is Associated Press, *CIA Watchdog Looks into 'Erroneous Renditions': Inspector General Investigates Cases of People Mistaken as Terror Suspects*, Dec. 27, 2005, available at <http://www.msnbc.msn.com/id/10618427/> (last visited Dec. 21, 2008).

Dated: December 22, 2008  
New York, NY



Gitanjali S. Gutierrez

GITANJALI S. GUTTERREZ

WILMER HALE

April 25, 2006

Catherine Kane Ronis

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Re: Request Submitted Under the Freedom of Information Act for Records Concerning Detainees, including "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners," and "CIA Detainees/Prisoners"

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

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### Definitions

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

The term "foreign official" includes any foreign government employee, and any person providing services to any agency of a foreign government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the foreign government.

The term "communication" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

### Scope of Request

Unless otherwise stated, this request refers to *individuals who were, have been, or continue to be deprived of their liberty by or with the involvement of the United States and about whom the United States has not provided public information. These individuals have been referred to, among other things, as "ghost detainees/prisoners," "unregistered detainees/prisoners," "CIA detainees/prisoners" and "Other Governmental Agency*

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**Detainees**" ("OGA Detainees"). These individuals have reportedly been held in various locations, including regular and irregular detention facilities, ships, aircraft, and military bases.

Although not limited to any specific geographic area, this request pertains particularly to the following places:

Afghanistan	Azerbaijan	Bulgaria	Djibouti
Egypt	Germany	Indonesia	Iraq
Jordan	Kosovo	Macedonia	Morocco
Pakistan	Poland	Romania	Syria
Thailand	Turkey	Ukraine	
United Kingdom (including Diego Garcia)			
United States (including all territories under the S.M.T.J)			
Uzbekistan	Yemen		

This Request does not seek records related to the formal extradition of individuals.

Requested records pertain to persons apprehended since September 11, 2001.

### **Background**

Numerous media reports indicate that the United States is involved in the secret or irregular apprehension, transfer, and detention of individuals on foreign territory.<sup>1</sup> These reports

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<sup>1</sup> See, e.g., Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1; Jan Cienski, Christopher Condon, Caroline Daniel, Guy Dinmore, Andrei Postelnicu, & Demetri Sevastopulo, *Evidence CIA Has Secret Jails in Europe*, FINANCIAL TIMES (LONDON), Nov. 3, 2005, at 1; Siobhan Gorman & Tom Bowman, *Reports of Secret CIA Prisons Prompt Concern*, L.A. TIMES, Nov. 3, 2005, at A4; Douglas Jehl & David Johnston, *CIA Now Acting Independently to Move Prisoners*, INT'L HERALD TRIB., Mar. 7, 2005, at 4; Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake: German Citizen Released After Months in Rendition*, WASH. POST., Dec. 4, 2005; Brian Ross and Richard Esposito, *Exclusive: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, at <http://abcnews.go.com/WNT/Investigation/story?id=1375123>; Eric Schmitt and Thom Shanker, *Rumsfeld Issued an Order to Hide Detainee in Iraq*, N.Y. Times, June 17, 2004, at A1; *US bars access to terror suspects*, BBC NEWS, Dec. 9, 2005; Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16; *White House Mum on Secret CIA Prisons*, AGENCIE FRANCE PRESSE ENGLISH WIRE, Nov. 2, 2005; *Yemen says U.S. sent prisoners to Europe*, UNITED PRESS INT'L (UPI), Dec. 11, 2005, at <http://www.upi.com/InternationalIntelligence/view.php?StoryID=20051211-051738-9694r>.

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suggest that the government secretly detains and transports individuals on U.S. ships, military bases, and U.S.-chartered planes, as well as in foreign states.<sup>2</sup>

Records Requested

Please disclose any records reflecting, discussing or referring to the policy and/or practice concerning:

1. The apprehension, transfer, detention, and interrogation of persons within the Scope of Request, including but not limited to:

- (a) The transfer of intelligence by one or more U.S. agencies or government officials to one or more foreign agencies or officials, in connection with the apprehension or detention of a person.
- (b) A request or direction by one or more U.S. agencies or government officials to one or more foreign agencies or officials regarding the apprehension of any person, and any related agreement concerning such apprehension.
- (c) The apprehension of a person in a foreign country by, with the involvement of, or in the presence of one or more U.S. officials.
- (d) The transfer of a person from any country to any other country for the purpose of detention and/or interrogation, at the direction or request or with the knowledge of one or more U.S. agencies or officials.
- (e) The transfer of a person from one place of detention to another within the same country at the direction or request or with the knowledge of one or more U.S. agencies or officials.
- (f) The detention of a person in a foreign country at the direction or request of one or more U.S. agencies or officials, including any agreement concerning the detention.
- (g) One or more U.S. agencies or officials seeking and/or being granted access to a foreign national detained in a foreign country.

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<sup>2</sup> See, *id.* and further e.g., Craig Whitlock, *Europeans Probe Secret CIA Flights; Questions Surround Possible Illegal Transfer of Terrorism Suspects*, WASH. POST, Nov. 17, 2005, at A22; Eric Schmitt & Carolyn Marshall, *In Secret Unit's 'Black Room,' a Grim Portrait of U.S. Abuse*, N.Y. TIMES, Mar. 19, 2006.

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(h) One or more U.S. agencies or officials being present in a place of detention in a foreign country. This does not include visits to U.S. citizens by U.S. officials pursuant to the Vienna Convention on Consular Relations.

(i) One or more U.S. agencies having control, direction, or administration of a subdivision, portion, or “cell” of a place of detention in a foreign country.

2. Current and former places of detention where individuals within the Scope of Request have been or are currently held, including but not limited to:

(a) Any place of detention in a foreign country being under the control, direction, or administration of one or more U.S. agencies.

(b) Any place of detention that is not under the control, direction or administration of one or more U.S. agencies, where a detainee is held at the request or instruction of one or more U.S. agencies or officials.

(c) Any subdivision, portion, or “cell” of a place of detention in a foreign country under the control, direction, or administration of one or more U.S. agencies.

(d) Any agreement between the U.S. government or one or more U.S. agencies or officials, and a foreign government or one or more foreign agencies or officials, in relation to a place of detention in a foreign country, regardless of whether that place of detention is foreign or U.S.—controlled.

3. The names and identities of detainees who fall within the scope of this request.<sup>3</sup>

#### **Fee Waiver**

The requestors qualify as “representatives of the news media” and the records sought are not for commercial use. Moreover, this Request “is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii).

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<sup>3</sup> Because of the nature of their detention, the requesters do not know the names or identities of those within the scope of this request. For examples of individuals that the United States has acknowledged detaining, but about whom the United States has not provided public information, see Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown: Detainees in the “War on Terror”* (2005), available at <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>; and Human Rights Watch, “List of ‘Ghost Prisoners’ Possibly in CIA Custody (2005), available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm>. The scope of this request extends far beyond these examples.

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Amnesty International is a non-governmental organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including torture and disappearances. AI also disseminates information through its website [www.amnesty.org](http://www.amnesty.org).

The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRGJ publishes reports and operates a website [www.nyuhr.org](http://www.nyuhr.org) discussing human rights issues.

The International Human Rights Clinic is a project of CHRGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this Request through the channels described above.

#### **Expedited Processing**

Expedited processing is warranted as there is a “compelling need” for the records sought in this Request. 5 U.S.C. § 552(a)(6)(E)(i)(I). This need arises because the requesters are “primarily engaged in disseminating information” and there is an “urgency to inform the public concerning actual or alleged Federal Government Activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government’s role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ’s website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media articles cited above, there is an urgent need to provide the public with information relating to the U.S. government’s practices concerning unregistered or ghost detainees.

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There is also a “compelling need” because failure to obtain the records on an expedited basis “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt any such practices could reasonably be expected to pose an imminent threat to the physical safety and lives of individuals whose identities we are unable to ascertain without the records sought herein.

Expedited processing is also warranted because this request involves “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv).

AI and WSLs certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

\* \* \*

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

WILMERHALE

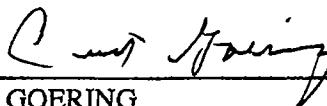
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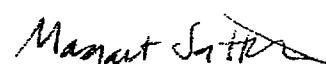
Thank you for your prompt attention. Please direct all questions and future responses to:

CATHERINE K. RONIS  
Counsel to Amnesty International USA  
WilmerHale  
2445 M Street Washington, D.C. 20037  
Tel: (202) 663-6380  
Fax: (202) 663-6363  
E-mail: catherine.ronis@wilmerhale.com

If you need someone to reach by telephone, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785.

Sincerely,

  
CURT GOERING  
Deputy Director  
Amnesty International USA  
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**WILMERHALE**

April 25, 2006

**Catherine Kane Ronis**

Via Facsimile, Email and US Mail

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GayLa D. Sessoms  
FOIA Coordinator  
Office of Intelligence Policy and Review  
Department of Justice  
Room 6150, 950 Pennsylvania Ave. N.W.  
Washington D.C. 20530-0001  
(Ph.) 202-514-5600  
(Fax) 202-305-4211

**Re: Request Under the Freedom of Information Act for Records Concerning Ghost Detainee Memoranda, Department of Defense Detainee Reporting, Reports to Certain U.N. Committees, and the Draft Convention on Enforced Disappearance**

Dear Freedom of Information Officer:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). The Request is submitted on behalf of Amnesty International (“AI”) and Washington Square Legal Services, Inc. (“WSLS”). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic (“the Clinic”) of the New York University School of Law (“NYU Law School”). The Clinic is a project of NYU Law School’s Center for Human Rights and Global Justice (“CHRGJ”).

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

**WILMERHALE**

FOIA Request  
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**Definitions**

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

The term "foreign official" includes any foreign government employee, and any person providing services to any agency of a foreign government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the foreign government.

The term "communication" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

Unless otherwise specified, this request relates to all records generated between September 11, 2001 and the present.

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**Memoranda of Understanding**

The practice of persons being kept as “off-the-record” detainees in military prisons has been well documented.<sup>1</sup> In this context, “ghost” or “unregistered” detainees are understood to refer to those detainees who were at some point during their detention, or remain: not “officially” registered at military facilities; “kept off the books”; and/or denied access to the International Committee of the Red Cross (ICRC).<sup>2</sup> Documents produced by the Department of Defense on March 3, 2005 pursuant to an ACLU FOIA request<sup>3</sup> and a media report in the

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<sup>1</sup> See Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16. See also Jane Mayer, *A Deadly Interrogation: Can the C.I.A. Legally Kill a Prisoner?*, NEW YORKER, Nov. 14, 2005, at 44 (discussing the practice, particularly with respect to the death of Manadel al-Jamadi). See also the following Department of Defense documents released to the American Civil Liberties Union (ACLU) pursuant to a *Freedom of Information Act* request, all available at <http://www.aclu.org/torturefoia/released/030905/>: Transcript of deposition of Brig. Gen. Janis L. Karpinski, Appendix to Fay/Jones/Kern Report (July 18, 2004); Statement of MNF-I, C2, IMIR CW2, Annex to Fay/Jones/Kern Report (June 16, 2004); Sworn Statement of E-5, 519th MI Bn, Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report; Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report; Sworn Statement of SGT, 372nd MP, Camp Victory, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SPC/E4, B Co., 66th MI Group, 202nd MI BN, Annex to Fay/Jones/Kern Report (May 24, 2004); Sworn Statement of SGT, Member of GTMO team, “Shut Up Group,” Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of CW2, A/519th MI Bn, Annex to Fay/Jones/Kern Report (May 19, 2004); Sworn Statement of SGT, 372nd MP Co, Annex to Fay/Jones/Kern Report (May 7, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004). See further HUMAN RIGHTS FIRST, BEHIND THE WIRE: AN UPDATE TO *ENDING SECRET DETENTIONS* 6 (2005), available at [http://www.humanrightsfirst.org/us\\_law/PDF/behind-the-wire-033005.pdf](http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf) (providing overview of the practice of ghosting in military facilities); HUMAN RIGHTS WATCH, THE UNITED STATES’ DISAPPEARED: THE CIA’S LONG-TERM “GHOST DETAINEES” 5-15 (2004), available at <http://www.hrw.org/backgrounder/usa/us1004/us1004.pdf> (outlining practice of keeping CIA prisoners in military detention generally).

<sup>2</sup> *Id.*

<sup>3</sup> See Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000719-000725, available at <http://www.aclu.org/torturefoia/released/030905/> (“OGA and TF-121 routinely brought in detainees for a short period of time. The A/519th soldiers initiated the term ‘ghost.’ They stated they used this term as the detainees were not in-processed in the normal way via the MP database and were not yet categorized. It was difficult to track these particular detainees and I and other officers recommended that a Memorandum of Understanding be written up between OGA, the 205th MI BDE and the 800th MP BDE to establish procedures for a ghost detainee”); Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000726-000729, available at <http://www.aclu.org/torturefoia/released/030905/> (“...in reference to Ghost detainees, OGA would bring in detainees for a short period of time. [REDACTED] brought them in. These particular ghost detainees were not yet

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*Washington Post* dated March 11, 2005<sup>4</sup> indicate that this arrangement for “ghosting” was not “ad hoc” but was embodied in a Memorandum of Understanding (MOU) between military officials and the CIA.<sup>5</sup> The exact contours of this arrangement are not publicly known as a copy of this MOU was not included in the documents released by the Department of Defense.<sup>6</sup>

**Records Requested**

We seek the following records relating to the arrangement described above:

1. Any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies, or between any agency and any subdivision or official, concerning the handling of ghost or unregistered detainees. This includes but is not limited to:
  - (a) Any record reflecting communications about whether or not to draft any memorandum of understanding or agreement regarding unregistered or ghost detainees.
  - (b) Any record reflecting communications about the content of any memorandum of understanding or agreement regarding unregistered or ghost detainees.
2. Any record reflecting a policy, whether formal or informal, about the reception, detention, or movement of unregistered or ghost detainees.
3. Any memorandum of understanding, or other record reflecting an agreement between any agencies, or between any subdivision or official or any other agency, regarding the transfer of detainees from the custody of one agency to that of another.

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categorized and OGA was working on that. It was very difficult keeping track of these OGA because they were not processed until OGA decided to turn them over to us. COL PAPPAS was not happy with that procedure. [REDACTED] recommended that a Memorandum of Understanding be written up between OGA and MI on the procedures to drop off a ghost detainee. COL PAPPAS met with OGA and TF-121 and the memorandum on procedures for dropping ghost detainees was signed").

<sup>4</sup> Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16.

<sup>5</sup> *Id.*

<sup>6</sup> Press Release, American Civil Liberties Union, Newly Released Army Documents Point to Agreement Between Defense Department and CIA on "Ghost" Detainees, ACLU Says: Declassified Annexes to Fay Report, Which Denied Link, Contain Further Evidence of Brutal Army Abuses (Mar. 10, 2005), available at <http://www.aclu.org/safefree/general/17597prs20050310.html>.

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**Department of Defense Detainee Reporting**

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004) ("the Act"), requires the Department of Defense to submit an annual report regarding certain detainees.

**Records Requested**

4. Any record generated in connection with the reporting requirement under Section 1093(c) of the Act, regardless of whether or not such record was actually submitted in the final report, and any record submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives pursuant to Section 1093(c) of the Act.<sup>7</sup> This includes but is not limited to records reflecting:

- (a) Any notice of investigation into any violation of international obligations or laws of the United States regarding the treatment of individuals detained by the U.S. Armed Forces or by a person providing services to the Department of Defense on a contractual basis.
- (b) Any discussions regarding whether any investigation described in Request 4(a) should be reported.
- (c) The number of detainees held in Department of Defense custody, or released from Department of Defense custody during the time period covered by the report, broken down into the greatest number of time intervals for which such information is available.
- (d) The number of detainees detained by the Department of Defense as "enemy prisoners of war," "civilian internees," and "unlawful combatants," broken down into the greatest number of time intervals for which such information is available.
- (e) The number of detainees detained by the Department of Defense under any status other than "enemy prisoners of war," "civilian internees," and "unlawful

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<sup>7</sup> Section 1093(e) of the Act mandates that the reports "be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States." To the extent any records or portions of records responsive to this request are classified, please provide basic information as to the date, sender, recipient, and subject matter of the classified records.

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combatants," broken down into the greatest number of time intervals for which such information is available.

- (f) The transfer or proposed transfer of detainees by the Department of Defense to the jurisdiction of other countries, and the countries to which those detainees were transferred.
- (g) Any communications regarding decisions to include or not include information in the Department of Defense's report under Section 1093(c) of the Act and decisions as to whether to submit any information in unclassified or classified form pursuant to Section 1093(d) of the Act.

**United States Report to the Committee Against Torture**

On May 6, 2005, the U.S. submitted its Second Periodic Report to the United Nations ("U.N.") Committee Against Torture, as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Records Requested**

All records reflecting:

5. Communications regarding the United States' Second Periodic Report to the Committee Against Torture, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Committee Against Torture.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment relating to apprehension, transfer and detention, (including Articles 1, 3, 5, 16), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Committee Against Torture.

**United States Report to the Human Rights Committee**

On November 28, 2005, the U.S. submitted its Third Periodic Report to the U.N. Human Rights Committee, as required by the International Covenant on Civil and Political Rights.

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Records Requested

All records reflecting:

6. Communications regarding the United States' Third Periodic Report to the Human Rights Committee, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Human Rights Committee.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the International Covenant on Civil and Political Rights relating to apprehension, transfer and detention, (including Articles 6, 7, 9), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Human Rights Committee.

**The Convention on the Protection of all Persons from Enforced Disappearance**

On September 23, 2005, a U.N. working group concluded the draft text of the Convention on the Protection of all Persons from Enforced Disappearance. In 2006, the draft convention will be submitted to the U.N. Commission on Human Rights and the U.N. General Assembly, before being opened for signature and ratification.

Records Requested

7. Any record reflecting communications regarding the negotiation or drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

8. Any record reflecting communications with a foreign government, or an agency or official of a foreign government, regarding the drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

**Fee Waiver**

The requestors qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

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Amnesty International is a non-government organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including the prohibition on torture and the prohibition on disappearances. AI also disseminates information through its website [www.amnesty.org](http://www.amnesty.org).

The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRGJ publishes reports and operates a website [www.nyuhr.org](http://www.nyuhr.org) discussing human rights issues.

The International Human Rights Clinic is a project of CHRGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

#### **Expedited Processing**

Expedited processing is warranted as there is a “compelling need” for the records sought in this request. 5 U.S.C. § 552(a)(6)(E)(i)(I). The requesters are primarily engaged in “disseminating information” and there is an “urgency to inform the public concerning the actual or alleged Federal Government Activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government’s role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ’s website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media reports discussed above, there is an urgent need to provide the public with information relating to the U.S. government’s practices concerning unregistered or ghost detainees.

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There is also a “compelling need” because failure to obtain the records on an expedited basis “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt the practices prompting this Request could reasonably be expected to pose an imminent threat to the physical safety and lives of such individuals.

Expedited processing is also warranted because this request involves “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv).

AI and WSLS certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

\* \* \*

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

WILMERHALE

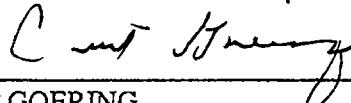
FOIA Request  
April 21, 2006  
Page 10

Thank you for your prompt attention. Please direct all questions and future responses to:

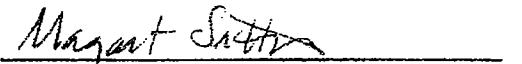
CATHERINE K. RONIS  
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E-mail: catherine.ronis@wilmerhale.com

If you need someone to reach by telephone or email, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785.

Sincerely,



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U.S. Department of Justice

Washington, D.C. 20530

MAY 12 2006

Catherine K. Ronis  
WilmerHale, L.L.P.  
2445 M Street, NW  
Washington, DC 20037

Dear Ms. Ronis:

Your Freedom of Information Act and/or Privacy Act (FOIA/PA) request was received by this office which serves as the receipt and referral unit for FOIA/PA requests addressed to the Department of Justice (DOJ). Federal agencies are required to respond to a FOIA request within 20 business days. This period does not begin until the request is actually received by the component within the DOJ that maintains the records sought.

We have referred your request to the DOJ component(s) you have designated or, based on descriptive information you have provided, to the component(s) most likely to have the records. The component(s) to which your request has been forwarded are indicated on the enclosed FOIA/PA Referral/Action Slip. All future inquiries concerning the status of your request should be addressed to the component(s) which now has your letter for response. For your convenience, we have enclosed the List of Department of Justice Components, Functions and Records Maintained.

Sincerely,

A handwritten signature in black ink that reads "Ronald Deacon".

Ronald Deacon, Director  
Facilities and Administrative  
Services Staff  
Justice Management Division

Enclosures  
FOIA/PA Referral/Action Slip  
List of Department of Justice Components,  
Functions and Records Maintained

U.S. Department of Justice  
Justice Management Division

**Freedom of Information Act/Privacy Act  
Referral/Action Slip**

Clerk: M. Barnes

Date:

Organization: JMD/FASS

MAY 12 2006

Building & Room: LOC, 113

- | To                                  | From  | To                                  | From   |
|-------------------------------------|---|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> Office of Information & Privacy<br><u>Office of the Attorney General</u> | <input type="checkbox"/>            | <input type="checkbox"/> Immigration Review, Executive Office for    |
|                                     | _____<br>_____<br>_____   | <input checked="" type="checkbox"/> | <input type="checkbox"/> Inspector General, Office of                |
| <input type="checkbox"/>            | <input type="checkbox"/> Antitrust Division   | <input checked="" type="checkbox"/> | <input type="checkbox"/> Intelligence Policy and Review, Office of   |
| <input type="checkbox"/>            | <input type="checkbox"/> Bureau of Alcohol, Tobacco, Firearms<br>and Explosives                   | <input type="checkbox"/>            | <input type="checkbox"/> INTERPOL, U.S. National Central Bureau      |
| <input type="checkbox"/>            | <input type="checkbox"/> Civil Division   | <input type="checkbox"/>            | <input type="checkbox"/> Justice Management Division<br>Staff: _____ |
| <input type="checkbox"/>            | <input type="checkbox"/> Civil Rights Division  | <input type="checkbox"/>            | <input type="checkbox"/> Justice Programs, Office of                 |
| <input type="checkbox"/>            | <input type="checkbox"/> Community Relations Service  | <input type="checkbox"/>            | <input type="checkbox"/> Legal Counsel, Office of                    |
| <input type="checkbox"/>            | <input type="checkbox"/> Community Oriented Policing Services                                     | <input type="checkbox"/>            | <input type="checkbox"/> National Drug Intelligence Center           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> Criminal Division  | <input type="checkbox"/>            | <input type="checkbox"/> Pardon Attorney, Office of                  |
| <input type="checkbox"/>            | <input type="checkbox"/> Dispute Resolution, Office of  | <input type="checkbox"/>            | <input type="checkbox"/> Professional Responsibility Advisory Office |
| <input type="checkbox"/>            | <input type="checkbox"/> Drug Enforcement Administration  | <input type="checkbox"/>            | <input type="checkbox"/> Professional Responsibility, Office of      |
| <input type="checkbox"/>            | <input type="checkbox"/> Environment & Natural Resources Division                                 | <input type="checkbox"/>            | <input type="checkbox"/> Solicitor General, Office of                |
| <input type="checkbox"/>            | <input type="checkbox"/> Federal Bureau of Prisons  | <input type="checkbox"/>            | <input type="checkbox"/> Tax Division                                |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> Federal Bureau of Investigation  | <input type="checkbox"/>            | <input type="checkbox"/> U.S. Attorneys, Executive Office for        |
| <input type="checkbox"/>            | <input type="checkbox"/> Federal Detention Trustee, Office of                                     | <input type="checkbox"/>            | <input type="checkbox"/> U.S. Marshals Service                       |
| <input type="checkbox"/>            | <input type="checkbox"/> Foreign Claims Settlement Commission                                     | <input type="checkbox"/>            | <input type="checkbox"/> U.S. Parole Commission                      |
|                                     |   | <input type="checkbox"/>            | <input type="checkbox"/> U.S. Trustees, Executive Office for         |
|                                     |   | <input type="checkbox"/>            | _____  |

Requester: Catherine K. Ronis

Ref: \_\_\_\_\_

Date of Request: April 25, 2006

Received By: FOIA/PA Mail Referral Unit

Type of Request: FOIA

Remarks: Requester advised of this referral.

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

## ATTACHMENT B

## Listing and Descriptions of Department of Justice Components, Addresses, Locations of Reading Rooms, and Descriptions of Information Routinely Made Publicly Available, and Multitrack Processing

This attachment lists the subdivisions or "components" of the Department of Justice, with a brief description of their functions. Whenever a component requires special information in order to respond to a Freedom of Information Act (FOIA) request, this is noted immediately below the listing. If a component employs multitrack processing of FOIA requests, it also has provided a description of its multitrack processing system. Also following each component listing is a general description of the types of information that the component makes publicly available without requiring that a formal FOIA request be made. If you are interested in such information, please contact the component, either in writing or by telephone.

For most other materials, FOIA requests must be made in writing. You are encouraged to write directly to the addresses provided below in order to speed up the handling of your request. However, if you are unable to identify the Department component(s) most likely to have the records, you may send your request to the Freedom of Information Act/Privacy Act Mail Referral Unit, Justice Management Division, U.S. Department of Justice, Room 1070, NPB, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, which will then forward your request to the appropriate component(s). In either case, please mark the envelope "Freedom of Information Act Request."

All reading room records created by the Justice Department on or after November 1, 1996 are available through the Department's FOIA site on the World Wide Web site ([www.usdoj.gov/foia](http://www.usdoj.gov/foia)) under "Reading Rooms." This site provides links to each component's FOIA page, which should indicate which records are available electronically. Persons without access to the World Wide Web may access the Department's electronic reading rooms at Room 10200, PHB, 601 D Street, N.W., Washington, D.C. Where an individual component also maintains a separate reading room, that reading room location is also noted following the component description. Before visiting a component's reading room, be sure to first contact the component to determine the hours during which the reading room may be open (or to schedule a visit) and to verify that any specific document or information that you are seeking is, in fact, maintained in the reading room.

The following list of Justice Department components is in alphabetical order:

## ANTITRUST DIVISION – Requests for Antitrust Division records should be addressed to:

FOIA/PA Officer  
 Antitrust Division  
 Department of Justice  
 Suite 200, Liberty Place Building  
 Washington, D.C. 20530-0001  
 (202) 514-2692

The Antitrust Division is charged with the general enforcement, by criminal and civil proceedings, of federal antitrust laws and other laws relating to the protection of competition and the prohibition of monopolization and restraints of trade. This Division maintains files of its investigations and legal cases, stores documents utilized during such investigations and litigation, and keeps records pertaining to the administration of the Division.

Special information required: No special information is required for your request, but please be as specific as possible.

Publicly available information: Public documents located on this Division's Web site include public court and administrative filings, such as complaints, indictments, final judgments, statements of policy, staff manuals, and guidelines; press releases; speeches; congressional testimony; business review letters; and the Division telephone book.

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF THE ASSOCIATE ATTORNEY GENERAL** -- Requests for Associate Attorney General records should be addressed to:

Deputy Director  
Office of Information and Privacy  
Department of Justice  
Suite 570, Flag Building  
Washington, D.C. 20530-0001  
(202) 514-FOIA

The Associate Attorney General advises and assists the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to a broad range of civil justice, federal and local law enforcement, and public safety matters. The Office oversees the following Department of Justice components: the Antitrust, Civil, Civil Rights, Environment and Natural Resources, and Tax Divisions, the Office of Justice Programs, the Office of Community Oriented Policing Services (COPS); the Community Relations Service, the Office of Dispute Resolution; the Office on Violence Against Women, the Office of Information and Privacy, the Executive Office for United States Trustees, and the Foreign Claims Settlement Commission. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Information and reports considered to be of significant public interest.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF THE ATTORNEY GENERAL** -- Requests for Attorney General records should be addressed to:

Deputy Director  
Office of Information and Privacy  
Department of Justice  
Suite 570, Flag Building  
Washington, D.C. 20530-0001  
(202) 514-FOIA

The Attorney General is responsible for the overall supervision and direction of the administration and operation of the Department. The Attorney General represents the United States in legal matters generally and furnishes advice and opinions on legal matters to the President, the Cabinet, heads of the executive departments, and other agencies of the federal government. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Information and reports considered to be of significant public interest.

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

**Multitrack processing:** FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES** – Requests for Bureau of Alcohol, Tobacco, Firearms, and Explosives records should be addressed to:

Division Chief  
 Bureau of Alcohol, Tobacco, Firearms, and Explosives  
 Department of Justice  
 Room 8400, 650 Massachusetts Avenue, N.W.  
 Washington, D.C. 20226  
 (202) 927-8480

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) conducts criminal investigations, regulates the firearms and explosives industries, and assists other law enforcement agencies in order to suppress violent crime and protect the public. The ATF removes violent offenders and criminal organizations from the community; assists prosecutors in incarcerating violent offenders; provides leadership to solve violent crime; denies criminals access to firearms by stopping illegal firearms traffickers; works with the firearms and explosives industries to ensure compliance with regulations and record keeping requirements; promotes comprehensive crime gun tracing; safeguards the public from explosives and arson incidents; supports interagency counterterrorism effort; assists state, local, and other federal law enforcement agencies by establishing and conducting law enforcement training and research programs; investigates thefts and losses of firearms and explosives; allows only qualified applicants to become licensed in firearms and explosives industries; conducts revenue investigations in conjunction with alcohol and tobacco diversion investigations; and prevents criminal encroachment of the legitimate alcohol and tobacco industries. ATF also maintains records relating to the administration of the bureau.

Special information required: None.

Publicly available information: A request for a listing of Federal Firearms Licensee's (FFL's) in your residential zip code can be made without a FOIA request. Send your request to:

Bureau of Alcohol, Tobacco, Firearms, and Explosives  
 Chief, Firearms and Explosives Services Division  
 Department of Justice  
 Room 5100, 650 Massachusetts Avenue, N.W.  
 Washington, D.C. 20226

Reading room location: Sixth Floor, 650 Massachusetts Avenue, N.W., Washington, D.C.

Multitrack processing: None.

**CIVIL DIVISION** – Requests for Civil Division records should be addressed to:

Freedom of Information/Privacy Act Office  
 Civil Division  
 Department of Justice  
 Room 7304, 20 Massachusetts Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 514-2319

The Civil Division represents the United States, its agencies, and its employees in general civil litigation that is not within the specialized fields of other divisions of the Department. It defends the federal

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government in suits challenging the constitutionality, lawfulness, or propriety of Presidential initiatives, federal statutes, and government programs and actions. It also initiates litigation to enforce various federal statutes, including the False Claims Act, and the federal consumer protection and immigration laws. It handles tort claims against the government, and the defense of federal civilian and military officials sued personally for official actions. The Division maintains record material relating to cases and matters under its jurisdiction, as well as records relating to the administration of the division.

**Special information required:** Requests for records from Civil Division case files should include a case caption or name, civil action number, judicial district, and date or year of filing.

**Publicly available information:** Certain Civil Division legal practice monographs and a limited number of health care settlements.

**Multitrack processing:** None.

**CIVIL RIGHTS DIVISION** -- Requests for Civil Rights Division records should be addressed to:

Chief, FOIA/PA Branch  
 Civil Rights Division  
 Department of Justice  
 Room 311, NALC Building  
 Washington, D.C. 20530-0001  
 (202) 514-4209

The Civil Rights Division (CRT) conducts the litigation of cases to secure equal opportunity in the areas of employment, education, housing, voting, public accommodations and facilities, and federally assisted programs. CRT is also responsible for enforcing the antidiscrimination provision of the Immigration Reform and Control Act through the investigation and prosecution of charges filed on the basis of citizenship status or national origin. It also prosecutes criminal violations of federal civil rights statutes. The Division maintains records of all its legal cases, correspondence, and memoranda, as well as records on certain individuals protected under civil rights statutes. Records maintained include those relating to the administration of the office.

**Special information required:** None.

**Publicly available information:** The Disability Rights Section and the Office of Special Counsel for Immigration-Related Unfair Employment Practices have numerous publications available to the public through each section's public information office.

**Multitrack processing:** FOIA requests are placed in one of four tracks. Track one requests meet the criteria for expedited processing and requests for which there are no records or are records that have already been processed in response to a prior request. Track two is for responses that require retrieval of 3000 pages or less and responses for which at least a 2500-page fee is anticipated to be assessed. Track three is for requests requiring processing of more than 3000 pages. Track four is for responses of voluminous amounts of documents for historical projects where requesters have qualified for a fee waiver.

**COMMUNITY RELATIONS SERVICE** -- Requests for Community Relations Service records should be addressed to:

FOIA/PA Coordinator  
 Community Relations Service  
 Department of Justice  
 Suite 6000, 600 E Street, N.W.  
 Washington, D.C. 20530-0001  
 (202) 305-2935

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The Community Relations Service (CRS) provides community mediation and conciliation services to resolve conflicts or disputes relating to race, color, or national origin at the request of state or local officials, local citizens and organizations, or on its own motion when it believes that peaceful relations among citizens are threatened.

Special information required: None.

Publicly available information: Annual reports; CRS Customer Service Plan; general publications on conflict resolution and related CRS work. Other types of public information are available on CRS's Web site at [www.usdoj.gov/crs](http://www.usdoj.gov/crs).

Multitrack processing: None.

**CRIMINAL DIVISION – Requests for Criminal Division records should be addressed to:**

Chief, FOIA/PA Unit  
 Criminal Division  
 Department of Justice  
 Suite 1127, Keeney Building  
 Washington, D.C. 20530-0001  
 (202) 616-0307

The Criminal Division, in association with the 93 United States Attorneys nationwide, is responsible for the enforcement of all federal criminal statutes except those arising under the antitrust, civil rights, income tax, and environmental protection laws. It is also responsible for the conduct of certain civil litigation, primarily that involving prison and parole matters, and civil litigation involving electronic surveillance. The Division supervises such matters as electronic surveillance (but not when related to national security or defense investigations), granting of immunity from federal prosecution, and the issuance of subpoenas to members of the press or attorneys. However, the division maintains records of criminal proceedings only when necessary to the exercise of its supervisory role and case files only where it has assumed direct responsibility for prosecution. The majority of criminal prosecutions are handled by the individual United States Attorneys Offices, which ordinarily maintain all relevant case files. The Criminal Division maintains records of large-scale fraud cases; foreign agents registration matters; certain matters relating to terrorism and espionage; exchange of prisoners with foreign countries pursuant to treaties; requests for assistance to and from foreign governments in criminal prosecutions; extradition matters; records concerning asset forfeitures; investigations and denaturalization proceedings against individuals who participated in Nazi persecutions or any acts of genocide or government-sponsored torture or murder; records pertaining to the International Criminal Investigative Training Assistance Program; and records relating to the administration of the Criminal Division. The Criminal Division does not maintain Criminal History Records (commonly referred to as "Rap Sheets"). Such records should be requested from the FBI. Instructions for obtaining Rap Sheets can be found at Department of Justice regulations at 28 C.F.R. §§ 16.30-34 or by following the link on the Criminal Division FOIA page on the World Wide Web.

For a description of the records maintained by the Criminal Division, go to the Criminal Division's FOIA page on the World Wide Web at [www.usdoj.gov/criminal](http://www.usdoj.gov/criminal).

Special information required: None.

Publicly available information: Foreign Agents Registration Act information.

Multitrack processing: Track one is requests that meet the criteria for expedited processing and requests for which no responsive records are located or records that have already been processed in response to a recent prior FOIA request. Track two is requests that require an average amount of time to process, typically within thirty days, once all responsive records have been received by the FOIA/PA Unit. Track three is requests for voluminous amounts of documents and/or complex requests requiring more than thirty days to process following receipt of the responsive records in the FOIA/PA Unit.

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<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

**OFFICE OF THE DEPUTY ATTORNEY GENERAL – Requests for Deputy Attorney General records**  
 should be addressed to:

Deputy Director  
 Office of Information and Privacy  
 Department of Justice  
 Suite 570, Flag Building  
 Washington, D.C. 20530-0001  
 (202) 514-FOIA

The Deputy Attorney General advises and assists the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction of all organizational units of the Department. The Office of the Deputy Attorney General, through the Justice Management Division's Office of Attorney Recruitment and Management, also administers the attorney hiring program of the Department and maintains the files containing Honor Program and Summer Law Intern Program applications. (Applicant files relating to experienced attorney hiring are maintained by the hiring component. Attorney personnel files are maintained by individual components and/or by the Justice Management Division's Personnel Staff, other than those for Assistant United States Attorneys, which are maintained by the Executive Office for United States Attorneys.) Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Information and reports considered to be of significant public interest.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

► **DRUG ENFORCEMENT ADMINISTRATION -- Requests for Drug Enforcement Administration records**  
 should be addressed to:

Freedom of Information Operations Unit (SARCO)  
 Drug Enforcement Administration  
 Department of Justice  
 700 Army Navy Drive  
 Arlington, VA 22202  
 (202) 307-7596

The Drug Enforcement Administration (DEA) enforces the controlled substances laws and regulations of the United States by bringing to the criminal and civil justice system of the United States, or any other competent jurisdiction, those involved in the growth, manufacture, or distribution of controlled substances in or destined for the illicit traffic in the United States. DEA maintains investigative and intelligence files of criminal activities related to illicit drug traffic and drug abuse, rosters and investigations of legitimate drug handlers, distributors and manufacturers, and records of controlled substance security investigations. It also keeps various records pertaining to the administration of DEA.

Publicly available information: Certain manuals, pamphlets on drugs and other DEA programs published by DEA's Office of Public Affairs; asset forfeiture advertisements and auction announcements; requests for reasons for the issuance of a telephone record subpoena made by the subject of the subpoena.

Reading room location: Room W-7216, 700 Army Navy Drive, Arlington, VA.

Multitrack processing: None.

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<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

**ENVIRONMENT AND NATURAL RESOURCES DIVISION** – Requests for Environment and Natural Resources Division records should be addressed to:

FOIA Coordinator  
Law and Policy Section  
Environment and Natural Resources Division  
Department of Justice  
P.O. Box 4390, Ben Franklin Station  
Washington, D.C. 20044-4390  
(202) 514-1442

The Environment and Natural Resources Division (ENRD) is responsible for the civil and criminal enforcement of environmental laws, the defense of the government's administration of federal environmental laws, and litigation relating to the use and protection of federally owned public lands and natural resources. Some statutes that are within the Division's subject-matter expertise are the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act; the Oil Pollution Act of 1990, the National Environmental Policy Act, the Federal Land Policy Management Act, the National Forest Management Act, and the Endangered Species Act. The Division also represents the United States in its trust capacity for Indian tribes; acquires land by purchase or condemnation for use by the federal government; and defends the government against Fifth Amendment takings claims. The Division maintains case files, correspondence files, and records relating to the administration of the Division.

Special information required: None.

Publicly available information: On ENRD's Web site, among other things -- press releases, Global Settlement Policy, Integrated Enforcement Policy, ENRD Summaries of Litigation Accomplishments (for recent years), model consent decrees, land-acquisition appraisal standards.

Otherwise available: Amicus briefs, complaints, consent decrees, other ENRD case-related documents.

Multitrack processing: None.

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW** -- Requests for Executive Office for Immigration Review records should be addressed to:

Office of the General Counsel  
Attn: FOIA/Privacy Act Requests  
Executive Office for Immigration Review  
Department of Justice  
Suite 2600, 5107 Leesburg Pike  
Falls Church, VA 22041  
(703) 605-1297

The Executive Office for Immigration Review (EOIR) includes the Board of Immigration Appeals (BIA), the Office of the Chief Immigration Judge (OCIJ), and the Office of the Chief Administrative Hearing Officer (OCAHO). BIA is a quasi-judicial body which hears appeals of decisions rendered by immigration judges and certain officers of the Department of Homeland Security. Records of proceedings are returned to Immigration Courts upon completion of BIA proceedings and maintained at the BIA while cases are pending. OCIJ oversees the work of Immigration Courts, which maintain records of cases brought before them involving removal proceedings and related matters. OCAHO's administrative law judge hears cases related to the employer sanction and anti-discrimination provisions of law. Official OCAHO case files are centralized. EOIR is responsible for the administrative adjudication and interpretation of the immigration laws, including provisions of the Immigration and Nationality Act. EOIR also maintains various administrative records.

Special information required: For aliens, "A" number.

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<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Publicly available information: Published decisions by the BIA and OCAHO. Case information is available by dialing 1-800-898-7180. Other types of public information are available on EOIR's Web site at [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir).

Reading room location: BIA Law Library, Suite 112, 5205 Leesburg Pike, Falls Church, VA 22041.

Multitrack processing: Three tracks: (1) simple; (2) complex; (3) expedited.

**EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS** -- Requests for United States Attorney records should be addressed to:

FOIA/Privacy Staff  
 Executive Office for United States Attorneys  
 Department of Justice  
 Room 7300, 600 E Street, N.W.  
 Washington, D.C. 20530-0001  
 (202) 616-6757

The ninety-three United States Attorneys nationwide are responsible for handling litigation affecting the interests of the United States, including the prosecution of criminal cases and the defense of civil cases, and for the conduct of grand jury proceedings. These offices maintain records on their legal cases, criminal investigations, and citizen complaints, as well as records relating to the administration of the office. Legal case files are not indexed or centralized in Washington, D.C., but are located in the office of the United States Attorney who handled the case. Accordingly, requests for United States Attorney records should be sent to the Washington, D.C. address above and should indicate the particular judicial district or city in which the matter was handled. The usual administrative and personnel records are maintained in headquarters offices in Washington, D.C. as well.

Special information required: Date and place of birth and judicial district in which investigation/prosecution or other litigation occurred.

Publicly available information: Annual Statistical Report; U.S. Attorneys' Manual; U.S. Attorneys' Bulletin.

Multitrack processing: Five tracks: (1) expedited; (2) projects; (3) referrals; (4) regular; (5) classified.

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES** -- Requests for United States Trustees records should be addressed to:

FOIA/PA Counsel  
 Office of the General Counsel  
 Executive Office for United States Trustees  
 Department of Justice  
 Suite 8000, 20 Massachusetts Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 307-1399

The United States Trustee Program (USTP) consists of ninety-five offices nationwide, plus an Executive Office in Washington, D.C. headed by a Director. There are twenty-one regions, each headed by a United States Trustee, covering all federal judicial districts except those in Alabama and North Carolina.

The USTP acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases. United States Trustees are responsible for the effective administration of bankruptcy cases arising under chapters 7, 11, 12, and 13 of the United States Bankruptcy Code. They also serve as

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watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy system and bring civil enforcement actions in appropriate cases. See 28 U.S.C. §§ 581-589a and 11 U.S.C. §§ 101, et seq.

While the Executive Office maintains certain administrative records, case files are not centralized in Washington, D.C. The USTP regional and field offices maintain duplicate copies of certain court pleadings and material concerning specific cases. Accordingly, all FOIA requests for USTP records -- which should be addressed to the FOIA/PA Counsel, Office of General Counsel, Executive Office for United States Trustees -- should identify a case name, particular judicial district, and/or specific USTP office(s) where responsive records may exist.

Special information required: For bankruptcy files -- judicial district and the name of the case.

Publicly available information: Frequently requested records, reports, policy statements, staff manuals, and other information considered to be of significant public interest are available on EOUST's Web site at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

Multitrack processing: None.

**FEDERAL BUREAU OF INVESTIGATION** -- Requests for Federal Bureau of Investigation records should be addressed to:

FOIPA Section  
Federal Bureau of Investigation  
Department of Justice  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535  
(202) 324-5520

The Federal Bureau of Investigation (FBI) investigates violations of certain Federal statutes, collects evidence in legal cases in which the United States is or may be an interested party, and performs other duties specifically imposed by law or Presidential directive. The Bureau maintains files of its criminal, legal, and security investigations; a nationwide index of wanted persons, stolen property, criminal histories, and missing persons; fingerprint identification records; personnel records of FBI employees; and records of investigations of applicants for sensitive positions in the United States Government. It also maintains records relating to the administration of the Bureau.

Special information required: Date and place of birth.

Publicly available information: Employment and recruitment materials; publications giving general history about the FBI's accomplishments, organizational structure, law enforcement services, programs, and history; crime statistics.

Reading room location: J. Edgar Hoover Building, 935 Pennsylvania Avenue, N.W., Washington, D.C.

Multitrack processing: Three tracks: (1) 500 pages or less; (2) 501-2500 pages; (3) 2501 pages or more.

**FEDERAL BUREAU OF PRISONS** -- Requests for Federal Bureau of Prisons records should be addressed to:

Chief, FOIA/PA Section  
Office of General Counsel  
Federal Bureau of Prisons  
Department of Justice  
Room 841, HOLC Building  
Washington, D.C. 20534  
(202) 514-6655

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<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

The Federal Bureau of Prisons is responsible for the care and confinement of offenders who are committed to its custody. The Bureau maintains records on current and former inmates of federal penal and correctional institutions concerning sentence computation; institutions of confinement; criminal, social, educational, and occupational background; identification data; institutional work and housing assignments; educational, disciplinary, health, and work data during incarceration; and reports relating to release planning, furlough, institutional adjustment, and violations of release. The Federal Bureau of Prisons also maintains records relating to the administration of the Federal Bureau of Prisons.

Special information required: For inmates, register number, committed name, and institution where last housed.

Publicly available information: Limited.

Reading room location: Seventh Floor, 500 First Street, N.W., Washington, D.C.

Multitrack processing: Track one is for more complicated requests. The second track is for simpler requests.

**FOREIGN CLAIMS SETTLEMENT COMMISSION** – Requests for Foreign Claims Settlement Commission records should be addressed to:

Chief Counsel  
 Foreign Claims Settlement Commission  
 Department of Justice  
 Room 6002, 600 E Street, N.W.  
 Washington, D.C. 20579-0001  
 (202) 616-6975

The Foreign Claims Settlement Commission adjudicates claims of United States nationals for losses resulting from the uncompensated nationalization or other taking of their property by foreign governments, and claims for compensation based on wartime confinement of United States servicemen and civilians as prisoners of war or civilian internees. The Commission maintains records on all such claims, on inquiries concerning such claims, and on the administration of the programs in which those claims are adjudicated. The Commission also maintains records on its own administrative operations and procedures.

Special information required: None.

Publicly available information: Decisions of past claims programs.

Reading room location: Room 6002, 600 E Street, N.W., Washington, D.C.

Multitrack processing: None.

**INTERPOL-UNITED STATES NATIONAL CENTRAL BUREAU** – Requests for INTERPOL-United States National Central Bureau records should be addressed to:

FOIA/PA Specialist  
 INTERPOL-United States National Central Bureau  
 Department of Justice  
 Washington, D.C. 20530-0001  
 (202) 616-9000

The INTERPOL-United States National Central Bureau (INTERPOL-USNCB) acts as liaison with the International Criminal Police Organization (INTERPOL) to enable domestic law enforcement agencies to participate in an international exchange of criminal justice information. INTERPOL was created to promote mutual assistance among criminal police authorities in the prevention and suppression of international

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crime. INTERPOL-USNCB maintains investigative files of criminal activities and noncriminal files concerning matters of humanitarian assistance. It also maintains various administrative files.

Special information required: Complete name, date and place of birth, and any aliases ever used (social security number optional).

Publicly available information: Internship package; Public Affairs package (USNCB pamphlet, Overview of INTERPOL and USNCB, Memorandum of Understanding between the Department of Homeland Security and the Department of Justice, USNCB Organization Chart); listing of agencies represented at USNCB.

Multitrack processing: Three tracks: simple (no records, referred documents, and routine); complex; and expedited.

**JUSTICE MANAGEMENT DIVISION** – Requests for Justice Management Division records should be addressed to:

FOIA Contact  
 Justice Management Division  
 Department of Justice  
 Room 1111, 950 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 514-3101

The Justice Management Division serves as the management arm of the Department of Justice, establishing internal administrative policy, providing administrative support services to Departmental organizations, and developing and directing administrative management programs. This Division keeps Department of Justice personnel records, accounting and budget records, and property, motor pool, parking records, and other administrative records.

Special information required: None.

Publicly available information: Justice Department's Annual Report on the Freedom of Information Act; listing of current contracts under administration and listing of upcoming procurements; lists of bureau procurement officers; statistical data and explanatory information concerning the operations of the Asset Forfeiture Fund; Annual Report of the Attorney General on Management Controls; Department Organization and Functions Manual; annual reports and statistical summaries prepared by the Equal Employment Opportunity Staff.

Multitrack processing: None.

**NATIONAL DRUG INTELLIGENCE CENTER** – Requests for National Drug Intelligence Center records should be addressed to:

FOIA/PA Coordinator  
 National Drug Intelligence Center  
 319 Washington Street, Fifth Floor  
 Johnstown, PA 15901-1622  
 (814) 532-4601

The mission of the National Drug Intelligence Center (NDIC) is to produce strategic intelligence for the counterdrug community – focusing on drugs, gangs, and violence. NDIC utilizes open-source information along with material from state and local law enforcement and federal entities. This information is coupled with related foreign assessments from the intelligence community in order to accurately reflect the global threat posed by the drug trade.

Special information required: None.

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Publicly available information: Certain documents which are published by NDIC on illicit drugs and their hazards are available upon request.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF COMMUNITY ORIENTED POLICING SERVICES** -- Requests for the Office of Community Oriented Policing Services records should be addressed to:

FOIA Officer, Legal Division  
 Office of Community Oriented Policing Services  
 Department of Justice  
 1100 Vermont Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 514-3750

The Office of Community Oriented Policing Services administers discretionary grants for the hiring and redeployment of officers to participate in community policing and for innovative community policing programs, and offers training and technical assistance to assist grantees with the implementation of community policing in their communities. This office maintains records pertaining to the application for, and award and monitoring of these grants. The office also maintains records on its own administrative operations and procedures.

Special information required: None.

Publicly available information: Specimen grant application materials; information about a specific grant when requested by the grant recipient; noncustomized lists of grant recipients.

- Multitrack processing: None.

**OFFICE OF DISPUTE RESOLUTION** -- Requests for Office of Dispute Resolution records should be addressed to:

Senior Counsel for Alternative Dispute Resolution  
 Office of Dispute Resolution  
 Department of Justice  
 Room 5736, 950 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 616-9471

The mission of the Office of Dispute Resolution is to promote and facilitate the broad and effective use of alternative dispute resolution processes by the Department of Justice and throughout the Executive Branch of the federal government. Records maintained include those relating to the administration of the office.

Special information required: Information that would identify the matter in dispute.

Publicly available information: None.

Multitrack processing: None.

**OFFICE OF THE FEDERAL DETENTION TRUSTEE** -- Requests for Office of the Federal Detention

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<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Trustee records should be addressed to:

Federal Detention Trustee  
 Office of the Federal Detention Trustee  
 Suite 1210  
 1331 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 353-4601

The Office of the Federal Detention Trustee was established and activated in September 2001 by directive of Congress (Pub. L. 106-553, § 166, 114 Stat. 2762 (2000)) in response to growing concerns regarding federal detention. The Federal Detention Trustee leads the development of Department of Justice detention policy and manages federal detention resources to maximize available detention space and contain costs associated with the detention of criminal defendants and aliens awaiting adjudication and/or removal from the United States. Additionally, the Federal Detention Trustee ensures that the Department of Justice provides safe, secure, and humane detention services and works with the U.S. Marshals Service, U.S. Citizenship and Immigration Services, and the Federal Bureau of Prisons to identify emerging detention-related problems and project future detention space needs.

Special information required: None.

Publicly available information: On the Office of the Federal Detention Trustee's Web site -- a table of compliance with the Department of Justice's core detention standards and statistics.

Multitrack processing: None.

**OFFICE OF INFORMATION AND PRIVACY** -- Requests for Office of Information and Privacy records should be addressed to:

Deputy Director  
 Office of Information and Privacy  
 Department of Justice  
 Suite 570; Flag Building  
 Washington, D.C. 20530-0001  
 (202) 514-FOIA

The Office of Information and Privacy (OIP) discharges the Department's administrative and policy responsibilities under the Freedom of Information Act (FOIA) and promotes governmentwide compliance with the Act. OIP maintains files of administrative appeals of denials of FOIA and Privacy Act requests for Department of Justice records and initial request files of FOIA and Privacy Act requests for records of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legal Policy, Legislative Affairs, Intergovernmental and Public Liaison, and Public Affairs. The office also maintains records relating to the administration of the office.

Special information required: None.

Publicly available information: On OIP's Web site, among other things -- FOIA Post, FOIA Update (1979-2000); "Department of Justice Guide to the Freedom of Information Act" (May 2004); "Privacy Act Overview" (May 2004); Freedom of Information Case List (May 2002).

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

**OFFICE OF THE INSPECTOR GENERAL** -- Requests for Office of the Inspector General records should be addressed to:

FOIA/PA Specialist  
Office of the Inspector General  
Department of Justice  
Suite 6100, 1425 New York Avenue, N.W.  
Washington, D.C. 20530-0001  
(202) 616-0646

The Office of the Inspector General provides leadership and assists management in promoting economy, efficiency, and effectiveness within the Department of Justice; enforces the fraud, waste, and abuse laws and regulations of the United States within the Department; and refers to the criminal and civil justice systems those individuals or organizations involved in financial, professional, or criminal misconduct relating to programs of the Department of Justice. Investigative records are maintained for all ongoing and closed matters received after April 14, 1989. Audit reports are maintained from 1986 and inspection reports are maintained from April 14, 1989. The office also maintains records relating to the administration of the office.

Special information required: None.

Publicly available information: Audit reports; inspection reports; semi-annual reports.

Multitrack processing: None.

**OFFICE OF INTELLIGENCE POLICY AND REVIEW** -- Requests for Office of Intelligence Policy and Review records should be addressed to:

FOIA Coordinator  
Office of Intelligence Policy and Review  
Department of Justice  
Room 6150, 950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001  
(202) 514-5600

The Office of Intelligence Policy and Review provides formal and informal legal advice to the Attorney General and the United States intelligence agencies regarding questions of law and procedure that relate to United States intelligence activities; performs review functions of certain intelligence activities; and prepares and presents applications for electronic surveillance and physical search to the United States Foreign Intelligence Surveillance Court. This office maintains copies of legal memoranda; applications presented to the Foreign Intelligence Surveillance Court; correspondence from persons who have written to the office and/or indices to individuals who have been referred to the office; and indices to the legal memoranda, applications, and correspondence. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: None.

Multitrack processing: None.

**OFFICE OF INTERGOVERNMENTAL AND PUBLIC LIAISON** -- Requests for Office of Intergovernmental and Public Liaison records should be addressed to:

Deputy Director  
Office of Information and Privacy

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Department of Justice  
 Suite 570, Flag Building  
 Washington, D.C. 20530-0001  
 (202) 514-FOIA

The Office of Intergovernmental and Public Liaison (OIPL), formerly the Office of Intergovernmental Affairs, manages and coordinates the Department of Justice's efforts to inform and engage state and local government, law enforcement, and many other groups and organizations, acting as their liaison with the Department. OIPL ensures that the Department's policies and positions on a variety of complex issues are clearly communicated to these groups as well as making certain that the state and local perspective is taken into account as Department policies and programs are discussed and implemented.

Special information required: None.

Publicly available information: None.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF JUSTICE PROGRAMS** – Requests for Office of Justice Programs records should be addressed to:

FOIA Coordinator  
 Office of Justice Programs  
 Department of Justice  
 Room 5400; 810 7th Street, N.W.  
 Washington, D.C. 20531-0001  
 (202) 307-0790

The Office of Justice Programs (OJP) is responsible for processing responses under the Freedom of Information Act for its component agencies: the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime, as well as the program and support offices in OJP. These components award and administer financial assistance and technical aid to state and local criminal justice agencies as well as conduct research studies and statistical surveys in matters concerning the administration of criminal justice. They maintain records to monitor and manage their programs. In addition, these component agencies maintain files on civil rights compliance investigations relating to any grants awarded by them.

Special information required: None.

Publicly available information: Numerous publications regarding law enforcement, crime prevention, and law enforcement-related statistical information.

Multitrack processing: Three tracks: (1) "no records" requests; (2) routine requests; (3) voluminous and/or complex requests.

**OFFICE OF LEGAL COUNSEL** – Requests for Office of Legal Counsel records should be addressed to:

Supervisory Paralegal  
 Office of Legal Counsel  
 Department of Justice  
 Room 5515, 950 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

(202) 514-2038

The Office of Legal Counsel prepares the formal opinions of the Attorney General and renders informal opinions and advice on questions of law (other than on the FOIA and Privacy Act) to the various executive agencies and to other components of the Department of Justice. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Published opinions from 1992 through 2004 are available on the Office of Legal Counsel's Web site ([www.usdoj.gov/olc](http://www.usdoj.gov/olc)) and are available in paper form and on LEXIS and Westlaw from 1977.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required; or those requests which may involve sensitive records.

**OFFICE OF LEGAL POLICY** – Requests for Office of Legal Policy records should be addressed to:

Deputy Director  
Office of Information and Privacy  
Department of Justice  
Suite 570, Flag Building  
Washington, D.C. 20530-0001  
(202) 514-FOIA

The Office of Legal Policy (OLP) serves as the Attorney General's principal policy development staff and is involved in a wide range of criminal and civil justice policy initiatives central to the Department's mission. The office reviews and analyzes pending legislation proposals, coordinates regulatory development and review of proposed rules, and serves as liaison to OMB on regulatory matters. The office evaluates potential nominees for federal judicial appointments and assists in preparation of nominees for Senate confirmation. OLP maintains background files on OLP policy, legislative proposals; judicial nomination files, and working files for its staff support activities. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Information and reports considered to be of significant public interest.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF LEGISLATIVE AFFAIRS** – Requests for Office of Legislative Affairs records should be addressed to:

Deputy Director  
Office of Information and Privacy  
Department of Justice  
Suite 570, Flag Building  
Washington, D.C. 20530-0001  
(202) 514-FOIA

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

The Office of Legislative Affairs (OLA) has responsibility for devising and implementing the legislative strategy to carry out the Attorney General's initiatives requiring congressional action. OLA provides or arranges for testimony by Department witnesses at congressional hearings. OLA also responds or coordinates responses for the Department to requests and inquiries from congressional committees and subcommittees and individual Members of Congress and their staffs, including requests from Congress on behalf of constituents. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Weekly reports to the Attorney General (2000-2002).

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF THE PARDON ATTORNEY** – Requests for Office of the Pardon Attorney records should be addressed to:

Office of the Pardon Attorney  
Department of Justice  
Suite 400, 500 First Street, N.W.  
Washington, D.C. 20530-0001  
(202) 616-6070

The Office of the Pardon Attorney receives and reviews petitions for all forms of executive clemency, including pardon, commutation (reduction) of sentence, remission of fine, and reprieve, initiates the necessary investigations of clemency requests, and prepares the report and recommendation of the Attorney General, or his designee, to the President on clemency requests. The office maintains a clemency case file for each individual who has applied for or been granted clemency, as well as copies of the warrants and proclamations of clemency granted by the President, and records relating to the administration of the office. The office also acts as liaison with the public for correspondence and informational inquiries about the clemency process and maintains correspondence files relating to such inquiries.

Special information required: For clemency files -- the full name of the person who applied for or was granted clemency. For miscellaneous correspondence files -- the full name of the author of the letter and the full name of the person on whose behalf the letter was written (if different). For FOIA administrative files -- the full name of the person who made the FOIA request.

Publicly available information: Executive clemency statistics from the administration of President McKinley to the present; rules establishing the Office of the Pardon Attorney and governing petitions for executive clemency published at 28 C.F.R. §§ 0.35-36 and §§ 1.1, et seq.; forms for applying for executive clemency; electronic publication: "Civil Disabilities of Convicted Felons: A State-by-State Survey" (Oct. 1996); copies of clemency warrants and proclamations for persons who have been granted executive clemency; description of clemency procedures contained in the United States Attorneys' Manual at §§ 1-2.110-113; whether an individual has applied for executive clemency and final action on such application. Most of these documents are available in the Office of the Pardon Attorney's electronic reading room on the World Wide Web ([www.usdoj.gov/pardon](http://www.usdoj.gov/pardon)).

Multitrack processing: None.

**OFFICE OF PROFESSIONAL RESPONSIBILITY** – Requests for Office of Professional Responsibility records should be addressed to:

DOJ Reference Guide: Attachment B, Descriptions of D... <http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Deputy Counsel  
 Office of Professional Responsibility  
 Department of Justice  
 Suite 3529, 950 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 514-3365

The Office of Professional Responsibility (OPR) maintains records relating to its investigations of allegations of misconduct by Department of Justice attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, and allegations of misconduct by law enforcement personnel when they are related to allegations of misconduct by Department of Justice attorneys. Those cases in which there appears to be a violation of the law are often referred to the investigative agency with jurisdiction over such alleged violation, although OPR also conducts criminal and administrative investigations. Investigative records are maintained in the office on all ongoing cases. Records maintained include records relating to closed investigations, inquiries, complaints, and records relating to the administration of OPR.

Special information required: None.

Publicly available information: OPR annual reports that contain a review and evaluation of the activities of the internal inspection units of the Justice Department; public summaries of certain OPR investigations.

Multitrack processing: FOIA requests are placed in one of two tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA or which do not involve voluminous records or lengthy consultations with other entities. Track two is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those which may involve sensitive records.

**OFFICE OF PUBLIC AFFAIRS** – Requests for Office of Public Affairs records should be addressed to:

Deputy Director  
 • Office of Information and Privacy  
 Department of Justice  
 Suite 570, Flag Building  
 Washington, D.C. 20530-0001  
 (202) 514-FOIA

The Office of Public Affairs is responsible for ensuring that the public and press are informed about the Department's activities and about the priorities and policies of the Attorney General and the President with regard to law enforcement and legal affairs. The office keeps copies of press releases, speeches, and testimony. Records maintained include those relating to the administration of the office.

Special information required: None.

Publicly available information: Department press releases.

Multitrack processing: FOIA requests are placed in one of three tracks. Track one is for those requests which seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for those requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for those requests which involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

**OFFICE OF THE SOLICITOR GENERAL** – Requests for Office of the Solicitor General records should be addressed to:

Assistant to the Solicitor General

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Office of the Solicitor General  
 Department of Justice  
 Room 5738, 950 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001  
 (202) 514-2203

The Solicitor General is responsible for authorizing all government appeals and petitions for rehearing en banc or mandamus in the courts of appeals, all government amicus briefs in the courts of appeals, and petitions for a writ of certiorari in the Supreme Court. Also, the Solicitor General is responsible for authorizing all interventions by the United States in cases in any court (state or federal; trial or appellate). In addition, the Solicitor General is responsible for briefing and arguing cases on behalf of the government in the Supreme Court. The Office of the Solicitor General maintains records relating to appeals and petitions for which authorization to file has been sought, and maintains records on Supreme Court cases to which the United States or a government agency was a party. The Office also maintains records relating to the administration of the office.

Special information required: Case name and docket number of case, or citation to case.

Publicly available information: Government briefs and petitions for the current term of the United States Supreme Court.

Multitrack processing: None.

**OFFICE ON VIOLENCE AGAINST WOMEN** -- Requests for Office on Violence Against Women records should be addressed to:

FOIA Officer  
 Office on Violence Against Women  
 Department of Justice  
 810 7th Street, N.W.  
 Washington, D.C. 20531  
 (202) 307-6026

The Office on Violence Against Women (OVW) handles the Department's legal and policy issues regarding violence against women and coordinates Departmental efforts in this area. Ovw administers the formula and discretionary grant programs to eligible grantees in the areas of domestic violence, sexual assault, and stalking. It is responsible for coordination with other departments, agencies, or offices regarding activities authorized or undertaken pursuant to the Violence Against Women Act of 1994 and the Violence Against Women Act of 2000. The office also maintains records relating to the administration of the office.

Special information required: None.

Publicly available information: A state-by-state list of grant award recipients; information about domestic violence, sexual assault, and stalking; various publications concerning violence against women; press releases; information on state grant-administering agencies.

Multitrack processing: None.

**PROFESSIONAL RESPONSIBILITY ADVISORY OFFICE** -- Requests for Professional Responsibility Advisory Office records should be addressed to:

Law Librarian  
 Professional Responsibility Advisory Office  
 Department of Justice  
 Suite 600, 1325 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20530-0001

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

(202) 514-0458

The mission of the Professional Responsibility Advisory Office (PRAO) is to ensure prompt, consistent advice to Department attorneys and Assistant United States Attorneys with respect to areas of professional responsibility and choice-of-law issues. PRAO provides definitive advice to government attorneys and the leadership at the Department on issues relating to professional responsibility. Assembles and maintains the codes of ethics including, inter alia, all relevant interpretative decisions and bar opinions of the District of Columbia and every state and territory, and other reference materials and serves as a central repository for briefs and pleadings as cases arise. PRAO provides coordination with the litigating components of the Department to defend attorneys in any disciplinary or other hearing where it is alleged that they failed to meet their ethical obligations. Serves as liaison with the state and federal bar associations in matters related to the implementation and interpretation of 28 U.S.C. § 530B, the Ethical Standards for Prosecutors Act, and any amendments and revisions to the various state ethics codes. PRAO coordinates with other Department components to conduct training for Department attorneys and client agencies to provide them with the tools to make informed judgments about the circumstances which require their compliance with 28 U.S.C. § 530B, the Ethical Standards for Prosecutors Act, and the Hyde Amendment or which otherwise implicate professional responsibility concerns. Performs such other duties and assignments as determined from time to time by the Attorney General or the Deputy Attorney General.

Note: Complaints concerning the actions of individual Department attorneys and Assistant United States Attorneys are not processed and/or handled by the PRAO.

Special information required to make a FOIA request: None.

Publicly available information: None.

Multitrack processing: None.

**TAX DIVISION** – Requests for Tax Division records should be addressed to:

Senior Division Counsel for FOIA and Privacy Act Matters  
 Tax Division  
 Department of Justice  
 P.O. Box 227  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 307-0462

The Tax Division's chief activity is to represent the Internal Revenue Service in civil and criminal litigation. It also represents other federal agencies which may have problems with state and local taxing authorities. Consequently, information which is maintained by the Tax Division pertains mainly to civil and criminal tax litigation, either actual or contemplated. This information is stored in files which are indexed in central classification systems under the names of the individuals or entities who are parties to the litigation. In addition, there is some information maintained by the Tax Division which relates to various procedures and guidelines relevant to the processing of tax cases, as well as files on its administrative functions.

Special information required: None.

Publicly available information: Criminal Tax Manual, Judgment and Collection Manual, Settlement Reference Manual.

Multitrack processing: None.

**UNITED STATES MARSHALS SERVICE** – Requests for United States Marshals Service records should be addressed to:

DOJ Reference Guide: Attachment B, Descriptions of D...

<http://www.usdoj.gov/04foia/attachmentbmay99.htm>

Office of General Counsel  
 United States Marshals Service  
 Department of Justice  
 Washington, D.C. 20530-1000  
 (202) 307-9054

United States Marshals serve as law enforcement agents of the government and, in that capacity, also serve as officers of the federal courts. The United States Marshals Service maintains files on individuals for whom federal warrants have been issued; records on prisoners in the custody of the United States Marshals; background information and records related to threats to and the protection of government witnesses, U.S. Attorneys and their assistants, federal jurists, and other court officials; records on process served and executed in federal court proceedings; and records on seized and forfeited property and evidence. It also maintains various records pertaining to the administration of the Service, including official personnel files for its employees.

**Special information required:** For individuals -- judicial district. For prisoner transportation -- date and trip number. For seized property -- judicial district, civil action number, asset identification number, and/or accurate description of the property.

**Publicly available information:** Recruitment and employment literature; fact sheets; information regarding forfeiture program and sales of forfeited property.

**Multitrack processing:** Three primary tracks: (1) simple requests; (2) complex requests; and (3) expedited requests. Within each of these primary designations, there are additional tracks for: (4) employee/applicants; (5) seized assets; and (6) procurement matters.

**UNITED STATES PAROLE COMMISSION** -- Requests for United States Parole Commission records should be addressed to:

United States Parole Commission  
 Department of Justice  
 Suite 420, 5550 Friendship Boulevard  
 Chevy Chase, MD 20815  
 (301) 492-5959

The United States Parole Commission has sole authority to grant, modify, or revoke paroles of federal offenders who committed their offenses prior to November 1, 1987, and is responsible for the supervision of parolees and mandatory releases. Further, under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, the U.S. Parole Commission assumed the jurisdiction of the District of Columbia Board of Parole. The Commission maintains records regarding its hearings and decisions for prisoners and releasees.

**Special information required:** None.

**Publicly available information:** Final decisions rendered by the Parole Commission on parole applications for offenders who committed offenses prior to November 1, 1987. (Parole hearings are not open to the public.)

**Multitrack processing:** Requests by inmates and parolees for tape recordings, or for two documents or less, will be processed ahead of requests seeking numerous documents. If a requester demonstrates "compelling need," the request will be processed on an expedited basis.

Go to: [Reference Guide](#) // [DOJ FOIA Page](#) // [Justice Department Home Page](#)

Updated April 26, 2005  
 usdoj/oip/pam



U.S. Department of Justice

Office of Intelligence Policy and Review

Washington, D.C. 20530

JUN - 7 2006

Catherine K. Ronis  
Counsel to Amnesty International USA  
WilmerHale  
2445 M Street, NW  
Washington DC 20037

Re: FOIA/PA # 06-32 & 06-33

Dear Ms. Ronis:

This is to acknowledge receipt of your letters dated April 25, 2006 seeking access to (1) records concerning the "apprehension, transfer, detention, and interrogation of ghost detainees/prisoners, unregistered detainees/prisoners, CIA detainees/prisoners and Other Governmental Agency Detainees, and (2) any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies, or between any agency and any subdivision or official, concerning the handling of ghost or unregistered detainees." You also requested expedited processing of your Freedom of Information Act requests, and the Office of Public Affairs granted your request for expedited treatment. Accordingly, your request will be reviewed ahead of others routinely processed on a first-in, first-out basis.

If you have any questions concerning your request, feel free to contact me on (202) 616-5460.

Sincerely,

\_\_\_\_\_  
GayLa D. Sessoms  
FOIA Coordinator



## U.S. Department of Justice

National Security Division

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*Washington, D.C. 20530*

OCT 30 2006

Catherine K. Ronis  
Wilmer Hale  
2445 M Street, NW  
Washington, DC 20037

Re: FOIA/PA # 06-32 and 06-33

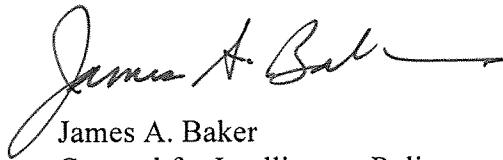
Dear Ms. Ronis:

This responds to your April 25, 2006 Freedom of Information Act (FOIA) requests to the Office of Intelligence Policy and Review (OIPR) seeking access to (1) records concerning the "apprehension, transfer, detention, and interrogation of ghost detainees/prisoners, unregistered detainees/prisoners, CIA detainees/prisoners and Other Governmental Agency Detainees, and (2) any memorandum of understanding, or other records reflecting an agreement or proposed agreement between agencies, or between any subdivision or official, concerning the handling of ghost or unregistered detainees." You also requested expedited processing of your FOIA request and a waiver of processing fees. Both requests were granted and your request has been reviewed ahead of others routinely processed on a first-in, first-out basis without any cost to you.

The Office of FISA Operations and Intelligence Oversight (formerly OIPR) provides advice to the Attorney General and United States intelligence agencies regarding questions of law and policy that relate to U.S. intelligence activities; performs review functions of certain intelligence activities; and prepares and presents applications for electronic surveillance and physical search to the United States Foreign Intelligence Surveillance Court pursuant to the Foreign Intelligence Surveillance Act (FISA). We maintain copies of all FISA applications, as well as requests for approval of various foreign intelligence and counterintelligence collection techniques such as physical searches. However, we did not search these records in response to your request because the existence or nonexistence of such records on specific persons or organizations is properly classified under Executive Order 12958, as amended. To confirm or deny the existence of such materials in each case would tend to reveal which persons or organizations are the subjects of such requests. Accordingly, we can neither confirm nor deny the existence of records responsive to your request pursuant to 5 U.S.C. § 552(b)(1).

We have conducted a search of our policy files as well as the electronic communications (e-mail) and office files of senior management and did not locate any records responsive to your request. If you are not satisfied with this response you may administratively appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. Both the letter and envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



The signature is handwritten in black ink. It consists of the first name "James" followed by the middle initial "A." and the last name "Baker". There is a short horizontal line extending to the right from the end of the "k" in "Baker".

James A. Baker  
Counsel for Intelligence Policy

## WILMERHALE

December 22, 2006

**Kyle M. DeYoung****By Certified U.S. Mail and Facsimile**

+1 202 663 6785 (t)

+1 202 663 6363 (f)

kyle.deyoung@wilmerhale.com

Director  
 Office of Information and Privacy  
 United States Department of Justice  
 1425 New York Avenue, NW Suite 11050  
 Washington D.C. 20530-0001

Re: Freedom of Information Act Appeal - *Case Numbers FOIA/PA # 06-32 and 06-33*

Dear Director:

On April 25, 2006 Amnesty International USA<sup>1/</sup> ("Amnesty") and Washington Square Legal Services ("WSLS") filed two requests with the U.S. Department of Justice, Office of Intelligence Policy and Review ("OIPR") for information under the Freedom of Information Act ("FOIA") regarding detainees secretly held by the United States Government, including (but not limited to) information, reports, and memoranda regarding "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners" and "CIA Detainees/Prisoners" ("the Requests").

Your agency, the Department of Justice (DOJ), Office of Intelligence Policy and Review, first responded to our Requests on June 7, 2006. You assigned the Requests case numbers 06-32 and 06-33 and granted expedited processing for both Requests. Copies of the Requests and your response letters are attached as Exhibits A through D. In a letter dated October 30, 2006, the U.S. Department of Justice, National Security Division, Office of FISA Operations and Intelligence Oversight ("FISA OIO") denied our Requests.<sup>2</sup>

The justification that you provided for denying our Requests was twofold. First, you stated that you conducted a search of your policy files as well as the electronic communications (e-mail) and office files of senior management and did not locate any records responsive to our requests.

