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[Redacted]

To: [Redacted]
cc: [Redacted]

Subject: Re: OIG Case [Redacted] - Eyes Only

07/10/2006 02:19 PM

[Redacted]

Sorry I can't be of more assistance but the only thing I can say is that photo three looks somewhat familiar, for whatever reason, and it may not be the december 13 time period. However, I don't know the name or role of that individual or the others. I can only guess that they are DOD. There was a major influx of military personnel from Baghdad for the operation on [Redacted] and they cleared out as soon as the operation was completed. If there are any other questions that may help clarify or assist in recollection of these individuals please send them.

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APPROVED FOR RELEASE
DATE: APR 2008

Scott W. Muller
OGC

Sent by: Scott W. Muller

To: [Redacted]

cc:

01/21/2004 08:07 AM

Subject: [Redacted]



----- Forwarded by Scott W. Muller on 01/21/04 08:07 AM -----

William R. Harlow
OPA

01/21/04 08:06 AM



To: James L. Pavitt@DO

cc: [Redacted]

Subject: [Redacted]

Wall Street Journal
January 21, 2004

Hambali Interrogation Yields Clues

By Don Greenlees, Staff Reporter Of The Wall Street Journal

JAKARTA, Indonesia -- The interrogation of Southeast Asia's most prominent terrorism suspect has shed new light on the workings of the region's biggest militant group, Jemaah Islamiyah, and its links to al Qaeda's terror network.

Riduan Isamuddin, a 39-year-old Indonesian cleric accused of running terrorist operations across Southeast Asia, has given U.S. security officials details of names, financial transactions, meetings, methods of operation and the structure of Jemaah Islamiyah and al Qaeda, according to people familiar with transcripts of his interrogation.

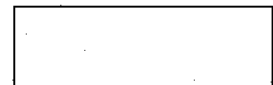
But despite Mr. Riduan's disclosures, his capture isn't likely to be a knockout blow for either Jemaah Islamiyah or al Qaeda in Southeast Asia, where security experts say terrorism's roots are too diverse and too resilient to be severed by the elimination of a few key leaders. Counterterrorism police and security officials across the region say they are braced for future terrorist attacks.

"He is not the Rosetta stone or key to future operations," says an intelligence analyst who has studied summaries of Mr. Riduan's interrogation distributed in Southeast Asia. Another Western security official who has seen the summaries adds: "The sort of things he knew about were already foiled -- the new thinking, the plots, he does not know."

Widely known as Hambali, Mr. Riduan was captured on Aug. 11 in Thailand and is currently being held by U.S. intelligence officials at an undisclosed location. With their interrogation of Mr. Riduan largely cloaked in secrecy, U.S. allies in Asia, including Indonesia, haven't had direct access to him. So far, regional intelligence and law-enforcement agencies say, they have received only selected summaries of interrogation results from the U.S.

American officials consider Mr. Riduan -- who was operations chief for Jemaah Islamiyah, a group with the stated long-term goal of uniting all of Muslim Southeast Asia in an Islamic state -- to be the most senior non-Arab in the al Qaeda hierarchy. Mr. Riduan's status reflected his connections to al Qaeda leaders, including Osama bin Laden, whom he met in Afghanistan during the war to expel Soviet troops from the country in the 1980s. His success in managing

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several terrorist attacks in the Philippines and Indonesia since 2000 and his ability to persuade some Islamic extremists in Southeast Asia to become suicide bombers enhanced Mr. Riduan's position as a trusted al Qaeda operative, security experts say.

Among the valuable information Mr. Riduan has provided on how Jemaah Islamiyah and al Qaeda operated in Southeast Asia, security officials say, is new insight about how money moved among militants to finance attacks and the amount of financial support provided by al Qaeda to Islamic extremists in Southeast Asia. According to security officials familiar with the interrogation transcripts, Mr. Riduan said he mistrusted the informal money-transfer system among Muslim money traders known as hawala -- a system many counterterrorism experts believe was widely used to move terrorist funds internationally. Instead, Mr. Riduan said he preferred to use couriers for direct money transfers. He added that he set up an Islamic charity in Malaysia in the 1990s to fund terrorist training, bombings and other operations.

His skill with money was one of the keys to Mr. Riduan's success, security experts say. According to American academic Zachary Abuza, now-detained al Qaeda military commander Khalid Sheikh Mohammed told U.S. interrogators that al Qaeda admired Hambali's ability as a financial manager. "He could do very good operations and back-office stuff with very little capital," says Mr. Abuza. "To someone like Osama bin Laden that would have meant a lot."

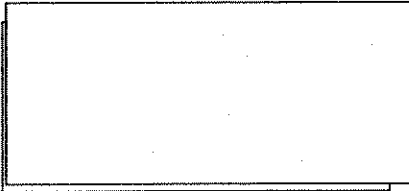
Evidence of al Qaeda's confidence in Mr. Riduan came after the October 2002 bombings on the Indonesian resort island of Bali, for which Mr. Riduan claimed direct responsibility, according to the interrogation summaries. Mr. Riduan said that after the attack -- which killed 202 people, mainly Australian tourists -- Mr. Mohammed gave him \$100,000 to spend as he wished on future operations. That was a departure from al Qaeda's normal practice of dispensing cash for specific missions. Mr. Riduan told interrogators he gave \$27,000 of this to the Moro Islamic Liberation Front in the Philippines -- an example of regional cooperation among Islamic extremists. MILF spokesman Eid Kabalu denies that organization is funded by al Qaeda.

As al Qaeda's financial conduit and operational commander of Jemaah Islamiyah, Mr. Riduan was in regular contact with the Southeast Asian terrorist network's subcommanders, even while on the run in Cambodia and Thailand before his capture. Still, security officials familiar with his interrogation say Mr. Riduan claimed to know little about Jemaah Islamiyah's grass-roots terrorist cells. He said that the cells are flexible and have the capacity to rebound, a view that also fits the assessment of security officials, who believe that while the group has been weakened significantly, it is still capable of mounting attacks, particularly bombings.

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APPROVED FOR RELEASE
DATE: APR 2008

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NE/LGLJ

12/16/03 03:01 PM

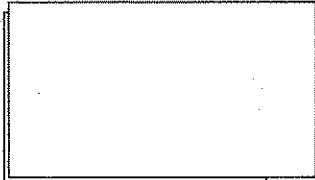


To: [Redacted] Scott W. Muller@DCI
cc: [Redacted]

Subject: URGENT Rumsfeld says CIA will conduct Saddam's
interrogation

We need to discuss next steps.

----- Forwarded by [Redacted] on 12/16/03 03:00 PM -----



Office: Chief/NE

12/16/03 01:59 PM



To: [Redacted]
[Redacted] Buzzy

Krongard@DCI, [Redacted]

[Large redacted block containing multiple lines of text]

harlow@dci, [Redacted] William

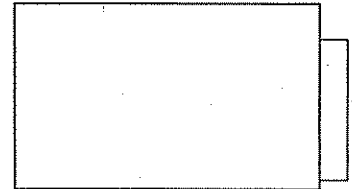
cc: [Redacted]
Subject: URGENT Rumsfeld says CIA will conduct Saddam's
interrogation

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----- Forwarded by [redacted] on 12/16/03 01:59 PM -----



William R. Harlow @ DCI

Office: OPA



12/16/03 01:54 PM

To: James L. Pavitt@DO, John E. McLaughlin@DCI, [redacted]

[redacted], Jami Miscik/STF/AGENCY@DI

cc: [redacted] Stanley M. Moskowitz@DCI, [redacted]

Subject: URGENT Rumsfeld says CIA will conduct Saddam's
interrogation

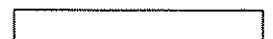
WASHINGTON, Dec 16 (AFP) - US Defense Secretary Donald Rumsfeld said on Tuesday that the Central Intelligence Agency (CIA) headed by George Tenet will be responsible for the interrogation of Saddam Hussein.

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US-Iraq-Rumsfeld-CIA
AFP 161838 GMT 12 03

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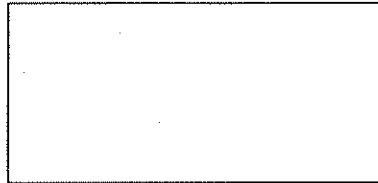
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APPROVED FOR RELEASE
DATE: APR 2008



[Redacted]
Investigations Staff/OIG
10/04/04 08:02 AM



To: [Redacted]
cc:

Subject: FYI--1 October 2004 Congressional Record Extract: Sen. Leahy Floor Statement, "Abuse of Foreign Detainees"

fyi

----- Forwarded by [Redacted] STF/AGENCY on 10/04/04 08:01 AM -----

[Redacted]
OCA

10/03/04 07:38 PM

To: [Redacted]
[Redacted]
[Redacted]
John L. Helgerson/STF/AGENCY@DCI,
[Redacted]
cc: Stanley M. Moskowitz/STF/AGENCY@DCI,
[Redacted]

Subject: FYI--1 October 2004 Congressional Record Extract: Sen. Leahy Floor Statement, "Abuse of Foreign Detainees"

----- Forwarded by [Redacted] on 10/03/04 07:31 PM -----

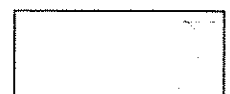
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DCI/OCA
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10/02/04 10:12 AM

To: [Redacted]
cc:

Subject: FYI--Congressional Record Extract: "Abuse of Foreign Detainees"

Following is the floor statement by Sen. Leahy, in case you might be interested. It's four pages.



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SI0256

CONGRESSIONAL RECORD—SENATE

October 1, 2004

Grateful Americans are holding events such as these in cities and towns across this great land of ours, to express their gratitude to those who sacrificed their freedom to ensure ours, our American POWs, and to those who have never returned from foreign battlefields, our MIAs.

Americans honor their POWs and MIAs, their comrades, and their families through our worldwide commitment to account for our missing warriors, to bring our heroes home from distant lands, and to reunite them once again with their loved ones.

American POWs and MIAs have honored their Nation through their service and sacrifice, much like the magnificent young men and women standing so proudly on the parade field before us today. As I marched the line this morning, I was inspired beyond words by their professionalism. You honor all of us with your presence this morning.

Those who wear the uniform today, and those who went before them know—better than most—why bringing our missing Americans home is a sacred commitment. That mission rests squarely on the shoulders of those of us to whom you have entrusted some measure of leadership.

Your support and encouragement will continue to hold us accountable. Though this effort is ingrained in the hearts and minds of Americans, it is you who ensure this mission continues.

I want to say especially to the families of the missing and to you—their comrades—that your government will not rest until all come home.

More than 140 years ago, President Lincoln, desperately seeking to hold our Nation together, spoke of "... those brave men who are now on the tented field or nobly meeting the foe in the front ... that they who sleep in death ... are not forgotten by those in highest authority ... and should their fate be the same, their remains will not be uncared-for."

At the dedication of a grand, national cemetery near the battlefield—at Gettysburg, Pennsylvania, in perhaps the most eloquent 272 words in American history, the President spoke to the families of those lost and to the soldiers still in combat.

He spoke of the honor that we must pay to those who have made the ultimate sacrifice to ensure their sacrifices were not in vain to ensure that this Nation will never forget.

We are equally committed today to the families of the missing from past conflicts, and to the soldiers still in combat.

More than 600 men and women are working around the world on that commitment—that mission. In my home State of Hawaii we have the headquarters of the Joint Task Force on Full Accounting that carries out these searches and the Combat Identification Lab which goes through the painstaking process of identifying the remains which are discovered.

I am very proud of their work and the small contribution that my state makes to this effort.

You are aware of the monumental effort to account for the missing from all wars. But the commitment goes much further than that.

While we seek to bring home the warriors of the past, we must also ensure that you warriors of the present—should you go into harm's way—your Nation will bring you home. "Whatever it takes ..."

The results of this mission can be seen on distant battlefields where numerous personnel in Afghanistan and Iraq have been recovered.

In Iraq alone, our heroic rescue forces have recovered more than 75 of our warriors alive. But in spite of our commitment to recover today's service members from today's battle-

fields, our challenge remains to account for those who fell in past conflicts.

I am told that more than 1,800 are unaccounted for from the Vietnam war—730 others have been identified and returned to their families since the end of that war.

Just last week, our troops from the Joint Task Force on Full Accounting brought home the remains of more American soldiers from the Korean war.

Throughout the world—from North Korea to Southeast Asia, in the South Pacific, and even in Europe and Russia, with the cooperation of the people and governments of many nations, the work goes on around the clock.

My fellow Americans, this past weekend the Nation commemorated the third anniversary of the terrorist attack on the United States. The horrifying memory of the attack remains fresh in our minds.

Less than one week after 9-11, Senator TED STEVENS and I were sent by the Senate to New York to assess the damage as we prepared our first supplemental appropriations measure to respond to the tragedy. As we circled the smoldering ruins I was struck by the devastation that lay below us.

The day before, we had toured the wreckage here at the Pentagon.

Let me tell all of you that those two experiences are etched in my brain never to be forgotten.

Today we recognize that the world remains a dangerous place. As much as we desire to live in peace we understand that there is likely to always be a need for a strong military to defend this country and to fight our Nation's wars.

Our obligation is both to future generations of those who go in harm's way, and to those of the past, as Lincoln said, we will assure all of you and them that we shall never forget.

That, my fellow Americans is our solemn pledge. Thank you.

ABUSE OF FOREIGN DETAINEES

Mr. LEAHY. Mr. President, almost five months after learning of the atrocities that occurred at Abu Ghraib, several of the investigations into U.S. detention policies are now complete. I commend Chairman WARNER for his efforts to investigate this scandal, but he remains hampered by the leadership of his own party and an administration that does not want the full truth revealed. While the investigations provide new insight into how the abuses occurred, they frequently raise as many new questions as they answer. Despite calls from a small handful of us who want to find the truth, Congress and this administration have failed to seriously investigate acts that bring dishonor upon our great Nation and endanger our soldiers overseas.

The Bush administration circled the wagons long ago and has continually maintained that the abuses were the work of 'a few bad apples.' I have long said that somewhere in the upper reaches of the executive branch a process was set in motion that rolled forward until it produced this scandal. Even without a truly independent investigation, we now know that the responsibility for abuse runs high up into the chain of command. To put this matter behind us, first we need to understand what happened at all levels of government. It is the responsibility of

the Senate to investigate the facts, from genesis to final approval to implementation and abuse. However, this Senate, and in particular the Judiciary Committee, continues to fall short in its oversight responsibilities.

Democrats on the Judiciary Committee attempted in June to force the disclosure of policy memos on the treatment of detainees, but were defeated by a party-line vote. Recently, a Federal judge, recognizing the importance of public examination of such documents, ordered the Bush administration to comply with freedom of information laws and release a list of all documents on the detentions at Abu Ghraib prison by October 15. I commend this decision, but even that list would not tell the entire story.

A recent Washington Post column addressed the administration's attempt to whitewash this scandal. Jackson Diehl wrote:

Cynics will not be surprised to learn that senior military commanders and Bush administration officials are on the verge of avoiding any accountability for the scandal of prisoner abuse in Iraq and Afghanistan—despite the enormous damage done by that affair to U.S. standing in Iraq and around the world; despite the well-documented malfeasance and possible criminal wrongdoing by those officials; despite the contrasting prosecution of low-ranking soldiers.

Allowing senior officials to avoid accountability sets a dangerous precedent. It is time for Congress, even this Republican Congress, to do its job and take action. We must send a message that no one in the chain of command—from an enlisted private at Abu Ghraib to the Commander-in-Chief—is above the laws of our Nation.

The investigations completed thus far provide additional insight into how the prison abuses occurred, but their narrow mandates prevented them from addressing critical issues. The reports by the Army Inspector General, Maj. Gen. George Fay, and Lt. Gen. Anthony Jones all suffered from structural limitations. The Army IG report was designed as "a functional analysis" of operations, not an investigation into any specific incidents. The Fay and Jones reports, tasked with reviewing the role of military intelligence at Abu Ghraib, were limited in scope to the military itself despite acknowledging that relationships between military intelligence, military police, and outside agencies were significant to the breakdown in order. Overall, these investigations collectively suffered from a lack of scope and authority, leaving key inquiries into issues like contractor abuses and "ghost detainees" unexplored.

The panel led by former Defense Secretary James Schlesinger was similarly limited to the role of the military and could not investigate the role of the CIA. The Schlesinger panel had no subpoena power and lacked true independence. Its loyalty to the Secretary of Defense is betrayed by its acceptance of a policy that is proving to be one of the root causes of this scandal. In August 2002, Assistant Attorney General

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CONGRESSIONAL RECORD—SENATE

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Jay Bybee wrote in a memo to White House Counsel Alberto Gonzales that, "While many of these techniques may amount to cruel, inhuman or degrading treatment, they do not produce pain or suffering of the necessary intensity to meet the definition of torture." Alarmingly, in his recent testimony before the Senate Armed Services Committee, Dr. Schlesinger sounded more like an administration official than an independent investigator. His statement to the committee that, "What constitutes humane treatment lies in the eye of the beholder" is something I would have expected to read in a memo from Jay Bybee, not the head of an "independent" commission.

I could not disagree more with the statements of Dr. Schlesinger and Mr. Bybee. The Geneva Conventions and Convention Against Torture define humane treatment of prisoners, setting standards that protect our own soldiers when they are captured. A number of State Department lawyers fought to protect these standards in early 2002, when the President broke with decades of policy and decided against providing the Geneva protections to terrorist suspects. Military lawyers fought the same battle after Secretary Rumsfeld approved techniques for use at Guantanamo that are illegal under the Geneva Conventions.

The recently released reports illustrate why an independent investigation is still necessary. They brought us closer to the truth, but questions remain unanswered. Despite its failings, the Schlesinger report refuted the administration's efforts to avoid responsibility and to minimize this scandal as the misdeeds of 'a few bad apples.' The report documents a failure of leadership by some at higher levels in the chain of command, as well as poor planning from the top and a great deal of confusion about which interrogation and detention practices were acceptable. But the confusion was not caused solely by a lack of leadership. In recent months we have learned that senior officials in the White House, the Justice Department and the Pentagon set in motion a systematic effort to minimize, distort and even ignore our laws, policies and agreements on torture and the treatment of prisoners. The Schlesinger panel failed to follow the investigation to the highest levels of the administration.

Ultimately, what emerges from these reports is a striking contradiction. The reports state that there was no official policy of abuse and they do not recommend punishment for high-ranking officials. And yet, the reports show that decisions that were made by top officials, including the President himself, led to the abuses that occurred in the fields of battle.

Piecing together the facts and findings of these reports with information contained in other official documents and press accounts, a timeline emerges that shows how edicts from Washington trickled down, crossed oceans,

and migrated from the front lines on one continent to the next.

In February 2002, President Bush signed a memorandum stating that the Geneva Conventions did not apply to members of al-Qaida and the Taliban. That decision was taken at the recommendation of the Attorney General and White House counsel, and over the objection of the Secretary of State.

Eight months later, in October 2002, with hundreds of prisoners captured in Afghanistan then being held at Guantanamo Bay, the Schlesinger report states that authorities at the base "requested approval of strengthened counter-interrogation techniques." In December of that year, according to the Fay report, Secretary Rumsfeld approved for use at Guantanamo techniques such as "stress positions, isolation for up to thirty days, removal of clothing and the use of detainees' phobias (such as the use of dogs)." Lawyers in the military reacted negatively, strenuously arguing that the use of such techniques was anathema to military tradition and would ultimately come back to haunt the armed services. In January 2003, Secretary Rumsfeld rescinded his approval of the extreme interrogation techniques; new guidelines were issued in April 2003 from a Defense Department working group.

