CHAPTER 1 ENDNOTES

1 Guantánamo Remarks Cost Policy Chief His Job, CNN (Feb. 2, 2007), available at http://www.cnn.com/2007/US/02/02/gitmo.resignation (“When corporate CEOs see that those firms are representing the very terrorists who hit their bottom line back in 2001, those CEOs are going to make those law firms choose between representing terrorists or representing reputable firms.”).

2 Task Force staff interview with Moazzam Begg, Omar Deghayes, Bisher al-Rawi (Apr. 17, 2012) [hereinafter Begg, Deghayes, al-Rawi Interview].

3 Neil A. Lewis, U.S. Military Eroding Trust of Detainees, Lawyers Say, N.Y. Times (Mar. 9, 2005), available at http://www.nytimes.com/2005/03/08/world/americas/08iht-gtimo.html (“Another lawyer, Marc Falkoff of New York, whose firm represents several Yemenis at the naval base in Cuba, said some of his clients had told him that a person who said he was a lawyer and had civilian clothes had conferred several times with some detainees. That person, Falkoff said his clients had told him, later appeared at the detention center in uniform, leading the inmates to distrust anyone claiming to be a lawyer and acting in their interest.”). See also Neil A. Lewis, Detainee’s Lawyer Says Captors Foment Mistrust, N.Y. Times (Dec. 7, 2005), available at http://www.nytimes.com/2005/12/07/international/07hamdan.html (“The Guantánamo authorities violated a court order by moving a prisoner from the general population there and placing him in close contact with a hard-core operative for Al Qaeda known for urging detainees to refuse to cooperate with their lawyers, according to papers filed with the United States District Court here by Lt. Cmde. Charles D. Swift.”).

4 Lewis, U.S. Military Eroding Trust, supra note 3.

5 Begg, Deghayes, al-Rawi Interview, supra note 2.

6 Task Force staff interview with Clive Stafford Smith (Apr. 16, 2012); William Glaberson, Many Detainees at Guantánamo Refuse Lawyers, N.Y. Times (May 5, 2007), available at http://www.nytimes.com/2007/05/05/us/05gitmo.html (“Some people don’t have full trust in attorneys,’ Mr. Khussrof said, according to Mr. Remes’s notes. ‘They think you work for government.’ ”).

7 Begg, Deghayes, al-Rawi Interview, supra note 2.

8 Neil A. Lewis, Broad Use of Harsh Tactics is Described at Cuba Base, N.Y. Times (Oct. 17, 2004), available at http://www.nytimes.com/2004/10/17/politics/17gitmo.html (“They were also occasionally given milkshakes and hamburgers from the McDonald’s on the base”).


11 Levin Report, supra note 10, at 19.


13 Task Force staff interview with Col. (Ret.) Terry Carrico (Nov. 2, 2011) [hereinafter Carrico
Interview]. All the detainees had been transferred to Camp Delta by April 29, 2002.


15 *Id.*


19 Conover, *supra* note 16.


23 Task Force staff interview with Albert Shimkus (July 26, 2012) [hereinafter Shimkus Interview].

24 *Id.*

25 *Id.*

26 The next most impressive element of the public relations tour was a talk visitors had with the camp’s Muslim chaplain, Capt. James Yee, a Chinese-American graduate of West Point and a convert to Islam. Capt. Yee proudly explained how he played the Muslim call to prayer over the camp’s loudspeaker system several times a day as required. He also told visitors how he insured that the food was halal, religiously appropriate for consumption by Muslims. He was later arrested on suspicion of espionage by base commanders and held in harsh conditions for several months. He eventually underwent a preliminary court-martial. He was acquitted of anything connected to espionage — it became evident that investigators had a hair-trigger on their suspicions and misfired completely. Some other Muslims in the military were also wrongly suspected of nefarious activities on behalf of Al Qaeda. In Capt. Yee’s case, he was discovered in the course of the investigation to have had an extramarital affair at Guantánamo for which he was also charged. He was humiliated publicly when military prosecutors, finding their espionage case empty, enthusiastically presented details of Capt. Yee’s relationship with a female Navy reservist from California, as well as his internet pornography habits. It led to the end of his military career. See Tim Golden, *Loyalties and Suspicions: The Muslim Servicemen; How Dubious Evidence Spurred Relentless Guantánamo Spy Hunt*, N.Y. TIMES (Dec. 19, 2004), available at http://query.nytimes.com/gst/fullpage.html?res=9A04EDEC1230F93AA25751C1A9629C8B63

27 Shimkus Interview, *supra* note 23.
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28 See Faculty Profile, Albert J. Shimkus, U.S. Naval War College, http://www.usnwc.edu/Academics/Faculty/Albert-Shimkus.aspx

29 Shimkus Interview, supra note 23.

30 Id.

31 Begg, Deghayes, al-Rawi Interview, supra note 2.

32 Shimkus Interview, supra note 23.

33 Id.

34 Id.

35 Id.


37 Shimkus Interview, supra note 23.

38 Rosenberg, supra note 36.


44 A Nation Challenged; Air Campaign So Far, N.Y. TIMES (Oct. 13, 2001), available at http://www.nytimes.com/2001/10/13/us/a-nation-challenged-air-campaign-so-far.html; Dexter Filkins, A Nation Challenged; The Prisoners; Taliban Arab, Like Many, Longs for Home but Faces a Doubtful Fate, N.Y. TIMES (Dec. 2, 2001),

45 Task Force staff interview with anonymous source.

46 Chief Warrant Officer 3 Sharon Curcio, Generational Differences in Waging Jihad, MIL. REV. 84 (2005) (“The recruiters used visual displays of persecuted Muslims, and routinely exposed recruits to films that featured suffering women and children in refugee camps in Chechnya or Palestine.”).

47 Id.

48 Id.

49 Id. at 85.

50 Id. at 85–86.

51 Id. at 86 ("But why did the older men not expect retaliation after the 9/11 attack? Because there had been no significant retaliation after the terrorist attacks on the Khobar Towers housing complex in Dhahran, Saudi Arabia, and the USS Cole in Port Aden, Yemen. It was reasonable to assume the United States would, once again, do little. Al-Qaeda also did not want to alert the young recruits that a larger, more dangerous game might have just begun.").

52 Id. at 87 (“Arab recruits were told to exit Afghanistan as soon as possible because a price was on their heads. Many recruits sought cover in the Tora Bora Mountains but were caught in the bombing and suffered shrapnel wounds or lost limbs after stepping on landmines. … Quite a few hired Afghan guides to get them out of the mountains and spent many days on foot trying to get to the border. … Some recalled being rounded up and betrayed by Pakistanis who sold them to the Northern Alliance.”).


54 Id.

55 Andy Worthington, The Guantánamo Files 33–34 (2007); see also The Guantánamo Docket—Tariq Mahmoud Ahmed al Sawah, N.Y. TIMES, at http://projects.nytimes.com/guantanamo/detainees/535-tariq-mahmoud-ahmed-al-sawah/documents/4 (last visited June 13, 2012) (“Massoud and Dostum were our enemies before. They are fighting Muslims. There are no rules in the United States to prevent it if you want to fight for religion. There are no rules to direct me not to defend people. … If Massoud and Dostum are American allies, they were not an alliance before September 11th, were they? I think they were not American allies.”).


59 Some of the detainees, in a case that has puzzled observers, included former prisoners of the Taliban. The Taliban had considered them spies, but the arrival of Western forces was no help to them, as they were not freed, but were then taken in as U.S. detainees, held in Kandahar, and later Guantánamo. They were Jamal al-Harith, Abdul Rahim Al Ginco, Airat Vakhitov, Saddiq Ahmad Turkistani, and Abdul Hakim Bukhary. Their journey from Taliban prisoners to U.S. detention in Afghanistan to Guantánamo was obviously one of the most ironic and incomprehensible. See The Guantánamo Files, supra note 55, at 114; Tim Golden, Expecting U.S. Help, Sent to Guantánamo, N.Y. TIMES (Oct. 15, 2006), available at http://www.nytimes.com/2006/10/15/us/15gitmo.html

60 Cullen Murphy, Todd S. Purdum, David Rose & Phillippe Sands, Guantánamo: An Oral History, VANITY FAIR (Jan. 11, 2012) (“Maybe they had been picked up on the battlefield, and maybe they were involved in low-level insurgency. That would’ve been the worst of it with a large portion of these characters. The majority of the ones that I saw-really, we just didn’t have anything on them.”), available at http://www.vanityfair.com/politics/2012/01/guantanamo-bay-oral-history-201201


63 Id. at 12 (“The detainee participated in military operations against the United States and its coalition partners. 1. The detainee fled, along with others, when the United States forces bombed their camp. 2. The detainee was captured in Pakistan, along with other Uighur fighters.”).

64 Id. at 14.

65 The Guantánamo Files, supra note 55, at 34; The Guantánamo Docket, supra note 58.

66 The Interrogators, supra note 61, at 221.

67 Id. at 217.

68 Task Force staff interview with Richard Shiffrin (Mar. 9, 2012).

69 Id.

70 Eyewitness observation by Neil A. Lewis, Task Force staff Director.


75 Id. at 57.
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76 Task force staff interview with William H. Taft IV (Sept. 27, 2011).

77 Carrico Interview, supra note 13.


79 Carrico Interview, supra note 13.

80 Id.


82 Id.

83 Carrico Interview, supra note 13.


89 Id. at 62.


93 SANDS, supra note 85, at 77.

94 Levin Report, supra note 10, at 66-70.

95 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 85, at 77.

96 Levin Report, supra note 10, at 71.
409

97 GREENBERG & DRATEL, supra note 92, at 237.

98 Levin Report, supra note 10, at 96.

99 Id. at 60.


102 Id. at 27.


104 Id.


108 Id.


110 Task Force staff interview with Sherif El-Mashad (Aug. 13, 2012) (“As Muslims we don’t like to take off our clothes in front of men or women. They make you do it knowing the sensitivity of the issue.”).

111 Task Force staff interview with Sami al-Hajj (Oct. 6, 2011) [hereinafter al-Hajj Interview].

112 Id. (“Every 30 minutes, they come and say for you to move, move. They do this for 2 days, continuously.”).

113 Id.

114 Task Force staff interview with Sean Baker (Nov. 30, 2011) [hereinafter Baker Interview].

115 Amended Complaint, Baker v. United States, No. 05-221 (E.D. Ky. May 31, 2005); Decl. of


117 Task Force staff interview with Alberto Mora (Apr. 24, 2012) [hereinafter Mora Interview].


120 Mora Interview, *supra* note 117.

121 *Id.*


123 Mora Interview, *supra* note 117.

124 *Id.*

125 *Id.*

126 *Id.*

127 *Id.*

128 *Id.*

129 *Id.*

130 *Id.*


132 Mora Interview, *supra* note 117.

133 *Id.*

134 *Id.*

135 *Id.; See also* Eichenwald, *supra* note 131, at 453.

136 Eichenwald, *supra* note 131, at 455.


138 *Id.*

139 *Id.*
140 Id.


142 Rives Interview, *supra* note 137.

143 Id.

144 See Memoranda from JAGs (Feb.-March 2003), available at http://www.torturingdemocracy.org/documents/20030205.pdf

145 Id.

146 Mora Interview, *supra* note 117.

147 Id.

148 Id.

149 Id.

150 Id.


152 Id.


154 Id.


156 Id.

157 Mora Interview, *supra* note 117.


164 Interview with Sami al-Hajj, supra note 111.

165 Id.


167 Id.

168 Id.

169 *Guantánamo: An Oral History*, supra note 60.

170 Golden, supra note 166.


178 Id.


181 Task Force staff visit to Guantánamo Bay, supra note 174; Rosenberg, *Guantánamo’s Once-Hated Camp*, supra note 180.

182 Task Force staff visit to Guantánamo Bay, supra note 174.
183 Id.


186 Task Force staff visit to Guantánamo Bay, *supra* note 174.


189 Id.


193 Task Force staff visit to Guantánamo Bay, *supra* note 174.

194 Id.

195 Id.

196 Guantánamo: An Oral History, *supra* note 60 [Quote from Torin Nelson: “I realized that a large majority of the population just had no business being at Guantánamo”; Quote from Lawrence Wilkerson: “That first big tranche of prisoners was basically not captured by U.S. personnel. It was the Northern Alliance, the warlords associated therewith, and the Paks and others who gave us that first huge tranche, based on bonuses we paid them or based on their own sweep down from the border into Kabul. So in most cases we’ve initially accepted someone else’s word for their guilt.”]


198 Id.


207 Guantánamo: An Oral History, supra note 60.


211 David S. Cloud, Red Cross Cited Detainee Abuse Over a Year Ago, WALL ST. J. (May 10, 2004).


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219 Lewis, Red Cross Finds Detainee Abuse, supra note 212.


221 Eyewitness observation by Neil A. Lewis, Task Force staff director.

222 Lewis, Red Cross Criticizes Indefinite Detention, supra note 216.

223 Id.

224 Id.

225 Id.

226 Cloud, supra note 211.

227 Id.

228 Lewis, Red Cross Found Abuses, supra note 225.

229 Id.

230 Id.

231 Id.

232 Summary, June 04 ICRC Medical Visit to Guantánamo [June 2004] [on file with The Constitution Project]; Lewis, Red Cross Finds Detainee Abuse, supra note 212.

233 Lewis, Red Cross Finds Detainee Abuse, supra note 212.

234 Id.

235 Summary, June 04 ICRC Medical Visit, supra note 232.

236 Id.

237 Lewis, Red Cross Finds Detainee Abuse, supra note 212.

238 Task Force staff interview with Christophe Girod (Apr. 20, 2012) [hereinafter Girod Interview].
239  Id.


241  Summary, June 04 ICRC Medical Visit, supra note 232.

242  Girod Interview, supra note 238.

243  Id.

244  Id.

245  Id.

246  Id.

247  Id.
CHAPTER 2 ENDNOTES

1  Seymour Hersh, King’s Ransom: Exposing a Right Royal Mess, New Yorker (Oct. 22, 2001), available at http://www.newyorker.com/archive/2001/10/22/011022fa_FACT1

2  Alex Strick van Linschoten & Felix Kuehn, Separating the Taliban from al-Qaeda: The Core of Success in Afghanistan, NYU Ctr. for Int’l Cooperation (Feb. 2011), available at http://cic.es.its.nyu.edu/sites/default/files/gregg_sep_tal_al-Qaeda.pdf (“The Taliban and al-Qaeda remain distinct groups with different goals, ideologies, and sources of recruits; there was considerable friction between them before September 11, 2001, and today that friction persists.”); See also Nigel Inkster, The al-Qaeda-Taliban Nexus, Council on Foreign Rel. (Nov. 25, 2009), available at http://www.cfr.org/pakistan/al-qaeda-taliban-nexus/p20838 (“The Afghan Taliban were never that much in sympathy with al-Qaeda and the Afghan Arabs, and if you look at what happened in Afghanistan pre-9/11, you realize that the relationship was never very comfortable.”); see also Andy Worthington, The Guantanamo Files 2 (2007).

