





United States Department of Justice

War Crimes vs. Private Defense Contractors

"If we destroy human rights and rule of law in the response to terrorism, they have won."

- Joichi Ito

Dedicated to the victims of unjust torture everywhere

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Group Identity

We are Representatives from the Department of Justice presenting our Policy Recommendation before the Subcommittee on Crime and Terrorism from the Senate Committee on the Judiciary.

Mission Statement

Our mission is to reduce the possibility of American defense contractors from committing war crimes, such as torture, in prisons abroad in order to protect the values and credibility of the United States of America.

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Table of Contents

Acknowledgements and Group Identity	3
1. Introduction.....	8
2. Background Information on Abu Ghraib.....	11
3. The Nuremberg Trials Sets Precedence	13
4. International and Domestic Definitions on War Crimes.....	14
4.1 International Definition of War Crimes.....	15
4.2 Universal Jurisdictions, Limitations and its Impact on the Prosecution of War Crimes.....	16
4.3 The U.S.' Definition of War Crimes	18
4.4 A Lack of Oversight and the Manipulation of Law.....	19
5. The Weaknesses within the Prosecution.....	20
5.1 The Torture Memos.....	21
5.2 America's Negative Public Opinion on Abu Ghraib.....	24
5.3 The Events Leading to Abu Ghraib.....	25
5.4 Insubstantial Evidence to Convict CACI.....	26
5.5 Civilian v. Enemy Combatant.....	27
5.6 Strengths of the Defense: Why CACI Has Not been Convicted.....	27
6. President Barack Obama's Executive Order 13491.....	29
6.1 Enhanced Interrogation Under the Bush Administration.....	30

6.2 Interrogation Standards for Detainees During Armed Conflict Under Obama’s Executive Order.....	31
6.3 The Red Cross and Special Task Force Policies Under Obama’s Executive Order.....	33
6.4 The Flaws of Executive Order 13491.....	34
7. Policy Recommendation: Concise Language, Enforcing Laws, and the Special Task Force.....	36
7.1 Overview.....	36
7.2 Increased Oversight- Special Interagency Task Force.....	36
7.3 Selection Process for Special Interagency Task Force.....	37
7.4 When Human Eyes Fail: Surveillance.....	38
7.5 Clearly Defined and Strictly Enforced Laws.....	40
7.5 A. The Geneva Conventions.....	40
7.5 B. Torture Definition Clarification.....	41
7.5 C. The Military Extraterritorial Jurisdiction Act.....	43
7.6 Extending the Life of the Special Task Force in Referencing Private Contractors.....	43
7.7 The Difficulty of Distinguishing Suspects of Terror from Civilians.....	45
7.8 Establishing a Chain of Command.....	47
8. Conclusion.....	49
Appendices	
Appendix A: Geneva Convention (III) Relative to the Treatment of Prisoners of War (August 12, 1949).....	51

Appendix B: Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (August 12, 1949).....	52
Appendix C: 18 U.S. Code § 2441- War Crimes.....	53
Appendix D: Timothy Dugan’s Case.....	56
Appendix E: Timothy Dugan Dismissed from Case.....	57
Appendix F: Fay-Jones Report.....	64
Appendix G: Protocol I.....	66
Appendix H: Military Extraterritoriality Jurisdiction Act.....	68
Appendix I: U.S. Code 2331.....	69
Appendix J: Alien Torture Statute.....	75
Appendix K: Executive Order 13491.....	77
Appendix L: U.S. Army Field Manual 2-22.3.....	82
Appendix M: Proposed Chain of Command.....	85
Appendix N: Abuses at Abu Ghraib Photos.....	86
Appendix O: Military Chain of Command Picture.....	87
Glossary.....	88
Bibliography.....	90
Endnotes.....	98

1. Introduction:

Over a decade has passed since the appalling Abu Ghraib photos came to light. The shock and embarrassment that the United States faced in 2004, after disturbing images of Iraqi prisoners were leaked, has now faded into a somewhat distant memory. The only reminder that persists from the human rights incident is a lawsuit against CACI International Inc. for its alleged involvement in war crimes against Iraqi prisoners.

The case, *Al Shimari v. CACI* (2013), was originally filed against Titan Corporation, CACI International Inc. and Timothy Dugan, a former CACI employee.¹ [See Appendix D &E] Four former prisoners of war, who endured numerous kinds of abuses and who were later released from Abu Ghraib without a single charge, introduced the lawsuit. Titan and CACI were U.S. based private contractors in charge of providing translation and interrogation services at Abu Ghraib and other facilities in Iraq. Titan and Timothy Dugan have been dismissed as defendants in the case because “the victim’s allegations are either unsupported by the facts or are legal conclusions cast as facts.”² However, the suit against CACI has withstood eight years without a definitive conclusion. The plaintiffs’ allegations against the company claim CACI was responsible for directing and encouraging torture in the interrogation process with the goal of softening up prisoners and making them more willing to release information.³ The case was brought under the Alien Torture Statute (ATS), an American federal law that allows non-U.S. citizens to sue in United States courts for tort violations of international law.⁴ [See Appendix J] The lawsuit questions three significant issues: federal jurisdiction, domestic law and international law. Violations of the U.S. and international laws, mainly caused by weakly defined jurisdiction, include: “torture; cruel, inhuman or degrading treatment; war crimes; assault and battery;

sexual assault and battery; intentional infliction of emotional distress; negligent hiring and supervision; and negligent infliction of emotional distress.”⁵ In addition, “civil conspiracies and aiding and abetting accounts are attached to most of these charges.”⁶ Based on the aforementioned actions, the plaintiffs seek compensation and insist that castigatory damages be placed on CACI.

CACI International Inc. was significantly involved in the Second Iraq War, providing assistance from August of 2003 to August of 2005. Its services ranged from supplying interrogators, intelligence analysts, background investigations, screenings, property management, recordkeeping, and installation of computer software and hardware systems. A total of sixty interrogators were sent to Iraq in the contract’s two year period and there were never more than twenty-eight contractors at any given time. Furthermore, only ten interrogators were assigned to Abu Ghraib specifically.⁷ According to the company statement, the services offered were a direct response to a request by the U.S. Army, which lacked the necessary manpower. However, when analyzed more closely, it became apparent that the United States Department of Interior, not the Department of Defense (DoD), hired CACI to possibly shield it from the Military Extraterritorial Jurisdiction Act (MEJA); and thus made it less accountable to war crime charges in comparison to the army or to companies directly contracted by the DoD.⁸ MEJA, originally passed in 2000, allowed for the prosecution of DoD civilian contractors, “employed by or accompanying the Armed Forces,” for crimes committed overseas that would be considered felonies under U.S. law.⁹ [See Appendix H] In October 2004, the law was amended to include all civilian contractors and employers of other federal agencies whose work supports the DoD’s missions abroad.¹⁰ The original wording found in MEJA, only

placed DoD contracted companies under U.S. jurisdiction, creating a loophole that made the company less accountable for war crimes, including those committed at Abu Ghraib.

CACI's credibility was questioned after the release of the Fay-Jones Report, dated August 23, 2004.¹¹ The joint report was formed from two separate investigations carried out by Major General George R. Fay and Lieutenant General Anthony R. Jones. [See Appendix F] Both examinations sought to discover the truth behind alleged detainee abuses at Abu Ghraib by members of the Military Intelligence Brigade. Among several accusations, three CACI employees were mentioned to have partaken in abusive behavior while at the prison. Included in military police testimonies were the names of two particular workers suspected of carrying out inhumane interrogation techniques: Steve Stefanowicz and Daniel Johnson. Several of the military police officers who were court-martialed at Abu Ghraib have testified that Stefanowicz and Johnson ordered them to abuse numerous detainees. The Fay-Jones Report suggests Stefanowicz was the first to carry out these types of inexcusable practices on prisoners and later encouraged Military Personnel to do the same.¹²

After several other reports and testimonies, the four prisoners of war sued CACI for violating international human rights laws under the Alien Torture Statute. In *Al Shimari v. CACI*, the plaintiffs were released from Abu Ghraib without charges after months of inflicted pain and suffering. Nevertheless, CACI is yet to be convicted due to its undefined jurisdiction and lack of hard evidence. The litigation has demonstrated that federal interest overcame weak evidence and preempted the torture claims made by the Iraqi plaintiffs. The case was a result of the Torture Memos released before the beginning of the war, in 2002, which authorized "enhanced interrogation."¹³

The lawsuit is more than a mere evasion of U.S. law under MEJA; it has also breached international laws on human rights deriving from the Geneva Conventions and violated 18 U.S. Code 2441 of Laws on War Crimes. As a self-asserted beacon of liberty and democracy, the United States has the responsibility to prevent a future Abu Ghraib from occurring. War crimes and abuses of power will most likely repeat themselves unless preventative measures are taken. Although military personnel may be charged, other parties involved, such as contracted companies, will continue to find loopholes in U.S. laws to evade justice. A new policy is necessary to counteract war crimes from private contractors: one that addresses the lack of oversight, clarifies ambiguous language in existing laws, and works to complement international legislation while addressing domestic issues and regulations.

2. Background Information on Abu Ghraib

In order to better understand the case filed against CACI International Corp., it is important to review the events that took place before and during the Abu Ghraib scandal. Saddam Hussein's era, characterized by horror and death, was most vividly illustrated at Abu Ghraib. Originally, Abu Ghraib, near Baghdad, was a site of torture and execution. The infamous prison cramped with 50,000 people within its walls under terrible living conditions.¹⁴ However, in April of 2003, the United States took control of the site, converting it into an American military prison. Regardless of the significant renovations to its infrastructure, the prison's reputation would remain tarnished, especially after Amnesty International released a number of unforgettable photos depicting soldiers' abusive behaviors. The revelation launched a

bombardment of questions; investigations began soon after, where it became apparent that physically and mentally abusive techniques were used in the prison to aid interrogations.

All prisons in Iraq were under the supervision of Janis Karpinski, a career officer in the U.S. Army now retired, who lacked experience in running a prison system. The prisoners “loosely fell into three categories: common criminals; security detainees suspected of ‘crimes against the coalition;’ and a well number of suspected ‘high-value’ leaders of the insurgency against the coalition forces.”¹⁵ Abuses committed by soldiers at Abu Ghraib included: forced nudity, sleep and light deprivation, long periods of isolation, stress positions, exploiting fear of dogs, electrical shocks, sexual harassment, rape, and one recorded homicide.¹⁶ [See Appendix N] What made matters worse is the conservative nature of the Arab world. According to Bernard Haykel, a professor of Middle Eastern Studies at NYU, the dehumanizing acts that occurred at Abu Ghraib, are not only socially unacceptable but forbidden; it is against Islamic law to perform homosexual acts and it is degrading for a man to be naked in front of another man. The actions taken by M.Ps on site were clearly a form of torture for Iraqi prisoners as they clashed with Islamic cultural beliefs. Sergeant Frederick’s emails and letters to loved ones stated that the actions taken at and prior to interrogations were mostly directed by “military-intelligence teams” and “interrogation specialists from private defense contractors.”¹⁷ The Taguba Report, conducted by Major General Antonio M. Taguba, described failures in the system that lead to the atrocities. Above all, the report attributed the mistreatments at Abu Ghraib to military ceding “day-to-day management of prisoners” to civilian contract employees, including CACI.¹⁸ The events at Abu Ghraib had long lasting implications for the Army’s moral, the prisoner’s lives, and the United States’ global reputation.

3. The Nuremberg Trials Sets Precedence:

A few months after the end of World War II (WWII), the world's great powers- The United States, France, Great Britain, and the Soviet Union- established a charter to form the world's first International Military Tribunal (IMT), also known as the "Nuremberg Tribunal." This entity led the prosecution against the European nations charged with committing war crimes during WWII. The tribunal sought to punish and prosecute within four categories: conspiracy, crimes against peace, war crimes, and crimes against humanity¹⁹. Notably, the Nuremberg Tribunal defined war crimes under Article Six subsection "b" as:

murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity²⁰.

This definition set precedence and would later be the basis for defining punishable war crimes in future policies.

Additionally, the establishment of the tribunal was the foundation for human rights laws in the post-war world²¹. The principles agreed upon by the IMT, for the first time, concretely defined crimes against humanity as:

murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated²².

The conventional idea of charging individuals with crimes against humanity would be a precedent set by the IMT and used in future military and wartime tribunals. Heavily influenced

by the Nuremberg Trials, the United Nations created the Universal Declaration of Human Rights in 1948. This doctrine was the first of its kind to clearly recognize human rights as a legal concept²³.

Another legacy of the Nuremberg Tribunal was that it was an inspiration for the Geneva Conventions, which were later established in 1949. The Conventions drew upon the tribunal's definition of war crimes for the litigation of torture. According to John Rodden, who wrote about the Nuremberg Trials and their impact on the international legal system in the *Journal of Human Rights*, "The Nuremberg Trials also served as the basis for the rules and principles drafted in the 1949 Geneva Conventions on wartime conduct, which stipulate that countries must punish those who commit human rights violations, regardless of whether they claim to have 'followed orders'"²⁴. By addressing crimes against humanity for the first time in a legal setting, the Nuremberg Trials paved the way for recognition of human rights violations and the contingency of war crimes in the international legal system.

4. International and Domestic Definitions on War Crimes:

The Nuremberg Trials exposed many of the war crimes committed by Nazi leaders and the soldiers in both concentration/death and prisoner of war (POW) camps, causing international outrage. As a result, a new international movement was established, aimed at serving justice and creating universal humanitarian law. This call for justice for war crimes was embodied in the Third and Fourth Geneva Conventions, which strove to establish the rights and protection of prisoners and civilians during wartime. The Geneva Convention Articles and the

judicial precedents from the Nuremberg Trials established both the international definition of a war crime and the policy to prosecute them.

