CANADIAN FORCES COLLEGE - COLLÈGE DES FORCES CANADIENNES

NSSC 8

Detainee Operations: The Enduring Legacy of Abu Ghraib

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May 2006

Abstract

While the act of war has been a constant for humanity, attempts to place the rule of law upon this act have been a relatively recent development. Today, the act of war and the laws that govern behavior during conflict seem indivisible and the actions of civilized nation-states are assessed through international scrutiny. Therefore, the activities uncovered at Abu Ghraib prison appear more shocking in light of the fact that these acts were conducted by U.S. soldiers as part of a U.S.-led operation against a totalitarian regime. The strategic damage that the U.S. government sustained as a result of the activities at Abu Ghraib is likely difficult to quantify; however, this incident highlights the impact tactical actions by soldiers can have on a nation-state at war. This paper examines the confusion generated at the strategic level as a consequence of policymakers debating, writing, reviewing, rescinding and then re-issuing policies on prisoner treatment and interrogation during detainment. It considers U.S. prisoner treatment policies against international conventions and highlights the urgent requirement to address the treatment of prisoners who do not meet the definition of combatant under existing international statutes. It describes the activities of those guarding Abu Ghraib Prison from the perspective of incoherent and inconsistent strategic policies that were not specifically designed for that operation; given this vantage point, it can be seen how this incident was, to some degree, almost inevitable. The urgent requirement to address these strategic gaps cannot be overstated in the modern world of asymmetric warfare.

...the nation has placed an enormous burden upon our armed forces. We have asked you to be our soldiers and our statesmen, to be our combatants and our conscience. This burden has been placed upon you with only limited guidance.[1]

Introduction

Wars, or war-like tendencies, have been around the human race for thousands of years. In the beginning, conflicts were conducted by hand, then with crudely made war instruments. As humans become more sophisticated with their capability to wage war, the lethality and precision of war has become almost unimaginable and will only get more so with the advent of robotics and genetically engineered weapons. Also, with the explosion of information technology, the capability to monitor and observe conflicts in near real time has brought war, when it happens, into every living room in the world that has a TV (or a computer screen). Seeing a news report of precision-guided munitions remotely piloted into a window of a target 7,000 miles away is, for the most part, old news. With these technological capabilities and the immediate information feedback, it seems to the military profession the world population expects perfection when it comes to the conduct of war and all that it entails. This assumption is displayed ad nauseam by the general media attention and coverage of mistakes made during the conduct of war. A prime example was the inadvertent targeting of the Chinese Embassy in Kosovo during the NATO-led bombing campaign and the daily litany of editorial comments and coverage of this event afterwards.

But, there is a very human part of war that is much less exotic, much less precise and definitely less perfect. On the ground where forces meet other forces and combatants

[1] Justice Sandra Day O'Connor, "We Need a Clear Set of Rules to Reaffirm Our Values as a Nation" in her Thayer Award Acceptance Address, *Army* 56, no1 (January 2006): 9-12.

come face to face with those who are their opponents, reality is rarely as clean and clear-cut. It gets dirty and gritty and people die. And, inevitably, there will be people, who for some reason or another, will be captured by those of the opposing force. When this event happens, the capturing force has decisions to make. What is to be done with the captured person and, secondly, a very critical issue is what kind of information the capturing force can obtain from the captured person that may help in the conduct of their mission. Just as critical is determining exactly how this information will be obtained and what the limits will be on the techniques used to obtain this information. These issues and decisions should not have to be made by soldiers on the ground but inevitably are in many cases. And, even those in charge at a higher more operational level should not have to determine what would be done with prisoners on the battlefield. These heady issues should be clearly stated and promulgated from the highest political level in the form of a policy or strategic guidance, set out in law, international convention, government policy, military doctrine, as well as specific mission guidance or instructions.

Since 1949 and latterly 1977 with the Geneva Conventions and the additional protocols, most of the civilized world has agreed that prisoners and civilians detained during wartime should be treated with a certain standard of dignity and respect. The Geneva Conventions are fairly clear and uniform for those countries that have ratified them, but dignity and respect has varying meanings to different cultures and different nations. This problem is compounded by the complexities involved with different national standards of detention and interrogation of prisoners to obtain critical information for the campaign at hand. The United Nations (UN) has put forth a huge effort to overcome this issue, as will be discussed later in this paper. During

interrogation, sometimes the detaining nation deems the information so critical that any and all means to obtain this information seem appropriate. But what happens when the treatment of prisoners crosses the line between legitimately harsh and legal treatment to cruelty and torture? There are many incidents in the past that demonstrate the effects of mistreatment of prisoners and there is plenty of blame to go around in the world when it comes to allegations of mistreatment of prisoners during wartime. Some may assume that when graphic images of prisoner abuse are displayed through the world media, the soldiers on the ground have gotten it wrong. They are barbaric in their actions, undisciplined, poorly trained and/or poorly led. At times, this type of abuse is systematic and condoned by those in military authority. Although this situation may be true to some extent, when one conducts a little more analysis of the situation at hand, he may find that the roots of the problem are not at the tactical/soldier level and not at the operational/commander level. Even though the individual on the ground is the one who makes the final decision to abuse, more likely than not, the problem lies squarely at the strategic/policy level. The incidents that unfolded at Abu Ghraib Prison in 2003 highlight the result of incoherent U.S. strategic policy guidance (along with leadership and training failures through the entire chain of command) and this incident demonstrates the need to generate sound U.S. detainee policy and ensure this policy is aggressively managed at all levels. To not do so is a critical strategic mistake that does not need repeating.

