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~~FOR OFFICIAL USE ONLY~~

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

POLICY

APR 29

Andrew Shearer
Minister-Counsellor [Political]
Embassy of Australia
1601 Massachusetts Avenue, N.W.
Washington, DC 20036

Dear Mr. Shearer:

I am writing to advise you of the current status of the Department of the Navy's independent investigations into the alleged abuse of Mr. David Hicks and Mr. Mamdouh Habib while they were in U.S. Department of Defense custody.

Since my last letter to you of January 4, 2005 forwarding an investigative summary, Naval criminal investigators have continued conducting interviews around the world to ensure that these alleged abuses are comprehensively investigated.

The attached documents provide an update on the current status of these investigations. Because the investigations are not yet complete and involve Law Enforcement Sensitive information, I ask that your Government use prudence in releasing the information contained in these summaries. Please do not release the actual memoranda or this letter.

We intend to provide your Government with a releasable summary of these investigative results once the Department of Defense has officially closed the two investigations, similar to what Principal Deputy Under Secretary of Defense Ryan Henry provided to your Government on August 22, 2004. Regarding the Hicks investigation, while the Department of the Navy has advised me that the investigation is in its final stages, it is difficult to predict when it will be completed, as investigators continue to work on two remaining interviews. All investigative leads concerning Habib's allegations have been completed. Once the Hicks investigative leads are complete, the Department of Defense will be able to make an official determination on both investigations.

I hope this information is helpful to you. Please let me know if I can assist you further.

Sincerely,

Matthew C. Waxman
Deputy Assistant Secretary of Defense
for Detainee Affairs

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A3

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

Andrew Shearer
Minister-Counsellor [Political]
Embassy of Australia
1601 Massachusetts Avenue, N.W.
Washington, DC 20036

Dear Mr. Shearer:

I am writing to advise you of the current state of the Department of the Navy's independent investigations into the alleged abuse of Mr. David Hicks and Mr. Mamdouh Habib while they were in U.S. Department of Defense custody.

Since Assistant Secretary of Defense Peter Rodman forwarded you the initial investigative reports on August 23, 2004, Naval criminal investigators have been conducting interviews around the world ensuring that these alleged abuses are comprehensively investigated.

The attached documents provide an update on the current status of these investigations. Because the investigations are not yet complete and involve Law Enforcement Sensitive information, I ask that your Government use care in releasing the information contained in these summaries. Please do not release the actual memoranda or this letter.

The Department of Defense intends to provide your Government with a releasable summary of these investigative results once the Department of the Navy has completed its investigations, similar to what Principal Deputy Under Secretary of Defense Ryan Henry provided to your Government on August 22, 2004. The Department of the Navy has advised me that the investigations are in their final stages. Nevertheless, it is difficult to predict when these investigations will be completed, as investigators identify new individuals who may have had contact with Mr. Hicks and Mr. Habib.

I hope this information is helpful to you. Please let me know if I can assist you further.

Sincerely,

Matthew C. Waxman
Deputy Assistant Secretary of Defense
for Detainee Affairs

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A4

BRITISH DETAINEES TO BE TRANSFERRED

The Department of Defense announced today that DoD will be transferring the four British detainees and one Australian detainee, in detention at Guantanamo Bay, Cuba, to the governments of the United Kingdom and Australia.

These detainees are enemy combatants who had been detained by the United States in accordance with the laws of war and U.S. law. The governments of the United Kingdom and Australia have accepted responsibility for these individuals and will work to prevent them from engaging in or otherwise supporting terrorist activities in the future.

The U.K. and Australian governments have made a number of security assurances to the U.S. government in this regard that was important to the transfer decision. The timing of the detainees' return remains under discussion by our governments.

-END-

TALKING POINTS:

- **The war against al Qaeda and its supporters is a global war in which nations like the United States, the United Kingdom and Australia must work closely together if we are to succeed. This action allows our British and Australian allies to ensure that their citizens who previously engaged in or supported terrorist activities do not do so in the future.**

- **We cannot win the Global War on Terror without the continued support of the international community and our allies. We have transferred detainees to France, Spain, Russia, Saudi Arabia, and other countries and we hope to transfer others. Whether any particular detainee can be transferred depends on all the facts of that particular case.**

- **We have no doubt that these individuals were properly detained as enemy combatants under the laws of war. British and Australian authorities have assured us that they will take the necessary steps to address the threat posed by these individuals.**

- **UK and Australian authorities have offered security assurances and will do everything in their power, consistent with their laws, to ensure that these individuals do not engage in or support terrorism in the future. The USG has confidence in their commitment and ability to fulfill this responsibility.**

Selected Q & A:

Q1: So you are acknowledging that these individuals were not a threat, should not have been held at Guantanamo, and are innocent of any charges?

A1: We continue to believe that these individuals pose a significant threat. British and Australian authorities have assured us that they will take the necessary steps to address the threat posed by these individuals. The war against al Qaeda and its supporters is a global war in which nations like the United States, the United Kingdom and Australia must work closely together if we are to succeed, and this action allows us to share some of the responsibility with our allies.

Q2: Will these detainees be set free upon their return like the 5 other British detainees?

A2: We expect that the British authorities will detain their detainees upon their arrival in the UK for questioning on their involvement with terrorism. You would have to ask the British government for further details on that. We understand, however, that they will be released if no charges can be brought against them. We understand the Australian detainee will be released.

Q3: Doesn't this decision indicate that these individuals were improperly detained?

A3: No. We have no doubt that these individuals were properly detained as enemy combatants under the laws of war.

Q4: What types of security assurances did the British and Australians provide to ensure that these individuals would not engage in terrorist activities?

A4: We aren't going to get into those details, other than to say that there were strong assurances and that we believe that UK and Australian authorities will do everything in their power, consistent with their laws, to ensure that these individuals do not engage in or support terrorism in the future.