Second, you chose not to search your records pertaining to 1) advice to the Attorney General and United States intelligence agencies regarding questions of law and policy that related to U.S. intelligence activities; 2) review functions of certain intelligence activities; and 3) applications for electronic surveillance and physical search to the United States Foreign Intelligence Court pursuant to the Foreign Intelligence Surveillance Act (FISA), including copies

<sup>1/</sup> Amnesty International USA is the U.S. Section of Amnesty International. See <http://www.amnestyusa.org/about/>.

<sup>2/</sup> In your October 30, 2006 letter, you stated that your reply was in response to our April 25, 2006 Freedom of Information Act Requests to the Office of Intelligence Policy and Review, and that the Office of FISA OIO was formerly OIPR. We therefore submit this appeal under the assumption that all records formerly maintained or in the possession of OIPR are now in the possession of the FISA OIO. In addition, all other references to the FISA OIO necessarily reference and include OIPR.

WILMER HALE

Director, Office of Information and Privacy  
 December 22, 2006  
 Page 2

of all FISA applications, as well as requests for approval of various foreign intelligence and counterintelligence collection techniques such as physical searches. You indicated that you did not search these records in response to our Requests because the existence or non-existence of such records on specific persons or organizations was properly classified under Executive Order 12958, and to confirm or deny the existence of such materials in each case would tend to reveal which persons or organizations were the subjects of such requests. Accordingly, you neither confirmed nor denied the existence of records responsive to our Requests, under exemption 5 U.S.C. § 552 (b)(1).

**a. Appeal of No-Records Response**

Pursuant to 5 U.S.C. § 552(a)(6), Amnesty and WSLS hereby appeal the adequacy of the FISA OIO's search for relevant documents. While FOIA recognizes an agency's need for nondisclosure through enumerated exemptions, FOIA has also placed a burden on the agency to provide adequate explanation for asserting a specific FOIA exemption.<sup>3</sup> An agency must conduct a "thorough search" for responsive documents and must give "reasonably detailed explanations why any withheld documents fall within an exemption."<sup>4</sup>

Despite the requirements enumerated above, the FISA OIO's response merely restates our Requests, and does not provide any information regarding its search methods, other than noting the broad category of files searched (the "policy files" and e-mail and office files of senior management). This response does not adequately demonstrate that the FISA OIO complied with its FOIA obligations and is insufficient to allow Amnesty and WSLS to verify whether its search was adequate or reasonable.<sup>5</sup>

Amnesty and WSLS have reason to believe that the Justice Department, and specifically the FISA OIO, is involved in, and has provided legal review of, the U.S. secret detention and rendition program, and that the agency possesses documents responsive to the Requests. We therefore respectfully request that you conduct a more thorough search of your files and provide a more detailed explanation of your search methods.<sup>6</sup>

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<sup>3</sup> See U.S.C. § 552(a)(4)(B).

<sup>4</sup> *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994); see also *Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973).

<sup>5</sup> The fundamental principle animating FOIA is public access to government documents. Accordingly, [courts] require[] agencies to make more than perfunctory searches and, . . . to follow through on obvious leads to discover requested documents. An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (DC Cir. 1999).

<sup>6</sup> See *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested).

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Specifically, media articles and Government sources have pointed to Justice Department involvement with the secret apprehension, transfer or detention of individuals, including "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners" and "CIA Detainees/Prisoners." The functions of the FISA OIO, as stated in your October 30, 2006 letter, include, among other things, 1) providing advice to the Attorney General and United States intelligence agencies regarding U.S. intelligence activities, 2) preparing and presenting applications for electronic surveillance and physical search to the United States Foreign Intelligence Surveillance Court pursuant to the FISA, and 3) maintaining copies of all FISA applications, as well as requests for approval of various foreign intelligence and counterintelligence collection techniques. These functions indicate a likelihood that the FISA OIO and/or its antecedent, the OIPR, was involved in developing and reviewing the policies underlying the secret detention and rendition program.

In particular, on September 6, 2006, President Bush explicitly and specifically acknowledged the existence of the CIA's secret detention program that held and facilitated the interrogation of suspected terrorists in secret locations overseas.<sup>7</sup> The President described the CIA's secret detention program as a crucial intelligence gathering activity, and emphasized that questioning of the suspected terrorists has assisted the U.S. government in gathering information about potential terrorist attacks.<sup>8</sup> Further, the President unequivocally stated in this speech that the CIA's secret detention program "has been subject to multiple legal reviews by *the Department of Justice and CIA lawyers*" (emphasis added) and that these lawyers have advised the President that the program complied with U.S. laws.<sup>9</sup>

President Bush further stated that the "alternative set of procedures" used for interrogation in the program were comprehensively reviewed by the DOJ and approved: "The

<sup>7</sup> Press Release, Office of the Press Secretary, President Discusses Creation of Military Commissions to Try Suspected Terrorists, Sept. 6, 2006, [hereinafter President Bush Speech Sept. 6, 2006], available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> ("In addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency ..."). See also Sheryl Gay Stolberg, *Threats and Responses: The Overview; President Moves 14 Held in Secret to Guantanamo*, N.Y. TIMES, Sept. 7, 2006; R. Jeffrey Smith & Michael Fletcher, *Bush Says Detainees Will be Tried; Confirms Existence of CIA Prisons*, WASH. POST, Sept. 7, 2006; Mark Silva, *Bush Confirms Use of Secret CIA Prisons*, CHICAGO TRIB., Sept. 7, 2006; Deb Reichmann, *Bush Admits the CIA Runs Secret Prisons*, ASSOC. PRESS, Sept. 7, 2006.

<sup>8</sup> President Bush Speech Sept. 6, 2006, *supra*.

<sup>9</sup> *Id.* See also Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1, available at [http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644_pf.html) ("The black-site program was approved by a small circle of White House and *Justice Department* lawyers and officials, according to several former and current U.S. government and intelligence officials" (emphasis added).)

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Department of Justice reviewed the authorized methods extensively and determined them to be lawful.”<sup>10</sup> On September 6, 2006, the same day that the President announced the existence of the secret detention program, the Office of the Director of National Intelligence released a statement that twice confirmed that the DOJ had provided legal advice on the procedures used in the program (“The CIA sought and obtained legal guidance from the Department of Justice that none of the new procedures violated the U.S. statutes prohibiting torture,” and “The Department of Justice has reviewed procedures proposed by the CIA on more than one occasion and determined them to be lawful.”).<sup>11</sup> Another source indicates that the detention system had been “set up after 9/11, primarily by a small group of lawyers in the White House, the Justice Department and the Defense Department.”<sup>12</sup>

It has also been reported that the CIA set up its secret prisons under its “covert action authority.”<sup>13</sup> Covert actions can only be authorized by a Presidential Finding, which is “reviewed and approved” by the DOJ and other legal advisers.<sup>14</sup> One of the primary functions of the FISA OIO and its antecedent, the OIPR, is to provide advice to the Attorney General and the intelligence agencies on questions of law and policy that relate to U.S. intelligence activities, thus it is likely that the FISA OIO is in possession of records reflecting the review and approval of the CIA’s secret detention program.<sup>15</sup>

Amnesty and WSLS have reason to believe that the FISA OIO is also in possession of records containing at least some of the names and identities of individuals who fall within the scope of our Requests. The September 6, 2006 statement of the Office of the Director of National Intelligence indicates that it has shared “broadly within the U.S. intelligence and law enforcement communities and with key partners overseas” the names of the individuals who

<sup>10</sup> President Bush Speech Sept. 6, 2006, *supra* note 7.

<sup>11</sup> Announcement, Office of the Director of National Intelligence, Summary of the High Value Terrorist Detainee Program, Sept. 6, 2006, available at <http://www.dni.gov/announcements/content/TheHighValueDetaineeProgram.pdf>.

<sup>12</sup> See Tim Golden, *Detainee Memo Created Divide in White House*, NY TIMES, Oct. 1, 2006, at 1 (“At the time the England-Zelikow memorandum was written, in mid-June 2005, several officials said they saw little enthusiasm for reconsidering the detention system that had been set up after 9/11, primarily by a small group of lawyers in the White House, the Justice Department and the Defense Department.”) (emphasis added))

<sup>13</sup> See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1, *supra* note 9.

<sup>14</sup> 50 U.S.C.A. § 413b (The President may authorize a covert action if she or he determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States. A Presidential finding must meet the conditions set out in § 413b and be reported to the congressional intelligence committees.). See also Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1, *supra* note 9.

<sup>15</sup> See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1, *supra* note 9.

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have been removed from the battlefield by the U.S. and its allies.<sup>16</sup> Since the FISA OIO and/or OIPR has played a significant role in shaping the policy within the intelligence and law enforcement communities, it is highly likely that your agency is also in possession of this information.

Amnesty and WSLs also have reason to believe that the FISA OIO is in possession of records relating to agreements with foreign governments or government agencies concerning the apprehension, transfer and detention of detainees who fall within the scope of our Requests. It has been reported that the U.S. government negotiated agreements with foreign governments to set up the CIA's secret detention program.<sup>17</sup> These agreements, which are reported to be "status of forces agreements," but which may also include more informal agreements, reportedly include immunity clauses for U.S. personnel from both the government and private companies.<sup>18</sup> It is likely that the FISA OIO and/or the OIPR was involved in the negotiation and preparation, and/or review of these agreements and thus is in possession of records responsive to our Requests.

In light of the foregoing, Amnesty and WSLs believe that there are records in the FISA OIO's possession responsive to the Requests. We therefore appeal your "no-records" determination and respectfully request that your agency conduct a more thorough search, produce any and all responsive documents (in redacted form if required), and, if any documents are withheld, provide a detailed explanation including which specific exemptions cover which specific documents, and why the exemptions asserted govern each of the documents in question.

#### **b. Appeal of Glomar Response**

<sup>16</sup> Announcement, Office of the Director of National Intelligence, *Summary of the High Value Terrorist Detainee Program*, Sept. 6, 2006, *supra* note 11.

<sup>17</sup> John Barry, Michael Hirsh & Michael Isikoff, *The Roots of Torture*, Newsweek, May 24, 2005, available at <http://www.msnbc.msn.com/id/4989436/site/newsweek/>.

<sup>18</sup> *Id.* See also Amnesty International's Report, *USA: Updated briefing to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights*, July 2006, available at <http://web.amnesty.org/library/index/engamr511112006> ("... the 2003 Status of Forces Agreement (SOFA) between the United States and Afghanistan...contains the following provisions... 'By the terms of the SOFA, all US military personnel operating in Afghanistan have been conferred diplomatic privileges and immunity from legal prosecution in Afghanistan as set out in the Vienna Convention on Diplomatic Relations. In addition, the SOFA absolves the US military for any legal liability which might arise as a result of its activities in Afghanistan...'").

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Amnesty and WSL also appeal the FISA OIO's refusal to confirm or deny the existence of records responsive to our Requests, also known as a "Glomar" response.<sup>19</sup> A government agency may issue a Glomar response if a FOIA exemption would itself preclude the acknowledgment of such documents.<sup>20</sup> However, if merely confirming or denying the existence of a document does not implicate a FOIA exemption, then the agency cannot refuse to confirm or deny the existence of the records.<sup>21</sup> Courts have said that Glomar responses, if not closely regulated, can encourage over-classification of information, "frequently keeping secret that which the public already knows, or that which is more embarrassing than revelatory of intelligence sources or methods."<sup>22</sup> Such is the case here, where the press has reported frequently on the existence of such documents and President Bush himself has admitted that the key subject matter of the documents, namely, the CIA's secret detention program, exists.

The issue of secret and irregular apprehensions, transfers, and detentions has been extensively covered by the media for some time,<sup>23</sup> particularly since the filing of our FOIA

<sup>19</sup> See *Phillipi v. CIA*, 546 F.2d 1009, 1011 (D.C. 1976) (upholding CIA refusal to confirm or deny existence of records of CIA connection to activities of ship named the *Hughes Glomar Explorer*), aff'd, 655 F.2d 1325 (D.C. Cir 1981).

<sup>20</sup> *Hunt v. CIA*, 981 F.2d 1116, 1118 (9th Cir. 1992).

<sup>21</sup> *ACLU v. Dep't. of Def.*, 396 F. Supp. 2d 459, 462 (S.D.N.Y. 2005) ("confirming or denying the existence of a legal memorandum interpreting the Convention Against Torture adds nothing to, and detracts nothing from, the public understanding").

<sup>22</sup> *ACLU v. Dep't. of Def.*, 389 F. Supp. 2d 547, 561 (S.D.N.Y. 2005) ("... an excessive reliance on secrecy tends to compartmentalize knowledge, encourage a dangerous tendency to withhold information... compromise the basics of a free and open democratic society, and damage even the goal of security itself, the very goal that a system of classifying secrets is intended to advance").

<sup>23</sup> See e.g., Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16. See also Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake: German Citizen Released After Months in Rendition*, WASH. POST., Dec. 4, 2005 at A1; Brian Ross & Richard Esposito, *Exclusive: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, at <http://abcnews.go.com/WNT/Investigation/story?id=1375123>; Jane Mayer, *A Deadly Interrogation: Can the C.I.A. Legally Kill a Prisoner?*, NEW YORKER, Nov. 14, 2005, at 44 (discussing the practice, particularly with respect to the death of Manadel al-Jamadi); Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1, *supra* note 9.

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Requests.<sup>24</sup> Indeed, on September 6, 2006, President Bush explicitly recognized the existence of the CIA's secret detention program and government authorities released documents concerning the program, igniting a storm of currently unfolding media attention and public interest.<sup>25</sup> Bodies responsible for investigations initiated in Europe regarding secret detention and rendition reacted to President Bush's speech by requesting additional information from countries alleged to have hosted secret prisons.<sup>26</sup> President Bush also explained that the CIA's secret detention program had been the subject of legal review by several agencies, including the Department of

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<sup>24</sup> See, e.g., Joseph Goldstein, *Court Weighs ACLU Request on CIA Terror Documents*, N.Y. Sun, June 13, 2006; *Court Will Investigate Alleged CIA Flights*, L.A. TIMES, June 13, 2006, at A23; *The Detention Dilemma*, Editorial, WASH. POST, June 19, 2006, at A20; Barrie Dunsmore, *Ugly portrait emerges dot by dot*, TIMES ARGUS, June 18, 2006; *Euro MP's to Extend Probe Into CIA Activities*, Expatica, June 13, 2006, available at [http://www.expatica.com/actual/article.asp?subchannel\\_id=52&story\\_id=30767](http://www.expatica.com/actual/article.asp?subchannel_id=52&story_id=30767); Anemona Hartocollis, *Judges Press CIA Lawyer Over Withheld Documents*, N.Y. TIMES, June 13, 2006, at A17; Larry Neumeister, *Court Urged to Protect CIA Detention Info*, ASSOC. PRESS, June 13, 2006; *Region Still Lacks Support for Torture Victims, Say Observers*, IRIN, June 25, 2006, available at [http://www.irinnews.org/S\\_report.asp?ReportID=54150&SelectRegion=Middle\\_East](http://www.irinnews.org/S_report.asp?ReportID=54150&SelectRegion=Middle_East); Scott Shane & Mark Mazzetti, *C.I.A. Crackdown Seeks to Tighten Agency's Secrecy*, N.Y. TIMES, April 24, 2006, at A1; Jan Sliva, *EU Concedes Rendition Flights Took Place*, The Herald (U.K.), June 28, 2006; Jan Sliva, *Probe of CIA Prisons Implicates EU Nations*, ASSOC. PRESS, June 7, 2006, available at <http://abcnews.go.com/International/wireStory?id=2048514>; Ike Seamans, *Above the Law*, Miami Herald, June 25, 2006, available at <http://www.miami.com/mld/miamiherald/entertainment/books/14886794.htm>; Jeremy Smith, *EU Lawmakers Back Report on CIA Terror Kidnapping*, Reuters, June 12, 2006.

<sup>25</sup> See, e.g., Jess Bravin, *Bush Confirms Existence of Secret CIA Prisons*, WALL ST. J., Sept. 7, 2006, at A3; *Bush Justifies CIA Detainee Abuse*, US Fed News, Sept. 6, 2006; Tim Golden, *Detainee Memo Created Divide in White House*, N.Y. TIMES, Oct. 1, 2006; Ron Hutcheson & Margaret Talev, *President Confirms CIA Prisons*, News Trib., Sept. 7, 2006, at A01; Brian Knowlton, *European Reaction Split*, INT'L HERALD TRIB., Sept. 7, 2006, available at <http://www.iht.com/articles/2006/09/07/news/react.php>; Dafna Linzer & Glenn Kessler, *Decision to Move Detainees Resolved Two-Year Debate Among Bush Advisers*, WASH. POST, Sept. 8, 2006, at A01; David Morgan, *U.S. Gives Details on CIA Detention Program*, REUTERS, Sept. 6, 2006; Jeannie Shawl, *Bush Confirms Existence of Secret CIA Prisons for High-Value Terror Detainees*, JURIST, Sept. 6, 2006, available at <http://jurist.law.pitt.edu/paperchase/2006/09/bush-confirms-existence-of-secret-cia.php>; Chase Squires, *Intelligence Director Says CIA Interrogation Program to Continue*, ASSOC. PRESS, Sept. 8, 2006; Kevin Sullivan, *Detainee Decision Greeted Skeptically*, WASH. POST, Sept. 7, 2006, at A17; Stephen Grey & Sarah Baxter, *CIA still hiding 'ghost' captives*, SUNDAY TIMES, Sept. 10, 2006, available at <http://www.timesonline.co.uk/article/0,,2089-2350485,00.html>; Farah Stockman, *Fate of some Detainees Still Unknown*, BOSTON GLOBE, Sept. 22, 2006, available at [http://www.boston.com/news/nation/articles/2006/09/22/fate\\_of\\_some\\_cia\\_detainees\\_still\\_unknown](http://www.boston.com/news/nation/articles/2006/09/22/fate_of_some_cia_detainees_still_unknown).

<sup>26</sup> See, e.g., Constant Brand, *EU Calls on U.S. to Abide by International Law in Treatment of Terror Suspects*, ASSOC. PRESS, Sept. 15, 2006; *Europe Remains Opposed to Secret CIA Prisons: Council of Europe*, AGENCE FR. PRESSE, Sept. 7, 2006; *European Campaigners Want More Details On CIA Prisons*, DOW JONES INTERNATIONAL, Sept. 6, 2006; Ingrid Melander, *EU Condemns Secret CIA Prisons*, REUTERS, Sept. 15, 2006; *President Bush's Comments Are "Tangible" Proof of CIA Exactions, Terry Davis Says, Calling for Secret Services to Be Controlled in Europe*, AGENCE EUROPE, Sept. 9, 2006; *Romania, Poland asked to clarify CIA Detention Centres Issues*, BBC, Sept. 8, 2006; Jan Sliva, *EU Parliamentarians to Go to 4 Countries Over Alleged CIA Secret Prisons, Transfers*, ASSOC. PRESS, Sept. 11, 2006; Nicholas Watt & Suzanne Goldenberg, *European human rights watchdog seeks scrutiny of CIA's secret prisons*, THE GUARDIAN, Sept. 8, 2006.

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Justice,<sup>27</sup> and stressed that the program would continue.<sup>28</sup> DOJ lawyers advised President Bush that the program complied with U.S. laws.<sup>29</sup>

President Bush also revealed that fourteen of the individuals detained in secret locations were being transferred from CIA custody to Guantánamo Bay for continued detention by the Department of Defense.<sup>30</sup> The Director of National Intelligence's September 6, 2006 "Summary of the High Value Detainee Program" and the "Biographies of High Value Detainees Transferred to the US Naval Base at Guantánamo Bay" provided additional details about the nature of the CIA's secret detention program and the identities of all of the fourteen transferred detainees.<sup>31</sup>

Media coverage of the issue of secret detentions continued as Congress debated legislation to authorize military commissions and the appropriate interrogation procedures for suspected terrorists, including those held by the CIA.<sup>32</sup> Public and media attention is not

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<sup>27</sup>/ President Bush Speech Sept. 6, 2006, *supra* note 7 ("This program has been subject to multiple legal reviews by the Department of Justice and CIA lawyers; they've determined it complied with our laws. This program has received strict oversight by the CIA's Inspector General.")

<sup>28</sup>/ *Id.* ("[A]s more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical -- and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information ... [W]e will also consult with congressional leaders on how to ensure that the CIA program goes forward.")

<sup>29</sup>/ *Id.* See also Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1, *supra* note 9 ("The black-site program was approved by a small circle of White House and *Justice Department* lawyers and officials, according to several former and current U.S. government and intelligence officials." (emphasis added)).

<sup>30</sup>/ President Bush Speech Sept. 6, 2006, *supra* note 7 ("So I'm announcing today that Khalid Sheikh Mohammed, Abu Zubaydah, Ramzi bin al-Shibh, and 11 other terrorists in CIA custody have been transferred to the United States Naval Base at Guantánamo Bay.").

<sup>31</sup>/ Announcement, Office of the Director of National Intelligence, Summary of the High Value Terrorist Detainee Program, Sept. 6, 2006, *supra* note 11; Announcement, Office of the Director of National Intelligence, Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantánamo Bay, Sept. 6, 2006, available at <http://www.dni.gov/announcements/content/DetaineeBiographies.pdf>; Press Release, The White House, Fact Sheet: Bringing Terrorists to Justice, Sept. 6, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-2.html>

<sup>32</sup>/ See e.g. Stephen Grey & Sarah Baxter, *CIA Still Hiding 'Ghost' Captives*, SUNDAY TIMES, Sept. 10, 2006, available at <http://www.timesonline.co.uk/article/0,,2089-2350485,00.html>; Chase Squires, *Intelligence Director Says CIA Interrogation Program to Continue*, ASSOC. PRESS, Sept. 8, 2006; Peter Baker, *GOP Infighting on Detainees Intensifies; Bush Threatens to Halt CIA Program if Congress Passes Rival Proposal*, WASH. POST, Sept. 16, 2006, at A01; Anne Plummer Flaherty, *Republican Senate Panel Defies Bush, Approves Bill on Treatment of Terror Detainees*, ASSOC. PRESS, Sept. 14, 2006; Rick Klein, *Bush Raps McCain's Detainee Proposals; Says Measures Would Cripple War on Terror*, BOSTON GLOBE, Sept. 16, 2006, at A1; Ingrid Melander, *EU Condemns Secret Prisons*, REUTERS, Sept. 15, 2006; Patrick Quinn, *U.S. Wartime Prison Network Grows Into Legal Vacuum for 14,000*, ASSOC. PRESS, Sept. 17, 2006; Andrew Selsky, *Senators Visit Guantánamo Bay Prison*, ASSOC. PRESS, Sept. 11, 2006; Demetri Sevestopulo, *Tensions Rise as McCain Challenges CIA Chief*, FIN. TIMES, Sept. 15, 2006, at 4; Katherine Shrader, *CIA Interrogations of Suspected Terrorists Face New Legal Scrutiny, Possible Overhaul*, ASSOC. PRESS, Sept. 16, 2006.

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expected to abate now that Congress has approved legislation that purports to authorize military commissions and which some<sup>33</sup> assert will allow the CIA to continue its secret detention program.<sup>34</sup> President Bush did not reveal what had happened to the detainees previously held in the CIA's secret detention program other than the fourteen transferred to Guantánamo Bay, but said that "... as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical -- and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information."<sup>35</sup> At a press conference on September 15, 2006, the President reiterated his commitment to continue the secret detention program.<sup>36</sup> This commitment has been made even more clear after the President signed the Military Commissions Act of 2006<sup>37</sup> based on his understanding that the Act authorized the secret detention program to continue.<sup>38</sup> The future form of this program is an issue of public debate<sup>39</sup> and will continue to be followed intensely by the media and the public at-large.

<sup>33</sup> Even John Bellinger, Legal Adviser to the Department of State, has recognized that the CIA's program must still pass legal review, above and beyond the text of the Military Commissions Act. *See* State Department Foreign Press Center Briefing, FED. NEWS SERVICE, Oct. 19, 2006, at 1, 5 (quoting John Bellinger as stating that "The act itself does not specifically address the CIA program").

<sup>34</sup> Pub. L. No. 109-366, 120 Stat. 2600. Military Commissions Act of 2006, signed on 10/17/06. *See also* Sheryl Gay Stolberg, *President Signs New Rules to Prosecute Terror Suspects*, N.Y. TIMES, OCT. 18, 2006, at 20 (arguing that law will allow the CIA to resume once-secret program handling most dangerous enemy operatives, but the agency is unlikely to do so until Bush issues executive order clarifying rules for questioning high-level detainees; the new law strips federal courts of jurisdiction over habeas corpus petitions from noncitizens).

<sup>35</sup> President Bush Speech Sept. 6, 2006, *supra* note 7.

<sup>36</sup> *See* Press Conference, Office of the Press Secretary, Press Conference of the President (Sept. 15, 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/20060915-2.html> ("[w]ere it not for this [CIA] program, our intelligence community believes that al Qaeda and its allies would have succeeded in launching another attack against the American homeland. Making us -- giving us information about terrorist plans we couldn't get anywhere else, this program has saved innocent lives. In other words, it's vital").

<sup>37</sup> See Pub. L. No. 109-366, 120 Stat. 2600.

<sup>38</sup> Press Release, Office of the Press Secretary, President Bush Signs Military Commissions Act of 2006, (Oct. 17, 2006) available at <http://www.whitehouse.gov/news/releases/2006/10/20061017-1.html> ("When I proposed this legislation, I explained that I would have one test for the bill Congress produced: Will it allow the CIA program to continue? This bill meets that test. It allows for the clarity our intelligence professionals need to continue questioning terrorists and saving lives. This bill provides legal protections that ensure our military and intelligence personnel will not have to fear lawsuits filed by terrorists simply for doing their jobs.").

<sup>39</sup> *See, e.g., Editorial, A License to Abuse; Mr. Bush Says He Has "One Question" for Congress. The Right Answer to It is "No.",* WASH. POST, Sept. 17, 2006, at B06; Peter Baker, *GOP Infighting on Detainees Intensifies; Bush Threatens to Halt CIA Program if Congress Passes Rival Proposal*, WASH. POST, Sept. 16, 2006, at A01; Michael Hedges & Patty Reinert, *Bush Warns Detainee Program Might End*, HOUSTON CHRONICLE, Sept. 16, 2006; Terence Hunt, *Bush Pushes Back Against Republican Revolt, Says U.S. Has High Ground in Terror War*, ASSOC. PRESS, Sept. 15, 2006; Jim Rutenberg & Sheryl Gay Stolberg, *Bush Says G.O.P. Rebels Are Putting Nation at Risk*, N.Y. TIMES, Sept. 16, 2006, at 12; Scott Shane, *The Question of Liability Stirs Concern at the C.I.A.*, N.Y. TIMES, Sept. 16, 2006, at 12.

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The government disclosures surrounding President Bush's speech on September 6, 2006 and the extensive media coverage of this issue, both of which include and involve the Department of Justice, and specifically the FISA OIO and/or the OIPR (as advisor to the Attorney General and U.S. intelligence agencies and reviewer of foreign intelligence policies), preclude your agency from asserting that you can neither confirm nor deny the existence of records responsive to our Requests. The existence of these types of records has already been disclosed, and therefore it cannot be classified under Executive Order 12958, as amended.<sup>40</sup>

Finally, you claim that to confirm or deny the existence of such materials would tend to reveal which specific persons or organizations are the subject of such requests. However, this is not sufficient to warrant your agency's refusal to search for and produce *redacted* documents, or to withhold such documents pursuant to an exemption and provide a detailed index itemizing the documents withheld,<sup>41</sup> especially where, as here, there is a vital public interest in understanding our government's involvement in the secret detention of individuals.

Moreover, where the privacy of organizations is concerned, at least one court has determined that the mere fact that an agency or organization has requested legal or policy memoranda from the Department of Justice is not a sufficient justification to warrant a Glomar response.<sup>42</sup> In *ACLU v. Department of Defense*, the Court required the disclosure of the existence or non-existence of a memorandum interpreting the Convention Against Torture, stating that “[t]he fact that such a memorandum [interpreting the Convention Against Torture] might be addressed to the CIA tells us nothing of the ‘intelligence sources and methods’ utilized by the CIA ... confirming or denying the existence of a legal memorandum interpreting the Convention Against Torture adds nothing to, and detracts nothing from, the public understanding.”<sup>43</sup>

In light of the foregoing, Amnesty International, USA and Washington Square Legal Services, Inc., appeal your refusal to confirm or deny the existence of records responsive to our

<sup>40</sup> See *Nuclear Control Inst. v. U.S. Nuclear Regulatory Comm'n*, 563 F. Supp. 768 (D.D.C., 1983) (Glomar rejected where agency had previously admitted the existence of documents); *ACLU v. Dep't. of Defense*, 396 F. Supp. 2d 459, 462 (S.D.N.Y. 2005) (Because the press has reported frequently about CIA involvement in the interrogation of Detainees, confirming or denying the existence of a legal memorandum interpreting the Convention Against Torture is not subject to a Glomar response).

<sup>41</sup> *Church of Scientology v. U.S. Dep't of the Army*, 611 F.2d 738, 742 (9th Cir. 1979) (The agency resisting disclosure of requested information has the burden of proving the applicability of an exemption); see also *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (court required an itemized list of withheld documents to allow the FOIA requester an opportunity to contest, and the trier of fact a foundation to review the basis for withholding).

<sup>42</sup> *ACLU v. Dep't. of Defense*, 396 F. Supp. 2d 459 (S.D.N.Y. 2005).

<sup>43</sup> *Id.* at 462.

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Requests. We respectfully request that you produce all responsive documents, subject to the exemption procedures noted above.

We look forward to your reply to this appeal **within twenty (20) working days**, as required under 5 U.S.C. § 552(a)(6)(A)(ii). Thank you for your prompt attention. Please direct all questions and future responses to:

KYLE M. DEYOUNG  
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You may also contact Bruce Berman of WilmerHale at (202) 663-6173 or at  
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Sincerely,

*Curt Goering /b7c*  
\_\_\_\_\_  
Curt Goering  
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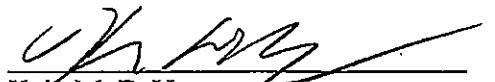
Director, Office of Information and Privacy

December 22, 2006

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WILMERHALE

April 25, 2006

Catherine Kane Ronis

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Re: Request Under the Freedom of Information Act for Records Concerning Ghost Detainee Memoranda, Department of Defense Detainee Reporting, Reports to Certain U.N. Committees, and the Draft Convention on Enforced Disappearance

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

Wilmer Cutler Pickering Hale and Dorr LLP, 2445 M Street, NW, Washington, DC 20037

Baltimore Beijing Berlin Boston Brussels London Munich New York Northern Virginia Oxford Palo Alto Waltham Washington

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Definitions

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

The term "foreign official" includes any foreign government employee, and any person providing services to any agency of a foreign government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the foreign government.

The term "communication" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

Unless otherwise specified, this request relates to all records generated between September 11, 2001 and the present.

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Memoranda of Understanding

The practice of persons being kept as "off-the-record" detainees in military prisons has been well documented.<sup>1</sup> In this context, "ghost" or "unregistered" detainees are understood to refer to those detainees who were at some point during their detention, or remain: not "officially" registered at military facilities; "kept off the books"; and/or denied access to the International Committee of the Red Cross (ICRC).<sup>2</sup> Documents produced by the Department of Defense on March 3, 2005 pursuant to an ACLU FOIA request<sup>3</sup> and a media report in the

<sup>1</sup> See Josh White, *Army, CIA Agree on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16. See also Jane Mayer, *A Deadly Interrogation: Can the C.I.A. Legally Kill a Prisoner?*, NEW YORKER, Nov. 14, 2005, at 44 (discussing the practice, particularly with respect to the death of Manadel al-Jamadi). See also the following Department of Defense documents released to the American Civil Liberties Union (ACLU) pursuant to a Freedom of Information Act request, all available at <http://www.aclu.org/torturefoia/released/030905/>: Transcript of deposition of Brig. Gen. Janis L. Karpinski, Appendix to Fay/Jones/Kern Report (July 18, 2004); Statement of deposition of Brig. Gen. Janis L. Karpinski, Appendix to Fay/Jones/Kern Report (July 18, 2004); Sworn Statement of E-5, 519th MI Bn, Annex to Fay/Jones/Kern Report (June 16, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Report (May 7, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report; Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report; Sworn Statement of SGT, 372nd MP, Camp Victory, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SPC/E4, B Co., 66th MI Group, 202nd MI BN, Annex to Fay/Jones/Kern Report (May 24, 2004); Sworn Statement of SGT, Member of GTMO team, "Shut Up Group," Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of CW2, A/519th MI Bn, Annex to Fay/Jones/Kern Report (May 19, 2004); Sworn Statement of SGT, 372nd MP Co, Annex to Fay/Jones/Kern Report (May 7, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004). See further HUMAN RIGHTS FIRST, BEHIND THE WIRE: AN UPDATE TO ENDING SECRET DETENTIONS 6 (2005), available at [http://www.humanrightsfirrst.org/us\\_law/PDF/behind-the-wire-033005.pdf](http://www.humanrightsfirrst.org/us_law/PDF/behind-the-wire-033005.pdf) (providing overview of the practice of ghosting in military facilities); HUMAN RIGHTS WATCH, THE UNITED STATES' DISAPPEARED: THE CIA'S LONG-TERM "GHOST DETAINEES" 5-15 (2004), available at <http://www.hrw.org/backgrounder/usa/us1004/us1004.pdf> (outlining practice of keeping CIA prisoners in military detention generally).

<sup>2</sup> Id.

<sup>3</sup> See Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000719-000725, available at <http://www.aclu.org/torturefoia/released/030905/> ("OGA and TF-121 routinely brought in detainees for a short period of time. The A/519th soldiers initiated the term 'ghost.' They stated they used this term as the detainees were not in-processed in the normal way via the MP database and were not yet categorized. It was difficult to track these particular detainees and I and other officers recommended that a Memorandum of Understanding be written up between OGA, the 205th MI BDE and the 800th MP BDE to establish procedures for a ghost detainee"); Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000726-000729, available at <http://www.aclu.org/torturefoia/released/030905/> ("...in reference to Ghost detainees, OGA would bring in detainees for a short period of time. [REDACTED] brought them in. These particular ghost detainees were not yet

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*Washington Post* dated March 11, 2005<sup>4</sup> indicate that this arrangement for "ghosting" was not "ad hoc" but was embodied in a Memorandum of Understanding (MOU) between military officials and the CIA.<sup>5</sup> The exact contours of this arrangement are not publicly known as a copy of this MOU was not included in the documents released by the Department of Defense.<sup>6</sup>

Records Requested

We seek the following records relating to the arrangement described above:

1. Any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies, or between any agency and any subdivision or official, concerning the handling of ghost or unregistered detainees. This includes but is not limited to:
  - (a) Any record reflecting communications about whether or not to draft any memorandum of understanding or agreement regarding unregistered or ghost detainees.
  - (b) Any record reflecting communications about the content of any memorandum of understanding or agreement regarding unregistered or ghost detainees.
2. Any record reflecting a policy, whether formal or informal, about the reception, detention, or movement of unregistered or ghost detainees.
3. Any memorandum of understanding, or other record reflecting an agreement between any agencies, or between any subdivision or official or any other agency, regarding the transfer of detainees from the custody of one agency to that of another.

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categorized and OGA was working on that. It was very difficult keeping track of these OGA because they were not processed until OGA decided to turn them over to us. COL PAPPAS was not happy with that procedure. [REDACTED] recommended that a Memorandum of Understanding be written up between OGA and MI on the procedures to drop off a ghost detainee. COL PAPPAS met with OGA and TF-121 and the memorandum on procedures for dropping ghost detainees was signed").

<sup>4</sup> Josh White, Army, *CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16.

<sup>5</sup> *Id.*

<sup>6</sup> Press Release, American Civil Liberties Union, Newly Released Army Documents Point to Agreement Between Defense Department and CIA on "Ghosts" Detainees, ACLU Says: Declassified Annexes to Fay Report, Which Denied Link, Contain Further Evidence of Brutal Army Abuses (Mar. 10, 2005), available at <http://www.aclu.org/safe/free/general/17597prs20050310.html>.

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Department of Defense Detainee Reporting

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004) ("the Act"), requires the Department of Defense to submit an annual report regarding certain detainees.

Records Requested

4. Any record generated in connection with the reporting requirement under Section 1093(c) of the Act, regardless of whether or not such record was actually submitted in the final report, and any record submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives pursuant to Section 1093(c) of the Act.<sup>7</sup> This includes but is not limited to records reflecting:

- (a) Any notice of investigation into any violation of international obligations or laws of the United States regarding the treatment of individuals detained by the U.S. Armed Forces or by a person providing services to the Department of Defense on a contractual basis.
- (b) Any discussions regarding whether any investigation described in Request 4(a) should be reported.
- (c) The number of detainees held in Department of Defense custody, or released from Department of Defense custody during the time period covered by the report, broken down into the greatest number of time intervals for which such information is available.
- (d) The number of detainees detained by the Department of Defense as "enemy prisoners of war," "civilian internees," and "unlawful combatants," broken down into the greatest number of time intervals for which such information is available.
- (e) The number of detainees detained by the Department of Defense under any status other than "enemy prisoners of war," "civilian internees," and "unlawful

<sup>7</sup> Section 1093(e) of the Act mandates that the reports "be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States." To the extent any records or portions of records responsive to this request are classified, please provide basic information as to the date, sender, recipient, and subject matter of the classified records.

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"combatants," broken down into the greatest number of time intervals for which such information is available.

- (f) The transfer or proposed transfer of detainees by the Department of Defense to the jurisdiction of other countries, and the countries to which those detainees were transferred.
- (g) Any communications regarding decisions to include or not include information in the Department of Defense's report under Section 1093(c) of the Act and decisions as to whether to submit any information in unclassified or classified form pursuant to Section 1093(d) of the Act.

United States Report to the Committee Against Torture

On May 6, 2005, the U.S. submitted its Second Periodic Report to the United Nations ("U.N.") Committee Against Torture, as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Records Requested

All records reflecting:

5. Communications regarding the United States' Second Periodic Report to the Committee Against Torture, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Committee Against Torture.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment relating to apprehension, transfer and detention, (including Articles 1, 3, 5, 16), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Committee Against Torture.

United States Report to the Human Rights Committee

On November 28, 2005, the U.S. submitted its Third Periodic Report to the U.N. Human Rights Committee, as required by the International Covenant on Civil and Political Rights.

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Records Requested

All records reflecting:

6. Communications regarding the United States' Third Periodic Report to the Human Rights Committee, including but not limited to:
  - (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Human Rights Committee.
  - (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the International Covenant on Civil and Political Rights relating to apprehension, transfer and detention, (including Articles 6, 7, 9), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
  - (c) Proposed language or earlier drafts of the report to the Human Rights Committee.

The Convention on the Protection of all Persons from Enforced Disappearance

On September 23, 2005, a U.N. working group concluded the draft text of the Convention on the Protection of all Persons from Enforced Disappearance. In 2006, the draft convention will be submitted to the U.N. Commission on Human Rights and the U.N. General Assembly, before being opened for signature and ratification.

Records Requested

7. Any record reflecting communications regarding the negotiation or drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.
8. Any record reflecting communications with a foreign government, or an agency or official of a foreign government, regarding the drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

Fee Waiver

The requestors qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

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Amnesty International is a non-government organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including the prohibition on torture and the prohibition on disappearances. AI also disseminates information through its website [www.amnesty.org](http://www.amnesty.org).

The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRGJ publishes reports and operates a website [www.nyuhr.org](http://www.nyuhr.org) discussing human rights issues.

The International Human Rights Clinic is a project of CHRGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

**Expedited Processing**

Expedited processing is warranted as there is a "compelling need" for the records sought in this request. 5 U.S.C. § 552(a)(6)(E)(i)(I). The requesters are primarily engaged in "disseminating information" and there is an "urgency to inform the public concerning the actual or alleged Federal Government Activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government's role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ's website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media reports discussed above, there is an urgent need to provide the public with information relating to the U.S. government's practices concerning unregistered or ghost detainees.

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There is also a "compelling need" because failure to obtain the records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt the practices prompting this Request could reasonably be expected to pose an imminent threat to the physical safety and lives of such individuals.

Expedited processing is also warranted because this request involves "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

AI and WSLS certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

\* \* \*

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request within twenty (20) days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

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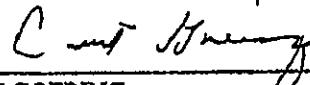
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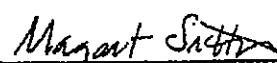
Thank you for your prompt attention. Please direct all questions and future responses to:

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If you need someone to reach by telephone or email, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785.

Sincerely,

  
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**WILMERHALE**

April 25, 2006

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Re: Request Submitted Under the Freedom of Information Act for Records Concerning Detainees, including "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners," and "CIA Detainees/Prisoners"

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

**WILMERHALE**

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**Definitions**

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

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The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

**Scope of Request**

Unless otherwise stated, this request refers to *individuals who were, have been, or continue to be deprived of their liberty by or with the involvement of the United States and about whom the United States has not provided public information. These individuals have been referred to, among other things, as "ghost detainees/prisoners," "unregistered detainees/prisoners," "CIA detainees/prisoners" and "Other Governmental Agency*

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*Detainees*" ("OGA *Detainees*"). These individuals have reportedly been held in various locations, including regular and irregular detention facilities, ships, aircraft, and military bases.

Although not limited to any specific geographic area, this request pertains particularly to the following places:

Afghanistan	Azerbaijan	Bulgaria	Djibouti
Egypt	Germany	Indonesia	Iraq
Jordan	Kosovo	Macedonia	Morocco
Pakistan	Poland	Romania	Syria
Thailand	Turkey	Ukraine	
United Kingdom (including Diego Garcia)			
United States (including all territories under the S.M.T.J.)			
Uzbekistan	Yemen		

This Request does not seek records related to the formal extradition of individuals.

Requested records pertain to persons apprehended since September 11, 2001.

#### Background

Numerous media reports indicate that the United States is involved in the secret or irregular apprehension, transfer, and detention of individuals on foreign territory.<sup>1</sup> These reports

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<sup>1</sup> See, e.g., Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1; Jan Cienski, Christopher Condon, Caroline Daniel, Guy Dinmore, Andrei Postelnicu, & Demetri Sevestopulo, *Evidence CIA Has Secret Jails in Europe*, FINANCIAL TIMES (LONDON), Nov. 3, 2005, at 1; Siobhan Gorman & Tom Bowman, *Reports of Secret CIA Prisons Prompt Concern*, L.A. TIMES, Nov. 3, 2005, at A4; Douglas Jehl & David Johnston, *CIA Now Acting Independently to Move Prisoners*, INT'L HERALD TRIB., Mar. 7, 2005, at 4; Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake: German Citizen Released After Months in Rendition*, WASH. POST., Dec. 4, 2005; Brian Ross and Richard Espesito, *Exclusive: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, at <http://abcnews.go.com/WNT/Investigation/story?id=1375123>; Eric Schmitt and Thom Shanker, *Rumsfeld Issued an Order to Hide Detainee in Iraq*, N.Y. Times, June 17, 2004, at A1; *US bars access to terror suspects*, BBC NEWS, Dec. 9, 2005; Josh White, *Army, CIA Agree on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16; *White House Mum on Secret CIA Prisons*, AGENCIE FRANCE PRESSE ENGLISH WIRE, Nov. 2, 2005; *Yemen says U.S. sent prisoners to Europe*, UNITED PRESS INT'L (UPI), Dec. 11, 2005, at <http://www.upi.com/InternationalIntelligence/view.php?StoryID=20051211-051738-9694r>.

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suggest that the government secretly detains and transports individuals on U.S. ships, military bases, and U.S.-chartered planes, as well as in foreign states.<sup>2</sup>

Records Requested

Please disclose any records reflecting, discussing or referring to the policy and/or practice concerning:

1. The apprehension, transfer, detention, and interrogation of persons within the Scope of Request, including but not limited to:

(a) The transfer of intelligence by one or more U.S. agencies or government officials to one or more foreign agencies or officials, in connection with the apprehension or detention of a person.

(b) A request or direction by one or more U.S. agencies or government officials to one or more foreign agencies or officials regarding the apprehension of any person, and any related agreement concerning such apprehension.

(c) The apprehension of a person in a foreign country by, with the involvement of, or in the presence of one or more U.S. officials.

(d) The transfer of a person from any country to any other country for the purpose of detention and/or interrogation, at the direction or request or with the knowledge of one or more U.S. agencies or officials.

(e) The transfer of a person from one place of detention to another within the same country at the direction or request or with the knowledge of one or more U.S. agencies or officials.

(f) The detention of a person in a foreign country at the direction or request of one or more U.S. agencies or officials, including any agreement concerning the detention.

(g) One or more U.S. agencies or officials seeking and/or being granted access to a foreign national detained in a foreign country.

<sup>2</sup> See, *id.* and further e.g., Craig Whitlock, *Europeans Probe Secret CIA Flights; Questions Surround Possible Illegal Transfer of Terrorism Suspects*, WASH. POST, Nov. 17, 2005, at A22; Eric Schmitt & Carolyn Marshall, *In Secret Unit's 'Black Room,' a Grim Portrait of U.S. Abuse*, N.Y. TIMES, Mar. 19, 2006.

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(h) One or more U.S. agencies or officials being present in a place of detention in a foreign country. This does not include visits to U.S. citizens by U.S. officials pursuant to the Vienna Convention on Consular Relations.

(i) One or more U.S. agencies having control, direction, or administration of a subdivision, portion, or "cell" of a place of detention in a foreign country.

2. Current and former places of detention where individuals within the Scope of Request have been or are currently held, including but not limited to:

(a) Any place of detention in a foreign country being under the control, direction, or administration of one or more U.S. agencies.

(b) Any place of detention that is not under the control, direction or administration of one or more U.S. agencies, where a detainee is held at the request or instruction of one or more U.S. agencies or officials.

(c) Any subdivision, portion, or "cell" of a place of detention in a foreign country under the control, direction, or administration of one or more U.S. agencies.

(d) Any agreement between the U.S. government or one or more U.S. agencies or officials, and a foreign government or one or more foreign agencies or officials, in relation to a place of detention in a foreign country, regardless of whether that place of detention is foreign or U.S.-controlled.

3. The names and identities of detainees who fall within the scope of this request.<sup>3</sup>

Fee Waiver

The requestors qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> Because of the nature of their detention, the requesters do not know the names or identities of those within the scope of this request. For examples of individuals that the United States has acknowledged detaining, but about whom the United States has not provided public information, see Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown: Detainees in the "War on Terror"* (2005), available at <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>; and Human Rights Watch, "List of 'Ghost Prisoners' Possibly in CIA Custody" (2005), available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm>. The scope of this request extends far beyond these examples.

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Amnesty International is a non-governmental organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including torture and disappearances. AI also disseminates information through its website [www.amnesty.org](http://www.amnesty.org).

The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRGJ publishes reports and operates a website [www.nyuhr.org](http://www.nyuhr.org) discussing human rights issues.

The International Human Rights Clinic is a project of CHRGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this Request through the channels described above.

**Expedited Processing**

Expedited processing is warranted as there is a "compelling need" for the records sought in this Request. 5 U.S.C. § 552(a)(6)(E)(i)(I). This need arises because the requesters are "primarily engaged in disseminating information" and there is an "urgency to inform the public concerning actual or alleged Federal Government Activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government's role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ's website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media articles cited above, there is an urgent need to provide the public with information relating to the U.S. government's practices concerning unregistered or ghost detainees.

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There is also a "compelling need" because failure to obtain the records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt any such practices could reasonably be expected to pose an imminent threat to the physical safety and lives of individuals whose identities we are unable to ascertain without the records sought herein.

Expedited processing is also warranted because this request involves "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

AI and WSLS certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

\* \* \*

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request within twenty (20) days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

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FOIA Request

April 21, 2006

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Thank you for your prompt attention. Please direct all questions and future responses to:

CATHERINE K. RONIS  
Counsel to Amnesty International USA  
WilmerHale  
2445 M Street Washington, D.C. 20037  
Tel: (202) 663-6380  
Fax: (202) 663-6363  
E-mail: catherine.ronis@wilmerhale.com

If you need someone to reach by telephone, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785.

Sincerely,

*Curt Goering*  
CURT GOERING  
Deputy Director  
Amnesty International USA  
5 Penn Plaza  
New York, NY 10001  
Tel: (212) 807-8400  
Fax: (212) 627-1451  
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*Margaret Satterthwaite*  
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U.S. Department of Justice  
Office of Intelligence Policy and Review

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Washington, D.C. 20530

JUN -7 2006

Catherine K. Ronis  
Counsel to Amnesty International USA  
WilmerHale  
2445 M Street, NW  
Washington DC 20037

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Re: FOIA/PA # 06-32 & 06-33

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Dear Ms. Ronis:

This is to acknowledge receipt of your letters dated April 25, 2006 seeking access to (1) records concerning the "apprehension, transfer, detention, and interrogation of ghost detainees/prisoners, unregistered detainees/prisoners, CIA detainees/prisoners and Other Governmental Agency Detainees, and (2) any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies, or between any agency and any subdivision or official, concerning the handling of ghost or unregistered detainees." You also requested expedited processing of your Freedom of Information Act requests, and the Office of Public Affairs granted your request for expedited treatment. Accordingly, your request will be reviewed ahead of others routinely processed on a first-in, first-out basis.

If you have any questions concerning your request, feel free to contact me on (202) 616-5460.

Sincerely,

  
\_\_\_\_\_  
GayLa D. Sessoms  
FOIA Coordinator



Received 11/10/08  
e5  
U.S. Department of Justice  
National Security Division

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Washington, D.C. 20530

OCT 30 2006

Catherine K. Ronis  
Wilmer Hale  
2445 M Street, NW  
Washington, DC 20037

Re: FOIA/PA # 06-32 and 06-33

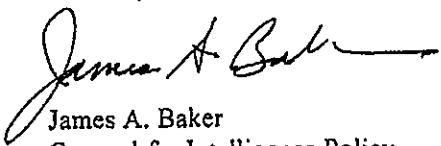
Dear Ms. Ronis:

This responds to your April 25, 2006 Freedom of Information Act (FOIA) requests to the Office of Intelligence Policy and Review (OIPR) seeking access to (1) records concerning the "apprehension, transfer, detention, and interrogation of ghost detainees/prisoners, unregistered detainees/prisoners, CIA detainees/prisoners and Other Governmental Agency Detainees, and (2) any memorandum of understanding, or other records reflecting an agreement or proposed agreement between agencies, or between any subdivision or official, concerning the handling of ghost or unregistered detainees." You also requested expedited processing of your FOIA request and a waiver of processing fees. Both requests were granted and your request has been reviewed ahead of others routinely processed on a first-in, first-out basis without any cost to you.

The Office of FISA Operations and Intelligence Oversight (formerly OIPR) provides advice to the Attorney General and United States intelligence agencies regarding questions of law and policy that relate to U.S. intelligence activities; performs review functions of certain intelligence activities; and prepares and presents applications for electronic surveillance and physical search to the United States Foreign Intelligence Surveillance Court pursuant to the Foreign Intelligence Surveillance Act (FISA). We maintain copies of all FISA applications, as well as requests for approval of various foreign intelligence and counterintelligence collection techniques such as physical searches. However, we did not search these records in response to your request because the existence or nonexistence of such records on specific persons or organizations is properly classified under Executive Order 12958, as amended. To confirm or deny the existence of such materials in each case would tend to reveal which persons or organizations are the subjects of such requests. Accordingly, we can neither confirm nor deny the existence of records responsive to your request pursuant to 5 U.S.C. § 552(b)(1).

We have conducted a search of our policy files as well as the electronic communications (e-mail) and office files of senior management and did not locate any records responsive to your request. If you are not satisfied with this response you may administratively appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. Both the letter and envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



James A. Baker  
Counsel for Intelligence Policy

# centerforconstitutionalrights

666 broadway new york, ny 10012  
212.614.6464 www.ccr-ny.org

December 21, 2004

Via Facsimile & U.S. Mail

GayLa D. Sessions, FOIA Coordinator  
Office of Intelligence Policy and Review  
Department of Justice  
Room 6150, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001  
Fax: (202) 514-5600

**Re: Request Submitted Under the Freedom of Information Act**

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The Request is submitted on behalf of the Center for Constitutional Rights ("Requester").

We are filing this Request simultaneously with the Department of Defense (including its components, the Departments of the Army, Navy, and Air Force, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, and the Central Intelligence Agency. By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(4)(E).

Background on Records Requested

Recent news reports indicate that the Central Intelligence Agency "CIA") has been secretly operating a holding and interrogation center ("CIA Guantánamo Center" or "Center") within the larger American military-run prison at Guantánamo Bay, Cuba ("Guantánamo"). The reports further indicate that individuals apprehended after September 11, 2001, and held by the United States at Guantánamo ("Detainees") in the CIA Guantánamo Center have been separately interrogated by CIA agents.<sup>1</sup>

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<sup>1</sup> See David Johnston and Neil A. Lewis, "Officials Describe Secret C.I.A. Center at Guantánamo Bay," New York Times, December 17, 2004.



News reports also indicate that the CIA Guantánamo Center is “related to a network of holding centers operated by the CIA at undisclosed locations around the world”<sup>2</sup> since United States authorities began capturing individuals after the attacks of September 11, 2001. Other news reports state that the “buildings used by the CIA are shrouded by high fences covered with thick green mesh plastic and ringed with floodlights . . . [t]hey sit within the larger Camp Echo complex, which was erected to house the Defense Department’s high value detainees and those awaiting military trials on terrorism charges.”<sup>3</sup> According to one military official, the “CIA’s [Guantánamo] facility has been ‘off-limits to nearly everyone on the base.’”<sup>4</sup>

According to a report by the Washington Post, in contrast to the majority of detainees held at Guantánamo, the CIA detainees “are held under separate rules and far greater secrecy.”<sup>5</sup> Under a presidential decree and policies approved by Administration attorneys, “the CIA is allowed to capture and hold certain classes of suspects without accounting for them in any public way and without revealing the rules for their treatment.”<sup>6</sup> According to other news reports, these detainees have not and will not receive review of their status through the Combatant Status Review Tribunals.<sup>7</sup>

In addition to the secret CIA Guantánamo Center, there have been numerous media reports during the last two years confirming the existence of CIA detention facilities located around the world, including one in an off-limits corner of the Bagram Airbase in Afghanistan, at Camp Cropper, a detention center on the outskirts of Baghdad International Airport,<sup>8</sup> on ships at sea,<sup>9</sup> on Britain’s Diego Garcia Island in the Indian Ocean,<sup>10</sup> in a secret facility in Jordan,<sup>11</sup> and in secret locations outside of Iraq.<sup>12</sup> According to a report by Human Rights Watch, detainees are being held in more than 24 secret detention facilities across the globe.<sup>13</sup> Furthermore, government officials have admitted that even within known facilities,

<sup>2</sup> *Id.*

<sup>3</sup> Dana Priest and Scott Higham, “At Guantánamo, A Prison Within A Prison; CIA Has Run a Secret Facility for Some Al Qaeda Detainees, Officials Say,” Washington Post, December 17, 2004, at A01.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Suzanne Goldenberg, “‘Ghost Detainees’ at Camp Delta: Pentagon Accused of Planning To Exclude Some Guantánamo Prisoners from Review,” The Guardian, July 10, 2004 at 18.

<sup>8</sup> Eric Schmitt, “Abuse Inquiry Says Official Exercised Little Oversight,” The New York Times, Dec. 4, 2004 at A10.

<sup>9</sup> Eric Schmitt & Douglas Jehl, “Army Says CIA hid More Iraqis than it Claimed,” The New York Times, Sept. 9, 2003 at A1.

<sup>10</sup> *Id.*

<sup>11</sup> Inigo Gilmore & Robin Gedy, “Jordan Ghost Jail ‘holds al-Qa’eda men’ Israeli Intelligence Expert Claims to have Solved Mystery of Missing Terrorist Leaders Captured by American Forces in Past Three Years,” The Daily Telegraph, Oct. 14, 2004 at 16.

<sup>12</sup> See Dave Goldiner, “Saddam’s Pals on Hunger Strike,” Daily News, December 13, 2004 at 20.

<sup>13</sup> Human Rights Watch, “The United States Disappeared: The CIA’s Long Term ‘Ghost Detainees’” October, 2004.

CIA officials have employed a policy under which “ghost prisoners” captured in Iraq and Afghanistan have been interrogated by CIA agents and have had their “identities and locations withheld from relatives, the International Red Cross and even Congress.”<sup>14</sup> Finally, reports have stated that CIA agents have spirited detainees in Iraq to third countries for interrogation under conditions which might violated the requirements of international humanitarian law.<sup>15</sup>

The Washington Post reports that other detainees captured during the war in Iraq are being held under the custody of an Army task force, “Task Force 6-26, in a secret facility in Iraq. According to that report, the Pentagon does not officially acknowledge the existence of the unit.”<sup>16</sup>

The Request seeks records relating to the identity of, transport and location(s) of, authority over, and treatment of all unregistered, CIA, and “ghost” Detainees interdicted, interrogated, and detained by any agency or department of the United States.

Both international and United States law unequivocally prohibit hiding individuals in such a manner even during wartime. The Geneva Conventions require the registration of all detainees with the Red Cross. They also prohibit “forcible transfers as well as deportations” of individuals, and ban all “physical or moral coercion . . . in particular to obtain information.” The Convention Against Torture (“CAT”), which the United States has signed and ratified, prohibits the use of torture and the infliction of other cruel, inhuman or degrading treatment or punishment.<sup>17</sup> The prohibition against torture is also codified in United States law at 18 U.S.C. § 2340A.

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<sup>14</sup> Editorial, The Washington Post, “The CIA’s Disappeared,” October 26, 2004.

<sup>15</sup> Eric Schmitt & Douglas Jehl, “Army Says CIA hid More Iraqis than it Claimed,” The New York Times, Sept. 9, 2003 at A1.

<sup>16</sup> Barton Gellman & R. Jeffrey Smith, “Report to Defense Alleged Abuse by Prison Interrogation Teams; Intelligence Official Informed Defense Dept. in June,” The Washington Post, Dec. 8, 2004 at A1.

<sup>17</sup> In this Request, the terms “torture” and “cruel, inhuman or degrading treatment or punishment” have the meaning accorded them in the CAT, as interpreted by the United Nations Committee Against Torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. I, S. Treaty Doc. No. 100-20 (1998), 1465 U.N.T.S. 85. 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, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Id.* The United Nations Committee Against Torture has held that the following techniques constitute “torture” as defined under the CAT: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill. See Report of the Committee Against Torture, U.N. GAOR, 52d Sess., Supp. No. 44, at para 257, U.N. Doc. A/52/44 (1997). Our use of these terms also encompasses torture and/or “cruel inhuman or degrading treatment or punishment” under any other United States constitutional or statutory provision.

The CAT further provides that “[n]o 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.”<sup>18</sup> This provision is implemented in United States law by the Foreign Affairs Reform and Restructuring Act of 1998, which states that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”<sup>19</sup>

To determine whether the United States is honoring its obligations under domestic and international law, Requesters seek the release of agency records as described in the numbered paragraphs below:

#### RECORD REQUESTS

Please disclose the following records:

1. All records that propose, authorize, report on, or describe, or that discuss the legality or appropriateness of holding Unregistered, CIA, and/or “Ghost” Detainees in special CIA or other agency facilities for purposes of interrogation.
2. All records that discuss the creation, use and/or closure of the various centers at which the CIA and/or any other agency of the federal government has held, and/or continues to hold Unregistered, CIA, and/or “Ghost” Detainees.
3. All records reflecting the use of any private companies, other U.S. officials or citizens, and/or officials or citizens of any foreign governments regarding the interdiction, arrest, transfer, detention, questioning, interrogation, and/or other treatment of any Unregistered, CIA, or “Ghost” Detainee
4. All records reflecting standards or policies governing who may be held as an Unregistered, CIA, and/or “Ghost” Detainee and what procedural protections or guidelines, if any, are used to review the arrest, detention, and treatment of these Detainees.
5. Every location from September 11, 2001 to the present at which the CIA or any other governmental agency has been or is now holding Unregistered, CIA, or “Ghost” Detainees, the dates of operation of each such facility, whether the facility remains

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<sup>18</sup> CAT, art. 3.

<sup>19</sup> Pub. L. No. 105-277, § 2242(b), 112 Stat. 2681 (1999) (codified as Note to 8 U.S.C. § 1231).

open at this time, the purpose of the facility, a complete list of the Detainees held at the facility (both past and current with indications as to this status), a list of techniques used for interrogation at each facility, and a list of personnel who have worked and those who continue to work at each Center.

6. All records concerning the treatment of the Unregistered Detainees held in any CIA or other governmental facility in the world. Please include all records discussing the following interrogation methods at such facilities, including but not limited to records discussing their legality or appropriateness: using "stress and duress" techniques on Detainees; using force against them; subjecting them to physical injury; requiring them to stand or kneel for prolonged periods; depriving them of sleep, food or water; holding them in awkward and painful positions for prolonged periods; denying them painkillers or medical treatment; administering or threatening to administer mind altering substances, "truth serums" or procedures calculated to disrupt the senses or personality; subjecting them to prolonged interrogation under bright lights; requiring them to be hooded, stripped, or blindfolded; binding their hands and feet for prolonged periods of time; isolating them for prolonged periods of time; subjecting them to violent shaking; subjecting them to intense noise; subjecting them to heat or cold; or threatening harm to them or other individuals.
7. All records setting forth or discussing policies, procedures or guidelines<sup>20</sup> relating to the detention, questioning, interrogation, transfer, and treatment (including, but not limited to the interrogation with the use of torture or other cruel, inhuman or degrading treatment or punishment) of the Unregistered, CIA, and "Ghost" Detainees, including but not limited to policies, procedures or guidelines relating to the methods listed above.
8. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that CIA Detainees were not, are not or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment. Please include all records indicating how any such policies, procedures or guidelines were, are, or will be, communicated to personnel involved in the interrogation or detention of CIA Detainees.
9. All records indicating or discussing actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above.
10. All records indicating or discussing serious injuries, illnesses, and/or deaths of any Unregistered, CIA, and/or "Ghost" Detainees.

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<sup>20</sup> In this Request, the phrase "policies, procedures or guidelines" means policies, procedures or guidelines that were in force on September 11, 2001 or that have been put in place since that date.

11. All records, including autopsy reports and death certificates, relating to the deaths of any Unregistered, CIA, and/or "Ghost" Detainees.
12. All records relating to investigations, inquiries, or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
13. All records relating to the actual or alleged torture or other cruel, inhuman or degrading treatment or punishment of any Unregistered, CIA, and/or "Ghost" Detainee.
14. All records relating to policies, procedures or guidelines governing the role of health personnel in the interrogation of the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to the role of health personnel in the medical, psychiatric, or psychological assessment of Detainees immediately before, during or immediately after interrogation. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.
15. All records relating to medical, psychiatric or psychological assessment of any Unregistered, CIA, and/or "Ghost" Detainee or guidance given to interrogators by health personnel immediately before, during or immediately after the interrogation of any Unregistered, CIA, and/or "Ghost" Detainees..
16. All records indicating whether and to what extent the International Committee for the Red Cross ("ICRC") had, has or will have access to Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny the ICRC access to any Detainee or group of Detainees.
17. All records indicating whether and to what extent any other non-governmental organization or foreign government had, has or will have access to the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny them access to any Detainee or group of Detainees.

Fee Waiver

The Requester qualifies as "representatives of the news media" and the records are not sought for commercial use. Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II). These organizations are "entit[ies] that gather . . . information

of potential interest to a segment of the public, use . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute . . . that work to an audience." *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The CCR is a legal and public education not-for-profit organization that engages in litigation, legal research, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. These materials are available through CCR's Development and Education & Outreach Departments. CCR also operates a website, www.ccr-ny.org, that addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public.

The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

We also request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii). This Request aims at furthering public understanding of government conduct, and specifically to help the public determine whether or not the government's commitment to domestic and international proscriptions against torture is honored in practice.

As indicated above, numerous news articles reflect the significant public interest in the records we seek. See articles cited *supra*; see also *Answers about Torture*, Washington Post, Mar. 16, 2003, at B06 ("The Bush administration has categorically denied that it is torturing people. But it has offered no details regarding its policies toward interrogations. . . . The secrecy surrounding U.S. policy makes any objective assessment of these allegations impossible. . . . The public is entitled to a fuller understanding."). Disclosure of the requested records will contribute significantly to the public's understanding of government conduct.

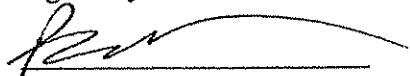
\* \* \*

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter.

Please respond to Barbara Olshansky, Deputy Legal Director, Center for Constitutional Rights, 666 Broadway, 7<sup>th</sup> Floor, New York, New York 10012.

Signed by:



BARBARA OLSHANSKY  
RACHEL MEEROPOL  
MICHAEL RATNER  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012  
Tel: (212) 614-6439  
Fax: (212) 614-6499



**U.S. Department of Justice**

*Washington, D.C. 20530*

**MAR 04 2005**

Barbara Olshansky  
Deputy Legal Director  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

Dear Ms. Olshansky:

Your Freedom of Information Act and/or Privacy Act (FOIA/PA) request was received by this office which serves as the receipt and referral unit for FOIA/PA requests addressed to the Department of Justice (DOJ). Federal agencies are required to respond to a FOIA request within twenty business days. This period does not begin until the request is actually received by the component within the DOJ that maintains the records sought.

We have referred your request to the DOJ component(s) you have designated or, based on descriptive information you have provided, to the component(s) most likely to have the records. The component(s) to which your request has been forwarded are indicated on the enclosed FOIA/PA Referral/Action Slip. All future inquiries concerning the status of your request should be addressed to the component(s) which now has your letter for response. For your convenience, we have enclosed the List of Department of Justice Components, Functions and Records Maintained.

Sincerely,

A handwritten signature in black ink that reads "Ronald L. Deacon".

Ronald L. Deacon, Director  
Facilities and Administrative  
Services Staff  
Justice Management Division

Enclosures  
Freedom of Information Act/Privacy Act  
Referral/Action Slip  
List of Department of Justice Components,  
Functions and Records Maintained

U.S. Department of Justice  
Justice Management Division

**Freedom of Information Act/Privacy Act  
Referral/Action Slip**

Clerk: E. White

Date:

MAR 04 2005

Organization: JMD/FASS

Building & Room: LOC, Room 113

- | To  | From   |
|---|--|
| <input checked="" type="checkbox"/> <input type="checkbox"/> Office of Information & Privacy<br><u>The Attorney General</u><br>_____<br>_____ | <input type="checkbox"/> Immigration Review, Executive Office for<br><input type="checkbox"/> Inspector General, Office of<br><input checked="" type="checkbox"/> Intelligence Policy and Review, Office of<br><input type="checkbox"/> INTERPOL, U.S. National Central Bureau<br><input type="checkbox"/> Justice Management Division Staff: _____<br><input type="checkbox"/> Justice Programs, Office of<br><input type="checkbox"/> Legal Counsel, Office of<br><input type="checkbox"/> National Drug Intelligence Center<br><input type="checkbox"/> Pardon Attorney, Office of<br><input type="checkbox"/> Professional Responsibility Advisory Office<br><input checked="" type="checkbox"/> Professional Responsibility, Office of<br><input type="checkbox"/> Solicitor General, Office of<br><input type="checkbox"/> Tax Division<br><input checked="" type="checkbox"/> U.S. Attorneys, Executive Office for<br><input type="checkbox"/> U.S. Marshals Service<br><input type="checkbox"/> U.S. Parole Commission<br><input type="checkbox"/> U.S. Trustees, Executive Office for<br><input type="checkbox"/> _____ |
| <input type="checkbox"/> <input type="checkbox"/> Antitrust Division  |  |
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| <input type="checkbox"/> <input type="checkbox"/> Federal Bureau of Prisons   |  |
| <input type="checkbox"/> <input type="checkbox"/> Federal Bureau of Investigation   |  |
| <input type="checkbox"/> <input type="checkbox"/> Federal Detention Trustee, Office of  |  |
| <input type="checkbox"/> <input type="checkbox"/> Foreign Claims Settlement Commission  |  |

Requester: Barbara Olshansky

Ref: \_\_\_\_\_

Date of Request: December 21, 2004

Received By: FOIA/PA Referral Unit

Type of Request: FOIA

Remarks: Requester advised of this referral.



**U.S. Department of Justice**  
Office of Intelligence, Policy and Review

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Washington, D.C. 20530

Barbara Olshansky  
Center for Constitutional Rights  
666 Broadway  
New York, NY 10012

MAR 29 2005

Re: FOIA/PA #5-08

Dear Ms. Olshansky:

This responds to your December 21, 2004 Freedom of Information Act (FOIA) request for access to records pertaining to the "identity of, transport and location(s) of, authority over, and treatment of all unregistered, CIA, and ghost detainees interdicted, interrogated, and detained by any agency or department of the United States." You also requested expedited treatment of your FOIA request and the Office of Public Affairs granted your request for expedited treatment. Accordingly, your request was reviewed ahead of others routinely processed on a first-in, first-out basis.

The Office of Intelligence Policy and Review (OIPR) provides legal advice to the Attorney General and the United States intelligence agencies regarding questions of law and procedure that relate to U.S. intelligence activities; performs review functions of certain intelligence activities; and prepares and presents applications for electronic surveillance and physical search to the United States Foreign Intelligence Surveillance Court. It has been determined that the fact of the existence or non-existence of records concerning the matters relating to those set forth in your request is properly classified under Executive Order 12958, as amended. Accordingly, we can neither confirm nor deny the existence of records responsive to your request pursuant to 5 U.S.C. § 552(b)(1).

If you are not satisfied with this response you may administratively appeal by writing to the Co-Director, Office of Information and Privacy, United States Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001, within sixty days from the date of this letter. Both the letter and envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

James A. Baker  
Counsel for Intelligence Policy

VIA Fax

May 31, 2005

Co-Director  
Office of Information and Privacy  
United States Department of Justice  
Flag Building , Suite 570  
Washington D.C. 20530-0001

Re: Freedom of Information Act Appeal FOIA/PA #5-08

Dear Co-Director of Information and Privacy,

I am writing to appeal the decision by the Office of Intelligence, Policy and Review to neither confirm nor deny the existence or non-existence of records pertinent to our request under the Freedom of Information Act ("FOIA") in the above-referenced matter as set forth in the Office of Intelligence, Policy and Review ("Response"), attached hereto as Exhibit A ("Ex. A"). This administrative appeal is filed based on Section 552(a)(6) of FOIA. The Center for Constitutional Rights requested these records under FOIA in a letter dated December 21, 2004 ("Request"), attached hereto as Exhibit B ("Ex. B"). In the denial of our FOIA request, your office stated,

It has been determined that the fact of the existence or non-existence of records concerning the matters relating to those set fourth in your request is properly classified under Executive Order 12958, as amended. Accordingly we can neither confirm nor deny the existence of records responsive to your request pursuant to 5 U.S.C § 552(b)(1).<sup>1</sup>

The Center understand your office's response to mean that you have relied upon Exemption 1 under 5 U.S.C. § 521(b)(1). Reliance on this exemption to FOIA's disclosure obligations requires that the materials in question be (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order. See 5 U.S.C. § 5521(b)(1), *see also American Civil Liberties Union v DOJ 265 F. Supp. 2d 20 (D.D. C. 2003)*.

By responding that you neither confirm nor deny the existence or nonexistence of the requested information, you claim that information related to the existence or nonexistence of each of the Center's seventeen requests, or any portion of these requests, is itself classified. The D.C. Circuit Court has construed such a government response to be as "if [we] had requested and been refused permission to see a document which says

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<sup>1</sup> See Exhibit A.

either ‘Yes, we have records related to [our request]’ or ‘No, we do not have any such records.’” Phillippi v. CIA, 178 U.S. App. D.C. 243, (D.C.C. 1976).

In your office’s initial written response you failed to specify the provision of Sec. 1.4 of Executive Order 12958, as amended, upon which you were relying. While your office has invoked your ability to neither confirm nor deny the existence or nonexistence of requested information under Sec 3.6(a), whenever the fact of its existence or nonexistence is itself classified under Executive Order 12958, as amended, such reliance does not exempt you from likewise meeting the requirements of Sec. 1.4 which sets out the Order’s authorized classification categories. See Exec. Order No. 12958 as amended by Exec. Order No. 13292 Sec. 1.1(c); Washington Post v. United States Dep’t of Defense, 766 F. Supp. 1, (D.D.C.1991). Because your office failed to specify the relevant provision of Sec 1.4, in your written response to the Center’s request, we were forced to contact your office directly in order to ascertain the full meaning of your response. In your subsequent response to our inquiry, your office’s FOIA Coordinator Ms. GayLa D. Sessoms indicated that your office had denied our request under Executive Order 12958, as amended, by relying on Sec. 1.4(c) “intelligence activities (including special activities), intelligence sources or methods, or cryptology”.

Reliance on Exemption 1 requires that disclosure of the requested information “reasonably could be expected to result in damage to national security.” ACLU v. United States DOJ, 265 F. Supp. 2d 20, at 28 (D.C.C. 2003) (quoting Exec. Order No. 12,958 §§ 1.2, 1.5 as amended Sec 1.1(4)); Washington Post v. United States Dep’t of Defense, 766 F. Supp. 1, (D.D.C. 1991). Based on this understanding of your office’s response to the Center’s request, we must strongly contest your initial denial of our FOIA request on several grounds. In the first instance, the Center contests that documents which merely state the existence or non-existence of other records pertinent to our request regarding information related to Unregistered, CIA, and/or “Ghost” Detainees “concern” “intelligence activities (including special activities), intelligence sources or methods, or cryptology” under Sec. 1.4 of Executive Order 12958 as amended. Merely revealing that said documents do or do not exist does not “concern” intelligence activities, because doing so will not in any way affect these activities. Even were it found to “concern” national security in some tenuous manner, we cannot accept that the release of limited records, or “reasonably segregable portions” of these records, “reasonably could be expected to result in damage to national security.” ACLU v. United States DOJ, 265 F. Supp. 2d 20 at 28 (quoting Exec. Order No. 12,958 Sec. 1.2, 1.5, as amended Sec. 1.1(4)).