4.1: The International Definition of a War Crimes

The international definition of a war crime is based heavily on the articles of the Third and Fourth Geneva Conventions of 1949, as well as the additional Protocols established in 1977. The articles from these documents stipulate the rights and protection of prisoners of war and civilians during wartime and the actions that are considered war crimes. Specifically, Article Three of the Third Geneva Convention defines a prisoner of war and the prohibited actions that might be used against them by signatory states during times of war [See Appendix A]. Article Three states that prisoners who have surrendered from combat and who have laid down their arms will be treated “humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”²⁵ The following actions committed by the protector state are, thus, considered war crimes:

- a) Violence to life and person: murder, mutilation, cruel treatment, and torture.
- b) The taking of hostages.
- c) Humiliating and degrading treatment that seeks to lower an individual’s personal dignity.
- d) Passing sentences and performing executions without a just trial and judgment.²⁶

The same stipulations are also applied in the Fourth Geneva Convention in Article Twenty-Seven regarding the treatment of civilians during wartime [See Appendix B]. Article Twenty-Seven prohibits the rape and forced prostitution of women, the discrimination against protected civilians by the high contracting power, and pillage.²⁷

The prohibited actions stated in Article Three and Twenty-Seven of the Third and Fourth Geneva Conventions, ratified in 196 countries including the United States, form the international definition of a war crime and the actions that can be punished as such. The Conventions strive to prosecute these prohibited actions internationally in order to prevent future atrocities and promote universal jurisdiction, a concept that promotes the idea that crimes against humanity, war crimes, and genocide would be punished whenever and wherever they occurred. The hope was that in the new era, all states in the international theater would accept the war crime definition provided by the Geneva Conventions and thus develop a universal standard of law in prosecuting war crimes. The implementation of universal jurisdiction is vital to ensuring the enforcement of the Geneva Conventions in order to prevent war crimes from occurring. This notion was embodied in the creation of the International Criminal Court (ICC) in 1996, an international tribunal purposed with handling war crime trials and promoting universal jurisdiction. However, although many states have accepted and adopted the international definition and policies, certain factors have limited the implementation of universal jurisdiction.

4.2 Universal Jurisdiction's Limitations and its Impact on the Prosecution of War Crimes

Although the articles of the Third and Fourth Geneva Conventions officially defined war crimes, they failed to establish an effective tribunal to handle the trials of war criminals (the ICC was formed many years later) and specific punishments for charged offenders. Instead, the Conventions required “States to enact criminal legislation to punish those responsible for grave breaches.”²⁸ The process of prosecuting and punishing war criminals was thus left up to the states themselves. The international humanitarian law requires states to enact national

legislation prohibiting violations of the Conventions, searching and prosecuting suspected war criminals, assisting other states, and requiring their military leadership to prevent soldiers under their command from committing war crimes.²⁹ However, fulfilling these obligations means that it is ultimately up to each state to determine its own policy for handling war crimes, which limits universal jurisdiction by allowing states to adopt the international definition of a war crime while creating a policy that benefits the state's interests. States can also pick and choose which alleged war criminals to pursue based on the state's political interests. The ambiguity of war crime proceedings hinder the adoption of universal jurisdiction by all states in the international system.

In addition to states interpreting their own policy on war crimes, the punishment of war criminals is largely dependent upon the state's level of power in the international system. Lia Kent, a professor at the Australian National University, cites how universal jurisdiction, in practice, largely depends on the state's "hegemony and sovereignty" in article, "Interrogating the 'Gap' Between Law and Justice: East Timor's Serious Crimes Process."³⁰ Hegemonic states (those with strong authority over others) have a large influence over which war criminals will be prosecuted. Whether the war crime is brought to trial depends on the amount of resources the state has to allocate towards the prosecution's case and the state's political interest. However, if the case appears to be more of a burden to the state, the trial may not take place. This practice presents the danger that states may allow their own military personnel or citizens to get away with committing war crimes if the state stands to benefit as a result; this leads to interests of the most powerful states dictating universal jurisdiction and war crime trials. A state's sovereignty also plays a role in whether a war crime trial takes place. Sovereignty is a

significant factor because the prosecution of war crimes also requires state cooperation. Because many war crimes happen outside of a state's territory, sovereign governments must cooperate for "access to archives, permission to conduct forensic investigations, permission to interview witnesses, and the ability to make arrests" when conducting war crime trials.³¹ Thus, states must cooperate in order to collect evidence that can be used to prosecute war crimes. However, at the expense of time and money combined with the large volume of war crime cases each year, states are forced to be selective in the cases they choose to prosecute. As a result, few war criminals are actually tried and prosecuted. Therefore, hegemony and sovereignty contribute to the highly selective policies of able states and limit the amount of war crime trials, hindering universal jurisdiction.

4.3: The U.S. Definition of War Crimes

Although each state is ultimately left to interpret its own policy on war crimes, the U.S.' interpretation is heavily based on Article Three of the Third Geneva Convention. This interpretation is embodied in the document 18 U.S. Code § 2441, which also works to define the prohibited actions listed under war crimes [See Appendix C]. Under § 2441, a war crime is defined as a "grave breach in any of the international conventions signed at the [Geneva Conventions of 1949], or any protocol to such convention to which the United States is a party."³² The actions prohibited by this U.S. code include torture, cruel or inhumane treatment, performing biological experiments on persons in custody, murder, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, pillage, child conscription, and the taking of hostages.³³ Not only does this U.S. code list all of the war crime acts, it also works to define what each prohibited action entails. For instance, torture is

specified as “the act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.”³⁴ This code of law applies to all American citizens and military personnel in the U.S. Armed Forces. Whether the war crime occurs abroad or on U.S. soil, convicted American war criminals are subject to either life in prison or the death penalty.

4.4: A Lack of Oversight and the Manipulation of Law

The U.S. war crime policy through 18 U.S.C. § 2441 works to enforce the articles of the Geneva Conventions with U.S. interpretation. This code provides both the U.S. definition of a war crime and prohibited actions (as listed in the Geneva Conventions). Although these forbidden actions are defined, the lack of oversight of § 2441 and the defense contractors’ skewed interpretation of the code significantly limit its enforcement as well as the implementation of the Geneva Conventions. The Third and Fourth Geneva Conventions state that any prisoners of war or civilians who have ceased involvement in hostilities are considered “innocent civilians”³⁵ and are protected from actions prohibited by Article Three of the Third Geneva Convention.

In addition, contracted personnel are all required to be trained on the Geneva Conventions and U.S. War Crime codes before providing military and interrogation services abroad. In the case of *Al Shimari v. CACI*, CACI International Inc. took the notion of “innocent civilians” from the Geneva Conventions out of context. CACI’s interpretation was that only

“innocent civilians” had the right to be protected under the Geneva Conventions. From CACI’s perspective, prisoners were not “innocent civilians,” but suspects of terror, which provided the company with the flexibility to use enhanced interrogation methods such as torture.

CACI’s manipulation of context presents a significant problem towards the laws that work to prevent war crimes. In full text, the Geneva Conventions grant prisoners of war, civilians, and combatants protection from inhumane treatment. CACI’s manipulation of the Geneva Conventions signifies an even greater problem: the lack of governmental or military oversight abroad. At Abu Ghraib, there was a clear lack of authority and military oversight over the defense contractors working in interrogation operations. In a military report presented at the Al Shimari v. CACI trial, Major Generals Fay and Jones reported that the interrogations at Abu Ghraib were “plagued by a lack of an organizational chain of command presence” and the “failure to effectively screen certify, and then integrate contractor interrogators, analysts, and linguists.” [See Appendix F]³⁶ The lack of command and oversight over defense contractors was the overarching problem that allowed for contracted personnel to manipulate the war crime laws, which then led to the abuse and war crimes at Abu Ghraib. Without a stable chain of command and oversight, the proper training and moral standards will not be established in prison facilities, which easily can lead to future breaches in the Geneva Conventions by private contractors.

5. The Weaknesses Within the Prosecution:

After the terrorist attacks on September 11, 2001, the United States, under President George W. Bush, pursued a foreign policy based on preemption. Preemption, or preemptive

war, is an offensive launched against any assumed threat that has yet to materialize.³⁷ The objective is to neutralize the threat before it comes to fruition; in other words, the threat must be subdued before another terrorist attack occurs on U.S. soil. In his speech at West Point Military Academy, former president George W. Bush explained the need for preemptive war:

If we wait for threats to fully materialize, we will have waited too long — Our security will require transforming the military you will lead — a military that must be ready to strike at a moment's notice in any dark corner of the world. And our security will require all Americans to be forward-looking and resolute, to be ready for preemptive action when necessary to defend our liberty and to defend our lives.³⁸

The detainment and transfer of Iraqi insurgents was in the name of national security and preemption since U.S. soldiers were eliminating an assumed threat before any greater harm could be done. To support its objective for preemptive war, the Bush Administration reworked the U.S. definition of torture after the events of September 11th. As a signatory of the Geneva Conventions, the United States had been obliged to follow certain international criteria for handling prisoners of war. However, since these attacks occurred so long after the Conventions were agreed upon, many government officials felt it was time to reinterpret them.

5.1: The Torture Memos

As a result, from the early months of 2002 through August of 2003, the Bush administration was drafting a series of memoranda now known as the Torture Memos. These documents addressed the justification of torture that allowed for enhanced interrogation to occur despite the Geneva Conventions. The memos were outlined by various government officials who felt information gathering analysis needed to be strengthened. John Yoo, the Deputy Assistant U.S. Attorney General in the Office of Legal Counsel and the Department of

Justice during the Bush Administration, clearly emphasized in one of the first memos that U.S. officials should not be charged for war crimes regarding the treatment and interrogation of prisoners, especially since the Geneva Conventions did not apply to suspects of terror.³⁹

Similarly, Alberto Gonzales, who served as the 30th White House Counsel from 2001 to 2005, stressed the idea that the Taliban and al-Qaeda fell outside the Geneva Conventions since they were stateless and therefore were not a high contracting party. The memo stated “none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere through the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.”⁴⁰

While other memos, such as one drafted by the International Committee of the Red Cross, illustrated how the breach of the Geneva Conventions could lead to more problems, the Bush Administration continued to modify U.S. torture laws.⁴¹ By August 2002, the Bybee Torture Memo, by the Assistant U.S. Attorney General and head of the Office of Legal Counsel Jay Bybee, distinctly justified torture to extract information from al-Qaeda operatives. This memo additionally provided a very narrow definition of torture and reinterpreted the preexisting Torture Statute, allowing for President Bush to freely announce the nation was “following all laws.” In this memo, torture is defined as any “extreme act” that causes “severe physical or mental pain or suffering,” and leads to “prolonged mental harm.” It also includes that “a defendant must specifically intend to cause prolonged mental harm for the defendant to have committed torture.”⁴² Soon after, the Department of Defense released another memorandum emphasizing President Bush’s power as the Commander in Chief. This allowed the president to be the sole decision-maker in certain acts, despite any international treaties or federal torture laws. Additionally, it provided immunity to all military officers who would

otherwise be guilty of war crimes although they were strictly following orders. Consequently, U.S. military operatives could lawfully run enhanced interrogation since the Taliban and al-Qaeda did not qualify as prisoners of war. Shortly after, the U.S. Secretary of Defense Donald Rumsfeld created a memo that outlined twenty-four permitted enhanced interrogation techniques.⁴³

Acting under the request of the U.S. Army, CACI provided services in Iraq to aid the U.S. government and its national needs. During August of 2003, the Department of Interior signed a contract with CACI acquiring their services. By August of 2004, the U.S. Army itself directly issued a contract for continued interrogation services by CACI International Inc. This contract, which specified in its Statement of Work how CACI should operate in Iraq and included the qualifications CACI personnel should meet, is claimed to have resulted from insufficient available workforces during the beginning of the war.⁴⁴ However, as mentioned before, the fact that the Department of Interior contracted CACI in 2003 up until August in 2004 (during the events at Abu Ghraib) allowed for CACI to fall outside of Military Extraterritorial Jurisdiction Act requirements, creating a loophole. MEJA is a bill passed in 2000 that states:

whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

1. while employed by or accompanying the Armed Forces outside the United States; or
2. while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense.⁴⁵

In other words, because CACI was not operating under a DoD contract, but rather one provided by The Department of Interior during that time, their personnel did not fall under U.S. jurisdiction at the time of Abu Ghraib, making them less accountable.

Because CACI employees were strictly performing their hired duties, prosecution for their participation at Abu Ghraib has been hard to substantiate. CACI claims that all their personnel were qualified and experienced professionals in information gathering and analysis. Additionally, each employee had undergone background checks and training on the rules of engagement and general orders applicable to U.S. Armed forces, DoD civilians and U.S. contractors.⁴⁶ Yet, while this company mentioned military training was not mandatory and their employees were still trained professionals, Army investigations “found that 35 percent of contract interrogators ‘lacked formal military training as interrogators.’”⁴⁷ After the conclusion of its contract with the U.S. Army in 2005 and the surging Abu Ghraib controversy, CACI retired from providing any type of interrogation services anywhere in the world and is no longer operating in Iraq.⁴⁸

5.2: America’s Negative Public Opinion on Abu Ghraib

In regard to Abu Ghraib, the public’s major focus was on the isolated actions of the soldiers and private contractors. When the media obtained the graphic pictures of naked Iraqis being abused, a very negative opinion concerning the American role in the war developed. Prior to the scandal at Abu Ghraib, American perception regarding the war was positive: only 27% of Americans believed the U.S. invasion was a mistake.⁴⁹ American forces had successfully located and captured Saddam Hussein, who was enemy number one on the Iraqi front, completing President Bush’s mission objective. It was not until June and July of 2004, when news of the abuses at Abu Ghraib began to surface, that American public opinion turned to opposition. By that summer, over 50% of Americans believed that the U.S. involvement in Iraq was a

mistake.⁵⁰ President Bush's lack of an exit strategy for post-Saddam Iraq, was the primary catalyst for the declining public support for the war.

5.3: The Events Leading to Abu Ghraib

While Americans were so focused on the atrocities of Abu Ghraib, they failed to recognize the impact of Bush's anti-terrorist policies that created the foundation and mentality for the scandal. In October of 2004, an Iraqi Sunni Islamic Jihadist organization, Tanzim Qaidat al-Jihad fi Bilad al-Rafidayn, or al-Qaeda in Iraq (AQI), began its crucial role in the war.⁵¹ AQI was one of the major allies of the Iraqi insurgency, formed in 2003 after the U.S. invasion of Iraq failed to bring stability to the region. Jordanian militant Abu Musab al-Zarqawi led AQI from 2004 until his death by an American missile strike in 2006. Al-Zarqawi had taken full responsibility for numerous suicide bombings, Improvised Explosive Device (IED) detonations, and is believed to have been the prime suspect in the beheading video of Nick Berg, an American radio-tower repairman.⁵² While al-Qaeda was one of the world's leading terrorist organizations, its members were difficult to distinguish from the civilian population. This ambiguity was apparent during the attacks on September 11th when nineteen al-Qaeda members successfully infiltrated the United States.

The events of September 11th demonstrated how difficult it was for the U.S. to differentiate irregular combatants from traditional military forces and civilians. During the Vietnam War, guerilla warfare was one of the greatest challenges for American Forces. In any traditional war with a defined opponent, America's superior military would usually have the upper hand, as demonstrated in the First Iraq War in August of 1990. Ground combat began on February 24, 1991 after months of aerial missile bombardment on Iraqi forces. In approximately

100 hours, the Coalition Forces, 956,000 strong, with 700,000 being American, destroyed Saddam's army. The war ended on February 28 after nearly 35,000 Iraqis were killed, and 70,000+ more injured. The United States only lost 146 men, 35 being accidental.⁵³ The superiority of the American military when fighting a standing army seemed incontestable during the First Iraq War.