Q5: Is it true that these individuals are trained al Qaeda operatives that some of them agreed to participate in suicide missions, and that others had connections to Usama Bin Laden and other senior al Qaeda leaders?

A5: The British and Australian governments have requested their transfer and accepted responsibility for these detainees. They have assured the USG that the detainees will not pose a continuing security threat to the United States or our allies. The USG has

confidence in their commitment and ability to fulfill this responsibility.

Q6: Are these the most dangerous detainees released thus far?

A6: I am not going to get into comparing the relative danger posed by detainees.

Q7: Is President Bush succumbing to pressure from Prime Minister Blair and Prime Minister Howard?

A7: No. We have said all along that we are willing to transfer detainees from Guantanamo to other countries under appropriate conditions when those countries will accept responsibility for them. We cannot win the Global War on Terror alone. We have transferred detainees to France, Spain, Russia, Saudi Arabia, and other countries under this policy, and we hope to transfer others. Whether any particular detainee can be transferred depends on all the facts of that particular case.

Q8: Has the President changed his mind about trying three of these individuals by military commission?

A8: The President determined that three of these five were eligible for trial by military commission, but they had not been charged with crimes at the time of their transfer.

Q9: Did the British and Australians conclude that military commissions are unfair and is that why they are being returned?

A9: We continue to believe that military commissions can and will provide full and fair trials, as the President has directed. I would refer you to the British concerning their views of the military commissions. The Australians previously stated publicly that military commissions can provide full and fair trials and have consented to the United States bringing the remaining Australian detainee, David Hicks, to trial in military commissions proceedings.

Q10: Does this decision indicate that the case against these detainees was weak?

A10: No. This decision has nothing to do with the merits of any case for prosecuting any of the detainees.

Q11: What does this transfer mean for the future of military commissions?

A11: This transfer has no impact on use of the military commission process for other detainees. This decision has nothing to do with the merits of any case for prosecuting any of the detainees. One

Australian detainee remains in proceedings before a military commission.

Q12: Were Prime Minister Blair, Prime Minister Howard and President Bush personally involved in this decision?

A12: Yes, given the importance of this issue.

Q13: Is President Bush disappointed with this turn of events, i.e. that he failed to persuade even our closest allies that their detainees should continue to be held or tried by military commission?

A13: President Bush is satisfied with the strong security assurances that the British government has provided. The British are our closest allies in the war against al Qaeda and its supporters, and we need to work with them to win it.

Q14: Did the Secretary of Defense approve/concur with this transfer?

A14: This decision was reached at the highest levels of the US Government, involving consultations with the Department of Defense and other national security agencies.

Q15: Last time, when the five other UK detainees were returned, it was said that these four detainees could not be returned because they were significantly more dangerous. What has happened in the meantime to change that assessment?

A15: That assessment has not changed. But the USG has confidence in the security assurances that the UK and Australian authorities have offered regarding these five and this was a significant factor in the decision to return them.

Q16: What about the other Australian detainee, David Hicks?

A16: He remains in detention and remains subject to trial by military commission for violations of the law of war.

Q17: Why did you give the name of the one Australian detainee and not give the names of the UK detainees? What are their names? Can you confirm that they are: Moazzam Begg from Birmingham, Feroz Abassi, from Croydon, south London, Martin Mubanga, from Wembley, north-west London and Richard Belmar, from St John's Wood, north west London?

A17: We made an exception in the case of Habib since another Australian will remain in detention and subject to trial by military commissions for violations of the law of war.

Q18: Did these detainees have a Combatant Status Review Tribunal or Administrative Review Board?

A18: Yes, all had a CSRT, none had appeared before an Administrative Review Board.

Q19: What happens when these detainees return to the UK and Australia?

A19: Once an individual is transferred, that person becomes the responsibility of their home country and subject to that country's laws. UK and Australian authorities have offered security assurances and will do everything in their power, consistent with their laws, to ensure that these individuals do not engage in or support terrorism in the future. The US Government has confidence in their commitment and ability to fulfill this responsibility.

Q20: What will the United States do if any of these five resume terrorist activity or go back to the Taliban or Al-Qaida as some released detainees apparently already have done?

A20: It's not helpful to speculate on what might happen. However, transfers are not without risk. We make a determination about transfer of a detainee based on the best information we have at the time. Remember, some of these people are highly skilled in concealing the truth. Once the individual is transferred, that person becomes the responsibility of their home country and is subject to that country's laws. Finally we believe that UK and Australian authorities will do everything in their power, consistent with UK and Australian law, to ensure that these individuals do not engage in or support terrorism in the future.

Q21: How long had these individuals been held at Guantanamo?

A21: Generally, we don't comment on the duration of specific detainee cases. Detainees began arriving at Guantanamo in January of 2002 and it is possible they may have been there since that date -- the most recent additions in the detainee population arrived in September 2004.

Q22: How do you respond to allegations raised by British detainees of being beaten and physically abused by DoD personnel?

A22:

- There is no evidence that any British detainee in DoD custody was tortured or abused.
- The act of capturing and detaining a resistant combatant can be traumatic, but such lawful acts do not constitute abuse.

- Three of the four UK detainees are now making allegations that they were abused during detention at GTMO. Only one of the four UK detainees, who is included in the group of three making allegations, ever alleged abuse at GTMO prior to October 2004. The other three never made allegations of abuse before this, and they confirmed this fact with US and UK representatives on October 2004.

- The one UK detainee who did make a claim of abuse at GTMO had his claim investigated, and not only was there no evidence found to substantiate his claim, but it was found that he actually assaulted an interrogator during the incident.

- All four of these detainees received al Qaida training. This training included basic warfare, urban and guerilla warfare, mountain warfare, artillery training, chemical and explosives training, bomb making, assassination training, and suicide bomber training.

- It is important to note that al Qaida training manuals emphasize the tactic of making false abuse allegations. The al Qaida "Manchester" Manual states this as Standard Operating Procedure on the second to last page in the chapter entitled "Lesson Eighteen: Prisons and Detention Centers."

