

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

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SUHAIL NAJIM )  
ABDULLAH AL SHIMARI *et al.*, )

Plaintiffs, )

v. )

C.A. No. 08-cv-0827 GBL-JFA

CACI INTERNATIONAL, INC., *et. al.*, )

Defendants )

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**EXPERT REPORT OF  
GEOFFREY S. CORN**

**REPORT OF PROFESSOR GEOFFREY CORN, ESQ.**  
**February 1, 2013**

**OVERVIEW**

This Report addresses the obligations owed to individuals under the body of international law called International Humanitarian Law, and more specifically the fundamental humanitarian obligations reflected in the four Geneva Conventions of 1949, the 1977 Additional Protocols to these Conventions, and customary international law. In sum, this Report concludes: (1) under binding international humanitarian law, individuals who are *hors de combat*, such as the four plaintiffs in this case were owed a clear and absolute duty of humane treatment, such that a violation of that duty likely constituted a “grave breach” of the Geneva Conventions; (2) in light of the stress and dehumanization of the “enemy” inherent in armed conflict, soldiers, interrogators and others must be thoroughly trained to respect these obligations and must be carefully supervised by those in authority to ensure that the obligations are observed; (3) the treatment alleged by the plaintiffs (as set forth in their answers to interrogatories provided to me) unquestionably violated duties under international humanitarian law.

**Qualifications to give my opinion:**

I am currently the Presidential Research Professor of Law at South Texas College of Law in Houston, where I teach courses in the law of armed conflict (international humanitarian law), national security law, counter-terrorism law, criminal law, and criminal procedure. I joined the South Texas faculty in the summer of 2005. Prior to doing so, I served in the U.S. Army for 22 years, retiring in the rank of Lieutenant Colonel. In my final year of government service, I served as a civilian attorney with the Department of the Army, in Rosslyn, Virginia, as the Chief of the Law of War Branch for the Office of The Judge Advocate General, Headquarters, United States Army. In this position, I was also designated as the Special Assistant to the Judge Advocate General for Law of War Matters – the Army’s senior law of war expert advisor. In that capacity, which I held from July 27, 2004 through July 15, 2005, I advised senior officials of the Department of the Army on all matters related to the law of war. Prior to that, I served for 21 years on active duty in the U.S. Army, first as an intelligence officer and later in the Judge Advocate General’s Corps. My military experience included serving as the Chief of International and Operational Law for Headquarters, U.S. Army Europe from June 2001 through July 2003, and as a Professor of International Law at the U.S. Army Judge Advocate General’s School from May 1997 through June 2000. I began his military career in 1983 as a tactical intelligence officer before attending law school in 1989 and transitioning to the Judge Advocate General’s Corps. My CV is attached, which sets forth my qualifications and publications in more detail.

### **Bases of my opinion:**

In giving my opinion, I relied upon: my knowledge and expertise in relation to International Humanitarian Law (Law of Armed Conflict), including the four 1949 Geneva Conventions and the 1977 Additional Protocols to those Conventions; my review of plaintiffs' answers to defendants' interrogatories and plaintiffs' second amended complaint.

### **Compensation:**

Counsel for Plaintiffs have agreed to compensate me at a rate of \$350 per hour for my work in preparing this report. I spent approximately 5 hours preparing this report.

### **Opinion:**

International humanitarian law (IHL) is a branch of international law developed to regulate armed conflicts and thereby mitigate as much as possible the humanitarian suffering associated with such conflicts. In U.S. practice, this branch of international law is often referred to as the law of armed conflict (LOAC). While IHL provides extensive authority for parties to armed conflict to employ force in order to achieve legitimate military objectives, it is founded on the principle that "the right of belligerents to adopt means of injuring the enemy is not unlimited"<sup>1</sup>, and that as a result only those measures justified by military necessity are legally permissible. To this end, IHL includes numerous absolute humanitarian obligations derived from the determination that certain conduct can never be justified by military necessity.

First among these obligations is the humane treatment mandate. This obligation requires parties to a conflict to extend humane treatment to any individual not actively participating in hostilities. This obligation is especially relevant to members of opposition forces or other individuals posing a threat to the security of friendly forces who, as the result of capture or surrender, are subject to detention. No matter how implicated in opposition, dissident, or hostile activities such individuals may have been prior to incapacitation, once under the control of a detaining power they must at all times be treated humanely. Furthermore, this humane treatment obligation is unqualified and absolute. As a result, military necessity may never be invoked to justify treatment that violates this baseline standard of protection, as military necessity justifies only those measures *not otherwise prohibited by international law* necessary for securing the prompt submission of an enemy.

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<sup>1</sup> See United States Army Field Manual 27-10, The Law of Land Warfare, (1956), par. 33 (citing Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land, art. 22).

This humane treatment obligation is reflected in numerous IHL treaty provisions, including each of the four 1949 Geneva Conventions and the 1977 Additional Protocols to these Conventions. The humane treatment obligation does not, however, arise only as a matter of treaty law. Instead, as a fundamental IHL principle, customary international law requires the humane treatment of all individuals detained in the context of any armed conflict (and even in the context of military operations that might not even qualify as armed conflicts). The binding effect of such customary IHL rules on U.S. forces is clearly indicated in the U.S. Army Field Manual on the Law of Land Warfare:

The unwritten or customary law of war is binding upon all nations. It will be strictly observed by United States forces, subject only to such exceptions as shall have been directed by competent authority by way of legitimate reprisals for illegal conduct of the enemy (see par. 497). The customary law of war is part of the law of the United States and, insofar as it is not inconsistent with any treaty to which this country is a party or with a controlling executive or legislative act, is binding upon the United States, citizens of the United States, and other persons serving this country.

For the United States armed forces, ensuring the humane treatment of all detainees is also mandated by Department of Defense policy during all military operations, even those that might not qualify as armed conflicts (an indication of the recognized significance of this principle as it relates to the effectiveness and credibility of U.S. military operations). In short, the humane treatment of detainees and other individuals not actively participating in hostilities is at the very core of the regulation of armed conflict and essential to effective mission accomplishment.