As held in Nuclear Control Institute v. Nuclear Regulatory Commission, if the government denies disclosure merely because in its view ‘confirmation or denial of the existence of the document is so sensitive that its disclosure would cause damage to the national security”, the disclosure of its existence must itself “reasonably [be] expected to result in damage to national security”. Nuclear Control Institute v. Nuclear Regulatory Commission 563 F. Supp. 768 (DDC C 1983).

Revealing the mere existence or non-existence of records or “reasonably segregable portions” of records that only state the existence or non-existence of the information the Center requested, will not “reveal classified sources or methods of obtaining foreign intelligence” as would be grounds for a “glomar response” under

previous case law. See Phillippi v. CIA, 178 U.S. App. D.C. 243, (D.C.C. 1976); Frugone v. CIA, 335 U.S. App. D.C. 144, (D.C.C. 1999).

Even if we were to accept *arguendo* that the disclosure of some of these records could potentially harm national security, the “reasonably segregable portions” of records that would not do so must be released. As you are fully aware, “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt... unless they are *inextricably intertwined* with exempt portions”. Mokhiber v. United States Dep’t of the Treasury, 335 F. Supp. 2d 65 (D.C.C. 2004), *see also Krikorian v. Department of State*, 299 U.S. App. D.C. 331, (D.C. C., 1993). It does not seem within the realm of possibility that every portion of every single one of the denied records could be so *inextricably intertwined* with information that even if appropriately redacted they “reasonably could be expected to result in damage to national security” when they merely state the existence or non-existence of the specifically requested records. ACLU v. United States DOJ, 265 F. Supp. 2d 20, at 28 (quoting Exec. Order No. 12,958 §§ 1.2, 1.5 as amended 1.1(4)).

Your office cannot rely on negative consequences from the creation of a Vaughn index as a basis for your refusal to confirm or deny the existence or non-existence of the requested records. See Vaughn v. Rosen, 484 F.2d 820, 827. This is not a case in which a good faith argument could be made that the creation of a Vaughn index solely of the records (or reasonably segregable portions of records) which solely confirm the existence or nonexistence of the requested records, would result in “inferences from Vaughn indexes or selective disclosure... reveal[ing] classified sources or methods of obtaining foreign intelligence.” *See, e.g., Frugone v. CIA*, 169 F.3d 772 (D.C.C., 1999); Minier v. CIA, 88 F.3d 796 (9th Cir. 1996). Such a disclosure is not specific enough that it would reveal information helpful to our adversaries. The general nature of this type of disclosure would also not reveal information that could fit under the “mosaic theory” cited in Nat'l Security v. CIA, 331 F.3d 918, at 928.

In the second instance, your office’s withholding of these records under Sec 3.6(a) of 12958, as amended, is invalid in light of the existence of this information within the public domain. As held in Davis v. U.S. Department of Justice, “the Government cannot rely on an otherwise valid exemption claim to justify withholding information that is in the “public domain.” Davis v. U.S. Depart. of Justice, 968 F.2d 1276, 1279 (D.C. Cir. 1992). This is because “suppression of already well publicized information would normally frustrate the pressing policies of the Freedom of Information Act without even arguably advancing countervailing considerations”. Washington Post v. United States Dep’t of Defense, 766 F. Supp. 1; Founding Church of Scientology of Washington, D.C., Inc. v. National Security Agency, 610 F.2d 824, 831 - 32 (1979); Afshar v. Dep’t of State, 702 F.2d 1125, 1130 (1983); Lamont v. Dep’t of Justice, 475 F. Supp. 761, 772 (S.D.N.Y. 1979); *see also Phillips v. Central Intelligence Agency*, 655 F.2d 1325, 1332 (1981) (Mikva, J., concurring). Moreover, as to the Executive Order 12958, as amended, upon which your office relies, when attempting to justify maintaining classification of information already released into the public domain, it must also be the case that this information may “reasonably be recovered” from the public domain. Exec. Order No. 12958 as amended by Exec. Order No. 13292 Sec 1.7(c)(2). This information in question cannot be “reasonably retrieved” from the public domain because it has been too widely

disseminated.. The existence or non-existence of the requested records fails all of these requirements because the evidence of some of the requested records is publicly known.

Although the Center bears the burden of asserting that such information is in the public domain, and must "point to 'specific' information identical to that being withheld." Davis v. U.S. Depart. of Justice, 968 F.2d 1276, 1279 (D.C. Cir. 1992). This burden is easily met in the instant case. As the Center can easily demonstrate, the fact that documents relevant to our request actually exist is clearly already within the public domain, and renders a "glomar" response inadequate to our request.

Secretary of Defense Rumsfeld's approval of the creation of a specific ghost detainee, as well as the existence of the widespread practice of holding Unregistered, CIA, and/or "Ghost" Detainees, has been made known to the public through media reports, the Secretary's own statements, and the statements of other prominent government officials.<sup>2</sup> Secretary of Defense Donald Rumsfeld publicly stated on June 17, 2004 that he had approved the creation of a specific "ghost detainee", the very type which is the subject of the Center's request for information.<sup>3</sup> This public disclosure by the Secretary of Defense is necessarily an admission of the existence of the records necessary to authorize such a status. The position taken by your office that the release of records merely confirming the "existence or non-existence" of records pertinent to ghost detainees would create "further damage to the national security" is meritless against the backdrop of this direct public disclosure, because the *existence* of at least some of our request records pertinent to at least one detainee is uncontestedly public knowledge. Washington Post v. United States Dep't of Defense, 766 F. Supp. 1, at 9.

Secretary of Defense Rumsfeld's disclosure was an official public disclosure, and does not fall under the ambit of unofficial disclosures under Military Audit Project, 656 F.2d, 724, 744. Moreover, it cannot be argued that "unresolved doubt may still remain in the minds of the United States' potential and actual adversaries" as to the existence of at least some records pertinent to at least some detainees. Military Audit Project, 656 F.2d 724, at 744; accord Abbotts v. Nuclear Regulatory Comm'n, 766 F.2d 604, 608 (1985). After the Secretary's public disclosure that he personally authorized a ghost detainee, the existence or non-existence of a record of some relevant information cannot arguably be said to be a contested fact. Even if the government were to argue that the more specific records we have requested would remove "unresolved doubt... in the minds of the United States' potential and actual adversaries", it cannot be argued that merely releasing some of those records, or the reasonably segregable parts of records, that *do no more than confirm the existence or non-existence of the requested records*, could be said to do so. Military at 744.

In this case the public is already aware of the existence of at least *one record* authorizing the creation of *at least one ghost detainee*. This record fits precisely under our requests for information and is not properly excludable under Salisbury v. United

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<sup>2</sup> See eg., *Disappeared in Iraq*, BOS. GLOBE, Jun. 18, 2004; Oliver Burkeman, *Rumsfeld defends treatment of 'ghost detainees'*, Guardian, Sep. 11, 2004 , at 19.

<sup>3</sup> See Dana Priest & Bradley Graham, *U.S. Struggled Over How Far to Push Tactics*, WASH. POST, Jun. 24, 2004, available at <http://www.washingtonpost.com/ac2/wp-dyn/A756-2004Jun23?language=printer>; Pamela Hess, *CIA won't share info on ghost detainees*, UNITED PRESS INTERNATIONAL, Sep. 9, 2004; Elise Lawmakers troubled by disclosure of more 'ghost detainees', ASSOCIATED PRESS, Sep. 10, 2004; Elise Ackerman, *Rumsfeld admits to holding 'ghost detainees'*, KNIGHT RIDDER/TRIBUNE NEWS SERVICE , Jun. 18, 2004.

States, 690 F.2d at 971 - 72. Nor can a record of such a general nature fall under the holding in Afshar, which held that "revealing the context in which the information is discussed would itself reveal additional information, release of which is harmful to the national security". Afshar v. Department of State, 702 F.2d 1125, 1130 (D.C. Cir. 1983).

The Center's view is further supported by the fact that after an even more expansive internal review of the phenomenon, the Secretary of Defense's own office (the Pentagon), has publicly acknowledged the holding of as many as 100 ghost detainees.<sup>4</sup> According to a statement by Senator Patrick Leahy, the Pentagon's own Fay-Jones report/investigation,

[R]evealed that the ghost detainee problem was far more pervasive than the Defense Department had previously acknowledged. General Kern, the investigation's appointing officer, testified before the Senate Armed Services Committee that there could be as many as 100 ghost detainees, but his panel could not thoroughly investigate the matter because the CIA refused to cooperate in the inquiry.<sup>5</sup>

Moreover, the existence of specific documents which include our requested materials has been publicly acknowledged by Congress. The Congressional Judiciary Committee has not only publicly referenced these documents, but members of the committee have adamantly requested them.

Among the 23 memos, reports and letters identified in the subpoena request was a directive issued by Rumsfeld to Gen. James Hill, the chief of the Southern Command, which coordinates US military operations in Latin America. The title of the document was "Coercive interrogation techniques that can be used with approval of the Defense Secretary." (see Requests 1,3,5,6,7,8,14,15).

A second document, issued by the legal adviser to Lt. Gen. Ricardo Sanchez, the senior US military officer in Iraq, to military intelligence and military police contingents at the Abu Ghraib prison bore the title, "New plan to restrict Red Cross access to Abu Ghraib."<sup>6</sup> (see Requests 1-14).

To argue that the mere existence or non-existence of all records pertinent to our requests is not in the public domain is simply incorrect. Although your office may likely take the view (which the Center contests) that more specific records should be excludable, the refusal to release even just those records, or the reasonably segregable portions of

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<sup>4</sup> See Oliver Burkeman, *Rumsfeld defends treatment of 'ghost detainees'*, Guardian, Sep. 11, 2004 , at 19.

<sup>5</sup> See Statement of Senator Patrick Leahy On Abuse of Foreign Detainees, Oct. 1, 2004, available at <http://leahy.senate.gov/press/200405/050504c.html>.

<sup>6</sup> See Bill Van Auken, Rumsfeld, *Rice tied to torture in Iraq*, Jun. 19, 2004, available at <http://www.wsws.org/articles/2004/jun2004/tort-j19.shtml>.

records, that simply admit the existence or non-existence of requested documents, does not withstand the weight of significant scrutiny.

In the second instance, aside from your office's refusal to confirm the existence or non-existence of the requested records, the Center likewise contests your implicit holding that the release of the request records, beyond those that merely confirm the existence or non-existence of the requested records "reasonably could be expected to result in damage to national security." ACLU v. United States DOJ, 265 F. Supp. 2d 20 at 28 (*quoting* Exec. Order No. 12,958 §§ 1.2, 1.5 as amended Sec 1.1(4)).

While your reliance on a harm to national security within the ambit of "intelligence activities (including special activities), intelligence sources or methods, or cryptology" may be relevant to *some* of our requested information, we cannot believe that such a claim would stand scrutiny as to all, or reasonably segregable parts of all, *seventeen requests* for information. In our original communication of December 21, 2004 we requested:

1. All records that propose, authorize, report on, or describe, or that discuss the legality or appropriateness of holding Unregistered, CIA, and/or "Ghost" Detainees in special CIA or other agency facilities for purposes of interrogation.
2. All records that discuss the creation, use and/or closure of the various centers at which the CIA and/or any other agency of the federal government has held, and/or continues to hold Unregistered, CIA, and/or "Ghost" Detainees.
3. All records reflecting the use of any private companies, other U.S. officials or citizens, and/or officials or citizens of any foreign governments regarding the interdiction, arrest, transfer, detention, questioning, interrogation, and/or other treatment of any Unregistered, CIA, or "Ghost" Detainee
4. All records reflecting standards or policies governing who may be held as an Unregistered, CIA, and/or "Ghost" Detainee and what procedural protections or guidelines, if any, are used to review the arrest, detention, and treatment of these Detainees.
5. Every location from September 11, 2001 to the present at which the CIA or any other governmental agency has been or is now holding Unregistered, CIA, or "Ghost" Detainees, the dates of operation of each such facility, whether the facility remains open at this time, the purpose of the facility, a complete list of the Detainees held at the facility (both past and current with indications as to this status), a list of techniques used for interrogation at each facility, and a list of personnel who have worked and those who continue to work at each Center.
6. All records concerning the treatment of the Unregistered Detainees held in any CIA or other governmental facility in the world. Please include all records discussing the following interrogation methods at such facilities, including but not limited to records discussing their legality or appropriateness: using "stress and duress" techniques on Detainees; using force against them; subjecting them to

physical injury; requiring them to stand or kneel for prolonged periods; depriving them of sleep, food or water; holding them in awkward and painful positions for prolonged periods; denying them painkillers or medical treatment; administering or threatening to administer mind altering substances, "truth serums" or procedures calculated to disrupt the senses or personality; subjecting them to prolonged interrogation under bright lights; requiring them to be hooded, stripped, or blindfolded; binding their hands and feet for prolonged periods of time; isolating them for prolonged periods of time; subjecting them to violent shaking; subjecting them to intense noise; subjecting them to heat or cold; or threatening harm to them or other individuals.

7. All records setting forth or discussing policies, procedures or guidelines<sup>7</sup> relating to the detention, questioning, interrogation, transfer, and treatment (including, but not limited to the interrogation with the use of torture or other cruel, inhuman or degrading treatment or punishment) of the Unregistered, CIA, and "Ghost" Detainees, including but not limited to policies, procedures or guidelines relating to the methods listed above.
8. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that CIA Detainees were not, are not or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment. Please include all records indicating how any such policies, procedures or guidelines were, are, or will be, communicated to personnel involved in the interrogation or detention of CIA Detainees.
9. All records indicating or discussing actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above.
10. All records indicating or discussing serious injuries, illnesses, and/or deaths of any Unregistered, CIA, and/or "Ghost" Detainees.
11. All records, including autopsy reports and death certificates, relating to the deaths of any Unregistered, CIA, and/or "Ghost" Detainees.
12. All records relating to investigations, inquiries, or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
13. All records relating to the actual or alleged torture or other cruel, inhuman or degrading treatment or punishment of any Unregistered, CIA, and/or "Ghost" Detainee.

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<sup>7</sup> In this Request, the phrase "policies, procedures or guidelines" means policies, procedures or guidelines that were in force on September 11, 2001 or that have been put in place since that date.

14. All records relating to policies, procedures or guidelines governing the role of health personnel in the interrogation of the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to the role of health personnel in the medical, psychiatric, or psychological assessment of Detainees immediately before, during or immediately after interrogation. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.
15. All records relating to medical, psychiatric or psychological assessment of any Unregistered, CIA, and/or "Ghost" Detainee or guidance given to interrogators by health personnel immediately before, during or immediately after the interrogation of any Unregistered, CIA, and/or "Ghost" Detainees.
16. All records indicating whether and to what extent the International Committee for the Red Cross ("ICRC") had, has or will have access to Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny the ICRC access to any Detainee or group of Detainees.
17. All records indicating whether and to what extent any other non-governmental organization or foreign government had, has or will have access to the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny them access to any Detainee or group of Detainees.

For each and every one of our 17 specific requests we contest the following:

- 1) That the classified documents were properly classified and "concern" "intelligence activities (including special activities), intelligence sources or methods, or cryptology" under Exec. Order No. 12,958 Sec. 1.2, 1.5 as amended 1.4.
- 2) That the release of all of the requested records "reasonably could be expected to result in damage to national security" as claimed by your office. ACLU v. United States DOJ, 265 F. Supp. 2d 20 at 28 (quoting Exec. Order No. 12,958 §§ 1.2, 1.5 as amended Sec 1.1(4)).
- 3) And that even accepting arguendo that the requested records "reasonably could be expected to result in damage to national security", that every single one of the "reasonably segregable portion" of each record pertinent to all of our 17 requests are so '*inextricably intertwined*' with exempt portions" that none could be released without harming national security. Mokhiber v. United States Dep't of the Treasury, 335 F. Supp. 2d 65 (D.D.C.2004), see also Krikorian v. Department of State, 299 U.S. App. D.C. 331, (D.C.C. 1993).

In addition to these three points, we have made additional observations regarding each of our requests. Each request is addressed in turn.

- 1) *All records that propose, authorize, report on, or describe, or that discuss the legality or appropriateness of holding Unregistered, CIA, and/or "Ghost" Detainees in special CIA or other agency facilities for purposes of interrogation.*

Even if you were to successfully rely on Sec. 1.4(c) of Executive Order 12958, as amended, as your basis for refusal of this request, you are still required to submit information responsive to the above request that relates solely to the aspects of the detention that do not "concern" "intelligence activities (including special activities), intelligence sources or methods, or cryptology". Within the ambit of the requested records not all of the records, and/or all portions of records, "concern" intelligence activities and/or intelligence sources or methods. While these issues may play a part in the detention of the aforementioned detainees, an element of these records is also purely focused on the legality or appropriateness of holding them irrespective of the intelligence implications.

- 2) *All records that discuss the creation, use and/or closure of the various centers at which the CIA and/or any other agency of the federal government has held, and/or continues to hold Unregistered, CIA, and/or "Ghost" Detainees.*

The release of records regarding both publicly confirmed and/or non-confirmed centers cannot "reasonably [be] expected to result in damage to national security." ACLU v. United States DOJ, 265 F. Supp. 2d 20 at 28 (quoting Exec. Order No. 12,958 Sec. 1.2, 1.5 as amended Sec 1.1(4)).

As stated in "Ending Secret Detentions", a report by Human Rights First, many detainee detention facilities have been publicly confirmed by the United States government. These facilities include:

- Collection Center at the U.S. Air Force Base in Bagram.
- Detention facility in Kandahar (an intermediate site, where detainees await transport to Bagram).
- Approximately 20 outlying transient sites (used to hold detainees until they may be evacuated either to Kandahar or Bagram).
- U.S. Naval Base at Guantanamo Bay
- Naval Consolidated Brig (Charleston, South Carolina). This is where the U.S.

Government is detained at least three individuals as enemy combatants.: two U.S. citizens, Jose Padilla and Yaser Hamdi, as well as Ali Saleh Kahlah al-Marri, a Qatari national residing in the United States.<sup>8</sup>

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<sup>8</sup> See Ending Secret Detentions, Human Rights First, 2004, available at [http://www.humanrightsfirst.org/us\\_law/PDF/EndingSecretDetentions\\_web.pdf](http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf)

Additionally, subsequent reports have stated that ghost detainees have also been held at Abu Ghraib<sup>9</sup>

The release of information similar to previously released information cannot in this case be “reasonably [expected] to result in damage to national security.” ACLU v. United States DOJ, 265 F. Supp. 2d 20 at 28 (quoting Exec. Order No. 12,958 §§ 1.2, 1.5 as amended Sec 1.1(4)). Even if your office disagrees, such a claim cannot be made as to *past* facilities which are no longer operational.

Another basis of our appeal is that withholding the requested information regarding the facilities at Guantanamo and Abu Ghraib does not pass scrutiny. Guantanamo and Abu Ghraib have both been the subject of immense public scrutiny and discussion as well as litigation in open court. It cannot be that the release of *all* documents related to these facilities will *further* increase any damage to national security not already done by the current publicly available information. Any finding that the public release of further information regarding Guantanamo or Abu Ghraib, and/or any other known and confirmed facility, must cause *more harm* than that already caused by the initial confirmation of the facility to support a finding that it “reasonably could be expected to result in damage to national security.” In Nuclear Control Institute v. United States Nuclear Regulatory, the court implied that to find that additional official disclosures regarding the topic of an unauthorized disclosure “reasonably could be expected to result in damage to national security” required the creation of additional harm beyond that caused by the initial unauthorized release. Nuclear Control Institute v. Nuclear Regulatory Commission, 563 F. Supp. 768 (D. C 1983) (*citing Stein v. United States Department of Justice*, 662 F.2d 1245 (7th Cir. 1981); Military Audit Project v. Casey, 211 U.S. App. D.C. 135, 656 F.2d 724 (D.C. Cir. 1981)). Applying this holding to authorized releases, it cannot be that additional authorized releases of similar information can be exempted from disclosure when they create no *new* harm to national security, not already caused by the previous disclosure.

In addition, the release of confirming records regarding the existence of suspected sites are an “open secret”, and cannot “reasonably expected to result in damage to national security.” Washington Post v. United States Dep’t of Defense, 766 F. Supp. 1, 14. The previous willingness of the government to disclose information regarding many other detention facilities would weigh against a determination that the release of any and all information regarding undisclosed detention facilities would be harmful to national security. With each similar previous release of information, the potential additional harm from each new disclosure decreases. The detention facilities that have been identified by non-government sources, but have not been officially confirmed by the government include:

Detention facilities in:

- Asadabad\*

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<sup>9</sup> See Dana Priest & Bradley Graham, *U.S. Struggled Over How Far to Push Tactics*, WASH. POST, Jun. 24, 2004, available at <http://www.washingtonpost.com/ac2/wp-dyn/A756-2004Jun23?language=printer>; Pamela Hess, *CIA won't share info on ghost detainees*, UNITED PRESS INTERNATIONAL, Sep. 9, 2004; Elise Lawmakers troubled by disclosure of more 'ghost detainees', ASSOCIATED PRESS, Sep. 10, 2004; Elise Ackerman, *Rumsfeld admits to holding 'ghost detainees'*, KNIGHT RIDDER/TRIBUNE NEWS SERVICE , Jun. 18, 2004.

- Kabul\*
- Jalalabad\*
- Gardez\*
- Khost\*
- CIA interrogation facility at Bagram
- CIA interrogation facility in Kabul  
(known as .the Pit.)

\*These sites may be part of the approximately 20 .outlying transient sites..

- Kohat (near the border of Afghanistan)
- Alizai
- Al Jafr Prison (cia interrogation facility)
- U.S. Naval Ships: USS Bataan and USS Peleliu.

Subsequent reports have also identified Diego Garcia as an additional detention facility.<sup>10</sup>

*3) All records reflecting the use of any private companies, other U.S. officials or citizens, and/or officials or citizens of any foreign governments regarding the interdiction, arrest, transfer, detention, questioning, interrogation, and/or other treatment of any Unregistered, CIA, or "Ghost" Detainee.*

The refusal to confirm or deny the existence or non-existence of any record related to any “private companies, other U.S. officials or citizens, and/or officials or citizens of any foreign governments” cannot be based on a fear that the release “reasonably could be expected to result in damage to national security”. ACLU v. United States, 265 F. Supp. 2d 20 at 28 (quoting Exec. Order No. 12,958 §§ 1.2, 1.5 as amended Sec 1.1(4)). In addition, such a claim cannot squared with the pre-existing public knowledge of the CIA “renditions jet(s)”. The existence and movements of two CIA chartered jets have been extensively reported in the media.<sup>11</sup> Moreover, ownership of the jet by *specific companies* has also been reported and made public.<sup>12</sup> One of the former owners has even publicly addressed and expressed regret as to the involvement of his company in the use of these jets.<sup>13</sup> To say that the release of *all* information by the government involving this request would “reasonably [be] expected to result in damage to national security” in light of this degree of public awareness regarding the specifics of the “renditions jet” is unsubstantiated. ACLU Although the government has relied upon intelligence activities as its specific basis for classification under Executive Order 12958, as amended, Sec.1.4(c), it is additionally clear that not all aspects of the use the cited jet(s) are related to intelligence activities. There is an aspect of the use of the jets that is strictly related to *transportation* and/or non-intelligence activities. Those records regarding the jet which do not relate to intelligence activities must be released.

<sup>10</sup> See Linda S. Heard, *Diego Garcia: Paradise Isle or Britain's Shame*, GULF NEWS, Jul. 6, 2004, available at [http://www.humanrightsfirst.org/us\\_law/detainees/end\\_abuse/scottish\\_mp\\_statement.htm](http://www.humanrightsfirst.org/us_law/detainees/end_abuse/scottish_mp_statement.htm)

<sup>11</sup> See Mystery jet ferries men to torture: CIA suspected: 'Ghost' company jet seen carrying hooded passengers, AGENCIE FRANCE-PRESSE; Farah Stockman, *Terror Suspects' Torture Claims Have Mass. Link*, Dec. 29, 2004; BOS. GLOBE, Nov. 29, 2004.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

*4) All records reflecting standards or policies governing who may be held as an Unregistered, CIA, and/or "Ghost" Detainee and what procedural protections or guidelines, if any, are used to review the arrest, detention, and treatment of these Detainees.*

The Center is especially perplexed about how disclosure of procedural protections or guidelines could *harm* national security. Simply stating the level of protections provided to detainees is "security neutral". Moreover, the release of any elements of this request will not allow "[analysis] of bits of data into a 'mosaic' by skilled intelligence agents who may receive FOIA- released documents" as has been previously relied upon as a basis for withholding even fragmentary information See, e.g., Nat'l Security, 331 F.3d 918, 928 (and cases cited therein). Here, the guidelines or procedural protections are not relevant in any manner to the safety and security of our nation, or for that matter, relevant to our intelligence activities under Sec.1.4(c).

The efforts of our intelligence officers to gain information through interrogations, is distinct from the procedural protections or guidelines regarding the detention and treatment of these detainees. To hold otherwise would be to argue that every element of the record relating to the procedural protection and/or guidelines used in arresting *and* detaining *and* treatment of detainees is so inextricably tied to the efforts of our intelligence officers that it "reasonably could be expected to result in damage to national security". The Center contests, and is perplexed by the assertion that knowledge of a person's level of procedural protections or analogous guidelines can be found to implicate *damage to national security concerns*, let alone that that such an assertion would be "reasonable".

*5) Every location from September 11, 2001 to the present at which the CIA or any other governmental agency has been or is now holding Unregistered, CIA, or "Ghost" Detainees, the dates of operation of each such facility, whether the facility remains open at this time, the purpose of the facility, a complete list of the Detainees held at the facility (both past and current with indications as to this status), a list of techniques used for interrogation at each facility, and a list of personnel who have worked and those who continue to work at each Center.*

The Center contests that the release of this information would in any way implicate a harm to national security. The media has reported with great regularity and specificity the locations of United States detention facilities around the world. The physical locations of the great majority of detention facilities would not implicate nationals security because this information is already in the public domain. Even if holding *arguendo* that the release of the physical locations of the detention facilities could "reasonably [be] expected to harm national security", either the specific and/or general physical locations of the facilities could be redacted from the documents, while the rest of the information including: the detainees held at a given facility, the dates of operation of each facility, the purpose of each facility, as well as list of techniques used for interrogation, could be released.

- 6) All records concerning the treatment of the Unregistered Detainees held in any CIA or other governmental facility in the world. Please include all records discussing the following interrogation methods at such facilities, including but not limited to records discussing their legality or appropriateness: using "stress and duress" techniques on Detainees; using force against them; subjecting them to physical injury; requiring them to stand or kneel for prolonged periods; depriving them of sleep, food or water; holding them in awkward and painful positions for prolonged periods; denying them painkillers or medical treatment; administering or threatening to administer mind altering substances, "truth serums" or procedures calculated to disrupt the senses or personality; subjecting them to prolonged interrogation under bright lights; requiring them to be hooded, stripped, or blindfolded; binding their hands and feet for prolonged periods of time; isolating them for prolonged periods of time; subjecting them to violent shaking; subjecting them to intense noise; subjecting them to heat or cold; or threatening harm to them or other individuals.

Your office's blanket denial of information regarding treatment of detainees is unsupported in light of the official disclosure by Secretary Rumsfeld of a list of approved interrogation techniques at Guantanamo, the public review of interrogation techniques by the Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations, as well as the release of official documents regarding prisoner treatment at Abu Ghraib.<sup>14</sup> Moreover, there is extensive information available with references to specific documents regarding the progression of the government's interrogation techniques. See generally, "Law of War" at [http://lawofwar.org/interrogation\\_techniques.htm](http://lawofwar.org/interrogation_techniques.htm). In light of the high level of public knowledge regarding detainee interrogations, the Center contests that the release of the requested information, especially regarding treatment at Guantanamo and Abu Ghraib, "reasonably could be expected to harm national security". Moreover, the Center contests that this harm could be directed at "intelligence activities." Your office must hold that the release of the requested information would create harm *additional* to that already caused by similar previous releases, a burden it cannot carry in this case.

- 7) All records setting forth or discussing policies, procedures or guidelines<sup>15</sup> relating to the detention, questioning, interrogation, transfer, and treatment (including, but not limited to the interrogation with the use of torture or other cruel, inhuman or degrading treatment or punishment) of the Unregistered, CIA, and "Ghost" Detainees, including but not limited to policies, procedures or guidelines relating to the methods listed above.

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<sup>14</sup> See Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations, 6 March, 2003. <http://www.ccr-ny.org/v2/reports/docs/PentagonReportMarch.pdf>; "Law of War" at [http://lawofwar.org/interrogation\\_techniques.htm](http://lawofwar.org/interrogation_techniques.htm).

<sup>15</sup> In this Request, the phrase "policies, procedures or guidelines" means policies, procedures or guidelines that were in force on September 11, 2001 or that have been put in place since that date.

The Center contests the non-disclosure of this request for the same reasons as listed in regards to paragraph 6 above.

- 8) *All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that CIA Detainees were not, are not or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment. Please include all records indicating how any such policies, procedures or guidelines were, are, or will be, communicated to personnel involved in the interrogation or detention of CIA Detainees.*

The Center feels that your office's withholding of records regarding this request is simply indefensible. The release of these records cannot "reasonably [be] expected to result in damage to national security." ACLU at 28. Moreover, it cannot reasonably be said to present a potential harm to intelligence activities. The administration has unequivocally stated that it does not allow or condone torture.<sup>16</sup>

The only means by which the Center can contemplate that the release of the requested information could harm national security would be that the absence of policies, procedures, or guidelines, would increase hostility towards the United States. However, the United States has publicly stated that it has contravened its own policies regarding "ghost detainees", and in the case of Abu Ghraib found that the correct policies, procedures and/or guidelines were simply not followed. In light of these admissions it is not reasonable to assume that the release of the requested policies, procedures, and/or guidelines reasonably could be expected to cause any additional harm to national security. The Center also cannot accept that merely revealing "how any such policies, procedures or guidelines were, are, or will be, communicated to personnel" without describing the content of the communication, could implicate a risk to national security in any manner.

- 9) *All records indicating or discussing actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above [which reads] All records reflecting standards or policies governing who may be held as an Unregistered, CIA, and/or "Ghost" Detainee and what procedural protections or guidelines, if any, are used to review the arrest, detention, and treatment of these Detainees.*

It is not reasonable to withhold from the public the requested information when the Pentagon has reported publicly that these violations have occurred. The Pentagon could not have found that procedures were violated were it not for the existence of records that stated what these procedures were. The Department has stated that approximately 100 ghost detainees have been created. The Center contests that the release of more specific information on this topic could further harm national security in light of these previous disclosures on the topic, especially within the context of "intelligence activities". The claim that the existence of the requested documents can continue to be correctly

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<sup>16</sup> See Bush Denies Ordering Torture Of Detainees, Releases Official Documents, FRONTRUNNER, Jun. 23, 2004.

classified in light of public knowledge of their existence is especially weak within this context.

*10) All records indicating or discussing serious injuries, illnesses, and/or deaths of any Unregistered, CIA, and/or "Ghost" Detainees.*

The Center contests that the release of records regarding this request "could reasonably be expected to harm national security". The deaths and injuries of many detainees have already been officially reported by the government, and so the Center fails to understand how more specific information "reasonably could be expected to harm national security", nor how this harm would occur within the realm of intelligence activities. In this instance, the Center especially cannot believe that reasonably segregable portions of the records that are "security neutral" are so "inextricably" interwoven with sensitive materials that they cannot be released. The claim is even less tenable in relation to the neutral medical reports of detainees.

*11) All records, including autopsy reports and death certificates, relating to the deaths of any Unregistered, CIA, and/or "Ghost" Detainees.*

The Center contests the refusal for the same reasons as listed in regards to the above paragraph 10.

*12) All records relating to investigations, inquiries, or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.*

The fact that internal investigations have occurred and/or are occurring is information already within the public domain. The center finds it impossible to defend the position that even records which simply state the existence of such investigations, inquiries, or disciplinary proceedings could harm national security. Doing so could not arguably advance any information to our actual or potential adversaries abroad that could assist in efforts to harm our national security. To the extent that releasing the names of agents conducting or subject to these procedures might endanger them or their families, the names of these officials may simply be redacted from the records. The center cannot understand how records regarding disciplinary proceedings could be said to in any way implicate our nation's national security, let alone our intelligence activities.

*13) All records relating to the actual or alleged torture or other cruel, inhuman or degrading treatment or punishment of any Unregistered, CIA, and/or "Ghost" Detainee.*

The only reason that the Center can fathom national security risks related to this information is that its release might incite attacks against American interests. However, if

records of additional mistreatment of detainees were released, they would serve only to confirm pre-existing beliefs of detainee mistreatment or to beneficially correct previous misconceptions.

- 14) All records relating to policies, procedures or guidelines governing the role of health personnel in the interrogation of the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to the role of health personnel in the medical, psychiatric, or psychological assessment of Detainees immediately before, during or immediately after interrogation. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.*

We contest that the above request could reasonably be thought to harm national security and/or intelligence activities. If released documents show adequate provision for medical care, then release of the requested information could dispel rumors in the larger world regarding the lack of medical care. On the other hand, if the released documents show inadequate care, such withholding of care is illegal. As held in Davis, if a requester "puts forward compelling evidence that the agency denying the Freedom of Information Act, 5 U.S.C.S. § 552, request is engaged in illegal activity, and shows that the information sought is necessary in order to confirm or refute that evidence" it will be viewed by the court as substantially supportive of the release of records. Davis v. United States Dep't of Justice, 296 U.S. App. D.C. 405.

Secondly, we cannot accept that merely revealing "how any such policies, procedures or guidelines were, are, or will be, communicated to personnel" without describing the content of the communication implicate a risk to national security under any circumstance.

- 15) All records relating to medical, psychiatric or psychological assessment of any Unregistered, CIA, and/or "Ghost" Detainee or guidance given to interrogators by health personnel immediately before, during or immediately after the interrogation of any Unregistered, CIA, and/or "Ghost" Detainees.*

The medical, psychiatric or psychological assessments of detainees have no relevance as to the United States' national security. Releasing these records will not give our actual or potential adversaries additional insight into our intelligence activities. Your office's decision to neither confirm nor deny the existence or non-existence of these records is misapplied in at least the case of one detainee. The Pentagon's own report states that no medical records exist for the ghost detainee that died in American custody. This public statement of the non-existence of these records prohibit a refusal to confirm the records *non-existence*. The *non-existence* of at least one medical record is information within the public domain, and as such cannot legitimately remain classified.

- 16) All records indicating whether and to what extent the International Committee for the Red Cross ("ICRC") had, has or will have access to Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to*

*particular decisions to grant or deny the ICRC access to any Detainee or group of Detainees.*

The International Red Cross in no way implicates national security. The results of all visits by the Red Cross are confidential, and access to records of their access to detainees has no informational consequence that could harm our national security.

*17) All records indicating whether and to what extent any other non-governmental organization or foreign government had, has or will have access to the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny them access to any Detainee or group of Detainees.*

The Center contests that every single record concerning the access of every single non-governmental organization or foreign government can be properly excluded from release. While there may be some records that your office could reasonably withhold, we cannot accept that such record "reasonably could be expected to result in damage to national security". ACLU at 28.

The requested information also constitutes an exceptional case under Executive Order 12958 as amended by 13292 Sec. 3.1(b) which states,

In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified.<sup>17</sup>

This is precisely the kind of case contemplated by Sec. 3.1(b). The existence of detainees held in contravention of international treaties which the United States has ratified such as the Geneva Conventions, the International Covenant of Civil and Political Rights, and the Convention Against Torture, is a highly public matter involving fundamental constitutional and human rights, the disclosure of which must prevail over any need to protect information regarding national security or foreign policy.

United States officials have publicly admitted that the government has "violated our own policies and regulations by including what has been labeled as "ghost detainees," people who were brought to the detention facility but not registered."<sup>18</sup> The gravity of previous harm, and the correspondingly important need for a further investigation of such findings, clearly presents an exceptional circumstance under Sec. 3.1(c). To hold otherwise would imply that the holding of Unregistered, CIA, and/or "Ghost" Detainees is not itself an exceptional circumstance, and is instead routine. The United States government has repeatedly denied that these circumstances were anything but

<sup>17</sup> See Exec. Order No. 13292; 22 C.F.R. § 171.22(a).

<sup>18</sup> See Investigation Results: Military Intelligence Activities at Abu Ghraib, General Paul Kern, The Appointing Authority for the Investigation; Lt. Gen. Anthony Jones, Lead Investigator; and Maj. Gen. George Fay, Investigating Officer, Foreign Press Center Washington, DC August 25, 2004., available at <http://fpc.state.gov/fpc/35738.htm>.

exceptional.<sup>19</sup> Moreover, U.S. army officials have publicly requested that the very subject our of request, Unregistered, CIA, and/or "Ghost" Detainees, be further investigated. General Kern, the Appointing Authority for the Investigation, has stated that the holding of ghost detainees is "against our policies and regulations. [It] shouldn't have been done, and we are asking for that to be investigated further."<sup>20</sup> (emphasis added).

The public interest in disclosure of the requested records is further heightened in light of the fact that Kern has also stated to a Senate panel that the

"Pentagon investigators believe the CIA has held as many as 100 'ghost' detainees in Iraq without revealing their identities or locations, a much greater number than previously disclosed," Kern told the Senate panel. "However, the precise number of undisclosed prisoners and the conditions in which they have been held remain a mystery,"... "*because CIA officials have refused to cooperate with Pentagon investigators, denying repeated requests for documents and information on the detainees.*"<sup>21</sup> (emphasis added)

Moreover,

"The Red Cross, according to knowledgeable sources, has repeatedly warned administration officials that they were not complying with international law in the treatment of prisoners. Five weeks ago, Secretary Rumsfeld promised the Senate Armed Services Committee that he would turn over the Red Cross reports but, to date, the administration has failed to deliver on that promise, citing objections from the Red Cross. The Red Cross, however, contacted by NPR, said it did not have objections to the proper turnover of its reports to the Senate and that the Red Cross had so informed the administration five weeks ago."<sup>22</sup>

The Office of Intelligence, Policy, and Review should use its discretion to determine that the public interest in disclosure of these documents outweighs any potential damage, if any, to national security that might reasonably be expected to result from disclosure.

It appears that your office's withholding of these documents is additionally prohibited on separate grounds, because of the illegality of holding Unregistered, CIA,

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<sup>19</sup> See Dana Priest & Bradley Graham, *U.S. Struggled Over How Far to Push Tactics*, WASH. POST, Jun. 24, 2004, available at <http://www.washingtonpost.com/ac2/wp-dyn/A756-2004Jun23?language=printer>; Pamela Hess, *CIA won't share info on ghost detainees*, UNITED PRESS INTERNATIONAL, Sep. 9, 2004; *Lawmakers troubled by disclosure of more 'ghost detainees'*, ASSOCIATED PRESS, Sep. 10, 2004; Elise Ackerman, *Rumsfeld admits to holding 'ghost detainees'*, KNIGHT RIDDER/TRIBUNE NEWS SERVICE , Jun. 18, 2004.

<sup>20</sup> See Investigation Results: Military Intelligence Activities at Abu Ghraib, General Paul Kern, The Appointing Authority for the Investigation; Lt. Gen. Anthony Jones, Lead Investigator; and Maj. Gen. George Fay, Investigating Officer, Foreign Press Center Washington, DC August 25, 2004., available at <http://fpc.state.gov/fpc/35738.htm>.

<sup>21</sup> See Senators Criticize Army Generals Over CIA "Ghost Detainees" At Abu Ghraib, Frontrunner Sep. 10, 2004.

<sup>22</sup> See Steve Inskeep, *Senate Judiciary Committee heats up in discussions over legal memos on torture of prisoners*, Morning Edition (11:00 AM ET) – NPR, Jun. 18, 2004.

and/or "Ghost" Detainees. If a requester "puts forward compelling evidence that the agency denying the Freedom of Information Act, 5 U.S.C.S. § 552, request is engaged in illegal activity, and shows that the information sought is necessary in order to confirm or refute that evidence" it will be viewed by the court as substantially supportive of the release of the records. Davis v. United States Dep't of Justice, 296 U.S. App. D.C. 405. (D.C. C. 1992). As previously stated, government officials attempting to fulfill their duty of review of government conduct have found government agencies to be in violation of the law, and have repeatedly been refused access to many of the relevant documents requested in our FOIA request.<sup>23</sup>

Separately, the Center seeks a mandatory declassification review pursuant to Exec. Order 12958 for all of the requested information under sec. 552(b)(1). See Exec. Order No. 12958, as amended by Exec. Order No. 13292, Sec. 3.5 (March 28, 2003).

We expect a response to this appeal within 20 working days.

Most Sincerely,



Rachel Meeropol, Esq.

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<sup>23</sup> *Supra* note 20.

**INTERNATIONAL HUMAN RIGHTS CLINIC  
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MARGARET L. SATTERTHWAITE  
*Clinic Director*

SMITA NARULA  
*Clinic Director*

December 28, 2007

Via Facsimile and U.S. Mail:

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
(Ph.) 703-613-1287  
(Fax) 703-613-3007

Re: Request Under the Freedom of Information Act for Specific Records Concerning  
Information on Secret Detention And Rendition

Dear Freedom of Information Act Officer:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). The request is submitted by the International Human Rights Clinic of Washington Square Legal Services<sup>1</sup> (“WSLS”), on behalf of WSLS, Amnesty International (“AI”), and the Center for Constitutional Rights (“CCR”). We are currently engaged in litigation with your agency concerning two requests filed on April 25, 2006 by WSLS and AI, and one request filed on December 21, 2004 by CCR, all of which seek records pertaining to rendition and secret detention in connection with the U.S. Government’s anti-terrorism efforts.<sup>2</sup> The attorneys representing the U.S. Government in this litigation are being sent copies of this request.

We seek the opportunity to inspect and copy, if necessary, the specific records listed below, or, in the event that any of the specified records have been destroyed, any records which are integrally related to, summarize, or are interchangeable with said records. We seek records in the possession of the Central Intelligence Agency, including any officers, divisions, or bureaus thereof. We further request that you expedite processing pursuant to 5 U.S.C. § 552(a)(6)(e)(i).

**Records Requested**

For the purpose of this request, the term “records” includes any and all reports, statements, examinations, memoranda, correspondence, designs, maps, photographs, microfilms, computer tapes or disks, audio or videotapes or transcripts thereof, rules, regulations, codes, handbooks, manuals, or guidelines.

Please disclose the following records, or, in the event that they have been destroyed, any records that are integrally related to, summarize, or are interchangeable with said records.

<sup>1</sup> WSLS is the corporation that supports the International Human Rights Clinic (“the Clinic”) of the New York University School of Law. The Clinic is a project of NYU School of Law’s Center for Human Rights and Global Justice.

<sup>2</sup> Amnesty International USA et al. v. CIA, No. 07-cv-5435 (S.D.N.Y.).

1. The spring 2004 report by the Office of the Inspector General (OIG) on the CIA's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The existence of this document was publicly revealed in October 2007 by the *New York Times*.
  - o "A report by Mr. Helgerson's office completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture." Mark Mazzetti and Scott Shane, *C.I.A. Watchdog Becomes Subject Of C.I.A. Inquiry*, N.Y. Times, October 12, 2007, at A1.
2. The list of "erroneous renditions" compiled by the CIA's OIG. This list was described by several intelligence officials in a December 2005 article in the *Washington Post*.
  - o "The CIA inspector general is investigating a growing number of what it calls 'erroneous renditions,' according to several former and current intelligence officials. One official said about three dozen names fall in that category; others believe it is fewer. The list includes several people whose identities were offered by al Qaeda figures during CIA interrogations, officials said." Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Wash. Post, December 4, 2005, at A1.
3. The fax sent by the CIA to the Royal Canadian Mounted Police Criminal Intelligence Directorate (RCMP CID) in the afternoon or evening of Oct. 3, 2002, asking a number of questions about Maher Arar. The existence of this document was publicly acknowledged in the official report of the Canadian Government's inquiry into the rendition of Mr. Arar.
  - o "Late in the afternoon of October 3, the CIA sent a fax to RCMP CID, asking a number of questions about Mr. Arar." Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, Addendum: Disclosure of Information Authorized by the Federal Court of Canada in accordance with Sections 38.04 and 38.06 of the Canada Evidence Act 157 (2006) (based on 2005 testimony of Gar Pardy, Director General of the Consular Affairs Bureau of Foreign Affairs and International Trade Canada (DFAIT )) (Transcripts of Testimony available at <http://www.ararcommission.ca/eng/14b.htm>).
4. The document sent by the CIA to the RCMP CID, the Canadian Security Intelligence Service (CSIS), and Project A-O Canada on Nov. 5, 2002 in response to requests for information on the whereabouts of Mr. Arar. The existence of this document was publicly acknowledged in the official report of the Canadian Government's inquiry into the rendition of Maher Arar.
  - o "On November 5, the CIA sent CSIS and Project A-O Canada a written response to CSIS' [sic] October 10 request for information about the circumstances of Mr. Arar's removal." Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, Addendum: Disclosure of Information Authorized by the Federal Court of Canada in accordance with Sections 38.04 and 38.06 of the Canada Evidence Act 307 (2006). "An identical reply was also sent to RCMP Headquarters." *Id.* at 180

(based on testimony of Dan Livermore of the Security and Intelligence Branch of DFAIT).

5. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of a slap on detainee Abu Zubaydah (Zein al Abideen Mohamed Hussein). The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007.
  - o “There was discussion: ‘Should we slap him? What’s to be gained if we slap him?’ . . . The Deputy Director for Operations says, ‘Yes, you can slap him.’ The cable goes out. They slap him.” *CIA – Abu Zubaydah*: Interview with John Kiriakou (ABC News broadcast Dec. 10, 2007), available at [http://abcnews.go.com/images/Blotter/brianross\\_kiriakou\\_transcript1\\_blotter071210.pdf](http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf) and [http://abcnews.go.com/images/Blotter/brianross\\_kiriakou\\_transcript2\\_blotter071210.pdf](http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript2_blotter071210.pdf)
6. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of a slap on detainee Khalid Sheikh Mohammed. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
7. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of an ‘attention shake’ on Abu Zubaydah. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007.
  - o “[W]e had these trained interrogators who were sent to his location-- to use the enhanced techniques as necessary to get him to open up... [T]hese enhanced techniques included everything from-- what was called an attention shake where you grab the person by their lapels and sha[ke] them.” *Id.*
8. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of an ‘attention shake’ on Khalid Sheikh Mohammed. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
9. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) to the operative(s) in the field discussing and/or approving the use of sleep deprivation on Abu Zubaydah. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
10. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of sleep deprivation on Khalid Sheikh Mohammed. The existence of such cables was

acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*

11. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Abu Zubaydah. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
  - “Two people were water boarded, Abu Zubaydah being one.” *Id.*
12. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Khalid Sheikh Mohammed. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
  - “It’s my understanding that he [Khalid Sheikh Mohammed] was—that he was also water boarded.” *Id.*
13. Video tapes, audio tapes, and transcripts of materials related to interrogations of detainees that were acknowledged to exist during the case of *United States v. Zacharias Moussaoui* and described in a letter from United States Attorney Chuck Rosenberg to Chief Judge Karen Williams, United States Court of Appeals for the Fourth Circuit, and Judge Leonie Brinkema, United States District Court, Eastern District of Virginia, dated October 25, 2007, including, but not limited to two video tapes and one audio tape of interrogations of detainees, the transcripts of those tapes submitted for the court’s review in the *Moussaoui* case, and the intelligence cables summarizing the substance of those tapes.
  - Letter from Chuck Rosenberg, U.S. Attorney, to the Honorable Karen J. Williams and the Honorable Leonie Brinkema, (Oct. 25, 2007), *available at* [http://graphics8.nytimes.com/packages/pdf/world/20071207\\_intel\\_letter.pdf](http://graphics8.nytimes.com/packages/pdf/world/20071207_intel_letter.pdf).
14. The Sept. 13, 2007 notification (described in a letter from Chuck Rosenberg to Judges Williams and Brinkema, dated October 25, 2007) from the attorney for the CIA informing the United States Attorney for the Eastern District of Virginia that the CIA had obtained a video tape of an interrogation of one or more detainees. *Id.*
15. The communications between the CIA and the U.S. Embassy in Sana'a, Yemen, relating to the apprehension, transfer and/or detention of Mohamed Farag Ahmad Bashmilah (Muhammad Bashmilah). These communications likely occurred on or around March 5, 2005, and were preparatory to a communication between the U.S. Embassy in Sana'a and the Government of Yemen that has been acknowledged by the Government of Yemen.
  - “On March 5, 2005, the United States, through the Liaison Officer in Sanaa [sic], informed the Central Organization for Political Security in Yemen that Mr. Mohamed Bashmilah was being held in their custody.” Letter from the Embassy of the Republic of Yemen in France to Mr. Dick Marty, Council of Europe (Mar. 27, 2006) (filed as Exhibit G to Declaration of Mohamed Farag Ahmad Bashmilah in *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (N.D.Cal. Dec. 14, 2007)).

16. The communications between the U.S. Government and the Government of Yemen, and/or any documents pertaining to the transfer of Mohamed Farag Ahmad Bashmilah from U.S. custody to the custody of the Government of Yemen on or near May 5, 2005. The Government of Yemen has acknowledged the existence of communications between the U.S. Government and the Government of Yemen concerning Mr. Bashmilah's transfer. *Id.*
17. A copy of the files relating to Salah Nasser Salim Ali and Mohamed Farag Ahmad Bashmilah provided to the Government of Yemen on Nov. 10, 2005 by the United States Government. The Government of Yemen has acknowledged the existence of these files.
  - Letter from Ghalib Mathar al-Qamish, Chief of the Central Department of Political Security, Yemen, to the Special Rapporteur on the question of Torture and the Special Rapporteur on the question of Human Rights and Counter-Terrorism (Dec. 20, 2005) (filed as Exhibit V to Declaration of Mohamed Farag Ahmad Bashmilah in *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (N.D.Cal. Dec. 14, 2007)).

**Fee Waiver**

The requesters qualify as “representatives of the news media” and the records sought are not for commercial use. Moreover, this Request “is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii).

The International Human Rights Clinic of WSLC is a project of the Center for Human Rights and Global Justice (“CHRGJ”) and an official program of NYU School of Law, composed of students and directed by clinical professors who engage in research and advocacy on human rights issues. CHRGJ is a research center at NYU School of Law. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education, and training. CHRGJ publishes reports and also disseminates information through its website, [www.chrgj.org](http://www.chrgj.org).

Amnesty International is a non-governmental organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters, and urgent action requests informing the public about human rights, including torture and disappearances. AI also disseminates information through its website, [www.amnesty.org](http://www.amnesty.org).

The Center for Constitutional Rights is a legal and public education not-for-profit organization that engages in litigation, legal research, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. These materials are available through CCR’s Development and Education & Outreach Departments. CCR also operates a website, [www.ccr-ny.org](http://www.ccr-ny.org), that addresses the issues on which CCR works. The website includes material on topical civil and human rights issues and material concerning CCR’s work. All of this material is freely available to the public.

The requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above. This Request aims generally to further public understanding of government conduct; and particularly to contribute to the current debate around the rendition and secret detention policies and programs put in place by the CIA.

### **Expedited Processing**

Expedited processing is warranted under 5 U.S.C. § 552(a)(6)(E)(i)(I), as there is a “compelling need” for the records sought in this request: the requesters are primarily engaged in “disseminating information” and there is an “urgency to inform the public concerning the actual or alleged Federal Government Activity” under 5 U.S.C. § 552(a)(6)(E)(v)(II). There is also a “compelling need” because failure to obtain the records on an expedited basis “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I).

CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government’s role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ’s website. The Clinic actively supports this work, and WSLS houses the clinic. AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CCR disseminates information through newsletters, publications, handbooks, and through its website. All three organizations seek the documents listed in this request to educate the public about the CIA’s secret detention and rendition program, which is currently the subject of high-profile debate.<sup>3</sup>

Moreover, failure to obtain the records can reasonably be expected to pose an imminent threat to the physical safety of individuals undergoing or at risk of undergoing ongoing unlawful detention and abuse with the involvement of or at the behest of U.S. agents abroad. 5 U.S.C. § 552(a)(6)(E)(v)(I). Allegations of torture and ill-treatment have surrounded the secret detention and rendition program. Failure to publicly expose and thereby halt the practices prompting this Request could reasonably be expected to pose an imminent threat to the physical safety and lives of at least one individual. CIA director Michael Hayden recently admitted that the secret detention and rendition program remains in operation.<sup>4</sup>

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<sup>3</sup> See, e.g., Joby Warrick & Dan Eggen, *Waterboarding Recounted: Ex-CIA Officer Says It 'Probably Saved Lives' but Is Torture*, Wash. Post., Dec. 11, 2007, at A1; Pamela Hess, *Congress Wants Answers on CIA Tapes*, Wash. Post., Dec. 11, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/10/AR2007121000087.html>; Mark Mazetti, CIA Destroyed Two Tapes Showing Interrogations, N.Y. Times, Dec. 7, 2007, at A1; CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, SURVIVING THE DARKNESS: TESTIMONY FROM THE U.S. "BLACK SITES" (2007), available at <http://www.chrgj.org/projects/docs/survivingthedarkness.pdf>.

<sup>4</sup> CIA Director Hayden recently discussed the secret detention and rendition program on the *Charlie Rose Show*, explaining that as of 2007, the U.S. program of “rendition” and CIA detention continued. *The Charlie Rose Show: Interview with Director Michael Hayden* (PBS television broadcast Oct. 22 & 23, 2007) (transcript available at <https://www.cia.gov/news-information/press-releases-statements/interview-with-charlie-rose.html>).

\* \* \*

If this request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information.

We look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Thank you for your prompt attention. Should you have any questions in this matter, please contact Margaret L. Satterthwaite, International Human Rights Clinic, Washington Square Legal Services, Inc., New York University School of Law, 245 Sullivan Street, New York, NY 10012; tel.: (212) 998-6657.

Sincerely,



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Washington, D.C. 20505

Ms. Margaret L. Satterthwaite  
Director, International Human Rights Clinic  
Washington Square Legal Services, Inc.  
New York University School of Law  
245 Sullivan Street  
New York, NY 10012

JAN 30 2008

Reference: F-2008-00611

Dear Ms. Satterthwaite:

On 28 December 2007, the Information and Privacy Coordinator received your Freedom of Information Act (FOIA) request of the same date. Specifically, you request copies of the following records:

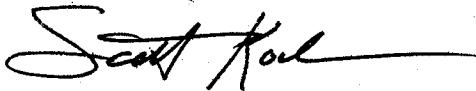
1. The spring 2004 report by the Office of the Inspector General (OIG) on the CIA's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. The list of "erroneous renditions" compiled by the CIA's OIG.
3. The fax sent by the CIA to the Royal Canadian Mounted Police Criminal Intelligence Directorate (RCMP CID) in the afternoon or evening of Oct. 3, 2002, asking a number of questions about Maher Arar.
4. The document sent by the CIA to RCMP CID, the Canadian Security Intelligence Service (CSIS), and Project A-O Canada on Nov. 5, 2002 in response to requests for information on the whereabouts of Mr. Arar.
5. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of a slap on detainee Abu Zubaydah (Zein al Abideen Mohamed Hussein).
6. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of a slap on detainee Khalid Sheikh Mohammed.
7. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of an 'attention shake' on Abu Zubaydah.
8. The cables between the Deputy Director of Operations at the CIA (or other agency officials(s)) and the operative(s) in the field discussing and/or approving the use of an 'attention shake' on Khalid Sheikh Mohammed.

9. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of sleep deprivation on Abu Zubaydah.
10. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of sleep deprivation on Khalid Sheikh Mohammed.
11. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Abu Zubaydah.
12. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Khalid Sheikh Mohammed.
13. Video tapes, audio tapes, and transcripts of materials related to interrogations of detainees that were acknowledged to exist during the case of *United States v. Zacharias Moussaoui* and described in a letter from United States Attorney Chuck Rosenberg to Chief Judge Karen Williams, United States Court of Appeals for the Fourth Circuit, and Judge Leonie Brinkema, United States District Court, Eastern District of Virginia, dated October 25, 2007, including but not limited to two video tapes and one audio tape of interrogations of detainees, the transcripts of those tapes submitted for the court's review in the *Moussaoui* case, and the intelligence cables summarizing the substance of those tapes.
14. The Sept. 13, 2007 notification (described in a letter from Chuck Rosenberg to Judges Williams and Brinkema, dated October 25, 2007) from the attorney for the CIA informing the United States Attorney for the Eastern District of Virginia that the CIA had obtained a video tape of an interrogation of one or more detainees.
15. The communications between the CIA and the U.S. Embassy in Sana'a, Yemen, relating to the apprehension, transfer and/or detention of Mohamed Farag Ahmad Bashmilah (Muhammad Bashmilah).
16. The communications between the U.S. Government and the Government of Yemen, and/or any documents pertaining to the transfer of Mohamed Farag Ahmad Bashmilah from U.S. custody to the custody of the Government of Yemen on or near May 5, 2005.
17. A copy of the files relating to Salah Nasser Salim Ali and Mohammed Farag Ahmad Bashmilah provided to the Government of Yemen on Nov. 10, 2005 by the United States Government.

The CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA. To the extent your request seeks information that is subject to the FOIA, we accept your request and will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, and, unless you object, search only for CIA-originated records existing through the date of this acceptance letter. As a matter of administrative discretion, we have waived any fees associated with the processing of your FOIA request.

You have requested expedited processing. We handle all requests in the order we receive them: that is, "first-in, first-out." We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A "compelling need" exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in disseminating information makes the request and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity. We have reviewed your request and determined that it does not demonstrate a "compelling need" under these criteria and, therefore, we deny your request for expedited processing.

Sincerely,



Scott Koch  
Information and Privacy Coordinator

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**Congressional Testimony****Statement of Robert S. Mueller, III, Director, FBI  
Before the National Commission on Terrorist Attacks  
upon the United States  
April 14, 2004**

Thank you Chairman Kean, Vice Chair Hamilton and members of the Commission for the opportunity to address you this afternoon. You have been given an extremely important mission: to help America understand what happened on September 11th and to help us learn from that experience to improve our ability to prevent future acts of terrorism.

The FBI recognizes the importance of your work, and my colleagues and I have made every effort to be responsive to your requests. I have appreciated your critique and feedback on the efforts we are making to improve the FBI. I look forward to receiving your recommendations on how we can continue to improve.

Let me take a moment before addressing the specifics of the FBI's reform efforts to reflect on the loss we suffered on September 11, 2001. I wish to acknowledge the pain and anguish of the friends and families of those we lost that day, and I want to assure you that we in the FBI are committed to doing everything in our power to ensure that America never suffers such a loss again.

Like so many in this country, the FBI lost colleagues that day. John O'Neill was a retired counterterrorism investigator who had just started a new job as head of security for the World Trade Center. Lenny Hatton was a Special Agent assigned to the New York Field Office. Lenny was driving to work when he saw the towers ablaze, rushed to the scene and helped to evacuate the buildings. He was last seen helping one person out the door and then heading back upstairs to help another.

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It is the memory of the thousands like John and Lenny who died that day that inspires the men and women of the FBI and fuels our resolve to defeat terrorism.

The terrorist threat of today presents complex challenges. Today's terrorists operate seamlessly across borders and continents, aided by sophisticated communications technologies; they finance their operations with elaborate funding schemes; and they patiently and methodically plan and prepare their attacks.

To meet and defeat this threat, the FBI must have several critical capabilities:

First, we must be intelligence-driven. To defeat the terrorists, we must be able to develop intelligence about their plans and use that intelligence to disrupt those plans.

We must be global. We must continue our efforts to develop our overseas operations, our partnerships with foreign services and our knowledge and expertise about foreign cultures and our terrorist adversaries overseas. We must have networked information technology systems. We need the capacity to manage and share our information effectively.

Finally, we must remain accountable under the Constitution and the rule of law. We must respect civil liberties as we seek to protect the American people.

This is the vision the FBI has been striving towards each day since September 11th. It is also the vision that guided Director Freeh and the Bureau throughout the last decade. Director Freeh and his colleagues took a number of important steps to build a preventive capacity within the Bureau. With their complex investigations of various terrorist plots and attacks, they developed extensive intelligence and an expertise about international terrorism that is the foundation of our efforts today. With their doubling of Legal Attache offices around the world, they developed the overseas network and relationships that are so critical to the war against international terrorism.

Prior to September 11, 2001, however, various walls existed that prevented the realization of that vision. Legal walls -- real and perceived -- prevented the integration of intelligence and criminal tools in terrorism

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investigations. Cultural walls -- real and perceived -- continued to hamper coordination between the FBI, the CIA and other members of the Intelligence Community. Operational walls -- real and perceived -- between the FBI and our partners in state and local law enforcement continued to be a challenge. Since the September 11th attacks, we and our partners have been breaking down each of these walls.

The legal walls between intelligence and law enforcement operations that handicapped us before 9/11 have been eliminated. The PATRIOT Act, the Attorney General's intelligence sharing procedures and the opinion from the Foreign Intelligence Surveillance Court of Review tore down the legal impediments to coordination and information-sharing between criminal investigators and intelligence agents. We can now fully coordinate operations within the Bureau and with the Intelligence Community. We can also deploy the full range of investigative tools -- both criminal processes like search warrants and grand jury subpoenas and intelligence authorities like FISA wiretap warrants -- to identify, investigate and neutralize terrorist threats. With these changes, we in the Bureau can finally take full operational advantage of our dual role as both a law enforcement and an intelligence agency.

We are eliminating the wall that historically stood between us and the CIA. The FBI and the CIA started exchanging senior personnel in 1996, and we have worked hard to build on that effort. Today, we and the CIA are integrated at virtually every level of our operations. From my daily meetings with George Tenet and with CIA officials at my twice daily threat briefings, to our joint efforts in transnational investigations, to our coordinated threat analysis at the Terrorist Threat Integration Center, we and the CIA have enhanced our interaction at every level. This integration will be further enhanced later this year when our Counterterrorism Division co-locates with the CIA's Counter Terrorist Center and the Terrorist Threat Integration Center at a new facility in Virginia.

We have also worked hard to break down the walls that have, at times, hampered coordination with our 750,000 partners in state and local law enforcement. We have more than doubled the number of Joint Terrorism Task Forces (JTTFs) since 9/11. We have processed thousands of security clearances to permit law enforcement officers to share freely in our investigative information. We have created and refined new information sharing systems that electronically link us with our domestic partners. And, we have brought on an experienced police chief from North

Carolina to serve as our State and Local Law Enforcement Coordinator.

This coordination has been the hallmark of our operations since September 11th. A good example is the case involving the Lackawanna terrorist cell in upstate New York. Every one of our partners played a significant role in that case -- from the police officers who helped to identify, investigate and surveil the cell members, to the diplomatic and Intelligence Community personnel who handled the investigations and liaison overseas, to the federal agents and prosecutors who conducted the grand jury investigation leading to the arrests and indictment.

Removing these walls has been part of a comprehensive plan to strengthen the ability of the FBI to predict and prevent terrorism. We developed this plan immediately after the September 11th attacks. With the participation and strong support of the Attorney General and the Department of Justice, we have been steadily and methodically implementing it ever since.

This plan encompasses many areas of organizational change -- from re-engineering business practices to overhauling our information technology systems. Since you have a detailed description of the plan in the written report we submitted on Monday, I will not repeat it here today. If I may, however, I would like to take a moment to highlight several of the fundamental steps we have taken since 9/11.

### **1. Prioritization**

Our first step was to establish the priorities to meet our post-9/11 mission. Starting that morning, protecting the United States from another terrorist attack became our overriding priority. We formalized that with a new set of priorities that direct the actions of every FBI program and office. Every FBI manager understands that he or she must devote whatever resources are necessary to address the terrorism priority, and that no terrorism lead can go unaddressed.

### **2. Mobilization**

The next step was to mobilize our resources to implement these new priorities. Starting soon after the attacks, we shifted substantial manpower and resources to the counterterrorism mission. We also established a number of operational units that give us new or improved counterterrorism capabilities -- such as the 24/7 Counterterrorism Watch Center, the

Document Exploitation Unit, and the new Terrorism Financing Operation Section.

### **3. Centralization**

We then centralized coordination of our counterterrorism program. Unlike before, when investigations were managed primarily by individual field offices, the Counterterrorism Division at Headquarters now has the authority and the responsibility to direct and coordinate counterterrorism investigations throughout the country. This fundamental change has improved our ability to coordinate our operations here and abroad, and it has clearly established accountability at Headquarters for the development and success of our Counterterrorism Program.

### **4. Coordination**

As I noted earlier, another critical element of our plan since September 11th has been the increased coordination with our law enforcement and intelligence partners. We understand that we cannot defeat terrorism alone, and we are working hard to enhance coordination and information sharing with all of our partners, including the Department of Homeland Security which plays a central role in the protection of our nation's borders and infrastructure. This coordination is critical to every area of our operations.

As you pointed out in your second staff statement, this coordination is particularly critical when we face a transnational threat from Al Qaeda or another terrorist group that operates internationally. In that situation, we need to be completely aligned with the CIA, with foreign services, and with other agencies that have operations or information relating to that transnational threat.

We have learned much about how we and other agencies coordinated the investigation of Khalid al Mihdhar and Nawaf al Hazmi in 2000 and 2001. As your staff statement explained, our efforts to investigate and locate al Mihdhar and al Hazmi were complicated because some felt that they could not coordinate or share certain information with others.

Because of our improved coordination since 9/11, I believe that that investigation would proceed differently if it were to occur today.

- Because we coordinate much more closely and regularly with the CIA

and NSA, we would likely be aware of -- and involved in -- the search for the two men much earlier in the process.

- Because the legal wall between intelligence and law enforcement operations has been eliminated, FBI and CIA personnel would be able to share all information about these two men and their possible travel to the United States.
- Because the CIA now briefs me and my top executives each morning and CIA and DHS officials attend my twice-daily threat briefings, information about the threat posed by these two men could quickly reach -- and get the attention of -- the highest levels of the FBI, and the government.

### **5. Intelligence Integration**

The last crucial element of our transformation has been to develop our strategic analytic capacity, while at the same time integrating intelligence processes into all of our investigative operations. We needed to dramatically expand our ability to convert our investigative information into strategic intelligence that could guide our operations. Initially we concentrated our efforts on the 9/11 investigation and the Counterterrorism Division. We then developed step-by-step from there.

Our first step was to deploy 25 CIA analyst detailees to the Counterterrorism Division, along with dozens of FBI analysts from other divisions, to improve our ability to analyze the masses of data generated in our post-9/11 investigations. We then established a formal analyst training program and started to develop the permanent analyst position and career track within the Counterterrorism Division.

The next step of this effort was to establish an official Intelligence program to manage the intelligence process throughout the Bureau. To oversee this effort, I appointed Maureen Baginski -- a 25-year analyst and executive from the NSA -- to serve as the Bureau's first Executive Assistant Director for Intelligence. Thanks to the efforts of Maureen and her colleagues in the Office of Intelligence, we have made substantial progress since her appointment last May.

- We have developed and are in the process of executing Concepts of Operations governing all aspects of the intelligence process -- from the identification of intelligence requirements to the methodology for intelligence assessment to the drafting and formatting of intelligence

products.

- We have established a Requirements and Collection Management Unit to identify intelligence gaps and develop collection strategies to fill those gaps.
- We have established Field Intelligence Groups in the field offices, whose members review investigative information -- not only for use in investigations in that field office -- but to disseminate it throughout the Bureau and ultimately to our law enforcement and Intelligence Community partners.
- We are accelerating the hiring and training of analytical personnel, and developing career paths for analysts that are commensurate with their importance to the mission of the FBI.

With these changes in place, the Intelligence Program is established and growing. We are now turning to the last structural step in our effort to build an intelligence capacity. Just last month, I authorized new procedures governing the recruitment, training, career paths and evaluation of our Special Agents -- all of which are focused on developing intelligence expertise among our agent population.

The most far-reaching of these changes will be the new agent career path, which will guarantee that agents get experience in intelligence investigations and with intelligence processes. Under this plan, new agents will spend an initial period familiarizing themselves with all aspects of the Bureau, including intelligence collection and analysis, and then go on to specialize in counterterrorism, intelligence or another operational program. A central part of this initiative will be an Intelligence Officer Certification program that will be available to both analysts and agents. That program will be modeled after -- and have the same training and experience requirements as -- the existing programs in the Intelligence Community.

### **Conclusion**

Those are some of the highlights of our plan for organizational reform. To get a sense for the pace and number of changes since 9/11, I would refer you to the time-line chart displayed on the easel. This time-line plots out almost 50 significant new counterterrorism-related capabilities or components we have established over the past 31 months. From the founding of the Counterterrorism Watch Center on 9/11 to the directive

establishing the intelligence career track last month, this time line shows a steady pace of change and innovation.

Many have asked whether all these changes have succeeded in turning us into the agency we need to be. These are valid questions.

To the question of whether the FBI now has a fully-matured intelligence apparatus in place, the answer is that we have laid the structural foundation, and are developing the intelligence personnel and the capacities at a steady pace.

To the question of whether the FBI and its partners now enjoy seamless coordination, the answer is that we are communicating and integrating our operations like never before.

To the question of whether the FBI is making progress, the answer is that we clearly are. While we still have much work to do, the Bureau is moving steadily in the right direction.

Our efforts over the past 31 months have produced meaningful and measurable results. Working with our partners here and abroad, we have disrupted and detained supporters of Al Qaeda from Lackawanna, New York, to Portland, Oregon; we have participated in the detention of much of Al Qaeda's leadership; and we have seized millions of dollars in terrorist financing.

We have also seen measurable accomplishments within the FBI. While it is always difficult to quantify the extent of organizational change, it is worth spending a minute with the next chart on the easel. Here, we have plotted a number of measures that reflect, in one way or another, our evolution into a prevention-based intelligence agency. As you see, it is a series of bar graphs showing numerical comparisons between September 11, 2001 and now. Starting on the left, you can see how we have increased the numbers of agents, analysts and translators assigned to counterterrorism, as well as the total personnel assigned to the 84 Joint Terrorism Task Forces around the country. We have increased the number of counterterrorism agents from 1344 to 2835; counterterrorism analysts from 218 to 406; linguists from 555 to 1204; and JTTF personnel from 912 to 4249. The first two charts on the bottom line show the increase in the number of intelligence bulletins and reports issued since

9/11. We have gone from no intelligence bulletins in 2001 to 115 since 9/11; and from no intelligence reports to 2648. Finally, the last two charts show an increase of 85% in the number of Foreign Intelligence Surveillance Act warrants we have obtained and an increase of 91% in the number of counterterrorism sources we have developed -- both important measures of our increasing focus on developing intelligence against our terrorist adversaries.

Each of these increased measures reflects hard work and dedication on the part of the men and women of the FBI. They have embraced and implemented these counterterrorism and intelligence reforms, while continuing to shoulder the responsibility to protect America. And, they have carried out the pressing mandate to prevent further terrorism, while continuing to work in strict fidelity to the Constitution and the rule of law.

The men and women of the FBI have served admirably because they believe it is their duty to protect the citizens of the United States, to secure freedom, and to preserve justice for all Americans. I want to take this opportunity to thank them and their families for their sacrifices and for their service to America.

I look forward to continuing our cooperation with the Commission, and to reviewing the findings in your final report.

I would be happy to answer any questions you might have.



## Transcript: Cheney Defends Hard Line Tactics

### In Exclusive Interview With ABC News, Vice President Dick Cheney Opens Up About His Hard Line Tactics

Dec. 16, 2008—

*The following is a transcript from ABC News' Jonathan Karl's exclusive interview with Vice President Dick Cheney on Dec. 15, 2008 in the Executive Office Building.*

**JONATHAN KARL:** Mr. Vice President, there has not been a terrorist attack in the United States in more than seven years. How important have your administration's policies on surveillance, interrogation and detention been in protecting the homeland?

**VICE PRESIDENT CHENEY:** Well, I think they've been crucial, Jonathan. I think that anybody who'd looked at the situation the morning after the 9/11 attack would never have bet that we'd been able to go this long without another attack.

We've been able to defeat or disrupt all further attempts to strike the homeland. It's enormously important. I think those programs were crucial. The president made some very tough decisions, and we had some very able and talented people involved in the military and our intelligence services, making certain that we were able to keep the country safe.

**KARL:** But you've heard leaders, the incoming Congress, saying that this policy has basically been torture and illegal wiretapping, and that they want to undo, basically, the central tenets of your anti-terrorism policy.

**CHENEY:** They're wrong. On the question of terrorist surveillance, this was always a policy to intercept communications between terrorists or known terrorists, or so-called "dirty numbers," and folks inside the United States to capture those international communications.

It's worked. It's been successful. It's now embodied in the FISA statute that we passed last year -- and that Barack Obama voted for, which I think was a good decision on his part. It's a very, very important capability. It is legal. It was legal from the very beginning. It is constitutional. To claim that it isn't, I think is just wrong.

On the question of so-called torture, we don't do torture. We never have. It's not something that this administration subscribes to. Again, we proceeded very cautiously. We checked. We had the Justice Department issue the requisite opinions in order to know where the bright lines were that you could not cross.

The professionals involved in that program were very, very cautious, very careful -- wouldn't do anything without making certain it was authorized and that it was legal. And any suggestion to the contrary is just wrong. Did it produce the desired results? I think it did.

I think, for example, Khalid Sheikh Mohammed, who was the number three man in al Qaeda, the man who planned the attacks of 9/11, provided us with a wealth of information. There was a period of time there, three or four years ago, when about half of everything we knew about al Qaeda came from that one source. So, it's been a remarkably successful effort. I think the results speak for themselves.

