

## APPENDIX 1

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<sup>1</sup> Miriam J. Aukerman, *Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice*, 15 HARV. HUM. RTS. J. 39, 41 (2002) (“[T]he actions of individual human rights violators, such as murder, rape, assault, and torture, are prohibited by almost every domestic criminal justice system”); *see also* *Nuru v. Gonzales*, 404 F.3d 1207, 1222 n.11 (9th Cir. 2005) (listing various constitutional and penal prohibitions against torture from around the world). For a comprehensive database of global anti-torture legislation, *see* the Compilation of Torture Laws at the Association for the Prevention of Torture, <http://www.ap.t.ch/en/compilation-of-torture-laws>

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

<sup>3</sup> *See* 1863 Lieber Code, Gen. Orders No. 100, § I, art. 16 (Apr. 24, 1863), reprinted in RICHARD SHELLY HARTIGAN, *LIEBER’S CODE AND THE LAW OF WAR* 48 (1983).

<sup>4</sup> *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004), *quoting* *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980). *See also* *Nuru*, 404 F.3d at 1222, n.11 (“torture is illegal under the law of virtually every country in the world”).

<sup>5</sup> 18 U.S.C. §§ 2340–2340A.

<sup>6</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10 1984, 1465 U.N.T.S. 85 [hereinafter CAT] at art. 2(2)–(3), *available at* <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> (stating that “no exceptional circumstance for torture whatsoever, whether a state of war or a threat of war, political instability or any other public emergency, may be invoked as a justification of torture”). *See also* Universal Declaration on Human Rights [hereinafter Universal Declaration], G.A. Res. 217A (III), U.N. Doc A/810 at art. 5 (1948) (prohibiting torture, and cruel, inhuman or degrading treatment); International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967) [hereinafter ICCPR] at art. 7 (banning torture, and cruel, inhuman or degrading treatment); Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9; 37 I.L.M. 1002 (1998); 2187 UNTS 90 at arts. 7–8.

<sup>7</sup> *E.g.* Geneva Convention Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter GCIII] at art. 3(1), art. 17, art. 87, art. 130 (prohibiting torture and defining it as a “grave breach”); Geneva Convention Relative to the Protection of Civilian Persons in Times of War, 12 Aug. 1959, 6 U.S.T. 3316, 75 U.N.T.S. 287 [hereinafter GCIV] at art. 3(1), art. 32, art. 147 (same).

<sup>8</sup> 18 U.S.C. §§ 2340–2340A; CAT, *supra* note 6, art. 2(2)–(3); GCIV, *supra* note 7, art. 3(1).

<sup>9</sup> Vienna Convention on the Law of Treaties, UN Doc. A/Conf.39/27; 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969); 63 A.J.I.L. 875 (1969) at art. 53 (defining a *jus cogens* norm as one “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”). *See* M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 VA. J. INT’L L. 81 (Fall 2001).

<sup>9</sup> *Id.*

<sup>10</sup> *Saadi v. Italy*, Appl. No. 37201/06, Council of Europe: European Court of Human Rights, 28 February 2008, *available at* <http://www.unhcr.org/refworld/docid/47c6882e2.html>

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<sup>11</sup> American Convention on Human Rights Art. 27(2), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. at 123.

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

<sup>13</sup> Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment, ¶ 144 (Dec. 10, 1998).

<sup>14</sup> Statute of the International Criminal Tribunal for Rwanda, SC res. 955, UN SCOR 49th sess., 3453rd mtg., U.N. Doc. S/Res/955 (1994); 33 ILM 1598 (1994) at art. 3(f) (defining torture as a “crime against humanity”).

<sup>15</sup> 18 U.S.C. §§ 2340–2340A [Torture Act]; 28 U.S.C. § 1350 [Torture Victims Protection Act] [hereinafter TVPA]; 18 U.S.C. § 2441 [War Crimes Act] [hereinafter WCA]; 18 U.S.C. §§ 1801–1807 [Military Commissions Act of 2009] [hereinafter MCA].

<sup>16</sup> CAT, *supra* note 6, art. 1. CAT was adopted by the U.N. General Assembly on December 10, 1984, and took force on June 26, 1987. DOS, Initial Report of the United States of America to the U.N. Committee Against Torture (Oct. 15, 1999), *available at* <http://www.state.gov/documents/organization/100296.pdf>. CAT was ratified by the U.S. Senate on October 20, 1994, and took effect as U.S. law on November 20, 1994. *Id.* The U.S. Senate ratified CAT subject to a list of reservations, understandings, and declarations. *U.S. Reservations, Declarations, and Understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 136 CONG. REC. S17486-01 (daily ed., Oct. 27, 1990) [hereinafter *U.S. CAT Reservations*], *available at* <http://www1.umn.edu/humanrts/usdocs/tortres.html>

<sup>17</sup> *Id.* art II(1)–(5). In international law, these are referred to as understandings, declarations and reservations; they alter the binding nature of an international treaty such that the country making such reservations is bound only to the extent of those reservations.

<sup>18</sup> 18 U.S.C. §§ 2340–2340A.

<sup>19</sup> *Id.* § 2340(1).

<sup>20</sup> *Id.* § 2340(2).

<sup>21</sup> *Id.* § 2340(1).

<sup>22</sup> *See* discussion below which reviews the relevant cases.

<sup>23</sup> *E.g., Nuru*, 404 F.3d at 1218.

<sup>24</sup> MCA, 18 U.S.C. § 950t(11)(A) (2009).

<sup>25</sup> WCA, 18 U.S.C. § 2441(d)(1)(A).

<sup>26</sup> TVPA, 28 U.S.C. § (3)(b)(1).

<sup>27</sup> MCA 18 U.S.C. § 950t(11)(A) (2009); WCA, 18 U.S.C. § 2441(d)(1)(A); TVPA, 28 U.S.C. § (3)(b)(1). It is not clear that this additional language narrows the definition of torture in practice. Two circuits have held that this language is meant merely “to illustrate the common motivations that cause individuals to engage in torture ... [and to] ensure[ ] that, whatever its specific goal, torture can occur ... only when the production of pain is purposive, not merely haphazard.” *United States v. Belfast*, 611 F.3d 783, 807 (11th Cir. 2010), *citing* *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 93 (D.C. Cir. 2002)

<sup>28</sup> CAT, *supra* note 6, art. 1.

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<sup>29</sup> Torture Act, 18 U.S.C. §§ 2340(1).

<sup>30</sup> *Auguste v. Ridge*, 395 F.3d 123, 125, 145–46 (3d Cir. 2005). *See also* *Villegas v. Mukasey*, 523 F.3d 983 (9th Cir. 2008); *Pierre v. Gonzales*, 502 F.3d 109, 117 (2nd Cir. 2007); *Cadet v. Bulger*, 377 F.3d 1173 (11th Cir. 2004); *In re J-E-*, 23 I. & N. Dec. 291 (BIA 2002). *Contra* *Zubeda v. Ashcroft*, 333 F.3d 463, 473 (3d Cir. 2003) (“Although the regulations require that severe pain or suffering be ‘intentionally inflicted,’ we do not interpret this as a ‘specific intent requirement.’”) (internal citations omitted). The *Auguste* court dismissed this as *dicta*. *Auguste*, 395 F.3d at 148.

<sup>31</sup> *Pierre*, 502 F.3d at 117.

<sup>32</sup> *Auguste*, 395 F.3d at 146.

<sup>33</sup> *E.g.*, CAT, *supra* note 6, at art. 16; ICCPR, *supra* note 6, at art. 7; Universal Declaration, *supra* note 6, art. 5; GCIII, *supra* note 7, art. 3, American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S 143 at art. 5(2), African Charter on Human and People’s Rights, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 UNTS 217; 21 ILM 58 (1982) at art. 5.

<sup>34</sup> MCA, 18 U.S.C. § 948r(a).

<sup>35</sup> Detainee Treatment Act [DTA], 42 U.S.C. §1003(d). The definition is also tied to the “United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.”

<sup>36</sup> *U.S. CAT Reservations*, *supra* note 16. (“[T]he United States considers itself bound by the obligation under Article 16 to prevent ‘cruel, inhuman or degrading treatment or punishment,’ only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”)

<sup>37</sup> 18 U.S.C. § 2441(B).

<sup>38</sup> Memorandum from Jay S. Bybee (Ass’t Att’y Gen., OLC) to Alberto Gonzales (Counsel to the President), *Standards for Conduct for Interrogation Under 18 U.S.C. 2340 – 2340A* at 2 (Aug. 1, 2002), available at <http://www.justice.gov/olc/docs/memo-gonzales-aug2002.pdf>.

<sup>39</sup> *Id.* at 46.

<sup>40</sup> *Id.* at 23.

<sup>41</sup> JACK GOLDSMITH, *THE TERROR PRESIDENCY* 145 (2007).

