

Command's Responsibility

Detainee Deaths in U.S. Custody in Iraq and Afghanistan

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About Us

Human Rights First is a leading human rights advocacy organization based in New York City and Washington, DC. Since 1978, we have worked in the United States and abroad to create a secure and humane world – advancing justice, human dignity, and respect for the rule of law. All of our activities are supported by private contributions. We accept no government funds.

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Command's Responsibility documents a dozen brutal deaths as the result of the most horrific treatment. One such incident would be an isolated transgression; two would be a serious problem; a dozen of them is policy. The law of military justice has long recognized that military leaders are held responsible for the conduct of their troops. Yet this report also documents that no civilian official or officer above the rank of major responsible for interrogation and detention practices has been charged in connection with the torture or abuse-related death of a detainee in U.S. custody. And the highest punishment for anyone handed down in the case of a torture-related death has been five months in jail. This is not accountability as we know it in the United States.

John D. Hutson
Rear Admiral (Ret.), JAGC, USN

The torture and death catalogued in excruciating detail by this important Human Rights First report did not happen spontaneously. They are the consequence of a shocking breakdown of command discipline on the part of the Army's Officer Corps. It is very clear that cruel treatment of detainees became a common Army practice because generals and colonels and majors allowed it to occur, even encouraged it. What is unquestionably broken is the fundamental principle of command accountability, and that starts at the very top. The Army exists, not just to win America's wars, but to defend America's values. The policy and practice of torture without accountability has jeopardized both.

David R. Irvine
Brig. Gen. (Ret.) USA

I. Introduction

Do I believe that [abuse] may have hurt us in winning the hearts and minds of Muslims around the world? Yes, and I do regret that. But one of the ways we address that is to show the world that we don't just talk about Geneva, we enforce Geneva [T]hat's why you have these military court-martials; that's why you have these administrative penalties imposed upon those responsible because we want to find out what happened so it doesn't happen again. And if someone has done something wrong, they're going to be held accountable.

U.S. Attorney General Alberto Gonzales
Confirmation Hearings before the Senate Judiciary Committee
January 6, 2005

Basically [an August 30, 2003 memo] said that as far as they [senior commanders] knew there were no ROE [Rules of Engagement] for interrogations. They were still struggling with the definition for a detainee. It also said that commanders were tired of us taking casualties and they [told interrogators they] wanted the gloves to come off Other than a memo saying that they were to be considered "unprivileged combatants" we received no guidance from them [on the status of detainees].

Chief Warrant Officer Lewis Welshofer
Testifying during his Court Martial for Death of Iraqi General Abed Hamed Mowhoush
January 19, 2006

Since August 2002, nearly 100 detainees have died while in the hands of U.S. officials in the global "war on terror." According to the U.S. military's own classifications, 34 of these cases are suspected or confirmed homicides; Human Rights First has identified another 11 in which the facts suggest death as a result of physical abuse or harsh conditions of detention. In close to half the deaths Human Rights First surveyed, the cause of death remains officially undetermined or unannounced. Overall, eight people in U.S. custody were tortured to death.

Despite these numbers, four years since the first known death in U.S. custody, only 12 detainee deaths have resulted in punishment of any kind for any U.S. official. Of the 34 homicide cases so far identified by the military, investigators recommended criminal charges in

fewer than two thirds, and charges were actually brought (based on decisions made by command) in less than half. While the CIA has been implicated in several deaths, not one CIA agent has faced a criminal charge. Crucially, among the worst cases in this list – those of detainees tortured to death – only half have resulted in punishment; the steepest sentence for anyone involved in a torture-related death: five months in jail.

It is difficult to assess the systemic adequacy of punishment when so few have been punished, and when the deliberations of juries and commanders are largely unknown. Nonetheless, two patterns clearly emerge: (1) because of investigative and evidentiary failures, accountability for wrongdoing has been limited at best, and almost non-existent for command; and (2)

commanders have played a key role in undermining chances for full accountability. In dozens of cases documented here, grossly inadequate reporting, investigation, and follow-through have left no one at all responsible for homicides and other unexplained deaths. Commanders have failed both to provide troops clear guidance, and to take crimes seriously by insisting on vigorous investigations. And command responsibility itself – the law that requires commanders to be held liable for the unlawful acts of their subordinates about which they knew or should have known – has been all but forgotten.

The failure to deal adequately with these cases has opened a serious accountability gap for the U.S. military and intelligence community, and has produced a credibility gap for the United States – between policies the leadership says it respects on paper, and behavior it actually allows in practice. As long as the accountability gap exists, there will be little incentive for military command to correct bad behavior, or for civilian leadership to adopt policies that follow the law. As long as that gap exists, the problem of torture and abuse will remain.

This report examines how cases of deaths in custody have been handled. It is about how and why this “accountability gap” between U.S. policy and practice has come to exist. And it is about why ensuring that officials up and down the chain of command bear responsibility for detainee mistreatment should be a top priority for the United States.

The Cases to Date

The cases behind these numbers have names and faces. This report describes more than 20 cases in detail, to illustrate both the failures in investigation and in accountability. Among the cases is that of Manadel al-Jamadi, whose death became public during the Abu Ghraib prisoner-abuse scandal when photographs depicting prison guards giving the thumbs-up over his body were released; to date, no U.S. military or intelligence official has been punished criminally in connection with Jamadi’s death.

The cases also include that of Abed Hamed Mowhoush, a former Iraqi general beaten over days by U.S. Army, CIA and other non-military forces, stuffed into a sleeping bag, wrapped with electrical cord, and suffocated to death. In the recently concluded trial of a low-level military officer charged in Mowhoush’s death, the officer received a written reprimand, a fine, and 60 days with his movements limited to his work, home, and church.

And they include cases like that of Nagem Sadoon Hatab, in which investigative failures have made accountability impossible. Hatab, a 52-year-old Iraqi, was killed while in U.S. custody at a holding camp close to Nasiriyah. Although a U.S. Army medical examiner found that Hatab had died of strangulation, the evidence that would have been required to secure accountability for his death – Hatab’s body – was rendered unusable in court. Hatab’s internal organs were left exposed on an airport tarmac for hours; in the blistering Baghdad heat, the organs were destroyed; the throat bone that would have supported the Army medical examiner’s findings of strangulation was never found.

Although policing crimes in wartime is always challenging, government investigations into deaths in custody since 2002 have been unacceptable. The cases discussed in this report include incidents where deaths went unreported, witnesses were never interviewed, evidence was lost or mishandled, and record-keeping was scattershot. They also include investigations that were cut short as a result of decisions by commanders – who are given the authority to decide whether and to what extent to pursue an investigation – to rely on incomplete inquiries, or to discharge a suspect before an investigation can be completed. Given the extent of the non-reporting, under-reporting, and lax record keeping to date, it is likely that the statistics reported here, if anything, under-count the number of deaths.

Among our key findings:

- Commanders have failed to report deaths of detainees in the custody of their command, reported the deaths only after a period of days and sometimes weeks, or actively interfered in efforts to pursue investigations;
- Investigators have failed to interview key witnesses, collect useable evidence, or maintain evidence that could be used for any subsequent prosecution;
- Record keeping has been inadequate, further undermining chances for effective investigation or appropriate prosecution;
- Overlapping criminal and administrative investigations have compromised chances for accountability;
- Overbroad classification of information and other investigation restrictions have left CIA and Special Forces essentially immune from accountability;
- Agencies have failed to disclose critical information, including the cause or circumstance of death, in close to half the cases examined;
- Effective punishment has been too little and too late.

Closing the Accountability Gap

The military has taken some steps toward correcting the failings identified here. Under public pressure following the release of the Abu Ghraib photographs in 2004, the Army reopened over a dozen investigations into deaths in custody and conducted multiple investigation reviews; many of these identified serious flaws. The Defense Department also “clarified” some existing rules, reminding commanders that they were required to report “immediately” the death of a detainee to service criminal investigators, and barring release of a body without written authorization from the relevant investigation agency or the Armed Forces Medical Examiner. It also made the performance of an autopsy the norm, with exceptions made only by the Armed Forces Medical Examiner. And the Defense Department says that it is now providing pre-deployment training on the Geneva Conventions and rules of engagement to all new units to be stationed in Iraq and responsible for guarding and processing detainees.

But these reforms are only first steps. They have not addressed systemic flaws in the investigation of detainee deaths, or in the prosecution and punishment of those responsible for wrongdoing. Most important, they have not addressed the role of those leaders who have emerged as a pivotal part of the problem — military and civilian command. Commanders are the only line between troops in the field who need clear, usable rules, and policy-makers who have provided broad instructions since 2002 that have been at worst unlawful and at best unclear. Under today’s military justice system, commanders also have broad discretion to insist that investigations into wrongdoing be pursued, and that charges, when appropriate, be brought. And commanders have a historic, legal, and ethical duty to take responsibility for the acts of their subordinates. As the U.S. Supreme Court has recognized since World War II, commanders are responsible for the acts of their subordinates if they knew or should have known unlawful activity was underway, and yet did nothing to correct or stop it. That doctrine of command responsibility has yet to be invoked in a single prosecution arising out of the “war on terror.”

Closing this accountability gap will require, at a minimum, a zero-tolerance approach to commanders who fail to take steps to provide clear guidance, and who allow unlawful conduct to persist on their watch. Zero tolerance includes at least this:

First, the President, as Commander-in-Chief, should move immediately to fully implement the ban on cruel, inhuman and degrading treatment passed overwhelmingly by the U.S. Congress and signed into law on December 30, 2005. Full implementation requires that the President clarify his commitment to abide by the ban (which was called into question by the President’s statement signing the bill into law). It also requires the President to instruct all relevant military and intelligence agencies involved in detention and interrogation operations to review and revise internal rules and legal guidance to make sure they are in line with the statutory mandate.

Second, the President, the U.S. military, and relevant intelligence agencies should take immediate steps to make clear that all acts of torture and abuse are taken seriously – not from the moment a crime becomes public, but from the moment the United States sends troops and agents into the field. The President should issue regular reminders to command that abuse will not be tolerated, and commanders should regularly give troops the same, serious message. Relevant agencies should welcome independent oversight – by Congress and the American people – by establishing a centralized, up-to-date, and publicly available collection of information about the status of investigations and prosecutions in torture and abuse cases (including trial transcripts, documents, and evidence presented), and all incidents of abuse. And the Defense and Justice Departments should move forward promptly with long-pending actions against those involved in cases of wrongful detainee death or abuse.

Third, the U.S. military should make good on the obligation of command responsibility by developing, in consultation with congressional, military justice, human rights, and other advisors, a public plan for holding all those who engage in wrongdoing accountable. Such a plan might include the implementation of a single, high-level convening authority across the service branches for allegations of detainee torture and abuse. Such a convening authority would review and make decisions about whom to hold responsible; bring uniformity, certainty, and more independent oversight to the process of discipline and punishment; and make punishing commanders themselves more likely.

Finally, Congress should at long last establish an independent, bipartisan commission to review the scope of U.S. detention and interrogation operations worldwide in the “war on terror.” Such a commission could investigate and identify the systemic causes of failures that lead to torture, abuse, and wrongful death, and chart a detailed and specific path going forward to make sure those mistakes never happen again. The proposal for a commission has been endorsed by a wide range of distinguished Americans from Republican and Democratic members of Congress to former presidents to leaders in the U.S. military. We urge Congress to act without further delay.

This report underscores what a growing number of Americans have come to understand. As a distinguished group of retired generals and admirals put it in a September 2004 letter to the President: “Understanding what has gone wrong and what can be done to avoid systemic failure in the future is essential not only to ensure that those who may be responsible are held accountable for any wrongdoing, but also to ensure that the effectiveness of the U.S. military and intelligence operations is not compromised by an atmosphere of permissiveness, ambiguity, or confusion. This is fundamentally a command responsibility.” It is the responsibility of American leadership.

II. Homicides: Death by Torture, Abuse or Force

An American soldier told us of our father's death. He said: "Your father died during the interrogation." So we thought maybe it was high blood pressure under personal stress. This would happen in American detention centers. People would die of high blood pressure. But afterwards the people who were imprisoned, detained with him said: "No. They would torture him and they assigned American soldiers to him especially for the torture. He died during the torture." . . . Honestly, my mother, after the case, after they brought my father dead, she entered a state we can say a coma or like a coma. She withdrew from life.

Hossam Mowoush (in translation)
 Son of Iraqi Maj. Gen. Abed Hamed Mowhoush,
 Killed in U.S. Custody November 26, 2003¹

Of the close to 100 deaths in U.S. custody in the global "war on terror,"² at least a third were victims of homicide at the hands of one or more of their captors.³ At least eight men, and as many as 12, were tortured to death.⁴ The homicides also include deaths that the military initially classified as due to "natural causes," and deaths that the military continues to classify as "justified." This chapter briefly reviews the facts of some of these worst cases, and the consequences – or not – for those involved.

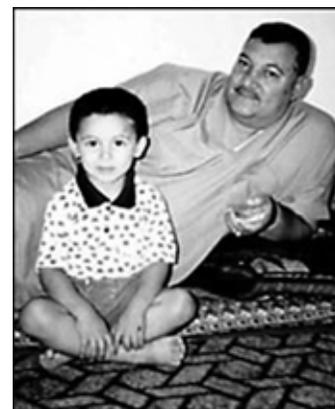
Definition of a Detainee

In this report, we include any death of a detainee under effective U.S. control as a "death in custody." We adopt the definition of "detainee" used by the U.S. Army Criminal Investigative Command (CID) – the Army's agency for investigating crimes committed by soldiers – "any person captured or otherwise detained by an armed force."⁵ For the purposes of this report, we do not include people killed in the course of combat or as a result of injuries sustained during combat, or persons shot at checkpoints when it is alleged that they disobeyed orders to stop their vehicle. We do include prisoners in U.S. military detention centers, as well as those who have been killed while being interrogated in their homes, or shot at the point of their capture, after surrendering to U.S. troops. Once a person has been captured, the U.S. military or intelligence agency assumes control over him, and can restrain him against his will. It is under these circumstances that American law and values are most acutely tested.

PROFILE: HOMICIDE

So then the interrogator came that used to interrogate [me] in the Baghdadi jail. . . . He told me: "We are going to let you see your father." Of course this was a point of relief. [Mohammed was taken by U.S. forces to the facility where his father was held, the "Blacksmith Hotel."]. . . . They took me to my father's room. He was under very tight security. I looked in and I saw him. He looked completely drained and distraught and the impacts or signs of the torture were clear on him. His clothes were old and torn. He was really upset. When I first saw him I was overwhelmed and had a breakdown. I started crying and I embraced him and I told him: "Don't worry. I am brave. I am going to be able to handle these circumstances like you taught me." At this instant the interrogator stormed in. He grabbed me and I tried to remain seated So he threatened my father that if he didn't speak he would turn me over to the men who interrogated my father and do to me what they did to him or he would have me killed in an execution operation So they took me to him and they said: "This is your son, we are going to execute him if you don't confess." My father didn't confess. One of them pulled me to a place where my father couldn't see. He pulled his gun, he took it out of the place where it was kept and he shot a fire into the sky. And he hit me a hit so that I would cry out. So, this moment there was at the place where I was, blood, I mean drops of blood. They [then] took [me] to the side and they brought my father and said: "This is your son's blood. We killed him. So, it is better for you to confess lest this happen to the rest of your sons." My father, when he saw the blood, he must have thought that I had been killed. At this moment, he fell to the ground.

Mohammed Mowoush (in translation), describing his last sight of his father, Iraqi Maj. Gen. Abed Hamed Mowhoush. Killed in U.S. Custody November 26, 2003⁶



Major General Abed Hamed Mowhoush with a grandson

Abed Hamed Mowhoush

Abed Hamed Mowhoush turned himself over to U.S. forces in Iraq on November 10, 2003,⁷ about a month before U.S. forces captured ousted Iraqi leader Saddam Hussein, and at a time when pressure on Army intelligence to produce information was at its height. At Forward Operating Base ("FOB") Tiger, where Mowhoush appeared, the U.S. Army had set up a base camp and prison operations earlier in the year; the facility was near the town of Al Qaim at the western edge of Anbar province, about a mile from the Syrian border.⁸ By mid-October 2003, FOB Tiger was staffed with about 1,000 soldiers from the 1st Squadron of the 3rd Armored Cavalry Regiment ("ACR"), based in Fort Carson, Colorado Springs, Colorado.⁹ Their mission included the detention and interrogation of captured prisoners, a mission that took on added importance that November, as U.S. forces picked up Iraqi men and boys in the region in an effort to quell a rising insurgency.

According to Chief Warrant Officer Lewis Welshofer, who was deployed to Iraq in March 2003 as part of the military intelligence company of the 3rd ACR,¹⁰ guidelines on how to conduct prisoner interrogations at FOB Tiger were sparse.¹¹ Welshofer described a captain's memo he had received in late August 2003, which stated that there were no specific rules of engagement for interrogations in Iraq, and that U.S. Army Central Command officials were still struggling with the basic definition of a "detainee."¹² Although specific rules were hard to come by, command was clear that intelligence to date was inadequate and, as Welshofer put it: "[t]hey were looking for ideas outside the box."¹³ In the meantime, captured detainees were to be considered "unprivileged

combatants¹⁴ – a status that the Bush Administration had separately suggested meant detainees were not to be afforded the protections of the Geneva Conventions.¹⁵ Welshofer understood this guidance to include detainees like Mowhoush,¹⁶ a former uniformed Major General in the Iraqi Army,¹⁷ and a soldier whom in past conflicts the United States would have considered presumptively under Geneva protections.¹⁸

Soon after, a September 10, 2003 memo from Lt. Gen. Ricardo S. Sanchez, then U.S. Army Commander of the Coalition Joint Task Force in Iraq, underscored with new specificity the confusion over the applicability of Geneva protections in Iraq.¹⁹ Even as he recognized that other countries might view certain practices as inconsistent with the Geneva Conventions, General Sanchez authorized such harsh interrogation techniques as sleep and environmental manipulation, the use of aggressive dogs, and the use of stress positions.²⁰ Welshofer testified later that the meaning of “stress positions” had never been explained in his Army training back in the States;²¹ Welshofer was left largely to his own devices to fill in the meaning of the term. According to Welshofer, the Sanchez memo (disclosed publicly for the first time in January 2006) was the only guidance on permissible interrogation techniques in Iraq he ever received.²²

The Interrogations

By the time Mowhoush, 57, arrived at FOB Tiger in mid-November, his four sons had been in U.S. custody for approximately 11 days, held in a prison outside Baghdad.²³ According to one of them, Hossam, U.S. forces made clear to the sons in the course of interrogations that they had been arrested for the purpose of making sure General Mowhoush turned himself in.²⁴ According to the son, Mowhoush arrived at the base expecting that he would be able to set his sons free.²⁵ But Mowhoush's sons remained in detention; one of them would later play a part in U.S. efforts to extract from their father what information they could.

Chief Welshofer was among the first interrogators Mowhoush would see. According to Welshofer, his interrogation of Mowhoush on the day of Mowhoush's arrival on November 10 was limited to direct questions – a two-hour affair that passed with little of consequence.²⁶ By the end of that week, though, Welshofer had begun to take a different approach. Welshofer took Mowhoush, his hands bound, before an audience of fellow detainees and slapped him – an attempt, according to Welshofer, to show Mowhoush who was in charge.²⁷

Still unsatisfied with Mowhoush's answers in interrogation, Welshofer's unit brought Mowhoush with them when they moved a few days later from FOB Tiger to a converted railroad station called the Blacksmith Hotel.²⁸ The “Hotel” was a makeshift facility, set up to handle an influx of Iraqi prisoners anticipated from sweeps intended to stop the growing insurgency.²⁹ There, on November 24, Welshofer called in interrogation reinforcements.³⁰ According to military documents and trial testimony, Welshofer engaged CIA and possibly Army Special Forces personnel – together with a “Scorpion” team of Iraqi paramilitary forces on the CIA payroll – to ratchet up the pressure.³¹ Three separate soldiers eventually recounted what they saw and heard.³² The new team beat Mowhoush with sledgehammer handles;³³ as one soldier testified, eight to ten of the non-military forces “interrogate[d] Mowhoush and ‘beat the crap’ out of him.”³⁴ Specialist Jerry Loper, a guard at the Blacksmith Hotel, was standing outside the interrogation room the night of November 24 when some of the beatings were going on, and described hearing the thudding sound of Mowhoush being hit. “It wasn't like they were hitting a wall,” said Loper, “[t]here were loud screams.”³⁵ After Mowhoush's death, an Army autopsy revealed the effects of the beatings: Mowhoush had “massive” bruising and five broken ribs.³⁶

The next day, Welshofer interrogated Mowhoush again, this time on the roof of the interrogation building. Here, in the absence of any more specific instructions for interrogation techniques, Welshofer reached back beyond his basic training in the Army, to his own service as a trainer at a military school in Hawaii where U.S. service members are coached on what they might face if there were to fall into enemy hands.³⁷ The military's “SERE” courses (standing for Survival, Evasion, Resistance, Escape) were based on studies of North Korean and Vietnamese efforts to break American prisoners; the courses aimed to subject trainees to the brutal detention conditions they would have faced at the hands of the United States' former enemies.³⁸ Among other things, the courses put troops through prolonged isolation, sleep deprivation, and painful body positions; studies of the effects on troops subjected to these techniques showed most suffering from overwhelming stress, despair, and intense anxiety, and some from hallucinations and delusions as well.³⁹ Internal FBI memos and press reports have pointed to SERE training as the basis for some of the harshest techniques authorized for use on detainees by the Pentagon in 2002 and 2003.⁴⁰ When Welshofer was asked during his court martial whether anyone told him

that SERE techniques were not to be used in Iraq, Welshofer was unequivocal: “No sir.”⁴¹

With these techniques in his interrogator’s mind, Mowhoush’s next session included having his hands bound, being struck repeatedly on the back of his arms, in the painful spot near the humerus, and being doused with water⁴² – all these, according to Welshofer and others who later testified, drawn from the lessons of techniques learned in SERE.⁴³ Later that evening, Chief Welshofer arranged for a short meeting between Mowhoush and his youngest son, Mohammed, then 15 years old; Welshofer hoped the meeting would compel Mowhoush to convey more useful information.⁴⁴ He later described Mowhoush as being moved to tears upon seeing his son.⁴⁵ According to Mohammed though, the meeting was more than a conversation; in interviews with Human Rights First, Mohammed explained that U.S. personnel made Mowhoush believe his son would be executed if he did not speak to their satisfaction, and soldiers fired a bullet into the ground near Mohammed’s head within earshot but just beyond the eyesight of Mowhoush.⁴⁶ Mohammed reports this was the last time he saw his father alive.⁴⁷

By November 26, Welshofer was ready to try yet another technique – stuffing his subject into a sleeping bag until Mowhoush was prepared to respond.⁴⁸ Welshofer had already proposed the sleeping bag technique to his Company Commander, Major Jessica Voss, who authorized its use.⁴⁹ Much later, trial testimony would make clear that the technique had been used on at least 12 detainees.⁵⁰ It proved catastrophically ineffective in Mowhoush’s case. During his final interrogation, Mowhoush was shoved head-first into the sleeping bag, wrapped with electrical cord, and rolled from his stomach to his back. Welshofer sat on Mowhoush’s chest and blocked his nose and mouth.⁵¹ At one point, according to Loper, Mowhoush started to clinch and kick his legs, “almost like he was being electrocuted.”⁵² It was at this point Mowhoush gave out, dying (according to the autopsy report) of asphyxia due to smothering and chest compression.⁵³

The day after his death, the U.S. military issued a press release stating that Mowhoush had died of natural causes.⁵⁴

Taking Account

Despite the brutality of Mowhoush’s death, and the likely involvement of officials from the CIA, only one individual, Chief Welshofer, has faced court martial for his actions. Over the course of a 6-day trial in Colorado, more than two years after Mowhoush’s final interrogation, a 6-member Army jury heard testimony that civilian leaders in the Administration had instructed that Geneva Convention protections against cruel and inhuman treatment would not apply in this conflict; that the U.S. commanding general in Iraq, General Sanchez, had authorized “stress positions” in interrogation⁵⁵; and that, according to Welshofer and his own commanding officer, Major Voss, stuffing a detainee in a sleeping bag was widely understood to fall within that general authorization.⁵⁶ Jurors also heard testimony, some closed to the public, of the involvement of the CIA and Special Forces, as well as of the Iraqi paramilitary group, the “Scorpions.”⁵⁷ Secret Army documents had long noted this involvement: “[T]he circumstances surrounding the death are further complicated due to Mowhoush being interrogated and reportedly beaten by members of a Special Forces team and other government agency (OGA) employees two days earlier.”⁵⁸ And jurors heard Welshofer’s own tearful testimony – that he was trying to be a loyal soldier, and trying to do his job.⁵⁹

Although he was originally charged with murder, Welshofer was convicted of lesser charges: negligent homicide and negligent dereliction of duty.⁶⁰ That conviction carried a possible sentence of more than three years in prison, but Welshofer received a far more lenient sentence from the Army jury: a written reprimand, a \$6,000 fine, and 60 days with movement restricted to his home, base, and church.⁶¹

The others implicated in Mowhoush’s death have faced less. Chief Warrant Officer Jefferson Williams and Specialist Jerry Loper, who were present during Mowhoush’s interrogation, were originally charged with murder, but the charges were later dropped. In exchange for testimony against Welshofer, Williams will receive administrative (not criminal) punishment, and Loper will be tried in a summary proceeding rather than a full court martial.⁶² Another soldier, Sgt. 1st Class William Sommer, had his murder charge dropped as well and may receive nonjudicial punishment.⁶³ No charges have been brought (nor are charges expected to be brought according to law enforcement and intelligence officials) against CIA personnel, and Special Forces Command determined (without public explanation) that none of their personnel were guilty of wrongdoing.⁶⁴ Major Voss, the officer who commanded

the Military Intelligence unit responsible for interrogating Mowhoush, was reprimanded for her failure to provide adequate supervision, but she was not charged in the death.⁶⁵ The commander of the 3rd ACR from 2002-2004 (including the period of Mowhoush's death) was Colonel David A. Teeple.⁶⁶ At a preliminary hearing in Welshofer's case, Teeple testified to his

belief that the sleeping bag technique was approved and effective;⁶⁷ Teeple was reportedly "reluctant" to press charges against Welshofer, despite the view of military lawyers that Welshofer should be prosecuted.⁶⁸ Teeple does not appear to have been disciplined in connection with Mowhoush's death.

Special Forces & the CIA

The involvement of special military forces and members of other governmental agencies in the interrogation and detention of detainees has raised serious concerns regarding proper investigative procedures and accountability. The Army's CID has jurisdiction over crimes committed by all U.S. Army personnel; CID's Field Investigative Units are trained to conduct investigations that implicate classified activities,⁶⁹ and individual detachments have investigated deaths in which Special Forces personnel played a part.⁷⁰ Yet it appears that alternative investigative procedures have sometimes been used where Special Forces were involved. For example, in one case involving the 2nd Battalion of the 5th Special Forces Group, commanders conducted their own investigation and failed to inform CID of the death.⁷¹ When CID did learn of the incident, it simply reviewed and approved the pre-existing inquiry – an inquiry that itself remains classified.⁷² Brigadier General Richard Formica completed an investigation into allegations of detainee abuse in Iraq by Special Forces personnel, but the Army has also classified the resulting report, refusing to release even a summary of its findings.⁷³

Deaths in which the CIA has been implicated (alone or jointly with Army Special Forces or Navy SEALs) have presented additional problems.⁷⁴ Such deaths are required to be investigated by the CIA Inspector General and, if cause exists, referred to the Department of Justice for prosecution.⁷⁵ Yet while five of the deaths in custody analyzed by Human Rights First appear to involve the CIA,⁷⁶ only a contract worker associated with the CIA has to date faced criminal charges for his role in the death of detainees. Further, the CIA has sought to keep closed the courts-martial of Army personnel where CIA officers may be implicated,⁷⁷ and has in military autopsies classified the circumstances of the death.⁷⁸ These efforts have encumbered the investigation and prosecution of both CIA officials and military personnel.⁷⁹ Thus, for example, in the military trial of Navy SEAL Lt. Andrew Ledford, charged in connection with the death of detainee Manadel al-Jamadi, CIA representatives protested questions regarding the position of al-Jamadi's body when he died, and the role of water in al-Jamadi's interrogation; questions by defense lawyers were often prohibited as a result.⁸⁰ Finally, press reports suggest, the Department of Justice is unlikely to bring criminal charges against CIA employees for cases involving the death, torture, or other abuse of detainees, including the deaths of al-Jamadi and General Abed Hamed Mowhoush and a detainee whose name has not been made public and who died of hypothermia at a CIA-run detention center in Afghanistan.⁸¹ The Department of Justice has not made the reasons for its decisions known.

Reports of internal efforts at the CIA to address detainee abuse by agents are less than encouraging. After completing a review in spring 2004 of CIA detention and interrogation procedures in Afghanistan and Iraq, the CIA Inspector General made 10 recommendations for changes, including more safeguards against abuse, to CIA Director Porter Goss.⁸² Eight of the 10 have been "accepted,"⁸³ but the changes did not apparently prevent consideration of a proposal for handling deaths of detainees in CIA custody. According to the *Washington Post*: "One proposal circulating among mid-level officers calls for rushing in a CIA pathologist to perform an autopsy and then quickly burning the body."⁸⁴

PROFILE: HOMICIDE

Abdul Jameel

Lieutenant Colonel Abdul Jameel, a former officer in the Iraqi army, was detained at a Forward Operating Base near Al Asad, Iraq, and died there on January 9, 2004.⁸⁵ He was 47 years old.⁸⁶

According to Pentagon documents obtained by the *Denver Post*, Jameel had been kept in isolation with his arms chained to a pipe in the ceiling.⁸⁷ During an interrogation by Army Special Forces soldiers, he allegedly lunged and grabbed the shirt of one soldier and was then beaten.⁸⁸ Three days later, Jameel escaped from his cell, but was recaptured.⁸⁹ During a subsequent interrogation session, Jameel refused his interrogators' orders to stay quiet, and was put in a "stress position": he was tied by his hands to the top of his cell door, then gagged.⁹⁰ Within five minutes, he was dead.⁹¹ A "senior Army legal official" admitted that Jameel had been "lifted to his feet by a baton held to his throat," causing a throat injury that "contributed" to his death.⁹²

According to an autopsy conducted by the U.S. Armed Forces Medical Examiner's Office and reviewed by Human Rights First, Jameel's death was a homicide caused by "Blunt Force Injuries and Asphyxia"⁹³ – a lack of oxygen.⁹⁴ The autopsy found "[t]he severe blunt force injuries, the hanging position, and the obstruction of the oral cavity with a gag contributed to [his] death."⁹⁵ The autopsy detailed evidence of additional abuse Jameel suffered: a fractured and bleeding throat, more than a dozen fractured ribs, internal bleeding, and

numerous lacerations and contusions all over his body.⁹⁶

Among the findings of the Army's criminal investigators was that Jameel "was shackled to the top of a door-frame with a gag in his mouth at the time he lost consciousness and became pulseless."⁹⁷ Criminal investigators found probable cause to recommend prosecution of 11 soldiers – including members of the 3rd Armored Cavalry Regiment (the same Regiment involved in the death of Iraqi Major General Mowhoush), as well as the Special Forces personnel – for charges including negligent homicide, assault, and lying to investigators.⁹⁸ The investigation into Jameel's death also examined CIA involvement.⁹⁹ The Army Special Forces Command declined to follow the recommendations, and investigation findings of any CIA involvement have not been publicly released.¹⁰⁰ Upon reviewing the case, Army commanders decided that the soldiers' actions were at all points a lawful response to Jameel's "misconduct."¹⁰¹ The reasons for the commanders' decisions are unclear. The same person, Colonel David A. Teeple, was commander of the 3rd Armored Cavalry at the time of Jameel's death and also that of Iraqi Major General Abed Mowhoush.¹⁰² Because the killing was found to be justified, no disciplinary action was taken.¹⁰³

PROFILE: HOMICIDE

Fashad Mohammed

The Armed Forces Medical Examiner's report on autopsy number ME 04-309 reads: "This approximately 27 year-old male civilian, presumed Iraqi national, died in US custody approximately 72 hours after being apprehended. By report, physical force was required during his initial apprehension during a raid. During his confinement, he was hooded, sleep deprived, and subjected to hot and cold environmental conditions, including the use of cold water on his body and

hood."¹⁰⁴ Although the autopsy described "multiple minor injuries, abrasions and contusions" and "blunt force trauma and positional asphyxia,"¹⁰⁵ it found both the cause of death and manner of death "undetermined."¹⁰⁶

The autopsy, which was not conducted until three weeks after Mohammed's death,¹⁰⁷ is a drier version of accounts pieced together in subsequent inquiries.

Mohammed was apparently apprehended by members of Navy SEAL Team 7, which was operating with the CIA, in northern Iraq on or about April 2, 2004.¹⁰⁸ The SEALs then brought Mohammed to an Army base outside Mosul.¹⁰⁹ The Navy SEALs who interrogated Mohammed subjected him to hooding, sleep deprivation, and exposure to extreme temperatures—all methods that deviate from the techniques described in the Army Field Manual on Intelligence Interrogation FM 34-52, but that were approved by the Secretary of Defense for use at Guantanamo,¹¹⁰ and later authorized in part by Lt. Gen. Ricardo S. Sanchez for use in Iraq.¹¹¹ A Pentagon official relates that after an interrogation, the SEALs let Mohammed sleep. He never woke up.¹¹²

We know very little about Mohammed's last hours and the military has released even less information about its investigation into his death and charges brought against those responsible. The most recent press reports indicate that as many as three Navy SEALs were charged with abusing Mohammed; charges included assault with intent to cause death and serious bodily harm, assault with a dangerous weapon, maltreatment of detainees, obstruction of justice, and dereliction of duty. Murder or manslaughter charges were not brought, reportedly because of lack of evidence.¹¹³ Human Rights First asked the Department of Defense on January 26, 2006 for an update on the status and outcome of any prosecutions in Mohammed's case; as of February 10, 2006 we had received no response.

PROFILE: HOMICIDE

Asphyxia is what he died from – as in a crucifixion.

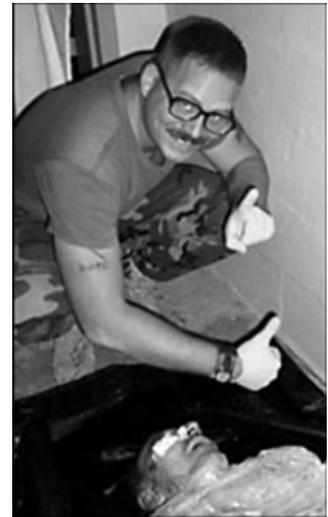
Dr. Michael Baden, Chief Forensic Pathologist, New York State Police, giving his opinion of the cause of Manadel al-Jamadi's death.¹¹⁴

Manadel al-Jamadi

According to press accounts, Manadel al-Jamadi, an Iraqi citizen of unknown age, was captured and tortured to death in Abu Ghraib by Navy SEALs and CIA personnel working closely together; he died on November 4, 2003.¹¹⁵ The SEAL and CIA team that captured al-Jamadi took turns punching, kicking and striking him with their rifles after he was detained in a small area in the Navy camp at Baghdad International Airport known as the "Romper Room."¹¹⁶ A CIA security guard later told CIA investigators that after al-Jamadi was stripped and doused with water a CIA interrogator threatened him, saying: "I'm going to barbecue you if you don't tell me the information."¹¹⁷ A Navy SEAL reported that the CIA interrogator leaned into al-Jamadi's chest with his forearm, and found a pressure point, causing al-Jamadi to moan in pain.¹¹⁸ A government report states that another CIA security guard "recalled al-Jamadi saying, 'I'm dying. I'm dying,' translated by the interpreter, to which the interrogator replied, 'I don't care,' and, 'You'll be wishing you were dying.'"¹¹⁹

When al-Jamadi was taken to Abu Ghraib, he was not entered on the prison rolls – he was a "ghost" detainee.¹²⁰ The intelligence agents took him to the

shower room where, military police testified, a non-covert CIA interrogator (identified as Mark Swanner by *The New Yorker*) ordered them to shackle al-Jamadi to a window about five feet from the floor, in a posture known as the "Palestinian hanging," making it impossible for him to kneel or sit without hanging from his arms in pain.¹²¹ Less than one hour later, Swanner summoned guards to re-position al-Jamadi, claiming the detainee was not cooperating.¹²² When the guards arrived they found al-Jamadi's corpse, hooded with a sandbag and with his arms handcuffed behind his back and still shackled to the window – which was now above his head.¹²³ According to one of the guards, blood gushed from al-Jamadi's mouth as the guards released him and his arms were almost coming out of their sockets.¹²⁴ A CIA supervisor requested that al-



Charles Graner next to the corpse of Manadel al-Jamadi

Jamadi's body be held overnight and stated that he would call Washington about the incident.¹²⁵ The next morning the "body was removed from Abu Ghraib on a litter, to make it appear as if he were only ill, so as not to draw the attention of the Iraqi guards and detainees."¹²⁶ Al-Jamadi's death became public during the Abu Ghraib prisoner-abuse scandal, after photographs of prison guards giving the thumbs-up over his body were released.¹²⁷

U.S. forces did not release al-Jamadi's body to the International Committee of the Red Cross ("ICRC") until February 11, 2004, more than three months after his death.¹²⁸ The ICRC delivered the body to Baghdad's mortuary the same day, but one expert from Baghdad's main forensic medico-legal institute said that the refrigeration of al-Jamadi's body for that period made it difficult for the Iraqis to establish the real cause of death by autopsy.¹²⁹ An autopsy conducted by the U.S. military five days after al-Jamadi's death had found that the cause of death was "Blunt Force Injuries Complicated by Compromised Respiration."¹³⁰ The autopsy report noted al-Jamadi had six broken ribs and a gunshot wound to the spleen.¹³¹ A medical examiner who later examined the autopsy report at the request of a lawyer for one of the SEALs and was informed of al-Jamadi's shackling position gave the opinion that the likely cause of his death was the hanging position, rather than beatings inflicted prior to his arrival at Abu Ghraib.¹³² According to Dr. Michael Baden, New York State police chief forensic pathologist, "asphyxia is what he died from – as in a crucifixion."¹³³ Dr. Edmund Donahue, the president of the American Academy of Forensic Scientists, who reviewed the autopsy at the request of National Public Radio, gave a similar opinion, saying: "When you combine [the hanging

position] with having a hood over your head and having the broken ribs, it's fairly clear that this death was caused by asphyxia because he couldn't breathe properly."¹³⁴

During a later court martial proceeding, one Navy SEAL testified that he and his fellow SEALs were not trained to deal with Iraqi prisoners.¹³⁵ Although Navy lawyers testified they trained the SEALs to treat detainees humanely, one SEAL stated: "The briefing I remember is that these [prisoners] did not fall under the Geneva Convention because they were not enemy combatants."¹³⁶

Of the 10 Navy personnel – 9 SEALs and one sailor – accused by Navy prosecutors of being involved in al-Jamadi's death,¹³⁷ nine were given nonjudicial punishment.¹³⁸ In contrast to a general court martial, which is a criminal felony conviction, nonjudicial or administrative punishment is usually imposed by an accused's commanding officer for minor disciplinary offenses, and does not include significant jail time.¹³⁹ The only person formally prosecuted in the case was Navy SEAL Lieutenant Andrew K. Ledford, the commander of the SEAL platoon, who was charged with dereliction of duty, assault, making a false statement to investigators, and conduct unbecoming an officer.¹⁴⁰ At court-martial, Ledford was acquitted of all charges.¹⁴¹ The decision whether to prosecute CIA personnel for possible wrongdoing is pending,¹⁴² but government officials have indicated that charges are unlikely to be brought.¹⁴³ The interrogator, Mark Swanner, continues to work for the CIA.¹⁴⁴ To date, no U.S. official has been punished criminally in connection with al-Jamadi's death. Human Rights First asked the Department of Defense on January 26, 2006 the status of the al-Jamadi case; as of February 10, we had received no response.