And I think those who allege that we've been involved in torture, or that somehow we violated the Constitution or laws with the terrorist surveillance program, simply don't know what they're talking about.

**KARL:** Did you authorize the tactics that were used against Khalid Sheikh Mohammed?

**CHENEY:** I was aware of the program, certainly, and involved in helping get the process cleared, as the agency in effect came in and wanted to know what they could and couldn't do. And they talked to me, as well as others, to explain what they wanted to do. And I supported it.

**KARL:** In hindsight, do you think any of those tactics that were used against Khalid Sheikh Mohammed and others went too far?

**CHENEY:** I don't.

**KARL:** What is your advice to President-elect Obama then on this? Because he's been quite critical. And he might have supported...

**CHENEY:** He has.

**KARL:** ... FISA. But President-elect Obama has been very critical of the counterterrorism policies of this administration.

**CHENEY:** Well, counterterrorism policy's designed to defeat the terrorists. It turns on intelligence. You can't do anything without collecting first-rate intelligence. And that's what these programs are all about.

**CHENEY:** I would argue that, for the new administration, how they deal with these issues are going to be very important, because it's going to have a direct impact on whether or not they retain the tools that have been so essential and defending the nation for the last seven-and-a-half years, or whether they give them up.

I think it's vital that they sit down and -- which I believe they're doing -- and look at the specific threat that's out there, to understand these programs and how they operate, and

see the extent to which we were very cautious in terms of how we put them together, and then make a decision based on that with respect to whether or not they're going to continue. They shouldn't just fall back on campaign rhetoric to make these very fundamental decisions about the safety of the nation.

**KARL:** And what if he does fall back on campaign rhetoric and rolls back those policies?

**CHENEY:** Well...

**KARL:** What's the danger?

**CHENEY:** ... I think that would be -- I think that would be very unfortunate.

**KARL:** And on KSM, one of those tactics, of course, widely reported was waterboarding. And that seems to be a tactic we no longer use. Even that you think was appropriate?

**CHENEY:** I do.

**KARL:** More than two years ago, President Bush said that he was -- wanted to close down Guantanamo Bay. Why has that not happened?

**CHENEY:** It's very hard to do. Guantanamo has been the repository, if you will, of hundreds of terrorists, or suspected terrorists, that we've captured since 9/11. They -- many of them, hundreds -- have been released back to their home countries. What we have left is the hard core.

Their cases are reviewed on an annual basis to see whether or not they're still a threat, whether or not they're still intelligence value in terms of continuing to hold them.

But -- and we're down now to some 200 being held at Guantanamo. But that includes the core group, the really high-value targets like Khalid Sheikh Mohammed. Now, the question: If you're going to close Guantanamo, what are you going to do with those prisoners?

One suggestion is, well, we bring them to the United States. Well, I don't know very many congressmen, for example, who are eager to have 200 al Qaeda terrorists deposited in their district. It's a complex and difficult problem. If you bring them onshore into the United States, they automatically acquire a certain legal rights and responsibilities that the government would then have, that they don't as long as they're at Guantanamo. And that's an important consideration.

These are not American citizens. They are not subject, nor do they have the same rights that an American citizen does vis-a-vis the government. But they are well treated. They also have the opportunity, and the process has started now, to be heard before a military

commission with judgment, fair and honest judgment made about their guilt or innocence, to be represented by counsel provided through that process.

So, they -- I don't know any other nation in the world that would do what we've done in terms of taking care of people who are avowed enemies, and many of whom still swear up and down that their only objective is to kill more Americans.

**KARL:** So, when do you think we'll be at a point where Guantanamo could be responsibly shut down?

**CHENEY:** Well, I think that that would come with the end of the war on terror.

**KARL:** When's that going to be?

**CHENEY:** Well, nobody knows. Nobody can specify that. Now, in previous wars, we've always exercised the right to capture the enemy and then hold them till the end of the conflict. That's what we did in World War II with, you know, thousands, hundreds of thousands of German prisoners. The same basic principle ought to apply here in terms of our right to capture the enemy and hold them.

As I say, the other option is to turn them over to somebody else. A lot of them, nobody wants. I mean, there's a great resistance sometimes in the home countries to taking these people back into their own territory.

And it's not a law -- it's not a traditional law enforcement problem. I mean, one of the things that happened on 9/11 was, we went from thinking about a terrorist attack as a law enforcement problem where you would prosecute an individual, to rather being a strategic threat to the United States where we need to use all of our capabilities to be able to defeat the enemy.

And these folks are, in fact, unlawful combatants, adversaries of the United States, members of al Qaeda. And I think that's true for most of them there. As I say, there's a regular, annual review of each of their cases to make certain that we're still justified in holding them. And if not, to send them back to their home country, if they'll have them.

**KARL:** But basically, it sounds like you're talking about Guantanamo being a -- it sounds like you're saying Guantanamo Bay will be open indefinitely.

**CHENEY:** Well, a lot of people, including the president, expressed the view that they'd like to close Guantanamo. I think everybody can say we wished there were no necessity for Guantanamo. But you have to be able to answer these other questions before you can do that responsibly. And that includes, what are you going to do with the prisoners held in Guantanamo? And nobody yet has solved that problem.

**KARL:** What's the danger in doing this too soon, you know, just make this symbolic gesture to shut the place down?

**CHENEY:** Well, if you release people that shouldn't have been released -- and that's happened in some cases already -- you end up with them back on the battlefield.

And we've had, as I recall now -- and these are rough numbers, I'd want to check them -- but, say, approximately 30 of these folks have been held in Guantanamo, then released, and ended up back on the battlefield again, and we've encountered them a second time around. But they've either been killed or captured in further conflicts with our forces.

**KARL:** I don't know if you saw, but on Sunday, John McCain said that the national security team that has been established by President-elect Obama -- Clinton, James Jones, Robert Gates -- this is a team that he could have assembled. How do you assess this incoming team?

**CHENEY:** Well, I must say, I think it's a pretty good team. I'm not close to Barack Obama, obviously, nor am I a -- do I identify with him politically. He's a liberal. I'm a conservative. But I think the idea of keeping Gates at Defense is excellent. I think Jim Jones will be very, very effective as the national security adviser. And while I would not have hired Senator Clinton, I think she's tough, she's smart, she works very hard and she may turn out to be just what President Obama needs.

**KARL:** Should he keep the intelligence chiefs as well?

**CHENEY:** I don't want to get into the business of encouraging them on one course of another. It could be the kiss of death. He's already made his judgments about Jones and Gates and as I say, I think they're both very talented people and they'll do well. For me to get into the business of commenting on individuals where decisions have not yet been made, frankly, I think that would not be fair to them in that process.

**KARL:** So it was reported that when you went up to lunch for the Republicans shortly before the auto bailout vote that you said if the auto companies go down it will be Hoover time. Do you believe that to be true?

**CHENEY:** Well, that's not quite what I said. This was a report that came out of a meeting where we did discuss the subject. What I said basically was that a crisis in the auto industry could not have come at a worse time because we were in the midst of a major financial crisis, we're on the downside of what may be the worst recession since the end of World War II and we're in the middle of a presidential transition.

President Bush to the Obama administration and under those circumstances were the automobile industry be allowed to collapse or at least the American portion of it I thought would be extremely unfortunate and that we needed to do everything we could to prevent that. That's sort of the basic picture I made. I did make a reference to Herbert Hoover but I can't recall the exact words for it.

**KARL:** But if the government doesn't act to save these companies, to give them a lifeline, do we risk headed to Hoover time?

**CHENEY:** Well, not so much in terms of the time but I would be concerned if under these circumstances we did not as an administration, and we still have major responsibilities for another month, if we didn't do everything we could to avoid those consequences and it would have a lasting impact, if you will, on how we're perceived

**KARL:** What do you think when you hear the Democrats talk about a stimulus plan of a trillion dollars?

**CHENEY:** Well, it depends on what goes into it. I'm not sure it's needed or necessary. It's not clear to me that it would have any short term effect. That doesn't mean there aren't things that could be done on some of these longer term projects but I think caution is in order here and to date I have not seen the proposals, I have not seen the arguments for why this is appropriate or why it would be good economic policy at this time.

We clearly are involved now in a recession. We see that around us every day but I think part of that is the fallout from the financial crisis we had earlier this year and it's a global problem. It's not just the United States that's affected here. This is really both, whether we're talking about the recession or we talk about financial problems, these are global issues that are going to effect everybody worldwide and it seems to me you cannot treat this just as an isolated problem inside the United State as has often been the case in the past with our recession. This is one that's going to occur on a global basis.

**KARL:** You've been called the most powerful vice president in history. Help me understand how a guy who didn't even seek this job out managed to do that.

**CHENEY:** Well, whatever I've been able to do as vice president, it's been because that's what the president wanted me to do. And I have enjoyed very much my time as vice president, it's been a tremendous experience. It's not anything I sought as you mentioned. The president asked me to take it on and I agreed to do it and I think it was exactly the right decision from my standpoint. In terms of how I'm viewed as a powerful vice president or influential vice president, I think that's something that we'll have to leave to the historians. There are a lot of people out there with opinions and I'll let somebody else sort them out.

**KARL:** What do you say to those who say you've changed? I mean, you've seen friends go across, say, I don't know Dick Cheney any more. They've really known you just about as long as anybody in this town. What do you say to that?

**CHENEY:** Well, I !! the way I think of it is in terms of whether or not I changed, I think a prime motivation for me and much of what I've done was 9/11. And being here on 9/11, going through that experience. And reaching the conclusion that somebody said the other day that I said at that point, that's not going to happen again on my watch. And we've done everything we could, the president has, I have, a lot of the people that we work with, to make certain that didn't happen.

And we've succeeded. But when you contemplate the 9/11 with terrorists instead of being armed with box cutters and airline tickets, equipped with a nuclear weapon or a biological agent of some kind in the middle of one of our cities and think about the consequences of that and then I think we're justified in taking bold action. I think it's incumbent upon us to take bold action to make certain that never happens.

And it does say we've been successful for seven and a half years now and have I changed? Well, not in the sense that I've gone through some fundamental psychological transition here but I have been since that day focused very much on what we needed to do to defend the nation and I think the policies we've recommended, the programs that we've undertaken have been good program. I think those have been sound decisions and if that's what they mean by saying I've changed, I'm guilty.

**KARL:** What did you think when you saw that shoe flying at the president?

**CHENEY:** Well, I thought the president handled it rather well. He had some good moves the way he ducked and avoided the shoe and then what was his response? That it was a size 10 and he could see that as it went by. No, I think it's an incident where an Iraqi reporter threw shoes at the president. I don't attribute any special significance to it.

**KARL:** But when you were told during another interview that the American public is overwhelmingly against the war, you said, "So?" Do you regret saying that? Would you take that back.

**CHENEY:** No. In effect what I did was, the person who made the statement they didn't ask a question. And after they made a statement, I said, "So?" expecting a question and I didn't get a question. And I took "So" to mean that I didn't have any concern for public opinion. I do. But I don't think the point I made then is that we could not have done what we'd done if we'd been reading the polls.

If we had responded to the polls I think the world would look very different today than it does. I think Saddam Hussein would still be in power. I think the progress that we've made in liberating 50 million people in Iraq and Afghanistan might well have not happened.

You can't base public policy or tough decisions in a presidency simply on what's happening in the polls. They change from week to week. You can take two polls on exactly the same day and get totally different results. It's just a bad way to make policy. And we didn't do that. What we did was what we thought was right for the country. We stood once for reelection and were reelected and we've continued to pursue those policies throughout our time in office.

Our objective has not been to see how high we could get our poll numbers by the time we left office. Our objective has been to do other things such as defend the nation, pursue a successful counterinsurgency program to prevail in Iraq and Afghanistan, reform the education system, add prescription drug benefits to Medicare, cut taxes. Those are all

things that I think we've succeeded on. They were not all popular, especially what we did in the national security area I think has been controversial but it was the right thing to do and the president and I were elected to make decisions and not to read polls.

**KARL:** Now, President Bush recently said that his greatest regret was that the intelligence was wrong on weapons of mass destruction. Is that your biggest regret?

**CHENEY:** No, I wouldn't !! I understand why he says that. I certainly share the frustration that the intelligence report on Iraq WMD generated but in terms of the intelligence itself, I tend to look at the entire community and what they've done over the course of the last several years. Intelligence !! it's not a science, it's an art form in many respects and you don't always get it right.

I think while I would mention that as a major failure of the intelligence community, it clearly was. On the other hand, we've had other successes and failures. I think the run-up to 9/11 where we missed that attack was a failure. On the other hand we've had great success since 9/11 in terms of what the intelligence community has contributed overall to the defense of the nation, to defeating al Qaeda, to making it possible for us to do very serious damage to our enemies.

**KARL:** You probably saw Karl Rove last week said that if the intelligence had been correct we probably would not have gone to war.

**CHENEY:** I disagree with that. I think !! as I look at the intelligence with respect to Iraq, what they got wrong was that there weren't any stockpiles. What we found in the after action reports, after the intelligence report was done and then various special groups went and looked at the intelligence and what its validity was. What they found was that Saddam Hussein still had the capability to produce weapons of mass destruction. He had the technology, he had the people, he had the basic feed stocks.

They also found that he had every intention of resuming production once the international sanctions were lifted. He had a long reputation and record of having started two wars. Of having brutalized and killed hundreds of thousands of people, some of them with weapons of mass destruction in his own country. He had violated 16 National Security Council resolutions. He had established a relationship as a terror sponsoring state according to the State Department. He was making \$25,000 payments to the families of suicide bombers.

This was a bad actor and the country's better off, the world's better off with Saddam gone and I think we made the right decision in spite of the fact that the original NIE was off in some of its major judgments.

**KARL:** So you're 30 something !! how many more days do you have left?

**CHENEY:** Thirty five!

**KARL:** Thirty five more days left. Who's counting? What advice do you have to Joe Biden coming in this role? You've already seen that Harry Reid has said that Biden will not be invited into the policy luncheons up at the Senate. Biden's already signaled that he's going to be scaling back some of this office, what you've done to this office. What's your advice to Biden?

**CHENEY:** Well, the most important element in deciding what kind of vice presidency any administration is going to have is what the president wants to have done. He is the boss. He is the one who's got to decide what kind of authority he wants to entrust to his vice president, how he fits with the other folks in the administration, what kinds of policies he wants him involved in and it's really unique for each administration.

I've had one meeting with Joe Biden since he won the election. He and his wife came by the house and we were able to show him the official residence and had a pleasant chat. We didn't get into policy in any major way. But Joe Biden's an experienced senator. He's been around a long time. He knows a lot. Whatever contribution he's allowed to make to the Obama administration is really up to President Obama, he'll decide what his role is going to be.

**KARL:** What are you going to miss most about this job?

**CHENEY:** Well, I am looking forward to a return to private life. This is the fourth time I've transitioned out of government to the private sector. But I'll also miss it. It's really been just a tremendously remarkable experience. I think the people that I've been pleased to work with including some of my colleagues in the administration, especially the men and women of our armed forces and the intelligence community who have done so much to keep us safe over this period of time. It's been 40 years since I came to Washington to stay 12 months and I think it's about time I went and did something else.

**KARL:** Regrets?

**CHENEY:** Oh, not a lot at this stage. I think I'll have a chance to reflect on that after I get out of here and see whether to !! anything immediately comes to mind. I think given the circumstances we've had to deal with, I think we've done pretty well.

My experience goes back, this is the fourth administration I've worked in. Things that were cited as a regret at the time, Jerry Ford's pardon of Richard Nixon, for example, 30 years later look pretty good. So I am cautious in terms of making judgments at this point. A lot of other people can do it. I am not yet out of office and I'll withhold judgment for a while.

**KARL:** The attacks don't seem to have bothered you but when they make a political ad out of you in the last week of the campaign simply because you've done one event and you know the approval rating, so I understand your position on the polls, but do those attacks on you get to you? Do they bug you?

**CHENEY:** No. If they didn't I shouldn't take this job. We've talked about how Senator Clinton referred to me as Darth Vader. I asked my wife about that, if that didn't bother her. She said, no, it humanizes you. So it's !! you've got to have a sense of humor about it. Don't take it personally. You've got to have a thick skin or you shouldn't be in this business. You can turn on the Jay Leno show or David Letterman on any weekday night and over the course of a week there are likely to be two or three shots fired in my direction. You just, you really can't worry about it. Most of them are pretty funny.

**KARL:** And then finally, what are you going to do next? What's the final act for &

**CHENEY:** Well, I don't know yet. I'll say I've got 35 more days to go here with the president and then I'll decide after that. I'm not ready to retire yet but I do want a chance to spend more time with the family. Got some rivers I want to face. Maybe write a book. I haven't decided yet.

So there'll be hopefully plenty of years left to engage in those other activities and my experience has been when you get to one of these major turning points in your life, major milestone where you leave one activity and have to go to something else, on the other side usually are good things. That's always been my experience.

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**JUSTICE DEPARTMENT'S  
OFFICE OF LEGAL COUNSEL**

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**HEARING  
BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND CIVIL LIBERTIES  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION**

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PERRY APELBAUM, *Staff Director and Chief Counsel*

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SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

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**JUSTICE DEPARTMENT'S  
OFFICE OF LEGAL COUNSEL**

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**THURSDAY, FEBRUARY 14, 2008**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND CIVIL LIBERTIES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 12:07 p.m., in room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Nadler, Davis, Ellison, Scott, Watt, Franks, and King.

Staff Present: David Lachmann, Subcommittee Chief of Staff; Burt Wides, Majority Counsel; Heather Sawyer, Majority Counsel; Sam Sokol, Majority Counsel; Caroline Mays, Majority Professional Staff Member; Paul Taylor, Minority Counsel; Crystal Jezierski, Minority Counsel; and Jennifer Burba, Minority Staff Assistant.

Mr. NADLER. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order.

Today's hearing will examine the work of the Office of Legal Counsel of the Department of Justice with respect to its involvement in the legal review of Administration policies relating to detention and interrogation.

The Chair recognizes himself for 5 minutes for an opening statement.

Today we consider a matter that goes to the heart of who we are as a Nation. No one will argue that we live in a dangerous world, that there are people who are organizing to attack our Nation, or that our Government must gather reliable intelligence to defend us. All that is obvious. What is at issue is the lengths to which some people acting on our behalf have gone, and what the Office of Legal Counsel has advised our Government what it may and may not legally do.

The job of OLC is of critical importance to the rule of law in this country. As Newsweek described it, the OLC, "is the most important Government office you've never heard of."

Within the executive branch, including the Pentagon and CIA, the OLC acts as a kind of mini-Supreme Court. Its carefully worded opinions are regarded as binding precedent, final say on what the President and all his agencies can and cannot legally do. So when it comes to the question of the treatment, the use of waterboarding and other extreme forms of coercion for interroga-

tion of people detained by the United States, OLC is really the place to start.

Our witness today, Steven Bradbury, is the Principal Deputy Assistant Attorney General for OLC. He serves in that position, because his nomination as Assistant Attorney General has not yet been confirmed by the Senate.

OLC and Mr. Bradbury have been in the middle of the controversy regarding the treatment of detainees. The now infamous Bybee Torture Memo was produced by Mr. Bybee's deputy, John Yoo. Its publication coming on top of the exposé of prisoner abuse at Abu Ghraib, devastated America's standing around the world. It also led numerous prominent military lawyers to fear it would permit hostile forces to brutalize our soldiers and deny that what they were doing was torture.

That OLC product was so flawed and so at odds with our law and our values that a subsequent head of OLC, Jack Goldsmith, rescinded it. More recently, the OLC's role in developing interrogation policy has again been in the spotlight. According to the *New York Times*, Mr. Bradbury wrote two secret but controversial opinions in 2005. Mr. Bradbury, as the acting head of OLC, reportedly issued an opinion authorizing the use, in combination, of certain harsh interrogation techniques, including head-slapping, simulated drowning, and exposure to frigid temperatures.

While its details remain unknown, that is to say secret, Deputy Attorney General Comey has been reported to have objected to it so vigorously that he told colleagues they would all be ashamed when the world learned of it.

More recently, several developments have focused the attention of this Subcommittee and of the Nation on the chilling practice of waterboarding. My own view of waterboarding is clear. It is torture, period; and as such, violates several of our laws. Waterboarding is often misnamed "simulated drowning." In fact, as was testified to by witnesses at a couple of prior hearings of this Subcommittee, it is actual drowning, with all the excruciating agony that entails, which is stopped short of death. That is why what is now euphemistically called "waterboarding" has for centuries been more bluntly known as the water torture, from the Inquisition to the U.S. prosecution in the last century of both enemy captors and Americans alike for practicing waterboarding. This has been the long-held view of our Nation, our legal system and of our military.

Senator McCain, who is something of an expert on the subject, has been unsparing in his criticism of these practices. I have held several hearings where experts in interrogation have testified not only to the cruelty, but to the ineffectiveness of this practice.

Waterboarding is also prohibited by the Army Field Manual on Interrogation. Just yesterday, the Senate passed a bill that would extend the Army Field Manual guidance, which outlaws waterboarding to the entire Intelligence Community incorporating a bill which I had introduced initially with Mr. Delahunt. As a civilized Nation there must be limits in our conduct, even during military conflicts. And our laws so dictate. President Bush has long said that America does not torture. I urge him to sign this legislation into law and thus affirm that commitment.

The fact that this Administration tortures, despite its testimony that it doesn't, is no longer a closely held secret. Recently, CIA Director Hayden disclosed the three individuals who were subjected to waterboarding. He also disclosed that at least two videotapes of those sessions had been destroyed after several years of discussion among the CIA, Justice Department, and the White House.

In addition to reportedly drafting several controversial memoranda on interrogation, Mr. Bradbury also has been a point man for the Bush administration, repeatedly explaining and defending its programs and legal positions before congressional Committees and participating in White House question-and-answer sessions with the press and the public.

Opinions issued by OLC have offered the legal support for a number of the Administration's more controversial programs and actions, whose legality under statutes of the Constitution is strongly questioned by many scholars. In addition, Mr. Bradbury has been a frequent advocate for and defender of Administration policies before the Congress and press and the public. This raises the questions about the state of OLC today.

Some observers, including former OLC officials who served in Administrations of both political parties, have questioned whether OLC in this Administration has operated with sufficient independence to present objective analysis of the controlling law, or has too readily created weak arguments to support what the President wants to do in regard to terrorism or other areas. I hope we can get to this important issue.

I want to welcome our witness, I yield back the balance of my time.

I would now recognize our distinguished Ranking minority Member, the gentleman from Arizona, Mr. Franks, for his opening statement.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, we are here today because of an article about interrogation techniques that appeared in the *New York Times*. The article describes a memo that allows what the headline characterizes as "Severe Interrogations," as described by a few anonymous sources who are only briefed on the memo and who have apparently not actually seen it. The *Times* article concedes that the tactics it characterizes as "severe interrogations" simply include "interrogation methods long used in training for our own American servicemen to withstand capture."

Severe interrogations are unpleasant, to be very sure, but, Mr. Chairman, they are sometimes necessary to prevent severe consequences that potentially involve the violent deaths of thousands of innocent American citizens. Severe interrogations are very infrequent. CIA Director Michael Hayden has confirmed that despite the incessant hysteria, the waterboarding technique has only been used on three high-level captured terrorists, the very worst of the worst of our terrorist enemies.

Director Hayden suspended the practice of waterboarding by CIA agents in 2006. Before the suspension, Director Hayden confirmed that his agency waterboarded Khalid Sheikh Mohammed, Abu Zubayda, and Abd al-Rahim Nashiri, each for approximately 1 minute. The results were of immeasurable benefit to the American

people. CIA Director Hayden has said that Mohammed and Zubayda provided approximately 25 percent of the information the CIA had on al-Qaeda from human sources. That's 25 percent of the total information in human intelligence that we have received on al-Qaeda, derived from 3 minutes' worth of rarely used interrogation tactics.

Curtailing this program would drastically reduce our ability to protect against horrific terrorist attacks. Even the *New York Times* article points out that such techniques have "helped our country disrupt terrorist plots and save innocent lives."

Torture, Mr. Chairman, by contrast is illegal, as it should be. Torture is banned by the Uniform Code of Military Justice in 19 U.S.C. 893 and the 2005 McCain amendment prohibiting the cruel, inhuman, or degrading treatment of anyone in U.S. custody, as understood in the 5th, 8th and 14th amendments.

According to the *New York Times*, the Department of Justice issued a legal opinion that "The standards imposed by Mr. McCain's Detainee Treatment Act would not force any change in the CIA's practices. Relying on a Supreme Court finding that only conduct that shocks the conscience was unconstitutional. The opinion found that in some circumstances, waterboarding was not cruel, inhuman or degrading if, for example, a suspect was believed to possess crucial intelligence about a planned terrorist attack, the officials familiar with the legal finding said."

Now, we do not know whether or not the confidential Department of Justice legal opinion actually used the example of waterboarding. But the general principle expressed by the Department of Justice, echoed by the Supreme Court's finding that circumstances inform our analysis of whether or not a tactic is cruel, inhuman or degrading, and whether a tactic constitutionally shocks the conscience.

The nonpartisan Congressional Research Service confirms that this analysis, "The types of acts that fall within cruel, inhuman or degrading treatment or punishment contained in the McCain amendment, may change over time, and may not always be clear. Courts have recognized that circumstances often determine whether conduct shocks the conscience and violates a person's due process rights."

Even ultra-liberal Harvard law professor Alan Dershowitz agrees as he wrote this recently in The Wall Street Journal. "Mukasey is absolutely correct," he says, "as a matter of constitutional law, that the issue of waterboarding cannot be decided in the abstract. The Court must examine the nature of the governmental interest at stake and then decide on a case-by-case basis. In several cases involving the actions at least as severe as waterboarding, courts have found no violations of due process."

As the Wall Street Journal pointed out in the recent editorial, Congress wants the Justice memos made public, but the reason to keep them secret is so that enemy combatants cannot use them as a resistance manual. If they know what is coming, they can psychologically prepare for it. We know al-Qaeda training involves its own forms of resistance training, and publicly describing the rules offers our enemies a road map for resistance.

Mr. Chairman, as I said in the last hearing, I believe those who would challenge aspects of the current practices and procedures governing the interrogation of terrorists have an absolute obligation to state explicitly what sorts of interrogation techniques they do find acceptable. Criticism without solution is useless and represents the opposite of leadership.

And I look forward to hearing from our witnesses, Mr. Chairman, and yield back.

Mr. NADLER. I thank the gentleman. I would comment that some of us have done precisely that. We have suggested that the practices that are permissible are those in the U.S. Army Field Manual.

In the interest of proceeding to our witness, and mindful of our busy schedules, I would ask that other Members submit their statements for the record.

Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record.

Without objection, the Chair will be authorized to declare recess of the hearing.

As we ask questions of our witness, the Chair will recognize Members in the order of their seniority in the Subcommittee, alternating between majority and minority, provided that the Member is present when his or her turn arrives. Members who are not present when their turn begins will be recognized after the other Members have an opportunity to ask their questions. The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

Our witness today, Steven G. Bradbury, who currently serves as the Principal Deputy Assistant Attorney General for the Office of Legal Counsel. The Office of Legal Counsel assists the Attorney General in his function as legal advisor to the President and all the executive branch agencies.

Before we begin, it is customary for the Committee to swear in its witnesses. If you would please stand and raise your right hand to take the oath.

[Witness sworn.]

Mr. NADLER. Let the record reflect the witness answered in the affirmative. You may be seated.

Mr. Bradbury, you are recognized for your statement.

**TESTIMONY OF STEVEN G. BRADBURY, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE**

Mr. BRADBURY. Thank you, Mr. Chairman, Chairman Nadler, Ranking Member Franks and Members of the Committee.

Let me first extend my condolences to this body and to the family of Congressman Lantos for the loss of a great American and a great Member of this House.

Mr. Chairman, I appreciate the opportunity to appear before you today to address the CIA's program of detention and interrogation of high-value terrorists.

As this Committee knows, the Office of Legal Counsel exercises the authority of the Attorney General to render legal opinions for the executive branch. I've been privileged to serve as the Principal Deputy in OLC since April 2004, and I can assure the Committee

that every opinion I sign for the Office represents my best objective judgment as to what the law requires, without regard for the political currents that often swirl around the questions presented to us.

The CIA program was initiated not long after 9/11, when our knowledge of al-Qaeda was more limited and when the possibility of a follow-on attack was thought to be eminent. The program has always been very narrow in scope, reserved for a small number of hard-core al-Qaeda members believed to possess uniquely valuable intelligence.

Fewer than 100 terrorists have been detained by the CIA as part of this program. The President and CIA Director Hayden have said that the program has been a critical source of intelligence to help prevent further mass terrorist attacks on the U.S. This program has involved the limited use of alternative interrogation methods judged to be necessary in certain cases because hardened al-Qaeda operatives are trained to resist the types of methods approved in the Army Field Manual which governs military interrogations. The CIA's interrogation methods were developed for use by highly trained professionals, subject to careful authorizations, conditions, limitations and safeguards. They have been reviewed on several occasions by the Justice Department over the past 5-plus years and determined on each occasion to be lawful under then-applicable law.

These alternative interrogation methods have been used with fewer than one-third of the terrorists who have ever been detained in the program. Certain of the methods have been used on far fewer still. In particular, as General Hayden has now disclosed, the procedure known as waterboarding was used on only three individuals and was never used after March 2003.

While there is much we cannot say publicly about the CIA program, the program has been the subject of oversight by the Intelligence Committees of both Houses of Congress, and the classified details of the program have been briefed to Members of those Committees and other leaders in Congress.

In 2002 when the CIA was establishing the program and first sought the legal advice of the Justice Department, the relevant Federal law applicable to the CIA program was the Federal anti-torture statute which prohibits acts intended to inflict severe physical or mental pain or suffering, as defined in the statute.

The Justice Department set forth its interpretation of the anti-torture statute in OLC's public December 2004 opinion where we affirm that torture is abhorrent to American values. All advice we have given since has been consistent with the December 2004 opinion.

Since 2005, additional laws have become applicable to the program. Congress passed the Detainee Treatment Act in December 2005 and the Military Commissions Act in October 2006. And in June 2006, the Supreme Court held for the first time, in *Hamdan v. Rumsfeld*, that Common Article 3 of the Geneva Conventions applies to our worldwide armed conflict with al-Qaeda.

The CIA program is now operated in accordance with the President's executive order of July 20, 2007, which was issued pursuant to the Military Commissions Act. The President's executive order requires that the CIA program comply with a host of substantive

and procedural requirements. The executive order reaffirms that the program must be operated in conformity with all applicable statutory standards, including the Federal prohibition on torture, Detainee Treatment Act, and the prohibitions on grave breaches of Common Article 3, which were added to the War Crimes Act by the 2006 Military Commissions Act.

In addition, the executive order requires that all detainees in the program must be afforded adequate food and shelter and essential medical care. They must be protected from extremes in temperature and their treatment must be free of religious denigration or acts of humiliating personal abuse that rise to the level of an outrage upon personal dignity.

The Director of the CIA must have procedures in place to ensure compliance with the executive order, and he must personally approve each individual plan of interrogation. After enactment of the Detainee Treatment Act, the CIA commenced a comprehensive policy and operational review of the program, which eventually resulted in a narrower set of proposed interrogation methods.

As the Attorney General disclosed, the program as it is authorized today does not include waterboarding. And let me be clear, Mr. Chairman. There has been no determination by the Justice Department that the use of waterboarding under any circumstances would be lawful under current law. Many of the legal questions raised by the CIA program are difficult ones and ones over which reasonable minds may differ. But the dedicated professionals at the CIA are working with honor to protect the country in accordance with the law.

Mr. Chairman, while differences between Congress and the Department in these turbulent times are inevitable and are consistent with the institutional tension embedded in our Constitution, it is important to remember that I, like Members of this Committee, have sworn an oath to protect and defend the Constitution of the United States. Each of the opinions I have rendered at the Office of Legal Counsel has been true to this oath. While difficult questions arise, every opinion I have issued has been consistent with my professional obligations as an attorney and with my obligation to protect and defend the Constitution.

Thank you Mr. Chairman.

Mr. NADLER. I thank you, Mr. Bradbury.

[The prepared statement of Mr. Bradbury follows:]

PREPARED STATEMENT OF STEVEN G. BRADBURY

**PREPARED STATEMENT OF STEVEN G. BRADBURY  
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL  
OFFICE OF LEGAL COUNSEL  
U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE**

**HOUSE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES**

**FEBRUARY 14, 2008**

Chairman Nadler, Ranking Member Franks, Chairman Conyers, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to address the Department of Justice's legal review of the CIA program of detention and interrogation.

A few basic points are worth stressing up front:

First, the CIA program is—and always has been—very narrow in scope; it is reserved for a small number of the most hardened terrorists believed to possess uniquely valuable intelligence—intelligence that could directly save lives. The program is operated in a professional manner, and all the methods of interrogation authorized for the program are subject to strict limitations and safeguards.

Second, the Justice Department's legal advice continues to reflect the principles set forth in our public December 2004 opinion to the Deputy Attorney General in which the Office of Legal Counsel explained our current interpretation of the federal statute prohibiting torture, and which rejected all torture as abhorrent to American values. All advice we have given since then has been consistent with the December 2004 opinion. Of course, many of the legal standards involved (some of which have only recently

become applicable to the CIA program) are quite general in nature, and their application can raise difficult questions about which reasonable people may disagree.

Third, although I cannot discuss classified details about the CIA program here, it is appropriate to stress that the program has been the subject of oversight by the Intelligence Committees of both Houses of Congress, and the classified details have been briefed to Members of those Committees and other leaders in Congress.

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In response to the attacks of 9/11, the Central Intelligence Agency has operated a program of detention and interrogation of certain high value al Qaeda terrorists captured in the War on Terror. It is important to remember that the program was initiated at a time when our knowledge of al Qaeda was more limited and when the possibility of a follow-on attack was thought to be imminent.

Fewer than one hundred terrorists have been detained by the CIA as part of this program since its inception in 2002. The President and CIA Director General Hayden have stated that this program has been one of the most valuable sources of intelligence to help prevent further mass terrorist attacks on the U.S. homeland and U.S. interests worldwide.

As the President and General Hayden have also stated, this program has involved the limited use of alternative (also called "enhanced") interrogation methods, judged to be necessary in certain cases because hardened al Qaeda operatives are trained to resist the types of methods approved in the Army Field Manual, which guides military interrogations.

The CIA's interrogation methods were developed for use by highly trained professionals, subject to careful authorizations, conditions, limitations, and safeguards. They have been reviewed on several occasions by the Justice Department over the past five-plus years and determined on each occasion to be lawful under then-applicable law. These alternative interrogation methods have been used with fewer than one-third of the terrorists who have ever been detained in this program, and certain of the methods have been used on far fewer still. As General Hayden has disclosed, one interrogation method that has received considerable public attention, waterboarding, was used on only three individuals, and was never used after March 2003.

From the very beginning, the CIA has sought the views of the Department of Justice to ensure that its interrogation program complied with the law. In 2002, when the CIA was establishing the program and first sought advice, the relevant federal law applicable to the CIA program was the federal anti-torture statute, 18 U.S.C. §§ 2340-2340A, which prohibits government conduct occurring outside the United States that is intended to inflict severe physical or mental pain or suffering, as defined in the statute. Since then, new legal requirements have become applicable: Congress has passed the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006, and the Supreme Court held for the first time in *Hamdan v. Rumsfeld* that Common Article 3 of the Geneva Conventions applies to a worldwide armed conflict with an international terrorist organization—specifically, our armed conflict with al Qaeda.

After enactment of the Detainee Treatment Act in December 2005, the CIA commenced a comprehensive policy and operational review of the program, which

eventually resulted in a narrower set of proposed interrogation methods. While that process was underway, the Supreme Court handed down its decision in *Hamdan* in June 2006, and, in response to *Hamdan*, Congress enacted the Military Commissions Act in the fall of 2006, in part to ensure that the CIA could continue to operate its program in an effective form. Among other things, the Military Commissions Act amended the War Crimes Act to spell out the specific War Crimes Act provisions that apply in Common Article 3 conflicts. In addition, the Military Commission Act helped to clarify how the United States would apply Common Article 3.

In conjunction with the CIA's policy and operational review, OLC evaluated the legality of the narrower program against the new legal framework, including not only the Detainee Treatment Act but also the Military Commissions Act and Common Article 3.

The CIA program is now operated in accordance with the President's executive order of July 20th, 2007, which was issued pursuant to the Military Commissions Act. The President's executive order requires that the CIA program comply with a host of substantive and procedural requirements.

Number one, of course, the executive order makes clear to the world that the CIA program must and will be operated in complete conformity with all applicable statutory standards, including the federal prohibition on torture, the prohibition on cruel, inhuman, or degrading treatment contained in the Detainee Treatment Act, and the prohibitions on grave breaches of Common Article 3 of the Geneva Conventions, as defined in the amended War Crimes Act.

Number two, the executive order makes clear that the program must be very narrow in scope, to include only those high-value terrorist detainees believed to possess critical knowledge of potential attack planning or the whereabouts of senior al Qaeda leadership. All detainees in the program must be afforded the basic necessities of life, including adequate food and shelter and essential medical care; they must be protected from extremes in temperature; and their treatment must be free of religious denigration or acts of humiliating and degrading personal abuse that rise to the level of an outrage upon personal dignity. The Director of the CIA must have rules and procedures in place to ensure compliance with the executive order, and he must personally approve each individual plan of interrogation before it is implemented.

As noted, the specifics of the program authorized today are not the same as they were in the initial years. The set of interrogation methods authorized for current use is narrower than before, and it does not today include waterboarding. As the Attorney General has made clear, before any additional interrogation method could be authorized for use in the program, three things would have to happen:

First, the Director of the CIA, together with the Director of National Intelligence, would have to determine that the new method is necessary to obtain information on terrorist attack planning or the location of senior al Qaeda leadership; second, the Attorney General would have to conclude that the use of the method, subject to all conditions, limitations, and safeguards proposed for its use, would be lawful under current law (and that includes the requirements of the Detainee Treatment Act, the Military Commissions Act, and Common Article 3); and, three, even if the Attorney

General concludes that the method's use is lawful, the President would have to personally authorize its use. In addition, Congress would be appropriately notified—including, per the commitment from the Attorney General, specific notification to the Judiciary Committees if there were a plan to add waterboarding to the program.

Let me be clear, though: There has been no determination by the Justice Department that the use of waterboarding, under any circumstances, would be lawful under current law.

While there is much we cannot say publicly about the CIA program, the Administration has briefed the Intelligence Committees on the operational details relating to the program, including all of the interrogation practices that have been employed, or are currently authorized to be employed, and the authorities supporting those practices.

I realize, Mr. Chairman, that these matters are controversial. Although many of the legal questions raised by the CIA program are difficult ones, and ones over which reasonable minds may differ, we believe that Congress and the American people should have confidence that the dedicated professionals at the CIA are working with honor to protect the country effectively and in accordance with the law.

Thank you, Mr. Chairman, and I look forward to the Committee's questions.

Mr. NADLER. I will begin by recognizing myself for 5 minutes to question the witness.

Mr. Bradbury, I understand that for many of the CIA's enhanced interrogation techniques, the test of their legality under current law is linked to the constitutional standards of whether it shocks the conscience, and that this may depend on the circumstances. But under the convention against torture and the implementing Federal torture statute, torture is absolutely barred; and that does not depend on the circumstances and that does not depend on whether it shocks the conscience.

So let's put that aside and cut to the chase. The convention and the Federal torture statute defined torture to be "an act specifically designed to inflict severe physical or mental pain or suffering." I fail to see how the agonizing pain of not being able to breathe as your lungs fill with water and oxygen is denied your body cannot be considered severe physical pain. And I fail to see how feeling that you are drowning and about to die cannot be considered severe mental pain and suffering.

It is certainly specifically designed—waterboarding, that is—to inflict both severe mental and physical pain and suffering so that the prisoner will speak.

Now, in your legal opinion, is waterboarding a violation of the Federal torture statute?

Mr. BRADBURY. Well, Mr. Chairman, as General Hayden has disclosed, our office has advised—

Mr. NADLER. I'm not interested in your opinions before. Never mind former OLC opinions. I'm asking you the question now: Is waterboarding a violation of the Federal torture statute?

Mr. BRADBURY. I was about to answer the question, Mr. Chairman, this way. Our office has advised the CIA, when they were proposing to use waterboarding, that the use of the procedure, subject to strict limitations and safeguards applicable to the program, was not torture and did not violate the anti-torture statute. And I think that conclusion was reasonable. I agree with that conclusion.

Mr. NADLER. Given the definition I just read, how can you possibly justify that?

Mr. BRADBURY. Well, first of all, I'm limited in what I can say about the technique itself, because—

Mr. NADLER. We know what the technique is. It has been done for hundreds of years.

Mr. BRADBURY. Well, with respect, Mr. Chairman, your description is not an accurate description of the procedure that's used by the CIA, and I think there's—

Mr. NADLER. My description was a description that was given to this Committee by ex-interrogation officers.

Mr. BRADBURY. Well, there's been a lot of discussion in the public about historical examples. For example, as the Chairman referenced, from the Spanish Inquisition; cases of torture from the Philippines and committed by the Japanese during World War II. Those cases of water torture have involved the forced consumption of mass amounts of water and often large amounts of water in the lungs. They have often involved the imposition of weight or pressure—

Mr. NADLER. But your testimony is that that's not what we're talking about now.

Mr. BRADBURY. That is not what we are talking about.

Mr. NADLER. Well, then let me go to the following. You have refused—according to the *New York Times*, you wrote several memos on interrogation techniques in 2005. The *Times* said that the opinion about using a whole bunch of very intense techniques on the prisoner, in combination, including waterboarding, so outraged Deputy Attorney General Comey that he told colleagues they would be ashamed if it ever came out.

Now, that has peaked our curiosity. But the Attorney General said he could not give us those memos and others we have repeatedly asked for on this subject because they were very sensitive. When the Chairman of this Committee, Mr. Conyers, reminded him that we all have Top Secret clearance, the Attorney General simply repeated that he was unable to share them with us.

Now we have been shown documents on the NSA warrant list wiretapping that are Code Word, which I'm sure is a higher classification than your legal opinion of interrogation. So can you tell us why you won't—I mean, you're telling us that the opinions we're making about waterboarding are wrong because we don't know what waterboarding really is. Therefore we can't form a judgment, you're telling us, on the legal basis; or on whether it is legal because we don't know what—literally, we don't know about what we're talking because you won't tell us.

So can you tell us precisely what the legal authority is for withholding those documents from the Committee of proper subject matter jurisdiction other than the fact that they might be embarrassing to somebody?

Mr. BRADBURY. Well, Mr. Chairman, let me say I and the Department of Justice and the Attorney General fully recognize and respect the strong oversight interest this Committee has in the work of our office—

Mr. NADLER. We've seen no evidence of that.

Mr. BRADBURY. Well, let me say that we do intend and we strive to respond to—

Mr. NADLER. Let's break through all this. Will you commit to letting us see those memos? And, if not, why not?

Mr. BRADBURY. We will—we are giving that serious consideration, Mr. Chairman. We are giving that serious consideration.

Mr. NADLER. Is there any legal basis for saying "no" to a committee of jurisdiction which falls squarely within our jurisdiction and where we all have clearance—security clearance?

Mr. BRADBURY. Well, these are matters that traditionally are subject to the extensive oversight of the Intelligence Committees.

Mr. NADLER. And the Judiciary Committee.

Mr. BRADBURY. And the classified details of the program are very close hold—

Mr. NADLER. Excuse me. I said we all had top security clearances. So given that fact, is there any legal justification for withholding those documents?

Mr. BRADBURY. Well, Mr. Chairman, as you and I have discussed these—this very question before, the interest is—the interest that

the President and the executive branch have in protecting the potential public disclosure of—

Mr. NADLER. Wait, that's saying "secret". We all have top security clearance, so all you're saying is that it might be revealed. We have top security clearance.

Mr. BRADBURY. Well, I think there was some discussion previously, perhaps mentioned earlier in the opening statements, about public disclosure. That—

Mr. NADLER. We're not talking right now about public disclosure, we're talking about disclosure to this Committee.

Mr. BRADBURY. I understand that. And my point today is we recognize your interest, we recognize the unique nature of this issue, the controversial nature of the issue. We do recognize the extraordinary—

Mr. NADLER. But what is—you keep not answering my question. What is the legal basis for your assertion of your ability to have discretion about whether to give those documents to us?

Mr. BRADBURY. Mr. Chairman, I'm not asserting any legal basis.

Mr. NADLER. If there is no legal basis, then you must give them to us.

Mr. BRADBURY. It's not a decision for me, but I am saying—I am saying that the Attorney General, in close consultation with the President, are giving careful consideration—

Mr. NADLER. Are you the head of the Office of Legal Counsel?

Mr. BRADBURY. Yes.

Mr. NADLER. Isn't it your job as such to give the opinion to the Attorney General on these kinds of questions?

Mr. BRADBURY. We do most often, yes, advise the Attorney General and the President on matters that potentially involve executive privilege issues.

Mr. NADLER. So have you advised the Attorney General that they have the legal right to withhold these documents from this Committee?

Mr. BRADBURY. I don't—

Mr. NADLER. Or that they don't have the legal right?

Mr. BRADBURY. Mr. Chairman, the executive branch does have the legal right to protect the confidentiality of deliberations of the executive branch and sensitive documents—

Mr. NADLER. The executive branch, you're saying, has the unlimited right, in its own discretion, to withhold any document because of confidentiality?

Mr. BRADBURY. I'm absolutely not saying that. The Congress has a very strong constitutionally based interest in getting information necessary for oversight—

Mr. NADLER. Thank you very much.

Mr. BRADBURY. We recognize those interests.

Mr. NADLER. But you won't commit to giving us those documents despite the fact that we have security clearance, so your recognition is totally hollow.

Mr. BRADBURY. I will commit to attempting fully to satisfy the Committee's interest in these matters, to the fullest extent possible, consistent with legitimate interests that the executive branch has. And let me just underscore, we are—

Mr. NADLER. Okay. Let me just say, then, that within a few days after this Committee, we'd like an explanation in writing. Either—we'd either like to see those documents or an explanation in writing in why we can't see them, and what the legal basis of your right to withhold them is.

Mr. BRADBURY. Okay.

Mr. NADLER. Thank you.

I now recognize the distinguished Ranking Minority Member for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Let me just first offer a little illustration that I hope gives some idea as to why some of us separate waterboarding from torture, and why we do believe that circumstances in certain situations do change whether or not something shocks the conscience—and by way of just an illustration I hope that is relevant to most people.

If a neighbor is invited over for dinner and insults the hostess on the dessert, and the husband of the home takes a baseball bat and beats his skull in for such an insult, I think that the courts would look negatively upon that. However, if a criminal breaks in at night and is attempting to rape his 4-year-old daughter and he does the same thing, it changes the way the courts look at the same situation.

So I want to put to rest the idea that there aren't effects on the circumstances, given the nature of any act. That's very fundamental and I'm astonished that we don't understand that.

Another thing I'm a little confused about, Mr. Chairman, in all deference to the leadership of this Subcommittee and the larger Committee, the Judiciary Committee itself, we've spent time trying to deal with waterboarding issues, with issues related to FISA, with issues related to habeas corpus and Guantanamo. In all three of those areas we spent considerable time, and those things asserted by the majority would have great favorable effect on terrorists and very little effect on protecting American citizens.

And I'm astonished that, given the fact that our first purpose in the Federal Government is to protect our citizens, that we spend so much time doing what we can to make sure that we're protecting terrorists and not our own—not the citizens, which is our primary cause.

With that said, I want to ask Mr. Bradbury a question. Incidentally, sir, I think you've done a good job today.

General Hayden testified last week that in the past, the U.S. military has used waterboarding against America's soldiers during the SERE training program. SERE, that's Survival Escape Resistance and Evasion is the acronym. If waterboarding really is torture, then doesn't that mean that the U.S. military routinely tortures soldiers during their training? Would that be lawful? Do you think that those who support a criminal investigation of CIA officers for their interrogation of terrorists also would support an investigation of the military officers who waterboarded our soldiers during training exercises?

Mr. BRADBURY. Well, Mr. Franks, as General Hayden did say, the CIA's use of the waterboarding procedure was adapted from the SERE training program used by the Navy and other departments

of the military, in which many, many members of the military have been trained using that procedure.

And I agree with Chairman Nadler that, as distinct from the cruel, inhuman or degrading treatment shocks the conscience standard under the Detainee Treatment Act, the torture statute is an absolute standard statute. It is a bright line rule and whenever its done in color of law, that's when it's done for Government purposes on behalf of the Government. If it is torture when done for one purpose. The same act would be torture when done for another purpose. So I believe it would be correct that those training personnel engaged in the use of that procedure, which I think was used until very recently, would be guilty of torture.

Mr. FRANKS. Well, again, I would just assert that I too truly believe that torture in our statute and in the practice of this country is illegal and should remain illegal.

I've heard a lot of reports in the press that waterboarding was developed in the Spanish Inquisition and that the United States repeatedly prosecuted it. Is that true? Do you believe that these past historical practices bear any resemblance to the waterboarding as done by the CIA?

Mr. BRADBURY. To my knowledge, they bear no resemblance to what the CIA did in 2002 and 2003. The only thing in common is, I think, the use of water. The historical examples that have been referenced in public debate have all involved a course of conduct that everyone would agree constituted egregious cases of torture.

And with respect to the particular use of water in those cases, as I've indicated, in most of those cases they involved the forced consumption of large amounts of water, to such extent that—beyond the capacity in many cases of the victim's stomach, so that the stomach would be distended. And then in many cases weight or pressure, including in the case of the Japanese, people standing on or jumping on the stomach of the victim, blood would come out of the mouth. And in the case of the Spanish Inquisition, there truly would be agony and, in many cases, death.

And so some of these historical examples I think have been used in a way that's not, I think, an accurate portrayal of what—of the careful procedures that the CIA was authorized to use with strict time limits, safeguards, restrictions, and not involving the same kind of water torture that was involved in most of those cases.

Mr. FRANKS. Mr. Bradbury, my time is almost up, but you've—is it your testimony that waterboarding is indeed not torture and, if so, what briefly would you offer as the difference?

Mr. BRADBURY. Well, let me say—first of all, let me make it very clear, as I tried to do in my testimony, there are a lot of laws that apply here beyond the torture statute, and waterboarding has not been used by the CIA since March of 2003. There has been no determination by the Justice Department that its use today would satisfy those recently enacted laws, in particular the Military Commissions Act, which has defined new war crimes for violations of Common Article 3, which would make it much more difficult to conclude that the practices were lawful today.

But under, strictly speaking, just under the anti-torture statute, as we've said in our December 2004 opinion, there are three basic concepts: severe physical pain, severe physical suffering, and severe

mental pain or suffering, which is specifically defined in the statute.

And if something subject to strict safeguards, limitations and conditions does not involve severe physical pain or severe physical suffering—and severe physical suffering, we said in our December 2004 opinion, has to take account both the intensity of the discomfort or distress involved and the duration. Something can be quite distressing or uncomfortable, even frightening, but if it doesn't involve severe or physical pain and it doesn't last very long, it may not constitute severe physical suffering. That would be—that would be the analysis.

Under the mental side, Congress was very careful in the torture statute to have a very precise definition of severe mental pain or suffering. It requires predicate conditions be met. And then, moreover, as we said in our opinion in December 2004, reading many cases, court cases under the Torture Victims Protect Act, it requires an intent to cause prolonged mental harm. Now that's a mental disorder that is extended or continuing over time. And if you've got a body of experience with a particular procedure that's been carefully monitored that indicates that you would not expect that there would be prolonged mental harm from a procedure, you could conclude that it is not torture under the precise terms of that statute.

Mr. FRANKS. Thank you.

Mr. BRADBURY. The last thing on the torture statute I'd like to say, though, Mr. Chairman, is that the Attorney General has made it clear that if he's essentially taken—he's taking ownership of this issue in the sense that if there were any proposal to use this technique again, the question would have to go to the Attorney General, and he would personally have to determine that it satisfies all the legal standards, including the torture statute. By the way, he is not simply going to rely on past opinions that may have addressed it years ago; he would make an independent and new judgment today as to whether he agrees with that conclusion.

Mr. FRANKS. Mr. Chairman, thank you. I just wanted to ask you to pass something to the Chairman. If indeed we've had testimony in this Committee that waterboarding is being used to train our soldiers, why aren't we investigating that? Why are we more concerned about the terrorists than we are our own soldiers?

Mr. NADLER. Well, first of all, it is not necessary. One of the problems with waterboarding people that you may think are terrorists may not be. There's the question—there is always the question of—

Mr. FRANKS. Well, we know that is happening to our soldiers; why are we not investigating that?

Mr. NADLER. It is training in case they're tortured. That's what it is there for.

Mr. FRANKS. That's my point.

Mr. NADLER. In case they are tortured, because we assume that enemy nations might torture people. We assume that we won't torture people. We don't assume the enemy is going to obey the law, so it may prudent to train our people for torture.

In addition to which, I would point out that at least with respect to the mental element, infliction of severe mental distress, when

they are tortured they know they are not going to die. When someone is being drowned, the mental aspect is he doesn't know you're going to stop. If someone is being trained, he knows you're not going to actually drown him. May be severe physical, but it is certainly not a severe mental aspect. When we are torturing somebody else or someone else is torturing one of our soldiers, they don't know that they are going to be treated kindly.

Mr. FRANKS. But if it is indeed, Mr. Chairman—if it is indeed torture shouldn't we be

Mr. NADLER. Well, is the gentleman asking me to investigate the military?

Mr. FRANKS. I'm asking you to understand the points here.

Mr. DAVIS. Mr. Chairman, can I ask for regular order? Mr. Franks has exceeded his time.

Mr. FRANKS. Thank you.

Mr. NADLER. Mr. Franks has exceeded his time.

I would also point out that one thing is very interesting from Mr. Bradbury's testimony, which really puts a very different light on a lot of things and makes it very necessary to get those documents, is that essentially what he said is that everything we have thought we knew about waterboarding from past cases—what the Japanese did, the Inquisition did, the newspapers have reported—that's not what we're talking about. We are talking about something else which may be different. If that's the case, we have to know about it.

I now recognize the gentleman from Alabama for 5 minutes.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Bradbury, I have a number of questions I want to ask you, but I want to pick up on your last line with the Ranking Member. You reiterated to him, and I think you stated in your testimony today, that you do not consider waterboarding to be torture as the term is precisely defined.

Your boss, the Attorney General, was asked a series of questions before the Senate Judiciary Committee and he stated that he would consider waterboarding to be torture if it was done to him. Is the Attorney General being hypersensitive?

Mr. BRADBURY. Well, I think he was describing how he would personally react to what I think everybody would recognize would be a very distressing and frightening procedure.

Mr. DAVIS. Let me pick up on that observation that it is a very distressing and frightening procedure. If individuals were subject to distressing, frightening procedures, is it conceivable that they might respond by lying?

Mr. BRADBURY. Well, I'm not an expert on that.

Mr. DAVIS. Well, let me ask you just to rely on your common sense. If someone—and I recognize we've quibbled today about the definition of waterboarding, let's see if we can agree on some common sense concepts.

Could waterboarding cause someone to feel distressed? If you would give me a simple answer.

Mr. BRADBURY. I think so, yes.

Mr. DAVIS. Could waterboarding cause someone to feel extremely frightened?

Mr. BRADBURY. I think so.

Mr. DAVIS. And if someone were feeling distressed or extremely frightened, would that human being be capable of telling a lie?

Mr. BRADBURY. I suppose so.

Mr. DAVIS. John McCain, who is an authentic American hero and is about to become a nominee of the party that I suspect you belong to, was subject to torture in Vietnam, was he not?

Mr. BRADBURY. Yes, sir.

Mr. DAVIS. And in response to that torture, he signed a confession of being a war criminal. That was a false confession on his part, wasn't it?

Mr. BRADBURY. Yes, sir.

Mr. DAVIS. It was an inaccurate, untruthful statement, was it not?

Mr. BRADBURY. Yes, it was.

Mr. DAVIS. And it was in response to the extreme distress and anxiety that he was experiencing, was it not?

Mr. BRADBURY. I believe he had bones broken and he—

Mr. DAVIS. If you could answer my question.

Mr. BRADBURY. Yes. Yes, it was.

Mr. DAVIS. That's the concern, Mr. Bradbury, that I think a number of us have.

I strongly disagree with the Ranking Member, a very able Member of this Committee, but I strongly disagree with his characterization that those of us who take issue with his position and yours are somehow trying to pass laws that favor terrorists. Some of us are concerned about the inherent unreliability of some of these practices.

You were absolutely correct when you say that someone who is experiencing waterboarding can feel or experience anxiety, distress, and you're absolutely correct to say that people in those conditions can lie. And if people can lie, they are not giving us the inherent information we need. Now let's test that for a moment.

Page 3 of your written statement, you state that these alternative interrogation methods have been used with fewer than one-third of the terrorists who have been detained in this program. Approximately how many people is that, Mr. Bradbury, about 30 or so?

Mr. BRADBURY. I don't think the exact number has been publicly—

Mr. DAVIS. Just give me a ball park, if you would. This was your word choice.

Mr. BRADBURY. I actually am not authorized to be more precise.

Mr. DAVIS. Well, but this is your word choice. They have been used with fewer than one-third of the terrorists who have been detained. Approximately how many have been detained?

Mr. BRADBURY. Fewer than 100.

Mr. DAVIS. All right. Fewer than 100, a third of those. Have any of those individuals, to your knowledge, lied in response to the interrogation techniques?

Mr. BRADBURY. I don't know.

Mr. DAVIS. Is it conceivable that some of them might have lied?

Mr. BRADBURY. I don't know.

Mr. DAVIS. My point again. Mr. Bradbury, you're right, you don't know, you can't know.

How many prosecutions have been brought based on what those 30 or so individuals have said?

Mr. BRADBURY. Mr. Davis—

Mr. DAVIS. That's a simple question. How many prosecutions have been brought? Have there been any?

Mr. BRADBURY. No.

Mr. DAVIS. No prosecutions have been brought. You don't know if any of them have given untrue or false information. You know, I am an SCC guy, so I like football. That sounds to me like a completion rate that could be pretty low for all we know.

Mr. BRADBURY. May I—may I respond?

Mr. DAVIS. Yes.

Mr. BRADBURY. The purpose of this program is not to obtain evidence to use in criminal prosecutions. The purpose of the program is to obtain intelligence that may be used to—

Mr. DAVIS. No, Mr. Bradbury. We have to test whether or not you are doing that. We have to test—if I could finish my sentence, sir, we have to test whether or not the program is reliable. I assume you don't mean to fashion a program that's unreliable.

Mr. BRADBURY. I—

Mr. DAVIS. I assume you don't mean to fashion a program that doesn't yield results.

Mr. BRADBURY. I don't fashion the program. We don't fashion—

Mr. DAVIS. You don't mean to condone or sanction a program that doesn't yield results, do you?

Mr. BRADBURY. I just give my legal opinion—

Mr. DAVIS. Let me make my point, Mr. Bradbury, since you're not addressing my point. It is a very simple one. We can't measure the accuracy of this program by saying we've gone out and brought hard-and-fast cases based on it. You cannot tell me whether any of these individuals, or all of these individuals, have lied. You've conceded to me that someone facing extreme anxiety and pressure could yield false information.

I add all of that up and come to one simple conclusion: We can't tell if this program is working. You won't give us the information to let us know that. And for some of us, that's not enough for this program to pass muster. And we take that position—not in the name of protecting terrorists, with all due respect to Mr. Franks—we take that position because we want to get the real terrorists, and we don't know if you were succeeding in doing that or if you were unearthing a bunch of lies.

And I yield back the balance of my time.

Mr. BRADBURY. If I might, I rely—I can only rely on what General Hayden has said. General Hayden has said that this program has produced thousands and thousands of intelligence reports that have been extremely valuable in heading—

Mr. DAVIS. That's an inherently subjective conclusion, Mr. Bradbury, that cannot be quantified in any way. It in no way resolves the concerns.

Mr. BRADBURY. I believe he thinks it can be quantified and has been.

Mr. DAVIS. Will he share that information with this Committee?

Mr. BRADBURY. I know he has shared it with the House Intelligence Committee.

Mr. DAVIS. Well, Mr. Chairman, I would end by requesting that if the individual you mentioned, General Hayden, the Intelligence Director, has quantifiable information about the accuracy of this program, we would ask that be disclosed and shared with this Committee.

Mr. NADLER. The time of the gentleman is expired but I would second that as Chair of this Subcommittee. This is squarely within the jurisdiction of the Judiciary Committee as well, and we would ask this be shared with us.

I now recognize the distinguished gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I point out that in the introduction of our witness Mr. Bradbury, it was addressed that he is waiting confirmation by the United States Senate. I believe there are dozens, in fact perhaps hundreds, of the President's appointees awaiting confirmation, and yet the unconfirmed representative of our Federal Government is being pushed to divulge what we know are State secrets here in a public meeting. And I don't take issue with the security clearance.

Mr. NADLER. We have asked that he provide this stuff that's confidential, in confidentiality to this Committee, all of whose Members are cleared to Top Secret information we have not asked.

Mr. KING. Reclaiming my time.

Mr. NADLER. I will give you the time back in a second. And we will take that off the time you are here.

I want to correct the record. Nobody has asked, nobody in this Committee has asked that secret information be disclosed publicly.

Mr. KING. Our definition—thank you, Mr. Chairman, I recognize your point. I think we disagree on what secret information is, and some of that—the State secret has been a subject of debate before this Committee. That would be one. And how many have been interrogated under this fashion? The question that was just asked and the answer Mr. Bradbury gave reluctantly was less than 100.

But I think also some statements that have been made here need to be clarified. One is the statement that we know what waterboarding is. I don't think there is a consensus on this Committee as to what waterboarding is. I think we understand from the testimony what some of the historical examples of or ancient versions of waterboarding are. But I go back to a statement made earlier by the Chairman, that as your lungs fill with water—and I would ask Mr. Bradbury, are you knowledgeable about any activity that would include a modern version of waterboarding in which the subject's lungs would fill with water, literally?

Mr. BRADBURY. No I'm not.

Mr. KING. And I am not either. So I just point that out to illustrate that we don't have a consensus on what we see as waterboarding. You did illustrate how it was used by the Japanese in World War II.

I want to go back to—I want to stress—I want to make another point, is that while we are here having this hearing, talking about State secrets and the risk of divulging information to the terrorists who are pledged to kill us, we have a debate going on on the floor of the House of Representatives right now; at least it is a tactical

negotiation going on right now on the eve of the expiration of our FISA law.

And I want to point out to this Committee that the national security secrets that are subject here and the national security secrets that are the subject of the FISA debate put Americans at risk. And the sunset of the FISA law is an important piece of this that ties this all together, and politics are getting in the way of the policy.

But I'm interested in one piece of the subject, and you went into the details of it to some degree. If your lungs don't fill with water and the fear definition that you gave, how does one define how this is torture under that definition if there isn't a physical pain that's involved and if the lungs aren't filling with water?

Could you go back to that fear factor, the mental pain factor, and the fear definition that you gave Mr. Bradbury?

Mr. BRADBURY. Yes, Mr. King, briefly. There is a specific definition in the anti-torture statute of severe mental pain or suffering, and it requires certain conditions, certain prerequisites or factors be present, and that those factors cause prolonged mental harm.

And one of the factors, the one that raises most questions with respect to this particular procedure, is the question of whether it involves a threat of imminent death. And what's pointed to there is the physiological sensation that's created, physiological or mental sensation, almost like a gag urge of drowning.

The question is whether that's a threat of imminent death. And as I would understand it, as I think the Chairman may have suggested, it's a reaction that even if you're involved in training, as I understand it, the subject would have. So whether or not you know that it's not really involving drowning, you have this physiological reaction, and that's the acute nature of it.

And if that is a threat of imminent death, then you need to ask: Is it the kind that would be expected to cause prolonged mental harm; that is an ongoing, persistent mental disorder as a result of that? That's what the cases have focused on with respect to the Torture Victims Protection Act and that would be—the analysis would turn on that.

Mr. KING. Thank you, just a short—

Mr. BRADBURY. I'm sorry, may I point out, though, I don't want the Committee to lose sight. There are new statutes on the books, and one of them is a new statute, the cruel and inhuman treatment war crime, added by the Military Commissions Act in fall 2006. That's a crime that took this definition from the torture statute and changed it.

Mr. NADLER. It—

Mr. BRADBURY. And it eliminated the prolonged mental harm requirement and made it serious, but nontransitory, mental harm which need not be prolonged. That's a new statute. It became effective in the fall of 2006. The Department has not analyzed this procedure under that statute. And as I think you can tell from the change in the language, that statute would present a more difficult question, significantly more difficult question with respect to this.

Mr. KING. That language sounds vague.

Are you aware of any version of waterboarding that's currently practiced where there has been a result of death?

Mr. BRADBURY. I am not.

Mr. KING. That's my point. Thank you, Mr. Chairman. I yield back.

Mr. NADLER. I thank the gentleman. The gentleman's time has expired. I now recognize for 5 minutes the gentleman from Minnesota.

Mr. ELLISON. General Mukasey testified in a Senate Judiciary Committee that he would not order an investigation of waterboarding depicted on the destroyed tapes, because the OLC had issued opinions regarding torture that were presumably relied upon by those administering the technique.

He gave two reasons. It would not be appropriate for the Justice Department to be investigating itself was one reason. The other reason is it would not be fair to prosecute persons who relied on OLC opinions.

As to the first reason, this is precisely the conflict situation for which the special counsel regulations of the Department call for pointing to someone outside of the Department to conduct important investigations.

But I want to focus on the second reason, which has certain implications I would like you to focus on. At a minimum, we need to investigate whether their actions exceeded the legal advice that OLC gave them, or whether they would have known on their own that waterboarding could not be legal.

But there is much more basic concern. If an OLC opinion, once written, had relied upon and relied upon, will prevent an investigation of executive branch felony or constitutional violations, we face a very dangerous situation. The President or other officials can violate the rights of millions of Americans and simply show that they "relied on an OLC opinion," no matter how far out and baseless the opinion is. And if the victims try to bring a lawsuit, you will use the State secrets option to have the case thrown out of court before it even starts, so perpetrators will not even be investigated.

Isn't that a recipe for unchecked executive power?

Mr. BRADBURY. Well, Congressman, no, I don't—I don't believe it is. And it may not be accepted at this point by this Committee, but I believe that the opinions we are talking about are reasonable and were appropriately relied on by the agency.

I understand this Committee is not in a position now—

Mr. ELLISON. Excuse me. Mr. Bradbury, excuse me, I have got to reclaim my time. How do you know that they were relied upon as you set forth those opinions?

Mr. BRADBURY. That's my understanding.

Mr. ELLISON. What is your understanding based on?

Mr. BRADBURY. Based on my interactions.

Mr. ELLISON. Is it based on you attending the application of these techniques of these enhanced interrogation techniques?

Mr. BRADBURY. No, sir.

Mr. ELLISON. Were you ever present for an incident of waterboarding?

Mr. BRADBURY. No.

Mr. ELLISON. Now, you said earlier that—

Mr. BRADBURY. I'm sorry, may I respond?

Mr. ELLISON. No, I reclaim my time, sir. I'm sorry.

Now, you indicated earlier that the waterboarding that we've been talking about, applied by people who you give legal advice to, is nothing like what happened to American soldiers at the hands of the Japanese or in the Spanish Inquisition. You've made that point clear.

Can you tell us exactly what it is like? Can you describe exactly what—how this technique is applied, based upon the advice that you have given?

Mr. BRADBURY. No, Mr. Ellison, I'm really not—

Mr. ELLISON. Have you seen video tape?

Mr. BRADBURY. That—no, I've not.

Mr. ELLISON. And so you haven't been there and you haven't seen videotape. So how in the world do you know that the advice you've been giving has been properly relied on? Somebody told you?

Mr. BRADBURY. I have reason to believe.

Mr. ELLISON. Which is what?

Mr. BRADBURY. In my interactions with the people that we work with.

Mr. ELLISON. Okay, your interactions. Are you talking about statements that were made to you, and that's what you're relying on?

Mr. BRADBURY. Talking about statements between clients and lawyers.

Mr. ELLISON. I know. I'm not asking you about what your client said or what you said back. I'm saying how do you know that the advice that you were given was properly relied on, how do you know that? How do you know that the limits were not exceeded?

Mr. BRADBURY. I believe that—

Mr. ELLISON. Because somebody told you, right?

Mr. BRADBURY. I believe that that's—

Mr. ELLISON. Because somebody said so, right?

Mr. BRADBURY. I don't have—I believe that that is the case.

Mr. ELLISON. Okay, so—

Mr. BRADBURY. May I make—

Mr. ELLISON. No, no, you can't, because I only have 5 minutes. If I had more time you could talk all you want.

Mr. BRADBURY. I would like to respond to—

Mr. ELLISON. No, I am going to ask you to answer my questions. That's the way this hearing goes.

So let me ask you this. I think the point was made before that it's somehow torture for the American military to use waterboarding as a training exercise, you agreed that it would in fact be torture if it were done and a violation of law. That's what you said, right?

Mr. BRADBURY. If something is torture for one purpose but it's done by the Government for another purpose, the same procedure would be torture in the other context.

Mr. ELLISON. Sure. So when a police officer goes and sells drugs as an undercover agent, do you think they should be prosecuted for controlled substance violations? I would guess you would say no to that, right?

Mr. BRADBURY. May I?

Mr. ELLISON. No. I mean, sting operations, if somebody—if a police officer is told there's a child pornographer—

Mr. BRADBURY. Mr. Chairman, may I respond?

Mr. ELLISON. Respond to the question. You have to be responsive.

Mr. BRADBURY. May I? May I respond?

Mr. ELLISON. If you're responsive.

Mr. BRADBURY. There are lines of cases addressing exactly that circumstance that say generally worded statutes that simply say any person are not reasonably read to cover the police officer in circumstances that you've suggested, because it would be an absurd result and it would not allow the Government to undertake an essential function. In this case we're dealing with a statute that says under Color of Law it is specifically addressed to Government activity. So that line of cases would not apply to this statute.

Mr. ELLISON. Right. And I'm sure you'll provide the citations for the cases.

Mr. BRADBURY. If you would like.

Mr. ELLISON. I would like.

Mr. BRADBURY. I'm happy to.

Mr. ELLISON. You mean at some later point?

Mr. BRADBURY. Well, I don't have the names of the cases on me.

Mr. ELLISON. So for example, you're saying there's a case, so trust me?

Mr. BRADBURY. Sure, there are Third Circuit cases and Second Circuit cases.

Mr. ELLISON. But you don't know the cases and so you can get them to me later.

Mr. BRADBURY. I'm happy to do that.

[The information referred to is available on page 46.]

Mr. ELLISON. As a person who has practiced law for 16 years, if I told a judge, hey, there's a case, Judge, it wouldn't pass muster. Not that I'm a judge here, but you're citing caselaw, so I expect you to at least know the name of the case.

Mr. BRADBURY. I'm not making a legal argument.

Mr. ELLISON. All right. Now, let me just ask you this question. Are we done? Okay, I'm done.

Mr. NADLER. The time of the gentleman has expired. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Bradbury, in your statement you said that the CIA program is very narrow in scope and is reserved for a small number of most hardened terrorists believed to possess uniquely valuable intelligence, intelligence that could directly save lives. Later on you say fewer than 100 terrorists have been detained by the CIA as part of this program. It's been one of the most valuable sources of intelligence.

If you're using what everybody else in the world would consider torture, is it okay if you're not doing it to too many people and you're getting good information?

Mr. BRADBURY. No. If it's torture it's not okay. We recognize, and this is what we said in our December 2004 opinion, torture is abhorrent. And I think the President has made it clear that it's not condoned or tolerated.

Mr. SCOTT. That's 2004. What about 2005?

Mr. BRADBURY. I'm sorry, in 2005?

Mr. SCOTT. The 2005 memo.

Mr. BRADBURY. Our memos have consistently applied the principles from the December 2004 opinion.

Mr. SCOTT. And so if it's—is there any international precedence outside of this Administration that suggests that waterboarding is not torture? Anybody else in the world ever consider waterboarding not torture except this Administration?

Mr. BRADBURY. I am not aware of precedents that address the precise procedures used by the CIA. I'm simply not aware of precedents on point. And that's often what makes, frankly what makes our job difficult. And I recognize that—

Mr. SCOTT. Well, you had the stuff on tape. You've heard the, I'm sure you've heard the joke about the guy who was testifying in his murder trial and the prosecutor asking him to tell the truth and the guy said yes and the prosecutor said, do you know the penalty for perjury, and the defendant said yes, it's a whole lot less than the penalty for murder.

Now, my question is, is the penalty for destroying the CIA tapes less or more than the penalty that could have been imposed had the contents of the tape been seen?

Mr. BRADBURY. I don't know the answer. I'm not in a position to answer that. Of course that matter is being handled by John Durham, the acting U.S. attorney in the Eastern District of Virginia.

Mr. SCOTT. Was your office involved in the discussion as to whether or not the CIA tapes should have been destroyed?

Mr. BRADBURY. I was not, and to my knowledge I don't know of anybody who was.

Mr. SCOTT. You do not know—

Mr. BRADBURY. I don't know of anybody in our office who was.

Mr. SCOTT. Well, who was involved in the discussion?

Mr. BRADBURY. I don't know. I don't have personal knowledge of that.

Mr. SCOTT. Well, give us some leads. Who do you think was involved?

Mr. BRADBURY. I'm not in a position, Mr. Scott, to do that. I only know what I've read in the paper about the—

Mr. SCOTT. And so if we're trying to find out who was involved in the discussion of the destruction of the CIA tapes, who should we look to?

Mr. BRADBURY. I would look to the outcome of Mr. Durham's investigation.

Mr. SCOTT. Well, I mean, help us out a little bit. You're right here. Who would be involved in that discussion, in your opinion?