In the context of an international armed conflict (an inter-state armed conflict or the belligerent occupation of the territory of one state by the armed forces of another state), each of the four Geneva Conventions include specific treaty provisions requiring the humane treatment of individuals protected by those Conventions. For example, captured enemy personnel who qualify as prisoners of war are protected persons within the meaning of the Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention). Article 13 of that Convention mandates that “prisoners of war must at all times be humanely treated.” During belligerent occupation, civilians subjected to preventive security internment are, in contrast, protected by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). Article 27 of this Convention mandates that protected persons “shall at all times be humanely treated.” Perhaps an even more significant indication of the non-derogable nature of the humane treatment obligation is found in Article 5 of the Fourth Geneva Convention. This article authorizes denial of many of the Convention’s privileges for civilians detained as the result of conduct that threatens the security of a state or an

occupying power, but nevertheless obligates the detaining power to ensure that even these detainees be treated humanely:

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State. Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention. *In each case, such persons shall nevertheless be treated with humanity . . .*<sup>2</sup>

As a party to both of these Conventions, these obligations are applicable to U.S. armed forces as a matter of treaty law, and are also considered obligatory as a matter of customary international law. Furthermore, the significance of this humane treatment obligation is bolstered by the fact that the Fourth Convention classifies inhuman treatment (and other maltreatment) of a person protected within the meaning of the treaty (including a civilian detained for reasons of imperative security) as a Grave Breach of the Convention. Grave Breaches are, quite simply, violations of the Geneva Conventions considered so severe and unacceptable that they trigger both an obligation to prosecute the wrongdoer as well as universal jurisdiction over the violation. This is established by Article 147 of the Fourth Convention, which states:

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or *inhuman treatment*, including biological experiments, willfully causing great suffering or serious injury to body or health

Finally, in order to ensure that no individual could be excluded from this humane treatment obligation by asserting they failed to qualify for the protections of one of these Conventions, Article 75 of the 1977 Additional Protocol I to the Geneva Conventions indicates that “persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances . . .” Although the U.S. is not a party to AP I, this article and the humane treatment obligation it implements has

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<sup>2</sup> Convention (IV) Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S 287, at art. 147.

been treated as a customary international law obligation by U.S. forces for decades.<sup>3</sup> Perhaps more importantly, it reflects a premise at the core of U.S. compliance with humanitarian law: no person falls below this baseline standard of protection, no matter how the operation or the individual is legally classified.

Respect for this humane treatment obligation is equally applicable to armed conflicts not of an international character. While the armed conflict in Iraq qualified as international in character, the extension of this non-derogable obligation to the non-international armed conflict context is a further indication that it is a core principle of IHL. Indeed, Article 3 to the four Geneva Conventions of 1949 (Common Article 3) is widely regarded as the most significant treaty articulation of the humane treatment principle, and establishes a prohibition against cruel, inhuman, or degrading treatment, to include violence to life and person, including any physical abuse, torture, mental abuse or coercion, and outrages upon personal dignity, in particular humiliating and degrading treatment. Although Common Article 3 applies as a matter of treaty law only to situations of non-international armed conflict, the obligation it reflects has since 1949 been recognized as applicable to both non-international and international armed conflicts. Indeed, the International Committee of the Red Cross Commentary associated with Common Article 3 emphasized that because the obligation it created was so fundamental, it applied *a fortiori* to situations of international armed conflict.<sup>4</sup> This Commentary indicates why the principle of humane treatment provides the very foundation for the humanitarian focus of the Geneva tradition of protecting victims of war:

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<sup>3</sup> See, e.g., United States Army Field Manual 27-10, The Law of Land Warfare, (1956), par. 2(b):

The conduct of armed hostilities on land is regulated by the law of land warfare which is both written and unwritten. It is inspired by the desire to diminish the evils of war by:

- a. Protecting both combatants and noncombatants from unnecessary suffering;
- b. *Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and*
- c. Facilitating the restoration of peace.

Id. (emphasis added); see also INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK 86 (MAJ Gillman and MAJ Johnson, ed., 2012), at 159 (noting that "The Army doctrine for specific treatment of detainees and the internment or resettlement of civilians is contained in AR 190-8 and FM 3-19.40, both of which are drafted with Geneva Conventions III and IV as the standard. These standards of treatment are the default standards for detainee operations, unless directed otherwise by competent authority (usually the Combatant Commander or higher).

<sup>4</sup> JEAN PICTET, ET. AL., COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949, (1952) at 52 ("The value of the provision is not limited to the field dealt with in Article 3. Representing, as it does, the minimum which must be applied in the least determinate of conflicts, its terms must a fortiori be respected in the case of international conflicts proper when all the provisions of the Convention are applicable. For "the greater obligation includes the lesser", as one might say.").

Humane treatment. '--- We find expressed here the fundamental principle underlying the four Geneva Conventions. It is most fortunate that it should have been set forth in this Article, in view of the decision to dispense with a Preamble. The value of the provision is not limited to the field dealt with in Article 3. Representing, as it does, the minimum which must be applied *in the least determinate of conflicts*, its terms must a fortiori be respected in the case of international conflicts proper, when all the provisions of the Convention are applicable.<sup>5</sup>

Compliance with the humane treatment obligation is the essential component to respect for the concept of humanity – a fundamental principle of law related to military operations. It reflects the basic concept that all individuals, even those who actively oppose friendly armed forces are, when no longer capable of manifesting such opposition, entitled to respect as human beings, which in turn is premised on a truism that animates the LOAC: the execution of military operations represents the implementation of national purpose, and is not motivated by personal interests, anger, or revenge.

While the humane treatment mandate for any person who is *hors de combat* is regarded as a core IHL principle, it is more difficult to comprehensively define the full scope of the protection provided by this principle. However, this is not difficult at its core: any physical abuse or violence, mental coercion, or conduct that would be objectively viewed as humiliating in nature violates this principle. This is all reflected in the content of common article 3, which states the broad humane treatment mandate, but then uses a non-exclusive list of prohibited acts to define conduct that is “especially prohibited.” This approach to giving meaning to the principle is emphasized in another excerpt from the ICRC Commentary:

Lengthy definition of expressions such as "humane treatment" or "to treat humanely" is unnecessary, as they have entered sufficiently into current parlance to be understood. It would therefore be pointless and even dangerous to try to enumerate things with which a human being must be provided for his normal maintenance as distinct from that of an animal, or to lay down in detail the manner in which one must behave towards him in order to show that one is treating him "humanely", that is to say as a fellow human being and not as a beast or a thing. The details of such treatment may, moreover, vary according to circumstances -- particularly the climate -- and to what is feasible.

On the other hand, there is less difficulty in enumerating things which are

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<sup>5</sup> *Id.* (emphasis added).

incompatible with humane treatment. That is the method followed in the Convention when it proclaims four absolute prohibitions. The wording adopted could not be more definite: "To this end, the following acts ' are ' and ' shall remain prohibited at any time and in any place whatsoever [murder; summary execution; torture; cruel, inhuman, and degrading treatment . . .].'" No possible loophole is left; there can be no excuse, no attenuating circumstances.<sup>6</sup>

Although the Commentary suggests the impracticability of a comprehensive definition of humane treatment, the reference to "treatment like a human being" has tremendous significance. This is particularly true with regard to captured enemy fighters or civilians subject to internment due to conduct posing a threat to the security of occupation forces.