PROFILE: HOMICIDE

Nagem Sadoon Hatab

Nagem Sadoon Hatab, a 52-year-old Iraqi, was killed in U.S. custody at a Marine-run temporary holding camp close to Nasiriyah.¹⁴⁵ Soon after his arrival at the camp in June 2003, a number of Marines beat Hatab,¹⁴⁶ including allegedly "karate-kicking" him while he stood handcuffed and hooded.¹⁴⁷ A day later, Hatab reportedly developed severe diarrhea, and was covered in feces.¹⁴⁸ Once U.S. forces discovered his condition, Hatab was stripped and examined by a medic, who thought that Hatab might be faking sickness.¹⁴⁹ At the

base commander's order, a clerk with no training in handling prisoners dragged Hatab by his neck to an outdoor holding area, to make room for a new prisoner.¹⁵⁰

The clerk later testified to the ease with which he was able to drag the prisoner: Hatab's body, covered by sweat and his own feces, slid over the sand.¹⁵¹ Hatab was then left on the ground, uncovered and exposed in the heat of the sun. He was found dead sometime after

midnight.¹⁵² A U.S. Army medical examiner's autopsy of Hatab found that he had died of strangulation – a victim of homicide.¹⁵³ The autopsy also found that six of Hatab's ribs were broken and his back, buttocks, legs and knees covered with bruises.¹⁵⁴

The guards at the detention center to which Hatab had been brought were ill-prepared for their duty at best. The previous commander of the facility, Major William Vickers, would later testify that none of the approximately 30 Marines at the camp had been trained to run a jail before their assignment: "Not then or even after."¹⁵⁵ Most were reservists and according to Major Vickers' testimony, the Marines, members of the 2nd Battalion, 25th Marine Regiment, were assigned to the guard role after Army and other Marine units refused it.¹⁵⁶ The base commander at the time, Major Clarke Paulus, had been in that position for a week before Hatab's death, and had spent only a day observing the prison operations before taking command.¹⁵⁷ His predecessor, Major Vickers, added that the camp had originally been designated a temporary holding facility, where Marines would interrogate prisoners for a day or two before their release or transfer.¹⁵⁸ Instead, prisoners were kept for longer, resulting in overcrowding and a strain on guards.¹⁵⁹

The treatment of Hatab's body did not improve after his death. A Navy surgeon, Dr. Ray Santos, testified that when Hatab's body arrived at the morgue: "It kept slipping from my hands so I did drop it several times."¹⁶⁰ The U.S. Army Medical Examiner, Colonel Kathleen Ingwersen, who performed the autopsy, reportedly acknowledged that Hatab's body had undergone decomposition because it was stored in an unrefrigerated drawer before the autopsy.¹⁶¹ In fact, testimony at a later court martial indicated that a container of Hatab's internal organs was left exposed on an airport tarmac for hours; in the blistering Iraqi heat, the organs were destroyed.¹⁶² Hatab's ribcage and part of his larynx were later found in medical labs in Washington, D.C. and Germany, due to what the Medical Examiner, Colonel Ingwersen, described as a "miscommunication" with her assistant.¹⁶³ Hatab's hyoid bone – a U-shaped throat bone located at the base of the tongue¹⁶⁴ – was never found,¹⁶⁵ and Colonel Ingwersen testified that she couldn't recall whether she removed the bone from the body during the autopsy or not.¹⁶⁶ The bone was a key piece of evidence, because it supported the Army Medical Examiner's finding that Hatab died of strangulation.¹⁶⁷

Although eight Marines were initially charged in the case, only two were actually court-martialed.¹⁶⁸ Major Paulus, who ordered Hatab dragged by his neck and permitted him to lie untreated in the sun, was originally charged with a number of offenses, including negligent homicide, while Sergeant Gary P. Pittman was charged with five counts of assault for beating prisoners (including Hatab) and two counts of dereliction of duty.¹⁶⁹ Neither was sentenced to any prison time, however, in part because of the lax handling of the medical evidence.¹⁷⁰ The judge in the court martial proceedings, Colonel Robert Chester, ruled that the autopsy findings and other medical evidence – evidence which was also Hatab's remains – could not be considered, because it had been lost or destroyed and thus could not be examined by the defense.¹⁷¹ The judge's decision eliminated the possibility that prosecutors could win conviction on the most serious charges they had brought. In addition, at Sergeant Pittman's court martial, prosecutors acknowledged that the military had either lost or destroyed photos of Hatab being interrogated in the days before his death.¹⁷²

As a result, prosecutors were unable to win conviction on any charges relating to culpability for Hatab's death: Paulus was convicted of dereliction of duty and maltreatment for ordering a subordinate to drag Hatab by the neck, and for allowing Hatab to remain unmonitored in the sun.¹⁷³ Sergeant Pittman was acquitted of abusing Hatab, though he was sentenced for assaulting other detainees.¹⁷⁴ Charges against Lance Corporal Christian Hernandez (who dragged Hatab by the neck), including negligent homicide, were dropped, and the cases against the other Marines similarly did not proceed to trial.¹⁷⁵ One Marine, William Roy, accepted a reduction in rank from a lance corporal to a private first class in exchange for his testimony. But because the demotion was a non-judicial punishment, and the basis for it is not public, the precise contours of his culpability remain unclear.¹⁷⁶

PROFILE: HOMICIDE

Abdul Wali

On June 18, 2003, Abdul Wali turned himself in to soldiers at an Army firebase in Asadabad, Afghanistan, after he learned they were looking for him.¹⁷⁷ The son of the governor of the province where the base is located accompanied Wali and initially acted as his interpreter during interrogation.¹⁷⁸ According to this interpreter, the U.S. interrogator was so aggressive in questioning Wali that the interpreter left in disgust.¹⁷⁹ Three days later, on June 21, Wali was dead.¹⁸⁰

The man who interrogated Abdul Wali was not a soldier; David Passaro was a former Army Ranger who had been hired as a civilian contractor by the CIA.¹⁸¹ Reportedly convinced that Wali had information about weapons that would be used to attack U.S. personnel, Passaro questioned Wali on June 19 and 20.¹⁸² At each of these sessions, the U.S. government alleges, Passaro beat Wali, both with his hands and with a flashlight.¹⁸³ According to prosecutors, Passaro kicked Wali in the groin “on at least one occasion.”¹⁸⁴ Wali, who apparently suffered from poor health, did not survive to see a third such interrogation.¹⁸⁵

Army criminal investigators looked into Wali’s death, found that no Army personnel were implicated and

referred the case to the Department of Justice for possible prosecution of Passaro.¹⁸⁶ In June 2004, a federal grand jury in the Eastern District of North Carolina indicted Passaro on four counts of assault.¹⁸⁷ As of February 2006, the case against Passaro was moving toward trial, with the government and defense engaged in arguments about the defenses that would be allowed, and which witnesses would testify in the proceedings.¹⁸⁸ According to his lawyer, Passaro’s position at trial will be that abusive questioning techniques were not criminal because they were consistent with authorized interrogation policies, and that his actions were legally justified under a series of Executive Branch memos that appear to permit aggressive interrogation techniques.¹⁸⁹

No one has been charged with murder or manslaughter in connection with Wali’s death. Human Rights First asked the Department of Defense on January 26, 2006 for any update on the status of Wali’s case; as of February 10, 2006 we had received no response.

PROFILE: HOMICIDE

Habibullah

Habibullah died on the night of December 3, 2002, because of abuses inflicted upon him by U.S. soldiers at the Bagram detention facility in Afghanistan.¹⁹⁰ Habibullah was captured by an Afghan warlord and, according to detailed reporting by the *New York Times*, was brought to the Bagram detention facility on the last day of November, 2002.¹⁹¹ Members of the 377th Military Police Company at that facility reportedly subjected detainees held at the base to peroneal strikes—a knee strike aimed at a cluster of nerves on the side of the thigh, meant to quickly disable an escaping or resistant prisoner.¹⁹² One soldier stated that he gave Habibullah five peroneal strikes for being “noncompliant and combative.”¹⁹³

Immediately upon his arrival, Habibullah was placed in an isolation cell and shackled to the ceiling by his wrists.¹⁹⁴ During one interrogation, an interrogator allowed him to sit on the floor because his knees would not bend enough for him to sit on a chair; as Habibullah coughed up phlegm, soldiers laughed at his distress.¹⁹⁵ One day later, Habibullah was found hanging from the ceiling and unresponsive.¹⁹⁶ One soldier thought that he felt the almost-incapacitated prisoner spit on him; the soldier yelled and began beating Habibullah while he was still chained to the ceiling.¹⁹⁷ The next time anyone checked on Habibullah, he was dead.¹⁹⁸

The U.S.-conducted autopsy found that Habibullah had died of an embolism—a blood clot, almost certainly the product of the repeated beatings, had traveled through

his bloodstream and clogged the arteries leading to his lungs;¹⁹⁹ the autopsy determined the manner of death to be homicide.²⁰⁰ The Army Criminal Investigation Command looked into the death, and initially recommended closing the case.²⁰¹ According to criminal investigators' findings it was impossible to determine who was responsible for Habibullah's injuries because so many were involved.²⁰² Investigators also failed to maintain critical evidence in the case. A sample of Habibullah's blood was kept in the butter dish of investigators' office refrigerator until the office was closed.²⁰³

Press interest in Habibullah's death—and that of Dilawar, another detainee who died a week later at the same facility—sparked renewed progress in the criminal investigation, resulting in charges against the soldiers allegedly responsible.²⁰⁴ In October 2004, almost two years after Habibullah's death, criminal investigators recommended that charges be brought against 27 soldiers for their roles in the death of Dilawar and against 15 of the same soldiers for the death of Habibullah, including “two captains, the military intelligence officer in charge of the interrogation group, and the reservist commander of the military police guards.”²⁰⁵ The recommended charges ranged from dereliction of duty to involuntary manslaughter.²⁰⁶ The soldiers included members of the 377th Military Police Company and interrogators from the 519th Military Intelligence Battalion.²⁰⁷

To date, less than half of the soldiers against whom charges were recommended –12 out of 27– have

actually been prosecuted for their roles in the deaths of Habibullah and Dilawar.²⁰⁸ Eleven cases have been concluded.²⁰⁹ Apart from demotions and some discharges, only four of these individuals were given sentences that included confinement, and the sentences ranged from 60 days to five months.²¹⁰ In January 2006, after a pre-trial inquiry, the Army dropped its criminal case against the only officer charged (with lying to investigators and dereliction of duties) in connection with the deaths, Military Police Captain Christopher M. Beiring.²¹¹

Lieutenant Colonel Thomas J. Berg, the Army judge who oversaw the pretrial inquiry, criticized the prosecution for not presenting sufficient evidence to support their charges against him.²¹² Berg added that the military police company had not been adequately trained before deployment for its mission at the Bagram detention facility.²¹³ “Little of the training focused on the actual mission that the 377th [Military Police Company] anticipated that it would assume upon arrival in theater Much of the 377th's training was described as ‘notional’ in that soldiers were asked to imagine or pretend that they had the proper equipment for training exercises.”²¹⁴ As of January 2006, the trial of Sergeant Alan J. Driver is pending.²¹⁵ Notably, no soldier has yet been charged with murder or voluntary manslaughter for either of the deaths of Habibullah or Dilawar.²¹⁶

PROFILE: HOMICIDE

Dilawar

Dilawar was the second detainee killed in a week at the Bagram detention facility in Afghanistan.²¹⁷ A 22-year-old Afghan citizen whose case similarly became the focus of *New York Times* investigative reports, Dilawar was driving his taxi past U.S. Camp Salerno when he was stopped and his car searched by a local Afghan commander working with the Americans.²¹⁸ Dilawar was then taken into custody as a suspect in a rocket attack.²¹⁹ The commander of the Afghan soldiers was later suspected of having launched the attack himself.²²⁰

Dilawar was brought to the Bagram detention facility on December 5, 2002.²²¹ The 122-pound taxi driver was labeled a “noncompliant” detainee by U.S. soldiers, and

was subjected to the same kind of peroneal strikes that eventually contributed to the death of Habibullah.²²² During one of the beatings by soldiers, Dilawar cried “Allah” when he was hit.²²³ According to a U.S. soldier, U.S. military personnel found these cries funny and hit Dilawar repeatedly to hear him cry out.²²⁴ Over a 24-hour period, one soldier estimated that Dilawar was



Dilawar

struck over 100 times by soldiers.²²⁵

According to an interpreter, during his fourth interrogation session on December 8, Dilawar was unable to comply with commands to keep his hands above his head, leading one soldier to push his hands back up.²²⁶ During the same interrogation, two interrogators shoved Dilawar against a wall when he was unable to sit in a “chair” position against the walls because of the injuries to his legs.²²⁷ At the end of the interrogation, one of the soldiers ordered Dilawar to be chained to the ceiling.²²⁸ During his final interrogation session on December 10, Dilawar could not obey the orders the interrogators gave him to stand in stress positions and kneel.²²⁹ Dilawar died that day.²³⁰

The official autopsy, conducted three days after his death, showed that Dilawar’s legs had suffered “extensive muscle breakdown and grossly visible necrosis with focal crumbling of the tissue.”²³¹ The damage was “nearly circumferential,” from below the skin down to the bone. The manner of death was found to be homicide.²³² Despite this conclusion, the military initially said that Dilawar had died of natural causes.²³³

Criminal investigation into his death, and that of Habibullah had been at a “virtual standstill,”²³⁴ and only

accelerated after the *New York Times* reported in new detail how both men died in U.S. custody.²³⁵ The renewed investigation also cast into stark relief the flaws in the original investigative efforts: agents had not interviewed the commanders of the soldiers responsible for the deaths, failed to interview an interrogator who had witnessed most of Dilawar’s questioning during his detention, and mishandled critical evidence.²³⁶ It was only during the subsequent investigation – and at the individual initiative of at least one soldier – that investigators finally took statements.²³⁷ The statements revealed that witnesses who had previously been overlooked had crucial information, including an eyewitness account of an interrogator apparently choking Dilawar by pulling on his hood, and that “most [soldiers at the base] were convinced that [Dilawar] was innocent.”²³⁸

The status of prosecutions of the soldiers responsible for Dilawar’s death is described above.

PROFILE: HOMICIDE

Sajid Kadhim Bori al-Bawi

Sajid Kadhim Bori al-Bawi, an Iraqi actor, was shot and killed in his home in Baghdad early in the morning of May 17, 2004.²³⁹ According to his family, U.S. and Iraqi soldiers raided the house by crashing through the gate in a Humvee.²⁴⁰ Al-Bawi’s brother, uncle, and nephew were bound and held on their knees and the women and children were kept in the living room while he was interrogated in a bedroom.²⁴¹ While they were waiting, the family heard shots ring out.²⁴² The troops left an hour after they arrived.²⁴³ According to the family, the troops took with them a robed and hooded man, and told the family that they were arresting al-Bawi.²⁴⁴ But when the family went into the room where he had been questioned, they found al-Bawi’s corpse, stuffed behind a refrigerator and hidden under a mattress.²⁴⁵ He had been shot five times: in the leg, throat, armpit, and chest.²⁴⁶

An administrative investigation²⁴⁷ into al-Bawi’s death found the shooting to be justified.²⁴⁸ The military reported in its initial public statements about the

shooting that al-Bawi had grabbed a U.S. soldier’s pistol, switched the safety off, and the soldier then fired five shots in self-defense.²⁴⁹ But the military’s statements became the subject of dispute. An Iraqi medical examiner who examined the body found that the shots had been fired from two different directions; al-Bawi’s family reported that they found two kinds of casings in the room where he died.²⁵⁰ Army criminal investigators only began their investigation a month after al-Bawi’s death, when an investigation was requested by the military’s Detainee Assessment Task Force, based on a *Washington Post* article detailing al-



Sajid Kadhim Bori al-Bawi’s son holds a portrait of his father

Bawi's family's allegations.²⁵¹ Despite the contradictions between the findings of the administrative investigation and allegations by al-Bawi's family and the medical examiner,²⁵² the criminal investigating agent spent a scant four hours reviewing the findings of the administrative investigation, did not attempt any independent verification, and then forwarded the case for closure.²⁵³ News reports detailing the family's allegations were included in the file, but the only change the criminal investigator made to the initial probe was to correct the spelling of al-Bawi's name.²⁵⁴ The criminal probe restated the conclusion that the killing was justified and recommended no charges be brought.²⁵⁵

The lack of any independent investigation into al-Bawi's family's allegations – or any investigation beyond a

review of the administrative findings – is troubling. At a minimum, there is a disconnect between the administrative finding that one soldier fired all the shots with one weapon,²⁵⁶ and the family's allegations that al-Bawi was shot from two directions with two different calibers of bullet.²⁵⁷

Al-Bawi's family reportedly was offered \$1,500 in compensation by military officials, conditioned on their agreeing that the United States has no responsibility for al-Bawi's death.²⁵⁸ The family has refused the money.²⁵⁹

PROFILE: HOMICIDE

Obeed Hethere Radad

Obeed Hethere Radad was shot to death on September 11, 2003, in his detention cell in an American forward operating base in Tikrit, Iraq.²⁶⁰ Both criminal and administrative investigations were conducted into his death.²⁶¹ The soldier accused of the shooting, Specialist Juba Martino-Poole, stated during the administrative investigation that he had shot Radad without giving any verbal warning because Radad was "fiddling" with his hand restraints and standing close to the wire at the entrance to his cell.²⁶²

The administrative investigation found "sufficient cause to believe" Martino-Poole violated the Army's use of force policy and the base's particular directives on the use of deadly force with which Radad could be charged; the administrative investigation recommended a criminal investigation be initiated to determine offenses.²⁶³ But the investigation also determined that there was inadequate clarity on the use of weapons and force with regard to detainee operations at the base, and noted in particular the lack of any written standard operating procedures.²⁶⁴ The investigation also criticized the location of weapons within the detention facilities, and the insufficient numbers of guards assigned to guard detainees.²⁶⁵ A military lawyer who later reviewed the administrative investigation found it legally insufficient, apparently because it failed to determine what, if any, briefing on the use of force guards received.²⁶⁶

Army criminal investigators were only notified of the death after the administrative investigation con-

cluded.²⁶⁷ And before the criminal investigation was over, Martino-Poole had sought a military discharge in lieu of a court martial for manslaughter.²⁶⁸ Martino-Poole's commander, Major General Raymond T. Odierno, approved the request for discharge without waiting for criminal investigative agents to conclude their investigation and forward their findings.²⁶⁹ A little more than a week later, criminal investigators found probable cause to charge Martino-Poole with murder.²⁷⁰

The Radad case was reviewed along with all detainee deaths in custody after the revelations at Abu Ghraib, and the reviewer noted flaws in both the criminal and the administrative investigations, but decided against reopening the criminal investigation because "further investigation would not change the outcome."²⁷¹ Martino-Poole later accused his commanders of wanting to avoid disclosure of the lax security practices at the base – practices that would likely have come to light in a court martial proceeding.²⁷²

PROFILE: HOMICIDE

Mohammed Sayari

Mohammed Sayari was in the custody of members of the U.S. Army Special Forces when he was killed near an Army firebase on August 28, 2002 in Lwara, Afghanistan.²⁷³ According to Army investigative records reviewed by Human Rights First, an Army staff sergeant from the 519th Military Intelligence Battalion who was supporting the Special Forces team was dispatched to the site of the shooting of a “suspected aggressor” on a road just outside the firebase, to take photographs documenting the scene.²⁷⁴ When he arrived, the members of the Special Forces unit told the sergeant they had stopped Sayari’s truck because he had been following them.²⁷⁵ The soldiers ordered the passengers traveling in Sayari’s truck to leave the area and then, they said, they disarmed Sayari.²⁷⁶ According to their later testimony, the soldiers neglected to restrain Sayari’s hands, and left his AK-47 weapon ten feet from him.²⁷⁷ When a soldier turned away for a moment, they said, Sayari lunged for the rifle and managed to point it at the Special Forces soldiers before they shot him in self-defense.²⁷⁸

Sayari’s body was fingerprinted and turned over to his family.²⁷⁹ The Military Intelligence sergeant (whose name is redacted in the records Human Rights First reviewed) then instructed other military personnel to transfer DNA evidence taken at the scene and other photographs to the Bagram Collection Point.²⁸⁰ On September 24, 2002 the captain of the Special Forces group that shot Sayari told the sergeant that a member of the Staff Judge Advocate General’s Corps would be coming as part of the administrative investigation to take statements from Special Forces soldiers involved in the shooting.²⁸¹ The captain then asked the sergeant for the photographs he had taken.²⁸² After reviewing the photographs, the Special Forces captain told the sergeant to include only certain of the photographs in the investigation and ordered him to delete all the other crime-scene photographs.²⁸³ The administrative investigation would eventually find Sayari’s shooting to be justified.²⁸⁴

The following day, the sergeant contacted criminal investigators to report “a possible war crime.”²⁸⁵ According to one criminal investigation agent’s report, the sergeant had not reported his concerns to criminal authorities earlier because he had waited to see the results of the administrative investigation and he had feared for his safety while working with the Special

Forces team.²⁸⁶ The sergeant told the agents that several details at the scene made him question the veracity of the Special Forces soldiers’ story. He said that Sayari had been shot five or more times – in the torso and head – but all the entry wounds appeared to be in the back of the body, which made it unlikely that he had been facing the soldiers and pointing his rifle at them when he was shot.²⁸⁷ One of Sayari’s sleeves had brain matter on it, suggesting that his hands were on or over his head when he was shot.²⁸⁸ When the sergeant first arrived, he had noticed that Sayari’s corpse still clutched a set of prayer beads in the right hand, which was inconsistent with the Special Forces soldiers’ report that he had picked up and pointed an assault rifle at them.²⁸⁹ Among the photos that the Special Forces captain instructed the sergeant to delete was one showing Sayari’s right hand clenched around the prayer beads and another depicting bullet holes in Sayari’s back.²⁹⁰ The AK-47 could not be found.²⁹¹

Criminal investigators eventually found probable cause to recommend charges of conspiracy and murder against the four members of the Special Forces unit; they also recommended dereliction of duty charges against three of them, and a charge of obstruction of justice against the captain.²⁹² Finally, they recommended that a fifth person, a chief warrant officer, be charged as an accessory after the fact.²⁹³

After consultation with their legal advisors, however, commanders decided not to pursue any of the recommended charges in a court martial.²⁹⁴ To date, the only action commanders have taken in response to the criminal investigators’ recommendations is to reprimand the captain for destroying evidence.²⁹⁵ The captain was disciplined – he had inarguably destroyed evidence – but received only a letter of reprimand.²⁹⁶ No further action was taken against the soldiers.²⁹⁷ The commanders who declined to report Sayari’s death – and who later declined to prosecute the soldiers involved – received similar leniency; they have received no disciplinary action for their conduct. Human Rights First asked the Department of Defense on January 20 and 26, 2006 for an update on the status of Sayari’s case; as of February 10, 2006, we had received no response.

PROFILE: HOMICIDE

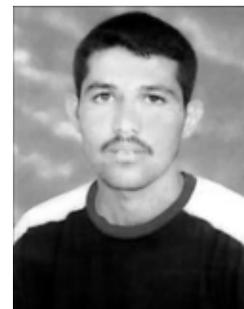
Zaidoun Hassoun

Zaidoun Hassoun, (also known as Zaydoon Fadhil), a 19-year-old Iraqi civilian, and his cousin Marwan were arrested by members of the 1st Battalion, 8th Infantry Regiment, 3rd Brigade, 4th Infantry Division in January 2004 on the streets of Samarra, in Iraq, at or around an 11 p.m. curfew time.²⁹⁸ Army Lieutenant Jack Saville then ordered his platoon to take the two Iraqis to a 10-foot-high bridge over the Tigris River and force the two to jump.²⁹⁹ Three soldiers, Sergeant (“Sgt.”) Alexis Rincon, Specialist Terry Bowman and Sgt. Reggie Martinez, complied with the order.³⁰⁰ Saville and Staff Sgt. Tracy Perkins had earlier that night stated that “someone was going to get wet tonight” and “someone is going for a swim.”³⁰¹ Marwan surfaced and swam to the shore.³⁰² Zaidoun, who had proposed to his fiancée three weeks previously and planned on starting a family once he graduated from high school, did not.³⁰³ According to his cousin, he was sucked into the current near an open dam gate and was unable to escape.³⁰⁴ Criminal charges initially filed against Saville alleged that he had also pushed another Iraqi into the Tigris in Balad the previous month.³⁰⁵

The platoon’s three immediate commanders, Lt. Col. Nathan Sassaman, the battalion commander, Captain Matthew Cunningham, a company commander, and Major Robert Gwinner, the deputy battalion commander, did not report the incident to criminal investigators, based on the assumption that there was no proof Hassoun had drowned.³⁰⁶

Sgt. Irene Cintron, a criminal investigative agent assigned to the case, suspected, however, “that the whole chain of command was lying to [her].”³⁰⁷ During the criminal investigation into Hassoun’s death, agents administered a polygraph test to a member of the squad that allegedly pushed him into the river.³⁰⁸ The soldier told agents that his chain of command had ordered him to deny soldiers had forced Hassoun into the river, and not to cooperate with criminal investigators.³⁰⁹ After the criminal investigation was underway, Lt. Col. Sassaman, the battalion commander, informed Major General Raymond Odierno, the commander of the Fourth Infantry Division, of the truth; soldiers had in fact forced Hassoun to jump into the Tigris.³¹⁰ According to the official investigative report, which Human Rights First reviewed, the officer who conducted a subsequent Article 32 hearing—analogous to a grand jury proceeding³¹¹—also found the commanders had “coach[ed]”

their soldiers on what to say to the investigating agents.³¹² The three commanders – Lt. Col. Sassaman, Captain Cunningham, and Major Gwinner – obtained grants of immunity from prosecution, and admitted at the soldiers’ trial that the allegations were true.³¹³



Zaidoun Hassoun

The commanders testified that they thought the investigation into Hassoun’s death was the result of “a personal vendetta” between Sassaman and the brigade commander, motivated by personal antipathy and jealousy.³¹⁴ They also maintained their belief that Hassoun had not actually drowned as a justification for their refusal to cooperate with investigators; Cunningham protested that “[they] were not covering up anything that injured anybody.”³¹⁵ Saville plead guilty to a reduced charge of assault and received 45 days in prison and Perkins was convicted of the same charge and sentenced to six months.³¹⁶ Two other soldiers, Sergeant Reggie Martinez (originally charged with involuntary manslaughter) and Sergeant Terry Bowman (originally charged with assault), received non-judicial punishment.³¹⁷ The three commanders received reprimands for obstruction of justice but were not relieved of their command.³¹⁸

III. Death by Officially Unknown, “Natural” or Other Causes

The autopsy findings in this 27-year-old man seem insufficient to explain his death. The fact that they seem to have found pulmonary edema, water in the lungs, is very unusual in a man of this age without heart disease. The available information is insufficient to explain his death. A full investigation report that describes the circumstances preceding his death and the manner in which the body was found shortly before any attempt at resuscitation is needed to explain the cause of death and to rule out a homicide which seems more likely than not in a 27-year-old man who suddenly died in captivity.

Dr. Steven Miles
Professor and Bioethicist, University of Minnesota Medical School on autopsy of
Fashad Mohamed, died in U.S. custody, April 5, 2004³¹⁹

For close to half of the deaths Human Rights First has analyzed – 48 out of 98 – the cause of death remains officially undetermined or unannounced.³²⁰ The military classified another 15 deaths as due to natural causes and one as accidental. But a significant number of all of these deaths occurred under suspicious circumstances and may more appropriately be considered homicides themselves; 17% of the deaths in which the official cause of death is unknown or due to natural causes either followed severe injuries consistent with, or occurred in circumstances suggesting, physical abuse or harsh conditions of detention.³²¹ This chapter briefly reviews the facts of some of these cases and the consequences – or not – for those involved. Given the passage of time since each of these deaths, and flaws in the investigations that have already taken place, it is now unlikely that the facts of their deaths will ever be known. If there has been wrongdoing, no one will be punished.

PROFILE: UNDETERMINED CAUSE

[Bringing in an Iraqi physician to treat detainees] would decrease the perception of our involvement or cover-up in events similar to this.

Department of the Army, 101st Airborne Division,
Administrative Investigation into the Death of Abu
Malik Kenami³²²

Abu Malik Kenami

Abu Malik Kenami (also referred to as Abdureda Lafta Abdul Kareem), a 44-year-old Iraqi man, died on December 9, 2003, in a U.S. detention facility in Mosul, Iraq.³²³ According to the findings of an administrative investigation, Kenami had arrived at the facility four days earlier, and according to the soldiers who interrogated him upon his arrival, he said he did not suffer from any pre-existing medical conditions.³²⁴ On the night of December 8, Kenami allegedly talked out loud in the presence of guards, and tried to look out

from underneath his hood to see what was happening.³²⁵ That earned him what had become a standard form of punishment: “up and downs” — an exercise in which detainees were made to stand up, then sit down, over and over again for periods of up to twenty minutes.³²⁶

Kenami had been subjected repeatedly to “up and downs” during his detention, but this night turned out to be different.³²⁷ Following the forced workout, soldiers flexicuffed Kenami’s hands behind his back and covered his head with a sandbag hood.³²⁸ Kenami was then ordered to lie down among other detainees in his overcrowded cell; built for 30 prisoners, it housed 66.³²⁹ When a guard attempted to rouse the prisoners in the morning, Kenami, still bound and hooded, was dead.³³⁰

The Army’s initial criminal investigation into Kenami’s death could not determine the cause of death because no autopsy was ever conducted.³³¹ It was only five months later, after the revelations from Abu Ghraib, that the Army reviewed this case and it became clear how troubling the original criminal investigation had been.³³² In the words of the military police forensic science officer who reviewed the initial criminal investigation: “it was weak in Thoroughness and Timeliness.”³³³ In addition to the lack of an autopsy, the review determined that important interviews were not conducted of the interrogators, medics, or detainees present at the scene of the death, and that key details were omitted from the report.³³⁴ The file “[did] not mention the presence, or lack of, signs of a struggle, or of blood or body fluids,” “the crime scene sketch... [did] not document where guard personnel found the deceased,” and “records of medical treatment of the deceased were not collected and reviewed.”³³⁵ The Army’s administrative investigation had recommended that an Iraqi physician be brought in to treat the detainees, noting that among other benefits, “[i]t would [also] decrease the perception of our involvement or cover-up in events like these.”³³⁶

According to military records made public to date, the cause of Kenami’s death remains officially undetermined.³³⁷ But there could be a more troubling conclusion. Dr. Steven Miles is a professor and bioethicist at the University of Minnesota Medical School, who has reviewed the Army’s records related to Kenami’s death. Kenami’s body “had bloodshot eyes, lacerations on his wrists from the plastic ties, unexplained bruises on his abdomen and a fresh bruised laceration on the back of his head,” Miles explains, expressing particular concern that “Army investigators noted that the body did not have defensive bruises on his arms, an odd notation given that a

man cannot raise bound arms in defense.”³³⁸ Based on his analysis, Dr. Miles found: “It is likely that Mr. Kenami suffocated because of how he was restrained, hooded and positioned. Positional asphyxia looks just like death by a natural heart attack except for those telltale bloodshot, [conjunctival hemorrhage] eyes.”³³⁹ Human Rights First asked the Department of Defense on January 20 and 26, 2006 for comments on Dr. Miles’ findings; as of February 10, 2006, we had received no response.

The Army has taken no punitive or disciplinary action in the case.³⁴⁰

PROFILE: UNKNOWN CAUSE

Dilar Dababa

Dilar Dababa, an approximately 45-year-old Iraqi civilian detainee, died on June 13, 2003 at Camp Cropper, after being subjected to what press accounts of unreleased Army investigation records describe as “physical and psychological stress” and restraint in a chair during interrogation.³⁴¹ Military investigation documents cite an autopsy finding that Dababa died from a “hard, fast blow to the head.”³⁴² The Armed Forces Medical Examiner’s autopsy report on Dilar Dababa does not use the same language, but states that “[p]hysical force was required to subdue the detainee, and during the restraining process, his forehead hit the ground.”³⁴³ Twelve hours later, he was dead.³⁴⁴

The medical examiner’s autopsy lists the cause of Dababa’s death as a “Closed Head Injury with a Cortical Brain Contusion and Subdural Hematoma.”³⁴⁵ The autopsy describes a litany of injuries in technical detail, and makes clear that Dababa was subjected to physical violence.³⁴⁶ Dababa’s body was covered with at least 22 bruises,³⁴⁷ and at least 50 abrasions.³⁴⁸ His head and neck suffering the most significant abuse, resulting in hemorrhaging throughout his brain.³⁴⁹ He also had a fractured rib.³⁵⁰ A military official stated in May 2004 that Army criminal investigators were looking into Dababa’s death, but there has been no documentation of any charges being brought against those responsible for the death.³⁵¹ The military has not publicly provided an official cause of death. Human Rights First asked the Department of Defense on January 20 and 26, 2006 for the status of any investigation or prosecution in Dababa’s case; as of February 10, 2006 we had received no response.

PROFILE: UNDETERMINED CAUSE

Hadi Abdul Hussain Hasson al-Zubaidy (Hasson)

All that is known about Hadi Abdul Hussain Hasson al-Zubaidy (Hasson) is his name, his identification number and the fact that he died in Iraq, at Camp Bucca, some time between April and September 2003.³⁵² His death went officially unnoticed until nearly a year after it happened,³⁵³ when Army investigators conducted a review of all detainee deaths following the public Abu Ghraib scandal.³⁵⁴ Despite later attempts to determine what happened to Hasson – including when and how he died – investigators were only able to determine that Hasson had been treated on board a U.S. Navy hospital ship.³⁵⁵

In the end, investigators closed the Hasson case without being able to determine whether his death was due to natural causes or homicide.³⁵⁶ The investigators' report notes that inadequate record-keeping made it impossible for them to learn anything more: "All efforts disclosed there as [sic] virtually no documentation in reference to Mr. HASSON's manner, cause, or circumstances of death."³⁵⁷ A U.S. Mortuary Affairs officer told an investigator that "the documentation on deceased Detainees was very limited . . . the majority of the time prior to earlier this year [2004], when the Mortuary received the remains of a deceased Detainee they would only know that the deceased was a detainee, and would not have any other info on the remains, so they would have a list of the remains as unknown John Doe."³⁵⁸

PROFILE: NATURAL CAUSE

Nasef Ibrahim

Nasef Ibrahim was 63 at the time of his death of what an initial autopsy report called "atherosclerotic cardiovascular disease." He died at Abu Ghraib in January 2004 – a death the Army attributes to natural causes.³⁵⁹ Army criminal investigators on the case attended the autopsy and interviewed a number of soldiers who stated that Ibrahim's son, detained with him, brought his collapse to the attention of prison guards.³⁶⁰ After the special agent in charge determined that pursuing the case further would be of little value, and that remaining leads were not significant, the criminal investigation was closed.³⁶¹



Nasef Ibrahim

The case was re-examined on May 19, 2004, as part of the Army's review of detainee death and abuse cases following the revelations from Abu Ghraib. This time, the Army found several grounds for criticism. The initial investigation had not included a visit to the scene of the death, interviews of the witnesses who found the victim, or any "effort . . . to interview the alleged . . . son of the victim who [was] reportedly at the prison at the time of death."³⁶² Ibrahim's son, who was with him when he died, says that his father's death came only after his father suffered extensive abuse.³⁶³ The son alleges that the abuses Ibrahim suffered included being beaten, menaced by dogs, repeatedly doused with cold water during the height of winter, being left naked outside for days and deprived of food to the point of fainting, and left on his stomach with hands tied above his head for hours.³⁶⁴

The May 2004 Army review indicated that "[t]he investigation has not yet received the final autopsy report."³⁶⁵ The May review asked that a "supplemental ROI"—an additional report of investigation—be submitted as soon as the final autopsy was received.³⁶⁶ Government documents to date regarding the investigation reviewed by Human Rights First do not indicate whether this request was ever acted upon, or if there was any further action taken. Human Rights First asked the Department of Defense on January 20 and 26, 2006 for the status of the investigation and any prosecution in Ibrahim's case; as of February 10, 2006, we had received no response.

