

SAIG (20-1b) ANNEX 3 (TESTIMONY) to DIG 05-80001

(b)(7)(D)

15. (U) On 21 December 2004, AMB Bremer testified to DAIG:

a. (U) It was important for the CPA and CJTF-7 to have a close relationship. For the first three or four months, the military was the major presence outside of Baghdad. LTG Sanchez moved his office and top people to the CPA HQs, and provided the CPA a briefing every morning regarding overnight developments. The meeting gave LTG Sanchez and his colleagues a chance to hear what CPA was doing on the political side. (pp. 4-5)

b. (U) The initial assumption that there would be a permissive environment in which to conduct SASO was valid at the time, based on what they knew. The insurgency did not start on a major scale until August 2003, with the attacks on the Jordanian embassy and the United Nations mission. (p. 5)

c. (U) In August 2003, he was concerned that their intelligence was not focused on the right target. The Central Intelligence Agency (CIA) station was spending most of its time looking for weapons of mass destruction (WMD). It did not strike him that it was likely that any coalition Soldiers were going to be killed by WMD, but they were getting killed by insurgents. The intelligence needed to be targeted on the insurgency. As a result, he directed the establishment of an intelligence fusion cell that brought together the intelligence capability of the military, the CIA, the Defense Intelligence Agency (DIA), etc. MG Fast was placed in charge. He visited the fusion cell several times, and it was his impression that they did a good job pulling the intelligence together. (p. 8)

d. (U) This was not to say their intelligence was good - they were not getting enough intelligence on the insurgents, which was why he emphasized standing up an Iraqi intelligence service. The CPA and CJTF-7 were not organized to get that kind of intelligence. They were in a situation not faced by the US government for over 50 years. They were occupying a country, and the only useful intelligence was HUMINT. The technical intelligence was irrelevant regarding an insurgent running around with a rocket propelled grenade (RPG). They needed people who would tell them where the insurgency cells were, and that meant they needed Iraqis who would cooperate. They had a massive amount of information that was not getting collated in a useful fashion. It was possible that the people they were talking to did not have anything useful to say. It

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was also possible that the information was not adequately assessed, either in Washington or in the fusion cell. (pp. 9-10)

e. (U) LTG Sanchez was a good officer, and he admired him for his patriotism and his skills. (p. 10)

f. (U) At the time the CPA was stood up in June 2003, all the prisons in the country were looted or destroyed. There was no medium security prison anywhere other than AGP, and AGP was the only maximum security prison available. After surveying all the options, he told the SecDef that they had to use AGP. Regarding the existing Iraqi justice system at the time, they did not have prisons, courts, or judges. They had to establish these, and they could not wait the three years they were told it would take to build a new maximum security prison. They worked the complicated problem of how to transfer the Iraqi prisoners out of US custody into Iraqi custody. It was key to remember that Saddam Hussein released thousands of hardened criminals into Iraqi society that the coalition later gathered up. Initially, they did not have a good system for sorting the security detainees from the criminals, and he pressed hard for a better process. The situation eventually improved. By September 2003, they were not keeping detainees on perpetual "MI hold". A reason was required to continue to detain security detainees. (pp. 11-14)

g. (U) He had regular meeting with LTG Sanchez regarding detention operations and detainee population numbers because it was a matter of concern. He (Mr. Bremer) walked through AGP several times, and it was neither chaotic nor a "rat hole." Although several hundred prisoners were living in tents at the time of his visits, so were most of the Soldiers. The prison blocks were in the process of being rebuilt, and they were a big improvement. (pp. 14-16)

h. (U) He pressed CJTF-7 to ensure they met their obligations under international law on how often they reviewed a security detainee's status. Keeping Iraqis detained for too long was a political problem, because this could potentially create enemies. (p. 17)

i. (U) The CPA had several hundred military personnel on their staff provided by CJTF-7. There was a high degree of integration with the military. The CofS, CJTF-7, was heavily engaged with the CPA. (pp. 18-19)

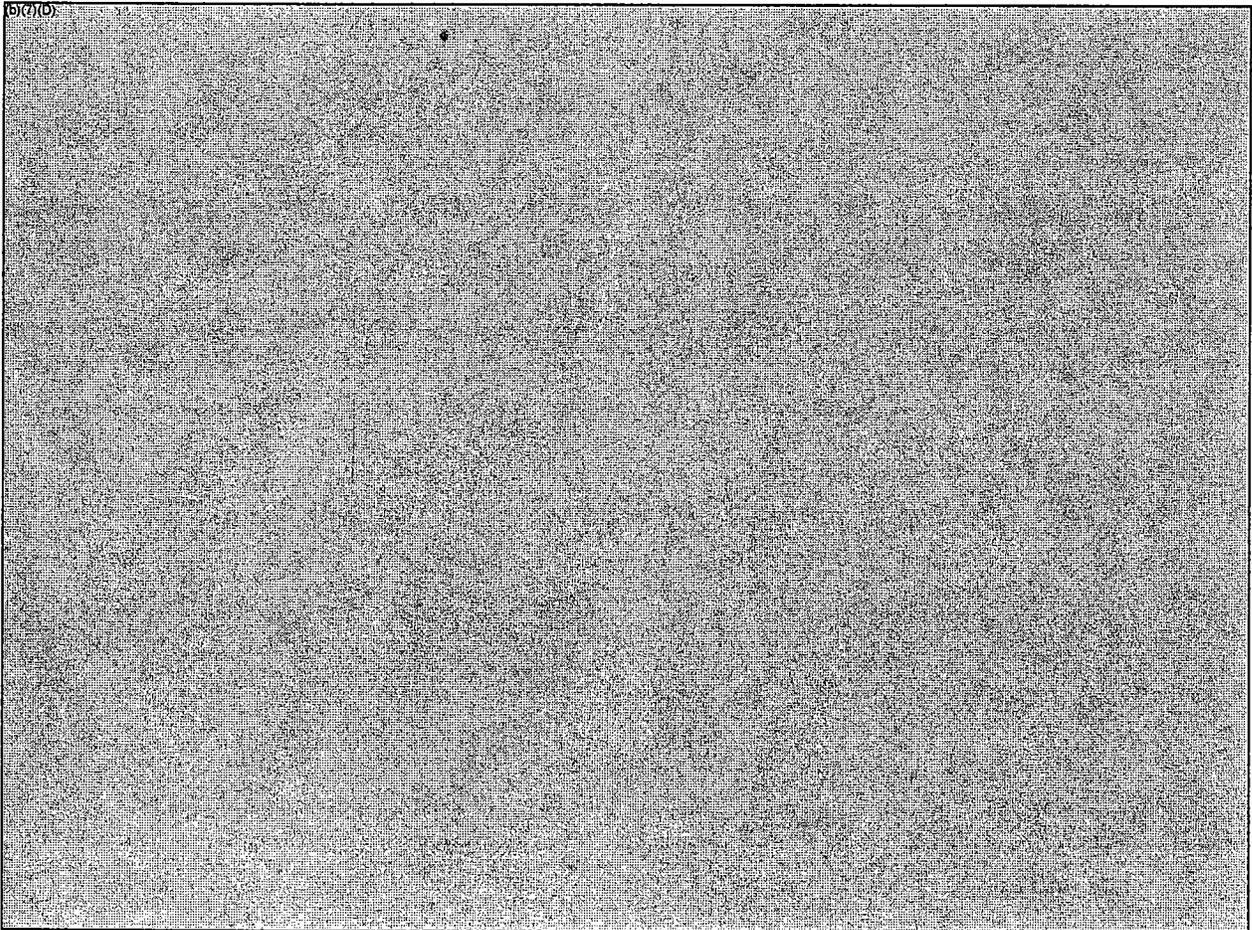
j. (U) He was not aware any guidance given to MG Fast regarding CJTF-7's cooperation with OGAs, specifically the CIA, and the use of AGP facilities. He guessed such guidance, if any, came from the military. (p. 19)