5.4: Insubstantial Evidence to Convict CACI

CACI claims to be dedicated to working with integrity, commitment, distinction and pride; however, CACI's self-alleged high ethical standards conflict with their behavior in the events during and following Abu Ghraib.⁵⁴ For instance, while CACI has continuously asserted that none of their employees were linked to events at Abu Ghraib despite various eyewitness accounts and somewhat evident involvement, the plaintiffs in the *Al Shimari v. CACI* case argued that CACI employees were either encouraging or directing enhanced interrogations.⁵⁵ Steven Stefanowicz and Daniel Johnson are two former CACI employees who have been allegedly linked to the torture at Abu Ghraib. Stefanowicz, known as "Big Steve," along with Daniel Johnson, allegedly directed or encouraged torture at Abu Ghraib, but have not been charged, despite the fact that court-martialed military police testified to their abuse.⁵⁶ Nevertheless, the company stresses "no CACI employee or former employee has ever been indicted for any misconduct in connection with CACI's work in Iraq," and "while three former employees have been cited in various reports in connection with disputed incidents in Iraq, no CACI employee took part or appears in any of the horrific photos released from Abu Ghraib."⁵⁷

Because of the lack of physical evidence such as photos or video recordings, the involvement of CACI personnel at the incidents at Abu Ghraib remains unclear.

5.5: Civilian v. Enemy Combatant

War is never constant, and the enemy does not always wear a uniform. After the American Invasion of Afghanistan in October 2001, the United States military embarked on a battle against an unidentified enemy. This notion of an invisible enemy continued in 2003, when George W. Bush declared a deployment of troops to Iraq. Entrusting the Iraqi people with the safety of American troops was a decision that held grave consequences. The great number of instances in which marines were betrayed by Iraqi citizens raises the question of who could be trusted and which actions justified detainment.⁵⁸ However, by signing one of the torture memos President Bush established "... I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al-Qaeda, al-Qaeda detainees also do not qualify as prisoners of war."⁵⁹

5.6: Strengths of the Defense- Why CACI Has Not Been Convicted

The four prisoners at Abu Ghraib claimed that CACI employees were responsible for a great deal of the accusations brought against the Americans running Abu Ghraib, but there is a lack of definitive proof. In a "Democracy Now!" interview, a former Abu Ghraib prisoner and plaintiff of the Al Shamari vs. CACI case, Sallah Hassan, recounted his horrifying ordeal and the abuses he experienced. Sallah Hassan has been suing CACI for alleged abuses since his release.⁶⁰ It is without a doubt that Hassan had in fact been subjected to abuses, but his confidence that the actions were carried out by CACI employees does not amount to proof. He

explained, “I did not know who was arresting me, I did not know if it was a U.S. soldier, a private company or who. They had on a uniform that the U.S. military wears, but the patches that are usually there, and that I am familiar with, were not.”⁶¹ Evidently, Hassan admits he did not recognize who arrested him in the first place. It is unlikely that the employees of CACI clearly identified themselves, which poses a question as to how he is sure CACI was involved in the abuses at Abu Ghraib. Secondly, as anyone who has seen the pictures can observe, black hoods were used to eliminate the vision of the detainees; thus, it is not certain that a CACI employee was responsible for the accused crimes.⁶²

Adding to the sufficiently difficult attempt to prove CACI’s involvement in the events at Abu Ghraib, the company claims they were under U.S. military supervision the entire time. CACI specifically asserts that all CACI acts “were monitored by both U.S. military and CACI chains of command.”⁶³ The company also states that upon arrival CACI employees “were designated their tasks, work placement, and work schedules by military supervisors.” CACI makes the effort to prove that “all interrogators were under the control and supervision of the officer-in-charge of interrogation control.”⁶⁴ When asked about the roles of contractors and their supervision in Iraq during the Senate Armed Services hearings in 2004, Secretary of Defense Donald Rumsfeld maintained these claims by stating CACI was responsible under the supervision of the military intelligence who hired them.⁶⁵ However, military investigations have found that “private contractors at Abu Ghraib ‘wandered about’ unsupervised among Abu Ghraib detainees and that CACI employees were put in positions of authority over soldiers.”⁶⁶ Additionally, “army investigations documented numerous instances in which contractors ‘supervised’ military officers (as specified in the jobs they answered to) and other instances in which contractors

demonstrated disdain for their uniformed clients.”⁶⁷ This raises the question of whether it is legal for military contractors to have more power over the military and how much military supervision was actually taking place at Abu Ghraib.

6. President Barack Obama’s Executive Order 13491

On January 22, 2009, President Barack Obama issued Executive Order 13491 entitled “Ensuring Lawful Interrogations,” which defined and addressed the issues of torture and enhanced interrogation methods⁶⁸. In addition to shutting down detention camps such as Guantanamo Bay, Obama issued this order to reverse the policies adopted under the Bush Administration regarding the interrogation of detainees⁶⁹. The questionable manner in which detainees in the past had been interrogated as evidenced in the abuses at Abu Ghraib have heavily influenced Obama’s current policy toward enhanced interrogation. Defending his order, the President bluntly stated, “The United States will not torture. The orders that I signed today should send an unmistakable signal that our actions in defense of liberty will be as just as our cause and we, the people, will uphold our fundamental values as vigilantly as we protect our security”⁷⁰. Executive Order 13491 reflects a step towards closely abiding by international human rights laws.

Obama’s policy is one that addresses the treatment of detainees and the methods in which information is obtained. In the past, the United States has been guilty of violating the agreements of the Geneva Conventions exemplified during the Iraq war in the Abu Ghraib prison. Split into six sections, each containing a number of subsections, the executive order

systematically defines torture, revokes old policies, and establishes new precedence for dealing with enhanced interrogation⁷¹.

6.1: Enhanced Interrogation under the Bush Administration

Section One of Obama's Executive Order calls for "revocation"⁷² of Executive Order 13440 signed by former President George W. Bush on July 20, 2007. The order, entitled "Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency," justifies the use of torture by stating that enemy combatants are no longer protected under the third article of the Geneva Conventions regarding treatment of prisoners of war. President Bush signed this order citing the attacks on September 11, 2001 and the increasing presence of terrorist groups such as the Taliban and al-Qaeda as justification for such a radical move.

Surprisingly, Bush's Executive Order does ban all forms of torture including acts defined in 18 U.S. Code § 2340. In fact, the order outlaws all forms of physical and psychological torture including abuses that aim to humiliate or result in death⁷³. However, despite Bush's policy on enhanced interrogation appearing to comply with human rights laws and prohibit all types of torture, some of the wording provides a loophole for the military and CIA to justifiably commit these prohibited abuses. Section Three states that the Director of the CIA, with the help of professionals, has the power to determine interrogation methods that are safe to obtain information that could:

(1) assist in detecting, mitigating, or preventing terrorist attacks, such as attacks within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or other countries cooperating in the war on terror with the United States, or their armed forces or other personnel, citizens, or facilities; or (2) could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces⁷⁴.

This is where Bush's Executive Order gives too much leeway for loopholes and justified torture. Despite earlier prohibiting all forms of torture, the wording "the interrogation practices are determined by the Director of the Central Intelligence Agency"⁷⁵ found in section three allows for the certain prohibited torture methods to be found acceptable. On the one hand Bush bans all forms of enhanced interrogations as outlined in laws such as 18 U.S. Code § 2340; however, he also uses vague wording which allows for the CIA and military to get around these prohibited methods.

By completely eradicating former President Bush's order regarding torture, the new policy not only reinstates the protection under the Third Geneva Convention for prisoner of war detainees, but also eliminates the possibility for loopholes and abuses that could have risen from the previous policy.

6.2: Interrogation Standards for Detainees during Armed Conflict under Obama's Executive Order

Section Three of Executive Order 13491 delineates the interrogation protocol as approved by Obama with references to the Geneva Conventions and other laws pertaining to torture. In subsection "a" of section three, Obama clearly states that detainees will be treated humanely and that they must not be subject to physical and psychological abuse which would affect their wellbeing:⁷⁶

Such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained

within a facility owned, operated, or controlled by a department or agency of the United States.⁷⁷

The end of subsection “a” emphasizes who must follow these rules, including officers, employees or agents working for the U.S. government. Additionally, it’s important to note that the subsection also includes facilities that are owned, operated or controlled by a department or agency of the U.S. are to comply with these standards.

Additionally, subsection “b” of section three asserts the appropriate interrogation methods that are allowed to be used by U.S. officials and facilities in charge of detainees during armed conflict. Citing the Army Field Manual 2-22.3, a most recent version, the Executive Order allows for any procedures and practices listed in the manual and prohibit any methods that deviate in the slightest from those listed in the text. Under the section “Approach Strategies for Interrogation,” it emphasizes that an interrogation is not meant to be a hostile ordeal between a detained and the interrogator.⁷⁸ The manual goes into a step by step process of interrogation methods which includes the systematic processes of debriefing, elicitation and termination of questioning [see Appendix L]. Two appropriate methods of soliciting information that the manual highlights are the use of flattery and provocation. These are mild forms of manipulation that are acceptable and effective according to the guide. Subsection 8-81 warns Human Intelligence (HUMINT) interrogators not to lose control of the situation in a manner that could lead to abuses toward the detainee:

The HUMINT collector is frequently under a great deal of pressure to “produce results.” This situation, coupled with the facts that the HUMINT collector is dealing with threat personnel who may have been attempting to kill US personnel just minutes before questioning and the fact that the source is in a vulnerable state, leads to a tendency to use fear-up techniques. This may, in some circumstances, be the proper approach; however, the HUMINT collector must ensure that in doing so he neither loses control of his own emotions nor uses physical or mental coercion.⁷⁹

By explicitly stating that intelligence personnel may not use physical or mental coercion, the Manual complies with the Geneva Conventions and emphasis torture free interrogation. Thus, this is the reason the Executive order under the Obama Administration refers to the Army Field Manual for proper interrogation techniques. Subsection “c” also notes that U.S. facilities and employees may not use any interpretations of the Army Field Manual, but must follow the document exactly as it is written.⁸⁰ This prevents any U.S. Government personnel from committing abuses and justifying them based on their interpretation of the manual.

6.3: The Red Cross and Special Task Force Policies under Obama’s Executive Order

Section four of Obama’s order regarding ensuring lawful interrogations addresses the International Committee of the Red Cross and its access to detained persons. Subsection “b” states that all departments and agencies of the Government must report any information about those detained by personal or facilities under jurisdiction of the U.S. government to the Red Cross. According to the Executive Order, the information must be provided through means of “Department of Defense protocol.” This protocol simply calls for information obtained to be released to the International Committee of the Red Cross in a timely manner and that no information must be withheld.⁸¹

In an effort to monitor methods used by the U.S. interrogators and affiliates, section five of Obama’s policy establishes a Special Interagency Task Force on Interrogation. The Special Task Force is chaired by the Attorney General and is comprised of employees from the Department of Justice and various members of the Cabinet. Additionally, the mission of this group is as follows:

To study and evaluate whether the interrogation practices and techniques in Army Field Manual 2 22.3, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies.⁸²

The Task Force must investigate interrogation methods and determine if they comply with domestic and international laws as well and ensure that detainees are being handled in a humane manner. Also, the group has 180 days from the date of the order to present a report of their findings to the President. In sum, this Special Task Force is designed to investigate the root of interrogation as laid out in the Army Field Manual and implemented by interrogators under U.S. jurisdiction, and to determine whether it is efficient in obtaining information in an appropriate way. Once the Chair feels like the Special Task Forces has successfully completed its mission, he is to terminate the group.⁸³

6.4: The Flaws of Executive Order 13491

Though Obama's policy on enhanced interrogations is strong and tackles any pertinent aspects of torture and regulation, there are some flaws to his policy that still do not acknowledge relevant issues. While Obama's Executive Order is careful to use language that addresses almost all agents and individuals working for the U.S. government, there is no specific reference to private contractors. For example, subsection "a" of Section Two addresses who must follow the appropriate interrogation protocol as outlined by the Army Field Manual with:

Individuals detained in any armed conflict, such persons shall in all circumstances be treated humanely ...whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or

detained within a facility owned, operated, or controlled by a department or agency of the United States.⁸⁴

Here, “other agents” could be interpreted to include private contracting companies, but the lack of exact language could also allow for contractors to forgo the law by claiming they do not fall under the jurisdiction of Executive Order 13941 because it does not explicitly list “private contractors” as entities that must follow the proper interrogation protocol.

Additionally, the Special Task Force is a necessary and strategic plan for ensuring that interrogation protocols are up to standards with torture and human rights laws and that the practices listed in the Army Field Manual are effective; however, it does nothing to prevent the abuses such as the ones that occurred at Abu Ghraib from happening again. This group focuses mostly on evaluating the practices to determine its usefulness and once it has done so, the Special Task Force can be terminated. The flaw with this is that in its mission, there is nowhere that says it is in charge of enforcing proper behaviors during interrogation. So, despite studying and evaluating the appropriate methods of interrogation in the Army Field Manual, the Special Task Force has no real authority to enforce the rules, leaving the detention center for prisoners of war during armed conflict without any oversight. In sum, Obama’s policy towards enhanced interrogation indefinitely addresses the issues of torture and takes necessary steps to regulate and follow certain standards set by international law; however, lack of specific language and oversight in prisoner of war detention centers allows for private military contractors to commit war crimes such as torture and not be held accountable under Executive Order 13491.

7. Policy Recommendation: Concise Language, Enforcing Laws, and the Special Task Force

7.1: Overview

After examining the flaws of Executive Order 13491 under the Obama Administration, this proposal seeks to eliminate weaknesses in our system by addressing the issue of war crimes pertaining to detainees in American prisons. We propose the following solutions: increased oversight via a third party, clearly defined and strictly enforced laws, and an established chain of command.

7.2: Increased Oversight- Special Interagency Task Force

A third party presence is essential to address the lack of human oversight in U.S. prisons abroad. President Obama had this idea of oversight in mind when he created the “Special Interagency Task Force on Interrogation and Transfer Policies” in his Executive Order 13491.⁸⁵ This task force was created to “review interrogation and transfer policies” to ensure they are in line with the aforementioned guidelines in his policy.⁸⁶ The members of the Task Force, according to the Executive Order, are the “Attorney General (chair); the Director of National Intelligence (Co-Vice-Chair); the Secretary of Defense (Co-Vice-Chair); the Secretary of State; the Secretary of Homeland Security; the Director of the CIA; and the Chairman of the Joint Chiefs of Staff.”⁸⁷ The Task Force also has non-administrative heads comprised of “officers or full time or permanent part-time employees of the United States as determined by the chair.”⁸⁸ Depending on the gravity of the situation, the Attorney General may call for additional manpower.

