

**Testimony before the
Committee on Armed Services
United States Senate**

**“Final Report of the Independent Panel to
Review Department of Defense Detention
Operations”**

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A Statement by

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Panel Member**

Mr. Chairman, Senator Levin and members of the Committee:

I am pleased to appear before you today to report on the work of the Independent Panel and to present my personal conclusions on the issues involved. Let me begin by noting that some related investigations are still in progress and that further facts may well emerge. That means that a degree of tentativeness remains. But the Panel's own work and our access to almost all of the other investigations have revealed enough so that conclusions, if not final ones, can be drawn.

The abuses in Block 1A at Abu Ghraib displayed a pathology not, so far as we were able to find, duplicated elsewhere. But there have been several hundred other cases of abuse of detainees alleged at Abu Ghraib and elsewhere in Iraq, in Afghanistan and at Guantanamo; a significant fraction have been or will be confirmed as such. About a third of the cases appear to have been connected with interrogations. In addition to their unacceptability on humanitarian grounds, these events have been extremely damaging to U.S. standing, policies and objectives in the Greater Middle East and to the struggle against transnational terrorism, as well as to the image and self-image of the armed forces and of America itself.

The underlying context for abuses was framed by two judgments made before combat operations began. First was the expectation by the Defense Department leadership, along with most of the rest of the Administration, that following the collapse of the Saddam Hussein regime through Coalition military operations, a stable successor regime would soon emerge in Iraq. Though there was planning for some contingencies, those planned for did not include what actually happened: a breakdown of order, widespread looting and infrastructure destruction and strong resistance to the occupation. This in turn produced a large mixed population of detainees—Baathist holdouts; high level officials; surrendered military; domestic and foreign religious extremists; ordinary criminals; individuals captured in the act of attacking Coalition forces or suspected of doing so; and undoubtedly some innocents— rather than a large number of relatively passive prisoners of war. Moreover, detention operations took place within a situation that is a more serious product of the misjudged forecast of what would happen following the overthrow of the Saddam regime: Iraq, including urban areas, remained (and remains) a zone of continued and substantial combat, as well as economic deprivation and political instability.

The second judgment was the policy adopted toward various classes of detainee, set for Al Qa'eda and Taliban after 9/11, following debate within the U.S. Government and decision by the President. The President determined that the provisions of Geneva did not apply to our conflict with Al Qa'eda, that Taliban

detainees were “unlawful combatants” not qualifying as prisoners of war, but reaffirmed a previous order by the Secretary of Defense that detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the Geneva principles. This in turn led to a series of determinations about allowed interrogation methods beyond those long customary under Army Field Manual 34-52. The Secretary of Defense authorized, then rescinded, a list of such methods for Guantanamo and, after study by a working group, promulgated a narrowed approved list “limited to interrogations of unlawful combatants held at Guantanamo.” These events occurred before operations took place in Iraq. We found no evidence of a policy on the part of senior civilian or military authorities that countenanced, let alone encouraged or directed, abuse. Approval of interrogation techniques beyond those in AFM 34-52 was limited to Guantanamo and required that any of them be used only with the specific approval of the Secretary of Defense in each case. He approved any of them in only two cases. Those additional methods of interrogation were intended for and limited to resistant Al Qaeda members at Guantanamo knowledgeable about what had been their plans for 9/11 and for the future.

Nevertheless, various versions of expanded lists migrated unauthorized to Afghanistan, and to Iraq where the Geneva Conventions continued to apply. That migration of rules (and of personnel) led to confusion about what interrogation practices were authorized and to several changes in directions to interrogators. I believe that was a contributing factor in the abuse of detainees. Whether the initial, more expansive, guidelines or the findings of the Office of Legal Counsel in the Department of Justice further contributed to an atmosphere of permissiveness in the field is more difficult to assess.

A result of the first misjudgment was, especially at Abu Ghraib, a situation in which both Military Police capabilities for custody and protection, and Military Intelligence capabilities for interrogation to obtain tactical, strategic and counterterrorist intelligence, suffered extreme lack of resources. Another result was that the number and mix of detainees went far beyond what had been planned for. And the respective responsibilities, authorities and modes of cooperation for MP and MI units were poorly defined. Separately, the policy failure at all levels to assure a clear and stable set of rules for treatment and interrogation further opened the door to abuse. The problems were compounded by inadequate training, confused command arrangements and, at Abu Ghraib, personal deficiencies at command levels up to and including the brigade level. Hindsight always finds it too easy to assign blame. Nevertheless, varying degrees of responsibility for failure to provide adequate resources to support the custodial and intelligence

requirements throughout the theater, and for the confusion about permissible interrogation techniques, extend all the way up the chain of command, to include the Joint Chiefs of Staff and the Office of the Secretary of Defense.

Our report goes into considerably more detail about why abuses occurred, how they occurred and lessons learned. It includes a dozen or so recommendations to improve the way we deal with such matters. Action on some of these is already under way. It also notes that, though any abuse of detainees is too much, these cases were only a small percentage of the tens of thousands of prisoners and detainees in the theater of combat, and that in many cases they were brought to light by American military personnel who spoke up. This new sort of conflict poses difficult problems of many kinds, detention and interrogation among them. The U.S. needs to deal with them more effectively. I hope that our report helps in that effort.