<sup>42</sup> *Id.*

<sup>43</sup> Scott Higham, *Law Experts Condemn U.S. Memos on Torture*, WASH. POST (Aug. 5, 2004), available at <http://www.washingtonpost.com/wp-dyn/articles/A41189-2004Aug4.html>

<sup>44</sup> Edward Alden, *Dismay at Attempt to Find Legal Justification for Torture*, FINANCIAL TIMES (June 10, 2004).

<sup>45</sup> Adam Liptak, *Legal Scholars Criticize Memos on Torture*, N.Y. TIMES (June 25, 2004), at A14, available at <http://www.nytimes.com/2004/06/25/world/the-reach-of-war-penal-law-legal-scholars-criticize-memos-on-torture.html>

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<sup>46</sup> Kathleen Clark & Julie Mertus, *Torturing Law: The Justice Department's Legal Contortions on Interrogation*, WASH. POST (June 20, 2004), available at <http://www.washingtonpost.com/wp-dyn/articles/A54025-2004Jun19.html>; R. Jeffrey Smith, *Slim Legal Grounds for Torture Memos*, WASH. POST (July 4, 2004), available at <http://www.washingtonpost.com/wp-dyn/articles/A26431-2004Jul3.html>

<sup>47</sup> DOJ Office of Prof'l Resp. Report, *Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of "Enhanced Interrogation Techniques" on Suspected Terrorists* 3 (June 29, 2009) [hereinafter OPR Report], available at <http://judiciary.house.gov/hearings/pdf/OPRFinalReport090729.pdf>; Mike Allen & Dana Priest, *Memo on Torture Draws Focus to Bush*, WASH. POST (June 9, 2004), available at <http://www.washingtonpost.com/wp-dyn/articles/A26401-2004Jun8.html>

<sup>48</sup> Memorandum from Daniel B. Levin (Acting Ass't Att'y Gen., OLC) to Att'y Gen. & Deputy Att'y Gen., DOJ, *Status of Interrogation Advice* 1 (Sept. 2004), available at <http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc89.pdf>

<sup>49</sup> Eric Lichtblau & Scott Shane, *Report Faults 2 Authors of Bush Terror Memos*, N.Y. TIMES (Feb. 19, 2010), available at <http://www.nytimes.com/2010/02/20/us/politics/20justice.html>. See OPR Report, *supra* note 47.

<sup>50</sup> Memorandum from David Margolis (Associate Att'y Gen., DOJ) to Att'y Gen. and Deputy Att'y Gen., DOJ, *Memorandum of Decision Regarding the Objections to the Findings of Professional Misconduct in the Office of Professional Responsibility's Report of Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of "Enhanced Interrogation Techniques" on Suspected Terrorists* (Jan. 5, 2010), available at <http://graphics8.nytimes.com/packages/pdf/politics/20100220JUSTICE/20100220JUSTICE-DAGMargolisMemo.pdf>

<sup>51</sup> Memorandum from Jay S. Bybee (Ass't Att'y Gen., OLC) to John Rizzo (Acting Gen. Counsel, CIA), *Interrogation of Al Qaeda Operative* 2 (Aug. 1, 2002) [hereinafter Bybee Techniques Memo], available at [http://media.luxmedia.com/aclu/olc\\_08012002\\_bybee.pdf](http://media.luxmedia.com/aclu/olc_08012002_bybee.pdf).

<sup>52</sup> CIA Office of the Inspector Gen., *Special Review: Counterterrorism Detention and Interrogation Activities (Sept. 2001 – Oct. 2003)* (May 7, 2004) [hereinafter CIA OIG Report], available at [http://media.washingtonpost.com/wp-srv/nation/documents/cia\\_oig\\_report.pdf](http://media.washingtonpost.com/wp-srv/nation/documents/cia_oig_report.pdf)

<sup>53</sup> Bybee Techniques Memo, *supra* note 51, at 5.

<sup>54</sup> See CIA, *OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention* (May 2004) [hereinafter OMS Guidelines May 2004], available at <http://www.aclu.org/torturefoia/released/103009/cia-olc/2.pdf>; Memorandum from Steven G. Bradbury (Principal Deputy Att'y Gen., OLC) to John A. Rizzo (Senior Deputy Gen. Counsel, CIA), *Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value Al Qaeda Detainee* (May 10, 2005 [No. 13]) [hereinafter Bradbury May 10 Memo Re: Individual Techniques], available at [http://media.luxmedia.com/aclu/olc\\_05102005\\_bradbury46pg.pdf](http://media.luxmedia.com/aclu/olc_05102005_bradbury46pg.pdf); Memorandum from Steven G. Bradbury (Principal Deputy Ass't Att'y Gen., OLC) to John A. Rizzo (Senior Deputy Gen. Counsel, CIA), *Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value Al Qaeda Detainee* (May 10, 2005 [No. 12]) [hereinafter Bradbury May 10 Memo Re: Combined Techniques], available at [http://media.luxmedia.com/aclu/olc\\_05102005\\_bradbury\\_20pg.pdf](http://media.luxmedia.com/aclu/olc_05102005_bradbury_20pg.pdf); Memorandum from Steven

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G. Bradbury (Principal Deputy Ass't Att'y Gen.) to John A Rizzo (Senior Deputy Gen. Counsel, CIA), *Application of U.S. Obligations Under Article 16 of CAT to Certain Techniques that May Be Used in Interrogation of High Value Al Qaeda Detainees* (May 30, 2005) [hereinafter Bradbury May 30 Memo], available at [http://media.luxmedia.com/aclu/olc\\_05302005\\_bradbury.pdf](http://media.luxmedia.com/aclu/olc_05302005_bradbury.pdf)

<sup>55</sup> Bradbury May 10 Memo Re: Individual Techniques, *supra* note 54 at 9–10.

<sup>56</sup> *Id.* at 28.

<sup>57</sup> *Id.* at 11.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 12.

<sup>60</sup> Bradbury May 30 Memo, *supra* note 54, at 13.

<sup>61</sup> OMS Guidelines May 2004, *supra* note 54, at 7, 23.

<sup>62</sup> Bradbury May 30 Memo, *supra* note 54, at 13.

<sup>63</sup> *Id.*

<sup>64</sup> CIA, *OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention* 17–18 (Dec. 2004), available at [http://dspace.wrlc.org/doc/bitstream/2041/72435/02793\\_041200display.pdf](http://dspace.wrlc.org/doc/bitstream/2041/72435/02793_041200display.pdf)

<sup>65</sup> *Id.* at 19.

<sup>66</sup> Bradbury May 10 Memo Re: Individual Techniques, *supra* note 54, at 13–15.

<sup>67</sup> Bradbury May 10 Memo Re: Individual Techniques, *supra* note 54, at 5.

<sup>68</sup> *Id.* at n. 31.

<sup>69</sup> *Id.* at 45.

<sup>70</sup> Bradbury May 10 Memo Re: Combined Techniques, *supra* note 54.

<sup>71</sup> Bradbury May 30 Memo, *supra* note 54.

<sup>72</sup> Am. Med. Ass'n, *Ethics Opinion 2.068 — Physician Participation in Interrogation* (Nov. 2006), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2068.page>

<sup>73</sup> Am. Psychiatric Ass'n, *Position Statement: Psychiatric Participation in Interrogation of Detainees* (May 2006), available at [http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2006\\_Interrogation.pdf](http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2006_Interrogation.pdf)

<sup>74</sup> Am. Psychological Ass'n, *Letter from Carol T. Goodheart to the Texas State Board of Examiners of Psychologists Re: Complaint Filed by Dr. Jim L.H. Cox Regarding Dr. James Elmer Mitchell* (June 30, 2010) (APA Mitchell Letter), available at <http://www.apa.org/news/press/statements/texas-mitchell-letter.pdf>

<sup>75</sup> Am. Psychological Ass'n, *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as*

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“*Enemy Combatants*” (Aug. 19, 2007), available at <http://www.apa.org/about/governance/council/torture-amend.aspx>

<sup>76</sup> See *U.S. CAT Reservations*, *supra* note 16 (“That the United States considers itself bound by the obligation under Article 16 to prevent ‘cruel, inhuman or degrading treatment or punishment,’ only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”); *U.S. Reservations, Declarations, And Understandings, International Covenant on Civil and Political Rights I(3)*, 138 CONG. REC. S4781-01 (daily ed., Apr. 2, 1992) (“That the United States considers itself bound by Article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.”); see also *Estate of Cabello v. Fernandez-Larios*, 157 F. Supp. 2d 1345, 1361 (S.D. Fla. 2001).

<sup>77</sup> See *Price*, 294 F.3d at 93 (stating that the court needed to know the frequency, duration, and affected parts of plaintiff’s body in order to assess severity for the purposes of determining torture).

<sup>78</sup> *Id.* (“The more intense, lasting, or heinous the agony, the more likely it is to be torture.”).