Guidelines

Before discussing contemporary detainee issues, it will be helpful to cover the grand strategic policies and guidelines that apply to those issues. "Grand strategic" for the purpose of this discussion is defined as the attempt by world bodies to somehow

control the conduct of war. The most prevalent documents that relate to the Grand Strategic conduct of war are The Hague and Geneva Conventions. The Hague Conventions of 1899 and 1907 "prescribes the rules of engagement during combat and is based on the key principles of military necessity and proportionality."[2] The Geneva Conventions "emphasizes human rights and responsibilities, including the humane and just treatment of prisoners"[3] and it sets out criteria for recognition as a lawful combatant: wearing of uniform, carrying arms openly, taking orders from a recognizable chain of command, etc. Countries that have ratified the Geneva and Hague conventions abide by the basic rules that are included in the broad category Law of Armed Conflict. The *1949 Geneva Convention relative to the Treatment of Prisoners of War* is a 60-page document laying out very specific guidelines on how prisoners of war should be treated. It was discussed and debated in 1949 and entered into force on 21 October 1950.[4] Its 143 articles set out the definition of a prisoner and the qualification of prisoner of war status. It implores combatants to act with respect to those not involved in the actual conflict:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provision: Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex birth or wealth, or any other similar criteria.[5]

The Convention continues to describe in detail those activities that are prohibited at all times with respect to persons who meet the criteria stated above. These include:

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[2]United States, Supreme Court Debates, *The Law of War*, (Washington, D.C., U.S. Government Printing Office, 2004), 167.
[3] Ibid, 167.
[4] United Nations General Assembly, *Geneva Convention Relative to the Treatment of Prisoners of War*, (New York: U.N., 1949).
[5] Ibid.

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
b) taking of hostages;
c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.[6]

The convention goes on to define specifically who should be treated as a prisoner of war, the protections that should be accorded prisoners of war, prisoner internment, and specific administrative guidelines pertaining to treatment of prisoners throughout their internment. Since 1950 there have been very specific guidelines for treatment of combatants when they become prisoners of war and these guidelines coincide with U.S. military experiences in Vietnam and the 1st Gulf War. But, there is more. Dr Steven Miles contends that the U.S. has, over the years, signed or enacted a litany of what could be considered grand strategic guidelines that, in one form or another, deal with persons who are detained in some way, shape or form. These include: the UN *Universal Declaration of Human Rights*, the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, the UN *Standard Minimum Rules for the Treatment of Prisoners,* and the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*.[7] Each of these documents provides very specific and detailed guidance to the signatories on what is considered to be basic human rights, what is considered torture and minimum rules for treatment of persons who are considered detained. Also, the regulations governing prisoner treatment can be modified by the applications of domestic law and Supreme Court rulings. These

[6] Ibid.
[7] Steven H. Miles," Abu Ghraib: Its legacy for military medicine," *The Lancet Medical Journal*, (August 2004), paragraph 2.

documents and conventions are minimum standards for prisoner treatment and are frequently used to discredit current U.S. policy with respect to prisoners and interrogation. It is worthwhile to delve into these documents to determine exactly what they mean for those who have signed up for them and who follow their guidelines.

A possible interpretation of these guidelines and conventions could be that the entire series of "rules" are created through a Utopian view of society. Or, it is the logical evolution toward a more pacifist world where differences are worked out by observance of common standards, rather than force. Somehow, if the nations of the world would act humanely, the world would be a perfect place for all who inhabit it. It sounds very lucrative and desirable on the surface, but putting these ideals to work bring us back to the real, gritty, deadly world that we live in. And in this real world is where the nations' soldiers fight.

First, the *Universal Declaration of Human Rights* document adopted and proclaimed by the UN General Assembly in 1948 will be considered. Most idealistic of all the documents stated, it in no way deals with prisoners of war and in the American sense reads like motherhood and apple pie. It includes very general and broad statements such as "All human beings are born free and equal in dignity and rights"[8] and "everyone has the right to life, liberty and security of person."[9] This document reflects a great deal of idealism and provides little practical guidance. Article 5 states "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[10] But, there is no definition of what torture, cruel, inhuman or degrading punishment is or does not in any way put the article in context. All the articles contained in this document by

[8] United Nations General Assembly, *Universal Declaration of Human Rights, Article1,* (New York: 1949).
[9] Ibid, Article 3.
[10] Ibid, Article 5.

western standards, values and interests sound and read well in the broad sense, but have limited applicability when dealing with an enemy who by all accounts does not support any of the articles. This document definitely does not help the foot soldier on the ground who has now become the potential lightning rod for issues that take on strategic importance. His every action has the potential to be scrutinized at the highest level of civilian government, military leadership and the general population.

In 1977, the UN formally adopted the *Standard Minimum Rules for the Treatment of Prisoners*. The goal of this document is "to set out what is generally accepted as being good principles and practice in the treatment of prisoners and the management of institutions."[11] It is a document that is intended to give general guidance and guidelines for detention of civilian society's criminals. It does a very good job in this respect, but it is not written in a way that either implies or specifically states that it pertains to the very unique category of prisoners of war; however it may apply to those who do not get or deserve the status of prisoner of war under the 1949 Geneva Convention. It does, however, provide good basic guidelines on the general treatment of prisoners and, although it is not a guide for prisoner of war operations, it can be useful to the commander in the field who may need minimum standards while creating and managing a prisoner of war camp. At the strategic level, it provides good advice and guidelines for general detainee/prisoner procedures and describes minimum requirements for the facilities and personnel who conduct prisoner operations. Again, the document is good at categorizing very specific activities for detention of persons, but it is not specifically

[11] United Nations General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, (New York: 1977).

applicable to the category of prisoners of war and has little or no use when dealing with the critical issue of torture.

The document perhaps the most restrictive to U.S. in its treatment of prisoners and the policies involved, especially when discussing torture is *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. This convention provides an outstanding definition for torture:

> means any 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.[12]

This Convention continues with the clear statement, "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture" and "an order from a superior officer or a public authority may not be invoked as a justification of torture."[13] This Convention was initiated in the early 1980s and entered into force in 1987. Clearly, the UN and especially the Office of the High Commissioner for Human Rights saw a need for the civilized world to define and restrict the use of torture throughout the world. Again, very clear and idealized notions inform this document that painstakingly describes the steps nation-states should take to prevent and, if necessary, prosecute violators. The convention also does a good job of defining what constitutes torture and puts a positive

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[12] United Nations General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.*
[13] Ibid, Article 2.

obligation on countries to prevent torture and actions that lead to this activity. It even clearly states the responsibility for training personnel in article 10, "each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."[14] Training is a critical issue and the lack of training or inadequate training plays a role in the events at Abu Ghraib and will be discussed later in this paper.