Since the Special Interagency Task Force is currently in existence, it would be counterintuitive to demolish it and propose a new body. Thus, for the sake of practicality, we propose to add on to the Task Force and make it a more consistent, permanent body in the American bureaucracy. Max Boot, an American military historian, advised the United States “to cultivate better strategic thinkers in...civilian spheres” in his Foreign Affairs article “More Small Wars: Counterinsurgency is Here to Stay.”⁸⁹ The Department of Justice is a noncombative branch of the government, so putting more civilians in the interrogation rooms for oversight will bring a fresh strategic influx of ideas into the government. By giving these members of the Task Force the ability to provide oversight, we will be cultivating their strategic minds and growing the information base in the government, just as Boot advises. It is important that civilians provide oversight during the interrogation process so that the proceedings are not under the complete jurisdiction of the military. By including civilians for oversight, we would eliminate the conflict of interest via the introduction of a neutral body. The Executive Order states the task force “shall be established for administrative purposes within the Department of Justice and the Department of Justice shall...provide administrative support and funding for the Special Task Force.”⁹⁰

7.3: Selection Process for the Special Interagency Task Force

Strengthening the Task Force causes several questions to arise: who will provide oversight in U.S. detainee prisons, who will officers report to, and who will cover the costs that derive from the added force. Since the officers will come from the Department of Justice, a DOJ executive will nominate officers who have served at least seven years. After being nominated, they will undergo thorough background checks as well as an interview process with the

executive members, including the Attorney General. Along with the interview, nominated officers will take an examination on the Geneva Conventions and the history of modern war crimes from the World War II era forward. If the officers pass with a score of at least 85%, they will be granted the position of “Detainee Interrogation Operations Supervisor,” but they will need to go through an additional training program on the proper interrogation methods. These members of the task force should also hold extensive knowledge of the Geneva Conventions and interrogation procedures.

Since the Attorney General serves as the chair on the Special Interagency Task Force, all of the supervisors will report to him. However, if the Attorney General is unavailable, the supervisors can report to the Secretary of State, who is also on the executive board. Since the Task Force would have more power and authority, and therefore more risks, the cost of expanding this body would significantly increase. Increasing the defense budget would provide us with the necessary money to fund this expansion. In turn, this increase will impose a bigger tax burden on the American people, who may be reluctant to funnel money into something that could be potentially unsuccessful. In addition to increasing the defense budget, funds could also be derived from the budget of the Department of Justice, given that they are set up to help the Special Interagency Task Force in Executive Order 13491.⁹¹

7.4: When Human Eyes Fail- Surveillance

Installing camera systems in each prison would aid in preventing individuals from committing war crimes while handling detainees. By videotaping each interrogation, the interrogators and other officers present are aware that their actions are being monitored and reviewed on a scheduled basis. Due to this ongoing surveillance, the intelligence personnel

might hesitate to thoroughly interrogate the detainees in order to avoid prosecution for unlawful behavior. As a result, they might not be able to acquire the information they need from the detainee, making the entire interrogation process inefficient. However, compensation might act as an incentive for interrogators to perform their duties.

The Department of National Security could find a possible problem with filming events that take place in high security prisons because it could potentially be leaked. However, since these videotapes would be stored in the Department of Homeland Security, only to be seen by United States officers, the risk of a national security breach would be significantly reduced. Since the Secretary of Homeland Security is an administrative member of the Special Interagency Task Force, there will be overlap and cohesion between the two efforts to provide transparency. The biggest reason CACI could not be charged for any war crimes was the lack of physical evidence. Had there been a constant, unbiased videotaping presence during the detainee interrogations, perhaps *Al Shimari v. CACI* would have turned out less favorable for CACI the first time around.

One foreseeable downside with increasing surveillance in detention centers is the necessary allocation in defense spending to cover the cost of this new oversight. The money would be taken from the defense budget since detention centers such as Abu Ghraib are wartime facilities which house combatants and noncombatants detained during armed conflicts. We estimate that installing state-of-the-art, high resolution cameras covering the entire facility would cost approximately \$400,000.⁹² This is based off a successful installation of high definition megapixel cameras in an Oklahoma County Detention Center, which significantly reduced officer-inmate violence and saved the county millions, according to a report

documented by the county sheriff's office.⁹³ The detention center is thirteen floors and houses almost 3,000 inmates, making it a fairly large facility, comparable to U.S. prisoner of war detention centers abroad.⁹⁴ According to the report issued by the county sheriff's office entitled "Camera System Stems Prison Violence, Saves \$\$:"

Not only have we filed criminal charges on inmates, we have also filed charges on officers for various reasons. Also, the number of lawsuits filed against the county has dropped. It will save us millions of dollars over the course of the next few years in personnel costs and lawsuits.⁹⁵

It is clear that installing high definition surveillance has reduced officer-inmate conflict in the aforementioned detention center. Considering the overseas operations budget for the 2015 fiscal year amounts to \$60 billion, a cost of \$400,000 per facility appears to be a feasible allocation.⁹⁶

7.5: Clearly Defined and Strictly Enforced Laws:

7.5 (a): The Geneva Conventions

The poor enforcement of the Third and Fourth Geneva Conventions allowed private contractors like CACI to manipulate the language of the Conventions in its favor. As mentioned before, the Conventions state that those who have ceased involvement in hostilities are considered "innocent civilians" and are protected under the Conventions.⁹⁷ However, private contractors found that by deeming prisoners of war suspects of terror, these prisoners were no longer considered "innocent civilians." Therefore, these detainees were removed from protection under the Geneva Conventions, allowing contractors and military personnel to use a broader range of interrogation techniques on them.

Our solution would thus increase enforcement of the Geneva Conventions via the Special Task Force. It would also mandate that private contractors undergo training on the Geneva Conventions before providing its services overseas. In addition to this decree, we also propose that the Special Task Force be given the duty to oversee the training of defense contractor employees and ensure that all deployed personnel pass an exam testing their knowledge on the Conventions before going abroad.

7.5 (b): Torture Definition Clarification

The definition of Torture should be closely aligned to what is stated in Obama's Executive Order and 18 U.S. Code § 2441. Under our proposed policy, the definition would be reviewed and updated every five years to accommodate advances in technology that give rise to new interrogation and torture techniques. The process of updating interrogation methods has not been included in any previous legislation and while this change could be tedious, it can prove beneficial in the long run. Throughout the span of five years, the definition of torture will most likely change based on the advancement of society, setting new precedents for future prosecutions. Therefore, when a case reopens, such as the aforementioned *Al Shimari vs. CACI*, it should be tried under the torture definition that was standard at the time.

Along with constantly modifying the definition of torture, this policy proposes to make the ambiguous language of the Torture Memos and 18 U.S. Code § 2441 more specific and straightforward. The Bybee Torture Memo states, "a defendant must specifically intend to cause prolonged mental harm for the defendant to have committed torture,"⁹⁸ just as the 18 U.S. Code § 2441 also emphasizes the notion of "intended" physical or mental abuse as torture.⁹⁹ The word intend creates a loophole within both of these laws, leaving its definition

up to interpretation. Consequently, since intentions cannot be easily measured, the defendants are given an escape clause from the law. For instance, a defendant may evade punishment by claiming they did not intend to inflict “prolonged mental harm,” but to acquire necessary information. Therefore, the policy proposes to eliminate the word intend from the language of both documents and replace it with a concrete list of prohibited actions. Under our policy, the following actions, along with those mentioned in the Geneva Conventions, are considered acts of torture:

Waterboarding	Sexual Exploitation	Exploitation of Phobias
Stress Positions	Rape	Mutilation
Sleep Deprivation	Use of Unmuzzled Dogs	
Electric Shock	Forced Nudity	
Oxygen Deprivation	Acts of Degradation (see Appendix N)	

This, in turn, questions which interrogation techniques are permitted under our policy. We suggest that interrogation techniques be evaluated based on duration and intensity. Any physical action against a detainee that results in blood loss is an example of a high intensity technique; and the duration of these actions should last no longer than forty minutes. A detainee who experiences a session of high intensity interrogation should not undergo another high intensity session for the next two weeks. However, verbal interrogation can ensue during that period.

7.5 (c): The Military Extraterritorial Jurisdiction Act

Because states' sovereignty weakens universal jurisdiction and pertains to the international community, we cannot realistically address this problem without joining the ICC. However, we can try to address jurisdiction on a domestic level using the Military Extraterritorial Jurisdiction Act. In 2005, when MEJA was amended, it extended U.S. court jurisdiction to all contractors that were either employed by or aiding the Armed Forces outside of the United States, thereby closing the loophole which CACI was able to slip through. Moreover, MEJA only addresses crimes that carry a punishment of over a year, thus, creating another opportunity to circumvent the law (See Appendix H). Therefore, simple assault charges, including the physical assault of a detainee (e.g., slapping and striking) along with forms of mental abuse that are prohibited by law, would not fall under MEJA or be considered violations in U.S. court.¹⁰⁰ Our policy, therefore, proposes to eliminate the line in MEJA which states "for more than one year" and revise it to read:

Under special U.S. maritime and territorial jurisdiction abroad, whoever engages in conduct violating the revised prohibited actions listed in Executive Order 13491, 18 U.S. Code § 2441 or the Geneva Conventions

"(1) while employed by or accompanying the Armed Forces outside the United States; or
(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense."¹⁰¹

7.6: Extending the Life of the Special Task Force and Referencing Private Contractors

According to Obama's Executive Order 13491, the Special Task Force would be terminated once its duties were fulfilled.¹⁰² This policy, however, recommends that the Special Task Force be established as a permanent body and its duties be extended perpetually. This ensures that the Special Task Force is always present as a source of oversight in any detention center under United States jurisdiction overseas. The idea of a Special Task Force might instill

fear in those who feel this third-party agency, under the Department of Justice, will overpower the Department of Defense. Opponents may argue that oversight should solely be enforced by military personnel and that adding the presence of an additional third party will create a more confusing chain of command. However, the presence of this new body will ultimately reduce the likelihood of war crimes by supervising interrogation procedures to ensure that inhumane treatment is not used. The oversight of the Special Task Force will also work to hold military and defense personnel accountable for their actions. This will, in effect, preserve the credibility of the United States and reduce any expenses from potential lawsuits and investigations.

In addition, Executive Order 13491 must be revised because it does not have an exact reference to private contractors. By explicitly including private contractors in the rhetoric of section three of the Executive Order 13491, we would make them more responsible for their actions through the application of more direct jurisdiction. In section three (b), the Executive Order recognizes those working in the detention center as “officer[s], employee[s], or other agent[s] of the United States government.”¹⁰³ We propose to include the word “defense contractor personnel” in this phrase to make this provision specifically apply to contractors as well. While this increased accountability might discourage defense contractors from offering their services to the United States, the fact that the U.S. government is such a large client would prevent them from retracting their services. Severing contracts would be a significant blow to these companies, with government spending being “roughly 14% of the federal budget on private sector contractors” and the Department of Defense “awarding \$364 billion in contracts” as of 2012.¹⁰⁴

7.7: The Difficulty of Distinguishing Suspects of Terror From Civilians

As mentioned earlier, the administration itself claimed that the Geneva Conventions do not apply to the Taliban or al-Qaeda since they are not considered traditional combatants. Since the Geneva Conventions did not apply to these groups, the military personnel and contractors were authorized to do as they pleased with members of the Taliban or al-Qaeda, regardless of how inhumane their actions were. The challenge lies in distinguishing between al-Qaeda or Taliban members from regular civilians. There was no way to tell whether the people captured in the prisons were just civilians or members of al-Qaeda. Moreover, even if military personnel and defense contractors were able to differentiate between members of these terror groups and normal civilians, there were no guidelines set in place after the Geneva Conventions were deemed inapplicable, thus adding on to the chaotic and unstructured environment of Abu Ghraib.

Although we acknowledge that differentiating civilians from terror suspects is nearly impossible, we propose a solution to work towards solidifying the definition of these two groups. Our first part proposes the U.S. ratification of the Additional Protocol I in the Geneva Conventions. Protocol I seeks to protect “the civilian population against the effects of hostilities.” [See Appendix G]¹⁰⁵ Articles 43, 44, and 50 of Protocol I work to accomplish this goal by providing a “new definition of the armed forces and combatants,” thus distinguishing the Armed Forces, enemy combatants, and civilians.¹⁰⁶ When Protocol I was first drafted in 1977, the U.S. signed but did not ratify the Protocol due to its fundamental flaws. In President Ronald Reagan’s address to the Senate, he argued that the U.S. could not ratify Protocol I because it did not clearly define the difference between international and non-international

conflicts or the difference between irregular combatants and civilians. Failing to differentiate irregular combatants endangers civilians from military attacks and terrorist hostilities.¹⁰⁷ While we recognize that the language in Protocol I is ambiguous and does not fully define an irregular combatant, it does have a working definition of civilians. Therefore, we propose that the U.S. ratify Protocol I to provide a clearer definition of civilians in wartime and in non-international conflict. By ratifying Protocol I, we will be working towards establishing a more precise definition to better distinguish suspects of terror from civilians. Although not completely eradicating the problem, it brings us one step closer to finding a solution.

In addition to defining civilians, we also propose to work towards a more precise description of suspects of terror by using the already existent definitions and policies relating to terrorism. The 18 U.S. Code § 2331, enacted in 1992, defines international terrorism as activities that “involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the U.S. or of any state” and appear to:

- i) to intimidate or coerce a civilian population
- ii) to influence the policy of a government by intimidation or coercion
- iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping. [See Appendix I]¹⁰⁸

Additionally, terrorism defined by the FBI, the U.S. Army Code, and the Department of Defense, states that it is “the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population or any segment thereof, in furtherance of political, religious, or ideological goals.”¹⁰⁹ Despite the fact that this does not help to differentiate a terrorist from a civilian, it works to define acts of terror, much like the Geneva Conventions do for civilians. Although this exact definition will take significant amounts of time and research, establishing a solid definition of civilians and terrorism sets the foundation for

identifying a terrorist amongst a group of civilians and will therefore reduce war crimes and civilian casualties from preemptive attacks.