The Fay report reveals, however, that despite the Secretary's shift in policy, the methods he had authorized in December 2002 for use only at Guantanamo Bay quickly migrated to Afghanistan and other locations where our military is active. As early as December 2002, reports General Fay, "interrogators in Afghanistan were removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation."

It was also in December 2002 that two prisoners in U.S. custody were killed. Both deaths were ruled homicides by pathologists, but, at the time, the Army publicly attributed them to natural causes. It was not until journalists saw copies of the death certificates, which had been given to the non-English speaking families of the deceased, that the truth about the fatalities came out. In September, criminal charges were finally filed, 20 months after the deaths occurred.

These deaths are deeply disturbing, but at least we know some of the details of the cases and can seek justice against the perpetrators. A recent report by the Crimes of War Project uncovered an Afghan detainee's death that was never reported up the military chain of command. The detainee, Jamal Naseer, died in March 2003, allegedly after weeks of torture by American soldiers. Because the Special Forces unit that reportedly controlled the detention facility failed to report the death, it was never investigated. This incident is very troubling on its own, but, like so many other incidents

we have discovered, it points to a much larger problem. The U.S. Army Criminal Investigation Command received a tip about Naseer's death earlier this year, but could not investigate the matter due to a lack of information. Christopher Coffey, an Army detective based at Bagram air base, told the L.A. Times:

We're trying to figure out who was running the base. We don't know what unit was there. There are no records. The reporting system is broke across the board. Units are transferred in and out. There are no SOPs [standard operating procedures] and each unit acts differently.

The L.A. Times article illustrates a serious failure of leadership by the Department of Defense and the obvious shortcomings of allowing the Pentagon to investigate itself. The Army Inspector General's report, released in July, stated that the investigation's team "that visited Iraq and Afghanistan discovered no incidents of abuse that had not been reported through command channels; all incidents were already under investigation." We now know this cannot be accurate. What we don't know is how many more deaths and cases of torture have gone unreported.

As I stated before, the Schlesinger report agreed with administration policy that detainees did not merit Geneva protections, a position with which I and many of those in uniform disagree. The panel acknowledged, however, that the President's policy of treating al-Qaida and Taliban detainees "consistent with the principles of Geneva," was "vague and lacking." Even a government treating prisoners "consistent" with the Conventions would not rely on interrogation practices like the ones we have witnessed. The techniques I just described, ones that were used in Guantanamo, Afghanistan, and Iraq are clearly illegal under the Geneva Conventions. Secretary Rumsfeld and, later, Lt. Gen. Ricardo Sanchez, authorized the use of techniques that were contrary to both U.S. military manuals and international law. Given this incredible overstepping of bounds, I find it incredible that the reports generated thus far have not recommended punishment of any kind for high level officials.

Meanwhile, the CIA conducted its own set of interrogations. The Fay and Schlesinger reports state that the CIA operated under a different set of rules, sometimes including the military and sometimes not. The Fay report states that "the CIA's detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib." The result: further confusion among soldiers in the field over appropriate standards of treatment and the application of the Geneva Conventions.

How did these techniques, which were rescinded by Secretary Rumsfeld in January 2003 become so prevalent in Iraq? The Fay report states it flatly: "Concepts for the non-doctrinal, in-field manual approaches and practices

S10258

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clearly came from documents and personnel in Afghanistan and Guantanamo." Ultimately, the "non-dogmatic" approaches used at Abu Ghraib included nakedness and humiliation, the use of dogs to "fear up" detainees, and sexual and physical assaults. These approaches migrated to Iraq a number of ways, any of which might have been prevented by clear statements of policy from the top. Members of the 519th Military Intelligence Battalion served at Bagram Air Force Base in Afghanistan in 2002. Some of these soldiers have been implicated in the deaths of the two prisoners at Bagram. A number of soldiers from the 519th were sent to Iraq, and some of those have been implicated in the Abu Ghraib abuse scandal. As we all know, military intelligence played a major role in directing and carrying out the abuses at Abu Ghraib.

In addition, as the Fay report cites, "Interrogators in Iraq, already familiar with the practice of some of these new ideas, implemented them even prior to any policy guidelines." Before long, as the Schlesinger report states, policy guidance backed up the interrogators' actions. In August 2003, Maj. Gen. Miller "brought the Secretary of Defense's April 16, 2003, policy guidelines for Guantanamo with him," and gave this policy to Lt. Gen. Sanchez, who was, at the time, the highest level commander in Iraq. On September 14 of last year, according to the Schlesinger report, Lt. Gen. Sanchez approved a policy on interrogation that included techniques that, up to that point, had only been officially applied to so-called enemy combatants—those who, in the minds of President Bush and Secretary Rumsfeld, were not protected by the Geneva Conventions. The Bush administration has steadfastly claimed that the Geneva Conventions apply to the war in Iraq. And yet, Lt. Gen. Sanchez determined, with no authorization to do so, that some of the detainees held in Iraq were to be categorized as unlawful combatants.

How did Lt. Gen. Sanchez justify his authority to approve such techniques? The Schlesinger report found that Lt. Gen. Sanchez relied on the President's February 2002 memorandum and the Department of Justice's notorious August 1, 2002 memo twisting the definition of torture. It is deeply troubling, given this evidence, that the Bush administration has held fast to the contention that the abuses at Abu Ghraib were committed by "a few bad apples." And it is extremely disconcerting that the very outcome that military lawyers warned of when they fought against the administration's desire to suspend the Geneva Conventions—the undermining of the military's tradition of upholding the rule of law—came to fruition. Our armed forces have been tainted by this scandal and our soldiers in the field placed at greater risk.

The Sanchez policy guidelines were technically in effect for only a month before being revised. But, as in Afghan-

istan, these illegal techniques were put to use almost immediately. Interrogators in Iraq relied upon the guidelines and may have done so believing that they were appropriate. The Jones report states that, "Some of these incidents involved conduct which, in retrospect, violated international law. However, at the time some of the soldiers or contractors committed the acts, they may have honestly believed the techniques were condoned."

I find it deeply disturbing that American soldiers would have acted on such guidelines. I have stated many times that those who violated the laws by assaulting and humiliating prisoners should be prosecuted. The buck should not stop there, however. The reports have shown that there was a serious breakdown in training and operations. There was one MP for every 75 prisoners at Abu Ghraib when the abuses occurred. And as the Army Inspector General found, interrogation facilities lacked oversight processes and control mechanisms. Even routine inspections were lacking.

What these reports show—and, unfortunately, it is an unstated revelation one discovers by reading between the lines—is that once President Bush and his top advisors let the genie out of the bottle by denying the protections of the Geneva Conventions and rewriting the definition of torture, they set off a chain reaction that spanned the globe. By changing the rules of treatment and interrogation for one group of detainees, by tossing away decades of military protocol, by writing and rescinding and rewriting guidelines so often that soldiers had no clear understanding of policy or practice, and by allowing the CIA to operate in the shadows, the leaders of the Bush administration lost control. What was initiated for one group of detainees in one location spilled over into other countries and to very different types of prisoners.

A day or two after the release of the Schlesinger and Fay-Jones reports, Secretary Rumsfeld still claimed that there was no evidence that prisoners had been abused during interrogations. I wonder if he took the time to read or to request a briefing on these investigations. He made the same statement twice before his handlers corrected him, in the middle of a press conference. Incredibly, he again misstated the facts, "correcting" himself to say that only two or three cases of abuse took place during interrogation. In fact, 13 of 44 instances of abuse involved interrogation. It leaves me to wonder. Meanwhile, President Bush has kept quiet about the findings of the reports. His silence is deafening.

As I have said before, there needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion. An independent commission, structured on the model of the 9/11 Commission, will allow us begin to heal the damage that has been done.

I am not alone in calling for an independent commission. Several organizations, including the American Bar Association, Human Rights First, Amnesty International, and Human Rights Watch, have urged the creation of an independent, bipartisan commission to investigate the prisoner abuses. A recent letter from eight retired generals and admirals to President Bush asked him to appoint a prisoner abuse commission modeled on the 9/11 Commission. In that letter, the flag officers stated, "internal investigations by their nature . . . suffer from a critical lack of independence. Americans have never thought it wise or fair for one branch of government to police itself."

The 9/11 Commission provides more than a structural model for a new commission; it also provides a lesson in how perseverance can overcome the administration's refusal to seek the truth. The Bush administration initially opposed the formation of the 9/11 Commission, just as it now opposes a prisoner abuse commission. The administration used the same argument against both commissions. It asserts that the numerous internal investigations are sufficient to uncover the truth. Dr. James Schlesinger, the head of the panel established by Secretary Rumsfeld to investigate the prisoner abuses, addressed this issue in his testimony to the Senate Government Affairs Committee in February 2002, as it debated the need for the 9/11 Commission. He argued for the creation of the Commission because, "to this point many questions have been addressed piecemeal—or not at all. The purpose of the National Commission would be systematically and comprehensively to address such questions—and to give a complete accounting of the events leading up to 9/11. In my judgment, such a Commission would serve a high, indeed indispensable, national purpose." This is exactly the same reason we need an independent commission to investigate the prisoner abuse scandal.

The Governmental Affairs Committee report on the bill to establish the 9/11 Commission stated that it "is a bipartisan initiative to help answer the many remaining questions in a constructive, methodical, and non-partisan way. The commission would complement investigations being undertaken by Congress and the Executive Branch." A prisoner abuse commission would fulfill a similar need—to fill the gaps that inevitably occur when an investigation is addressed in a piecemeal fashion. We already know some gaps exist—such as the ghost detainee problem and the role of contractors—others are sure to arise in the course of an independent investigation.

International law, as well as the Defense Department's own policies, requires the registration and accounting of all detainees. Detainees kept off of the official rolls—so called 'ghost detainees'—are held in violation of the law. The Fay-Jones report revealed that the ghost detainee problem was

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

These revelations should not come as a surprise—human rights groups have been calling for an investigation into the ghost detainee issue for months. I first wrote to the National Security Advisor about mistreatment of detainees in June 2003, including a request for information on prisoners transferred in secret by the United States to other nations for interrogation. A report on secret detentions was released on June 17, 2004, by Human Rights First. The report, titled, *Ending Secret Detentions*, describes a number of officially undisclosed locations that sources—typically unnamed government sources quoted in the press—have described as detention centers for terrorism suspects. These sources have discussed facilities in Iraq, Afghanistan, Pakistan, Jordan, Diego Garcia, and on U.S. war ships. The ICRC has not been allowed access to these facilities. It issued a public statement in March expressing its growing concern over “the fate of an unknown number of people captured . . . and held in undisclosed locations.” To date, its requests have been denied.

After being rebuffed by the CIA, the Fay-Jones panel asked two offices to conduct further investigations into the ghost detainee issue: the Department of Defense Inspector General and the CIA Inspector General. Once again, this would result in one branch of government to policing itself. Like the Fay-Jones panel, the Inspectors General lack the authority to follow such investigations beyond their own departments—again allowing many questions to remain unanswered. We need to know what role senior administration officials in the White House, Justice Department, Defense Department, and CIA played in formulating the policies that allowed the illegal detention of ghost detainees. We know this problem emanated from senior officials—Secretary Rumsfeld admitted in June that he approved the secret detention of one detainee at the request of CIA Director Tenet. Only an independent commission with significant authority will be able to fully investigate this matter.

The Fay-Jones report also found that civilian contractors were complicit in the abuse of detainees. We already knew this, but the panel's findings raise new questions about whether the contractors will be held accountable for their actions. Thus far, one contractor has been charged for abuse in Afghanistan, but no charges have been filed against contractors in Iraq. As P.W. Singer points out in his recent *Washington Post* op-ed, “Army investigators are at a loss over how to hold the contractors accountable. The Army

referred individual employees' names to the Justice Department more than three months ago, but Attorney General Ashcroft has yet to take action.” As these cases are referred to the Justice Department, the Judiciary Committee must fulfill its oversight responsibility to ensure these crimes do not go unpunished. Given the reports and allegations of abuses of Iraqi prisoners that involved civilian contractors, I am deeply troubled at the passivity being displayed by the Department of Justice. If loopholes exist in the law, the Department should be working with Congress to fill them.

Some argue that another investigation will prevent us from putting the scandal behind us, but ignoring the problem will not make it go away. Each week brings new allegations that reveal how much we still don't know. Human rights groups and journalists have been unrelenting in their efforts to uncover this scandal, and I applaud their contributions. The report released recently by the War Crimes Project revealed unreported deaths in Afghanistan. Veteran journalist Seymour Hersh claims in his new book that senior military and national security officials were repeatedly warned in 2002 and 2003 that prisoners were being abused. Mr. Hersh writes that FBI agents notified their superiors about abuses at Guantanamo and that these reports were passed along to officials at the Pentagon. The ACLU continues to fight in Federal courts to compel the administration to release documents related to torture. Even without further Government action, this scandal is not going to go away. It is time for us to lead the investigation, rather than wait to read about the latest discovery of abuse in tomorrow's paper. We must establish an independent commission.

In the coming months, the remaining Pentagon investigations will come to an end. It will be like finding an old jigsaw puzzle in the back of the closet—it looks complete, but you can never tell if there are pieces missing until you try to put it together. An independent commission can take on this important task; it will ensure that no pieces are missing and that we have a complete, unbiased assessment of a sad chapter in our Nation's history. The 9/11 Commission showed us that it can be painful to dredge up the past, but it is also a necessary step to moving forward.

CHILDREN'S HEALTH PROTECTION AND IMPROVEMENT ACT OF 2004

Mr. ROCKEFELLER. Mr. President, yesterday marked a critical juncture in the fight to provide comprehensive and affordable health care coverage for our Nation's children. Congress had a tremendous opportunity to improve the quality of life for hundreds of thousands of children, not just for the foreseeable future, but also over the long term. September 30, 2004, should have

gone down in history as the day Congress set aside partisan politics and took a stand for children. Unfortunately, yesterday will be remembered as the day Congress chose political rhetoric over action and failed to protect health care coverage for children in working families.

Some of my colleagues will argue that September 30 only marked a statutory deadline and didn't really matter in terms of coverage for kids. I strongly disagree. Yesterday's deadline was about keeping our promise to America's working families that their children will have access to comprehensive, affordable, and reliable health care coverage. We in Congress have broken that promise, and it is unconscionable to think that Members would go home to campaign while the health care of some of most vulnerable children hangs in the balance.

We must act now to preserve health care coverage for children enrolled in the Children's Health Insurance Program, CHIP. This is too important an issue to delay even a day. Senators CHAFEE, KENNEDY, SNOWE, and I, along with Congressmen BARTON and DINGELL, have a bipartisan, bicameral bill on the table right now that will protect coverage for America's children. The Children's Health Protection and Improvement Act has the support of 48 bipartisan cosponsors in the House of Representatives and 33 bipartisan cosponsors in the Senate. Our legislation has been endorsed by over 100 local, state, and national organizations including the National Governors Association, the American Academy of Pediatrics, the American Hospital Association, the National Association of Children's Hospitals, the Catholic Health Association, Families USA, the Children's Defense Fund, and the March of Dimes. There is no reason why we cannot pass this legislation today.

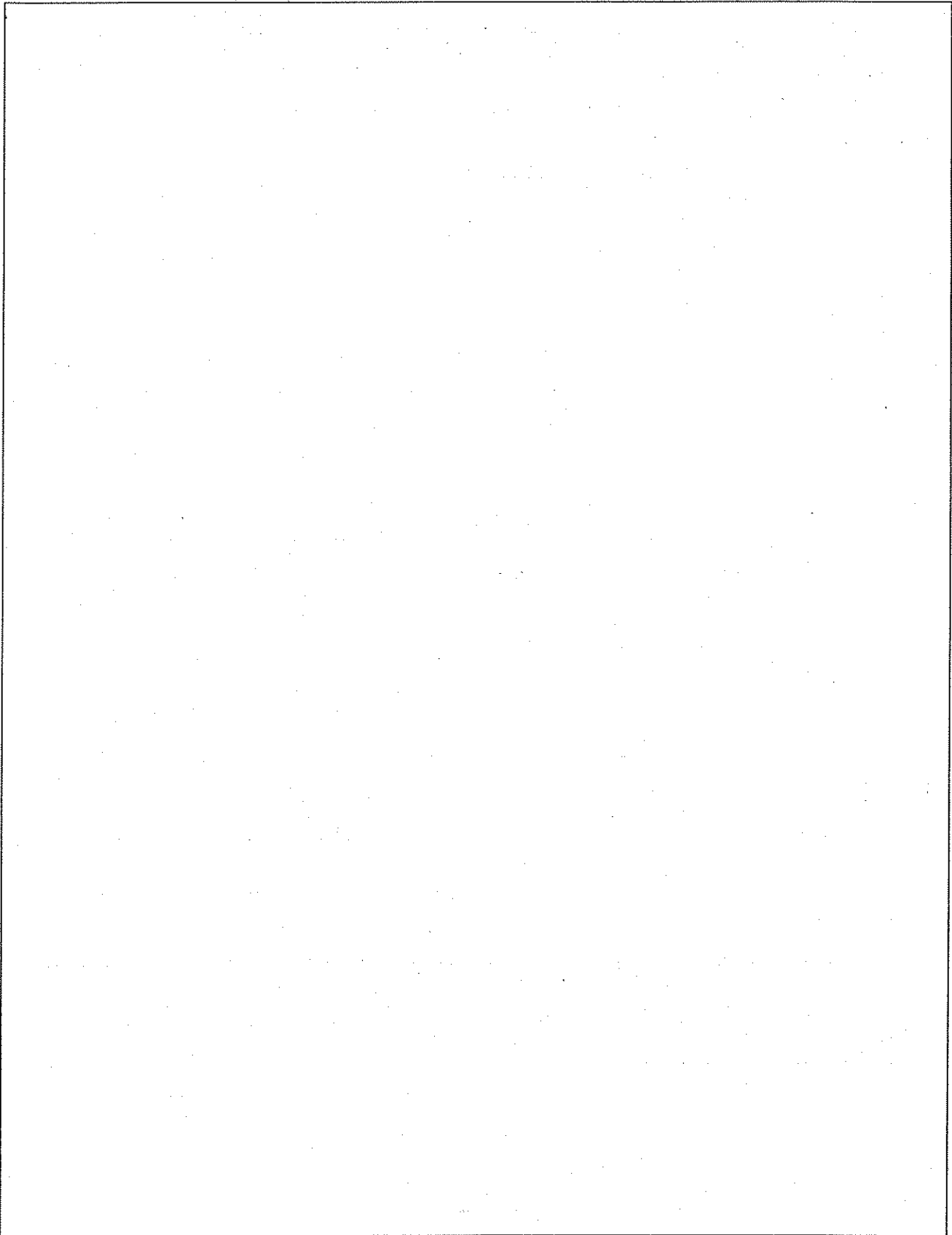
If my colleagues were to talk to their Governors about the merits of the Children Health Protection and Improvement Act, all 50 Governors would say that our legislation addresses the long-term Federal funding shortfalls that will occur in SCHIP over the next 3 years.

If my colleagues were to visit doctors' offices and hospital emergency rooms and talk to general practitioners, pediatricians, and surgeons, these providers would confirm that our legislation makes it easier for children to access health services and reduces our Nation's growing uncompensated health care burden.