Then, in 1988 the UN General Assembly adopted the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. This document very clearly demonstrates the principles "that apply for the protection of all persons under any form of detention or imprisonment."[15] There are very clear definitions of detained person, imprisoned person, detention, imprisonment and arrest.[16] There are 39 principles with a general clause at the end of this document with the 6th principle clearly stating: "no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment…no circumstance whatsoever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."[17] The general clause at the very end of the document discusses cruel, inhuman or degrading treatment or punishment.[18] The interesting aspect of this

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[14] Ibid, Article 10.
[15] United Nations General Assembly, *Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment*, (New York: 1988), Scope of the Body of Principles Statement.
[16] Ibid. To review actual definitions, refer to the "Use of terms" section at the beginning of Body of Principles.
[17] Ibid, Article 6.
[18] Ibid. General clause: The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or

document is torture, inhuman or degrading treatment are separate and distinct and this will be examined further in later discussions about the definition and application of the word torture.

With such detailed published and accepted guidelines on detention and torture, national policies and procedures concerning these actions should be very straight-forward. All policymakers have to do is promulgate guidance mirroring the framework given by the documents discussed above. In Canada, these conventions are made part of Canadian law by an enabling act of Parliament; thus persons who contravene them are, in effect, committing offences under Canadian domestic law. But, some serious flaws are found when analyzing these documents that so very idealistically and desirably want to make this world a better place for all who inhabit it. The most glaring shortcoming is that various documents were written with a nation-state perspective that very simplistically assumes that when war occurs, war is necessary against another nation-state or an assemblage of nation states. Similar guidance is used for conflicts short of all out war.

The documents do not envisage a world in which a nation fights an enemy who is transnational and asymmetric. Where huge criminal organizations exist with no claim to any country and possess few intentions to follow generally accepted rules of warfare and more specifically the rules of detention and torture, then these organizations or groups are not eligible for the protections granted under the Geneva and Hague Conventions. It is important to note that additional protocols extend protection to certain guerrilla groups and prohibits mercenaries as a distinct group. Also, while the countries that, in good faith, would try to follow the guidelines of the conventions and tools laid out very nicely

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permanently of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

in the UN documents, the criminal actors identified above, who do not even attempt to abide by the guidelines, are free to openly criticize and denounce any violation of these guidelines. These criminal actors can criticize if they so wish but it is up to the countries and armed forces to set the true standard of the law and send a clear message how persons eschewing the law will be treated if caught. The Geneva and Hague conventions set out minimum standards for nations to meet. This very complicated and confusing scenario came to fruition after September 11, 2001 when the U.S. found itself in the middle of a conflict with a foe that was more like an extremely dangerous and brutal transnational criminal organization than a nation-state. Then, the unthinkable happened. In early 2003 images were published that clearly show detainees at Abu Ghraib being at the very least humiliated and, some would immediately say, tortured or abused.

Abu Ghraib

The world will probably never know all the events that took place in and around the prison known as Abu Ghraib despite the summary reports and results of inequities submitted by retired generals, military commentators and organizations such as the International Red Cross. But what is known has potentially changed the way the present world perceives the U.S. and may affect the way the U.S. can conduct war for many years. The pictures displayed to the world in Spring 2004 were not pretty; the handiwork of supposedly professional U.S. soldiers shocked the U.S. public and created an enormous negative world opinion of the U.S. in general. There were pictures of naked prisoners in a pyramid, naked men being taunted and led on a leash by women, pictures of prisoners with bags over their head, and pictures of prisoners performing other

humiliating acts.[19] Those were the pictures that were published. Further investigations revealed even more barbaric actions against prisoners at Abu Ghraib:

> Breaking chemical lights and pouring the phosphoric liquid on detainees, pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against a wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick and using military working dogs to frighten and intimidate with threats of attack, and one instance of actually biting a detainee.[20]

Almost all the pictures contained smiling men and women from the U.S. military in them who were clearly not concerned that what they were doing could in any way be wrong. They actually looked like they were proud of what they were doing. Who were these people? They were junior non-commissioned officers or lower and there are many official reasons provided for why they were doing what they were doing. These included lack of training, poor leadership, inexperience, rogue military police guards, rogue military intelligence agents, poor guidance and poor policy. Courts martial have punished many of these junior soldiers, with the most jail time going to a mid-rank Sergeant: 10 years hard labor at Fort Leavenworth. Senior military and civilian officials were quick to lay blame on the junior leaders and soldiers and as quickly as possible avert attention away from them. To date, no one over the rank of sergeant has been brought to courts martial for the incidents at Abu Ghraib. Senator Mark Dayton (Democrat from Minnesota) declared: "We've now had fifteen of the highest-level officials involved in this entire operation, from the Secretary of Defense to the generals in command, and nobody knew that anything was amiss, no one approved anything amiss, nobody did

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[19] Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (New York, New York Review of Books), 217-224.
[20] Seymour Hersh, *Chain of Command*, (New York: Harper Collins Publishers Inc), 22.

anything amiss. We have a general acceptance of responsibility, but there's no one to blame, except for the people at the very bottom of one prison."[21] Even the general officer with overall responsibility for the prison, Brigadier General Karpinski, denied knowing that anything was going disastrously wrong at Abu Ghraib.[22] Command responsibility and at what level blame should be applied is an aspect of the events at Abu Ghraib and certainly did not give credibility to the U.S. in how the punishments were handed out. This surely adds to the world wide disappointment concerning the events at Abu Ghraib.

Impending Disaster

How could arguably the most powerful country in the world, espousing freedom and liberty and a fair and democratic process for all, allow such a horrendous episode such as Abu Ghraib? Were these just inexperienced, poorly led, poorly trained soldiers who, on their own, decided to cross that imaginary line between legitimate treatment of prisoners and that of torture? Unequivocally, the answer is no. The soldiers in the pictures with the prisoners at Abu Ghraib were most likely poorly led and, for the most part, were poorly trained for the mission given to them at Abu Ghraib. But, the road to Abu Ghraib started before American forces entered Iraq and it began at the highest strategic level in the United States.