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k. (U) They had about 80-85% of all the MPs in the entire Army in Iraq. There was a limit to how much more could be done. They couldn't ask to have 100%. (p. 20)

l. (U) Iraq was a very complicated environment for both the military and civilians, and one for which there was no recent American experience on this scale. America did not face insurgencies in Germany and Japan after World War II. It was difficult for everyone to figure out how to make this civil-military approach to an occupation work. Detention was a problem and he and the CPA staff worked it. They received no resistance from LTG Sanchez and his staff on the matter. CJTF-7 may have been under-manned, but they never raised it to him as a problem. (pp. 21-22)

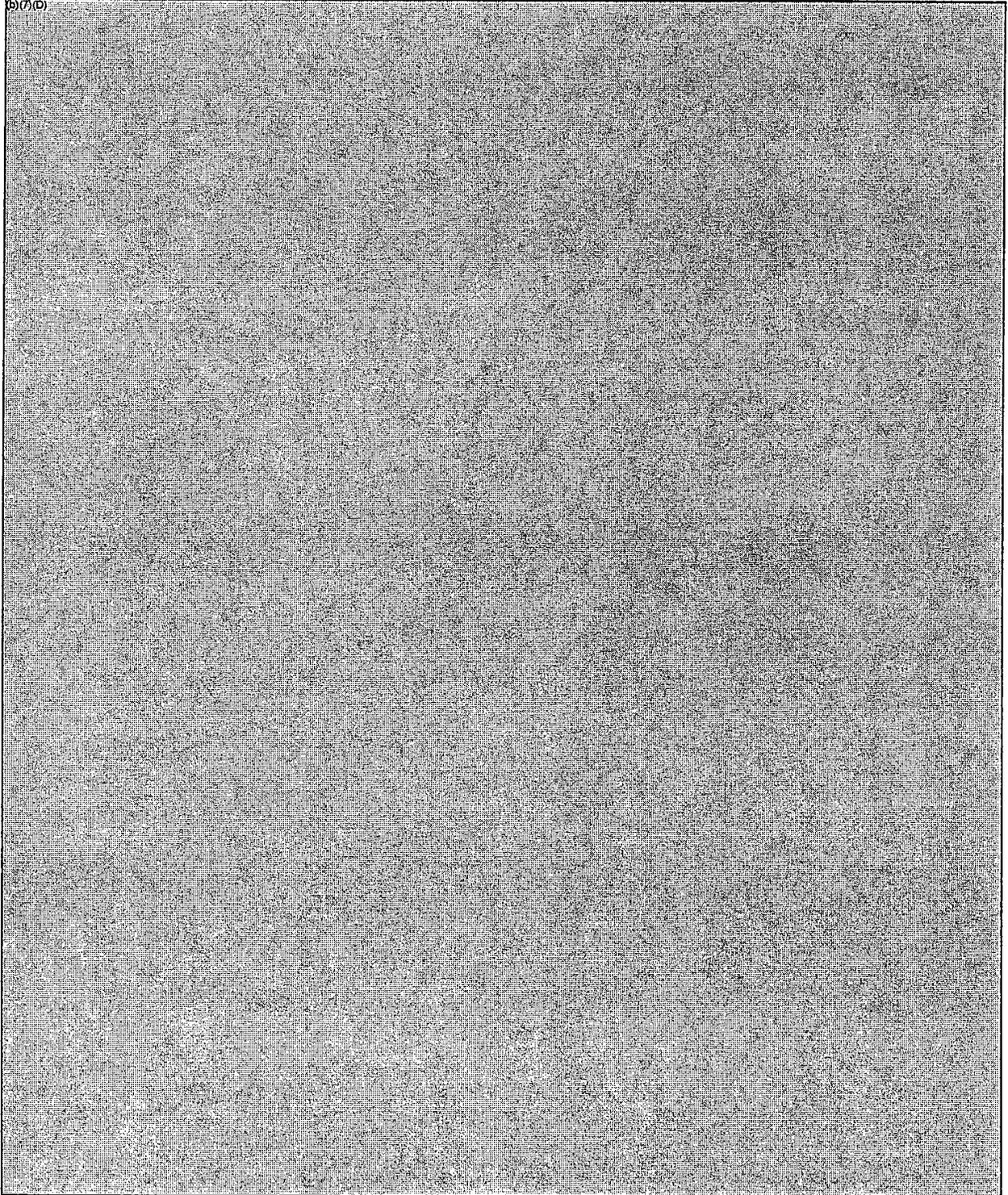
m. (U) He did not see conceptually how the prison population at AGP could have contributed to the abuse. (p. 22) (EXHIBIT D-15)