Most importantly, if my colleagues were to talk to working families in their home states who rely on CHIP, working families would say that our legislation guarantees real coverage for their children. Our legislation gives working families the peace of mind that comes from knowing their children would not just receive health care coverage tomorrow, next month, or next year, but for the next several

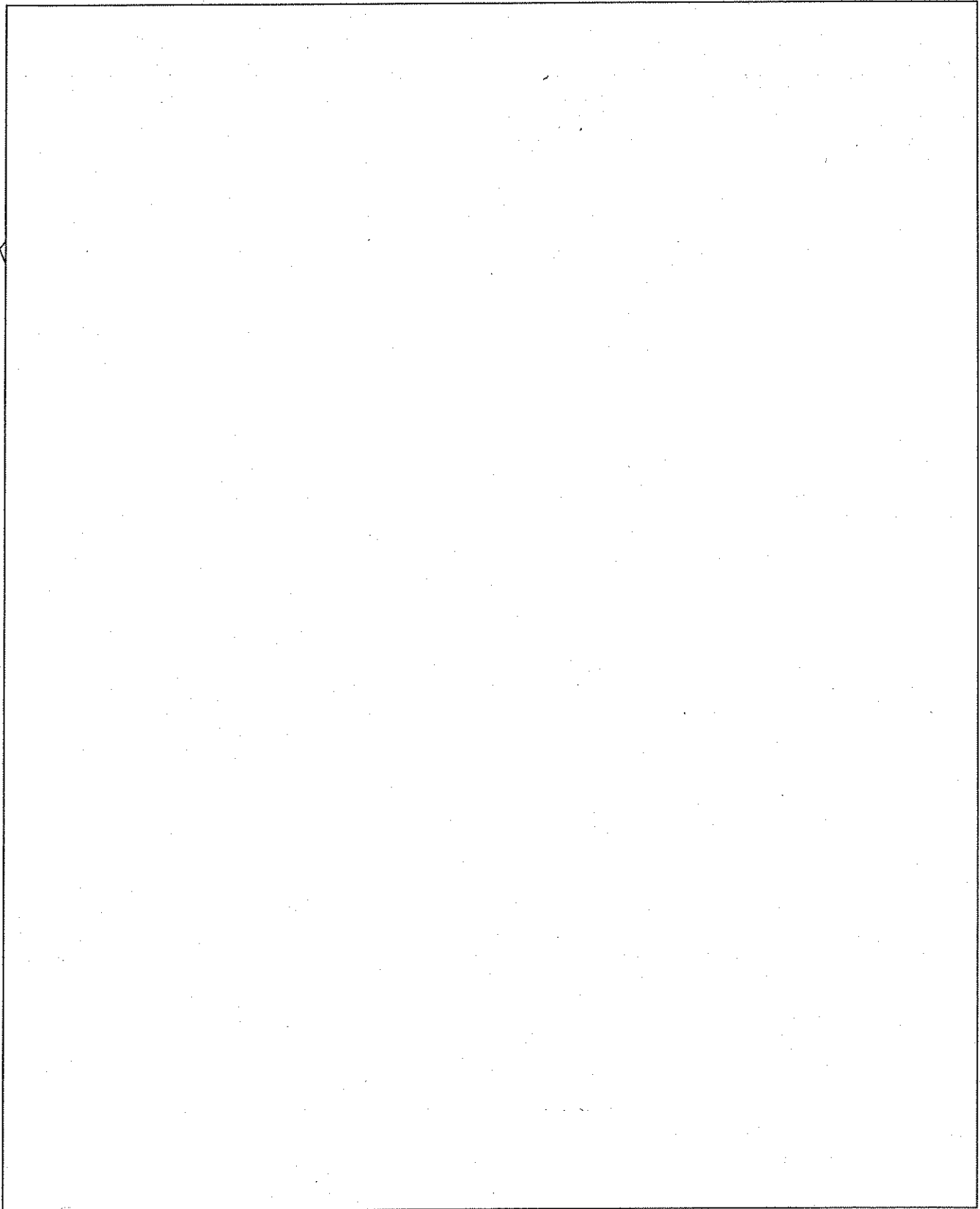
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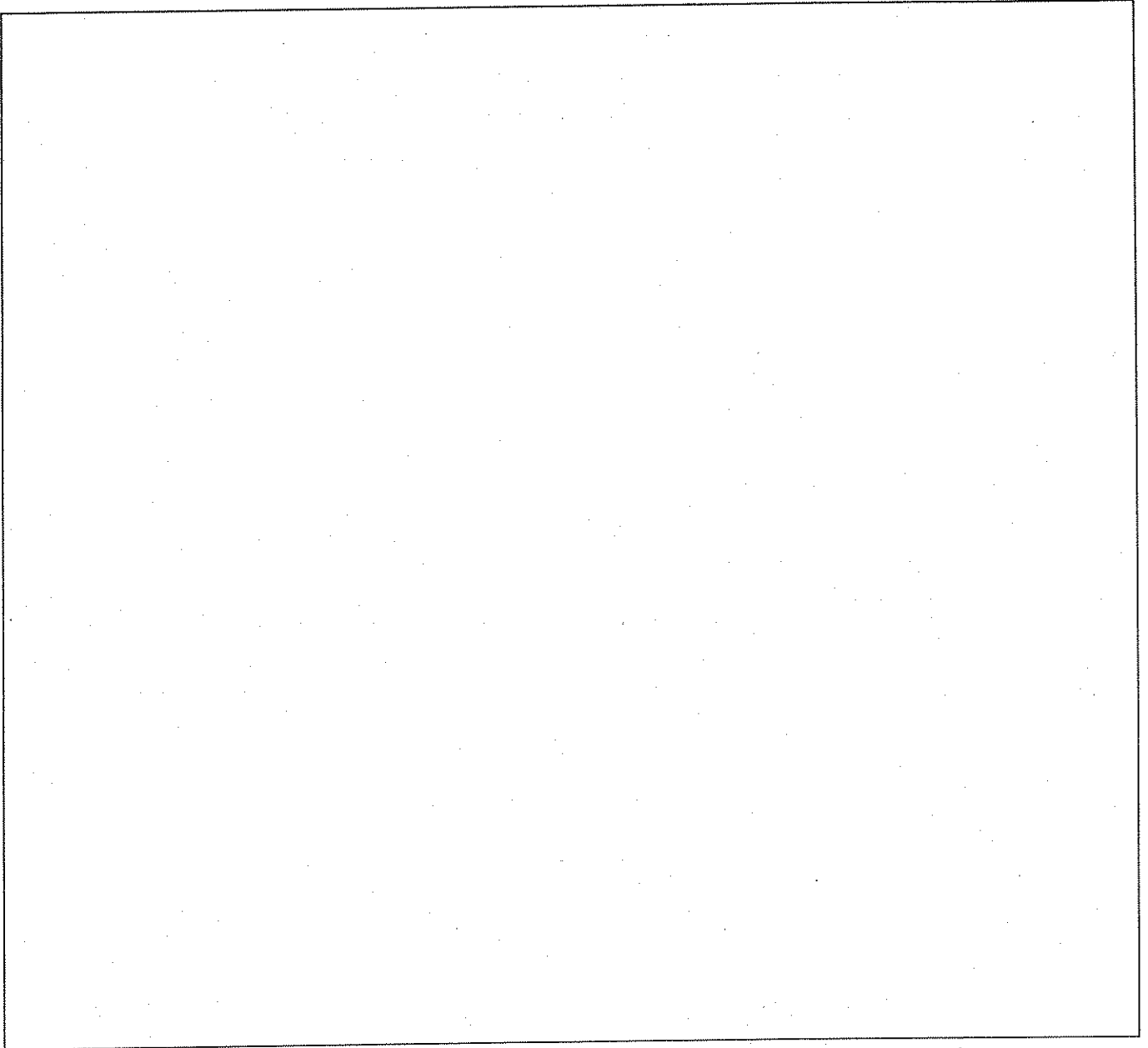
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OIG

10/29/04 04:08 PM



To: John L. Helgerson/STF/AGENCY@DCI

cc:

[Redacted]

Subject: Geneva Convention Summary

John -- At long last, I am sending you the attached memo in response to your request for a working summary relating the geneva convention to the matter of ghost detainees. This may not look like much, but I have tried to keep it to bare minimum and avoid obscure Latin phrases, legal citations, etc. It may not stand up to scrutiny as more facts are developed, understanding increases, and the positions of OGC and the rest of the US Government become more clear. I am sure that [Redacted] will be able to expand on and correct it, and to answer any follow-on questions you may have as a result. With that, and the soon-to-be-completed draft of an employee review policy, I will become a ghost employee.

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Geneva Convention Summary.doc Geneva Convention IV Matrix.doc

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**Geneva Convention IV (August 12, 1949) – ‘Protection of Civilian Persons in Time of War’
Selected Provisions**

Article	Subject	Text	Remarks*
1	Extent of Obligations	The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.	The United States and Iraq signed the Convention and are "High Contracting Parties." "It is not an engagement concluded on the basis of reciprocity, binding each Party to the contract only insofar as the other Party observes its obligations. It is rather a series of unilateral engagements solemnly contracted before the world as represented by the other . . . Parties. . . The . . . Parties do not undertake merely to respect the Convention, but also to <i>ensure respect</i> for it [by all those over whom it has authority] . . . [T]he Party to the conflict is responsible for the treatment accorded to Protected Persons. . . [A]s soon as one of the conditions of application for which Article 2 provides is present, no . . . Party can offer any valid pretext, legal or otherwise, for respecting the Convention in its entirety. . . ."
2	Applicability to Hostilities	. . . the . . . Convention shall apply to all cases of . . . armed conflict which may arise between two or more of the High Contracting Parties The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.	". . . By its general character, this paragraph deprives belligerents, in advance, of the pretexts they might in theory put forward for evading their obligations. There is no need for a formal declaration of war, or for the recognition of the existence of a state of war, as preliminaries to the application of the Convention. The occurrence of <i>de facto</i> hostilities is sufficient. . . ."
4	Applicability: Definition of Protected Persons	Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.	". . . [P]rotection is accorded to all persons who are not the nationality of the occupying State, excluding: (1) Nationals of a State which is not party to the Convention (2) Nationals of a co-belligerent State [that] has normal diplomatic representation in the occupying State. (3) Persons covered . . . under one of the three other Geneva Conventions. . . ."
5	Exclusion for Hostile Persons Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite	". . . There may of course be occasions when it is desirable to keep the fact of an arrest secret in the hope of capturing

* Remarks in quotations are taken from *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross (1958).

		<p>suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.</p> <p>In each case, such persons shall nevertheless be treated with humanity and . . . shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present convention at the earliest date consistent with the security of the . . . Occupying Power.</p>
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a whole organization or spying. But although the Convention obliges the Powers to give Protected Persons certain opportunities for communicating with the outside world, even when they are being held for trial, it does allow some latitude: Article 136 lays down, for example, that the names of the detained persons are to be transmitted if they are kept in custody *for more than two weeks*; one can see that this leaves a margin which will, in the major of cases, meet any legitimate security requirements. . . . It may . . . seem rather surprising that a humanitarian Convention should tend to protect spies, saboteurs, or irregular combatants. Those who take part in the struggle deliberately outside the laws of warfare [and] know the danger set which they are exposing themselves. [B]ut in terms . . . sabotage, terrorism, . . . have so often been used lightly . . . that it was not advisable to leave the accused a the mercy of those detaining them. . . .”

“The rights referred to are not very extensive in the case Protected Persons under detention; . . . essentially the right to correspond, . . . receive individual or collective relief, . . . spiritual assistance from ministers . . . and receive visits from representatives of the Protecting Power and the International Committee of the Red Cross.

The security of the State could not conceivably be put forward as a reason for depriving such persons of the benefit of other provisions – for example, . . . Article 37 that they are to be humanely treated when they are confined pending proceedings Torture and recourse reprisals are of course prohibited.

It should, moreover, be noted that this provision cannot release the Detaining Power from its obligations It remains fully bound by the obligation, imposed on it by Article 136, to transmit to the official Information Bureau particulars of any Protected Person who is kept in custody for more than two weeks. This is not, in fact, a right or privilege of the Protected Person, but an obligation of the

9	Supervision and Oversight	<p>The . . . Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. . . . The Parties to the conflict shall facilitate to the greatest extent possible the task of the . . . Protecting Powers.</p>	<p>Detaining Power. . . . It must be emphasized most strongly . . . that Article 5 can only be applied in individual cases of an exceptional nature, when the existence of specific charges makes it almost certain that penal proceedings will follow. This Article should never be applied as a result of mere suspicion."</p> <p>The International Committee of the Red Cross has come to be accepted as one of the recognized "Protecting Powers" . . . This is a command. . . . [I]t is addressed in the first instance to . . . the Occupying Powers, since the responsibility for application is theirs. They are bound to accept the co-operation of the Protecting Power; if necessary, they must demand it. The whole Convention shows that it was intended to exclude any possibility of the Protected Persons not having the benefit of the services of a Protecting Power. . . ."</p>
13, 25, 26	Applicability: General	<p>13. The provisions of Part II [General Protection of Populations Against Certain Consequences of War] cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the suffering caused by war.</p> <p>25. All persons in . . . [an occupied] territory . . . shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them . . . speedily and without undue delay.</p> <p>26. Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.</p>	<p>" . . . the mere fact of a person residing in a territory . . . occupied by a party to the conflict is sufficient to make Part II of the Convention applicable to him. . . . "</p>
27	Protections Afforded	<p>Protected Persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious</p>	<p>"It should be noted that the Convention makes express provision for setting up information bureaux, and lays down detailed regulations concerning them. Each belligerent should set up an official Information Bureau to receive and transmit information about Protected Persons in its hands; the information should mention the measure adopted concerning them and should include any particulars which will enable a Protected Person to be identified, and his family notified. . . . "</p> <p>"The obligation to grant Protected Persons humane treatment is in truth the <i>leitmotiv</i> of the four Geneva</p>

<p>29</p>	<p>Obligation of Occupying Power</p>	<p>The Party to the conflict in whose hands Protected Persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.</p>	<p>"Any breach of the law is bound to be committed by one more individuals and it is normally they who must answer for their acts. Nevertheless, if the author of the act contrary to international law is an agent of the State, it is</p>
		<p>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. all Protected Persons shall be treated with the same consideration . . . 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 the war.</p>	<p>Conventions. [T]he paragraph under discussion mentions as an example . . . any act of violence or intimidation inspired not by military requirements or a legitimate desire for security, but by a systematic scorn for human values. The Convention does not confine itself to stipulating that such acts are not to be committed. It goes further: it requires States to take all the precautions and measures in their power to prevent such acts and to assist the victims in case of need. The requirement of humane treatment and the prohibition of certain acts incompatible with it are general and absolute in character. Like the obligation enjoining respect for essential rights and fundamental liberties. They are valid 'in all circumstances' and 'at all times,' and apply, for example, to cases where a Protected Person is the legitimate object of strict measure, since the dictates of humanity and measures of security or repression, even when they are severe, are not necessarily incompatible. The obligation to give humane treatment and to respect fundamental rights remains fully valid in relation to persons in prison or interned, . . . in occupied territory. It is in such situations, when human values appear to be in greatest danger, that the provision assumes its full significance. The various security measures which States might take are not specified A great deal is thus left to the discretion of the Parties. What is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned. [T]hose rights must be respected even when measures of constraint are justified</p>

			<p>no longer his responsibility alone which is involved, but also that of the State, which must make good the damage and punish the offender. . . .</p> <p>The term 'agent' must be understood as embracing everyone who is in the service of a . . . Party, no matter in what way or in what capacity. It included civil servants, members of the armed forces, members of par-military police organizations, etc. . . .</p> <p>The nationality of the agents does not affect the issue. That is of particular importance in occupied territories, as means that the occupying authorities are responsible for acts committed by their locally recruited agents of the nationality of the occupied country. . . ."</p>
30	Rights of Protected Persons	<p>Protected Persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, . . . where they may be, as well as to any organization that might assist them.</p> <p>These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.</p> <p>Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the . . . Occupying Powers shall facilitate, as much as possible, visits to protected Persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.</p>	<p>" . . . The right in question is an absolute right, possessed by all Protected Persons . . . in occupied territory, whether [or not] they are not detained. . . . The right of communication may be exercised under all circumstances It must be pointed out, however, that this right may be suspended if the seriousness of the circumstances so demands. . . ."</p> <p>. . . The obligation to facilitate this work [by the Protecting Powers] is limited however by military or security considerations. . . . It is essential, however, that the belligerents, who will be sole judges of the validity of the reasons put forward, should show moderation in the use they make of this reservation and only apply it in cases of real necessity. Moreover, limitations should only continue as long as the reasons for them continue to exist. . . . The right of communication of Protected Persons may, for instance, be temporarily restricted by means of exception measures taken to ensure the secrecy of military operations in certain specified areas; but such restrictions should never be applied generally and they should be lifted as soon as circumstances allow. . . ."</p>
31	Bar on Coercion to Obtain Information	<p>No physical or moral coercion shall be exercised against Protected Persons, in particular to obtain information from them or from third parties.</p>	<p>"[The provision] covers all cases, whether the pressure is direct or indirect, obvious or hidden (as for example a threat to subject other persons to severe measures . . .)."</p>

			<p>[I] prohibits coercion for any purpose or reason and the obtaining of information is only given as an example. . . . [The] Article is subject to the unspoken reservation that force is permitted whenever it is necessary to use it in the application of measures taken under the Convention. This power is embodied and expressed particularly in penal legislation and in the control and security regulations . . . which Protected Persons are subject.</p> <p>“ . . . it is not necessary that an act should be intentional for the person committing it to be answerable for it. The aim to ensure that every Protected Person shall receive human treatment from the civil and military authorities. . . . The prohibition of torture set forth in this Article is absolute; it covers all forms of torture . . . and whatever the means employed. There need not necessarily be any attack on physical integrity since the ‘progress’ of science has enabled the use of procedures which, while they involve physical suffering, do not necessarily cause bodily injury</p>
32	Bar on Physical Suffering	<p>The . . . Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering . . . of Protected Persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation, and medical or scientific experiments not necessitated by the medical treatment of a Protected Person, but also to any other measures of brutality whether applied by civilian or military agents.</p>	<p>The list of prohibited acts should not be considered as exhaustive. . . . This prohibition . . . is intended to cover cases which, while they are not among the specifically prohibited acts, nevertheless cause suffering to Protected Persons. There is not need to make any distinctions between such practices carried out by civilians or by military personnel; in both cases and in respect of all the acts covered by this Article, the agent and the Power for whom he acts must both bear responsibility. . . . ”</p> <p>“ . . . Obviously, the belligerents will retain the right to punish individuals who have committed hostile acts, in accordance with . . . penal legislation and procedure where it is a matter of safeguarding their legitimate interests and security.</p>
33	Limits on Punishment	<p>No Protected Person may be punished for an offence he or she has not personally committed. Collective penalties and . . . all measures of intimidation or of terrorism are prohibited. . . . Reprisal against Protected Persons and their property are prohibited.</p>	<p>“ Any movement of Protected Persons to another State, carried out by the Detaining Power . . . is considered as a transfer for the purposes of Article 45. . . . In the absence any clause stating that deportation is to be regarded as a</p>
45	Limits on Transfers to Other Countries	<p>Protected Persons shall not be transferred to a Power which is not a party to the Convention. . . . [The Detaining Power must satisfy itself that a Power to which a Protected Person is to be transferred is able and willing to apply the Convention, and must act if that</p>	<p>any clause stating that deportation is to be regarded as a</p>