Before addressing the policies and procedures leading to the Abu Ghraib incident it is prudent to discuss whether the prisoners at Abu Ghraib were actually tortured at all. According to the definition of torture found/espoused in the *Convention against Torture*

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[21] Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (New York, New York Review of Books), 10.
[22] Karen J. Greenberg and J.L. Dratel, editors, *The Torture Papers: The road to Abu Ghraib*, (New York: Cambridge University Press), Interview of BG Karpinski, 529-552.

and Other Cruel, Inhuman or Degrading Treatment or Punishment, it could be argued that none of the prisoners shown in the pictures were suffering from severe pain or suffering…physical or mental. They were extremely humiliated but humiliation is not a part of the United Nations convention definition of torture. Do actions such as those shown in pictures of detainees shown being humiliated tug at ones sense of what is right and wrong? For most of the civilized world the answer would most likely be yes, but sense of what is right and wrong is not in the definition of torture. Article 5 of the somewhat Utopian UN Universal *Declaration of Human Rights* states: "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[23] Although a good case could be made for inhuman and degrading treatment at Abu Ghraib, even the article is written in a way that separates torture from inhuman or degrading treatment. Inhuman or degrading treatment does not necessarily equal torture in all cases. Furthermore, the word torture is not even mentioned in the Office of the High Commissioner's Human *Rights Standard Minimum Rules for the Treatment of Prisoners*. Likewise, torture is mentioned a mere four times in the *Geneva Convention relative to the Treatment of Prisoners of War*. Where mentioned, torture is a separate element from either "cruel treatment," "violence to life and person," "any other form of coercion" (other than physical or mental torture), "or cruelty," and "willful killing."[24] This convention does not even define torture. So, although the incidents at Abu Ghraib that were publicly displayed to the world through every media outlet were disgusting, sophomoric, crude, and contradicted public sensibilities, it is very hard to, by definition, link these activities to the word torture. Again, torture by definition is any act by which

[23] United Nations General Assembly. *Universal Declaration of Human rights*, (New York: 1948), Article 5.
[24] See articles 3 para 1a, 17 para 3, 87 para 3, and 139 of the *Geneva Convention relative to the Treatment of Prisoners of War.*

severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. Humiliation does not equal severe pain or suffering. Of course one counter-argument to this discussion would be to consider world reaction if U.S. detainees or soldiers were treated in the same way. And in the contemporary "war on terror," the only thing we can compare it to is the arbitrary beheading of innocent non-combatants by rogue groups intent on making statements on behalf of their particular cause. Surely, there is no comparison.

Another issue frequently mentioned and in need of clarification is the status of detainees or prisoners who are from an organization that does not represent a nation state and does not abide by anyone's rules and laws except their own. Although not all prisoners held at U.S. prisons abroad are de-linked from a nation state, the Al Qaeda organization is a prime example of an organization that claims no nation state and provides a challenge to the entire world community. A myriad of major issues are involved when sorting out how to deal with an entity like Al Qaeda. Among the most difficult issues is how a nation-state negotiates or even communicates with them, or even if negotiations could or would possibly take place except through actions or the media. Another issue is how, in the broad context, a nation-state applies the generally accepted *Laws of Armed Conflict* when dealing with a group that neither recognizes nor attempts to follow these rules. But, more specifically, how does a nation-state categorize the persons it detains when the convention that it follows fails to identify them as prisoners of war? The Geneva Conventions were intended to set standards and conditions for those activities that take place between nation states and covers lawful combatants. In the *Geneva Convention relative to the Treatment of Prisoners of War*, it discusses "armed

conflict which may arise between two or more of the High Contracting Parties" and "partial or total occupation of the territory of a High Contracting Party."[25] In Article 4, the Convention defines prisoner of war status and sets the parameters for who may be considered a prisoner of war. These include:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
2. Members of other militias and members of other volunteer corps, including those organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:
    a. That of being commanded by a person responsible for his subordinates;
    b. That of having a fixed distinctive sign recognizable at a distance;
    c. That of carrying arms openly;
    d. That of conducting their operations in accordance with the laws and customs of war
3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
4. Persons who accompany the armed forces without actually being members thereof…
5. Members of crews (merchant marine and civil aircraft)….
6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces….[26]

It is difficult to categorize Al Qaeda into a force whose members would "qualify" for protection under the Geneva Convention. So, it is incumbent on the nation-state that is in conflict with an organization like Al Qaeda to determine exactly how it will categorize people who are detained or captured. Also, the capturing nation must determine the rule that will govern actions taken once someone is taken into custody. In keeping with domestic law, resulting policy might put limits on torture and cruel and inhumane

[25] United Nations General Assembly. *Geneva Convention relative to the Treatment of Prisoners of War*, (New York: 1949), Article 2.
[26] Ibid, Article 4.

treatment as well as basic administrative guidelines for detention (standards of care, facility rules, diet, etc).

There is clearly the question of how a nation state categorizes an adversary who does not fit neatly into the generally accepted definition of a combatant who is protected under the Geneva Convention. Civilians are combatants by virtue of their actions, but their actual status (legal or illegal) depends on criteria set out in the Conventions and as applied by military forces. There is considerable doubt that prisoners were actually tortured at Abu Ghraib, rather they were cruelly treated or humiliated. Notwithstanding these very important issues, the problem still exists. The incidents at Abu Ghraib have created an enduring legacy for the U.S. that may affect its foreign policy and legitimacy for years. The question becomes, how could the incidents at Abu Ghraib possibly happen in this enlightened age and at the hands of a country that very vocally defends individual rights and justice for all and also protects them from those who challenge individual rights and justice for all? The single absolute answer is extremely elusive and the blame can be felt throughout the entire spectrum of war from the strategic level all the way down to the very hands-on tactical level. But, decisions made and policies promulgated at the strategic level are undoubtedly the catalyst for Abu Ghraib.

Strategic Guidance/Policy

To determine what happened at Abu Ghraib in Fall 2003, the evolution must begin on 11 September, 2001. That day, the world watched the World Trade Center towers destroyed by a few terrorists who hijacked commercial airplanes and crashed them into the buildings. Almost simultaneously, another commercial airplane was flown into the Pentagon and another was brought down in a field in Pennsylvania, presumably as a

result of passengers and terrorists fighting to gain control of the plane. As a country clearly provoked and wounded, the U.S. soon responded very aggressively by sending U.S. forces into Afghanistan in an effort to neutralize the Taliban regime and the organization known as Al Qaeda.