- That these detainees are now making allegations of abuse at GTMO after having told US, UK, and other organization representatives that they were not abused seems to fit the standard operating procedure in al Qaida training manuals.

- We must not forget the facts surrounding the detention of these detainees. They were detained either supporting hostile forces or on the battlefield fighting illegally against the U.S. and coalition forces in Afghanistan. They purposely traveled to that foreign land to fight for, support, or facilitate actions by al Qaida and the Taliban. They were released from Guantanamo after the UK Government agreed to accept responsibility for them and to take steps to ensure that they do not engage in or support terrorist activities in the future.

- We have no doubt that these individuals were properly detained as enemy combatants under the laws of war. The USG has been assured at the highest levels by British and Australian authorities that they will take the necessary steps to address the threat posed by these individuals.

Investigations into Allegations

- All credible allegations of are fully investigated. If violations are uncovered, personnel who commit unlawful acts are held accountable under the UCMJ and Department policy.

- For example, allegations of abuse made by Australian detainees were referred to the Naval Criminal Investigation Services for further investigation. The matter is still under investigation, but we have provided the Government of Australia updates on the investigation's results to date.

- Allegations made by British detainee, Moazzam Begg, were referred to the Army Criminal Investigation Command (CID.) No evidence of abuse was found against detainee Begg.

- The two detainee deaths Mr. Begg claims to have witnessed at Bagram were investigated by CID and charges have been referred against 28 soldiers. Investigators also note that at the time of their interview with Mr. Begg concerning the two detainee deaths, he specifically said he was not tortured nor mistreated. The investigation into Mr. Begg's abuse allegations remains open.

Q23: How do you respond to allegations raised by British detainees of being beaten and physically during interrogations?

A23: Investigations into detainee abuse have found no evidence to substantiate the British detainees' claims. In one case, an investigation found that a British detainee making a claim of interrogator abuse actually assaulted the interrogator.

- U.S. policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with all U.S. legal obligations, and in particular with legal obligations prohibiting torture.

- Approved interrogation techniques used are lawful and in accordance with our obligations under U.S. and international law. The Secretary of Defense guidance concerning approved interrogation techniques dated April 16, 2003 remains in effect at JTF-GTMO. As noted in the memorandum, SECDEF notification is required for use of certain interrogation techniques. Army Field Manual, FM 34-52, contains DoD policy concerning interrogation operations. JTF-GTMO complies with this doctrine.

Q24: How can you dismiss allegations of abuse when released U.S. government documents show that it occurred at Guantanamo and other places?

A24: We do not dismiss credible allegations. When they are credible, we will investigate and we have investigated. We have conducted numerous investigations into allegations of abuse and mistreatment and some are still ongoing.

Q25: What is your response to detainees who say they will bring suit against the U.S. with claims that they have lost two years of their life?

A25: While this is a question best addressed by the Justice Department, I can tell you that there was no mistake in originally detaining these individuals as enemy combatants. Their detention was directly related to their combat activities as determined by an appropriate DoD official before they were ever transferred to Guantanamo. A determination to transfer detainees does not negate their original status. Therefore, detainees have no basis for claiming compensation for their detention from the U.S. government.

Q26: Each of these detainees is a plaintiff in pending habeas cases. What is the impact of this transfer on the habeas corpus litigation?

A26: The government will inform the federal judge of the transfer promptly once it is complete and will move to dismiss the claims raised by the four detainees.

Habib Talking Points
Charging decision:

Q1: What is the role of the Appointing Authority?

A1: The Appointing Authority is the independent overseer of the military commission process. He is entrusted with administrative as well as quasi judicial functions. In addition to making available the necessary administrative resources to the prosecution and defense teams, the commission panels, and the review panel in order to ensure each accused receives a full and fair trial, the Appointing Authority decides whether to approve and refer charges to a commission, appoints commission panels, and drafts regulations to supplement procedure provided by Military Commission Orders and Instructions.

Q2: What is the Appointing Authority's role regarding charging detainees?

A2: One of the most important duties of the Appointing Authority is to determine whether to approve and refer charges. To initiate the process, the Office of the Chief Prosecutor forwards charges to the Legal Advisor for Military Commissions. Upon receipt, the Legal Advisor reviews the available evidence and recommends to the Appointing Authority if the evidence is sufficient to conclude that there is reasonable ground to believe the accused committed the acts as charged. The Appointing Authority then reviews the recommendation and available evidence to independently determine if war crime charges are appropriate. The grand jury determination whether to indict someone is the closest civilian court analogy.

The Office of the Chief Prosecutor may only forward charges pertaining to detainees previously deemed by the President within the jurisdiction of military commissions. The President's determination that a detainee is eligible for trial by military commission does not mean the detainee will be tried. That determination is a separate and distinct determination made by the Appointing Authority. While the first decision is necessary for the other, it does not determine it.

Q3: What does the decision mean?

A3: If the Appointing Authority decides the forwarded evidence does not warrant approving the charges, the case file is returned to the Office of the Chief Prosecutor. Upon receipt of additional evidence, a new package may be submitted for reconsideration by the Appointing Authority.

In the present case, based on the information before him, the Appointing Authority concluded war crimes charges were not appropriate. His decision in this case was consistent with his independent role and reflects the fairness of the entire military commission process. Any decisions regarding a detainee following that conclusion are not within the purview of the Office of the Appointing Authority.

A7E

1. This message contains press guidance for responding to recent allegations of abuse of Australian citizen detainees. Department will relay additional information and guidance as it becomes available.

2. Begin Hicks talking points:

--We are aware of press reports alleging that Australian citizen David Hicks was mistreated in Afghanistan.

--DOD officials are looking into the matter. They are in touch with Hicks' defense team and
are encouraging them to provide any information they have as it is difficult to launch proper investigations based on press accounts.

--All credible allegations of mistreatment will be investigated, and where evidence of criminal behavior is found, the responsible individuals will beheld accountable.