		<p>proves not to be so.]</p>	<p>form of transfer, this Article would not appear to raise an obstacle to the right of the Parties to the conflict to deport aliens in individual cases when State security demands such action. . . . [But see Article 49] Moreover, expulsion, if it does take place, must be carried out under humane conditions, the persons concerned being treated with due respect and without brutality [and] the Protecting Power must be notified. . . . The prohibition is general in character. It applies to all Protected Persons in the hands of a belligerent, whatever their status may be. . . ."</p>
<p>47</p>	<p>Bar on Denial of Rights by Changes in Government</p>	<p>Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the . . . Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement . . . between authorities of the occupied territories and the Occupying Power. . . .</p>	<p>" . . . The main point . . . is that changes made in the internal organization of the State must not lead to Protected Persons being deprived of the rights and safeguards provided for them. Consequently it must be possible for the Convention to be applied to them in its entirety, even the Occupying Power has introduced changes in the institutions or government of the occupied territory."</p>
<p>49</p>	<p>Bar on Deportations</p>	<p>Individual . . . transfers, as well as deportations of Protected Persons from occupied territory to . . . any other country . . . are prohibited, regardless of their motive. [Evacuations of areas are permitted for population security or imperative military reasons, but the] Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.</p>	<p>"[T]his Article] prohibits the forcible transfer or deportation from occupied territory of Protected Persons. . . . The prohibition is absolute and allows of no exceptions. . . . [and unlawful] deportation or transfer is included] among the grave breaches . . . calling for the most severe penal sanctions."</p>
<p>76</p>	<p>Treatment of Detainees</p>	<p>Protected Persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country. . . . Protected Persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.</p>	<p>" . . . The recommendation that Protected Persons convicted should be separated from other detainees takes into account the fact which has often been emphasized, if persons guilty of offenses against the penal law of occupying Powers have often acted for patriotic reasons and could not be considered as similar to ordinary criminals. . . . In addition to their right to be visited by the representatives of the Protecting Power, those detained may also be visited by delegates of the International Committee of the Red Cross, who will have access to prison establishments on the same basis as the representatives of the Protecting Power."</p>

<p>136</p>	<p>Notice of Protected Persons Being Detained</p>	<p>Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau, responsible for receiving and transmitting information in respect of the Protected Persons who are in its power. Each of the Parties . . . shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any Protected Persons who are kept in custody for more than two weeks It shall, furthermore, require its various departments concerned with such matters to provide the . . . Bureau promptly with information concerning all changes pertaining to these Protected Persons.</p>	<p>The humanitarian activities of the International Committee are of particular importance when those detained have no the benefit of assistance from a Protecting Power to safeguard their interests and ensure that the provisions of the Convention are carried out." "This [is] a general rule. . . and must be interpreted strictly . . . [The Parties] are bound to take action at the very beginning [of the conflict] and of their own accord. If territory is occupied, whether in the face of armed resistance or not, the establishment of an Information bureau is immediate and to some extent automatic. . . . Information may now be transmitted . . . concerning all 'protected persons' as defined in Article 4. . . . The first sentence defines the Protected Persons concerning whom information must be sent to the National Bureau. They are those who have been kept in custody for more than two weeks. Noting that during the Second World War a large number of persons disappeared without a trace, the Diplomatic Conference considered that the National Information Bureau, in order to keep constant track of each person, should record every sort of detention, whether for political reasons or for offenses against ordinary law, and whatever the authority responsible. The keeping of such record, however, would not be necessary if detention did not exceed two weeks. Unlike information concerning identity, which may only be given by the Protected Person himself and which dealt with in Article 138, the information referred to here all known to the Detaining Power, which can therefore plead no excuse if it fails in its obligation to transmit it. Furthermore, the detaining Power will see to it that information is communicated to its Bureau promptly and soon as one of the events listed takes place. Transfer must be understood to mean a change in the place of residence or camp in which the Protected Person is living, since the list applies to persons kept in custody for</p>
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137		<p>Each national Bureau shall immediately forward information concerning Protected Persons by the most rapid means . . . through the intermediary of the Protecting Powers and . . . the Central Bureau provided in Article 140. The Bureau shall also reply to all enquiries which may be received regarding Protected Persons. . . .</p>	<p>more than two weeks. . . ."</p> <p>"Once the various items of information concerning Protected Persons have been gathered and transmitted . . . to the National Bureau, the Bureau - and this is the essential part of its task and the reason for its existence - will forward them [using the most rapid means] to the Power concerned through the Protecting Power and the Central Agency. . . .</p> <p>The responsibility of the Bureau, in fact, extends only to the forwarding of information to the Protecting Power and the Central Agency. . . .</p> <p>. . . In fact, it will be for the Protecting Power and the Agency to forward the information either to the country of origin or . . . domicile or both. . . .</p> <p>The forwarding of information concerning Protected persons in occupied territory will sometimes raise problems, particularly if the civilian administration of the territory is in the hands of the Occupying Power. Here all the Protecting Power and the [Central] Agency will have take whatever measures circumstances make necessary, either restricting the information to a family only or transmitting the information to a particular authority or charitable society, whether Red Cross or other."</p>
138		<p>The information received by the National Bureau and transmitted by it shall be of such a character as to make it possible to identify the Protected Person exactly and to advise his next of kin quickly [including] at least his surname, first names, place and date of birth, nationality, last residence, distinguishing characteristics the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him, and the name and address of the person to be informed.</p>	<p>" . . . While the Detaining Power is under an obligation to try to obtain information by interrogating the Protected Person, that Person is not bound to supply such information. . . . The departments concerned will then have no other solution than to try to obtain the information from another source or to abandon the attempt."</p>
140		<p>A Central Information Agency for Protected Persons . . . shall be created in a neutral country . . . to collect all information of the type set forth in Article 136 . . . and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned . . . It shall receive from the Parties to the conflict all</p>	<p>" . . . The first task of the [Central] Agency is to collect a possible information concerning the Protected Persons. It will obtain that information first of all from the National Information Bureau . . . this represents the 'official channels.' It may, however, resort to other methods of</p>

142	Visits to Protected Persons	<p>reasonable facilities for effecting such transmissions. . . .</p> <p>Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the Protected Persons, shall receive from these [Detaining] Powers . . . all facilities for visiting the Protected Persons</p> <p>The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities . . . on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all Protected Persons.</p> <p>The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.</p>	<p>collection, i.e., 'private channels.' Indeed, nothing must prevent the Agency from trying to obtain the greatest possible amount of information concerning persons sought by their family and from approaching all those who might be of assistance</p> <p>“ The [Article] . . . repeats [the] right [of religious organizations] to visit Protected Persons, a right of which all bodies fulfilling the necessary conditions will now have the advantage, i.e., in particular religious organizations at Red Cross Societies in . . . occupied countries.</p> <p>Visits by representatives of relief societies to Protected Persons form . . . an essential part of their charitable activities.</p> <p>“ The Detaining Power . . . can only base opposition to the activities of a relief society [as expressed in the Article] and on condition that the reservation is invoked in good faith. ”</p>
143		<p>Representatives or delegates of the Protecting Powers shall have permission to go to all places where Protected Persons are, particularly to places of internment [or] detention</p> <p>They shall have access to all premises occupied by Protected Persons and shall be able to interview the latter without witnesses, personally or through an interpreter.</p> <p>Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.</p> <p>Such representatives and delegates shall have full liberty to select the places they wish to visit.</p> <p>The delegates of the international Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.</p>	<p>“ Of course, the inspection of places of detention . . . and interviews with Protected Persons are the best means available to the Protecting Powers for really effective supervision, but it would be illogical to restrict to those activities alone the obligation laid on those Powers to assist in the application of the Convention and subject it to scrutiny, as must be done everywhere where it is applicable. Thus, the Protecting Power in carrying out each of its tasks under the Convention will . . . be under the additional obligation of exercising a degree of supervision based not on the mandate it has received from the Power of origin, but on a higher mandate given to Protecting Powers in general by the whole of the States party to the Convention.</p> <p>Nevertheless, in the case of . . . detainees, the Convention will find application mainly in places of . . . detention. It is therefore essentially by visits to those places that the Protecting Power will be able to fulfill its general task more effectively.</p>

			<p>Article 143 also contains a new feature The International Committee of the Red Cross will now take part in the system of supervision and the presence and activities of its delegates side by side with those of the Protecting Power is hereby sanctioned</p> <p>. . . . Article 143 lays down the principal method of exercising the supervision mentioned in Article 9: visits to camps and all places where Protected Persons are held. The Article begins with the general rule: all places without exception where Protected Persons are shall be open to inspection</p> <p>The words 'shall have permission; indicate that the inspectors must request permission to visit the place of detention . . . they have chosen, and that their request must be granted. Only imperative military necessity would allow of such permission being postponed (but never refused)</p> <p>The Detaining Powers are therefore obliged to grant permission (and to) facilitate to the greatest possible extent the inspection of places of . . . detention</p> <p>No restriction is imposed in regard to places open to inspection. The agents of the Protecting Powers and of the International Committee must be able to reach all Protected Persons, whether in groups or as isolated individuals, in occupied territory</p> <p>Places of detention will include places where civilian internees are undergoing punishment and places where Protected Persons are detained who have not been interned</p> <p>In all places where there are Protected Persons, all the premises which they use either permanently or temporarily will be visited. . . .</p> <p>. . . . The importance of [interviews without witnesses] for obtaining a knowledge of actual conditions needs no emphasis. . . .</p> <p>. . . . The choice of places to be visited is left entirely to the judgment of the Protecting Powers and the International</p>
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144	Education of Officials	<p>The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present convention as widely as possible in their respective countries. . . .</p> <p>Any civilian, military, police, or other authorities, who in time of war assume responsibilities in respect of Protected Persons, must possess the text of the Convention and be especially instructed as to its provisions.</p>	<p>Committee of the Red Cross. . . ."</p> <p>" . . . [I]f legal provisions are to be properly applied a thorough knowledge of them is necessary. . . .</p> <p>The duty incumbent upon States by virtue of Article 144 general and absolute in character. It must be carried out peacetime and wartime alike. . . .</p> <p>In the first place, the Convention must be known by those who will have to apply it, who may have to render an account of their shortcomings before the courts. . . ."</p> <p>The following provision of the U.S. Code, enacted in 19 satisfies this obligation:</p> <p><u>18 U.S.C. 2441</u></p> <p>(a) <u>Offense</u> - Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in . . . (b), shall be fined under 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.</p> <p>(b) <u>Circumstances</u> - The circumstances referred to in subsection (a) are that the person committing such war crime . . . is a member of the Armed Forces of the United States or a national of the United States. . . .</p> <p>(c) <u>Definition</u> - As used in this section the term "war crime" means any conduct -</p> <p>(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is party; . . .</p> <p><i>Torture</i> refers to its "so to speak, legal meaning - i.e., the infliction of suffering on a person to obtain from that person, or from another person, confessions or information. . . . It is more than a mere assault on the physical or moral integrity of a person. What is important is not so much the pain itself as the purpose behind its infliction. . . ."</p> <p><i>Inhuman treatment</i> "is rather difficult to define [and is that] which ceased to be humane. It could not mean . . .</p>
146	Enforcement of Grave Breaches and Other Violations	<p>The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention defined in the [Article 147].</p> <p>. . . .</p> <p>Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in [Article 147].</p>	
147	Grave Breaches	<p>Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention:</p> <p><i>Willful killing;</i></p> <p><i>Torture or inhuman treatment. . . .</i></p> <p><i>Willfully causing great suffering or serious injury to body or health;</i></p> <p><i>Unlawful deportation or transfer or unlawful confinement of a</i></p>	

<p>148</p>		<p>Protected Person: ... willfully depriving a Protected Person of the rights of fair and regular trial prescribed in the present Convention ...</p>	<p>solely treatment constituting an attack on physical integrity or health; the aim of the Convention is certainly to grant civilians in enemy hands a protection which will preserve their human dignity and prevent them being brought down to the level of animals. . . . <i>Willfully causing great suffering</i> "refers to suffering without the ends in view for which torture is inflicted. . . . It would therefore be inflicted as a punishment, in revenge or for some other motive, perhaps out of pure sadism . . . <i>Unlawful deportation or transfer</i> "refers to breaches of [Article] 49. . . . [T]ransfers are forbidden except in cases where the safety of the protected persons makes them absolutely necessary. Provisions doubtless do exist in national penal codes which would enable these breaches be punished by analogy: coercion or deprivation of personal liberty are quite common examples, but in this particular case the coercion is exercised by the authorities and it is not . . . easy to deal with it by analogy with offences against ordinary law. . . ." <i>Unlawful confinement</i>: "Most national legal systems punish unlawful deprivation of liberty and this breach could therefore be dealt with as an offence against ordinary law. The offence, however, would probably be very difficult to prove. . . . Occupying Powers can intern some of the inhabitants of the occupied territories. The illegal nature of confinement would therefore be very difficult to prove in view of the extended powers granted in this matter to States. Obviously, however, internment for no particular reason, especially in occupied territory, could come within the definition of this breach."</p>
		<p>No High Contracting Party shall be allowed to absolve itself . . . of any liability incurred by itself . . . in respect to any breaches referred to in [Article 147].</p>	

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APPROVED FOR RELEASE
DATE: APR 2008

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To: John L. Helgerson/STF/AGENCY@DCI, [Redacted]

cc:

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Subject: Geneva Convention -- summary of relevant provisions

John, et al. -- attached is a collection of provisions drawn from the Geneva Convention that governs treatment of civilians in occupied territories that I thought most relevant based upon my limited understanding of the INV Staff's current work. I have included text from each of the selected provisions and explanations I thought useful drawn largely from a commentary published by the International Committee of the Red Cross a few years after the Convention was developed. I have tried to keep the summary short, but it is still imposing, and it is intended to be a starting point for understanding, discussion, and further research on the meaning and reach of the various provisions. [Redacted] has been involved in researching the Convention and the two of us shall continue to develop background material for the investigations. Please let me know if you have specific questions that require further insight.

[Redacted]



Geneva Convention IV Summary.doc

Geneva Convention IV (August 12, 1949) – “Protection of Civilian Persons in Time of War”

Selected Provisions

Article	Subject	Text	Remarks
1	Extent of Obligations	The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.	The United States and Iraq signed the Convention and are “High Contracting Parties.” “It is not an engagement concluded on the basis of reciprocity, binding each Party to the contract only insofar as the other Party observes its obligations. It is rather a series of unilateral engagements solemnly contracted before the world as represented by the other . . . Parties. . . . The . . . Parties do not undertake merely to respect the Convention, but also to <i>ensure respect</i> for it [by all those over whom it has authority]. . . . [T]he Party to the conflict is responsible for the treatment accorded to Protected Persons. . . . [A]s soon as one of the conditions of application for which Article 2 provides is present, no . . . Party can offer any valid pretext, legal or otherwise, for not respecting the Convention in its entirety. . . .”
2	Applicability to Hostilities	. . . the . . . Convention shall apply to all cases of . . . armed conflict which may arise between two or more of the High Contracting Parties The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.	“. . . By its general character, this paragraph deprives belligerents, in advance, of the pretexts they might in theory put forward for evading their obligations. There is no need for a formal declaration of war, or for the recognition of the existence of a state of war, as preliminaries to the application of the Convention. The occurrence of <i>de facto</i> hostilities is sufficient. . . .”
4	Applicability: Definition of Protected Persons	Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.	“. . . [P]rotection is accorded to all persons who are not of the nationality of the occupying State[, excluding]: (1) Nationals of a State which is not party to the Convention (2) Nationals of a co-belligerent State [that] has normal diplomatic representation in the occupying State. (3) Persons covered . . . under one of the three other Geneva Conventions. . . .”
5	Exclusion for Hostile Persons	. . . Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite	“. . . There may of course be occasions when it is desirable to keep the fact of an arrest secret in the hope of capturing

* Remarks in quotations are taken from *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross (1958).

<p>suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.</p> <p>In each case, such persons shall nevertheless be treated with humanity and . . . shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present convention at the earliest date consistent with the security of the . . . Occupying Power.</p>	<p>a whole organization or spy ring. But although the Convention obliges the Powers to give Protected Persons certain opportunities for communicating with the outside world, even when they are being held for trial, it does allow some latitude: Article 136 lays down, for example, that the names of the detained persons are to be transmitted if they are kept in custody for <i>more than two weeks</i>; one can see that this leaves a margin which will, in the majority of cases, meet any legitimate security requirements. . . . It may . . . seem rather surprising that a humanitarian Convention should tend to protect spies, saboteurs, or irregular combatants. Those who take part in the struggle while not belonging to the armed forces are acting deliberately outside the laws of warfare [and] know the danger set which they are exposing themselves. [B]ut the terms . . . sabotage, terrorism, . . . have so often been used lightly . . . that it was not advisable to leave the accused at the mercy of those detaining them. . . ."</p> <p>"The rights referred to are not very extensive in the case of Protected Persons under detention; . . . essentially the right to correspond, . . . receive individual or collective relief, . . . spiritual assistance from ministers . . . and receive visits from representatives of the Protecting Power and the International Committee of the Red Cross.</p> <p>The security of the State could not conceivably be put forward as a reason for depriving such persons of the benefit of other provisions - for example, . . . Article 37 that they are to be humanely treated when they are confined pending proceedings . . . Torture and recourse to reprisals are of course prohibited.</p> <p>It should, moreover, be noted that this provision cannot release the Detaining Power from its obligations. . . . It remains fully bound by the obligation, imposed on it by Article 136, to transmit to the official Information Bureau particulars of any Protected Person who is kept in custody for more than two weeks. This is not, in fact, a right or privilege of the Protected Person, but an obligation of the</p>
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<p>9</p>	<p>Supervision and Oversight</p>	<p>The . . . Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. . . . The Parties to the conflict shall facilitate to the greatest extent possible the task of the . . . Protecting Powers.</p>	<p>Detaining Power. . . . It must be emphasized most strongly . . . that Article 5 can only be applied in individual cases of an exceptional nature, when the existence of specific charges makes it almost certain that penal proceedings will follow. This Article should never be applied as a result of mere suspicion."</p> <p>The International Committee of the Red Cross has come to be accepted as one of the recognized "Protecting Powers."</p> <p>"This is a command. . . [I]t is addressed in the first instance to . . . the Occupying Powers, since the responsibility for application is theirs. They are bound to accept the co-operation of the Protecting Power; if necessary, they must demand it. The whole Convention shows that it was intended to exclude any possibility of the Protected Persons not having the benefit of the services of a Protecting Power"</p> <p>". . . the mere fact of a person residing in a territory . . . occupied by a party to the conflict is sufficient to make Part II of the Convention applicable to him. . . ."</p>
<p>13, 25, 26</p>	<p>Applicability: General</p>	<p>13. The provisions of Part II [General Protection of Populations Against Certain Consequences of War] cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the suffering caused by war.</p> <p>25. All persons in . . . [an occupied] territory . . . shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them . . . speedily and without undue delay.</p> <p>26. Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.</p>	<p>"It should be noted that the Convention makes express provision for setting up information bureaux, and lays down detailed regulations concerning them. Each belligerent should set up an official Information Bureau to receive and transmit information about Protected Persons in its hands; the information should mention the measures adopted concerning them and should include any particulars which will enable a Protected Person to be identified, and his family notified."</p> <p>"The obligation to grant Protected Persons humane treatment is in truth the <i>leitmotiv</i> of the four Geneva</p>
<p>27</p>	<p>Protections Afforded</p>	<p>Protected Persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious</p>	<p>"The obligation to grant Protected Persons humane treatment is in truth the <i>leitmotiv</i> of the four Geneva</p>