Mr. BRADBURY. Well, I believe communications between the Department and—I know Chairman Reyes on the Intel Committee had been handled by the deputy, the acting deputy attorney general, and so I would refer you to his office.

Mr. SCOTT. Okay. You've indicated that you want to be clear. Let me be clear, though. There has been no determination by the Justice Department. The use of waterboarding under any circumstances would be lawful under current law.

Mr. BRADBURY. That's correct.

Mr. SCOTT. Has there been any determination that it is unlawful under current law?

Mr. BRADBURY. No, sir, because the Department, as I've tried to indicate, has not had occasion to address the question since the enactment of these new laws.

Mr. SCOTT. And we don't have the CIA tapes to know what we're talking about, so everything is kind of vague. In the 2007 Executive order in your statement says, the Executive order makes clear to the world that the CIA program must and will be operated in complete conformity with all applicable statutory standards, including Federal prohibition against torture, the prohibition on cruel inhumane or degrading treatment contained in the Detainee Treatment Act and the prohibitions on grave breaches of Common Article 3 in the Geneva Conventions as defined in the amended War Crimes Act. Did that part of the Executive order change anything?

Mr. BRADBURY. Yes, in the sense that that Executive order—that part of the Executive order simply affirms that those statutes must be complied with.

Mr. SCOTT. Did that part of the—

Mr. BRADBURY. That doesn't—I'm sorry?

Mr. SCOTT. Did that part of the Executive order change anything?

Mr. BRADBURY. No, not in the sense that those statutes on their own terms do apply. In other words, recognize that those statutes must be satisfied. But I think the one thing the Executive order does do is—

Mr. SCOTT. I'm just talking about that part of the Executive order that says you're going to comply with the law.

Mr. BRADBURY. We have to comply with the law. The program has to comply with the law.

Mr. SCOTT. So those words didn't add anything. Could we be concerned about the word "grave," prohibitions on grave breaches of Common Article 3?

Mr. BRADBURY. That's the term, Congressman, that's used in the Military Commissions Act, which define those new War Crimes Act offenses. That's the term that is used in the statute. That's all that is referring to. Those are those serious violations of Common Article 3 that merit criminal penalties.

Mr. SCOTT. So breaches of Common Article 3 that are not grave are not illegal under the War Crimes Act; they're improper apparently, but not illegal under the War Crimes Act?

Mr. BRADBURY. That's correct. They would be a violation of our treaty obligations. And other aspects of the President's Executive order address those other aspects of Common Article 3. The purpose of the Executive order is to define requirements to ensure compliance with our treaty obligations under Common Article 3.

Mr. SCOTT. My time has just about expired, Mr. Chairman. I yield back.

Mr. NADLER. I thank the gentleman. I now recognize the gentleman from North Carolina for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. Mr. Bradbury, on page 2 of your written testimony you say that fewer than 100 terrorists have been detained by the CIA as part of the program since its inception in 2002. Those are the people who were at Guantanamo?

Mr. BRADBURY. I believe the 14, maybe 15 high value detainees at Guantanamo who were transferred there from CIA custody are

among those who have ever been detained by the CIA. But the CIA has held others. So that's not the sum total of the terrorists who have ever been detained in this program by the CIA. Those were the ones who were—I believe, as the President said in September of 2006, when the 14 HVDs were moved to Gitmo at that time, that that emptied the overseas facilities of the CIA. At that time there were no—

Mr. WATT. What's the totality of the number of people that was held at Guantanamo?

Mr. BRADBURY. Over time or today?

Mr. WATT. Over time and today.

Mr. BRADBURY. I believe over time it may have—I may not have the accurate number. It may be somewhere around 700, 750. And today I believe it's about 350.

Mr. WATT. And if I were trying to determine the disposition of one or more of those 350 people who are still there—well, first of all, what is the maximum duration that they have been held there?

Mr. BRADBURY. I believe the first detainees came into Gitmo around January or February of 2002, I believe.

Mr. WATT. So we've got some people there who have been there since 2002?

Mr. BRADBURY. I believe so.

Mr. WATT. And they're still there. And have they been formally charged with anything?

Mr. BRADBURY. Some of them have been. A small number have been formally charged. That number is growing as we move forward with military commission procedures. All of them have had the combatant status review tribunal determinations that they are enemy combatants. They go through that process, which is then subject to appeal to the D.C. Circuit under the Detainee Treatment Act.

Mr. WATT. And if I were trying to find out the status of one or more of those 350 people, who would I be contacting?

Mr. BRADBURY. I would suggest that you contact Gordon England, the Deputy Secretary of Defense, directly.

Mr. WATT. And would he be in a position to determine who's there and what their disposition is; is that the information that would be made available to a Member of Congress?

Mr. BRADBURY. I don't know for sure, but I believe yes, sir. I believe he'll be able to provide that information.

Mr. WATT. Okay. And he's at the Department of Defense?

Mr. BRADBURY. He's the Deputy Secretary of Defense, Mr. England.

Mr. WATT. Okay. The whole legal regimen you say has changed now; new statutes. I'm wondering whether the President still has, in your opinion, the authority to under Article 2 to disregard the new legal framework, regardless of what—let's suppose you all issued an opinion that said under the new framework waterboarding was illegal.

Mr. BRADBURY. Correct.

Mr. WATT. Could the President disregard that under Article 2?

Mr. BRADBURY. I don't believe the President would ever—

Mr. WATT. I didn't ask you whether he would do it. I said could he do it?

Mr. BRADBURY. May I make a couple of points?

Mr. WATT. If you will answer my question first, you could make as many points as you would like. I would like to know first whether in your legal opinion the President has the authority under Article 2 to disregard an opinion that your office has issued?

Mr. BRADBURY. I don't believe he would disregard—

Mr. WATT. I didn't ask you that, Mr. Bradbury. I asked you whether he would have the authority to do it. I didn't ask you whether he would do it or not.

Mr. BRADBURY. Well, he—

Mr. WATT. I give my President the same presumptions that you do, that he would not.

Mr. BRADBURY. He would not.

Mr. WATT. But would he have the authority to do it under Article 2? That's the question I'm trying to—

Mr. BRADBURY. Could I get to that in a second?

Mr. WATT. What about answering that first and then getting to the explanation?

Mr. BRADBURY. This Congress has constitutional authority to enact these provisions, these War Crimes Act offenses. And so I believe they're constitutional. The Congress has authority to define offenses against the law of nations. It's constitutional authority that Congress has. There's no question about the constitutionality of the statutes. Moreover, traditionally and by statute the Attorney General is the chief law enforcement officer for the United States who gives opinions for the executive branch on what the law requires. And in all cases the President will look to those opinions; will not disregard them.

Now, in theory, Congressman, the President stands at the top of the executive branch. So in theory all of the authority of executive branch officers, including the Attorney General, is subject to the ultimate authority of the President. That said, it's not—it is quite hypothetical, and I believe unsustainable, for the President to disregard an opinion of the Attorney General, particularly a considered formal opinion of the Attorney General.

Mr. WATT. My question you still haven't answered even after all of that. Does the President have the authority to disregard the opinion under Article 2?

Mr. BRADBURY. Well, the President is sworn to—

Mr. WATT. I understand—

Mr. NADLER. The time of the gentleman has expired. I believe, Mr. Bradbury, your answer is yes, he has that authority?

Mr. BRADBURY. Well, Mr. Chairman, you are putting words in my mouth.

Mr. NADLER. Yes, I am. I think you've said he has that authority, but it would be very rare for him to exercise it.

Mr. WATT. Well, the question is does he have the authority, and if he does—I mean, I would love to have gotten, if you hadn't ropey doped my whole 5 minutes here, to the next question, which is are there any limits to that authority?

Mr. BRADBURY. Yes, there are.

Mr. NADLER. Answer that question briefly.

Mr. BRADBURY. General Hayden has very clearly said, and this is a practical limit that matters under our system of Government,

he will not order his people and his people will not do anything that the Attorney General has determined is inconsistent with a statute that applies.

Mr. WATT. So if the President of the United States issues the order to General Hayden, he's not going to—he's going to listen to the Attorney General rather than to the President of the United States, that's what you're saying?

Mr. BRADBURY. That's what General Hayden has said.

Mr. NADLER. The time of the gentleman has expired. All time has expired.

Mr. Bradbury, our Members may have additional questions after this hearing. We've had some difficulty getting responses to our questions from the Justice Department and timely responses when we get them at all. Will you commit to providing a written response to our written questions within 30 days of receipt of the questions?

Mr. BRADBURY. Yes. I will do it as soon as possible and I will make every effort to do it within 30 days.

Mr. NADLER. Thank you. Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witness, which we will forward and ask the witness to respond as promptly as you can so that your answer may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

I will note for the edification of the Members there are 7 minutes left on the vote on the motion to adjourn on the floor. With that, this hearing is adjourned.

[Whereupon, at 1:25 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

February 12, 2008

The Honorable Glenn A. Fine  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

The Honorable H. Marshall Jarrett  
Counsel for Professional Responsibility  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW, Room 3266  
Washington, D.C. 20530

Dear Inspector General Fine and Counsel Jarrett:

We request that you investigate the role of Justice Department officials in authorizing and/or overseeing the use of waterboarding by the Central Intelligence Agency.

Attorney General Michael Mukasey refuses to investigate the Administration's authorization and use of waterboarding. CIA Director Michael Hayden has testified that the CIA waterboarded three detainees, and Attorney General Mukasey has testified that, "There are circumstances where waterboarding is clearly unlawful." Nonetheless, the Attorney General refused Senator Durbin's request to investigate because he does "not believe such an investigation is necessary, appropriate, or legally sustainable."

Attorney General Mukasey admitted that, "the CIA sought advice from the Department of Justice, and the Department informed the CIA that [waterboarding's] use would be lawful under the circumstances and within the limits and the safeguards of the program." The Attorney General's justification for refusing to open an investigation is that, "no one who relied in good faith on the Department's past advice should be subject to criminal investigation for actions taken in reliance on that advice." However, this does not address Senator Durbin's request that "a Justice Department investigation should explore whether waterboarding was authorized and whether those who authorized it violated the law" (our emphasis).

Waterboarding has a sordid history in the annals of torture by repressive regimes, from the Spanish Inquisition to the Khmer Rouge. The United States has always repudiated waterboarding as a form of torture and prosecuted it as a war crime. The Judge Advocates General, the highest-ranking attorneys in each of the four military services, have stated unequivocally that waterboarding is illegal and violates Common Article 3 of the Geneva Conventions.

Yet, despite the virtually unanimous consensus of legal scholars and the overwhelming weight of legal precedent that waterboarding is illegal, certain Justice Department officials, operating behind a veil of secrecy, concluded that the use of waterboarding is lawful. We believe it is appropriate for you to investigate the conduct of these Justice Department officials. As you know, a similar investigation is underway regarding Justice Department officials who advised the National Security Agency that its warrantless surveillance program is lawful.

To restore the faith of our intelligence professionals and the American people in the Justice Department's ability to provide accurate and honest legal advice, we request that you make your findings public.

We ask that you explore, among other things:

- Did Justice Department officials who advised the CIA that waterboarding is lawful perform legal work that meets applicable standards of professional responsibility and internal Justice Department policies and standards? For example, did these officials consider all relevant legal precedents, including those that appear to contradict directly their conclusion that waterboarding is lawful? Did these officials consult with government attorneys who are experts in the relevant legal standards, e.g. Judge Advocates General who are experts in the Geneva Conventions? Was it reasonable to rely on standards found in areas such as health care reimbursement law in evaluating interrogation techniques?
- Were Justice Department officials who advised the CIA that waterboarding is lawful insulated from outside pressure to reach a particular conclusion? What role did White House and/or CIA officials play in deliberations about the lawfulness of waterboarding?

We agree with Attorney General Mukasey that our intelligence professionals should be able to rely in good faith on the Justice Department's legal advice. However, if CIA agents or contractors have been put in jeopardy by misguided counsel from the Justice Department, including legal opinions that the Administration has been forced to repudiate, and as a result they risk war crimes prosecution overseas, this is a serious matter. It also places CIA agents at risk of receiving similarly flawed advice in the future. Moreover, the Justice Department's continued refusal to repudiate waterboarding does tremendous damage to America's values and image in the world and places Americans at risk of being subjected to waterboarding by enemy forces. We believe it merits investigation to determine if these grievous results were the product of legal theories violating the Department's professional standards, or improper influence violating the Department's standards for independent legal advice.

We respectfully request that you inform us whether you plan to initiate a review as soon as possible, and no later than February 19, 2008. We also request that you inform us whether the results of your review will be provided to Congress and made public. Thank you for your time and consideration.

Sincerely,  
Richard J. Durbin  
U.S. Senator

Sheldon Whitehouse  
U.S. Senator

# ROLL CALL

## Seeking an Inquiry on Torture

February 13, 2008

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Senate Majority Whip Dick Durbin (D-Ill.) and Sen. Sheldon Whitehouse (D-R.I.) on Tuesday called on the Department of Justice's inspector general to launch an investigation into the role DOJ officials have played in authorizing the use of waterboarding during interrogations.



At the same time, Senate Majority Leader Harry Reid (D-Nev.) on Tuesday reiterated that President Bush's nomination of Steven Bradbury to become an assistant attorney general was dead in the Senate.

"There will never be any movement" on Bradbury, Reid said, adding that "Bradbury will never be approved by the Democrats. Too many people think that he shouldn't be approved."

Bradbury's nomination has run into opposition over his role in setting the Bush administration's policies on torture, including the potential use of waterboarding.

In a letter to the IG, Durbin and Whitehouse call for an investigation of "certain Justice Department officials, [who] operating behind a veil of secrecy, concluded that the use of waterboarding is lawful. We believe it is appropriate for you to investigate the conduct of these Justice Department officials. As you know, a similar investigation is underway regarding Justice Department officials who advised the National Security Agency that its warrantless surveillance program is lawful."

Durbin and Whitehouse note that Attorney General Michael Mukasey has thus far refused to conduct his own inquiry into the matter, which is why they have called on the IG.

— John Stanton





**U.S. Department of Justice**

Office of Legal Counsel

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Office of the Principal Deputy Assistant Attorney General

Washington, D.C. 20530

February 25, 2008

The Hon. Jerrold Nadler  
U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights and Civil Liberties  
2138 Rayburn House Office Building  
Washington, D.C. 20515

*Re:*     “Oversight Hearing on the Justice Department’s Office of Legal Counsel”  
(Feb. 14, 2008)

Dear Chairman Nadler:

Thank you for the opportunity to appear before the Subcommittee last week. I write to clarify and correct the record with respect to three matters addressed at the hearing.

First, Ranking Member Franks asked me during the hearing to describe the legal standards under the anti-torture statute, and I provided the following response:

MR. BRADBURY: [U]nder the anti-torture statute, as we've said in our December 2004 opinion, there are three basic concepts: severe physical pain, severe physical suffering and severe mental pain or suffering, which is specifically defined in the statute. And if something subject to strict safeguards, limitations and conditions does not involve severe physical pain or severe physical suffering—and severe physical suffering we said in our December 2004 opinion has to take account of both the intensity of the discomfort or distress involved and the duration, and something can be quite distressing or uncomfortable even frightening—but if it doesn't involve severe physical pain and it doesn't last very long, it may not constitute severe physical suffering. That would be the analysis.

Following my testimony, the *Washington Post* erroneously described that statement as reflecting the conclusion that an act would constitute torture only if it involves “severe and lasting pain.” The *Post* subsequently issued the following correction on February 22, 2008:

A Feb. 17 A-section article misstated a portion of testimony from Steven G. Bradbury, acting chief of the Justice Department's Office of Legal Counsel. Bradbury told a House Judiciary subcommittee that an interrogation tactic may violate a federal anti-torture statute if it constitutes severe or lasting physical pain, not both severe and lasting pain.

In order to ensure that the Committee did not misunderstand my testimony, I would like to reiterate that the anti-torture statute prohibits three categories of acts: those specifically intended to inflict “severe physical pain,” “severe physical suffering,” or “severe mental pain or suffering.” An act may inflict “severe physical pain” no matter how short its duration. As I emphasized in my testimony, only if the act does not constitute “severe physical pain” would it be necessary to consider its duration (as well as its intensity) in determining whether it amounts to “severe physical suffering.” In addition, it would be necessary to consider whether the act constitutes “severe mental pain or suffering,” which includes a statutory requirement of “prolonged mental harm.” As I also emphasized, Congress has passed several recent laws prohibiting conduct not rising to the level of torture, and those statutes would need to be considered in reviewing the lawfulness of future conduct wholly apart from the anti-torture statute.

Second, I testified at last week’s hearing that if an act were to constitute unlawful torture when performed for the purpose of gathering intelligence, then it also would constitute torture if done by the Government for another purpose, such as if it were done as part of a program for training military personnel in the resistance of enemy interrogations. In response to that testimony, I had the following exchange with Representative Ellison:

REP. ELLISON: Okay, so when a police officer goes and sells drugs as an undercover agent, you think they should be prosecuted for crack—for controlled substance violations? I would guess you’d say no to that, right?

MR. BRADBURY: And, may I?

REP. ELLISON: No, I mean, sting operations. If somebody—if police officers pose as a child pornographer—

MR. BRADBURY: Mr. Chairman, may I respond, because—

REP. ELLISON: Respond to the question—

MR. BRADBURY: May I? May I respond? May I?

REP. ELLISON: If you’re responsive.

MR. BRADBURY: There are lines of cases addressing exactly that circumstance that say generally worded statutes that simply say “any person” are not reasonably read to cover the police officer in circumstances that you’ve suggested because it would be an absurd result and it would not allow the government to undertake an essential function. In this case—

REP. ELLISON: Thank you.

MR. BRADBURY: In this case we're dealing with a statute that says "under color of law." It is specifically addressed to government activity, so there—that line of cases would not apply to this statute.

REP. ELLISON: Right. And you—I'm sure you'll provide the citations for the cases.

During my testimony, I was unable to identify particular cases in response to Representative Ellison's question. In order to complete the record, however, I would submit the following legal authority in support.

It is well established that generally worded criminal statutes do not prohibit reasonable conduct by government agents, such as those who make undercover drug sales or conduct "sting" operations against peddlers of child pornography. *See, e.g., Brogan v. United States*, 522 U.S. 398, 406 (1998) (holding that a statute prohibiting "any" false statement "does not make it a crime for an undercover narcotics agent to make a false statement to a drug peddler.") (alteration and internal citation omitted); *Nardone v. United States*, 302 U.S. 379, 384 (1937) (finding it an "obvious absurdity" to apply "a speed law to a policeman pursuing a criminal or the driver of a fire engine responding to an alarm."); *United States v. Condon*, 170 F.3d 687, 690 (7th Cir. 1999) (The terms "whoever" and "any person," as used in the federal anti-gratuity statute, do not prohibit the "authorized acts of federal agents, in the ordinary course of their duties."); *United States v. Singleton*, 165 F.3d 1297, 1299-1302 (10th Cir. 1999) (en banc) (holding that a statute that criminalizes "whoever" "promises anything of value" in exchange for the testimony of "any person" does not apply to or prohibit an Assistant United States Attorney from offering leniency to defendant's accomplice in exchange for the latter's testimony). By contrast, that exception does not apply when the statute, read in context, specifically applies to and prohibits a government agent's conduct. *See, e.g., Nardone*, 302 U.S. at 384; *Condon*, 170 F.3d at 689-90. Because the federal anti-torture statute is specifically directed at government conduct—insofar as it prohibits actions taken "under the color of law," 18 U.S.C. § 2340(1)—it prohibits all torture committed by government agents, regardless of the purpose for which it was committed.

Finally, during the hearing, I had the following exchange with Representative Ellison:

REP. ELLISON: So you haven't been there and you haven't seen videotape, so how in the world do you know that the advice you've been giving has been properly relied on? Somebody told you?

MR. BRADBURY: I have reason to believe it was—

REP. ELLISON: Which is what?

MR. BRADBURY: My interactions with the people that we work with—

REP. ELLISON: Okay, your interactions. Are you talking about statements that were made to you and that's what you're relying on?

MR. BRADBURY: Talking about statements between clients and lawyers as to what—

REP. ELLISON: I know. I'm not asking you about what your client said or what you said back; I'm saying how do you know that the advice you were giving was properly relied on? How do you know that? How do you know that the limits were not exceeded?

MR. BRADBURY: I believe that—

REP. ELLISON: Because somebody told you, right?

MR. BRADBURY: I believe that that's—

REP. ELLISON: Because somebody said so, right?

MR. BRADBURY: I don't have—I believe that that is the case.

I was hampered in responding to these questions because they involve classified operational matters and confidential attorney-client interactions. Although I may have my own opinions on these matters, the primary role of the Office of Legal Counsel is to render prospective opinions for executive agencies on the correct interpretation of the law, not to evaluate the past actions of agencies to judge whether they have complied with all applicable legal requirements. In the case of the CIA, other officials or entities are better equipped than OLC to make such judgments, including the Director of National Intelligence and the Director of the CIA, with the assistance of the CIA's Inspector General; the Attorney General, with the assistance of others within the Department of Justice; and the Intelligence Committees of Congress. You can be assured that there has been and continues to be rigorous oversight of the CIA's program of detention and interrogation. In addition, as with any complex and sensitive operational program, the conditions applicable to the CIA program have been modified over time in light of experience with the program, and OLC's legal advice has taken account of such modifications.

Thank you for the opportunity to clarify and complete the record of my testimony before the Subcommittee, and I would ask that you please include this letter in the hearing record. I appreciate the opportunity to have appeared before the Subcommittee.

Sincerely,



Steven G. Bradbury  
Principal Deputy Assistant Attorney General

Attachment

cc: The Honorable Trent Franks, Ranking Member  
The Honorable Keith Ellison

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**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

August 18, 2008

The Honorable Jerrold Nadler  
Chairman  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the February 14, 2008, appearance before the Subcommittee of Deputy Assistant Attorney General Steven Bradbury at a hearing entitled "Oversight Hearing on the Justice Department's Office of Legal Counsel." We hope that this information is of assistance to the Subcommittee. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Keith B. Nelson  
Principal Deputy Assistant Attorney General

cc: The Honorable Trent Franks  
Ranking Minority Member

**Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
U.S. House of Representatives**

**Questions for the Record for  
Steven G. Bradbury  
Principal Deputy Assistant Attorney General  
Office of Legal Counsel**

**Arising from a Hearing Entitled  
“Oversight Hearing on the Justice Department’s Office of Legal Counsel”**

**February 14, 2008**

**Questions Submitted by Chairman Jerrold Nadler**

**In your testimony before the Subcommittee, you agreed that, under the Convention Against Torture and the implementing Federal Torture Statute, torture is absolutely barred, and that this does not depend on the circumstances.**

**You said that, in your legal opinion, the CIA procedure did not violate the Convention Against Torture and the Federal Torture Statute, which prohibits: “An act . . . specifically designed to inflict severe physical or mental pain or suffering.”**

**You also referenced the December 30, 2004, Memorandum Opinion for the Deputy Attorney General by then acting head of OLC, Daniel Levin (Levin Memorandum) as the basic Justice Department position on what constitutes a violation of the Torture Statute. The Levin Memorandum makes clear—and your testimony confirms—that “severe physical pain,” “severe physical suffering,” and “severe mental suffering” are distinct triggers of the Torture Statute. You first questioned whether the CIA’s form of waterboarding was sufficiently painful physically to constitute torture. You then analyzed whether it constituted severe physical suffering or severe mental pain or suffering. Your comments raised several questions:**

**1. Physical Pain**

**The Levin Memorandum also makes clear that “severe pain” under the Convention and Statute need only be “intense” or “hard to endure.” It need not be “excruciating” or “agonizing.” Moreover, if the physical pain is sufficiently intense, it does not have to be prolonged to constitute torture.**

**Although you said the CIA waterboarding protocol involves strict safeguards, limitations, and conditions, medical experts have pointed out that waterboarding is**

inherently uncontrolled and imprecise because each individual will experience and react to it differently and in unpredictable ways. The pain caused by oxygen deprivation and small amounts of water invading the respiratory system inevitably will vary among different subjects being waterboarded. So will the physiological stress caused by fear of drowning and the physical impact of stress hormones it produces, like adrenalin, cortisol and epinephrine. In addition, the subjects may be persons who have high blood pressure, or other cardiovascular and pulmonary illness.

In short, the method of waterboarding—angle of the board, amount and rate of water application, duration of the waterboarding—may be controlled and precise, but the resulting impact on the waterboarded subject can be neither precise nor controlled.

In light of that variation of physiological response, and the effect of varying preconditions, what is the basis for your assurance that waterboarding under the CIA protocol does not cause the “intense pain” that constitutes unlawful torture?

**ANSWER:** Information provided by the CIA indicated that the CIA’s proposed interrogation practices, subject to limitations, conditions, and safeguards, were not designed to cause, and would not be expected to cause, physical pain of such intensity as to constitute “severe physical pain” within the meaning of 18 U.S.C. § 2340(1). Relevant limitations, conditions, and safeguards have included, among other things, individual assessments of each detainee’s medical and psychological health, as well as monitoring for indications of changes in a detainee’s medical and psychological condition. The current CIA program is governed by Executive Order 13440, which requires the Director of the CIA to approve individually tailored interrogation plans contingent upon medical and psychological assessments and monitoring to help ensure safe treatment of detainees and compliance with all legal and policy standards applicable to the program. As has been publicly stated, waterboarding is not currently authorized for use in the CIA program and was last employed by the CIA in March 2003.

## 2. Physical Suffering

The Levin memorandum further states that “severe suffering” can occur even in the absence of “severe pain.” As you acknowledged, “severe suffering,” according to the Levin Memorandum, is calculated as a combination of intensity and duration. However, your testimony referred to the duration of the administered waterboarding. Specifically, you said that:

Something can be quite distressing, uncomfortable, even frightening [but] if it doesn’t involve severe physical pain, and *it doesn’t last very long*, it may not constitute severe physical suffering. That would be the analysis.

Yet the Levin Memorandum clearly refers to the duration of the physical suffering, not merely to the duration of the physical act of torture.

Prolonged intense physical suffering, even after relatively brief waterboarding itself ends, may be caused by oxygen deprivation, by even small amounts of water being drawn into the respiratory tract, and by the continuing physiological effects of the acute stress of perceived drowning described above.

(A) In light of the distinct possibility of intense physical suffering, the unpredictable results, and the fact that, by definition, severe physical suffering need not involve intense physical pain, what is the basis for your assurance that waterboarding under the CIA protocol does not cause the "intense physical suffering" that constitutes unlawful torture?

**ANSWER:** Information provided by the CIA indicated that the CIA's proposed interrogation practices, subject to limitations, conditions, and safeguards, were not designed to cause, and would not be expected to cause, physical pain, discomfort, or distress of such intensity or duration as to constitute "severe physical suffering" within the meaning of 18 U.S.C. § 2340(1).

(B) If the CIA's form of waterboarding does not cause intense physical pain or suffering, then how can you explain the fact that hardened, zealous terrorists reportedly broke in less than two dozen seconds and divulged information?

**ANSWER:** Responding to this question would require disclosure of classified information about particular interrogations. Such information has been provided in classified briefings to or testimony before the Intelligence Committees of Congress or their staffs.

### 3. Mental Pain and Suffering

As the Levin Memorandum notes, intentionally inflicting the intense mental anguish caused by the sensation and fear of imminent death, in order to obtain information, is expressly listed in the Torture Statute as one of the specified ways of inducing severe mental pain and suffering covered by the Statute. That is precisely the means by which CIA interrogators sought to induce full disclosure. Your testimony suggested that mental pain and suffering must be "prolonged" in order to constitute torture. As in the case of physical suffering, however, the Levin Memorandum makes clear that the requirement refers to prolonged harm resulting from the waterboarding, not to the duration of the waterboarding itself.

(A) On what do you base the suggestion that detainees who suffer the sensation of drowning will not experience intense mental harm or suffering for sometime afterwards, including the possibility of severe post traumatic stress disorder?

**ANSWER:** Information provided by the CIA indicated that the CIA's proposed interrogation practices, subject to limitations, conditions, and safeguards, were not designed to cause, and would not be expected to cause, "severe mental pain or suffering" within the meaning of 18 U.S.C. § 2340(2). The definition of "severe mental pain or suffering" under 18 U.S.C. § 2340(2)

requires the occurrence of one of the four specified predicate acts, as well as resulting “prolonged mental harm.” Relevant limitations, conditions, and safeguards have included, among other things, individual assessments of each detainee’s medical and psychological health, as well as monitoring for indications of changes in a detainee’s medical and psychological condition.

(B) On what basis can you assume that, even if the waterboarding itself lasts only a brief period, it will not cause “prolonged” mental pain or suffering? In providing your response to this question, please keep in mind that the claim that the CIA interrogators using the protocol do not seek to inflict prolonged mental pain or suffering, and merely seek to inflict it momentarily so that the detainee will talk, is not a responsive answer. The Levin Memorandum did not conclude that the specific intent requirement of the Torture Statute is unmet if the specified harm is the foreseeable result of the waterboarding.

ANSWER: Please see the answer to question 3(A).

(C) The detainee must anticipate the prospect of additional waterboardings should the CIA interrogators become dissatisfied with the completeness or accuracy of his answers after the first waterboarding session, or if they pose additional questions, which he resists answering. This is likely to be a constant source of severe anxiety. Does that not constitute mental pain and suffering of substantial duration?

ANSWER: Please see the answer to question 3(A).

(D) You testified that “[i]f you have a *body of experience* with a particular procedure that’s been carefully monitored that indicates that you would not expect that there would be prolonged mental harm from a procedure, you could conclude that it is not torture under the precise terms of the statute.”

(i) Has any employee, contractor, or other person acting on behalf of the United States engaged in waterboarding of any type of detainees or terror suspects since September 11, 2001, apart from the three cited cases of Khalid Sheikh Mohammed, Abu Zubaydah, and Abd al-Rahim al-Nashiri?

ANSWER: The Director of the CIA has stated that the three al Qaeda members identified in the question were the only detainees subjected to waterboarding by the CIA as part of its post-9/11 program of detention and interrogation. I am not aware of other detainees who have been subjected to waterboarding by persons acting on behalf of the United States since 9/11.

(ii) Do you consider experience with the three, and only three, admitted subjects of waterboarding to be a “body of experience”?

**ANSWER:** It provides some relevant, though limited, experience. To the extent any particular interrogation practice may have been used as part of military training, such training experience would also be relevant to some degree.

**(iii) If so, have any CIA, FBI, or non-CIA investigators, doctors, or psychiatrists raised questions about the mental state of any of those three following their subjection to waterboarding?**

**ANSWER:** The Department of Justice has not had custody of the individuals in question. We would refer you to the CIA or to the Department of Defense (which currently has custody of the relevant individuals). Those agencies are in a better position to respond to this question.

**(iv) Have the three individuals subjected to waterboarding been evaluated by independent medical professionals to determine whether or not they have suffered prolonged physical or mental harm?**

**ANSWER:** These individuals have been evaluated by medical and psychological professionals. We would refer you to the CIA or the Department of Defense, either of which is in a better position to respond to this question.

**(v) If you agree that three examples hardly constitute a "body of experience," please indicate what other subjects of waterboarding are included in that "body of experience."**

**ANSWER:** Please see the answers to questions 3(D)(i) and (ii).

#### **4. SERE TRAINING**

You agreed with Rep. Franks's suggestion that, if the waterboarding administered by the CIA to terrorist detainees was illegal torture, then so might be the waterboarding-type procedure that U.S. personnel undergo as part of their Survival, Escape, Resistance and Evasion (SERE) training. Your answer implicitly presumed that everything about the administration and usage of such techniques is identical in the two different situations. Yet the SERE trainees, unlike terrorist detainees, know that they do not face death, that the exercise will end whether or not they provide the information sought, and they will not face repeated sessions should their interrogators subsequently decide they need to ask new questions. Moreover, the SERE trainees are select members of the military in excellent physical shape, and medical personnel are directly involved in the actual application of waterboarding during SERE training, in order to monitor the trainee's response.

**(A) Do you really believe that there is no significant distinction between "waterboarding" as part of a one-time limited training exercise and waterboarding as part of a hostile interrogation of enemy detainees?**

**ANSWER:** The terms of the federal anti-torture statute focus on whether the conduct in question is done under color of law and whether it is done with the specific intent to inflict "severe physical or mental pain or suffering" as defined in the statute. So long as the conduct is under color of law, the language of the statute does not distinguish one government purpose (such as the resistance training of military personnel) from another government purpose (such as intelligence gathering). Nevertheless, there is a significant distinction between interrogation as part of a military training program and interrogation of a hostile detainee held in custody, particularly in terms of the likely expectations of the individual undergoing the practice. The two situations are not identical, and the circumstances of particular conduct would need to be considered in evaluating a potential application of the federal prohibition on torture.

**(B) Representative Franks asked whether SERE trainers should be criminally prosecuted for violating the Torture Act. During U.S. military training, especially as provided to special operations and other elite units, "drill instructors" and other trainers use a variety of intense actions on military personnel. Many of those actions could constitute criminal violations, such as assault, battery, reckless endangerment, and false imprisonment, if done to or imposed upon civilians who were not part of a military training program.**

**ANSWER:** Depending on the circumstances, traditional forms of authorized military training, such as those described in the question, would not meet the required elements of the federal crimes of assault, battery, reckless endangerment, and false imprisonment. Furthermore, generally worded criminal statutes are typically not read to prohibit reasonable conduct by government agents in the exercise of their essential functions. *See, e.g., Brogan v. United States*, 522 U.S. 398, 406 (1998) (holding that a statute prohibiting "any" false statement "does not make it a crime for an undercover narcotics agent to make a false statement to a drug peddler") (alteration and internal citation omitted); *Nardone v. United States*, 302 U.S. 379, 384 (1937) (finding it an "obvious absurdity" to apply "a speed law to a policeman pursuing a criminal or the driver of a fire engine responding to an alarm."). By contrast, the *Nardone* canon of construction would not apply where the statute in question is specifically intended to reach conduct by or on behalf of the government. The federal anti-torture statute is specifically directed at government conduct—it prohibits actions taken "under the color of law," 18 U.S.C. § 2340(1).

##### 5. Combination of Techniques

Did your 2005 legal opinion about the use of enhanced interrogation techniques in combination consider the possibility that waterboarding, when conducted in combination with other intensive and stressful techniques, could cause prolonged severe physical or mental suffering that would constitute unlawful torture? Or did you only consider whether each technique considered separately could constitute torture?

**ANSWER:** In advising the CIA about the lawfulness of its proposed interrogation methods from 2002 onward, the Office of Legal Counsel ("OLC") has consistently advised that it is

important to consider the proposed methods both individually and in their combined use. OLC advised that a comprehensive legal review under the anti-torture statute should consider how proposed methods were intended to be used together in practice, in order to ensure that their combined use would not exceed what the law permits; accordingly, in two opinions issued on May 10, 2005, OLC addressed the consistency of the CIA's interrogation methods with 18 U.S.C. §§ 2340-2340A both individually and in combination. If OLC had addressed the interrogation methods only individually, in isolation, and failed to address the overall way they were actually expected to be employed in a typical interrogation, OLC's legal advice would have risked being artificial and incomplete. Giving incomplete advice would have been irresponsible and unfair to those who sought and relied upon OLC's advice.

#### **6. Is the CIA Waterboarding Protocol Unique?**

You distinguished the waterboarding protocol used by the CIA from historical water tortures as variously practiced by the Inquisition, the U.S. Army during the occupation of the Philippines, and the Japanese army in World War II. You emphasized, in this regard, that the CIA protocol did not involve pouring or pumping large quantities of water into the victims and then applying pressure to their distended organs. Others have pointed out that the reported CIA technique of placing plastic wrap or cloth over or in the subject's nose and mouth and dripping water on the person's head is also well known and was practiced by the Khmer Rouge, the French in Algeria, and the Dutch in Southeast Asia. Thus, the more traditional "water cure" of forcing large quantities of water into the victim is not the only way in which severe pain or suffering can be inflicted.

**(A) How is waterboarding as practiced under the CIA protocol and used in the three instances in which our government has acknowledged having used it to interrogate "high-value detainees" different from those other forms of water torture?**

**ANSWER:** This question cannot be answered without disclosing the classified details of interrogation practices. Information provided by the CIA indicated that the CIA's proposed interrogation practices, subject to limitations, conditions, and safeguards, were not designed to cause, and would not be expected to cause, severe physical or mental pain or suffering within the meaning of 18 U.S.C. § 2340. As has been publicly stated, waterboarding is not currently authorized for use in the CIA program and was last employed by the CIA more than five years ago.

**(B) Assume Congress were to enact a statute that the President signed, and that contained a provision that directly and explicitly banned waterboarding under the CIA protocol that you described at the hearing.**

**(i) Is it your legal opinion that despite the explicit statutory ban, the President still could authorize the CIA to waterboard under his Article II powers as the Commander in Chief? Please note that this question assumes**

*an express statutory prohibition on waterboarding, and not merely a requirement that CIA interrogation comply with the Army Field Manual.*

**ANSWER:** The CIA has made clear that it will follow all statutory restrictions in this area that Congress may enact, including a specific statutory ban on the practice of waterboarding, if such a ban were to become law. The Director of the CIA has stated that he would not direct or permit officials of his agency to disregard a statutory prohibition. Accordingly, whether the President may have independent authority under the Constitution to authorize conduct that would otherwise contravene a specific statute—if, for example, the President determined, in light of particular circumstances, that such conduct were necessary to protect the Nation from an imminent terrorist attack that would cause mass casualties—is a hypothetical question we currently have no need to confront.

The President, of course, like all officers of the Government, is not above the law. He has the duty to protect and defend the Constitution and faithfully to execute the laws of the United States, in accordance with the Constitution. A central part of the President's responsibility under the Constitution is his duty to defend the Nation as Commander in Chief, and the Executive Branch has long taken the view that if a statute were applied to encroach impermissibly on the President's constitutional authorities, including his core Commander in Chief authority, a statute would be, to that extent, unconstitutional. See *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 Op. O.L.C. 199, 200 (1994) (opinion of Assistant Attorney General Walter Dellinger) (characterizing as "unassailable" the proposition that "the President may decline to enforce unconstitutional statutes").

However, it would be imprudent to opine on such questions in the abstract. The President's independent constitutional powers, including his powers as Commander in Chief, have never been fully defined, and cannot be, because their contours necessarily depend on the concrete exigencies of particular events. In the words of Justice Jackson in his concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, the President's independent constitutional powers may "depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law." 343 U.S. 579, 637 (1952) (Jackson, J., concurring). See also *Request of the Senate for an Opinion as to the Powers of the President "in Emergency or State of War,"* 39 Op. A.G. 343, 347 (1939) (opinion of Attorney General Frank Murphy) ("[T]he Executive has powers not enumerated in the statutes—powers derived not from statutory grants but from the Constitution. It is universally recognized that the constitutional duties of the Executive carry with them the constitutional powers necessary for their proper performance. These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances.").

**(ii) Do you recognize any limits on the President's Article II powers regarding detainee interrogation, in the face of an enacted statute? If so, what is the limiting principle?**

**ANSWER:** Yes, there are limits to the President's authority under Article II, and Congress does have power under the Constitution to legislate in this area. Depending on particular circumstances, an apparent conflict between the President's constitutional duties and a specific statutory enactment may raise difficult and weighty issues, and it would be imprudent to attempt to opine on such questions in the abstract. Please see the answer to question 6(B)(i).

**7. Interrogation Memoranda**

According to the *New York Times*, you wrote several memos on interrogation techniques in 2005. At the hearing, you could offer no legal authority for the Department to withhold these memoranda from the Committee. When you noted the memoranda are sensitive, I reminded you that all committee Members have Top Secret clearance, and that we have been shown documents on the NSA warrantless wiretapping that are at the codeword level, which is a higher classification than that of your legal opinions on interrogation.

You simply said there was tradition for the Executive withholding documents. You agreed to *promptly supply us with legal authority or to produce your memoranda for us to review*. Your letter of February 25th supplied no such legal authority. Please comply with your agreement and promptly cite the legal authority for withholding them or make the necessary arrangements to share these opinions with the Committee.

In your answer, please do not rely on the fact that the House Permanent Select Committee on Intelligence (HPSCI) has been briefed on those memoranda. That is irrelevant under the Rules of the House. Clauses 11(b)(3) & (4) of Rule X of the Rules of the House of Representatives makes clear that HPSCI's creation in no way derogates from the jurisdiction of any other House Committee over information concerning matters within its jurisdiction. This matter clearly is within the Judiciary Committee's jurisdiction over criminal laws, human rights and the Department of Justice.

Also, please do not rely on section 503(b)(2) of the National Security Act of 1947 (50 U.S.C. 413b(b)(2)) that permits the President to restrict intelligence information to only eight members of Congress. As you are no doubt aware, that provision relates only to the required notification of Congress about covert action.

**ANSWER:** The Administration recognizes Congress's legitimate oversight interests in this area; the Administration has endeavored to accommodate those interests and is currently providing further accommodations. Since my testimony, the Administration has further accommodated congressional interest in this subject by making available to the Intelligence Committees the classified OLC opinions on the CIA program. In addition, the Administration has made available to the Judiciary Committees these classified OLC opinions, with limited redactions necessary to protect exceptionally sensitive intelligence sources and methods.

At the same time, the Executive Branch has legitimate and strong interests in protecting the confidentiality of national security information and the integrity of its own internal deliberative processes. The opinions referenced in the question are highly sensitive national security documents, which contain confidential legal and deliberative communications and are classified at the codeword level. Any accommodation the Administration has made of Congress's interests in understanding the legal analysis reflected in these opinions must respect, and does not waive, the Executive Branch's confidentiality interests in the opinions. The Executive Branch preserves all potential privileges with respect to these documents and the information contained therein.

It is well established as a matter of constitutional law that inherent in the President's powers as Commander in Chief and as the Nation's principal voice in foreign affairs is the authority to "determine how, when, and under what circumstances" sensitive national security information should be disclosed, including to Congress. *Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. 92, 92 (1998); *see also Memorandum for John R. Stevenson, Legal Adviser, Department of State, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: The President's Executive Privilege to Withhold Foreign Policy and National Security Information* at 7 (Dec. 8, 1969) ("[T]he President has the power to withhold from Congress information in the field of foreign relations or national security if in his judgment disclosure would be incompatible with the public interest."). Courts have repeatedly recognized the President's authority to protect national security information. *See, e.g., Department of Navy v. Egan*, 484 U.S. 518, 527 (1988) (The President's "authority to . . . control access to information bearing on national security . . . flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant. . . . The authority to protect such information falls on the President as head of the Executive Branch and as Commander in Chief."); *In re United States*, 872 F.2d 472, 476 (D.C. Cir. 1989) (explaining that the state secrets doctrine provides absolute protection for information the release of which would impair the Nation's defense, disclose intelligence activities, or disrupt diplomatic relations with foreign governments); *Hill v. Department of Air Force*, 844 F.2d 1407, 1410 (10th Cir. 1988) ("The Executive Branch has a constitutional responsibility to classify and control access to information bearing on national security."). Since the Administration of George Washington, Presidents have withheld from Congress "extremely sensitive information with respect to national defense or foreign affairs." *Whistleblower Protections*, 22 Op. O.L.C. at 95 (citing *History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress*, 6 Op. O.L.C. 751 (1982)).

The National Security Act of 1947, 50 U.S.C. §§ 401-441d, recognizes the President's authority to control access to sensitive national security information. The Act vests primary responsibility for conducting oversight of intelligence activities in the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, *see id.* § 413, and it expressly limits what is to be provided to those primary oversight committees by specifying that the President is to provide information to the Intelligence Committees "[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating

to sensitive intelligence sources and methods or other exceptionally sensitive intelligence matters." 50 U.S.C. §§ 413a(a)(1), 414b(b).

It is also settled as a matter of constitutional law that the President may protect the confidentiality of internal Executive Branch deliberations, including confidential legal advice. As the Supreme Court has explained, "A President and those who assist him must be free to explore alternatives in the process of shaping policies and to do so in a way many would be unwilling to express except privately." *United States v. Nixon*, 418 U.S. 683, 708 (1974). See also Letter for the President from John Ashcroft, Attorney General, Dec. 10, 2001 (available at <http://www.usdoj.gov/olc>) ("The Constitution clearly gives the President the power to protect the confidentiality of executive branch deliberations."); Letter for the President from Janet Reno, 23 Op. O.L.C. 1, 2 (1999) (opinion of Attorney General Janet Reno) (describing the President's constitutional authority to protect not only "confidential communications to the President, but also 'communications between high Government officials and those who advise and assist them in the performance of their manifold duties.'") (quoting *Nixon*, 418 U.S. at 705).

#### **8. Investigation of waterboarding and destruction of tapes**

**Attorney General Mukasey testified in the Senate Judiciary Committee that he would not order an investigation of the waterboarding depicted on the destroyed tapes because OLC had issued opinions regarding torture that were presumably relied upon by those administering the techniques. You echoed that rationale at the Subcommittee hearing.**

**Representative Ellison asked you to pursue this logic of reliance on OLC memoranda. He noted it would mean that the President or other senior officials could commit a felony or violate the constitutional rights of millions of Americans, but be immunized if they claimed reliance on an OLC opinion, no matter how frivolous or baseless the legal reasoning in the opinion was. Representative Ellison asked why that was not a recipe for unchecked Executive power. Your response was that the OLC opinions about waterboarding that had been relied on were reasonable. Does reliance on an OLC opinion provide immunity from civil or criminal liability even if the act was illegal? If the OLC opinion was incorrect, would it still confer immunity on a person who relied on it? If so, how far does this principle extend? Under what circumstances would reliance on an OLC opinion not provide a person with immunity? Would it apply only if the opinion was "reasonable" or would it apply if the opinion was not reasonable?**

**ANSWER:** The opinions of OLC are issued on behalf of the Attorney General and represent the Justice Department's authoritative interpretation of the law for the Executive Branch. Unless withdrawn by the Department or superseded by a subsequent opinion, OLC opinions are binding within the Executive Branch, subject to the constitutional authority of the President to supervise subordinate executive officers. All officials of the Executive Branch, including our intelligence professionals, must be able to rely on the advice of the Department of Justice about what the law permits. They will be unable to perform their duties to protect the country if they fear that the advice provided by the Department will survive only as long as the tenure of the person who

gave it and that a subsequent Attorney General could disregard their prior reliance in deciding whether they acted within the law. Those limitations cannot depend simply on whether a future Attorney General deems the past legal advice incorrect, because intelligence professionals, most of whom are non-lawyers, cannot be expected to perform an independent evaluation of the Department's legal advice. The Supreme Court has recognized that no one who relied in good faith on the advice of public authorities may be subject to criminal penalties based upon that reliance. *See, e.g., Cox v. Louisiana*, 379 U.S. 559, 571 (1965); *Raley v. Ohio*, 360 U.S. 423, 437-39 (1959).

**Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
U.S. House of Representatives**

**Questions for the Record for  
Steven G. Bradbury  
Principal Deputy Assistant Attorney General  
Office of Legal Counsel**

**Arising from a Hearing Entitled  
“Oversight Hearing on the Justice Department’s Office of Legal Counsel”**

**February 14, 2008**

**Questions Submitted by Chairman John Conyers, Jr.**

**1. In a court pleading filed in the Southern District of New York (Case No. 04 Civ 4151 (AKH), 05 Civ. 9620 (AKH)), the Department confirmed that three memoranda regarding interrogation of CIA detainees were written in May 2005, two on May 10 and one on May 30.**

**(A) What role, if any, did you play in authoring the three OLC memoranda regarding the interrogation of CIA detainees that were written in May 2005.**

**ANSWER:** I was the principal author of the three opinions in question.

**(B) Who else at the Department of Justice participated in drafting or approving them, and what role did they play?**

**ANSWER:** Consistent with longstanding Executive Branch practice, it would not be appropriate to discuss in detail the confidential deliberative processes that resulted in the issuance of these OLC opinions. Other attorneys within OLC, other offices within the Department of Justice, and other agencies and components of the Executive Branch reviewed and commented on the opinions, and the Attorney General approved their issuance. The final opinions represented my own best judgment as to what the law required.

**(C) Please identify all personnel at the White House or the Vice President’s office who reviewed and commented on these memoranda.**

**ANSWER:** Please see the answer to question 1(B).

**(D) Please identify any other legal opinions or memoranda you have authored or assisted in drafting regarding the interrogation of detainees by U.S. personnel or contractors.**

**ANSWER:** In addition to the three opinions issued by OLC in May 2005, I assisted in preparing the public December 30, 2004 opinion interpreting the federal anti-torture statute. In addition, I authored two opinions related to the CIA program in 2006 and one in 2007. The latter opinion was provided in conjunction with the President's issuance of Executive Order 13440 setting forth the legal requirements for the CIA program in accordance with the Military Commissions Act of 2006. I also provided or participated in providing other legal advice relevant to the CIA program, either orally or by letter, from time to time in the period from 2004 to the present, and also presented testimony or briefings or participated in preparing letters on this subject to Committees of Congress and their Members and staffs. Finally, I assisted in drafting legal advice and testimony concerning Department of Defense interrogation policies during the tenure of Assistant Attorney General Jack Goldsmith in 2004.

**2. On October 4, 2007, the New York Times published an article apparently describing these interrogation memoranda titled "Secret Endorsement of Severe Interrogations."**

**(A) Please state if there are any statements from this article that you find inaccurate, and explain your disagreements.**

**ANSWER:** Several assertions in the October 4, 2007 New York Times article were inaccurate or created a misimpression. Among other things:

The New York Times article incorrectly indicated that OLC issued two opinions confirming the legality of the CIA's proposed interrogation practices in February 2005. In fact, OLC did not issue opinions to the CIA in February 2005; rather, OLC issued three opinions to the CIA addressing interrogation practices in May 2005—two opinions on May 10, 2005 addressing the federal anti-torture statute and one opinion on May 30, 2005 addressing Article 16 of the Convention Against Torture.

The New York Times article incorrectly suggested that OLC's opinions in 2005 were inconsistent with OLC's earlier advice, that the 2005 opinions found lawful interrogation methods that had never previously been found lawful, and that the 2005 opinions contradicted the interpretation of the anti-torture statute set forth in the public December 30, 2004 opinion signed by Acting Assistant Attorney General Dan Levin. In fact, OLC's 2005 opinions were fully consistent with the December 30, 2004 opinion. The May 2005 opinions did not find torture lawful in any circumstances, and both of the May 10 opinions addressing the anti-torture statute expressly reiterated the admonition from the December 30, 2004 opinion that torture is abhorrent to American values and that the President has made clear that torture will not be authorized, condoned, or tolerated. OLC's 2005 opinions, like its earlier advice, made clear that OLC's legal conclusions were contingent on a number of express conditions, limitations, and safeguards that had been adopted by the CIA and that were designed to ensure that the program

would be administered by trained professionals, with strict oversight and controls, and that none of the interrogation practices would result in severe pain or suffering. The public December 30, 2004 opinion (in footnote 8) had clearly stated that OLC had reviewed its prior advice on specific interrogation methods and determined that the Office's earlier conclusions were unaffected by OLC's December 30, 2004 interpretation of the anti-torture statute. Indeed, each of the specific interrogation techniques upheld by OLC in 2005 had previously been found lawful by the Acting AAG of OLC in the summer and fall of 2004, and OLC had also previously found lawful CIA's specific interrogation practices in 2002 (in a classified opinion that was not withdrawn by the Justice Department).

One of OLC's May 10, 2005 opinions concerning the anti-torture statute addressed the CIA's methods of interrogation individually, and the other addressed the potential combined effects of the interrogation methods. The New York Times article implied that the second of these opinions was a departure from prior advice and was designed to enable harsher interrogations. In fact, in accordance with advice that OLC has consistently provided to the CIA since 2002, the May 10, 2005 combined-effects opinion considered how proposed interrogation methods were actually intended to be used in practice, in order to help ensure that their combined use would not exceed what is permitted under the anti-torture statute. If OLC had addressed the interrogation methods only individually, in isolation, and failed to address the overall way they were actually expected to be employed in a typical interrogation, OLC's legal advice would have risked being artificial and incomplete. Giving incomplete advice would have been irresponsible and unfair to those who sought and relied upon OLC's advice.

The New York Times article implied that the Acting Assistant Attorney General of OLC was removed in early 2005 because of concern he would refuse to find CIA interrogation practices lawful, and that I was nominated to be the Assistant Attorney General because of my opinions in 2005 addressing the CIA program. In fact, the Acting AAG's departure on February 4, 2005 came only ten days before the expiration of the 210-day period under the Vacancies Reform Act for him to serve as the designated Acting AAG (since the President had not yet sent a nomination to the Senate); the Acting AAG left OLC for the White House to assume the important position of Legal Adviser to the National Security Counsel and Senior Associate Counsel to the President. Furthermore, the December 30, 2004 opinion signed by the Acting AAG made clear (in footnote 8) that OLC at that time had reviewed its prior advice on specific interrogation methods and determined that the Office's earlier conclusions were unaffected by OLC's December 30, 2004 interpretation of the anti-torture statute; indeed, each of the specific interrogation techniques upheld by OLC in 2005 had previously been found lawful by the Acting AAG of OLC during the summer and fall of 2004. No one ever suggested to me that my nomination as Assistant Attorney General for OLC would depend on what I concluded in any legal opinion, including the opinions addressing the CIA program. Every opinion I have signed for OLC has represented my own best judgment of what the law requires. Moreover, although my nomination was not transmitted to the Senate until June 2005, the President's approval of my nomination occurred, as such approvals usually do, weeks earlier, in April 2005, before I signed the May 2005 opinions reaffirming the legality of CIA's interrogation practices.

The New York Times article also implied that the Administration in 2005 had not communicated to Congress its views on the scope and interpretation of the “cruel, inhuman, or degrading treatment” prohibition in Article 16 of the Convention Against Torture, or “CAT,” as it may have applied to the CIA interrogation program. In fact, in July 2004, in unclassified testimony before the House Intelligence Committee, the Justice Department explained its view on the meaning of the “cruel, inhuman, or degrading treatment” standard in Article 16 (as qualified by the reservation required by the Senate as a condition of United States ratification of the CAT). The Department advised that with respect to detainees in the War on Terror who have not been convicted of any crime, the relevant substantive standard for Article 16 is what the Supreme Court has called the “shocks the conscience” standard of substantive due process under the Fifth Amendment. In various communications with Congress in early 2005, the Department explained that Article 16 does not apply to the treatment of alien detainees held outside territory subject to United States jurisdiction, but that, nevertheless, it was the policy of the Administration to ensure that United States practices did comply with the substantive standard imposed by Article 16, even where that standard did not apply as a matter of law. The Department reiterated all of these points about Article 16 in an unclassified letter to the Senate Judiciary Committee on April 4, 2005. Later in 2005, when Congress was considering the Detainee Treatment Act, the Administration made clear that it was the policy of the United States to comply with the Article 16 “cruel, inhuman, or degrading treatment” standard, regardless of the nationality or location of a detained person, and that the Administration believed it was in compliance with that standard. The Administration also made it clear that the principal effect of the so-called McCain Amendment would be to convert the Administration’s existing policy into a statutory requirement. As the President explained upon signing the Detainee Treatment Act, “Our policy has also been not to use cruel, inhuman or degrading treatment, at home or abroad. This legislation now makes that a matter of statute for practices abroad.” 41 Comp. Pres. Doc. 1920 (Dec. 30, 2005). *See also* Anne Plummer, *McCain and the White House Continue Efforts to Reach a Deal on Detainees*, CQ Today, Dec. 7, 2005 (quoting Secretary Rice); Press Briefing with National Security Advisor Stephen Hadley on the McCain Amendment, Dec. 15, 2005, The Roosevelt Room, The White House (Statement of National Security Advisor Hadley).

The New York Times article contained other assertions concerning internal Executive Branch deliberative matters that we are unable to address and clarify without inappropriately revealing internal deliberations or classified information. Finally, the article contained one or more assertions relating to matters unconnected to OLC’s legal advice on the CIA program that also were inaccurate or created a misimpression.

**3. The New York Times article reports that former Deputy Attorney General Jim Comey refused to approve these memoranda and stated that the Department would be “ashamed” if the public learned of them.**

**(A) As you understand it, what was the basis for Mr. Comey’s objection or any other objections?**

**ANSWER:** The New York Times article discussed two OLC opinions that issued on May 10, 2005—one opinion finding that all of the individual interrogation practices of the CIA were consistent with the federal anti-torture statute and a second, related opinion addressing the combined use of these practices. Of these two opinions, the article reported that Mr. Comey objected to the second one—the combined-effects opinion. The Department is not able to discuss or confirm these characterizations of confidential internal deliberations. As noted above in response to question 2(A), in accordance with advice that OLC has consistently provided to the CIA since 2002, the May 10, 2005 combined-effects opinion considered how proposed interrogation methods were actually intended to be used in practice, in order to help ensure that their combined use would not exceed what would be permitted under the anti-torture statute. If OLC had addressed the interrogation methods only individually, in isolation, and failed to address the overall way they were actually expected to be employed in a typical interrogation, OLC's legal advice would have risked being artificial and incomplete. Giving incomplete advice would have been irresponsible and unfair to those who sought and relied upon OLC's advice.

**(B) Did anyone other than Mr. Comey object to these memoranda? Who, and on what basis did they object?**

**ANSWER:** As noted above, we are not able to comment on the Executive Branch's confidential internal deliberations over these classified matters.

**4. Did you have any role in the Department's decision to withdraw prior memoranda or opinions on torture that had been drafted in 2002? Please describe your role, and please explain the basis for the Department's decision to withdraw those memoranda or opinions.**

**ANSWER:** The Department of Justice withdrew one OLC opinion addressing legal standards for interrogation that was drafted in 2002—the unclassified August 1, 2002 opinion of Assistant Attorney General Jay Bybee addressed to Counsel to the President Alberto Gonzales. That opinion was publicly withdrawn by the Department in June 2004. As the Principal Deputy Assistant Attorney General in OLC in June 2004, I participated in, and supported, the decision to withdraw that opinion. As the Principal Deputy in OLC, furthermore, I participated in preparing OLC's public December 30, 2004 opinion that set forth the Department's updated interpretation of the anti-torture statute.

The decision to withdraw the unclassified August 1, 2002 Bybee memorandum did not require the withdrawal of a separate, classified 2002 opinion of OLC, which reviewed the CIA's specific interrogation practices and found them to be consistent with the federal anti-torture statute. The conclusions of the classified 2002 opinion were more limited than those of the withdrawn Bybee memorandum: For example, the classified 2002 opinion contained no assertion of the President's Commander in Chief power, and there was no discussion of defenses to criminal prosecution or any discussion purporting to find torture lawful. The classified 2002 opinion remained in effect as an opinion of OLC until it was superseded in all relevant respects by later advice, including two opinions applying the anti-torture statute that OLC issued on May 10, 2005.

**5. Did you have any role in drafting or reviewing the December 2004 memorandum by Assistant Attorney General Dan Levin stating that “[t]orture is abhorrent both to American law and values, and to international laws”? Please describe your role, and please state who else at the Department of Justice or the White House was involved in the drafting and approval of this memorandum.**

**ANSWER:** Yes. As noted above in response to question 4, I assisted in preparing the December 30, 2004 memorandum that was signed by Mr. Levin. Consistent with longstanding Executive Branch practice, it would not be appropriate to discuss in detail the confidential deliberative processes that resulted in the issuance of this OLC opinion. Other attorneys within OLC, other offices within the Department of Justice, and other components of the Executive Branch reviewed and commented on the opinion, and the Attorney General approved its issuance.

**6. The December 2004 memorandum was publicly released and taken by many as a sign that U.S. torture policy had changed.**

**A. How does the Department decide which memoranda and opinions are to be classified and which are to be released to the public?**

**ANSWER:** The Office of Legal Counsel does not have original classification authority. Ordinarily, classified OLC memoranda are classified because they are derived from or incorporate information classified by another Executive Branch officer or entity with classification authority.

The December 2004 opinion was written for the express purpose of public disclosure and was intended to be published from the outset. On the other hand, most OLC opinions consist of confidential legal advice for senior Executive Branch officials. Maintaining the confidentiality of OLC opinions is often necessary to preserve the deliberative process of decision making within the Executive Branch and attorney-client relationships between OLC and other executive offices; in some cases, the disclosure of OLC advice also may interfere with federal law enforcement efforts. These confidentiality interests are especially great for OLC opinions relating to the President's exercise of his constitutional authorities, including his authority as Commander in Chief. It is critical to the discharge of the President's constitutional responsibilities that he and the officials under his supervision are able to receive confidential legal advice from OLC.

At the same time, many OLC opinions address issues of relevance to a broader circle of Executive Branch lawyers or agencies than just those officials directly involved in the opinion request. In some cases, the President or an affected agency may have a programmatic interest in putting other agencies, Congress, or the public on notice of the legal conclusion reached by OLC and the supporting reasoning. In addition, some OLC opinions will be of significant practical interest and benefit to lawyers outside the Executive Branch, or of broader interest to the general

public, including historians. In such cases, and when consistent with the legitimate confidentiality interests of the President and the Executive Branch, it is the policy of our Office to publish OLC opinions. This publication program is in accordance with a directive from the Attorney General to OLC to publish selected opinions on an annual basis for the convenience of the Executive, Legislative, and Judicial Branches of the Government, and of the professional bar and the general public.

The decision whether to publish an OLC opinion is made on a case-by-case basis, according to a standard practice that has existed since OLC opinions first began to be published. Relevant factors may include: whether there is a continuing need for confidentiality; the potential benefit that other Executive Branch agencies would derive from access to the opinion; whether the subject matter of the opinion is of interest to a broad segment of the Executive Branch; whether the opinion addresses a matter that gives helpful insight into the operations of government; the level of public or historical interest in the subject matter; whether the opinion addresses a novel legal issue; and whether the issue is likely to recur.

**B. Who from the Department, the White House, the Vice President's office, or any other agency, participated in the decision not to release the May 2005 memoranda?**

**ANSWER:** Since my testimony, the Administration has accommodated congressional interest in this subject by making available to the Intelligence Committees the classified OLC opinions on the CIA program. In addition, the Administration has made available to the Judiciary Committees the classified OLC opinions, with limited redactions necessary to protect exceptionally sensitive intelligence sources and methods. The May 2005 interrogation memoranda may not be publicly released because they contain highly sensitive and classified national security information and represent confidential internal deliberative communications of the Executive Branch.

7. Executive Order 12958 "prescribes a uniform system for classifying, safeguarding, and declassifying national security information." Section 6.2(b) of the Order requires the Attorney General to interpret the order as questions arise regarding its administration. On July 20, 2007, you wrote a letter stating that you "would not be providing an opinion" to the Director of the Information Security Oversight Office (ISOO) regarding a dispute between ISOO and the Office of the Vice President (OVP). Apparently, you believed that the dispute between ISOO and OVP was resolved because (1) the White House Counsel had addressed the issue in a letter and (2) White House spokespersons had made statements on the issue.

**A. How does it satisfy the Attorney General's obligation to render legal interpretations on issues that arise during the administration of the Executive Order to rely on statements of the White House counsel and the White House spokespersons in a dispute between an agency and officials in the White House?**

**ANSWER:** The January 9, 2007 letter to the Attorney General from the Director of the Information Security Oversight Office (“ISOO”) of the National Archives and Record Administration requested an opinion addressing whether the Office of the Vice President is an “agency” for purposes of Executive Order 12958, as amended. On July 12, 2007, the Counsel to the President wrote a letter on behalf of the President to Senator Brownback stating that “[t]he President has asked me to confirm to you that . . . the Office of the Vice President . . . is not an ‘agency’ for purposes of the Order.” Letter to the Honorable Sam Brownback, United States Senate, from Fred F. Fielding, Counsel to the President. As the question notes, in a letter dated July 20, 2007, OLC responded to the ISOO request by stating, “That statement on behalf of the President directly resolves the question you presented to the Attorney General. Therefore, the Department of Justice will not be providing an opinion addressing this question.”

Executive Order 12958, as amended, provides that the Attorney General may “render an interpretation of this order” with respect to questions “arising in the course of its administration.” The executive order does not specify that an Attorney General opinion is the only mechanism for clarifying the order’s meaning or that the President is disabled from issuing clarifying instructions to his subordinates.

**B. Do you believe the President can change his interpretation of an Executive Order without formally amending the order or issuing a new one?**

**ANSWER:** The clarification issued by the Counsel to the President did not change the interpretation of Executive Order 12958. As the Counsel to the President stated, “the Executive Order deals with the President and the Vice President separately from agency heads and thus the Office of the Vice President, like the President’s office, is not an ‘agency’ for purposes of the order.” *Cf. Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 156 (1980) (“The Conference Report for the 1974 FOIA Amendments indicates that ‘the President’s immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President’ are not included within the term ‘agency’ under the FOIA.”) (quoting H.R. Conf. Rep. No. 93-1380, at 15 (1974)); *Whether the Office of the Vice President is an “Agency” for Purposes of the Freedom of Information Act*, 18 Op. O.L.C. 10 (1994) (OVP is not an “agency” for FOIA purposes).

The President may change his interpretation of terms within an executive order without formally amending the order or issuing a new one. An executive order is “a set of instructions from the President to his subordinates in the Executive Branch.” Memorandum for the Attorney General, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, *Re: Legal Authority for Recent Covert Arms Transfers to Iran* 14 (Dec. 17, 1986), reprinted in *Authorization for the Department of Justice for Fiscal Year 1988: Hearing Before the H. Comm. on the Judiciary*, 100th Cong. App. 97 (1988). The President has broad authority to modify an executive order, even without formally amending the order or issuing a new order. *Cf. id.* (concluding that President may, through his actions, “create[] a valid modification of, or exception to, [an] executive order” without formally amending an order). The President may

validly determine that it is sufficient to instruct his subordinates on the interpretation of an existing opinion rather than amending the order or issuing a new one.

- C. **What are the limits, if any, on the President's ability to determine the meaning of a written executive order by offering "interpretations" through his or her representatives once a dispute arises?**

**ANSWER:** It is difficult to analyze in the abstract whether there might be limitations on the extent to which the President could issue interpretations of a hypothetical executive order. The President's interpretation of a single term within Executive Order 12958 was well within his broad authority to interpret a presidential directive to his subordinates.

8. **On February 7, 2008, Attorney General Mukasey told the Judiciary Committee that the CIA's past use of waterboarding was "found to be permissible" by the Office of Legal Counsel and that, as a result, waterboarding "cannot possibly be" investigated by the Department.**

- (A) **What Office of Legal Counsel memoranda or opinions did the CIA agents who used waterboarding rely on?**

**ANSWER:** They relied on the classified August 2002 opinion that is described above in response to question 4. That opinion was not withdrawn by the Justice Department and remained in effect as an opinion of OLC until it was superseded in all relevant respects by later advice, including the two opinions issued by OLC on May 10, 2005. The public December 30, 2004 opinion (in footnote 8) stated that OLC at that time had reviewed its prior advice on specific interrogation methods and determined that the Office's earlier conclusions were unaffected by OLC's December 30, 2004 interpretation of the anti-torture statute. As has been publicly stated, waterboarding is no longer authorized for use in the CIA program and was last employed by the CIA in March 2003.

- (B) **Did that opinion or opinions specifically authorize waterboarding by name, and did it describe the exact method, form, and duration, of waterboarding that could be conducted, or were the agents required to interpret the opinion to determine what conduct was permissible?**

**ANSWER:** The classified August 2002 opinion did address the consistency of specific interrogation techniques, including waterboarding, with the federal anti-torture statute, which was the only federal law determined at that time to apply to the CIA program of detention and interrogation. Beyond that, we are not able to discuss the classified operational details contained within that opinion or other relevant advice, including details related to the limits and safeguards applicable to particular interrogation techniques.

**Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
U.S. House of Representatives**

**Questions for the Record for  
Steven G. Bradbury  
Principal Deputy Assistant Attorney General  
Office of Legal Counsel**

**Arising from a Hearing Entitled  
"Oversight Hearing on the Justice Department's Office of Legal Counsel"**

**February 14, 2008**

**Questions Submitted by Ranking Member Franks**

- 1.** At the hearing, the Chairman referenced "an opinion authorizing the use in combination of certain harsh interrogation techniques" that had generated some controversy separate from the Department's advice on the interrogation techniques themselves. Could you explain why the Department provided advice on the combined effects of interrogation techniques and how that opinion relates to OLC's advice on the legality of particular interrogation techniques?

**ANSWER:** In advising the CIA about the lawfulness of its proposed interrogation methods, OLC considered the methods both individually and in combination, as the CIA proposed to use them. OLC concluded that its legal review should consider how the proposed methods were intended to be used in practice, in order to help ensure that their combined use would not exceed what the law permits. If OLC had addressed the interrogation methods only individually, in isolation, and failed to address the overall way they were actually expected to be employed in a typical interrogation, OLC's legal advice would have risked being artificial and incomplete. Giving incomplete advice would have been irresponsible and unfair to the people who sought and relied upon our advice.

- 2.** I find it difficult to believe that the U.S. Government would "torture" American soldiers even during a training exercise, and I agree with your testimony that if the anti-torture statute prohibited the use of waterboarding against a captured terrorist, then it surely would prohibit the use of such alleged "torture" on members of the U.S. armed forces. A Member of the Subcommittee, however, suggested that the U.S. military might waterboard American soldiers for training purposes under the same legal theory by which an undercover police officer could sell drugs as a part of a sting operation. Could you provide a fuller explanation for why that rationale would not excuse a violation of the anti-torture statute?

**ANSWER:** It is well established that generally worded criminal statutes do not prohibit reasonable conduct by government agents carrying out essential functions, such as those who make undercover drug sales or conduct "sting" operations against peddlers of child pornography. *See, e.g., Brogan v. United States*, 522 U.S. 398, 406 (1998) (holding that a statute prohibiting "any" false statement "does not make it a crime for an undercover narcotics agent to make a false statement to a drug peddler."); (*Nardone v. United States*, 302 U.S. 379, 384 (1937) (finding it an "obvious absurdity" to apply "a speed law to a policeman pursuing a criminal or the driver of a fire engine responding to an alarm.")); *United States v. Condon*, 170 F.3d 687, 690 (7th Cir. 1999) (The terms "whoever" and "any person," as used in the federal anti-gratuity statute, do not prohibit the "authorized acts of federal agents, in the ordinary course of their duties."); *United States v. Singleton*, 165 F.3d 1297, 1299-1302 (10th Cir. 1999) (en banc) (holding that a statute that criminalizes "whoever" "promises anything of value" in exchange for the testimony of "any person" does not apply to or prohibit an Assistant United States Attorney from offering leniency to defendant's accomplice in exchange for the latter's testimony). By contrast, that exception does not apply when the statute, read in context, specifically applies to and prohibits a government agent's conduct. *See, e.g., Nardone*, 302 U.S. at 384; *Condon*, 170 F.3d at 689-90. Because the federal anti-torture statute is specifically directed at government conduct—insofar as it prohibits actions taken "under the color of law," 18 U.S.C. § 2340(1)—it prohibits all torture committed by government agents, regardless of the purpose for which it was committed.



M I C H I G A N

# Carl Levin

UNITED STATES SENATOR

FOR IMMEDIATE RELEASE  
June 17, 2008

Contact: Senator Levin's Office  
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## Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques

*Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody*

Documents referenced in Senator Levin's opening statement [PDF]

Today's hearing will focus on the origins of aggressive interrogation techniques used against detainees in U.S. custody. We have three panels of witnesses today and I want to thank them for their willingness to voluntarily appear before the Committee.

Intelligence saves lives. Knowing where an insurgent has buried an IED can keep a vehicle carrying Marines in Iraq from being blown up. Knowing that an al Qaeda associate visited an internet café in Kabul could be the key piece of information that unravels a terrorist plot targeting our embassy. Intelligence saves lives.

But how do we get the people who know the information to share it with us? Does degrading them or treating them harshly increase the chances that they'll be willing to help? Just a couple of weeks ago I visited our troops in Afghanistan. While I was there I spoke to a senior intelligence officer who told me that treating detainees harshly is actually an impediment – a “roadblock” to use that officer's word – to getting intelligence from them.

Here's why, he said – al Qaeda and Taliban terrorists are taught to expect Americans to abuse them. They're recruited based on false propaganda that says the United States is out to destroy Islam. Treating detainees harshly only reinforces their distorted view and increases their resistance to cooperate. The abuse at Abu Ghraib was a potent recruiting tool for al Qaeda and handed al Qaeda a propaganda weapon they could use to peddle their violent ideology.

So, how did it come about that American military personnel stripped detainees naked, put them in stress positions, used dogs to scare them, put leashes around their necks to humiliate them, hooded them, deprived them of sleep, and blasted music at them. Were these actions the result of “a few bad apples” acting on their own? It would be a lot easier to accept if it were. But that's not the case. The truth is that senior officials in the United States government sought information on aggressive techniques, twisted the law to create the appearance of their legality, and authorized their use against detainees. In the process, they

damaged our ability to collect intelligence that could save lives.

Today's hearing will explore part of the story: how it came about that techniques, called SERE resistance training techniques, which are used to teach American soldiers to resist abusive interrogations by enemies that refuse to follow the Geneva Conventions, were turned on their head and sanctioned by Department of Defense officials for use offensively against detainees. Those techniques included use of stress positions, keeping detainees naked, use of dogs, and hooding during interrogations.

### **Background on Survival Evasion Resistance and Escape (SERE) Training**

Some brief background on SERE, which stands for Survival Evasion Resistance and Escape training. The U.S. military has five SERE schools to teach certain military personnel – whose missions create a high risk that they might be captured – the skills needed to survive in hostile enemy territory, evade capture, and escape should they be captured. The resistance portion of SERE training exposes students to physical and psychological pressures designed to simulate abusive conditions to which they might be subject if taken prisoner by enemies that may abuse them. The Joint Personnel Recovery Agency – JPRA – is the DoD agency that oversees SERE training. JPRA's instructor guide states that a purpose of using physical pressures in the training is "stress inoculation," building soldiers' immunities so that should they be captured and subject to harsh treatment, they will be better prepared to resist. The techniques used in SERE resistance training can include things like stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures. It can also include face and body slaps and until recently, for some sailors who attended the Navy's SERE school, it included waterboarding – mock drowning.