Understanding the reality that mortal combat always presents a risk of evoking the darker side of human instinct – instinct that can and often has led to acts of revenge and retribution directed towards captured opponents - is essential to understanding the profound significance of the simple assertion that humane treatment means treating a former opponent as a human being. One of the most difficult challenges for any soldier is to overcome the natural aversion of civilized society to the killing of another human being. Because of this, professional armed forces have long understood that preparing warriors for battle requires a certain level of dehumanization of the enemy. An interesting pop culture illustration of this is seen in a movie about the Korean War, "Fixed Bayonets!" During one scene, a young soldier confronts his first opportunity to kill an enemy with direct fire from his rifle. He is incapable of pulling the trigger, and another soldier must then shoot the enemy. However, his Sergeant mistakenly believes that the soldier who froze was actually the one who killed the enemy, and the following dialogue ensues: "[A]ll you gotta remember is that you're not shooting at a man; you're shooting at an enemy. Once you remember this you are over the hump; you are a rifleman."<sup>1</sup> This fictional episode reflects the reality that transforming a civilian into a warrior requires dehumanization of the enemy. As brutal as this may sound, it has become a core tenet of military training, particularly in response to empirical studies following World War II that indicated that a large percentage of front line soldiers, like the fictional soldier in this episode, were unable to overcome their aversion to killing and as a result never fired a shot. It is therefore no accident that soldiers train by shooting at "silhouettes" and that the enemy is referred to with negative characterizations.

The humane treatment mandate accordingly requires warriors to "restore" to a status of human being opponents who may have been trying to kill the detaining forces only moments prior to capture. This is no small challenge, and it does not necessarily

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<sup>6</sup> *Id.* at 53.

become easier the more attenuated the detainee becomes from the immediate fight. Soldiers who have been trained to vilify the enemy are required to treat that enemy in a fundamentally different manner upon capture and during all phases of detention. Thus, when the Commentary refers to “treatment as a human being”, it is really indicating that at its core, humane treatment obligates detaining forces to discard the dehumanized vision of an enemy and see that enemy through an entirely different lens upon capture: a lens of humanity.

The humane treatment obligation in the context of any armed conflict is triggered when the forces of one of the parties to the conflict gain control over an individual subject to detention as a result of suspicion of or perception of being a member of an opposition force or of conduct posing a threat to friendly forces. At this point, the captured individual is *hors de combat*. The humane treatment of a captive made *hors de combat* begins when they are subdued and no longer capable of actively participating in hostilities or threatening friendly forces. Once captured, detention of the individual commences, and conditions of detention then become the critical elements of implementing the humane treatment obligation. However, it is important to analyze this obligation based on the differing levels of detention. While the basic obligation to do no harm arises at the moment of capture, the provision of resources for a detainee’s benefit at the point of capture is obviously not identical to what is required in a mature detention facility, because the provision of resources for detainees will often be far more operationally restricted at the point of capture than in detention facilities established for short or longer term internment. This contextual analysis of the obligation is supported by the common article 3 Commentary cited above, which indicates that “[T]he details of such treatment may, moreover, vary according to circumstances -- particularly the climate -- and to what is feasible.”<sup>7</sup>

Acknowledging the constant applicability of the humane treatment obligation does not, however, resolve every question regarding detainee treatment. The combat environment is one of extreme uncertainty, and even the most comprehensive detainee treatment doctrine is susceptible to this uncertainty. Implementation of this obligation therefore requires a comprehensive approach to preparing forces and other personnel for dealing with these issues, anticipating logistical and security requirements related to detention operations, and providing responsible leadership oversight of such operations. Accordingly, in operational practice, compliance with the humane treatment obligation is most effectively implemented by building detainee treatment on a three-pillar foundation. The first pillar is to ensure detaining forces recognize that once *hors de combat*, an opponent is no longer the permissible object of hostility. The second pillar is to comply with the express prohibitions enumerated in common article 3. The final pillar is to ensure that at a minimum, conditions for detainees are never worse than those for the detaining forces. This last pillar is the essential solution to the variables of

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<sup>7</sup> GCI Commentary, at 53.

the combat environment, for it ensures that “situational” application of the humane treatment obligation is linked to a standard of reasonableness. For example, if rations are in short supply, they will be shared equally by detaining and detained forces; medical treatment will always be based on principles of triage applied equally to detaining and detained personnel; the shelter provided for detainees will mirror that provided for detaining forces, and so on. This last pillar, however, has no impact on the express prohibition against cruel, inhuman, or degrading treatment, or against the use of coercion to obtain information. Indeed, because any such maltreatment would be considered unacceptable if inflicted on U.S. forces, this actually emphasizes the absolute impermissibility of such maltreatment.

It therefore appears why it is in the context of detention operations that the list of enumerated prohibitions in common article 3 becomes critical, as they indicate that even at the point of capture in the midst of intense combat, “circumstances” can never justify abusive treatment of a detainee. This obligation continues through all phases of detention. This does not, of course, impede the ability of the detaining force to take measures to secure the captured individual and protect security interests. Accordingly, there is nothing inhumane about following what are known in U.S. military practice as the five “S’s”: Secure, Search, Segregate, Safeguard, and Speed to the Rear. Nor would blindfolding a captured enemy be inhumane *at this point of the detention process*, so long as there is a security-based justification.

As the detainee progresses from the point of initial capture to more mature detention facilities, the treatment standards should become more “mature” and less *ad hoc*. Additional aspects of implementing this obligation arise at the established detention facility level. These include first and foremost the provision of basic needs of human existence: adequate food, shelter, clothing, and medical care. In addition, the right to free exercise of religion, respect for religious and cultural meal preferences, and access to impartial humanitarian relief agencies also should fall within the definition of humane treatment.<sup>8</sup> (It is instructive to note that all of these aspects of implementing the humane treatment obligation are expressly provided for in the 1977 Additional Protocol II to the Geneva Conventions. While this treaty applies only to non-international armed conflicts, the fact that these specific protections were provided for in this category of armed conflict bolsters the conclusion that, like Common Article 3 itself, they must be respected during international armed conflicts. It is also important to note that while the U.S. is not a party to Additional Protocol II, both President Reagan and President Clinton sought Senate advice and consent for this treaty and indicated that the U.S. would apply the treaty to any armed conflict triggering the provisions of Common Article 3).

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<sup>8</sup> See Article 5 of Additional Protocol II.

Respect for the human dignity of detainees or internees is equally central to compliance with the humane treatment obligation. As a result, the obligation prohibits not only severe types of maltreatment rising to the level of torture, but also any maltreatment that is cruel, inhuman, or degrading. The fact that the pressures produced by the brutality and intensity of armed hostilities make it foreseeable that individuals tasked with securing, controlling, and interrogating detainees may be inclined to subject detainees to cruel or inhuman treatment is the very genesis of Common Article 3 and other provisions mandating humane treatment. To this end, it is instructive that the enumeration of “especially prohibited” conduct included in Common Article 3 and Article 75 of AP I focus primarily on physically abusive conduct.