<p>conventions 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.</p> <p>... all Protected Persons shall be treated with the same consideration ... without any adverse distinction based, in particular, on race, religion, or political opinion.</p> <p>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 the war.</p>	<p>Conventions. . . .</p> <p>... [T]he paragraph under discussion mentions as an example . . . any act of violence or intimidation inspired not by military requirements or a legitimate desire for security, but by a systematic scorn for human values. . . . The Convention does not confine itself to stipulating that such acts are not to be committed. It goes further; it requires States to take all the precautions and measures in their power to prevent such acts and to assist the victims in case of need. . . .</p> <p>The requirement of humane treatment and the prohibition of certain acts incompatible with it are general and absolute in character, like the obligation enjoining respect for essential rights and fundamental liberties. They are valid 'in all circumstances' and 'at all times,' and apply, for example, to cases where a Protected Person is the legitimate object of strict measure, since the dictates of humanity and measures of security or repression, even when they are severe, are not necessarily incompatible. The obligation to give humane treatment and to respect fundamental rights remains fully valid in relation to persons in prison or interned, . . . in occupied territory. It is in such situations, when human values appear to be in greatest danger, that the provision assumes its full significance. . . .</p> <p>The various security measures which States might take are not specified. . . . A great deal is thus left to the discretion of the Parties. . . . What is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned. . . . [T]hose rights must be respected even when measures of constraint are justified . . .</p>
<p>Obligation of Occupying Power</p>	<p>The Party to the conflict in whose hands Protected Persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.</p> <p>"Any breach of the law is bound to be committed by one or more individuals and it is normally they who must answer for their acts. Nevertheless, if the author of the act contrary to international law is an agent of the Satte, it is</p>

<p>no longer his responsibility alone which is involved, but also that of the State, which must make good the damage and punish the offender. . . . The term 'agent' must be understood as embracing everyone who is in the service of a . . . Party, no matter in what way or in what capacity. It included civil servants, . . . members of the armed forces, members of par-military police organizations, etc. . . . The nationality of the agents does not affect the issue. That is of particular importance in occupied territories, as it means that the occupying authorities are responsible for acts committed by their locally recruited agents of the nationality of the occupied country. . . ."</p>			
<p>" . . . The right in question is an absolute right, possessed by all Protected Persons . . . in occupied territory, whether [or not] they are not detained. . . . The right of communication may be exercised under all circumstances. It must be pointed out, however, that this right may be suspended if the seriousness of the circumstances so demands. The obligation to facilitate this work [by the Protecting Powers] is limited however by military or security considerations . . . It is essential, however, that the belligerents, who will be sole judges of the validity of the reasons put forward, should show moderation in the use they make of this reservation and only apply it in cases of real necessity. Moreover, limitations should only continue as long as the reasons for them continue to exist. . . . The right of communication of Protected Persons may, for instance, be temporarily restricted by means of exceptional measures taken to ensure the secrecy of military operations in certain specified areas; but such restrictions should never be applied generally and they should be lifted as soon as circumstances allow. . . ."</p>	<p>Protected Persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, . . . where they may be, as well as to any organization that might assist them. These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations. Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the . . . Occupying Powers shall facilitate, as much as possible, visits to protected Persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.</p>	<p>Rights of Protected Persons</p>	
<p>"[The provision] covers all cases, whether the pressure is direct or indirect, obvious or hidden (as for example a threat to subject other persons to severe measures . . .).</p>	<p>No physical or moral coercion shall be exercised against Protected Persons, in particular to obtain information from them or from third parties.</p>	<p>Bar on Coercion to Obtain Information</p>	

<p>[I] prohibits coercion for any purpose or reason and the obtaining of information is only given as an example. . . . [The] Article is subject to the unspoken reservation that force is permitted whenever it is necessary to use it in the application of measures taken under the Convention. This power is embodied and expressed particularly in penal legislation and in the control and security regulations . . . to which Protected Persons are subject.</p>		
<p>“ . . . it is not necessary that an act should be intentional for the person committing it to be answerable for it. The aim is to ensure that every Protected Person shall receive humane treatment from the civil and military authorities. . . . The prohibition of torture set forth in this Article is absolute; it covers all forms of torture . . . and whatever the means employed. There need not necessarily be any attack on physical integrity since the ‘progress’ of science has enabled the use of procedures which, while they involve physical suffering, do not necessarily cause bodily injury. . . .</p> <p>The list of prohibited acts should not be considered as exhaustive. . . . This prohibition . . . is intended to cover cases which, while they are not among the specifically prohibited acts, nevertheless cause suffering to Protected Persons. There is not need to make any distinctions between such practices carried out by civilians or by military personnel; in both cases and in respect of all the acts covered by this Article, the agent and the Power for whom he acts must both bear responsibility. . . .”</p> <p>“ . . . Obviously, the belligerents will retain the right to punish individuals who have committed hostile acts, in accordance with . . . penal legislation and procedure when it is a matter of safeguarding their legitimate interests and security.</p> <p>“Any movement of Protected Persons to another State, carried out by the Detaining Power . . . is considered as a transfer for the purposes of Article 45. . . . In the absence of any clause stating that deportation is to be regarded as a</p>	<p>The . . . Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering . . . of Protected Persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation, and medical or scientific experiments not necessitated by the medical treatment of a Protected Person, but also to any other measures of brutality whether applied by civilian or military agents.</p>	
<p>Bar on Physical Suffering</p>	<p>No Protected Person may be punished for an offence he or she has not personally committed. Collective penalties and . . . all measures of intimidation or of terrorism are prohibited. . . . Reprisal against Protected Persons and their property are prohibited.</p> <p>Protected Persons shall not be transferred to a Power which is not a party to the Convention. . . . [The Detaining Power must satisfy itself that a Power to which a Protected Person is to be transferred is able and willing to apply the Convention, and must act if that</p>	<p>Limits on Punishment</p>
<p>Limits on Transfers to Other Countries</p>		

	<p>proves not to be so.]</p>	<p>form of transfer, this Article would not appear to raise any obstacle to the right of the Parties to the conflict to deport aliens in individual cases when State security demands such action. . . . [But see Article 49] Moreover, expulsion, if it does take place, must be carried out under humane conditions, the persons concerned being treated with due respect and without brutality [and] the Protecting Power must be notified. . . . The prohibition is general in character. It applies to all Protected Persons in the hands of a belligerent, whatever their status may be. . . .”</p>	
<p>47</p>	<p>Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the . . . Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement . . . between authorities of the occupied territories and the Occupying Power</p>	<p>“ . . . The main point . . . is that changes made in the internal organization of the State must not lead to Protected Persons being deprived of the rights and safeguards provided for them. Consequently it must be possible for the Convention to be applied to them in its entirety, even if the Occupying Power has introduced changes in the institutions or government of the occupied territory.”</p>	
<p>49</p>	<p>Individual . . . transfers, as well as deportations of Protected Persons from occupied territory to . . . any other country . . . are prohibited, regardless of their motive. [Evacuations of areas are permitted for population security or imperative military reasons, but the] Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.</p>	<p>“[This Article] prohibits the forcible transfer or deportation from occupied territory of Protected Persons. . . . The prohibition is absolute and allows of no exceptions. . . . [and unlawful deportation or transfer is included] among the grave breaches . . . calling for the most severe penal sanctions.”</p>	
<p>76</p>	<p>Protected Persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country. . . . Protected Persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.</p>	<p>“ . . . The recommendation that Protected Persons convicted should be separated from other detainees takes into account the fact which has often been emphasized, that persons guilty of offenses against the penal law of occupying Powers have often acted for patriotic reasons and could not be considered as similar to ordinary criminals. . . . In addition to their right to be visited by the representatives of the Protecting Power, those detained may also be visited by delegates of the International Committee of the Red Cross, who will have access to prison establishments on the same basis as the representatives of the Protecting Power.”</p>	

<p>136</p>	<p>Notice of Protected Persons Being Detained</p>	<p>Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau, responsible for receiving and transmitting information in respect of the Protected Persons who are in its power.</p> <p>Each of the Parties . . . shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any Protected Persons who are kept in custody for more than two weeks . . . It shall, furthermore, require its various departments concerned with such matters to provide the . . . Bureau promptly with information concerning all changes pertaining to these Protected Persons.</p>	<p>The humanitarian activities of the International Committee are of particular importance when those detained have not the benefit of assistance from a Protecting Power to safeguard their interests and ensure that the provisions of the Convention are carried out."</p> <p>"This [is] a general rule. . . and must be interpreted strictly. . . [The Parties] are bound to take action at the very beginning [of the conflict] and of their own accord. If territory is occupied, whether in the face of armed resistance or not, the establishment of an Information bureau is immediate and to some extent automatic. . . . Information may now be transmitted . . . concerning all 'protected persons' as defined in Article 4. . . . The first sentence defines the Protected Persons concerning whom information must be sent to the National Bureau. They are those who have been kept in custody for more than two weeks, . . .</p> <p>. . . . Noting that during the Second World War a large number of persons disappeared without a trace, the Diplomatic Conference considered that the National Information Bureau, in order to keep constant track of each person, should record every sort of detention, whether for political reasons or for offenses against ordinary law, and whatever the authority responsible. The keeping of such a record, however, would not be necessary if detention did not exceed two weeks. . . .</p> <p>. . . . Unlike information concerning identity, which may only be given by the Protected Person himself and which is dealt with in Article 138, the information referred to here is all known to the Detaining Power, which can therefore plead no excuse if it fails in its obligation to transmit it. . . . Furthermore, the detaining Power will see to it that information is communicated to its Bureau promptly and as soon as one of the events listed takes place.</p> <p>Transfer must be understood to mean a change in the place of residence or camp in which the Protected Person is living, since the list applies to persons kept in custody for</p>
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<p>137</p>	<p>more than two weeks..."</p> <p>"Once the various items of information concerning Protected Persons have been gathered and transmitted . . . to the National Bureau, the Bureau - and this is the essential part of its task and the reason for its existence - will forward them [using the most rapid means] to the Power concerned through the Protecting Power and the Central Agency. . . .</p> <p>The responsibility of the Bureau, in fact, extends only to the forwarding of information to the Protecting Power and the Central Agency . . .</p> <p>. . . In fact, it will be for the Protecting Power and the Agency to forward the information either to the country of origin or . . . domicile or both</p> <p>The forwarding of information concerning Protected persons in occupied territory will sometimes raise problems, particularly if the civilian administration of the territory is in the hands of the Occupying Power. Here also the Protecting Power and the [Central] Agency will have to take whatever measures circumstances make necessary, either restricting themselves to informing the family only or transmitting the information to a particular authority or charitable society, whether Red Cross or other."</p>	<p>Each national Bureau shall immediately forward information concerning Protected Persons by the most rapid means . . . through the intermediary of the Protecting Powers and . . . the Central Bureau provided in Article 140. The Bureau shall also reply to all enquiries which may be received regarding Protected Persons. . . .</p>
<p>138</p>	<p>" While the Detaining Power is under an obligation to try to obtain information by interrogating the Protected Person, that Person is not bound to supply such information. . . . The departments concerned will then have no other solution than to try to obtain the information from another source or to abandon the attempt."</p>	<p>The information received by the National Bureau and transmitted by it shall be of such a character as to make it possible to identify the Protected Person exactly and to advise his next of kin quickly [including] at least his surname, first names, place and date of birth, nationality, last residence, distinguishing characteristics the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him, and the name and address of the person to be informed.</p> <p>A Central Information Agency for Protected Persons . . . shall be created in a neutral country . . . to collect all information of the type set forth in Article 136 . . . and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned . . . It shall receive from the Parties to the conflict all</p>
<p>140</p>	<p>" The first task of the [Central] Agency is to collect all possible information concerning the Protected Persons. It will obtain that information first of all from the National Information Bureau . . . this represents the 'official channels.' It may, however, resort to other methods of</p>	<p></p>

<p>142</p>	<p>Visits to Protected Persons</p>	<p>reasonable facilities for effecting such transmissions. . . .</p>	<p>collection, i.e., 'private channels.' Indeed, nothing must prevent the Agency from trying to obtain the greatest possible amount of information concerning persons sought by their family and from approaching all those who might be of assistance. . . .</p> <p>" . . . The [Article] . . . repeats [the] right [of religious organizations] to visit Protected Persons, a right of which all bodies fulfilling the necessary conditions will now have the advantage, i.e., in particular religious organizations and Red Cross Societies in . . . occupied countries. Visits by representatives of relief societies to Protected Persons form . . . an essential part of their charitable activities. . . .</p> <p>. . . The Detaining Power. . . can only base opposition to the activities of a relief society [as expressed in the Article] and on condition that the reservation is invoked in good faith. . . ."</p>	<p>Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the Protected Persons, shall receive from these [Detaining] Powers . . . all facilities for visiting the Protected Persons . . .</p> <p>The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities . . . on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all Protected Persons.</p> <p>The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.</p>
<p>143</p>	<p>Visits to Protected Persons</p>	<p>Representatives or delegates of the Protecting Powers shall have permission to go to all places where Protected Persons are, particularly to places of internment [or] detention . . . They shall have access to all premises occupied by Protected Persons and shall be able to interview the latter without witnesses, personally or through an interpreter.</p> <p>Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted. Such representatives and delegates shall have full liberty to select the places they wish to visit. . . .</p> <p>The delegates of the international Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.</p>	<p>" . . . Of course, the inspection of places of detention . . . and interviews with Protected Persons are the best means available to the Protecting Powers for really effective supervision, but it would be illogical to restrict to those activities alone the obligation laid on those Powers to assist in the application of the Convention and subject it to scrutiny, as must be done everywhere where it is applicable. Thus, the Protecting Power in carrying out each of its tasks under the Convention will . . . be under the additional obligation of exercising a degree of supervision based not on the mandate it has received from the Power of origin, but on a higher mandate given to Protecting Powers in general by the whole of the States party to the Convention. . . .</p> <p>Nevertheless, in the case of . . . detainees, the Convention will find application mainly in places of . . . detention. It is therefore essentially by visits to those places that the Protecting Power will be able to fulfill its general task most effectively.</p>	<p>Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the Protected Persons, shall receive from these [Detaining] Powers . . . all facilities for visiting the Protected Persons . . .</p> <p>The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities . . . on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all Protected Persons.</p> <p>The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.</p> <p>Representatives or delegates of the Protecting Powers shall have permission to go to all places where Protected Persons are, particularly to places of internment [or] detention . . . They shall have access to all premises occupied by Protected Persons and shall be able to interview the latter without witnesses, personally or through an interpreter.</p> <p>Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted. Such representatives and delegates shall have full liberty to select the places they wish to visit. . . .</p> <p>The delegates of the international Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.</p>

Article 143 also contains a new feature . . . The International Committee of the Red Cross will now take part in the system of supervision and the presence and activities of its delegates side by side with those of the Protecting Power is hereby sanctioned. . . .

. . . Article 143 lays down the principal method of exercising the supervision mentioned in Article 9: visits to camps and all places where Protected Persons are held. . . . The Article begins with the general rule: all places without exception where Protected Persons are shall be open to inspection. . . .

The words 'shall have permission; indicate that the inspectors must request permission to visit the place of detention . . . they have chosen, and that their request must be granted. Only imperative military necessity would allow of such permission being postponed (but never refused)

The Detaining Powers are therefore obliged to grant permission [and to] facilitate to the greatest possible extent the inspection of places of . . . detention

No restriction is imposed in regard to places open to inspection. The agents of the Protecting Powers and of the International Committee must be able to reach all Protected Persons, whether in groups or as isolated individuals, in . . . occupied territory. . . .

Places of detention will include places where civilian internees are undergoing punishment and places where Protected Persons are detained who have not been interned. . . .

In all places where there are Protected Persons, all the premises which they use either permanently or temporarily will be visited. . . .

. . . . The importance of [interviews without witnesses] for obtaining a knowledge of actual conditions needs no emphasis. . . .

. . . . The choice of places to be visited is left entirely to the judgment of the Protecting Powers and the International

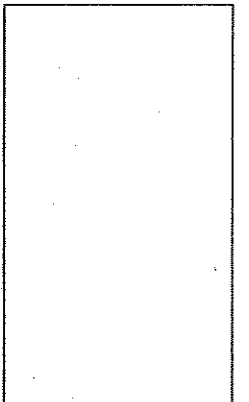
144	Education of Officials	<p>The High Contracting Powers undertake, in time of peace as in time of war, to disseminate the text of the present convention as widely as possible in their respective countries. . . . Any civilian, military, police, or other authorities, who in time of war assume responsibilities in respect of Protected Persons, must possess the text of the Convention and be especially instructed as to its provisions.</p>	<p>Committee of the Red Cross. . . ."</p> <p>" . . . [I]f legal provisions are to be properly applied a thorough knowledge of them is necessary. . . . The duty incumbent upon States by virtue of Article 144 is general and absolute in character. It must be carried out in peacetime and wartime alike. . . . In the first place, the Convention must be known by those who will have to apply it, who may have to render an account of their shortcomings before the courts. . . ."</p> <p>The following provision of the U.S. Code, enacted in 1996, satisfies this obligation:</p> <p><u>18 U.S.C. 2441</u></p> <p>(a) Offense – Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in . . . (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.</p> <p>(b) Circumstances – The circumstances referred to in subsection (a) are that the person committing such war crime . . . is a member of the Armed Forces of the United States or a national of the United States. . . .</p> <p>(c) Definition – As used in this section the term "war crime" means any conduct –</p> <p>(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party; . . .</p> <p><i>Torture</i> refers to its "so to speak, legal meaning – i.e., the infliction of suffering on a person to obtain from that person, or from another person, confessions or information. . . . It is more than a mere assault on the physical or moral integrity of a person. What is important is not so much the pain itself as the purpose behind its infliction. . . ."</p> <p><i>Inhuman treatment</i> "is rather difficult to define [and is that] which ceased to be humane. It could not mean . . .</p>
146	Enforcement of Grave Breaches and Other Violations	<p>The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention defined in the [Article 147].</p> <p>Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in [Article 147].</p>	<p><u>18 U.S.C. 2441</u></p> <p>(a) Offense – Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in . . . (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.</p> <p>(b) Circumstances – The circumstances referred to in subsection (a) are that the person committing such war crime . . . is a member of the Armed Forces of the United States or a national of the United States. . . .</p> <p>(c) Definition – As used in this section the term "war crime" means any conduct –</p> <p>(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party; . . .</p> <p><i>Torture</i> refers to its "so to speak, legal meaning – i.e., the infliction of suffering on a person to obtain from that person, or from another person, confessions or information. . . . It is more than a mere assault on the physical or moral integrity of a person. What is important is not so much the pain itself as the purpose behind its infliction. . . ."</p> <p><i>Inhuman treatment</i> "is rather difficult to define [and is that] which ceased to be humane. It could not mean . . .</p>
147	Grave Breaches	<p>Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention:</p> <p>Wilful killing;</p> <p>Torture or inhuman treatment . . . ;</p> <p>Wilfully causing great suffering or serious injury to body or health;</p> <p>Unlawful deportation or transfer or unlawful confinement of a</p>	<p><u>18 U.S.C. 2441</u></p> <p>(a) Offense – Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in . . . (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.</p> <p>(b) Circumstances – The circumstances referred to in subsection (a) are that the person committing such war crime . . . is a member of the Armed Forces of the United States or a national of the United States. . . .</p> <p>(c) Definition – As used in this section the term "war crime" means any conduct –</p> <p>(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party; . . .</p> <p><i>Torture</i> refers to its "so to speak, legal meaning – i.e., the infliction of suffering on a person to obtain from that person, or from another person, confessions or information. . . . It is more than a mere assault on the physical or moral integrity of a person. What is important is not so much the pain itself as the purpose behind its infliction. . . ."</p> <p><i>Inhuman treatment</i> "is rather difficult to define [and is that] which ceased to be humane. It could not mean . . .</p>