PROFILE: NATURAL CAUSE**Abed Mohammed Najem**

Evidentiary failures pervaded the investigation into the death of Abed Mohammed Najem, who died at Abu Ghraib in August 2003.³⁶⁷ According to accounts in an original criminal investigation, Najem began a hunger strike on August 6 (during the hottest part of the Iraqi year) and refused food, water, and even his diabetes medication;³⁶⁸ on August 8, Najem took a double dose of his prescription, which appears to have precipitated a fatal heart attack.³⁶⁹ The official criminal investigation found Najem died of "natural causes."³⁷⁰ But the true cause of death may never be known. Investigators' later review of the original criminal investigation found that there had been no crime scene examination; no interviews of anyone who was with Najem at the time of his death; no interview of an Iraqi medical professional listed in the original investigation as having pertinent information; no medical records or interviews to substantiate claims that Najem had a preexisting condition; and no copies of autopsy reports.³⁷¹

PROFILE: UNKNOWN CAUSE**Jassim Al-Obodi**

The evidence collected in the investigation into the death of Jassim Al-Obodi on August 3, 2003 is fragmentary.³⁷² Al-Obodi, a 38-year-old Iraqi male, collapsed in Camp Cropper in Iraq, and criminal investigation interviews of other detainees indicate he had "not been feeling well" earlier in the day.³⁷³ But no medical records were collected, and no autopsy included in the file; the investigating agent was told that an autopsy would be conducted in the United States, but he apparently failed to request the results.³⁷⁴ When the agent's supervisor reviewed the file four months later and noticed the omission, the investigator attempted to collect the evidence he had missed, but perhaps due to the delay, could not locate any medical records, the autopsy report, or even a death certificate.³⁷⁵ The investigation results state that it "failed to prove the cause or manner of death"; among other things, investigators could not determine if an autopsy had been done or even to whom the body had been released.³⁷⁶ In a note in the file, the supervisor warned the agent not to "get so focused on your opinion that you want to do a stat and close this [sic] keep you from being thorough."³⁷⁷

PROFILE: UNDETERMINED CAUSE**Mohammad Munim al-Izmerly**

Mohammad Munim al-Izmerly, a 65-year-old Iraqi chemist, was detained at the Camp Cropper facility, where high-value detainees were kept, in April 2003; his family was allowed to visit him once.³⁷⁸ Within a few weeks of their visit in January 2004, al-Izmerly was dead.³⁷⁹ The only autopsy ever performed on the body was conducted by the Director of Baghdad Hospital's Department of Forensics, Dr. Faik Amin Baker, at the request of al-Izmerly's family.³⁸⁰ Dr. Baker found that al-Izmerly died from a "sudden hit to the back of his head," and that the cause of the death was blunt trauma.³⁸¹ According to Dr. Baker, al-Izmerly "died from a massive blow to the head."³⁸²

U.S. forces retained al-Izmerly's body for 17 days after his death, and did not inform Army criminal investigators that al-Izmerly had died in U.S. custody until after his body was released.³⁸³ Al-Izmerly's family only learned of his death after U.S. forces delivered his body to an Iraqi hospital, accompanied by a death certificate stating that al-Izmerly had died of a "sudden brainstem compression"; the certificate had no explanation of the compression's cause.³⁸⁴ An initial, inconclusive investigation into the case only appears to have been reopened after press accounts of al-Izmerly's death.³⁸⁵ The Army's Criminal Investigation Command records have not been publicly released, but according to published reports, the records list al-Izmerly's death as of "undetermined cause" – because the body was released and no U.S. autopsy was performed.³⁸⁶

Al-Izmerly's family reportedly filed a wrongful death claim for \$10,000, but the Army dismissed it, saying the family had presented no evidence of wrongdoing by U.S. personnel.³⁸⁷ The re-opened investigation into al-Izmerly's death remains pending; to date, no charges have been brought.³⁸⁸ Human Rights First asked the Department of Defense on January 20 and 26, 2006 the status of the investigation and any prosecution in al-Izmerly's case; as of February 10, we had received no response.

Death by Heart Attacks or Other Natural Causes

Many prisoners suffered "natural" deaths from heart attacks or atherosclerotic cardiovascular disease. None of the forensic investigation of these "heart attacks" explores the possibility that these men died of stress-induced heart attacks. Threats, beatings, fear, police interrogation, and arrests are known to cause "homicide by heart attack" or life-threatening heart failure. People with pre-existing heart disease, dehydration, hyperthermia, or exhaustion are especially susceptible.

Dr. Steven Miles, Professor and Bioethicist, University of Minnesota Medical School³⁸⁹

The military's classification of a number of deaths as "natural" gives Human Rights First cause for concern. Of the nearly 100 deaths Human Rights First reviewed, official records indicate more than a fifth involved instances in which heart attack or heart disease was determined to be part or all of the cause of death.³⁹⁰ A number of the victims were surprisingly young: the youngest detainee alleged to have died from heart disease is 25; those apparently dead from heart attacks also include men aged 30, 31, and 43.

In part, concern about the accuracy of the "natural causes" label comes from the Army's track record of having publicly labeled torture-related deaths "natural," only to have to revise that assessment when case facts came to light. This was the pattern in the cases, discussed above, of Iraqi Major General Mowhoush, and Afghan detainees Habibullah and Dilawar.

Another reason for concern was identified in the recent testimony of Maj. Michael Smith, U.S. Army Forensic Pathologist, on Jan. 19, 2006, during the trial of a junior officer for Mowhoush's death: "The forensic pathologist, who does not gather information on the circumstances of a death, will invariably miss homicides and suicides. It is incumbent on the pathologist to look at the circumstances of a death. Otherwise, a homicide or a suicide may appear like a natural death. "

Additional concern about the accuracy of deaths deemed "natural causes" flows from the inadequacy of investigations into many of these deaths. Army investigators themselves criticized the investigation into the death of one of these men: a subsequent Army review of the original investigation into the death of Abed Najem, who allegedly died due to heart disease complicated by diabetes, found the investigation "operationally insufficient and administratively insufficient."³⁹¹ The reviewers noted that "[t]hrough U.S. Army medical personnel alleged the victim had a preexisting medical condition aggravated by a self imposed hunger strike, the investigation did not obtain any medical records or conduct interviews to substantiate the information."³⁹²

Other findings of detainee deaths by "natural causes" have been rejected as outright impossible by surviving families. An Army criminal investigation attributed the death of Nasef Jasem Ibrahim to a compression of the heart often associated with heart attacks.³⁹³ Army investigators closed the case finding "[f]urther investigation would be little or no value."³⁹⁴ But Ibrahim's son, who was with Ibrahim in detention, was not interviewed as part of the investigation into Ibrahim's death.³⁹⁵ The family has since alleged in a lawsuit that Ibrahim died as a result of abusive detention conditions.³⁹⁶

Finally, medical personnel told have told military investigators of confusion about the proper standard of care to apply to detainees. According to the Army Inspector General: "Coalition Provisional Authority treatment policy... reportedly dictated that U.S. medical care was only available to detainees to prevent loss of life, limb, or eyesight," which conflicted with the governing Army regulation.³⁹⁷ The Army Surgeon General found "the use of different classifications for detained personnel (Enemy Prisoner of War (EPW), detainees, Retained Personnel (RP), Civilian Internees (CI)) that, under Department of Defense (DoD) and Department of the Army (DA) guidance, receive different levels care."³⁹⁸ Similar confusion over novel detainee classifications detached from the Geneva Conventions was a contributing factor in incidents of detainee abuse.

PROFILE: UNKNOWN CAUSE

Sher Mohammed Khan

The circumstances of Sher Mohammed Khan's death remain unclear despite an Army criminal investigation. An Afghan citizen, Khan was arrested on September 24, 2004, in his home in the village of Lakan, Khost province, Afghanistan.³⁹⁹ Khan was subsequently taken to the nearby Salerno Firebase, which doubled as a temporary



Sher Mohammed Khan

detention facility for U.S. forces, and placed in a holding cell. The next evening, the U.S. military says that he complained to guards that a snake had entered his cell and bitten him; medical personnel examined him, but could find no punctures in the skin, and no action was taken, though a medic was detailed to check on Khan throughout that night. During one such check, the medic found that Khan had stopped breathing.⁴⁰⁰

Immediately after Khan's death, Army officials informed the governor of Khost province that a man in U.S. custody had died of a heart attack, an explanation on which Department of Defense officials continued to insist publicly until January 2005, when details of the snake-bite story were reported in the press.⁴⁰¹ Adding to the uncertainty, Khan's family has said that his body was bruised when they picked it up from the Salerno base,⁴⁰² and alleges that he appeared to have been beaten in custody.⁴⁰³

In January 2005, more than three months after Khan's death, the commander of the U.S. troops who detained Khan said that he had not yet received a final autopsy report.⁴⁰⁴ An Army criminal investigation has reportedly found "no signs of abuse or trauma" on Khan's body; yet neither details of the investigation nor a death certificate listing the official cause of death has been released.⁴⁰⁵ No disciplinary action has been taken.⁴⁰⁶ Human Rights First asked the Department of Defense on January 20 and 26, 2006 the status of the investigation and any prosecution in Khan's case; as of February 10, we had received no response.

PROFILE: UNKNOWN CAUSE

Jamal Naseer

Jamal Naseer was an 18-year-old Afghan soldier who died in the custody of U.S. Special Forces soldiers in March 2003.⁴⁰⁷ An investigation into his case, begun some nine months after his death, had been closed due to a lack of leads.⁴⁰⁸ It was reopened when a *Los Angeles Times* journalist investigated the case



Jamal Naseer

independently, and wrote a feature-length article about Naseer's death, alleging that Naseer had been tortured, and that the Afghan government had conducted a detailed investigation into the death.⁴⁰⁹

According to these accounts, Naseer was arrested by U.S. forces as a result of a complicated series of feuds between the local governor, a warlord, and local military commanders.⁴¹⁰ The governor labeled Naseer's entire unit as Taliban agents, and U.S. forces, acting on the tip, arrested the detachment and imprisoned them in a forward operating base near Gardez – a base named in claims by a number of former detainees interviewed by Human Rights First who have described suffering torture and serious abuse.⁴¹¹ Details of what was done to Naseer are scarce, but seven Afghan soldiers detained with him attest to an extended period of interrogation and abuse.⁴¹² According to the soldiers, they were questioned about their relationship with Al Qaeda; when they denied any involvement, they were subjected to severe abuse, including beatings with fists and cables – sometimes while suspended upside-down (allegations that again echo those of other Afghan detainees held by U.S. forces in Gardez).⁴¹³ They were immersed in cold water and exposed to the winter weather, sometimes being forced to lie in the snow.⁴¹⁴ Some say they were electrocuted.⁴¹⁵ On a particularly cold day in March, Naseer collapsed and died.⁴¹⁶

After Naseer's death, U.S. commanders allegedly relied on local authorities to transfer the body to his family rather than doing so themselves.⁴¹⁷ Afghan police entered a local hospital and ordered an ambulance to go to the U.S. base to get Naseer's body; according to a doctor, no driver could be found, and the police began to beat the "frightened" medical personnel with their rifle butts.⁴¹⁸ Neither U.S. personnel nor the local doctors performed an autopsy; according to a hospital

administrator, “none of the [local] doctors wanted to look into the cause of death because they were afraid that they would be beaten again by the police.”⁴¹⁹ It appears that the only contact any U.S. military personnel had with Naseer’s family was when an officer apologized to Naseer’s brother – who had been detained with Naseer – while the brother was still held at the Gardez facility.⁴²⁰

The Army initiated a criminal investigation based on a tip about the incident, but later determined the tip was “unfounded,” because investigators were unable to find any documentation confirming the death or identifying witnesses.⁴²¹ Record-keeping remained a problem even after the *Los Angeles Times* journalist uncovered many previously unknown details – including the existence of a hundred-page investigation into Naseer’s death launched by Afghan military prosecutors, which contained the names of and interviews with several witnesses.⁴²² Army criminal investigators reportedly could not even determine which Special Forces unit had been assigned to the firebase at which Naseer died: according to one criminal investigator, “[t]here are no records. The reporting system is broke across the board.”⁴²³ The criminal investigation remains ongoing; no charges have been announced.⁴²⁴ Human Rights First asked the Department of Defense on January 20 and 26, 2006 the status of the investigation and any prosecution in Naseer’s case; as of February 10, we had received no response.

IV. Failures in Investigation

[T]he President has been pretty clear on that, that while we have to do . . . what is necessary to defend the country against terrorists attacks and to win the war on terror, the President has been very clear that we're going to do that in a way that is consistent with our values. And that is why he's been very clear that the United States will not torture. The United States will conduct its activities in compliance with law and international obligations And to the extent people do not meet up, measure up to those principles, there will be accountability and responsibility.

National Security Advisor Stephen Hadley
Remarks at Press Briefing, November 2, 2005⁴²⁵

There is an old Army aphorism: the unit does what the commander checks If rigorous adherence to humane treatment had been deemed important, someone wearing stars would have required a thorough, impartial investigation of every death of a detainee.

Brigadier General David R. Irvine, U.S. Army (Ret.)
Interview with Human Rights First, October 14, 2005

When conducted according to the military's own rules, the U.S. Armed Forces' procedures for investigating the deaths of detainees can effectively uncover the underlying facts through interviews and evidence gathering, and determine whether to seek accountability. But the handling of death cases to date shows internal government mechanisms to secure accountability were badly dysfunctional during a time when torture and abuse in U.S. custody was at its worst.⁴²⁶ Commanders failed to convey that detainee deaths were to be taken seriously.⁴²⁷ Detainee death investigations were fundamentally flawed, and often did not meet the Army's own regulations. The result has been a pattern of impunity for the worst violations, with punishment for bad behavior too little and too late, and

a still incomplete picture of what really went wrong. This chapter highlights the major investigative failures in the range of cases involving detainee deaths in U.S. custody.⁴²⁸

How An Investigation Should Work

Military regulations require that the death of a detainee in the custody of the U.S. Armed Forces must be investigated by the criminal investigation command of the service that held the detainee.⁴²⁹ The Army may conduct two types of investigations in a case involving a detainee death. The first is the mandatory criminal investigation by the Army Criminal Investigation Division.⁴³⁰ The criminal investigation is governed by a detailed set of regulations,⁴³¹ including rules on how evidence must be gathered and maintained: victims and eyewitnesses should be interviewed within 24 hours of the event, evidence collected within a single duty day,⁴³² and requests for lab-work and coordination with other branches or agencies should be sent out within five duty days.⁴³³ Army commanders in the field also have the discretion to order an administrative investigation governed by its own set of regulations.⁴³⁴ An administrative investigation may be conducted before, during, or after, any other investigation, including a criminal one.⁴³⁵ Thus, while a criminal investigation is absolutely required into any death in custody,⁴³⁶ it is not uncommon to see an administrative investigation into that death also. The rules of evidence applicable to trials or other court proceedings generally do not apply to administrative investigations. The Army's Judge Advocate General Corps provides legal oversight and advice on both criminal and administrative investigations.⁴³⁷ Military commanders have the discretion to determine whether and how an offender should be charged after an investigation, criminal or administrative, has taken place.⁴³⁸ Commanders' options include taking no action, initiating non-judicial action (which can range from counseling to a reprimand to correctional custody to discharge),⁴³⁹ and referring the case for court martial.⁴⁴⁰ Punishment by court martial can, depending on the crime, include punitive discharges and confinement, including in certain types of murder cases, life imprisonment or death.⁴⁴¹

No Evidence for the Prosecution

I would have directed the death of any detainee to be thoroughly investigated. Any poor medical care should have been thoroughly investigated. The absence of autopsies, body parts, and evidence is really just astonishing.

Brigadier General Stephen N. Xenakis, U.S. Army (Ret.)
Former Commanding General of the Southeast Regional Army Medical Command⁴⁴²

Accountability for detainee deaths caused by criminal misconduct is impossible if evidence is never collected, or not catalogued, stored, or maintained following its collection. For these reasons, the Army's Manual on Legal Guidance to Commanders emphasizes: "[t]he most difficult form of evidence to collect and preserve is also the most important – testimonial evidence."⁴⁴³ If evidence is missing or mishandled, it becomes useless in any subsequent judicial proceeding.⁴⁴⁴ Of critical importance is the autopsy, which was not required until after the revelations of Abu Ghraib, when the Defense Department clarified policies for handling detainee deaths.⁴⁴⁵

Yet in case after case, before and after the Abu Ghraib photos were released in 2004, Army criminal investigators did not interview those most likely to have witnessed a death, or the events leading up to it. Physical evidence was not collected, and evidence that was collected was at times grossly mishandled. Autopsies were not conducted, and bodies themselves were treated carelessly. In some of these cases, the omissions were not crucial; where agents have

interviewed half a dozen bystanders, any remaining similarly situated witnesses are unlikely to add much new information.⁴⁴⁶ But in others, deaths that appear to have been caused by abusive detention or interrogation practices were not fully investigated, and charges could not be brought.

Human Rights First found 16 cases in which investigators appear to have failed to collect useable evidence and/or did not maintain evidence; flaws ranged from a failure to adequately examine a crime scene to the failure to properly collect and maintain a decedent's body organs, or weapons used.⁴⁴⁷ The result of many of these failures: no accountability for U.S. forces responsible for the deaths.

The case of Nagem Sadoon Hatab, detailed above, is illustrative. Because of a series of errors, the medical evidence necessary to substantiate the prosecutors' case for death by strangulation was destroyed or missing: Hatab's body was allowed to partially decompose before autopsy; some of his organs were destroyed in heat; body parts were stored on different

continents,⁴⁴⁸ and a neck bone was never found. Partly as a result of these errors, six of the soldiers initially charged in his death were never court-martialed, and others had their charges reduced or were acquitted.⁴⁴⁹

In another case, criminal investigators were unable to determine the cause of Abu Malik Kenami's death because no autopsy was performed; Kenami died after he was cuffed and hooded in a crowded cell.⁴⁵⁰ Criminal investigators also failed to interview key witnesses, including detainees, other interrogators and medics who treated Kenami.⁴⁵¹ As a consequence, no one has been held accountable.

In more than a dozen cases, Human Rights First also found a failure to interview key witnesses, ranging from other detainees who witnessed the death, to military personnel with possible knowledge of the circumstances of the death.⁴⁵² For example, in the case of Nasef Ibrahim, the failure to interview the decedent's son, who was with his father at his death,⁴⁵³ meant that investigators never learned that abusive detention practices may have contributed to the death. The investigation into the death of Abed Mohammed Najem was similarly scant; a subsequent Army review itself criticized the original investigators' failure to interview witnesses to a death allegedly due to hunger strike.⁴⁵⁴

No Reporting, Underreporting, and Delayed Reporting of Deaths in Custody

Apart from being a regulatory requirement, it is common sense that an investigation into an alleged crime should begin as soon as possible after its discovery. Delay in reporting can reduce the evidentiary value of both physical evidence and witness statements.⁴⁵⁵ The Army's own Legal Guide for Commanders explains: "As time passes, witnesses may forget, develop a biased view of the facts, hesitate to give statements, or become difficult to find. The scene of the incident may also change, perhaps due to repairing damaged property or moving evidence."⁴⁵⁶ For this reason, Army regulations require commanders to report the deaths of detainees in their custody within 24 hours of the incident.⁴⁵⁷

The standards governing command behavior in response to a death in custody are particularly stringent. Commanders are required to report criminal incidents⁴⁵⁸ and cooperate in any ensuing investigation;⁴⁵⁹ they may release "accurate and timely" information to the public,⁴⁶⁰ but may not release information "concerning ongoing [criminal] investiga-

tions."⁴⁶¹ Once an investigation is completed, the commander must review the case and, in consultation with military lawyers, determine what disciplinary action to take.⁴⁶² While a criminal investigation is ongoing, a commander may not take actions that could affect or pre-empt the investigation, in order to allow it to reach an unbiased result.⁴⁶³ Indeed: "Commanders are prohibited from interfering with the investigations or impeding the use of investigative techniques."⁴⁶⁴

The Impact of Public Attention

After the prolonged public exposure of the Abu Ghraib torture scandal, the Army's Criminal Investigation Division Headquarters initiated an operational review of all detainee abuse and death cases, in Iraq and Afghanistan, which were then on file.⁴⁶⁵ Army criminal investigators assessed the quality of the investigation report based on the file; they did not conduct an independent investigation. The reviewers' findings were appended to the investigation reports, some of which have been publicly released. Of the 42 criminal or administrative investigations into the detainee deaths Human Rights First reviewed, seven include notes from this operational review.⁴⁶⁶ Army reviewers found two of the original investigations to be adequate, but identified flaws in the others.⁴⁶⁷ The reviewers also found eight investigations to be incomplete because autopsy reports had not been included in the original investigation reports.⁴⁶⁸ It was only after these files were reviewed in May 2004 that autopsy reports were sent for eight deaths that had occurred as far back as August of 2003.⁴⁶⁹ In July 2004, investigators at the Army Criminal Investigation Division headquarters also reviewed rosters of prison deaths, and discovered what appeared to be four previously unreported deaths.⁴⁷⁰ They opened investigations into at least two of these deaths, one of which had occurred in 2003⁴⁷¹ and the other in April 2004.⁴⁷²

Too often these reviews have come only after public exposure of a death. The fact that the subsequent reviews have repeatedly shown circumstances worse than those originally found raises serious questions about the quality of investigative practice when the cameras are not focused squarely upon investigations. And they raise questions about the validity of the investigations into more than 60 deaths that are still listed as of unknown nature or of natural causes. These questions underscore the importance of building in more robust, independent checks of prisoner abuse and death.

Yet the possibility of accountability in at least 17 cases examined by Human Rights First was compromised from the beginning as a result of delays in reporting a death, failure to report a death at all, and in one case, commanders' deliberate attempt to conceal the death of a detainee.⁴⁷³ Delays in reporting of incidents of deaths in custody were neither isolated nor limited to a handful of cases. An Army tally of criminal investigations into prisoner abuse as of November 2004 suggests that as many as 17 detainee deaths were not reported through proper channels. (The Army's tally is heavily redacted, but based on dates of deaths, eight of the Army's cases overlap with those Human Rights First identified).⁴⁷⁴ Our examples include:

- The death of an unnamed Afghan, killed while being questioned by Army Special Forces in January 2003, was not reported to criminal investigators at all. Instead, the "[b]asic allegation [was] discovered during the conduct of another CID investigation" and an investigation was opened only in September 2004,⁴⁷⁵ over one and a half years after the death occurred.
- The death of Hamza Byaty in Iraq on August 7, 2003 was not reported until over two weeks after it occurred.⁴⁷⁶ Army criminal investigators had difficulty finding witnesses,⁴⁷⁷ and perhaps as a result of this delay, the autopsy could only find that he had died of an "undetermined atraumatic cause."⁴⁷⁸
- Army criminal investigators were not informed of Iraqi detainee Mohammed al-Izmerly's death until 17 days after it occurred on January 31, 2004. By that time, the body had been released to al-Izmerly's family and Army investigators could not conduct an autopsy.⁴⁷⁹
- Four deaths that occurred during riots at Abu Ghraib prison in Iraq on November 24, 2003 were not reported to Army criminal investigators until December 2, 2003. As a result, investigators were not able to examine the body of one of the victims, which had already been taken away from the prison.⁴⁸⁰
- Hadi Abdul Hussain Hasson al-Zubaidy (Hasson) died in at Camp Bucca in Iraq in the middle of 2003, but Army investigators did not learn of Hasson's death until a year after it occurred.⁴⁸¹ The resulting investigation could not determine a cause of death or any other information about circumstances.

Criminal Investigations

The Army's CID is the sole agency responsible for investigating felony crimes that involve Army personnel and that carry a maximum punishment of one or more years of confinement.⁴⁸² CID agents—approximately 2000 soldiers and civilians and 900 special agents⁴⁸³— are deployed worldwide and are concentrated in combat zones.⁴⁸⁴ For every investigation, CID agents are required to maintain detailed records of their investigation plans and the outcomes of any investigation.⁴⁸⁵ The final investigation report includes the findings of the agents,⁴⁸⁶ pending leads,⁴⁸⁷ chronological summaries of the investigative proceedings,⁴⁸⁸ and any other relevant documents (such as medical reports or crime lab results).⁴⁸⁹ Drafts are reviewed by a Special Agent in Charge⁴⁹⁰ and, once completed, the official report is forwarded to the local JAG unit for legal review, including whether the facts warrant prosecution and the charges that may be brought.⁴⁹¹ After the legal review, the final report is forwarded to CID Headquarters at Fort Belvoir, Virginia,⁴⁹² where the case is reviewed again to determine if it merits further investigation or if it may be closed.⁴⁹³ Based on the report of the investigating CID agent, the commander of the soldier's unit will consult with the commander's assigned JAG officer to decide whether or not to follow the recommendations. The decision to press charges is at the discretion of the unit's commanders.⁴⁹⁴

Overlapping Investigations

The effectiveness of internal investigations was also undermined in a number of instances by careless use of the Army's multiple-investigative-avenues structure — one in which commanders have the option to request both administrative and criminal investigations that may run on parallel tracks. In some instances, an administrative investigation may be an effective means of conducting an investigation into wrongdoing. Major General Antonio Taguba's investigation into the detention and internment operations of the 800th Military Police Brigade in the context of the Abu Ghraib abuse scandal, for example, is a model of an administrative investigation conducted with objectivity and thoroughness.⁴⁹⁵

But review of the individual deaths that were subjects of both criminal and administrative investigations indicates that the existence of both investigative procedures, each with their own reporting and evidentiary standards, has sometimes functioned to reduce accountability for unlawful acts.⁴⁹⁶ In one case, a subsequent criminal investigator simply served to

“rubber stamp” a prior administrative investigation.⁴⁹⁷ In at least one other case, administrative investigators failed to observe the standards of evidence collection required in criminal investigations and, as a result, the possibility of prosecution for what turned out to be a criminal offense was limited.⁴⁹⁸

The “rubber stamp” problem is in part structural: under a policy memorandum issued on April 3, 2002, Army criminal investigators were authorized to decide that an administrative investigation into allegations of felonies or war crimes committed against detainees was adequate and close the case without independent investigation.⁴⁹⁹

An example of the problem is the investigation into the death of Sajid Kadhim Bori al-Bawi, the Iraqi actor who was shot and killed in his Baghdad home. The administrative investigation found the shooting to be justified; it concluded that al-Bawi had grabbed a U.S. soldier's rifle, switched the safety off, and that the soldier then fired his pistol five times in self-defense.⁵⁰⁰ Public statements about the killing made by the military were consistent with these findings.⁵⁰¹ But subsequent articles in the *Washington Post* and the *Boston Globe* detailed the family's allegations of wrongdoing by U.S. forces.⁵⁰² These articles were in the criminal investigation file,⁵⁰³ despite this, the criminal investigating agent spent an hour and a half reviewing the administrative investigation, and did not attempt any independent verification before requesting approval from his unit's Staff Judge Advocate to close the case.⁵⁰⁴ The criminal investigators concurred in the administrative investigation's finding that the killing was in self-defense.⁵⁰⁵

Another example is the criminal investigation report into the shooting death of an Iraqi detainee at Camp Cropper, Akel Abedal Hussein Jabar; the criminal investigation report also references an attached administrative investigation into the detainee's death.⁵⁰⁶ Jabar, an Iraqi detainee, was ostensibly killed during a riot. The file contains an “Outstanding Leads Worksheet,” which lists 17 items for follow-up, including such basic investigation tasks as completing the crime scene examination, sending evidence to a lab for forensic evaluation, interviews of soldiers and detainee witnesses to the death, collection of the weapon and shell casings used to shoot Jabar, and conduct of an autopsy.⁵⁰⁷ None of the leads was followed and the criminal investigating agent, the Special Agent in Charge, and the Staff Judge Advocate concluded the administrative investigation adequately supported a finding of justifiable homicide.⁵⁰⁸

Administrative Investigations

Administrative investigations, or so-called “Army Regulation 15-6 investigations,” are standard procedures for administrative fact-finding in the Army⁵⁰⁹ and “may be used as a general guide for investigations”⁵¹⁰ into anything from a series of broken air-conditioners, to a missing soldier, to a death in custody.⁵¹¹ At its inception, the appointing commander designates whether the administrative investigation will be formal or informal,⁵¹² and assigns an investigating officer who need not be a professional investigator or lawyer.⁵¹³ Procedural guidelines and documentation standards depend on whether an investigation is formal (more stringent requirements; require proceedings to be documented) or informal (not required to meet specific guidelines; no documentation of proceedings required).⁵¹⁴ On completion, the report of an administrative investigation must be submitted to the appointing commander's JAG officer for legal review,⁵¹⁵ then provided to the appointing commander, who determines what action, if any, should be brought.⁵¹⁶ In making that determination, the appointing commander is “neither bound nor limited by the findings or recommendations of an investigation.”⁵¹⁷ Administrative investigations can only be used to investigate an incident or individual within the appointing commander's chain of command, in other words, the investigator cannot investigate wrongdoing at the level of, or higher than, the commander who initiated the investigation.⁵¹⁸

Inadequate Record Keeping

One of the fundamental tenets of the laws of war is that full and adequate records regarding the capture and treatment of detainees must be kept;⁵¹⁹ a host of Department of Defense and Army regulations codify this requirement.⁵²⁰ Yet in more than a dozen cases, these regulations were not followed, and investigations into most of these detainee deaths appear to have been undermined as a result.⁵²¹

The Army's medical record-keeping was particularly poor, with detainees' medical records often left incomplete or entirely missing. Thus, although Army investigations found that fourteen detainees died of natural causes because of pre-existing conditions,⁵²² at least five case files do not include records documenting these conditions.⁵²³ In some instances, this appears to have been an administrative oversight by criminal investigators who may not have requested records.⁵²⁴ In others, however, there were simply no medical records to be found. For example, although it was policy at Iraq's Camp Warhorse that a record of a

detainee's intake medical screening be attached to his detainee file, the officer who investigated Hassan Ahmed's death found that there was "no documentation of a medical screening . . . in his file."⁵²⁵ This was also certainly the case in the deaths of at least two "ghost" detainees⁵²⁶ killed in American custody – prisoners whose names were unlawfully kept off the prison's rolls in an effort to keep the International Committee of the Red Cross from knowing about them.⁵²⁷ It was also at times a matter of policy. For example, until mid-August 2004, at Camp Warhorse, no records had been kept of "sick call" treatment given to detainees.⁵²⁸ The administrative officer who investigated the death of an unidentified detainee at that facility recommended that "[a]ll medical information and encounters . . . [be] documented," because such record keeping was "standard of care throughout the world."⁵²⁹

For criminal investigators, the absence of medical records can be pivotal. Inadequate records kept in the cases of Hadi Abdul Hussain Hasson al-Zubaidy and Jassim Al-Obodi made determining the cause of death impossible.⁵³⁰ Without basic records, there was no basis in either of these cases to determine or substantiate the cause of death, let alone seek any accountability for it.

Medical Records

The Army Surgeon General's April 2005 Report on Detainee Medical Operations in Iraq, Afghanistan, and Cuba found "wide variability in medical records generation at level I and II [non-hospital] facilities. In some cases, no records were generated In others cases, care was documented on Field Medical Cards . . . only."⁵³¹ Further, "[m]edical care, including screenings, at or near the time of interrogation, was neither consistently documented nor consistently included in detainee medical records."⁵³² Notable among omissions from detainees' records, medical personnel "did not consistently nor uniformly document [actual or suspected detainee] abuse in the medical record," and the Surgeon General's investigating team "discovered no DoD, Army, or theater policies requiring that actual or suspected abuse be documented in a detainee's medical records."⁵³³ Even if those policies existed, they may not have been followed because "less than 3% of medical personnel surveyed from the AC [active component] and 7% from the RC [reserve component] . . . reported receiving training on detainee medical records."⁵³⁴

V. Failure of Accountability

Command is a sacred trust. The legal and moral responsibilities of commanders exceed those of any other leader of similar position or authority. . . . Our society and the institution look to commanders to make sure that missions succeed, that people receive the proper training and care, that values survive. On the one hand, the nation grants commanders special authority to be good stewards of its most precious resources: freedom and people. On the other hand, those citizens serving in the Army also trust their commanders to lead them well.

U.S. Department of the Army Field Manual on Leadership 22-100

There are surprisingly few detainee death cases in which anyone has been identified as responsible; there are fewer still in which someone accused of wrongdoing has been punished. Of the 34 homicide cases surveyed in this report,⁵³⁵ investigators recommended criminal charges in fewer than two thirds,⁵³⁶ and charges were actually brought in less than half.⁵³⁷ In the end, we know of only 12 detainee deaths that have resulted in punishment of any kind for any individual.⁵³⁸ The punishments in eight of the 12 cases appear strikingly lenient.⁵³⁹ Critically, only half of the cases of detainees tortured to death have resulted in punishment; the steepest sentence for anyone implicated in a torture-related death has been five months in jail.⁵⁴⁰

While it is difficult to assess the systemic adequacy of punishment when the deliberations of juries and commanders remain largely unknown, two things are clear: (1) command has played a key role in undermining chances for full accountability, and (2) investigative and evidentiary failures have limited accountability up and down the chain of command.

The Role of Command

Command failures to provide clear guidance and lawful instruction on interrogation and detention rules appear to have played a role in limiting accountability, especially in cases involving torture. Punishments for torture-related deaths have been much less severe than punishments meted out for homicides involving, for example, a wrongful shooting. In part, evidence of command's responsibility in the torture cases may have caused military juries or judges to award lenient sentences or accept lesser pleas for lower ranking troops; if troops received guidance that appeared to justify (or turn a blind eye to) harsh or torturous treatment, or if they received no guidance, it could seem unfair to hold them solely or fully accountable for a death.

Indeed, inadequate or unlawful guidance has been raised as an issue in at least four detainees' deaths.⁵⁴¹ For example:

- In court martial proceedings against Chief Warrant Officer Lewis Welshofer, for the murder of Iraqi detainee General Abed Hamed Mowhoush, Welshofer claimed that he was "not at all" trained for the interrogation of captured detainees.⁵⁴² He understood he was authorized to force Mowhoush

into a sleeping bag based in part on a memorandum from General Ricardo Sanchez, the highest-ranking military official in Iraq at the time.⁵⁴³ In that memorandum, General Sanchez authorized harsh interrogation techniques, including sleep and environmental manipulation, the use of aggressive dogs, and stress positions – even as Sanchez acknowledged that other countries might view these techniques as inconsistent with the Geneva Conventions.⁵⁴⁴ That memorandum was the only in-theater guidance Welshofer testified he received.⁵⁴⁵ The use of the sleeping bag technique was also authorized by Welshofer’s Company Commander, Major Jessica Voss.⁵⁴⁶ Welshofer was charged with murder but found guilty of negligent homicide, for which he received a reprimand, a \$6,000 fine, and confinement to his home, base, or place of worship for 60 days.⁵⁴⁷ Voss was not criminally charged.

- Lieutenant Colonel Thomas J. Berg, the Army judge who oversaw a pretrial inquiry in the death of two Afghan detainees Dilawar and Habibullah, noted that the Military Police Company responsible for detainees at the Bagram detention facility had not been adequately trained before deployment for its mission; Berg recommended that charges be dropped against the accused officer, Captain Christopher M. Beiring.⁵⁴⁸
- An administrative investigation into the death of Iraqi Obeed Hethere Radad, shot to death in his detention cell by Army Specialist Juba Martino-Poole, found that Martino-Poole violated the Army’s use of force policy.⁵⁴⁹ The investigation also found that there were no written standard operating procedures and that there was inadequate clarity on the use of force with regard to detainee operations at the base.⁵⁵⁰ Martino-Poole was discharged by his commander before a criminal investigation could be completed; the investigation ultimately found probable cause to charge him with murder.⁵⁵¹

Authorization and training are also at issue in cases implicating the CIA. Recently, the judge in a federal criminal case against CIA contractor David Passaro ruled that Passaro can present evidence that he was following orders in his interrogation of Abdul Wali, an Afghan detainee.⁵⁵² The government alleges that in the two days before Wali died, Passaro beat Wali with his fists and a flashlight.⁵⁵³ As of February 2006, the case is proceeding toward trial.