3  Worthington, supra note 2, at 2; See also George H. Aldrich, The Taliban, al Qaeda, and the Determination of Illegal Combatants, 96 AM. J. INT’L L. 891, 898 n.11 (2002) (“I know of no evidence suggesting that Qaeda personnel were incorporated in Taliban military units as part of the Taliban armed forces.”).


5  Brian Whitaker, Taliban Agreed to Bin Laden Handover in 1998, GUARDIAN (UK) (Nov. 4, 2001), available at http://www.guardian.co.uk/world/2001/nov/05/afghanistan.terrorism3

6  Worthington, supra note 2, at 1.


8  Alex Strick Van Linschoten & Felix Kuehn, An Enemy We Created: The Myth of the Taliban-Al-Qaeda Merger in Afghanistan 234 (2012) (“Even the Mullah Mohammed Omar did not believe that the United States would launch a full-scale attack”; id. at 237 (“The lack of Taliban preparation was undoubtedly an important reason why a defeat of their government and military forces was so swiftly accomplished.”)).


10  Id.


12  Id.

13  Id.

14  Id.
Id.

Id.


Mayer *supra* note 11, at 76.

Id. at 77.


Id.

Id. at 11.


Jim Sciutto & Don Dahler, *Hundreds of Taliban Surrender at Kunduz*, *ABC News* (Nov. 24, 2001), available at http://abcnews.go.com/International/story?id=80387 (“Northern Alliance officials say more than 1,100 of perhaps 13,000 Afghan and foreign soldiers believed to be defending the last Taliban stronghold in northern Afghanistan either surrendered or switched sides today”).

Paul Salopek, *Shipping Containers Adorn the Countryside*, *Sun Sentinel* (Jan. 1, 2002), available at http://articles.sun-sentinel.com/2002-01-01/news/0112310549_1_afghanistan-malik-pahlawan-containers (“Container death” has been a common form of execution in Afghanistan at least since 1997. That year, a ruthless Uzbek general named Malik Pahlawan is alleged to have suffocated at least 1,250 captured Taliban soldiers inside containers. The Taliban repaid the favor by killing hundreds of Pahlawan’s Hazara allies in a similarly horrible manner a year later”); Wortington, *supra* note 2.


Wortington, *supra* note 2, at 22.


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34  Id.

35  Id.

36  Id.


40  Chris Mackey & Greg Miller, The Interrogators 113 (2004).

41  Id.


44  Mackey & Miller, supra note 40, at 235.


47  Id.

48  Id.


50  Id. at 166.


52  Task Force staff interview with Joshua Claus (July 13, 2011) [hereinafter Claus Interview].

54  Mackey & Miller, supra note 40, at 7.

55  Task Force staff interview with Sami al-Hajj (Oct. 6, 2011) [hereinafter al-Hajj Interview].


57  David Hicks, Guantánamo: My Journey 206 (2011).

58  Id. at 209.


61  Id.

62  Claus Interview, supra note 52.

63  Former FBI interrogator Ali Soufan, wrote in his 2011 book, Black Banners, that he believed Begg was guilty of helping to raise funds for the Khalden training camp in Afghanistan. Of Begg, Soufan wrote “British Pakistani extremist who operated al-Ansar, a bookstore in Birmingham, and helped raise funds for the Khaldan training camp. He escaped from England to Afghanistan when British authorities tried to arrest him.”


66  Id.


68  Id.

69  Id.

70  Id.

71  NOW Interview, supra note 65.


73  Id.

74  Task Force staff interview with Moazzam Begg (Apr. 17, 2012).

75  Id.
76 Id.


78 Id.

79 Id. at 12 (“The detainee participated in military operations against the United States and its coalition partners. 1. The detainee fled, along with others, when the United States forces bombed their camp. 2. The detainee was captured in Pakistan, along with other Uigher fighters.”).

80 Id. at 14.

81 *Worthington*, *supra* note 2, at 34.

82 *Mackey & Miller*, *supra* note 40, at 221.

83 Cullen Murphy, Todd S. Purdum, David Rose & Philippe Sands, *Guantánamo: An Oral History*, *Vanity Fair* (Jan. 11, 2012) [hereinafter *Guantánamo: An Oral History*], available at http://www.vanityfair.com/politics/2012/01/guantanamo-bay-oral-history-201201 (“Maybe they had been picked up on the battlefield, and maybe they were involved in low-level insurgency. That would’ve been the worst of it with a large portion of these characters. The majority of the ones that I saw — really, we just didn’t have anything on them.”).

84 *Mackey & Miller*, *supra* note 40, at 220.

85 Id. at 221.

86 Claus Interview, *supra* note 52.


89 *Abdul Salam Zaeef, My Life With the Taliban* 182 (2010).


94 Summary of Open Source Materials in the case of Noor Uthman Muhammed before the Office of Military Commissions (Jan. 2011) [hereinafter Noor Uthman Muhammed Fact Summary].

95 Claus Interview, *supra* note 52.

96 Al-Haji Interview, *supra* note 55.
97  NOW Interview, supra note 65.


99  Claus Interview, supra note 52.


101  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 (“At the C.I.A. in December 2001, Dr. Mitchell’s theories were attracting high-level attention. Agency officials asked him to review a Qaeda manual, seized in England, that coached terrorist operatives to resist interrogations. He contacted Dr. Jensen, and the two men wrote the first proposal to turn the enemy’s brutal techniques — slaps, stress positions, sleep deprivation, wall-slamming and waterboarding — into an American interrogation program.”).


104  Id.


106  Sworn Statement of Jeff Allan Bovarnick 49 (May 26, 2008), available at http://detaineetaskforce.org


108  Golden (May 20, 2005), supra note 103.

109  Claus Interview, supra note 52.


111  Sworn Statement, Selena Marie Salcedo 55 (Sept. 15, 2005) http://detaineetaskforce.org


113  Task Force staff interview with Angela Birt (July 20, 2011).

114  Id.


117  Id.

118  See Noor Uthman Muhammed Fact Summary, supra note 94.

119  Id.


121  Claus Interview, supra note 52.

122  Task Force staff interview with Col. (Ret.) Stuart Herrington (June 20, 1012).

123  MAYER, supra note 11, at 144.

124  Id. at 146.


126  HUM. RTS. WATCH, supra note 7, at 36.

127  Id.

128  Id. at 32.

129  Church Report Summ., supra note 51, at 18.


133  Id. at 3.

134  Id.

135  Id. at 4.


137  Jacoby Report, supra note 59, at 3.

138  Id. at 4.

139  Id.

140  Id. at 15.
141 Id. at Encl. P, at p. 78.

142 Id.


144 Id. at 10.

145 Id. at 15.

146 Id. at 11.

147 Id. at 16.


153 Jeff A. Bovarnick, Detainee Review Boards in Afghanistan: From Strategic Liability to Legitimacy, 2010 ARMY LAWYER 9, 25 (2010) (“The detainees regularly play soccer in a large recreation yard which has basketball hoops at either end. There is a large vocational training area, and the officer-in-charge of rehabilitation programs is implementing practical programs such as tailoring, baking, farming, and artistry that will benefit the detainees upon release.”); see also Tom Jones, CJIATF 435 Bringing Power to ANA Life Support Area, Local Villages, U.S. Cent. Command (Aug. 13, 2011), available at http://www.centcom.mil/news/cjiatf-435-bringing-power-to-ana-life-support-area-local-villages (To prepare for a transition of control from the ISAF and U.S. forces to the Afghan authorities of the Parwan Detention Facility, Task Force-435 began working on connecting the facility, and thereby surrounding villages, to the national power grid. The project would provide opportunities for employment for local workers and Afghan contractors as well as guaranteeing a reliable power source for villagers in the area.).


156 Golden (Jan. 7. 2008), supra note 150.


Id. at F-1, p. 50.

Id. at F-4, p. 54.

McCHRISTAL, supra note 45, at 178.

Id. at 199.


Bovarnick, supra note 153.

Id.

Id. at 18.

Id., at 19.

Id. at 19–20 ("The panel of three officers also had the responsibility of dividing the detainees into separate categories: High Level Enemy Combatant (HLEC); Low Level Enemy Combatant (LLEC); and Threat only. Those who were to be released were categorized as No Longer Enemy Combatant (NLEC). As the UECRB worked its way through the [sic] hundred detainees in the BTIE, the files of all detainees assessed as LLECs were transferred to the DAB. The DAB, comprised of military intelligence analysts and military criminal investigators, assessed the detainee files for potential transfer to Afghan authorities for prosecution. To support the Rule of Law mission, the DAB would only recommend transfer of cases for prosecution if there was solid evidence. Those detainees not recommended for transfer remained interned until their next review in six months.").


Hum. Rts. First, Fixing Bagram: Strengthening Detention Reforms to Align with U.S. Strategic Priorities 2–3 (2009). available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Fixing-Bagram-110409.pdf ("On the other hand, similarities between the DRBs and the discredited Combatant Status Review Tribunals (CSRTs) in Guantánamo are cause for concern. Specific problems with the CSRTs that may also arise in the DRBs involve enforcement of detainees’ entitlement to exculpatory information and their ability to review and challenge the evidence against them and produce their own evidence, including
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witnesses, all in the absence of entitlement to legal representation or independent review of their detention.”).

174 Bovarnick, supra note 153, at 22–24.

175 Id.


177 Bovarnick, supra note 153, at 23 (“Since March 2010, the inclusion of Afghan witness testimony has had a noticeable impact on the DRB process, not only in terms of logistics, but also in the frequency of releases for detainees supported by witness testimony.”).

178 Hum. Rts. First, Detained and Denied in Afghanistan 2 (May 2011) [hereinafter Detained and Denied], available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Detained-Denied-in-Afghanistan.pdf (“Former detainees we interviewed repeatedly emphasized that they believed they were wrongly imprisoned based on false information provided to U.S. forces by personal, family or tribal enemies, a view that they took back to their villages after their eventual release. Afghan lawyers and human rights workers confirmed that this is a big problem in Afghanistan, as have recent news reports.”).

179 Id. at 3.

180 Bovarnick, supra note 153, at 35 (“During roughly the same period — 6 March to 18 June 2010 — a total of 581 DRBs were conducted. In the 404 cases where no witnesses appeared, the board recommended continued interment in 55% of the cases. In the 177 cases, which involved either live or telephonic witnesses, the continued interment rates were considerably lower: 43% and 48% respectively.”).

181 Id. (“In large part, that is because the detainees are not represented by legal counsel in these proceedings, known as Detainee Review Boards. The detainees’ ‘personal representatives’ are uniformed U.S. soldiers with no legal background or training in the culture or language of the detainees they represent. Moreover, with only 15 such representatives assigned to Bagram at the time of this report, each representative is responsible for the defense of more than 100 detainees.”).

182 Id. (“Moreover, while most forensic evidence, which is more likely to be reliable, is not classified, evidence provided by informants, which is far more difficult to verify, is classified. These informants are never tested. It is also impossible to know if the classified evidence includes statements elicited from the detainee or from witnesses by coercion, torture, or cruel, inhuman or degrading treatment, despite the military’s rule excluding tortured evidence. Such evidentiary rules can only be enforced if the evidence can be tested in a truly adversarial system.”); Hum. Rts. First, Undue Process: An Examination of Detention and Trials of Bagram Detainees in April 2009 (2009), available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Undue-Process-Afghanistan-web.pdf

183 Detained and Denied, supra note 178, at 4.


187 Andrew Woods, “Good Muslim, Good Citizen” And Other Lesson Plans from Iraq Prisons, SLATE [Jan. 23, 2009] available at http://www.slate.com/articles/life/faithbased/2008/07/good_muslim_good_citizen.html (“Prisons are where so many Islamist identities are born, nurtured, and plugged into violent networks. It was in Cairo’s prisons that Sayyid Qutb crafted an intellectual framework for modern Islamist terrorism, and Ayman al-Zawahiri underwent the transformation that would lead him to launch al-Qaida. … And now, along comes a Marine reservist from California, hard as hell, McKinsey-savvy, who claims he can turn detention facilities into a strategic asset.”).


189 Id.


194 McChrystal Assessment, supra note 161, at § 2-7, p. 15.


197 Id.

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199  Id.

200  Open Soc’y Founds., supra note 155, at 3.

201  Id. at 4.


203  Task Force staff interviews (Nov. 2012).


205  Id.


209  Id.


211  Savage & Bowley, supra note 198.

212  Id.


214  Task Force staff interview with Senator Lindsey Graham (June 12, 2012).

CHAPTER 3 ENDNOTES


3 Id. at 163.

4 Id. at 162.

5 Id. at 163.

6 Id.


9 Id. at 13.

10 Id. at 3, 28–29.

11 Id. at 73.


13 Levin Report, supra note 2, at 160-61; DOD IG Report, supra note 1, at 26.

14 Levin Report, supra note 2, at 161.


16 Levin Report, supra note 2, at 160. Koenig’s name is redacted from the report but he was later identified in congressional testimony by Col. Randy Moulton, supra note 15.

17 Levin Report, supra note 2, at 160.

18 Id.

19 Moulton Testimony, supra note 15, at 21.

20 Levin Report, supra note 2, at 170-71.
21 Task Force staff interview with Col. (Ret.) Steven Kleinman [June 19, 2012] [hereinafter Kleinman Interview].

22 Levin Report, supra note 2, at 176.


24 Levin Report, supra note 2, at 176–78. Russell later told Senate Armed Service Committee staff that Kleinman should have intervened through the interrogator’s chain of command. Id.