Very quickly the U.S. found itself dealing with detainees on the battlefield who needed to be questioned and held. But, what was the status of these detainees? Did the Geneva Convention apply? What were the rules of engagement for questioning these detainees and under what authority were they to be detained and for how long? It seemed that all the old rules just did not apply to this "new kind of war".[27] What happened at the U.S. policy-making level soon after September 11, 2001 was a discussion at the highest level about these very issues. This discussion continues to this day with the White House and Department of Justice on one side and the State Department and some in the Department of Defense on the other. The wrangling at the highest levels over details concerning detainee status demonstrates how complex the issue really is. If there are questions at the top, one can only imagine the difficulties soldiers on the ground would have when dealing with the issue in a practical fashion. How does a soldier treat a captive when guidelines and the next level of authority clearly state the legal status of that captive? The fall back position should be all captives are treated with dignity and respect and should be afforded all of the protections of the current laws and conventions; at least until their true status is determined by military tribunal and sanctions allowed under the law can be applied. Of course this is easier said than done by the people who have to place their hands on and control an enemy combatant who has no state, follows

[27] Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (New York, New York Review of Books), 75.

no rules and is willing, able and ready to kill his captor at any opportune time. Additionally, he may possibly have information that, if known, could save lives. Clearly, higher authority must delineate the status of detainees in a clear and precise manner.

As early as November 13, 2001 the President of the United States signed a military order pertaining specifically to the detention and treatment of non-citizens in the war against terrorism.[28] This order, deemed necessary because of the demonstrated threat of international terrorists, prescribes responsibilities and provides broad based guidelines for detaining these terrorists or anyone directly linked to these terrorists. Persons subject to the order are spelled out and the memorandum pertains specifically to the group Al Qaeda and not the Taliban or anyone else on the battlefield. Because the White House saw this conflict as a conflict outside the normal guidelines for conducting war, the Secretary of Defense was provided specific detention authority for the individuals detained and was provided wide-ranging control of the detention process. The memorandum specifically states, in a manner similar to the Geneva Conventions, that the individuals affected by this order be afforded adequate food, drinking water, shelter, clothing, and medical treatment along with the ability to exercise freely their religious beliefs.[29] Some might find it surprising that this memorandum also states that individuals will be "treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria."[30] This order was only the beginning of the debate. While U.S. soldiers were moving into Afghanistan to hunt down terrorists and the Taliban in Fall 2001, a conflict/struggle of a different sort began to play out at the nation's capital.

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[28] Ibid., 78-82.
[29] Ibid., 79, 80.
[30] Ibid., 80.

The changed nature of warfare and the challenges it placed on the established rules pertaining to the treatment of prisoners of war presented the U.S. leadership with a dilemma: do the individuals detained in the "war on terror" fit the categories of prisoners of war? Do members belonging to organizations such as Al Qaeda and the Taliban deserve protection under the guidelines? Through much discussion both publicly and privately over the next few years, the official answers to these questions from the highest level of the U.S. were that the detainees who are from the Al Qaeda organization and the Taliban were not considered eligible for protections under the 1949 Geneva Conventions or the follow-on conventions and international rules concerning combatants. The debates played out even while U.S. soldiers were moving detainees from Afghanistan to a prison on a little known U.S. outpost on the island of Cuba named Guantanamo Bay. In January 2002 just after the arrival of the first detainees at Guantanamo Bay, the Secretary of Defense, in a memorandum for the Chairman of the Joint Chiefs of Staff, instructed "that Al Qaeda and Taliban individuals under the control of the Department of Defense are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949."[31] This is clearly in keeping with existing Law of Armed Conflict pertaining to prisoners of war. The memorandum goes on to state that these detainees should be treated humanely and in a manner "consistent with the principles of the Geneva Conventions of 1949." One can only imagine what the commanders on the ground really thought about this type of guidance, but it soon played out in a back and forth legal wrangling between the combatant commander in theater and the strategic leaders who were trying to define the legal parameters within which the soldiers on the ground should act. This debate

[31] Karen J. Greenberg and J.L. Dratel, editors, *The Torture Papers: The road to Abu Ghraib*, (New York: Cambridge University Press), 80.

included the limitations and procedures that could be used to obtain information from these detainees. Meanwhile, U.S. Secretary of State, Colin Powell (retired U.S. Army General and former Chairman of the Joint Chiefs of Staff) was vehemently opposed to the policy of not treating the detainees in accordance with the Geneva Conventions. Rationally looking at the question from a former soldier's point of view, in a memorandum to the President's counsel on January 26, 2002, Secretary Powell clearly set out the pros and cons for applying the Geneva Convention and not applying the Geneva Convention to the conflict in Afghanistan. The cons for not applying the Geneva Convention greatly outnumbered the pros (only one) and included: reversing longstanding policy of supporting the Geneva Convention, undermining the protections provided U.S. troops, negative international reaction, adverse foreign policy consequences, undermining of public support among allies, probable concerns of legality from other countries, possible provocation of foreign prosecution of U.S. troops along with other legal arguments. The only pro was it provided an "across the board" policy that provided maximum flexibility.[32] Undeterred, the Counsel to the President, Alberto Gonzales, refuted the Secretary of State's claims on the grounds of legal definitions and current convention language. Additionally, on 1 February, 2002, the Attorney General of the U.S. also argued the Geneva Conventions did not apply to members of Al Qaeda or the Taliban.[33] With the decision made that Al Qaeda and Taliban detainees do not fall into protected categories in accordance with the Geneva Conventions, later in 2002, the discussions turned to what kind of "counter-resistance techniques" could and should be used against the detainees held in Guantanamo Bay. There was uncertainty as to the

[32] Ibid., 123.
[33] Ibid, 126-127.

legality of some forms of interrogation techniques and how the torture statute should be interpreted and just how far intelligence interrogators should go when interrogating detainees. Directives were given, rescinded, re-issued and studied and re-studied and further discussed.[34] In a Secretary of Defense working group report as late as April 2003, the determination was made that the Al Qaeda and Taliban detainees were not covered by the 1949 Geneva Conventions, but the U.S. was in turn bound by the Torture convention of 1994 (only if certain constitutional considerations apply). The report contained a very descriptive discussion about torture and the definition of torture; moreover, the report identified the need for a specific definition of "severe mental or physical pain or suffering".[35] After this working group provided its findings to the Secretary of Defense, he sent a memorandum to the Commander of US Southern Command (SOUTHCOM) laying out the authorized forms of "counter-resistance" techniques that could be used by military forces while interrogating detainees. The directives were specifically for the detainees at Guantanamo Bay and very specifically laid out authorized methods. These methods included direct asking, playing on emotions, boosting or insulting egos, change of scenery and more. All the authorized techniques are generally accepted techniques with a few that required specific Secretary of Defense notification. Any techniques above and beyond the ones listed were to be requested through the Chairman of the Joint Chiefs of Staff to the Secretary of Defense.[36] It is interesting to note that a couple of the techniques identified by the working group as legal and acceptable were not included in