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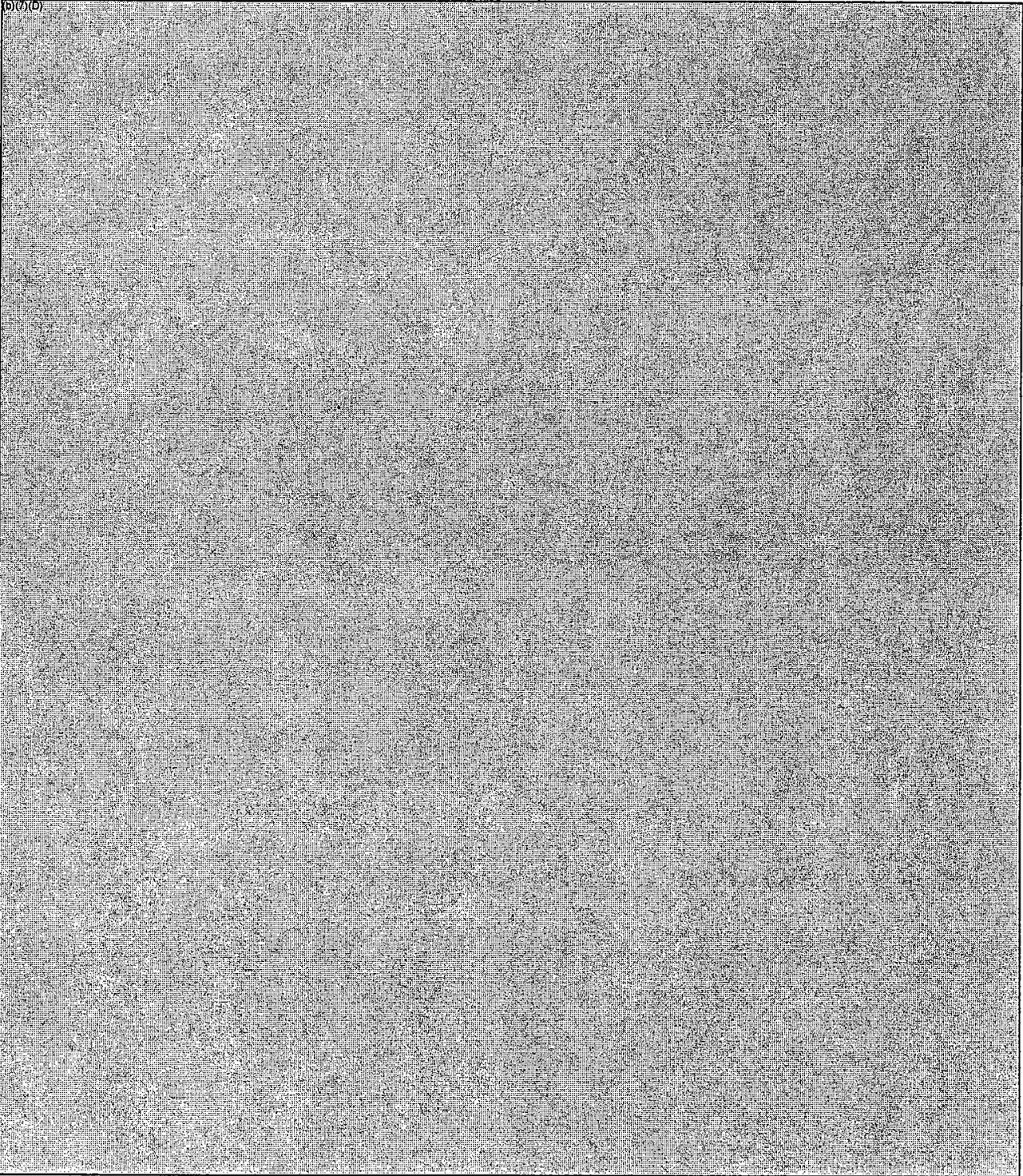
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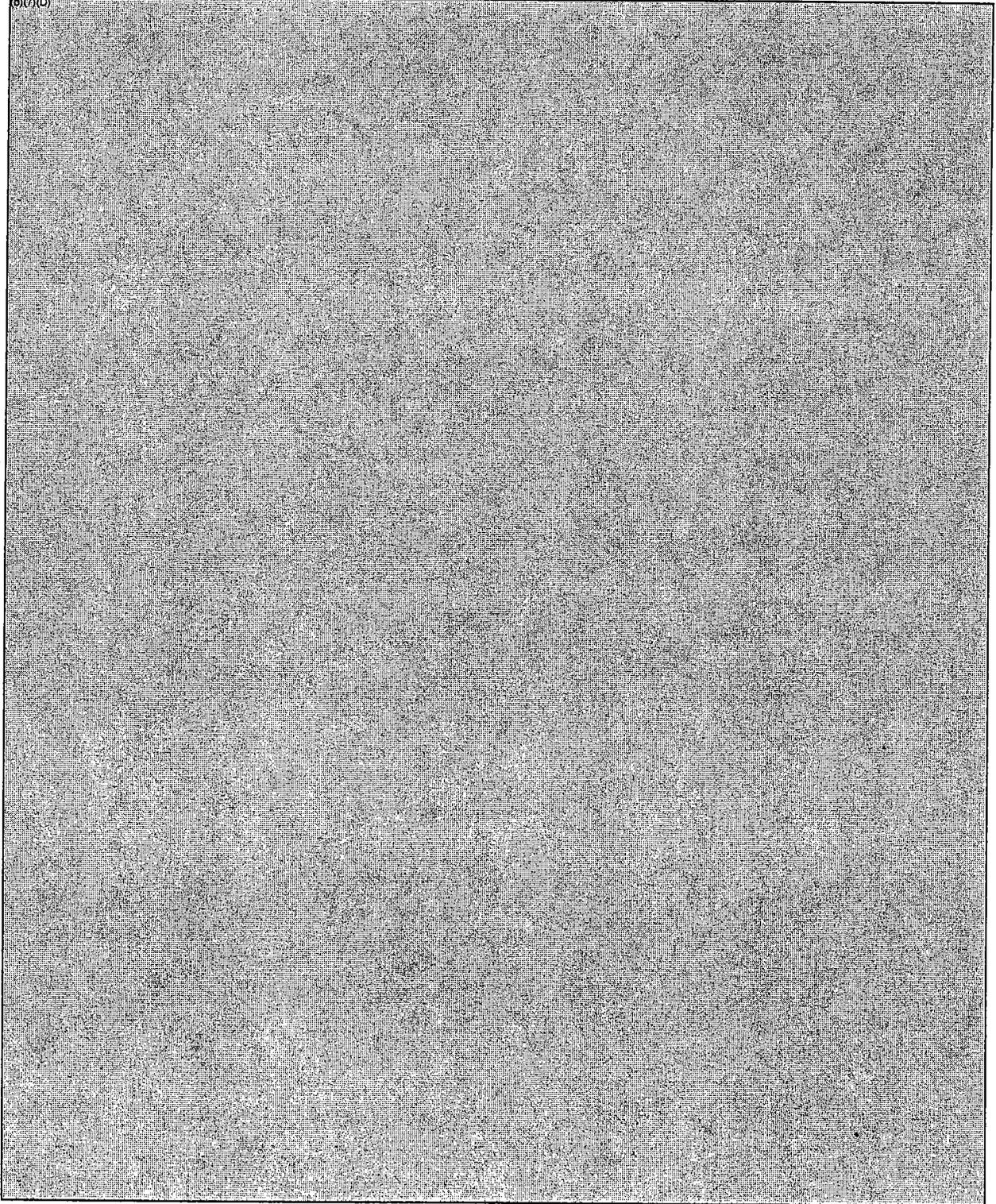