25 Kleinman Testimony, supra at note 23, at 14.

26 Levin Report, supra note 2, at 179.

27 Kleinman Testimony, supra note 23, at 19.

28 Id.

29 Levin Report, supra note 2, at 181–82.

30 Id. at 182.

31 Kleinman Interview, supra note 21.

32 Id.

33 Id. Levin Report, supra note 2, at 186.

34 Kleinman Interview, supra note 21.

35 Levin Report, supra note 2, at 193-94.

36 Kleinman Interview, supra note 21.


39 Id.


41 Id.; Herrington Report, supra note 38.

42 Herrington Army OIG interview, supra note 12, at 9–10.

Endnotes

44 Id. at 14.

45 Id. at 7–8.

46 Id. at 13.

47 Id. at 16–17.

48 Task Force staff interview with Angela Birt (July 20, 2011).


50 Memorandum from Vice Adm. Lowell Jacoby (Dir., DIA) to Stephen Cambone (Undersecretary of Defense for Intelligence), Alleged Detainee Abuse by TF 6-6 Personnel (June 25, 2004), available at http://www1.umn.edu/humanrts/OathBetrayed/DOD%2020596-0297.pdf


52 Schmitt & Marshall, supra note 40.

53 DOD IG Report, supra note 1, at 16.

54 Seymour M. Hersh, The Gray Zone, NEW YORKER (May 24, 2004), available at http://www.newyorker.com/archive/2004/05/24/040524fa_fact

55 Id.


57 ANTHONY SHAFFER, OPERATION DARK HEART (2010) (unredacted version), available at http://www.fas.org/sgp/news/2010/09/dark-contrast.pdf. The reference to “Copper Green” has been removed from most copies of the book. The Army initially approved Shaffer’s book for publication with minor redactions. After the first printing, however, the DIA and NSA read the book, and decided that much more of the book needed to be deleted or redacted. The Department of Defense purchased and destroyed the first printing of approximately 10,000 copies, but was not able to destroy advance review copies that were already circulating.


59 Al-Ani CID file, supra note 8, at 99.


62 Id. at 296. See also id. at 44, 539.


64 Dababa CID file, supra note 61, at 338.

65 Autopsy, Dababa, supra note 63.

66 Dababa CID file, supra note 61, at 18–19, 30, 126

67 Id. at 15–16, 149, 156

68 Id. at 16–19, 26–30, 53, 55, 132

69 Id. at 275.

70 Id. at 248.


73 Id.

74 McChesney, supra note 71.

75 Id.

76 Mayer, A Deadly Interrogation, supra note 71.

77 McChesney, supra note 71.

78 Mayer, A Deadly Interrogation, supra note 71.

79 Id.


82 U.S. Army Criminal Investigative Div., Interview of Charles Graner, at 247 [on file with The Constitution Project].

83 Id. at 273–74.

84 Abu Ghraib MP logbook at 23 [on file with The Constitution Project]; U.S. Army Criminal
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Endnotes

85 Abu Ghraib MP logbook, supra note 84, at 16.

86 Id. at 24.

87 Mayer, A Deadly Interrogation, supra note 71.


90 Jamadi CID file, supra note 72, at 96.

91 Id.

92 Id.


94 Id.

95 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).

96 Court-Martial Record, United States v. Welshofer, supra note 95.

97 Id. at 134–36 (Testimony of Jerry Loper).

98 Id. at 53–54 (Testimony of Jefferson Williams).

99 Id. at 101–02 (Testimony of Todd Sonnek).

100 Id. at 177 (Testimony of Lewis Welshofer).

101 George Tenet & Bill Harlow, At the Center of the Storm: My Years at the CIA 388 (2007).

102 See generally Court-Martial Record, United States v. Welshofer, supra note 95.


104 Court-Martial Record, United States v. Welshofer, supra note 95, at 52–54, 64–66, 69–74, 104–05.


106 Court-Martial Record, United States v. Welshofer, supra note 95, at 93.


109  Detainee Autopsy Summary (Sept. 23, 2004), available at http://dspace.wrlc.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 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 Criminal 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

110  The hyoid bone is located in the neck, and is frequently fractured in homicides caused by strangulation.

111  Jameel CID file, supra note 109, at 119.

112  Id. at 59, 67.

113  Id. at 99 (medical examiners stated that detainee had an unhealthy heart); 101 (witness believed detainee to be “at least seventy years old and emotionally unsound”); 123 (description of detainee as an “old man”); 301 (detainee told medical screeners that he was diabetic and had high blood pressure).

114  Id. at 202, 358

115  Id.

116  Id. at 5, 9.

117  Id. at 326.

118  Id. at 9.

119  Id. at 95.


122  Id. at 16.

123  Id.

124  Id.

125  Id.
126 Id. at 52.
127 Id. at 65, 88.
129 Id.
132 Id. at 227.
133 Id.
136 McChrystal, supra note 131, at 228.
138 McChrystal, supra note 131, at 229.
139 Id.
140 Urban, supra note 137, at 87.
141 Id. at 87.
142 Id. at 187.
143 McChrystal, supra note 131, at 229.
145 Id.
146 Id. at 48–49, 72–73.
147 Interviews with detainees (conducted by Katherine Hawkins et al. in Istanbul, Turkey, July 2007) [interview notes on file with The Constitution Project].
148 Id.
149 Id.
150 Id.

151 McChrystal, supra note 131, at 230.

152 Id. at 231.

153 Id.


155 Id.

156 Id.


161 Id.

162 Id. at 169–70.

163 Id. at 191–97.

164 Sanchez, supra note 159, at 266.


167 Levin Report, supra note 2, at 203–04.

168 Id. at 204–05.


170 Id. at 121–22.

171 Fay Report, supra note 89, at 71.

172 Taguba Report, supra note 88, at 18.


174 Taguba has said to New Yorker reporter Seymour Hersh that he believed his military career hit a dead end as a result of his report. See Seymour Hersh, The General’s Report, New Yorker [June 25, 2007], available at http://www.newyorker.com/reporting/2007/06/25/070625fa_fact_hersh. He confirmed
this to Task Force staff, and recounted that that shortly before his retirement a higher ranking general, someone he described as an old friend, had called him and told him, “you know you’re blacklisted.”


176 The interview appears in Taxi to the Dark Side (2007).

177 Fay Report, supra note 89, at 89.

178 Id. at 88.

179 Id. at 90.


181 Id.

182 Id.

183 Id.

184 Letter reprinted in Gourevitch & Morris, supra note 175, at 110–11.

185 Interview with Sabrina Harman (conducted by Katherine Hawkins et al. in Washington, D.C. in 2007) [notes on file with The Constitution Project].

186 Id.

187 U.S. Army Criminal Investigative Division, Interview of Charles Graner, supra note 82, at 223.

188 Id.


190 Taguba Report, supra note 88, at 18; Fay Report, supra note 89, at 74-75. Waleed is referred to as “Detainee-07” in the Fay Report.

191 Translated deposition testimony of Amjad Ismail Waleed, United States v. Harman (Feb. 2005) [on file with The Constitution Project].


193 U.S. Army Criminal Investigative Div., Interview of Ivan Frederick at 44–45, 49–50, 84–85 [on file with The Constitution Project].

194 Court-Martial Record, United States v. Smith, at 469–70 (Testimony of Ivan Frederick).


196 Interview of Ivan Frederick, supra note 193, at 101.

197 Richard A. Serrano, Two Army Dog Handlers Charged in Abuse Scandal, L.A. Times (June 3, 2005),


208 Task force staff interview with Col. (Ret.) Stuart Herrington [June 20, 2012] [hereinafter Herrington Interview].


210 Herrington Interview, *supra* note 208.


213 *Id.*

214 *Id.* at 80.


218  Id.


221  No Blood, No Foul, supra note 43, at 45.


223  Former U.S. Army Interrogator Describes the Harsh Techniques He Used in Iraq, Detainee Abuse by Marines and Navy SEALs and Why “Torture is the Worst Possible Thing We Could Do,” Democracy Now! (Nov. 15, 2005), available at http://www.democracynow.org/2005/11/15/former_u_s_army_interrogator_describes


225  No Blood, No Foul, supra note 43.

226  Id.

227  Id.


229  Id. at 11.

230  Id. at 16

231  Id.


233  Leadership Failure, supra note 228, at 17–18.

234  Phillips, supra note 215.

235  Id.

236  Id. at 101.

237  Id. at 106.


240 Id.


242 Id.

243 Id.

244 Id.


246 Id.

247 Task Force staff interview with Maj. Gen. (Ret.) William Brandenburg (Sept. 26, 2011) [hereinafter Brandenburg Interview].

248 Id.

249 Id.


252 Id.

253 Brandenburg Interview, supra note 247.


255 Id.

Endnotes


258 Stone Interview, *supra* note 254.

259 Gamel, *supra* note 257.


261 Stone Interview, *supra* note 254.

262 Id.

263 Id.


266 Id.

267 Stone Interview, *supra* note 254.

268 There was one exception: Ali Omar Ibrahim al-Mohammed Amin, a journalist who was arrested multiple times. He acknowledged that he had fought against Americans and fought for the insurgency. He did not know if he had ever injured or killed anybody, and the leader of his group told him he was not a competent soldier, but “[o]nce I burned a Bradley vehicle,” he said. He said he had been honest with interrogators about his involvement in the insurgency. Task Force staff interview with Ali Omar Ibrahim al-Mohammed al-Amin (Aug. 25, 2012).

269 Task Force staff interview with Nuri Nejem Abdullah (Aug. 27, 2012).

270 Id.

271 Id.

272 Task force staff interviews with Saad Rahim Abdelalratha (Sept. 1, 2012); Mohammed Abdwariya (Aug. 25, 2012); Nuri Nejem Abdullah (Aug. 27, 2012); Tay Rahm Addularida (Aug. 27, 2012); Tamer Abdullah Abass al-Ameri (Aug. 28, 2012); Ali Omar Ibrahim al-Mohammed al-Amin (Aug. 25, 2012); Saddam Rahm (Aug. 28, 2012). There are troubling reports made by some Iraqis in interviews with Task Force staff that U.S. forces who came to their homes to make arrests also pillaged valuables. The accounts of Iraqi detainees as to what they claim was taken are specific and explicit, although there is no feasible way to properly evaluate what are only uncorroborated allegations. Of the more than two dozen Iraqis interviewed about their detention experiences, about a third reported that during the raids that led to their arrests, some soldiers took cash or gold, which Iraqis typically keep in their homes. One man said that at the time of his arrest, soldiers took cash, gold and a locked safe. He said he saw the safe later at the detention center to which he had been taken and that it had been broken open. He said that all the money and gold that had been in the safe was returned to him later but not the money and gold taken during the raid. Lt. Col. Todd Breascale, a Defense Department spokesman said in response to a
request for comment that, “Allegations of this sort became a kind of cottage industry for a minority of those affected and are not only absolutely baseless but simply do not withstand meaningful, intellectual rigor.” The Task Force emphasizes that it takes no position on the veracity of these uncorroborated allegations. Nonetheless, the Task Force thought it appropriate to note the existence of these reports for several reasons. They would be criminal violations of the Uniform Code of Military Justice and cannot be dismissed as implausible on their face. And, to whatever extent any of the accounts might be true, it would signify a lack of proper supervision and a failure of command discipline, which comports with documented and lamentable failures in the military command structure that the Task Force believes contributed to many of the verifiable incidents of physical abuse and torture that occurred.

273 Task force staff interview with Saddam Rahm (Aug. 28, 2012).

274 Task force staff interview with Tay Rahm Addularida (Aug. 27, 2012).
CHAPTER 4 ENDNOTES


2  U.S. Const. amend. V.

3  Id. amend. XIV.

4  Id. amend. VIII.


6  The Geneva Conventions were ratified by the United States in 1955. The four Conventions include: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first adopted 1864, last revision in 1949) [hereinafter GCI]; Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (first adopted in 1949, successor of the 1907 Hague Convention X) [hereinafter GCII]; Third Geneva Convention Relative to the Treatment of Prisoners of War (first adopted in 1929, last revision 1949) [hereinafter GCIII]; Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (first adopted in 1949) [hereinafter GCIV]. The two Conventions applicable to detainees are the Third and Fourth Geneva Conventions.

7  The law of war is referred to as “international humanitarian law” (IHL) and the law of armed conflict (LOAC). Those terms are used interchangeably in this report.


9  The Geneva Conventions were adopted on August 12, 1949, and ratified by the United States in February 1955.


12 See supra note 6.


15 At a speech commemorating the Geneva Conventions’ 60th anniversary at the Library of Congress, Susan Rice, U.S. ambassador to the U.N., noted: “We embrace the Geneva Conventions because it is the right thing to do. … We embrace them because hard experiences have taught us that
we are safer and stronger when we do. The United States will support and advance international humanitarian law, both as a matter of national policy and as a basic precept for the entire international community." Kimberly Rieken, *Honoring the Geneva Conventions* (Jan.–Feb. 2010), available at http://www.loc.gov/loc/lcib/10012/conference.html


19  GCI, GCII, GCIII, GCIV art. 3.

20  *Id.*

21  *Id.* art. 3(1).

22  *Id.* art. 3(1)(a)–(d).

23  *Id.* art. 3(1).

24  GCIII.

25  GCIV.

26  Commentary to GCIII art. 3 ¶ 1(1)(A).

27  *Id.*

28  GCIII art. 2.

29  *Id.* art. 3 (Note that no statuses apply here in the only provision addressing noninternational armed conflict).

30  GCIV.

31  GCI, GCII, GCIII, GCIV art. 3.

32  Customary international law (CIL), which emerges from a general and consistent practice of states followed out of a sense of legal obligation, is binding on all states irrespective of implementing domestic legislation or treaty ratification. CIL is considered binding international law within the United States. *See* Corfu Channel Case (U.K. v. Alb.) 1949 I.C.J. 4, 22 (Apr. 9, 1949); Paquete Habana, 175 U.S. 677, 700 (1900) (holding that "International Law is part of our law.").

34 GCI, GCII, GCIII, GCIV art. 3(1)(a)–(d) (emphasis added). Common Article 3 also prohibits hostage taking and requires care for the wounded and sick. These provisions are not quoted since they have lesser application to detainees.

35 See, e.g., Prosecutor v. Tadić, Case No. IT-94-1-A, Decision on Defence Motion on Jurisdiction, ¶ 65-74 (August 10, 1995) (finding that Common Art. 3 applied to the conflict in the former Yugoslavia whether or not that conflict was characterized as international or internal in scope. And, stating that Common Art. 3 sets forth “the most fundamental requirements of the law of war”); Military and Paramilitary Activities (Nicaragua v. U.S.), 1986 I.C.J. 14, 113-14 (June 27) (stating that “[t]here is no doubt that, in the event of international armed conflicts, [the provisions of Article 3] constitute a minimum yardstick. … Because the minimum rules applicable to international and non-international conflicts are identical, there is no need to address the question whether [the actions alleged to be in violation of Common Art. 3] must be looked at in the context of the rules which operate for one or for the other category of conflict.”).