End Hicks talking points.

3. Department has just become aware of additional allegations regarding the treatment of Australian Citizen Mamdouh Habib at Guantanamo. In response to questions regarding his case, post may use the following points.

4. Begin Habib talking points:

--We are aware of press reports alleging that Mamdouh Habib was mistreated in Guantanamo.

--All credible allegations of mistreatment will be investigated, and where evidence of criminal behavior is found, the responsible individuals will be held accountable.

--We encourage all individuals with evidence of detainee mistreatment to provide that information so that any abuses can be brought out into the open and thoroughly investigated.

End Habib talking points.

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A 10

PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2500

AUG 2 3 2004

POLICY

Michael Thawley
Ambassador to the United States
Embassy of Australia
1601 Massachusetts Avenue, NW
Washington, DC 20036

Dear Ambassador Thawley:

I am writing to advise you of the findings of the investigation the Deputy Secretary of Defense ordered for a comprehensive review of the treatment of Mr. Hicks and Mr. Habib while in U.S. Department of Defense custody.

As you are aware, the investigation arose from a number of allegations made by Mr. Hicks and Mr. Habib that they had been abused while under Department of Defense control and reflects the seriousness with which we respond to such allegations.

U.S. commands responsible for Mr. Hicks' and Mr. Habib's detention prior to their arrival and during their detention at Guantanamo (U.S. Central Command and U.S. Southern Command respectively) have reviewed records relevant to the alleged abuses. These classified reports will be provided separately.

Examination of medical records and other documents concerning the detention of Mr. Hicks and Mr. Habib by the Department of Defense reveals no information to support the abuse allegations.

The examination did reveal that Mr. Habib had been forcibly removed from his cell in Guantanamo on four occasions by the Initial Response Force (IRF). This was as a consequence of his threatening and disruptive behavior and his refusal to comply voluntarily with directions by the guard force. The IRF is a specially-trained guard force that handles life-threatening and other critical situations, including suicide attempts and hostage situations. Many prison systems around the world, including those of the United States, have an IRF-like

capability. The existence of the IRF and other support personnel with specialized skills and training at Guantanamo exemplify that the detention facility is operated professionally and reflect the importance of ensuring the security and safety of the detainees. The use of the IRF does not constitute abusive treatment.

Regular visits to Mr. Hicks and Mr. Habib at Guantanamo by Australian representatives have enabled your government to conduct first-hand assessments related to the humane treatment of the Australian detainees at Guantanamo. While under Department of Defense control, Mr. Hicks and Mr. Habib, and all other detainees, are provided food, religious materials, shelter, medical care, mail service, reading materials, and clothing. They are treated humanely. Department of Defense policies do not permit, tolerate, or condone torture by its personnel under any circumstances. Violations of these policies result in investigation and further actions as appropriate. Additionally, Guantanamo is regularly visited by the International Committee of the Red Cross and Members of the U.S. Congress.

As you are aware, the Naval Criminal Investigative Service (NCIS) is conducting an independent investigation into the allegations of abuse, which has included interviews with Mr. Hicks and Mr. Habib. NCIS hopes to have their findings completed soon, and will then have the results quickly reviewed by the Naval Inspector General, Vice Admiral Albert Church. These results will be communicated to you as soon as possible.

The Department of Defense continues to treat the cases of Mr. Hicks and Mr. Habib as a matter of priority. Mr. Hicks' case is before a military commission for a preliminary hearing. Mr. Habib has been designated for trial by military commission, and we are in the process of assigning him legal counsel. This affords both Mr. Hicks and Mr. Habib a full and fair process to address the criminal charges against them.

I hope this information is helpful to you. Please let me know if I can assist you further.

Sincerely,

Ryan Henry

PTERDPDC
corresp.
A11

ASSISTANT SECRETARY OF DEFENSE
2400 DEFENSE PENTAGON
WASHINGTON, DC 20301-2400

INTERNATIONAL
SECURITY
AFFAIRS

24 AUG 2004

Mr. Peter Baxter
Chargé d'Affaires
Embassy of Australia
1601 Massachusetts Avenue, NW
Washington, DC 20036

Dear Mr. Chargé d'Affaires:

Deputy Secretary Wolfowitz asked the Department of the Navy to conduct an investigation independent of the review that the Combatant Commands conducted concerning the alleged abuse of Mr. David Hicks and Mr. Mamdouh Habib while they were in U.S. Department of Defense custody.

The investigation is ongoing, but we want to provide you with available information as soon as possible. The attached preliminary findings of the Department of the Navy investigation provide the most current information available to the Department of Defense. Because the investigation is not yet complete and it is Law Enforcement Sensitive information, we ask that your Government not share any details of this investigation publicly at this time.

I would also like to amplify upon the results of the Combatant Commands' review of their records concerning the detention of Mr. Hicks and Mr. Habib that was provided to Ambassador Thawley on August 23, 2004. An examination of all records concerning their detention in Department of Defense control revealed no information that would support abuse allegations.

We will continue to work closely with you and your staff on this important issue.

Sincerely,

Peter W. Rodman

Peter W. Rodman

2005 PTER
(GTMO-HABIB)

A14

NEWS RELEASE FROM THE DEPARTMENT OF DEFENSE
No. 03-55
January 11, 2005
Media Contact: 703-697-5131
Public Industry Contact: 703-428-0711

GUANTANAMO Detainees to be Transferred

The Department of Defense announced today that it will be transferring the four British detainees and one Australian detainee in detention at Guantanamo Bay, Cuba, to the governments of the United Kingdom and Australia.

These detainees are enemy combatants who had been detained by the United States in accordance with the laws of war and U.S. law. The governments of the United Kingdom and Australia have accepted responsibility for these individuals and will work to prevent them from engaging in or otherwise supporting terrorist activities in the future.

The U.K. and Australian governments have made a number of security assurances to the U.S. government in this regard that was important to the transfer decision. The timing of the detainees' return remains under discussion by our governments.