<p>148</p>	<p>Protected Person; ... willfully depriving a Protected Person of the rights of fair and regular trial prescribed in the present Convention</p>	<p>solely treatment constituting an attack on physical integrity or health; the aim of the Convention is certainly to grant civilians in enemy hands a protection which will preserve their human dignity and prevent them being brought down to the level of animals. . . ." <i>Wilfully causing great suffering</i> "refers to suffering without the ends in view for which torture is inflicted. . . . It would therefore be inflicted as a punishment, in revenge, or for some other motive, perhaps out of pure sadism" <i>Unlawful deportation or transfer</i> "refers to breaches of [Article] 49 [T]ransfers are forbidden except in cases where the safety of the protected persons makes them absolutely necessary. Provisions doubtless do exist in national penal codes which would enable these breaches to be punished by analogy: coercion or deprivation of personal liberty are quite common examples, but in this particular case the coercion is exercised by the authorities and it is not . . . easy to deal with it by analogy with offences against ordinary law. . . ." <i>Unlawful confinement</i>: "Most national legal systems punish unlawful deprivation of liberty and this breach could therefore be dealt with as an offence against ordinary law. The offence, however, would probably be very difficult to prove. . . . Occupying Powers can intern some of the inhabitants of the occupied territories. The illegal nature of confinement would therefore be very difficult to prove in view of the extended powers granted in this matter to States. Obviously, however, internment for no particular reason, especially in occupied territory, could come within the definition of this breach."</p>
<p>No High Contracting Party shall be allowed to absolve itself . . . of any liability incurred by itself . . . in respect to any breaches referred to in [Article 147].</p>	<p>No High Contracting Party shall be allowed to absolve itself . . . of any liability incurred by itself . . . in respect to any breaches referred to in [Article 147].</p>	

(b) (5)

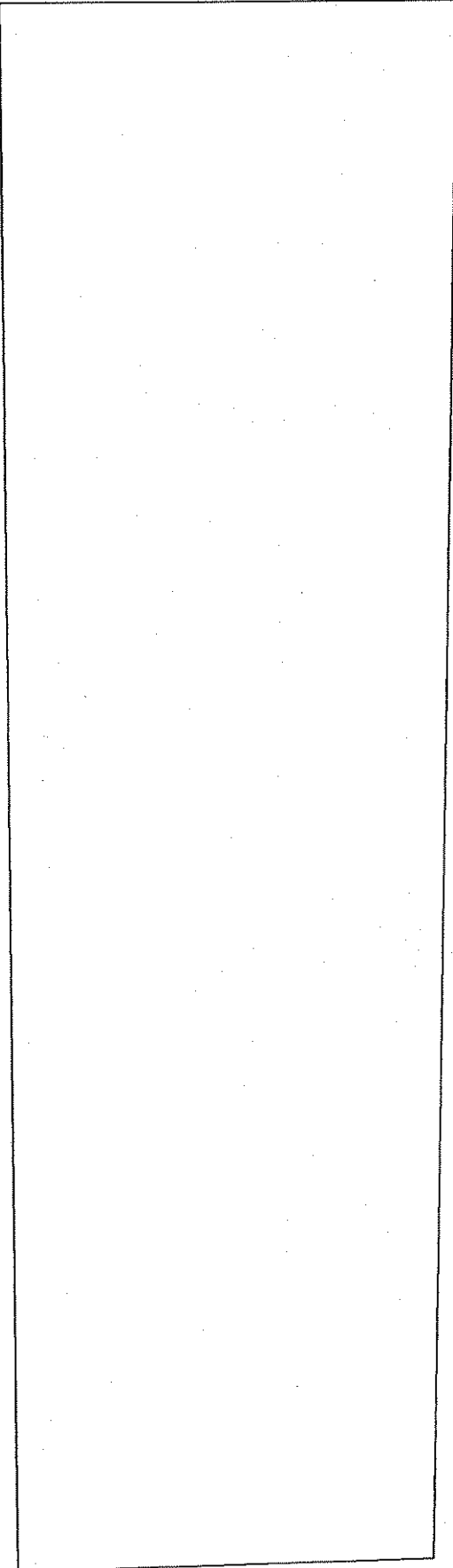
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War Crimes, Torture & other serious offenses



Jurisdiction

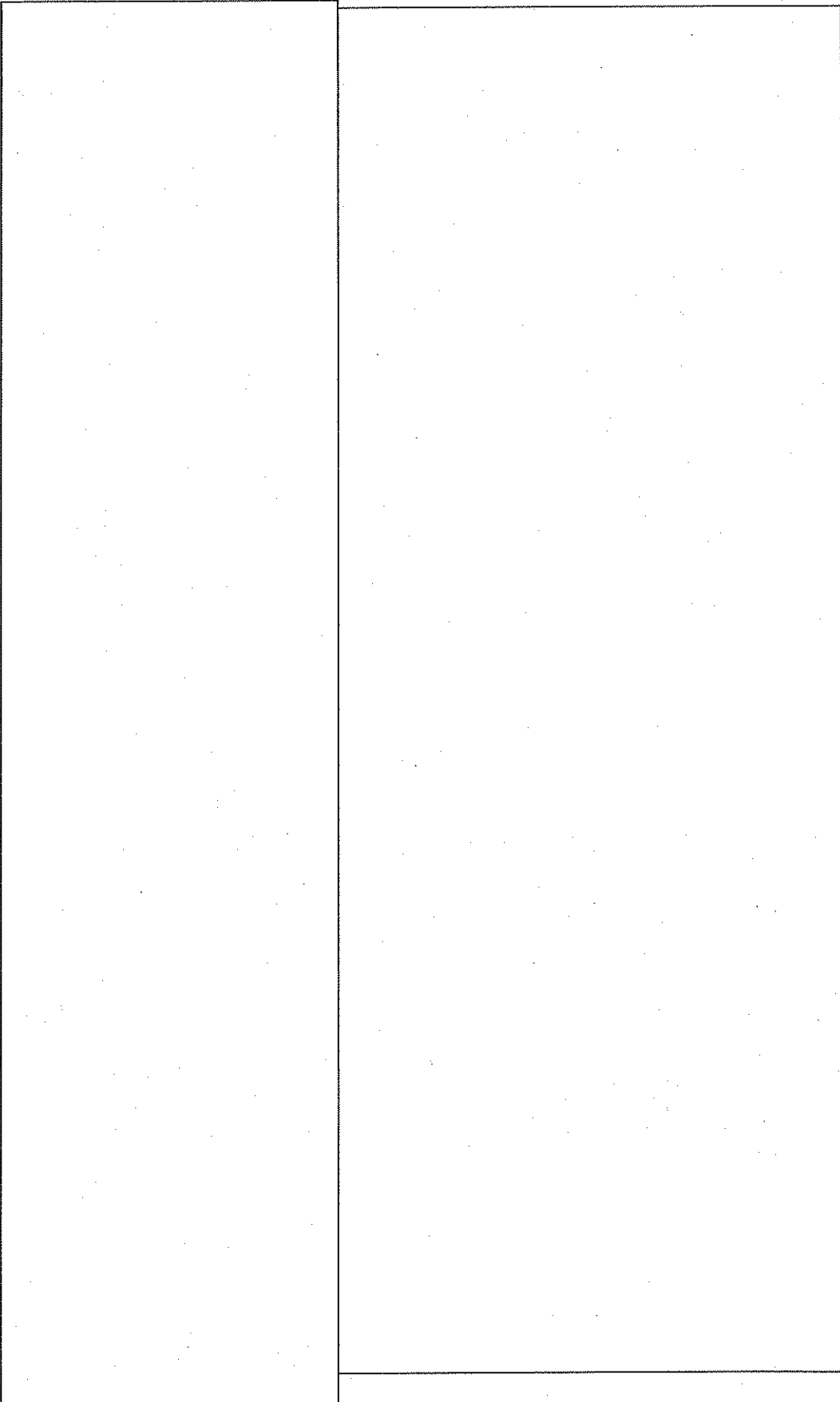
- **Subject matter** – war crimes, torture and other serious federal offenses apply to acts committed overseas



Geneva Conventions of 1949

- “ . . . All Treaties made, . . ., under the Authority of the United States, shall be the supreme Law of the land.” Art. VI of the Constitution
- U.S. has ratified the Geneva Conventions of 1949 - 18 U.S.C 2441 is the result of that ratification
- Similarly, 18 U.S.C. 2340 is the result of U.S. ratification of the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment

Geneva Conventions



18 U.S.C. 2441 – War Crimes

- **Applicable to acts committed inside or outside the U.S.**
- **The person committing act or victim is a member of the U.S. Armed Forces or national of the U.S.**
- **Act committed is a “grave breach” of the 1949 GC or Art. 23, 25, 27 or 28 of the 1907 Hague Convention**

Grave Breaches

- Grave Breaches of GC III - POWS
- Committed against a protected person
- Acts include:
 - willful killing,
 - torture or inhumane treatment
 - willfully causing great suffering or serious injury to body or health,
 - compelling a prisoner of war to serve in the forces of the hostile Power, or
 - willfully depriving a prisoner of war of the rights of a fair and regular trial prescribed in this convention

Art. 130, GC III

Grave Breaches

- Grave Breaches of GC IV – Civilians
 - Includes all acts listed under GC III but adds:
 - unlawful deportation or transfer or unlawful confinement of a protected person &
 - taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

Art 147, GC IV

Hague Conventions of 1907

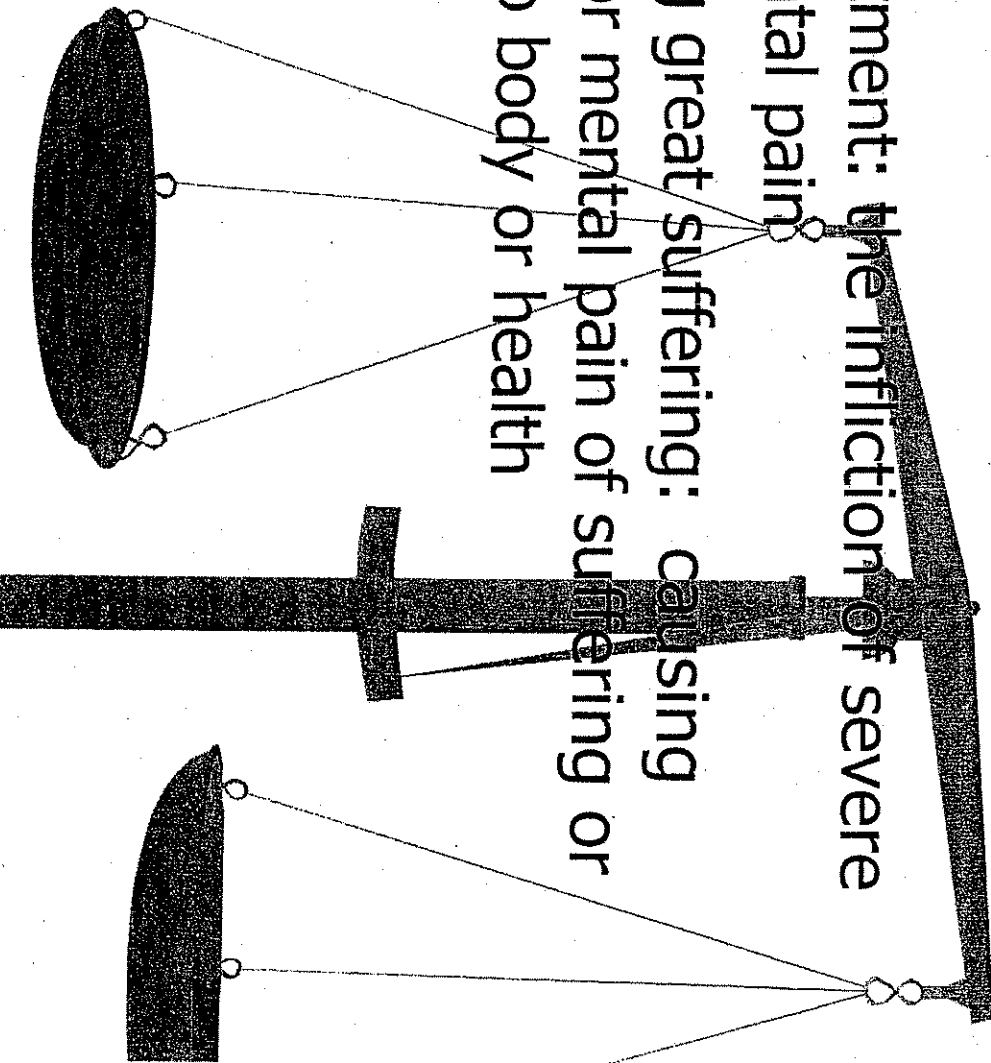
- Art 23: it is especially forbidden to
 - Employ poison or poisonous weapons
 - Kill or wound treacherously
 - Kill or wound someone who has surrendered
 - To declare that no quarter will be given
 - To use weapons or materials calculated to cause unnecessary suffering
 - To make improper use of a flag of truce, uniform or flag of the enemy, or the distinctive badges of the GC
 - To seize or destroy enemy property not required by military necessity
 - To abolish or suspend the legal rights and actions of enemy nationals
 - To compel enemy nationals to take part in operations against their own country

Hague Conventions of 1907

- Art. 25: attack or bombardment of an undefended town, village, dwelling or building
- Art. 27: Protection during bombardment or siege of cultural, historical, charitable or medical buildings or objects
- Art. 28: pillaging is prohibited

Cruel, Inhumane & Degrading treatment

- ICC:
 - Inhumane treatment: the infliction of severe physical or mental pain
 - Willfully causing great suffering: causing great physical or mental pain of suffering or serious injury to body or health



Torture

■ 18 U.S.C. 2340

- The specific intent to inflict severe mental or physical pain or suffering (doesn't include lawful sanctions)
- Committed by a person acting under the color of authority upon another person within his custody or physical control

Torture

- Severe mental pain or suffering =
 - Infliction or threatened infliction of severe physical pain or suffering
 - Use or threat of use of mind altering substances or procedures calculated to disrupt profoundly the senses or personality
 - Threat of imminent death
 - Threat that another person will be subject to the above conduct

Protected Persons

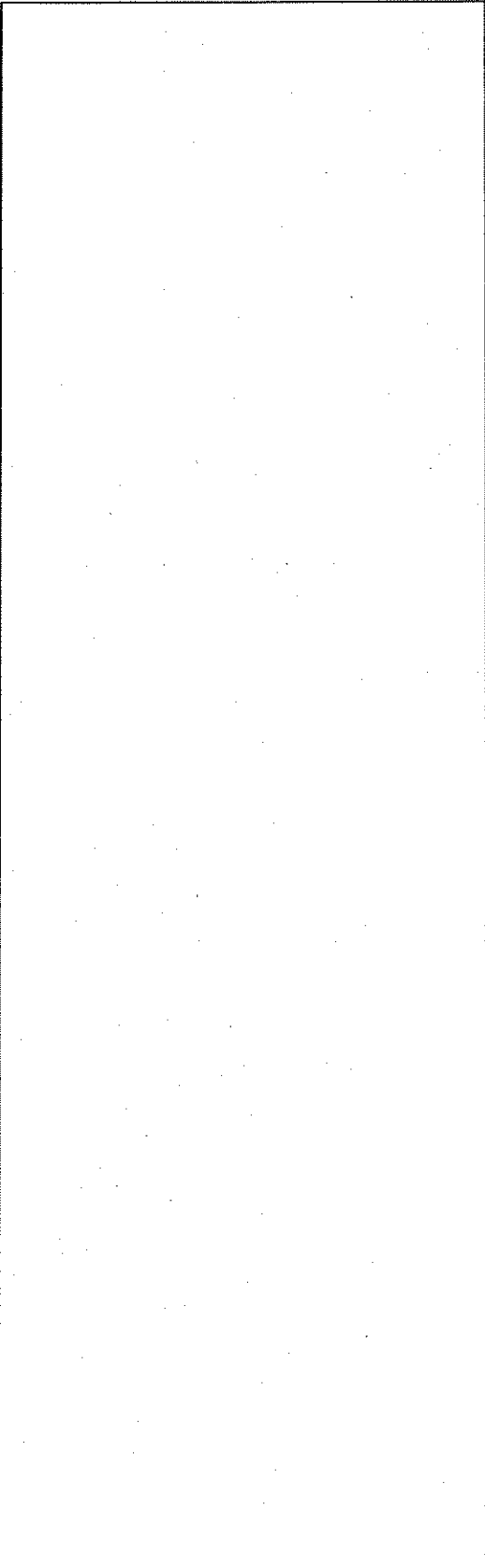
- protected persons are the wounded, the sick, the shipwrecked, prisoners of war, civilians and other persons not or no longer taking part in the fighting, medical and religious personnel, the staff of relief operations, the staff of civil defense organizations and mediators.

Protected Persons - Civilians

- GC IV – Art. 4: those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.
- Basically, anyone not a member of the armed forces

Unlawful Combatants

- Those who are not members of the armed forces, recognized militias or levee en masse – who are all considered “privileged combatants” meaning that they can kill the enemy without penalty.

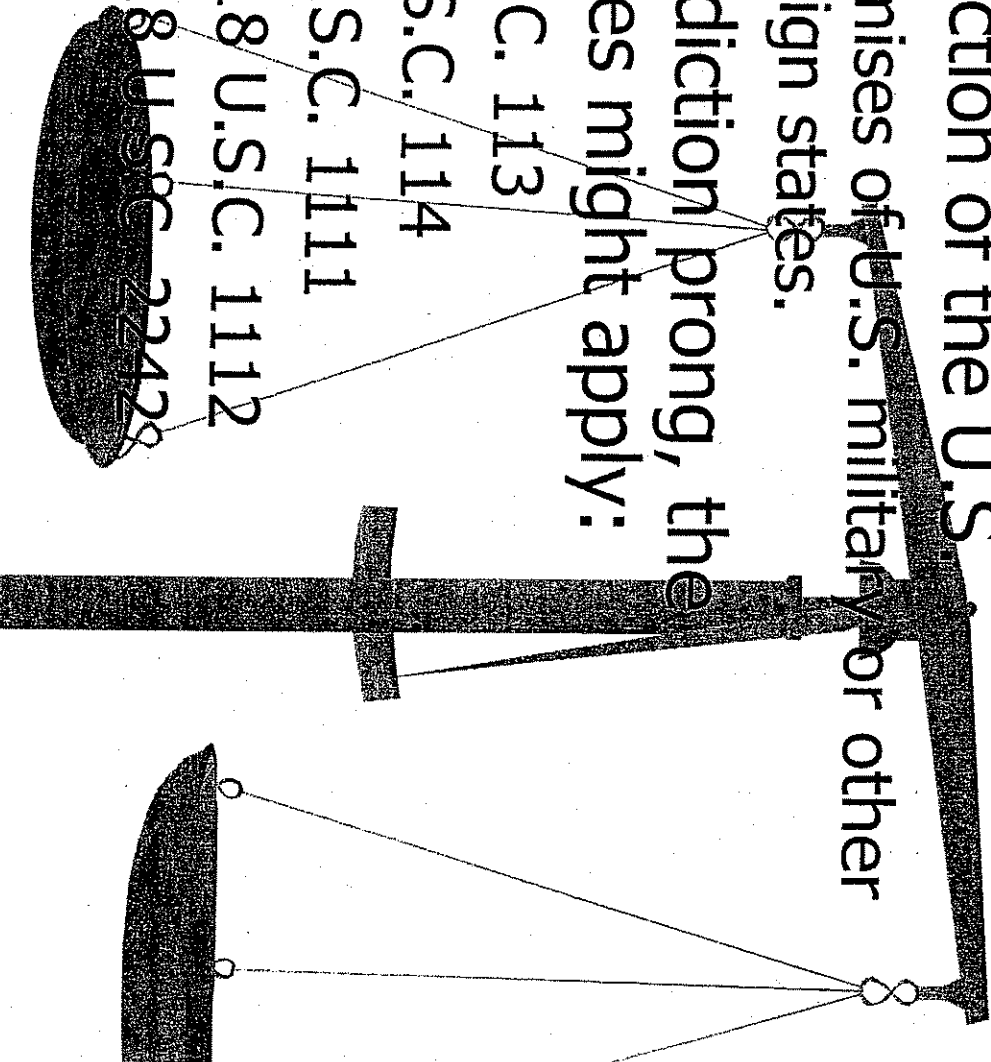


Questioning Enemy Civilians

- **GC IV, Art. 31: No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or third parties.**

Other Federal Offenses

- 18 U.S.C. 7: Special maritime and territorial jurisdiction of the U.S.
- (9)(A): the premises of U.S. military or other missions in foreign states.
- Under that jurisdiction prong, the following offenses might apply:
 - Assault, 18 U.S.C. 113
 - Maiming, 18 U.S.C. 114
 - Homicide, 18 U.S.C. 1111
 - Manslaughter, 18 U.S.C. 1112
 - Sexual Abuse, 18 U.S.C. 2242



The Garrity Issue

- The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in Miranda v. State of Arizona, is 'likely to exert such pressure upon an individual as to disable him from making a free and rational choice.' We think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary under our prior decisions.
Garrity v. State of New Jersey, 87 S.Ct. 616 (1967)

(b) (5)

APPROVED FOR RELEASE
DATE: APR 2008Geneva Conventions Summary (1949)¹**GC III - Geneva Convention Relative to the Treatment of Prisoners of War**

Art. 13: requires EPW be treated humanely; prohibits measures of reprisals against prisoners of war.