It is probably impossible to provide a comprehensive list of all acts or omissions that would transgress this prohibition against cruel, inhuman, or degrading treatment, just as it is impossible to define comprehensively all maltreatment qualifying as torture. Indeed, enumerating such a list would invite creative avoidance of the humane treatment obligation by use of inhumane treatment not explicitly prohibited. Instead, the objective of the obligation is clear: treat detainees as human beings who are subjected to deprivation of liberty as a preventive (non-punitive) measure. In 1984, during my training as a new Army intelligence officer, I was instructed on a standard for assessing the propriety of detainee treatment that resonates with me to this day (this instruction was provided by a seasoned Army interrogator, not a military lawyer): “ask simply whether you would consider what you are about to do to the detainee, if done to your subordinate by the enemy, improper.” This pragmatic touchstone of humane treatment reflects the prohibition against cruel and degrading treatment, as any such treatment if inflicted on a U.S. soldier detained by an enemy would unquestionably be perceived as improper.

It is therefore clear that any physical or mental maltreatment of a detainee violates the humane treatment mandate and the express prohibition against cruel treatment; that any conduct intended to humiliate the detainee would violate the prohibition against degrading treatment; and that any act or omission that subjects the detainee to conditions or treatment inconsistent with the minimum standards we would demand for our own forces upon capture must be considered inhumane. Implementation of this humane treatment obligation is essential for a number of reasons beyond the humanitarian objective of protecting victims of war from unnecessary suffering. First, it is directly linked to the strategic end state of military operations. Abuse of individuals under the control of a detaining power has proved throughout history to alienate the enemy population, stiffen resistance by enemy operatives, and discredit the legitimacy of friendly operations. Second, and not frequently understood, requiring respect for the human dignity of individuals subject to the control of a detaining power protects the moral integrity of the friendly forces tasked with conducting detention and interrogation operations. These IHL rules evolved from the reasoned judgment of military professionals who recognized that non-derogable humanitarian protections for individuals rendered *hors de combat* by capture

protect friendly forces from the corrosive moral consequences of mortal combat. This aspect of IHL is reflected in virtually every codification of laws and customs of war. Indeed, the widely regarded foundation for all of the modern IHL treaties, the venerated Lieber Code for U.S. forces engaged in the struggle to preserve the nation during the American Civil War, emphasized that “Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God”, and that “Military necessity does not admit of cruelty -- that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions.”

Ensuring compliance with the humane treatment obligation is obviously a challenge in the midst of intense combat operations that necessitates both effective training of those entrusted with the control of and interaction with detainees, and effective leadership oversight of detention operations. The dehumanization of opposition forces and the inevitable instinct for revenge or retribution even among the most disciplined forces cannot be ignored. It is for this reason that effective training and responsible command leadership are essential to facilitate respect for and compliance with this obligation. The efficacy of even the most comprehensive humanitarian regulatory regime is absolutely contingent on the proper training and leadership of those tasked with the capture, detention, and interrogation of detainees. This is especially important with interrogators, who will be under intense pressure to produce actionable intelligence to facilitate tactical and operational success of friendly forces. While use of positive incentives is both authorized and encouraged, IHL strictly forbids coercive measures even to secure the most vital intelligence.

Nor is training alone sufficient to effectively implement this obligation. Commanders and those responsible for leadership of subordinates engaged in detention operations must embrace their obligation to provide constant oversight of such operations in order to identify and correct deficiencies rapidly and efficiently. A critical aspect of this oversight is the recognition that the risk of breach by subordinates will inevitably increase with the increased intensity and pressures associated with combat operations. This is almost axiomatic in respect to interrogation operations. Interrogators face the daunting task of providing actionable information from captured and detained personnel to contribute to the intelligence development process. The perceived importance of this “human” source information is extremely high during counter-insurgency operations precisely because other sources of intelligence – such as imagery and signals intelligence – are of diminished effectiveness against insurgent enemies. Effective leaders will recognize that the pressure to deliver actionable information will inevitably push even the very best trained interrogators to fall into the trap of acting on the belief that the means justifies the ends, and will therefore increase oversight and supervisory efforts precisely when this pressure is most intense. Indeed, the IHL concept of command responsibility is built on the premise that the exercise of “responsible command” is an indispensable element in ensuring compliance with IHL obligations.

I have reviewed the four plaintiffs' responses to interrogatories, in which they describe the maltreatment they suffered during their detention at Abu Ghraib. According to his interrogatory response, Mr. Al-Ejaili was subjected to repeated beatings; periodically deprived of food for multiple days; forced to remain naked for lengthy periods; repeatedly placed in stress positions for long periods of time; exposed to cold temperatures and cold water; threatened with unleashed dogs; kept in solitary confinement; and subjected to sexually humiliating taunting. Mr. Al-Shimari states that he was held in a closed, windowless cell and in conditions of sensory deprivation; that he was subject to gratuitous and humiliating sexual touching; choked, punched, and hit on the side of his head; hooded while a dog was unleashed on his body; forced to exercise to the point of exhaustion; and exposed to extremely cold temperatures; during his interrogations, he states he was frequently beaten, kicked, attacked by dogs, and electrically shocked. Mr. Al-Zuba'e states that he had his head smashed against the wall and was handcuffed to the upper bunk of the bed with his arms above his head and his feet barely touching the floor; stripped naked and left naked for three days in the extreme cold; and beaten with fists and/or wooden sticks or attacked by dogs. He also states that was exposed to cold temperatures, imprisoned in solitary confinement in conditions of sensory deprivation, and forced to crawl or slide on his stomach while naked down the length of a hallway. Mr. Rashid states was forced to remain naked for lengthy period; sexually assaulted several times, electrically shocked, and beaten with wooden sticks all over his body until he lost consciousness; dragged out of his cell and suspended from the ceiling while being beating. During an interrogation he states he was subject to mock execution and seriously injured, and at the end of the interrogation, dragged naked across the floor. He also states that he was forced to watch the rape of two female detainees and forced into a pyramid, while hooded and naked, with other naked detainees.

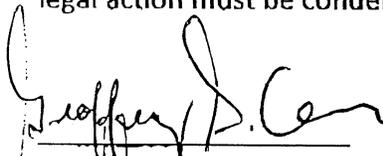
Based on the information provided to me, it appears these detainees were civilians subjected to internment<sup>9</sup>. As such, they qualified as protected persons within the meaning of Article 4 of that Convention, and Article 27 prohibited any inhumane treatment or coercion against them. Furthermore, Article 147 of this same treaty condemns any inhuman treatment – even if it does not rise to the level of torture – as a grave breach of the Convention resulting in both an *obligation* to prosecute those responsible and universal jurisdiction over these offenses. Based on the foregoing, it is my opinion that all of the alleged acts of maltreatment inflicted on these detainees violated fundamental IHL obligations and almost certainly violated the specific protective provisions of the Fourth Geneva Convention and qualified as grave breaches of that Convention.