36 Hamdan, 548 U.S. 557.


38 See, e.g., CAT, supra note 37, art. 7; GCI, GCII, GCIII, GCIV art. 3(1)(c); 18 U.S.C. § 2441(d)(b).

39 In subsequent laws these concepts are generally stated together as a ban on “Cruel, Inhuman or Degrading treatment.” For purposes of brevity this report will shorthand this as “CID.” See, e.g., 18 U.S.C. § 2441(d)(1)(B); CAT, supra note 37, art. 16.

40 CAT, supra note 37, arts. 5, 7.

41 GCI, GCII, GCIII, GCIV art. 3(1)(d).


43 Hamdan, 548 U.S. at 632–33 (stating that the definition of “regularly constituted” is specific to the U.S., and in the U.S., courts-martial, not military commissions, are the “regularly constituted” courts. As such, the latter can be used only if there is a practical need for their deviation from that which is “regularly constituted.” In Hamdan, the Supreme Court in 2006 held that the government failed to show such a practical need.).

44 GCIII art. 3.

45 Id. art. 4.

46 Id. art. 5.

47 Id. arts. 2–78.

48 Id. art. 4.

49 Id. art. 4(A)(1).

50 Id. art. 4(A)(2)(a)–(d).
Civilians are defined, in Art. 50(1) Additional Protocol I of 1977, as individuals not belonging to one of the categories of persons referred to in Art. 4(A)(1),(2),(3), and (6) of GCIII as well as in Art. 43 of the Protocol. See Protocol I (1977): Protocol to the Geneva Conventions of Aug. 12, 1949, relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, available at http://www.icrc.org/ihl.nsf/full/470

Commentary to GCIV, supra note 11, art. 42 ¶ 1 (stating that “[t]he Convention stresses the exceptional character of measures of internment and assigned residence by making their application subject to strict conditions,” and that such measures are “exceptional” in character).

GCIV art. 5.

Id.

Id.

Id. art. 78; see also Jelena Pejic, Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence, 87 INT'L REV. OF RED CROSS 375, 381 (2005), available at http://www.icrc.org/eng/assets/files/other/icrc_002_0892.pdf

GCIV art. 78.

Id.

Id. art. 147.

Id. art. 132.

Id. art. 27.

Id. art. 43.


The codified prohibition against torture goes back at least to the American Civil War, when it was absolutely banned in the 1863 Lieber Code. See 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).

CAT, supra note 37, art. 16.
To date, the United States has presented two periodic reports to the Committee Against Torture.

DOS observed that the U.S. took note of torture elsewhere, stating that “[t]he U.S. government pursues allegations of torture by other governments as an integral part of its overall human rights policy.”

According to the Vienna Convention on the Law of Treaties, which governs the interpretation and binding force of treaties, a reservation is “a unilateral statement … whereby [a State] purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” By contrast, understandings are statements interpreting the treaty language, and declarations are statements of purpose or position regarding the subject matter of the treaty. While reservations modify a state’s obligations under a treaty, understandings and declarations do not.

The text of the provision defining torture is:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

There were further understandings and declarations made with regard to Art. 1, but here we address only those that pertain to detainee treatment.
85  Id.

86  CAT, supra note 37, art. 16(1).

87  U.S. Reservations, supra note 82.

88  U.S. Initial Report, supra note 68.

89  CAT, supra note 37, art. 16.

90  CAT, General Comment No. 2, (Jan. 24, 2008) available at http://www.unhcr.org/refworld/publisher, CAT,GENERAL,,47ac78ce2,0.html. Although General Comments by U.N. treaty bodies are not legally binding, they provide authoritative guidance regarding the object and purpose of the treaty.

91  CAT, supra note 37, art. 2(1). Here as in other instances, U.S. law involved the interplay of international and domestic law. The Senate consented to ratification of CAT after a domestic torture statute (18 U.S.C. §§ 2340-2340A) had been adopted, as required to fulfill this requirement to enact domestic legislation.

92  Id. art. 2(4).

93  Id. arts. 2(2), 2(3).

94  U.S. Reservations, supra note 82.

95  CAT, supra note 37, art. 10.

96  Id.

97  Id. art. 12.

98  Id. art. 16(2).

99  CAT, supra note 37, art. 15 (emphasis added).

100  Id.


102  Id.

103  Id.


106  CAT, supra note 37, art. 7.


108  Id. § 2441.
109 Id.

110 Id.

111 Id. Under the Conventions, “grave breaches” in international conflicts are willful killing, torture or inhuman treatment, biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of a hostile power, or willfully depriving a prisoner of war of the rights of fair and regular trial. GCIII art. 129.


114 Id./Art. 3 establishes that “[e]veryone has the right to life, liberty and the security of person.” Art. 9 holds that “no one shall be subjected to arbitrary arrest, detention or exile.” Art. 10 establishes the right to “a fair and public hearing by an independent and impartial tribunal … to any criminal charges against him,” and Art. 11(1) confirms the “right to be presumed innocent until proven guilty according to law in a public trial in which he has had all the guarantees for his defence.”


118 David P. Stewart, The Significance of the Reservations, Understandings, and Declarations, 42 DePaul L. Rev. 1183, 1187–88 (1993). The ICCPR is similar in some respects to the U.S. Bill of Rights, as it recognizes freedom of thought, conscience, and religion (Art. 18(1)); freedom of opinion and expression (Art. 19(1)–(2)); freedom of association (Art. 22); the right of peaceful assembly (Art. 21); the right to vote (Art. 25(b)); equal protection of the law (Art. 14(1)); the right to liberty (Art. 9(1)); the right to a fair trial, including the presumption of innocence (Art. 14(1)–(2)).


121 Id.

122 Peter Bergen, Manhunt 25 (2012).

123 Id.

124 Id.

125 Id.

127 OLC Guide, supra note 126


129 Id.


134 Yoo, U.N. Wars, supra note 133, at 364.


138 Transcript of Interview with Vice President Dick Cheney, ABC’s This Week at 9 (Feb. 14, 2010), available at http://abcnews.go.com/ThisWeek/week-transcript-vice-president-dick-cheney/story?id=9818034&page=9


140 OPR Report, supra note 136, at 51.


142 Memorandum from John C. Yoo (Deputy Ass’t Att’y Gen., OLC) to David Kris (Assoc. Deputy

143 *Id.* at 12.

144 Memorandum from John C. Yoo (Deputy Ass’t Att’y Gen., OLC) & Robert J. Delahunty (Special Counsel) to Alberto R. Gonzales (Counsel to the President) & William J. Haynes II (Gen. Counsel, DOD), *Authority for Use of Military Force to Combat Terrorist Activities* (Oct. 23, 2001) [hereinafter Oct. 2001 Military Authority Memo], available at http://documents.nytimes.com/bush-administration-terrorism-memos#p=14

145 *Id.*

146 *Id.*

147 *Id.*

148 *Id.* In citing a number of Supreme Court decisions for the proposition that First Amendment liberties could be curtailed (including *Near v. Minn. ex rel. Olson*, 283 U.S. 697, 716 (1931), which had recognized the government’s ability to resist divulging information on the movement of troops) the memo, at page 24, posited “The current campaign against terrorism may require even broader exercises of federal power domestically.”

149 Memorandum from John C. Yoo (Deputy Ass’t Att’y Gen., OLC) to the Deputy Counsel to the President, *The President’s Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them* (Sept. 25, 2001), available at http://www.usdoj.gov/olc/warpowers925.htm

150 *Id.*

151 *Id.* (emphasis added).

152 *Id.*

153 *Id.*

154 *Id.*

155 Memorandum from John C. Yoo (Deputy Ass’t Att’y Gen., OLC) & Robert J. Delahunty (Special Counsel) to John Bellinger III (Senior Assoc. Counsel to the President and Legal Adviser to NSC), *Authority of the President to Suspend Certain Provisions of the ABM Treaty* (Nov. 15, 2001), available at http://documents.nytimes.com/bush-administration-terrorism-memos#p=51

156 *Id.*


158 Memorandum from Patrick F. Philbin (Deputy Ass’t Att’y Gen., OLC) to the Counsel for the President, *Legality of the Use of Military Commissions to Try Terrorists* (Nov. 6, 2001), available at http://www.justice.gov/olc/2001/pub-millcommfinal.pdf

159 *Id.*
The Report of The Constitution Project’s Task Force on Detainee Treatment

160  Id.

161  Id.

162  Id. at 8.


165  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

166  Id.

167  Id.


169  ACLU Index, supra note 164.

170  Id.

171  Id.

172  The first time at least that is publicly known.


174  Memorandum from Jay S. Bybee (Ass’t Att’y Gen., OLC) to Alberto Gonzales (Counsel to the President) & William J. Haynes II (Gen. Counsel, DOD), Application of Treaties and Laws to Al Qaeda and Taliban Detainees (Jan. 22, 2002) [hereinafter Jan. 22 Bybee memo], available at http://www.torturingdemocracy.org/documents/20020122.pdf

175  Id.

176  Id.

177  This reasoning is similar to the OLC’s earlier reasoning and advice that the President had the plenary authority to suspend the Anti-Ballistic Missile Treaty.

178  Jan. 22 Bybee memo, supra note 174.

180  *Id.*
181  *Id.*
182  *Id.*
183  *Id.*
184  *Id.*
185  *Id.*
186  ACLU *Index, supra note 164.*
187  *Id.*
188  *Id.*
189  *Id.*
190  *Id.*
191  *Torture Papers, supra note 173,* at 118.
192  *Id.* at 80.
193  *Id.* at 118.
194  *Id.*
195  *Id.* at 119.
196  *Id.* at 120.
197  *Id.*
198  *Id.* at 122.
199  *Id.* at 123.
201  *Id.*
202  *Id.*
203  *Id.*
204  Taft presumably wrote the memo after he had learned of Attorney General Ashcroft’s February 1 letter.
205  *Torture Papers, supra note 173,* at 129.
206  *Id.* at 134.
207 Id.
208 Id. at 135.
209 Id. at 134.
211 Torture Papers, supra note 173, at 144.
213 Id.
214 ACLU Index, supra note 164, at 6.
215 Id. at 7.
217 Id. at 2.
218 See Oct. 2001 Military Authority Memo, supra note 144.
219 Philbin Swift Justice Memo, supra note 216, at 20.
221 Id.
222 Id. at 417.
223 Id.
224 Memorandum from Jay S. Bybee (Asst’t Att’y Gen., OLC) to John Ashcroft (Att’y Gen., DOJ), Determination of Enemy Belligerency and Military Detention [June 8, 2002] [hereinafter Bybee Padilla Memo], available at http://documents.nytimes.com/bush-administration-terrorism-memos#p=126
225 Ex Parte Quirin, 317 U.S. 1 (1942).
226 Ex Parte Milligan, 71 U.S. 2 (1866).
227 Bybee Padilla Memo, supra note 224, at 6.
228 Id. at 9.
229 Memorandum from John C. Yoo (Deputy Asst’t Att’y Gen., OLC) to Daniel J. Bryant (Asst’t Att’y Gen., DOJ Office of Legis. Affairs), Re: Applicability of 18 U.S.C. § 4001(a) to Military Detention of United
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230 Yoo Padilla Memo, supra note 229.

231 Id.

232 Id. at 136.

233 Id. at 137.

234 Id. at 141.

235 Id. at 138.

236 Id. at 143.

237 Memorandum from Jay S. Bybee (Ass’t Att’y Gen., OLC) to William J. Haynes II (Gen. Counsel, DOD), Re: The President’s Power as Commander in Chief to Transfer Captured Terrorists to the Control and Custody of Foreign Nations (Mar. 13, 2002), available at http://documents.nytimes.com/bush-administration-terrorism-memos#p=72

238 Id. at 72.

239 Id.

240 Id.

241 Id. at 95.


244 Leopold & Kaye, supra note 242.

245 Id.


247 OPR Report, supra note 136, at 35.


249 OPR Report, supra note 136, at 38.

250 Bybee Testimony, supra note 132, at 14.

Id.

Id.

Id.

OPR Report, supra note 136, at 49.

Id.

Id.

Id.

Senate Comm. on Homeland Sec. & Gov’t Aff., Testimony of Michael Chertoff (Feb. 2, 2005), available at http://www.hsgac.senate.gov/hearings/2005/02/02/nomination-hearing

ACLU Index, supra note 164, at 8.

Fax to John C. Yoo (Deputy Ass’t Att’y Gen., OLC) from unknown (July 24, 2002) [hereinafter Yoo Psychological Assessment Fax], available at http://www.aclu.org/torturefoia/released/082409/olcremand/2004olc4.pdf

Id.

Id.

Id.

See Parry, supra note 139.

OPR Report, supra note 136, at 43.

Id.; but see id. at 63, where Patrick Philbin expressed his view about how time pressure had existed and had played a role in OLC’s process.

Bybee Testimony, supra note 132, at 150.

OPR Report, supra note 136, at 43.

Id. at 46.

Id.

Bybee Testimony, supra note 132, at 125.


OPR Report, supra note 136, at 50.
275 Id.
276 Id.
277 Id.
278 Id. at 51.
279 Id.
280 Id.
281 Addington Testimony, supra note 141, at 38.
282 OPR Report, supra note 136, at 53.
283 Letter from John C. Yoo (Deputy Ass’t Att’y Gen., OLC) to Alberto Gonzales (Counsel to the President) (Aug. 1, 2002), available at http://www.torturingdemocracy.org/documents/20020801-3.pdf
284 Id.
285 Id.
286 Id.
287 Id. at 5.
289 OPR Report, supra note 136, at 53.
290 Id.
291 Id. at 54.
292 Bybee Aug. 1 Interrogation Methods Memo, supra note 288.
293 Id.
294 Id.
295 See Yoo Psychological Assessment Fax, supra note 261, as the source of OLC’s discussion here of Zubaydah’s psychological assessment.
296 Bybee Aug. 1 Interrogation Methods Memo, supra note 288.
297 OPR Report, supra note 136, at 101.
298 Id. at 104.

OPR Report, supra note 136, at 27.

Id. at 36.

Id. at 110.; see also Parry, supra note 139.

Id.

OPR Report, supra note 136, at 110.

Id.; see also Bybee Testimony, supra note 132, at 29.

OPR Report, supra note 136, at 27.

ACLU Index, supra note 164, at 12.

OPR Report, supra note 136, at 111.


Id. at 154.

Id. at 155.


Id.

Id.

Id.


Id.

Id.