The last aspect of our policy consists of having another convention to address plausible solutions for establishing a working definition of a terrorist. This particular convention would work to discuss terrorism in the new world order, how to better combat it and how to better distinguish a terrorist from a civilian. All of the signatory parties in the Geneva Conventions will participate again in this new convention and work to try and establish a better definition of a terrorist. With the growing threat of rising terrorist groups, signatory parties might be more willing to participate in a new convention. Admittedly, the convention will take a significant amount of negotiation and time to produce a final result. However, this gives nations the chance to discuss their knowledge on certain terrorist groups, operations, and methods used to combat it. The signatory nations should also allow experts and scholars on terrorism to contribute by developing ways to better differentiate a terrorist from a civilian. Although this convention might not reach a resolution, it would spark discussion and collaboration that might get us closer to a solution in the future.

7.8: Establishing a Chain of Command

The fact that no evident chain of command existed at Abu Ghraib posed another problem. As one LA Times article cites, "Military investigations ordered by senior officers found that private contractors at Abu Ghraib 'wandered about' unsupervised among Abu Ghraib detainees and that CACI employees were put in positions of authority over soldiers."¹¹⁰ With the presence of so many different entities - private contracting companies, military police, military intelligence, and CIA interrogators - all under different leadership, there was no proper

chain of command (See Appendix O). Therefore, a lack of accountability persisted since there was no clear answer to who had authority over who. For example, CACI seemed to have its own chain of command that diverged from the military's chain of command. Stefanowicz, as mentioned earlier, was ordering military personnel to carry out certain actions that did not comply with the Geneva Conventions.¹¹¹ According to the plaintiff's memorandum in opposition for CACI's motion to dismiss (a plaintiff document from *Al Shimari vs. CACI*), "CACI executive Mudd testified that CACI employees did not have to take orders from military personnel."¹¹²

To avoid such an unstructured situation in the future, this policy proposes to have the Special Task Force monitor all prison operations. While the military has more authority over defense contractors, both are equally accountable for their actions. In other words, the chain of command would consist of the military commanders being in charge of both the soldiers and defense contractor management. Defense contractors are ultimately employees of the Department of Defense. They get compensated for their services, which puts them underneath the jurisdiction of the Department of Defense along with the military personnel. The defense contractor management would then be in charge of its employees. (See Appendix M). This split will prevent defense contractor employees from assuming authority over the military personnel, as soldiers will only respond to orders given by military commanders. In turn, the accountability gap will be minimized, for a clear authority would be defined.

If military personnel or private contractors are inclined to torture and commit war crimes in war prisons, then the Special Task Force members, who are present at the prison, can enforce the Geneva Conventions, Executive Order 13491, and 18 US Code § 2441 to stop

detainee-related war crimes from occurring. The advantages of such a policy would ensure more structure, allowing for order rather than the chaos, unlike what occurred at Abu Ghraib. No contractors or military personnel will be able to "wander about" unsupervised due to the presence of cameras and the Special Task Force. Moreover, since the military is more knowledgeable about the Geneva Conventions and they know what is acceptable according to the Army Field Manual, they are better suited to make decisions that are in abidance with those laws; thus, they are capable of conserving human rights in wartime prisons. The employees of private contractors would still be free to suggest interrogation techniques; however, if any of their tactics do not adhere to the Army Field Manual or army rules and regulations, then military commanders have the right to exercise authority over the contractors.

8. Conclusion:

The problem with Abu Ghraib was that, although military personnel were convicted of their use of torture, defense contractors from CACI were not. Cases against interrogators from CACI were either dismissed or are ongoing due to a lack of physical evidence. This lack of evidence from the prosecution allowed military contractors to get away with their use of torture, even though they might be guilty of war crimes against not only combatants but also actual civilians. American laws involving torture and military contractors are neither enforced nor fully defined. This allows for the existence of loopholes, which along with the lack of photographic and video evidence, weakened the prosecution's case. The deficiency that exists in our system creates leeway for war criminals to go unpunished and allows for contractors like CACI to continue to be hired with the ability to torture irregular combatants. Our policy

proposal of increased oversight via the extended presence of the Special Task Force and the use of surveillance, the clarity of language in existent laws, and the establishment of a clear chain of command seeks to address these loopholes and inconsistencies. Enacting this policy, we believe, will reduce the likelihood of war crimes and in the long-run, make interrogation operations and detainment facilities abroad less costly and more efficient.

Appendix A

Geneva Convention (III) Relative to the Treatment of Prisoners of War (August 12, 1949)

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E160550475C4B133C12563CD0051AA66>

- a. Article 3- In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply as a minimum, the following provisions:
 - i. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
 - 1. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
 - 2. Taking of hostages
 - 3. Outrages upon personal dignity, in particular humiliating and degrading treatment
 - 4. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples
 - ii. The wounded and sick shall be collected and cared for
 - 1. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Appendix B

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (August 12, 1949)

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=FFCB180D4E99CB26C12563CD0051BBD9>

Article 27- Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of war.

Appendix C

18 U.S. Code § 2441- War Crimes

<https://www.law.cornell.edu/uscode/text/18/2441>

- a. Offense- Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.
- b. Circumstances- The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).
- c. Definition- As used in this section the term “war crime” means any conduct:
 - i. Defined as a grave breach in any of the international conventions signed at Geneva August 12, 1949, or any protocol to such convention to which the United States is a Party
 - ii. Prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed October 18, 1907
 - iii. Which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character
 - iv. Or of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on May 3, 1996 (Protocol II as amended on May 3, 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians
- d. Common Article 3 Violations:
 - . Prohibited Conduct- “Grave Breach of Common Article 3”
 - 1. Torture- The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.
 - 2. Cruel or inhuman treatment- The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering

incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

3. Performing biological experiments- The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.
4. Murder- The act of a person who intentionally kills or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.
5. Mutilation or maiming- The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.
6. Intentionally causing serious bodily injury- The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.
7. Rape- The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.
8. Sexual assault or abuse- The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.
9. Taking hostages- The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from

acting as an explicit or implicit condition for the safety or release of such person or persons.

i. Definitions

1. The term “severe mental pain or suffering” shall be applied for purposes of paragraphs 1A and 1B
2. The term “serious bodily injury” shall be applied for purposes of paragraph 1F
3. The term “sexual contact” shall be applied for purposes of paragraph 1G
4. The term “serious physical pain or suffering” shall be applied for purposes of paragraph 1B as meaning bodily injury that involves:

- a. a substantial risk of death
- b. extreme physical pain
- c. a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises)
- d. Significant loss or impairment of the function of a bodily member, organ, or mental faculty...

ii. Inapplicability of certain provisions with respect to collateral damage or incident of lawful attack- The intent specified for the conduct stated in subparagraphs D, E, and F, or paragraph 1 precludes the applicability of those subparagraphs to an offense under subsection a b reasons of subsection c3 with respect to:

1. collateral damage
2. death, damage, or injury incident to a lawful attack

iii. Incapability of taking hostages to prisoner exchange- Paragraph 1I does not apply to an offense under subsection a by reason of subsection c3 in the case of a prisoner exchange during wartime

- e. Definition of grave breaches- The definition in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

Appendix D

Timothy Dugan's Case

Google: PDF. File

The present litigation began with a civil action filed in June 2008 by plaintiff Suhail Najim Abdullah Al Shimari (Al Shimari) against CACI, CACI International, former CACI employee Timothy Dugan, and L-3 Services, Inc., another government contractor. The action originally was filed in the Southern

District of Ohio, where defendant Timothy Dugan resided. In the complaint, Al Shimari alleged claims under the Alien Tort Statute (ATS), 28 U.S.C. § 1350, including claims of war crimes, torture, and cruel, inhuman, or degrading treatment (collectively, the ATS claims). The complaint also contained numerous common law claims, including claims of assault and battery, sexual assault and battery, intentional and negligent infliction of emotional distress, and negligent hiring and training (collectively, the common law tort claims). In August 2008, Al Shimari's action was transferred to the Eastern District of Virginia, where the corporate headquarters of CACI and CACI International are located. The following month, Al Shimari submitted an amended complaint that included the similar claims of three other plaintiffs, namely, Taha Yaseen Arraq Rashid, Salah Hasan Nusaif Al-Ejaili, and Asa'ad Hamza Hanfoosh Al-Zuba'e3 (collectively, the Rashid plaintiffs). The amended complaint also identified the names of three CACI employees who allegedly "directed and caused some of the most egregious [acts of] torture and abuse at Abu Ghraib," which information was based on post-conviction testimony and statements given by military personnel who had been prosecuted for their misconduct. In October 2008, the defendants moved to dismiss the amended complaint on numerous grounds, including the political question doctrine, federal preemption, derivative sovereign immunity, and lack of subject matter jurisdiction under the ATS. The district court denied the defendants' motion and held that the plaintiffs' allegations did not present a political question. However, the court concluded that it lacked jurisdiction over the plaintiffs' ATS claims exclusively in Iraq, a foreign sovereign. The district court also dismissed Al Shimari's remaining common law tort claims, holding that governing Iraqi law promulgated by the Coalition Provisional Authority (CPA)⁴ precluded imposition of liability on the defendants, and awarded CACI \$13,731.61 in costs as the prevailing party in the civil action. The plaintiffs timely appealed the district court's entry of final judgment with respect to all four plaintiffs' ATS and common law claims, as well as the district court's taxation of costs against the plaintiffs.

Appendix E

Timothy Dugan Dismissed from Case

www.plainsite.org/dockets/download.html?id=2766569&z=9e5f59f2

I. THIS COURT HAS PERSONAL JURISDICTION OVER DEFENDANT DUGAN UNDER THE DISTRICT OF COLUMBIA LONG-ARM STATUTE.

This Court has jurisdiction over Defendant Dugan because the TAC alleges that Defendant Dugan participated in a conspiracy formed and furthered in this District. See, e.g., *Berwyn Fuel, Inc. v. Hogan*, 399 A.2d 79, 80 (D.C. Ct. App. 1979) (holding that section 13-423 “permits a jurisdictional reach coextensive with that permitted by the due process clause”); *Dickson v. United States*, 831 F. Supp. 893, 897 (D.D.C. 1993) (same); *Youming Jin v. Ministry of State Sec.*, 335 F. Supp. 2d 72, 78-79 (D.D.C. 2004) (Urbina, J.) (holding that court may exercise personal jurisdiction over a defendant based on his co-conspirators’ overt acts with the forum.)

This case is on all fours with *Youming Jin v. Ministry of State Security*, 335 F. Supp. 2d 72, 78-79 (D.D.C. 2004) (J. Urbina). The plaintiffs in *Youming* alleged that the Chinese government had conspired with American officials to abuse and intimidate Chinese practitioners of Falun Gong. One of the individual defendants, a member of a Chinese-American association based in Chicago, filed a motion to dismiss. The Court found that the plaintiffs had alleged that the defendant was a member of the conspiracy and had “sufficiently pled acts by purported co-conspirators in the District of Columbia.” *Youming* at 83. Having found that there was a proper basis for conspiracy jurisdiction, the Court granted the plaintiffs leave to take jurisdictional discovery on the issue of whether the individual defendant had purposefully availed himself of the District such that personal jurisdiction was within the bounds of constitutional due process. *Id.* at 83-84.

Here, this Court has personal jurisdiction over Defendant Dugan under the same reasoning found in *Youming*. The TAC alleges Defendant Dugan formed a conspiracy with others to torture prisoners. The TAC cites to actions taken by Defendant Dugan to further the conspiracy – namely, threatening to kill a co-worker who was cooperating with the criminal investigators who were investigating the conspiracy. TAC ¶ 79.

The TAC expressly alleges Defendant Dugan’s co-conspirators took acts in furtherance of the conspiracy in this District and also alleges overt acts in this District, including forming and fostering relationships that furthered the conspiracy through meetings and communications that occurred in the District of Columbia. TAC ¶ 98. The TAC alleges overt acts in furtherance of

the conspiracy, including meetings, discussion by telephone and in person, e-mail correspondence, and other communications occurring in the District of Columbia. TAC ¶ 98.

As is to be expected, the torture victims have learned more information (dates, etc.) about the facts alleged in the TAC about CACI interrogators engaging in direct telephonic communications with government officials located in the District of Columbia.

But even as plead in the TAC, Defendant Dugan is on notice of the claims and the jurisdictional basis by which the D.C. long-arm statute reaches him based on his participation in the conspiracy. Defendant Dugan is subject to jurisdiction here even if he was not one of the interrogators on the telephone calls because he is responsible for the acts of his co-conspirators. *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 84 (D.D.C. 2006) (“One party may be liable for the acts of another under theories of vicarious liability, such as conspiracy, aiding and abetting and inducement.”). Thus, the overt acts of Defendant Dugan’s co-conspirators are imputed to him for purpose of the D.C. long-arm statute analysis.

Here, exercising personal jurisdiction over Defendant Dugan in this District would not violate standards of due process because he has purposefully availed himself of this District. See *Youming* at 78 (“It is ‘essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’”) (citing *Creighton Ltd. v. Government of State of Qatar*, 181 F.3d 118 (D.C. Cir. 1999), and *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). By entering into an employment agreement with CACI to work on a contract for the U.S. Army in Iraq, Defendant Dugan created a connection to the nation’s capital such that he could reasonably anticipate being brought into court here. *Youming* at 78 (“In short, ‘the defendant’s conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there.’”) (citing *GTE New Media Servs. v. BellSouth Corp*, 199 F.3d 1343, 1347 (D.C. Cir. 2000); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

Should the Court disagree that Defendant Dugan reasonably could have anticipated being haled into court in the nation’s capital as a result of conspiring to and torturing prisoners being held under military control in Iraq, the torture victims respectfully request jurisdictional discovery to establish additional minimum contacts. Courts in this Circuit have liberally granted leave to plaintiffs to take jurisdictional discovery. *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1351-52 (D.C. Cir. 2000); *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 268 F. Supp. 2d 1, 15 (D.D.C. 2003); *El-Fadl v. Cent. Bank of Jordan*, 75 F.3d 668, 676 (D.C. Cir. 1996) (“A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.”). Here, it would not prejudice

Defendant Dugan or any of the other parties to permit Plaintiffs a limited amount of jurisdictional discovery.

II. THE TAC STATES VALID COMMON LAW CLAIMS.

This Court has already denied Rule 12(b)(6) motions filed Defendant CACI and Titan. Yet Defendant Dugan asserts that this Court should dismiss the TAC for a failure to state a claim against him because the torture victims' allegations are either unsupported by the facts or are legal conclusions cast as facts. Memorandum at 6. Defendant Dugan was a former CACI interrogator known to have participated in the torture. Defendant Dugan threatened CACI co-worker Torin Nelson with death because Nelson identified Dugan to military criminal investigators. See Statement of Torin Nelson at 55-58, excerpt attached as Exhibit A.3 Indeed, Defendant Dugan himself admitted to counsel that he participated in the conspiracy – stating “they made me interrogate a dead guy.” See Email from S. Burke to W. Koegel & J. O'Connor (Aug. 22, 2006), attached as Exhibit B.