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<sup>9</sup> While the reasons for the four plaintiffs' detention have not been established by a tribunal, it appears that the purported reason for their detention was be that they were deemed to be an imperative security risk to U.S. occupation forces in Iraq in accordance with Article 78 of the Fourth Geneva Convention. But whatever the grounds for their detention, as discussed in text above, they would be entitled under IHL to humane treatment by the detaining force.

Assuming *arguendo* that these detainees did not qualify for protected person status pursuant to the Fourth Convention (based on a theory that they were properly classified as unprivileged belligerents and therefore not protected by either the Third or Fourth Geneva Conventions) does not alter my conclusion that this maltreatment violated IHL. While it would not have qualified as a grave breach of the Fourth Convention, it is clear from the analysis provided above that no person falls outside the scope of the humane treatment protection. As noted above, Article 75 of AP I was included precisely to ensure that even a detainee disqualified from the more explicit protections of one of the Geneva Conventions fell within the protection of the humane treatment mandate. Accordingly, customary international law required that even unprivileged belligerents be treated humanely once captured and detained, and designation of a detainee in such a manner could not release the U.S. from this obligation nor dilute the protective scope of the obligation.

Finally, I note that any assertion that these detainees fell outside the protection of this fundamental IHL norm based on a theory that the conflict they engaged in was somehow not contemplated by the drafters of the Geneva Conventions is fatally flawed. First, as noted throughout this opinion, the combined effect of the Conventions, Common Article 3, and the 1977 Additional Protocols render the conclusion that no individual may be excluded from this protection virtually irrefutable. Second, even conceding this remotely viable hypothesis does not end the analysis. Instead, it would merely require resort to the Marten's Clause – a proverbial “last line” defense against any suggestion that cruel or inhumane treatment may be permissible. This treaty provision, which first appeared in the preamble to the 1899 Hague Convention and was subsequently included (with slight modification) in the Geneva Conventions and the Additional Protocols, provides in its most recent version, “Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience.” Thus, IHL actually anticipated the unanticipated, and established a baseline norm: even in situations of conflict arising in the future that may not have been anticipated sufficiently to ensure they trigger the humanitarian provisions of relevant IHL treaties, the principle of humanity is an indelible limit on the authority of participants in hostilities. No place has this been, nor will it be more profound than in the treatment of individuals at the mercy of a detaining power, and it is for this reason that the maltreatment at the center of this legal action must be condemned.



Geoffrey Corn

February 1, 2013

Geoffrey S. Corn  
Curriculum Vitae

# GEOFFREY STEVEN CORN

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## PROFESSIONAL EXPERIENCE

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### **South Texas College of Law**, Houston, TX

Professor of Law and Presidential Research Professor	2011 – present
Associate Professor of Law	2008-2011
Assistant Professor of Law	2005-2008

#### Teaching Awards

Professor of the Year: 2006, 2008, 2009, 2010, 2011, 2012

Advisor of the Year: 2005, 2007, 2008, 2009, 2010, 2011, 2012

### **United States Army**

Special Assistant to The Judge Advocate General for Law of War Matters and Chief of the Law of War Branch, Office of The Judge Advocate General	2004-2005
Judge Advocate Officer (Retired Lieutenant Colonel)	1992-2004
Military Intelligence Officer	1984-1992

## EDUCATION

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<b>US Army JUDGE ADVOCATE GENERAL'S SCHOOL</b> , Charlottesville, Virginia	LL.M., 1997
Distinguished Graduate (first in class)	
American Bar Association Award for Professional Merit	
Award for Outstanding Achievement in International Law	

<b>GEORGE WASHINGTON UNIVERSITY LAW SCHOOL</b> , Washington, D.C.	J.D., 1992
Highest Honors (top two percent of class, ranked 10 of 415 graduates)	
Order of the Coif	
George Washington Law Review	
Award for outstanding achievement in the field of civil procedure	

<b>HARTWICK COLLEGE</b> , Oneonta, NY	BA History, 1983
Magna Cum Laude	
John Christopher Hartwick Scholarship (awarded to the top six members of the rising senior class for overall academic achievement and commitment to the values represented by John Christopher Hartwick)	

## PUBLICATIONS

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### WORKS IN PROGRESS

*Terrorist Tips and Vehicle Searches: Rethinking Reasonableness in an Age of Terror*

*War, Law, and the Moral Relevance of Legal Fictions*

*Targeted Killing and Constitutional Legality: Assessing Reasonableness through a Fourth Amendment Lens*

*The Law of Military Operations* (Oxford University Press, forthcoming, 2013) (editor and lead author).

*War Crimes and War Crime Trials: From Leipzig to the ICC and Beyond: Cases, Materials and Comments (2<sup>nd</sup> Edition)* (North Carolina Academic Press, forthcoming, 2012) (editor and lead author)

### BOOKS AND BOOK CHAPTERS

THE LAW OF ARMED CONFLICT: AN OPERATIONAL APPROACH (Aspen Publishers, 2012) (editor and lead author)

PRINCIPLES OF COUNTER-TERRORISM: A CONCISE HORNBOOK (Thompson-West 2010) with Professor Jimmy Gurule

WAR ON TERROR AND THE LAWS OF WAR: A MILITARY PERSPECTIVE (Oxford University Press 2009) (editor and lead author)

*Two Sides of the Combatant COIN: Untangling Direct Participation from Belligerent Status in Non-International Armed Conflicts*, Chapter in *Old Laws, New War* (Volume II), (Oxford University Press, forthcoming, 2013)

*Civilian Control over the Military*, Chapter in *Ashgate Research Companion to Political Leadership*, (Ashgate Publishers 2009) (with Eric Jensen)

*Legal Developments in the Role of Contractors Supporting Military Operations*, Chapter in *CONTRACTORS AND WAR: THE TRANSFORMATION OF UNITED STATES' MILITARY AND STABILIZATION OPERATIONS*, (Stanford University Press forthcoming 2012)

*Transnational Counterterrorist Military Operations: The Stakes of Two Legal Models* Chapter in *Old Laws, New War*, (Columbia University Press, 2012)

*The Principle of Humanity*, in the *Max Planck Encyclopedia of Public International Law*, (Oxford University Press, 2011)

*Questioning the Jurisdictional Moorings of the Military Commission Act*, Chapter in MILITARY LAW AND JUSTICE (Edited by Asifa Begim), (Icafi University Press 2010 (reprint of an article published in the Texas International Law Journal)

## ARTICLES

*Losing the Forest for the Trees: Syria, Law and the Pragmatics of Conflict Recognition*, (with Laurie Blank), Vanderbilt Journal of Transnational Law (forthcoming, spring, 2013)