Id.
323 ACLU Index, supra note 164, at 13.
324 OPR Report, supra note 136, at 113.
325 Id.
326 Id.
327 ACLU Index, supra note 164, at 13.
328 Id.
330 Id. at 3.
331 Id. at 23.
332 GOLDSMITH, supra note 311, at 41.
333 Id.
334 Id.
335 TORTURE PAPERS, supra note 173, at 366.
336 Id. at 367.
337 Id. at 368.
338 Id. at 380.
339 ACLU Index, supra note 164, at 14.
340 Id.
341 OPR Report, supra note 136, at 113.
342 ACLU Index, supra note 164, at 14.
343 IG Report, supra note 301; see also Bybee Testimony, supra note 132, at 115, in which Bybee suggested the CIA had exceeded or deviated from the legal counsel provided by OLC in its application of certain interrogation methods.
344 IG Report, supra note 301, at 102.
345 Id. at 101.
346 Id.
347 Id.
348 Letter from Jack L. Goldsmith III (Ass’t Att’y Gen., OLC) to John L. Helgerson, Inspector
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460

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460
Id.

ACLU Index, supra note 164, at 18.


Id.


Id.

Id.

Id. (emphasis added).


OPR Report, supra note 136, at 117.


Id.

Id.

Id. at 4.

Id. at 8.

Id. at 2 (emphasis added).
392 See Greenburg & de Vogue, supra note 384.

393 Goldsmith, supra note 311, at 165.

394 ACLU Index, supra note 164, at 23.

395 Id. at 24.

396 OPR Report, supra note 136, at 131.

397 Id.

398 Id.

399 See Parry, supra note 139.

400 OPR Report, supra note 136, at 131.

401 Id.

402 Id. at 143.

403 Id.

404 Id.

405 Id.

406 Id.

407 Id. at 132.

408 Id. at 142.

409 Id.

410 Id. at 144.

411 Id. at 145.

412 Id.


414 Id. at 1.

415 Id. at 4.

416 Id. at 5.

417 Id.


The McCain Amendment would be signed into law in December 2005.


Task Force staff interview with Senator Lindsey Graham (June 13, 2012).


444  *Id.*

445  *Id.* at 157.

446  *Id.*


448  *Id.*

449  *Id.* at 2.

450  *Id.*

451  *Id.* at 4.

452  *Id.*

453  *Id.* at 10.


457  *Id.*

458  *Id.* at 151.

459  *Id.*


462 Id. at 11.

463 Id.

464 Id. at 160.

465 Id.


467 Id. at 2.

468 See, e.g., Task Force staff interview with Alberto Mora (Apr. 24, 2012); Ackerman, supra note 439.

469 Mayer, supra note 135, at 8.

470 343 U.S. 579 (1952)

471 U.S. v. Lee, 744 F.2d 1124 (5th Cir. 1984).


474 Id. at 3.


477 Id. at 457.


479 Id. at 143.

480 GCIV art. 5.

481 Id.

482 Id.

483 DAVID HACKETT FISCHER, WASHINGTON’S CROSSING 376 (2004).

484 Id.

485 Id.
486 Id.

487 Mayer, supra note 135, at 84.

488 Id. at 85; See also Richard Shelly Hartigan, Lieber’s Code and the Law of War (1983).
CHAPTER 5 ENDNOTES

1 Task Force staff interview with David Crane (Sept. 23, 2011). We know that the practice dates as far back as 1886, when the Supreme Court in *Ker v. Illinois*, 119 U.S. 436 (1886), ruled that U.S. courts had jurisdiction to prosecute individuals abducted from other countries, and this principle was affirmed in the 1992 case of *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).


5 Id.


9 Id.

10 Id.


13 Id.


16 Mayer, supra note 7.

17 Scheuer Testimony, supra note 4.

18 Task Force staff interview with Paul Pillar (Dec. 16, 2011).

19 Task Force staff interview with Ali Soufan (July 5, 2012) [hereinafter Soufan Interview].
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24 Id.

25 For example, Binyam Mohammed, who was arrested in Pakistan, rendered to Morocco, then transferred to the “dark prison” reserved for CIA prisoners near Kabul, and finally Bagram and Guantánamo Bay in 2004. Mohammed was released from Guantánamo without charge in 2009. Roger Gough, Stuart McCracken & Andrew Tyrie, Account Rendered: Extraordinary Renditions and Britain’s Role 35 (2011).


27 Task Force staff interview with Tyler Drumheller (June 13, 2012) [hereinafter Drumheller Interview].


33 Peter Bergen & Katherine Tiedemann, Disappearing Act: Rendition by the Numbers, Mother Jones (Mar. 3, 2008) [hereinafter Disappearing Act], available at http://motherjones.com/politics/2008/03/disappearing-act-rendition-numbers


36 DeNeen L. Brown & Dana Priest, Deported Terror Suspect Details Torture in Syria; Canadian’s Case Called Typical of CIA, WASH. POST (Nov. 5, 2003).


38 Drumheller Interview, supra note 27.


42 Cole & Wali, supra note 14.

43 Diplomatic Assurances, supra note 34, at 6 (Rep. Pitts quoting Baer interview).

44 Soufan Interview, supra note 19.


46 Id.

47 Id.


49 ICRC HVD Report, supra note 48, at 78.

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51  Id.
52  Id.
53  Id.
54  Id.
57  Id.
58  Mayer, supra note 12, at 110.
60  Id.
62  Id.
63  Maher Arar: Statement, supra note 59.
64  Id.
66  Diplomatic Assurances, supra note 34.
69  Drumheller Interview, supra note 27.
70  Nahal Zamani, Rendition to Continue Under Obama’s Watch, ACLU (Aug. 27, 2009), available at http://www.aclu.org/2009/08/27/rendition-program-to-continue-under-obamas-watch (highlighting the fact that DOS has sought to replace the system of diplomatic assurances with a “monitoring mechanism” to ensure that abuse does not take place post-transfer).
71  Id.


77  Scheuer Testimony, supra note 4 (during the hearing, it was stated that “these renditions not only appear to violate our obligations under the U.N. Convention Against Torture and other international treaties, but they have undermined our very commitment to fundamental American values.”).

78  Diplomatic Assurances, supra note 34; Task Force staff interview with Harold Koh, Legal Advisor to Secretary of State (Feb. 6, 2012) [hereinafter Koh Interview].

79  Diplomatic Assurances, supra note 34 (Bellinger’s statement). There has been debate on this point. Former Congressman Bill Delahunt argued against Bellinger in a 2008 hearing that the 1998 Foreign Affairs Reform and Restructuring Act (codifying CAT Art. 3) is “a law that is passed by the United States Congress [and] must be complied with by the executive.” Id. at 9. See also COLUM. L. SCH. HUM. RTS. INST., PROMISES TO KEEP: DIPLOMATIC ASSURANCES AGAINST TORTURE IN US TERRORISM TRANSFERS (2010), available at http://www.law.columbia.edu/ipimages/Human_Rights_Institute/Promises%20to%20Keep.pdf

80  Task Force staff interview with Juan Mendez (Sept. 21, 2011). See also Michael John Garcia, Renditions: Constraints Imposed by Laws on Torture 16, CRS Report RL32890 16 (Sept. 8, 2009), available at http://www.fax.org/spp/crs/natsec/RL32890.pdf (“the express language of CAT-implementing legislation, the United States cannot ‘expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.’ It may be argued that this express statutory language prohibits renditions from outside the United States.”).


Priest, supra note 83.


Memorandum from Jack L. Goldsmith, supra note 83.

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93 See, e.g., Scheuer Testimony, supra note 4; Peter Bergen, I Was Kidnapped by the CIA, MOTHER JONES (2008), available at http://motherjones.com/politics/2008/03/exclusive-i-was-kidnapped-cia; John Crewdson, CIA Chiefs Reportedly Split Over Cleric Plot: Agency Schisms Come to Light in Italy Probe, CHI. TRIB. (Jan. 8, 2007), available at http://www.chicagotribune.com/news/nationworld/chi-0701080198jan08,0,5630268.story; Elsea & Kim, supra note 90; Council of Europe: Secret CIA Prisons Confirmed, supra note 90 .

94 See, e.g., Council of Europe Report, supra note 81; CoE Second Report, supra note 92; Council of Europe: Secret CIA Prisons Confirmed, supra note 90; John Goetz & Holger Stark, CIA Had Secret Plan to Kidnap German-Syrian Suspect in Hamburg, DER SPIEGEL (Jan. 12, 2010), available at http://www.spiegel.de/international/germany/0,1518,671198,00.html


96 ACCOUNT RENDERED, supra note 25; Complaint, Arar, supra note 61; Application, El-Masri, supra note 82; Sweden Refuses Residence Permit, supra note 95; European Parliament Report, supra note 28.


99 *Id.*


106 *Id.*


109 *Id.*


113 *Id.*


115 Drumheller Interview, *supra* note 27.


120  Id.

121  Id.

122  Task Force staff interview with Col. (Ret.) Lawrence Wilkerson (Oct. 28, 2011).

123  DELIVERED INTO ENEMY HANDS, supra note 56, at n. 391.


126  DELIVERED INTO ENEMY HANDS, supra note 56.

127  Id.

128  Id.

129  Id.


132  MAIER, THE DARK SIDE, supra note 12, at 119.

133  The Broken Promise, Swedish TV4 Kalla Fakta Program (May 17, 2004), available at http://www.hrw.org/legacy/english/docs/2004/05/17/sweden8620.htm


135  Johan Nylander, CIA Rendition Flights Stopped by Swedish Military, SWEDISH WIRE (Dec. 5, 2010), available at http://www.swedishwire.com/component/content/article/2-politics/7497-cia-rendition-


137 Council of Europe Report, supra note 81, at ¶ 22.

138 Id.

139 CoE Second Report, supra note 92.

140 Id.

141 Id.

142 Id.

143 Task Force staff interview with Jozef Pinior (Nov. 23, 2011) [hereinafter Pinior Interview].

144 Id.

145 U.N. Report, supra note 37, at ¶ 22.

146 Id. ¶¶ 107–159.


149 Quinn & Cobain, supra note 148 (quoting William Ryan, representing Richmor).


Endnotes


159 Priest, supra note 157.


161 Horton, supra note 87.

162 Drumheller Interview, supra note 27.


165 GREY, supra note 11; Extraordinary Rendition, supra note 164; Grey, supra note 164.

166 Grey, supra note 164.

167 Extraordinary Rendition, supra note 164; Grey, supra note 164.


Id.

Delivered into Enemy Hands, supra note 56.

Id.

Id. at n. 134.

Id.

Id.

U.S. Operated Secret Dark Prison in Kabul, supra note 171; U.N. Report, supra note 37; Delivered Into Enemy Hands, supra note 56.

Delivered Into Enemy Hands, supra note 56.

Id.

Id.

Id. at n. 134.

Id.


Goldman & Gannon, supra note186.

Id.


193 White, supra note 192.


195 Id.

196 Id.

197 Id.


199 Mayer, supra note 194.

200 Goldman & Apuzzo, supra note 198.


206 Id.


208 Bajoria & Zissis, supra note 205.

209 Shane, supra note 204.

210 CoE Second Report, supra note 92, at n.27.


213 CoE Second Report, supra note 92, at ¶ 70.


215 Soufan, supra note 212, at 383. George Tenet & Bill Harlow, At the Center of the Storm: My Years at the CIA (2007).

216 Anonymous source.


218 CIA IG Report, supra note 211, ¶¶ 74, 91 (unclassified version released 24 Aug. 2009); U.N. Report, supra note 37; Goldman & Apuzzo, supra note 217.


220 Cobain, supra note 116.

221 CIA IG Report, supra note 211, ¶ 77; U.N. Report, supra note 37, at ¶ 108.


224  U.N. Report, supra note 37; Johnston & Mazzetti, supra note 29.


228  Mayer, supra note 12, at 225.

229  Goldman & Apuzzo, supra note 217.


231  Soufan, supra note 212, at 381–85 (detailing the dramatic transfer of Abu Zubaydah to a Thai hospital by CIA officials dressed as soldiers). See also 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), available at http://media.luxmedia.com/aclu/olc_08012002_bybee.pdf

232  U.N. Report, supra note 37, at 108.


234  CIA IG Report, supra note 211, at 36. See also 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) (notes that Abu Zubaydah was waterboarded, by the CIA’s own admission, while already compliant with interrogators), available at http://media.luxmedia.com/aclu/olc_05302005_bradbury.pdf. Former CIA official Jose Rodriguez has described the process of waterboarding as counting the number of times water was poured onto the cloth over the detainee’s nose and mouth. Rodriguez, supra note 219, at 70.

235  Soufan, supra note 212, at 380–81.

236  Soufan Interview, supra note 19.

237  Soufan, supra note 212, at 393-410.

238  Rodriguez, supra note 219, at 190, 193; Mark Mazzetti, US Says CIA Destroyed 92 Tapes of Interrogations, N.Y. TIMES (Mar. 2, 2009), available at http://www.nytimes.com/2009/03/03/washington/03web-intel.html. Soufan Interview, supra note 19. Soufan claims that this justification was false, since the interrogators on the video who used the “enhanced” techniques wore masks.

239  Id. See also Mark Mazzetti, C.I.A. Destroyed 2 Tapes Showing Interrogations, N.Y. TIMES (Dec. 7, 2007),


241 Goldman, *supra* note 158.


244 *Id.* at ¶ 125.

245 *Id.* at ¶ 124 (quoting a long-serving CIA official).

246 Task Force staff interview with Anonymous Polish Source (Nov. 16, 2011).


249 Pinior Interview, *supra* note 143.


251 *Id.*


255 *Id.*

256 *Id.*


258 Koh Interview, *supra* note 78.

260 *Id.*

261 *Id.*

262 Mayer, *supra* note 12, at 276.

263 ICRC HVD Report *supra* note 48, at 35.

264 *Id.*

265 *Id.* at 36.


268 *Id.*

269 *Id.* at 37. See also Scott Shane, *Inside a 9/11 Mastermind’s Interrogation*, N.Y. Times (June 22, 2008), available at http://www.nytimes.com/2008/06/22/washington/22ksm.html

270 CIA IG Report, *supra* note 211, at ¶ 92.

271 *Id.*

272 *Id.* at 94.

273 Goldman, *supra* note 158. When contacted by the Task Force, the former CIA official said to have been in charge of the Polish prison refused to comment.


275 CIA IG Report, *supra* note 211, at ¶ 97.

276 Abu Zubaydah Application, *supra* note 82, at ¶ 29 (2010); Yemeni Claims He Was Held at CIA Prison in Poland, The News Poland (Feb. 15, 2012), available at http://www.thenews.pl/1/10/Artykul/90331,Yemeni-claims-he-was-held-at-CIA-prison-in-Poland

277 Task Force staff interview with Anonymous Source (Nov. 16, 2011).


280 Letter from Stefan Meller (Poland Minister of Foreign Aff.) to Terry Davies (Secretary Gen. of Council of Eur.) (Feb. 17, 2006), available at http://www.coe.int/t/e/com/files/events/2006-cia/Poland.pdf
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286  Id.