-END-

A14A

DOD
January 11, 2005

TALKING POINTS:

- The war against al Qaeda and its supporters is a global war in which nations like the United States, the United Kingdom and Australia must work closely together if we are to succeed. This action allows our British and Australian allies to ensure that their citizens who previously engaged in or supported terrorist activities do not do so in the future.

- We cannot win the Global War on Terror without the continued support of the international community and our allies. We have transferred detainees to France, Spain, Russia, Saudi Arabia, and other countries and we hope to transfer others. Whether any particular detainee can be transferred depends on all the facts of that particular case.

- We have no doubt that these individuals were properly detained as enemy combatants under the laws of war. British and Australian authorities have assured us that they will take the necessary steps to address the threat posed by these individuals.

- UK and Australian authorities have offered security assurances and will do everything in their power, consistent with their laws, to ensure that these individuals do not engage in or support terrorism in the future. The USG has confidence in their commitment and ability to fulfill this responsibility.

Selected Q & A:

Q1: So you are acknowledging that these individuals were not a threat, should not have been held at Guantanamo, and are innocent of any charges?

A1: We continue to believe that these individuals pose a significant threat. British and Australian authorities have assured us that they will take the necessary steps to address the threat posed by these individuals. The war

against al Qaeda and its supporters is a global war in which nations like the United States, the United Kingdom and Australia must work closely together if we are to succeed, and this action allows us to share some of the responsibility with our allies.

Q2: Will these detainees be set free upon their return like the 5 other British detainees?

A2: We expect that the British authorities will detain their detainees upon their arrival in the UK for questioning on their involvement with terrorism. You would have to ask the British government for further details on that. We understand, however, that they will be released if no charges can be brought against them. We understand the Australian detainee will be released.

Q3: Doesn't this decision indicate that these individuals were improperly detained?

A3: No. We have no doubt that these individuals were properly detained as enemy combatants under the laws of war.

Q4: What types of security assurances did the British and Australians provide to ensure that these individuals would not engage in terrorist activities?

A4: We aren't going to get into those details, other than to say that there were strong assurances and that we believe that UK and Australian authorities will do everything in their power, consistent with their laws, to ensure that these individuals do not engage in or support terrorism in the future.

Q5: Is it true that these individuals are trained al Qaeda operatives that some of them agreed to participate in suicide missions, and that others had connections to Usama Bin Laden and other senior al Qaeda leaders?

A5: The British and Australian governments have requested their transfer and accepted responsibility for these detainees. They have assured the USG that the detainees will not pose a continuing security threat to the United

States or our allies. The USG has confidence in their commitment and ability to fulfill this responsibility.

Q6: Are these the most dangerous detainees released thus far?

A6: I am not going to get into comparing the relative danger posed by detainees.

Q7: Is President Bush succumbing to pressure from Prime Minister Blair and Prime Minister Howard?

A7: No. We have said all along that we are willing to transfer detainees from Guantanamo to other countries under appropriate conditions when those countries will accept responsibility for them. We cannot win the Global War on Terror alone. We have transferred detainees to France, Spain, Russia, Saudi Arabia, and other countries under this policy, and we hope to transfer others. Whether any particular detainee can be transferred depends on all the facts of that particular case.

Q8: Has the President changed his mind about trying three of these individuals by military commission?

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Q12: Were Prime Minister Blair, Prime Minister Howard and President Bush personally involved in this decision?

A12: Yes, given the importance of this issue.

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Australian authorities have offered regarding these five and this was a significant factor in the decision to return them.

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A18: Yes, all had a CSRT, none had appeared before an Administrative Review Board.

Q19: What happens when these detainees return to the UK and Australia?

A19: Once an individual is transferred, that person becomes the responsibility of their home country and subject to that country's laws. UK and Australian authorities have offered security assurances and will do everything in their power, consistent with their laws, to ensure that these individuals do not engage in or support terrorism in the future. The US Government has confidence in their commitment and ability to fulfill this responsibility.

Q20: What will the United States do if any of these five resume terrorist activity or go back to the Taliban or Al-Qaida as some released detainees apparently already have done?

A20: It's not helpful to speculate on what might happen. However, transfers are not without risk. We make a determination about transfer of a detainee based on the best information we have at the time. Remember, some of these people are highly skilled in concealing the truth. Once the individual is transferred, that person becomes the responsibility of their home country and is subject to that country's laws. Finally we believe that UK and Australian authorities will do everything in their power, consistent with UK and Australian law, to ensure that these individuals do not engage in or support terrorism in the future.

Q21: How long had these individuals been held at Guantanamo?

A21: Generally, we don't comment on the duration of specific detainee cases. Detainees began arriving at Guantanamo in January of 2002 and it is possible they may have been there since that date -- the most recent additions in the detainee population arrived in September 2004.

Q22: How do you respond to allegations raised by British detainees of being beaten and physically abused by DoD personnel?

A22:

- There is no evidence that any British detainee in DoD custody was tortured or abused.

- The act of capturing and detaining a resistant combatant can be traumatic, but such lawful acts do not constitute abuse.

- Three of the four UK detainees are now making allegations that they were abused during detention at GTMO. Only one of the four UK detainees, who is included in the group of three making allegations, ever alleged abuse at GTMO prior to October 2004. The other three never made allegations of abuse before this, and they confirmed this fact with US and UK representatives on October 2004.

- The one UK detainee who did make a claim of abuse at GTMO had his claim investigated, and not only was there no evidence found to substantiate his claim, but it was found that he actually assaulted an interrogator during the incident.

- All four of these detainees received al Qaida training. This training included basic warfare, urban and guerilla warfare, mountain warfare, artillery training, chemical and explosives training, bomb making, assassination training, and suicide bomber training.

- It is important to note that al Qaida training manuals emphasize the tactic of making false abuse allegations. The al Qaida "Manchester" Manual states this as Standard Operating Procedure on the second to last page in the chapter entitled "Lesson Eighteen: Prisons and Detention Centers."