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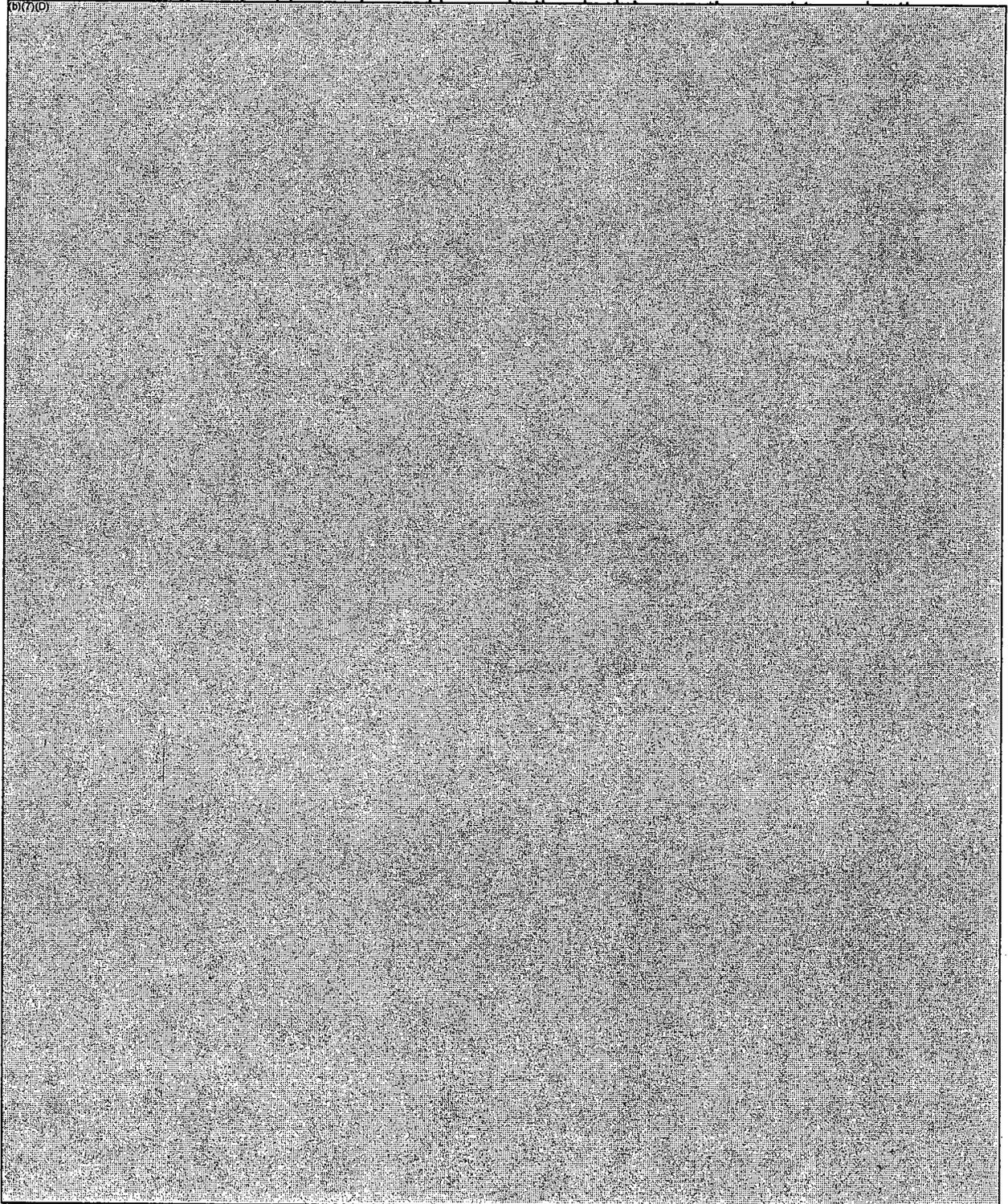
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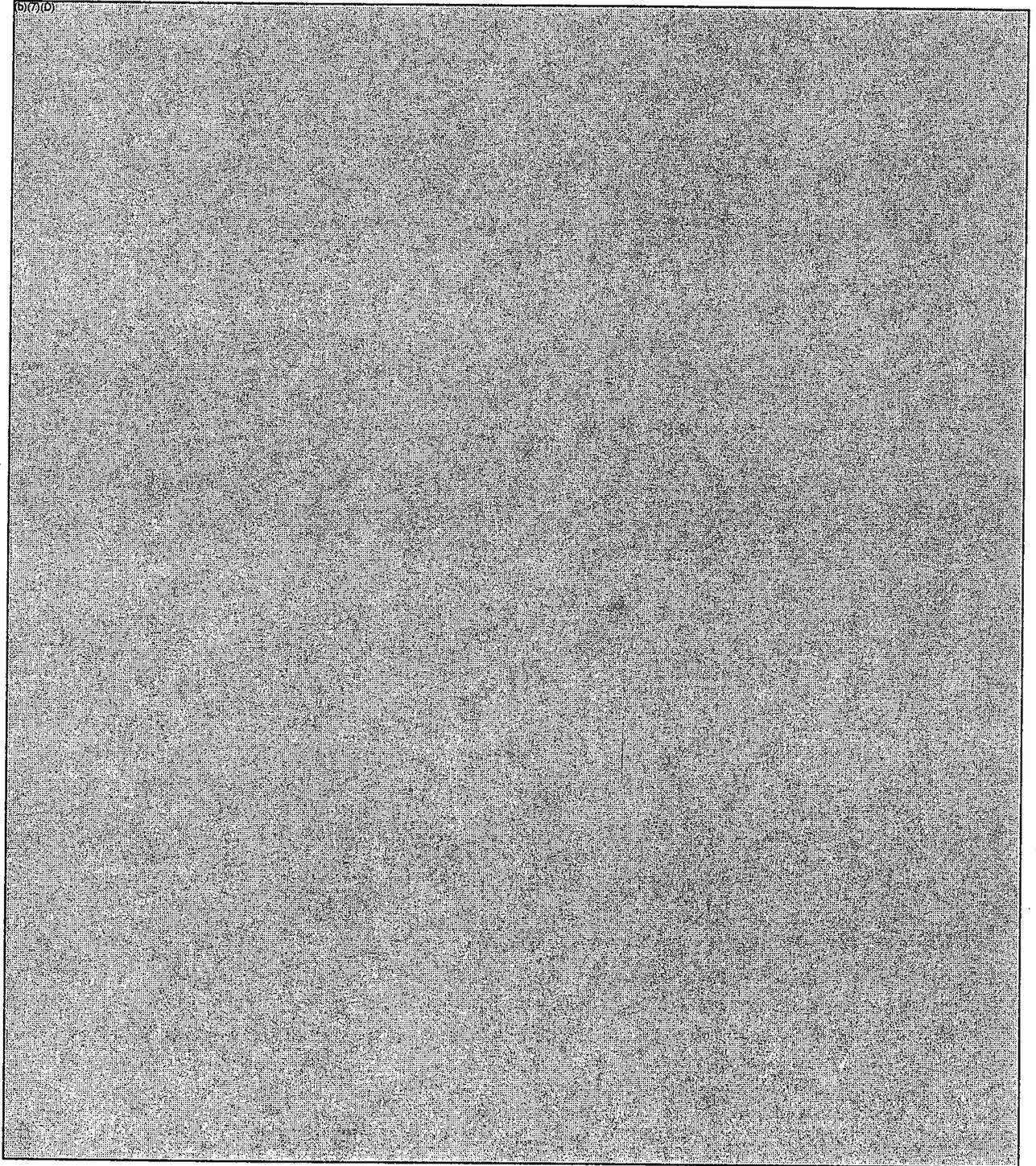
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