*Fishing for the Red Herring: The Elusive Effort to Define the Geography of Armed Conflict*, Naval War College International Law Blue Book (forthcoming, fall, 2012)

*Arizona v. Gant: Deciphering the Meaning of Reasonable Belief*, Connecticut Law Review (forthcoming, Fall 2012)

*Three Important Changes to the Uniform Code of Military Justice*, Journal of National Security Law (with Professor Victor Hansen) (forthcoming, Fall 2012)

*Unprivileged Belligerents, Preventive Detention, and Fundamental Fairness: Rethinking the Review Tribunal Representation Model*, Santa Clara Journal of International Law (forthcoming, Spring 2012)

*Two Sides of the Combatant COIN: Untangling Continuous Combat Function from Belligerent Status in Non-International Armed Conflicts*, 33 U. Pa. J. Int'l L. UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 313 (2012)

*The Law of Operational Targeting: Viewing the LOAC through an Operational Lens*, 47 Tex. Int'l L.J. 337 (2012) (with Lieutenant Colonel Gary Corn)

*The Missing Miranda Warning: What Criminal Suspects Really Need to Understand to Effectively Exercise the Privilege Against Self-Incrimination*, UTAH L. REV. (forthcoming (2012), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1762896](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1762896))

*Targeting, Command Judgment, and a Proposed Quantum of Proof Component: A Fourth Amendment Lesson in Contextual Reasonableness*, 77 Brook. L. Rev. 2 (2012).

*Siren Song: The Implications of the Goldstone Report on International Criminal Law*, Berkeley J. Int'l L., Vol. 7, 2011 (with Lieutenant Colonel Chris Jenks)

*America's Longest Held Prisoner of War: The Legal Odyssey of General Manuel Noriega*, LOUISIANA LAW REVIEW (with Professor Sharon Finnegan), 71 La. L. Rev. 1111 (2011)

*Thinking the Unthinkable: Is it Time to Consider Granting Combatant Immunity to Non-State Belligerents?* 22 STANFORD LAW AND POL. REV. 253 (2011)

*Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality*, 14 Lewis and Clark L. Rev. 687 (2010)

*International Legality, the Use of Military Force, and Burdens of Persuasion: The Security Council, the Inherent Right of Self-Defense, and the Perception of International Legitimacy*, (with Colonel Dennis Gyllensporre, Swedish Army), 30 PACE LAW REV. 484 (2010)

*Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict*, JOURNAL OF INTERNATIONAL HUMANITARIAN LEGAL STUDIES 54 (2010)

*The Obama Administration's First Year and IHL: A Pragmatist Reclaims the High Ground*, Yearbook of International Humanitarian Law (with Eric Jensen), 12 YIHL 263 (2009)

*Imputed Liability for Supervising Prosecutors: Applying the Military Doctrine of Command Responsibility to Reduce Prosecutorial Misconduct*, Berkeley J. Crim. L. (with Professor Adam Gershowitz) 14 BERKLEY J. OF CRIM. LAW 395 (2009)

*Understanding the Limitations on Invoking the Courts-Martial Option for Trying Captured Terrorists*, 17 WILLAMETTE J. OF INT. LAW 1 (2009)

*Back to the Future: De Facto Hostilities, Transnational Terrorism, and the Purpose of the Law of Armed Conflict*, 30 U. PA. J. INT'L. L. 1345 (2009)

*The Commission Prosecutor: Navigating Uncharted Ethical Waters in a Sea of International Uncertainty*, 50 S. Tex. L. Rev. 803 (2009)

*The National Security Constitution: The Separation of Powers and the War on Terror*, 23 St. John's J. Legal Comment. 973 (2009)

*Transnational Armed Conflict: A 'Principled' Approach to the Regulation of Counter-Terror Combat Operations*, 42 ISRAEL L. REV. 45 (2009) (with Eric T. Jensen)

*Making the Case for Conflict Bifurcation in Afghanistan: Transnational Armed Conflict, Al Qaida, and the Limits of the Associated Militia Concept*, International Law Studies (U.S. Naval War College), Vol. 85, 2009 (republished in the ISRAELI YEARBOOK OF HUMAN RIGHTS)

*Viewing Hamdan through a Military Lens*, 33 OKLAHOMA CITY L. REV. 101 (2008)

*Untying the Gordian Knot: A Proposal for Determining Applicability of the Laws of War to the War on Terror*, 81 TEMPLE L. REV. 787 (2008)

*The Role of the Courts in the War on Terror: The Intersection of Hyperbole, Military Necessity, and Judicial Review*, 43 NEW ENGLAND L. REV. 17 (2008)

*Bringing Discipline to the Civilianization of the Battlefield: A Proposal for a More Legitimate Approach to Resurrecting Military Criminal Jurisdiction over Civilian Augmentees*, 62 MIAMI L. REV. 491 (2008)

*Unarmed but How Dangerous? Civilians Augmentees, the Law of Armed Conflict, and the Search for an Effective Standard for Defining the Limits of Civilian Battlefield Functions*, 2 JOURNAL OF NAT'L SECURITY LAW & POLICY 257 (2008)

*Questioning the Jurisdictional Moorings of the Military Commission Act*, 43 TEX. INT'L L.J. 29. (2007)

*Enemy Combatants and Access to Habeas Corpus: Questioning the Validity of the Prisoner of War Analogy*, 5 Santa Clara J. Int'l L. 2, (2007)

*The Political Balance of Power Over the Military: Rethinking the Relationship between the Armed Forces, the President, and Congress*, 44 HOUS. L. REV. 553. (2007)

*Understanding the Distinct Function of the Combatant Status Review Tribunals: A Response to Blocher*, 116 YALE L.J. (POCKET PART) 327 (2006)

*Hamdan, Lebanon, and the Regulation of Armed Conflict: The Need to Recognize a Hybrid Category of Armed Conflict*, 40 Vand. J. Transnat'l L. 295 (2006)

*Taking the Bitter with the Sweet: A "Full and Fair" Critique of the Military Commissions*, 35 STETSON L. REV. 811 (2006)

*Hamdan, Fundamental Fairness, and the Significance of Additional Protocol II*, THE ARMY LAWYER, (August, 2006)

*Developing Warrior Lawyers: Why it's Time to Create a Joint Services Law of War Academy*, Mil. L. Rev., (June, 2006)

*"Snipers in the Minaret—What is the Rule?" The Law of War and the Protection of Cultural Property: A Complex Equation*, THE ARMY LAWYER, (July, 2005)

*"Improving the Fighting Position" A Practitioners Guide to Operational Law Support to the Interrogation Process*, The Army Lawyer, (July, 2005) (with LTC Paul Kantwill and CPT Jon Holdoway)

*Bringing International Agreements Out of the Shadows: Confronting the Challenges of a Changing Force*, The Army Lawyer, (July, 2005) (with COL James Schoettler)