In any event, regardless of the state of the evidentiary record at present, Defendant Dugan has not – and cannot – carry the heavy burden of proving this motion should be denied. The TAC may be dismissed under Rule 12(b)(6) if it appears beyond doubt that no set of facts could support the legal claims made by the torture victims their complaint. See, e.g., *In re Swine Flu Immunization Prod. Liab. Litig.*, 880 F.2d 1439, 1443 (D.C. Cir. 1989) (“The standard is quite strict under Rule 12(b)(6), where the court limits itself to the pleadings; a defendant must show ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’”) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1955)); *McBride v* Plaintiffs submitted a complete version of Mr. Nelson's statement to the Court as part of Exhibit B to Saleh Plaintiffs' Reply To CACI's Opposition To Rule 56 Discovery (Dkt. 97; Oct. 2, 2006).

Merrell Dow & Pharmaceuticals Inc., 717 F.2d 1460, 1466 (D.C. Cir. 1983) (“The standard to be applied in evaluating the dismissal of a complaint under Fed .R. Civ. P. 12(b)(6) is a stringent one.”). Defendant Dugan has to establish that the torture victims' allegations fail to state a claim as a matter of law. *Kimberlin v. Dept. of Justice*, 150 F. Supp. 2d 36, 41 (D.D.C. 2001) (“A party moving for dismissal under Federal Rule of Civil Procedure 12(b)(6) has the burden of proving that the nonmovant has failed to state a claim upon which relief can be granted.”). But here, where the Court has already found that the torture victims stated valid common law claims against CACI and Titan, and the torture victims' TAC clearly identifies Defendant Dugan's acts in furtherance of the conspiracy, Defendant Dugan simply cannot carry that heavy burden.

A. The TAC Alleges Defendant Dugan Formed a Conspiracy To Torture Prisoners.

The Court of Appeals for the D.C. Circuit had held that a plaintiff makes out the elements of the common law tort of civil conspiracy by alleging “(1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme.” *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983). See also *Weishapl v. Sowers*, 771 A.2d 1014, 1023 (D.C. 2001) (same).

The TAC alleges that in or around 2002, a conspiracy to torture and otherwise mistreat prisoners in Iraq was formed. TAC ¶ 97. Plaintiffs allege that Defendant Dugan intentionally and knowingly agreed to and did work in concert with others, including co-conspirators Nakhla, Israel, and Johnson. TAC ¶¶ 28, 29. The TAC alleges that Defendant Dugan conspired with his co-conspirators “to engage in a series of wrongful acts in prisons under the United States’ control.” TAC ¶ 28. The TAC alleges that the conspirators also conspired “to prevent the discovery and investigation of these wrongful acts.” *Id.* The TAC alleges that Defendant Dugan and his co-conspirators committed predicate acts in furtherance of the conspiracy, including, but not limited to, assault, battery, unlawful imprisonment, and obstruction of justice. TAC ¶ 107. The TAC alleges damages resulting from the conspirators’ unlawful acts including deaths, physical injuries, mental illness and disorders, and property losses. TAC ¶¶ 170-174.

B. The TAC Alleges Defendant Dugan Personally Committed Overt Acts That Both Evidenced and Furthered the Conspiracy To Torture Prisoners.

The TAC alleges overt acts by Defendant Dugan that both evidenced and furthered the conspiracy. Namely, the TAC alleges that Defendant Dugan repeatedly conducted interrogations in a manner that violated United States law and policy as well as international law. TAC ¶ 79. The TAC alleges that Defendant Dugan “used his position of authority to direct others, including military soldiers, to torture and mistreat Plaintiffs” *Id.* Plaintiffs specifically allege that Defendant Dugan “threatened death to one or more of those who were unwilling to participate in the conspiracy and instead reported it to the military authorities.” *Id.*

C. The TAC Alleges Conduct by Defendant Dugan and his Co-Conspirators That Suffices To State Tort Claims and Claims for Aiding and Abetting.

Defendant Dugan does not – and cannot – allege that the conduct alleged in the TAC fails to plead the requisite elements to support the tort claims. In the District of Columbia, a defendant commits civil assault when he or she intends to put the plaintiff in fear of immediate and harmful or offensive conduct. *Madden v. D.C. Transit System, Inc.*, 307 A.2d 756, 757 (D.C. 1973) (“An essential element of the ancient tort of assault is the intentional putting another in apprehension of an immediate and harmful or offensive conduct.”).

A defendant commits the tort of battery by intentionally acting in a way that causes harmful or offensive bodily contact. *Holder v. District of Columbia*, 700 A.2d 738, 741 (D.C.

Ct. App. 1997) (“An assault is ‘an intentional and unlawful attempt or threat, either by words or acts, to do physical harm to the plaintiff.’ . . . ‘A battery is an intentional act that causes a harmful or offensive bodily contact.”) (citing *Etheredge v. District of Columbia*, 635 A.2d 908, 916 (D.C. 1993)).

A defendant intentionally inflicts emotional distress if the plaintiff shows “(1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress.” *Darrow v. Dillingham & Murphy, LLP*, 902 A.2d 135, 139 (D.C. 2006) (quoting *Howard Univ. v. Best*, 484 A.2d 958, 985 (D.C. 1984)). As stated by one court in the District, “The conduct must be ‘so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’” *Larijani v. Georgetown University*, 791 A.2d 41, 44 (D.C. 2002) (internal citation omitted).

A defendant aids and abets the foregoing torts when (1) the party whom the defendant aids performs a wrongful act that causes an injury; (2) the defendant is generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and (3) the defendant knowingly and substantially assists the principal violation. *Burnett v. Al Baraka Inv. & Dev’t Corp.*, 274 F. Supp. 2d 86, 104-05 (D.D.C. 2003) (citing *Halberstam* for aiding and abetting common law tort elements).

Here, the TAC alleges that Defendant Dugan personally “directed and engaged in the torture and mistreatment” of Plaintiffs and Class Members. TAC ¶¶ 26. Plaintiffs allege that Defendant Dugan “threatened death to one or more of those who were unwilling to participate in the conspiracy and instead reported it to the military authorities.” TAC ¶ 79. The TAC describes the numerous assaults and batteries committed by Defendant Dugan and/or his co-conspirators, including those of a sexual nature.⁴ The TAC alleges that Defendant Dugan and his co-conspirators subjected Plaintiff Saleh to, among other brutal acts, electric shocks, threatening him with a dog, shooting him with plastic bullets, and numerous acts of physical and sexual abuse (TAC ¶116); subjected Plaintiff Haj Ali to, among other brutal acts, electric shocks, physical abuse, painful stress positions, exposure to extreme cold, and forced nudity (TAC ¶¶ 125, 124, 123); subjected Plaintiff Jalel Mahdy Hadood to harmful and offensive acts including exposure to extreme heat, sleep deprivation, humiliation by forcing him to wear women’s underwear, beating, food deprivation, stress positions and threats of sodomy (TAC ¶¶ 129, 130); subjected a boy, Plaintiff Umer Abdul Mutalib Abdul Latif, to extreme heat, food deprivation, beating, stress positions, threats to harm his family, and electric shocks (TAC ¶ 133); subjected Plaintiff Ahmed Shehab Ahmed to harmful and offensive conduct including beating, denial of medical care, forced nudity, and threats to rape his family (TAC ¶ 135); subjected Plaintiff Ahmed Ibrahim Neisef Jassem to harmful and offensive acts including exposure to extreme cold, forced nudity, intimidation with dogs, beating, forced nudity, food deprivation, and stress positions (TAC ¶ 137); subjected Plaintiff Ismael Neisef Jassem Al-Nidawi to harmful and offensive acts including beating, stress positions, electric shocks, sleep deprivation, forced nudity, threats of rape, and exposure to extreme heat (TAC ¶¶ 142, 143, 144); subjected Plaintiff Kinan Ismael Neisef Al-Nidawi to harmful and offensive acts including beating, sleep deprivation, stress positions, exposure to extreme heat and cold, forced nudity, rape and threats of sodomy (TAC ¶ 146, 147, 148); threatened Plaintiffs Mustafa, Natheer, Othman, and Hassan

⁴ See, e.g., TAC ¶ 54 (alleging that a Titan employee raped a fourteen-year-old class member); TAC ¶ 160(a)-(v) (describing forced nudity, rape and other forced sexual acts, photographing while nude and/or in other humiliating situations, as well as hooding, beating, solitary confinement, deprivation of food and water, exposure to loud music, stress positions, sleep deprivation, exposure to extreme temperatures, and ridicule of religious practice). and their family members with sexual abuse, sexually molested two of these plaintiffs, and subjected these plaintiffs to stress positions and food deprivation (TAC ¶¶ 155, 156, 157, 158).⁵

Given that Defendant Dugan is alleged to have personally directed and conspired with others to commit the torture and mistreatment and that the TAC spells out the many wrongful acts of torture, Defendant Dugan’s argument that Plaintiffs’ TAC should be dismissed for failure to allege events and allege any facts fails to persuade. This Court has already recognized that the

Plaintiffs' allegations of harm by the defendants reflect "nearly unspeakable acts of torture and other mistreatment." June 29, 2006 Order at 1. The brutality of the acts committed by the torture conspirators, see, e.g., TAC ¶ 160 (a)-(v), more than satisfy the standard of "outrageous" conduct.

Appendix F

Fay-Jones Report

“Suhail Najim Abdullah Al Shimari et al. vs. CACI Premier Technology Inc.: Plaintiff’s

Memorandum in Opposition to Defendant CACI Premier Technology’s Motion to Dismiss.” *Center for Constitutional Rights*. December 14, 2014. 27.

Discipline and Leadership

Military Intelligence and Military Police units had missions throughout the Iraqi Theater of Operations (ITO), however, 205th MI Brigade and 800th Military Police Brigade leaders at Abu Ghraib failed to execute their assigned responsibilities. The leaders from units located at Abu Ghraib or with supervision over Soldiers and units at Abu Ghraib, failed to supervise subordinates or provide direct oversight of this important mission. These leaders failed to properly discipline their Soldiers. These leaders failed to learn from prior mistakes and failed to provide continued mission-specific training. The 205th MI Brigade Commander did not assign a specific subordinate unit to be responsible for interrogations at Abu Ghraib and did not ensure that a Military Intelligence chain of command at Abu Ghraib was established. The absence of effective leadership was a factor in not sooner discovering and taking actions to prevent both the violent/sexual abuse incidents and the misinterpretation/confusion incidents.

Neither Department of Defense nor Army doctrine caused any abuses. Abuses would not have occurred had doctrine been followed and mission training conducted. Nonetheless, certain facets of interrogation and detention operations doctrine need to be updated, refined or expanded, including, the concept, organization, and operations of a Joint Interrogation and Debriefing Center (JIDC); guidance for interrogation techniques at both tactical and strategic levels; the roles, responsibilities and relationships between Military Police and Military Intelligence personnel at detention facilities; and, the establishment and organization of a Joint Task Force structure and, in particular, its intelligence architecture.

Other Contributing Factors

Demands on the Human Intelligence (HUMINT) capabilities in a counter- insurgency and in the future joint operational environment will continue to tax tactical and strategic assets. The Army needs trained and experienced tactical HUMINT personnel.

Working alongside non-DOD organizations/agencies in detention facilities proved complex and demanding. The perception that non-DOD agencies had different rules regarding interrogation and detention operations was evident. Interrogation and detention policies and limits of authority should apply equally to all agencies in the Iraqi Theater of Operations.

"Ghost Detainees"

The appointing authority and investigating officers made a specific finding regarding the issue of "ghost detainees" within Abu Ghraib. It is clear that the interrogation practices of other government agencies led to a loss of accountability at Abu Ghraib. DoD must document and enforce adherence by other government agencies with established DoD practices and procedures while conducting detainee interrogation operations at DoD facilities. This matter requires further investigation and, in accordance

Appendix G

Protocol I

<https://www.icrc.org/>

a. Article 43- Armed Forces

- i. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.
- ii. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.
- iii. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

b. Article 44 Sections 1, 2, and 3- Combatants and prisoners of war

- . Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war
- i. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall be deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.
- ii. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
 1. during each military engagement
 2. during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate

c. Article 50- Definition of civilians and civilian population

. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

i. The civilian population comprises all persons who are civilians.

ii. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character

Appendix H

Military Extraterritoriality Jurisdiction Act

18 U.S. Code Section 3261: Criminal offenses committed by certain members of the armed forces and by persons employed by or accompanying the Armed Forces outside of the United States

(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

(1) while employed by or accompanying the Armed Forces outside the United States; or

(2) while a member of the Armed Forces subject to chapter [47](#) of title [10](#) (the Uniform Code of Military Justice),

shall be punished as provided for that offense.

(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(c) Nothing in this chapter may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

(d) No prosecution may be commenced against a member of the Armed Forces subject to chapter [47](#) of title [10](#) (the Uniform Code of Military Justice) under this section unless—

(1) such member ceases to be subject to such chapter; or

(2) an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

Appendix I

U.S. Code 2331

“18 U.S. Code § 2331- Definitions.” *Cornell University Law School: Legal Information Institute*.

October 29, 1992.

Page 523 TITLE 18—CRIMES AND CRIMINAL PROCEDURE §2331

Sec.

1. 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.
1. 2332g. Missile systems designed to destroy aircraft.
2. 2332h. Radiological dispersal devices.
1. Civil remedies.
2. Jurisdiction and venue.
3. Limitation of actions.
4. Other limitations.
5. Suits against Government officials.
6. Exclusive Federal jurisdiction.
7. Harboring or concealing terrorists.
1. 2339A. Providing material support to terrorists.
2. 2339B. Providing material support or resources to designated foreign terrorist organizations.
1. 2339C. Prohibitions against the financing of terrorism.
1. 2339D. Receiving military-type training from a foreign terrorist organization.¹

CODIFICATION

Pub. L. 101–519, §132, Nov. 5, 1990, 104 Stat. 2250, known as the “Antiterrorism Act of 1990”, amended this chapter by adding sections 2331 and 2333 to 2338 and by amending former section 2331 and renumbering it as section 2332. Pub. L. 102–27, title IV, §402, Apr. 10, 1991, 105 Stat. 155, as amended by Pub. L. 102–136, §126, Oct. 25, 1991, 105 Stat. 643, repealed section 132 of Pub. L. 101–519, effective Nov. 5, 1990, and provided that effective Nov. 5, 1990, this chapter is amended to read as if section 132 of Pub. L. 101–519 had not been enacted.