Of all Deaths, Only 12 Have Resulted in Punishment

Punishment & Defense	Deaths involving torture (four)⁵⁵⁴	Deaths not involving torture (eight)⁵⁵⁵
People charged with any offense related to these deaths ⁵⁵⁶	28 ⁵⁵⁷	25 ⁵⁵⁸
People who received any kind of punishment	20 ⁵⁵⁹	15 ⁵⁶⁰
Highest rank punished for a death	Major ⁵⁶¹	Major ⁵⁶²
Convictions with jail time	4 ⁵⁶³	6 ⁵⁶⁴
Defendants asserting at court-martial their lack of training or that actions were authorized as a defense.	6 ⁵⁶⁵	1 ⁵⁶⁶
Highest punishment	5 months in prison and a bad-conduct discharge⁵⁶⁷	25 years in prison⁵⁶⁸
Lowest punishment	Reprimand⁵⁶⁹	Reprimand⁵⁷⁰

Who was charged?	Deaths involving torture	Deaths not involving torture
Officers charged	6 ⁵⁷¹	9 ⁵⁷²
Officers punished	5⁵⁷³	6⁵⁷⁴
Enlisted personnel charged	21⁵⁷⁵	16⁵⁷⁶
Enlisted personnel punished	15 ⁵⁷⁷	9 ⁵⁷⁸
Civilian contractors charged	1 ⁵⁷⁹	0
Civilian contractors punished	0 (trial pending)	0

In addition to the failure to provide clear guidance, commanders have in some cases exercised their discretion to lessen the punishment subordinates are given following investigations in which troops are found responsible for wrongdoing.

- In the case of Mohammed Sayari, an Afghan allegedly shot to death by U.S. Special Forces, criminal investigators found probable cause to recommend charges of conspiracy and murder

against four members of the Special Forces unit and dereliction of duty charges against three of the four.⁵⁸⁰ Among these, investigators recommended a captain be charged with murder, conspiracy, dereliction of duty, and obstruction of justice (likely because the captain ordered a subordinate to destroy evidence).⁵⁸¹ Criminal investigators also recommended that a fifth, a chief warrant officer, be charged as an accessory after the fact.⁵⁸² Yet the commander of the 2/3 Special Forces Group, based in Fort Bragg, decided not to pursue any of the recommended charges in a court martial.⁵⁸³ Instead, the captain was given only received a written reprimand for destruction of evidence; charges against other Special Forces soldiers were dropped.⁵⁸⁴ The reasoning behind the commander's decisions is unknown.

- After their subordinates ordered two Iraqis to jump into the Tigris River, resulting in the death of one, Zaidoun Hassoun, three Army commanders failed to inform criminal investigators of the incident.⁵⁸⁵ The commanders – Lt. Col. Nathan Sassaman, the battalion commander, Captain Matthew Cunningham, a company commander, and Major Robert Gwinner, the deputy battalion commander – allegedly ordered subordinates to deny the incident occurred, to resist cooperation with criminal investigators,⁵⁸⁶ and they “coach[ed]” their soldiers on what to say to investigators.⁵⁸⁷ The three later obtained grants of immunity from prosecution, and admitted at their subordinates' trial that their subordinates had forced Hassoun to jump into the Tigris.⁵⁸⁸ Sassaman, Cunningham and Gwinner received reprimands for obstruction of justice but were not relieved of their command.⁵⁸⁹ Four of their subordinates were charged in connection with Hassoun's death, two were acquitted of manslaughter but received punishment for assault,⁵⁹⁰ and two others received non-judicial punishment, details of which have not been disclosed.⁵⁹¹ The highest punishment any of the four junior soldiers received was six months imprisonment, reduction in rank, and a fine of \$2,004.⁵⁹²
- By the time criminal investigators completed their work and found cause to charge Army Specialist Juba Martino-Poole with murder in the death of Iraqi Obeed Hethere Radad, Martino-Poole's commander, Major General Raymond T. Odierno, had already given Martino-Poole a discharge.⁵⁹³ Martino-Poole did not, therefore, have to face the possible harsher punishment of a criminal proceeding. The reasons for Major General Odierno's decision are unknown.

Perhaps most significant, commanders themselves continue to escape accountability almost entirely. Again, this has been particularly striking in torture-related deaths, where command guidance and policy have been directly implicated; in these cases, enlisted personnel have been punished at a rate three times greater than those in command.

Both U.S. and international law provide that commanders are responsible for the acts of their subordinates; this law of command responsibility was discussed in detail by the U.S. Supreme Court since in a landmark case following World War II.⁵⁹⁴ Commanders are liable for the acts of their subordinates in the chain of command if commanders: (1) exercised effective control over those subordinates; (2) knew or had reason to know of their subordinates' unlawful conduct; and (3) despite that knowledge, failed to take reasonable and necessary measures to prevent their subordinates' conduct.⁵⁹⁵

Despite this longstanding rule, no civilian official or officer above the rank of major responsible for interrogation and detention policies or practices has been charged in connection with any death of a detainee in U.S. custody, including the deaths of detainees by torture or abuse. Consider these examples.

- Only 28% of the individuals charged in connection with a death in custody and 31% of those who received any kind of punishment are officers; the majority of those charged and punished are non-commissioned personnel.
- The highest ranking officer to be held responsible for detainee death is a Major: Major Clarke Paulus was convicted of dereliction of duty and maltreatment for ordering a subordinate to drag Iraqi detainee Hatab by the neck, and for allowing Hatab to remain unmonitored for hours in the blazing Iraqi sun; he was discharged but received no prison time.⁵⁹⁶ Major Jessica Voss received a reprimand for her failure to provide adequate supervision in the death of Iraqi General Mowhoush; she was not charged in the death.⁵⁹⁷
- Lt. Col. Nathan Sassaman, Captain Matthew Cunningham, and Major Robert Gwinner, the three commanders who attempted to cover up Iraqi detainee Hassoun's death and who instructed their subordinates not to cooperate with investigators, were not punished in connection with the death. They received only reprimands for obstruction of justice.⁵⁹⁸

- Captain Carolyn Wood was the commander in charge of the 519th Military Intelligence Battalion, members of which were involved in the killing of Afghan detainees Habibullah and Dilawar. Within weeks of those killings, Wood was awarded the first of two Bronze Star medals for “exceptionally meritorious service.”⁵⁹⁹ She was subsequently assigned to the Army’s Intelligence Center in Fort Huachuca, Arizona.⁶⁰⁰ Human Rights First sought to verify whether Captain Wood was an instructor for new interrogators but was told by a Fort Huachuca representative that the information could not be disclosed.⁶⁰¹
- No action has been taken to discipline or otherwise hold accountable Colonel David A. Teeple, commander of the 3rd Armored Cavalry, on whose watch two senior members of the Iraqi military, General Mowhoush and Lieutenant Colonel Jameel, died of abuse.⁶⁰²
- Lt. Gen. Ricardo S. Sanchez, U.S. Army Commander of the Coalition Joint Task Force in Iraq in 2003 and 2004, who authorized the use of sleep and environmental manipulation, aggressive dogs, and stress positions against detainees,⁶⁰³ was promoted to head the Army’s V Corps in Europe.⁶⁰⁴ Chief Warrant Officer Welshofer pointed to one of Sanchez’s memoranda as a basis for his belief that he could use a sleeping bag technique that lead to the death of Iraqi General Mowhoush.⁶⁰⁵ General Sanchez recently indicated plans to retire early.⁶⁰⁶
- In 2005, three members of the 82nd Airborne Division came forward to describe abuse of detainees by members of their Division in both Afghanistan and Iraq; they specifically described systematic and recurrent torture and other abuse of Iraqi detainees from September 2003 to April 2004, during their deployment.⁶⁰⁷ Major General Charles H. Swannack, Commander of the 82nd Airborne, has not been held accountable for the acts of his subordinates.⁶⁰⁸

Failures of Investigation and Evidence

As the case stories reviewed in this report make clear, repeated failures to adequately investigate, document, or pursue cases in the face of allegations of wrongdoing or abuse have been central contributing factors in creating the accountability gap. While a few non-torture-related homicides have resulted in stiff sentences,⁶⁰⁹ more have led to no punishment at all, or to sentences that seem strikingly lenient compared to the severity of the offense.

Examples of cases in which investigative failures or a lack of action have undermined accountability include:

- In the death of Hatab, key evidence (the detainee’s body) was destroyed, and partly as a result, charges of negligent homicide against a soldier could not be supported and were reduced to assault and battery.⁶¹⁰
- In a prosecution against an officer for the deaths of Habibullah and Dilawar, the hearing officer in an article 32 proceeding (analogous to a grand jury proceeding) criticized the prosecution in part for not presenting sufficient evidence to support their charges before recommending that the case be dismissed.⁶¹¹
- Mohammad Munim al-Izmerly, a 65-year-old Iraqi chemist who died in January 2004, was found by the Director of Baghdad Hospital’s Department of Forensics, Dr. Faik Amin Baker, to have “died from a massive blow to the head.”⁶¹² The investigation into al-Izmerly’s death was re-opened after press attention, and, two years since his death, remains pending.⁶¹³
- The Army autopsy of the death of Dilar Dababa, reviewed by Human Rights First, describes a number of injuries in detail, indicating he was the recipient of numerous beatings.⁶¹⁴ Dababa’s body was covered with at least 22 bruises,⁶¹⁵ and at least 50 abrasions,⁶¹⁶ with his head and neck suffering the most significant harm, resulting in hemorrhaging throughout his brain.⁶¹⁷ Dababa died in June 2003. Since then, there has been no documentation of the outcome of the investigation into his death or of charges being brought against those responsible.⁶¹⁸
- Fashad Mohammed died in April 2004.⁶¹⁹ According to the Army Medical Examiner’s autopsy report, “he was hooded, sleep deprived, and subjected to hot and cold environmental conditions, including the use of cold water on his body and hood.”⁶²⁰ The report found multiple abrasions and contusions,⁶²¹

and although the cause of death was listed as undetermined, the report explicitly did not rule out asphyxia “from various means” as a possible contributing factor.⁶²² It does not appear that any murder or manslaughter charges were brought as a result of Mohammed’s death. Although three Navy SEALs have been charged with assault and other lesser charges, the status of the charges has not been publicly disclosed.⁶²³

In addition to highlighting other systemic defects, investigative and evidentiary lapses themselves raise concerns about command’s failure to police the rules governing how crimes should be investigated and evidence maintained. At all stages in the investigation of deaths or other abuses, from investigation to (if justified) prosecution and punishment, command has significant work to do – work that to date has gone too often undone.

VI. The Path Ahead

I was part of a three-man Army JAG officer team sent by the Judge Advocate General's School in Charlottesville, at the time of the Vietnam War, to lecture on our obligations under the Geneva Conventions. The interest shown in Geneva's requirements by our toughest fighters, and their perceptive questions, was a revelation to me. That is because they wanted to know that they were doing the right thing. I am sure that our fighting men and women still do If we do not yet understand what has been lost by disregarding these rules, at least it is beginning to permeate the collective understanding that by failing to live up to them we are placing our own people in constant danger of retaliation. At the same time, of course, we are helping a determined enemy to recruit more volunteers against us.

William S. Shepard, U.S. Army Reserve, Judge Advocate General's Corps (Ret.)
Interview with Human Rights First, November 9, 2005

Addressing the accountability gap documented in this report is critical both in the interest of justice and also as a matter of national security for the United States. The fear and suspicion that abusive interrogation and detention practices have engendered among Muslim populations have undermined U.S. efforts to gather intelligence, and to fight virulent insurgencies now underway. The persistent lack of clarity on the rules governing detainee interrogation and detention has exposed front-line soldiers to needless risk, and increased the threat of harm for all U.S. officials overseas. And the secrecy that still permeates the system – including information about investigations, prosecutions, and steps toward accountability – raises the likelihood that torture and abuse will continue.

Human Rights First urges the United States to develop and implement a zero-tolerance policy for commanders who fail to provide clear guidance to their subordinates, and who allow unlawful conduct to persist on their watch. The key elements of such a policy include the following.

- The President should move immediately to fully implement the ban on cruel, inhuman and degrading treatment passed overwhelmingly by the U.S.

Congress and signed into law on December 30, 2005. Full implementation requires first and foremost that the President clarify his commitment to abide by the ban.

- The President should instruct all relevant military and intelligence agencies involved in detention and interrogation operations to review and revise internal rules and legal guidance to make sure they are in line with the McCain statutory mandate and existing constitutional and treaty obligations. The President should issue regular reminders to command that abuse will not be tolerated, and commanders should regularly give troops the same, serious message.
- The Defense Department, CIA and other relevant agencies should evaluate and update training for all U.S. officials engaged in human intelligence and detention operations to ensure they have a full practical understanding of the implications of the bans on torture and cruel, inhuman or degrading treatment – and the consequences of violating it. Personnel in each of the military and intelligence agencies charged with investigating crimes by U.S. soldiers and agents must also receive regular, high

quality training, so that when commanders do order investigations those processes are thorough and complete.

- The Defense Department, CIA and other relevant agencies should take steps to welcome independent oversight – by Congress and civil society – by immediately disclosing with specificity the status of all investigations into, and prosecution of cases concerning, detainee deaths, torture and abuse. Going forward, these agencies should establish a centralized, up-to-date, and publicly available collection of information about the status of investigations and prosecutions (including trial transcripts, documents, and evidence presented), and all incidents of abuse.
- The Departments of Defense and Justice should move forward promptly with long-pending actions against those involved in cases of wrongful detainee death or abuse, and state the basis of decisions not to prosecute.
- The U.S. military should make good on the obligation of command responsibility by developing, in consultation with congressional, military justice, human rights, and other advisors, a public plan for holding *all* those who engage in wrongdoing accountable. Such a plan could include the implementation of a single, high-level convening authority across the branches of the military for allegations of detainee torture and abuse. The convening authority would: review and make decisions about whom to hold responsible; take critical decisions about whether and when to charge troops with crimes out of the hands of individual commanders in the field; bring uniformity, certainty, and more independent oversight to the process of discipline and punishment; and make the punishment of commanders themselves more likely. An accountability plan might also include, for example, an increase in the maximum allowable punishments for maltreatment, dereliction of duty, and other offenses under the Uniform Code of Military Justice that are applicable in cases of abuse.

- Congress should implement a check on officer promotions – such as those put in place for the Navy following the Tailhook scandal – by requiring that each branch of the military certify, for any officer whose promotion requires Senate confirmation, that the officer was not involved in any case of detainee death, torture or abuse.
- Congress should at long last establish an independent, bipartisan commission to review the scope of U.S. detention and interrogation operations worldwide in the “war on terror.” Such a commission could investigate and identify the systemic causes of failures that lead to torture, abuse, and wrongful death, and chart a detailed and specific path of recommendations going forward to make sure those mistakes never happen again.

The “accountability gap” documented in this report is about more than just a failure to correct past mistakes. It is about how the United States is conducting detention and interrogation operations today, and whether officials up and down the chain of command – and in every U.S. agency – recognize and answer for the consequences that come with breaking the law. The United States will not be successful at ending torture and abuse until it has an established system designed to prevent abuse before it happens, punish it when it does, and deter any who might think it is possible to get away with abuse.

VII. Appendices

Appendix A

The Numbers

Visual breakdown of Human Rights First's findings.

<http://www.humanrightsfirst.info/pdf/06217-etn-app-a-hrf-dic.pdf>

Appendix B

Secretary Rumsfeld authorizes coercive interrogation techniques

On December 2, 2002, Secretary of Defense Donald Rumsfeld personally approved a list of interrogation techniques for use on detainees at Guantanamo. Many of these techniques were not consistent with international and U.S. law and contrary to the established rules and military standards governing detention and interrogation as set forth in Army Field Manual 34-52. They included the use of "stress positions," 20-hour interrogations, the removal of clothing, the use of dogs, isolation, and sensory deprivation. Although approved for Guantanamo, the techniques were later used by subordinates in Afghanistan and Iraq. Some of the techniques were later rescinded, and Secretary Rumsfeld personally approved a new list in April 2003, which still included dietary manipulation, sensory deprivation and "false flag" (leading detainees to believe that they have been transferred to a country that permits torture). He also made clear that harsher techniques could be used with his personal authorization. Appendix B contains the December 2, 2002 authorization and list of techniques. **The handwritten notation by Secretary Rumsfeld, on the first page, reads: "However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?"**

http://www.humanrightsfirst.org/us_law/etn/pdf/dod-memos-120202.pdf

Appendix C

General Sanchez authorizes harsh interrogation techniques, including stress positions

On September 10, 2003, a memo from Lt. Gen. Ricardo S. Sanchez, then U.S. Army Commander of the Coalition Joint Task Force in Iraq, authorized such harsh interrogation techniques as sleep and environmental manipulation, the use of aggressive dogs, and the use of stress positions. The memo, discussed for the first time as evidence in the January 2006 trial of a Chief Warrant Officer accused of involvement in a detainee's murder, is at Appendix C. It underscores both the confusion in the military over the applicability of Geneva Convention protections in Iraq and commanders' recognition that techniques could violate law:

General Sanchez authorized harsh techniques even as he recognized that other countries might view them as inconsistent with the Geneva Conventions.

<http://www.humanrightsfirst.info/pdf/06124-etn-sep-10-sanchez-memo.pdf>

Appendix D

Junior officer claims use of “sleeping bag technique” that caused detainee death was authorized stress position

Human Rights First’s analysis of deaths in U.S. custody includes the case of Iraqi Major General Abed Hamed Mowhoush, who suffocated to death after two soldiers forced him inside a sleeping bag, wrapped him in an electric cord, sat on him, and blocked his airways. Chief Warrant Officer Lewis Welshofer faced a murder charge at court martial. At an initial stage in the investigation, Chief Welshofer was given a letter of reprimand by his commanding officer, General Charles H. Swannack, commander of the 82nd Airborne Division. Both in a written rebuttal to Swannack’s reprimand and as part of his defense at court martial, Chief Welshofer argued that he understood “the sleeping bag technique” was authorized by General Sanchez’s September 10, 2003 memo, which specifically authorized the use of stress positions. Chief Welshofer was found guilty of negligent homicide and negligent dereliction of duty, and received punishment of a reprimand, a \$6,000 fine, and movement restricted to his home, base, and place of worship. Appendix D contains Chief Welshofer’s rebuttal to his reprimand. **The handwritten notation at the top, from his superior officer, General Swannack, reads: “Death was from asphyxiation! I expect better adherence to standards in the future!”**

<http://www.humanrightsfirst.info/pdf/mem-dic021104.pdf>

Appendix E

Record keeping failure means cause of death may never be known

Among the investigation flaws identified in Human Rights First’s review of deaths in U.S. custody are military investigators’ belated efforts to find out what happened to some detainees whose deaths were never reported and whose cases simply slipped through the cracks. Hadi Abdul Hussain Hasson al-Zubaidy (Hasson) is one of those cases. Appendix E is an extract from the Army’s October 2004 investigation report into Mr. Hasson’s death. As it describes, the Army’s eventual efforts to find out what happened to Mr. Hasson went nowhere because U.S. record-keeping about detainees was so poor. According to a U.S. Mortuary Affairs officer: **“the documentation on deceased Detainees was very limited . . . the majority of the time prior to earlier this year [2004], when the Mortuary received the remains of a deceased Detainee they would only know that the deceased was a detainee, and would not have any other info on the remains, so they would have a list of the remains as unknown John Doe.”**

<http://www.humanrightsfirst.info/pdf/06216-etn-dic-app-e.pdf>

Appendix F

Army recommendation to lessen perception of cover up

Abu Malik Kenami died after he was subjected to extreme exercise – made to stand up, then sit down, over and over again – then cuffed, hooded and returned to a crowded cell. The investigation into his death is an example of other flaws Human Rights First identified: investigators failed to conduct interviews of critical witnesses and did not gather and maintain physical evidence. The Army’s own subsequent review of the investigation into Mr. Kenami’s death found “it was weak in Thoroughness and Timeliness.” Appendix F contains two excerpts from the Kenami investigation records. The first is the Army’s review of the initial criminal investigation, and lists that investigation’s inadequacies. The second is an **excerpt from the Army’s administrative investigation, which recommends that an Iraqi physician be brought in to treat detainees because, among other benefits, “[i]t would [also] decrease the perception of our involvement or cover-up in events like these.”**

<http://www.humanrightsfirst.info/pdf/06216-etn-dic-app-f.pdf>

Appendix G

No criminal investigation: shooting death of allegedly elderly and disabled man

Among the deaths for which the official cause is unknown but which Human Rights First identifies as a possible homicide is an unnamed man, killed in Balad, Iraq, on January 3, 2004. The only publicly-available record of his death is in Appendix F, in which his family's claim for compensation is considered by U.S. forces – and denied. Human Rights First found no indication that the man's death was criminally investigated and has requested that information from the Department of Defense. According to Appendix G, U.S. forces allege that the man, whom they describe as a suspected insurgent, reached for a pistol while detained during a raid on his home. On the second page of Appendix G is what the Army document describes as a "verbatim transcription" of the man's family's claims. The family asserted that their father was shot without cause and attach medical records to support their assertion that **the father "was [a] physically disabled retired old man, walking only through the aid of crutches due [to] peripheral neuropathy and muscular atrophy caused by long standing disease of Diabetes Mellitus and hypertension . . ."**

<http://www.humanrightsfirst.info/pdf/06216-etn-dic-app-g.pdf>

Appendix H

List of Human Rights First Freedom of Information Act Requests

Lists the Freedom of Information Act requests Human Rights First has filed in connection with deaths in U.S. custody.

Appendix A – G (pages 47 – 98) are available online and in the printed version.

Appendix H

Human Rights First's Freedom of Information Act Requests Relating to Deaths in Custody

1. June 11, 2004, Request to the U.S. Army Crime Records Center [CID] for all records and reports of criminal investigations by the Army Criminal Investigation Command of possible misconduct against detainees in Iraq and Afghanistan since January 2002.
2. June 11, 2004, Request to the Central Intelligence Agency for all records concerning investigations by the Office of the Inspector General of the Central Intelligence Agency of deaths of three detainees in Iraq and Afghanistan in 2003 – Manadel al-Jamadi, Abid Hamid Mowhoush, and Abdul Wali.
3. June 18, 2004, Request to the Department of Justice for all records concerning the Department of Justice's criminal investigation of alleged homicide of a detainee in Iraq or Afghanistan by a contractor employed by the Central Intelligence Agency.
4. July 20, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to the Army Criminal Investigation Command (CID) investigation into the death of Sher Mohammed Khan.
5. July 21, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0011-04-CID469-79630 (drowning death of Zaidoun Hassoun).
6. July 21, 2005, Request to NCIS Headquarters for all documents related to the Naval Criminal Investigative Service (NCIS) investigation into the death of Nagem Sadoon Hatab.
7. July 21, 2005, Request to the 5th Special Forces Group for all documents related to the Commander's Inquiry conducted, pursuant to AR 15-6, into the death of Sajid Kadhim Bori al-Bawi on May 17th, 2004, in Baghdad, Iraq.
8. July 21, 2005, Request to the U.S. Army Medical Command for all medical records pertaining to the care of Sher Mohammed Khan, including his autopsy.
9. July 21, 2005, Request to the 4th Infantry Division for all records relating to the Commander's Inquiry conducted pursuant to AR 15-6 to investigate the shooting death of Obeed Hethere Radad.
10. July 22, 2005, Request to NCIS Headquarters for all documents relating to the Naval Criminal Investigative Service (NCIS) investigation into the deaths of Hamaady Kareem and Tahah Ahmead Hanjil.
11. July 22, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation into the death of Lt. Col. Abdul Jameel.
12. July 22, 2005, Request to Marine Corps Base Camp Lejeune for investigation reports and supporting or otherwise related materials for all commander's inquiries commenced on or after January 1, 2002 within the 2nd Battalion of the 2nd Marine Regiment regarding incidents occurring outside the territorial United States and involving bodily injury or death.
13. July 22, 2005, Request to Marine Corps Base Camp Pendleton for investigation reports and supporting or otherwise related materials for all commander's inquiries investigations commenced on or after January 1, 2002 within the 3rd Battalion of the 1st Marine Regiment regarding incidents

- occurring outside the territorial United States and involving bodily injury or death.
14. July 22, 2005, Request to the 301st Military Police for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 301st Military Police regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 15. July 22, 2005, Request to the 5th Special Forces Group for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within 5th Special Forces Group regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 16. July 22, 2005, Request to the 4th Infantry Division for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 1/8th Infantry Battalion of the 3rd Brigade of the 4th Infantry Division regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 17. July 22, 2005, Request to the 4th Infantry Division for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 4th Forward Support Battalion of the 4th Infantry Division regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 18. July 22, 2005, Request to Marine Corps Base Camp Lejeune for investigation reports and supporting or otherwise related materials for all commander's inquiries commenced on or after January 1, 2002 within the 2nd Regiment Combat Team of the 2nd Marine Expeditionary Brigade regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 19. July 22, 2005, Request to the XVIII Airborne Corps for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 7th Special Forces Group regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 20. July 22, 2005, Request to the 3rd Armored Cavalry Regiment for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 3rd Armored Cavalry Regiment regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 21. July 22, 2005, Request to the 1st Cavalry Division for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 1st Battalion of the 41st Infantry Regiment of the 1st Cavalry Division regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 22. July 22, 2005, Request to the XVIII Airborne Corps for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 519th Military Intelligence Battalion regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 23. July 22, 2005, Request to the 20th Special Forces Group for investigation reports and supporting or otherwise related materials for all Army Regulation 15-6 investigations commenced on or after January 1, 2002 within the 20th Special Forces Group regarding incidents occurring outside the territorial United States and involving bodily injury or death.
 24. July 25, 2005, Request to NCIS Headquarters for all records relating to a Naval Criminal Investigative Service (NCIS) investigation into the death of Manadel al-Jamadi.
 25. July 25, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation into the death of Manadel al-Jamadi.
 26. July 26, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0174-04-CID259, an investigation into a death which occurred at an unknown location, probably in Iraq or Afghanistan, on September 13th, 2003.
 27. July 27, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0233-04-CID789, an investigation into the possible death of a detainee at Abu Ghraib, Iraq, in June of 2004, as the result of a blood transfusion of the wrong type.

28. July 28, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0537-04-CID034, an investigation into a death which occurred at an unknown location, probably in Iraq or Afghanistan, on December 1st, 2003.
29. August 1, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation into the killing of Naser Ismail.
30. August 2, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation into the killing of Jamal Naseer.
31. August 3, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0239-04-CID259, an investigation into a death which occurred at Camp Bucca, Iraq, on an unknown date.
32. August 5, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0326-04-CID056, an investigation into a death which occurred at an unknown location, probably in Iraq or Afghanistan, on an unknown date.
33. August 8, 2005, Request to the U.S. Army Crime Records Center [CID] for all records relating to an Army Criminal Investigation Command (CID) investigation with sequence number 0035-03-CID259-61144, an investigation into the death of an Iraqi Army Private.
34. August 10, 2005, Request to the Department of Defense for all records relating to the detention, treatment, and transfer of Hadi Abdul Hussain Hasson al-Zubaidy, an Iraqi citizen, treated aboard the USNS Comfort in 2003.

VIII. Endnotes

¹ Human Rights First Telephone Interview with Hossam Mowhoush, son of Iraqi Maj. Gen. Abed Hamed Mowhoush (Sept. 22, 2005) (transcription on file with Human Rights First).

² The total number of deaths in custody analyzed by Human Rights First is 98. See research compilation on file with Human Rights First, based on documents released under the Freedom of Information Act, press reports, and Human Rights First interviews ("DIC Table"). Unless otherwise specified, supporting citations in footnotes to a detainee's last name refer to the entries concerning that detainee's death in the DIC Table, which is available upon request from Human Rights First. The DIC Table is organized chronologically by date of death. In a number of instances, the name of a detainee is not known, although the date and location of death is; such detainees have been sequentially numbered (Unknown 1, Unknown 2, etc.), based on date of death and are referred to in this Report by the sequential number. This Report focuses on deaths that implicate interrogation or detention policy or practice and Human Rights First includes in its count of 98 deaths any death caused by one or more members of the U.S. Armed Forces or other official U.S. governmental agency while the person was under U.S. control, including a death at a detainee's home, a death during an alleged escape attempt, and death at the point of capture but after a person's surrender. The 98 deaths also include ten deaths about which only minimal information, such as name or a date of death is publicly available, and for which there is no publicly available information on cause or circumstances of death. For the purposes of this Report, Human Rights First has not included in its analysis deaths in situations where U.S. custody is open to question (including deaths allegedly caused at check-point stops where circumstances of the stop or surrender are unclear), or deaths allegedly caused at a later point in time by injuries sustained during combat (including alleged "mercy" killings).

The total number of deaths Human Rights First counts is 141; this number includes 38 detainees who died when their detention facilities were struck by mortar attacks, and five deaths of detainees killed in U.S. custody by other detainees. While these latter 43 deaths are of concern – and appear to be in part a reflection of poor operational decisions, noted by former Defense Secretary James Schlesinger, to house detainees in areas of active danger – they were not a function of interrogation or detention policy or practice. See FINAL REPORT OF THE INDEP. PANEL TO REVIEW DOD DETENTION OPERATIONS, Aug. 2004, at 63, 77.

³ We use the same definition of "homicide" as the Army's Criminal Investigation Division: "Death resulting from the intentional (explicit or implied) or grossly reckless behavior of another person or persons." As the Army itself points out, this definition is different from murder, which, like manslaughter, is a legal term that requires a judge or jury to find that the intent behind the death had a degree of maliciousness. Dep't of the Army, Criminal Investigation Division, *Frequently Asked Questions*, <http://www.cid.army.mil/faqs.htm> (accessed Feb. 3, 2006) (citing to Title 18, U.S. Code definition of "Murder" as "the unlawful killing of a human being with malice aforethought."). See DIC Table: There are 20 homicides in which investigators found unjustified homicide or in which there were prosecutions for a death and 14 that investigators found justifiable. The 20 unjustified homicides are: Sayari (criminal investigators found probable cause for conspiracy to murder); Dilawar and Habibullah (probable cause for crimes ranging from involuntary manslaughter to lying to investigators); Unknown 2 (murder charge); Hatab (charges initially brought included voluntary manslaughter; commanders later dropped the charge), Wali (federal criminal assault charges in connection with death); Radad (criminal investigators found probable cause for murder); F. Mohammed (prosecutors brought charges including assault with intent to cause death); al-Jamadi (pathologist ruled case a homicide; court martial for assault and battery); Mowhoush (court martial brought on murder charge); Hassoun (two soldiers charged with manslaughter, one other charged with involuntary manslaughter); Ismail (soldier charged with murder, but acquitted); Jameel (criminal investigators recommended charges including negligent homicide); Kadir (manslaughter conviction); Kareem and Hanjil (criminal investigators recommended, and commanders considered but ultimately dropped, murder charges); Unknowns 18 and 19 (two soldiers court-martialed for murders, received 25 and 5 years in jail, respectively); T. Ahmed (soldier guilty of murder); Unknown 22 (soldier charged with murder). The 14 deaths found by the military to be justified homicides are: al-Haddii; Jabar; A. Hassan; Unknown 7; Sayar; Salman; Shalaan; Thawin; Amir; Farhan; K. Mahmood; al-Bawi; Ghafar and Habib.

⁴ See 18 U.S.C. §2340 (1998) ("'torture' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control"). See DIC Table: The detainees tortured to death are: Habibullah; Dilawar; Naseer; Abdul Wali; Unknown 1 (detainee killed at the "Salt Pit" facility in Afghanistan); al-Jamadi; Mowhoush; and, Jameel. In addition, the publicly-available evidence and circumstances surrounding the deaths of Dababa, F. Mohammed, Hatab and al-Izmerly raise concerns that they may also have been subjected to torture.

- ⁵ Dep't of the Army, CID, *CID Report of Investigation – Initial/Final SSI – 0037-04-CID201-54050* (Nov. 16, 2004), available at http://www.aclu.org/torturefoia/released/042105/9290_9388.pdf, at 68-69 (accessed Feb. 3, 2006). Throughout this Report, page number citations for PDF files of records released by the military and other government agencies refer to the physical number of pages in the files and may not correspond to agency-assigned page number stamps.
- ⁶ Human Rights First Telephone Interview with Mohammed Mowhoush, son of Iraqi Major General Abed Hamed Mowhoush (Nov. 9, 2005) (transcription on file with Human Rights First).
- ⁷ Josh White, *Documents Tell of Brutal Improvisation by GIs*, WASH. POST, Aug. 3, 2005, at A1 [hereinafter White, *Brutal Improvisation*].
- ⁸ Monte Morin and Alissa Rubin, *Abuse Suspected in Iraqi General's Death*, L.A. TIMES, May 23, 2004, at A9; GlobalSecurity.org, Iraq Facilities, FOB Tiger, Al Qaim, available at <http://www.globalsecurity.org/military/world/iraq/al-qaim.htm> (accessed Feb. 3, 2006).
- ⁹ GlobalSecurity.org, Iraq Facilities, FOB Tiger, Al Qaim, available at <http://www.globalsecurity.org/military/world/iraq/al-qaim.htm> (accessed Feb. 3, 2006).
- ¹⁰ Human Rights First notes from observation of Welshofer court martial, Day Four, Jan. 20, 2006, available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006); Eric Schmitt, *Army Interrogator Is Convicted of Negligent Homicide in 2003 Death of Iraqi General*, N.Y. TIMES, Jan. 23, 2006, at A16.
- ¹¹ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ¹² *Id.*
- ¹³ *Id.*; Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A2.
- ¹⁴ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ¹⁵ While the Administration had issued guidance stating that the Geneva Conventions would apply in Iraq (Department of Defense News Release, Briefing on Geneva Convention, EPW's and War Crimes, (Apr. 7, 2003), available at http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html (accessed Feb. 3, 2006)), this guidance conflicted with other public statements. Secretary of Defense Donald Rumsfeld said, "technically unlawful combatants do not have any rights under the Geneva Conventions." Dep't of Defense News Briefing, Secretary of Defense Donald Rumsfeld and Joint Chiefs of Staff Chairman General Richard Myers (Jan. 11, 2002), available at http://www.defenselink.mil/transcripts/2002/t01112002_t0111sd.html (accessed Feb. 3, 2005); See also Human Rights First, ENDING SECRET DETENTIONS, (June 2004) at 11–12, available at http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf (accessed Feb. 3, 2005) (describing changes in designations for detainees in Iraq). It also conflicted with how detainees were classified and held throughout Iraq in practice. Dep't of the Army, The Inspector General, DETAINEE OPERATIONS INSPECTION (July 21, 2004) at 76, available at http://www.humanrightsfirst.org/us_law/PDF/abuse/mikolashekdetaineeereport.pdf (accessed Feb. 3, 2006); MAJ. GEN. GEORGE R. FAY, AR 15-6 INVESTIGATION OF INTELLIGENCE ACTIVITIES AT ABU GHRAIB, Aug. 2004, at 11-12, available at <http://www4.army.mil/ocpa/reports/ar15-6/AR15-6.pdf> (accessed Feb. 3, 2006) [hereinafter FAY REPORT]. ("In addition to EPWs [enemy prisoners of war] and compliant, non-hostile CIs [civilian internees], units in OEF [Operation Enduring Freedom] and OIF [Operation Iraqi Freedom] were confronted with capturing ... other classifications of detainees, such as non-state combatants and non-compliant CIs,"); see also, Douglas Jehl & Neil Lewis, *U.S. Said to Hold More Foreigners in Iraq Fighting*, N.Y. TIMES, Jan. 8, 2006, at A1.
- ¹⁶ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ¹⁷ Michael Howard, *Ex-Iraqi general dies in US custody*, THE GUARDIAN, Nov. 28, 2003, available at <http://www.guardian.co.uk/Iraq/Story/0,2763,1094984,00.html> (accessed Feb. 7, 2006).
- ¹⁸ Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949, 75 U.N.T.S. 135, art. 4 ("[p]risoners of war are persons who fall into enemy hands and belong to one of the following categories: "(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 of 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) They are commanded by a person responsible for his subordinates (b) They have a fixed distinctive sign recognizable at a distance; (c) They carry arms openly; and (d) They conduct their operations in accordance with the laws and customs of war"); see also, Memorandum from Colin Powell for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan (Jan. 26, 2002), available at http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/memo_20020126_Powell_WH%20.pdf (accessed Feb. 3, 2006).
- ¹⁹ Memorandum from General Ricardo Sanchez to Combined Joint Task Force Seven and the Commander, 205th Intelligence Brigade (Sept. 10, 2003), available at <http://www.humanrightsfirst.info/pdf/06124-etn-sep-10-sanchez-memo.pdf> (accessed Feb. 3, 2006).
- ²⁰ *Id.*
- ²¹ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ²² *Id.*
- ²³ White, *Brutal Improvisation*, *supra* note 7.
- ²⁴ Human Rights First Telephone Interview with Hossam Mowhoush, son of Iraqi Maj. Gen. Abed Hamed Mowhoush (Oct. 10, 2005) (transcription on file with Human Rights First).
- ²⁵ *Id.*
- ²⁶ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006).