- That these detainees are now making allegations of abuse at GTMO after having told US, UK, and other organization representatives that they were not abused seems to fit the standard operating procedure in al Qaida training manuals.

- We must not forget the facts surrounding the detention of these detainees. They were detained either supporting hostile forces or on the battlefield fighting illegally against the U.S. and coalition forces in Afghanistan. They purposely traveled to that foreign land to fight for, support, or facilitate actions by al Qaida and the Taliban. They were released from Guantanamo after the UK Government agreed to accept responsibility for them and to take steps to ensure that they do not engage in or support terrorist activities in the future.

- We have no doubt that these individuals were properly detained as enemy combatants under the laws of war. The USG has been assured at the highest levels by

British and Australian authorities that they will take the necessary steps to address the threat posed by these individuals.

Investigations into Allegations

- All credible allegations of are fully investigated. If violations are uncovered, personnel who commit unlawful acts are held accountable under the UCMJ and Department policy.

- For example, allegations of abuse made by Australian detainees were referred to the Naval Criminal Investigation Services for further investigation. The matter is still under investigation, but we have provided the Government of Australia updates on the investigation's results to date.

- Allegations made by British detainee, Moazzam Begg, were referred to the Army Criminal Investigation Command (CID.) No evidence of abuse was found against detainee Begg.

- The two detainee deaths Mr. Begg claims to have witnessed at Bagram were investigated by CID and charges have been referred against 28 soldiers. Investigators also note that at the time of their interview with Mr. Begg concerning the two detainee deaths, he specifically said he was not tortured nor mistreated. The investigation into Mr. Begg's abuse allegations remains open.

Q23: How do you respond to allegations raised by British detainees of being beaten and physically during interrogations?

A23: Investigations into detainee abuse have found no evidence to substantiate the British detainees' claims. In one case, an investigation found that a British detainee making a claim of interrogator abuse actually assaulted the interrogator.

- U.S. policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with all U.S. legal obligations, and in particular with legal obligations prohibiting torture.

- Approved interrogation techniques used are lawful and in accordance with our obligations under U.S. and international law.
  The Secretary of Defense guidance concerning approved interrogation techniques dated April 16, 2003 remains in effect at JTF-GTMO. As noted in the memorandum, SECDEF notification is required for use of certain interrogation techniques. Army Field Manual, FM 34-52, contains DoD policy concerning interrogation operations. JTF-GTMO complies with this doctrine.

Q24: How can you dismiss allegations of abuse when released U.S. government documents show that it occurred at Guantanamo and other places?

A24: We do not dismiss credible allegations. When they are credible, we will investigate and we have investigated. We have conducted numerous investigations into allegations of abuse and mistreatment and some are still ongoing.

Q25: What is your response to detainees who say they will bring suit against the U.S. with claims that they have lost two years of their life?

A25: While this is a question best addressed by the Justice Department, I can tell you that there was no mistake in originally detaining these individuals as enemy combatants. Their detention was directly related to their combat activities as determined by an appropriate DoD official before they were ever transferred to Guantanamo. A determination to transfer detainees does not negate their original status. Therefore, detainees have no basis for claiming compensation for their detention from the U.S. government.

Q26: Each of these detainees is a plaintiff in pending habeas cases. What is the impact of this transfer on the habeas corpus litigation?

A26: The government will inform the federal judge of the transfer promptly once it is complete and will move to dismiss the claims raised by the four detainees.

Habib Talking Points
Charging decision:

Q1: What is the role of the Appointing Authority?

A1: The Appointing Authority is the independent overseer of the military commission process. He is entrusted with administrative as well as quasi judicial functions. In addition to making available the necessary administrative resources to the prosecution and defense teams, the commission panels, and the review panel in order to ensure each accused receives a full and fair trial, the Appointing Authority decides whether to approve and refer charges to a commission, appoints commission panels, and drafts regulations to supplement procedure provided by Military Commission Orders and Instructions.

Q2: What is the Appointing Authority's role regarding charging detainees?

A2: One of the most important duties of the Appointing Authority is to determine whether to approve and refer charges. To initiate the process, the Office of the Chief Prosecutor forwards charges to the Legal Advisor for Military Commissions. Upon receipt, the Legal Advisor reviews the available evidence and recommends to the Appointing Authority if the evidence is sufficient to conclude that there is reasonable ground to believe the accused committed the acts as charged. The Appointing Authority then reviews the recommendation and available evidence to independently determine if war crime charges are appropriate. The grand jury determination whether to indict someone is the closest civilian court analogy.

The Office of the Chief Prosecutor may only forward charges pertaining to detainees previously deemed by the President within the jurisdiction of military commissions. The President's determination that a detainee is eligible for trial by military commission does not mean the detainee will be tried. That determination is a separate and distinct determination made by the Appointing Authority. While the first decision is necessary for the other, it does not determine it.

Q3: What does the decision mean?

A3: If the Appointing Authority decides the forwarded evidence does not warrant approving the charges, the case file is returned to the Office of the Chief Prosecutor. Upon receipt of additional evidence, a new package may be submitted for reconsideration by the Appointing Authority.

In the present case, based on the information before him, the Appointing Authority concluded war crimes charges were not appropriate. His decision in this case was consistent with his independent role and reflects the fairness of the entire military commission process. Any decisions regarding a detainee following that conclusion are not within the purview of the Office of the Appointing Authority.

DRAFT FINAL DRAFT DRAFT

A15A

Detainee Transfer
(3 January 2005)

1. BACKGROUND:

JTF-GTMO previously transferred 202 detainees—146 for release, and 56 transferred to the control of other governments (29 to Pakistan, five to Morocco, four to France, seven to Russia, four to Saudi Arabia, one to Spain, one to Sweden and five to Great Britain). This transfer to the UK includes a total of four detainees; that increases the number of detainees to 206 who have departed GTMO.