*Clinton, Kosovo, and the Final Destruction of the War Powers, Resolution*, William and Mary Law Review, April 2001 (42 WM AND MARY L. REV. 1149); cited in Dycus, et al., NATIONAL SECURITY LAW, 3rd edition (July 12, 2002)

*Authority to Court-Martial Non-U.S. Military Personnel for Serious Violations of International Humanitarian Law Committed During Internal Armed Conflicts*, 167 Mil. L. Rev. 74 (2001) (cited in CRS Report for Congress, *Terrorism and the Law of War: Trying Terrorists as War Criminals before Military Commissions* (December 11, 2001))

*“To Be or Not To Be, That is the Question?” Contemporary Military Operations and the Status of Captured Personnel*, 3 J. Nat’l. Security L. 75 (1999) (cited in CRS Report for Congress, *Treatment of “Battlefield Detainees” in the War on Terror* (September 17, 2003))

*Campbell v. Clinton: The “Implied Consent” Theory of Presidential War Power is Again Validated*, 161 Mil. L. Rev. 202 (1999) (cited in Dycus, et al., *National Security Law*, 3rd edition (July 12, 2002))

*Presidential War Power: Do the Courts Offer Any Answers*, 157 Mil. L. Rev. 180 (1998) (cited in *Campbell v. Clinton*, 203 F.2d 19, (U.S. App. 2000))

#### **ADDITIONAL WRITINGS**

*The Problem With Law Avoidance*, 32 ABA National Security Law Report 1, 4-7 (Winter 2010)

Article Commissioned by the International Humanitarian Law Research Initiative of Harvard Law School and the Swiss Government: *Law of Armed Conflict Challenges in Multi-National Operations* (2007)

*New Options for Prosecuting War Criminals in Internal Armed Conflicts*, Parameters, U.S. Army War College Quarterly, Spring 2002 (also published in Spanish in the quarterly Hispano-American edition of the Military Review as *Nuevas Opciones para la Prosecucion de Criminales de Guerra en los Conflictos Armadas Internos*, March-April 2003)

*War! The President, the Congress, and the Constitution*, published by the Institut fur Friedenssicherungsrecht of the Ruhr Universitat Bochum in *Humanitares Volkerrecht* by the Deutsches Rotes Kreuz (German Red Cross) in April 2002 (this article was requested following a presentation made at the on the same subject at the bi-annual German –American Law Symposium in Garmisch, Germany in 2001)

International and Operational Law Deskbook, TJAGSA, (JAG School developed textbook for use by LLM candidates) (contributing author) 1997-2000

The Operational Law Handbook, TJAGSA (Treatise type publication developed by the JAG School and widely utilized by U.S. and international legal advisors) (contributing author) 1997-2003

## SELECTED PRESENTATIONS

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*Legal Interoperability and Multi-National Operations*, International Association for Military Law and the Law of War Tri-Annual Conference, Quebec, Canada, May 2012

*Unprivileged Belligerents, Preventive Detention, and Fair Process: Questioning the Lay Representation Model*, Santa Clara Journal of International Law Symposium on Emerging Issues in International Humanitarian Law, February 2012

*National Security and Human Rights*, Keynote Address, Mexican National Security Agency Legal Conference, Mexico D.F., November 2011

*Emerging Concepts of Armed Conflict and the Challenge to Internal Security*, Annual International Counter-Terrorism Conference, Interdisciplinary Center Herzilya, Israel, September 2011

*Thematic Framework for a National Security Law Course*, ABA Standing Committee on National Security Law Annual Conference on Teaching National Security Law, Georgetown Law Center, September 2011

*Integrating LOAC Instruction into Other Law School Subject Areas*, ICRC Conference on Teaching International Humanitarian Law, Emory Law School, February 2011

*A Proposed Quantum Framework for Targeting Reasonableness*, Presentation at the Annual Legal Conference for the U.S. Special Operations Command, Tampa, FL, February 2011

*A Proposed Quantum Framework for Targeting Reasonableness*, Presentation at the Annual Legal Conference for the U.S. Central Command, Doha, Qatar, February 2011

*Critiquing the Air and Missile Warfare Manual*, University of Texas International Law Journal Symposium, Austin, TX, February 2011

*Two Sides of the Combatant COIN: Belligerent Status in Non-International Armed Conflicts*, Annual International Counter-Terrorism Conference, Interdisciplinary Center Herzliya, Israel, September 2010

*The Role of Human Rights in Armed Conflict*, Keynote Address to the International Law Students Association Summer Conference in Istanbul, Turkey, July 2010

*Civilian Protection during Military Operations*, Defense Institute of International Legal Studies, Newport, RI, July 2010

*Understanding the Contextual Meaning of Arbitrary State Action*, Conference of the American Armies, Bogota, Colombia, April 2010

*Seeking Legal Legitimacy in the War on Terror*, Presentation to the Political Science Department of Hartwick College, April 2010

*The Law of War and the War on Terror*, Presentation to the Prairie View A&M Army ROTC and Pre-Law Organization, April 2010

*Integrating LOAC Instruction into Other Law School Subject Areas*, ICRC Conference on Teaching International Humanitarian Law, Berkley Law School, April 2010

*Human Rights in Armed Conflict*, Faculty Forum Presentation, Southern Methodist University Dedman School of Law, February 2010

*Mind the Gap: Human Rights and Armed Conflict*, Debate with Professor Blum of Harvard Law School sponsored by the American Society of International Law, Washington, DC, February 2010

*The Law of War and the War on Terror: Current Issues*, Keynote Presentation at the Annual Legal Conference for the U.S. Special Operations Command, Tampa, FL, February 2010

*The Logical Limits of Applying Human Rights Norms in Armed Conflict*, Annual Sommerfeld Lecture, U.S. Army Judge Advocate Legal Center and School, Charlottesville, VA, August 2009

*Legal Issues in the War on Terror*, International Association for Military Law and the Law of War Tri-Annual Conference, Tunis, Tunisia, May 2009

*Thinking the Unthinkable: Extending Combatant Immunity to Transnational Non-State Belligerents*, Annual International Counter-Terrorism Conference, Interdisciplinary Center Herzliya, Israel, September 2009

*The Trial of Unlawful Enemy Combatants and the Limits of Legitimate Military Jurisdiction*, International Law Association (West) Annual Conference, Willamette Law School, Salem, OR, March 2009

*Guantanamo Bay After Boumediene and Hamdan: What Happens Now?* University of San Diego Law School, November 2008

Keynote Address, *The Law of War and the War on Terror*, 47th International Affairs Symposium, Lewis and Clark University, April 2008

*Navigating the Twilight Zone between Crime and War: Khadr, Terrorism, and the Limits of War Crimes Jurisdiction*, ILA, Canadian Branch, April 2008