Art. 17: not be subjected to "physical or mental torture to secure from them information of any kind.

Art. 16: requires that all prisoners be treated alike without any adverse distinction based on race, nationality, religious belief, political opinions, etc.

Art. 126: Protecting power entitled to visit all prisoner of war "camps" and to interview prisoners; visits may not be prohibited except for reasons of "imperative military necessity, and then only as exceptional and temporary measures."

GC IV - Geneva Convention Relative to the Protection of Civilian Persons in Time of War. [massive code of conduct for Occupying Power] [sometimes referred to as GCC]

Art. 34: prohibits murder, torture, corporal punishment, mutilation of a protected person, "any other measures of brutality whether applied by civilian or military agents."

Art. 43: "Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power² the names of any protected persons who have been interned.

Art. 49: individual or mass transfers of protected persons or their deportations to the territory of the Occupying Power.

Art. 143: states that representatives of the Protecting Powers shall have to go to all places where protected persons are; shall have access to all premises occupied by protected persons, and shall be able to interview them without witnesses; visits not to be prohibited except for reasons of imperative military necessity, and then only as exceptional and temporary measure.

Purpose: to establish humanitarian rules applicable to international armed conflicts.

18 USC § 2441 War Crimes [War Crimes Act of 1996]

- Grave breaches of Geneva Conventions of 1949
- Conduct prohibited by the Hague Convention IV (1907)
- Conduct constituting violation of Common Article 3 of GCs
- [conduct relating to Protocol on Mines, etc. when the US is party to such Protocol]

¹ Geneva Convention I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick Members of Armed Forces in the Field; Geneva Convention II: Geneva Convention for the Amelioration of the Condition of Members of Armed forces at Sea. There are also two "protocols" (1977) to the GC's that most of the world has signed on to. The United States has not. Protocol I deals with the victims of international armed conflicts; II applies to non-international armed conflicts. (President Reagan submitted II to the Senate in 1987, but the Senate has not yet acted.)

² The role of the "Protecting Power" may be performed by the ICRC or another comparable and impartial humanitarian organization. GC II, art. 8; GCIV, art.9.

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31-01-1998

Grave breaches specified in the 1949 Geneva Conventions and in additional Protocol I of 1977

Grave breaches specified in the four 1949 Geneva Conventions (Art 50, 51, 130,147 respectively)	Grave breaches specified in the third and fourth 1949 Geneva Conventions (Art 130 and 147 respectively)	Grave breaches specified in the fourth 1949 Geneva Conventions (Art147)
<ul style="list-style-type: none"> - wilful killing; - torture or inhuman treatment; - biological experiments; - wilfully causing great suffering; - causing serious injury to body or health; - extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly <p>(this provision is not included in Art. 130 third Geneva Convention).</p>	<ul style="list-style-type: none"> - compelling a prisoner of war or a protected civilian to serve in the armed forces of the hostile Power; - wilfully depriving a prisoner of war or a protected person of the rights or fair and regular trial prescribed in the Conventions. 	<ul style="list-style-type: none"> - unlawful deportation or transfer; - unlawful confinement of a protected person; - taking of hostages.

Grave breaches specified in the Additional Protocol I of 1977 (Art. 11 and Art. 85)	
<p>- seriously endangering, by any wilful and unjustified act or omission, physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of an armed conflict, in particular physical mutilations, medical or scientific experiments, removal of tissue or organs for transplantation which is not indicated by the state of health of the person concerned or not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and in no way deprived of liberty;</p>	
<p>- When committed wilfully and if they cause death or serious injury to body and health:</p> <ul style="list-style-type: none"> - making the civilian population or individual civilians the object of attack; - launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian 	<p>- When committed wilfully and in violation of the Conventions and the Protocol:</p> <ul style="list-style-type: none"> - the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; - unjustifiable delay in the repatriation of prisoners

(b) (1)
(b) (2)
(b) (3)
(b) (5)

UNCLASSIFIED//~~FOUO~~

Scott W. Muller@DCI
OGC

APPROVED FOR RELEASE
DATE: APR 2008

Sent by: Scott W.
Muller@DCI

05/22/04 02:38 PM

To: George J. Tenet/STF/AGENCY@DCI, John E.
McLaughlin/STF/AGENCY@DCI, James L. Pavitt@DO
[redacted] Buzzy Krongard/STF/AGENCY@DCI [redacted]
Stanley M. Moskowitz/STF/AGENCY@DCI, William R.
Harlow/STF/AGENCY@DCI

cc: [redacted]

Subject: Re: NYT Article

[Large redacted area]

— Forwarded by Scott W. Muller/STF/AGENCY on 05/22/04 02:21 PM —

[redacted]
OGC/Litigation Division – Secure [redacted]

05/21/04 11:00 AM



To: [redacted]
cc: [redacted]

[redacted] Scott W.
Muller/STF/AGENCY@DCI [redacted]

Subject: Re: NYT Article [redacted]

Attached is the article [redacted] referenced:

Rejection Of Prison Abuse Was Sought

Administration Was Reluctant, Groups Say
Robin Wright and Glenn Kessler, Washington Post, 16 May 2004

After reports emerged in 2002 of abuses in military detention facilities, human rights groups repeatedly pressed the White House and the Pentagon to issue a presidential-level statement renouncing the cruel and unusual treatment of prisoners and detainees. Administration officials initially balked, issuing letters from low-level officials that drew the line at condemning torture.

Finally, after intense internal debate, the White House released on June 26, 2003, a statement by President Bush that not only condemned torture but also said the United

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[redacted]

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States would "prevent other cruel and unusual punishment." The administration, however, never followed up with a plan to enforce the statement. The Pentagon, in fact, approved interrogation procedures that human rights groups say directly contradict the statement issued in Bush's name.

The handling of the 2003 torture statement spotlights what until recently had been the Bush administration's reluctance to forcefully reject the kind of abusive tactics that have been at the heart of the scandal at the Abu Ghraib prison in Iraq, according to human rights groups, congressional officials and former administration officials.

Despite pressure from human rights groups and European allies, the administration has been unwilling to tie the hands of the CIA and the military in interrogating detainees, a key tool in its effort to break al Qaeda and quell the insurgency in Iraq, these officials said. While willing to acknowledge the relevance of the Geneva Conventions to traditional wars between nations, the administration showed little interest in weakening tactics that officials saw as necessary for dealing with dangerous thugs.

Those familiar with the internal debate say it was unclear whether senior officials were driven by a disdain for international law or a fear that such a statement might someday come back to haunt the administration. For months, a former U.S. official said, the administration had "stiffed" human rights groups. "There was always great reluctance from the Pentagon and the White House counsel's offices, from people who were opposed to issuing a statement," the official said.

Human rights advocates say the failure to enforce a strong anti-torture position suggests that the White House and Pentagon officials were not serious about dealing with allegations of prisoner abuse in the first place.

"Personally, I feel burned," said Tom Malinowski, Washington advocacy director of Human Rights Watch. "I feel they were being disingenuous. They put out a statement that gave us everything we wanted. But it was not translated into changes in interrogation policy, and the United States is paying a tragic price for that."

Administration officials reject that conclusion, though officials at the Pentagon and the White House declined to discuss how or why the presidential statement was drafted. "Our policy is to comply with all U.S. laws, including the Constitution, federal statutes and U.S. treaty obligations with respect to all detainees," said Sean McCormack, a spokesman for the National Security Council.

At issue is U.S. interrogation tactics, which gained attention after the U.S. military intervention in Afghanistan led to the arrest of thousands of suspected al Qaeda and Taliban fighters -- and the first reports of abuses, according to human rights groups. The same tactics, from forced nudity and painful stress positions to prolonged sleeplessness, are today the focus of investigations into the treatment of Iraqi detainees at Abu Ghraib.

With hundreds of foreign citizens held at the U.S. prison in Guantanamo Bay, Cuba -- and repeated assertions by administration officials that the rules of the Geneva Conventions may have outlived their usefulness -- the administration's position of torture had already received worldwide scrutiny. Human rights officials pressed the administration to issue a declaration renouncing torture, as well as "cruel, inhuman and degrading" treatment, in accordance with treaties the United States had signed earlier and the Constitution's Fifth, Eighth and 14th Amendments.

The groups wrote President Bush to appeal for "unequivocal statements" renouncing

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torture and promising the prosecution of any U.S. official found to use or condone torture. Top officials of the groups met with Deputy Defense Secretary Paul D. Wolfowitz in January 2003 to ask that clear guidelines be issued to U.S. troops that torture would not be tolerated, according to Human Rights Watch.

For his meetings with Pentagon and National Security Council officials, Malinowski brought a two-inch mound of news clippings from around the world on alleged abuse at detention centers in Afghanistan and Guantanamo to illustrate that U.S. credibility as a champion of law and order was under threat. The reports included boasts by U.S. interrogators about tactics bordering on torture.

"We begged them to say that the military and intelligence officials [engaged in these practices] weren't speaking for the president or the administration, and that policy forbade torture and cruel and degrading treatment," Malinowski said.

During a February 2003 meeting, William J. Haynes II, the Pentagon's general counsel, scolded the human rights officials, saying the United States does not torture and accusing the groups of cheapening the notion of torture, recalled Holly J. Burkhalter, U.S. policy director of Physicians for Human Rights.

In April 2003, Haynes, who is currently up for a federal judgeship, sent a letter to Sen. Patrick J. Leahy (D-Vt.) saying that U.S. policy "condemns and prohibits torture." But the letter sidestepped the issue of illegal, inhuman and degrading treatment.

The same month, the Pentagon quietly approved about 20 interrogation techniques for use at Guantanamo Bay that included what human rights groups charge are outlawed stress-and-duress tactics.

Unaware of that move, human rights groups persisted in their campaign to persuade the administration to take the extra step to formally reiterate longstanding U.S. commitments on the same tactics. On June 2, Leahy wrote national security adviser Condoleezza Rice expressing concern that detainees in U.S. custody were being subjected to cruel and degrading treatment, including beatings and food deprivation. He, too, appealed for a public renunciation of such techniques.

A group of senior human rights officials then met with Rice and other White House officials on June 11 to emphasize their concerns. Rice reiterated that the United States does not condone torture, according to Alexandra Arriago, director of government relations at Amnesty International. But the human rights groups argued that a reference to cruel and unusual punishment was also important.

On June 25, Haynes responded to Leahy's letter to Rice. For the first time, he stated that U.S. policy is to "treat all detainees and conduct all interrogations, wherever they may occur," in a manner consistent with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment. He specifically mentioned the Eighth Amendment – which the Senate referenced when it ratified the treaty and which the groups noted had been cited by the Bush administration in a 2002 Supreme Court case in which the handcuffing of an Alabama prison inmate to a "hitching post" for seven hours in the sun had been deemed unconstitutional.

The next day, on U.N. International Day in support of torture victims, the White House issued the Bush statement.

John Yoo, a law professor at the University of California at Berkeley and a Justice Department official in the first two years of the Bush administration, said Haynes's letter is not remarkable. "All the letter is doing is simply restating the conditions on the treaty

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placed by the Senate," he said. "If it's the law, it's the law."

At the time, the statement was heralded by the human rights community. But they then found they could pry little information out of the administration about how its statements were being implemented, even after they filed a Freedom of Information Act request.

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Original Text of [redacted]

[redacted]
OGC/Litigation Division -- Secure [redacted]



05/21/04 10:37 AM

To: [redacted]
cc: [redacted]

Muller/STF/AGENCY@DCI [redacted]

Scott W.

Subject: Re: NYT Article [redacted]

I'll see what I can pull up . . . stay tuned

[redacted]
Original Text of [redacted]

[redacted]

05/21/04 10:28 AM

To: [redacted]
cc: [redacted]

Muller/STF/AGENCY@DCI [redacted]

Scott W.

Subject: Re: NYT Article [redacted]

Thanks -- also, would it be possible for you to pull last Sunday's article from the Post re a similar set of issues? (I'd do it myself, but you evidently know how to do that already!)

Thanks -- [redacted]

Original Text of [redacted]

[redacted]
OGC/Litigation Division -- Secure [redacted]



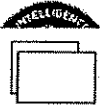
05/21/04 07:56 AM

To: [redacted]
cc: [redacted]

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UNCLASSIFIED//~~FOUO~~

Subject: NYT Article



Following up on our conversation of yesterday . . . from today's New York Times, A12:



Justice-Memos-Geneva.pdf

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(b) (2)
(b) (3) APPROVED FOR RELEASE
(b) (5) DATE: APR 2008
(b) (6)

OCA 02255-04

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DCI/OCA/LIAISON/[redacted]/smf: ext. [redacted] 9/16/04

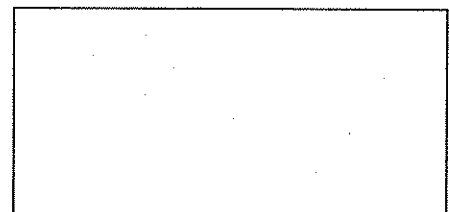
OCA 2004-1323

File: [redacted]

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Central Intelligence Agency



Washington, D.C. 20505

23 September 2004

The Honorable Edward J. Markey
House of Representatives
Washington, D.C. 20515-2107

Dear Mr. Markey:

I appreciate your interest in and concerns about the important issue of terrorist renditions as reflected in your letter to the Acting Director of Central Intelligence dated 15 July 2004.

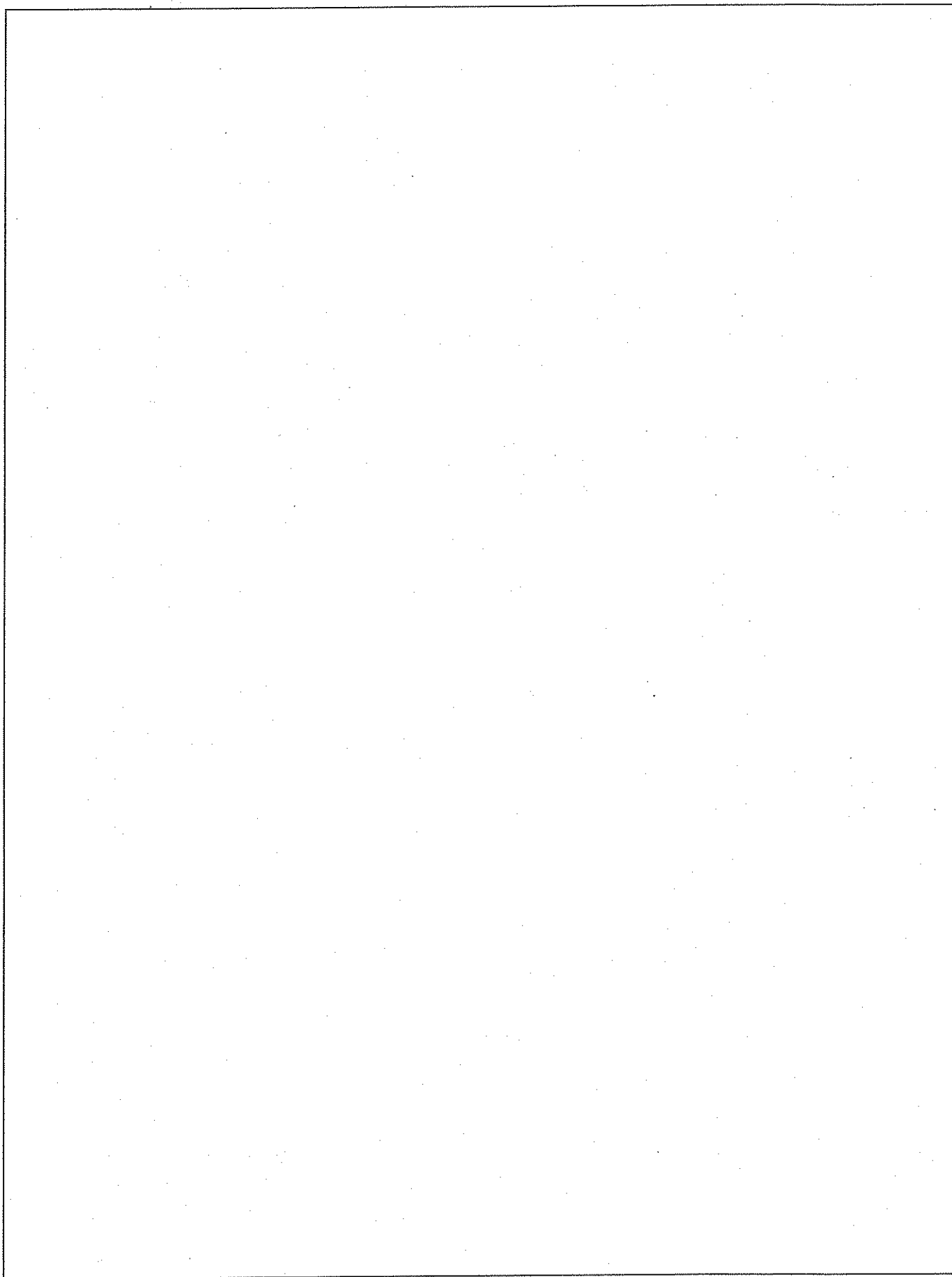
Your concerns about renditions and the questions about them raised in your letter are matters that are subject to the regular and necessary oversight functions of the various congressional oversight committees, as well as to the applicable laws and conventions of the United States. I can assure you that it remains the policy and practice of this Agency to be fully and promptly compliant with these authorities as they apply to the matter of renditions.

Thank you again for your concerns and attention to this issue.