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[34] For a more detailed description of the various directives and their dates of issue, rescinding and discussion, the reader may wish to read Karen J. Greenberg and J.L. Dratel, editors, *The Torture Papers: The road to Abu Ghraib*, (New York: Cambridge University Press), and Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (New York, New York Review of Books).
[35] Karen J. Greenberg and J.L. Dratel, editors, *The Torture Papers: The road to Abu Ghraib*, (New York: Cambridge University Press), 286-365.
[36] Ibid, 360.

the Secretary of Defense's memorandum to the Commander of SOUTHCOM. These methods include hooding (questioning a detainee with a blindfold or other such item in place) and removal of clothing. The working group identified removal of clothing as a technique to create a feeling of helplessness and dependence, with a warning that this technique must be monitored to ensure the detainee was not injured in any way. The Secretary of Defense memorandum does not even mention this technique, much less degrading a detainee through sexual humiliation, as seen in the infamous Abu Ghraib photographs. It also does not discuss softening up detainees by humiliating them, chaining them to their cells, or making them do things such as standing on one leg on a chair with electrodes placed on the body with a hood over the head. As a matter of fact, the Secretary of Defense clearly stated: "I reiterate that US Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions."[37] This statement was either lost in the translation to the lower ranks or never made it to the lower levels at all.

At about the same time as this latest directive from the Secretary of Defense was promulgated to the Commander of SOUTHCOM, U.S. and coalition forces began the campaign known as Operation Iraqi Freedom. From the very beginning there were individuals detained and within only a few short months (Fall 2003) the disturbing photographs were taken at Abu Ghraib. Interestingly, far before the photographs were released to the public in late April 2004, the Commanding General of the Combined Joint

how to fix these problems. These investigations included: an assessment of the Department of Defense (DoD) Counter Terrorism Interrogation and Detention Operations in Iraq conducted in early September 2003 by Major General (MG) Miller; a thorough analysis of detention and corrections operations in Iraq conducted by MG Ryder in October and November 2003; and an in-depth overarching investigation into the 800th Military Police Brigade by MG Taguba. Additionally, a fairly comprehensive and telling report was submitted by the International Committee of the Red Cross submitted in February 2004 and the U.S. Army Criminal Investigation Command was actively conducting investigations into reports of prisoner abuse after acquiring compact disks containing pictures of abuse in January 2004.

MG Miller, at the time the Commander of Joint Task Force Guantanamo, came to Iraq to assist coalition forces working interrogation techniques. Having already worked through a series of legal issues and techniques, his insights were invaluable to the coalition forces working in Iraq, but because of the difference in scope and detainee status, there may have been some confusion brought on by this "assistance." It is made very clear by MG Miller's team that the detainees in Iraq are potentially different than those in Guantanamo and all the techniques approved and used in Guantanamo would not work or apply in Iraq, especially when dealing with detainees who are not part of a terrorist organization but who are ordinary street criminals and Iraqi citizens. Nevertheless, the techniques used at Guantanamo were suggested to the coalition along with other recommendations to improve the entire interrogation apparatus. A specific recommendation to have the guard force set the conditions for successful interrogation is one example of a procedure that under the very controlled environment of Guantanamo is

workable, but in the extensive, complex, undermanned prison systems in Iraq could prove problematic. Coincidently, MG Ryder and MG Taguba strongly disagree with MG Miller's recommendation on this point.[38] Although at the operational level of this conflict, this disagreement shows that senior leaders in their branch of service were very much in opposition when it came to how detainees should be treated. It is interesting to note that policy guidance is not used to back up the assertions made by all in reference to police personnel preparing detainees for interrogation. As best determined, there is no policy guidance on this subject.

MG Ryder, the Provost Marshal General of the U.S. Army, conducted a very thorough and comprehensive assessment of the detainee and correction system in Iraq. In this assessment, there were many areas that needed immediate attention, but there were mid and long-term recommendations as well. The evaluation included all aspects of detention and included very specific recommendations on how military police guards should not be part of the interrogation process in any way. Military Police conducting their duties at a detention facility should become very good at obtaining "passive intelligence" while conducting their daily duties, but should not be part of supervised interrogation sessions. Also, his report stated, "Military Police should not be involved with setting 'favorable conditions' for subsequent interviews."[39] This is an observation/recommendation made by the most senior Military Police officer in uniform and was made at about the same time the pictures were taken at Abu Ghraib.

MG Taguba, the Deputy Commanding General Support for the Coalition Forces Land Component Command submitted his report in March 2004 in which he

[38] Ibid., MG Miller's report and Taguba and Ryder reports.
[39] Ibid, Summary of Ryder report from MG Taguba's Report, 288.

describes a clear lack of leadership at the brigade level and below. In his report, he recommends punishment and places blame on specific members of the 800th Military Police Brigade, including the brigade commander, and Military Intelligence personnel from 205th Military Intelligence Brigade, including the brigade commander. The recommended punishments for those individuals named in the report include General Officer Memorandums of Reprimand, removal from commands, removal from promotion lists, further investigations, and *Uniform Code of Military Justice* action. It is interesting to note that none of the senior personnel were recommended for courts martial. In his conclusion, he states: "several U.S. Army Soldiers have committed egregious acts and grave breaches of international law at Abu Ghraib…furthermore, key leaders in both the 800th MP Brigade and 205th MI Brigade failed to comply with established regulations, policies, and command directives in preventing detainee abuses at Abu Ghraib...during the period August 2003 to February 2004."[40] When it came down to the basic question of what the problem at Abu Ghraib was, it is clear that, although not all inclusive, these problems included poor leadership, inadequate training, young soldiers who did not have the aptitude to clearly understand the *Law of Armed Conflict* and how it applied to the detainees at Abu Ghraib, reserve soldier training (MP soldiers at Abu Ghraib were reservists), soldiers blindly following orders, pressures to "soften up" detainees, fraternization, and low discipline levels.[41] These findings might have suggested widespread and rampant abuse throughout Iraq, but this apparently was not so. MG Taguba lauds two Military Police battalions subordinate to the 800th Military Police Brigade, 744th MP Battalion and 530th MP Battalion, for properly running detention

[40] Ibid, Taguba Report, 444.
[41] Ibid, Summarized from the Taguba Report and the DAIG report and interviews, 405-557, 630-907.

facilities and for being disciplined in their duties. He also commends a Military Intelligence battalion, 165th MI Battalion, for its duty on the exterior of the Abu Ghraib prison. He recognizes specific individuals for their actions, including the junior soldier who discovered the pictures and subsequently turned them over to law enforcement authorities.