<sup>79</sup> *Id.*

<sup>80</sup> See *Mehinovic v. Vuckovic*, 198 F. Supp. 2d. 1322, 1359 (N.D. Ga. 2002) (“Plaintiffs continue to suffer from their ordeals both physically and emotionally. ... [A]ll have lasting physical scars and injuries, and continue to experience pain from injuries they have experienced as a result of torture.”); *Cicippio v. Islamic Republic of Iran*, 18 F. Supp. 2d. 62, 65 (D.D.C. 1998) (noting the permanent physical scarring and hearing loss suffered by plaintiffs when finding that they were tortured).

<sup>81</sup> *Mehinovic*, 198 F. Supp. at 1336 (noting that plaintiff suffered “eight broken ribs ... [and] a broken nose and finger”).

<sup>82</sup> *Id.* (noting permanent damage to plaintiff’s kidneys); *Cicippio*, 18 F. Supp. 2d. at 65 (noting that plaintiff suffers from permanent hearing loss as a result of his treatment).

<sup>83</sup> *Mehinovic*, 198 F. Supp. at 1337 (noting that plaintiff has a permanent crescent scar on his forehead that was carved by the defendant).

<sup>84</sup> *United States v. Belfast*, 611 F.3d 783, 799 (11th Cir. 2010) (noting victim’s disfigured genitals).

<sup>85</sup> *Mehinovic*, 198 F. Supp. at 1359 (noting lasting mental effects such as “nightmares, difficulty sleeping, flashbacks, anxiety”).

<sup>86</sup> *Doe v. Qi*, 349 F. Supp. 2d 1258, 1317 (N.D. Cal. 2004).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 1318.

<sup>89</sup> *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 910 F. Supp. 1460, 1463 (D. Haw. 1995).

<sup>90</sup> *Id.*

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<sup>91</sup> *Id.*

<sup>92</sup> *Nuru*, 404 F.3d at 1213.

<sup>93</sup> *Belfast*, 611 F.3d at 783–828.

<sup>94</sup> *Al-Safer v. INS*, 268 F.3d 1143, 1147 (9th Cir. 2001).

<sup>95</sup> *Kang v. Atty. Gen. of United States*, 611 F.3d 157, 161 (3d Cir. 2010).

<sup>96</sup> Paul Kramer, *The Water Cure*, NEW YORKER (Feb. 25, 2008), available at [http://www.newyorker.com/reporting/2008/02/25/080225fa\\_fact\\_kramer](http://www.newyorker.com/reporting/2008/02/25/080225fa_fact_kramer).

<sup>97</sup> JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST 1059 (1948) (“Among these tortures were the water treatment. . . . The victim was bound or otherwise secured in a prone position; and water was forced through his mouth and nostrils into his lungs and stomach until he lost consciousness. Pressure was then applied, sometimes by jumping upon his abdomen to force the water out. The usual practice was to revive the victim and successively repeat the process.”)

<sup>98</sup> Walter Pincus, *Waterboarding Historically Controversial*, WASH. POST (Oct. 5, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/04/AR2006100402005.html>. Defenders of the legality of waterboarding have argued that the “water cure” practiced in many of these prior cases was distinct from the method that the CIA used, either because the “water cure” was accompanied by other forms of torture or used a higher volume of water. But the CIA also did not use waterboarding in isolation, and the precedents need not be factually identical in every respect to be relevant.

<sup>99</sup> *White v. State*, 129 Miss. 182 (1922); see also *Fisher v. State*, 145 Miss. 116 (1926) (“There can be no kind of doubt that this confession [by water cure] was unlawfully secured”).

<sup>100</sup> *White*, 129 Miss. at 187.

<sup>101</sup> *Id.* at 187; 189.

<sup>102</sup> *Cavazos v. State*, 143 Tex. Crim. 564 (1942) (The court did not describe how the water cure was administered. In addition to the water cure, officers made defendant “stand for hours on tin cans with his feet bare and with his arms extended above his head” and “slapped and kicked” him and shocked him “with an iron rod charged with electricity.” *Id.* at 566.)

<sup>103</sup> *Id.* at 567. An intermediate appellate court in Texas rejected an appeal of a conviction based a confession allegedly coerced using waterboarding in *Morris v. State* but the issue there was on the credibility of the allegations and not on the severity of the alleged behavior. 697 S.W.2d 687 (Tex. App. 1985).

<sup>104</sup> *United States v. Lee*, 744 F.2d 1124, 1125 (5th Cir. 1984).

<sup>105</sup> *Two Witnesses Describe Torture by Texas Sheriff*, N.Y. TIMES (Sept. 2, 1983), available at <http://www.nytimes.com/1983/09/02/us/around-the-nation-two-witnesses-describers00.2torture-by-texas-sheriff.html>

<sup>106</sup> *Lee*, 744 F.2d at 1126. The issue on appeal was whether the district court should have severed the appellant’s trial from the other defendants.

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<sup>107</sup> *Marcos Human Rights Litigation*, 910 F. Supp. at 1463 (describing the practice as “where a cloth was placed over the detainee’s mouth and nose, and water poured over it producing a drowning sensation”).

<sup>108</sup> *Hilao v. Estate of Ferdinand Marcos*, 103 F.3d 789, 795 (9th Cir. 1996) (“[A]ll of the abuses alleged ... constituted either torture or prolonged arbitrary detention.”).

<sup>109</sup> *See, e.g., Sarei v. Rio Tinto*, 2011 U.S. App. LEXIS 21515, at \*48, 58, 77 (9th Cir. 2011) (*en banc*) (citing several international tribunals, including the ICTY and ICTR, when considering the elements of genocide); *Doe I v. Qi*, 349 F. Supp. 2d 1258 (N.D. Cal. 2004) (citing decisions by ICTY and ICTR regarding persecution and command responsibility in suit against Chinese officials by followers of Falun Gong and definition of genocide); *Mehinovic*, 198 F. Supp. 2d at 1346 (stating that opinions by the ICTY and ICTR are “particularly relevant” to U.S. courts determining contemporary norms in CIL and noting that the U.S. has “explicitly endorsed” the approach of the ICTY Statute); *see also Sosa*, 542 U.S. at 762 (Breyer, J., concurring) (citing case law from the ICTY and Supreme Court of Israel that crimes such as torture and genocide are subject to universal jurisdiction).

<sup>110</sup> *E.g.* ICTY Statute at arts. 2(a)&5(f); ICTR Statute at arts. 3(f)&4(a); Rome Statute at arts. 7(1)(f)&(2)(e), 8(2)(a)(ii)&(c)(i).

<sup>111</sup> *See, e.g. Prosecutor v. Kvočka*, IT-98-30/1-A, Appeals Judgment, ¶289 (Feb. 28, 2005); *Prosecutor v. Ntagerura*, ICTR-99-46-T, Trial Judgment, ¶ 703 (Feb. 25, 2004).

<sup>112</sup> *Prosecutor v. Limaj*, IT-03-66-T, Trial Judgment, ¶ 237 (Nov. 2, 2001).

<sup>113</sup> *Case of Kaing Guek Eav alias Duch*, Case No. 001/18-07-2007/ECCC/TC, Judgment, ¶ 241 (July 26, 2010).

<sup>114</sup> *Id.* at ¶ 360.

<sup>115</sup> *Ireland v. United Kingdom*, ECHR (1978) Series A, No. 25, at ¶¶ 96, 167.

<sup>116</sup> *Id.* (stating that torture implies “a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.”).

<sup>117</sup> Hum. Rts. Watch, *Getting Away with Torture* 4 (July 2011) (stating that detainees in U.S. run facilities experienced exposure to loud noises, stress positions, and deprivation of food, water and sleep, among other interrogation techniques); Senate Armed Servs. Comm. (110th Cong.), *Inquiry into the Treatment of Detainees in U.S. Custody* xxiii-xxiv, 54 (Nov. 20, 2008) (Levin Report), available at [http://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final\\_April%2022%202009.pdf](http://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf). (describing the use of stress positions, sleep deprivation, loud noise, food deprivation among other interrogation techniques); DOD, *Working Group Report on Detainee Interrogations in the Global War on Terrorism* 64–65, 70 (2003) (approving and recommending the use of hooding, forced standing, and sleep deprivation for interrogations).

<sup>118</sup> *Aksoy v. Turkey*, (Eur. Ct. of Hum. Rts. 1996), available at <http://www.unhcr.org/refworld/docid/3ae6b67518.html>

<sup>119</sup> *Id.* at ¶¶ 14–15.

<sup>120</sup> *Id.* at ¶ 64.



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<sup>121</sup> El-Masri v. Macedonia, Judgment No. 39630/09 (Eur. Ct. of Hum. Rts. Dec. 13, 2012) ¶¶ 205–211, *available at* [http://www.opensocietyfoundations.org/sites/default/files/CASE\\_OF\\_EL-MASRI\\_v\\_\\_THE\\_FORMER\\_YUGOSLAV\\_REPUBLIC\\_OF\\_MACEDONIA.pdf](http://www.opensocietyfoundations.org/sites/default/files/CASE_OF_EL-MASRI_v__THE_FORMER_YUGOSLAV_REPUBLIC_OF_MACEDONIA.pdf)

<sup>122</sup> *Id.* at ¶¶ 24–30.