PRIOR PROVISIONS

Another chapter 113B, consisting of sections 2340 to 2340B, was renumbered chapter 113C.

AMENDMENTS

2004—Pub. L. 108–458, title VI, §6911(a), Dec. 17, 2004, 118 Stat. 3775, added items 2332g and 2332h.

2002—Pub. L. 107–197, title I, §102(b), title II, §202(b), June 25, 2002, 116 Stat. 724, 727, added items 2332f and 2339C.

2001—Pub. L. 107–56, title VIII, §803(b), Oct. 26, 2001, 115 Stat. 377, added item 2339.

1998—Pub. L. 105–277, div. I, title II, § 201(c)(2), Oct. 21, 1998, 112 Stat. 2681–871, struck out item 2332c “Use of chemical weapons”.

1996—Pub. L. 104–294, title VI, § 605(q), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2332d, relating to requests for military assistance to enforce prohibition in certain emergencies, as item 2332e, and moved the item to follow item 2332d, relating to financial transactions.

Pub. L. 104–294, title VI, §604(b)(5), Oct. 11, 1996, 110 Stat. 3506, amended directory language of Pub. L. 103–322, title XII, § 120005(b), Sept. 13, 1994, 108 Stat. 2023. See 1994 Amendment note below.

Pub. L. 104–201, div. A, title XIV, §1416(c)(2)(B), Sept. 23, 1996, 110 Stat. 2723, which directed amendment of table of sections at beginning of the chapter 133B of this title, that relates to terrorism, by adding item 2332d relating to requests for military assistance to enforce prohibition in certain emergencies, after item 2332c, was executed by making the addition after item 2332c in the table of sections at the beginning of this chapter to reflect the probable intent of Congress. This title does not contain a chapter 133B.

Pub. L. 104–132, title III, §§303(b), 321(b), title V, §521(c), title VII, §702(b), Apr. 24, 1996, 110 Stat. 1253, 1254, 1287, 1294, added items 2332b to 2332d and 2339B.

1994—Pub. L. 103–322, title XII, §120005(b), Sept. 13, 1994, 108 Stat. 2023, as amended by Pub. L. 104–294, title VI, §604(b)(5), Oct. 11, 1996, 110 Stat. 3506, added item 2339A.

Pub. L. 103–322, title VI, §60023(b), title XXV, §250002(a)(1), (b)(2), Sept. 13, 1994, 108 Stat. 1981, 2082,

1 Editorially supplied. Section 2339D added by Pub. L. 108–458 without corresponding amendment of chapter analysis.

2085, renumbered chapter 113A as 113B, amended chapter heading generally, substituting “113B” for “113A”, and added item 2332a.

1992—Pub. L. 102–572, title X, §1003(a)(5), Oct. 29, 1992, 106 Stat. 4524, substituted “TERRORISM” for “EXTRA- TERRITORIAL JURISDICTION OVER TERRORIST ACTS ABROAD

AGAINST UNITED STATES NATIONALS” in chapter heading and amended chapter analysis generally, substituting “Definitions” for “Terrorist acts abroad against United States nationals” in item 2331 and adding items 2332 to 2338.

1988—Pub. L. 100–690, title VII, § 7062, Nov. 18, 1988, 102 Stat. 4404, added item 2331.

§ 2331. Definitions

As used in this chapter—

(1) the term “international terrorism”

means activities that—

(A) involve violent acts or acts dangerous

to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

(2) the term “national of the United States” has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

(3) the term “person” means any individual or entity capable of holding a legal or beneficial interest in property;

(4) the term “act of war” means any act occurring in the course of—

(A) declared war;

(B) armed conflict, whether or not war has been declared, between two or more nations; or

(C) armed conflict between military forces of any origin; and

(5) the term “domestic terrorism” means activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.

(Added Pub. L. 102–572, title X, §1003(a)(3), Oct. 29, 1992, 106 Stat. 4521; amended Pub. L. 107–56, title VIII, § 802(a), Oct. 26, 2001, 115 Stat. 376.)

§2332 TITLE 18—CRIMES AND CRIMINAL PROCEDURE Page 524

REFERENCES IN TEXT

Section 101(a)(22) of the Immigration and Nationality Act, referred to in par. (2), is classified to section 1101(a)(22) of Title 8, Aliens and Nationality.

PRIOR PROVISIONS

A prior section 2331 was renumbered 2332 of this title.

AMENDMENTS

2001—Par. (1)(B)(iii). Pub. L. 107–56, §802(a)(1), substituted “by mass destruction, assassination, or kidnapping” for “by assassination or kidnapping”.

Par. (5). Pub. L. 107–56, § 802(a)(2)–(4), added par. (5). EFFECTIVE DATE

Section 1003(c) of Pub. L. 102–572 provided that: “This section [enacting this section and sections 2333 to 2338 of this title, amending former section 2331 of this title, and renumbering former section 2331 of this title as 2332] and the amendments made by this section shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act [Oct. 29, 1992].”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, §6601, Dec. 17, 2004, 118 Stat. 3761, provided that: “This subtitle [subtitle G (§§6601–6604) of title VI of Pub. L. 108–458, enacting section 2339D of this title, amending sections 2332b and 2339A to 2339C of this title, and enacting provisions set out as a note under section 2332b of this title] may be cited as the ‘Material Support to Terrorism Prohibition Enhancement Act of 2004’.”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–197, title I, §101, June 25, 2002, 116 Stat. 721, provided that: “This title [enacting section 2332f of this title and provisions set out as notes under section 2332f of this title] may be cited as the ‘Terrorist Bombings Convention Implementation Act of 2002’.”

Pub. L. 107–197, title II, §201, June 25, 2002, 116 Stat. 724, provided that: “This title [enacting section 2339C of this title and provisions set out as notes under section 2339C of this title] may be cited as the ‘Suppression of the Financing of Terrorism Convention Implementation Act of 2002’.”

§ 2332. Criminal penalties

(a) **HOMICIDE.**—Whoever kills a national of the United States, while such national is outside the United States, shall—

- (1) if the killing is murder (as defined in section 1111(a)), be fined under this title, punished by death or imprisonment for any term of years or for life, or both;
- (2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both; and
- (3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than three years, or both.

(b) **ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.**—Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall—

- (1) in the case of an attempt to commit a killing that is a murder as defined in this chapter, be fined under this title or imprisoned not more than 20 years, or both; and
- (2) in the case of a conspiracy by two or more persons to commit a killing that is a murder as defined in section 1111(a) of this

title, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

(c) **OTHER CONDUCT.**—Whoever outside the United States engages in physical violence—

- (1) with intent to cause serious bodily injury to a national of the United States; or
 - (2) with the result that serious bodily injury is caused to a national of the United States;
- shall be fined under this title or imprisoned not more than ten years, or both.

(d) **LIMITATION ON PROSECUTION.**—No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General

or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

(Added Pub. L. 99–399, title XII, § 1202(a), Aug. 27, 1986, 100 Stat. 896, §2331; amended Pub. L. 101–519, §132(b), Nov. 5, 1990, 104 Stat. 2250; Pub. L. 102–27, title IV, §402, Apr. 10, 1991, 105 Stat. 155; Pub. L. 102–136, §126, Oct. 25, 1991, 105 Stat. 643; renumbered §2332 and amended Pub. L. 102–572, title X, §1003(a)(1), (2), Oct. 29, 1992, 106 Stat. 4521; Pub. L. 103–322, title VI, §60022, Sept. 13, 1994, 108 Stat. 1980; Pub. L. 104–132, title VII, § 705(a)(6), Apr. 24, 1996, 110 Stat. 1295.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–132 substituted “ten years” for “five years” in concluding provisions.

1994—Subsec. (a)(1). Pub. L. 103–322 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “if the killing is a murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;”.

1992—Pub. L. 102–572 renumbered section 2331 of this title as this section, substituted “Criminal penalties” for “Terrorist acts abroad against United States national” in section catchline, redesignated subsec. (e) as (d), and struck out former subsec. (d) which read as follows: “DEFINITION.—As used in this section the term ‘national of the United States’ has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).”

1991—Pub. L. 102–27, §402, as amended by Pub. L. 102–136, §126, repealed Pub. L. 101–519, §132, and amended this section to read as if Pub. L. 101–519, §132, had not been enacted, effective as of Nov. 5, 1990, the date of enactment of Pub. L. 101–519. See Codification note preceding this section.

1990—Pub. L. 101–519, §132, which amended this section, was repealed by Pub. L. 102–27, §402, as amended. See 1991 Amendment note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as an Effective Date note under section 2331 of this title.

§ 2332a. Use of weapons of mass destruction

(a) OFFENSE AGAINST A NATIONAL OF THE UNITED STATES OR WITHIN THE UNITED STATES.— A person who, without lawful authority, uses,

Appendix J

Alien Torture Statute

https://www.law.cornell.edu/uscode/pdf/uscode28/lii_usc_TI_28_PA_IV_CH_85_SE_1350.pdf

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE PART IV - JURISDICTION AND VENUE CHAPTER 85 - DISTRICT COURTS; JURISDICTION § 1350. Alien's action for tort The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. (June 25, 1948, ch. 646, 62 Stat. 934.) Historical and Revision Notes Based on title 28, U.S.C., 1940 ed., § 41(17) (Mar. 3, 1911, ch. 231, § 24, par. 17, 36 Stat. 1093). Words "civil action" were substituted for "suits," in view of Rule 2 of the Federal Rules of Civil Procedure. Changes in phraseology were made. Torture Victim Protection Pub. L. 102-256, Mar. 12, 1992, 106 Stat. 73, provided that: "SECTION 1. SHORT TITLE. "This Act may be cited as the 'Torture Victim Protection Act of 1991'. "SEC. 2. ESTABLISHMENT OF CIVIL ACTION. "(a) Liability.—An individual who, under actual or apparent authority, or color of law, of any foreign nation— "(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or "(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death. "(b) Exhaustion of Remedies.—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred. "(c) Statute of Limitations.—No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose. "SEC. 3. DEFINITIONS. "(a) Extrajudicial Killing.—For the purposes of this Act, the term 'extrajudicial killing' means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation. "(b) Torture.—For the purposes of this Act— "(1) the term 'torture' means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and "(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from— "(A) the intentional infliction or threatened infliction of severe physical pain or suffering; "(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; "(C) the threat of imminent death; or "(D) the threat that another individual will imminently be subjected to death, severe physical pain or

suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.”

Appendix K

Executive Order 13491

https://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations

ENSURING LAWFUL INTERROGATIONS

By the authority vested in me by the Constitution and the laws of the United States of America, in order to improve the effectiveness of human intelligence-gathering, to promote the safe, lawful, and humane treatment of individuals in United States custody and of United States personnel who are detained in armed conflicts, to ensure compliance with the treaty obligations of the United States, including the Geneva Conventions, and to take care that the laws of the United States are faithfully executed, I hereby order as follows:

Section 1. Revocation. Executive Order 13440 of July 20, 2007, is revoked. All executive directives, orders, and regulations inconsistent with this order, including but not limited to those issued to or by the Central Intelligence Agency (CIA) from September 11, 2001, to January 20, 2009, concerning detention or the interrogation of detained individuals, are revoked to the extent of their inconsistency with this order. Heads of departments and agencies shall take all necessary steps to ensure that all directives, orders, and regulations of their respective departments or agencies are consistent with this order. Upon request, the Attorney General shall provide guidance about which directives, orders, and regulations are inconsistent with this order.

Sec. 2. Definitions. As used in this order:

(a) "Army Field Manual 2-22.3" means FM 2-22.3, Human Intelligence Collector Operations, issued by the Department of the Army on September 6, 2006.

(b) "Army Field Manual 34-52" means FM 34-52, Intelligence Interrogation, issued by the Department of the Army on May 8, 1987.

(c) "Common Article 3" means Article 3 of each of the Geneva Conventions.

(d) "Convention Against Torture" means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 100-20 (1988).

(e) "Geneva Conventions" means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(f) "Treated humanely," "violence to life and person," "murder of all kinds," "mutilation," "cruel treatment," "torture," "outrages upon personal dignity," and "humiliating and degrading treatment" refer to, and have the same meaning as, those same terms in Common Article 3.

(g) The terms "detention facilities" and "detention facility" in section 4(a) of this order do not refer to facilities used only to hold people on a short-term, transitory basis.

Sec. 3. Standards and Practices for Interrogation of Individuals in the Custody or Control of the United States in Armed Conflicts.

(a) Common Article 3 Standards as a Minimum Baseline. Consistent with the requirements of the Federal torture statute, 18 U.S.C. 2340-2340A, section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd, the Convention Against Torture, Common Article 3, and other laws regulating the treatment and interrogation of individuals detained in any armed conflict, such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.

(b) Interrogation Techniques and Interrogation-Related Treatment. Effective immediately, an individual in the custody or under the effective control of an officer, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2-22.3 (Manual). Interrogation techniques, approaches, and treatments described in the Manual shall be implemented strictly in accord with the principles, processes, conditions, and limitations the Manual prescribes. Where processes required by the Manual, such as a requirement of approval by specified Department of Defense officials, are inapposite to a department or an agency other than the Department of Defense, such a department or agency shall use processes that are substantially equivalent to the processes the Manual prescribes for the Department of Defense. Nothing in this section shall preclude the Federal Bureau of Investigation, or other Federal law enforcement agencies, from continuing to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises.

(c) Interpretations of Common Article 3 and the Army Field Manual. From this day forward, unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may, in conducting interrogations, act in reliance upon Army Field Manual 2-22.3, but may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation -- including interpretations of Federal criminal laws, the Convention Against Torture, Common Article 3, Army Field Manual 2-22.3, and its predecessor document, Army Field Manual 34-52 -- issued by the Department of Justice between September 11, 2001, and January 20, 2009.

Sec. 4. Prohibition of Certain Detention Facilities, and Red Cross Access to Detained Individuals.

(a) CIA Detention. The CIA shall close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future.

(b) International Committee of the Red Cross Access to Detained Individuals. All departments and agencies of the Federal Government shall provide the International Committee of the Red Cross with notification of, and timely access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States Government, consistent with Department of Defense regulations and policies.

Sec. 5. Special Interagency Task Force on Interrogation and Transfer Policies.

(a) Establishment of Special Interagency Task Force. There shall be established a Special Task Force on Interrogation and Transfer Policies (Special Task Force) to review interrogation and transfer policies.