It has been decided that the four British detainees remaining in detention at Guantanamo Bay will be transferred to the custody of the government of the United Kingdom. Two of these four had been designated by the President for trial by military commission. UK authorities objected to that process, and asked that their detainees be returned to their custody. Five other British detainees were transferred to the UK government in March 2004.

2. PA POSTURE: Passive – RTQ only, using the statement in paragraph 4 prior to completion of the detainee transfer and only after the initial release announcement has been made. Once the transfer is completed, OASD(PA) will provide the press release in paragraph 5.

3. PRESS RELEASE AFTER UK ANNOUNCEMENT:

The Department of Defense announced today that it will be transferring the four British detainees remaining in detention at Guantanamo Bay, Cuba to the government of the United Kingdom.

These detainees are enemy combatants who had been detained by the United States in accordance with the laws of war and U.S. law. The government of the United Kingdom has accepted responsibility for these individuals and will work to prevent them from engaging in or otherwise supporting terrorist activities in the future.

The U.K. government has made a number of security assurances to the U.S. government in this regard that were important to the transfer decision. The timing of the detainees' return to the United Kingdom remains under discussion by the two governments.

4. RESPONSE TO QUERY (PRIOR TO COMPLETION of the detainee movement): (UNCLAS)

We can confirm a transfer is pending. Because of security concerns, we will not discuss further details until after completion of the transfer.

We are regularly in negotiations with other governments, including the United Kingdom, about transferring detainees from Guantanamo.

As with previous movements, a press release will be issued when the detainee movement has successfully taken place. (Refer to the DoD website: www.dod.mil/releases/). Also note: http://www.defenselink.mil/news/detainees.html .

To date, 202 detainees have departed GTMO - 146 for release, and 56 transferred to the control of other governments (29 to Pakistan, five to Morocco, four to France, seven to Russia, four to Saudi Arabia, one to Spain, one to Sweden and five to Great Britain).

5. PRESS RELEASE:

FOLLOWING NOTIFICATION OF completed detainee transfer:

TRANSFER OF BRITISH DETAINEES COMPLETE

The Department of Defense announced today that it transferred four British detainees from Guantanamo Bay, Cuba to the custody of the United Kingdom.

The decision to transfer or release a detainee is based on many factors, including whether the detainee poses a continued threat to the United States or its allies and whether he is of further intelligence value. The decision to transfer these detainees was made after extensive discussions between our two governments.

During these discussions, the British government has requested their transfer and accepted responsibility for these detainees. They have assured the USG that the detainees will not pose a continuing security threat to the United States or our allies. The Department of Defense has strong confidence in the UK's commitment and ability to fulfill this responsibility.

During the course of the War on Terrorism, the department expects that there will be other transfers or releases of detainees.

Because of operational and security considerations, no further details regarding the movement can be provided. To date, 206 detainees have departed GTMO - 146 for release, and 60 transferred to the control of other governments (29 to Pakistan, five to Morocco, four to France, seven to Russia, four to Saudi Arabia, one to Spain, one to Sweden and nine to Great Britain). As a result of today's transfer, there are now approximately 545 detainees at GTMO.

-END-

6. TALKING POINTS:

- **The war against al Qaeda and its supporters is a global war in which nations like the United States and the United Kingdom must work closely together if we are to succeed. This action allows our British allies to ensure that their citizens who previously engaged in or supported terrorist activities do not do so in the future.**

- **We cannot win the Global War on Terror without the continued support of the international community and our allies. We have transferred detainees to France, Spain, Russia, Saudi Arabia, and other countries and we hope to transfer others. Whether any particular detainee can be transferred depends on all the facts of that particular case.**

- **We have no doubt that these individuals were properly detained as enemy combatants under the laws of war. British authorities have assured us that they will take the necessary steps to address the threat posed by these individuals.**

- **UK authorities have offered security assurances and will do everything in their power, consistent with UK law, to ensure that these individuals do not engage in or support terrorism in the future. The Department of Defense has confidence in the U.K.'s commitment and ability to fulfill this responsibility.**

7. QUESTIONS & ANSWERS (RTQ):

Q1: Can you confirm that the United States is releasing the British detainees from Guantanamo?

A1: We can confirm a transfer is pending. Because of security concerns, we will not discuss further details until after completion of the transfer.

We are regularly in negotiations with other governments, including the United Kingdom, about transferring detainees from Guantanamo.

As with previous movements, a press release will be issued when the detainee movement has successfully taken place. (Refer to the DoD website: www.dod.mil/releases/). Also note: http://www.defenselink.mil/news/detainees.html .

Transfer or release of detainees can be based on many factors. The detainee assessment process is ongoing. We periodically review the detention of each detainee based on various factors, to determine if continued detention is still appropriate.

To date, 202 detainees have departed GTMO - 146 for release, and 56 transferred to the control of other governments (29 to Pakistan, five to Morocco, four to France, seven to Russia, four to Saudi Arabia, one to Spain, one to Sweden and five to Great Britain).

Q2: So you are acknowledging that these individuals were not a threat, should not have been held at Guantanamo, and are innocent of any charges?

A2: We continue to believe that these individuals pose a significant threat. British authorities have assured us that they will take the necessary steps to address the threat posed by this group, who are all British nationals.

The war against al Qaeda and its supporters is a global war in which nations like the United States and the United Kingdom must work closely together if we are to succeed, and this action allows us to share some of the responsibility with our British allies.

Q3: Will these detainees be set free upon their return to the UK like the others?

A3: We have been advised that British authorities will detain them upon their arrival in the UK for questioning on their involvement with terrorism. You would have to ask the British government for further details on that. We understand, however, that they may be released if no charges can be brought against them.

Q4: Doesn't this decision indicate that these individuals were improperly detained?

A4: No. We have no doubt that these individuals were properly detained as enemy combatants under the laws of war.

Q5: What types of security assurances did the British provide to ensure that these individuals would not engage in terrorist activities?