- ²⁷ Human Rights First notes from observation of Welshofer court martial, Day Four, Jan. 20, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006).
- ²⁸ White, *Brutal Improvisation*, *supra* note 7.
- ²⁹ White, *Brutal Improvisation*, *supra* note 7.
- ³⁰ White, *Brutal Improvisation*, *supra* note 7; Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006).
- ³¹ White, *Brutal Improvisation*, *supra* note 7; Arthur Kane, *Guardsmen: CIA Beat Iraqis with Hammer Handles*, DENVER POST, July 27, 2005, at A9; Arthur Kane, *Iraqi General Beaten Two Days Before Death*, DENVER POST, Apr. 5, 2005, at A1; Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006).
- ³² The three soldiers were Sergeant Gerold Pratt (see Matthew D. LaPlante, *Utah G.I. Exposed Abuses at Prison*, SALT LAKE TRIB., July 31, 2005, at A1; Human Rights First notes from observation of Welshofer court martial, In Their Own Words, Jan. 19, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906d.asp (accessed Jan. 31, 2006)), Chief Warrant Officer Jefferson Williams (see Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A02; Human Rights First notes from observation of Welshofer court martial, In Their Own Words, Jan. 19, 2006, excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906d.asp (accessed Jan. 31, 2006)), and Specialist Jerry Loper (see Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A2; Human Rights First notes from observation of Welshofer court martial, Day Four, Jan. 20, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006)).
- ³³ Arthur Kane, *Guardsmen: CIA Beat Iraqis with Hammer Handles*, DENVER POST, July 27, 2005, at A9; Arthur Kane, *Iraqi General Beaten Two Days Before Death*, DENVER POST, Apr. 5, 2005, at A1.
- ³⁴ Human Rights First notes from observation of Welshofer court martial, Day Two, Jan. 18, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011806.asp (accessed Feb. 3, 2006).
- ³⁵ Human Rights First notes from observation of Welshofer court martial, Day Four, Jan. 20, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006).
- ³⁶ Office of the Armed Forces Med. Exam'r, *Autopsy Examination Report, Autopsy No. ME03-571* (Dec. 18, 2003) [Autopsy, Mowhoush], *available at* http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 93-100 (accessed Feb. 3, 2006) [hereinafter Autopsy, Mowhoush]; Arthur Kane, *Iraqi General Beaten 2 Days Before Death*, DENVER POST, Apr. 5, 2005, at A1.
- ³⁷ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ³⁸ M. Gregg Bloche and Jonathan H. Marks, *Doing Unto Others as They Did Unto Us*, N.Y. TIMES, Nov. 14, 2005, at A21.
- ³⁹ Jane Mayer, *The Experiment: The military trains people to withstand interrogation. Are those methods being misused at Guantanamo?*, THE NEW YORKER, July 11, 2005, *available at* http://www.newyorker.com/fact/content/articles/050711fa_fact4 (accessed Feb. 7, 2006); M. Gregg Bloche and Jonathan H. Marks, *Doing Unto Others as They Did Unto Us*, N.Y. TIMES, Nov. 14, 2005, at A21.
- ⁴⁰ See, e.g., Jane Mayer, *The Experiment: The military trains people to withstand interrogation. Are those methods being misused at Guantanamo?*, THE NEW YORKER, July 11, 2005, *available at* http://www.newyorker.com/fact/content/articles/050711fa_fact4 (accessed Feb. 7, 2006); see also Memorandum for Commander 82nd ABN DIV, re: CW3 Welshofer, Lewis E. Rebuttal to General Letter of Reprimand (Feb. 11, 2004), at 2, *available at* <http://www.lchr.org/pdf/mem-dic021104.pdf> (accessed Feb. 3, 2006); see also Memorandum, Dep't of Defense, JTF GTMO "SERE" Interrogation SOP DTD (Dec. 10, 2002), *available at* <http://www.aclu.org/projects/foiasearch/pdf/DOD045202.pdf> (accessed Feb. 3, 2006).
- ⁴¹ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ⁴² *Id.*
- ⁴³ *Id.*; Human Rights First notes from observation of Welshofer court martial, In Their Own Words, Jan. 19, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906d.as (accessed Feb. 3, 2006).
- ⁴⁴ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ⁴⁵ *Id.*
- ⁴⁶ Human Rights First Telephone Interview with Mohammed Mowhoush, son of Iraqi Maj. Gen. Abed Hamed Mowhoush (Nov. 9 and Nov. 14, 2005) (transcription on file with Human Rights First).
- ⁴⁷ *Id.*
- ⁴⁸ White, *Brutal Improvisation*, *supra* note 7; Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006, (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006); Memorandum for Commander 82nd ABN DIV, re: CW3 Welshofer, Lewis E. Rebuttal to General Letter of Reprimand (Feb. 11, 2004), *available at* <http://www.lchr.org/pdf/mem-dic021104.pdf> (accessed Feb. 3, 2006).
- ⁴⁹ Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A2; Human Rights First notes from observation of Welshofer court martial, In Their Own Words, Jan. 19, 2006, *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906d.as (accessed Feb. 3, 2006).
- ⁵⁰ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts *available at* http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).

- ⁵¹ White, *Brutal Improvisation*, *supra* note 7; Arthur Kane, *Iraqi General Beaten Two Days Before Death*, DENVER POST, Apr. 5, 2005, at A1; Matthew D. LaPlante, *Utah G.I. Exposed Abuses at Prison*, SALT LAKE TRIB., July 31, 2005, at A1; Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ⁵² Human Rights First notes from observation of Welshofer court martial, Day Four, Jan. 20, 2006, available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006m.asp (accessed Feb. 3, 2006).
- ⁵³ Autopsy, Mowhoush, *supra* note 36, at 93–100.
- ⁵⁴ Press Release, Multi-National Force, Iraq, Combined Joint Task Force 7, Iraqi General Dies of Natural Causes, No. 31127a (Nov. 27, 2003). The release has since been removed from military websites, but an archived copy is available at <http://web.archive.org/web/20041128154754/http://www.cjtf7.army.mil/media-information/november2003/031127a.htm> (accessed Feb. 3, 2006).
- ⁵⁵ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006); Erin Emery, *Carson Soldier Takes the Stand*, DENVER POST, Jan. 20, 2006, available at http://www.denverpost.com/news/ci_3419775.
- ⁵⁶ See Human Rights First notes from observation of Welshofer court martial, In Their Own Words, Jan. 19, 2006, available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906d.asp (accessed Feb. 3, 2006); Nicholas Riccardi, *Interrogator Convicted in Iraqi's Death*, L.A. TIMES, Jan. 22, 2006, available at <http://www.latimes.com/news/printedition/la-na-interrogate22jan22.1.81943.story> (accessed Feb. 3, 2006); Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A2.
- ⁵⁷ Human Rights First notes from observation of Welshofer court martial, Day Three, Jan. 19, 2006, available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906m.asp (accessed Feb. 3, 2006); Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A2.
- ⁵⁸ White, *Brutal Improvisation*, *supra* note 7 (quoting Army memo dated May 10, 2004).
- ⁵⁹ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006 (on file with Human Rights First), excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).
- ⁶⁰ Nicholas Riccardi, *Interrogator Convicted in Iraqi's Death*, L.A. TIMES, Jan. 22, 2006, available at <http://www.latimes.com/news/printedition/la-na-interrogate22jan22.1.81943.story> (accessed Feb. 3, 2006); Erin Emery, *Carson GI Convicted in Death of Detainee*, DENVER POST, Jan. 21, 2006, available at http://www.denverpost.com/search/ci_3426219 (accessed Feb. 3, 2006).
- ⁶¹ Jon Sarche, *Jury Orders Reprimand, No Jail for Soldier*, ASSOC. PRESS, Jan. 24, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/24/AR2006012400177.html> (accessed Jan. 27, 2006); Josh White, *Army Interrogator Reprimanded in Iraqi's Death*, WASH. POST, Jan. 24, 2006, at A2.
- ⁶² Dick Foster, *Army Drops Murder Charges*, ROCKY MOUNTAIN NEWS, Jan. 13, 2006, at 17A.
- ⁶³ Arthur Kane, *Lesser Charges Urged in Death of Iraqi*, DENVER POST, May 11, 2005, at B3; Dick Foster, *Army Drops Murder Charges*, ROCKY MOUNTAIN NEWS, Jan. 13, 2006, at 17A.
- ⁶⁴ Douglas Jehl and Tim Golden, *C.I.A. Is Likely to Avoid Charges in Most Prisoner Deaths*, N.Y. TIMES, Oct. 23, 2005, at A6; Press Release, Army Criminal Investigation Command, Army Criminal Investigators Outline 27 Confirmed or Suspected Detainee Homicides for Operation Enduring Freedom, Operation Iraqi Freedom, (Mar. 25, 2005), available at <http://www.cid.army.mil/Documents/OIF-OEF%20Homicides.pdf>, at 2 (accessed Feb. 8, 2006) [hereinafter Criminal Investigators Outline 27 Homicides].
- ⁶⁵ *Lawyers: Army Backed Interrogation Methods*, ASSOC. PRESS, Apr. 1, 2005, available at <http://www.newsmax.com/archives/articles/2005/3/31/205753.shtml> (accessed Feb. 3, 2006); Arthur Kane and Miles Mofeit, *U.S. General Backed Lightest Penalty in Interrogation Death*, DENVER POST, May 10, 2005, at A6.
- ⁶⁶ Dep't of the Army, Blood and Steel: The History, Customs, and Traditions of the 3d Armored Cavalry Regiment (2002), at 35, 73, available at <http://www.carson.army.mil/UNITS/3RD%20ACR/main%20pages/3d%20ACR%20History.pdf> (accessed Feb. 12, 2006).
- ⁶⁷ Josh White, *Documents Tell of Brutal Improvisation by GIs*, WASH. POST, Aug. 3, 2005, at A1.
- ⁶⁸ Miles Mofeit and Arthur Kane, *Army charges 4 in death*, DENVER POST, Oct. 5, 2004, at A1.
- ⁶⁹ Dep't of the Army, Criminal Investigative Division, CID's Mission – In Depth, <http://www.cid.army.mil/mission2.htm> (accessed Feb. 3, 2006).
- ⁷⁰ Criminal Investigators Outline 27 Homicides, *supra* note 64 at 7.
- ⁷¹ See, e.g., Dep't of the Army, CID, *CID Report of Investigation-Corrected/Initial/Final/SSI-0171-04-CID259-80223-5H6* (Aug. 7, 2004) [Criminal Investigation, al-Bawi], available at http://www.aclu.org/torturefoia/released/4894_4927.pdf, at 2, 5, 16 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, al-Bawi].
- ⁷² Criminal Investigation, al-Bawi, *supra* note 71, at 2, 8. "(S)" next to the listing of the administrative investigation denotes it as "secret." See Defense Security Service Internet Web Site, Security Related Acronyms, Abbreviations, And Basic Security Forms, (Mar. 2001), at 9, <http://www.dss.mil/training/acro.pdf> (accessed Feb. 3, 2006).
- ⁷³ U.S. Dep't of State, Second Periodic Report of the United States of America to the Committee Against Torture, Annex I, Part Two, III(B)(2) (May 6, 2005), available at <http://www.state.gov/g/drl/rls/45738.htm> (accessed Feb. 3, 2006).
- ⁷⁴ See DIC Table: The eight cases of deaths in which the involvement of the CIA, Special Forces and/or Navy SEALs is alleged are: Unknown 1 (detainee killed at "Salt Pit" facility in Afghanistan in Nov. 2002) (CIA), Unknown 2 (detainee killed in Wazi village, Afghanistan between Jan. 1 and Jan. 13, 2003) (Special Forces), Abdul Wali (CIA), al-Jamadi (CIA and Navy SEALs), Mowhoush (CIA and Special Forces), Jameel (Special Forces/CIA), Fashad Mohamed (Navy SEALs), Jameel Naseer (Special Forces).
- ⁷⁵ Exec. Order No. 12333 §1.7, U.S. Intelligence Activities, 46 Fed. Reg. 59941, 59945 (Dec. 4, 1981).

⁷⁶ See DIC Table: These are the deaths of Unknown 1, Wali, al-Jamadi, Mowhoush, and Jameel.

⁷⁷ White, *Brutal Improvisation*, *supra* note 7.

⁷⁸ White, *Brutal Improvisation*, *supra* note 7.

⁷⁹ Transcript from *United States v. CW2 Williams, Sgt. 1st Class Sommer and Spc. Loper*, Article 32 investigation, at 14-16 (in the prosecution arising from the death of Mowhoush, ability to produce a verbatim transcript of trial proceedings complicated by requirement for keeping certain information secret) (Dec. 2, 2004); White, *Brutal Improvisation*, *supra* note 7 (“Determining the details of [Mowhoush’s] demise has been difficult because the circumstances are listed as ‘classified’ on his official autopsy, court records have been censored to hide the CIA’s involvement in his questioning, and reporters have been removed from a Fort Carson courtroom when testimony relating to the CIA has surfaced.”); Jane Mayer, *A Deadly Interrogation*, THE NEW YORKER, Nov. 14, 2005, at 44 [hereinafter Mayer, *A Deadly Interrogation*] (regarding death of al-Jamadi, CIA officials protested questions asked by lawyers in court-martial; individual CIA personnel might have destroyed evidence; an apparent refusal to inform pathologists as to circumstances of a detainee’s death might have led to an incorrect finding); Andrea Weigl, *Passaro Says Assault Charges Political*, NEWS & OBSERVER, Oct. 20, 2005, at B1 (in prosecution of CIA contractor in connection with the Wali death, evidence provided to defendant was severely censored, reducing his ability to mount “an adequate defense”).

⁸⁰ Mayer, *A Deadly Interrogation*, *supra* note 79.

⁸¹ Douglas Jehl and Tim Golden, *CIA Is Likely to Avoid Charges in Most Prisoner Deaths*, N.Y. TIMES, Oct. 23, 2005, at A6.

⁸² Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, WASH. POST, Mar. 3, 2005, at A1.

⁸³ Douglas Jehl, *Report Warned CIA about Interrogations*, N.Y. TIMES, Nov. 9, 2005, at A1.

⁸⁴ Dana Priest, *Covert CIA Program Withstands New Furor*, WASH. POST, Dec. 30, 2005, at A1.

⁸⁵ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 7; Douglas Jehl, *Pentagon Will Not Try 17 GIs Implicated in Prisoners’ Deaths*, N.Y. TIMES, Mar. 26, 2005, at A1; *Intel GIs to be Charged in Death*, ASSOC. PRESS, June 24, 2004, available at <http://www.cbsnews.com/stories/2004/06/25/iraq/main626121.shtml> (accessed Feb. 3, 2006). Jameel’s last name is sometimes given as “Jaleel.”

⁸⁶ Office of the Armed Forces Med. Exam’r, *Final Autopsy Report, Autopsy No. ME04-14* (Apr. 30, 2004) [Autopsy, Jameel], available at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 108 (accessed Feb. 3, 2006) [hereinafter Autopsy, Jameel].

⁸⁷ Miles Mofeit, *Brutal Interrogation in Iraq*, DENVER POST, May 19, 2004, at A1.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Douglas Jehl, *Pentagon Will Not Try 17 GIs Implicated in Prisoners’ Deaths*, N.Y. TIMES, Mar. 26, 2005, at A1.

⁹³ Autopsy, Jameel, *supra* note 86, at 108.

⁹⁴ MedLine Plus: Medical Dictionary, <http://www.nlm.nih.gov/medlineplus/plusdictionary.html> (accessed Feb. 3, 2006).

⁹⁵ Autopsy, Jameel, *supra* note 86, at 114.

⁹⁶ Autopsy, Jameel, *supra* note 86, at 108-114.

⁹⁷ Autopsy, Jameel, *supra* note 86, at 114.

⁹⁸ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 7.

⁹⁹ Arthur Kane and Miles Mofeit, *Memos: Abuse rifle in Iraq Interrogation techniques banned at Guantanamo*, DENVER POST, June 27, 2004, at A25.

¹⁰⁰ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 7; Douglas Jehl, *Pentagon Will Not Try 17 GIs Implicated in Prisoners’ Deaths*, N.Y. TIMES, Mar. 26, 2005, at A1.

¹⁰¹ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 7; Douglas Jehl, *Pentagon Will Not Try 17 GIs Implicated in Prisoners’ Deaths*, N.Y. TIMES, Mar. 26, 2005, at A1.

¹⁰² See Mowhoush case profile, *supra* text accompanying note 66.

¹⁰³ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 7; Douglas Jehl, *Pentagon Will Not Try 17 GIs Implicated in Prisoners’ Deaths*, N.Y. TIMES, Mar. 26, 2005, at A1.

¹⁰⁴ Office of the Armed Forces Med. Exam’r, *Final Autopsy Report, Autopsy No.: ME 04-309* (Nov. 22, 2004) [Autopsy, F. Mohammed], available at http://www.defenselink.mil/pubs/foi/detainees/army_previous_releases/eighth_release/, at 96 [hereinafter Autopsy, F. Mohammed].

¹⁰⁵ Autopsy, F. Mohammed, *supra* note 104, at 96; Criminal Investigators Outline 27 Homicides, *supra* note 64, at 3-4.

¹⁰⁶ Autopsy, F. Mohammed, *supra* note 104, at 96.

¹⁰⁷ Office of the Armed Forces Med. Exam’r, *Preliminary Autopsy Report ME 04-309* (June 23, 2004), available at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 133 (accessed Feb. 7, 2006) [Preliminary Autopsy, F. Mohammed].

¹⁰⁸ Josh White, *3 More Navy SEALs Face Abuse Charges*, WASH. POST, Sept. 25, 2004, at A16.

¹⁰⁹ Eric Schmitt, *Navy Charges 3 Commandos With Beating of Prisoners*, N.Y. TIMES, Sept. 24, 2004, at A7.

¹¹⁰ See App. A, Memorandum from William J. Haynes, II, Action Memo: Counter-Resistance Techniques (Nov. 27, 2002) (approved by Secretary of Defense Rumsfeld on Dec. 2, 2002, with hand-written notation: “However, I stand for 8-10 hours a day. Why is standing

limited to 4 hours?”). Haynes’ memo attaches a memo from General James Hill (Oct. 25, 2002); a memo from Maj. Gen. Michael Dunlavey (Oct. 11, 2002), a memo (legal review) by Lt. Col. Diane Beaver (Oct. 11, 2002) and a Request for Approval for Counter-Resistance Strategies from Lt. Col. Jerald Phifer (Oct. 11, 2002); *see also* Memorandum from Donald Rumsfeld to Commander, US Southern Command, Counter-Resistance Techniques in the War on Terrorism (Apr. 16, 2003), *available at* http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/mem_20030416_Rum_IntTec.pdf (accessed Feb. 7, 2006).

¹¹¹ Memorandum from Ricardo S. Sanchez to Commander, U.S. Central Command (Sept. 14, 2003) (attaching Combined Joint Task Force-7 interrogation policy), *available at* http://www.humanrightsfirst.org/us_law/etn/pdf/sanc-%20memo-091403.pdf (accessed Feb. 7, 2006).

¹¹² Josh White, *3 More Navy SEALs Face Abuse Charges*, WASH. POST, Sept. 25, 2004, at A16.

¹¹³ Eric Schmitt, *Navy Charges 3 Commandos With Beating of Prisoners*, N.Y. TIMES, Sept. 24, 2004, at A7.

¹¹⁴ Mayer, *A Deadly Interrogation*, *supra* note 79.

¹¹⁵ Mayer, *A Deadly Interrogation*, *supra* note 79; David S. Cloud, *Navy Officer Found Not Guilty in Death of an Iraqi Prisoner*, N.Y. TIMES, May 28, 2005 at A6; Office of the Armed Forces Med. Exam’r, *Final Autopsy Report, Autopsy No. ME03-504* (Jan. 9, 2004) [Autopsy, al-Jamadi], *available at* http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 85 (accessed Feb. 3, 2006) [hereinafter Autopsy, al-Jamadi].

¹¹⁶ Mayer, *A Deadly Interrogation*, *supra* note 79; Seth Hettena, *Navy SEAL: CIA Roughed Up Iraqi Prisoner*, ASSOC. PRESS, Nov. 1, 2004, *available at* <http://www.phillyburbs.com/pb-dyn/news/1-11012004-393371.html> (accessed Feb. 3, 2006).

¹¹⁷ John McChesney, *All Things Considered: The Death of an Iraqi Prisoner* (National Public Radio broadcast, Oct. 27, 2005) [hereinafter McChesney, *Death of an Iraqi Prisoner*].

¹¹⁸ McChesney, *Death of an Iraqi Prisoner*, *supra* note 117.

¹¹⁹ McChesney, *Death of an Iraqi Prisoner*, *supra* note 117.

¹²⁰ Sworn Statement of Col. Thomas Pappas, May 14, 2004, *available at* http://www.aclu.org/torturefoia/released/030905/DOD616_653.pdf, at 15 (accessed Feb. 3, 2006); FAY REPORT, *supra* note 15, at 53 – 55, 75 – 76; *see also* Mayer, *A Deadly Interrogation*, *supra* note 79.

¹²¹ Mayer, *A Deadly Interrogation*, *supra* note 79; Seth Hettena, *Iraqi Died While Hung From Wrists*, ASSOC. PRESS, Feb. 17, 2005, *available at* <http://www.commondreams.org/headlines05/0217-09.htm> (accessed Feb. 3, 2006) [hereinafter Hettena, *Hung From Wrists*]. *But see* McChesney, *Death of an Iraqi Prisoner*, *supra* note 117 (reporting that one of the MP guards maintains that there was enough slack to allow al-Jamadi to kneel).

¹²² Mayer, *A Deadly Interrogation*, *supra* note 79; Hettena, *Hung From Wrists*, *supra* note 121.

¹²³ Mayer, *A Deadly Interrogation*, *supra* note 79; McChesney, *Death of an Iraqi Prisoner*, *supra* note 117; Hettena, *Hung From Wrists*, *supra* note 121.

¹²⁴ Mayer, *A Deadly Interrogation*, *supra* note 79; McChesney, *Death of an Iraqi Prisoner*, *supra* note 117; Hettena, *Hung From Wrists*, *supra* note 121.

¹²⁵ FAY REPORT, *supra* note 15, at 76.

¹²⁶ FAY REPORT, *supra* note 15, at 53.

¹²⁷ Mayer, *A Deadly Interrogation*, *supra* note 79; Hettena, *Hung From Wrists*, *supra* note 121.

¹²⁸ Luke Harding, *How Abu Ghraib Torture Victim Faces Final Indignity: An Unmarked Grave*, THE GUARDIAN, June 1, 2004, at 4.

¹²⁹ *Id.*

¹³⁰ Autopsy, al-Jamadi, *supra* note 115, at 85.

¹³¹ Autopsy, al-Jamadi, *supra* note 115, at 86.

¹³² Mayer, *A Deadly Interrogation*, *supra* note 79.

¹³³ *Id.*

¹³⁴ McChesney, *Death of an Iraqi Prisoner*, *supra* note 117.

¹³⁵ T.R. Reid, *Trial Starts in Abu Ghraib Death; Navy SEAL Faces Charges; CIA Agents Not Named in Case*, WASH. POST, May 25, 2005, at A2.

¹³⁶ Tony Perry, *SEALs Instructed to Treat Prisoners Well*, L.A. TIMES, May 26, 2005, at A29.

¹³⁷ Hettena, *Hung From Wrists*, *supra* note 121; David S. Cloud, *SEAL Officer Hears Charges in Court Martial in Iraqi’s Death*, N.Y. TIMES, May 25, 2005, at A8.

¹³⁸ Douglas Jehl and Tim Golden, *CIA is Likely to Avoid Charges in Most Prisoner Deaths*, N.Y. TIMES, Oct. 23, 2005, at A6; Hettena, *Hung From Wrists*, *supra* note 121; David S. Cloud, *SEAL Officer Hears Charges in Court Martial in Iraqi’s Death*, N.Y. TIMES, May 25, 2005, at A8.

¹³⁹ *See* Dep’t of Defense, *Victim and Witness Assistance*, Military Justice Overview, <http://www.defenselink.mil/vwac/military.html> (accessed Feb. 3, 2006); U.S. Navy Judge Advocate General, *NonJudicial Punishment*, http://www.jag.navy.mil/html/NLSOglakesNonjudicial_punishment.htm (accessed Feb. 3, 2006); Military.com, *Benefits and Resources, Legal Matters, NonJudicial Punishment*, <http://www.military.com/Resources/ResourcesContent/0,13964,30901--1,00.html> (accessed Feb. 3, 2006).

¹⁴⁰ David S. Cloud, *Navy Officer Retracts Confession in Death of Iraqi Prisoner*, N.Y. TIMES, May 27, 2005, at A18; Tony Perry, *Navy Lieutenant Denies Assaulting Iraqi Prisoner*, L.A. TIMES, May 27, 2005, at A31.

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- ¹⁴⁴ Mayer, *A Deadly Interrogation*, *supra* note 79.
- ¹⁴⁵ Alex Roth, *Marine Guilty in Death of Iraqi*, SAN DIEGO UNION-TRIB., Nov. 11, 2004 at B1.
- ¹⁴⁶ Office of the Armed Forces Med. Exam'r, *Final Autopsy Report, Autopsy No. A03-51* (Oct. 22, 2003) [Autopsy, Hatab], available at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 37 (accessed Feb. 3, 2006) [hereinafter Autopsy, Hatab]; Alex Roth, *Marine Guilty in Death of Iraqi*, SAN DIEGO UNION-TRIB., Nov. 11, 2004 at B1.
- ¹⁴⁷ Alex Roth, *Trial Starts for Marine in Iraqi's Jail Death; Prosecutor Paints Reservist as Rogue*, SAN DIEGO UNION-TRIB., Aug. 25, 2004 at NC-1; Alex Roth, *Iraqi Prisoner Called Thug for Hussein*, SAN DIEGO UNION-TRIB., Aug. 27, 2004 at NC-1. One of the accused denied during his court martial proceedings that he had abused Hatab or any other detainee. Alex Roth, *Never Abused Iraqi Prisoners, Marine Says At Court-Martial*, SAN DIEGO UNION-TRIB., Sept. 2, 2004 at NC-1.
- ¹⁴⁸ Deborah Hastings, *The Death of Iraqi Prisoner No. 0310337*, ASSOC. PRESS, July 31, 2004, available at http://www.dailytimes.com.pk/default.asp?page=story_2-8-2004_pg7_40 (accessed Feb. 3, 2006); David Hasemyer, *Marine Says He was Ordered to Grab Prisoner's Neck*, SAN DIEGO UNION-TRIB., Nov. 4, 2004, at B2.
- ¹⁴⁹ Philip Sherwell and Colin Freeman, *Iraqi Prisoner 'was beaten, kicked, and left to die by Marines'*, TELEGRAPH, May 23, 2004, at 24; Jeff McDonald, *Behavior of Detainee Who Died Is at Issue; Was Iraqi Ill or Just Belligerent*, SAN DIEGO UNION-TRIB., Nov. 5, 2004, at NC-1.
- ¹⁵⁰ Alex Roth, *Marine Guilty In Death of Iraqi*, SAN DIEGO UNION-TRIB., Nov. 11, 2004, at B1; David Hasemyer, *Marine Says He was Ordered to Grab Prisoner's Neck*, SAN DIEGO UNION-TRIB., Nov. 4, 2004, at B2.
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- ¹⁵² Autopsy, Hatab, *supra* note 146, at 37 (Hatab pronounced dead at 12:30 a.m.); David Hasemyer, *Marine Says He was Ordered to Grab Prisoner's Neck*, SAN DIEGO UNION-TRIB., Nov. 4, 2004, at B2; Alex Roth, *Marine Guilty in Death of Iraqi*, SAN DIEGO UNION-TRIB., Nov. 11, 2004, at B1.
- ¹⁵³ Seth Hettena, *Court Martial Begins in Iraq Prison Death*, ASSOC. PRESS, Nov. 2, 2004, available at <http://msnbc.msn.com/id/6394480/> (accessed Feb. 3, 2006). Three medical experts retained by the different defendants in subsequent courts-martial disputed this finding. Alex Roth, *Heart Failure Caused Death of Prisoner, Witness Says; Defense Expert Testifies at Marine's Court-Martial*; SAN DIEGO UNION-TRIB., Sept. 1, 2004, at NC-1. One expert gave the opinion that Hatab likely died of natural causes, probably heart failure. *Id.* Two experts stated that he likely died of asthma or pneumonia. *Id.* According to one of the experts, it was hard to pinpoint the cause of death because Hatab's body was left for four days in extreme heat before the autopsy. *Id.*
- ¹⁵⁴ Alex Roth, *Trial starts for Marine in Iraqi's Jail Death; Prosecutor Paints Reservist as Rogue*, SAN DIEGO UNION-TRIB., Aug. 25, 2004, at NC-1 (quoting prosecutor in court martial of one of the Marines charged in connection with Hatab's death).
- ¹⁵⁵ David Hasemyer, *Marine Says He was Ordered to Grab Prisoner's Neck*, SAN DIEGO UNION-TRIB., Nov. 4, 2004, at B2 (quoting Major William Vickers).
- ¹⁵⁶ *Id.*
- ¹⁵⁷ *Id.*
- ¹⁵⁸ *Id.*
- ¹⁵⁹ *Id.*
- ¹⁶⁰ Alex Roth, *Heart Failure Caused Death of Prisoner, Witness Says; Defense Expert Testifies at Marine's Court-Martial*, SAN DIEGO UNION-TRIB., Sept. 1, 2004, at NC-1 (describing pathologist's testimony).
- ¹⁶¹ *Id.*
- ¹⁶² Seth Hettena, *Military Loses Key Evidence in Iraqi Death*, ASSOC. PRESS, Sept. 9, 2004, available at <http://68.166.163.242/cgi-bin/readart.cgi?ArtNum=65771> (accessed Feb. 3, 2006).
- ¹⁶³ Seth Hettena, *Army Pathologist Concedes Errors in Prisoner-Abuse Case*, Assoc. Press, Oct. 14, 2004, available at http://www.usatoday.com/news/nation/2004-10-14-errors-abuse_x.htm (accessed Feb. 3, 2006) (rib cage found at Armed Forces Institute of Pathology, Washington D.C.; part of larynx found at Landstuhl military base in Germany).
- ¹⁶⁴ Dep't of the Army, Field Manual 19-20, Law Enforcement Investigations (Nov. 1985), at 200.
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- ¹⁶⁷ Autopsy, Hatab, *supra* note 146, at 37; Seth Hettena, *Army Pathologist Concedes Errors in Prisoner-Abuse Case*, Assoc. Press, Oct. 14, 2004, available at http://www.usatoday.com/news/nation/2004-10-14-errors-abuse_x.htm (accessed Feb. 3, 2006).
- ¹⁶⁸ Alex Roth, *Marines Involved in Iraqi Abuse Frustrated After Their Convictions*, SAN DIEGO UNION-TRIB., Dec. 13, 2004, at A1.
- ¹⁶⁹ Jonathan Heller, *8 Marine Reservists Charged in Beating Death of Iraqi POW*, SAN DIEGO UNION-TRIB., Oct. 19, 2003, at A2.

- ¹⁷⁰ Seth Hettena, *Court Martial Begins in Iraq Prison Death*, ASSOC. PRESS, Nov. 2, 2004 available at <http://msnbc.msn.com/id/6394480/> (accessed Feb. 3, 2006) (“most of the Marines had their cases dismissed in large part because of the breakdown in forensic evidence that has marred the case”); Alex Roth, *Reservist Convicted of Assault on Inmates; Sergeant Acquitted in Iraqi’s Death at Camp*, SAN DIEGO UNION-TRIB., Sept. 3, 2004, at A1.
- ¹⁷¹ Seth Hettena, *Court Martial Begins in Iraq Prison Death*, ASSOC. PRESS, Nov. 2, 2004, available at <http://msnbc.msn.com/id/6394480/> (accessed Feb. 3, 2006); Jeff McDonald, *Behavior of Detainee Who Died Is at Issue; Was Iraqi Ill or Just Belligerent*, SAN DIEGO UNION-TRIB., Nov. 5, 2004, at NC-1.
- ¹⁷² Alex Roth, *Reservist’s Court Martial Postponed; Defense in Iraqi Death Gets More Prep Time*, SAN DIEGO UNION-TRIB., July 29, 2004, at NC-1.
- ¹⁷³ Gidget Fuentes, *Major Convicted, Avoids Jail Time in Abuse Trial*, MARINE CORPS TIMES, Nov. 22, 2004, at 11; Alex Roth, *Marine Guilty in Death of Iraqi*, SAN DIEGO UNION-TRIB., Nov. 11, 2004, at B1.
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- ¹⁸⁸ See *U.S. v. Passaro*, No. 04 CR 211-1, E.D.N.C., Order, Dec. 30, 2005.
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- ¹⁹⁰ Tim Golden, *In U.S. Report, Brutal Details Of 2 Afghan Inmates’ Deaths*, N.Y. TIMES, May 20, 2005, at A1 [hereinafter Golden, *Brutal Details Of 2 Afghan Inmates’ Deaths*].
- ¹⁹¹ Golden, *Brutal Details Of 2 Afghan Inmates’ Deaths*, *supra* note 190.
- ¹⁹² Tim Golden, *Brutal Details Of 2 Afghan Inmates’ Deaths*, *supra* note 190; Tim Golden, *Abuse Cases Open Command Issues at Afghan Prison*, N.Y. TIMES, Aug. 8, 2005, at A1.
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- ²⁰¹ Tim Golden, *Army Faltered in Investigating Detainee Abuse*, N.Y. Times, May 22, 2005, at A1.
- ²⁰² *Id.*
- ²⁰³ *Id.*
- ²⁰⁴ *Id.*
- ²⁰⁵ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190; Tim Golden, *Abuse Cases Open Command Issues at Afghan Prison*, N.Y. TIMES, Aug. 8, 2005, at A1.
- ²⁰⁶ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²⁰⁷ Tim Golden, *Case Dropped Against U.S. Officer in Beating Deaths of Afghan Inmates*, Jan. 8, 2006, N.Y. TIMES, at A13.
- ²⁰⁸ See DIC Table: They are Private First Class ("Pfc.") Willie Brand (assault, maiming, maltreatment, false statement), Specialist ("Spc.") Brian Cammack (assault, two counts of false statement), Spc. Glendale Walls (dereliction, assault), Sergeant ("Sgt.") Anthony Morden (assault, two counts of dereliction), Sgt. Selena Salcedo (dereliction, assault), Sgt. Joshua Claus (maltreatment, assault), Sgt. Christopher Greatorex (assault, maltreatment, false statement), Sgt. Darin Broady (assault, maltreatment, false statement), Sgt. James Boland (maltreatment, dereliction, assault), Sgt. Alan Driver (assault, maltreatment), Staff Sergeant ("Staff Sgt.") Brian Doyle (dereliction, maltreatment), and Captain ("Capt.") Christopher Beiring (dereliction, false statement).
- ²⁰⁹ See DIC Table: Pfc. Brand (convicted, demoted to Private ("Pvt.")), Spc. Cammack (pled guilty, 3 months confinement, demoted to Pvt., bad-conduct discharge), Spc. Walls (pled guilty, 2 months confinement, demoted to Pvt., bad-conduct discharge), Sgt. Morden (pled guilty, 75 days confinement, demoted to Pvt., bad-conduct discharge), Sgt. Salcedo (pled guilty, fined \$1,000, demoted to Spc. or Corporal, reprimanded), Sgt. Claus (pled guilty, 5 months confinement, demoted to Pvt., bad-conduct discharge), Sgt. Greatorex (acquitted, faces administrative reprimand), Sgt. Broady (acquitted), Sgt. Boland (charges dropped, reprimanded for dereliction); Staff Sgt. Doyle (acquitted in connection with Habibullah's death); Capt. Beiring (charges dropped, reprimanded).
- ²¹⁰ *Id.*
- ²¹¹ Tim Golden, *Case Dropped Against U.S. Officer in Beating Deaths of Afghan Inmates*, N.Y. TIMES, Jan. 8, 2006, at A13.
- ²¹² *Id.*
- ²¹³ *Id.*
- ²¹⁴ Rowan Scarborough, *Senior Prison Officer Cleared*, WASH. TIMES, Dec. 23, 2005, available at <http://www.washingtontimes.com/national/20051223-121235-3444r.htm> (accessed Feb. 13, 2006).
- ²¹⁵ *A Look at the Soldiers Charged in the Afghanistan Abuse Investigation*, ASSOC. PRESS, Oct. 5, 2005, available at <http://www.kxan.com/Global/story.asp?S=3942230> (accessed Feb. 3, 2006); Tim Golden, *Case Dropped Against U.S. Officer in Beating Deaths of Afghan Inmates*, N.Y. TIMES, Jan. 8, 2006, at A13.
- ²¹⁶ *A Look at the Soldiers Charged in the Afghanistan Abuse Investigation*, ASSOC. PRESS, Oct. 5, 2005, available at <http://www.kxan.com/Global/story.asp?S=3942230> (accessed Feb. 3, 2006); see also DIC Table. A charge of involuntary manslaughter was initially brought against Pfc. Brand, but it was dropped before trial. Tim Golden, *Abuse Cases Open Command Issues at Army Prison*, N.Y. TIMES, Aug. 8, 2005, at A1.
- ²¹⁷ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²¹⁸ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²¹⁹ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁰ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²¹ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²² Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²³ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁴ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁵ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁶ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁷ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁸ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²²⁹ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²³⁰ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²³¹ Office of the Armed Forces Med. Exam'r, *Autopsy Examination Report, A0295* (Dec. 13, 2002) [Autopsy, Dilawar], available at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf at 29-36 [hereinafter Autopsy, Dilawar].
- ²³² Autopsy, Dilawar, *supra* note 231, at 29-36.
- ²³³ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190.
- ²³⁴ Tim Golden, *Army Faltered in Investigating Detainee Abuse*, N.Y. TIMES, May 22, 2005, at A1.
- ²³⁵ *Id.*; Carlotta Gall, *U.S. Military Investigating Death of Afghan in Custody*, N.Y. TIMES, Mar. 4, 2003, at A14.
- ²³⁶ Tim Golden, *Army Faltered on Investigating Detainee Abuse*, N.Y. TIMES, May 22, 2005, at A1.
- ²³⁷ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190; Tim Golden, *Army Faltered on Investigating Detainee Abuse*, N.Y. TIMES, May 22, 2005, at A1.

²³⁸ Golden, *Brutal Details Of 2 Afghan Inmates' Deaths*, *supra* note 190; Tim Golden, *Army Faltered on Investigating Detainee Abuse*, N.Y. TIMES, May 22, 2005, at A1.