287  Task Force staff interview with Prosecutors Waldemar Tyl, Dariusz Korneluk, & Szymon Liszewski (Nov. 18, 2011) [hereinafter Tyl, Korneluk, Liszewski Interview].


289  Task Force staff interviews with four anonymous sources (Nov. 15 & 24, 2011).

290  Id. See also Bodnar & Pudzianowska, supra note 253.

291  Tyl, Korneluk, Liszewski Interview, supra note 287.

292  Id.

293  Id. See also Scott Horton, Justice Department Refuses Cooperation With Polish Prosecutors Investigating Torture at CIA Black Site, HARPER’s (Dec. 30, 2010), available at http://www.harpers.org/archive/2010/12/hbc-90007880

294  Id.


297  Id. See also Former PM and President “Told About CIA Black Site in Poland,” NEWS POLAND (May 11, 2012), at http://www.thenews.pl/1/10/Artykul/99002,Former-PM-and-president-told-about-CIA-black-site-in-Poland


301  U.N. Report, supra note 37.


307  Id.

308  Id. ¶ 228.

309  Id. ¶¶ 211-12.

310  Id. ¶¶ 212-13.

311  Id. ¶ 134; U.N. Report, supra note 37, at ¶ 112.


313  Johnston & Mazzetti, supra note 29 (Foggo pleaded guilty in 2008 to a fraud charge involving a contractor that equipped the C.I.A. jails, and spent three years in jail).

314  Id.

Romanias-secret-cia-prison

316 Id.
317 Id.
318 Id.
319 Id.


321 Goldman & Apuzzo, supra note 198.

322 Crofton Black, Court Case Aims to Dispel Shadows Around Romania’s CIA Black Site, Reprieve (Aug. 22, 2012), available at http://www.reprieve.org.uk/blog/2012_08_22_Romania_CIA_ECHR/

323 Id.


325 Id. ¶¶ 6–7.
326 Id. ¶¶ 10–12.
327 Id. ¶ 33.
328 Id. ¶ 4.


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333 Lithuanian President Grybauskaite’s First Six Months (Jan. 4, 2010), available at http://www.cablegatesearch.net/cable.php?id=10VILNIUS4&q=grybauskaite

334 Id.

336  *Id.* at 6.

337  Task Force staff interview with Egle Digryte [Jan. 12, 2012] [hereinafter Digryte Interview].

338  *Id.* *See also* Seimas Report, supra note 335, at 6.

339  *Id.* at 5.

340  *Id.*

341  *Id.*

342  Cole, supra note 330 (quoting a former CIA official).

343  Task Force staff interview with Jonas Markevicius [Jan. 12, 2012] [hereinafter Markevicius Interview].

344  *Id.*

345  *Id.*

346  Task Force staff interview with Arvydas Anusauskas [Jan. 11, 2012] [hereinafter Anusauskas Interview].


348  Cole, supra note 330.


350  Seimas Report, supra note 335, at 6–7.

351  *Id.* at 6.

352  *Id.*


355  D.C. Dep’t of Consumer & Reg Aff., Certificate of Organization for Elite LLC [July 9, 2003].

356  *Id.*

357  Digryte Interview, supra note 337.
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358  Id.

359  Cole & Ross, supra note 354.

360  Seimas Report, supra note 335, at 7.

361  Id. at 7.

362  Id. at 8.

363  Id.

364  Id. at 9.

365  Anusauskas Interview, supra note 346. These details were confirmed by Jonas Markevicius. Markevicius Interview, supra note 343.

366  Anusauskas Interview, supra note 346.

367  Id.


370  Task Force staff interview with Vygaudas Usackas (Aug. 9, 2011) [hereinafter Usackas Interview]. See also Lithuania’s FM Resigns after CIA Dispute, supra note 369.

371  Usackas Interview, supra note 370.


373  Task Force staff interview with Darius Raulušaitis & Irmantas Mikelionis (Jan. 12, 2012) [hereinafter Raulušaitis & Mikelionis Interview]

374  Council of Europe, Press Release, Council of Europe Anti-Torture Committee Visits Lithuania (June 23, 2010), available at http://www.cpt.coe.int/documents/ltu/2010-06-23-eng.htm (the CPT is the only organization outside of Lithuania to have been granted site visits to both of the alleged detention sites. The Task Force requested similar access, but received no response from the Lithuanian government).

375  Id. at ¶68.


378  Raulušaitis & Mikelionis Interview, supra note 373.
379  Cole, supra note, 330. See also CSC’s Covert Flights Through Lithuania, Reprieve (Sept. 7, 2012), http:// reprieve.org.uk/articles/cslithuania

380  Raulušaitis & Mikelionis Interview, supra note 373.

381  Id.

382  Id.


384  Id.


388  Id.

389  Id.

390  Id. (Britel’s journey back to Italy had been delayed due to Moroccan authorities withholding his passport).

391  Id.

392  Id.

393  Abou Elkassim Britel: At Home at Last!, Giustizia per Kassim (Apr. 2011), available at http://www.giustiziaperkassim.net/?page_id=105


396  Id.


398  Id.

399  Id.


401  Id. at 33.
402 Id. at 34 (citing Section 4 (b) of KFOR Directive 42).

403 “Everyone Knew What Was Going on in Bondsteel”, supra note 397.


405 Id.

406 Council of Europe Report, supra note 81.

407 Id.

408 Delivered Into Enemy Hands, supra note 56, at fn. 134.


411 U.N. Report, supra note 37, at 81.

412 Raghavan & Tate, supra note 410.

413 U.N. Report, supra note 37, at 80 (citing High Court of Tanzania at Dar es Salaam, criminal application No. 23 of 2004, Abdullah Saleh Mohsen al-Asad v. Director of Immigration Services, ex parte Mohamed Abdullah Salehe Mohsen Al-Asaad counter affidavit, 30 June 2004).


415 Raghavan & Tate, supra note 410.


419 Id.

420 Id.

421 Id.

423  Id.
424  Id.
425  Id.
426  Id.
427  Id.
428  Id.
429  Id.
430  Id.
431  Id.
432  Id.
434  Id.
rendition-case


443 Hooper, *supra* note 442.

444 Id.


450 Id.

451 Id.


455 ACCOUNT RENDERED, *supra* note 25, at 11.

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459 Raghavan & Tate, supra note 410.


461 Gebauer & Goetz, supra note 460.

462 Id.

463 Id.

464 Observatory on “Rendition”: The Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, STATEWATCH, available at http://www.statewatch.org/rendition/rendition.html

465 Gebauer & Goetz, supra note 460.


470 Id.

471 Mark Tran, Miliband Admits US Rendition Flights Stopped on UK Soil, GUARDIAN (UK) (Feb. 21, 2008), available at http://www.guardian.co.uk/world/2008/feb/21/ciarendition.usa

472 Id.


*Id.*

*Id.*


*Id.*


*Id.* at 64.

*Id.* at 68, 70.


Rayner & Gardham, *supra* note 485.


*Id.*

*Id.*


492 Irish Establish Cabinet Committee to Review Renditions Allegations and Other Human Rights Concerns (Nov. 3, 2008), http://www.shannonwatch.org/cables/08dublin602

493 Id.


496 Id.


500 Id.


505 Report of the Events Relating to Maher Arar, supra note 90, at 185.

506 Id. at 185-90.

507 Koh Interview, supra note 78.
CHAPTER 6 ENDNOTES

1 Captain Shimkus’s current views, as expressed in an interview with Task Force staff, are discussed in Chapter 1.


6 Learned Helplessness in Humans, supra note 5, at 59.

7 Id.


10 Bloche, supra note 8, at 136–37.


12 Shane, supra note 9; Eban, supra note 9; Warrick & Finn, supra note 9; Levin Report, supra note 9, at 6–7; CIA, Office of Inspector Gen., Special Review: Counterterrorism Detention and Interrogation Activities 13 (May 7, 2004) [hereinafter CIA OIG Report], available at http://media.luxmedia.com/aclu/IG_Report.pdf

13 Task Force staff interview with Col. (Ret.) Steven Kleinman (June 19, 2012).

14 Id.

15 Fax from CIA to Dan Levin (DOJ, OLC), Background Paper on CIA’s Combined Use of Interrogation Techniques (Dec. 30, 2004) [hereinafter CIA Background Paper on Combined Techniques].

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19 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 9).

20 Soufan, Black Banners, supra note 20; Bloche, supra note 8, at 137; Eban, supra note 9; Peter Bergen, THE LONGEST WAR 112 (2011); Shane, supra note 9.


23 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.


25 Id. at 70.


28 Id.

29 Shane, supra note 9; Levin Report, supra note 9, at 23–24.

30 Bybee Aug. 1 Interrogation Methods Memo, supra note 27.


32 Id.
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33  Id.

34  SOUFAN, BLACK BANNERS, supra note 19, at 427–28.


38  Id.


40  Email from Kirk Hubbard, Aug. 19, 2012. (on file with the Constitution Project)

41  Bybee Aug. 1 Interrogation Methods Memo, supra note 27, at 11.

42  CIA OIG Report, supra note 12, at 36. Jose Rodriguez has alleged in his memoirs that the OIG Report is inaccurate and biased. In particular, Rodriguez states that the report’s finding that Abu Zubaydah was waterboarded 83 times and Khalid Sheikh Mohammed was waterboarded 183 times is a “canard”: “[i]t is a measure of the care and precision with which we conducted the program that Agency officers recorded every drip of water that was used … the ‘183 times’ that we get credited/blamed for waterboarding KSM in fact involved only 183 splashes of water (applications).” RODRIGUEZ, supra note 24, at 52. In fact, the OIG report makes clear that the 83 and 183 figures refer to the number of “waterboard applications,” which it defines as “each discrete instance in which water was applied.” CIA OIG Report, supra note 12, at 36.

43  CIA OIG Report, supra note 12, at 37.

44  Levin Report, supra note 9, at xxvi.


47  Adam Goldman & Matt Apuzzo, Officials: CIA Gave Waterboarders $5M Legal Shield, ASSOCIATED PRESS (Dec. 17, 2010).


49  Email from Hubbard, supra note 40.

50  Id.

51  Warrick & Finn, supra note 9.

52  CIA OIG Report, supra note 12, at 84–85.


Id.

Id.


Id. at 2.


Id. at 7.


Memorandum from Steven G. Bradbury (Acting 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*

73 Id.

74 Id. at 14.


76 OMS Guidelines May 2004, supra note 62, at 7, 23.

77 Bradbury May 30 Memo, supra note 75, at 13.

78 Id.


80 Id. at 19.

81 Bradbury May 10 Memo, supra note 72, at 14–15.

82 Id. at 7.

83 Id. at n. 31.

84 Id. at 47.


86 Bradbury May 30 Memo, supra note 75.

87 In the case of waterboarding, they were largely moot except insofar as they accurately described past practices, as Khalid Sheikh Mohammed was reportedly the last detainee subjected to that technique.

88 OPR Report, supra note 45, at 243.

89 ICRC HVD Report, supra note 53, at 22.

90 Id. at 11, 22.

91 Id. at 10.

92 Id. at 11–12, 15, 31–33.


Id. at 23.

Id. at 21.

Id. at 14–17.

Most of the former CIA detainees declined to attend their CSRTs.


A partial exception to this is Ahmed Ghailani, who was tried and convicted in federal court for his role in the 1998 attacks on U.S. embassies in Kenya and Tanzania. A psychologist hired by the defense asserted that Ghailani had suffered from PTSD as a result of his treatment in CIA custody, but his symptoms had “partially remitted.” A psychiatrist appointed by the court described Ghailani as becoming tearful and unable to speak about certain incidents in captivity (the details of which were redacted) and had “some anxiety-related symptoms that could be consistent with Post Traumatic Stress Disorder,” but concluded that overall, “I do not feel that Mr. Ghailani meets the criteria for a current diagnosis” of PTSD. The court accepted the psychiatrist’s conclusion. See Order, United States v. Ghailani, Crim. No. 98-1023 (S.D.N.Y. July 2, 2010), available at http://www.nylj.com/nylawyer/adgifs/decisions/070210kaplan.pdf; Forensic Psychiatric Evaluation by Gregory B. Saathoff, M.D. (redacted version), United States v. Ghailani, Crim. No. 98-1023 (S.D.N.Y. July 7, 2010).

James Mitchell and Bruce Jessen are known to have formed a company called Mitchell, Jessen and Associates that contracted with the CIA and had 120 employees in 2007. Their contracts were not fully terminated until 2009. It is unclear precisely what role their employees had in the interrogation program, however. Eban, supra note 9.


Id.


Id. at 36.

Id. at 37.

Levin Report, supra note 9, at 38–39. Major Leso’s name is redacted from the Levin report but he has been identified as the psychologist on the initial JTF-170 BSCT team. Sheri Fink, Tortured

110  Fink, supra note 109.


112  Task Force staff interview with Dr. Michael Gelles (Mar. 15, 2012) [hereinafter Gelles Interview]; see also Sands, supra note 111.

113  Gelles Interview, supra note 112; Sands, supra note 111.

114  Gelles Interview, supra note 112.

115  Levin Report, supra note 9, at 39.


117  Gelles Interview, supra note 112.


119  Levin Report, supra note 9, at 43–48.

120  Id. at 47.

121  Fink, supra note 109.


123  Id. at 51–52.

124  Id. at 52.

125  Id. at 50.

126  Bloche, supra note 8, at 154.

127  Levin Report, supra note 9, at 215.

128  Id. at 60.


131 Id. at 27.
132 Id. at 35.
133 Id. at 34, 37, 41.
134 Id. at 6, 9–11, 14, 18, 22, 24–25, 27–28, 30, 33, 35, 41, 45, 47, 58
135 Id. at 3, 6, 8, 9, 24, 29–31, 33, 37, 41, 46, 47, 53–55, 57, 64–65, 69, 76, 83.
136 Id. at 29, 31.
137 Id. at 1, 12, 20, 31, 59.
139 Id.
140 Id.
143 Id. at 30.
144 Id. at 57.
145 This phrasing seems to leave open the policy that abusive techniques might be approved for detainees not assessed to be too ill or fragile to bear them.
146 JAMES, supra note 142, at 59, 181.
147 Gelles Interview, supra note 112.
148 Levin Report, supra note 9, 137–38.
150 Levin Report, supra note 9, 140–41.
151 Id. at 140–41.
152 Id. at 141; Jess Bravin, The Conscience of the Colonel, WALL STREET J. (Mar. 31, 2007).
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156 Summary, June 04 ICRC Medical Visit to Guantánamo (June 2004) [on file with The Constitution Project].