The SERE schools obviously take extreme care to avoid injuring our own soldiers. Troops are medically screened to make sure they're fit for the SERE course. Prior to the training, each student's physical limitations are carefully documented to reduce the chance that the SERE training and the use of SERE techniques will cause injury. There are explicit limitations on the duration and intensity of physical pressures. For example, when waterboarding was permitted at the Navy SERE school, the instructor manual stated that a maximum of two pints of water could be used on a student who was being waterboarded and, if a cloth was used to cover a student's face, it could stay in place a maximum of 20 seconds.

SERE resistance training techniques are legitimate and important training tools. They prepare our forces who might fall into the hands of an abusive enemy to survive by getting them ready for what might confront them.

Strict controls are also in place during SERE resistance training to reduce the risk of psychological harm to students. Psychologists are present throughout SERE training to intervene should the need arise and to talk to students during and after the training to help them cope with associated stress.

Those who play the part of interrogators in the SERE school drama are not real interrogators – nor are they qualified to be. As the Deputy Commander for the Joint Forces Command put it “the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations.” That distinction is a fundamental one.

Some might say that if our personnel go through it in SERE school, what’s wrong with doing it to detainees. Well, our personnel are students and can call off the training at any time. SERE techniques are based on abusive tactics used by our enemies. If we use those same techniques offensively against detainees, it says to the world that they have America’s stamp of approval. That puts our troops at greater risk of being abused if they’re captured. It also weakens our moral authority and harms our efforts to attract allies to our side in the fight against terrorism.

### **Department of Defense General Counsel’s Office Contacts JPRA**

So, how did SERE techniques come to be considered by DoD for detainee interrogations. In July 2002, Richard Shiffrin, a Deputy General Counsel in the Department of Defense and a witness at today’s hearing, called Lieutenant Colonel Daniel Baumgartner, also a witness today and then the Chief of Staff at JPRA – the agency that oversees the SERE training – and asked for information on SERE techniques.

In response to Mr. Shiffrin’s request, Lt. Col. Baumgartner drafted a two-page memo, (TAB 1) and compiled several documents, including excerpts from SERE instructor lesson plans, that he attached to his memo saying JPRA would “continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy detainees.” The memo was hand delivered to the General Counsel’s office on July 25, 2002. Again, it is critical to remember here; these techniques are not used in SERE school to obtain intelligence, they are to prepare our soldiers to resist abusive interrogations.

The next day, Lt. Col. Baumgartner drafted a second memo (TAB 2), which included three attachments. One of those attachments (TAB 3) listed physical and psychological pressures used in SERE resistance training including sensory deprivation, sleep disruption, stress positions, waterboarding, and slapping. It also made reference to a section of the JPRA instructor manual that talks about “coercive pressures” like keeping the lights at all times, and treating a person like an animal. Another attachment (TAB 4), written by Dr. Ogrisseg, also a witness today, assessed the long-term psychological effects of SERE resistance training on students and the effects of the waterboard.

This morning, the Committee will have the chance to ask Mr. Shiffrin, Lt. Col. Baumgartner, and Dr. Ogrisseg about these matters.

### **Office of Legal Counsel (OLC) Issues Legal Guidance for Interrogations**

On August 1, 2002, a week after Lt. Col. Baumgartner sent his memos to the DoD General Counsel, the Department of Justice’s Office of Legal Counsel (OLC) issued two legal opinions. One (TAB 5), commonly known as the first Bybee memo, was addressed to then-

White House Counsel Alberto Gonzales and provided OLC's opinion on standards of conduct in interrogation required under the federal torture statute. That memo concluded:

[F]or an act to constitute torture as defined in [the federal torture statute], it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under [the federal torture statute], it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.

The other OLC opinion, issued the same day and known commonly as the second Bybee memo, responded to a CIA request, and addressed the legality of specific interrogation tactics.

While the interrogation tactics reviewed by the OLC in the second Bybee memo remain classified, General Hayden, in public testimony before the Senate Intelligence Committee in February of this year, said that the waterboard was one of the techniques that the CIA used with detainees. Steven Bradbury, the current Assistant Attorney General of the OLC, testified before the House Judiciary Committee earlier this year that the "CIA's use of the waterboarding procedure was adapted from the SERE training program."

### **JPRA Conducts Training for Guantanamo Bay Personnel**

During the time the DoD General Counsel's office was seeking information from JPRA, JPRA staff, responding to a request from Guantanamo, were finalizing plans to conduct training for interrogation staff from U.S. Southern Command's Joint Task Force 170 at GTMO. During the week of September 16, 2002, a group from GTMO, including interrogators and behavioral scientists, travelled to Fort Bragg, North Carolina, and attended training conducted by instructors from the JPRA SERE school. None of the three JPRA personnel who provided the training was a trained interrogator.

### **CIA Provides Advice to U.S. Southern Command's JTF-170 on Interrogations**

On September 25, 2002, just days after GTMO staff returned from that training, a delegation of senior Administration lawyers, including Jim Haynes, General Counsel to the Department of Defense, John Rizzo, acting CIA General Counsel, David Addington, Counsel to the Vice President, and Michael Chertoff head of the Criminal Division at the Department of Justice, visited GTMO. An after action report (TAB 6) produced by a military lawyer after the visit noted that one purpose of the trip was to receive briefings on "intel techniques."

On October 2, 2002, a week after John Rizzo, the acting CIA General Counsel visited GTMO, a second senior CIA lawyer, Jonathan Fredman, who was chief counsel to the CIA's CounterTerrorism Center, went to GTMO, attended a meeting of GTMO staff and discussed a memo proposing the use of aggressive interrogation techniques. That memo had been drafted by a psychologist and psychiatrist from GTMO who, a couple of weeks earlier, had attended the training given at Fort Bragg by instructors from the JPRA SERE school.

While the memo remains classified, minutes from the meeting where it was discussed are not. Those minutes (TAB 7) clearly show that the focus of the discussion was aggressive techniques for use against detainees.

When the GTMO Chief of Staff suggested at the meeting that GTMO “can’t do sleep deprivation,” LTC Beaver, GTMO’s senior lawyer, responded “Yes we can – with approval.” LTC Beaver added that GTMO “may need to curb the harsher operations while [International Committee of the Red Cross] is around.”

Mr. Fredman, the senior CIA lawyer, suggested it’s “very effective to identify [detainee] phobias and use them” and described for the group the so-called “wet towel” technique, which we know as waterboarding. Mr. Fredman said “it can feel like you’re drowning. The lymphatic system will react as if you’re suffocating, but your body will not cease to function.”

And Mr. Fredman presented the following disturbing perspective of our legal obligations under anti-torture laws, saying “It is basically subject to perception. If the detainee dies you’re doing it wrong.”

If the detainee dies, you’re doing it wrong. How on earth did we get to the point where a senior United States Government lawyer would say that whether or not an interrogation technique is torture is “subject to perception” and that “if the detainee dies you’re doing it wrong.” What was GTMO’s senior JAG officer, LTC Beaver’s response? “We will need documentation to protect us.”

Nine days after that October 2, 2002, meeting, General Dunlavy, the Commander of Joint Task Force 170 at GTMO, sent a memo to U.S. Southern Command (TAB 8) requesting authority to use interrogation techniques which the memo divided into three categories of progressively more aggressive techniques. Category I was the least aggressive. Category II was more so and included the use of stress positions, exploitation of detainee fears (such as fear of dogs), removal of clothing, hooding, deprivation of light and sound. Category III techniques included techniques like the so-called wet towel treatment, or “waterboard,” that were the most aggressive. A legal analysis (TAB 8) by GTMO’s Staff Judge Advocate, LTC Diane Beaver justifying the legality of the techniques, was sent with the request.

- On October 25, 2002, General James Hill, the SOUTHCOM Commander forwarded General Dunlavy’s request to the Chairman of the Joint Chiefs of Staff (TAB 9). Days later, the Joint Staff solicited the views of the military services on the GTMO request.

#### **Military Lawyers Weigh in Against GTMO Request**

The military services reacted strongly against using many of the techniques in the GTMO request. In early November 2002, in a series of memos, the services identified serious legal concerns with the techniques and they called urgently for additional analysis.

- The Air Force (TAB 10) cited “serious concerns regarding the legality of many of the proposed techniques” and stated that “the techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely...” The Air Force also called for an in depth legal review of the request.
- The Chief Legal Advisor to the Criminal Investigative Task Force at GTMO wrote (TAB 11) that Category III techniques and certain Category II techniques “may subject service members to punitive articles of the UCMJ [Uniform Code of Military Justice],” called “the utility and legality of applying certain techniques” in the request “questionable,” and stated that he could not “advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business.”
- The Chief of the Army’s International and Operational Law Division wrote (TAB 12) that techniques like stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress “crosses the line of ‘humane’ treatment,” would “likely be considered maltreatment” under the UCMJ, and “may violate the torture statute.” The Army labeled the request “legally insufficient” and called for additional review.
- The Navy response (TAB 13) recommended a “more detailed interagency legal and policy review” of the request.
- And the Marine Corps (TAB 14) expressed strong reservations, stating that “several of the Category II and III techniques arguably violate federal law, and would expose our service members to possible prosecution.” The Marine Corps said the request was not “legally sufficient,” and like the other services, called for “a more thorough legal and policy review.”

While it has been known for some time that military lawyers voiced strong objections to interrogation techniques in early 2003 during the DoD Detainee Working Group process, these November 2002 warnings from the military services – expressed *before* the Secretary of Defense authorized the use of aggressive techniques – were not publicly known before now.

When the Joint Staff received the military services’ concerns, RADM Jane Dalton, then-Legal Advisor to the Chairman of the Joint Chiefs of Staff, began her own legal review of the proposed interrogation techniques, but that review was never completed. Today we’ll have the opportunity to ask RADM Dalton about that.

### **Secretary of Defense Approves GTMO Request**

Notwithstanding concerns raised by the military services, Department of Defense General Counsel Jim Haynes sent a memo (TAB 15) to Secretary of Defense Donald Rumsfeld on November 27, 2002, recommending that he approve all but three of the eighteen techniques in the GTMO request. Techniques like stress positions, removal of clothing, use of phobias (such as fear of dogs), and deprivation of light and auditory stimuli were all recommended for approval.

Five days later, on December 2, 2002, Secretary Rumsfeld signed Mr. Haynes’s

recommendation, adding the handwritten note “I stand for 8-10 hours a day. Why is standing limited to 4 hours?” When Secretary Rumsfeld approved the use of the use of abusive techniques against detainees, he unleashed a virus which ultimately infected interrogation operations conducted by the U.S. military in Afghanistan and Iraq.

### **Heated Discussions at GTMO about SERE and Khatani Interrogation**

Discussions about “reverse engineering” SERE techniques for use in interrogations at GTMO had already prompted strong objections by the Department of Defense’s Criminal Investigative Task Force (CITF) at GTMO. CITF Deputy Commander Mark Fallon said that SERE techniques were “developed to better prepare U.S. military personnel to resist interrogations and not as a means of obtaining reliable information” and that “CITF was troubled with the rationale that techniques used to harden resistance to interrogations would be the basis for the utilization of techniques to obtain information.”

The dispute over the use of aggressive techniques came to a head with the military’s plan for interrogating Mohammed al-Khatani. Both CITF and FBI strongly opposed the military’s plan and CITF took their concerns up the Army Chain of Command and even to the DoD General Counsel’s office; but over CITF’s objections, the military’s plan was approved. The Khatani interrogation began on November 23, 2002, just over a week before the Secretary signed the Haynes memo.

SOUTHCOM Commander General James Hill described the Khatani interrogation in a June 3, 2004 press briefing. He said: “The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK.” General Hill said “we began to use a few of those techniques . . . on this individual . . .”

Key documents relating to Khatani’s interrogation remain classified. Published accounts, however, indicate that Khatani was deprived of adequate sleep for weeks on end, stripped naked, subjected to loud music, a dog was used to scare him, and a leash was placed around his neck as he was forced to perform dog tricks.

On May 13, 2008, the Pentagon announced in a written statement that the Convening Authority for military commissions had “dismissed without prejudice the sworn charges against Mohamed al Khatani.” The statement does not indicate the role his treatment played in that decision.

### **GTMO Develops SERE SOP – Navy SERE School Trainers Visit GTMO**

In the week following the Secretary’s December 2, 2002, authorization, senior staff at GTMO set to work drafting a Standard Operating Procedure (SOP) specifically for the use of SERE techniques in interrogations. The first page of one draft of that SOP (TAB 16) stated that “The premise behind this is that the interrogation tactics used at U.S. military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to ‘break’ SERE detainees. The same tactics and techniques can be used

to break real detainees during interrogation.” The draft described how to slap, strip, and place detainees in stress positions. It also described “hooding,” “manhandling,” and “walling” detainees.

When they saw the draft SOP, CITF and FBI personnel again raised a red flag. A draft of their comments on the SOP (TAB 17) said the use of aggressive techniques only “ends up fueling hostility and strengthening a detainee’s will to resist.” But those objections did not stop GTMO from taking the next step – training interrogators on how to use the techniques offensively.

On December 30, 2002, two instructors from the Navy SERE school arrived at GTMO (TAB 19). The following day, in a session with approximately 24 interrogation personnel, the two demonstrated how to administer stress positions, and various slaps – just like they do it in SERE school.

Around this time, General Hill, the Commander of the U.S. Southern Command spoke to General Miller and discussed the fact that a debate was occurring over the Secretary’s approval of the techniques. In fact, CITF’s concerns had made their way up to then-Navy General Counsel Alberto Mora and a battle over interrogation techniques was being waged at senior levels in the Pentagon.

On January 3, 2003, three days after they conducted the training, the SERE instructors met with Major General Miller. According to some who attended, General Miller stated that he did not want his interrogators using the techniques that the Navy SERE instructors had demonstrated. That conversation took place after the training had already occurred and not all the interrogators who attended the training got the message.

### **U.S. Navy General Counsel Objects to Interrogation Techniques**

Two weeks earlier, on December 20, 2002, Alberto Mora had met with DoD General Counsel Jim Haynes. In a memo describing the meeting (TAB 18), Mr. Mora says he told Mr. Haynes that he thought interrogation techniques that had been authorized by the Secretary of Defense on December 2, 2002 “could rise to the level of torture” and asked him, “What did ‘deprivation of light and auditory stimuli’ mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What exactly did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in?”

On January 9, 2003, Alberto Mora met with Jim Haynes again. According to his memo, Mora expressed frustration that the Secretary’s authorization had not been revoked and told Haynes that the policies could threaten Secretary Rumsfeld’s tenure and even damage the presidency.

On January 15, 2003, having gotten no word that the Secretary’s authority would be withdrawn, Mora delivered a draft memo to Haynes’s office stating that “the majority of the proposed category II and all of the category III techniques were violative of domestic and

international legal norms in that they constituted, at the minimum, cruel and unusual treatment and, at worst, torture." In a phone call, Mora told Haynes he would be signing his memo later that day unless he heard definitively that the use of the techniques was being suspended. In a meeting that same day, Haynes returned the draft memo and told Mora that the Secretary would rescind the techniques.

### **Working Group Report on Detainee Interrogations**

On January 15, 2003, the Secretary rescinded his December 2, 2002, authorization (TAB 20). At the same time, he directed the establishment of a "Working Group" to review interrogation techniques. What happened next has already become well known. For the next few months the judgments of senior military and civilian lawyers critical of legal arguments supporting aggressive interrogation techniques were rejected in favor of a legal opinion from Office of Legal Counsel's (OLC) John Yoo. The Yoo opinion (TAB 21), the final version of which was dated March 14, 2003, was requested by Jim Haynes, and repeated much of what the first Bybee memo had said six months earlier.

Mr. Mora, who was one of the Working Group participants, said that soon after the Working Group was established, it became evident the group's report "would contain profound mistakes in its legal analysis, in large measure because of its reliance on the flawed [Office of Legal Counsel] OLC memo." In a meeting with Yoo, Mora asked whether the law allowed the President to go so far as to order torture. Yoo responded "Yes."

The August 1, 2002, Bybee memo, again, had said that to violate the federal anti-torture statute, physical pain that resulted from an act would have to be "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." John Yoo's March 14, 2003 memo stated that criminal laws, such as the federal anti-torture statute, would not even apply to certain military interrogations and that interrogators could not be prosecuted by the Justice Department for using interrogation methods that would otherwise violate the law. One CIA lawyer reportedly called the Bybee memo of August 2002 a "golden shield." Combining it with the Yoo memo of March 2003, the Justice Department had attempted to create a shield to make it difficult or impossible to hold anyone accountable for their conduct.

Ultimately the Working Group report, finalized in April 2003, included a number of aggressive techniques that were legal according to John Yoo's analysis. The full story of where the Working Group got those techniques remains classified. However, the list itself reflects the influence of SERE. Removal of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, increasing anxiety through the use of a detainee's aversions like dogs, and face and stomach slaps were all recommended. Top military lawyers and service General Counsels had objected to these techniques as the report was being drafted. Those who had objected, like Navy General Counsel Alberto Mora, were simply excluded from the process and not even told that a final report had been issued.

On April 16, 2003, less than two weeks after the Working Group completed its report, the Secretary of Defense authorized the use of 24 specific interrogation techniques for use at

GTMO (TAB 23). While the authorization included such techniques as dietary manipulation, environmental manipulation, and sleep adjustment, it was silent on most of the techniques in the Working Group report.

However, the Secretary's memo said that "If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee."

Just a few months later, one such request arrived at the Pentagon. The detainee was Mohamedou Ould Slahi. While several documents relating to the Slahi interrogation plan remain classified, the recent report from the Department of Justice Inspector General includes newly declassified information suggesting the plan included hooding Slahi and subjecting him to sensory deprivation and "sleep adjustment." The Inspector General's report says that an FBI agent who saw a draft of the interrogation plan said it was similar to Khatani's interrogation plan. Secretary Rumsfeld approved the Slahi plan on August 13, 2003.

### **Influence in Afghanistan**

How did SERE techniques make their way to Afghanistan and Iraq? Shortly after the Secretary approved Jim Haynes's recommendation on December 2, 2002, the techniques – and the fact the Secretary had authorized them – became known to interrogators in Afghanistan. A copy of the Secretary's memo was sent from GTMO to Afghanistan. The Officer in Charge of the Intelligence Section at Bagram Airfield, in Afghanistan has said that in January 2003 she saw – in Afghanistan – a power point presentation listing the aggressive techniques authorized by the Secretary on December 2, 2002.

Documents and interviews also indicate that the influence of the Secretary's approval of aggressive interrogation techniques survived their January 15, 2003 rescission.

On January 24, 2003 – nine days after Rumsfeld's rescission – the Staff Judge Advocate for CJTF-180, CENTCOM's conventional forces in Afghanistan, produced an "Interrogation techniques" memo. While that memo remains classified, the unclassified version of a report by Major General George Fay stated that the CJTF-180 memo "recommended removal of clothing – a technique that had been in the Secretary's December 2 authorization" and discussed "exploiting the Arab fear of dogs" another technique approved by the Secretary on December 2, 2002.

From Afghanistan, the techniques made their way to Iraq. According to the Department of Defense Inspector General, at the beginning of the Iraq war, the special mission unit forces in Iraq "used a January 2003 Standard Operating Procedure (SOP) which had been developed for operations in Afghanistan." According to the DoD IG, the Afghanistan SOP had been:

"influenced by the counterresistance memorandum that the Secretary of Defense approved on December 2, 2002 and incorporated techniques designed for detainees who were identified as

unlawful combatants. Subsequent battlefield interrogation SOPs included techniques such as yelling, loud music, and light control, environmental manipulation, sleep deprivation/adjustment, stress positions, 20-hour interrogations, and controlled fear (muzzled dogs) . . .”

Special mission unit techniques eventually made their way into Standard Operating Procedures issued for all U.S. forces in Iraq. The Interrogation Officer in Charge at Abu Ghraib obtained a copy of the special mission unit interrogation policy and submitted it, virtually unchanged, to her chain of command as proposed policy for the conventional forces in Iraq, led at the time by Lieutenant General Ricardo Sanchez.

On September 14, 2003, Lieutenant General Sanchez issued the first Combined Joint Task Force 7 interrogation SOP. That SOP authorized interrogators in Iraq to use stress positions, environmental manipulation, sleep management, and military working dogs to exploit detainees’ fears in interrogations.

In the report of his investigation into Abu Ghraib, Major General George Fay said that interrogation techniques developed for GTMO became “confused” and were implemented at Abu Ghraib. Major General Fay said that removal of clothing, while not included in CJTF-7’s SOP, was “imported” to Abu Ghraib, could be “traced through Afghanistan and GTMO,” and contributed to an environment at Abu Ghraib that appeared “to condone depravity and degradation rather than humane treatment of detainees.” Following a September 9, 2004 Committee hearing on his report, I asked Major General Fay whether the policy approved by the Secretary of Defense on December 2, 2002 contributed to the use of aggressive interrogation techniques at Abu Ghraib, and he responded “Yes.”

### **JPRA Support to the Special Mission Unit Task Force In Iraq**

Not only did SERE resistance training techniques make their way to Iraq, but instructors from the JPRA SERE school followed. The Department of Defense Inspector General reported that in September 2003, at the request of the Commander of the Special Mission Unit Task Force, JPRA deployed a team to Iraq to provide assistance to interrogation operations. During that trip, SERE instructors were authorized to participate in the interrogation of detainees in U.S. military custody. Accounts of that trip will be explored at a later time.

- I will be sending a letter to the Department of Defense asking that those accounts and other documents relating to JPRA’s interrogation-related activities be declassified.

### **JFCOM Statement on JPRA Roles and Responsibilities**

Major General James Soligan, the Chief of Staff of the U.S. Joint Forces Command (JFCOM), which is the Joint Personnel Recovery Agency’s higher headquarters (TAB 24), issued a memorandum referencing JPRA’s support to interrogation operations. Soligan wrote that:

"Recent requests from OSD and the Combatant Commands have solicited JPRA support based on knowledge and information gained through the debriefing of former U.S. POWs and detainees and their application to U.S. Strategic debriefing and interrogation techniques. These requests, which can be characterized as 'offensive' support, go beyond the chartered responsibilities of JPRA... The use of resistance to interrogation knowledge for 'offensive' purposes lies outside the roles and responsibilities of JPRA."

Lieutenant General Robert Wagner, the Deputy Commander of JFCOM, has likewise said that (TAB 25) "Relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations... requests for JPRA 'interrogation support' were both inconsistent with the unit's charter and might create conditions which tasked JPRA to engage in offensive operational activities outside of JPRA's defensive mission."

The Department of Defense Inspector General report completed in August 2006 said techniques in Iraq and Afghanistan had derived, in part from JPRA and SERE.

### **Closing**

Many have questioned why we should care about the rights of detainees. On May 10, 2007, General David Petraeus answered that question in a letter to his troops. General Petraeus wrote:

"Our values and the laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy. This fight depends on securing the population, which must understand that we – not our enemies – occupy the moral high ground.

I fully appreciate the emotions that one experiences in Iraq. I also know firsthand the bonds between members of the 'brotherhood of the close fight.' Seeing a fellow trooper killed by a barbaric enemy can spark frustration, anger, and a desire for immediate revenge. As hard as it might be, however, we must not let these emotions lead us – or our comrades in arms – to commit hasty, illegal actions. In the event that we witness or hear of such actions, we must not let our bonds prevent us from speaking up. Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary.

We are, indeed, warriors. We train to kill our enemies. We are engaged in combat, we must pursue the enemy relentlessly, and we must be violent at times. What sets us apart from our enemies in this fight, however, is how we behave. In everything we do, we must observe the standards and values that dictate that we treat noncombatants and detainees with dignity and respect. While we are warriors, we are also all human beings."

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Report No. 06-INTEL-10  
August 25, 2006  
Evaluation Report

# OFFICE OF THE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE



DEPUTY INSPECTOR GENERAL FOR INTELLIGENCE

## Review of DoD-Directed Investigations of Detainee Abuse (U)

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**Acronyms (U)**

CJCS	Chairman, Joint Chiefs of Staff
CJTF	Combined Joint Task Force
DIA	Defense Intelligence Agency
DSLOC	Detainee Senior Leadership Oversight Committee
HUMINT	Human Intelligence
JIDC	Joint Interrogation and Debriefing Center
JTF	Joint Task Force
OGA	Other Government Agency
SERE	Survival, Evasion, Resistance, and Escape
SOP	Standard Operating Procedure

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INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

August 25, 2006

MEMORANDUM FOR SECRETARY OF DEFENSE  
UNDER SECRETARY OF DEFENSE FOR POLICY  
UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE  
DIRECTOR, JOINT STAFF  
COMMANDER, U.S. JOINT FORCES COMMAND  
SECRETARY OF THE ARMY

SUBJECT: Review of DoD-Directed Investigations of Detainee Abuse (Report No. 06-INTEL-10) (U)

(U) We are providing this report for review and comment. We performed this review as a result of our monitoring and oversight of the investigations of allegations of detainee abuse and of the 13 senior-level reports appointed to inspect, assess, review, and investigate detention and interrogation operations initiated as a result of allegations of detainee abuse. We considered management comments on a draft of this report when preparing the final report.

(U) We requested and received written comments from the Under Secretary of Defense for Policy; the Director, Joint Staff; and the Deputy Chief of Staff, Army G-2. While not required, we received written comments from the Director, Defense Intelligence Agency, and the Department of the Army Inspector General.

(U) DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Under Secretary of Defense for Policy and the Department of the Army G-2's comments were responsive. The Director, Joint Staff's comments were partially responsive and we request additional comments on Recommendation A.2. and B.3. We did not receive written comments from the Secretary of Defense; the Under Secretary of Defense for Intelligence; and the Commander, U.S. Joint Forces Command. We redirected Recommendation B.2. to the Secretary of the Army based on comments from the Under Secretary of Defense for Policy. We revised Recommendation B.4. to include the Under Secretary of Defense for Intelligence in addition to the Secretary of the Army. We request comments on the final report by September 29, 2006.

(U) If possible, please send management comments in electronic format (Adobe Acrobat file only) to Team2@dodig.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET) or the Joint World-wide Communications System (JWICS).

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(U) We appreciate the courtesies extended to the staff. Questions should be directed to [REDACTED] at (703) 604-[REDACTED] (DSN 664-[REDACTED]) or [REDACTED] at (703) 604-[REDACTED] (DSN 664-[REDACTED]). See Appendix X for the report distribution. The evaluation team members are listed inside the back cover.



Shelton R. Young  
Deputy Inspector General  
for Intelligence

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**Office of the Inspector General of the Department of Defense**

**Report No. 06-INTEL-10  
(Project No. D2004-DINT01-0174)**

**August 25, 2006**

**Review of DoD-Directed Investigations  
of Detainee Abuse (U)**

**Executive Summary (U)**

**(U) Who Should Read This Report and Why?** DoD officials overseeing and determining policy on detainee operations and training personnel involved in detention and interrogation operations should read this report to understand the significance of oversight, timely reporting, and investigating allegations of detainee and prisoner abuse.

**(U) Background.** Following news media reports of allegations that U.S. Forces were abusing detainees held at detention facilities in Iraq, on May 7, 2004, 110 Members of Congress formally requested of the Secretary of Defense that the DoD Inspector General "supervise the investigations of tortured Iraqi prisoners of war and other reported gross violations of the Geneva Conventions at Abu Ghraib Prison in Iraq." In response to this request, the Inspector General announced, in a May 13, 2004, memorandum to the Secretaries of the Military Departments, the establishment of a multidisciplinary team to monitor allegations of detainee and prisoner abuse. This announcement generated a reporting requirement for the various military criminal investigative organizations and other agencies reporting allegations of detainee and prisoner abuse on the status of all open and closed investigations. The multidisciplinary team comprised personnel from two separate functional components of the DoD Office of Inspector General, with two separate objectives. For the first objective, the Office of Investigative Policy and Oversight evaluated the thoroughness and timeliness of criminal investigations into allegations of detainee abuse by focusing on the closed case files of 50 criminal investigations of allegations. That office issued a separate report on August 25, 2006.

**(U)** For the second objective, the Office of the Deputy Inspector General for Intelligence monitored allegations of detainee and prisoner abuse and evaluated the 13 senior-level inspections, assessments, reviews, and investigations of detention and interrogation operations that were initiated as a result of allegations of detainee abuse. The purpose of this review was to evaluate the reports to determine whether any overarching systemic issues should be addressed.

**(U)** The Deputy Inspector General for Intelligence's team developed a matrix to assist in tracking the growth in the number of allegations of criminal and noncriminal detainee abuse. As of February 27, 2006, DoD Components opened 842 criminal investigations or inquiries into allegations of detainee and prisoner abuse. A matrix detailing the status of these allegations is at Appendix P. According to the Deputy Assistant Secretary of Defense for Detainee Affairs, as of May 2005, more than 70,000 individuals have been detained by U.S. military and security forces since military operations began in Afghanistan on October 7, 2001.

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(U) Beginning on August 31, 2003, through April 1, 2005, DoD officials released 13 senior-level reports that included 492 separate recommendations. The Secretary of Defense established the Detainee Senior Leadership Oversight Committee to review and track all recommendations. Commanders and their respective Inspectors General should implement adequate corrective actions to prevent reoccurrence of the conditions identified. As of March 1, 2006, 421 recommendations were closed and 71 recommendations remained open.

(U) **Results.** The 13 senior-level reports provided extensive coverage of interrogation and detention operations, including detainee abuse. However, we identified three areas that should be examined further.

(U) Allegations of detainee abuse were not consistently reported, investigated, or managed in an effective, systematic, and timely manner. Multiple reporting channels were available for reporting allegations and, once reported, command discretion could be used in determining the action to be taken on the reported allegation. We did not identify any specific allegations that were not reported or reported and not investigated. Nevertheless, no single entity within any level of command was aware of the scope and breadth of detainee abuse. The Secretary of Defense should, when applicable, direct that all Combatant Commanders assign a Deputy Commanding General for Detention Operations, based on mission assignments. The Chairman, Joint Chiefs of Staff should expedite issuance of Joint Publications that outline responsibilities for intelligence interrogations. (See Finding A.)

(U) Interrogation support in Iraq lacked unity of command and unity of effort. Multiple DoD organizations planned and executed diverse interrogation operations without clearly defined command relationships, common objectives, and a common understanding of interrogation guidance. The Under Secretary of Defense for Intelligence and the Under Secretary of Defense for Policy should expedite issuance of relevant Manuals and Directives. The Chairman, Joint Chiefs of Staff and the Secretary of the Army should also expedite issuance of Joint and Multi-Service Publications. (See Finding B.)

(U) Counterresistance interrogation techniques migrated to Iraq, in part, because operations personnel believed that traditional interrogation techniques were no longer effective for all detainees. In addition, policy for and oversight of interrogation procedures were ineffective. As a result, interrogation techniques and procedures used exceeded the limits established in the Army Field Manual 34-52, "Intelligence Interrogation," September 28, 1992. The Under Secretary of Defense for Intelligence in coordination with the Commander, U.S. Joint Forces Command should develop and implement policy and procedures to preclude introducing survival, escape, resistance, and evasion techniques in an environment other than training. (See Finding C.)

(U) **Management Comments.** The Under Secretary of Defense for Policy concurred with one recommendation and nonconcurred with Recommendation B.2. requesting we redirect the recommendation to the Secretary of the Army. We redirected Recommendation B.2. to the Secretary of the Army.

(U) The Department of the Army G-2 concurred with the report, with comments. In response to verbal comments from the Under Secretary of Defense for Intelligence, we revised Recommendation B.4. to request that the Under Secretary of Defense for Intelligence, in coordination with the Secretary of the Army, expedite the issuance of Army Field Manual 2-22.3, "Human Intelligence Collector Operations."

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(U) Although not required to provide comments, the Director, Defense Intelligence Agency and the Department of the Army Inspector General concurred with the report, with comments.

(U) The Director, Joint Staff nonconcurred with findings and recommendations that he believed assigned responsibilities to the Chairman of the Joint Chiefs of Staff that were beyond his statutory authority. The Director, Joint Staff did not address specific recommendations directed to the Chairman that are within his statutory authority. We consider these comments nonresponsive and request that the Director, Joint Staff comment on the recommendations by September 29, 2006.

(U) We did not receive written comments on the draft report from the Secretary of the Defense; the Under Secretary of Defense for Intelligence; and the Commander, Joint Forces Command. Therefore, we request the Secretary of Defense, the Under Secretary of Defense for Intelligence, and the Commander, Joint Forces Command provide comments by September 29, 2006.

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## Background (U)

(U) On May 13, 2004, the DoD Inspector General announced the establishment of a multidisciplinary team to monitor allegations of abuse of Enemy Prisoners of War and other detainees (hereafter referred to collectively as detainees). This action was precipitated by the growing number of investigations subsequent to the April 2004 media release of photos taken from October through December 2003 that showed various abuses of detainees held at the Abu Ghraib Prison. The review also followed a May 7, 2004, letter to the Secretary of Defense in which 110 Members of Congress formally requested that the DoD Inspector General "supervise the investigation of tortured Iraqi prisoners of war, and other reported gross violations of the Geneva Convention at Abu Ghraib Prison in Iraq."

(U) The multidisciplinary team comprised personnel from two separate functional components of the DoD Office of Inspector General--the Office of Investigative Policy and Oversight and the Office of the Deputy Inspector General for Intelligence. The Office of Investigative Policy and Oversight evaluated the thoroughness and timeliness of criminal investigations into allegations of detainee abuse by focusing on the closed case files of 50 criminal investigations of allegations. The Office of Investigative Policy and Oversight prepared a separate report (see Appendix A). The Office of the Deputy Inspector General for Intelligence monitored allegations of detainee and prisoner abuse and evaluated the 13 senior-level inspections, assessments, reviews, and investigations of detention and interrogation operations that were initiated as a result of allegations of detainee abuse. (See Appendix B.) The purpose of this review was to evaluate the reports to determine whether any overarching systemic issues should be addressed.

(U) Although there are legal distinctions between Enemy Prisoners of War, civilian internees, retained personnel, and others captured or detained by U.S. Forces, this report focuses on reports, investigations, and reviews of matters involving persons who were in custody of the U.S. military, without regard to the status of the person in custody.

(U) On May 19, 2004, the DoD Inspector General tasked DoD Components to report the status of their organizations' review of allegations of detainee and prisoner abuse. Following a prescribed format, organizations reported on their opened and closed cases for criminal and non-criminal investigations, inspections, or reviews. Components started weekly reporting on May 20, 2004, and biweekly reporting on March 1, 2005. As of February 27, 2006, DoD Components opened 842 criminal investigations or inquiries into allegations of detainee and prisoner abuse. A reporting matrix detailing these Service-specific efforts is at Appendix P.

(U) From August 2003 through December 2004, senior officials directed the accomplishment of 13 senior-level reviews and investigations on

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detention and interrogation operations. The last report was issued on April 13, 2005. Although the purpose, mandate, and format of the reports were different, each report ultimately highlighted specific problems in the management and conduct of detention and interrogation operations. (See Appendix B.)

(U) The Secretary of Defense signed an order on July 16, 2004, that created the Office of Detainee Affairs to review detainee problems and formulate a coherent and seamless policy. The Deputy Assistant Secretary of Defense for Detainee Affairs, who is responsible for developing policy recommendations, reports to the Under Secretary of Defense for Policy.

(U) The 13 senior-level reports resulted in 492 recommendations. In November 2004, the Deputy Assistant Secretary of Defense for Detainee Affairs and the Joint Staff J-5 Deputy Director, War on Terrorism established the Detainee Senior Leadership Oversight Council (DSLOC) to review and monitor the status of the recommendations and actions in the major detainee abuse reviews, assessments, inspections and investigations. Working in concert with the Office of Detainee Affairs, the DSLOC meets quarterly to review the status reports and action plans from the designated office of primary responsibility on all open recommendations. See Appendix Q for information on the DSLOC as well as for observations and suggestions from the DoD Office of the Deputy Inspector General for Intelligence.

## **Detainee Treatment (U)**

(U) Various international laws and national treaties govern the treatment of detainees taken during war and other armed hostilities. The Geneva Conventions set the standard for international law to address humanitarian concerns. Overall, the laws and treaties are intended to ensure that detainees taken during armed hostilities are treated humanely.

(U) As of May 2004, the date of the congressional request, the DoD programs governing detainee treatment were prescribed in DoD Directive 5100.77, "DoD Law of War Program," December 9, 1998, and DoD Directive 2310.1, "DoD Program for Enemy Prisoners of War (EPOW) and Other Detainees," August 18, 1994.

(U) **Detention Operations.** Within DoD, the Under Secretary of Defense for Policy has overall responsibility for the coordination, approval, and implementation of major DoD policies and plans relating to detainee operations. The Secretary of the Army, as the DoD Executive Agent, administers the program through DoD Directive 2310.1 and Army Regulation 190-8 (AR 190-8), "Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees," October 1, 1997.

(U//~~FOUO~~) The Deputy Assistant Secretary of Defense for Detainee Affairs reported that, as of May 2005, the United States had eight theater-level holding facilities, and coalition forces had five facilities in Iraq; two

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theater-level holding facilities and 20 Forward Operating Bases in Afghanistan; and one facility at Guantanamo Bay. Further, U.S. military and security forces detained over 70,000 individuals since military operations began in Afghanistan on October 7, 2001.

## **Interrogation (U)**

(U) **Department of the Army Field Manual 34-52 (FM 34-52), "Intelligence Interrogation."** Prior to the issuance of the Deputy Secretary of Defense memorandum, "Interrogation and Treatment of Detainees by the Department of Defense," December 30, 2005, there was no official DoD-wide interrogation doctrine, but FM 34-52 was the de facto doctrine for intelligence personnel who conduct interrogations. The FM 34-52 expressly prohibits inhumane treatment and warns that the use of torture by U.S. personnel will bring discredit upon the United States and its armed forces, while undermining domestic and international support for the war effort.

(U) **Interrogation Operations.** DoD defines intelligence interrogation as the systematic process of using approved interrogation approaches to question a captured or detained person to obtain reliable information to satisfy intelligence requirements, consistent with applicable law. Interrogation is an art that can only be effective if practiced by trained and certified interrogators. Certified interrogators are trained to employ techniques that will convince an uncooperative source to provide accurate and relevant information.

(U) **Tactical to Strategic Interrogation.** Interrogation may be conducted at any level, from tactical questioning at the point of capture to the debriefing or interrogation conducted at a detainee's long-term internment facility. AR 190-8 recognizes that the value of intelligence information diminishes with time and therefore allows prisoners to be interrogated in the combat zone, usually by intelligence or counterintelligence personnel. Additionally, non-Military Intelligence personnel can conduct "tactical questioning" of detainees in the field prior to moving them to short-term or long-term holding facilities. After capture and tactical questioning, detainees should be expeditiously transferred to collecting points, corps holding areas, internment, or resettlement facilities. High value detainees are then selected for debriefing or interrogation at a Joint Interrogation and Debriefing Center (JIDC) or Joint Interrogation Facility.

(U) **Coercive Techniques.** The FM 34-52 states that:

Physical or mental torture and coercion revolves around eliminating the source's free will and are expressly prohibited by GWS [Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field], Article 13; GPW [Geneva Convention Relative to the Treatment of Prisoners of War], Articles 13 and 17; and GC [Geneva

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Convention Relative to the Protection of Civilian Persons in Time of War], Articles 31 and 32. Torture is defined as the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure. Examples of physical torture include— electric shock, forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time, food deprivation, and any form of beating. Examples of mental torture include—mock executions, abnormal sleep deprivation, and chemically induced psychosis. Coercion is defined as actions designed to unlawfully induce another to compel an act against one's will. Examples of coercion include—threatening or implying physical or mental torture to the subject, his family or others to whom he owes loyalty.

According to the FM 34-52, prohibited techniques are not needed to gain the cooperation of detainees; their use leads to unreliable information that may damage subsequent collection efforts. Not only does a detainee under duress provide information simply to stop the pain, but future interrogations will require more coercive, perhaps more dangerous, techniques. Finally, the interrogator must consider the negative effect that captivity stories will have on the local population, such as choosing not to communicate with or to actively oppose the presence of U.S. military personnel.

(U) **Field Manual 27-10 (FM 27-10), "The Law of Land Warfare."** provides authoritative guidance to military personnel on customary and treaty law for conducting warfare as follows:

Places limits on the exercise of a belligerent's power...and requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes and that they conduct hostilities with regard for the principles of humanity and chivalry.”

FM 27-10 further discusses prisoners of war and persons entitled to be treated as prisoners of war.

(U) **Presidential Military Order.** In a memorandum dated February 7, 2002, the President stated that Taliban and al Qaeda detainees were “unlawful combatants” not legally entitled to prisoner of war status. However, he did determine that al Qaeda and Taliban detainees were to be treated “humanely and to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva [Conventions].”

(U) ~~(S//NF)~~ **Approved Counterresistance Interrogation Techniques for Guantanamo Bay.** On April 16, 2003, the Secretary of Defense approved “Counter-Resistance Techniques in the War on Terrorism,” which were designed for the U.S. Southern Command, specifically the Guantanamo Bay, Cuba, facility. The April 16, 2003, memorandum reiterated that U.S. Forces must continue to treat detainees humanely. A previous

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memorandum dated December 2, 2002, incorporated techniques not found in the Army FM 34-52, but that were designed for those detainees identified as "unlawful combatants." (See Appendix V.) In response to Service-level concerns, the Secretary of Defense rescinded the harsher techniques and directed that a study be completed before he provided further guidance. This action led to a Working Group which evaluated 39 techniques for compliance with U.S. and international law and policy. The Secretary of Defense approved 24 of these interrogation techniques and included them in the April 16, 2003, memorandum. All 17 approved interrogation techniques found in Army FM 34-52 were also included in the April memorandum. Once again, these techniques were limited to interrogations of unlawful combatants held at Guantanamo Bay, Cuba. (See Appendix S.)

## Objectives (U)

(U) Our overall objective was to monitor allegations of detainee and prisoner abuse. Specifically, our objective was to evaluate each of the 13 senior-level reports and recommendations to determine whether any overarching systemic problems should be addressed. We identified three areas of concern and they are described as Findings A, B, and C. See Appendix A for a discussion of the scope and methodology and related report coverage. We did not review the management control program of any organization discussed in this report because such a review would be outside the scope of this review.

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## A. Reporting Incidents of Alleged Detainee Abuse (U)

The primary objective that the staff seeks to attain for the commander and for subordinate commanders is understanding, or situational awareness—a prerequisite for commanders anticipating opportunities and challenges. True understanding should be the basis for information provided to commanders in order to make decisions.

Joint Publication 0-2, "Unified Action Armed Forces (UNAAF)," July 10, 2001.

- (U) Allegations of detainee abuse were not consistently reported, investigated, or managed in an effective, systematic, and timely manner because clear procedural guidance and command oversight were either inadequate or nonexistent. As a result, no single entity within any level of command was aware of the scope and breadth of detainee abuse.
- (U) See paragraph, Management Actions, in the finding discussion.

### Background (U)

(U) **DoD Policies.** DoD Directive 2310.1 supports the DoD policy to provide humane treatment and effective care of all persons captured or detained. DoD Directive 5100.77 and DoD Directive 2310.1 prescribe policy to handle reportable incidents and require prompt reporting and thorough investigations. DoD Directive 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, which applies to intelligence components, also contains reporting requirements for questionable activities.

(U) DoD Directive 5100.77 pertains to the DoD Law of War Program, which encompasses all law for the conduct of hostilities binding on the United States, applicable U.S. law, treaties to which the United States is a party, and customary international law. Among other things, DoD policy is to ensure humane treatment and full accountability for all persons under DoD control. As defined in DoD Directive 5100.77, a reportable incident is, "...[a] possible, suspected, or alleged violation of the law of war," and provides that:

All reportable incidents committed by or against U.S. or enemy persons are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action.

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(U) DoD Directive 2310.1 requires the implementation of the international law of war, both customary and codified, including the Geneva Conventions for Enemy Prisoners of War, to include the sick or wounded, retained personnel, civilian internees, and other detained personnel. The program's objectives require that the U.S. Military Services observe and enforce the obligations and responsibilities of the U.S. Government for humane and efficient care and full accountability for all persons captured or detained by the U.S. Military Services throughout the range of military operations.

(U) DoD Directive 2310.1 defines a reportable incident as "... suspected or alleged violations of the Geneva Conventions and other violations of the international law of war," and states that the Secretaries of the Military Departments and the Commanders of the Unified Combatant Commands are responsible for reporting and investigating incidents promptly to the appropriate authorities in accordance with the DoD Law of War Program prescribed in DoD Directive 5100.77.

(U) DoD Directive 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, Procedure 15, requires each employee to report any questionable activity to the General Counsel or Inspector General for the DoD Component concerned or to the DoD General Counsel or the Assistant to the Secretary of Defense (Intelligence Oversight). DoD Directive 5240.1, "DoD Intelligence Activities," April 25, 1988, requires DoD intelligence component employees to report all activities that may violate a law, an Executive order, a Presidential Directive, or applicable DoD policy to the Inspector General or General Counsel responsible for the DoD intelligence component concerned, or to the Assistant to the Secretary of Defense (Intelligence Oversight).

(U) **Army Policies.** Army reporting criteria for allegations of detainee abuse fall under the reporting requirements of Army Regulation 190-40, "Serious Incident Report," June 15, 2005. A serious incident is any actual or alleged incident, accident, misconduct, or act, primarily criminal in nature, that, because of its nature, gravity, potential for adverse publicity, or potential consequences, warrants timely notice to Headquarters Department of the Army.

(U) Army Regulation 15-6, "Procedure for Investigative Officers and Boards of Officers," September 30, 1996, includes procedures that Army commanders in the field typically use to conduct administrative investigations. The regulation states that the policy is limited to investigations "not specifically authorized by any other directive." Commanders' inquiries under this regulation are subordinate to criminal investigations.

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## Inconsistent Reporting of Incidents (U)

(U) Allegations of detainee abuse were not reported consistently, in part because multiple channels existed to report them.<sup>1</sup> Multiple reporting channels were available for reporting allegations and, once reported, command discretion could be used in determining the action to be taken on the reported allegation. We did not identify any allegations that were not reported or reported and not investigated. Appendix R includes a case study on the difficulty of reporting and investigating allegations in a command environment with multiple organizations and differing reporting chains of command.

(U) Each command level has multiple channels available to report an allegation of abuse: the supervisor/commander, Inspector General, criminal investigators, and others, such as doctors, Staff Judge Advocates, and Chaplains. Once received by a commander, the following general options may be considered:

- Based on the lack of information or evidence, the receiving official may decide there is not enough evidence to take any action or that the alleged actions may not violate approved interrogation techniques.
- The receiving officials may initiate an internal investigation.
- The receiving official may also refer the case for outside review to a higher command or other channel.

(U) The reporting processes of the various Services and DoD agencies were different and therefore less than effective. Multiple reporting channels added to the challenge of maintaining situational awareness of authority and responsibility for directing, conducting, and overseeing unit-level investigations. Different DoD personnel could report an observed incident through any number of reporting channels. This is further exacerbated when some personnel are temporarily assigned or embedded with organizations that have different reporting procedures. The presence and activities of other Government agencies and Coalition partners not wholly subject to U.S. military procedures and policies also present intense challenges to commanders charged with overall situational awareness and oversight within their geographic and operational areas of responsibility. Despite the existence of DoD specialty-specific guidance for criminal investigators, Inspectors General, and medical organizations, the overarching guidance on detainee treatment was either not specific enough or nonexistent.

<sup>1</sup> We are not suggesting that multiple reporting channels be removed. However, multiple reporting channels do not provide the commander with situational awareness; therefore no single entity within the command is aware of the scope and breadth of the detainee abuse.

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(U) As documented in the Vice Admiral Church Report (Appendix M), Service members, DoD civilians, and contractors all agreed that they had an obligation to report any observed abuse. However, their descriptions of what constituted abuse (which ranged from "beating" to "verbal abuse"), to whom they would report abuse (ranging from supervisor to command's Inspector General), and finally who would determine the legitimacy of those allegations (senior enlisted or warrant officer, the interrogator, or the unit judge advocate) were varied.

### **Investigations Not Managed in an Effective Manner (U)**

(U) We believe that allegations of detainee abuse were not consistently investigated or managed in an effective, systematic, and timely manner. Commanders usually exemplify a strong tendency to limit information sharing during ongoing investigations. For example, the need to protect evidence and privacy in criminal cases may discourage Service investigative organizations from readily sharing case information, particularly during open cases and investigations or other high profile inquiries. The need to protect and the need to communicate are at odds with each other. For example, information developed by the Inspector General tends to stay in a restricted Inspector General channel, while private medical information remains within medical channels. Although this process works well for investigations in which one office has primary jurisdiction, such stove-piping otherwise disrupts and impedes a commander's oversight ability and prevents information from reaching the commander. As a result, decision makers often do not have the necessary information to make effective and informed decisions.

(U) The Military Criminal Investigative Organizations are responsible for investigating felony crimes committed in their respective Military Departments. In May 2004, the Commander, U.S. Army Criminal Investigation Command, announced that it would investigate all allegations involving detainees under U.S. Army personnel control or within U.S. Army facilities.

(U) As discussed in the Office of Investigative Policy and Oversight report, commanders frequently did not expeditiously refer potential criminal matters to the Army Criminal Investigation Command. Delays in investigations frequently resulted in evidence degradation or less reliable testimonial evidence as memories faded. Military commanders who do not refer potentially criminal matters to the Military Criminal Investigative Organizations in a timely fashion may also contribute to the perceptions of conspiracies and "coverups." Additionally, a commander's administrative investigation into a criminal matter may prematurely influence witness testimony in a subsequent criminal investigation, or eliminate interviews by trained investigators altogether when individuals invoke their right to counsel.

(U) A delay occurred in reporting potential felony crimes to the Army Criminal Investigation Command in 13 of the 50 cases reviewed

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(26 percent), which may have adversely affected the collection of evidence and subsequent punitive or remedial action. (See Appendix A.)

## **Procedural Guidance and Command Oversight**

(U) The inconsistency in reporting and investigating allegations was caused, in part, by the lack of clear procedural guidance and command oversight. Without command oversight, no single entity within any level of command was aware of the results of all investigations.

(U) At the initiation of enemy hostilities and planning for the War on Terrorism, DoD operations orders, local standard operating procedures, and other command guidance did not include or require clear criteria and procedures for reporting, processing, and investigating incidents of alleged detainee abuse.

(U) Before the position of Deputy Commanding General for Detention Operations, Multi-National Force-Iraq was established in July 2004, no single office was specifically responsible for detainee operations and treatment. This position is now the natural focal point for all allegations of detainee abuse in Iraq. All detention-related incidents in theater are now required to be reported through the Deputy Commanding General for Detention Operations.

## **Summary**

(U) A lack of oversight and uniformity in reports and investigations and in following up on incidents of alleged detainee abuse adversely affected situational awareness at the command level. With the establishment of the Deputy Commanding General for Detention Operations, Multi-National Force-Iraq, the commander created the focal point required for situational awareness on detainee abuse and any potential systemic problems. DoD needs to establish policy on detainee abuse that covers reporting criteria, mechanisms, chains of command, and responsibilities for the Services to include applicable Joint and Service policies and regulations.

## **Management Actions**

(U) The following directive was published after the 13 senior-level reports were issued.

(U) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings and Tactical Questioning," November 3, 2005, consolidates and codifies existing DoD policies and assigns responsibilities for intelligence interrogation, detainee debriefings, tactical questioning, and support activities conducted by DoD personnel. The Directive also establishes requirements for reporting violations of the policy on humane treatment during intelligence interrogations, detainee debriefings, or tactical questioning. Reportable incidents must be reported immediately

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through command or supervisory channels to the responsible Combatant Commander.

### **Recommendations (U)**

**A.1 (U)** We recommend that the Secretary of Defense, when appropriate, direct all Combatant Commanders to assign a Deputy Commanding General for Detention Operations.

(U) **Management Comments.** The Secretary of Defense did not respond to this recommendation. We request a response from the Office of the Secretary of Defense to this recommendation by September 29, 2006.

**A.2 (U)** We recommend that the Chairman, Joint Chiefs of Staff expedite issuance of Joint Publications that outline responsibilities for intelligence interrogations, debriefings, and tactical questioning, and issue guidance for reporting, tracking, and resolving reports of all detainee abuse inquiries and investigations.

(U) **Management Comments.** The Director, Joint Staff nonconcurred with the findings and recommendations assigning responsibilities to the Chairman of the Joint Chiefs of Staff that are beyond his statutory authority. The complete response is included in the Management Comments section of the report.

(U) **Evaluator Response.** We agree that some recommendations in the report are not within the Chairman of the Joint Chiefs of Staff's statutory authority; however, this specific recommendation is. Therefore we request comments on this recommendation by September 29, 2006.

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## B. Joint Interrogation Support (U)

To be effective, interrogations must be conducted by specially trained personnel operating under strict guidelines and with proper oversight.

LTG William Boykin, USA  
Deputy Under Secretary for  
Intelligence & Warfighter Support (House Permanent  
Select Committee on Intelligence, July 14, 2004)

(U) Interrogation in Iraq lacked unity of command and unity of effort. Multiple DoD organizations planned and executed interrogation operations without clearly defined command relationships and common objectives and understanding of interrogation guidance. These conditions occurred because:

- Interrogation policy was not uniform and consistent.
- Interrogation oversight was inadequate, and
- The Joint planning documents did not adequately consider the possible need for sustained and widespread detention and interrogation operations.

As a result, operational commanders may have failed to realize the full potential of interrogations.

(U) See Management Actions in the finding discussion.

### Background (U)

(U) Staff Planning. Planning for effective command and control is the result of commanders and their staffs collaborating to define the commander's intent, the mission statement, and the operational objectives. A collaborative environment disseminates the overarching strategic plan for staffs working on the various sections and helps commanders quickly identify and resolve conflicts early in the planning process. In this way, campaign objectives and operational guidance are communicated at every level, from beginning to end of operations. The Joint Strategic Capabilities Plan and other planning documents provide a complete description of the forces and resources required to execute the Combatant Commander's concept of operations for all phases of a campaign. Military planners prioritize and apportion available forces and resources, including limited and critical support forces.

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## Interrogation Support Lacked Unity of Command and Unity of Effort (U)

(U) Strategic interrogation support in Iraq lacked unity of command and unity of effort because multiple organizations performed interrogations without common objectives and clearly defined roles and responsibilities for all command participants.

(U) **Unity of Command.** Command is central to all military actions, and inherent in command is the authority that a military commander lawfully exercises over subordinates to demand accountability. Unity of command means that all forces operate under a single commander who has the requisite authority to direct all forces employed in pursuit of a common purpose. Unity of command is the foundation for the trust, coordination, and teamwork necessary for unified action and requires responsibility among commanders to be described in detail.

(U) **Unity of Effort.** Unity of command is central to unity of effort. A single commander with the necessary authority can influence all forces, even those that are not part of the same command structure, to coordinate and collaborate to achieve a common objective of obtaining intelligence within the established rules and winning the cooperation of the populace. This unity of effort cannot be achieved when command relationships and procedures for coordination are unclear.

(U) **Combined Joint Task Force-7 (CJTF-7).** The U.S. Central Command ordered the formation of CJTF-7 to coordinate and execute all Coalition military operations in Iraq. The primary mission of the CJTF-7 was to conduct "stability and support" operations to facilitate the eventual transfer of power to an Iraqi government. The CJTF-7 was also responsible for interrogation operations, including the maintenance of interrogation facilities at all locations. The objective of the interrogations was to obtain actionable tactical and operational intelligence on insurgency groups. However, the CJTF-7 did not control the detention and interrogation operations conducted by the Iraq Survey Group, the Special Mission Unit Task Force, and Other Government Agencies. There was no unity of command for all detention and interrogation operations in Iraq until July 2004 when Major General Geoffrey Miller was assigned as Deputy Commanding General for Detainee Operations.

(U) ~~(S/NF)~~ **Iraq Survey Group.** In May 2003, the Secretary of Defense established the Iraq Survey Group to undertake the U.S. Central Command's search for weapons of mass destruction. The Iraq Survey Group was responsible for operating an interagency JIDC comprising a mix of intelligence community, allied, and contractor personnel. The objective of their debriefings and interrogations was to obtain strategic intelligence from high value detainees.

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~~(S//NF)~~ **Human Intelligence Augmentation Teams.** The Defense Intelligence Agency (DIA) assigned human intelligence (HUMINT) augmentation teams to assist the special mission units in Iraq. These task-organized, direct-support interrogators and case officers plan, coordinate, conduct, and supervise interrogation operations.

(U)

~~(S//NF)~~ **Other Government Agencies.** DoD interrogation operations were sometimes conducted in conjunction with external agencies. In particular, Other Government Agencies (OGAs) operated with military units and used military facilities without interagency agreements that clearly defined roles and responsibilities. The lack of specific guidance led to the development of local agreements and contributed to the concerns expressed about what interrogation techniques were appropriate. (See Appendix M.)

(U)

~~(S//NF)~~ **Command Relationships.** For approximately 1 year, from May 2003 to June 2004, interrogations in Iraq were not conducted as part of a coordinated intelligence campaign plan. The command or supporting relationships among those elements operating in the U.S. Central Command Area of Responsibility were often not clearly understood. This ambiguous condition negatively impacted resource management. For example, Lieutenant General Jones stated in his report that the Iraq Survey Group did not acknowledge a mutual support relationship with the CJTF-7 and went so far as to "deny a request for interrogation support" from the Commander, U.S. Central Command. (See Appendix H.) Based on interviews with cognizant HUMINT personnel, we concluded that the DIA interrogators assigned to the Iraq Survey Group and attached to the special mission unit task forces were unable to effectively collaborate or support operations at the CJTF-7 JIDC when it was overwhelmed with detainees. Because these organizations had no previous common operational experience, as was the case with the Iraq Survey Group when it was first established in May 2003, formal command relationships were not fully developed enough to deal with complex coordination required in Iraq. In a July 6, 2004, memorandum to the Director, DIA, the Commander responsible for special mission units emphasized the need to build and maintain the right team for the mission, but admitted that the command "did not adequately in-brief and assimilate your personnel into the scheme of operations."

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## Interrogation Policy Was Not Uniform and Consistent (U)

- (U) Interrogations in Iraq lacked uniform execution of interrogation policy because approved interrogation techniques varied. Although the Commander, U.S. Central Command had primary responsibility for establishing interrogation policy in theater, the Under Secretary of Defense for Intelligence and the Under Secretary of Defense for Policy did not promulgate one definitive interrogation policy to reinforce the existing FM 34-52.<sup>2</sup>
- (U) ~~(S//NF)~~ Combined Joint Task Force-7. The CJTF-7 September 2003 Interrogation Policy used the FM 34-52 as a baseline for conducting interrogations, but expanded the techniques by incorporating more aggressive counterresistance policies. (See Appendix V.) As discussed in the Church Report,<sup>3</sup> it was only after the U.S. Central Command's legal review that some of the techniques, such as stress positions, isolation, sleep management, yelling, and loud music, were removed when CJTF-7 released a revised policy on October 12, 2003.
- (U) Major General Fay (see Appendix H) reported that interrogation policies promulgated by CJTF-7 were poorly defined and had changed three times in less than 30 days so that it became very confusing as to what techniques could be employed. According to the Schlesinger Report:<sup>4</sup>
- “changes in DoD interrogation policies between December 2, 2002 and April 16, 2003 were an element contributing to uncertainties in the field as to which techniques were authorized.” “in the absence of specific guidance from [U.S.] CENTCOM [Central Command], interrogators in Iraq relied on Field Manual FM 34-52 and on unauthorized techniques that had migrated from Afghanistan. . .clearly led to confusion on what practices were acceptable.”
- (U) **Iraq Survey Group.** The Iraq Survey Group used interrogation or debriefing techniques in the Army FM 34-52. The Commander, Iraq Survey Group and numerous interrogators operating at the Iraq Survey Group described debriefing techniques that included direct questions and incentives.
- (U) ~~(S//NF)~~ **Special Mission Unit Task Force.** At the commencement of Operation Iraqi Freedom, the special mission unit forces used a January 2003 Standard Operating Procedure (SOP) which had been developed for operations in Afghanistan. The Afghanistan SOP was influenced by the

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<sup>2</sup> Army FM 34-52 was the guideline used until December 29, 2005. (See Background for more information on FM 34-52.)

<sup>3</sup> See original Church Report.

<sup>4</sup> See original Schlesinger Report.

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counterresistance memorandum that the Secretary of Defense approved on December, 2, 2002 (see Appendix U), and incorporated techniques designed for detainees who were identified as "unlawful combatants." Subsequent battlefield interrogation SOPs included techniques such as yelling, loud music, light control, environmental manipulation, sleep deprivation/adjustment, stress positions, 20 hour interrogations, and controlled fear (muzzled dogs) that are not in the FM 34-52. The special mission unit did not submit, and was not required to submit, SOPs to the U.S. Central Command for review. We believe that because the U.S. Central Command failed to provide overarching guidance, the special mission units and CJTF-7 never synchronized their counterresistance techniques.

- (U) ~~(S//NF)~~ **Human Intelligence Augmentation Teams.** DIA personnel assigned to these teams were trained to follow Army FM 34-52. Conflicts arose when the DIA personnel were assigned to special mission unit task force operators who had expanded their interrogation techniques. In June 2004, not long after the Abu Ghraib photos became public, DIA HUMINT augmentation team members attached to the Special Mission Unit Task Force redeployed to the Iraq Survey Group and provided accounts of some task force personnel abusing detainees. Based on this information, as well as fearing for the team's safety, the Director, DIA authorized the Iraq Survey Group to remove all DIA personnel from special mission unit task force operations pending further review.
- (U) ~~(C)~~ According to DIA Policy Memorandum No. 73, "DIA Policy for Interrogation Operations," March 2002, both the operational commander and Defense HUMINT, who will seek urgent resolution of the conflict through appropriate channels, must be informed immediately when conflicts arise between the operational chain of command's orders and DIA policy and procedures.
- (U) ~~(S//NF)~~ Reports of detainee abuse by special mission unit task force personnel dated back to June 2003, but we believe it took the publicized abuse at Abu Ghraib and the revelation of threats to HUMINT augmentation team members to elevate the issue to the Flag Officer level. Earlier allegations of interrogation irregularities, which included use of techniques not consistent with interrogation techniques designed for Iraq, were not always decisively reported, investigated, and acted on. Consequently, the disagreements between the DIA and special mission units were not reconciled to the benefit of all those conducting interrogation operations in Iraq. Instead, the issue of disaffected interrogators from DIA who were not prepared for the demanding and exacting pace of operations overshadowed the reality that different interrogation policies were in effect.
- (U) **Other Government Agencies.** As discussed in the Church report (see Appendix M) there was no uniform understanding of what rules govern the involvement of OGAs in the interrogation of DoD detainees. Such uncertainty could create confusion regarding the permissibility and limits of various interrogation techniques.

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## Interrogation Oversight Inadequate (U)

- (U) Interrogation oversight, including high-level oversight of facilities and interrogation techniques, was often limited.
- (U) We concluded that multiple organizations providing interrogation at multiple levels and locations in Iraq had separate reporting chains of command, ranging from tactical interrogations performed by special mission units to operational and strategic interrogations and debriefings conducted by the Iraq Survey Group and the CJTF-7. No single organization at the U.S. Central Command or the CJTF-7 was responsible for overarching oversight of planning and execution for the interrogation mission and, as a result, no one was responsible for reconciling the numerous competing demands from the operational and tactical levels.
- (U) (S//NF) We believe that the absence of universal interrogation standards may have significantly affected how allegations of abuse were reported up the chain of command. If certain actions that DIA personnel characterized as abusive by their doctrinal standards were judged by a special mission unit investigating officer to be in compliance with the task force "interrogation guidelines," the case would be closed. These on-scene rulings may have prevented accurate reporting of incidents from reaching a level at which decision makers could identify a problem that was potentially systemic.

## Joint Planning Was Not Fully Developed (U)

(U) Joint planning documents did not adequately define the full extent of sustained detention and interrogation operations. Planning was influenced by the U.S. Central Command's assumption that long-term detention in Iraq would not be necessary. With the support of the local population and a new Iraqi government, the Commander, U.S. Central Command believed that "detainees should not be an issue." When this support did not materialize, sustaining operations amidst a hostile insurgency became much more difficult.

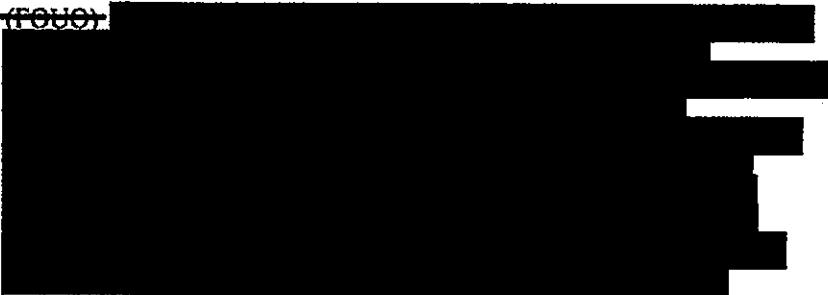
(U) **Perseverance, Legitimacy, and Restraint.** According to Joint Publication 3-0, "Doctrine for Joint Operations," September 10, 2001, operational planners should always prepare for the worst-case scenario application of military capability to sustain long-term operations. Commanders must balance the temptation to seek crisis-response options with the long-term goals of the strategic campaign plan to establish a legitimate government. The actions of military personnel are framed by the disciplined application of force, including specific rules of engagement. Therefore, the patient, resolute, and persistent restraint to achieve strategic campaign plan objectives is preferred over the expedient pursuit of actionable intelligence.

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(U) There are many well-documented reasons why detention and interrogation operations were overwhelmed. Interrogators had to adjust to the following conditions: a wartime environment; an expanding detainee population; an initial reluctance to release anyone in the mixture of regular criminals and active insurgents; a lack of unity of command; inconsistent training; a critical shortage of skilled interrogators, translators, and guard force personnel; and the external influence of special operations forces and OGAs.

(U) ~~(FOUO)~~ [REDACTED]



(U) The Chairman, Joint Chiefs of Staff, should develop doctrine that provides planners and warfighters with an approved framework to conduct detention and interrogation operations in a manner consistent with law, joint doctrine, and applicable policy.

### **Impact on Operational Requirements (U)**

(U) ~~(S)~~ Operational commanders may have failed to realize the full potential of interrogations. In the words of the Commander, CJTF-7:

"We did not envision having to conduct detention operations of this scope and for this length of time. . .we did not envision continuing to conduct operations and increase the number of detainees. . .the same thing happened with interrogations. . .it clearly was not sufficient."

The Under Secretary of Defense for Intelligence draft study, "Taking Stock of Defense Intelligence Assessment," November 13, 2003, stated that planning for intelligence operations was not synchronized and that Combat Support Agency involvement did not occur early enough in the Combatant Command planning process to ensure timely and adequate support. Finally, the 2005 Combat Support Agency Review Team Assessment of the DIA reported that HUMINT policies and procedures needed to be updated to reflect changes in operational parameters and coordination mechanisms. Supporting the Iraq war in addition to other worldwide missions led to personnel shortages and a lack of adequately trained interrogators that hampered their ability to effectively collect intelligence to satisfy critical Combatant Command requirements.

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## Summary

(U) A lack of unity of command and unity of effort in mission planning and execution by multiple organizations, with varying levels of interrogation and inconsistent interrogation standards negatively affected interrogation operations. The Office of the Secretary of Defense should establish authoritative directives and instructions that define both detention operations and interrogation policies and the Chairman, Joint Chiefs of Staff should update Joint doctrine to incorporate operational standards, roles and responsibilities, and oversight for interrogation and detention operations.

## Management Actions

(U) The following policy and guidance documents were published after the 13 senior-level reports discussed in this report were issued. See Appendix Q for a discussion on the DSLOC, which was established to ensure that the recommendations are addressed by the appropriate DoD Component.

(U) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings and Tactical Questioning," November 3, 2005, consolidates existing policies, including the requirement for humane treatment during all intelligence interrogations, detainee debriefings, or tactical questioning to gain intelligence from captured or detained personnel. The directive also assigns responsibilities as well as establishes requirements for reporting violations, intelligence interrogations, detainee debriefings, tactical questioning, and supporting activities that DoD personnel conduct.

(U) Deputy Secretary of Defense memorandum, "Interrogation and Treatment of Detainees by the Department of Defense," December 30, 2005, states that under the Defense Appropriations Act, 2006, no one in the custody of or under the effective control of DoD or detained in a DoD facility will be subject to any treatment or interrogation approach or technique that is not authorized and listed in U.S. Army FM 34-52, "Intelligence Interrogation," September 28, 1992. (See Appendix T.)

(U) Joint Publication 2-01.2, "Counterintelligence and Human Intelligence Support to Joint Operations, June 13, 2006." This revision establishes joint doctrine for interrogation operations.

(U) The following policy and guidance documents are pending release.

(U) DoD Directive 2310.1 E, "The Department of Defense Detainee Program," establishes the responsibilities of the Office of Detainee Affairs under the Under Secretary of Defense for Policy. The directive reinforces the policy that all captured or detained personnel, to include enemy combatants, enemy prisoners of war, civilian internees, and retained

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personnel, shall be treated humanely and in accordance with applicable law and policy.

(U) Joint Publication 3-63, "Detainee Operations." This publication provides guidelines for planning and executing detainee operations. It outlines responsibilities and discusses organizational options and command and control considerations across the range of military operations.

(U) Multi-Service Tactics, Techniques, and Procedures, "Detainee Operations in the Global War on Terror." This publication will support planners and warfighters by providing consolidated, accurate information on handling detainees from point of capture to release.

(U) Army Field Manual 2-22.3, "Human Intelligence Collector Operations." The new Field Manual will supersede Army FM 34-52 and update interrogation guidance with wartime lessons learned.

## **Recommendations (U)**

In response to the comments from the Under Secretary of Defense for Policy we modified Recommendation B.2. to request that the Secretary of the Army expedite the issuance of Multi-Service Tactics, Techniques and Procedures, "Detention Operations in the Global Wars on Terrorism."

With the issuance of Joint Publication 2-01.2, "Counterintelligence and Human Intelligence Support to Joint Operations," we modified draft report Recommendation B.3. which recommended expedited issuance of the Joint Publication.

In response to verbal comments from the Under Secretary of Defense for Intelligence, we revised Recommendation B.4. to request that the Under Secretary of Defense for Intelligence, in coordination with the Secretary of the Army, expedite the issuance of Army FM 2-22.3, "Human Intelligence Collector Operations."

**B.1. (U) We recommend that the Under Secretary of Defense for Policy expedite the issuance of DoD Directive 2310.1E, "The Department of Defense Detainee Program."**

(U) **Management Comments.** The Under Secretary of Defense for Policy concurred with this recommendation and indicated that DoD Directive 2310.1E will be issued after all national-policy issues are resolved. The complete comments are included in the Management comments section.

(U) **Evaluator Response.** We consider these comments to be responsive and will monitor the progress that the Office of the Under Secretary of Defense for Policy makes in publishing this directive.

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**B.2. (U) We recommend that the Secretary of the Army review and expedite the Services issuance of the Multi-Service Tactics, Techniques, and Procedures, "Detainee Operations in the Global War on Terrorism."**

(U) **Management Comments.** Although not required to comment, the Under Secretary of Defense for Policy nonconcurred stating that the Multi Service Tactics, Techniques and Procedures is the responsibility of the Joint Staff and the Army as the executive agent for detention operations. He further stated that the recommendation should be made to the Secretary of the Army.

(U) **Evaluator Response.** We redirected Recommendation B.2. to the Secretary of the Army. We request Army comments on this modified recommendation by September 29, 2006.

**B.3. (U) We recommend that the Chairman, Joint Chiefs of Staff expedite issuance of Joint Publication 3-63, Detainee Operations."**

(U) **Management Comments.** The Director, Joint Staff, nonconcurred with findings and recommendations assigning responsibilities to the Chairman of the Joint Chiefs of Staff that are beyond his statutory authority. The complete response is included in the Management Comments section.

(U) **Evaluators Response.** This specific recommendation is within Chairman of the Joint Chiefs of Staff's statutory authority; therefore we request that the Director, Joint Staff comment on this recommendation by September 29, 2006.

**B.4. (U) We recommend that the Under Secretary of Defense for Intelligence, in coordination with the Secretary of the Army, expedite the issuance of Army Field Manual 2-22.3, "Human Intelligence Collector Operations."**

(U) **Management Comments.** The Army Deputy Chief of Staff, G-2 concurred, but suggested that the report should present a more balanced perspective between interrogation operations and non-interrogation related detainee abuse. The G-2 also stated that on page 80-81 of the report, "the Colonel's AAR [After Action Report] did not include detainee abuse allegations." (See Appendix R.)

(U) **Evaluator Response.** The December 12, 2003, AAR, subject: Report of CI/HUMINT [Counterintelligence/Human Intelligence] Evaluation Visit sent to the CJTF-7 C2 describes accounts from the Officer In Charge of the Iraq Survey Group JIDC that prisoners captured by Task Force 121 showed signs of having been mistreated (beaten) by their captors, and that medical personnel noted during medical examination that detainees show signs of having been beaten. See Management Comments section for complete comments. During a status update briefing on August 4, 2006, the Under Secretary of Defense for

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Intelligence stated that he is responsible for the release of Army Field Manual 2-22.3, and not the Army Deputy Chief of Staff, G-2. As a result, we revised Recommendation B.4. We request that the Under Secretary of Defense for Intelligence provide comments by September 29, 2006.

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## C. DoD Interrogation Techniques (U)

**It is important to note that techniques effective under carefully controlled conditions in Guantanamo became far more problematic when they migrated and were not adequately safeguarded.**

Final Report of the Independent Panel to Review DoD Detention Operations,  
August 24, 2004

(U) Counterresistance interrogation techniques migrated to Iraq because operations personnel believed that traditional interrogation techniques were no longer effective for all detainees. In addition, policy for and oversight of interrogation procedures were ineffective. As a result, interrogation techniques and procedures used exceeded the guidelines established in the Army FM 34-52.