²³⁹ Dep't of the Army, CID, *CID Report of Investigation-Corrected/Initial/Final/SSI-0171-04-CID259-80223-/5H6* (Aug. 7, 2004) [Criminal Investigation, al-Bawi], available at http://www.aclu.org/torturefoia/released/4894_4927.pdf, at 1 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, al-Bawi]; Jackie Spinner, *Family Seeks Justice in Case Of Iraqi Slain by U.S. Troops*, WASH. POST, June 15, 2004, at A13.

²⁴⁰ Jackie Spinner, *Family Seeks Justice in Case Of Iraqi Slain by U.S. Troops*, WASH. POST, June 15, 2004, at A13; Liz Sly, *Family Prods Military on Iraqi's Death*, CHI. TRIB., July 6, 2004, at 4.

²⁴¹ Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1.

²⁴² *Id.*

²⁴³ Jackie Spinner, *Family Seeks Justice in Case Of Iraqi Slain by U.S. Troops*, WASH. POST, June 15, 2004, at A13; Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1.

²⁴⁴ Jackie Spinner, *Family Seeks Justice in Case Of Iraqi Slain by U.S. Troops*, WASH. POST, June 15, 2004, at A13; Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1.

²⁴⁵ Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1; Liz Sly, *Family Prods Military on Iraqi's death*, CHI. TRIB., July 6, 2004, at 4.

²⁴⁶ Jackie Spinner, *Family Seeks Justice in Case Of Iraqi Slain by U.S. Troops*, WASH. POST, June 15, 2004, at A13; Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1.

²⁴⁷ For a description of administrative investigations, see *infra* p. 33.

²⁴⁸ Criminal Investigation, al-Bawi, *supra* note 239, at 5.

²⁴⁹ Liz Sly, *Family Prods Military on Iraqi's Death*, CHI. TRIB., July 6, 2004, at 4 (quoting portions of military's statements).

²⁵⁰ *Id.*; Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1.

²⁵¹ Criminal Investigation, al-Bawi, *supra* note 239, at 16.

²⁵² The Army's subsequent criminal investigation into al-Bawi's death also found that it was a rifle, not a pistol, that al-Bawi allegedly tried to grab from a soldier. Criminal Investigation, al-Bawi, *supra* note 239, at 1.

²⁵³ Criminal Investigation, al-Bawi, *supra* note 239, at 5.

²⁵⁴ Criminal Investigation, al-Bawi, *supra* note 239, at 33.

²⁵⁵ Criminal Investigation, al-Bawi, *supra* note 239, at 1.

²⁵⁶ Criminal Investigation, al-Bawi, *supra* note 239, at 5; see also Liz Sly, *Family Prods Military on Iraqi's Death*, CHI. TRIB., July 6, 2004, at 4 (military statement alleging that all shots fired by one soldier).

²⁵⁷ Liz Sly, *Family Prods Military on Iraqi's Death*, CHI. TRIB., July 6, 2004, at 4.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Dep't of the Army, CID, *CID Report of Investigation – Final (C) – 0149-03-CID469-60209-5H1A* (Nov. 23, 2003) [Criminal Investigation, Radad], available at http://www.aclu.org/torturefoia/released/DOA_1053_1082.pdf, at 2, 15 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Radad].

²⁶¹ Criminal Investigation, Radad, *supra* note 260, at 2.

²⁶² Criminal Investigation, Radad, *supra* note 260, at 15.

²⁶³ Dep't of the Army, *Informal Investigation of Shooting of Obeed Hethere Radad* (Sept. 13, 2003), available at <http://www.aclu.org/projects/foiasearch/pdf/DOD044873.pdf> at 23 (accessed Feb. 3, 2006) [hereinafter Administrative Investigation, Radad].

²⁶⁴ Administrative Investigation, Radad, *supra* note 263, at 22.

²⁶⁵ Administrative Investigation, Radad, *supra* note 263, at 22.

²⁶⁶ Memorandum for Commander, 4th Infantry Division (Mechanized), FOB Ironhorse, Tikrit, Iraq, AR 15-5 Investigation – Legal Review, Obeed Hethere Radad (Sept. 14, 2003), at 1 (on file with Human Rights First).

²⁶⁷ Criminal Investigation, Radad, *supra* note 260, at 2-3 (incident reported on September 15; administrative investigation dated September 14 attached).

²⁶⁸ Memorandum from Spec. Juba Martino-Poole to Commander, 4th Infantry Division, Request for Discharge in Lieu of Trial by Court Martial (Oct. 16, 2003), available at http://www.aclu.org/torturefoia/released/041905/6768_7065.pdf, at 45-46 (accessed Feb. 3, 2006).

²⁶⁹ Criminal Investigation, Radad, *supra* note 260, at 2; Memorandum from Maj. Gen. Raymond T. Odierno for Commander, 502d Personnel Service Battalion, Request for Discharge in Lieu of Trial by Court-Martial, available at http://www.aclu.org/torturefoia/released/041905/6768_7065.pdf, at 53 (accessed Feb. 3, 2006).

²⁷⁰ Criminal Investigation, Radad, *supra* note 260, at 2.

²⁷¹ Criminal Investigation, Radad, *supra* note 260, at 29.

²⁷² Miles Moffeit and Arthur Kane, *Iraq GIs Allowed to Avoid Trial*, DENVER POST, Aug. 22, 2004, at A1.

- ²⁷³ Dep't of the Army, CID, *CID Report of Investigation – Final – 0114-02-CID369-23525 -5H1A*, Part 1 (May 23, 2003) [Criminal Investigation, Sayari], available at http://www.aclu.org/torturefoia/released/745_814.pdf, at 11-12, 27 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Sayari].
- ²⁷⁴ Criminal Investigation, Sayari, *supra* note 273, at 11-12, 27.
- ²⁷⁵ Criminal Investigation, Sayari, *supra* note 273, at 27-28.
- ²⁷⁶ Criminal Investigation, Sayari, *supra* note 273, at 28.
- ²⁷⁷ Criminal Investigation, Sayari, *supra* note 273, at 38-46. The criminal investigators found probable cause to charge three members of the squad with the crime of Dereliction of Duty for their failure to abide by standard operating procedures for detaining captives. Criminal Investigation, Sayari, *supra* note 273, at 12.
- ²⁷⁸ Criminal Investigation, Sayari, *supra* note 273, at 28.
- ²⁷⁹ Criminal Investigation, Sayari, *supra* note 273, at 28.
- ²⁸⁰ Criminal Investigation, Sayari, *supra* note 273, at 28.
- ²⁸¹ Criminal Investigation, Sayari, *supra* note 273, at 28.
- ²⁸² Criminal Investigation, Sayari, *supra* note 273, at 28.
- ²⁸³ Criminal Investigation, Sayari, *supra* note 273, at 27-28, 65-66. The sergeant complied, although the photos were not lost because he had previously made another copy. Criminal Investigation, Sayari, *supra* note 273, at 64.
- ²⁸⁴ Criminal Investigation, Sayari, *supra* note 273, at 19.
- ²⁸⁵ Criminal Investigation, Sayari, *supra* note 273, at 19, 28.
- ²⁸⁶ Dep't of the Army, CID, *CID Report of Investigation – Final – 0114-02-CID369-23525 -5H1A*, Part 4 (May 23, 2003) [Criminal Investigation, Sayari, Part 4], available at http://www.aclu.org/torturefoia/released/908_963.pdf, at 16 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Sayari, Part 4].
- ²⁸⁷ Criminal Investigation, Sayari, *supra* note 273, at 27, 31, 64; see also Criminal Investigation, Sayari, Part 4, *supra* note 286, at 15.
- ²⁸⁸ Criminal Investigation, Sayari, *supra* note 273, at 27, 31, 64; see also Criminal Investigation, Sayari, Part 4, *supra* note 286, at 15.
- ²⁸⁹ Criminal Investigation, Sayari, *supra* note 273, at 27; see also Criminal Investigation, Sayari, Part 4, *supra* note 286, at 15.
- ²⁹⁰ Criminal Investigation, Sayari, *supra* note 273, at 27-28, 65-66.
- ²⁹¹ Criminal Investigation, Sayari, *supra* note 273, at 29.
- ²⁹² Criminal Investigation, Sayari, *supra* note 273, at 11.
- ²⁹³ Criminal Investigation, Sayari, *supra* note 273, at 11.
- ²⁹⁴ Criminal Investigation, Sayari, *supra* note 273, at 1-10.
- ²⁹⁵ Criminal Investigation, Sayari, *supra* note 273, at 1-10; *Army: Soldiers Shouldn't be Charged*, ASSOC. PRESS, Jan. 24, 2005, available at <http://www.msnbc.msn.com/id/6863659/> (accessed Feb. 3, 2006).
- ²⁹⁶ Criminal Investigation, Sayari, *supra* note 273, at 1; *Army: Soldiers Shouldn't be Charged*, ASSOC. PRESS, Jan. 24, 2005, available at <http://www.msnbc.msn.com/id/6863659/> (accessed Feb. 3, 2006).
- ²⁹⁷ Criminal Investigation, Sayari, *supra* note 273, at 1-10.
- ²⁹⁸ Dexter Filkins, *The Fall of the Warrior King*, N.Y. TIMES MAG., Oct. 23, 2005, at 52 [hereinafter Filkins, *Warrior King*]; Hamza Hendawi, *Iraqi: U.S. Soldiers Laughed at Drowning*, ASSOC. PRESS, July 6, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-07/07/content_346293.htm (accessed Feb. 3, 2006).
- ²⁹⁹ Filkins, *Warrior King*, *supra* note 298; U.S. Soldier Goes on Trial for Allegedly Drowning Iraqi Civilian, Xinhua General News Service, Jan. 5, 2005 available at http://english.people.com.cn/200501/05/eng20050105_169731.html (accessed Feb. 7, 2006).
- ³⁰⁰ Filkins, *Warrior King*, *supra* note 298.
- ³⁰¹ Information Paper on Samarra Bridge Incident, July 15, 2004, available at http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 47 (accessed Feb. 3, 2006).
- ³⁰² Hamza Hendawi, *Iraqi: U.S. Soldiers Laughed at Drowning*, ASSOC. PRESS, July 6, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-07/07/content_346293.htm (accessed Feb. 3, 2006); Filkins, *Warrior King*, *supra* note 298.
- ³⁰³ Hamza Hendawi, *Iraqi: U.S. Soldiers Laughed at Drowning*, ASSOC. PRESS, July 6, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-07/07/content_346293.htm (accessed Feb. 3, 2006).
- ³⁰⁴ *Id.*; Filkins, *Warrior King*, *supra* note 298.
- ³⁰⁵ *G.I. Gets 45 Days for Assault of Iraqis*, ASSOC. PRESS, Mar. 15, 2005, available at <http://www.msnbc.msn.com/id/7200520/> (accessed Feb. 3, 2006). See also, Charge Sheet, available at http://action.aclu.org/torturefoia/released/063005/11950_12130PartB.pdf, at 80-81 (accessed Feb. 3, 2006).
- ³⁰⁶ Filkins, *Warrior King*, *supra* note 298; *Cover-up of Iraq Bridge Incident Admitted*, ASSOC. PRESS, July 30, 2004, available at <http://www.msnbc.msn.com/id/5560805/> (accessed Feb. 3, 2006).
- ³⁰⁷ Filkins, *Warrior King*, *supra* note 298.
- ³⁰⁸ Information Paper on Samarra Bridge Incident, July 15, 2004, available at http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 47 (accessed Feb. 3, 2006).
- ³⁰⁹ *Id.*

³¹⁰ Filkins, *Warrior King*, *supra* note 298.

³¹¹ U.S. Navy Judge Advocate General's Corps, Article 32 Investigations, http://www.jag.navy.mil/html/NLSOGLakesArticle_32_investigations.htm (accessed Feb. 3, 2006) ("grand jury indictment is expressly inapplicable to the Armed Forces. In its absence, Article 32 of the Uniform Code of Military Justice ... requires a thorough and impartial investigation of charges").

³¹² Investigating Officer's Report of Charges Under Article 32, Aug. 19, 2004, *available at* http://action.aclu.org/torturefoia/released/063005/11950_12130PartB.pdf, at 99-100 (accessed Feb. 3, 2006).

³¹³ *Cover-up of Iraq Bridge Incident Admitted*, ASSOC. PRESS, July 30, 2004, *available at* <http://www.msnbc.msn.com/id/5560805/> (accessed Feb. 3, 2006).

³¹⁴ *Id.*; *see also* Filkins, *Warrior King*, *supra* note 298.

³¹⁵ *Cover-up of Iraq Bridge Incident Admitted*, ASSOC. PRESS, July 30, 2004, *available at* <http://www.msnbc.msn.com/id/5560805/> (accessed Feb. 3, 2006).

³¹⁶ Filkins, *Warrior King*, *supra* note 298; Suzanne Goldenberg, *45 Days Jail for U.S. Officer Who Had Cousins Thrown Into Tigris*, THE GUARDIAN, Mar. 16, 2005, at Home Pages 2.

³¹⁷ Dick Foster, *Case Against 4 GI's Waning; 2 Won't Face Charges in Alleged Drowning*, ROCKY MOUNTAIN NEWS, Sept. 9, 2004, at 6A; Dick Foster, *Soldier: Iraqis Told to Jump; Several Issues Cloud Army's Case Against GIs in Drowning*, ROCKY MOUNTAIN NEWS, July 29, 2004, at 4A; Dick Foster, *Fort Carson Soldiers May Use Drug Defense in Courts-Martial*, ROCKY MOUNTAIN NEWS, July 28, 2004, at 5A.

³¹⁸ Filkins, *Warrior King*, *supra* note 298; Information Paper on Samarra Bridge Incident, July 15, 2004, *available at* http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 47 (accessed Feb. 3, 2006).

³¹⁹ Human Rights First Email Interview with Dr. Steven Miles, Professor, University of Minnesota Medical School (Nov. 4, 2005) (transcription on file with Human Rights First); for date of death, *see* Eric Schmitt, *Navy Charges 3 Commandos with Beating of Prisoners*, N.Y. TIMES, Sept. 25, 2004, at A7.

³²⁰ *See* DIC Table: The military officially ruled five deaths as due to undetermined causes after investigation (Hasson, al-Obodi, Kenami, F. Mahmood, and F. Najem). Forty-three other deaths have either not been investigated, or the results of any investigation have not been publicly announced or are unclear (Unknown 1, Naseer, el-Gashame, Dababa, Unknown 3, Unknown 4, Unknown 5, Unknown 6, Unknown 8, Unknown 9, Unknown 10, Unknown 11, Unknown 12, Unknown 13, Unknown 14, Unknown 15, al-Izmerly, Unknown 16, Unknown 17, Sher Mohammed Khan, Mohammed Nahar, Unknown 20, Unknown 21, Unknown 23, Unknown 24, Unknown 25, Unknown 26, Unknown 27, Unknown 28, Unknown 29, Sumaidaie, Unknown 30, Unknown 31, Unknown 32, Unknown 33, Unknown 34, Unknown 35, Unknown 36, Unknown 37, Unknown 38, Hamza al-Zubaidi, Unknown 39, Unknown 40).

³²¹ *See* DIC Table: Unknown 1 (died in November 2002 in Afghanistan "Salt Pit" prison of hypothermia after being chained to the floor and left without blankets; official cause of death not released); Naseer (allegedly tortured to death by Army Special Forces soldiers in Mar. 2003; official investigation findings not released); al-Sumaidaie (unarmed 21-year-old student allegedly killed in cold blood in June 2005 by Marine during a search of his home; case referred to Navy criminal investigators 10 days after death); Dababa (June 2003 autopsy indicates body covered by bruises and at least 50 abrasions, with head and neck suffering the most significant abuses, resulting in hemorrhaging throughout his brain; official cause of death not announced); Kenami (death after detainee subjected to extreme exercise, cuffed, hooded and left in overcrowded cell; cause officially undetermined); al-Izmerly (chief of forensics at Baghdad Hospital found January 2004 death was due to "massive blow" to head; investigation pending); Unknown 15 (U.S. forces allege male shot during home raid while reaching for a pistol; family alleges he was a physically disabled old man and reportedly provides medical records indicating a spinal condition or degeneration; no criminal investigation or any other action appears to have been initiated); Nasef Ibrahim (military ruled death due to natural causes; son, with him at the time, filed lawsuit alleging death from abuse); Khan (military initially stated death due to heart attack, until press reports of snakebite; family alleges abuse; no medical or other investigation records released since death in September 2004); A. Najem (military ruled death from natural causes after hunger strike, but no medical records or interviews in support); Zaid (U.S.-conducted autopsy stated accidental death from heat stroke; army official stated possibility that Zaid was not given enough water or proper care). Human Rights First asked the Department of Defense on January 20 and 26, 2006 the status of the investigations and any prosecutions in the following cases for which, as of February 10, we had received no response: Naseer; al-Sumaidaie; Dababa; Kenami [sought comment on medical expert finding that death caused by suffocation]; al-Izmerly; Ibrahim; Khan; Zaid.

³²² Dep't of the Army, *AR 15-6 Investigation Into the Death of Abu Malik Kenami* (Dec. 28, 2003), *available at* http://www.aclu.org/torturefoia/released/032505/1281_1380.pdf, at 2, (accessed Feb. 3, 2006) [hereinafter *Administrative Investigation, Kenami*].

³²³ Dep't of the Army, CID, *CID Report of Investigation – Final – 0140-03-CID389-61697-5H9B* (Jan. 1, 2004) [Criminal Investigation, Kenami], *available at* http://www.aclu.org/torturefoia/released/DOA_1206_1234.pdf, at 1 (accessed Feb. 3, 2006) [hereinafter *Criminal Investigation, Kenami*].

³²⁴ *Administrative Investigation, Kenami, supra* note 322, at 1.

³²⁵ *Administrative Investigation, Kenami, supra* note 322, at 16; *Criminal Investigation, Kenami, supra* note 323, at 5 – 6.

³²⁶ *Administrative Investigation, Kenami, supra* note 322, at 4, 16; *Criminal Investigation, Kenami, supra* note 323, at 19, 26.

³²⁷ *Administrative Investigation, Kenami, supra* note 322, at 4-5.

³²⁸ *Administrative Investigation, Kenami, supra* note 322, at 4-5; *Criminal Investigation, Kenami, supra* note 323, at 5-6, 11.

³²⁹ *Administrative Investigation, Kenami, supra* note 322, at 5.

³³⁰ *Administrative Investigation, Kenami, supra* note 322, at 5-6.

³³¹ *Criminal Investigation, Kenami, supra* note 323, at 2.

³³² *Criminal Investigation, Kenami, supra* note 323, at 13.

- ³³³ Criminal Investigation, Kenami, *supra* note 323, at 13.
- ³³⁴ Criminal Investigation, Kenami, *supra* note 323, at 13.
- ³³⁵ Criminal Investigation, Kenami, *supra* note 323, at 13.
- ³³⁶ Dep't Administrative Investigation, Kenami, *supra* note 322, at 1, 2. The administrative investigation made a number of recommendations: 1) that a physical exam be conducted on all detainees, preferably by an Iraqi physician; 2) that facilities be provided for remote audio/video monitoring of the detainee area by an Arabic speaker; 3) that autopsy facilities be created at Mosul.
- ³³⁷ Criminal Investigation, Kenami, *supra* note 323, at 1.
- ³³⁸ STEVEN MILES, OATH BETRAYED: MILITARY MEDICINE AND THE WAR ON TERROR, (forthcoming 2006) (Homicides Chapter, at 15, manuscript on file with Human Rights First).
- ³³⁹ *Id.*
- ³⁴⁰ Criminal Investigation, Kenami, *supra* note 323, at 1.
- ³⁴¹ Miles Mofeit, *Brutal Interrogation in Iraq*, DENVER POST, May 19, 2004, at A1 (quoting military investigative report); Office of the Armed Forces Med. Exam'r, *Autopsy Examination Report, Autopsy No. ME03-273* (May 11, 2004) [Autopsy, Dababa], available at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 56 (accessed Feb. 3, 2006) [hereinafter Autopsy, Dababa]; *New Probes of Prison Deaths*, ASSOC. PRESS, June 30, 2004, available at <http://www.cbsnews.com/stories/2004/07/02/iraq/main627244.shtml> (accessed Feb. 3, 2006); Spreadsheet of Military Investigations, (Nov. 5, 2004), available at http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 12 (accessed Feb. 3, 2006) (reporting two detainee deaths on June 13, 2003, one at Camp Cropper, the other at Camp Vigilant, a compound at Abu Ghraib. The death at Abu Ghraib is that of Alla Hassan, see Dep't of the Army, CID, *Report of Investigation – Final/SSI – 0145-04-CID146-71444-5H9C2 / 5H6 / 5Y3* (Oct. 26, 2004) [Criminal Investigation, Hassan], available at http://www.aclu.org/torturefoia/released/4193_4332.pdf (accessed Feb. 3, 2006).
- ³⁴² Miles Mofeit, *Brutal Interrogation in Iraq*, DENVER POST, May 19, 2004, at A1.
- ³⁴³ Autopsy, Dababa, *supra* note 341, at 56.
- ³⁴⁴ Autopsy, Dababa, *supra* note 341, at 56.
- ³⁴⁵ Autopsy, Dababa, *supra* note 341, at 56.
- ³⁴⁶ Autopsy, Dababa, *supra* note 341, at 58-61.
- ³⁴⁷ Autopsy, Dababa, *supra* note 341, at 58-61.
- ³⁴⁸ Autopsy, Dababa, *supra* note 341, at 58-61.
- ³⁴⁹ Autopsy, Dababa, *supra* note 341, at 59.
- ³⁵⁰ Autopsy, Dababa, *supra* note 341, at 60.
- ³⁵¹ John Lumpkin, *9 Prisoner Deaths in Iraq, Afghanistan Probed as Homicides*, ASSOC. PRESS, May 23, 2004, available at http://www.news-star.com/stories/052304/New_31.shtml (accessed Feb. 3, 2006).
- ³⁵² Dep't of the Army, CID, *CID Report of Investigation – Final/SSI – 0237-04-CID259-80273-5H9B* (Oct. 18, 2004) [Criminal Investigation, Hasson], available at http://www.aclu.org/torturefoia/released/4153_4192.pdf, at 2 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Hasson].
- ³⁵³ Criminal Investigation, Hasson, *supra* note 352, at 1-2.
- ³⁵⁴ Criminal Investigation, Hasson, *supra* note 352, at 6.
- ³⁵⁵ Investigators contacted the current and former Detainee Operations officers for the camp, the U.S. field hospital staff, officials at a British hospital, and requested searches of Military Police, Military Intelligence, and medical databases. Criminal Investigation, Hasson, *supra* note 352, at 4, 8.
- ³⁵⁶ See generally, Criminal Investigation, Hasson, *supra* note 352.
- ³⁵⁷ Criminal Investigation, Hasson, *supra* note 352, at 1-2.
- ³⁵⁸ Criminal Investigation, Hasson, *supra* note 352, at 19.
- ³⁵⁹ Dep't of the Army, CID, *CID Report of Investigation Final Supplemental /SSI Report -0007-04-CID259-80133-5H9A* (Aug. 23, 2004) [Criminal Investigation, Ibrahim], available at http://www.aclu.org/torturefoia/released/DOA_1443_1479.pdf, at 1 (accessed Feb. 7, 2006) [hereinafter Criminal Investigation, Ibrahim].
- ³⁶⁰ Criminal Investigation, Ibrahim, *supra* note 359, at 7 – 8.
- ³⁶¹ Criminal Investigation, Ibrahim, *supra* note 359, at 4.
- ³⁶² Criminal Investigation, Ibrahim, *supra* note 359, at 9.
- ³⁶³ Third Amended Complaint, *Saleh v. Titan Corp.*, No. 1:05-CV-1165 (U.S. District Court for the District of Columbia, filed Sept. 12, 2005), ¶¶135-139. See also Tom Squitieri, *Documents Give Different Explanation for Inmate's Death*, USA TODAY, June 28, 2004, at 2A.
- ³⁶⁴ Third Amended Complaint, *Saleh v. Titan Corp.*, No. 1:05-CV-1165 (U.S. District Court for the District of Columbia, filed Sept. 12, 2005), ¶¶135-139. See also Tom Squitieri, *Documents Give Different Explanation for Inmate's Death*, USA TODAY, June 28, 2004, at 2A.
- ³⁶⁵ Criminal Investigation, Ibrahim, *supra* note 359, at 9.
- ³⁶⁶ Criminal Investigation, Ibrahim, *supra* note 359, at 9.
- ³⁶⁷ Criminal Investigation, Najem, *supra* note 391.
- ³⁶⁸ Criminal Investigation, Najem, *supra* note 391.

- ³⁶⁹ Criminal Investigation, Najem, *supra* note 391.
- ³⁷⁰ Criminal Investigation, Najem, *supra* note 391, at 4.
- ³⁷¹ Criminal Investigation, Najem, *supra* note 391.
- ³⁷² Dep't of the Army, CID, *CID Report of Investigation-Final(C)- 0025-03-CID919-63733*, at 41-43 (Feb. 4, 2004) [Criminal Investigation, al-Obodij], available at http://www.aclu.org/torturefoia/released/DOA_1727_1780.pdf (accessed Feb. 7, 2006) [hereinafter Criminal Investigation, al-Obodij].
- ³⁷³ Criminal Investigation, al-Obodi, *supra* note 372, at 7.
- ³⁷⁴ Criminal Investigation, al-Obodi, *supra* note 372, at 41-43.
- ³⁷⁵ Criminal Investigation, al-Obodi, *supra* note 372, at 35-36.
- ³⁷⁶ Criminal Investigation, al-Obodi, *supra* note 372, at 1.
- ³⁷⁷ Criminal Investigation, al-Obodi, *supra* note 372, at 48.
- ³⁷⁸ Charles Hanley, *Heat on U.S. Over Iraqi Weapons Scientists*, ASSOC. PRESS, July 21, 2005; Sinan Salaheddin, *Family of Iraqi Scientist Welcomes Probe*, ASSOC. PRESS, Mar. 27, 2005, available at <http://www.armytimes.com/story.php?f=1-292925-745460.php> (accessed Feb. 3, 2006) [hereinafter Salaheddin, *Family Welcomes Probe*]; Luke Harding, *I Will Always Hate You People*, THE GUARDIAN, May 24, 2004, at Home Pages 1.
- ³⁷⁹ Salaheddin, *Family Welcomes Probe*, *supra* note 378; Luke Harding, *I Will Always Hate You People*, THE GUARDIAN, May 24, 2004, at Home Pages 1.
- ³⁸⁰ Luke Harding, *I Will Always Hate You People*, THE GUARDIAN, May 24, 2004, at Home Pages 1.
- ³⁸¹ *Id.*
- ³⁸² *Id.*; Salaheddin, *Family Welcomes Probe*, *supra* note 378.
- ³⁸³ Salaheddin, *Family Welcomes Probe*, *supra* note 378; Charles Hanley, *Heat on U.S. Over Iraqi Weapons Scientists*, ASSOC. PRESS, July 21, 2005.
- ³⁸⁴ Luke Harding, *Family's Fury at Mystery Death*, THE GUARDIAN, May 24, 2004, at Home Pages 1; Salaheddin, *Family Welcomes Probe*, *supra* note 378.
- ³⁸⁵ Salaheddin, *Family Welcomes Probe*, *supra* note 378 ("Now the Army's Criminal Investigation Command in Washington, after an inquiry by The Associated Press, says it has reopened an investigation into what it calls a previously closed case."); Charles Hanley, *Heat on U.S. Over Iraqi Weapons Scientists*, ASSOC. PRESS, July 21, 2005.
- ³⁸⁶ Salaheddin, *Family Welcomes Probe*, *supra* note 378; Charles Hanley, *Heat on U.S. Over Iraqi Weapons Scientists*, ASSOC. PRESS, July 21, 2005.
- ³⁸⁷ Salaheddin, *Family Welcomes Probe*, *supra* note 378.
- ³⁸⁸ Charles Hanley, *Experts Urge Release of Iraq Scientists*, ASSOC. PRESS, July 17, 2005.
- ³⁸⁹ STEVEN MILES, OATH BETRAYED: MILITARY MEDICINE AND THE WAR ON TERROR, (forthcoming 2006) (Homicides Chapter, at 15, manuscript on file with Human Rights First).
- ³⁹⁰ See DIC Table: Deaths likely caused by heart attack: Mahmood (age unknown, death certificate reportedly identified cardiac arrest, but cause of death officially undetermined); Mohammed Hamza al-Zubaidi (age 67, death reportedly by heart attack but no investigative findings); Unknown 3 (age 60; administrative investigation discussed but didn't rule on heart attack as cause); Unknown 17 (age unknown; death reportedly by heart attack but investigative findings unknown); Unknown 23 (age 31; death reportedly by heart attack but investigative findings unknown); Unknown 29 (age 30 reportedly by heart attack but investigative findings unknown); Unknown 33 (age 65, reportedly by heart attack but investigative findings unknown); Unknown 36 (age 43; reportedly by heart attack but investigative findings unknown); Unknown 38 (age 65 reportedly by heart attack but no investigative findings); Unknown 11 (age unknown; death reportedly by heart attack, but investigative findings unknown).
- Deaths likely caused by heart disease: A. Najem (age approx. 50; death from heart disease; criminal investigation found death from natural causes); Mihdy (age unknown; death from arteriosclerotic cardiovascular disease; criminal investigation found death from natural causes); Spah (age approx. 50; death from arteriosclerotic cardiovascular disease after hunger strike; criminal investigation found death from natural causes); Taleb (age approx. 40; death from arteriosclerotic cardiovascular disease; criminal investigation found death from natural causes); Ibrahim (age 63, death from arteriosclerotic cardiovascular disease; criminal investigation determined further investigation would be of little value); al-Hussen (age 25; death from myocarditis; criminal investigation found death from natural causes); Ahmed (age 61; death from arteriosclerotic cardiovascular disease; criminal investigation found death from natural causes); Abbas (age 55; death from arteriosclerotic cardiovascular disease; criminal investigation found probable death from the disease); Altia (age: approx. 65; arteriosclerotic cardiovascular disease; criminal investigation found death from natural causes); al-Razak (age 52; arteriosclerotic cardiovascular disease; criminal investigation found death from natural causes); Unknown 35 (age 60; heart failure after surgery; investigative findings unknown or not available).
- Of these 21 deaths, military investigators determined: eight were due to natural causes; the probable cause in one was heart disease; in one the cause is officially undetermined; in one investigators found further investigation would not be helpful. Of the remaining 11 deaths, official investigative findings are not known or not publicly available.
- ³⁹¹ Dep't of the Army, CID, *Report of Investigation-Final Supplemental- 0136-03-CID259-61187-5H9A* (June 4, 2004) [Criminal Investigation, Najem], available at <http://www.aclu.org/torturefoia/released/24TF.pdf>, at 1, 34 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Najem].
- ³⁹² Criminal Investigation, Najem, *supra* note 391, at 34.
- ³⁹³ Criminal Investigation, Ibrahim, *supra* note 359, at 1, 3.

³⁹⁴ Criminal Investigation, Ibrahim, *supra* note 359, at 4.

³⁹⁵ Criminal Investigation, Ibrahim, *supra* note 359, at 29.

³⁹⁶ Third Amended Complaint, *Saleh v. Titan Corp.*, No. 1:05-CV-1165 (U.S. District Court for the District of Columbia, filed Sept. 12, 2005), ¶¶135-139. See also Tom Squitieri, *Documents Give Different Explanation for Inmate's Death*, USA TODAY, June 28, 2004, at 2A (reporting allegation that Ibrahim had been doused with cold water over three days; he then became ill and died three days later).

³⁹⁷ Dep't of the Army, the Inspector General, DETAINEE OPERATIONS INSPECTION (July 21, 2004), at 76, available at http://www.humanrightsfirst.org/us_law/PDF/abuse/mikolashekdetainereport.pdf (accessed Feb. 3, 2006).

³⁹⁸ *Id.* at 1-3.

³⁹⁹ *Rights Group Puts Rumsfeld on Spot over Afghan Deaths*, REUTERS, Dec. 14, 2004, available at <http://www.commondreams.org/headlines04/1214-02.htm> (accessed Feb. 7, 2006).

⁴⁰⁰ *Afghan who died in U.S. custody complained of snake bite, American commander says*, ASSOC. PRESS, Jan. 3, 2005, available at http://www.fox23news.com/news/world/story.aspx?content_id=B22E7E94-260B-4D5A-9AE5-D194D5F59C4F (accessed Feb. 7, 2006).

⁴⁰¹ *U.S. Investigates 8 Afghan Prison Deaths*, ASSOC. PRESS, Dec. 13, 2004; *Rights Group Puts Rumsfeld on Spot over Afghan Deaths*, REUTERS, Dec. 14, 2004, available at <http://www.commondreams.org/headlines04/1214-02.htm> (accessed Feb. 7, 2006); *Afghan who died in U.S. custody complained of snake bite, American commander says*, ASSOC. PRESS, Jan. 3, 2005, available at http://www.fox23news.com/news/world/story.aspx?content_id=B22E7E94-260B-4D5A-9AE5-D194D5F59C4F (accessed Feb. 7, 2006).

⁴⁰² *Afghan who died in U.S. custody complained of snake bite, American commander says*, ASSOC. PRESS, Jan. 3, 2005, available at http://www.fox23news.com/news/world/story.aspx?content_id=B22E7E94-260B-4D5A-9AE5-D194D5F59C4F (accessed Feb. 7, 2006).

⁴⁰³ R. Jeffrey Smith, *Army Reprimand Reported in Slaying*, WASH. POST, Dec. 14, 2004, at A24; Letter from Human Rights Watch to Secretary Rumsfeld (Dec. 13, 2004), available at http://hrw.org/english/docs/2004/12/10/afghan9838_txt.htm (accessed Feb. 7, 2006).

⁴⁰⁴ *Afghan Who Died in U.S. Custody Complained of Snake Bite, American Commander Says*, ASSOC. PRESS, Jan. 3, 2005, available at http://www.fox23news.com/news/world/story.aspx?content_id=B22E7E94-260B-4D5A-9AE5-D194D5F59C4F (accessed Feb. 7, 2006).

⁴⁰⁵ *Id.*; *U.S. Army Acknowledges Eight Deaths in Military Custody in Afghanistan*, AGENCE FRANCE-PRESSE, Dec. 14, 2004, available at <http://www.keepmedia.com/pubs/AFP/2004/12/13/682161> (accessed Feb. 7, 2006); Human Rights First submitted a Freedom of Information Act request for the criminal investigation into Khan's death to the Crime Records Center on July 25, 2005, and a request to the Army Medical Command for Khan's final autopsy report on July 21, 2005. The autopsy request was denied on Oct. 31, 2005 based on privacy grounds, while the criminal investigation request remains pending as of February 2006.

⁴⁰⁶ *Afghan Who Died in U.S. Custody Complained of Snake Bite, American Commander Says*, ASSOC. PRESS, Jan. 3, 2005, available at http://www.fox23news.com/news/world/story.aspx?content_id=B22E7E94-260B-4D5A-9AE5-D194D5F59C4F (accessed Feb. 7, 2006); Adrian Levy and Cathy Scott-Clark, *'One Huge U.S. Jail'*, THE GUARDIAN, Mar. 19, 2005, available at <http://www.guardian.co.uk/afghanistan/story/0,1284,1440836,00.html> (accessed Feb. 3, 2006).

⁴⁰⁷ Craig Pyes and Mark Mazzetti, *U.S. Probing Alleged Abuse of Afghans*, L.A. TIMES, Sept. 21, 2004, at A1.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.*; Craig Pyes, *A Torture Killing by U.S. forces in Afghanistan*, Crimes of War Project, Sept. 20, 2004, available at <http://www.crimesofwar.org/special/afghan/news-tortureafghan.html> (accessed Feb. 3, 2006); see also Amended Complaint, *Ali, et al., v. Rumsfeld, et al.* No. 05-CV-1377 (D.D.C., filed Jan. 5, 2006), ¶¶172-188.

⁴¹² Craig Pyes, *A Torture Killing by U.S. forces in Afghanistan*, Crimes of War Project, 9/20/04, available at <http://www.crimesofwar.org/special/afghan/news-tortureafghan.html> (accessed Feb. 3, 2006).

⁴¹³ *Id.*; see also Amended Complaint, *Ali, et al., v. Rumsfeld, et al.* No. 05-CV-1377 (D.D.C., filed Jan. 5, 2006), ¶174.

⁴¹⁴ Craig Pyes, *A Torture Killing by U.S. forces in Afghanistan*, Crimes of War Project, 9/20/04, available at <http://www.crimesofwar.org/special/afghan/news-tortureafghan.html> (accessed Feb. 3, 2006).

⁴¹⁵ *Id.*

⁴¹⁶ Craig Pyes and Mark Mazzetti, *U.S. Probing Alleged Abuse of Afghans*, L.A. TIMES, Sept. 21, 2004, at A1.

⁴¹⁷ Craig Pyes for the Crimes of War Project, *A Torture Killing by U.S. Forces in Afghanistan*, Sept. 20, 2004, available at <http://www.crimesofwar.org/special/afghan/news-tortureafghan.html> (accessed Feb. 3, 2006).

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ Press Briefing with National Security Advisor Stephen Hadley, Office of the Press Secretary (Nov. 2, 2005), available at <http://www.whitehouse.gov/news/releases/2005/11/20051102-10.html> (accessed Feb. 3, 2006).