<sup>123</sup> U.S. Army, *Field Manual 34-52: Intelligence Interrogation* 1–8 (1992), *available at* <https://www.fas.org/irp/doddir/army/fm34-52.pdf>

<sup>124</sup> *Id.*

<sup>125</sup> U.S. Army, *Field Manual 2-22.3/34-52: Human Intelligence Collector Operations* (2006), *available at* <https://www.fas.org/irp/doddir/army/fm2-22-3.pdf>

<sup>126</sup> *Id.*

<sup>127</sup> CIA OIG Report, *supra* note 52, at 91.

<sup>128</sup> DOS, *Human Rights Reports* (1999 – present), *available at* <http://www.state.gov/g/drl/rls/hrrpt/>

<sup>129</sup> Bob Woodward, *Guantánamo Detainee was Tortured, Says Official Overseeing Military Trials*, WASH. POST (Jan. 14, 2009), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>

<sup>130</sup> *Id.*

<sup>131</sup> Memorandum from Alberto J. Mora (Navy Gen. Counsel) for Navy Inspector Gen., , *Statement for the Record: Office of General Counsel Involvement in Interrogation Techniques at 7* (July 7, 2004), *available at* [http://dspace.wrhc.org/doc/bitstream/2041/70985/02368\\_040707\\_001display.pdf](http://dspace.wrhc.org/doc/bitstream/2041/70985/02368_040707_001display.pdf)

<sup>132</sup> Alberto J. Mora, Op-Ed., *An Affront to American Values*, WASH. POST (May 27, 2006), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/26/AR2006052601548.html>

<sup>133</sup> Lawrence B. Wilkerson, Op-Ed., *No Torture. No Exceptions.*, WASH. MONTHLY (2008), *available at* <http://www.washingtonmonthly.com/features/2008/0801.wilkerson.html>

<sup>134</sup> Shushannah Walshe, *Former Powell Chief of Staff Col. Larry Wilkerson: Cheney “Fears Being Tried as a War Criminal,”* ABC News (Aug. 30, 2011), *available at* <http://abcnews.go.com/Politics/powell-chief-staff-col-larry-wilkerson-cheney-fears/story?id=14414226>

<sup>135</sup> PHYSICIANS FOR HUMAN RIGHTS, *BROKEN LAW, BROKEN LIVES: MEDICAL EVIDENCE OF TORTURE BY US PERSONNEL AND ITS IMPACT* viii (Preface by Antonio Taguba) (June 2008), *available at* [http://brokenlives.info/?page\\_id=23](http://brokenlives.info/?page_id=23)

<sup>136</sup> ICRC, *Report on the Treatment of Fourteen “High-Value Detainees” in CIA Custody* 5 (Feb. 2007) [hereinafter 2007 ICRC Report], *available at* [http://dspace.wrhc.org/doc/bitstream/2041/71001/03083\\_070214\\_001display.pdf](http://dspace.wrhc.org/doc/bitstream/2041/71001/03083_070214_001display.pdf)

<sup>137</sup> ICRC, *Report on the Treatment by Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment, and Interrogation* 23 (Feb. 2004) [hereinafter 2004 ICRC Report], *available at* <http://cryptome.org/icrc-report.htm>

<sup>138</sup> *Id.*

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<sup>139</sup> 2007 ICRC Report, *supra* note 136.

<sup>140</sup> 2004 ICRC Report, *supra* note 137, at 3.

<sup>141</sup> *Id.* at 23 (stating that “high value” detainees were kept in strict solitary confinement for 23 hours a day in small concrete cells devoid of daylight, “an internment regime which does not comply with the provisions of the Third and Fourth Geneva Conventions”)

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 8.

<sup>144</sup> *Id.* at 3.

<sup>145</sup> *Id.* at 4.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 10.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 8.

<sup>150</sup> *Id.* at 12.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 10.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 11.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 15.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 16.

<sup>161</sup> Neil A. Lewis, *Red Cross Finds Detainee Abuse at Guantánamo*, N.Y. TIMES (Nov. 30, 2004), available at <http://www.nytimes.com/2004/11/30/politics/30gitmo.html>

<sup>162</sup> 2007 ICRC Report, *supra* note 136, at 26.

<sup>163</sup> *Id.* at 24.

<sup>164</sup> *Id.* at 8.

<sup>165</sup> *Id.* at 7.

<sup>166</sup> *Id.* at 7.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 7–8.

<sup>169</sup> *Id.* at 24.

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<sup>170</sup> *Id.* at 16.

<sup>171</sup> *Id.* at 8–19. The list of these “ill-treatment” techniques is listed on pp. 8–9.

<sup>172</sup> *Id.* at 19.

<sup>173</sup> *Id.* at 11–12.

<sup>174</sup> *E.g., id.* at 9 (“each specific method was in fact applied in combination with other methods, either simultaneously, or in succession.”); *id.* at 35 (“The beatings were combined with the use of cold water...”); *id.* at 15 (“Sleep was deprived in various ways, and therefore overlaps with some of the other forms of ill-treatment described in this section, from the use of loud repetitive noise or music to long interrogation sessions to prolonged stress standing to spraying with cold water.”).

<sup>175</sup> *Id.* at 14.

<sup>176</sup> *Id.* at 19.

<sup>177</sup> *Id.* at 26.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 5.

<sup>180</sup> 743 F. Supp. 2d 261, 264 (S.D.N.Y. 2010).

<sup>181</sup> *Id.* at 288.

<sup>182</sup> *Id.* at 267.

<sup>183</sup> 613 F. Supp. 2d 51, 57–58, 61–64 (D.D.C. 2009).

<sup>184</sup> *Id.* at 58.

<sup>185</sup> *Id.* at 63.

<sup>186</sup> *Id.* at 58.

<sup>187</sup> *Id.* at 61.

<sup>188</sup> *Id.*

<sup>189</sup> Order (re: Mohammed Jawad) at 1, *Saki Bacha v. Obama*, Civ. No. 05-2385 (D.D.C. July 17, 2009).

<sup>190</sup> Order at 1, *Saki Bacha v. Obama*, No. 05-2385 (D.D.C. July 30, 2009).

<sup>191</sup> 689 F. Supp. 2d 38, 54, 64 (D.D.C. 2009).

<sup>192</sup> *Id.* at 57.

<sup>193</sup> The court states at 65 that “even though the identity of the individual interrogators changed ... there is no question that throughout his ordeal Binyam Mohamed was being held at the behest of the United States.”

<sup>194</sup> *Id.* at 57–60.

<sup>195</sup> *Id.* (Improvements included being able to bathe weekly, as opposed to never, being kept in the dark for 12 hours a day versus 23, and being given 5 minutes per week to spend outdoors versus none.)

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<sup>196</sup> *Id.* at 62.

<sup>197</sup> 696 F. Supp. 2d 1 (D.D.C. 2010) (re: Musa'ab Omar Al Madhwani).

<sup>198</sup> *Id.* at 3.

<sup>199</sup> *Id.* at 6.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 3. The court noted that a medical report indicated that the petitioner — who is five feet five inches tall and weighed 104 pounds six days before he was transferred to Guantánamo — had a diastolic blood pressure of 36, a sign of severe dehydration that ordinarily requires hospitalization. *Id.* at 18.

<sup>202</sup> *Id.* at 8.

<sup>203</sup> *Id.*

<sup>204</sup> 677 F. Supp. 2d 1 (D.D.C. 2009).

<sup>205</sup> *Id.* at 12.

<sup>206</sup> *Id.* at 11.

<sup>207</sup> *Id.* at 10.

<sup>208</sup> *Id.* at 12.

<sup>209</sup> The circuit court vacated and remanded the district court's decision because subsequent circuit court decisions were "inconsistent with several of the district court's legal premises." *Hatim v. Gates*, 632 F.3d 720, 721 (D.C. Cir. 2011). The circuit court's decision, however, did not discuss the district court's factual determinations.

<sup>210</sup> 708 F. Supp. 2d 9, 14 (D.D.C. 2010) (re: Uthman Abdul Rahim Mohammed Uthman).

<sup>211</sup> *Id.* at 15

<sup>212</sup> *Id.* The district court's memorandum opinion was reversed and remanded by the circuit court with instructions to deny petitioner's writ of *habeas corpus*. *Uthman v. Obama*, 637 F.3d 400, 402 (D.C. Cir. 2011). The circuit court's opinion discussed only whether the government's evidence, based on a functional approach, indicated that petitioner more likely than not was part of Al Qaeda. *Id.* at 402, 407. The circuit court did not disturb the district court's findings that statements from certain witnesses were unreliable because they were the product of torture. *See id.* at 404 n.5.