157 Id.

158 Task Force staff interview with Dr. Steven Sharfstein (Mar. 15, 2012) [hereinafter Sharfstein Interview].

159 JAMES, supra note 142, at 70. See also id. at 242 (asserting that “there were no psychologists at Abu Ghraib during the abuses.”).


162 BLOCHE, supra note 8, at 120.


166 Albert T. Church III, Review of Department of Defense Detention Operations and Detainee Interrogation Techniques 355 (Mar. 7, 2005), available at http://www.aclu.org/files/pdfs/safefree/church_353365_20080430.pdf. This may have been a matter of lax administration more than an attempt to allow interrogators to exploit medical files. With one exception, the clinicians interviewed for the Church Report denied interrogators ever making use of medical information or attempting to influence treatment.

167 Id. at 354.


169 Id. at 1–5.

170 Id. at 14-1, 14-2.

171 Id. at 14-1.

172 Id. at 14-2.

173 E.g., JANE MAYER, THE DARK SIDE 203–04 (2008). It is unclear how many of the personnel interviewed by the surgeon general were deployed at precisely the same time as the FBI observations,
however.


175 Id. at 16-2.


180 MILES, supra note 177, at 89–90.

181 Id. at 84.

182 Vincent Iacopino and Stephen N. Xenakis, Neglect of Medical Evidence of Torture in Guantánamo Bay: A Case Series, PLOS MED. (April 26, 2011), available at http://www.plosmedicine.org/article/info%253Adoi%252F10.1371%252Fjournal.pmed.1001027


185 Task Force staff interview with Sami al-Hajj (October 6, 2011).

186 Id.


188 Id. ¶ 15.


190 Id. ¶ 5.

191 Id. ¶ 8.

192 Id. ¶ 8.

193 http://www.restraintchair.com

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[hereinafter Keram Evaluation of Zuhair].

195 Mar. 13, 2006 Hooker Declaration, supra note 189, at ¶ 8, 11–12, 14.


199 Keram Evaluation of Shalabi, supra note 197, at ¶ 11–18.

200 This recommendation was followed in Zuhair’s case, until his release in 2009. Shalabi eventually began eating solid food again to avoid starvation after nasal inflammation and serious gastrointestinal problems made it impossible to absorb an adequate number of calories through enteral feeding.


209 28 C.F.R. § 552.20.

210 Id.


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214 Task Force staff interview with Laura Rovner (May 24, 2012).


222 Id.


A side by side comparison of the language is contained in Table A of *Coercive US Interrogation Policies*, supra note 226.

DOD Instruction, *supra* note 224.


*Id.* at 26.

*Id.* at 28–29.

Letter from Dr. C. Anderson Hedberg to Dr. William Winkenwerder (Nov. 15, 2005), available at http://www.acponline.org/running_practice/ethics/issues/human_rights/winkenwerder.pdf


Sharfstein Interview, *supra* note 158.


*Bloche*, *supra* note 8, at 167–69.

Sharfstein Interview, *supra* note 158.


*Id.* at 4.

*Id.*

Several are mentioned above: Michael Gelles, the NCIS psychologist who opposed abusive techniques at Guantánamo; Larry James, the former BSCT at Guantánamo and Abu Ghraib; Morgan Banks, the chief SERE and JSOC psychologist; and Scott Shumate, who reportedly left Abu Zubaydah’s interrogation because he objected to the techniques being used. Others were Robert Fein, a forensic psychologist who consulted for the Department of Defense, and Bryce Lefever, a SERE psychologist who advised interrogators in Afghanistan in 2002–2003, and has since publicly defended James Mitchell and Bruce Jessen.

Goodman & Gonzalez, *Dissident Voices*, supra note 244.


Email from Jean Maria Arrigo, May 22, 2005, PENS Emails, *supra* note 244, at 43–44.

Email from Col. Larry C. James, May 23, 2005, PENS Emails, *supra* note 244, at 47.

Id.

Task Force staff interview with Stephen Soldz (Mar. 14, 2012) [hereinafter Soldz Interview].


Soldz Interview, *supra* note 251.


Gelles Interview, *supra* note 112.


CHAPTER 7 ENDNOTES


3 Id.

4 Id.

5 Peter Bergen, Manhunt 102–03 (2012).


8 Id.


10 Id.


12 Id.

13 Bergen, supra note 5.


18 Mark Hosenball & Brian Grow, Bin Laden Informant’s Treatment Key to Torture Debate, Reuters (May 14, 2011), available at http://www.reuters.com/article/2011/05/14/us-binl aden-ghul-
idUSTRE74D0EJ20110514

19  *Id.*

20  *Rodriguez, supra* note 17, at 111.


22  *Id.*

23  *Id.*

24  *Id.*


26  *Id.* at 111.

27  *Id.* at 231.


29  Task Force staff interview with Joe Navarro (Jan. 8, 2013) [hereinafter Navarro interview].


31  *Id.*


34  *Id.* at 10.


36  Task Force staff interview with John Rizzo (Aug. 2, 2012) [hereinafter Rizzo Interview].

37  *Id.*

38  Task Force staff interview with Ali Soufan (July 5, 2012) [hereinafter Soufan Interview].

39  *Rodriguez, supra* note 17, at 102.

41  Soufan Interview, supra note 38.

42  Id.

43  Id.


45  Rizzo Interview, supra note 36.


47  Soufan Interview, supra note 38.

48  Email (Declassified) to Dusty Foggo, Exec. Dir., CIA, from unknown (Nov. 10, 2005), available at http://nsarchive.files.wordpress.com/2010/05/torture-email-1.pdf


50  A sensitive compartmented information facility (SCIF) is where highly classified information can be reviewed.

51  Soufan Interview, supra note 38.

52  Now known as the U.S. Bank Tower.


56  President George W. Bush’s Speech to the National Guard Association of the United States (Feb. 9, 2006), available at http://www.washingtonpost.com/wp-dyn/content/article/2006/02/09/AR2006020900892.html

57  Id.

58  Townsend Speech, supra note 55.


62 GEORGE TENET & BILL HARLOW, AT THE CENTER OF THE STORM 254 (2007). Other sources may have also contributed to Hambali, Bin Lep's and Zubair's arrest.


65 Id.

66 Soufan Interview, supra note 38.

67 Id.


70 Zubair told interrogators that he instructed Azahari to focus on a different target, and Khan's indictment states that Azahari and his co-conspirators only settled on the Marriott as the target in mid-July.


72 Navarro Interview, supra note 29.


74 Id.

75 Id.


77 Rizzo Interview, supra note 36.
78 Kleinman Statement, supra note 73.


80 Task Force staff interview with Dr. M. Gregg Bloche (Apr. 11, 2012).

81 Task Force staff interview with Dr. Stephen Xenakis (Jan. 16, 2013).

82 Id.

83 Id.

84 Rodriguez, supra note 17.

85 CIA IG Report, supra note 64.

86 Soufan noted that he does not believe that President Bush deliberately exaggerated Abu Zubaydah’s importance, saying of Bush: “[H]e’s a good man, with a decent heart, he really cares about the security of this country, however, he was ill-advised.” Soufan Interview, supra note 38.


88 Id.


91 Secretary Powell’s former chief of staff, Lawrence Wilkerson, told Task Force staff in an interview that neither he nor Powell, as they prepared for Powell’s U.N. presentation, were ever shown an internal Defense Intelligence Agency memorandum that cast doubt on al-Libi’s credibility.

92 Report of the Senate Select Committee on Intelligence, Postwar Findings About Iraq’s WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments (Sept. 8, 2006) at 80–82, available at http://intelligence.senate.gov/phaseiiaccuracy.pdf


94 Task Force staff interview with Col. (Ret.) Stuart Herrington (Jun. 20, 2012) [hereinafter Herrington Interview].

95 Navarro Interview, supra note 29.

96 Kleinman Statement, supra note 73.

97 Soufan Interview, supra note 38.

98 Id.

99 Herrington Interview, supra note 94.
100 Id.

101 Navarro Interview, supra note 29.


103 Id.

104 Herrington Interview, supra note 94.


106 Id.


108 Id. at 36.
CHAPTER 8 ENDNOTES


2  Id.

3  Id.


5  Id.


10  Id.


14  Id.


Endnotes


21 Id.


27 Task Force staff interview with Abdel Hakim Belhadj (Sept. 5, 2012) [hereinafter Belhadj Interview].


29 Belhadj Interview, supra note 27.

30 Id.

31 Id.

32 Id.

33 Id.

34 Id.
35 Id.


39 Cobain, supra note 28.

40 Id.

41 Casciani, supra note 37; Belhadj Interview, supra note 27.

42 Task Force staff interview with Sami Al Saadi (Sept. 5, 2012) [hereinafter Al Saadi Interview].

43 Id.

44 Id.

45 Id.

46 Id.; HUM. RTS. WATCH, supra note 25, at 105.

47 Al Saadi Interview, supra note 42.

48 Id.

49 Id.


51 Task Force staff interview with Khalid al-Sharif (Sept. 2, 2012).


58 Costanzo & Gerrity, supra note 54, at 194.


62 Id.

63 Id.

64 Id.

65 Id.

66 Id.


68 Id.


71  *Id.* at 235.

72  *Id.* at 236–37.

73  *Id.* at 235.


76  *Id.*

77  *Id.*

78  *Id.*


80  Mitchell, *supra* note 75.

81  *Id.*

82  Mitchell, *supra* note 79.


84  The Council of Europe is a transnational organization with 47 member states that primarily develops legal guidelines for the enforcement and promotion of the European Convention on Human Rights; see http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en


87  *Id.*

88  *Id.*

89  *Id.*

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92  Fletcher & Stover, supra note 91, at 65.

93  Id. at 66.

94  Id. at 63.

95  Task Force staff interviews with Moazzam Begg, Bisher al-Rawi, & Omar Deghayes (Apr. 17, 2012) [hereinafter Begg, al-Rawi, Deghayes Interviews].

96  Fletcher & Stover, supra note 91, at 67.


98  Task Force staff interview with Lal Gul (Nov. 13, 2012).

99  Id.

100  Id.

101  Id.

102  Id.

103  Id.

104  Id.

105  Id.

106  Id.

107  614 F.3d 1070 (9th Cir. 2010) (en banc).

108  Id.

110 Reprieve, The Story So Far, supra note 92.


112 Begg, al-Rawi, Deghayes Interviews, supra note 96.


114 Reprieve—El-Mashad, supra note 113.

115 Id.

116 Id.

117 Fletcher & Stover, supra note 91.

118 Id. at 64.

119 El-Mashad Interview, supra note 113.

120 Id.

121 Id.

122 “Reprieve” Report, Mohammed el Gharani, http://reprieve.org.uk/cases/mohammedelgharani/history


124 Id.

125 Id.

126 Id.

127 Id.

128 Id.

129 Id.

130 Id.

131 Fletcher & Stover, supra note 91, at 66.

132 Begg, al-Rawi, Deghayes Interviews, supra note 96.

133 Patrick Wintour, Guantanamo Bay Detainees to Be Paid Compensation by UK Government, GUARDIAN (UK) (Nov. 15, 2010), available at http://www.guardian.co.uk/world/2010/nov/16/guantanamo-bay-compensation-claim
134  Begg, al-Rawi, Deghayes Interviews, supra note 96.

135  Id.

136  Id.


139  Lisa Hajjar, Grave Injustice: Maher Arar and Unaccountable America, Middle E. Research & Info. Project (June 24, 2010), available at http://www.merip.org/mrto/mrto062410

140  Begg, al-Rawi, Deghayes Interviews, supra note 96.

141  European Union Justice & Home Affairs Council, supra note 137.

142  Reprieve, The Story So Far, supra note 92.

143  European Union Justice & Home Affairs Council, supra note 137. Most former detainees have been restricted in their movements outside of the states that receive them. Reprieve, The Story So Far, supra note 92, at 11.

144  Reprieve, The Story So Far, supra note 92, at 18.

145  Id. at 20.

146  Id. at 22. See also First Guantánamo Inmate Arrives in Switzerland, Swiss Broad. Corp. (swissinfo.ch) (Jan. 26, 2010) available at http://www.swissinfo.ch/eng/news/international/First_Guantanamo_inmate_arrives_in_Switzerland.html?cid=8166724

147  Reprieve, The Story So Far, supra note 92, at 41.


149  Id.


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153 Council of Europe Parliamentary Assembly, supra note 85, at 16.
154 Begg, al-Rawi, Deghayes Interviews, supra note 96.
155 FLETCHER & STOVER, supra note 91, at 68.
156 PHYSICIANS FOR HUM. RTS., BROKEN LAWS, supra note 98, at 90.
157 Id.
158 Id.
159 Begg, al-Rawi, Deghayes Interviews, supra note 96.
160 Id.
161 Task Force staff interview with Sami al-Hajj (Oct. 6, 2011) [hereinafter Al-Hajj Interview].
162 Id.
165 Id.
167 Id.
168 Id.
169 Id.
170 Id.
171 Reprieve—Al-Gazzar, supra note 164.
172 Moazzam Begg, supra note 166.
173 Reprieve—Al-Gazzar, supra note 164.
174 Id.
175 Begg, al-Rawi, Deghayes Interviews, supra note 96.


177 Id.


180 Physicians for Hum. Rts., Breaking them Down, supra note 178, at 49.


182 Begg, al-Rawi, Deghayes Interviews, supra note 96.

183 Id.

184 Physicians for Hum. Rts., Breaking them Down, supra note 178, at 50.

185 Id. at 91–92

186 Id. at 91.

187 Id. at 51.


189 Task Force staff interview with Kassim el-Britel and Khadija Anna (Jul. 20, 2012).

190 Id.

191 Id.

192 Al-Hajj Interview, supra note 161.


194 Devin Powell, supra note 176.

195 Id.

196 Id.


198 Id.


201 Attorney for German in CIA Kidnapping Case Concedes Client Set Fire to Store, INT’L HERALD TRIBUNE (May 18, 2007).


203 Id.

204 Id.


206 German CIA Rendition Victim Sentenced to Jail for Assault, THE LOCAL (Germany) (Mar. 31, 2010), available at http://www.thelocal.de/national/20100331-26253.html

207 Id.

208 Id.

209 PHYSICIANS FOR HUM. RTS., BREAKING THEM DOWN, supra note 178, at 57.


211 PHYSICIANS FOR HUM. RTS., BROKEN LAWS, supra note 98, at 89.


213 23 Detainees Attempted Suicide, supra note 212.


aljazeera.com/indepth/opinion/2012/09/201291872137626701.html


221  Id.


223  Asa Hutchinson, former DHS undersecretary for border and transportation security; David Irvine, Brig. Gen. (Ret.) and former Army Reserve Strategic Intelligence Officer.