⁴²⁶ See, e.g., Criminal Investigation, Radad, *supra* note 260, at 29 (investigation was "not completely thorough (i.e. [failure to collect] the weapon [allegedly used in the killing] for fingerprint analysis)"); Dep't of the Army, CID, *CID Report of Investigation – 3D Final Supplemen-*

tal - 0013-04-CID789-83982 (Aug. 24, 2004), available at http://www.aclu.org/torturefoia/released/DOA_1480_1541.pdf, at 55 (accessed Feb. 7, 2006) (review “disclosed the investigation was weak in the areas of thoroughness and documentation” because, *inter alia*, “the photographs ... were not taken consistent with the requirements or protocols of a homicide investigation,” the decision not to request an autopsy “should [have been] explained somewhere in the report,” and “agents should have conducted a thorough investigation of detainee’s remains.”); Criminal Investigation, Ibrahim, *supra* note 359, at 29 (“investigation did not conduct a crime scene examination ... did not conduct interviews of those witnesses who found the victim ... no effort [was] made to interview the alleged brother and son of the victim.”); Dep’t of the Army, CID, *CID Report of Investigation – Final – 0140-03-CID389-61697-5H9B* (Jan. 1, 2004) [Criminal Investigation, Kareem], available at http://www.aclu.org/torturefoia/released/DOA_1206_1234.pdf, (accessed Feb. 3, 2006) (investigation “was weak in Thoroughness and Timeliness ... no documentation ... explaining the lack of an autopsy ... [n]o interrogators were interviewed ... [the file] does not mention the presence, or lack of, signs of a struggle, or of blood or body fluids.”).

⁴²⁷ The term “commander” is a functional one, used by the U.S. Armed Forces to refer to a variety of top officers: brigades, battalions, regiments, and companies all have commanding officers, and each exercises broad discretion over the soldiers in their command. See Army Regulation 600-20, Army Command Policy, §1-5, (Feb. 1, 2006), available at http://www.army.mil/usapa/epubs/pdf/r600_20.pdf at 7-8 (accessed Feb. 8, 2006) (“[t]he key elements of command are authority and responsibility.... The commander is responsible for establishing leadership climate of the unit and developing disciplined and cohesive units.... The commanding officer... assigns appropriate duties [to soldiers].”). Army regulations regularly use the blanket term to set out broad policy directives. See, e.g. Army Regulation 360-1, The Army Public Affairs Program, §1-5, Oct. 15, 2000 (assigning responsibilities to “[a]ll commanders,” “Major Army Commander commanders,” “installation commanders,” and “local commanders.”). In the context of the death investigations discussed here, “commander” refers to officer-rank personnel with authority over subordinate enlisted soldiers and, as applicable, over other officers.

⁴²⁸ See DIC Table: The findings in this chapter are based on a review of the administrative and criminal investigation records of 41 deaths; the records of any investigations into the remaining 57 deaths in custody have not been made publicly available. Of these 41 deaths for which military investigation records have been publicly released, 32 are records of Army criminal investigations, covering 37 deaths. These records cover the deaths of: Kenami, Spah, al-Obodi, Abbas, Kadir, Sayari, Zaid, Byaty, Taleb, A. Najem, Mihdy, al-Haddii, al-Juwadi, H. Ahmed, Basim, F. Mahmood, Amir, [Salman, Shalaan, Sayar, Thawin], al-Bawi, Fadi, Altia, Ibrahim, Abdullah, [K. Mahmood, Farhan], Jabar, al-Hussen, al-Razak, Hasson, A. Hassan, F. Najem, [Habib, Ghafar], Radad (square brackets denote multiple deaths covered in a single investigation). The Army has also publicly released nine administrative investigations (described below). For six of the administrative investigations (which cover nine deaths, Radad, Kenami, H. Ahmed, [Salman, Shalaan, Sayar, Thawin], Jabar, A. Hassan) criminal investigation records were also released. For another three administrative investigations, each covering a single death (Unknown 3, Unknown 4 and Unknown 5), no corresponding criminal investigation records have been released. Only one Navy criminal investigation, into the death of Hemdan Haby Heshfan el-Gashame, has been publicly released. No details of investigations into CIA involvement in any of the deaths have been released.

⁴²⁹ Depending on the service, investigations may be conducted by the Army Criminal Investigation Division (CID), the Naval Criminal Investigative Service (NCIS), or the Air Force Office of Special Investigations. See, respectively, Army Regulation 195-1, Army Criminal Investigation Program (Aug. 12, 1974), available at http://www.army.mil/usapa/epubs/pdf/r195_1.pdf (accessed Feb. 8, 2006); SECNAV Instruction 5520.3B, Criminal and Security Investigations and Related Activities Within the Dep’t of the Navy (Jan. 4, 1993), available at <http://neds.daps.dla.mil/Directives/5520b3.pdf> (accessed Feb. 8, 2006); Army Regulation 195-7/AFR 124-19, Criminal Investigative Support to the Army and Air Force Exchange Service (AAFES) (Apr. 25, 1986), available at http://www.army.mil/usapa/epubs/pdf/r195_7.pdf (accessed Feb. 8, 2006).

⁴³⁰ The Army’s Criminal Investigation Division is required to investigate any death in which a member of the Armed Forces is involved, including both U.S. soldiers and their prisoners or detainees, as prescribed in Army Regulation 195-2, Criminal Investigation Activities, Appendix B (Oct. 30, 1985), available at http://www.army.mil/usapa/epubs/pdf/r195_2.pdf (accessed Feb. 8, 2006).

⁴³¹ Two series of military regulations detail the investigative procedures that Army CID must follow: Army Regulation Series 195, which is publicly available (see Official Dep’t of the Army Administrative Publications, 195 Series Collection, available at http://www.army.mil/usapa/epubs/195_Series_Collection_1.html (accessed Feb. 8, 2006)); and CID Regulation Series 195, which is not publicly available. Human Rights First attempted to obtain copies of the CID Regulation series both from CID Headquarters and from the Department of Defense. According to the Department of Defense Public Affairs Office, the CID Regulation Series 195 is “a non-releasable document and is protected under a law enforcement exemption.” Email from Maj. Wayne Marotto, Public Affairs Staff Officer, Dep’t of the Army, to Human Rights First, Feb. 10, 2006 (on file with Human Rights First).

⁴³² A single duty day is the equivalent of a single business day in the Army. See, e.g., Dep’t of the Army, 121st Signal Battalion, Policy Memorandum 15 (June 24, 2003), available at http://www.1id.army.mil/1ID/Units/121sig/Policy_Letters/121%20Bn%20Policy%2015-%20Battalion%20Rhythm.pdf (accessed Feb. 8, 2006).

⁴³³ See, e.g., Dep’t of the Army, CID, *CID Report of Investigation – Initial/SSI - 0040-04-CID469-79638-5H1A*, (Apr. 30, 2004) [Criminal Investigation, Kadir], available at http://www.aclu.org/torturefoia/released/5399_5486.pdf at 49 (accessed Feb. 8, 2006) [hereinafter Criminal Investigation, Kadir].

⁴³⁴ Army Regulation 15-6, Procedure for Investigating Officers and Board of Officers (Sept. 30, 1996), available at http://www.usma.edu/EO/regspubs/r15_6.pdf (accessed Feb. 8, 2006) [hereinafter AR 15-6].

⁴³⁵ AR 15-6, *supra* note 434, at § 1-4(d).

⁴³⁶ Army Regulation 195-2, Criminal Investigation Activities, Appendix B (Oct. 30, 1985), available at http://www.army.mil/usapa/epubs/pdf/r195_2.pdf (accessed Feb. 8, 2006). (CID is required to investigate the death of anyone in which the Armed Forces were involved, including both soldiers and detainees, as prescribed in Appendix B.).

⁴³⁷ Each Army command unit is assigned a Staff Judge Advocate office, which is required to provide legal services to the command. Dep’t of the Army, Field Manual 27-100, Legal Support to Operations, 2.1.7 (Mar. 1, 2000), available at <http://www.globalsecurity.org/military/library/policy/army/fm/27-100/index.html> (accessed Feb. 3, 2006).

⁴³⁸ See, e.g., Staff Judge Advocate of the Commandant of the Marine Corps, Military Justice Fact Sheets, Reporting Crime and First Stages of Investigation in the Military, <http://sja.hqmc.usmc.mil/JAM/MJFACTSHTS.htm> (accessed Feb. 3, 2006) (“[t]o help commanders

decide how to resolve charges, commanders must make a "preliminary inquiry" into any allegations against a member of the command under military procedural Rules for Courts-Martial (R.C.M.) found in the Manual for Courts-Martial....The commander can conduct this inquiry himself, appoint someone else in his command to do it, or, as happens in very serious cases, request assistance from civilian or military criminal investigative agencies....When the commander finishes the preliminary inquiry, he must make a decision on how to resolve the case. Unlike civilian communities, where a district attorney decides whether or not to "press" charges, in the military, commanders make that decision.")

⁴³⁹ See, e.g., *id.* ("The commander could decide that no action at all is warranted. Or he could take administrative action, such as an admonition or reprimand, or making an adverse comment in performance evaluations, or seeking discharge of the member from the service. The commander also possesses nonjudicial punishment authority under the procedures of Article 15, UCMJ. The commander may also determine that criminal charges are appropriate. The "preferential" of charges, similar to "swearing out a complaint" in civilian jurisdictions, initiates the court martial process").

⁴⁴⁰ See, e.g., *id.* There are three different levels of court martial – summary, special and general – with general court martial, the military's highest level trial court, used for the most serious offenses, including charges of murder or manslaughter. See Uniform Code of Military Justice, Subchapter IV: Court Martial Jurisdiction, § 816, Art. 816, available at <http://www.au.af.mil/au/awc/awcgate/ucmj.htm#SUBCHAPTER%20IV.%20COURT-MARTIAL%20JURISDICTION> (accessed Feb. 3, 2006); Military.com, Benefits and Legal Matters, Legal Matters: Courts-Martial, <http://www.military.com/Resources/ResourcesContent/0,13964,30902--1,00.html> (accessed Feb. 3, 2006). Manual for Courts-martial, United States (2005 Edition), available at <http://www.au.af.mil/au/awc/awcgate/law/mcm.pdf> (accessed Feb. 3, 2006).

⁴⁴¹ See Uniform Code of Military Justice, Subchapter VIII: Sentences, § 858a, Art. 58, available at <http://www.au.af.mil/au/awc/awcgate/ucmj.htm#SUBCHAPTER%20VIII.%20COURT-MARTIAL%20JURISDICTION> (accessed Feb. 3, 2006); Uniform Code of Military Justice, Subchapter VIII: Sentences, § 852, Art. 52(2), available at <http://www.au.af.mil/au/awc/awcgate/ucmj.htm#SUBCHAPTER%20VIII.%20COURT-MARTIAL%20JURISDICTION> (accessed Feb. 3, 2006) ("[n]o person may be sentenced by life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members at the time the vote is taken"). Manual for Courts-martial, United States (2005 Edition), Rule 1003, available at <http://www.au.af.mil/au/awc/awcgate/law/mcm.pdf> (accessed Feb. 3, 2006), at 173 – 177.

⁴⁴² Human Rights First Telephone Interview with Brigadier General Stephen N. Xenakis, USA (Ret.), Former Commanding General of the Southeast Regional Army Medical Command (Nov. 10, 2005) (notes on file with Human Rights First).

⁴⁴³ Dep't of the Army, Field Manual 27-1, Legal Guide for Commanders, Chapter 8 (Jan. 13, 1992), available at <http://www.globalsecurity.org/military/library/policy/army/fm/27-1/Ch8.htm> (accessed Feb. 3, 2006). The same is true for physical evidence. As the Army Field Manual for Law Enforcement Investigations states, "physical evidence is one of [an investigator's] most valuable investigative assets." Dep't of the Army, Field Manual 19-20, Law Enforcement Investigations (Nov. 25, 1985), available at <https://134.11.61.26/CD7/Publications/DA/FM/FM%2019-20%2019851125.pdf>, at 9 (accessed Feb. 3, 2006); see also Dep't of the Army, Field Manual 19-20, Law Enforcement Investigations, (Nov. 25, 1985), at 10 ("[t]o achieve the maximum benefit from physical evidence, you must be not only skilled in its collection, but careful in your handling of it to preserve it for laboratory examination and/or for presentation in court. You must retain the item's evidential integrity by *keeping the item as nearly as possible in its original condition.*") (emphasis in original).

⁴⁴⁴ Recognizing these dangers, Army Regulation 195-5 sets out 28 pages of detailed procedures on the proper handling and storage of physical evidence. Army Regulation 195-5, Evidence Procedures (Aug. 28, 1992).

⁴⁴⁵ Memorandum from the Secretary of Defense for Secretaries of the Military Departments, Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States (June 9, 2004), available at <http://www.aclu.org/torturefoia/released/navy3797.3798.pdf> (accessed Feb. 3, 2006).

⁴⁴⁶ Dep't of Army, CID, *CID Report of Investigation – Corrected Final – (C) 0264-03-CID259-61231/5H6* (Aug. 7, 2004) [Criminal Investigation, Salman, Shalaan, Sayar, and Thawin], available at http://www.aclu.org/torturefoia/released/DOA_1902_1950.pdf at 29 (accessed Feb. 8, 2006) [hereinafter Criminal Investigation, Salman, Shalaan, Sayar, and Thawin] (reporting that "due to the daily operations at the Abu Ghraib Prison, every soldier in the incident could not be located and/or were on duty"), but see *id.*, at 2-3 (listing as attachments around ten sworn statements as well as canvass interviews); see also Dep't of the Army, CID, *CID Report of Investigation – Final Supplemental - 0004-04-CID789-83980-5H6-5Y3*, (July 22, 2004) [Criminal Investigation, Amir], available at http://www.aclu.org/torturefoia/released/DOA_2156_2205.pdf, at 16–18 (accessed Feb. 8, 2006) (noting difficulty interviewing detainee witness to a riot shooting death, but agents spoke to medical personnel, the shooters, and numerous other witnesses).

⁴⁴⁷ See DIC Table: Habibullah (victim's blood stored in the butter dish of investigating agents' refrigerator, records and logs lost during the course of investigation), Dilawar (records lost during the course of the investigation); Hatab (medical evidence lost and destroyed due to lax handling); Jabar (no evidence collected from scene, including weapon and shells); al-Obodi (no fingerprints of deceased taken); A. Najem (no crime scene examination, no photographs); Radad (investigators did not collect weapon used in the killing); Kenami (crime scene examination incomplete); Ibrahim (no crime scene investigation conducted); Amir (crime scene investigation not conducted); Farhan and K. Mahmood (no crime scene examination conducted, photographs of victim and scene inadequate, no death certificates collected); al-Bawi (criminal investigator failed to collect any evidence supporting the conclusions of a prior investigation); F. Mahmood (no crime scene exam conducted); Ghafar and Habib (no crime scene investigation conducted).

⁴⁴⁸ Seth Hettena, *Army Pathologist Concedes Errors in Prisoner-Abuse Case*, Assoc. Press, Oct. 14, 2004, available at http://www.usatoday.com/news/nation/2004-10-14-errors-abuse_x.htm (accessed Feb. 3, 2006) (rib cage found at Armed Forces Institute of Pathology, Washington D.C.; part of larynx found at Landstuhl military base in Germany).

⁴⁴⁹ Alex Roth, *Marines Involved in Iraqi Abuse Frustrated after their Convictions* THE SAN DIEGO UNION-TRIB., Dec. 13, 2004, at A1.

⁴⁵⁰ Criminal Investigation, Kenami, *supra* note 323, at 2.

⁴⁵¹ Criminal Investigation, Kenami, *supra* note 323, at 13.

⁴⁵² See DIC Table: Habibullah (investigators failed to interview commanders and guards in original investigation); Dilawar (investigators failed to interview commanders and guards in original investigation, as well as an interrogator who later came forward to describe abuse); Jabar (7 interview-related leads remained open when case was closed); Hussain (witnesses, including other detainees, were not interviewed); Byaty (medics who tended to detainee not interviewed); Najem (no interviews with any witnesses to the death, nor with an Iraqi who had provided medical care to the detainee); Unknown 4 (no interviews of other detainees); Zaid (medical personnel not interviewed); Kenami (no interviews conducted with interrogators, doctor who filled out death certificate, one medic, guards, or other detainees); Ibrahim (no interviews with witnesses present at death, including son of detainee who later alleged detainee was abused); Abdullah (no interviews of other detainee witnesses); F. Mahmood (some medical personnel not interviewed); al-Bawi (no interviews of any person conducted); Fadil (no interview of possible medical witness).

⁴⁵³ Criminal Investigation, Ibrahim, *supra* note 359, at 7, 23-25, 29.

⁴⁵⁴ Criminal Investigation, Najem, *supra* note 391, at 34.

⁴⁵⁵ See, e.g., Dep't of the Army, Field Manual 19-20, Law Enforcement Investigations (Nov. 1985), available at <https://134.11.61.26/CD7/Publications/DA/FM/FM%2019-20%2019851125.pdf>, at 174 (evidentiary value of some medical evidence may be reduced by delayed examination), 176 (physical evidence may be destroyed if not secured promptly), 243 (delaying interviews allows suspects to coordinate their testimony and destroy evidence) (accessed Feb. 3, 2006).

⁴⁵⁶ See Dep't of Army, Field Manual 27-1, Legal Guide for Commanders, Chapter 8 (Jan. 13, 1992), available at <http://www.globalsecurity.org/military/library/policy/army/fm/27-1/> (accessed Feb. 3, 2006).

⁴⁵⁷ Army Regulation 190-40, Serious Incident Report (Jun. 15, 2005), available at http://www.usapa.army.mil/pdffiles/r190_40.pdf (accessed Feb. 8, 2006). Appendix C-1(g) lists "all prisoner deaths" as Category-2 Reportable Serious Incidents, Section 3-2(b) mandates the same 24-hour reporting period, and Section 3-5(a) also includes the Army's Criminal Investigation Command (CID) as an addressee of the report. The revised version of this regulation, issued June 15, 2005, contains identical requirements (section 2-3(g) lists "all prisoner deaths" as Category-2 Reportable Serious Incidents; 3-2(b) requires that Category-2 incidents be reported within 24 hours; 3-5(a) requires that all Serious Incident Reports be sent to CID); see also Memorandum from the Secretary of Defense for Secretaries of the Military Departments, Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States (June 9, 2004), available at <http://www.aclu.org/torturefoia/released/navy3797.3798.pdf> (accessed Feb. 3, 2006) (the June 7, 2004 memorandum modifies an Army CID Regulation that is not publicly available; it is not, therefore, clear what was the prior requirement of this specific regulation); Dep't of the Army, CID, *CID Report of Investigation – Initial/Final SSI – 0037-04-CID201-54050* (Nov. 16, 2004), available at http://www.aclu.org/torturefoia/released/042105/9290_9388.pdf, at 68-69 (accessed Feb. 3, 2006); United States Marine Corps, Military Police in Support of the MAGTF [Marine Air-Ground Task Force], MCWP 3-34. §1,5-4 ("[u]pon receiving information concerning alleged war crimes committed by Marines, commanders must immediately notify the nearest CID field office.").

⁴⁵⁸ Army Regulation 95-1, Army Criminal Investigation Program, §3(b) (Aug. 12, 1974) (commanders "will insure that known or suspected criminal activity is reported to the military police and, when appropriate, to CID for investigation.").

⁴⁵⁹ Army Regulation 195-2, Criminal Investigation Activities, §1-4(d) (Oct. 30, 1985).

⁴⁶⁰ Army Regulation 190-45, Law Enforcement Reporting, §3-1(a) (Jun. 6, 2005).

⁴⁶¹ Army Regulation 360-1, The Army Public Affairs Program, §5-45, (Oct. 15, 2000).

⁴⁶² Army Regulation 600-20, Army Command Policy, §5-8(1)(a) (July 15, 1999) (after a report of investigation has been forwarded to a commander, "the case will be disposed of at the lowest level having authority consistent with the gravity of the case.").

⁴⁶³ See Dep't of Army Field Manual 27-1, Legal Guide for Commanders, Chapter 3 (Jan. 13, 1992), available at <http://www.globalsecurity.org/military/library/policy/army/fm/27-1/> (accessed Feb. 3, 2006) ("Investigators must always remain impartial. A one-sided investigation may result in an injustice to the accused and an embarrassment to the command"); United States Marine Corps, Military Police in Support of the MAGTF [Marine Air-Ground Task Force], MCWP 3-34.1, §5-4 (Oct. 13, 2000) ("Commanders are prohibited from interfering with the investigations or impeding the use of investigative techniques.")

⁴⁶⁴ United States Marine Corps, Military Police in Support of the MAGTF [Marine Air-Ground Task Force], MCWP 3-34.1, §5-4 (Oct. 13, 2000).

⁴⁶⁵ See Criminal Investigation, Radad, *supra* note 260, at 28.

⁴⁶⁶ See *supra* note 428 for details of the number of military criminal and administrative investigation records released.

⁴⁶⁷ See, e.g., Radad (review found that failure to collect evidence jeopardized any possible prosecution), Criminal Investigation, Radad, *supra* note 260, at 28-29); Taleb (review found that autopsy report had not been received, Dep't of the Army, CID, *Report of Investigation – Final Supplemental – 0147-03-CID259-61195-5H9A* (June 3, 2004) [Criminal Investigation, Taleb], available at <http://www.aclu.org/torturefoia/released/23TFa.pdf>, at 5 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Taleb]); Abed Najem (review found that "the investigation was operationally insufficient and was administratively insufficient" due to lack of interviews and records, Criminal Investigation, Najem, *supra* note 391, at 34).

⁴⁶⁸ See criminal investigation reports for: Ibrahim (Criminal Investigation, Ibrahim, *supra* note 359); Abdullah (Dep't of the Army, CID, *CID Report of Investigation- Corrected Final (C)/SSI- 0036-04-CID259-80151* (Aug. 20, 2004) [Criminal Investigation, Abdullah] available at http://www.aclu.org/torturefoia/released/DOA_1872_1901.pdf, at 1-2, 6-7 (accessed Feb. 8, 2006) [hereinafter Criminal Investigation, Abdullah]); Byaty (Criminal Investigation Byaty *supra* note 476); Mihdy (Dep't of the Army, CID, *CID Report of Investigation Final Supplemental – 0239-03-CID259-61189-5H9A*, (Jun. 4, 2004) [Criminal Investigation, Mihdy] available at http://www.aclu.org/torturefoia/released/DOA_1542_1582.pdf (accessed Feb. 8, 2006) [hereinafter Criminal Investigation, Mihdy]); Najem (Criminal Investigation, Najem, *supra* note 391); Taleb (Criminal Investigation, Taleb, *supra* note 467); Zaid (Dep't of the Army CID, *CID Report of Investigation – Initial/Final C/SSI – 0168-04-CID899-81718-5H8*, (May 31, 2004) [Criminal Investigation, Zaid] available at http://www.aclu.org/torturefoia/released/DOA_2206_2216.pdf (accessed Feb. 8, 2006)); al-Hussen (Dep't of the Army CID, *CID Report of Investigation – Final Supplemental 0012-04-CID259-80136-5H9A*, (Sept. 3, 2004) [Criminal Investigation, al-Hussen] available at http://www.aclu.org/torturefoia/released/DOA_1837_1871.pdf (accessed Feb. 8, 2006) [hereinafter Criminal Investigation, al-Hussen]).

- ⁴⁶⁹ The earliest death in this group was that of Byaty, which occurred on August 7, 2003. Criminal Investigation, Byaty *infra* note 476, at 1.
- ⁴⁷⁰ Dep't of the Army, CID to Commander, Request for Investigation 0370-04-CID001, (Sept. 7, 2004) ("A review of unclassified military intelligence files revealed a spreadsheet titled 'PMO Detainee Not in Camp Roster' which documented eight detainee deaths, four of which were previously documented under a CID Report of Investigation."). Army CID was not the only agency to initiate such a review in May 2004. When the Abu Ghraib abuses became public, the FBI sent a request to all of its agents who had served in Guantanamo Bay for information related to prisoner abuses. See E-mail from Steven C. McGraw to multiple redacted recipients, Subject GTMO (July 7, 2004, 02:10 PM EST) available at http://www.aclu.org/torturefoia/released/FBI_3944_3947.pdf (accessed Feb. 3, 2006). Several previously unreported incidents – later substantiated by an official Pentagon investigation – came to light as a result. Dep't of the Army, *Army Regulation 15-6: Final Report: Investigation Into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba, Detention Facility*, (Jun. 9, 2005) available at <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf>, at 2 (accessed Feb. 3, 2006).
- ⁴⁷¹ Criminal Investigation, Hasson, *supra* note 352, at 2.
- ⁴⁷² Dep't of the Army, CID, *CID Report of Investigation – Final/SSI – 0236-04-CID259-80272-5H9B*, (Aug. 3, 2004) [Criminal Investigation, Mashnadane] available at http://www.aclu.org/torturefoia/released/5000_5014.pdf (accessed Feb. 8, 2006). CID agents later found that Mashnadane's death had previously been investigated. This was a death caused by mortar attack, so although it is included in our total count of deaths in U.S. custody, it is not included in the sample analyzed in the DIC Table. See *supra* note 1.
- ⁴⁷³ See DIC Table: Sayari (death not reported to criminal investigators by Special Forces commanders; criminal investigation began only after sergeant reported possible war crime to investigators); Unknown 2 (case does not appear to have been reported; came to light during the course of another criminal investigation 20 months after the death); Jabar (allegedly shot and killed during escape attempt; death not reported by commanders and investigation did not begin until a year later); Hassan (shooting of detainee during prison riot not reported; investigation not begun until 13 months after death); Byaty (investigation does not appear to have begun until nine months after death; reason unknown); Naseer (allegedly tortured to death by Special Forces; initial criminal investigation opened nine months after death, closed for lack of leads, reopened a year and a half after death); Hasson (death not reported; criminal investigation opened one year after death of detainee for whom no records but name, identification number and location of death were known); Radad (death not reported to criminal investigators until after administrative investigation); Unknown 6 (criminal investigation appears only to have opened 10 months after death, following ICRC report of death); al-Izmerly (criminal investigators not informed of death of high-value detainee until after body had been released, precluding a U.S. autopsy); Hassoun (commanders attempted to conceal detainee's death by drowning); Unknown 15 (death of man military claims was shot when he reached for a pistol does not appear to have been criminally investigated; family claims the man was elderly and disabled); al-Bawi (death does not appear to have been reported to criminal investigators; only administrative investigation originally conducted); Salman, Sayar, Shalaan, Thawin (deaths during prison riot not reported to criminal investigators for at least a week by which time body of one decedent had been taken away and could not be examined).
- ⁴⁷⁴ Among documents produced by the military in response to FOIA litigation is a spreadsheet dated November 5, 2004, listing cases of alleged abuse and deaths under investigation. The spreadsheet contains a "Rpt. by" column, in which the entries for 17 of the deaths include "Taguba report," "AFIP [Armed Forces Institute of Pathology]," and "ICRC [International Committee of the Red Cross] Report" – i.e. entities other than the unit commanders who are obligated to report deaths to criminal investigators. Spreadsheet of Military Investigations (dated Nov. 5, 2004), available at http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 11-21 (accessed Feb. 7, 2006).
- ⁴⁷⁵ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 5.
- ⁴⁷⁶ Dep't of the Army, CID, *CID Report of Investigation – Initial/Final C/SSI – 0167-04-CID899-81717* (May 31, 2004) [Criminal Investigation, Byaty], available at http://www.aclu.org/torturefoia/released/535_544.pdf, at 5 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, Byaty].
- ⁴⁷⁷ Criminal Investigation Byaty *supra* note 476, at 29, 48.
- ⁴⁷⁸ Office of the Armed Forces Med. Exam'r, *Autopsy Examination Report, ME03-385*, (Sept. 29, 2003) [Autopsy, Byaty], available at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf, at 77 (accessed Feb. 3, 2006).
- ⁴⁷⁹ Salaheddin, *Family Welcomes Probe*, *supra* note 378.
- ⁴⁸⁰ Criminal Investigation, Salman, Shalaan, Sayar, and Thawin, *supra* note 446, at 10.
- ⁴⁸¹ Criminal Investigation, Hasson, *supra* note 352, at 1-2.
- ⁴⁸² Army Regulation 195-2, Criminal Investigation Activities, § 1-5a (Oct. 30, 1985), available at http://www.army.mil/usapa/epubs/pdf/r195_2.pdf (accessed Feb. 8, 2006); Dep't of the Army, Field Manual 19-10, Military Police Law and Order Operations, Ch 14: MPI and USACIDC (Sept. 30, 1987), available at <http://www.globalsecurity.org/military/library/policy/army/fm/19-10/index.html> (accessed Feb. 8, 2006).
- ⁴⁸³ Dep't of the Army, CID, General Questions About CID, How many people are in CID?, <http://www.cid.army.mil/faqs.htm#faq2> (accessed Feb. 8, 2006).
- ⁴⁸⁴ Dep't of the Army, CID, General Questions About CID, What is CID's mission?, <http://www.cid.army.mil/faqs.htm#faq1> (accessed Feb. 8, 2006).
- ⁴⁸⁵ See, e.g., Criminal Investigation, Radad, *supra* note 260, at 23. Throughout the investigative process, the investigating agents draw up drafts of what will be, at the completion of the investigation, a final Report of Investigation. A Report of Investigation is defined as "an official written record of all pertinent information and facts obtained in a criminal investigation." Army Regulation 195-2, Criminal Investigation Activities (Oct. 30, 1985), available at http://www.army.mil/usapa/epubs/pdf/r195_2.pdf (accessed Feb. 8, 2006).
- ⁴⁸⁶ See, e.g., Criminal Investigation, Radad, *supra* note 260, at 2.
- ⁴⁸⁷ See, e.g., Dep't of the Army, CID, *CID Report of Investigation-Final Supplemental/SSI- 0071-04-CID065-62019* (Sept. 2, 2004) [Criminal Investigation, Jabar], available at http://www.aclu.org/torturefoia/released/DOA_1121_1144.pdf, at 12 (accessed Jan. 30, 2006) [hereinafter Criminal Investigation, Jabar].
- ⁴⁸⁸ See, e.g., Criminal Investigation, Radad, *supra* note 260, at 12.

- ⁴⁸⁹ Criminal Investigation, Sayari, *supra* note 273, at 12–17.
- ⁴⁹⁰ See, e.g., Criminal Investigation, Radad, *supra* note 260, at 22.
- ⁴⁹¹ See, e.g., Criminal Investigation, Salman, Shalaan, Sayar, and Thawin, *supra* note 446, at 8 – 9.
- ⁴⁹² See, e.g., Dep't of the Army, CID, *CID Report of Investigation-Final Supplemental- 0016-04-CID789-83983*, (July 22, 2004) [Criminal Investigation, F. Mahmood], *available at* http://www.aclu.org/torturefoia/released/DOA_1181_1205.pdf, at 2 (accessed Feb. 3, 2006) [hereinafter Criminal Investigation, F. Mahmood].
- ⁴⁹³ See, e.g., Criminal Investigation, F. Mahmood, *supra* note 492, at 24.
- ⁴⁹⁴ Criminal Investigators Outline 27 Homicides, *supra* note 64, at 1 (“it is important to note that CID does not charge persons with a crime, that is the responsibility of the appropriate commanders and their legal staffs”) (emphasis in original).
- ⁴⁹⁵ Maj. Gen. Antonio Taguba, AR 15-6, INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE, Feb. 2004, *available at* http://www.humanrightsfirst.org/us_law/800th_MP_Brigade_MASTER14_Mar_04-dc.pdf (accessed Feb. 3, 2006) [hereinafter TAGUBA REPORT].
- ⁴⁹⁶ See *supra* note 428 for details of the number of military criminal and administrative investigation records released. Based on references in the 32 publicly-released criminal investigation reports, press accounts, and reports of administrative investigations that have been publicly released, Human Rights First has identified 12 cases of overlap, covering 15 detainee deaths. See DIC Table: The deaths are those of Kenami, H. Ahmed, Sayar, Salman, Shalaan, Thawin, Jabar, A. Hassan, Radad, Kadir, Sayari, al-Bawi, Mowhoush, Dilawar, and Habibullah. Based on a review of the publicly released investigation reports, administrative and criminal investigations were concurrent in three cases: Mowhoush, Kenami and Hassan Ahmed.
- ⁴⁹⁷ Criminal Investigation, al-Bawi, *supra* note 71, at 5.
- ⁴⁹⁸ Criminal Investigation, Radad, *supra* note 260, at 29.
- ⁴⁹⁹ Dep't of the Army, CID, *CID Report of Investigation – Initial/Final SSI-0037-04-CID201-54050*, (Nov. 16, 2004), *available at* http://www.aclu.org/torturefoia/released/042105/9290_9388.pdf, at 70 (accessed Feb. 3, 2006) (stipulating that if “an AR 15-6 investigation or equivalent” was conducted “prior to notifying CID of an allegation ... the supporting CID element will obtain a copy of and review the inquiry to determine if it thoroughly and fairly investigated the incident(s) ... if further investigative efforts are deemed appropriate, the supporting CID element will initiate an ROI to continue the investigation.”).
- ⁵⁰⁰ Criminal Investigation, al-Bawi, *supra* note 71, at 5.
- ⁵⁰¹ Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1; Liz Sly, *Family Prods Military on Iraqi's Death*, CHI. TRIB., July 5, 2004, at 4.
- ⁵⁰² Jackie Spinner, *Family Seeks Justice in Case of Iraqi Slain by U.S. Troops*, WASH. POST, June 15, 2004, at A13; Thanassis Cambanis, *Shooting Death Angers Iraqi Family*, BOSTON GLOBE, June 21, 2004, at A1..
- ⁵⁰³ Criminal Investigation, al-Bawi, *supra* note 71, at 21 – 28.
- ⁵⁰⁴ Criminal Investigation, al-Bawi, *supra* note 71, at 8.
- ⁵⁰⁵ Criminal Investigation, al-Bawi, *supra* note 71, at 1.
- ⁵⁰⁶ Criminal Investigation, Jabar, *supra* note 487, at 5. The administrative investigation report was released independent of the criminal investigation report, as one of the annexes to the report of Major General Taguba. TAGUBA REPORT, *supra* note 495.
- ⁵⁰⁷ Criminal Investigation, Jabar, *supra* note 487, at 12.
- ⁵⁰⁸ Criminal Investigation, Jabar, *supra* note 487, at 2, 14.
- ⁵⁰⁹ AR 15-6, *supra* note 434, at 1-4a.
- ⁵¹⁰ AR 15-6, *supra* note 434, at 1-1.
- ⁵¹¹ AR 15-6, *supra* note 434, at 2-1a(3).
- ⁵¹² AR 15-6, *supra* note 434, at 1-4b, 2-1b.
- ⁵¹³ AR 15-6, *supra* note 434, at 2-1c..
- ⁵¹⁴ AR 15-6, *supra* note 434, at 5.
- ⁵¹⁵ AR 15-6, *supra* note 434, at 2-3.
- ⁵¹⁶ AR 15-6, *supra* note 434, at 2-3b.
- ⁵¹⁷ AR 15-6, *supra* note 434, at 2-3a..
- ⁵¹⁸ AR 15-6, *supra* note 434, at 2-1a.
- ⁵¹⁹ See, e.g., Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949, 75 U.N.T.S. 135, arts. 70 (requiring prisoners of war be allowed to send a card to their families with details of their capture and health), 122 (requiring states to set up an information bureau to gather and transmit information on the identity, health, and death of all prisoners of war), *available at* <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68> (accessed Feb. 3, 2006); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, August 12, 1949, 75 U.N.T.S. 287, arts. 106 (requiring civilian internees be allowed to send a card to their families with details of their capture and health), 136, 138 (requiring states to set up an information bureau to gather and transmit information on the identity, health, and death of civilian internees), *available at* <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5> (accessed Feb. 3, 2006).
- ⁵²⁰ See, e.g., Dep't of Defense, Directive No. 2310.1, Dep't of Defense Program for Enemy Prisoners of War and Other Detainees, D.2 (Aug. 18, 1994), *available at* http://www.fas.org/irp/doddir/dod/d2310_01.htm (accessed Feb. 3, 2006) (“[t]he Secretary of the Army [shall] ... [d]evelop and provide policy and planning guidance for the treatment, care, accountability, legal status, and administrative procedures

to be followed about [detainees, and] ensure that a national-level information center exists that can fully serve to account for all persons who pass through the care, custody, and control of the U.S. Military Services"); see also Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees, 1-7 (Oct. 1, 1997), available at http://www.usapa.army.mil/pdffiles/r190_8.pdf (accessed Feb. 3, 2006) (requiring that information on detainees be collected and stored, including "[c]apturing unit," "[c]ircumstances of capture," and "personal data [on]... state of health, and changes to this data"); Army Regulation 40-66, Medical Record Administration and Health Care Documentation, 1-4(h) (July 20, 2004), available at http://www.army.mil/usapa/epubs/pdf/r40_66.pdf (accessed Feb. 3, 2006) ("[h]ealth-care providers will promptly and correctly record all patient observations, treatment, and care").