<sup>213</sup> 709 F. Supp. 2d 25, 28 (D.D.C. 2010) (re: Yasein Khasem Mohammad Esmail).

<sup>214</sup> *Salahi v. Obama*, 710 F. Supp. 2d 1, 6 (D.D.C. 2010).

<sup>215</sup> *Id.* at 7

<sup>216</sup> *Id.* at 7, 16. The district court's grant of *habeas* grant was later overturned by the D.C. Circuit, but its factual conclusions were not.

## APPENDIX 2

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<sup>1</sup> Interview, Dick Cheney, *Meet the Press* (Sept. 16, 2001), available at <http://georgewbush-whitehouse.archives.gov/vicepresident/news-speeches/speeches/vp20010916.html>

<sup>2</sup> Interview, Cofer Black, *Frontline* (Mar. 7, 2006), available at <http://www.pbs.org/wgbh/pages/frontline/bushswar/interviews/black.html>

<sup>3</sup> [Presidential] Military Order, *Detention Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism* (Nov. 13, 2001), 66 Fed. Reg. 57,831 (Nov. 16, 2001), available at <http://www.fas.org/irp/offdocs/eo/mo-111301.htm>

<sup>4</sup> Memorandum from Patrick F. Philbin (Deputy Ass't Att'y Gen., OLC) & John C. Yoo (Deputy Ass't Att'y Gen., OLC) to William J. Haynes II (Gen. Counsel, DOD), *Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba* (Dec. 28, 2001), available at <http://www.torturingdemocracy.org/documents/20011228.pdf>

<sup>5</sup> Memorandum from President George W. Bush to Vice President *et al.*, *Humane Treatment of al Qaeda and Taliban Detainees* (Feb. 7, 2002), available at [http://www.pegc.us/archive/White\\_House/bush\\_memo\\_20020207\\_ed.pdf](http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf)

<sup>6</sup> James R. Schlesinger, *Final Report of the Independent Panel to Review DOD Detention Operations* 80 (Aug. 2004) (Schlesinger Report), available at <http://news.findlaw.com/wp/docs/dod/abughraibrpt.pdf>

<sup>7</sup> Memorandum from Donald Rumsfeld (Secretary of Defense) to Chairman of the Joint Chiefs of Staff, *Status of Taliban and Al Qaeda* (Jan. 19, 2002), available at <http://www.torturingdemocracy.org/documents/20020119.pdf>

<sup>8</sup> PHILIPPE SANDS, *TORTURE TEAM: DECEPTION, CRUELTY, AND THE PROMISE OF LAW* 39 (2008); Transcript of interview with Thomas Romig (Nov. 19, 2007), available at [http://www.gwu.edu/~nsarchiv/torturingdemocracy/interviews/thomas\\_romig.html](http://www.gwu.edu/~nsarchiv/torturingdemocracy/interviews/thomas_romig.html)

<sup>9</sup> Memorandum from William H. Taft IV (Legal Adviser, DOS) to John C. Yoo (Deputy Ass't Att'y Gen., OLC), *Your Draft Memorandum of January 9* (Jan. 11, 2002), available at <http://www.gwu.edu/~nsarchiv/torturingdemocracy/documents/20020111.pdf>

<sup>10</sup> Memorandum from Alberto R. Gonzales (White House Counsel) to President George W. Bush, *Decision re Application of the Geneva Convention* (Jan. 25, 2002), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>

<sup>11</sup> *Id.*

<sup>12</sup> Notes by William H. Taft IV (Legal Adviser, DOS) (Feb. 2, 2002), reproduced in KAREN GREENBERG & JOSHUA DRATEL, *THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB* (2005).

<sup>13</sup> Scott Shane, *2 U.S. Architects of Harsh Tactics in 9/11's Wake*, N.Y. TIMES (Aug. 11, 2009), available at <http://www.nytimes.com/2009/08/12/us/12psychs.html>; Katherine Eban, *Rorshach and Awe*, VANITY FAIR (July 17, 2007), available at <http://www.vanityfair.com/politics/features/2007/07/torture200707>; Jody Warrick & Peter Finn, *Interviews Offer Look at Roles of CIA Contractors During Interrogation*, WASH. POST (July 19, 2009), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/18/AR2009071802065.html>; Senate Armed Servs. Comm. (110th Cong.), *Inquiry into the Treatment of Detainees in U.S. Custody* 6–7 (Nov. 20, 2008) [hereinafter Levin Report], available at [http://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final\\_April%2022%202009.pdf](http://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf)

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<sup>14</sup> ALI SOUFAN, *THE BLACK BANNERS* 393–95 (2011) (Soufan refers to the CIA contract psychologist as “Boris” but multiple, credible press accounts have confirmed that it is Mitchell, e.g., Warrick & Finn, *supra* note 13).

<sup>15</sup> Michael Isikoff, “*We Could Have Done This the Right Way*,” *NEWSWEEK* (Apr. 24, 2009), available at <http://www.thedailybeast.com/newsweek/2009/04/24/we-could-have-done-this-the-right-way.html>; Senate Judiciary Comm., Testimony of Ali Soufan (May 13, 2009), available at [http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da14945e6&wit\\_id=e655f9e2809e5476862f735da14945e6-1-2](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da14945e6&wit_id=e655f9e2809e5476862f735da14945e6-1-2)

<sup>16</sup> SOUFAN, *supra* note 14, at 422–23 (FBI agent Steve Gaudin remained slightly longer, but his superiors eventually ordered him not to return); DOJ, Office of the Inspector Gen., *A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantánamo Bay, Afghanistan, and Iraq* (2009), available at <http://www.justice.gov/oig/special/s0910.pdf>

<sup>17</sup> Rodriguez does not identify Soufan by name in his book, but comparing his description to other sources makes clear that Soufan is the FBI agent in question.

<sup>18</sup> JOSE RODRIGUEZ & BILL HARLOW, *HARD MEASURES* 77–78 (2012).

<sup>19</sup> *Id.* at 70.

<sup>20</sup> GEORGE W. BUSH, *DECISION POINTS* 169 (2010).

<sup>21</sup> Memorandum from Jay S. Bybee (Ass’t Att’y Gen., OLC) to John Rizzo (Acting Gen. Counsel, CIA), *Interrogation of Al Qaeda Operative* (Aug. 1, 2002) [hereinafter Bybee Aug. 1 Interrogation Methods Memo], available at [http://media.luxmedia.com/aclu/olc\\_08012002\\_bybee.pdf](http://media.luxmedia.com/aclu/olc_08012002_bybee.pdf)

<sup>22</sup> ICRC, *Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody* 29–30 (Feb. 2007), available at <http://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>

<sup>23</sup> *Id.* at 11, 15.

<sup>24</sup> Senate Intelligence Comm., *Testimony of Michael Hayden* (Mar. 5, 2008).

<sup>25</sup> Memorandum from Steven G. Bradbury (Principal Deputy Ass’t Att’y Gen.) to John A. Rizzo (Senior Deputy Gen. Counsel, CIA), *Application of U.S. Obligations Under Article 16 of CAT to Certain Techniques that May Be Used in Interrogation of High Value Al Qaeda Detainees* (May 30, 2005), available at [http://media.luxmedia.com/aclu/olc\\_05302005\\_bradbury.pdf](http://media.luxmedia.com/aclu/olc_05302005_bradbury.pdf)

<sup>26</sup> Adam Goldman & Kathy Gannon, *Salt Pit Death: Gul Rahman, CIA Prisoner, Died of Hypothermia in Secret Afghanistan Prison*, *HUFFINGTON POST* (AP) (Mar. 28, 2010), available at [http://www.huffingtonpost.com/2010/03/28/salt-pit-death-gul-rahman\\_n\\_516559.html](http://www.huffingtonpost.com/2010/03/28/salt-pit-death-gul-rahman_n_516559.html); Adam Goldman & Kathy Gannon, *CIA Victim Said to Have Rescued Future Afghan President*, *Fox News* (AP) (April 7, 2010), available at <http://www.foxnews.com/world/2010/04/06/cia-victim-said-rescued-future-afghan-pres>; Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, *WASH. POST* (March 3, 2005), available at <http://www.washingtonpost.com/wp-dyn/articles/A2576-2005Mar2.html>

<sup>27</sup> Adam Goldman & Matt Apuzzo, *At CIA, Grave Mistakes, Then Promotions*, *WASH. TIMES* (AP) (Feb. 9, 2011), available at <http://www.washingtontimes.com/news/2011/feb/9/ap-cia-grave-mistakes-then-promotions>

<sup>28</sup> U.N. Hum. Rts. Council, *Joint Study On Global Practices in Relation to Secret Detention in the Context of Countering Terrorism* 59–68 (Feb. 19, 2010), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

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<sup>29</sup> 696 F. Supp. 2d 1, 6 (D.D.C. 2010), *aff'd sub nom.* Al-Madhwani v. Obama, 642 F.2d 1071 (D.C. Cir. 2011), *cert. denied*, 132 S. Ct. 2739 (2012)

<sup>30</sup> *Id.*

<sup>31</sup> 613 F. Supp. 2d 51, 58 (D.D.C. 2009).