Learning from Abu Ghraib

The results of Abu Ghraib are clear: U.S. credibility in the area of detainee operations is tainted and could potentially remain so for years to come. What actions at the strategic/policy level could have precluded the incidents at Abu Ghraib? Before reviewing the negative, it is helpful to look at what went right. There were many appropriate actions that occurred at the highest levels of government. First, there was a healthy, intense, thorough debate about what should be done about the detainees in Afghanistan almost immediately after U.S. forces entered that country. Whether one agrees with the final decision or not, the fact that a democratic debate with differing legal opinions and differing views from high level officials demonstrates that the highest levels of government took this issue very seriously and was intent on making a sound decision. Also, there were evident healthy discussions between the civilian leaders of the military and the military leaders. Along the way, values, interests international obligations and responsibilities were discussed in detail along with the responsibility to preserve the security of the U.S. and how best to do that. And, for the most part, it seems that orders, procedures and guidelines for treating detainees were efficiently and effectively published and promulgated. There were thousands of prisoners at hundreds of different detention facilities and there were few serious problems.

Unfortunately, the few serious problems were severe and a more cohesive strategic policy guidance could have been developed. One could argue that the U.S. knew before it went into Afghanistan that there would be an issue with the status of detainees. Why did it take months after arriving in theater to determine what the status was? These questions should have been resolved far in advance of the first soldier on the ground detaining the first enemy combatant. To illustrate this dilemma one only has to place himself in the boots of a soldier on the ground in Afghanistan or Iraq detaining a suspected Al Qaeda member without any guidelines on the status of that detainee. It may seem simple, but at that point in time what gives the soldier the legal authority to place the person in custody? What are the limits on forcible detainment? What are the soldiers' recourses when detainees assault them? The questions go on and on, and needed answers prior to engaging in conflict, not during operations.

Although hard to prove, there is a distinct possibility the strategic/policy guidance concerning detainees for Afghanistan, Guantanamo Bay and Iraq evolved into a one size fits all policy. Clearly, the smaller numbers of detainees with a defined legal status in the controlled environment of Guantanamo Bay were not in the same situation as detainees in Iraq. The environment in Iraq was complicated, fast moving, and very fluid. Detainee legal status was extremely hard to determine and there was much more diverse mixture in the overall prisoner population (common criminals, legal combatants, civilians, unknowns, etc). Even if policy guidance was very clear for detention operations in Iraq, which it seems was not, very disciplined, fully trained and fully manned units were required to ensure compliance. Clearly, the unit at Abu Ghraib was none of these.

Clear guidance from policymakers is very important for an issue with such high visibility. Eventually, sound strategic guidance was given for the detainees at Guantanamo Bay. But, this thorough guidance was not modified and scrutinized for the Iraqi theater of operations. The very complex issue of who was and who was not considered protected under the Geneva Conventions was not as clear-cut in the Iraqi theater of operations, resulting in misunderstanding at the tactical level as to what prisoners were entitled to prisoner of war status. Although it seems that every detainee was to be afforded protection under the Geneva Conventions, the leadership of Abu Ghraib Prison did not ensure compliance with this standard. Though an operational and tactical leadership break down occurred at Abu Ghraib, sound, precise, carefully planned strategic policy directives could have mitigated these deficiencies.

The final lesson to be learned at the strategic level is the *Geneva Conventions pertaining to the treatment of Prisoners* should be reviewed and modified to categorize adequately individuals who are detained in today's asymmetric warfare environment. International treaties that fill in the gaps left by the Geneva Conventions would be most helpful for those who find themselves in places fighting enemies without state sponsorship and without any of the "normal" attributes of a person fighting a traditional type of war or conflict. As such, nation-states such as the U.S. would not have to develop their own law to fill in the gaps, independent of the international community's support. This would require international consensus and many countries might not be willing to follow U.S. lead at the present time.

Conclusion

Much confusion surrounded U.S. strategic policies made on the status of detainees in Iraq. Several key international conventions could be applied, to varying degree, to enemy combatants. However, there was no clarity in directives generated at the strategic level for dealing with those detainees who were not clearly identifiable as members of a recognized, legitimate armed force. As a consequence, directives on detainee treatment were issued, reviewed, and rescinded several times by U.S. policymakers. The directives for detainee treatment at Guantanamo Bay were superficially modified for the Iraqi theatre without addressing the significant difference in detainee populations. They did not address the question of "What law guides detention and interrogation of terrorists?"

This strategic confusion was further exacerbated by an unclear and ineffective application of the directives at the operational level. MG Taguba's report is clearly scathing of the actions and lack of leadership exhibited by BG Karpinski, 800th MP Brigade, and key leaders in 205th MI Brigade. As a consequence, the failure of the operational leadership was further displayed in the activities of the soldiers at Abu Ghraib Prison.

U.S. strategic policy and international reputation can be restored through a consistent, strategic application of the learned experience from the tragedy of Abu Ghraib. Strategic policymakers should make every effort to continue encouraging the climate of healthy debate on these issues amongst key stakeholders inside and outside government. To ameliorate the confusion over detainee policies in differing theatres and in which each theatre is dealing with significantly different detainees, strategic policy guidance should be generated in advance of troop deployment to resolve clearly the legal

issues surrounding prisoner treatment, detainment and interrogation. A one size fits all policy for detainees will continue to fail those strategic policymakers, and this failure will continue to be manifested in the actions taken at the operational and tactical level. Finally, a review of all relevant international conventions to define treatment of those detained in today's asymmetric warfare must be considered a priority at the strategic level, to reaffirm the values espoused by the U.S. To do less will continue to undermine the capability of soldiers at the operational and tactical level and seriously damage the reputation of the U.S. at the strategic level.