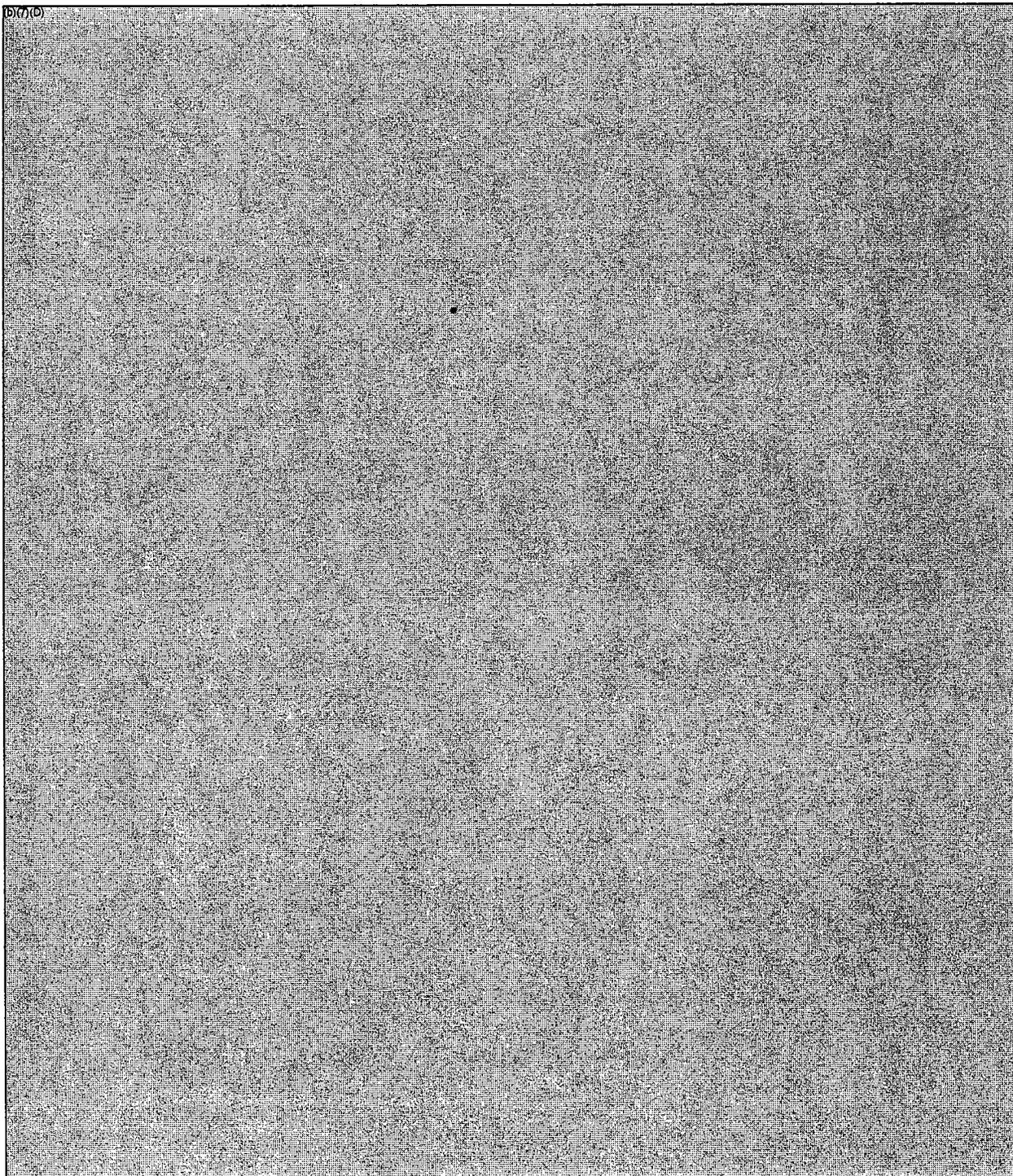
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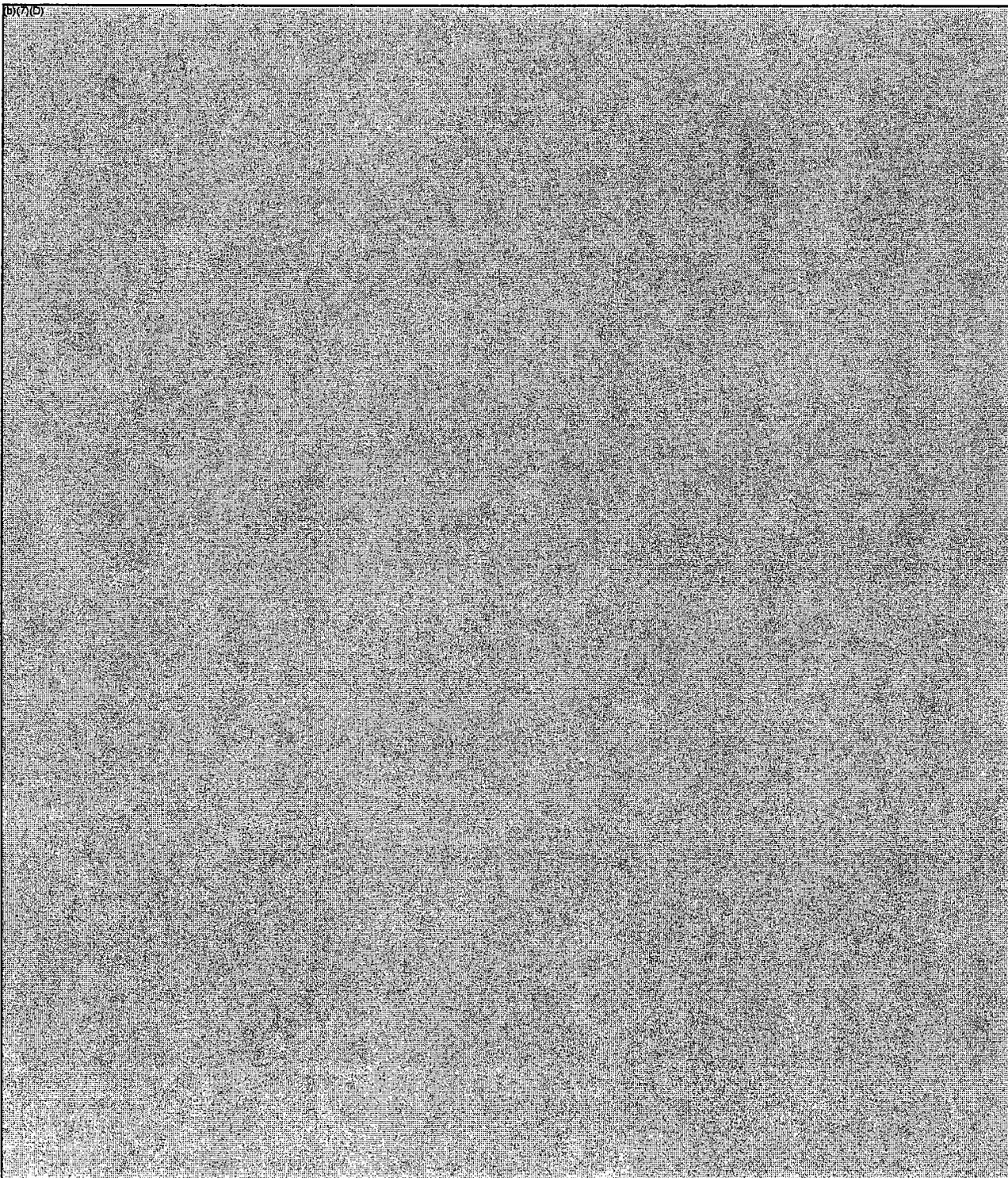
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