<sup>32</sup> 689 F. Supp. 2d 38, 60 (D.D.C. 2009).

<sup>33</sup> Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, WASH. POST (Dec. 4, 2005), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/03/AR2005120301476.html>; Craig S. Smith & Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, N.Y. TIMES (July 7, 2006), available at <http://www.nytimes.com/2006/07/07/world/africa/07algeria.html>

<sup>34</sup> Task Force staff interview with Khalid al-Sharif (Sept. 2, 2012).

<sup>35</sup> HUM. RTS. WATCH, *DELIVERED INTO ENEMY HANDS* 48–50 (Sept. 2012), available at [http://www.hrw.org/sites/default/files/reports/libya0912webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf)

<sup>36</sup> *Id.* at 4.

<sup>37</sup> Declaration of Mohamed Farag Ahmed Bashmilah (Mohamed v. Jeppesen Dataplan) (Dec. 5, 2007), available at <http://chrgj.org/wp-content/uploads/2012/07/declarationofbashmilah.pdf>

<sup>38</sup> Dana Priest & Barton Gellman, *U.S. Decries Abuse But Defends Interrogations*, WASH. POST (Dec. 26, 2002), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html>

<sup>39</sup> Raymond Bonner, Don Van Natta Jr. & Amy Waldman, *Threats and Responses: Interrogations; Questioning Terror Suspects In a Dark and Surreal World*, N.Y. TIMES (Mar. 3, 2003), available at <http://www.nytimes.com/2003/03/09/world/threats-responses-interrogations-questioning-terror-suspects-dark-surreal-world.html>

<sup>40</sup> RICARDO S. SANCHEZ WITH DONALD T. PHILLIPS, *WISER IN BATTLE* 149–50 (2008).

<sup>41</sup> Task Force staff interview with Rear Admiral James McPherson (Dec. 13, 2011).

<sup>42</sup> *Id.*

<sup>43</sup> KAREN GREENBERG, *THE LEAST WORST PLACE: GUANTÁNAMO'S FIRST 100 DAYS* 55–59, 62–63 (2009).

<sup>44</sup> Task Force staff interview with Colonel Terry Carrico (May 19, 2011).

<sup>45</sup> Gerry G. Gilmore, *Rumsfeld Visits, Thanks Troops at Camp X-Ray in Cuba*, AM. FORCES PRESS SERV. (Jan. 27, 2002), available at <http://www.defense.gov/news/newsarticle.aspx?id=43817>

<sup>46</sup> SANDS, *supra* note 8, at 51.

<sup>47</sup> Levin Report, *supra* note 13, at 38–39, 43–47, 51–53.

<sup>48</sup> *Id.* at 61–62, 65.

<sup>49</sup> *Id.* at 62.

<sup>50</sup> Julian Borger, “Soft” Guantánamo Chief Ousted, GUARDIAN (UK) (Oct. 16, 2002), available at <http://www.guardian.co.uk/world/2002/oct/16/usa.afghanistan>

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- <sup>51</sup> Memorandum from Lt. Col. Diane Beaver to Gen. James T. Hill, *Legal Review of Aggressive Interrogation Techniques* (Oct. 11, 2002), available at <http://www.defense.gov/news/Jun2004/d20040622doc3.pdf>
- <sup>52</sup> *Id.*
- <sup>53</sup> SANDS, *supra* note 8, at 77.
- <sup>54</sup> Levin Report, *supra* note 13, at 66–70.
- <sup>55</sup> *Id.* at 70. Beaver has stated that she asked requested Dalton’s assistance for her own review, but did not receive any. SANDS, *supra* note 8, at 77.
- <sup>56</sup> Levin Report, *supra* note 13, at 71.
- <sup>57</sup> Memorandum from William J. Haynes II (Gen. Counsel, DOD) to Donald Rumsfeld (Secretary of Defense), *Counter-Resistance Techniques* (Nov. 27, 2002), signed with handwritten note by Rumsfeld on Dec. 2, 2002, available at <http://www.defense.gov/news/Jun2004/d20040622doc5.pdf>
- <sup>58</sup> Levin Report, *supra* note 13, at 96.
- <sup>59</sup> *Id.* at 60.
- <sup>60</sup> Letter from T.J. Harrington (Deputy Ass’t Dir., FBI Counterterrorism Div.) to Major General Donald J. Ryder (Army CID), *Suspected Mistreatment of Detainees* (July 14, 2004), available at [http://humanrights.ucdavis.edu/resources/fbi-documents/FBI87\\_001914%20to%20001916\\_DOJFBI001914.pdf](http://humanrights.ucdavis.edu/resources/fbi-documents/FBI87_001914%20to%20001916_DOJFBI001914.pdf)
- <sup>61</sup> DOD, *Interrogation Log, Detainee 063* (Nov. 23, 2002 to Jan. 11, 2003), available at <http://www.time.com/time/2006/log/log.pdf>
- <sup>62</sup> *Id.* at 27.
- <sup>63</sup> Randall Schmidt and John Furlow, *Army Regulation 15-6: Final Report: Investigation Into FBI Allegations of Detainee Abuse at Guantánamo Bay, Cuba, Detention Facility* (Apr. 2005) [hereinafter Schmidt-Furlow Report], available at <http://www.defense.gov/news/Jul2005/d20050714report.pdf>; Levin Report, *supra* note 13, at 73–90.
- <sup>64</sup> Schmidt-Furlow Report, *supra* note 63, at 1, 20.
- <sup>65</sup> Bob Woodward, *Guantánamo Detainee Was Tortured, Says Official Overseeing Military Trials*, WASH. POST, (Jan. 14, 2009), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>
- <sup>66</sup> Memorandum from Alberto Mora (Navy Gen. Counsel) for Navy Inspector General, *Statement for the Record: Office of General Counsel Involvement in Interrogation Issues* (July 7, 2004) [hereinafter Mora Statement for the Record], available at [http://www.aclu.org/pdfs/safefree/mora\\_memo\\_july\\_2004.pdf](http://www.aclu.org/pdfs/safefree/mora_memo_july_2004.pdf)
- <sup>67</sup> *Id.*
- <sup>68</sup> *Id.*
- <sup>69</sup> *Id.* at 7–8.
- <sup>70</sup> *Id.* at 4–15.
- <sup>71</sup> Levin Report, *supra* note 13, at 120–21.



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<sup>72</sup> DOD, *Working Group Report on Detainee Interrogations in the Global War on Terrorism* 86–87 (Apr. 4, 2003), available at <http://www.au.af.mil/au/awc/awcgate/dod/d20040622doc8.pdf>

<sup>73</sup> Levin Report, *supra* note 13, at 131

<sup>74</sup> Memorandum from Donald Rumsfeld (Secretary of Defense) to Commander, U.S. Southern Command, *Counter-Resistance Techniques in the War on Terrorism* (Apr. 16, 2004), available at <http://www.torturingdemocracy.org/documents/20030416.pdf>

<sup>75</sup> *Id.*

<sup>76</sup> Levin Report, *supra* note 13, at 137–38.

<sup>77</sup> Schmidt-Furlow Report, *supra* note 63, at 24–25.

<sup>78</sup> Levin Report, *supra* note 13, at 139–40.

<sup>79</sup> *Id.* at 140–41.

<sup>80</sup> Levin Report, *supra* note 13, at 141; Jess Bravin, *The Conscience of the Colonel*, WALL STREET J. (Mar. 31, 2007).

<sup>81</sup> Levin Report, *supra* note 13, at 143–46.

<sup>82</sup> Email from [Redacted] to Valerie Caproni (FBI Office of Gen. Counsel) (forwarding email from [redacted] to [redacted]), *GITMO* (Aug. 2, 2004), available at <http://www.aclu.org/torturefoia/released/FBI.121504.5053.pdf>

<sup>83</sup> Interview with Operations Officer (Mar. 7, 2005), Annex to the Schmidt-Furlow Report, at 84, available at [http://humanrights.ucdavis.edu/resources/library/documents-and-reports/schmidt\\_furlow\\_enclosures\\_1.pdf](http://humanrights.ucdavis.edu/resources/library/documents-and-reports/schmidt_furlow_enclosures_1.pdf)

<sup>84</sup> Neil A. Lewis, *Red Cross Finds Detainee Abuse at Guantánamo*, N.Y. TIMES (Nov. 30, 2004), available at <http://www.nytimes.com/2004/11/30/politics/30gitmo.html>

<sup>85</sup> Office of the Armed Forces Med. Examiner, *Final Report of Postmortem Examination* (Dec. 8, 2003) (Habibullah autopsy), available at <http://www.thetorturedatabase.org/document/autopsy-report-mullah-habibullah-bagram-collection-point-afghanistan-homicide-0134-02>

<sup>86</sup> Task Force staff interview with Angela Birt (July 20, 2011) [hereinafter Birt Interview].