A5: We aren't going to get into those details, other than to say that there were strong assurances and that we believe that UK authorities will do everything in their power, consistent with UK law, to ensure that these individuals do not engage in or support terrorism in the future.

Q6: Is it true that these individuals are trained al Qaeda operatives that some of them agreed to participate in suicide missions, and that others had connections to Usama Bin Laden and other senior al Qaeda leaders?

A6: The British government has requested their transfer and accepted responsibility for these detainees. They have assured the USG that the detainees will not pose a continuing security threat to the United States or our allies. The Department of Defense has strong confidence in the UK's commitment and ability to fulfill this responsibility.

Q7: Are these the most dangerous detainees released thus far?

A7: I am not going to get into comparing the relative danger posed by detainees.

Q8: Is President Bush succumbing to pressure from Prime Minister Blair?

A8: No. We have said all along that we are willing to transfer detainees from Guantanamo to other countries under appropriate conditions when those countries will accept responsibility for them. We cannot win the Global War on Terror alone. We have transferred detainees to France, Spain, Russia, Saudi Arabia, and other countries under this policy, and we hope to transfer others. Whether any particular detainee can be transferred depends on all the facts of that particular case.

Q9: Has the President changed his mind about trying two of these individuals by military commission?

A9: The President determined that two of these four were eligible for trial by military commission, but they had not been charged with crimes at the time of their transfer.

Q10: Did the British conclude that military commissions are unfair and is that why they are being returned?

A10: We continue to believe that military commissions can and will provide full and fair trials, as the President has directed. I would refer you to the British concerning their views of the military commissions.

Q11: Does this decision indicate that the case against these detainees was weak?

A11: No. This decision has nothing to do with the merits of any case for prosecuting any of the detainees.

Q12: What does this transfer mean for the future of military commissions?

A12: This transfer has no impact on use of the military commission process for other detainees. This decision has nothing to do with the merits of any case for prosecuting any of the detainees.

Q13: Were Prime Minister Blair and President Bush personally involved in this decision?

A13: Yes, given the importance of this issue.

Q14: Is President Bush disappointed with this turn of events, i.e. that he failed to persuade even our closest ally that their detainees should continue to be held or tried by military commission?

A14: President Bush is satisfied with the strong security assurances that the British government has provided. The British are our closest allies in the war against al Qaeda and its supporters, and we need to work with them to win it.

Q15: Did the Secretary of Defense approve/concur with this transfer?

A15: The President, in consultation with DoD and other agencies, made the decision to transfer these individuals to the control of the UK government.

Q16: Last time, when the five other UK detainees were returned, it was said that these four detainees could not be returned because they were significantly more dangerous. What has happened in the meantime to change that assessment?

A16: That assessment has not changed. But UK authorities have offered additional security assurances regarding these four than were provided with regard to the other five, and this was a significant factor in the decision to return them.

Q17: Did these detainees have a Combatant Status Review Tribunal or Administrative Review Board?

A17: Yes, all had a CSRT, none had appeared before an Administrative Review Board.

Q18: What happens when these detainees return to the UK?

A18: Once an individual is transferred, that person becomes the responsibility of their home country and subject to that country's laws.

Q19: What will the United States do if these four resume terrorist activity or go back to the Taliban or Al-Qaida as some released detainees apparently already have done?

A19: It's not helpful to speculate on what might happen. However, transfers are not without risk. We make a determination about transfer of a detainee based on the best information we have at the time. Remember, some of these people are highly skilled in concealing the truth. Once the individual is transferred, that person becomes the responsibility of their home country and is subject to that country's laws. Finally we believe that UK authorities will do everything in their power, consistent with UK law, to ensure that these individuals do not engage in or support terrorism in the future.

Q20: How long had these individuals been held at Guantanamo?

A20: Generally, we don't comment on the duration of specific detainee cases. Detainees began arriving at Guantanamo in January of 2002 and it is possible they may have been there since that date -- the most recent additions in the detainee population arrived in September 2004.

Q21: What is your response to detainees who say they were abused while in U.S. custody?

A21: Credible allegations of unlawful conduct by U.S. personnel are taken seriously and investigated. Specific information about alleged abuse is not releasable until the investigation and possible prosecution is complete.

This precaution is essential to maintaining the integrity of the investigation and preventing unlawful command influence.

Reviews were conducted and many allegations were determined not credible or substantiated. Other cases that were found credible resulted in investigations being initiated.

Q22: So you will investigate any allegations these individuals make?

A22: If they make any allegations that prove to be credible, we will investigate them. I will remind you that many of the allegations we've investigated in the past have proven groundless and that it is a well known al-Qaida technique for captured members to allege abuse at every turn.

Q23: How can you dismiss allegations of abuse when released U.S. government documents show that it occurred at Guantanamo and other places?

A23: We do not dismiss credible allegations. When they are credible, we will investigate and we have investigated. We have conducted numerous investigations into allegations of abuse and mistreatment and some are still ongoing.

Q24: What is your response to detainees who say they will bring suit against the U.S. with claims that they have lost two years of their life?

A24: While this is a question best addressed by the Justice Department, I can tell you that there was no mistake in originally detaining these individuals as enemy combatants. Their detention was directly related to their combat activities as determined by an appropriate DoD official before they were ever transferred to Guantanamo. A determination, that a detainee should no longer be classified as an enemy combatant, does not negate his original status. Therefore, detainees have no basis for claiming compensation for their detention from the U.S. government.

Q25: Each of these detainees is a plaintiff in pending habeas cases. What is the impact of this transfer on the habeas corpus litigation?

A25: The government will inform the federal judge of the transfer promptly once it is complete and will move to dismiss the claims raised by the four detainees.

8. POCS: OASD (PA): LCDR Flex Plexico (Alvin.plexico@osd.mil) DSN: 227-1252 or Comm: 703-697-1252 or Maj Michael Shavers (Michael.shavers@osd.mil) DSN:225-0193 or Comm: 703-695-0193