224  No proven evidence of terrorist activity was ever presented for Begg, al-Rawi, or Deghayes.

225  Task Force meeting (July 23, 2012).
CHAPTER 9 ENDNOTES


7  Task Force staff correspondence with Gary Berntsen (Mar. 15, 2012). Gary Berntsen served in the CIA as part of the Directorate and as a station chief between 1982 and 2005.


10  Id.

11  JANE MAYER, THE DARK SIDE (2008); Tim Golden, Administration Officials Split Over Stalled Military Tribunals, N.Y. TIMES (Oct. 25, 2004), available at http://www.nytimes.com/2004/10/25/international/worldspecial2/25gitmo.html?pagewanted=all&position= ("[H]e was told after his arrival there in February 2002 that as many as half of the initial detainees were thought to be of little or no intelligence value."). See also Lawrence B. Wilkerson, Some Truths About Guantánamo Bay, WASH. NOTE (Mar. 17, 2009), available at http://washingtonnote.com/some_truths_abo/ ("[S]everal in the U.S. leadership became aware of this lack of proper vetting very early on and, thus, of the reality that many of the detainees were innocent of any substantial wrongdoing, had little intelligence value, and should be immediately released.").

12  MAYER, supra note 11.

The following is the list of the seven names provided in the 2006 DIA report: Mohammed Ismail, Said Mohammed Alim Shah (aka Abdullah Mahsud), Mohamed Yusif Yaqub (aka Mullah Shazada), Maulavi Abdul Ghaffar, Mohammed Nayim Farouq, Ravil Shafeyevich Gumarov, and Timur Ravilich Ishmurat. Id.


Defense Intelligence Agency, Defense Analysis Report—Terrorism: Transnational: Former GTMO Detainee Terrorism Trends—Update (Apr. 8, 2009) (Note the report does not give the percentage of re-engagement but states the confirmed and suspected numbers are out of “over 530” released; re-lying on the January 2009 number of 531 released detainees the percentages come out to 5 percent and 8.9 percent respectively).

Summary of the Reengagement of Detainee, supra note 4.


Director of National Intelligence, Summary of the Reengagement of Detainees Formerly Held at Guantánamo Bay, Cuba (Sept. 5, 2012), available at http://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs%202012/Summary%20of%20the%20Reengagement%20of%20Detainees%20Formerly%20Held%20at%20GTMO.pdf

Id.

Id.


See Director of National Intelligence, Summary of the Reengagement of Detainee, supra note 4.

See FOIA Letter, supra note 6.


See Director of National Intelligence, Summary of the Reengagement of Detainees, supra note 20.


Id.

Id.

Id. at 3.
33 Id. at 2.
35 Id. at 2.
37 Id. at 1.
38 See Leaving Guantánamo, supra note 1.
39 Id. at 7–9.
40 Id. at 61 (“It is possible that the precise deadline for the apparent impending closure of the facility
and a mandate that transfers or releases were to be prioritized over other options, could have colored
EOTF disposition considerations.”)
41 Id. at 67 (“The majority is well aware that most of the relevant material is classified and politically
sensitive.”)
42 Id.
43 Id. at 72.
44 Id. at 72–73 (“In addition, only 66 persons have been transferred from GTMO by the current
Administration, with only 2 confirmed as re-engagers, a figure of about 3.3%.”).
45 See Peter Bergen, Katherine Tiedemann & Andrew Lebovich, How Many Gitmo Alumni Take Up
how_many_gitmo_alumni_take_up_arms; Peter Bergen, Katherine Tiedemann & Andrew Lebovich,
foreignpolicy.com/files/fp_uploaded_documents/110112_RecidivismAppendix2.pdf
46 Mark P. Denbeaux, Joshua Denbeaux & R. David Gratz, Revisionist Recidivism: An Analysis of the
Government’s Representations of Alleged “Recidivism” of the Guantánamo Detainees, Seton Hall Univ. Sch. of Law,
Ctr. for Policy & Research (2009), available at http://law.shu.edu/ProgramsCenters/PublicIntGovServ/
CSJ/upload/GTMO_Final_Final_Recidivist_6-5-09-3.pdf
48 Revisionist Recidivism, supra note 46, at 4–5.
49 Id. at 5 (while not reported as either killed or captured).
50 Id. at 6 (the use of names rather than the more accurate Interment Serial Number (ISN) used to identify
the individuals re-engaged in terrorism is one of the reasons for such inaccuracies and led to Professor
Denbeaux raising the question of why ISN numbers are not used). See also The Meaning of “Battlefield,”
supra note 3, at 8.
51 Mark Denbeaux, National Security Deserves Better: “Odd” Recidivism Numbers Under the Guantánamo Policy
law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/loadercfin?csModule=security/
getfile&pageid=285565
52 See Director of National Intelligence, Summary of the Reengagement of Detainees, supra note 20.

53 The Meaning of “Battlefield,” supra note 3, at 9–10 (presumably the claim by Professor Denbeaux of no actual military conduct on behalf of these individuals is based on based available public information and may be contradicted by classified intelligence). See also Denbeaux, National Security Deserves Better, supra note 51 (highlights the 2007 DOD press release that identified five Uighurs as examples of recidivists; while these individuals had been transferred to Albania and held there at a refugee camp with not incident, one of the Uighur men wrote an opinion piece for the New York Times on habeas corpus in the United States).


56 Peter Bergen & Katherine Tiedemann, Inflating the Guantánamo Threat, N.Y. TIMES (May 28, 2009), available at http://www.nytimes.com/2009/05/29/opinion/29bergen.html?_r=1 (“[N]early half of the men on the new list — 14 of the 29 — are listed as being ‘suspected’ of terrorist activities, which makes ‘recidivist’ a fairly vague definition. Next, the acts that at least nine of the 29 are either known or suspected of having been involved with were not directed at America or at our immediate allies in our current wars, the governments of Iraq, Afghanistan and Pakistan.”).

57 See generally Boumediene v. Bush, 553 U.S. 723, 827–28 (2008) (Scalia, J., dissenting) (“The game of bait-and-switch that today’s opinion plays upon the Nation’s Commander in Chief will make the war harder on us. It will almost certainly cause more Americans to be killed. … In the long term, then, the Court’s decision today accomplishes little, except perhaps to reduce the well-being of enemy combatants that the Court ostensibly seeks to protect. In the short term, however, the decision is devastating. At least 30 of those prisoners hitherto released from Guantánamo Bay have returned to the battlefield.”).

58 Director of National Intelligence, Summary of the Reengagement of Detainees, supra note 20.

59 Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2725 (2010) (“Material support meant to ‘promot[e] peaceable, lawful conduct,’ Brief for Plaintiffs 51, can further terrorism by foreign groups in multiple ways. ‘Material support’ is a valuable resource by definition. Such support frees up other resources within the organization that may be put to violent ends. It also importantly helps lend legitimacy to foreign terrorist groups — legitimacy that makes it easier for those groups to persist, to recruit members, and to raise funds — all of which facilitate more terrorist attacks.”).

60 When there are references to multiple DIA reports there is seldom if ever additional information since last reported. The multiple reports are a summarization and restatement of previously reported cases of reengagement.

61 National Security Deserves Better, supra note 51, at 15 (“In the July 2007 DoD news release, the five Uighurs relocated to Albania were listed as examples of recidivists activity. … Since their release — following three years of incarceration at GTMO — the five men have lived at the same refugee camp in Tirana, Albania.”) (The press release was removed by the DOD and is no longer available online, the copy is reproduced in the cited report).
CHAPTER 10 ENDNOTES


5  Task Force staff interview with Greg Craig (Sept. 13, 2012) [hereinafter Craig Interview].

6  Id.

7  Id.


9  Craig Interview, supra note 5.


11  KLAIDMAN, supra note 10, at 102.

12  Id. at 105–06.

13  Id. at 106.

14  Craig Interview, supra note 5.


16  Finn & Kornblut, supra note 10.


18  Six others had been resettled in Albania under the Bush Administration. The remaining three detainees have rejected resettlement offers from Palau, El Salvador, and the Maldives.

20 Task Force staff interview with State Department officials (Feb. 6, 2012). [hereinafter Interview with DOS Officials]


22 Id.


27 ACLU v. DOD, 543 F.3d 59, 71, 75 (2d Cir. 2008).


31 Id.

32 Id.


34 Interview with DOS Officials, supra note 20.

35 Task Force staff interview with government official.


38 KLAIDMAN, supra note 10, at 4–6.
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41 KLAIDMAN, supra note 10 at 79.


46 Senate Select Comm. on Intelligence (111th Cong.), Nomination of Leon Panetta to be Director, Central Intelligence Agency 13–14 (Feb. 5–6, 2009), available at http://www.intelligence.senate.gov/pdfs/111172.pdf


48 Id.

49 Id.

50 Interview with DOS Officials, supra note 20.

51 Id.


53 Id.


58 Id. at 4.

59 Id. at 17–21.


61 Id.

62 Id.


64 Task Force staff interview with former U.S. official.


69 Interview with former U.S. official, supra note 64.

70 Id.


73 See, e.g., http://www.state.gov/documents/organization/100843.pdf. U.S. courts are unlikely to rule on the legal merits of this position, because every legal challenge alleging that U.S. military or CIA had violated the CAT has been dismissed on jurisdictional grounds or to protect state secrets.
Interview with former U.S. official, supra note 64.


Interview with former U.S. official, supra note 64.

Id.


Id. at 46–48.

Id. at 48.

Id.

Id.

Id. at 46–47.

Id. at 47.

Interview with former U.S. official, supra note 64.

Id.

Id.

Colvin Testimony, supra note 65.


Document available at http://www.guardian.co.uk/law/interactive/2012/nov/03/torture-email


Id.

Id. at 11.
96  Id. at 53.
97  Id. at 40–41.
98  Id. at 12.
99  Id. at 5.
100 Id. at 64.


102 UN Finds Torture Still Rampant in Afghan Prisons, supra note 101.


106 Id.

107 Id.


109 Appendix M, supra note 105.

110 Id.

111 Id.


113 Task Force staff interview with Col. (Ret.) Stuart Herrington [June 20, 2012] [hereinafter Herrington Interview].

114 Id.


116 Herrington Interview, supra note 113.

118  Id.


127  Id.

128  Id.


132  See generally United States v. Warsame, Crim. No. 11-559 (S.D.N.Y.).


138 Specific examples of this appear throughout this report, particularly in Chapter 2 (courts-martial for the deaths of detainees at Bagram Air Base resulted in maximum sentence of five months imprisonment), Chapter 3 (court-martial for homicide resulted in sentence of 60 days confinement to barracks; four other suspicious deaths resulted in no charges; many acts of mistreatment at Abu Ghraib never prosecuted), and Chapters 6 and 8 (no prosecutions for various acts of torture in CIA rendition, detention and interrogation program).


140 Id.


142 Mohamed v. Jeppesen Dataplan, Inc., 614 F.3d 1070 (9th Cir. 2010) (en banc).

143 Arar v. Ashcroft, 585 F.3d 559 (2d Cir. 2009), cert. denied, 130 S.Ct. 3409 (2010).


146 Id. Margulies said that in general conditions of confinement in Guantánamo had markedly improved since his early visits to the base: “Guantánamo’s an entirely different place from 2002, 2003, and 2004.” Even the high value detainees in Camp 7 were housed in conditions “vastly better than a maximum security unit” in the United States. Id.

147 Id.

148 Id.

149 Defense Motion to End Presumptive Classification, 28–31, United States v. Mohammed (Military Commission, Guantánamo Bay Apr. 17, 2012).


152 Transcript of Hearing I at 806, United States v. Mohammed (Military Commission, Guantánamo Bay Oct. 17, 2012).

153 Id. at 799–801.


155 Spencer Ackerman, 9-11 Defendants Seek to Preserve CIA Sites Where They Were Tortured, WIRED (Jan. 24, 2013), available at http://www.wired.com/dangerroom/2013/01/black-sites


160 See Chapter 2 (Afghanistan), Chapter 3 (Iraq).


162 Id.

163 Id.

164 Michael Hayden & Michael Mukasey, The President Ties His Own Hands on Terror, WALL STREET J. (Apr. 17, 2009).


166 Id.

167 Herrington Interview, supra note 113.

168 Task Force staff interview with Ali Soufan (July 5, 2012).

169 Task Force staff interview with Col. (Ret.) Steven Kleinman (June 19, 2012).
CHAPTER 11 ENDNOTES


3 David Nather, Congress as Watchdog Asleep on the Job, CONG. Q. WKLY. REP. 1190 (May 22, 2004); Joseph C. Anselmo & Martin Kady II, Duty and Honor’s Tightrope, CONG. Q. WKLY. REP. 1196 (May 22, 2004).


6 Anselmo & Kady II, supra note 4.

7 See CIA records (Member Briefings on Enhanced Interrogation Techniques), available at http://www.factcheck.org/UploadedFiles/EIT_Member_Briefings.pdf

8 Jose Rodriguez, Hard Measures 64 (2012).


32 Task Force staff interview with Tom Daschle (Aug. 21, 2012).


36 Id. at 235.

37 Id. at 234.

38 Kramer, supra note 34.


40 Kramer, supra note 34.


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45 Welch, supra note 35. See also Kramer, supra note 34.

46 Task Force staff email correspondence with Paul Kramer (Sept. 13, 2012).

47 Welch, supra note 39, at 145.

48 Correspondence with Kramer, supra note 46.


50 Id.; German Churches Enter Malmedy Case, Chi. Trib. (Sept. 8, 1949).

51 Plea for 12 of Malmedy; Anti-War Group Cables Clay to Spare German Soldiers, N.Y. TIMES (Mar. 6, 1949); William R. Conklin, Protests Increase on Malmedy Trial, N.Y. TIMES (Mar. 2, 1949); War Crimes: Clemency, TIME (Jan. 17, 1949).


53 Malmedy Massacre Investigation, supra note 52, at 35.


55 Malmedy Massacre Investigation, supra note 52, at 7–23.


57 Borch, supra note 49, at 8.

58 Task Force staff email correspondence with Fred L. Borch III (Sept. 25, 2012).