<sup>87</sup> Tim Golden, *In U.S. Report, Brutal Details of 2 Inmates, Deaths*, N.Y. TIMES (May 20, 2005), available at <http://www.nytimes.com/2005/05/20/international/asia/20abuse.html>

<sup>88</sup> U.S. Army Crim. Investigative Div., File No. 0134-02-CID369-23 (sworn statement of Ali Mohammad Baryalai (Dec. 18, 2002) [hereinafter Bagram CID file], available at <http://www.mcclatchydc.com/2008/06/15/v-print/40737/documents-from-mcclatchys-investigation.html>

<sup>89</sup> Task Force staff interview with Joshua Claus (July 13, 2011).

<sup>90</sup> Birt Interview, *supra* note 86.

<sup>91</sup> Timothy Golden, *Years After 2 Afghans Died, Abuse Case Falter*, N.Y. TIMES (Feb. 13, 2006), available at <http://www.nytimes.com/2006/02/13/national/13bagram.html>

<sup>92</sup> Bagram CID file, Sworn Statement of Betty J. Jones (Feb. 1, 2004).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

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<sup>95</sup> Transcript from *United States v. Brand* at 87–88 (Testimony of Marianne Plummer), available at [http://media.mcclatchydc.com/smedia/2008/06/04/14/Brand-9a.source.prod\\_affiliate.91.pdf](http://media.mcclatchydc.com/smedia/2008/06/04/14/Brand-9a.source.prod_affiliate.91.pdf)

<sup>96</sup> *Id.* at 91.

<sup>97</sup> Bagram CID file, Sworn Statement of Maj. Jeff A. Bovarnick, at 9 (May 26, 2004).

<sup>98</sup> *Id.* at 9–15.

<sup>99</sup> TAXI TO THE DARK SIDE (2007).

<sup>100</sup> Bagram CID file, Sworn Statement of Col. David L. Hayden, 16 (June 18, 2004).

<sup>101</sup> Levin Report, *supra* note 13, at 115.

<sup>102</sup> Bagram CID file, Sworn Statement, Sgt. Jennifer N. Higginbotham, 28 (Aug. 1, 2004), *but see id.* at 12.

<sup>103</sup> Senate Armed Servs. Comm., *Testimony of Donald Rumsfeld* (May 7, 2004).

<sup>104</sup> HUM. RTS. WATCH, NO BLOOD, NO FOUL: SOLDIERS' ACCOUNTS OF DETAINEE ABUSE IN IRAQ 7 (July 2006), available at <http://www.hrw.org/sites/default/files/reports/us0706web.pdf>

<sup>105</sup> *Id.* at 13.

<sup>106</sup> Levin Report, *supra* note 13, at 159–61.

<sup>107</sup> *Id.* at xiv, 170.

<sup>108</sup> *Id.* at 176–78.

<sup>109</sup> *Id.* at 179.

<sup>110</sup> Senate Armed Servs. Comm., *Testimony of Steve Kleinman* at 189 (Sept. 25, 2008).

<sup>111</sup> JANE MAYER, THE DARK SIDE 247 (2008); Levin Report, *supra* note 13, at 186.

<sup>112</sup> Levin Report, *supra* note 13, at 193–94.

<sup>113</sup> Stuart Herrington, *Report of CI/HUMINT Evaluation Visit* (Dec. 12, 2003) [hereinafter Herrington Report] [on file with The Constitution Project].

<sup>114</sup> Levin Report, *supra* note 13, at 163.

<sup>115</sup> U.S. Army Office of Inspector Gen., *Interview of Col. Stuart Herrington* at 5 (Nov. 3, 2004) [hereinafter Herrington Army OIG Interview].

<sup>116</sup> Herrington Report, *supra* note 113, at 7.

<sup>117</sup> Eric Schmitt & Carolyn Marshall, *In Secret Unit's "Black Room," A Grim Portrait of U.S. Abuse*, N.Y. TIMES (Mar. 19, 2006), available at <http://www.nytimes.com/2006/03/19/international/middleeast/19abuse.html>

<sup>118</sup> Herrington Report, *supra* note 113, at 7.

<sup>119</sup> Herrington Army OIG Interview, *supra* note 115, at 9–10.

<sup>120</sup> NO BLOOD, NO FOUL, *supra* note 104, at 14–15.

<sup>121</sup> *Id.* at 15–16.

<sup>122</sup> Birt Interview, *supra* note 86.

<sup>123</sup> Schmitt & Marshall, *supra* note 117.

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<sup>124</sup> Memorandum from Vice Adm. Lowell E. Jacoby (Director, DIA) to Stephen Cambone (Undersecretary of Defense for Intelligence), *Alleged Detainee Abuse by TF 6-26 Personnel* (June 25, 2004), available at [http://www.aclu.org/torturefoia/released/t2596\\_0297.pdf](http://www.aclu.org/torturefoia/released/t2596_0297.pdf)

<sup>125</sup> Memorandum from Stephen Cambone to William Boykin (June 26, 2004), available at [http://www.nytimes.com/imagepages/2006/03/19/international/19abuse\\_CA0ready.html](http://www.nytimes.com/imagepages/2006/03/19/international/19abuse_CA0ready.html)

<sup>126</sup> DOD Office of Inspector Gen., *Review of DOD-Directed Investigations of Detainee Abuse* 16 (Aug. 25, 2006).

<sup>127</sup> John McChesney, *Documents Shed Light on Abu Ghraib Death*, Nat'l Pub. Radio (Oct. 28, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4979183>; Jane Mayer, *A Deadly Interrogation*, NEW YORKER (Nov. 14, 2005), available at [http://www.newyorker.com/archive/2005/11/14/051114fa\\_fact](http://www.newyorker.com/archive/2005/11/14/051114fa_fact)

<sup>128</sup> U.S. Army Crim. Investigative Div., File No. 0237-03-CID259-61219 at 47–48 [hereinafter Jamadi CID file], available at <http://www.aclu.org/files/projects/foiasearch/pdf/DODDOACID009482.pdf>; Mayer, *A Deadly Interrogation*, *supra* note 127.

<sup>129</sup> *Id.*

<sup>130</sup> McChesney, *supra* note 127.

<sup>131</sup> *Id.*

<sup>132</sup> Mayer, *A Deadly Interrogation*, *supra* note 127.

<sup>133</sup> McChesney, *supra* note 127.

<sup>134</sup> Mayer, *A Deadly Interrogation*, *supra* note 127.

<sup>135</sup> *Id.*

<sup>136</sup> Adam Goldman & Matt Apuzzo, *Steve Stormoen, Former CIA Official, Under Scrutiny in Abu Ghraib Prisoner Death*, HUFFINGTON POST (AP) (July 13, 2011), available at [http://www.huffingtonpost.com/2011/07/13/steve-stormoen-former-cia-officer-abu-ghraib-death-\\_n\\_896810.html](http://www.huffingtonpost.com/2011/07/13/steve-stormoen-former-cia-officer-abu-ghraib-death-_n_896810.html)

<sup>137</sup> DOJ Press Release, *Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees* (Aug. 30, 2012), available at <http://www.justice.gov/opa/pr/2012/August/12-ag-1067.html>

<sup>138</sup> U.S. Army Crim. Investigative Div., Interview of Charles Graner, at 247 [on file with The Constitution Project].

<sup>139</sup> *Id.* at 273–74.

<sup>140</sup> Abu Ghraib MP logbook at 23 [on file with The Constitution Project]; Graner interview, *supra* note 138, at 272–73.

<sup>141</sup> Abu Ghraib MP logbook, *supra* note 140, at 16.

<sup>142</sup> *Id.* at 24.

<sup>143</sup> Mayer, *A Deadly Interrogation*, *supra* note 127.

<sup>144</sup> Antonio Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade 27* (May 2004) (Taguba Report), available at [http://www.npr.org/iraq/2004/prison\\_abuse\\_report.pdf](http://www.npr.org/iraq/2004/prison_abuse_report.pdf)

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<sup>145</sup> George Fay, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and the 205th Military Intelligence Brigade* 44–45 (Aug. 2004) [hereinafter Fay Report], available at <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>

<sup>146</sup> Jamadi CID file, *supra* note 128, at 96.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Josh White, *Documents Tell of Brutal Improvisation by GIs*, WASH. POST (Aug. 3, 2005), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/02/AR2005080201941.html>

<sup>150</sup> *Id.*

<sup>151</sup> Jon Sarche & Dan Elliott, *CIA Role Remains a Mystery at Army Court Martial*, ASSOCIATED PRESS (Jan. 22, 2006), available at <http://www.commondreams.org/headlines06/0122-08.htm>; Court-Martial Record, *United States v. Welshofer*, 118–21 (Testimony of unidentified witness).