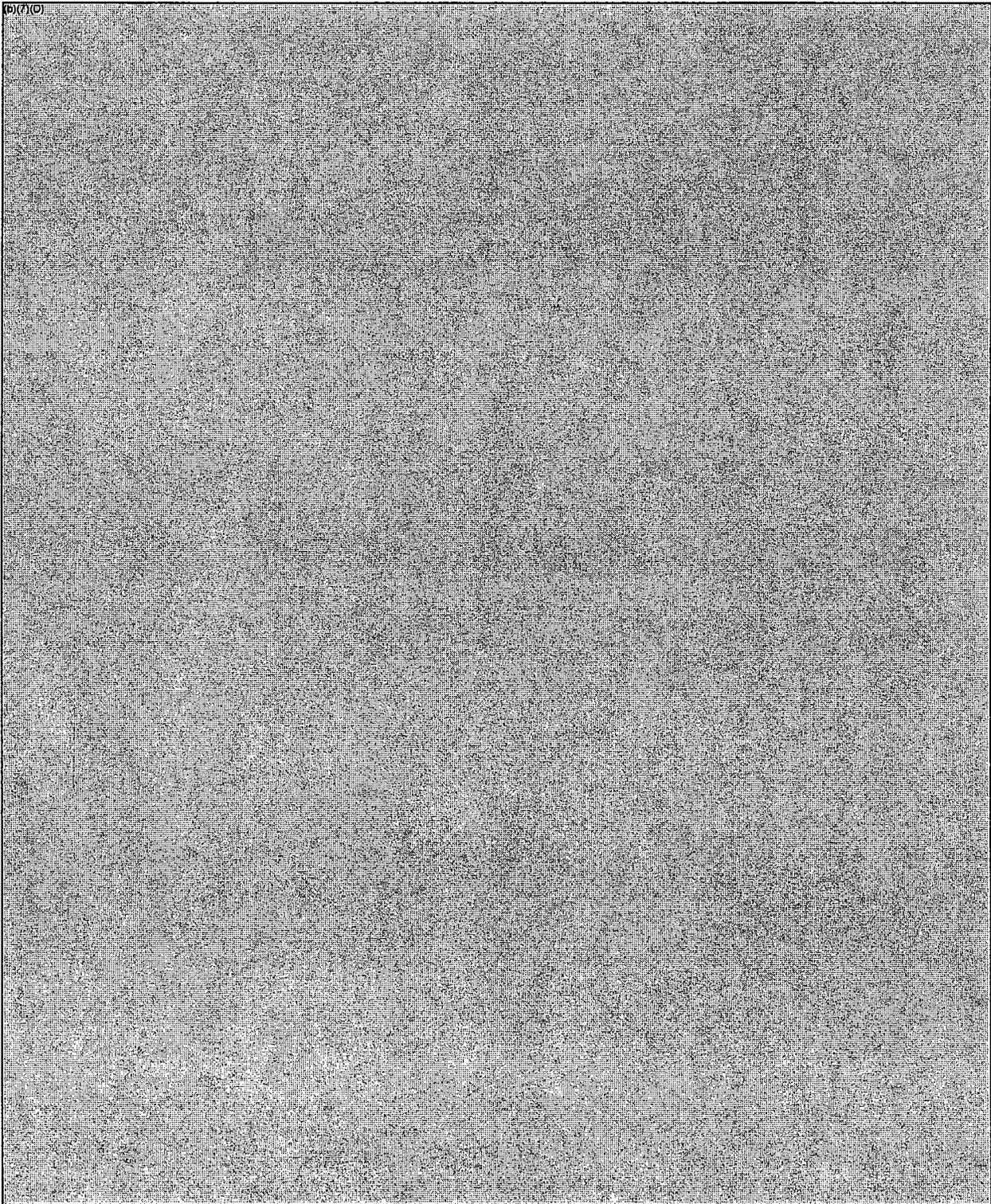
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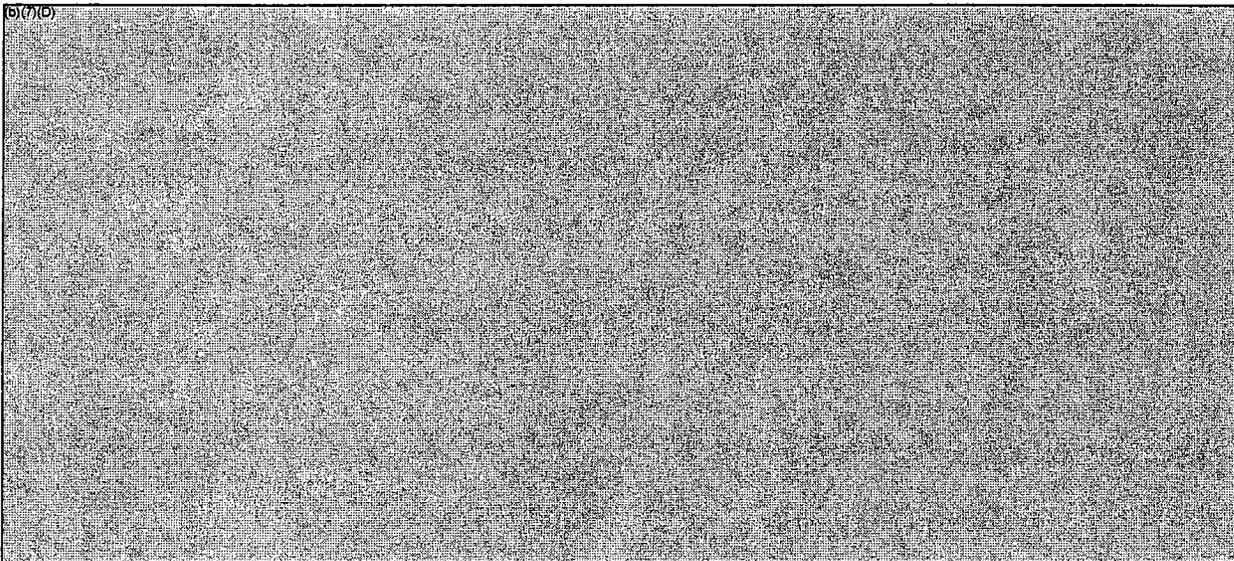
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ANNEX 4