Sincerely,

A rectangular box with a white background and a black border, used to redact the signature of Stanley M. Moskowitz.

Stanley M. Moskowitz
Director of Congressional Affairs



102 225 2074

CONGRESSMAN E J M

14:12:42 07-15-2004 1/3

DIAL - 04091-04

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS
ENERGY AND COMMERCE COMMITTEE
RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET
SELECT COMMITTEE ON
HOMELAND SECURITY
RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-2107

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www.house.gov/markey

July 15, 2004

John E. McLaughlin
Acting Director
Central Intelligence Agency
Washington, DC 20505

Dear Acting Director McLaughlin:

I am writing to you about a secretive intelligence practice known as "extraordinary rendition," in which terrorist suspects detained by U.S. authorities or foreign authorities acting in concert with the United States are sent to foreign nations for interrogation and torture. This practice raises serious human rights concerns.

Extraordinary rendition received attention by the American public after September 26, 2002, when Canadian citizen Maher Arar was detained in New York by U.S. authorities on suspicion of connections to al Qaeda. Under an order signed by a senior Justice Department official, Larry D. Thompson¹, Arar was flown to Jordan and then taken to Syria, where he reportedly was imprisoned and tortured by Syrian authorities. He was released ten months later and never charged with a crime.

After Canadian Prime Minister Paul Martin formally complained to U.S. authorities, Ambassador Paul Cellucci declared that that the U.S. reserves the right to "act unilaterally" and undertake extraordinary rendition as desired.² Acting Attorney General Thompson's decision was later justified by Attorney General John Ashcroft, who declared that the decision was made on the basis of "assurances" from Syria that it would not torture Arar.³ Further, Imad Moustapha, Syria's highest-ranking diplomat to the U.S., has said that Syrian intelligence had never heard of Arar before the U.S. government asked Syria to take him into custody.⁴

The State Department's 2003 Country Reports on Human Rights Practices details extensive torture methods used in Syrian prisons, including "administering electrical shocks; pulling out fingernails; forcing objects into the rectum; beating, sometimes while the victim is suspended from the ceiling; hyperextending the spine; bending the detainees into the frame of a wheel and whipping exposed body parts; and using a chair that bends backwards to asphyxiate the victim or fracture the victim's spine." Additionally, the State Department report notes that "Torture was most likely to occur while detainees were

¹ "Top Justice Aide Approved Sending Suspect to Syria," *Washington Post*, November 19, 2003.

² "Arar case may be repeated: Cellucci," *Toronto Star*, December 4, 2003.

³ "U.S. trusted Syria's assurances on Arar: Ashcroft," *Globe and Mail*, November 21, 2003.

⁴ "His Year in Hell," *60 Minutes*, *CBS News*, January 21, 2004.

being held at one of the many detention centers run by the various security services throughout the country, particularly while the authorities were attempting to extract a confession or information." In former Director George Tenet's November 6, 2003 remarks at the National Endowment for Democracy, he declared that "Dictators in Iraq and Syria promised the restoration of national honor, a return to ancient glories. They've left instead a legacy of torture, oppression, misery, and ruin."

The Arar case, while disturbing, is all the more troubling because there is strong reason to believe it is not an isolated example. Media reports have detailed numerous cases of extraordinary rendition directed and facilitated by U.S. authorities of suspects held at U.S. direction by allied governments.⁵ Diplomats and intelligence officials have repeatedly confirmed that extraordinary renditions continue to take place.⁶ On October 17, 2002, former Director Tenet gave testimony before the Joint House and Senate Select Intelligence Committees, stating "by 11 September, CIA (in many cases with the FBI) had rendered 70 terrorists to justice around the world."

As you know, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the U.S. on October 21, 1994, specifically addresses this issue in Article 3:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

I have recently introduced H.R. 4674, which directs the Department of State to transmit to Congress a list of countries in which torture or cruel, inhuman or degrading treatment is commonly practiced in interrogation or detention, and prohibits rendition, transfer, or return of any individual to any nation on this list. The bill grants limited waivers to this prohibition if the President certifies that the nation in question has made significant, verifiable progress in eliminating the use of torture or that, at a minimum, a recognized independent humanitarian organization will have immediate, unfettered and continuing access to the individual in question. The bill explicitly permits legal, treaty-based extradition, in which the subject has recourse to a U.S. court to appeal his extradition on the basis of concerns that he may be tortured if extradited.

In light of the seriousness of this issue, I respectfully request your assistance in answering the following questions. Please reply in unclassified format, although you may include a classified annex if necessary.

1. How many individuals have been subject to extraordinary rendition from United States territory since September 11, 2001?

⁵ "U.S. ships Al Qaeda suspects to Arab states," *Christian Science Monitor*, July 26, 2002.

⁶ "U.S. Behind Secret Transfer of Terror Suspects," *Washington Post*, March 11, 2002; "Questioning Terror Suspects in a Dark and Surreal World," *New York Times*, March 9, 2003; "U.S. Pledges Not to Torture Terror Suspects," *Washington Post*, June 27, 2003.

202 225 2974

CONGRESSMAN E J M

14:13:24 07-15-2004

3/3

2. How many individuals have been subject to extraordinary rendition under U.S. supervision, direction or instigation from foreign nations since September 11, 2001?
3. To what countries have these individuals been rendered? Of these countries, which ones are identified as consistent human rights abusers in the most recent State Department Country Reports on Human Rights Practices?
4. Has extraordinary rendition resulted in significant intelligence findings reported back to U.S. intelligence? Please provide examples.
5. Why is the assurance by a known human rights abuser such as Syria with a well-documented record of torturing prisoners sufficient to convince the U.S. government that a prisoner rendered will be safe from torture techniques?
6. Does the U.S. accept "assurances" from other known human rights abusers as sufficient to permit extraordinary rendition?
7. Given the fact that the United States is a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention) and is therefore bound by its provisions, what is the legal basis for the U.S. engaging in the practice of extraordinary rendition?
8. Has any legal analysis been performed of whether U.S. rendition efforts are consistent with the requirements of Article 3 of the Torture Convention? If so, please provide me with a copy. If not, please explain why such analysis has not been performed in light of the potential legal and political consequences of U.S. violations of the Convention.
9. What are the Agency's views regarding H.R. 4674?

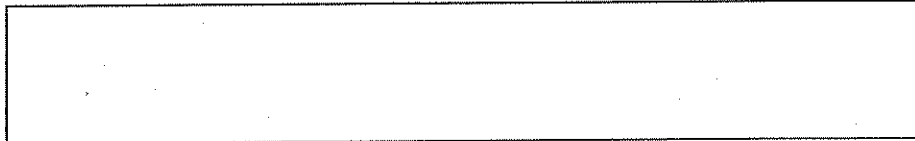
I appreciate your assistance on this important matter and look forward to a response by August 16. If you have any questions please contact Dr. Colin McCormick of my staff, at 202-225-2836.

Sincerely,



Edward J. Markey
Member of Congress

cc: The Honorable Colin Powell
The Honorable John Ashcroft
The Honorable Donald Rumsfeld
Robert S. Mueller
G. Indolezza

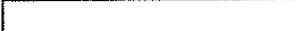



2 September 2005

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DATE: APR 2008

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

MEMORANDUM FOR: 
Investigations Staff
Office of Inspector General

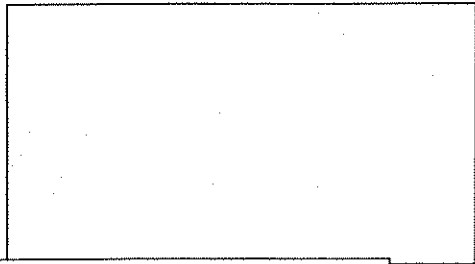
FROM: 
Information Management Officer
Office of Congressional Affairs

SUBJECT: (U) Request for Iraq Material


REFERENCE: Your Lotus Note dated 9 August 2005 re:
Request for DCI Area Records - Iraq

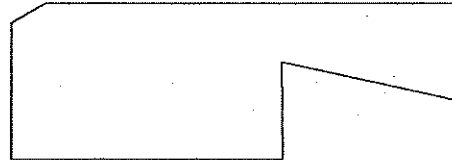
(U//AIUO) This memorandum is a supplemental response to your 9 August 2005 Lotus Note requesting "...records of congressional meetings, briefings, and hearings regarding Iraq for the period beginning March 2003 through December 2004. Please include MFRs, testimony, statements, talking points, QFRs and Q&As, notifications, briefing materials, e-mails, etc."  documents were identified as being potentially responsive to your request, and are enclosed. For your convenience, an index listing each document is also attached.

(U//AIUO) This information is a result of searches conducted in OCA's hardcopy records as well as the electronic  and  systems. This search was reasonably calculated to uncover all responsive records.





(U//AIUO) Regarding your subsequent Lotus Note dated 29 August 2005 which outlines relevant dates in 2004, I will search OCA systems for those dates separately. All responsive material will be turned over the search has been completed. Should you have any further questions, please call me at (s) .



Enclosures: as stated



[Redacted]

(b) (1)
(b) (3)

APPROVED FOR RELEASE
DATE: APR 2008

10 August 2005

MEMORANDUM FOR:

[Redacted]
Investigations Staff
Office of Inspector General

FROM:

[Redacted]
Information Management Officer
Office of Congressional Affairs

SUBJECT:

Request for Iraq Material, Part I

REFERENCE:

Telephone Conversation with [Redacted]
D/CIA Area IMO (8 August 2005), Same Subject

(U) In response to your conversation with [Redacted] requesting information on Congressional briefings/hearings re: Iraq, attached are [Redacted] documents which may be responsive to your request.

(U) This information is a result of searches in OCA's hardcopy records as well as the electronic [Redacted] system. An additional search of the DCI and OCA libraries in [Redacted] produced no further information.

~~(S)~~ As I understand the initial tasking, the request was to locate information with Iraq as the general subject, but more specifically, [Redacted] [Redacted] in Iraq. No responsive records were located regarding the latter.

(U) This search was reasonably calculated to uncover all responsive records.

(U) I am still working on completing the second part of the search request, as outlined in your Lotus Note dated 9 August 2005; any responsive material will be turned over once that portion of the search has been completed. Should you have any further questions, please let me know.

[Redacted]

[Redacted]

[Redacted]

18 AUG 05 10:28

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(b) (3)

APPROVED FOR RELEASE
DATE: APR 2008

[Redacted]

OGC

11/12/2004 08:07 AM

To: [Redacted]
cc: [Redacted]

Subject: Re: [Redacted]

OK.

Original Text of [Redacted]

[Redacted]

NE/LGL [Redacted]

11/11/04 10:49 AM

To: [Redacted]
cc: [Redacted]

Subject: Re: [Redacted]

Just want to sure that I have your okay to inform [Redacted] of the matter. I think he is entitled to know, even though he is currently detailed outside the building.

Original Text of [Redacted]

[Redacted]

OGC

11/10/04 05:28 PM

To: [Redacted]
cc: [Redacted]

Subject: [Redacted]

I have told the DCI and subsequently the DDO. I told them you would tell CTC and NE management. I know that you will do it in a way that will be frank, realistic but not overly alarmist.

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APPROVED FOR RELEASE
DATE: APR 2008

(b) (2)
(b) (3)

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UNCLASSIFIED

1. Justice Dept. Memo Redefines 'Torture'

Broader View Covers Variety of Abuse

R. Jeffrey Smith and Dan Eggen, Washington Post, 31 December 2004, Page A09

The Justice Department published a revised and expansive definition late yesterday of acts that constitute torture under domestic and international law, overtly repudiating one of the most criticized policy memorandums drafted during President Bush's first term.

In a statement published on the department's Web site, the head of its Office of Legal Counsel declared that "torture is abhorrent both to American law and values and international norms" and went on to reject a previous statement that only "organ failure, impairment of bodily function, or even death" constitute torture punishable by law.

Acting Assistant Attorney General Daniel Levin said instead that torture may consist of acts that fall short of provoking excruciating and agonizing pain, and thus may include acts that cause physical suffering or lasting mental anguish. His opinion has the explicit aim of eliminating any notion that those who conduct harmful interrogations may be exempt from prosecution.

This second effort by the Bush administration to parse the legal meaning of the word "torture" was provoked by the damaging political fallout from the disclosure this summer of the first memo, drafted in August 2002 and criticized by human rights lawyers and experts around the globe.

Many of the critics charged that the first memo, which they said laid out a very narrow view of what behavior might constitute torture and was crafted to help interrogators at the CIA evade prosecution, created the context for a record of persistent ill treatment by that agency and the U.S. military of detainees at prisons in Iraq, Afghanistan, Cuba's Guantanamo Bay and undisclosed locations.

The earlier memo figured prominently in complaints by Democrats and human rights groups about White House counsel Alberto R. Gonzales, who oversaw its creation and is Bush's nominee to become attorney general for the second term. The new memo's public release came six days before the start of Senate Judiciary Committee hearings on Gonzales's nomination.

"Clearly the release of this now is backfilling for Gonzales's confirmation hearing," said I. Michael Greenberger, a senior Justice Department official in the Clinton administration who now heads the Center for Health and Homeland Security at the University of Maryland. "These memos have been a tremendous source of embarrassment to both Gonzales and the administration."

Greenberger said that recent accounts of widespread abuse at U.S. detention facilities -- including disclosures that military interrogation practices were sharply criticized over the past two years by FBI and Defense Intelligence Agency personnel in the field -- has given ammunition to those within the administration who favor adherence to international norms against torture.

"It could be that this is not just a cynical ploy but a real sign of change," Greenberger said.

One of the most controversial provisions of the earlier memorandum, signed by Levin's predecessor, Jay S. Bybee, was a claim that the president's executive powers were sufficient to permit tolerance of tortuous acts in extraordinary circumstances. The International Committee of the Red Cross had declared in response that the prohibition on torture, embodied in a global convention signed by the United States, had no exceptions.

But advocates of strict adherence to the convention previously lost interagency battles to hard-liners

in the Defense Department, the Justice Department and the White House, who maintained that the president has expansive powers during the war on terrorism. The new memo pointedly sidesteps this issue, stating that the "consideration of the bounds of any such authority would be inconsistent with the president's unequivocal directive that United States personnel not engage in torture."

The memo, which states that it "supersedes the August 2002 memorandum in its entirety," also drops an attempt in the earlier version to rule that acts not specifically intended to cause severe pain and suffering might be legal. It states instead that no such precise definition of "intent" was needed, and that "a defendant's motive (to protect national security, for example) is not relevant to the question" of his intent under the law.

Tom Malinowski, Washington advocacy director for Human Rights Watch, which has been critical of the Bush administration's legal opinions regarding treatment of detainees, said that in the new memo, "the definition of torture is not as tortured as it was."

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2. U.S. Revamps Policy on Torture Of War Prisoners

Legal Guidance Criticizes Aggressiveness of Old Rules, Redefines 'Severe Pain'
Jess Bravin, Wall Street Journal, 31 December 2004, Page A1

The Bush administration issued a new definition of what constitutes torture of an enemy prisoner during interrogation, sharply scaling back its previous legal position that inflicting pain approaching that of organ failure or death was lawful, and retreating from earlier assertions that the president can authorize torture.

The 17-page memorandum issued by the Office of Legal Counsel, the Justice Department unit that provides definitive legal guidance for the executive branch, replaces a 50-page opinion issued in August 2002 that offered a legal framework to justify inflicting agony on prisoners and contended President Bush could set aside laws and treaties prohibiting torture.

The new document also concludes that the 2002 memo was wrong when it found that only "excruciating and agonizing pain" constituted torture, and that prosecution for committing torture was only possible if the defendant's goal was simply to inflict pain, rather than to extract information. "There is no exception under the statute permitting torture to be used for a 'good reason,'" the new memo concludes, even if the aim is "to protect national security."

Still, the memo concludes that even under its wider definition of torture, none of the interrogation methods previously approved by the Justice Department would be illegal.

The 2002 memo was incorporated into Defense Department interrogation policies approved by Defense Secretary Donald Rumsfeld, although administration officials say neither he nor the president actually authorized torture and say that subsequent incidents of prisoner abuse reported in Afghanistan, Iraq and Guantanamo Bay, Cuba, were aberrations.

But administration officials moved to revise their legal views after The Wall Street Journal published a draft of the Pentagon's interrogation policies, which were predicated on the more aggressive view of torture, in June. Subsequent disclosures of confidential legal memoranda led White House Counsel Alberto Gonzales to disavow the August 2002 memo, which administration officials said would be replaced within weeks with a new memo ruling out torture. That effort stalled amid interagency disagreements, and was only completed after Deputy Attorney General James Comey, the Justice Department's No. 2 official, ordered it released by year end.

A senior Justice Department official said the memo's delay -- it originally was planned for completion by August -- derived from differences among agencies including the ~~Central Intelligence Agency~~, the Defense and State departments and the White House.

Some apparently small semantic points occupied much of the internal debate over the memo, the official said. In particular, lawyers wrestled with whether "severe physical suffering" was something apart from "severe physical pain," and whether each could independently be defined as torture.

"If you induced nausea in someone, day after day for weeks," how would it be classified, the official said, by way of example. "It's not severe pain, it's not mental as it's a sensation," the official said. But over a prolonged period it could be considered physical suffering, and the Justice Department ultimately concluded it could constitute torture.

The new document comes less than a week before Mr. Gonzales, nominated to succeed John Ashcroft as attorney general, faces a Senate confirmation hearing where Judiciary Committee

members plan to grill him on his role in formulating interrogation policies. The White House declined to comment on the new memo.

The new document focuses on the main federal law prohibiting torture, enacted to enforce the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which the U.S. ratified in 1994. The opinion was principally drafted by acting Assistant Attorney General Daniel Levin, who heads the legal counsel office, and his predecessor, Jack Goldsmith, now a professor at Harvard Law School.

Addressed to Mr. Comey, it acknowledges that "questions have since been raised" about the prior memo's legal analysis, particularly its claims that the president held the power to set aside anti-torture laws and that even if he didn't, such laws only prohibited pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death."

The Justice Department now believes that analysis of the president's authority to order torture, or to immunize subordinates from prosecution for committing torture, is "unnecessary" because of Mr. Bush's "unequivocal directive that U.S. personnel not engage in torture."

Although the new memo has been publicly released, several related opinions that apply its conclusions to specific interrogation methods remain classified, the senior Justice official said.

The new memo is "a step forward from a very dark cave, but it certainly doesn't solve everything," said Tom Malinowski, Washington advocacy director for Human Rights Watch. He noted that while expanding the previous definition of torture, the memo still seeks to distinguish torture from lesser forms of abuse also prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"It would have been more clear and constructive had they pointed out that these other things which may not amount to torture under the law are still illegal," Mr. Malinowski said.

John Yoo, a former Justice Department official who worked on the 2002 memo, said the revision would be of little help to agencies charged with fighting the war on terror. "This memo muddies the water because it makes it difficult to figure out how the torture statute applies to specific interrogation methods," said Mr. Yoo, a law professor at the University of California, Berkeley. "It removed all the clear lines but didn't change the basic analysis."

While the White House has said that President Bush, in a February 2002 directive, required that prisoners be treated humanely, critics have claimed that earlier confidential memoranda on interrogation policies trickled down to the field, and contributed to cases of abuse of prisoners in Afghanistan, Guantanamo Bay, and most notoriously, in the Abu Ghraib prison in Baghdad. Moreover, critics observed, the president's directive suggested that the detainees had no legal right to humane treatment, but would receive it only as a matter of his policy.

After the earlier memos were drafted, dozens of prisoner-abuse cases have emerged.

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