<sup>152</sup> Court-Martial Record, *United States v. Welshofer*, *supra* note 151.

<sup>153</sup> *Id.* at 134–36 (Testimony of Jerry Loper).

<sup>154</sup> *Id.* at 53–54 (Testimony of Jefferson Williams).

<sup>155</sup> *Id.* at 101–02 (Testimony of Todd Sonnek).

<sup>156</sup> *Id.* at 177 (Testimony of Lewis Welshofer).

<sup>157</sup> GEORGE TENET & BILL HARLOW, *AT THE CENTER OF THE STORM: MY YEARS AT THE CIA* 388 (2007).

<sup>158</sup> Court-Martial Record, *United States v. Welshofer*, *supra* note 151.

<sup>159</sup> Office of the Armed Forces Med. Examiner, Autopsy Report No. ME03-571 (Dec. 18, 2003) (Abed Hamed Mowhoush Autopsy), available at <http://www.thetorturedatabase.org/document/autopsy-report-56-year-old-iraqi-male-al-qaim-iraqi-homicide-death-certificate-included>

<sup>160</sup> Court-Martial Record, *United States v. Welshofer*, *supra* note 151, at 52–54, 64–66, 69–74, 104–05.

<sup>161</sup> Record of Article 32 Investigation, *United States v. Williams, Sommer, and Loper* at 51–52, available at [http://dspace.wrhc.org/doc/bitstream/2041/84994/02795\\_041202\\_001.pdf](http://dspace.wrhc.org/doc/bitstream/2041/84994/02795_041202_001.pdf)

<sup>162</sup> Court-Martial Record, *United States v. Welshofer*, *supra* note 151, at 93.

<sup>163</sup> *Death of a General*, CBS News (Feb. 11, 2009), available at [http://www.cbsnews.com/8301-18560\\_162-1476781.html?pageNum=3](http://www.cbsnews.com/8301-18560_162-1476781.html?pageNum=3)

<sup>164</sup> Office of the Armed Forces Med. Examiner, Autopsy Report No. ME04-14 (Apr. 30, 2004) (Abdul Jameel autopsy), available at <http://www.thetorturedatabase.org/document/autopsy-report-47-year-old-male-al-asad-iraqi-homicide-0009-04-cid679-83486-death>

<sup>165</sup> Detainee Autopsy Summary (Sept. 23, 2004), available at [http://dspace.wrhc.org/doc/get/2041/78954/02668\\_040923\\_002.pdf](http://dspace.wrhc.org/doc/get/2041/78954/02668_040923_002.pdf). “OGA,” an abbreviation for “Other Government Agency,” usually refers to the CIA. In this case, though, the CID

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investigation into Abdul Jameel's death shows that he was interrogated by Operational Detachment Alpha (ODA) 525, of the 5th Special Forces Groups, and "OGA" may be a mistaken transcription of "ODA". However, there is a press report of possible CIA involvement in Jameel's death, and several pages of the CID file are absent as they are "civilian agency records." U.S. Army Crim. Investigative Div., File No. 009-04-CID679-83486 at 392 [hereinafter Jameel CID file], available at <http://www.thetorturedatabase.org/document/cid-report-death-009-04-cid679-83486>

<sup>166</sup> The hyoid bone is located in the neck, and is frequently fractured in homicides caused by strangulation.

<sup>167</sup> Jameel CID file, *supra* note 165, at 119.

<sup>168</sup> *Id.* at 59, 67.

<sup>169</sup> *Id.* at 99 (medical examiners stated that detainee had an unhealthy heart), at 101 (witness believed detainee to be "at least seventy years old and emotionally unsound"), at 123 (description of detainee as an "old man"), at 301 (detainee told medical screeners that he was diabetic and had high blood pressure).

<sup>170</sup> *Id.* at 202, 358

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 5, 9.

<sup>173</sup> *Id.* at 326.

<sup>174</sup> *Id.* at 9.

<sup>175</sup> *Id.* at 95.

<sup>176</sup> U.S. Army CID Press Release, *Army Criminal Investigators Outline 27 Confirmed or Suspected Detainee Homicides for Operation Iraqi Freedom, Operation Enduring Freedom* (Mar. 25, 2005), available at <http://www.cid.army.mil/Documents/OIF-OEF%20Homicides.pdf>.

<sup>177</sup> Richard Formica, *Article 15-6 Investigation of CJSOTF-AP and 5th SF Group Detention Operations* 46–48 (Nov. 2004) [hereinafter Formica Report], available at [http://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/dod054971.pdf](http://www.thetorturedatabase.org/files/foia_subsite/pdfs/dod054971.pdf)

<sup>178</sup> *Id.*

<sup>179</sup> Bybee Aug. 1 Interrogation Methods Memo, *supra* note 21.

<sup>180</sup> Formica Report, *supra* note 177, at 48–49, 72–73.

<sup>181</sup> Interview with detainees (conducted by Task Force staff member Katherine Hawkins and co-counsel in Istanbul, Turkey, July 2007) [interview notes on file with The Constitution Project].

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Joshua E.S. Phillips & Michael Montgomery, *What Killed Sergeant Gray*, Am. Radio Works (Jan. 2010), available at <http://americanradioworks.publicradio.org/features/vets/transcriptb.html>

<sup>186</sup> Levin Report, *supra* note 13, at 166–67.

<sup>187</sup> *Id.* at 169–70.

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<sup>188</sup> *Id.* at 191–97.

<sup>189</sup> SANCHEZ, *supra* note 40, at 266.

<sup>190</sup> Senate Armed Servs. Comm., *Testimony of Col. Marc Warren* (May 19, 2004).

<sup>191</sup> Douglas Jehl & Neil A. Lewis, *U.S. Military Disputed Protected Status of Prisoners Held in Iraq*, N.Y. TIMES (May 23, 2004), available at <http://www.nytimes.com/2004/05/23/world/reach-war-prisoners-us-military-disputed-protected-status-prisoners-held-iraq.html>

<sup>192</sup> Levin Report, *supra* note 13, at 203–04.

<sup>193</sup> *Id.* at 204–05.

<sup>194</sup> DICK CHENEY, IN MY TIME 420 (2011).

<sup>195</sup> JOHN YOO, WAR BY OTHER MEANS 195 (2006).

<sup>196</sup> CHRISTOPHER GRAVELINE & MICHAEL CLEMENS, THE SECRETS OF ABU GHRAIB REVEALED: AMERICAN SOLDIERS ON TRIAL 283 (2010).

<sup>197</sup> *Id.* at 121–22.

<sup>198</sup> PHILIP GOUREVITCH & ERROL MORRIS, STANDARD OPERATING PROCEDURE (2008).

<sup>199</sup> TAXI TO THE DARK SIDE, *supra* note 99.

<sup>200</sup> Fay Report *supra* note 145, at 89.

<sup>201</sup> ICRC, *Report on the Treatment by Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment, and Interrogation* 13 (Feb. 2004), available at <http://www.derechos.org/nizkor/us/doc/icrc-prisoner-report-feb-2004.pdf>

<sup>202</sup> *Id.* Detainees' psychological problems may not have resulted solely from abuse. The MPs have consistently reported that some hard site detainees were mentally disturbed, and were sent to Tier 1B from less secure areas of the prison as a disciplinary measure. *See, e.g.*, GOUREVITCH & MORRIS, *supra* note 198, at 144–45.

<sup>203</sup> For additional accounts of Forward Operating Base Tiger, *see* NO BLOOD, NO FOUL, *supra* note 104, at 25–37.

<sup>204</sup> *Id.* at 38–45. *See also* Peter Graff, *British Lawyer: U.S. Torture in Iraq Spread to Mosul*, REUTERS (Sept. 14, 2004), available at <http://www.commondreams.org/headlines04/0914-20.htm>; TONY LAGOURANIS & ALLEN MIKAELAN, FEAR UP HARSH 78–80 (2007).

<sup>205</sup> Ian Fishback, *A Matter of Honor*, WASH. POST (Sept. 28, 2005), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/27/AR2005092701527.html>; Hum. Rts. Watch, *Leadership Failure: Firsthand Accounts of Torture of Iraqi Detainees by the U.S. Army's 82nd Airborne Division* (Sept. 2005), available at <http://www.hrw.org/reports/2005/09/22/leadership-failure>

<sup>206</sup> *See generally* JOSHUA E.S. PHILLIPS, NONE OF US WERE LIKE THIS BEFORE (2011).

<sup>207</sup> Phillips & Montgomery, *supra* note 185.

<sup>208</sup> *Id.*

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<sup>209</sup> Thomas E. Ricks & Ann Scott Tyson, *Troops at Odds With Ethics Standards*, WASH. POST (May 5, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/04/AR2007050402151.html>

<sup>210</sup> General Charles C. Krulak & General Joseph P. Hoar, *It's Our Cage, Too*, WASH. POST (May 17, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/16/AR2007051602395.html>