SAIG (20-1b) ANNEX 4 (DISCUSSION) to DIG 05-80001

2. (U) Allegation #1: LTG Sanchez was derelict in the performance of his duties pertaining to detention and interrogation operations.

a. (U) Article 92 of the UCMJ stated dereliction in the performance of one's duties consisted of three elements: a person had certain duties; the person knew or reasonably should have known of those duties; and the person was derelict in the performance of those duties through willfulness, neglect, or culpable inefficiency. Actual knowledge of the duties could be shown by regulation, customs of the service, or testimony of persons who held similar or superior positions. Willfully meant intentionally. Negligently meant an act or omission which exhibited a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. Culpable inefficiency was inefficiency for which there was no reasonable or just excuse. (EXHIBIT B-1)

b. (U) The allegation that LTG Sanchez was derelict in the performance of his duties pertaining to detention and interrogation operations was derived from the following statements in the reports reviewed for this investigation:

(1) (U) The Jones Report:

(a) (U) The CG, CJTF-7, failed to ensure proper staff oversight of detention and interrogation operations.

(b) (U) The TACON relationship of the 800th MP BDE to CJTF-7 resulted in disparate support from the CJTF-7 staff, lower priority for resources needed for detention operations, and a lack of intrusive, aggressive oversight by the CJTF-7 leadership.

(c) (U) CJTF-7 responsibility for staff oversight of detention operations, facilities, intelligence analysis and fusion, and the limits of authority on interrogation techniques was dispersed among the CJTF-7 staff. The lack of one person on the staff to oversee detention operations and facilities complicated the coordination among the staff. (EXHIBIT C-25)

(2) (U) From the Kern Report:

(a) (U) There was a lack of clear command and control of detainee operations at the CJTF-7 level.

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(b) (U) The ICRC's allegations of abuse at AGP were not believed, nor were they adequately investigated. There was neither a defined procedure nor specific responsibility within CJTF-7 for dealing with ICRC visits. (EXHIBIT C-23)

(3) (U) From the Schlesinger Report:

(a) (U) LTG Sanchez failed to ensure proper staff oversight of detention and interrogation operations.

(b) (U) LTG Sanchez should have ensured his staff dealt with the command and resource problems. He should have ensured that urgent demands were placed for appropriate support and resources through CFLCC and CENTCOM to the JCS.

(c) (U) Commanding officers and their staffs at various levels failed in their duties and such failures contributed directly or indirectly to detainee abuse. Command failures were compounded by poor advice provided by staff officers with responsibility for overseeing battlefield functions related to detention and interrogation operations.

(d) (U) LTG Sanchez delegated responsibility for detention operations to MG Wojdakowski. Intelligence personnel at AGP reported through the C-2. These arrangements had the damaging result that no single individual was responsible for overseeing operations at AGP.

(e) (U) If CDRs and staffs at the operational level had been more adaptive in the face of changing conditions, a different approach to detention operations could have been developed by October 2003. Responsible leaders, to include the CG, CJTF-7, could have set in motion the development of a more effective alternative course of action.

(f) (U) LTG Sanchez was responsible for establishing the confused command relationship at AGP. There was no clear delineation of command responsibility between the 320th MP BN and the 205th MI BDE.

(g) LTG Sanchez should have taken more forceful action in November 2003 when he fully comprehended the depth of the leadership problems at AGP. His apparent attempt to mentor BG Karpinski was insufficient in a combat zone in the midst of a serious and growing insurgency.

(h) (U) There was a failure to report the abuses up the chain of command in a timely manner with adequate urgency. The abuses at AGP were known and under investigation as early as January 2004, but the gravity of the abuses was not conveyed

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up the chain of command to the SeCDeF. The Taguba report was transmitted to LTG Sanchez and the CG, CENTCOM, but the impact of the photos was not appreciated by any of these officers.

(i) (U) CJTF-7 determined that some of the detainees held in Iraq were to be categorized as unlawful combatants. Despite lacking specific authorization to operate beyond the confines of the GCs, CJTF-7 nonetheless determined it was within their command discretion to classify, as unlawful combatants, individuals captured during OIF. CJTF-7 concluded it had individuals in custody who met the criteria for unlawful combatants set out by the President of the United States and extended it in Iraq to those who were not protected as combatants under the GCs. CJTF-7 understood there was no authorization to suspend application of the GCs. CJTF-7 had no means of discriminating detainees among the various categories of those protected under the GCs and those unlawful combatants who were not. (EXHIBIT C-26)

(2) (U) Element #1: Did LTG Sanchez have duties with respect to detention and interrogation operations? **Yes.** As the CG, CJTF-7, LTG Sanchez was responsible for all CJTF-7 operations in CJTF-7's AOR. AR 600-20 stated that CDRs were responsible for everything their command did or failed to do, and that CDRs subdivided responsibility and authority and assigned portions of both to various subordinate CDRs and staff members. The evidence established that LTG Sanchez delegated authority for detention and interrogation operations to the CDRs of the 800th MP BDE and 205th MI BDE, respectively. He assigned staff responsibility for detention operations to the C-3, who exercised staff oversight through the PM. He assigned staff responsibility for interrogation operations to the C-2, and assigned overall supervisory responsibility for the CJTF-7 staff to MG Wojdakowski as the de facto CofS. Additionally, he delegated authority to MG Wojdakowski to supervise CJTF-7's SEP BDEs, which included the 800th MP BDE and 205th MI BDE.