(b) Membership. The Special Task Force shall consist of the following members, or their designees:

- (i) the Attorney General, who shall serve as Chair;
- (ii) the Director of National Intelligence, who shall serve as Co-Vice-Chair;
- (iii) the Secretary of Defense, who shall serve as Co-Vice-Chair;
- (iv) the Secretary of State;
- (v) the Secretary of Homeland Security;
- (vi) the Director of the Central Intelligence Agency;
- (vii) the Chairman of the Joint Chiefs of Staff; and

(viii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the department or agency concerned.

(c) Staff. The Chair may designate officers and employees within the Department of Justice to serve as staff to support the Special Task Force. At the request of the Chair, officers and employees from other departments or agencies may serve on the Special Task Force with the concurrence of the head of the department or agency that employ such individuals. Such staff must be officers or full-time or permanent part-time employees of the United States. The Chair shall designate an officer or employee of the Department of Justice to serve as the Executive Secretary of the Special Task Force.

(d) Operation. The Chair shall convene meetings of the Special Task Force, determine its agenda, and direct its work. The Chair may establish and direct subgroups of the Special Task Force, consisting exclusively of members of the Special Task Force, to deal with particular subjects.

(e) Mission. The mission of the Special Task Force shall be:

(i) to study and evaluate whether the interrogation practices and techniques in Army Field Manual 2-22.3, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies; and

(ii) to study and evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control.

(f) Administration. The Special Task Force shall be established for administrative purposes within the Department of Justice and the Department of Justice shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support and funding for the Special Task Force.

(g) Recommendations. The Special Task Force shall provide a report to the President, through the Assistant to the President for National Security Affairs and the Counsel to the President, on the matters set forth in subsection (d) within 180 days of the date of this order, unless the Chair determines that an extension is necessary.

(h) Termination. The Chair shall terminate the Special Task Force upon the completion of its duties.

Sec. 6. Construction with Other Laws. Nothing in this order shall be construed to affect the obligations of officers, employees, and other agents of the United States Government to comply with all pertinent laws and treaties of the United States governing detention and interrogation, including but not limited to: the Fifth and Eighth Amendments to the United States Constitution; the Federal torture statute, 18 U.S.C. 2340-2340A; the War Crimes Act, 18 U.S.C. 2441; the Federal assault statute, 18 U.S.C. 113; the Federal maiming statute, 18 U.S.C. 114; the Federal "stalking" statute, 18 U.S.C. 2261A; articles 93, 124, 128, and 134 of the Uniform Code of Military Justice, 10 U.S.C. 893, 924, 928, and 934; section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd; section 6(c) of the Military Commissions Act of 2006, Public Law 109-366; the Geneva Conventions; and the Convention Against Torture. Nothing in this order shall be construed to diminish any rights that any individual may have under these or other laws and treaties. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

BARACK OBAMA

THE WHITE HOUSE,

January 22, 2009.

Appendix L

U.S. Army Field Manual 2-22.3

http://fas.org/irp/doddir/army/fm2-22-3.pdf?hc_location=ufi

APPROACH STRATEGIES FOR INTERROGATION 8-77. Interrogation does not mean a hostile relationship between the HUMINT collector and the source. In fact, most interrogation sources (90 percent or more) cooperate in response to the direct approach. Unfortunately, those sources who have the placement and access to make them high priority sources are also the ones with the highest degree of security awareness. A source who uses counter-interrogation techniques such as delaying, trying to control the conversation, or interrogating the HUMINT collector himself may—

- Be an intelligence trained soldier.
- Be survival, evasion, resistance, and escape (SERE) trained.
- Be a terrorist.
- Have been a detainee or previously incarcerated.

8-78. In stability and reconstruction operations and civil support operations, detainees are often politically motivated and resistant to most approaches. 8-20 6 September 2006

___ FM 2-22.3 8-79. EPWs are normally vulnerable to basic incentive and emotional approach techniques. Most EPWs are traumatized to various degrees by the events preceding or surrounding their capture. They tend to be disoriented and exhibit high degrees of fear and anxiety. This vulnerable state fades over time, and it is vital for HUMINT collectors to interrogate EPWs as soon as and as close to the point of capture as possible. The earlier that an EPW is questioned the more likely he is to cooperate. And the earlier that he begins to cooperate, the more likely he is to continue to cooperate. It is also vital that the HUMINT collector be the first person that the EPW has a chance to talk to. This means that proper silencing and segregation of the sources by whoever is transporting them is an important part of a successful approach. 8-80. The vulnerability of civilian detainees to approach techniques available to the HUMINT collector may be dependent on the exact nature of the conflict. US HUMINT collectors are obligated to treat all detainees in accordance with applicable law and policy. Applicable law and policy include US law; the law of war; relevant international law; relevant directives including DOD Directive 3115.09, “DOD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning”; DOD Directive 2310.1E, “The Department of Defense Detainee Program”; DOD instructions; and military executive orders including FRAGOs. Detainees and, in particular, EPWs are guaranteed certain rights and privileges. The HUMINT collector may not take any action to remove, state that he will remove, or imply that he will remove any guaranteed right if a detainee fails to cooperate. Under the GPW, EPWs cannot be denied their rights or their privileges accorded them by rank as guaranteed by the GPW. Privileges afforded to them, however, which are not guaranteed by the Geneva Conventions or other applicable law or agreements, may be withheld. (See Appendix A, Section I.) Consult your SJA for questions concerning rights and privileges. 8-81. The HUMINT collector is frequently under a great deal of pressure to “produce results.” This situation, coupled with the facts that the HUMINT collector is dealing with threat personnel who may have been attempting to kill US personnel just minutes before questioning and the fact that the source is in a vulnerable state,

leads to a tendency to use fear-up techniques. This may, in some circumstances, be the proper approach; however, the HUMINT collector must ensure that in doing so he neither loses control of his own emotions nor uses physical or mental coercion. APPROACH STRATEGIES FOR DEBRIEFING 8-82. Sources who are debriefed vary even more widely than those who are interrogated. Since debriefing is the systematic questioning of individuals not in the custody of the questioning forces, the HUMINT collector needs to engender an atmosphere of cooperation and mutual benefit. Some sources for debriefing include members of the friendly forces and local personnel. HUMINT collectors often believe that approach techniques are not required for friendly forces and that friendly forces should view debriefing as part of their duties and in their own best interest. However, this is not necessarily the case. 6 September 2006 8-21 FM 2-22.3

___ 8-83. Many people see debriefing as an interruption in their normal duties and a waste of their time. HUMINT collectors must be sure to stay focused on the purpose and goals of the debriefing. They should be businesslike and must maintain the proper relationship with the source based on his rank and position. The HUMINT collector should allow senior sources more latitude to interpose their opinions and evaluations. A change of scene often facilitates the debriefing of a high-level source since it removes him from his normal distractions, such as the telephone, and allows him to concentrate on the topics being discussed. 8-84. Refugees and DPs are subject to many of the same anxieties and trauma that are experienced by EPWs or other detainees, with the added benefit to the HUMINT collector that they normally have an obvious vested interest in cooperating. Basic incentives usually are sufficient to induce their willing cooperation. The emotional support that can be provided by the HUMINT collector by simply listening and commiserating with their hardship is often sufficient to gain cooperation. The emotional approaches such as love of family and hate toward those who made them refugees are strong motivators toward cooperation. 8-85. The approach techniques used in the questioning of local civilians are probably the most difficult. The approach techniques chosen must take into consideration the attitude of the local population toward the US and its presence and cultural considerations. The local population must see their cooperation as self-beneficial. APPROACH STRATEGIES FOR ELICITATION 8-86. Elicitation is a sophisticated technique used when conventional collection techniques cannot be used effectively. Of all the collection methods, this one is the least obvious. However, it is important to note that elicitation is a planned, systematic process that requires careful preparation. It is always applied with a specific purpose in mind. This objective is the key factor in determining the subject (which source to question), the elicitor, and the setting. The subject will be selected based on access to or knowledge of the desired information. 8-87. Before approaching the subject, it is necessary to review all available intelligence files and records, personality dossiers, and knowledge possessed by others who have previously dealt with the subject. This will help determine the subject's background, motivation, emotions, and psychological nature. It also may require unobtrusive observation of the subject to establish such things as patterns of activity and likes and dislikes. The setting can be any number of social or official areas. It is important to note that the source should be approached in his natural surroundings, as this will

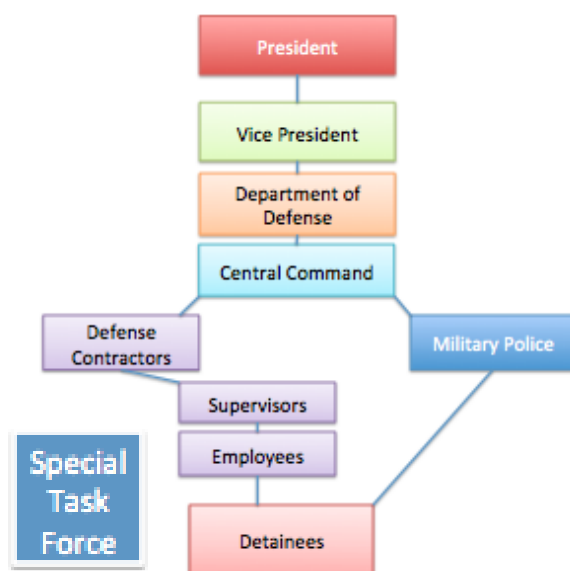
diminish suspicion. 8-88. The key to elicitation is the establishment of a rapport between the elicitor and the source, normally based on shared interests. In the initial stages of an elicitation, the collector confines his conversations to innocuous subjects such as sports and social commentary. Dependent on the value of the source, the collection environment, and the security consciousness of the 8-22 6 September 2006

____ FM 2-22.3 source the initial stage could last from a few minutes to numerous seemingly accidental meetings over a period of weeks or months. The HUMINT collector will gradually shift the conversation to topics of collection interest but will be prepared to return to more unthreatening topics based on negative reactions on the part of the subject. Once a topic of interest has been introduced, the HUMINT collector keeps the conversation going by asking for clarification (for example, "I agree, however, what did you mean by....?") or expressing a hypothetical situation. 8-89. There are two basic elicitation approaches: mild flattery and provocation. • Mild Flattery: Most people like talking about their interests and like talking to those who are knowledgeable and interested in the same topics. People also like to speak to someone who values their opinion on shared interests. The HUMINT collector takes advantage of this. The HUMINT collector leads the conversation into areas that he wishes to collect but does it in such a way that it appears to the source that the source is leading the conversation. Above all in elicitation, the HUMINT collector plays the role of the rapt, attentive, and inquisitive listener. • Provocation: This is a more dangerous approach and, if used too early in an operation, can alienate the source. Once the HUMINT collector has established shared interests with the source, he can selectively challenge some of the source's statements, encouraging the source to provide more information in support of his view. The HUMINT collector can also insert bits of actual information into the conversation to cause the source to confirm and expound on the topic. Care must be taken so as not to give away more information than is gained.

Appendix M

Proposed Chain of Command

Made by Felizzia Garza



This proposed chain of command only focuses on the role and authority of defense contractors and military personnel at prison camps.

Appendix N

Abuses at Abu Ghraib Photos

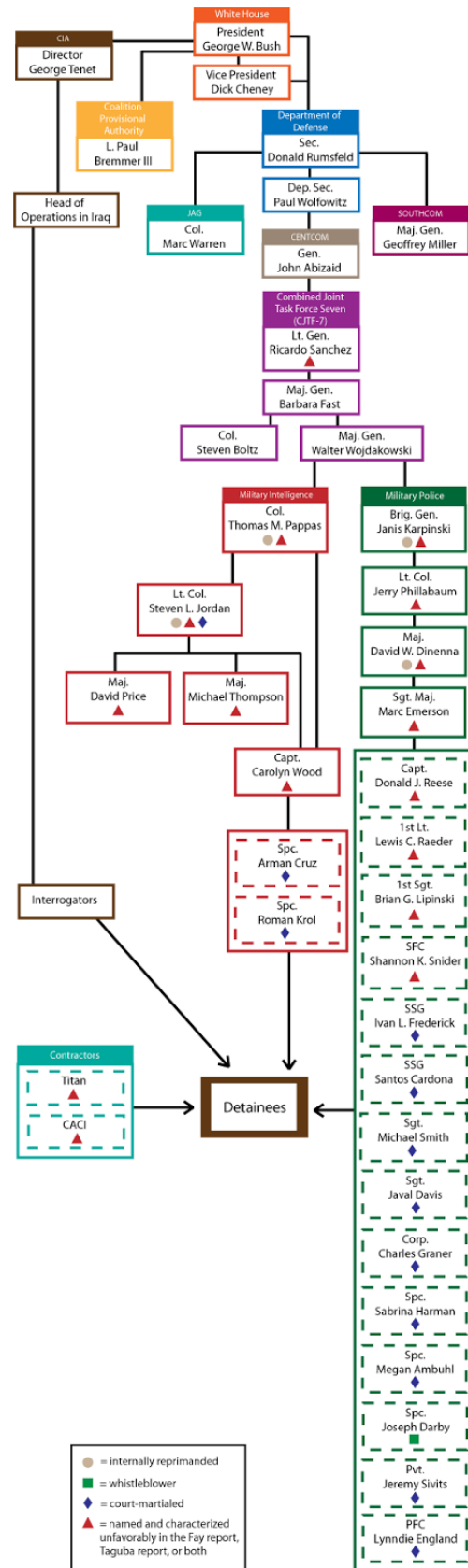
"Abu Ghraib Abuse Photos." February 17, 2006. <http://www.antiwar.com>.



Appendix O

Military Chain of Command Picture

<http://www.motherjones.com/politics/2008/03/exclusive-whos-behind-abu-ghraib>



Glossary

A

AQI = al-Qaeda in Iraq

E

Enhanced Interrogation: Torture: the action or practice of inflicting severe pain on someone as a punishment or to force them to do or say something, or for the pleasure of the person inflicting the pain.

EO = Executive Order

H

Higher contracting party: The representatives of states who have signed or ratified a treaty. From the point of view of international law it is immaterial where the treaty-making power resides (e.g. in a head of state, a senate, or a representative body): this is a question determinable by the constitutional law of the particular contracting state concerned. Other nations are entitled only to demand from those with whom they contract a de facto capacity to bind the society that they represent. The House of Lords has held that the determination of who the high contracting parties are is to be based upon the terms of the individual treaty in question. Thus the signatories, as well as the parties, can be considered to be high contracting parties.

HUMINT = Human Intelligence

I

IMT = International Military Tribunal

L

LTG = Lieutenant General

M

MG = Major General

MP = Military Police

P

POW = Prisoner of War

W

WWII = World War II

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