### Background (U)

(U) **Counterresistance techniques.** The FM 34-52 provides guidance on what techniques an intelligence interrogator should use to gain the cooperation of a detainee. As stated in the Secretary of Defense memorandum, "Counter-Resistance Techniques in the War on Terrorism," dated April 15, 2003, specific implementation guidance for techniques A-Q (see Appendix S) is provided in the FM 34-52. This finding addresses those techniques that are not included in FM 34-52.

(U) **Survival, Evasion, Resistance, and Escape (SERE) Training.** The U.S. Joint Forces Command is the DoD Executive Agent responsible for providing Service members with SERE training. The Joint Personnel Recovery Agency at Fort Belvoir, Virginia, monitors and oversees all DoD SERE training programs at the four DoD schools: Fairchild Air Force Base, Spokane, Washington (Air Force); Fort Bragg, North Carolina (Army); Naval Air Station Brunswick, Maine (Navy/Marines); and Naval Air Station North Island, San Diego, California (Navy/Marines). The Services train an estimated 6,200 members annually at these schools.

(U) DoD SERE training, sometimes referred to as code of conduct training, prepares select military personnel with survival and evasion techniques in case they are isolated from friendly forces. The schools also teach resistance techniques that are designed to provide U.S. military members, who may be captured or detained, with the physical and mental tools to survive a hostile interrogation and deny the enemy the information they wish to obtain. SERE training incorporates physical and psychological pressures, which act as counterresistance techniques, to replicate harsh conditions that the Service member might encounter if they are held by forces that do not abide by the Geneva Conventions.

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**(U) Defensive Interrogation Techniques.** The U.S. Joint Forces Command defines the training employed to increase the Service member's resistance capabilities as a defensive response to interrogation. The Deputy Commander and the Command Group has concluded that the Joint Personnel Recovery Agency and the SERE schools do not have personnel assigned to be interrogators and do not advocate interrogation measures to be executed by our force. The SERE expertise lies in training personnel how to respond and resist interrogations--not in how to conduct interrogations. Therefore, the Joint Personnel Recovery Agency and SERE mission is defensive in nature, while the operational interrogation mission is sometimes referred to as offensive.

**(U) Migration of Techniques.** Migration refers to the introduction of interrogation techniques from one theater of operation to another. Official migration relates to those interrogation techniques intended only for use at a specific facility that are officially approved for use at other facilities. Unofficial migration occurred when interrogators remained unaware of the approved guidance and believed that techniques that they may have experienced, including those from basic training, SERE training, or tours at other detention facilities, were permissible in other theaters of operation.

**(U)** While this report primarily addresses the U.S. Central Command Area of Operations, some discussion of the involvement of the Joint Personnel Recovery Agency with the JTF 170 at Guantanamo Bay, Cuba, is necessary background information explaining how SERE techniques migrated to Iraq.

### **Joint Personnel Recovery Agency Involvement in the Development of Interrogation Policy at Guantanamo Bay, Cuba (U)**

- (U) ~~(S)~~** Counterresistance techniques taught by the Joint Personnel Recovery Agency contributed to the development of interrogation policy at the U.S. Southern Command. According to interviewees, at some point in 2002, the U.S. Southern Command began to question the effectiveness of the Joint Task Force 170 (JTF-170), the organization at Guantanamo that was responsible for collecting intelligence from a group of hard core al Qaeda and Taliban detainees. As documented in the Vice Admiral Church report (Appendix M), the interrogators believed that some of the detainees were intimately familiar with FM 34-52 and were trained to resist the techniques that it described.
- (U) ~~(S//NF)~~** Counterresistance techniques were introduced because personnel believed that interrogation methods used were no longer effective in obtaining useful information from some detainees. On June 17, 2002, the Acting Commander, Southern Command requested that the Chairman, Joint Chiefs of Staff (CJCS) provide his command with an external review of ongoing detainee intelligence collection operations at Guantanamo Bay,

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which included an examination of information and psychological operations plans. The CJCS review took place between August 14, 2002, and September 4, 2002, and concluded that the JTF-170 had limited success in extracting usable information from some of the detainees at Guantanamo because traditional interrogation techniques described in FM 34-52 had proven to be ineffective. The CJCS review recommended that the Federal Bureau of Investigation Behavioral Science Unit, the Army's Behavioral Science Consultation Team, the Southern Command Psychological Operations Support Element, and the JTF-170 clinical psychologist develop a plan to exploit detainee vulnerabilities. The Commander, JTF-170 expanded on the CJCS recommendations and decided to also consider SERE training techniques and other external interrogation methodologies as possible DoD interrogation alternatives.

- (U) ~~(S//NF)~~ Between June and July 2002, but before the CJCS review, the Chief of Staff of the Joint Personnel Recovery Agency, working with the Army Special Operations Command's Psychological Directorate, developed a plan designed to teach interrogators how to exploit high value detainees.
- (U) ~~(S//NF)~~ On September 16, 2002, the Army Special Operations Command and the Joint Personnel Recovery Agency co-hosted a SERE psychologist conference at Fort Bragg for JTF-170 interrogation personnel. The Army's Behavioral Science Consultation Team from Guantanamo Bay also attended the conference. Joint Personnel Recovery Agency personnel briefed JTF-170 representatives on the exploitation techniques and methods used in resistance (to interrogation) training at SERE schools. The JTF-170 personnel understood that they were to become familiar with SERE training and be capable of determining which SERE information and techniques might be useful in interrogations at Guantanamo. Guantanamo Behavioral Science Consultation Team personnel understood that they were to review documentation and standard operating procedures for SERE training in developing the standard operating procedure for the JTF-170, if the command approved those practices. The Army Special Operations Command was examining the role of interrogation support as a "SERE Psychologist competency area."
- (U) ~~(C)~~ On September 24, 2002, a Joint Personnel Recovery Agency representative at the SERE conference recommended in a conference memorandum report to his Commander that their organization "not get directly involved in actual operations." Specifically, the memorandum states that the agency had "no actual experience in real world prisoner handling," developed concepts based "on our past enemies," and assumes that "procedures we use to exploit our personnel will be effective against the current detainees." In a later interview, the Commander, Joint Personnel Recovery Agency stated that his agency's support to train and teach "was so common that he probably got 15 similar reports [memoranda] a week and it was not his practice to forward them to the U.S. Joint Forces Command."

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- (U) ~~(S//NF)~~ The Commander, JTF-170 forwarded a request on October 11, 2002, to the Commander, U.S. Southern Command, seeking approval of counterresistance strategies. This memorandum in part stated:

"...the following techniques and other aversive techniques, such as those used in U.S. military interrogation resistance training or by other U.S. government agencies, may be utilized in a carefully coordinated manner to help interrogate exceptionally resistant detainees. Any or [sic] these techniques that require more than light grabbing, poking, or pushing, will be administered only by individuals specifically trained in their safe application."

The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family: exposure to cold weather or water (with appropriate medical monitoring); use of a wet towel and dripping water to induce the misperception of suffocation; use of mild, noninjurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.

The accompanying legal brief recommended that the proposed methods of interrogation be approved and that the interrogators be properly trained in the approved methods of interrogation.

- (U) ~~(S//NF)~~ On at least two occasions, the JTF-170 requested that Joint Personnel Recovery Agency instructors be sent to Guantanamo to instruct interrogators in SERE counterresistance interrogation techniques. SERE instructors from Fort Bragg responded to Guantanamo requests for instructors trained in the use of SERE interrogation resistance techniques. Neither of those visits was coordinated with the Joint Forces Command, which is the office of primary responsibility for SERE training, or the Army, which is the office of primary responsibility for interrogation.

(U) As discussed previously, the U.S. Southern Command's request led to the issuance of Secretary of Defense, December 2, 2002, memorandum (see Appendix V). In response to Service-level concerns, a Working Group was formed to examine counterresistance techniques, leading to the Secretary of Defense, April 16, 2003, memorandum that approved counterresistance techniques for U.S. Southern Command.

### **Migration of Counterresistance Interrogation Techniques into the U.S. Central Command Area of Operation (U)**

- (U) Counterresistance interrogation techniques in the U.S. Central Command Area of Operation derived from multiple sources that included migration of documents and personnel, the JTF-Guantanamo Assessment Team, and the Joint Personnel Recovery Agency.

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- (U) Unlike Guantanamo and Afghanistan where detainees were designated as unlawful combatants, the Geneva Conventions applied in Iraq. The Commander, CJTF-7 confirmed this by stating that "we all clearly understood that the conditions in GTMO [Guantanamo] were different than what the conditions were in Iraq because the Geneva Conventions applied."
- (U) ~~(S//NF)~~ Afghanistan. The Church report acknowledges that a draft copy of a Working Group report from which the Secretary of Defense's April 16, 2003, Guantanamo policy was derived influenced the development of interrogation policy in Afghanistan. The Jacoby Report observed the following: "There is a void in the availability of interrogation guidance in the field, and interrogation practice is as inconsistent and varied across the theater as are detention methods. There is some correlation between individual training and experience and interrogation methods being used, but there is little correlation between location and techniques employed." To fill this perceived void, interrogators attempted to integrate draft policy and "unevenly applied standards" in Afghanistan.
- (U) ~~(S//NF)~~ Iraq. The Church report also acknowledges the migration of policy and personnel in the interrogation procedures used. As documented in the Church Report, the CJTF-7 interrogation policy (Appendix V) itself drew from the techniques found in FM 34-52, the April 2003 Guantanamo policy, the special mission unit policy, and the experiences of interrogators in Afghanistan. Because interrogators were often unaware of the approved guidance, they relied on their prior training and experience.
- (U) Between August 2003 and February 2004, several visiting teams went to Iraq to advise the task force and assess interrogation operations within the Central Command's area of responsibility. On at least two occasions, visiting assessment teams discussed interrogation methods not sanctioned by FM 34-52.
- (U) ~~(FOUO)~~ JTF-Guantanamo Assessment Team. In August 2003, the Joint Chiefs of Staff J3 requested the U.S. Southern Command to send experts in detention and interrogation operations from Guantanamo to Iraq to assess the Iraq Survey Group's interrogation operations. The Iraq Survey Group did not request the assessment because they believed they had the proper interrogation standard operating procedures in place and in compliance with FM 34-52. Based on interviews with cognizant personnel, the JTF-Guantanamo assessment team reportedly discussed the use of harsher counterresistance techniques with Iraq Survey Group personnel. The Iraq Survey Group interrogators disagreed with what they described as the "hard line approach" that the assessment team recommended.
- (U) ~~(S//NF)~~ While the Iraq Survey Group did not endorse the JTF-Guantanamo techniques, the CJTF-7 incorporated some of the techniques in its policies and procedures. As discussed in the Church report, the CJTF-7 Staff Judge Advocate stated that its September 14, 2003,

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Interrogation Policy was influenced by multiple factors, including the Army Field Manual. The Interrogation Policy also incorporated the Guantanamo counterresistance policies. The CJTF-7 Staff Judge Advocate attributed the "genesis of this product" to the JTF-Guantanamo assessment team.

- (U) ~~(S//NF)~~ Joint Personnel Recovery Agency Team. The Joint Personnel Recovery Agency was also responsible for the migration of counterresistance interrogation techniques into the U.S. Central Command's area of responsibility. In September 2003, at the request of the Commander, TF-20, the Commander, Joint Personnel Recovery Agency sent an interrogation assessment team to Iraq to provide advice and assistance to the task force interrogation mission. The TF-20 was the special mission unit that operated in the CJTF-7 area of operations. The Joint Personnel Recovery Agency did not communicate its intent to introduce SERE interrogation resistance training to TF-20 interrogators with the Commander, U.S. Joint Forces Command.
- (U) ~~(S//NF)~~ The Commander, Joint Personnel Recovery Agency, explained that he understood that the detainees held by TF-20 were determined to be Designated Unlawful Combatants (DUCs), not Enemy Prisoners of War (EPW) protected by the Geneva Convention and that the interrogation techniques were authorized and that the JPRA team members were not to exceed the standards used in SERE training on our own Service members. He also confirmed that the U.S. Joint Forces Command J-3 and the Commanding Officer, TF-20 gave a verbal approval for the SERE team to actively participate in "one or two demonstration" interrogations.
- (U) ~~(S//NF)~~ SERE team members and TF-20 staff disagreed about whether SERE techniques were in compliance with the Geneva Conventions. When it became apparent that friction was developing, the decision was made to pull the team out before more damage was done to the relationship between the two organizations. The SERE team members prepared After Action Reports that detailed the confusion and allegations of abuse that took place during the deployment. These reports were not forwarded to the U.S. Joint Forces Command because it was not a common practice at that time.

## Oversight (U)

(U) A lack of uniform interrogation standards and oversight at the Combatant Command level from 2002-2004 as well as a lack of oversight over the Joint Personnel Recovery Agency activities allowed counterresistance techniques to influence interrogation operations. It was only after the Joint Personnel and Recovery Agency requested to take a SERE team to Afghanistan in May 2004, that the U.S. Joint Forces Command concluded that "the use of resistance to interrogation knowledge for offensive purposes lies outside the roles and responsibilities of JPRA [Joint Personnel Recovery Agency]." A Joint Personnel Recovery Agency Mission Guidance Memorandum,

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September 29, 2004, from the Commander, U.S. Joint Forces Command expressly prohibited such activities without specific approval from the U.S. Joint Forces Commander, Deputy, or Chief of Staff.

## **Conclusion (U)**

- (U) ~~(S//NF)~~ Many causes contributed to the migration of counterresistance interrogation techniques in Iraq. As shown in the Church report, even the process of developing policy can contribute to the development of policy in other theaters. The Church report states:

“...the experience of SERE school impresses itself indelibly in the minds of graduates, and is frequently their first and most vivid association with the broad concept of interrogation. Although our interview data did not reveal the employment of any specific SERE techniques in Afghanistan, the prevalence of the association between SERE school and interrogation suggests that specific cautions should be included in approved interrogation policies to counter the notion that any techniques employed against SERE students may be appropriate for use in interrogation of captured personnel.”

- (U) This finding recognizes those avenues, and also focuses on the role of the Joint Personnel Recovery Agency. The Joint Personnel Recovery Agency mission is extremely important in preparing select military personnel with survival and evasion techniques in case they are isolated from friendly forces. We are not suggesting that SERE training is inappropriate for those subject to capture; however, it is not appropriate to use in training interrogators how to conduct interrogation operations. We agree with the conclusion of the U.S. Joint Forces command that the use of resistance to interrogation knowledge for offensive purposes lies outside the role of the Joint Personnel Recovery Agency. The following recommendations are meant to institutionalize this conclusion.

## **Management Actions**

- (U) The following guidance is pending release:

- (U) Army Field Manual 2-22.3, “Human Intelligence Collector Operations.” The new Field Manual will supersede Army FM 34-52 and update interrogation guidance with wartime lessons learned.

## **Recommendations (U)**

- C.1. (U) We recommend that the Under Secretary of Defense for Intelligence develop policies that preclude the use of Survival, Evasion, Resistance, and Escape physical and psychological coercion

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techniques and other external interrogation techniques that have not been formally approved for use in offensive interrogation operations.

(U) **Management Comments.** The Under Secretary of Defense for Intelligence did not provide written comments on the draft report. Therefore, we request that the Under Secretary of Defense for Intelligence comment on the final report by September 29, 2006.

**C.2. (U)** We recommend that the Commander, U.S. Joint Forces Command, Office of Primary Responsibility for Personnel Recovery and Executive Agent for all Survival, Evasion, Resistance and Escape training implement formal policies and procedures that preclude the introduction and use of physical and psychological coercion techniques outside the training environment.

(U) **Management Comments.** The Commander, U.S. Joint Forces Command, did not respond to this recommendation. We request that the Commander, U.S. Joint Forces Command provide comments on the final report by September 29, 2006.

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## Appendix A. Scope and Methodology (U)

(U) This review is the result of monitoring and oversight of all of the DoD organizations involved in the investigation of allegations of detainee abuse. In addition to tracking the status of detainee abuse investigations, we reviewed the senior-level reports, covering the period August 2003 through April 2005, and their recommendations to determine whether any overarching systemic issues should be addressed. We performed this review in accordance with the *Quality Standards for Federal Office of Inspector General* during the period May 2004 through March 2006.

(U) To achieve our objective, we:

- Tracked reports on detainee abuse investigation from all of the Military Criminal Investigative Organizations,
- Examined more than 11,000 pages of documentation including DoD regulations, policy letters, briefings, and course curricula,
- Participated as observers in the quarterly meetings of the DSLOC,
- Interviewed senior officials from Combatant Commands, the Joint Personnel Recovery Agency, and DIA intelligence professionals assigned to the Iraq Theater of Operations,
- Reviewed in detail each of the 13 senior-level reports of investigation into allegations of detainee and prisoner abuse, and,
- Reviewed other reports and external reviews on intelligence collection operations at detention facilities.

(U) **Related Coverage:** During the last 5 years, The DoD Office of the Inspector General has issued one report discussing detainee abuse.

**OIG, DoD**

(U) Report No. IPO2004C005, "Report on Review of Criminal Investigations of Alleged Detainee Abuse," August 25, 2006, Office of the Deputy Inspector for Inspections and Policy, Investigative Policy and Oversight.

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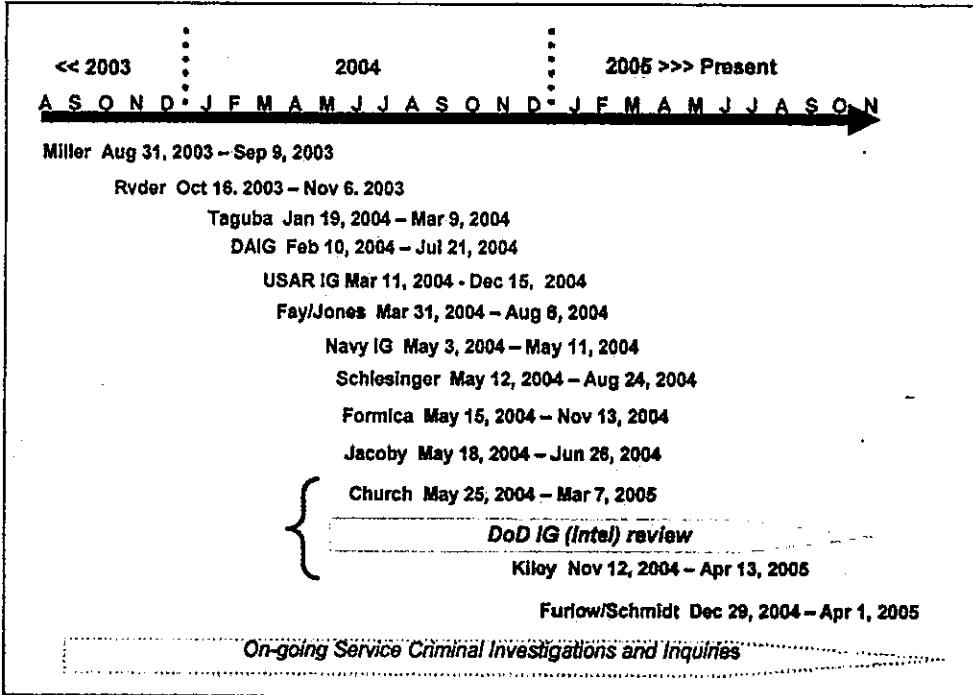
## **Appendix B. Timeline of Senior-Level Reports (U)**

(U) DoD officials directed or conducted 13 separate senior-level reviews and investigations related to detention and interrogation operations or training in the Global War on Terrorism. The first review commenced August 31, 2003, and the last report ended April 1, 2005. The following timeline shows when each major DoD review or investigation was conducted.

(U) Appendix C through Appendix O provides a synopsis of each report's scope, a limited extract of its executive summary, and a brief OIG assessment of the specific report. Although the reports represent widely differing scopes and various methodologies, they, intentionally or unintentionally, ultimately highlighted specific and systemic problems in the overall management and conduct of detention and interrogation operations. However, the narrow scope of some reports may also have unduly limited, or in some cases understated, the need, focus, and results of subsequent investigations.

## **TIMELINE: MAJOR SENIOR LEVEL REPORTS AND INVESTIGATIONS**

**Unclassified**



Unclassified

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## **Appendix C. Assessment of DoD Counter-terrorism Interrogation and Detention Operations in Iraq (Miller Report) (U)**

Investigating Officer: MG Miller, formerly Commander, Guantanamo

Appointing Authority: Secretary of Defense

Date of Initiation: August 31, 2003

Date of Completion: September 9, 2003

(U) **Scope:** Using the "JTF-GTMO operational procedures and interrogation authorities as baseline," visit to Iraq to "conduct assistance visits to CJTF-7, TF-20, and the Iraqi Survey Group to discuss current theater ability to rapidly exploit internees for actionable intelligence." The assessment focused on three areas: intelligence integration, synchronization, and fusion; interrogation operations; and detention operations.

### **(U) Extract of Executive Summary**

(U) The dynamic operational environment in Iraq requires an equally dynamic intelligence apparatus. To improve velocity and operational effectiveness of counterterrorism interrogation, attention in three major mission areas is needed. The team observed that the Task Force did not have authorities and procedures in place to affect a unified strategy to detain, interrogate, and report information from detainees/internees in Iraq. Additionally, the corps commander's information needs required an in-theater analysis capability integrated throughout the interrogation operations structure to allow for better and faster reach-back to other worldwide intelligence databases.

(U) The command initiated a system to drive the rapid exploitation of internees to answer CJTF-7, theater, and national level counterterrorism requirements. This is the first stage toward the rapid exploitation of detainees. Receipt of additional resources currently in staffing will produce a dramatic improvement in the speed of delivering actionable intelligence and leveraging the effectiveness of the interrogation efforts. Our assessment is that a significant improvement in actionable intelligence will be realized within 30 days.

(U) **OIG Assessment:** The report focused on how to conduct and exploit interrogation and detention operations. Although the findings and recommendations were limited to Iraq, they also applied to the U.S. Central Command's entire area of responsibility. The report did not discuss command and control of interrogation and detention facilities.

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## The CIA's torture teachers

**Psychologists helped the CIA exploit a secret military program to develop brutal interrogation tactics -- likely with the approval of the Bush White House.**

**By Mark Benjamin**

Jun. 21, 2007 | There is growing evidence of high-level coordination between the Central Intelligence Agency and the U.S. military in developing abusive interrogation techniques used on terrorist suspects. After the Sept. 11 attacks, both turned to a small cadre of psychologists linked to the military's secretive Survival, Evasion, Resistance and Escape program to "reverse-engineer" techniques originally designed to train U.S. soldiers to resist torture if captured, by exposing them to brutal treatment. The military's use of SERE training for interrogations in the war on terror was revealed in detail in a recently declassified report. But the CIA's use of such tactics -- working in close coordination with the military -- until now has remained largely unknown.

According to congressional sources and mental healthcare professionals knowledgeable about the secret program who spoke with Salon, two CIA-employed psychologists, James Mitchell and Bruce Jessen, were at the center of the program, which likely violated the Geneva Conventions on the treatment of prisoners. The two are currently under investigation: Salon has learned that Daniel Dell'Orto, the principal deputy general counsel at the Department of Defense, sent a "document preservation" order on May 15 to the chairman of the Joint Chiefs of Staff and other top Pentagon officials forbidding the destruction of any document mentioning Mitchell and Jessen or their psychological consulting firm, Mitchell, Jessen and Associates, based in Spokane, Wash. Dell'Orto's order was in response to a May 1 request from Sen. Carl Levin, the Democratic chairman of the Senate Armed Services Committee, who is investigating the abuse of prisoners in U.S. custody.

Mitchell and Jessen have worked as contractors for the CIA since 9/11. Both were previously affiliated with the military's SERE program, which at its main school at Fort Bragg puts elite special operations forces through brutal mock interrogations, from sensory deprivation to simulated drowning.

A previously classified report by the Defense Department's inspector general, made public last month, revealed in vivid detail how the military -- in flat contradiction to previous denials -- used SERE as a basis for interrogating suspected al-Qaida prisoners at Guantánamo Bay, and later in Iraq and Afghanistan. Moreover, the involvement of the CIA, which was secretly granted broad authority by President Bush days after 9/11 to target terrorists worldwide, suggests that both the military and the spy agency were following a policy approved by senior Bush administration officials.

Close coordination between the CIA and the Pentagon is referred to in military lingo as "jointness." A retired high-level military official, familiar with the detainee abuse scandals, confirmed that such "jointness" requires orchestration at the top levels of government. "This says that somebody is acting as a bridge between the CIA and the Defense Department," he said, "because you've got the [CIA] side and the military side, and they are collaborating." Human-rights expert Scott Horton, who chairs the International Law Committee at the New York City Bar Association, also says that the cross-agency coordination "reflects the fact that the decision to introduce and develop these methods was made at a very high level."

On Wednesday, dozens of psychologists made public a joint letter to American Psychological Association president Sharon Brehm fingering another CIA-employed psychologist, R. Scott Shumate. Previous news reports led the American Medical Association and the American Psychiatric Association to ban their members from participating in interrogations, but the issue has remained divisive within the American Psychological Association, which has not forbidden the practice. "We write you as psychologists concerned about the participation of our profession in abusive interrogations of national security detainees at Guantanamo, in Iraq and Afghanistan, and at the so-called CIA 'black sites,'" the psychologists wrote. In violation of APA ethics, they said, "It is now indisputable that psychologists and psychology were directly and officially responsible for the development and migration of abusive interrogation techniques, techniques which the International Committee of the Red Cross has labeled 'tantamount to torture.'" [Ed. note: The full letter detailing the allegations of APA complicity can be read [here](#).]

The letter cites a previously public biographical statement on Shumate that listed his position from April 2001 to May 2003 as "the chief operational psychologist for the CIA's Counter Terrorism Center." The bio also noted that Shumate "has been with several of the key apprehended terrorists" who have been held and interrogated by the agency since 9/11. At CTC, Shumate reported to Cofer Black, the former head of CTC who famously told Congress in September 2002, "There was a before 9/11, and there was an after 9/11. After 9/11 the gloves come off." Shumate's bio, obtained by Salon, has been removed from the InfowarCon 2007 conference Web site. Shumate did not return a phone call seeking comment.

The SERE-based program undermines assertions made for years by Bush administration officials that interrogations conducted by U.S. personnel are safe, effective and legal. SERE training, according to the Department of Defense inspector general's report, is specifically designed "to replicate harsh conditions that the service member might encounter if they are held by forces that do not abide by the Geneva Conventions."

"The irony -- and ultimately the tragedy -- in the migration of SERE techniques is that the program was specifically designed to protect our soldiers from countries that violated the Geneva Conventions," says Brad Olson, president of the Divisions for Social Justice within the American Psychological Association. "The result of the reverse-engineering,

however, was that by making foreign detainees the target, it made us the country that violated the Geneva Conventions," he says.

There are striking similarities between descriptions of SERE training and the interrogation techniques employed by the military and CIA since 9/11. Soldiers undergoing SERE training are subject to forced nudity, stress positions, lengthy isolation, sleep deprivation, sexual humiliation, exhaustion from exercise, and the use of water to create a sensation of suffocation. "If you have ever had a bag on your head and somebody pours water on it," one graduate of that training program told Salon last year "it is real hard to breathe."

Many of those techniques show up in interrogation logs, human rights reports and news articles about detainee abuse that has taken place in Guantánamo, Afghanistan and Iraq. (The military late last year unveiled a new interrogation manual designed to put a stop to prisoner abuse.) An investigation released this month by the Council of Europe, a multinational human rights agency, added extreme sensory deprivation to the list of techniques that have been used by the CIA. The report said that extended isolation contributed to "enduring psychiatric and mental problems" of prisoners.

Isolation in cramped cells is also a key tenet of SERE training, according to soldiers who have completed the training and described it in detail to Salon. The effects of isolation are a specialty of Jessen's, who taught a class on "coping with isolation in a hostage environment" at a Maui seminar in late 2003, according to a Washington Times article published then. (Defense Department documents from the late 1990s describe Jessen as the "lead psychologist" for the SERE program.) Mitchell also spoke at that conference, according to the article. It described both men as "contracted to Uncle Sam to fight terrorism."

Mitchell's name surfaced again many months later. His role in interrogations was referenced briefly in a July 2005 New Yorker article by Jane Mayer, which focused largely on the military's use of SERE-based tactics at Guantánamo. The article described Mitchell's participation in a CIA interrogation of a high-value prisoner in March 2002 at an undisclosed location elsewhere -- presumably a secret CIA prison known as a "black site" -- where Mitchell urged harsh techniques that would break down the prisoner's psychological defenses, creating a feeling of "helplessness." But the article did not confirm Mitchell was a CIA employee, and it explored no further the connection between Mitchell's background with SERE and interrogations being conducted by the CIA.

A call to Mitchell and Jessen's firm for comment was not returned. The CIA would not comment on Mitchell and Jessen's work for the agency, though the contractual relationship is not one Mitchell and Jessen entirely concealed. They advertised their CIA credentials as exhibitors at a 2004 conference of the American Psychological Association in Honolulu.

In a statement to Salon, CIA spokesman George Little wrote that the agency's interrogation program had been "implemented lawfully, with great care and close review,

producing a rich volume of intelligence that has helped the United States and other countries disrupt terrorist activities and save innocent lives."

Until last month, the Army had denied any use of SERE training for prisoner interrogations. "We do not teach interrogation techniques," Carol Darby, chief spokeswoman for the U.S. Army Special Operations Command at Fort Bragg, said last June when Salon asked about a document that appeared to indicate that instructors from the SERE school taught their methods to interrogators at Guantánamo.

But the declassified DoD inspector general's report described initiatives by high-level military officials to incorporate SERE concepts into interrogations. And it said that psychologists affiliated with SERE training -- people like Mitchell and Jessen -- played a critical role. According to the inspector general, the Army Special Operations Command's Psychological Directorate at Fort Bragg first drafted a plan to have the military reverse-engineer SERE training in the summer of 2002. At the same time, the commander of Guantánamo determined that SERE tactics might be used on detainees at the military prison. Then in September 2002, the Army Special Operations Command and other SERE officials hosted a "SERE psychologist conference" at Fort Bragg to brief staff from the military's prison at Guantánamo on the use of SERE tactics.

The chief of the Army Special Operations Command's Psychological Directorate was Col. Morgan Banks, the senior SERE psychologist, who has been affiliated with the training for years and helped establish the Army's first permanent training program that simulated captivity, according to a 2003 biographical statement. Banks also spent the winter of 2001 and 2002 at Bagram Airfield in Afghanistan "supporting combat operations against Al Qaida and Taliban fighters," according to one of his bios, which also said that Banks "provides technical support and consultation to all Army psychologists providing interrogation support."

In 2005, Banks helped draft ethical guidelines for the APA that say a psychologist supporting an interrogation is providing "a valuable and ethical role to assist in protecting our nation, other nations, and innocent civilians from harm." But as Salon reported last summer, six of the 10 psychologists who drafted that policy, including Banks, had close ties to the military. Some psychologists worry that the APA policy has made the organization an enabler of torture. Those ethics guidelines "gave the APA imprimatur to any of these techniques," says Steven Reisner, an APA member who has been closely tracking psychologists' role in interrogations. The policy, Reisner says, was developed by "psychologists directly involved in the interrogations."

 Another of the six psychologists on the panel that drafted the guidelines who had ties to the military was Shumate. His bio for that APA task force said he worked as a "director of behavioral science" for the Defense Department. It never mentioned that he also worked for the CIA.

-- By Mark Benjamin



## CIA's Harsh Interrogation Techniques Described

**Sources Say Agency's Tactics Lead to Questionable Confessions, Sometimes to Death**

By BRIAN ROSS and RICHARD ESPOSITO

Nov. 18, 2005 —

Harsh interrogation techniques authorized by top officials of the CIA have led to questionable confessions and the death of a detainee since the techniques were first authorized in mid-March 2002, ABC News has been told by former and current intelligence officers and supervisors.

They say they are revealing specific details of the techniques, and their impact on confessions, because the public needs to know the direction their agency has chosen. All gave their accounts on the condition that their names and identities not be revealed. Portions of their accounts are corroborated by public statements of former CIA officers and by reports recently published that cite a classified CIA Inspector General's report.

Other portions of their accounts echo the accounts of escaped prisoners from one CIA prison in Afghanistan.

"They would not let you rest, day or night. Stand up, sit down, stand up, sit down. Don't sleep. Don't lie on the floor," one prisoner said through a translator. The detainees were also forced to listen to rap artist Eminem's "Slim Shady" album. The music was so foreign to them it made them frantic, sources said.

Contacted after the completion of the ABC News investigation, CIA officials would neither confirm nor deny the accounts. They simply declined to comment.

The CIA sources described a list of six "Enhanced Interrogation Techniques" instituted in mid-March 2002 and used, they said, on a dozen top al Qaeda targets incarcerated in isolation at secret locations on military bases in regions from Asia to Eastern Europe. According to the sources, only a handful of CIA interrogators are trained and authorized to use the techniques:

1. **The Attention Grab:** The interrogator forcefully grabs the shirt front of the prisoner and shakes him.
2. **Attention Slap:** An open-handed slap aimed at causing pain and triggering fear.

**3. The Belly Slap:** A hard open-handed slap to the stomach. The aim is to cause pain, but not internal injury. Doctors consulted advised against using a punch, which could cause lasting internal damage.

**4. Long Time Standing:** This technique is described as among the most effective. Prisoners are forced to stand, handcuffed and with their feet shackled to an eye bolt in the floor for more than 40 hours. Exhaustion and sleep deprivation are effective in yielding confessions.

**5. The Cold Cell:** The prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is doused with cold water.

**6. Water Boarding:** 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. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt.

According to the sources, CIA officers who subjected themselves to the water boarding technique lasted an average of 14 seconds before caving in. They said al Qaeda's toughest prisoner, Khalid Sheik Mohammed, won the admiration of interrogators when he was able to last between two and two-and-a-half minutes before begging to confess.

"The person believes they are being killed, and as such, it really amounts to a mock execution, which is illegal under international law," said John Sifton of Human Rights Watch.

The techniques are controversial among experienced intelligence agency and military interrogators. Many feel that a confession obtained this way is an unreliable tool. Two experienced officers have told ABC that there is little to be gained by these techniques that could not be more effectively gained by a methodical, careful, psychologically based interrogation. According to a classified report prepared by the CIA Inspector General John Helgerwon and issued in 2004, the techniques "appeared to constitute cruel, and degrading treatment under the (Geneva) convention," the New York Times reported on Nov. 9, 2005.

It is "bad interrogation. I mean you can get anyone to confess to anything if the torture's bad enough," said former CIA officer Bob Baer.

Larry Johnson, a former CIA officer and a deputy director of the State Department's office of counterterrorism, recently wrote in the Los Angeles Times, "What real CIA field officers know firsthand is that it is better to build a relationship of trust & than to extract quick confessions through tactics such as those used by the Nazis and the Soviets."

One argument in favor of their use: time. In the early days of al Qaeda captures, it was hoped that speeding confessions would result in the development of important operational knowledge in a timely fashion.

However, ABC News was told that at least three CIA officers declined to be trained in the techniques before a cadre of 14 were selected to use them on a dozen top al Qaeda suspects in order to obtain critical information. In at least one instance, ABC News was told that the techniques led to questionable information aimed at pleasing the interrogators and that this information had a significant impact on U.S. actions in Iraq.

According to CIA sources, Ibn al Shaykh al Libbi, after two weeks of enhanced interrogation, made statements that were designed to tell the interrogators what they wanted to hear. Sources say Al Libbi had been subjected to each of the progressively harsher techniques in turn and finally broke after being water boarded and then left to stand naked in his cold cell overnight where he was doused with cold water at regular intervals.

His statements became part of the basis for the Bush administration claims that Iraq trained al Qaeda members to use biochemical weapons. Sources tell ABC that it was later established that al Libbi had no knowledge of such training or weapons and fabricated the statements because he was terrified of further harsh treatment.

"This is the problem with using the waterboard. They get so desperate that they begin telling you what they think you want to hear," one source said.

However, sources said, al Libbi does not appear to have sought to intentionally misinform investigators, as at least one account has stated. The distinction in this murky world is nonetheless an important one. Al Libbi sought to please his investigators, not lead them down a false path, two sources with firsthand knowledge of the statements said.

When properly used, the techniques appear to be closely monitored and are signed off on in writing on a case-by-case, technique-by-technique basis, according to highly placed current and former intelligence officers involved in the program. In this way, they say, enhanced interrogations have been authorized for about a dozen high value al Qaeda targets -- Khalid Sheik Mohammed among them. According to the sources, all of these have confessed, none of them has died, and all of them remain incarcerated.

While some media accounts have described the locations where these detainees are located as a string of secret CIA prisons -- a gulag, as it were -- in fact, sources say, there are a very limited number of these locations in use at any time, and most often they consist of a secure building on an existing or former military base. In addition, they say, the prisoners usually are not scattered but travel together to these locations, so that information can be extracted from one and compared with others. Currently, it is believed that one or more former Soviet bloc air bases and military installations are the Eastern European location of the top suspects. Khalid Sheik Mohammed is among the suspects detained there, sources said.

The sources told ABC that the techniques, while progressively aggressive, are not deemed torture, and the debate among intelligence officers as to whether they are

effective should not be underestimated. There are many who feel these techniques, properly supervised, are both valid and necessary, the sources said. While harsh, they say, they are not torture and are reserved only for the most important and most difficult prisoners.

According to the sources, when an interrogator wishes to use a particular technique on a prisoner, the policy at the CIA is that each step of the interrogation process must be signed off at the highest level -- by the deputy director for operations for the CIA. A cable must be sent and a reply received each time a progressively harsher technique is used. The described oversight appears tough but critics say it could be tougher. In reality, sources said, there are few known instances when an approval has not been granted. Still, even the toughest critics of the techniques say they are relatively well monitored and limited in use.

Two sources also told ABC that the techniques -- authorized for use by only a handful of trained CIA officers -- have been misapplied in at least one instance.

The sources said that in that case a young, untrained junior officer caused the death of one detainee at a mud fort dubbed the "salt pit" that is used as a prison. They say the death occurred when the prisoner was left to stand naked throughout the harsh Afghanistan night after being doused with cold water. He died, they say, of hypothermia.

According to the sources, a second CIA detainee died in Iraq and a third detainee died following harsh interrogation by Department of Defense personnel and contractors in Iraq. CIA sources said that in the DOD case, the interrogation was harsh, but did not involve the CIA.

The Kabul fort has also been the subject of confusion. Several intelligence sources involved in both the enhanced interrogation program and the program to ship detainees back to their own country for interrogation -- a process described as rendition, say that the number of detainees in each program has been added together to suggest as many as 100 detainees are moved around the world from one secret CIA facility to another. In the rendition program, foreign nationals captured in the conflict zones are shipped back to their own countries on occasion for interrogation and prosecution.

There have been several dozen instances of rendition. There have been a little over a dozen authorized enhanced interrogations. As a result, the enhanced interrogation program has been described as one encompassing 100 or more prisoners. Multiple CIA sources told ABC that it is not. The renditions have also been described as illegal. They are not, our sources said, although they acknowledge the procedures are in an ethical gray area and are at times used for the convenience of extracting information under harsher conditions than the U.S. would allow.

ABC was told that several dozen renditions of this kind have occurred. Jordan is one country recently cited as an "emerging" center for renditions, according to published reports. The ABC sources said that rendition of this sort are legal and should not be

confused with illegal "snatches" of targets off the streets of a home country by officers of yet another country. The United States is currently charged with such an illegal rendition in Italy. Israel and at least one European nation have also been accused of such renditions.

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ABC NEWS

"CIA - ABU ZUBAYDAH"

INTERVIEW WITH JOHN KIRIAKOU

CORRESPONDENT: BRIAN ROSS

MEDIA ID: TAPE #1

(OFF-MIC CONVERSATION)

BRIAN ROSS:

John, you were involved in the capture of Abu Zubaydah?

JOHN:

I was.

BRIAN ROSS:

And tell me about that, how it happened.

JOHN:

It was quite a long process. We had information that Abu Zubaydah was somewhere in Pakistan-- in either Fice (PH) Labodd (PH) or Lahore (PH). And we undertook a-- a week's long, month long-- investigation. We were able to narrow his location down to more than a dozen possibilities. And working with the Pakistani government and

MEDIA ID: TAPE #1

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with the FBI, we-- we raided each one of those sites and found him in one of the-- in one of the houses.

BRIAN ROSS:

And how were you able to focus in on where he was?

JOHN:

It was very difficult. But it was-- it was really a combination of-- of things. It was-- it was a wide variety of sources reporting on possibilities of where either he might be located or where-- others might be located who would know of his whereabouts.

We decided not to take the chance and-- and just hit one or two sites, fearing that-- word would get back to him, and he'd have a chance to-- to run off and-- and go deeper underground. So we elected to hit all the sites at the same time at-- the same night. And we're lucky enough that he was in one of them.

MEDIA ID: TAPE #1

Pg.3



BRIAN ROSS:

And how many-- people did that involve? A big operation--

JOHN:

Yeah. Just on the American side it was about-- three dozen people. There were a lot of-- there were a lot of heroes that night. People worked hard and worked closely together. And it worked.

BRIAN ROSS:

And why were you-- focused on him?

JOHN:

We were told at the time, well, we had a lot of information Abu Zubaydah going back into the '90s. He was one of the financiers of the September 11th attacks. He was a-- a logistics chief-- of al Qaeda. And we knew that he was close to bin Laden, although not co-located obviously. We know that-- or we knew at the time that he had a line to bin Laden. And we thought that if we could capture him it would deal a significant blow to the al Qaeda leadership.



MEDIA ID: TAPE #1

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BRIAN ROSS:

And he was in Pakistan.

JOHN:

He was in Fice Labad, Pakistan. Correct.

BRIAN ROSS:

And how long had he been there?

JOHN:

We're not sure. It-- it seemed to us-- he admitted to having been there a week. We thought he was probably there more like two or three weeks.

BRIAN ROSS:

And when was this?

JOHN:

This was in March of 2002.

BRIAN ROSS:

So you'd been looking for him since September 11th essentially or--

JOHN:

We had. We had indeed.

BRIAN ROSS:

And-- when-- when the catch was made, when you

caught up with him, you hit the right place, what happened there? Did he resist?

JOHN:

He resisted. There was a shootout. The Pakistanis were the first-- inside the door. And he stabbed a Pakistani policeman in the neck. We feared at the time that he-- that he had died. Things were happening so quickly, it was confusing. And-- the Pakistani authorities told us initially that the man had died.

He turned out to just have been wounded. But then Abu Zubaydah-- went up to the roof of his house and tried to jump to the roof of the neighboring house. He exchanged in a gun battle with the Pakistani police down below, and he was shot three times. And then dropped from the roof of the house onto the ground. He was almost killed. And later that night one of the doctors, the Pakistani doctors who was treating him, told me that he had never seen wounds so severe where the patient had lived.

MEDIA ID: TAPE #1

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BRIAN ROSS:

And what happened to him after you caught up with  
him (UNINTEL)

JOHN:

Well, we took him to a hospital for-- for  
emergency-- treatment. The hospital in Fice  
Labad was-- was just a-- a terrible place. So we  
evacuated him to a military hospital in Lahore.

And-- the Director of Central Intelligence,  
George Tenet, immediately got on the phone to  
Johns Hopkins University and asked if they could  
send a trauma surgeon to Pakistani. So that  
trauma surgeon got on a plane, a private plane,  
flew directly to the base. And-- I guess it was  
about 24 hours after the shooting-- he was able  
to begin treating Abu Zubaydah.

BRIAN ROSS:

And what was the nature of his wounds?

JOHN:

He was shot in the thigh, the groin, and the  
stomach with an AK-47.

MEDIA ID: TAPE #1

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BRIAN ROSS:

And barely survived.

JOHN:

Barely survived. One of the things that sticks in my mind-- from those-- those days and nights was how much blood he lost. There was blood everywhere. It was all over him. It was all over the bed. It pooled underneath the bed. It was all over us every time we had to move him. It was really an incredible amount of blood that he lost.

BRIAN ROSS:

And after you captured him what was your security like to keep him under-- lock and key?

JOHN:

(LAUGHS) The security was I tore up a sheet and tied him to the bed.

BRIAN ROSS:

You did?

JOHN:

Yeah. That was about all we could do in those initial hours. The idea was we wanted to get him



to a-- to a place where he would be safe, where he could recover from his wounds, and where we could begin interviewing him. But-- the idea was-- just to keep everybody not with us or his medical team away from him. And that's what we did. There was a group of nurses. And he had the Pakistani military doctor-- doing everything he could to help him. But otherwise it was me, and it was a small group of-- of CIA and FBI people who just kept 24/7 eyes on him.

BRIAN ROSS:

So you were in the room that whole time.

JOHN:

Yeah. In fact, I was the first person that spoke to him when he came out of his coma.

BRIAN ROSS:

And what'd you say?

JOHN:

He asked me-- well, first I went up to him, and I-- I asked him in Arabic what his name was. And he shook his head. And I asked him again in Arabic. And then he answered me in English. And

he said that he would not speak to me in God's language. And then I said, "That's okay. We know who you are."

And then he asked me to smother him with a pillow. And I said, "No, no. We have-- we have plans for you." And I encouraged him from the very beginning to cooperate and to tell us what he knew. Frankly there were lives at stake. And we knew that he was the biggest fish that we had caught. We knew he was full of information.

And-- and we wanted to get it. One of the reasons why it was of such-- importance to us that night is the room where-- where he was when the raid began had a table in it. And on the table Abu Zubaydah and two other men were building a bomb. The soldering arm was still hot. And they had the plans for-- for a school on the table. So we knew that there were-- immediate threats that he could-- he could help us with.

MEDIA ID: TAPE #1

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BRIAN ROSS:

A school where?

JOHN:

In Lahore. In Lahore, Pakistan.

BRIAN ROSS:

A Pakistani school.

JOHN:

We think it was the American school. Or the British school I guess it was. Not the American school.

BRIAN ROSS:

So you felt that he was-- he was very current. He knew what was going on.

JOHN:

Very current. On top of-- of the current threat information he-- he was so well tied into the al Qaeda leadership, and he was-- he was highly thought of in al Qaeda, and he was very, very good at logistics, that we knew that he knew everybody who was worth knowing in al Qaeda. He knew cell leaders.

MEDIA ID: TAPE #1

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He knew logistics people. He knew finance people. We knew that he was really one of the intellectual leaders of the group.

BRIAN ROSS:

And when you began to speak with him then did you-- revert to Arabic?

JOHN:

No. He would never speak to me in Arabic. And frankly he was very polite about it. We never exchanged a harsh word. He was a-- he was an interesting person to sit and have a conversation with. But he would never speak to me in Arabic. And his English was quite good.

BRIAN ROSS:

(UNINTEL)

JOHN:

It was fluent.

BRIAN ROSS:

He was fluent in English.

JOHN:

He was.

MEDIA ID: TAPE #1

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BRIAN ROSS:

And what was his demeanor?

JOHN:

He was a very-- (LAUGHS) it's-- it's funny to have to say it like this. But he was a very friendly guy. Later on he did things like he wrote poetry. Or he would debate-- the merits of Islam. Or he would wanna talk about the differences or similarities between Islam and Christianity.

He wanted to talk about current events. He-- he told us a couple of times that he had nothing personal, there was nothing personal against the United States. It was Israel that he wanted to fight. And that the United States was close to Israel. And we had been caught up in whatever it was that-- that bothered him. And-- he-- he-- he regretted having to help plan attacks against Americans. But because these were, in the end, attacks against Jews and Israelis, it was something that he felt he had to do.

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BRIAN ROSS:

So there was no attempt on his part to deny involvement?

JOHN:

Oh, no, not at all. Not at all. He was quite open.

BRIAN ROSS:

And did he talk about 9/11?

JOHN:

Yeah. He said that-- that 9/11 was necessary. That although he didn't think that-- there would be such a massive loss of life, his view was that 9/11th-- 9/11, rather, was supposed to be a wake-up call-- to the United States. It wasn't supposed to be something that so shook the United States that it led the US to attack-- al Qaeda's bases in Afghanistan.

In previous attacks, the USS Cole, the embassy bombings in-- in East Africa, the US government responded with missile strikes against alleged al Qaeda sites. And they truly believed that that's

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how we were gonna respond to September 11th.

They didn't think that there would be an all-out attack.

BRIAN ROSS:

So they didn't anticipate the death toll being so-- large?

JOHN:

They didn't. They didn't think the buildings would collapse.

BRIAN ROSS:

And--

JOHN:

That's been told me.

BRIAN ROSS:

As you began to talk to him-- was time of the essence? Did you feel you had to get him to talk?

JOHN:

Yes. Because in the beginning, while, like I say, he was friendly-- and he was willing to talk about philosophy, he was unwilling to give us any-- any actionable intelligence.

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BRIAN ROSS:

And what in your mind was your way you were gonna get him to give that up?

JOHN:

We had a group of folks-- at the agency who were trained in-- what had been reported in the press, we called enhanced techniques. I came back to the-- to the United States to headquarters to move onto a different job. But we had these trained interrogators who were sent to his location-- to use the enhanced techniques as necessary to get him to open up-- and to report some threat information.

BRIAN ROSS:

And can you describe them?

JOHN:

In-- in generalities. I suppose I can say that-- that my understanding is that what's been reported in the press-- has been correct in that these enhanced techniques included everything from-- what was called an attention shake where you grab the person by their lapels and shake

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them. All the way up to the other end, which was water boarding.

BRIAN ROSS:

And that was one of the techniques.

JOHN:

Water boarding was one of the techniques, yes.

BRIAN ROSS:

And was it used on Zubaydah?

JOHN:

It was.

BRIAN ROSS:

And was it successful?

JOHN:

It was.

BRIAN ROSS:

What happened as a result of that?

JOHN:

He resisted. He was able to withstand the water boarding for quite some time. And by that I mean probably 30, 35 seconds--

BRIAN ROSS:

That's quite some time.

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JOHN:

--which was quite some time. And a short time afterwards, in the next day or so, he told his interrogator that Allah had visit him in his cell during the night and told him to cooperate because his cooperation would make it easier on the other brothers who had been captured. And from that day on he answered every question just like I'm sitting here speaking to you.

BRIAN ROSS:

And a willing way?

JOHN:

In a willing way.

BRIAN ROSS:

So in your view the water boarding broke him.

JOHN:

I think it did, yes.

BRIAN ROSS:

And did it make a difference in terms of--

JOHN:

It did. The threat information that he provided disrupted a number of attacks, maybe dozens of

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attacks.

BRIAN ROSS:

No doubt about that? That's not some--

JOHN:

No doubt.

BRIAN ROSS:

--hype?

JOHN:

No, no question. No question. The reporting-- I remember reading the reporting, and it was dramatic when it first started coming in. Now, of course, a lot of that was time-sensitive. So after a period of time he wasn't too-- to provide any real actionable information, any information that you could use to disrupt an attack.

But what he was able to provide was information on the al Qaeda leadership. For example-- if bin Laden were to do X-- who would be the person to undertake such a-- such an operation? "Oh, logically that would be Mr. Y." And we were able to use that information to kind of get an idea of

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how al Qaeda operated, how it came about conceptualizing its operations, and-- and how it went about tasking different cells with carrying out operations.

BRIAN ROSS:

And in terms of the actual planned future attacks?

JOHN:

Yeah, we disrupted a lot of them.

BRIAN ROSS:

And he knew about them?

JOHN:

He knew about some. But like I say, it was time-sensitive information. So that-- that wound down over time.

BRIAN ROSS:

And the ones that he knew about, were they on US soil? Were they in Pakistan?

JOHN:

You know, I was out of it by then. I had moved onto a new job. And I-- I don't recall. To the best of my recollection, no, they weren't on US

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soil. They were overseas.

BRIAN ROSS:

The fact that the-- interrogation techniques had to go all the way to water boarding, that meant he resisted the steps on the way to that? We've reported--

JOHN:

Yes.

BRIAN ROSS:

--the attention slap--

JOHN:

Yes.

BRIAN ROSS:

--sleep deprivation?

JOHN:

Correct. And I should add too that it wasn't up to individual interrogators to decide, "Well, I'm gonna slap him. Or I'm going to shake him. Or I'm gonna make him stay up for 48 hours." Each one of these steps, even though they're minor steps, like the intention shake-- or the open-handed belly slap, each one of these had to have

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the approval of the Deputy Director for Operations.

So before you laid a hand on him, you had to send in the cable saying, "He's uncooperative.

Request permission to do X." And that permission would come. "You're allowed to hit him one time in the belly with an open hand."

BRIAN ROSS:

It was that specific.

JOHN:

It was that specific.

BRIAN ROSS:

Cable traffic back and forth.

JOHN:

The cable traffic back and forth was extremely specific. And the bottom line was these were very unusual authorities that the agency got after 9/11. No one wanted to mess them up. No one wanted to get in trouble by going overboard. So it was extremely deliberate.

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No one wanted to be the guy that accidentally did lasting damage to a prisoner. Or did something to a prisoner without authorization. It was very clear from the beginning that this had to be done within the rules.

BRIAN ROSS:

Was there concern that it might kill him?

JOHN:



No. No. There was a doctor there. And none of these-- none of these techniques, including water boarding, was life-threatening. An open-handed slap to the belly or to the cheek-- wasn't going to-- wasn't gonna kill him.

BRIAN ROSS:

Was there concern that-- the techniques would result in false confessions? He would just say something?

JOHN:

Oh, there was always that concern.

BRIAN ROSS:

And how do you guard against that?

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JOHN:

Well, the only way that you really can at least partially guard against that is to not do these things regularly. That's why so few people were-- were water boarded. I think the agency has said that two people were water boarded, Abu Zubaydah being one. And it's because you really wanted it to be a last resort. Because we didn't want these false confessions. We didn't want wild goose chases.

One of the things that we were able to do after a while so that you wouldn't have to water board people is in the beginning these prisoners were kept isolated from one another. And one didn't know that the other had been captured. So walking one past another's cell and just allowing them to catch a glimpse of one another was enough to shake them up-- enough that they-- that they would begin cooperating without you having to use any of these enhanced techniques.

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BRIAN ROSS:

Just to see that one of his colleagues had been caught.

JOHN:

That's right. And if you allow them to believe that, look, you've lost. The good guys won. You're all in jail. That was enough to really turn the tables.

BRIAN ROSS:

In the case of Abu Zubaydah did you feel that he was broken emotionally? That he had felt he'd lost the battle?

JOHN:

Yes. Yes, I think he did feel that way. And in the end it's funny. A-- a-- a former colleague of mine asked him during the conversation one day, "What would you do if we decided to let you go one day?" And he said, "I would kill every American and Jew I could get my hands on." And he said, "It's nothing personal. You're a nice guy. But this is who I am."

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BRIAN ROSS:

Did you feel comfortable with the techniques?

JOHN:

Frankly, no. And I elected to-- to forego the training. I was asked if I wanted to be trained in the enhanced techniques. And I sought the counsel of a senior agency officer who's still an agency officer. And I said, "What would you do in my situation?" And he said, "Frankly, I think it's a slippery slope. An accident's gonna happen. And-- I wouldn't do it." And so I declined.

BRIAN ROSS:

So you did not go through the training?

JOHN:

I did not.

BRIAN ROSS:

Have you seen water boarding?

JOHN:

We water boarded each other in the beginning to see what it felt like. And it's a-- it's a wholly unpleasant experience.

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BRIAN ROSS:

What is it like?

JOHN:

You feel like you're choking or drowning.

BRIAN ROSS:

And are you literally upside down? Or--

JOHN:

You're on your back with-- your feet at a slight incline. There's some cellophane or material over your mouth. And then they pour water on this cellophane. You can't breathe. And it feels like the water's going down your throat. And then you begin choking it. It-- induces the gag reflex.

BRIAN ROSS:

But the water's not actually going into your mouth?

JOHN:

No.

BRIAN ROSS:

Or through your nostrils?

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JOHN:

No.

BRIAN ROSS:

(UNINTEL)

JOHN:

It just feels like it is.

BRIAN ROSS:

It feels like it is 'cause of the pressure onto  
the-- onto the cellophane.



JOHN:

Correct.

BRIAN ROSS:

Like a Saran wrap kind of thing.

JOHN:

That's right.

BRIAN ROSS:

And how long did you last?

JOHN:

(LAUGHS) About five seconds. (LAUGHS)



BRIAN ROSS:

(UNINTEL) Is-- would you--

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JOHN:

Yeah.

BRIAN ROSS:

--call it torture?

JOHN:

You know, at the time, no. At the time I thought this was something that we-- we really needed to do. I had heard stories of-- of captured German prisoners from the Second World War playing chess with their interrogators. And over the course of many weeks and months of playing chess they develop a rapport, and the German ended up giving information. Al Qaeda is not like a World War Two German POW. It's a different world.

These guys hate us more than they love life. And so they're not-- you're not gonna convince them that because you're a nice guy and they can trust you and they have a rapport with you that they're going to confess and-- and give you their operations. It's-- it's different. It's a different world.

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BRIAN ROSS:

You're not-- you're not gonna be able to slowly seduce them to talk?

JOHN:

Not these guys. And at the time I-- I felt that water boarding was something that we needed to do. And as time has passed, and has-- as September 11th has-- has, you know, has moved farther and farther back into history-- I think I've changed my mind. And I think that-- water boarding is probably something that we shouldn't be in the business of doing.

BRIAN ROSS:

Why do you say that now?

JOHN:

Because we're Americans, and we're better than that.

BRIAN ROSS:

But at the time you didn't feel that way.

JOHN:

At the time I was so angry. And I wanted so much to help disrupt future attacks on the United

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States that I felt it was the only thing we could do.

BRIAN ROSS:

And with Zubaydah you think that was successful.

JOHN:

It was.

BRIAN ROSS:

And we have reported that Kaleed (PH) Shiek Muhammad was also water boarded.

JOHN:

I was out of it by then. But it's my understanding that he was-- that he was also water boarded.

BRIAN ROSS:

But those are really the only two.

JOHN:

To the best of my knowledge, yes.

BRIAN ROSS:

And bottom line as you sit here now do you think that was worth it?

JOHN:

Yes.

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BRIAN ROSS:

Did it compromise American principles? Or did it save American lives? Or both?

JOHN:

It-- it-- I think both. It may have compromised our principles at least in the short term. And I think it's good that we're having a national debate about this. We should be debating this.

And Congress should be talking about it. Because I think as a country we have to decide if this is something that we wanna do as a matter of policy. I'm not saying now that we should. But at the very least we should be talking about it. It shouldn't be secret. It should be out there as part of the national debate.

BRIAN ROSS:

It's been revealed now that the CIA had tapes of the interrogation underway. Were you involved in the taping process?

JOHN:

No. In fact, I first learned about it in the press yesterday.

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BRIAN ROSS:

Do-- you were not-- you did not see cameras?

JOHN:

We had cameras everywhere. But it was our understanding at the time that they were closed circuit cameras so that other interrogators and medical personnel and security officers could watch the interviews-- taking place.

BRIAN ROSS:

You didn't see it being recorded anywhere?

JOHN:

No. No, I never saw it being recorded.

BRIAN ROSS:

And now that you know it was recorded and the tapes were destroyed afterwards what do you make of that?

JOHN:

I'm disappointed frankly. I understand that the agency's explanation was they wanted to make sure that everything was being done legally and within the-- the guidelines that-- that the organization had set forth. But it makes me wonder instead if

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they simply didn't trust the interrogators. And if they wanted to catch somebody doing something that was unauthorized. So frankly, I'm a little disappointed that they didn't have that trust in us having already been polygraphed, having undergone-- not me, but other interrogators having undergone-- the training, they still didn't trust us enough to-- to let us just do-- do our jobs.

BRIAN ROSS:

You never saw tapes coming out of the machine or--

JOHN:

No.

BRIAN ROSS:

--being sent off to Washington?

JOHN:

No, never saw tapes.

BRIAN ROSS:

And never reviewed them when you were back in Washington?

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JOHN:

No, never heard about them even.

BRIAN ROSS:

Really? So they were very closely held.

JOHN:

Very closely held.

BRIAN ROSS:

Should they have been destroyed do you think?

JOHN:

I think not. I think they're a matter of-- of historical record at least within the agency. They may have-- some legal import. And they probably should not have been destroyed.

BRIAN ROSS:

If we were able to look at those tapes of Abu Zubaydah what would we see?

JOHN:

I think you'll see a lot of very long and very boring conversations about the minutiae surrounding the leadership of al Qaeda. I think you'll see a couple of incidents where-- at least in the beginning where he was-- very tough. And-

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- uncooperative. And then the rest of it I think you'll see just a lot of open conversations.

BRIAN ROSS:

Will you see him being slapped?

JOHN:

You know, I have no idea if that kind of thing was-- was taped. I would assume that it was. So you might-- you might see something like that.

BRIAN ROSS:

If they taped the enhanced interrogation we would see what?

JOHN:

Oh, an open-handed belly slap maybe. Or somebody who's very tired because he's been up for 48 hours and not allowed to sit down. But not much more than that.

BRIAN ROSS:

Kept him standing for 48 hours?

JOHN:

Uh-huh (AFFIRM)

BRIAN ROSS:

And do you suppose they taped the water boarding?

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JOHN:

Gosh-- you-- I honestly don't know. I don't know.

BRIAN ROSS:

If-- the American public was to see somebody, even Abu Zubaydah, being water boarded what would you guess would--

JOHN:

I think it would be objectionable. It-- it's-- it's sort of a violent thing to-- to see or to go through. You may be of, you know, one persuasion or the other where you think it's a necessary thing or-- or you think it's torture. But either way you dice it-- it-- it's not something that's pretty to watch.

BRIAN ROSS:

How does the body react?

JOHN:

Violently.

How so?

BRIAN ROSS:

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JOHN:

To me it's almost like being shocked. Where you tense up because you wanna-- you wanna wiggle out of the way of the water, and you can't, because you're strapped down. And-- and your head is immobilized. And you just have to lay there and take it until the interrogator stops pouring water on you.

BRIAN ROSS:

And the water's poured. And you have a kind of gag--

JOHN:

Uh-huh (AFFIRM)

BRIAN ROSS:

And you're just gagging.

JOHN:

Yes, you're gagging. Correct.

BRIAN ROSS:

Shouting? Or you can't-- can you do it?

JOHN:

Sure. Sure.

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BRIAN ROSS:

And was Zubaydah that was really only 35, 40 seconds that--

JOHN:

Which was remarkable at the time. Because none of us were able to withstand more than ten seconds worth, ten or 12 seconds. He was quite tough I recall.



BRIAN ROSS:

And you think that's what broke him though.

JOHN:

I do. I do. I think he just didn't wanna go through it again. And if the alternative is just sitting at the table across from a guy with a notepad and answering his questions, it's better just to answer the questions.



BRIAN ROSS:

And he decided to do that.

JOHN:

Yes.

BRIAN ROSS:

And was that considered a victory inside the CIA?

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JOHN:

A big victory. Because once the information started coming in and we were able to corroborate it with other sources-- and able to-- to-- disrupt other operations, al Qaeda operations or terrorist attacks, that was a big victory.

BRIAN ROSS:

And who else was present at the interrogation?



JOHN:

There were always several interrogators.

BRIAN ROSS:

C-- all CIA.

JOHN:

All CIA. There was a doctor. And--

BRIAN ROSS:

A CIA doctor?



JOHN:

CIA doctor. And then once in a while there would be-- a substantive expert, like an analyst who was there to ask the questions, somebody who really understood the-- the details of what needed to be asked, who was there and just

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happened to be around and asked to-- to stand in.

BRIAN ROSS:

Were there FBI agents present at all?

JOHN:

It's my understanding that later on in the process, after I had moved on, that FBI agents participated as well.

BRIAN ROSS:

We--

JOHN:

Not necessarily in the water boarding. But in the interrogations.

BRIAN ROSS:

We have reports that-- the Director of the FBI instructed the agents not to be involved in any--

JOHN:

I-- I'm sure that's true.

BRIAN ROSS:

--interrogation.

JOHN:

I'm sure that's true. Those authorities that came from the White House to-- to do the-- the

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enhanced techniques were solely for the CIA, not for the-- not for the FBI. So it-- it would make perfect sense to me that the FBI Director wouldn't want FBI personnel around.

BRIAN ROSS:

And did you know the CIA officers feel without a doubt you had the legal right to do what you were doing?

JOHN:



Absolutely. Absolutely. I remember-- I remember being told when-- the President signed the-- the authorities that they had been approved-- not just by the National Security Counsel, but by the-- but by the Justice Department as well, I remember people being surprised that the authorities were granted. And I remember-- one of the agency's senior-most leaders saying, "This is-- this is an awesome responsibility, that we have to act within the confines of the law. This isn't gonna be something that's being done willy-nilly, that people are gonna be trained in it. And we have to follow this to the letter."



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BRIAN ROSS:

And that was done in what you saw?

JOHN:

That was done. Yes. People were very, very concerned at the time about making sure that-- that no one overdid it, or no one overstepped the-- the legal authorities. People were very concerned.

BRIAN ROSS:

So when the decision was made to first do the slap of Abu Zubaydah the permission for that came specifically from Washington?

JOHN:

Yes. Absolutely.

BRIAN ROSS:

That--

JOHN:

There was discussion. It wasn't just a cable came in, "Can I slap him?" and the answer is "Yes," and the cable goes back out saying, "Yes." There was discussion. "Should we slap him? What's to be gained if we slap him? Is there

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gonna be any fallout to slapping him?"

Everybody talks about it. The Deputy Director for Operations says, "Yes, you can slap him." The cable goes out. They slap him. Send in a cable again saying, "We slapped him, and this is what happened." And if that works, great. If that doesn't work, well, maybe we shake him by the lapels the next time. And you go through the whole process again.

BRIAN ROSS:

And it got to the point where you got to sleep deprivation. He was standing up for how long?

JOHN:

You know, I used that as a an example.

BRIAN ROSS:

Yeah.

JOHN:

But I'm-- I'm not sure, to be honest with you, if they did the sleep deprivation with him.

BRIAN ROSS:

I see.

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JOHN:

I-- I-- I don't specifically remember that being used on him. Although it was one of the enhanced techniques. It's possible. You know, it's five-and-a-half years after the fact now. It's possible that-- that that was skipped over in favor of water boarding.

BRIAN ROSS:

So you didn't have to go through every step.

JOHN:

No.

BRIAN ROSS:

If there was a time-sensitive you could-- you could go right to it.

JOHN:

That's right.

BRIAN ROSS:

And when the sleep deprivation was used on others-- was that effective?

JOHN:

It was effective. It was effective.

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BRIAN ROSS:

Why-- why is that so effective?

JOHN:

You know, you may not think about it, but-- but exhaustion is-- is a very difficult thing to handle. It's one thing to be tired. It's another thing to be so tired that you begin to hallucinate. And after a while some people just can't take it anymore. And they'll tell you if-- "Just give me an hour. Give me two hours of sleep, I'll tell you anything you wanna know."

BRIAN ROSS:

Really?

JOHN:

Uh-huh (AFFIRM)

BRIAN ROSS:

And that's after how long generally?

JOHN:

I recall the handful of times it was used on people it was usually 40 hours plus. They just simply couldn't take it anymore.

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BRIAN ROSS:

And be standing this whole time?

JOHN:

Uh-huh (AFFIRM)

BRIAN ROSS:

Falling over? Trying to--

JOHN:

And you do things like you play music. You talk to them. You make them walk around so they-- they can't get comfortable.

BRIAN ROSS:

After Zubaydah was interrogated and really gave up all he knew, at least you-- all you thought he knew about the current operations, what was his value then?

JOHN:

His value was-- it allowed us to have somebody who we could pass ideas onto for his-- for his-- comments or analysis. For example, we would say things like-- "Mr. X was arrested in some European capital. And the Europeans think he was going to undertake such-and-such an operation.

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Would he be the person to do something like that?"

And Abu Zubaydah would say something like, "Yes, he's the perfect person." Or-- or, "Yes, he had -- he had a specialty in bomb-making, let's say, or in weapons or in fake documents." Or conversely, he would say, "No, that doesn't make any sense. He didn't have any experience in that area. Or you should be looking at this other person. This other person had experience in that area." So it was someone really to bounce ideas off of.

BRIAN ROSS:

He became a-- a resource in a sense in sort of like a-- a double check?

JOHN:

Yes.

BRIAN ROSS:

And you-- you used him a lot like that.

JOHN:

Yes, we did. We used him a lot.

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BRIAN ROSS:

And at that point was he completely cooperative?

JOHN:

Completely cooperative.

BRIAN ROSS:

But still hating the United States.

JOHN:

Yes. But like he said, it was nothing personal.

(LAUGHTER) He's a Muslim and a Palestinian. He's dedicated his life to the overthrow of-- of Israel, of the end of the existence of Israel. The United States is on the-- is on the side of Israel. And it's nothing personal. But there's a war on. And he's on the other side.

BRIAN ROSS:

And what happened to him? The initial interrogation was done in Pakistan?

JOHN:

No. He was-- he was in such terrible physical condition in Pakistan that aside from a one- or two-minute conversation that we would have every four or five hours, which was really about

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nothing-- he-- he was-- interviewed in-- in the--  
the third country that he moved onto from there.

BRIAN ROSS:

And how long--

(OFF-MIC CONVERSATION)

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*سفارة  
الجمهورية اليمنية  
بالعاصمة*

Paris, le 27 mars 2006

L'Ambassade de la République du Yémen présente ses compléments à Monsieur Dick Marty président de la commission des questions juridiques et des droits de l'homme de l'Assemblé parlementaire du conseil de l'Europe.

Nous avons l'honneur de répondre au courrier, daté du 13 février 2006, que vous avez adressé à Monsieur le Ministre de la défense au Yémen concernant Monsieur BASHMILA.

Et nous avons le plaisir de vous communiquer les informations transmises par les autorités compétentes yéménites le 22 mars 2006 à ce sujet.

Le Yémen apprécie les efforts importants du parlement européen concernant les prisons secrètes dans les pays membres du conseil de l'Europe et l'enlèvement des personnes sur les territoires européens et leur transfert vers d'autres pays. Ce sont des efforts et des principes compatibles avec ceux auxquels nous croyons et voudrons défendre ensemble avec les Européens.

L'Ambassade de la République de Yémen à Paris vous souhaite beaucoup de succès et réussite et saisie cette occasion pour renouveler les assurances de sa haute considération.

*Monsieur Dick Marty président de la commission des questions juridiques et des droits de l'homme de l'Assemblé parlementaire du conseil de l'Europe.*



## **TRADUCTION**

**Le sujet :**

***La procédure de l'arrestation de Monsieur BASHMILA et son arrivée au Yémen***

- Monsieur Mohamed Faraj Bashmila est un citoyen yéménite ordinaire, né en 1968 à Aden. Il a travaillé comme distributeur dans le prêt-à-porter.

- Depuis 2002 il a quitté le Yémen pour l'Indonésie où il s'est installé et s'est marié avec une Indonésienne, les autorités indonésiennes l'ont expulsé vers la Jordanie pour des raisons inconnues en novembre 2003

- Les services des renseignements jordanien l'avaient retenu pendant une semaine, ensuite ils l'ont livré, dans un aéroport jordanien, à une autre autorité qui l'a transféré au bord d'un avion à réaction vers une destination inconnue. Le vol a duré environ 3 heures et demi.

- Le détenu a été placé ensuite dans une ancienne unité de détention où il a été claustré dans une cellule individuelle souterraine pendant sept mois, surveillé par des soldats américains. Ces derniers ont infligé à leurs prisonniers des mauvais traitements et des pressions psychologiques ; tel que l'obligation de les faire écouter de la musique assourdissante, tous les jours et 24 heures sur 24.

Par la suite, le détenu a été transporté à nouveau au bord d'un avion à réaction pendant une durée de quatre heures. L'avion avait atterri dans un aéroport inconnu où le détenu y est resté seulement une heure ; puis il a été transporté dans un hélicoptère -durant deux heures – vers un endroit toujours inconnu où il a été incarcéré pendant un an dans une cellule individuelle.

- Le 11 mars 2004, le service des renseignements jordanien informait le service des renseignements et la sécurité yéménite que Monsieur Mohamed Bashmila a été libéré et qu'il lui permettait de quitter les territoires jordaniens pour l'Iraq.

- Le 5 mars 2005 l'officier de liaison au service militaire à l'Ambassade américaine à Sanaa avait prévenu le service des renseignements et de la sécurité yéménite que Monsieur Bashmila a été capturé et détenu par les autorités américaines.
- Le 5 mai 2005, Bashmila est arrivé par avion à réaction au Yémen avec d'autres détenus également de nationalité yéménite (Monsieur Salah Nasser Saleem (kraou) et Monsieur Mohamed Abdullah Saleh Alassad). Ce déplacement a duré cette fois-ci 6 à 7 heures environ.
- Les autorités compétentes yéménites confirment qu'ils n'ont pas incarcéré Monsieur Bashmila, mais qu'il leur a été remis par les autorités américaines comme détenu inculpé d'être membre d'Alqayda. Les autorités yéménites ont, par la suite, arrêté et interpellé Monsieur Bashmila selon l'article numéro 13 du code pénal de l'année 1994 et l'ont incarcéré.
- Monsieur Bashmila a comparu devant la justice et a eu un procès dont le verdict satisfait par la durée d'incarcérations qu'il a fait auparavant dans les prisons secret et il sera libéré après avoir les garanties nécessaire.
- Plusieurs membres actifs des organisations humanitaires européennes et de droit de l'homme ont demandé instamment à l'Ambassade du Yémen à Berlin de libérer M. Bashmila ainsi que d'autres détenus comme Salah Nasser Saleem.
- Certaines organisations américaines se sont intéressés à cette cause et ont envoyé une équipe d'avocats (Douglas KOKS, Sarah HENZ, Nita FOSTER), tous de nationalité américaine.
- Amnistie internationale s'est également intéressé au cas de Monsieur BASHMILA et Salah Nasser Saleem ainsi que d'autres. Et avait publié des rapports expliquant essentiellement les conditions et les étapes de leur détention après avoir rencontré les détenus le 7 et 12 février 2006 par l'équipe de :

Mme ANNE VITS GIRARD	Conseiller de l'organisation
Mme Madame LINNE WEISMAN	Ancienne Conseiller de l'organisation
MR AKRAM AL KHATIB	Traducteur

- **Le croix rouge internationale** avait également suivi le cas et chargé une de ses représentants, Madame Maya BETROVITSHE, de les rencontrer le 8 mars 2006.