BIBLIOGRAPHY

Adebajo, Adekeye and Sriram, Chandra Lekha (editors), *Managing Armed Conflicts in the 21st Century*. Frank Cass and Co. Ltd, 2001.

Andrews, Robert. "Steady Hand in Rough Seas." *Washington Times* (commentary), 10 May, 2004, p A19.

Babington, Charles. "Critics of Guantanamo Urge Hill to Intervene." *The Washington Post*, 16 June, 2005.

Binyon, Michael. "A century of murder most foul." *The Times (UK)*, 1 January, 2003.

Boutros-Ghali, Boutros. "US Torture Sets Back Cause of Human Rights in Arab World." *New Perspectives Quarterly*, vol 21 issue 3 (Summer 2004): 9-10.

Burress, Charles. "BERKELEY/Detainee policy debate comes to Cal/Pentagon officials say old rules on prisoners do not apply." *San Francisco Chronicle*, 2 December, 2005, p B1.

Canada. Commission of Inquiry. *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia.* (chapter 22). 1994.

Crook, John. "Attorney General Naminee's Views on Compliance with U.S. Treaty Obligations, Torture, Protocol I to the Geneva Conventions, Revising the Geneva Conventions." *American Journal of International Law*, vol 99 issue 2 (April 2005): 481-483.

Crook, John. "Justice Department Issues New Memorandum on Torture." *American Journal of International Law*, vol 99, issue 2 (April 2005): 479-481.

Danner, Mark. *Torture and Truth: America, Abu Ghraib, and the War on Terror*. New York: New York Review Books, 2004.

Dorr, Robert F. "All of us are harmed by policies on prisoners." *Air Force Times*, vol 65 issue 45 (30 May, 2005): 54.

"Fanning the Flames." *Economist*, vol 371 issue 8381 (26 June, 2004): 33.

Golden, Tim and Eric Schmitt. "Detainee Policy Sharply Divides Bush Officials." *New York Times* (cover story), vol 155, issue 53386 (2 November, 2005): A1, A23.

Green, Leslie C. *Essays on the Modern Law of War*. Transnational Publishers, Inc, 1999.

Green, Leslie C. *The Contemporary Law of Armed Conflict*. Manchester and New York: Manchester University Press, 1993.

Greenberg, Karen and Joshua Dratel. *The Torture Papers The Road to Abu Ghraib*. New York: Cambridge University Press, 2005.

Hersh, Seymour. *Chain of Command*, New York: HarperCollins Publishers Inc., 2004.

Klaidman, Daniel, John Barry and Michael Hirsh. "A New View At Defense." *Newsweek*, volume 146, issue 24 (12 December, 2005): 37.

Levin, Carl (Senator). "Levin Amendment Calls for Independent Commission To Review U.S. Detainee Policies and Allegations of Detainee Abuse." FDCH Press Releases, 21 July, 2005.

McCarthy, Andrew C. "Torture: Thinking About the Unthinkable." *Commentary*, vol 118 issue 1 (July/August 2004): 17-24.

Miles, Steven H. "Abu Ghraib: its legacy for military medicine," *The Lancet Medical Journal*, August 2004; available from http://globalresearch.ca/articles/MIL408A.html; Internet; accessed on 6 May 2006.

O'Connor, Justice Sandra Day. "We Need a Clear Set of Rules to Reaffirm Our Values as a Nation," *Army Magazine*, Vol 56, no1 (January 2006): 9-11.

Sangillo, Gregg. "Incarceration of Information?" *National Journal*, vol 36, issue 43 (23 October, 2004): 3227-3228.

Savage, Charlie. "Republican urges change in detainee rules." *The Boston Globe*, 16 June, 2005.

Scully, Megan and David Hess. "Defense Bill Hits Snag Despite Bush Deal on Torture Ban." *Congress Daily AM*, 16 December, 2005, 4-6.

"Secrets and Lies." *Nation*, vol 281, issue 22 (26 December, 2005): 39-41.

Slavin, Barbara. "Abuse of detainees undercuts U.S. authority, 9/11 panel says." *USA Today*, 15 November, 2005, 8A.

Smith, R. Jeffrey. "Lawyer for State Dept. Disputed Detainee Memo." *The Washington Post*, 24 June, 2004, A7.

Stevenson, Richard W. and Joel Brinkley. "More Questions As Rice Asserts Detainee Policy." *New York Times*, vol 155, issue 53422 (8 December, 2005): A1, A13.

Sullivan, Andrew. "The Abolition of Torture." *New Republic*, vol 233, issue 25 (19 December, 2005): 19-24.

"The Torture Administration." *Nation*, vol 281, issue 22 (26 December, 2005): 13-15.

"Torture and Democracy." *Nation*, vol 279 issue 1 (5 July, 2004): 3-4.

United Nations. *Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment*, (New York: 1988).

United Nations. *Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment*, (New York, 1987); available from http://www.unhchr.ch/html/menu3/b/h_cat39.htm; Internet, accessed on 24 February 2006.

United Nations. *Geneva Convention relative to the Treatment of Prisoners of War*, (New York, 1949); available from http://www.unhchr.ch/html/menu3/b/91.htm; Internet, accessed on 24 February 2006.

United Nations. *Standard Minimum Rules for the Treatment of Prisoners*, (New York: 1977); available from http://www.unhchr.ch/html/menu3/b/h_comp34.htm; Internet; accessed on 24 February 2006.

United Nations. Universal Declaration of Human Rights, (New York, 1949); available from http://www.un.org/Overview/rights.html; Internet, accessed on 24 Februrary 2006.

"U.S. Bishops Support Condemnation of Torture." *America*, vol 194, issue 1 (2 January, 2006).

United States. Supreme Court Debates. *The Law of War.* Vol 7 Issue 6. Washington, D.C.: U.S. Government Printing Office, September 2004. pp 167-192.

Whitelaw, Kevin. "A Diplomatic Dialogue About, Well, Torture." *U.S. News and World Report*, vol 139, issue 23 (19 December, 2005).

Wilson, George C. "Tortured Logic." *Congress Daily*, 14 November, 2005, 12-14.