⁵²¹ See DIC Table: Unknown 1 ("ghost" detainee was not on any agency's registry of prisoners; death was kept secret for two years prior to investigation); al-Jamadi ("ghost" detainee kept off prison records; body not released to ICRC until three months after his death); Naseer (lack of documentation of death, witnesses or even unit assigned to facility where death occurred stymied criminal investigation), al-Haddii (two-month delay in criminal investigation into death because file was misplaced), Jabar (investigation into death failed to follow up on 17 outstanding leads, including interviews of relevant witnesses, crime scene examination and an autopsy; death was determined to be justifiable homicide), Unknown 3 (failure to do medical screening of detainee and lack of documentation prevented definitive determination of cause of death), Unknown 4 (cause of death could not be determined because of inadequate medical reporting and record keeping), Unknown 5 (determination of cause of death difficult to determine because of lack of medical monitoring of detainee), Taleb (cause of death undetermined due to lack of autopsy results until nine months after death when autopsy report was received), Kenami (cause of death could not be determined, in part, because of what the review characterized as a criminal investigation "weak in thoroughness and timeliness" and faulted it for lack of autopsy; lack of interviews of pertinent witnesses, and a failure to collect records of medical treatment); al-Hussen (no medical records attached to investigation), H. Ahmed (failure to read medical intake records and to conduct witness interviews), Amir (investigation into death was reopened because of failure to obtain death certificate; few records regarding custody exist because of lack of clarity over whether detainee was in U.S. or Iraqi custody); al-Obodi (cause of death could not be determined because of failure to collect medical records including autopsy); al-Zubaidy (cause of death could not be determined because of almost no documentation, resulting in his death's going unreported for almost a year).

⁵²² Criminal Investigation, Abdullah, *supra* note 468, at 1-2, 6-7 (reporting detainee Abdullah died of a perforated ulcer); Abbas, Dep't of the Army, CID, *CID Report of Investigation-Final (C)- 0050-04-CID259-80155* (Mar. 16, 2004) [Criminal Investigation, Abbas], available at http://www.aclu.org/torturefoia/released/DOA_2097_2155.pdf, at 1, 6-7, 22 (accessed Feb. 8, 2006) (reporting detainee Abbas, who had suffered a number of heart attacks, died of cardiac arrest); Criminal Investigation, al-Obodi, *supra* note 372, at 1-2, 7-8 (reporting detainee al-Obodi "appeared extremely ill" and complained of feeling unwell prior to his death of an apparent heart attack); Basim, Dep't of the Army, CID, *CID Report of Investigation-Final Supplemental- 0014-03-CID919-63732* (July 21, 2004) [Criminal Investigation, Basim] available at http://www.aclu.org/torturefoia/released/DOA_2060_2096.pdf, at 1, 6 (accessed Feb. 8, 2006) (reporting detainee Basim was diagnosed with tuberculosis a day before his death); Criminal Investigation, Najem, *supra* note 391, at 1, 15 (reporting detainee Abed Najem died of heart attack arising from diabetes); Criminal Investigation, Mihdy, *supra* note 468, at 1, 11 (June 4, 2004) (reporting detainee Mihdy died of an apparent heart attack after telling medics that he had a prior heart condition); Criminal Investigation, al-Hussen, *supra* note 468, at 1, 26 (reporting detainee al-Hussen had been in medical hold when he died of myocarditis); Ahmed, Dep't of the Army, CID, *CID Report of Investigation-Final Supplemental- 0025-04-CID469-79635*, (July 14, 2004) [Criminal Investigation, Ahmed], at 1, 6 (reporting detainee Ahmed had been ill for "a couple" of days before his heart-attack death) and Dep't of the Army, *AR 15-6 Investigation of the Death Detainee [sic] # [redacted]*, p. 5 (Mar. 2, 2004) (detainee Ahmed suffered from diabetes, anemia, and kidney failure); Criminal Investigation, F. Mahmood, *supra* note 492, at 1, 12 (reporting detainee Mahmood died about 20 days after complaining of chest pains); al-Juwadi, Dep't of the Army, CID, *CID Report of Investigation-Final/SSI- 0032-04-CID789-83985*, (June 30, 2004) [Criminal Investigation, al-Juwadi] available at http://www.aclu.org/torturefoia/released/DOA_2222_2248.pdf, at 1, 3-4 (accessed Feb. 8, 2006) [hereinafter Criminal Investigation, al-Juwadi] (reporting detainee al-Juwadi, who had a history of high blood pressure and diabetes, died of a heart attack); Altia, Dep't of the Army, CID, *CID Report of Investigation-Final Supplemental- 0040-04-CID789-83990*, (Aug. 14, 2004) [Criminal Investigation, Altia] available at http://www.aclu.org/torturefoia/released/DOA_2578_2595.pdf, at 1, 5 (accessed Feb. 8, 2006) (reporting detainee Altia, who had a prior history of diabetes, died of a heart attack two days after complaining of chest pains); al-Razak, Dep't of the Army, CID, *CID Report of Investigation-Final/SSI- 0059-04-CID789-83991* (Oct. 15, 2004) [Criminal Investigation, al-Razak], available at http://www.aclu.org/torturefoia/released/021605/6022_6039.pdf, at 1, 3 (accessed Feb. 8, 2006) (reporting detainee Abd al-Razak, who had had previous heart problems, died of a heart attack several days after returning to the prison from a hospital); Unknown 3, Dep't of the Army, *15-6 Investigation [Into Death of an Unknown Detainee]* (July 26, 2003) [Administrative Investigation, Unknown 3], available at http://www.aclu.org/torturefoia/released/041905/6233_6312.pdf, at 5, (accessed Feb. 3, 2006). (noting unidentified detainee (listed in DIC Table as Unknown 3) was diagnosed with diabetes, angina, and coronary artery disease 20 days before his death); Unknown 4, Dep't of the Army, *Informal Investigation of Death of Iraqi Detainee [redacted]* (Aug. 24, 2003) [Administrative Investigation, Unknown 4], available at http://www.aclu.org/torturefoia/released/041905/6233_6312.pdf, at 3-4, (accessed Feb. 3, 2006) [hereinafter Administrative Investigation, Unknown 4] (noting unidentified detainee (listed in DIC Table as Unknown 4) complained to medics of various ailments the day before his death).

⁵²³ Criminal Investigation, al-Obodi, *supra* note 372, at 2-3, 35-36 (no medical records or autopsy found for al-Obodi); Criminal Investigation, Najem, *supra* note 391, at 1-2, 10, 13 (no records confirming that Abed Najem had diabetes); Criminal Investigation, Mihdy, *supra* note 468, at 1-2, 8-9, 11, 16 (no medical records for Mihdy attached); Criminal Investigation, al-Hussen, *supra* note 468, at 1-4, 18 (no medical records for al-Hussen attached because attempts to locate them were unsuccessful); Administrative Investigation, Unknown 4, *supra* note 522, at 3- (records of intake screening, sick call, and treatment could not be found for unnamed detainee (listed in DIC Table as Unknown 4)).

⁵²⁴ See, e.g., Criminal Investigation, al-Obodi, *supra* note 372, at 1, 43-44 (CID informed immediately after detainee death, but results of autopsy not requested for eight months due to apparent administrative neglect).

⁵²⁵ Criminal Investigation, al-Juwadi, *supra* note 522.

⁵²⁶ See TAGUBA REPORT, *supra* note 495, at 26-27 (stating the "320th MP Battalion ... held a handful of 'ghost detainees' ... that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team. This maneuver

was deceptive, contrary to Army Doctrine, and in violation of international law"); see also Dep't of Defense, Directive No. 2310.1, Dep't of Defense Program for Enemy Prisoners of War and Other Detainees D.2.d (Aug. 18, 1994), *available at* http://www.fas.org/irp/doddir/dod/d2310_01.htm (accessed Feb. 3, 2006); U.N. Hum. Rts. Comm., General Comment No. 20, Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7), 44th Sess., at ¶ 11 (1992), U.N. Doc. HRI/GEN/1/Rev.7 at 150 (2004), *available at* [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/ca12c3a4ea8d6c53c1256d500056e56f/\\$FILE/G0441302.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/ca12c3a4ea8d6c53c1256d500056e56f/$FILE/G0441302.pdf) (accessed Feb. 3, 2006).

⁵²⁷ The two are Manadel al-Jamadi and the "Salt Pit" detainee. See Eric Schmitt, *4 Navy Commandos are Charged in Abuse*, N.Y. TIMES, Sept. 4, 2004, at A6; Seth Hettena, *Reports Detail Abu Ghraib Prison Death*, ASSOC. PRESS, Feb. 17, 2005; Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, WASH. POST, Mar. 3, 2005, at A1.

⁵²⁸ Dep't of the Army, *AR 15-6 Investigation – Detainee Death at 2d BCT Detainment Facility* (Sept. 7, 2004), *available at* http://www.aclu.org/torturefoia/released/041905/6233_6312.pdf, at 52 (accessed Feb. 3, 2006).

⁵²⁹ *Id.* at 54. See DIC Table Unknown 4.

⁵³⁰ See *supra* notes 352-358 and accompanying text (case of Hasson) and *supra* notes 372-377 and accompanying text (case of al-Obodi).

⁵³¹ Dep't of the Army, Office of the Surgeon General, Army, ASSESSMENT OF DETAINEE MEDICAL OPERATIONS FOR OEF, GTMO, AND OIF, at 9 (1 – 4) (Apr. 13, 2005), *available at* http://www.globalsecurity.org/military/library/report/2005/detmedopsrpt_13apr2005.pdf (accessed Feb. 3, 2006).

⁵³² *Id.*

⁵³³ *Id.* at 83 (15–1).

⁵³⁴ *Id.* at 36 (6–1).

⁵³⁵ As described above, *supra* note 3, these cases include 20 homicides that military investigators found to be unjustified or in which prosecutions were brought. They also include 14 cases in which investigators found the homicide to be justified. We include in our count homicides that investigators found justified because the classification of many of these deaths as justifiable is open to question. For example, in the death of al-Bawi, a criminal investigator only gave an administrative investigation finding of justified homicide a cursory review, without independent investigation, despite allegations by al-Bawi's family and an Iraqi medical examiner that called findings into question. See *supra* notes 247-255 and accompanying text. Another four of the deaths investigators classified as justified are those of Salman, Sayar, Shalaan and Thawin, killed during the same prison riot by U.S. guards. The ICRC has criticized the military for use of excessive force in the riot that led to those deaths. International Committee of the Red Cross, REPORT OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) ON THE TREATMENT BY THE COALITION FORCES OF PRISONERS OF WAR AND OTHER PROTECTED PERSONS BY THE GENEVA CONVENTIONS IN IRAQ DURING ARREST INTERNMENT AND INTERROGATION, Feb. 2004, at 20, ¶46, *available at* http://www.humanrightsfirst.org/iraq/ICRC_Report.pdf (accessed Feb. 8, 2006). The ICRC's criticism is supported by the military's own findings. See TAGUBA REPORT, *supra* note 495, at 28-29 (finding that the riot was in protest of living conditions. Although use of deadly force was found to be authorized, contributing factors were "lack of comprehensive training of guards, poor or non-existent [standard operating procedures]... no rehearsals or ongoing training, the mix of less than lethal rounds with lethal rounds in weapons . . . [Rules of Engagement] not posted and not understood, overcrowding . . . poor communication between the command and Soldiers") (referencing Dep't of the Army, *15-6 Investigation on Riot and Shootings at Abu Ghurayb on (24 November 2003)*, Taguba Report Annex 8, *available at* http://www.defenselink.mil/pubs/foi/detainees/taguba/ANNEX_008_15-6_INVESTIGATION_24_NOV_2003.pdf (accessed Feb. 3, 2006)).

⁵³⁶ See DIC Table: Criminal charges were recommended against U.S. personnel for the deaths of Sayari, Habibullah, Dilawar, Unknown 2, Hatab, Wali, Radad, Jamadi, Mowhoush, Hassoun, F. Mohammed, Ismail, Jameel, Kadir, Kareem, Hanjil, Unknown 18, Unknown 19, T. Ahmed, and Unknown 22.

⁵³⁷ See DIC Table: Most cases involve multiple accused; in relation to any particular detainee death, proceedings against some individuals may be complete while others remain pending. Criminal charges have been brought in 14 cases: Habibullah, Dilawar, Hatab, Wali, Mowhoush, Jamadi, Hassoun, Kadir, Unknown 18, Unknown 19, Ismail, T. Ahmed, Unknown 22 and F. Mohammed. In another case, that of Unknown 2, killed while being questioned in a village in Afghanistan by Army Special Forces in January 2003, criminal charges were recommended but Human Rights First has been unable to determine whether they were eventually brought. Criminal Investigators Outline 27 Homicides, *supra* note 64, at 5. Criminal proceedings have not proceeded to completion in at least ten cases. Charges were recommended but no individual was ever punished for the deaths of Jameel, Kareem, and Hanjil because, in each of these cases, commanders decided not to proceed with either criminal or administrative punishment. There has been no public explanation of the reduction in charges in the Kareem or Hanjil cases, and a Human Rights First Freedom of Information Act request for case documents remains pending. In two cases (Sayari and Radad) criminal charges were recommended but commanders declined to bring them and punished the suspects administratively instead. Trials for some of the individuals charged in the deaths of Habibullah, Dilawar, and Wali are pending as of this writing. Finally, while the CIA has reportedly referred the cases of Mowhoush and al-Jamadi to the Department of Justice for possible prosecution, no further action has yet been taken. The status of the cases of Unknown 2 and Unknown 22 remains uncertain. Human Rights First sought from the Department of Defense on January 20 and 26, 2006 an update on the cases of Unknown 2 and 22; as of February 10, we had received no response.

⁵³⁸ See DIC Table: The twelve cases resulting in punishment of any kind are: Sayari (administrative reprimand against one soldier for destruction of evidence), Habibullah and Dilawar (punishments include convictions and guilty pleas at court martial and administrative punishments), Hatab (criminal and administrative punishment), Radad (administrative punishment), al-Jamadi (administrative punishment), Mowhoush (criminal and administrative punishment), Hassoun (criminal and administrative punishment), Kadir (criminal punishment), Unknown 18 (criminal punishment), Unknown 19 (criminal punishment), and T. Ahmed (criminal punishment).

⁵³⁹ See DIC Table: In eight out of twelve cases, punishments were disproportionately lenient: Sayari (commanders reduced charge against one accused to written reprimand, no action taken against four others); Dilawar and Habibullah (Three soldiers were charged with

offenses relating only to Habibullah; all three were acquitted of all charges. Two were charged with offenses relating only to Dilawar; both pled guilty and were sentenced to 5 months and 75 days in prison, respectively, among other punishments. Seven were charged with offenses relating to both detainees; two soldiers had their charges dismissed before being court-martialed and were reprimanded, one was convicted of assault and reduced in rank, three pled guilty – one received 3 months in prison and a second received 2 months, among other punishments, while the third was fined and reprimanded with no prison time – and the trial of one remains pending.); Hatab (charges against one accused were reduced to assault and battery, dereliction of duty, and maltreatment, and upon conviction on the latter two counts the punishment was discharge; another received nonjudicial punishment (reduction in rank) as part of plea agreement for testimony; another was acquitted of charges at court-martial, and the charges against all other accused were dismissed); Radad (commander authorized administrative discharge of only soldier accused; criminal investigators later found probable cause for murder); Hassoun (two soldiers acquitted of manslaughter (though convicted of other charges and given prison sentences of six months and 45 days), three commanders who had instructed subordinates not to cooperate with investigators received reprimands, two other soldiers received non-judicial punishment); Kadir (single accused charged with unpremeditated murder instead convicted of voluntary manslaughter and sentenced to three years in prison); Mowhoush (accused charged with murder convicted of negligent homicide and negligent dereliction of duty, fined \$6,000, 60 days restricted duty, reprimanded).

⁵⁴⁰ Of the eight deaths Human Rights First considers as involving torture, only four cases have resulted in any kind of punishment. See DIC Table: These are in the deaths of: Habibullah, Dilawar, Jamadi and Mowhoush. The most punishment in any of these cases to date is 5 months imprisonment and a bad conduct discharge for an Army Sergeant, for the death of Dilawar.

⁵⁴¹ Dilawar (*Army Reservist Sentenced to 75 Days in Prison*, ASSOC. PRESS, Aug. 31, 2005, available at <http://abclocal.go.com/ktrk/story?section=state&id=3399051> (accessed Feb. 3, 2006, 2005); Alicia Caldwell, *Cincinnati Soldier Found Guilty in Death of Detainee*, ASSOC. PRESS, Aug. 18, 2005, available at <http://news.cincypost.com/apps/pbcs.dll/article?AID=/20050818/NEWS01/508180382> (accessed Feb. 3, 2006)); Habibullah, (*Army Reservist Sentenced to 75 Days in Prison*, ASSOC. PRESS, Aug. 31, 2005, available at <http://abclocal.go.com/ktrk/story?section=state&id=3399051> (accessed Feb. 3, 2006, 2005); Alicia Caldwell, *Cincinnati Soldier Found Guilty in Death of Detainee*, ASSOC. PRESS, Aug. 18, 2005, available at <http://news.cincypost.com/apps/pbcs.dll/article?AID=/20050818/NEWS01/508180382> (accessed Feb. 3, 2006); Hatab (David Hasemyer, *Marine Says He Was Ordered to Grab Iraqi Prisoner's Neck*, SAN DIEGO UNION-TRIB., Nov. 4, 2004, at B2; Tony Perry, *Marine Convicted of Assault*, L.A. TIMES, Sept. 3, 2004, at B1); Mowhoush (Nicholas Riccardi, *Mild Penalties in Military Abuse Cases*, L.A. TIMES, Jan. 25, 2006, available at <http://www.latimes.com/news/print/edition/asection/la-na-abuse25jan25,1,6318208.story> (accessed Feb. 3, 2006); Jon Sarche, *Jury Orders Reprimand, No Jail for Soldier*, ASSOC. PRESS, Jan. 24, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/24/AR2006012400177.html> (accessed Feb. 3, 2006); Nicholas Riccardi, *Interrogator Convicted in Iraqi's Death*, L.A. TIMES, Jan. 22, 2006, available at <http://www.latimes.com/news/print/edition/la-na-interrogate22jan22,1,81943.story> (accessed Feb. 3, 2006); Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006, excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006)).

⁵⁴² Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006, excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).

⁵⁴³ *Id.*

⁵⁴⁴ Memorandum from General Ricardo Sanchez to Combined Joint Task Force Seven and the Commander, 205th Intelligence Brigade (Sept. 10, 2003), available at <http://www.humanrightsfirst.info/pdf/06124-etn-sep-10-sanchez-memo.pdf> (accessed Feb. 3, 2006).

⁵⁴⁵ Human Rights First notes from observation of Welshofer court martial, Welshofer In His Own Words, Jan. 20, 2006, excerpts available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-012006d.asp (accessed Feb. 3, 2006).

⁵⁴⁶ Josh White, *U.S. Army Officer Convicted in Death Of Iraqi Detainee*, WASH. POST, Jan. 23, 2006, at A2; Human Rights First notes from observation of Welshofer court martial, In Their Own Words, Jan. 19, 2006, available at http://www.humanrightsfirst.org/us_law/etn/trial/welshofer-011906d.as (accessed Feb. 3, 2006).

⁵⁴⁷ Jon Sarche, *Army Officer Found Guilty In Iraqi's Death*, ASSOC. PRESS, Jan. 22, 2006, available at <http://www.msnbc.msn.com/id/10950946/> (accessed Feb. 8, 2006).

⁵⁴⁸ Tim Golden, *Case Dropped Against U.S. Officer in Beating Deaths of Afghan Inmates*, N.Y. TIMES, Jan. 8, 2006, at A13.

⁵⁴⁹ Administrative Investigation, Radad, *supra* note 263, at 23.

⁵⁵⁰ Administrative Investigation, Radad, *supra* note 263, at 22.

⁵⁵¹ Criminal Investigation, Radad, *supra* note 260, at 2; Memorandum from Maj. Gen. Raymond T. Odierno for Commander, 502d Personnel Service Battalion, *Request for Discharge in Lieu of Trial by Court-Martial*, available at http://www.aclu.org/torturefoia/released/041905/6768_7065.pdf, at 53 (accessed Feb. 3, 2006). accessed Feb. 3, 2006.

⁵⁵² *Operative in Abuse Case Can Blame Orders*, ASSOC. PRESS, Feb. 3, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/03/AR2006020302197.html>, (accessed Feb. 6, 2006).

⁵⁵³ *Id.*

⁵⁵⁴ Of the eight deaths Human Rights First considers as involving torture, only four cases have resulted in any kind of punishment. These are for the deaths of: Habibullah, Dilawar, Jamadi and Mowhoush.

⁵⁵⁵ These are the deaths by homicide of: Sayari, Hatab, Radad, Hassoun, Kadir, Unknown 18, Unknown 19, T. Ahmed.

⁵⁵⁶ This includes both criminal and administrative charges.

⁵⁵⁷ Death of Habibullah (Sgt. Groatorex, Sgt. Broady, Staff Sgt. Doyle charged, *supra* note 208); death of Dilawar (Sgt. Claus, Sgt. Morden charged, *supra* note 208); deaths of both Habibullah and Dilawar (Sgt. Salcedo, Sgt. Boland, Spc. Cammack, Pfc. Brand, Capt. Beiring, Sgt. Driver, Spc. Walls charged, *supra* note 208); death of Wali (Passaro charged, *supra* text accompanying note 187); death of Jamadi (Lt. Ledford, 9 unnamed other Navy Personnel charged, *supra* text accompanying note 137); death of Mowhoush (Chief Warrant Officer

Welshofer charged, *supra* text accompanying note 60, Chief Warrant Officer Jefferson Williams charged, *supra* text accompanying note 62, Sgt. 1st Class Sommer charged, *supra* text accompanying note 63, Spc. Loper charged, *supra* text accompanying note 62, Maj. Voss charged, *supra* text accompanying note 65).

⁵⁵⁸ Death of Sayari (Captain, name unknown, charged, *supra* text accompanying note 192); death of Hatab (Maj. Paulus, Sgt. Pittman charged, *supra* text accompanying note 169, Lance Cpl. Roy, Maj. Vickers, charged, *see* DIC Table, Lance Cpl. Hernandez charged, *supra* text accompanying note 175, Sgt. Rodriguez-Martinez, Lance Cpl. Mikholap, Lance Cpl. Rodney charged, *see* DIC Table); death of Radad (Spc. Martino-Poole charged, *supra* text accompanying note 270); death of Hassoun (Lt. Saville charged, *supra* text accompanying note 305, Staff Sgt. Perkins charged, *supra* text accompanying note 316, Lt. Col. Sassaman, Maj. Gwinner, Capt. Cunningham charged, *see* DIC Table, Sgt. Martinez, Sgt. Bowman charged, *supra* text accompanying note 317); death of Ismail (Staff Sgt. Werst charged, *see* DIC Table); death of Kadir (Pfc. Richmond charged, *see* DIC Table); deaths of Kareem and Hanjil (1st Lt. Pantano charged, *see* DIC Table); death of Unknown 18 (Sgt. Michael Williams charged, *infra* note 609, 2nd Lt. Anderson charged, *see* DIC Table); death of Unknown 19 (Sgt. Michael Williams charged, *infra* note 609, Spc. May charged, *see* DIC Table); death of T. Ahmed (Sgt. 1st Class Diaz charged, *see* DIC Table); death of Unknown 22 (Sergeant, name unknown, charged, *see* DIC Table).

⁵⁵⁹ Death of Dilawar (Sgt. Claus, Sgt. Morden, *supra* note 209); deaths of Habibullah and Dilawar (Sgt. Salcedo, Sgt. Boland, Spc. Cammack, Pfc. Brand, Capt. Beiring, Spc. Walls, *supra*, note 209); death of al-Jamadi (9 unnamed Navy personnel other than Lt. Ledford *supra*, text accompanying note 138); death of Mowhoush (Chief Warrant Officer Welshofer, *supra* text accompanying note 61, Chief Warrant Officer Jefferson Williams, *supra* text accompanying note 62, Maj. Voss, *supra* text accompanying note 65).

⁵⁶⁰ Death of Sayari (Captain, name unknown, *supra* text accompanying note 296); death of Hatab (Maj. Paulus, *supra* text accompanying note 173, Lance Cpl. Roy, *see* DIC Table); death of Radad (Spc. Martino-Poole, *supra* text accompanying note 269); death of Hassoun (Lt. Saville, Staff Sgt. Perkins, *supra* text accompanying note 316, Lt. Col. Sassaman, Maj. Gwinner, Capt. Cunningham, *infra* text accompanying note 589, Sgt. Martinez, Sgt. Bowman, *supra* text accompanying note 317); death of Kadir (Pfc. Richmond, *see* DIC Table); death of Unknown 18 (Sgt. Michael Williams, *infra* note 606); death of Unknown 19 (Sgt. Michael Williams, *infra* note 609, Spc. May, *see* DIC Table); death of T. Ahmed (Diaz, *see* DIC Table).

⁵⁶¹ Death of Mowhoush (Maj. Voss, *supra* text accompanying note 65).

⁵⁶² Death of Hatab (Maj. Paulus, *supra* text accompanying note 169).

⁵⁶³ Death of Dilawar (Sgt. Claus, *supra* note 209, Sgt. Morden, *supra* note 209); deaths of Habibullah and Dilawar (Spc. Cammack, *supra* note 209, Spc. Walls, *supra* note 209).

⁵⁶⁴ Death of Hassoun (Lt. Saville, *supra* text accompanying note 316, Staff Sgt. Perkins, *supra* text accompanying note 316); death of Kadir (Pfc. Richmond, *see* DIC Table), deaths of Unknown 18 and Unknown 19 (Spc. Williams, *infra* note 609, Sgt. May, *see* DIC Table), T. Ahmed (Sgt. 1st Class Diaz, *see* DIC Table).

⁵⁶⁵ Death of Dilawar (Sgt. Morden, *see* DIC Table); deaths of Habibullah and Dilawar (Sgt. Salcedo, *see* DIC Table, Spc. Cammack, *see* DIC Table, Pfc. Brand, *see* DIC Table, Spc. Walls, *see* DIC Table); death of Mowhoush (Welshofer, *supra* text accompanying notes 10-22, 55-56, 542-547).

⁵⁶⁶ Death of Hatab (Maj. Paulus, *see* DIC Table).

⁵⁶⁷ Death of Dilawar (Sgt. Claus, *supra* note 209).

⁵⁶⁸ Deaths of Unknowns 18 and 19 (Sgt. Michael Williams, *infra* note 609).

⁵⁶⁹ Deaths of Dilawar and Habibullah (Capt. Beiring, *supra* note 209, Sgt. Boland, *supra* note 210); death of Mowhoush (Maj. Voss, *infra* text accompanying note 594).

⁵⁷⁰ Death of Sayari (Captain, name unknown, *supra* note 538); death of Hassoun (Lt. Col. Sassaman, *infra*, text accompanying note 589, Maj. Gwinner, *infra* text accompanying note 589, Capt. Cunningham, *supra* text accompanying note 318).

⁵⁷¹ This number includes both criminal and administrative charges. Deaths of Habibullah and Dilawar (Capt. Beiring, *supra* text accompanying notes 211 and 548); death of al-Jamadi (Lt. Ledford, *supra* text accompanying note 80, one other SEAL Lieutenant, *see* DIC Table); death of Mowhoush (Chief Warrant Officer Welshofer, *supra* text accompanying note 60, Chief Warrant Officer Jefferson Williams, *supra* text accompanying note 62, Maj. Voss,* *supra* text accompanying note 65). *Denotes administrative charge only.

⁵⁷² This number includes both criminal and administrative charges. Death of Sayari (Captain, name unknown,* *supra* text accompanying note 293); death of Hatab (Maj. Paulus, *supra* text accompanying note 169, Maj. Vickers, *see* DIC Table); death of Hassoun (Lt. Saville, *supra* text accompanying note 305, Lt. Col. Sassaman,* *infra* text accompanying note 589, Maj. Gwinner,* *infra* text accompanying note 589, Capt. Cunningham,* *infra* text accompanying note 589); deaths of Kareem and Hanjil (1st Lt. Pantano, *see* DIC Table); death of Unknown 18 (2nd Lt. Anderson, *see* DIC Table). *Denotes administrative charge only.

⁵⁷³ This number includes both criminal and administrative punishments. Deaths of Habibullah and Dilawar (Capt. Beiring,* *see* DIC Table); death of al-Jamadi (SEAL Lieutenant other than Lt. Ledford,* *see* DIC Table); death of Mowhoush (Chief Warrant Officer Welshofer, *supra* text accompanying note 60, Chief Warrant Officer Jefferson Williams,* *supra* text accompanying note 62, Voss,* *supra* text accompanying note 65). *Denotes administrative punishment only.

⁵⁷⁴ This number includes both criminal and administrative punishments. Death of Sayari (Captain, name unknown,* *supra* text accompanying note 295); death of Hatab (Maj. Paulus, *supra* text accompanying note 173); death of Hassoun (Lt. Saville, *supra* text accompanying note 316, Lt. Col. Sassaman,* *infra* text accompanying note 589, Maj. Gwinner,* *infra* text accompanying note 589, Capt. Cunningham,* *infra* text accompanying note 589). *Denotes administrative punishment only.

⁵⁷⁵ This number includes both criminal and administrative charges. Death of Habibullah (Sgt. Greatorex, *supra* note 208, Sgt. Broady, *supra* note 208, Staff Sgt. Doyle, *supra* note 208); death of Dilawar (Sgt. Claus, *supra* note 208, Sgt. Morden, *supra* note 208); deaths of Habibullah and Dilawar (Sgt. Salcedo, *supra* note 208, Sgt. Boland, *supra* note 208, Spc. Cammack, *supra* note 208, Pfc. Brand, *supra* note 208, Sgt. Driver, *supra* note 208, Spc. Walls, *supra* note 208); death of al-Jamadi (eight unnamed enlisted Navy personnel, *supra* text accompanying notes 138-140); death of Mowhoush (Sgt. 1st Class Sommer, *supra* note 62, Spc. Loper, *supra* note 62).

⁵⁷⁶ This number includes both criminal and administrative charges. Death of Hatab (Sgt. Pittman, *supra* text accompanying note 169, Lance Cpl. Roy, *supra* text accompanying note 176, Lance Cpl. Hernandez, *supra* text accompanying note 175, Sgt. Rodriguez-Martinez, see DIC Table, Lance Cpl. Mikholap, see DIC Table, Lance Cpl. Rodney, see DIC Table); death of Radad (Spc. Martino-Poole, *supra* text accompanying note 270); death of Hassoun (Staff Sgt. Perkins, *supra* text accompanying note 316, Sgt. Martinez, *supra* text accompanying note 317, Sgt. Bowman, *supra* text accompanying note 317); death of Ismail (Staff Sgt. Werst, see DIC Table); death of Kadir (Pfc. Richmond, see DIC Table); death of Unknown 18 (Sgt. Michael Williams, *infra* note 609); death of Unknown 19 (Sgt. Michael Williams, *infra* note 609, Spc. May, see DIC Table); death of T. Ahmed (Sgt. 1st Class Diaz, see DIC Table); death of Unknown 22 (Sergeant, name unknown, see DIC Table).

⁵⁷⁷ This number includes both criminal and administrative punishments. Death of Dilawar (Sgt. Claus, *supra* note 209, Sgt. Morden, *supra* note 209); deaths of Habibullah and Dilawar (Sgt. Salcedo, *supra* note 209, Sgt. Boland, * *supra* note 209, Spc. Cammack, *supra* note 209, Pfc. Brand, *supra* note 209, Spc. Walls, *supra* note 209); death of al-Jamadi (eight unnamed enlisted Navy personnel, * *supra* text accompanying notes 138-140). *Denotes administrative punishment only

⁵⁷⁸ This number includes both criminal and administrative punishments. Death of Hatab (Lance Cpl. Roy, * *supra* text accompanying note 176); death of Radad (Spc. Martino-Poole, *supra* text accompanying note 551); death of Hassoun (Staff Sgt. Perkins, *supra* text accompanying note 316, Sgt. Martinez, * *supra* text accompanying note 317, Sgt. Bowman, * *supra* text accompanying note 317); death of Kadir (Pfc. Richmond, see DIC Table); death of Unknown 18 (Sgt. Michael Williams, *infra* note 609), death of Unknown 19 (Sgt. Michael Williams, *infra* note 609, Spc. May, see DIC Table); death of T. Ahmed (Sgt. 1st Class Diaz, see DIC Table). *Denotes administrative punishment only

⁵⁷⁹ Death of Wali (Passaro, *supra* text accompanying note 187).

⁵⁸⁰ Criminal Investigation, Sayari, *supra* note 273, at 11.

⁵⁸¹ Criminal Investigation, Sayari, *supra* note 273, at 11.

⁵⁸² Criminal Investigation, Sayari, *supra* note 273, at 11.

⁵⁸³ Criminal Investigation, Sayari, *supra* note 273, at 1-10.

⁵⁸⁴ Criminal Investigation, Sayari, *supra* note 273, at 1; *Army: Soldiers Shouldn't be Charged*, ASSOC. PRESS, Jan. 24, 2005, available at <http://www.msnbc.msn.com/id/6863659/> (accessed Feb. 3, 2006).

⁵⁸⁵ Filkins, *Warrior King*, *supra* note 298; *Cover-up of Iraq Bridge Incident Admitted*, ASSOC. PRESS, July 30, 2004, available at <http://www.msnbc.msn.com/id/5560805/> (accessed Feb. 3, 2006).

⁵⁸⁶ Information Paper on Samarra Bridge Incident, July 15, 2004, available at http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 47 (accessed Feb. 3, 2006).

⁵⁸⁷ Investigating Officer's Report of Charges Under Article 32, Aug. 19, 2004, available at http://action.aclu.org/torturefoia/released/063005/11950_12130PartB.pdf, at 99-100 (accessed Feb. 3, 2006).

⁵⁸⁸ *Cover-up of Iraq Bridge Incident Admitted*, ASSOC. PRESS, July 30, 2004, available at <http://www.msnbc.msn.com/id/5560805/> (accessed Feb. 3, 2006).

⁵⁸⁹ Filkins, *Warrior King*, *supra* note 298; Information Paper on Samarra Bridge Incident, July 15, 2004, available at http://www.aclu.org/torturefoia/released/051805/8055_8181.pdf, at 47 (accessed Feb. 3, 2006).

⁵⁹⁰ Filkins, *Warrior King*, *supra* note 298; Suzanne Goldenberg, *45 Days Jail for U.S. Officer Who Had Cousins Thrown Into Tigris*, GUARDIAN, Mar. 16, 2005, at Home Pages 2.

⁵⁹¹ Filkins, *Warrior King*, *supra* note 298; *Several Issues Cloud Army's Case Against GIs in Drowning*, July 29, 2004, at 4A; Dick Foster, *Fort Carson Soldiers May Use Drug Defense in Courts-Martial*, Rocky Mountain News, ROCKY MOUNTAIN NEWS, at 5A; *Charges Dropped Against U.S. Soldier in Iraqi Man's Death*, ASSOC. PRESS, Sept. 7, 2004, available at <http://www.foxnews.com/story/0,2933,131717,00.html> (accessed Feb. 8, 2006).

⁵⁹² Criminal Investigators Outline 27 Homicides, *supra* note 64, at 5; Filkins, *Warrior King*, *supra* note 298.

⁵⁹³ Criminal Investigation, Radad, *supra* note 260, at 2 (accessed Feb. 3, 2006); Memorandum from Maj. Gen. Raymond T. Odierno for Commander, 502d Personnel Service Battalion, Request for Discharge in Lieu of Trial by Court-Martial, available at http://www.aclu.org/torturefoia/released/041905/6768_7065.pdf, at 53 (accessed Feb. 3, 2006).

⁵⁹⁴ *In re Yamashita*, 327 U.S. 1 (1946).

⁵⁹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, 1125 U.N.T.S. 3 art. 86 (not ratified by United States), available at <http://www.unhcr.ch/html/menu3/b/93.htm> (accessed Feb. 8, 2006) ("knew, or had information which should have enabled them to conclude in the circumstances at the time"); Dep't of the Army, Field Manual 27-10, The Law of Land Warfare, Chapter 8, § 2, art. 501 ("if he has actual knowledge, or should have knowledge, through reports received by him or through other means"); Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) (1993), art. 7(3), available at <http://www.un.org/icty/basic/statut/statute.htm> (accessed Feb. 8, 2006) ("knew or had reason to know"); Statute of the International Criminal Tribunal for Rwanda (ICTR), art. 6(3) ("knew or had reason to know").

⁵⁹⁶ Gidget Fuentes, *Major Convicted, Avoids Jail Time in Abuse Trial*, MARINE CORPS TIMES, Nov. 22, 2004, at 11; Alex Roth, *Marine Guilty in Death of Iraqi*, SAN DIEGO UNION-TRIB., Nov. 11, 2004, at B1.

⁵⁹⁷ *Lawyers: Army Backed Interrogation Methods*, ASSOC. PRESS, Apr. 1, 2005, available at <http://www.newsmax.com/archives/articles/2005/3/31/205753.shtml> (accessed Feb. 3, 2006); Arthur Kane and Miles Mofeit, *U.S. General Backed Lightest Penalty in Interrogation Death*, DENVER POST, May 10, 2005, at A6.

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- ⁶⁰² See Mowhoush case study, *supra* pp. 6-11 and Jameel case study, *supra* pp. 12-13.
- ⁶⁰³ Memorandum from General Ricardo Sanchez to Combined Joint Task Force Seven and the Commander, 205th Intelligence Brigade (Sept. 10, 2003), available at <http://www.humanrightsfirst.info/pdf/06124-etn-sep-10-sanchez-memo.pdf> (accessed Feb. 3, 2006). See also Memorandum from General Ricardo Sanchez to the Commander, U.S. Central Command (Sept. 14, 2003), available at http://www.humanrightsfirst.org/us_law/etn/pdf/sanc-%20memo-091403.pdf (accessed Feb. 7, 2006); Memorandum from General Ricardo Sanchez to Combined Joint Task Force Seven and the Commander, 205th Intelligence Brigade (Oct. 12, 2003), available at <http://www.aclu.org/FilesPDFs/october%20sanchez%20memo.pdf> (accessed Feb. 7, 2006).
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