Le service des renseignements et de la sécurité yéménite n'a pas cessé de demander aux autorités américaines de lui remettre les dossiers de tous les détenus et de lui présenter les arguments justifiant leur implication dans cette inculpation.

الموضوع: اجراءات اعتقال ووصول السيد/ محمد فرج باشميله إلى اليمن

- السيد/محمد باشميله هو مواطن يمني عادي من مواليد عام 1968م في مدينة عدن وكان يعمل في توزيع الملابس الجاهزة.
- كان مقينا في إندونيسيا منذ العام 2002م ومتزوجاً من امرأة إندونيسية والسلطات في ذلك البلد رحلته في نوفمبر 2003م إلى الأردن - لأسباب غير معروفة- حيث تم احتجازه من قبل المخابرات العامة الأردنية لمدة أسبوع.
- قام الأردنيون بتسليم المذكور في احدى مطاراتهم إلى (جهة أخرى) حيث تم نقله بطائرة نفاثة إلى مكان مجهول مدة الطيران إليه حوالي ثلاثة ساعات ونصف وغير معروف المطار الذي هبطت الطائرة به، ونقل منه إلى وحدة احتجاز قديمة تحت الأرض وأودع في سجن انفرادي مكث به سبعة أشهر، وكان الحراس المشرفين عليه أمريكيين، ومن ضمن ممارسات الضغط على نفسية المسجونين كان تشغيل الموسيقى الصاخبة خلال الـ 24 ساعة يومياً.
- تم نقل المذكور مرة أخرى على طائرة نفاثة مدة الطيران تقرباً 4 ساعات وهبطت في مطار غير معروف ومكث به مدة ساعة، ونقل من جديد على طائرة مروحية إلى مكان مجهول مدة الطيران إليه ساعتين ونقل بعدها إلى سجن انفرادي مكث به سنة.
- في تاريخ 11 مارس 2004م قام جهاز المخابرات العامة الأردنية بإبلاغ الجهاز المركزي للأمن السياسي في اليمن بأن السيد/ محمد باشميله قد تم إخلاء سبيله وسمح له بالسفر إلى العراق.

- في تاريخ 5 مارس 2005م قام الجتب الأمريكي عبر ضابط الارتباط في صنعاء بإبلاغ الجهاز المركزي للأمن السياسي في اليمن بأن السيد/محمد باشميته موقوف طرفهم.
- في تاريخ 5 مايو 2005م نقل المذكور من السجن الذي كان به على طائرة نفاثة إلى اليمن واستغرقت الرحلة من 6-7 ساعات، وكان معه في الطائرة كل من المواطنين اليمنيين صلاح ناصر سليم (قردو) و محمد عبد الله صالح الأسد.
- تؤكد السلطات اليمنية المختصة أنها لم تقم باعتقال المذكور وإنما تسلمه من قبل السلطات الأمريكية في 5 مايو تحت تهمة انتسابه لتنظيم (القاعدة) وتم احتجازه باليمن وفقاً لقانون الإجراءات الجزائية رقم (13) لسنة 1994م للتحقيق معه والتأكد من صحة ما نسب إليه من الأمريكيين.
- تم تقديم المذكور إلى القضاء اليمني لاستكمال الإجراءات القانونية تجاهه وصدر حكم قضائي بحقه بالاكتفاء بالمدة التي قضاهما في السجون السرية وسيتم الإفراج عنه في ضوء الحكم الصادر من القضاء بعد اخذ الضمانات.
- قدمت العديد من المنظمات الإنسانية من ناشطين أوروبيين في مجال حقوق الإنسان إلى سفارة اليمن في برلين بألمانيا للمطالبة بإطلاق سراح السيد/باشميته وأخرون (منهم صلاح ناصر سليم).
- اهتمت بعض المنظمات الأمريكية بالقضية، فقام فريق من المحامين الأمريكيين بالاتفاق بهم يوم 20 يونيو 2005م وهم التالية أسماؤهم:
  - السيد/بوجلاس كوكس
  - السيدة/ساره هنر
  - السيدة/نيتا فوستر.

- اهتمت منظمة العفو الدولية بموضوع السيد/محمد باشعيه وصلاح ناصر سليم وأخرون ونشرت تقرير يتضمن مراحل اعتقالهم وما مروا به من ظروف مختلفة وذلك بعد أن أجرى معهم فريق ممثلي منظمة العفو الدولية في اليمن لقائهم يومي 7 و 12 فبراير 2006م وكان الفريق مشكل من التالية أسماؤهم:

مستشارة في المنظمة	- السيدة/آن فيتز جيرارد
مستشارة سابقة في المنظمة	- السيدة/لين وسمن
مترجم	- السيد/أكرم الخطيب

- اهتمت منظمة الصليب الأحمر الدولي بالقضية وأرسلت السيدة/ مايا بيتر وفتش مندوبة الحماية في اللجنة الدولية للصليب الأحمر للانتقاء بهم يوم 8 مارس 2006م.  
- مازال الجهاز المركزي للأمن السياسي اليمني يطلب الجاني الأمريكي بتسليم ملفات المذكورين وتقديم الأدلة التي تثبت تورطهم فيما نسب إليهم واحتجازهم في سجون سرية خلال تلك الفترة، إلا أنه لم يتم الاستجابة للطلب حتى الآن.

س/ج

*Embassy of the Republic of Yemen  
25, rue Georges-Bizet-75116 Paris  
Tel. 01 53 23 87 87 – Fax 01 47 23 69 41*

[emblem] The Embassy of the  
Republic of Yemen Paris

Paris, 27 March 2006

The Embassy of the Republic of Yemen congratulates Mr. Dick Marty, President of the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly.

We are honored to answer the letter, dated February 13, 2006, that you have addressed to the Yemeni Minister of Defence concerning Mr. Bashmila.

And we are delighted to communicate to you the information transmitted by the competent Yemeni authorities on March 22, 2006, on that subject.

Yemen appreciates the significant efforts of the European Parliament pertaining to the secret prisons in the member states of the Council of Europe, to the kidnapping of individuals on European territories and to their transfer to other states. These efforts and principles are compatible with those in which we believe and will want to defend together with the Europeans.

The Embassy of the Republic of Yemen in Paris wishes you great success and seizes this opportunity to renew its high regards.

*Mr. Dick Marty, President of the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly.*

(Seal)

**TRANSLATION****The issue:*****Mr. BASHMILA's arrest procedure and his arrival in Yemen***

- Mr. Mohamed Faraj Bashmila is an ordinary Yemeni citizen, born in 1968 in Aden. He worked as a distributor in the ready to wear industry.
- Since 2002, he left Yemen for Indonesia, where he settled and married an Indonesian, the Indonesian authorities have expelled him to Jordania for unknown reasons in November 2003.
- The Jordanian intelligence services had withheld him for a week, and then delivered him, in a Jordanian airport, to another authority which transferred him in a jet airplane to an unknown destination. The flight lasted approximately three hours and a half.
- The detainee was then placed in a former detention unit where he was confined in an individual cell underground during seven months, surveilled by American soldiers. The latter inflicted on their prisoners mistreatment and psychological pressures; such as the obligation to make them listen to deafening music every day, twenty four hours a day.

The detainee was later transported once again in a jet airplane for a time period of four hours. The plane had landed in an unknown airport where the detainee only stayed an hour; he was then transported in a helicopter – during two hours – to a destination still unknown where he was incarcerated for a year in an individual cell.

- On March 11, 2004, the Jordanian intelligence service informed the Yemeni intelligence and security services that Mr. Mohamed Bashmila had been released and that he was allowed to leave Jordanian territory to go to Iraq.
- On March 5, 2005, the liaison officer for the military service at the US Embassy in Sanaa had warned the Yemeni intelligence and security services that Mr. Bashmila was captured and detained by the American authorities.
- On May 5, 2005, Bashmila arrived in Yemen by jet airplane, with other detainees of Yemeni nationality as well (Mr. Salah Nasser Saleem (kraou) and Mr. Mohamed Abdullah Saleh Alassad). This time, the displacement lasted more or less six to seven hours.
- The competent Yemeni authorities confirm that they did not incarcerate Mr. Bashmila, but that he was returned to them by the American authorities as a detainee charged with being an Al Qaida member. The Yemeni authorities later arrested and took in for questioning Mr. Bashmila under article 13 of the 1994 criminal code, and incarcerated him.

- Mr. Bashmila appeared in court and obtained a trial whose verdict satisfies by the duration of incarcerations he previously underwent in secret prisons, and he will be released once the necessary guarantees will have been made.
- Several active members of European humanitarian and human rights organizations have insistently asked the Yemeni Embassy in Berlin to release Mr. Bashmila as well as other detainees such as Salah Nasser Saleem.
- Some American organizations have also been interested in this cause and have sent a delegation of lawyers (Douglas KOKS, Sarah HENZ, Nita FOSTER), all of American nationality.
- **Amnesty International** has also been interested in the case of Mr. Bashmila and Salah Nasser Salem as well as others. And had published reports explaining mainly the conditions and phases of their detention after having met the detainees on February 7 and 12, 2006, by:

Mrs. ANNE VITS GIRARD  
Mrs. LINNE WEISMAN  
Mr. AKRAM AL KHATIB

Advisor of the Organization  
Former Advisor of the Organization  
Translator

- **The International Red Cross** has also followed the case and charged one of its representatives, Mrs. Maya BETROVITSHE, to meet them on March 8, 2006.

The Yemeni intelligence and security service kept asking the American authorities to deliver them the files of all detainees and to present the arguments justifying these charges against them.

Subject: **Chronology of the detention of Mr. Mohamed Farag Bashmilah and his arrival in Yemen**

- Mr. Mohamed Bashmilah is an ordinary citizen of Yemen, born in 1968 in the city of Aden, and used to work as a distributor of ready-to-wear clothes.
- He was living in Indonesia since 2002, being married to an Indonesian woman, when the authorities in that country deported him in November 2003 to Jordan for unknown reasons, and he was detained by the Jordanian General Intelligence for one week.
- The Jordanians handed over the aforementioned to another agency at one of their airports and he was transported by a jet aircraft to an unknown location about three and a half hours away by air. The landing airport is unknown. From there, he was transported to an old underground detention unit, where he was kept in solitary confinement for seven months. The guards were Americans. Among the psychological pressure tactics used against prisoners was to play loud music 24 hours a day.
- The aforementioned was transferred again by a jet aircraft, flying approximately four hours, and landing at an unknown airport, where it remained for an hour. He was then transported by a propeller aircraft to an unknown location two hours away by air. Afterwards, he was transferred to a solitary prison where he stayed for a year.
- On March 11, 2004, the Jordanian General Intelligence informed the Central Organization for Political Security in Yemen that Mr. Mohamed Bashmilah had been released and allowed to depart to Iraq.
- On March 5, 2005, the United States, through the Liaison Officer in Sanaa, informed the Central Organization for Political Security in Yemen that Mr. Mohamed Bashmilah was being held in their custody.
- On May 5, 2005, the aforementioned was transported from the prison where he was being held by a jet aircraft to Yemen. The flight lasted 6-7 hours. On board, he was accompanied by two Yemeni citizens, Salah Nasser Saleem (Qaru) and Muhammad Abdullah Saleh Al-Asad.
- The relevant Yemeni authorities confirm that they did not arrest the aforementioned. Rather, it received him from the U.S. authorities on May 5, being accused of membership in al Qa'ida. He was held in Yemen per Penal Procedure No. 13 of the year 1994 for questioning and verifying what the Americans have alleged against him.
- The aforementioned was brought before the Yemeni judicial system to complete the legal process in his case. A judicial sentence was issued making the time spent in secret prisons sufficient time served. He will be released per the judicial sentence, pending guarantees.
- Numerous humanitarian appeals were submitted by European human rights activists to the Yemeni Embassy in Berlin, Germany, demanding the release of Mr. Bashmilah and others (including Mr. Salah Nasser Saleem).
- Some American organizations were interested in the case. A team of American lawyers met with them on June 20, 2005, namely:
  - Mr. Douglas Cox
  - Ms. Sarah [Havens]
  - Ms. [Tina] Foster
- Amnesty International was interested in the case of Mr. Mohamed Bashmilah, Mr. Salah Nasser Saleem, and others. It published a report containing a narrative of their detention

and the various conditions they had endured after a team of Amnesty International representatives conducted two interviews with them in Yemen on February 7 and 12, 2006. The team consisted of:

Ms. Anne FitzGerald, organization advisor

Ms. Lynn Wessman [phonetic], former organization advisor

Mr. Akram al Khatib, Interpreter

- The International Committee of the Red Cross was interested in the case. It dispatched Ms. Maya Petrovich [phonetic], ICRC Protection Delegate, to meet with them on March 8, 2006.
- The Central Organization for Political Security in Yemen continues to press the U.S. to hand over the files of the aforementioned and to present the evidence for what has been alleged against them [and for which] they were held in secret prisons at that time. Until now, the request has not been granted.

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HUMAN RIGHTS COUNCIL  
Fourth regular session  
Item 2 of the provisional agenda

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

**Opinions adopted by the Working Group on Arbitrary Detention**

The present document contains the Opinions adopted by the Working Group on Arbitrary Detention at its forty-fourth, forty-fifth and forty-sixth sessions, held in November 2005, May 2006 and August 2006, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions is included in the report of the Working Group to the Human Rights Council at its fourth regular session (A/HRC/4/40).

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and redressed, if necessary by putting the perpetrators to justice. Yet, any procedure aiming to put right gross human rights violations, as such welcomed by the Working Group, shall scrupulously respect the rules and standards drawn up and accepted by the international community to respect the rights of any person charged of a criminal offence. The violation of the rights of the person charged may easily backfire. This is particularly true in the present case; any lack of respect for the rights of the leaders of the former regime in the criminal proceedings against them may undermine the credibility of the justice system of the newly emerging democratic Iraq.

39. The Working Group believes that under the circumstances the proper way to ensure that the detention of Saddam Hussein does not amount to arbitrary deprivation of liberty would be to see to it that his trial is conducted by an independent and impartial tribunal in strict conformity with international human rights standards.

40. On the basis of what precedes, the Opinion of the Working Group is that:

- (a) It will not take a position on the alleged arbitrariness of the deprivation of liberty of Mr. Saddam Hussein during the period of international armed conflict;
- (b) It will follow the development of the process and will request more information from both concerned Governments and from the source. In the meantime and referring to paragraph 17 (c) of its methods of work, it decides to keep the case pending until further information is received.

Adopted on 30 November 2005.

#### **OPINION No. 47/2005 (YEMEN)**

**Communication: addressed to the Government on 9 August 2005.**

**Concerning: Messrs. Walid Muhammad Shahir Muhammad al-Qadasi;  
Salah Nasser Salim`Ali and Muhammad Faraj Ahmed Bashmilah.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted to the source the reply provided by the Government. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

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5. The source reports that Mr. Walid Muhammad Shahir Muhammad al-Qadasi, a citizen of Yemen, was arrested in the Islamic Republic of Iran in late 2001. He was held there for about three months before being handed over, with other detained foreign nationals, to the authorities in Afghanistan, who in turn handed them over to the custody of the United States of America. He was held in a prison in Kabul, where he was blindfolded, interrogated, threatened with death and accused of belonging to Al-Qaida. Walid Muhammad Shahir Muhammad al-Qadasi and his fellow detainees were kept in underground cells, 10 of them in a cell measuring approximately two by three metres, and constantly exposed to loud music. After three months in detention in Kabul, he was transferred to a detention centre of the United States military forces at Baghram Air Base, outside Kabul. After a month there, Walid Muhammad Shahir Muhammad al-Qadasi was taken to the United States military base at Guantánamo Bay, Cuba.

6. Walid Muhammad Shahir Muhammad al-Qadasi was transferred from Guantánamo Bay to Yemen at the beginning of April 2004. On his arrival, he was detained in the Political Security Prison in Sana'a. He was denied access to a lawyer and not brought before a court. Walid Muhammad Shahir Muhammad al-Qadasi was visited in detention by representatives of the source in mid-April 2004. The prison staff informed the source that Walid Muhammad Shahir Muhammad al-Qadasi was under investigation and would be released as soon as the investigation was completed. Subsequently, he was transferred to Ta'iz prison, where a lawyer from the United States non-governmental organization Centre for Constitutional Rights met with him on 21 June 2005. He currently remains in detention there. He has not been charged with a criminal offence, nor been given the opportunity to challenge the legality of his detention. The Head of the Political Security Department in Sana'a informed the source that Walid Muhammad Shahir Muhammad al-Qadasi and other detainees who returned from Guantánamo Bay were being held at the request of the United States authorities and would remain detained in Yemen pending receipt of their files from these authorities for investigation.

7. With regard to Mr. Salah Nasser Salim 'Ali, the source reports that he is a 27-year-old Yemeni citizen who lived in Jakarta until 19 August 2003. On that day he was detained in Jakarta by agents of the Indonesian police and taken to an immigration centre. After four days of detention, during which his passport expired, Salah Nasser Salim 'Ali was told that he would be deported to Yemen, via Jordan. Upon arrival at the airport in Amman, however, he was taken to a detention facility of the Jordanian intelligence service, where he was interrogated about a past stay in Afghanistan and tortured repeatedly for four days.

8. As to Mr. Muhammad Faraj Ahmed Bashmilah, aged 37, the source reports that he is a Yemeni citizen, who also lived in Indonesia. In October 2003, he travelled to Jordan with his wife. On arrival at Amman airport, Jordanian immigration authorities took his passport. Three days later, on 19 October 2003, he was arrested by the Jordanian Da'irat al-Mukhabarat al-'Amah (General Intelligence Department, who kept him in custody for four days. During this period he was allegedly repeatedly tortured.

9. The source further states that from detention in Jordan, Messrs. Salah Nasser Salim 'Ali and Muhammad Faraj Ahmed Bashmilah were transferred to a detention centre under United States control. They were taken blindfolded to this detention centre by a several hours' long plane flight and detained underground, and are therefore not able to identify the location

of the detention centre. Both the forces in charge of transferring them thereto and those in charge of the detention centre were, however, from the United States. They were subsequently transferred, again blindfolded, by plane and helicopter, to a second detention centre under United States control. They are therefore not able to identify the location of the facility. In both places, the two men were interrogated about their activities in Afghanistan and Indonesia, and about their knowledge of other persons suspected of terrorist activities.

10. According to the source, Messrs. Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah were kept in United States custody for 20 and 18 months, respectively. During this period, they were held in solitary confinement and incommunicado, without contact with anyone other than the prison guards, interrogators and interpreters. Western music was piped into their cells uninterruptedly, 24 hours a day. In the second facility they were given books, including the Koran, and videos, and had an opportunity to exercise. Salah Nasser Salim 'Ali was visited by a doctor twice a month.

11. On or around 5 May 2005, without explanation, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali were transferred to Yemen, where they were detained in the central prison of Aden. They were subsequently briefly taken to Sana'a and back to Aden. They are currently detained at the Fateh political security facility in Aden, where they have received visits by their family.

12. The source states that neither Muhammad Farah Ahmed Bashmilah nor Salah Nasser Salim 'Ali have been charged or tried with any offence, nor have they been informed of the reason for their continued detention. Representatives of the Yemeni authorities have told the source that the reason for their detention is that their transfer from United States detention was conditional upon them being held in Yemen.

13. According to the source, the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali is devoid of any legal basis and thus arbitrary. In particular, the three above-mentioned persons were released from United States custody without charges and were never charged with any criminal offence in Yemen, where they have been detained for 18 months (Walid Muhammad Shahir Muhammad al-Qadasi) and three months (Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali), respectively. No decision concerning their detention and or statement setting forth the grounds therefor has been issued by any Yemeni authority. They have not been informed of any charges against them, have not been provided with legal assistance, have not had the right to challenge the lawfulness of their detention, and have not had a single hearing in their case.

14. The source adds that the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali is in violation of Yemeni domestic law, as well, because, according to it, suspects have the right to see a judge or prosecutor within 24 hours of being detained, the right to challenge the legal basis of their detention and the right to seek prompt legal assistance. Furthermore, Yemeni law provides that detention is not permitted except for acts punishable by law.

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page 44

15. In its reply to these allegations, the Government confirms that Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali were handed over to Yemen by the United States. They are held in a security police facility because of their alleged involvement in terrorist activities related to Al-Qaida. The Government of Yemen adds that the "competent authorities are still dealing with the case pending receipt of their [the persons'] files from the United States of America authorities in order to transfer them to the Prosecutor".

16. In replying to the Government's observations, the source informs that, as of 8 November 2005, the three men remain in detention, while the Government continues to state that it is awaiting the files concerning their cases from the United States authorities.

17. The Working Group, based on the above information provided by the source and the Government, which coincide, is in the position to render an Opinion.

18. The Government states that Messrs. Al-Qadasi, Bashmila and Salim were handed over to Yemen by the United States. It is waiting for the files from the American authorities so as to transfer them to the prosecutor. This clearly shows that the Yemen authorities do not currently have any files on them.

19. The Working Group notes with concern that the transfers that the three persons experienced before being detained in Yemen occurred outside the confines of any legal procedure, such as extradition, and do not allow the individuals access to counsel or to any judicial body to contest the transfers.

20. No charges have been made by the Government of Yemen against these three men. They have not been informed of any accusation against them, nor have been brought before any judicial authority. No legal procedure has been followed to accuse them. Their deprivation of liberty is, as such, devoid of any legal basis.

21. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim'Ali, is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Consequent upon the Opinion rendered, the Working Group requests the Government:

To release the three above-mentioned persons, or otherwise subject them to a competent judicial authority, bringing these cases in conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 30 November 2005.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



MISSION DE LA RÉPUBLIQUE DU YÉMEN

الوفد الدائم للجمهورية اليمنية

No. 758  
OI/ 68

The Permanent Mission of the Republic of Yemen to the United Nations Office and Other International Organizations presents its compliments the Special Rapporteur on the question of Torture and to the Special Rapporteur on Human Rights and Terrorism and has the honor to attach herewith,

Our country's reply to the note verbale Ref. ALG/So214 (53-02) YEM12/2005 on the case of the two Yemeni citizens, **Salah Nasser Ali** (27 years old) and **Muhammad Farah Ahmed Bashmilah** (37 years old).

The Permanent Mission hopes that constructive dialogue and cooperation continue between our government and your Special Rapporteurs in a positive atmosphere so as to understand the conditions and circumstances of each case separately.

And as you all know, the cases related to international terrorism and its relation with external factors are extremely sensitive and it is difficult to settle them quickly and to come to clear facts.

The Permanent Mission of the Republic of Yemen avails itself of this opportunity to renew to the Special Rapporteur on the question of Torture and the Special Rapporteur on Human Rights and Terrorism the assurances of its highest consideration.

Geneva, December 20<sup>th</sup> 2005

OHCHR REGISTRY

27 DEC 2005

Recipients : SPB



الرقم ..... ٢٦٣  
 التاريخ ..... ٢٠٠٥/١٤/٢٣  
 الموقن ..... ١٤  
 المرفقات .....

· شئم المليحة العجيبة ·



الجمهوريه اليمنيه  
 رئاسه الجمهوريه  
 الجهاز المركزي للأمن السياسي

**الأخ الدكتور / أبو بكر عبدالله القربي**

**وزير الخارجية** ..... **المحترم**

**بعد التحية :**

ردًا على مذركم رقم رقم ١٠/٢١٤/١٠ بتاريخ ٢٠٠٥/١٢/٧  
 بخصوص مذكرة الوفد الدائم بجنيف بناء على بلاغ المقرر الخاص بالتعذيب  
 والمقرر الخاص بحقوق الإنسان والارهاب بشأن المواطنين /صلاح ناصر سالم  
 علي ومحمد فرج احمد باشمبله .. وبناء عليه :-  
 نود افادتك ..... بما يلى :-

**أولاً :**

فيما يتعلق بصحة الواقع الوارد في البلاغ حول تعريضهما (المذكوران آنفًا)  
 للضرب والاهانة والتعذيب والتهديد بالتحرش والاحتجاز السري بمعزل عن  
 العالم ، من قبل السلطات الاندونيسية والأردنية والامريكية كما ورد في  
 البلاغ ، فهي من مسؤولية المقرر الخاص بالتعذيب والمقرر الخاص بحقوق  
 الإنسان والارهاب بمتابعة السلطات في البلدان المذكورة حول صحة الواقع  
 الوارد في البلاغ ..

**ثانياً :**

حول مزاعم التعريض للتعذيب أشار المذكوران آنفًا من خلال التحقيق معهما  
 إلا انهم قد تعرضوا للتعذيب من قبل السلطات المشار إليها آنفًا ..

**ثالثاً :**

**المسوغات القانونية :**  
 تؤكد السلطات اليمنية بأنه لم يجري اعتقال المذكوران واتما سلما للسلطات  
 اليمنية من السلطات الأمريكية تحت تهمة انتسابهما إلى ما يسمى بتنظيم

الرقم ..... ٥٣٦٧  
التاريخ ..... ١٢٥١٩٥٠-٢٠١٢  
الم Rafiq ..... ١٤  
الم نفقات .....



**الجمهورية اليمنية**  
**رئاسة الجمهورية**  
**الجهاز المركزي للأمن السياسي**

— 7 —

القاعد ، وقد قامت السلطات اليمنية باحتجازهما وفقاً لقانون الاجراءات الجزائية رقم (١٣) لسنة ٩٤ ل لتحقيق معهما والتأكد من صحة ما تسب اليهما من جانب السلطات الامريكية ، وقد جرى احتجازهما بناء على مسوغات قانونية وفقاً للقانون المشار اليه افأ ويختضع موضوعهما للمراجعة القانونية للتأكد من سلامة الاجراءات القانونية من قبل النيابة العامة ومدى ملائمة ومطابقة هذه الاجراءات للقانون وقد تسلمت السلطات اليمنية ملفاتها من السلطات الامريكية بتاريخ ١٠ /نوفمبر /٢٠٠٥م ، ويجرى استكمال الاجراءات القانونية لحالتهما إلى القضاء .

دایرکٹ

## **الرعاية الصحية وبرامج إعادة التأهيل :**

يحظى المحتجزون على نمط قضايا بالرعاية الصحية وكذلك ببرامج إعادة التأهيل وفقاً للقانون سوى كان ذلك في مراكز الاحتجاز أو في السجون بناءً على قانون تنظيم السجون في حالة الإدانة والحكم بالحبس ، وهناك لوائح داخلية تنظم وتقر مثل هذه الرعاية ، ويجري متابعتها والاشراف عليها من قبل النيابة العامة .

## الاطلاع واجراءاتك ..

وتقپلوا تحياتنا ،

# شـ. القميـ. مطهـ. مـ. شـ. القـ. مـ. شـ.

رئيس المهاجر المركزي للامن السياسي

**الطباطبائي** **مطهر القمي** **ش**  
**رئيس العطار المركزي للامن الصحي**

نسخه للأخ/ مدير مكتب رئيسة الجمهوريه  
نسخه للأخ/ وزير الداخلية .  
نسخه للأخت/ وزيرة حقوق الإنسان .

*(Translated from Arabic)*

**Republic of Yemen**

**Office of the President**

**Central Political Security Department**

Sir,

In response to your note No. 10/214/10, dated 7 December 2005, regarding a note from the Permanent Mission in Geneva about a report from the Special Rapporteur on torture and the Special Rapporteur on Human Rights and counter terrorism concerning Yemeni citizens Salah Nasser Salim Ali and Muhammad Faraj Ahmed Bashmilah, we should like to provide you with the following information:

1. With regard to the accuracy of the facts alleged in the report, namely, that the two men were beaten, verbally abused, tortured, threatened with sexual abuse and held incommunicado detention by the Indonesian, Jordanian and United States authorities, it is up to the Special Rapporteur on torture and the Special Rapporteur on Human Rights and terrorism to check with the authorities of the countries concerned whether the facts alleged in the report are accurate.
2. With regard to the allegations about torture, both of the above-mentioned persons stated, when questioned, that they had not been tortured by any of the authorities mentioned above.
3. Legal basis:

The Yemeni authorities confirm that the two men were not arrested but rather were handed over to them by the United States authorities after having been accused of being members of the organization known as Al-Qa'ida. The Yemeni authorities detained them under

Mr. Abubakr Abdallah Al-Qirbi  
Minister for Foreign Affairs

CHR/NONE/2005/426  
GE.05-16867 (E) 240106 240106

the Code of Criminal Procedures No. 13 of 1994, with a view to questioning them and verifying the allegations made by the United States authorities. The legal basis on which they were held was the aforementioned Code. The lawfulness of detention is subject to judicial review. Steps are taken to verify that the Department of Public Prosecutions has followed the proper legal procedures and that the procedures are consistent with the law. The Yemeni authorities received the files on these two men from the United States authorities on 10 November 2005, and the legal procedures are being completed pending their arraignment before the courts.

4. Medical treatment and rehabilitation programmes:

Under the Prisons Act, detainees awaiting trial are legally entitled to access to medical treatment and rehabilitation programmes, whether at a detention centre or, if they have been convicted and sentenced to imprisonment, at a prison. There are internal rules that regulate and establish the parameters for such treatment. The Department of Public Prosecutions oversees the implementation of these rules.

Accept, Sir etc.

(Signed):

Ghalib Mathar al-Qamish  
Chief  
Central Department of Political Security

cc.: Director, Office of the President of the Republic  
Minister for Internal Affairs  
Minister for Human Rights

UNITED  
NATIONS

A



**General Assembly**

Distr.  
GENERAL

A/HRC/4/G/17  
30 March 2007

ENGLISH  
Original: ARABIC/ENGLISH

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HUMAN RIGHTS COUNCIL  
Fourth session  
Agenda item 2

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

**Note verbale dated 22 March 2007 from the Permanent Mission of  
Jordan to the United Nations Office at Geneva addressed to the  
Office of the High Commissioner for Human Rights**

The Permanent Mission of the Hashemite Kingdom of Jordan presents its compliments to the Office of the High Commissioner for Human Rights and the secretariat of the Human Rights Council, and has the honour to attach herewith a copy in Arabic\* of the Government's comments on the addendum to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak (A/HRC/4/33/Add.3) of 5 January 2007 on his mission to Jordan.

The Permanent Mission of the Hashemite Kingdom of Jordan would be grateful to the Office of the High Commissioner if the above comments were made available on the website of the Council as an official document, together with its annex.

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\* Reproduced in the annex in the language of submission and in English only.

provided with every facility, including access to the Department's custody wing. The Special Rapporteur met with all prisoners on their own and without any interference by the security officers present. The Special Rapporteur's claims about torture at the Department's custody centre are all being investigated and those responsible will be punished, if found guilty.

**The Special Rapporteur refers to allegations about persons being held and tortured in secret prisons run by United States forces in Jordan:**

In this regard, we note that the Special Rapporteur had already made up his mind that there were secret prisons in Jordan being run by United States forces and that, as far as he was concerned, this was a certainty. Therefore, he treated the replies of security officials to his requests for clarification with contempt and incredulity, even though the officials assured him that there are no such centres in Jordan and that these are just allegations. As for the allegations concerning the persons whom the Special Rapporteur mentions as being held in Jordanian prisons, we should like to state the following:

- Salah Naser Salim Ali and Mohammed Faraj Ahmad Bashmila, both Yemeni nationals: their claims about being tortured in secret prisons run by United States forces in Jordan are baseless. The first-mentioned person (Salah) was arrested on 4 September 2005 because of his connection to Al-Qaeda and for entering the country on a forged passport bearing the name of his brother (Wadah Nasir Salim Ali). He was deported on 8 September 2005. The second-mentioned person (Mohammed) was brought back to the Department for questioning on 21 October 2003. He was then told to leave the country, which he did on 26 October 2003;
- Maher Irar, a Syrian national who also has Canadian nationality: there is nothing new to add to the information contained in the previous report on this subject;
- Sajidah Mubarak Atrus al-Rishawi, an Iraqi national: she was a member of a terrorist group that carried out suicide bombings at hotels in Amman on 9 November 2005, killing over 60 people and injuring hundreds of others. She was arrested based on information indicating that she was staying with a person in the town of Salt and had an explosive belt in her possession. The public prosecutor notified the State Security Court, which ordered the seizure of the explosive belt and the woman's arrest. From the very outset, the case was conducted under the authority and supervision of the Prosecutor-General, who conducted the questioning himself. It was at his request that she was placed in the detention centre of the General Intelligence Directorate. Her claims that she was tortured and threatened with rape are nothing but an attempt to obtain a lenient sentence from the court. On 12 December 2005, a delegation from the National Centre for Human Rights met with her. This meeting is mentioned in the 2005 report on the human rights situation in the Kingdom;
- Mundhir Abu Zahir and Marwan Ali Hamid: their allegations about being detained and tortured at the General Intelligence Directorate are false, since they have never been detained by the Directorate.

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page 18

In this connection, we should like to affirm that the security forces at all levels investigate complaints of this kind in order to ensure respect for human rights and to punish anyone who takes it upon himself to infringe these rights. The following are just some examples of cases in which individuals were investigated and tried for committing acts amounting to torture or ill-treatment:

- Case of Zahir Abd al-Jalil Abu al-Rish: this man was arrested on 24 June 2006 on suspicion of having robbed the Hijazi and Gawsha food company in the Marka area and having stolen 100,000 dinars from the company's iron safe. (It should be mentioned that he had a previous record for robbery and other offences.) He was detained for further questioning. While he was being processed, two criminal investigators beat him, in breach of the strict instructions issued to all general security officers that they must not use coercion during questioning and must stick to lawful investigation methods when dealing with any kind of case. Zahir was sent for a medical examination and the initial medical report concluded that his general health was good and that he had not sustained any fractures or serious injuries. When questioned, he asked for no charges to be brought against the two culprits.

The commission of inquiry decided to refer the two culprits to the police court to be tried for:

- Conspiracy to wound, in violation of article 334 of the Criminal Code and pursuant to article 76 of the same Code;
- Disobeying orders and instructions, in violation of article 37, paragraph 4, of the General Security Act;
- With regard to prisoner Ramey Mohammed Najib al-Kirki: he was detained by the Amman public prosecutor on a robbery charge and has a criminal record (25 previous convictions). The police public prosecutor investigated his complaint;
- Prisoner Sami Abd al-Ra'uf Ahmad al-Ramhi was convicted of issuing bad cheques, and has a previous criminal record;
- Prisoner Hikmat Adnan Ibrahim Sarih is in detention on a robbery charge;
- Prisoner Marwan Ali Hamid has 72 previous convictions for forgery and deception;
- Khalid Sabah Ya`qub, Mahmud Walid and Ali Ahmad Abd al-Rahman al-Shawbki do not appear to have been held in correction centres; their names may not be correct (we need the prisoners' correct names).

As for the case of the deputies to which the report refers, it is worth noting that they were all released.

With regard to the allegations in the report that some inmates of detention, correction and rehabilitation centres have been tortured during interrogation, a serious and transparent investigation was conducted into these claims and allegations. It showed that most of the complaints were misleading and groundless and were the result either of fighting between the inmates concerned and other prisoners or of the security forces being constrained to use force to control certain prisoners resisting or assaulting them while attempting to make an arrest. These measures are consistent with the police's legal powers pursuant to article 9 of the General Security Act. In other cases, evidence was found of an attempt by complainants to plea in court that they had been tortured or ill-treated in order to avoid a conviction. In other cases again, after in-depth investigations had been carried out and evidence gathered from medical tests, the complaints were shown to be true and the security officers involved were referred to the courts for the infliction of appropriate and exemplary penalties. Members of the security services do not enjoy any form of immunity against criminal prosecution in respect of any offence, particularly torture and ill-treatment.

### **Conclusion**

The Government takes a positive interest in the reports produced by most international and domestic human rights organizations. It views the opening of channels for dialogue and debate with these organizations as an important and necessary means of supporting the reform process on which the State has embarked with a view to the promotion and protection of human rights.

The Government should like to reassure the Special Rapporteur of its willingness to continue cooperation with him in full transparency and objectivity in order to promote, protect and develop human rights in Jordan. While the Government does not agree with most of the conclusions reached by the Special Rapporteur, it will give serious consideration to the recommendations in his final report - some recommendations have already been implemented - and will examine and decide on the other recommendations.

The Government should like to reaffirm its condemnation of all practices of torture and ill-treatment and its intention of imposing the highest penalties on any public official found guilty of torture and ill-treatment. The Government should also like to affirm its commitment to the Convention against Torture and all the human rights treaties to which Jordan is a party.

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**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

AMNESTY INTERNATIONAL USA, CENTER  
FOR CONSTITUTIONAL RIGHTS, INC. and  
WASHINGTON SQUARE LEGAL SERVICES,  
INC.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,  
DEPARTMENT OF DEFENSE, DEPARTMENT  
OF HOMELAND SECURITY, DEPARTMENT  
OF JUSTICE, DEPARTMENT OF STATE, AND  
THEIR COMPONENTS,

Defendants.

**ECF CASE**

07 CV 5435 (LAP)

**DECLARATION OF FUAD YAHYA**

Fuad M. Yahya, address 4627 Summer Lakes, Sugar Land, Texas 77479, pursuant to penalty of perjury under 28 U.S.C. § 1746, does hereby state the following:

1. I am fluent in both the English and Arabic languages, and fully qualified to translate written documents from Arabic to English. My linguistic competency has been screened by the Federal Bureau of Investigations, and I received a “meet or exceed the minimum requirements” evaluation. I am an associate member of the American Translators Association, No. 222052.
2. At the request of Washington Square Legal Services, I have translated the following Arabic document to English:

Yemeni Court Decision dated February 27, 2006, in the case of Mohammed Abdullah Saleh Al-Asad, Mohamed Farag Bashmilah, and Salah Naser Salem Ali Qaroo.

3. The English translation has been excerpted and is submitted with corresponding Arabic text.
4. The translation is true and accurate to the best of my knowledge and ability.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of December, 2008.

By:



Fuad M. Yahya

**Republic of Yemen  
Ministry of Justice  
Specialized Penal Court**

In the name of God, the  
Compassionate, the Merciful  
[emblem]

Ruling No. 1/A of the year 1427 [Hijri]

## **Judgment**

In the proceeding publicly held at the Specialized Penal Court on Monday, 28 Muharram 1427 [Hijri], 27 FEB 2006;

Presiding Judge: **Najeeb Mohammed Saleh Al-Qadiri** President of the Court

Present: **Khalid Al-Mawri**, Prosecutor General, and **Himyar Qays**, of the P.G. Office

Also present: **Mahdi Mohammed Haydar Al-Dhubaibi** Proceeding Secretary

I have issued Judgment No. 1/A of the year 1427 [Hijri]

in the Penal Case No. 3 of the year 1427 [Hijri]

Filed by the Office of Prosecutor General

### **Against**

1. ....;

2. Mohamed Farag Bashmilah (a.k.a. Julaybeeb Al-Adani); 37 years old; self-employed; residing at Qaf/Meem Street, Makalla, Aden; imprisoned;

3. Salah Naser Salem Ali Qaroo (a.k.a. Marwan Al-Adani); 28 years old; resident of Al-Buraiqa, Aden; imprisoned;

Regarding the factual matters alleged against them in the Decision to Charge, quoted below:

“The Office of Prosecutor General charges the named defendants as follows:

I. ...

II. The second defendant: Used a forged document of a foreign country, namely an identification card as an Indonesian named Mohamed Farag Ahmed, with which he married an Indonesian woman, knowing that it was forged, as shown in detail in the papers.

III. The third defendant: Used two forged official documents, namely two passport, one Iraqi and the other Yemeni, the first being in the name of Sa`eed Ahmed Ra’fat, with which he traveled from Iran to Malaysia; and the second being in the name of Waddah Naser Salem Ali, with which

[signature]

[ink seal]

Specialized Penal Court  
Copy True to the Original

[ink seal]

Republic of Yemen  
Ministry of Justice  
Specialized Penal Court

[signature]

**Republic of Yemen  
Ministry of Justice  
Specialized Penal Court**

In the name of God, the  
Compassionate, the Merciful  
[emblem] Ruling No. 1/A of the year 1427 [Hijri]

he traveled from Malaysia to Indonesia; while knowing they were forged; as shown in detail in the papers....

### **Trial Procedures**

....

The second defendant was then asked: What do you have to say regarding the matters alleged against you? He replied:

“I have admitted obtaining the card, and I have received my penalty in Indonesia in an Indonesian prison. They released me upon paying a monetary fine with the intervention of the Yemeni Embassy. I spent a month and a half in prison, and then I left, through the Yemeni Embassy, to Yemen. I was not tried for that incident, but rather paid a fine and was deported to Yemen via Jordan. I was accompanied by my wife and mother. I was arrested in Jordan without legal justification, as I was bearing the Yemeni passport in the name of Mohamed Farag Bashmilah. After being tortured, I was handed over to the United States [where I remained] for one year and seven months in secret prisons that we do not know, in very bad conditions. Afterwards, we were handed over to Yemen on 5/5/2005, as none of the prior charges of which we were accused could be proven, which are different from the charges against us in the Decision to Charge. We remained in prison for no reason other than a suspicion, and now we are in Yemeni prisons since 5/5/2005, without trial. The Yemeni authorities have declared that we had committed no violations, but they said that we were in prison by a request from the U.S. embassy in Yemen. I read this in the press. I ask the court to release me on bail as soon as possible, in addition to referring me to a specialized physician, and improving our conditions in prison in terms of food.”

The third defendant was then asked regarding the matters ascribed to him. He replied, “Yes, I bear the forged Yemeni passport.”

In the proceedings, Mr. Mohammed Abdulraqueeb Al-Saqqaf was assigned to argue in their defense.

The third defendant, Salah, continued saying, “I obtained the Yemeni passport in the name of Waddah for the purpose of coming to Yemen. I was arrested in Indonesia and spent three weeks

**Republic of Yemen  
Ministry of Justice  
Specialized Penal Court**

In the name of God, the  
Compassionate, the Merciful  
[emblem]

Ruling No. 1/A of the year 1427 [Hijri]

in prison in Indonesia. Then, I got a ticket to Yemen via Jordan. I was arrested in Jordan, and was told that this was due to some suspicion. There, I was subjected to all kinds of torture. After some time, they transferred us to the Americans at night. For one year and nine months, I did not know where [I was]. They said we were in Guantanamo, while we were not there. We could not see the sun or hear anything other than non-stop Western music. We suffered psychological torture, sleep deprivation, and food deprivation. With regards to the Iraqi passport, I had nothing to do with the forgery, as it was handed to me by the Iranian authorities. I have been imprisoned here for nine months. We demand release on parole.”

With regards to the passport in his brother’s name, he replied, “Yes, I use it.” ...

### **Grounds for Sentencing**

....

.... Based on all the above, it is determined that ... the second defendant knowingly and willingly committed the act of using a forged document; and that the third defendant knowingly and willingly committed the two acts of using the two forged documents. This being the case, they must be convicted of the acts alleged against them, pursuant to the provisions of Article 321 of the Law of Penal Procedures. ...

### **Sentence**

I. To consider the time that the first convict ..., the second convict Mohamed Farag Ahmed Bashmilah, and the third convict Salah Naser Salem Qaroo, spent in prison sufficient.

II. To count the time of imprisonment that the convicts endured outside the country as part of their determined sentence.

This is what I have stated and ruled. God is my satisfaction. He is the best of advocates. This was issued in court on Monday, 28 Muharram 1427 [Hijri], 27 February 2006.

Secretary  
[signature]  
Mahdi Mohammed Haydar Al-Dhubaibi

[ink seal]  
Specialized Penal Court  
Copy True to the Original

President of the Specialized Penal Court  
[signature]  
Najeeb Mohammed Saleh Al-Qadiri

[ink seal]  
Republic of Yemen  
Ministry of Justice  
Specialized Penal Court

**حكم**

بالجلسة المنعقدة علناً بالمحكمة الجزائية المتخصصة في يوم الاثنين 28 من شهر محرم 1427هـ الموافق 2006/2/27م

رئيس	نجيب محمد صالح القادري	برئاسة القاضي / المحكمة
عضو	خالد الماوري وكيل النيابة وحمير قيس	وبحضور الأستاذ / النيابة العامة
أمين سر	مهدي محمد حيدر الضبيبي	وبحضور / الجلسة

أصدرنا الحكم رقم (1/أ) لسنة 1427هـ  
في القضية الجنائية رقم (3) سنة 1427هـ  
المرفوعة من النيابة العامة

**ضد**

... 1

2. محمد فرج أحمد باشميلة (جليبيب العدني)، 37 سنة، أعمال حرة، مقيم عدن، المكلا شارع ق/م - محبوس

3. صلاح ناصر سالم علي قرو (مروان العدني) 28 سنة، مقيم عدن، البريقة، محبوس بشأن الواقع المنسوبة إليهم في قرار الاتهام التالي نصه: تتهم النيابة العامة المتهمين المذكورين لأنهم

أولاً : المتهم الأول: - ...

ثانياً: المتهم الثاني: - استعمل محرر مزور متعلق بدولة أجنبية هي بطاقة إثبات الشخصية على أنه إندونيسي، واسمها / محمد فرج أحمد، وتزوج من امرأة إندونيسية بتلك البطاقة مع علمه بتزويرها، وعلى النحو المبين تفصيلاً في الأوراق.

ثالثاً: - المتهم الثالث - استعمل محررين رسميين مزورين هما: جوازي سفر عراقي ويمني، الأول باسم / سعيد

[توقيع]

[ختم]  
الجمهوريه اليمنيه  
وزارة العدل  
المحكمة الجنائيه  
المختصه

[ختم]  
المحكمة الجنائيه المتخصصة  
صورة طبق الأصل

[توقيع]  
[signature]

حكم رقم (١/أ) لسنة ١٤٢٧ هـ



**الجمهورية اليمنية**  
**وزارة العدل**  
**المحكمة الجزائية**  
**المختصة**

أحمد رأفت وسافر به من إيران إلى ماليزيا، والثاني باسم / وضاح ناصر سالم علي وسافر به من ماليزيا إلى إندونيسيا مع علمه أنها مزورة، وعلى النحو المبين تفصيلاً في الأوراق....

### إجراءات المحاكمة

....

وثم سُئل المتهم الثاني: ما قولك فيما نسب إليك؟ فأجاب: أنا معترف فيما يتعلق باستخراجي للبطاقة وقد أخذت جزائي في أندونيسيا أمام السجن الأندونيسي وأفرجوا عنِّي بغرامة مالية وبواسطة السفاراة اليمنية واستمررت في الحبس لمدة شهر ونصف ثم رحلت عن طريق السفاراة اليمنية إلى اليمن، ولم أحاكم على تلك الواقعة وإنما دفعت غرامة وترحلت إلى اليمن عن طريق الأردن وكان برفقتي زوجتي ووالدتي وتم إلقاء القبض علينا في الأردن بدون أي مسوغ قانوني حيث أني أحمل الجواز اليمني باسم محمد فرج باشميلا وتم تسليمي بعد تعذيبِي في الأردن إلى أمريكا لمدة سنة وسبعة أشهر في سجون سرية لا نعلمها وأوضاع سيئة جداً، بعد ذلك تم تسليمنا إلى اليمن في تاريخ 5/5/2005م لعدم ثبوت أي أدلة ضدنا حول ما نسب إلينا من تهم سابقة غير تلك المنسوبة إلينا في قرار الاتهام وظلينا في السجون لمجرد الاشتباہ ونحن الآن في سجون اليمن من 5/5/2005م من دون محاكمة وقد صرحت الأجهزة اليمنية الأمنية بأنه لا يوجد علينا أي مخالفات ولكن قالوا بأن بقاءنا في السجن بناء على طلب السفاراة الأمريكية في اليمن وقرأت هذا في الصحافة وأطلب من المحكمة الإفراج عنِّي بضمانة مالية بأسرع وقت ممكن إضافة إلى إحالتي إلى طبيب مختص للعلاج وتحسين أحوالنا داخل السجن من ناحية الطعام.

ثم سُئل المتهم الثالث عما نسب إليه فأجاب: نعم أني أحمل الجواز اليمني المزور. وفي الجلسات قررت المحكمة ندب الأستاذ / محمد عبد الرقيب السقاف للترافع والدفاع عنهم.

ثم واصل المتهم الثالث صلاح قائلاً أخذت الجواز اليمني باسم وضاح لغرض المجيء إلى اليمن وقبض علينا في أندونيسيا وجلست ثلاثة أسابيع في أندونيسيا محبوس ثم أخذت تذكرة إلى اليمن وعن طريق الأردن قبضوا

عليها في الأردن، وقالوا أنه اشتباہ وهناك تعرضت لأنواع التعذيب وبعد فترة في الليل سلمونا للأمريكان وحوالي سنة وتسعة أشهر لا أدری أين وهم يقولوا أنَّا في جوانتموا ونحن

حكم رقم (١/أ) لسنة ١٤٢٧ هـ	بسم الله الرحمن الرحيم	<b>الجمهورية اليمنية</b> <b>وزارة العدل</b> <b>المحكمة الجزائية</b> <b>المختصة</b>
<p>لسا هناك ولا نرى الشمس ولا نسمع أي شيء إلا الموسيقى الغربية واصل وعندنا سماعة وعندنا التعذيب النفسي والسرير والحرمان من الطعام، أما فيما يتعلق بالجواز العراقي فقد أعطتنا هذه الجوازات السلطات الإيرانية سافرنا به من إيران إلى ماليزيا وليس لي دخل في عملية التزوير ولكن سلم إليها من السلطات الإيرانيةولي هنا تسعه أشهر في السجن ونطالب بالإفراج عنني بضمان.</p> <p>وأجاب فيما يتعلق بالجواز الذي باسم أخيه نعم استعمله....</p> <p style="text-align: right;">...</p>		
<h3>حيثيات الحكم</h3>		
<p>... وحيث يتبيّن من كلّ ما تقدّم أن ... المتهم الثاني ارتكب واقعة استعمال محرر مزور عن علم وإرادة وأنّ المتهم الثالث ارتكب واقعتي استعمال المحررين مزورين عن علم وإرادة، الأمر الذي يقتضي معه إدانتهم بالوقائع الثابتة نسبتها إليهم إعمالاً لحكم المادة (٣٢١) من قانون الإجراءات الجزائية...</p>		
<h3>المنطوق</h3>		
<p>أولاً: الاكتفاء بالمدة التي قضتها المدان الأول ... في الحبس، والمدانين الثاني محمد فرج أحمد باشميلاة والثالث صالح ناصر سالم على قرو؛</p> <p>ثانياً: احتساب مدة الحبس التي قضتها المدانين خارج البلد من العقوبة المقررة عليهم. هذا ما توجه لدى وبه حكمت والله حسبي ونعم الوكيل. صدر بقاعة المحكمة في يوم الاثنين 28 محرم ١٤٢٧ هـ الموافق 27 فبراير 2006م.</p>		
رئيس المحكمة الجزائية	أمين السر المختصة	
القاضي / [توقيع] نجيب محمد صالح القادري	[توقيع] مهدي محمد حيدر الضبيبي	
[ختم] الجمهورية اليمنية	[ختم] المحكمة الجزائية المختصة	
وزارة العدل	صورة طبق الأصل	
المحكمة الجزائية المختصة		

**washingtonpost.com**

## Wrongful Imprisonment: Anatomy of a CIA Mistake

German Citizen Released After Months in 'Rendition'

By Dana Priest

Washington Post Staff Writer

Sunday, December 4, 2005; A01

In May 2004, the White House dispatched the U.S. ambassador in Germany to pay an unusual visit to that country's interior minister. Ambassador Daniel R. Coats carried instructions from the State Department transmitted via the CIA's Berlin station because they were too sensitive and highly classified for regular diplomatic channels, according to several people with knowledge of the conversation.

Coats informed the German minister that the CIA had wrongfully imprisoned one of its citizens, Khaled Masri, for five months, and would soon release him, the sources said. There was also a request: that the German government not disclose what it had been told even if Masri went public. The U.S. officials feared exposure of a covert action program designed to capture terrorism suspects abroad and transfer them among countries, and possible legal challenges to the CIA from Masri and others with similar allegations.

The Masri case, with new details gleaned from interviews with current and former intelligence and diplomatic officials, offers a rare study of how pressure on the CIA to apprehend al Qaeda members after the Sept. 11, 2001, attacks has led in some instances to detention based on thin or speculative evidence. The case also shows how complicated it can be to correct errors in a system built and operated in secret.

The CIA, working with other intelligence agencies, has captured an estimated 3,000 people, including several key leaders of al Qaeda, in its campaign to dismantle terrorist networks. It is impossible to know, however, how many mistakes the CIA and its foreign partners have made.

Unlike the military's prison for terrorist suspects at Guantanamo Bay, Cuba -- where 180 prisoners have been freed after a review of their cases -- there is no tribunal or judge to check the evidence against those picked up by the CIA. The same bureaucracy that decides to capture and transfer a suspect for interrogation-- a process called "rendition" -- is also responsible for policing itself for errors.

The CIA inspector general is investigating a growing number of what it calls "erroneous renditions," according to several former and current intelligence officials.

One official said about three dozen names fall in that category; others believe it is fewer. The list includes several people whose identities were offered by al Qaeda figures during CIA interrogations, officials said. One turned out to be an innocent college professor who had given the al Qaeda member a bad grade, one official said.

"They picked up the wrong people, who had no information. In many, many cases there was only some

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vague association" with terrorism, one CIA officer said.

While the CIA admitted to Germany's then-Interior Minister Otto Schily that it had made a mistake, it has labored to keep the specifics of Masri's case from becoming public. As a German prosecutor works to verify or debunk Masri's claims of kidnapping and torture, the part of the German government that was informed of his ordeal has remained publicly silent. Masri's attorneys say they intend to file a lawsuit in U.S. courts this week.

Masri was held for five months largely because the head of the CIA's Counterterrorist Center's al Qaeda unit "believed he was someone else," one former CIA official said. "She didn't really know. She just had a hunch."

The CIA declined to comment for this article, as did Coats and a spokesman at the German Embassy in Washington. Schily did not respond to several requests for comment last week.

CIA officials stress that apprehensions and renditions are among the most sure-fire ways to take potential terrorists out of circulation quickly. In 2000, then-CIA Director George J. Tenet said that "renditions have shattered terrorist cells and networks, thwarted terrorist plans, and in some cases even prevented attacks from occurring."

### **The Counterterrorist Center**

After the September 2001 attacks, pressure to locate and nab potential terrorists, even in the most obscure parts of the world, bore down hard on one CIA office in particular, the Counterterrorist Center, or CTC, located until recently in the basement of one of the older buildings on the agency's sprawling headquarters compound. With operations officers and analysts sitting side by side, the idea was to act on tips and leads with dramatic speed.

The possibility of missing another attack loomed large. "Their logic was: If one of them gets loose and someone dies, we'll be held responsible," said one CIA officer, who, like others interviewed for this article, would speak only anonymously because of the secretive nature of the subject.

To carry out its mission, the CTC relies on its Rendition Group, made up of case officers, paramilitaries, analysts and psychologists. Their job is to figure out how to snatch someone off a city street, or a remote hillside, or a secluded corner of an airport where local authorities wait.

Members of the Rendition Group follow a simple but standard procedure: Dressed head to toe in black, including masks, they blindfold and cut the clothes off their new captives, then administer an enema and sleeping drugs. They outfit detainees in a diaper and jumpsuit for what can be a day-long trip. Their destinations: either a detention facility operated by cooperative countries in the Middle East and Central Asia, including Afghanistan, or one of the CIA's own covert prisons -- referred to in classified documents as "black sites," which at various times have been operated in eight countries, including several in Eastern Europe.

In the months after the Sept. 11 attacks, the CTC was the place to be for CIA officers wanting in on the fight. The staff ballooned from 300 to 1,200 nearly overnight.

"It was the Camelot of counterterrorism," a former counterterrorism official said. "We didn't have to mess with others -- and it was fun."

Thousands of tips and allegations about potential threats poured in after the attacks. Stung by the failure to detect the plot, CIA officers passed along every tidbit. The process of vetting and evaluating information suffered greatly, former and current intelligence officials said. "Whatever quality control mechanisms were in play on September 10th were eliminated on September 11th," a former senior intelligence official said.

J. Cofer Black, a professorial former spy who spent years chasing Osama bin Laden, was the CTC's director. With a flair for melodrama, Black had earned special access to the White House after he briefed President Bush on the CIA's war plan for Afghanistan.

Colleagues recall that he would return from the White House inspired and talking in missionary terms. Black, now in the private security business, declined to comment.

Some colleagues said his fervor was in line with the responsibility Bush bestowed on the CIA when he signed a top secret presidential finding six days after the 9/11 attacks. It authorized an unprecedented range of covert action, including lethal measures and renditions, disinformation campaigns and cyber attacks against the al Qaeda enemy, according to current and former intelligence officials. Black's attitude was exactly what some CIA officers believed was needed to get the job done.

Others criticized Black's CTC for embracing a "Hollywood model" of operations, as one former longtime CIA veteran called it, eschewing the hard work of recruiting agents and penetrating terrorist networks. Instead, the new approach was similar to the flashier paramilitary operations that had worked so well in Afghanistan, and played well at the White House, where the president was keeping a scorecard of captured or killed terrorists.

The person most often in the middle of arguments over whether to dispatch a rendition team was a former Soviet analyst with spiked hair that matched her in-your-face personality who heads the CTC's al Qaeda unit, according to a half-dozen CIA veterans who know her. Her name is being withheld because she is under cover.

She earned a reputation for being aggressive and confident, just the right quality, some colleagues thought, for a commander in the CIA's global war on terrorism. Others criticized her for being overzealous and too quick to order paramilitary action.

### **The CIA and Guantanamo Bay**

One way the CIA has dealt with detainees it no longer wants to hold is to transfer them to the custody of the U.S. military at Guantanamo Bay, where defense authorities decide whether to keep or release them after a review.

About a dozen men have been transferred by the CIA to Guantanamo Bay, according to a Washington Post review of military tribunal testimony and other records. Some CIA officials have argued that the facility has become, as one former senior official put it, "a dumping ground" for CIA mistakes.

But several former intelligence officials dispute that and defend the transfer of CIA detainees to military custody. They acknowledged that some of those sent to Guantanamo Bay are prisoners who, after interrogation and review, turned out to have less valuable information than originally suspected. Still, they said, such prisoners are dangerous and would attack if given the chance.

Among those released from Guantanamo is Mamdouh Habib, an Egyptian-born Australian citizen,

apprehended by a CIA team in Pakistan in October 2001, then sent to Egypt for interrogation, according to court papers. He has alleged that he was burned by cigarettes, given electric shocks and beaten by Egyptian captors. After six months, he was flown to Guantanamo Bay and let go earlier this year without being charged.

Another CIA former captive, according to declassified testimony from military tribunals and other records, is Mohamedou Ould Slahi, a Mauritanian and former Canada resident, who says he turned himself in to the Mauritanian police 18 days after the 9/11 attacks because he heard the Americans were looking for him. The CIA took him to Jordan, where he spent eight months undergoing interrogation, according to his testimony, before being taken to Guantanamo Bay.

Another is Muhammad Saad Iqbal Madni, an Egyptian imprisoned by Indonesia authorities in January 2002 after he was heard talking -- he says jokingly -- about a new shoe bomb technology. He was flown to Egypt for interrogation and returned to CIA hands four months later, according to one former intelligence official. After being held for 13 months in Afghanistan, he was taken to Guantanamo Bay, according to his testimony.

### The Masri Case

Khaled Masri came to the attention of Macedonian authorities on New Year's Eve 2003. Masri, an unemployed father of five living in Ulm, Germany, said he had gone by bus to Macedonia to blow off steam after a spat with his wife. He was taken off a bus at the Tabanovce border crossing by police because his name was similar to that of an associate of a 9/11 hijacker. The police drove him to Skopje, the capital, and put him in a motel room with darkened windows, he said in a recent telephone interview from Germany.

The police treated Masri firmly but cordially, asking about his passport, which they insisted was forged, about al Qaeda and about his hometown mosque, he said. When he pressed them to let him go, they displayed their pistols.

Unbeknown to Masri, the Macedonians had contacted the CIA station in Skopje. The station chief was on holiday. But the deputy chief, a junior officer, was excited about the catch and about being able to contribute to the counterterrorism fight, current and former intelligence officials familiar with the case said.

"The Skopje station really wanted a scalp because everyone wanted a part of the game," a CIA officer said. Because the European Division chief at headquarters was also on vacation, the deputy dealt directly with the CTC and the head of its al Qaeda unit.

In the first weeks of 2004, an argument arose over whether the CIA should take Masri from local authorities and remove him from the country for interrogation, a classic rendition operation.

The director of the al Qaeda unit supported that approach. She insisted he was probably a terrorist, and should be imprisoned and interrogated immediately.

Others were doubtful. They wanted to wait to see whether the passport was proved fraudulent. Beyond that, there was no evidence Masri was not who he claimed to be -- a German citizen of Arab descent traveling after a disagreement with his wife.

The unit's director won the argument. She ordered Masri captured and flown to a CIA prison in

Afghanistan.

On the 23rd day of his motel captivity, the police videotaped Masri, then bundled him, handcuffed and blindfolded, into a van and drove to a closed-off building at the airport, Masri said. There, in silence, someone cut off his clothes. As they changed his blindfold, "I saw seven or eight men with black clothing and wearing masks," he later said in an interview. He said he was drugged to sleep for a long plane ride.

### **Afghanistan**

Masri said his cell in Afghanistan was cold, dirty and in a cellar, with no light and one dirty cover for warmth. The first night he said he was kicked and beaten and warned by an interrogator: "You are here in a country where no one knows about you, in a country where there is no law. If you die, we will bury you, and no one will know."

Masri was guarded during the day by Afghans, he said. At night, men who sounded as if they spoke American-accented English showed up for the interrogation. Sometimes a man he believed was a doctor in a mask came to take photos, draw blood and collect a urine sample.

Back at the CTC, Masri's passport was given to the Office of Technical Services to analyze. By March, OTS had concluded the passport was genuine. The CIA had imprisoned the wrong man.

At the CIA, the question was: Now what? Some officials wanted to go directly to the German government; others did not. Someone suggested a reverse rendition: Return Masri to Macedonia and release him. "There wouldn't be a trace. No airplane tickets. Nothing. No one would believe him," one former official said. "There would be a bump in the press, but then it would be over."

Once the mistake reached Tenet, he laid out the options to his counterparts, including the idea of not telling the Germans. Condoleezza Rice, then Bush's national security adviser, and Deputy Secretary of State Richard L. Armitage argued they had to be told, a position Tenet took, according to one former intelligence official.

"You couldn't have the president lying to the German chancellor" should the issue come up, a government official involved in the matter said.

Senior State Department officials decided to approach Interior Minister Schily, who had been a steadfast Bush supporter even when differences over the Iraq war strained ties between the two countries. Ambassador Coats had excellent rapport with Schily.

The CIA argued for minimal disclosure of information. The State Department insisted on a truthful, complete statement. The two agencies quibbled over whether it should include an apology, according to officials.

Meanwhile, Masri was growing desperate. There were rumors that a prisoner had died under torture. Masri could not answer most questions put to him. He said he steadied himself by talking with other prisoners and reading the Koran.

A week before his release in late May 2004, Masri said he was visited in prison by a German man with a goatee who called himself Sam. Masri said he asked him if he were from the German government and whether the government knew he was there. Sam said he could not answer either question.

"Does my wife at least know I'm here?" Masri asked.

"No, she does not," Sam replied, according to Masri.

Sam told Masri he was going to be released soon but that he would not receive any documents or papers confirming his ordeal. The Americans would never admit they had taken him prisoner, Sam added, according to Masri.

On the day of his release, the prison's director, who Masri believed was an American, told Masri that he had been held because he "had a suspicious name," Masri said in an interview.

Several intelligence and diplomatic officials said Macedonia did not want the CIA to bring Masri back inside the country, so the agency arranged for him to be flown to Albania. Masri said he was taken to a narrow country road at dusk. When they let him off, "They asked me not to look back when I started walking," Masri said. "I was afraid they would shoot me in the back."

He said he was quickly met by three armed men. They drove all night, arriving in the morning at Mother Teresa Airport in Tirana. Masri said he was escorted onto the plane, past all the security checkpoints, by an Albanian.

Masri has been reunited with his children and wife, who had moved the family to Lebanon because she did not know where her husband was. Unemployed and lonely, Masri says neither his German nor Arab friends dare associate with him because of the publicity.

Meanwhile, a German prosecutor continues to work Masri's case. A Macedonia bus driver has confirmed that Masri was taken away by border guards on the date he gave investigators. A forensic analysis of Masri's hair showed he was malnourished during the period he says he was in the prison. Flight logs show a plane registered to a CIA front company flew out of Macedonia on the day Masri says he went to Afghanistan.

Masri can find few words to explain his ordeal. "I have very bad feelings" about the United States, he said. "I think it's just like in the Arab countries: arresting people, treating them inhumanly and less than that, and with no rights and no laws."

*Staff researcher Julie Tate contributed to this article.*

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have to face investigations—I'll have to testify in front of the Bundestag! Why didn't you just let him go, give him some money, and keep it quiet?"

The CIA, meanwhile, had flown Masri to Tirana, Albania, driven him blindfolded down a long, winding, potholed road, handed him back his possessions, and dropped him near the border with Serbia and Macedonia, where he was told to start walking and not look back. At the end of a path, three waiting men handed him a picnic lunch and drove him to the Tirana Airport, from which he flew home. He had lost so much weight, and looked so haunted and aged, the airport authorities accused him of using someone else's passport. When he arrived at his apartment, it was deserted and ransacked. His wife and sons, he learned later, had assumed themselves abandoned and moved in with his in-laws in Lebanon.

Asked if the treatment he got was torture or, as American officials have said, something less, Masri repeated the word. "Torture? I'm not sure what torture is. I'm not a lawyer. But it is my belief that I was tortured. Whoever says that's not torture should just have it done to them. They should feel it in their own mind and body. The whole time, I was in fear for my life. I was deadly afraid of what might happen next."

A former top Agency official declined to discuss the details of the Masri case, but he said in defense of the aggressive head of the Al Qaeda Unit, whose hunch had driven the mistaken rendition, "General Patton wasn't popular either, but sometimes it takes a tough person to win a war."

As Goldsmith was weighing how to withdraw the CIA's torture memo and replace it with a more restrictive version, a massive top-secret report detailing serious and mounting problems inside the Agency's program landed on his desk. Signs of trouble in the detention program had drawn the scrutiny of the Intelligence Agency's Inspector General, John Helgerson. By the end of 2003, he had begun an investigation, which some insiders believed might end with criminal charges for abusive interrogations. The Agency's internal watchdog was looking into at least three deaths of CIA-held prisoners in Afghanistan and Iraq. He had serious questions about the Agency's mistreatment of dozens more, including Khalid Sheikh Mohammed. And according to two former Agency officers, the Inspector General was investigating "seven or eight other cases like Masri" in which the CIA had apparently abducted and jailed the wrong people in its black prison sites. None of these other cases have become public.

The 2004 Inspector General's report, known as a "special review," was tens of thousands of pages long and as thick as two Manhattan phone books. It contained information, according to one source, that was simply "sickening." The behavior it described, another knowledgeable source said, raised concerns not just about the detainees but also about the Americans who had inflicted the abuse, some of whom seemed to have become frighteningly dehumanized. The source said, "You couldn't read the documents without wondering, 'Why didn't someone say, 'Stop!'"

Goldsmith was required to review the report in order to settle a sharp dispute that its findings had provoked between the Inspector General, Helgerson, who was not a lawyer, and the CIA's General Counsel, Scott Muller, who was. After spending months investigating the Agency's interrogation practices, the special review had concluded that the CIA's techniques constituted cruel, inhuman, and degrading treatment, in violation of the international Convention Against Torture. But Muller insisted that every single action taken by the CIA toward its detainees had been declared legal by John Yoo. With Yoo gone, it fell to Goldsmith to figure out exactly what the OLC had given the CIA a green light to do and what, in fact, the CIA had done.

As Goldsmith absorbed the details, the report transformed the antiseptic list of authorized interrogation techniques, which he had previously seen, into a Technicolor horror show. Goldsmith declined to be interviewed about the classified report for legal reasons, but according to those who dealt with him, the report caused him to question the whole program. The CIA interrogations seemed very different when described by participants than they had when approved on a simple menu of options. Goldsmith had been comfortable with the military's approach, but he wasn't at all sure whether the CIA's tactics were legal. Waterboarding, in particular, sounded quick and relatively harmless in theory. But according to someone familiar with the report, the way it had been actually used was "horrible."

Vice President Cheney, however, did not share this view. His reaction to this first, carefully documented in-house study concluding that the CIA's secret program was most likely criminal was to summon the Inspector General to his office for a private chat. Cheney's involvement was unusual. The Inspector General is supposed to function as an independent overseer, free from political pressure, but Cheney summoned the CIA Inspector General more than once to his office, an informed CIA source said. "Cheney loomed over everything," said the former CIA of-

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*The Inside Story of How the War on Terror  
Turned into a War on American Ideals*

*Jane Mayer*

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## CIA watchdog looks into 'erroneous renditions'

Inspector general investigates cases of people mistaken as terror suspects

**The Associated Press**

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WASHINGTON - The CIA's independent watchdog is investigating fewer than 10 cases where terrorist suspects may have been mistakenly swept away to foreign countries by the spy agency, a figure lower than published reports but enough to raise some concerns.

After the attacks of Sept. 11, 2001, President Bush gave the CIA authority to conduct the now-controversial operations, called "renditions," and permitted the agency to act without case-by-case approval from the White House or other administration offices.

The highly classified practice involves grabbing suspects off the street of one country and flying them to their home country or another where they are wanted for a crime or questioning.

Some 100 to 150 people have been snatched up since 9/11. Government officials say the action is reserved for those considered by the CIA to be the most serious terrorist suspects.

Bush has said that these transfers to other countries — with assurances the terrorist suspects won't be tortured — are a way to protect the United States and its allies from attack. "That was the charge we have been given," he said in March.

But some operations are being questioned.

The CIA's inspector general, John Helgerson, is looking into fewer than 10 cases of potentially "erroneous renditions," according to a current intelligence official who spoke on condition of anonymity because the investigations are classified. Others in the agency believe it to be much fewer, the official added.

### **Some see judicial evasion**

For instance, someone may be grabbed wrongly or, after further investigation, may not be as directly linked to terrorism as initially believed.

Human rights groups consider the practice of rendition an end run around the judicial processes that the United States has long championed. Experts with those groups and congressional committees familiar with intelligence programs say errors should be extremely rare because one vivid anecdote can do significant damage.

"I am glad the CIA is investigating the cases that they are aware of," said Tom Malinowski, Washington office director of Human Rights Watch. "But by definition, you are not going to be aware of all such cases, when you have a process designed to avoid judicial safeguards."

He said there is no guarantee that Egypt, Uzbekistan or Syria will release people handed over to them if they turn out to be innocent, and he distrusts promises the U.S. receives that the individuals will not be tortured.

### **Bush: 'We don't believe in torture'**

Bush and his aides have said the United States seeks those assurances — and follows up on them. "We do believe in protecting ourselves. We don't believe in torture," he said.

In the last 18 months, his administration has come under fire for its policies and regulations governing detentions and interrogations in the war on terrorism. At facilities run by the CIA and the U.S. military, graphic images of abuse and at least 26 deaths investigated as criminal homicides have raised questions about how authorities handle foreign fighters and terrorist suspects in U.S. custody.

Senior administration officials have sought to assure critics that that the cases are isolated instances among the more than 80,000 prisoners held since 9/11. Yet much remains unknown about the CIA's highly classified detention and interrogation practices, particularly when it grabs foreigners and spirits them away to other countries.

#### **Agency is target of lawsuit**

With the help of the American Civil Liberties Union, Khaled al-Masri, a German citizen of Lebanese descent, has sued the CIA for arbitrarily detaining him and other alleged violations after he was captured in Macedonia in December 2003 and taken to Afghanistan by a team of covert operatives in an apparent case of mistaken identity.

Speaking to reporters by video hookup from Germany this month, al-Masri said he was "dragged off the plane and thrown into the trunk of a car" and beaten by his captors in Afghanistan. Five months later, his complaint says, he was dropped off on a hill in Albania.

Mamdouh Habib, an Egyptian-born Australian, was arrested near the Pakistani-Afghan border shortly after 9/11 and flown to Cairo. He says for six months he was tortured there and was later transported to Afghanistan and Guantanamo Bay, Cuba. In 2005, he was released without charge and allowed to return to Sydney.

Before 9/11, renditions were ordered to bring wanted criminals to justice. But the purpose was broadened after the attacks to get terrorists off the streets.

Renditions represent just a fraction of the captures handled by the CIA and its allies. More than 3,000 foreigners have been detained in operations involving the CIA and friendly intelligence services since 9/11, according to the intelligence official. Sometimes the United States may merely be providing information, training or equipment for the operations.

#### **Middle Eastern countries involved**

Countries including Jordan and Egypt are believed to cooperate with the operations. Although Saudi Arabia is thought to be involved, its ambassador to the United States has denied accepting any cases at the United States' request.

The spotlight on the issue has called attention to how the CIA does its work, causing consternation among some agency officials who prefer to operate in the shadows.

For instance, planes operated by CIA front companies are often used to move the suspects from one country to another, bringing scrutiny to a secret agency fleet that's traveled in the United States, Spain, Germany, Afghanistan, Poland, Romania and elsewhere.

Intelligence officials said the planes are more likely to be carrying staff, supplies or Director Porter Goss on his way to a foreign visit.

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