*Transnational Terrorism and Armed Conflict*, Annual International Counter-Terrorism Conference, Interdisciplinary Center Herzliya, Israel, September 2008

*Legal Issues in the Treatment of Unlawful Enemy Combatants*, Annual Legal Conference for United States Northern Command, New Orleans, LA, April 2008

*Triggering the Law of Armed Conflict*, Hebrew University School of Law Annual Humanitarian Law Symposium, Jerusalem, Israel, May 2008

*Customary International Law and the Treatment of Detainees*, Conference on Customary International Humanitarian Law, Institute for International Humanitarian Law, San Remo, Italy, March 2006 (sponsored by the Swiss and Italian Ministries of Foreign Affairs)

*The Effectiveness of Humanitarian Law in Regulating the War on Terror*, Panel Participant, International Law Weekend sponsored by the Bar Association of the City of New York, November 2005

*Customary Norms Regulating Armed Conflict*, Conference on Customary International Humanitarian Law, McGill University, Canada, October 2005 (sponsored by the Canadian Red Cross)

*The Law of Armed Conflict*, NATO Allied Rapid Reaction Force Legal Course, March 2003

Guest Lecturer, NATO Allied Rapid Reaction Corps Legal Symposium, Rheindallen, Germany – Topic: Application of International Humanitarian Law to United Nations Sponsored Military Operations 2002

Lecturer, Red Cross Institute of International Humanitarian Law, San Remo, Italy – Topic: The Application of International Human Rights Norms to Military Operations Other Than War, 2001 and 2002

Lecturer, German-American Legal Symposium, Garmisch, Germany – Topic: War and the United States Constitution, 2001

Guest Lecturer, The University of Virginia School of Law, Charlottesville, VA. - TOPIC: The Foundations of International Humanitarian Law 2000

Guest Lecturer, The University of Virginia School of Law Annual Summer National Security Law Symposium, Charlottesville, VA. - TOPIC: The Foundations of International Humanitarian Law 1998 and 1999

Guest Lecturer, Partnership for Peace Legal Symposium, Tallinn, Estonia – Topic: Compliance with International Human Rights Obligations During Peacekeeping Operations 1999

Guest Lecturer, Symposium for Kenyan Military and Civilian Leaders, Nairobi, Kenya – Topics: International Humanitarian and Human Rights Obligations; National Security Structures 1999

Invited Professor, Naval Justice School Legal Symposium for Partnership for Peace Nations, Newport, RI – Topic: Protection of the Environment During Military Operations 1997

#### **EXPERT CONSULTING AND WITNESS**

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Expert defense consultant and witness, United States v. Boskovic, Federal District Court (Portland, OR), (assisted in defending Mr. Spiric against allegations of criminal fraud during his refugee application process for failing to disclose that he had been a member of the Bosnian Serb militia during the Bosnian civil war)

Expert consultant to the Republic of Georgia to assist in reviewing the legality of Georgian military operations during the armed conflict with Russia in August 2008

Expert defense consultant and witness in the case of Prosecutor v. Gotovina, International Criminal Tribunal for the Former Yugoslavia, (testified on the legality of the use of indirect fire weapons systems against enemy targets located in a populated area)

Expert defense consultant and witness in the case of United States v. Hamdan, U.S. Military Commission, (testified on the applicability of the law of armed conflict to the struggle against transnational terrorism)

Expert defense consultant on law of war issues in United States v. Hassoun (Jose Padilla's co-defendant)

Expert defense consultant on law of war issues in the original Military Commission case of United States v. Khadr (assisted defense team in developing strategy to challenge the charge of "Murder by an Unlawful Combatant").

Expert consultant for attorneys representing Guantanamo detainee Al Bihani in his effort to obtain *habeas* relief

Expert consultant and witness in the General Court-Martial trial of Captain Rogelio Maynulet (a U.S. Army officer charged with the murder of a wounded Iraqi insurgent during Operation Iraqi Freedom), (provided expert assistance and testimony on the law of armed conflict)

## PROFESSIONAL EXPERIENCE

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### INTERNATIONAL AND NATIONAL SECURITY LAW

Special Assistant to the Judge Advocate General for Law of War Matters and Chief of the Law of War Branch, Office of the Judge Advocate General, U.S. Army, August 2004-July 2005

*Senior U.S. Army expert for legal issues related to the Law of War, international law, national security law, and the law of military operations*

Chief, International Law and Operations Division, Office of the Judge Advocate, U.S. Army Europe, June 2001-July 2003

*Subject matter expert for U.S. Army Europe on all legal issues related to international law, national security law, and the law of military operations*

Professor of Law, United States Army Judge Advocate General's School, Charlottesville, VA, May 1997 – June 2000.

*Evaluated as the most effective teacher in this ABA Accredited degree granting Institution*

*Responsible for curriculum development, teaching, advising career attorneys enrolled in an LL.M. program*

### CRIMINAL LAW

Regional Defense Counsel, United States Army Trial Defense Service, July 2003-July 2004.

*Supervised the delivery of criminal defense services for all U.S. Army personnel in the Western United States, Alaska, and Hawaii*

*Represented service-members at felony level criminal proceedings.*

Chief of Criminal Law and Senior Criminal Trial Attorney, Office of the Staff Judge Advocate, 101<sup>st</sup> Airborne Division and Fort Campbell, Fort Campbell, KY, May 1993 – May 1997.

*Supervised the administration of criminal justice for one of the largest military communities in the United States:*

*Represented the United States in over 50 felony level prosecutions.*

## **OTHER MILITARY EXPERIENCE**

Legal Assistance Attorney, Office of the Staff Judge Advocate, 101<sup>st</sup> Airborne Division and Fort Campbell, Fort Campbell, KY, January 1993 – May 1993

Provided “legal aid” type services to military and civilian personnel assigned to Fort Campbell.

U.S. Army Judge Advocate General’s Corps, 1990 and 1991, Fort Belvoir, Virginia Summer Intern.

Tactical Intelligence Officer, U.S. Army South, Republic of Panama, 1984 – 1988  
Served as the staff intelligence officer at the Regional Command, Infantry Brigade, and Infantry Battalion levels during the period of intense political and security disruption caused by the exposure of corruption in the Noriega regime.

Military Education: U.S. Army Command and Staff College (2000-2001); Judge Advocate Graduate Course (1996-1997); Judge Advocate Basic Course (1992); Military Intelligence Officer Advance Course (1988); Military Intelligence Officer Basic Course (1984); Officer Candidate School (1984);

## **BAR ADMISSIONS**

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Virginia

United States Court of Appeals for the Armed Force

## **CURRENT PROFESSIONAL MEMBERSHIPS**

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International Society for Military Law and the Law of War

Institute for International Humanitarian Law

National Institute of Military Justice

American Bar Association

Houston Bar Association

REFERENCES AND WRITING SAMPLE AVAILABLE UPON REQUEST