(3) (U) Element #2: Did LTG Sanchez know or should he have reasonably known of this duty? **Yes.** The evidence established that LTG Sanchez, as the CG, CJTF-7, knew and accepted his duties as the CG, CJTF-7, regarding detention and interrogation operations. Testimony was consistent among LTG Sanchez and other witnesses as to his duties as the CDR with respect to detention and interrogation operations.

c. (U) Element #3: Was LTG Sanchez derelict in the performance of those duties through willfulness, neglect, or culpable inefficiency? **No.**

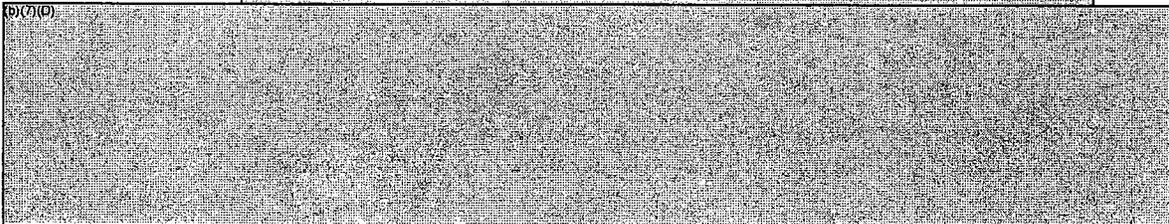
(1) (U) **With respect to providing proper oversight of detention and interrogation operations:** Both the Jones and Schlesinger Reports stated that

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LTG Sanchez failed to ensure proper staff oversight of detention and interrogation operations. The Jones Report stated the TACON relationship of the 800th MP BDE to CJTF-7 resulted in disparate support from the CJTF-7 staff and a lack of intrusive, aggressive oversight by the CJTF-7 leadership. The Kern Report stated there was a lack of clear command and control at the CJTF-7 level. The Schlesinger Report stated that CDRs and their staffs at various levels failed in their duties, and such failures contributed directly or indirectly to detainee abuse. Command failures were compounded by poor advice provided by staff officers with responsibility for overseeing battlefield functions related to detention and interrogation operations.

(a) (U) AR 600-20 stated that CDRs subdivided responsibility and authority and assigned portions of both to various subordinate CDRs and staff members. The evidence established that LTG Sanchez properly provided oversight of those SEP BDEs and elements of the CJTF-7 staff with responsibility for detention and interrogation operations. Through MG Wojdakowski, LTG Sanchez established regular procedures by which he provided oversight of the SEP BDEs, regardless of whether the units were OPCON or TACON to CJTF-7. Testimony indicated MG Wojdakowski provided frequent guidance and mentoring to the CDRs of both the 205th MI BDE and 800th MP BDE. (b) (7)(D)



(b) (7)(D) BG Karpinski indicated she had conversations with MG Wojdakowski almost daily regarding her concerns about personnel and force protection at AGP. Testimony established that MG Wojdakowski provided her substantial guidance and assistance within CJTF-7's authority and resourcing level while holding her responsible for matters within her control. The CJTF-7 leadership provided routine oversight of the SEP BDEs through a variety of mechanisms. MG Wojdakowski held thrice-weekly TACSAT updates with the SEP BDE CDRs, which kept him and LTG Sanchez abreast of the BDEs and provided the CDRs an opportunity to raise issues and receive guidance on a regular basis. Both the 205th MI BDE and the 800th MP BDE participated in these updates. Monthly LRRs were held in which the CDRs provided updates on their materiel readiness, resource, and life support issues. As these SEP BDE CDRs planned and executed missions, MG Wojdakowski appropriately required that they rehearse and outline their plans to him.

(b) (U) (U) MG Wojdakowski hosted two CJTF-7 detention summits in the fall of 2003 that pulled together elements of the CPA, the Iraqi Provisional Government, the

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CJTF-7 staff (to include the SJA, C-2 and C-3), and representatives from the Divisions, the 205th MI BDE, and the 800th MP BDE. AMB Bremer and the CPA had a legitimate political interest for CJTF-7 to expeditiously identify and release eligible civilian detainees back into the populace in order to reduce civil tensions. LTG Sanchez and CJTF-7 had a legitimate military interest to identify, detain, and interrogate persons identified to have intelligence value. Detention summits were a means to coordinate and plan for detention and interrogation operations in Iraq, provide guidance, identify resourcing issues, and ensure unity of effort.

(c) (U) As the de facto CofS, MG Wojdakowski properly managed multiple staff activities pertaining to detention and interrogation operations on a regular, systemic basis. MG Wojdakowski provided oversight of the CJTF-7 staff by synchronizing the daily staff updates to LTG Sanchez, which included intelligence and operations briefings. LNOs from the 800th MP BDE were assigned to the PM office that provided a direct line of coordination between the 800th MP BDE and the CJTF-7 staff. The C2X conducted weekly visits to the JIDC that assisted the C-2 in staff oversight of interrogations. While he was not personally involved in the execution of interrogation operations, MG Wojdakowski provided resources in terms of equipment, supplies, and contracting for the interrogation mission, and received regular updates from MG Fast and COL Pappas. Detainee population numbers and MP strength were regularly briefed to MG Wojdakowski so that he could make management decisions regarding detention facilities. Additionally, CJTF-7 published several FRAGOs that addressed detention operations and the treatment of detainees.

(d) (U) In addition to establishing oversight of the SEP BDEs and staff through MG Wojdakowski, the evidence indicated that LTG Sanchez was also directly involved in providing such oversight. (b)(7)(D)

(b)(7)(D)

(b)(7)(D)

LTG Sanchez visited AGP several times as part of his effort to periodically visit his units. He met personally with the interrogators at AGP to emphasize the limits of their interrogation authorities. He provided considerable guidance on interrogation operations directly to COL Pappas, and in November 2003, he directed COL Pappas to move to AGP to ensure more command oversight of the interrogation operation. LTG Sanchez had frequent interaction with BG Karpinski, and as a result of one of their meetings, directed that AGP become an enduring base, and thus receive higher priority for resources. The evidence indicated that both LTG Sanchez and MG Wojdakowski provided oversight of the 800th MP BDE, a TACON unit, in a manner similar to the oversight provided to CJTF-7's OPCON or assigned units.

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(e) (U) The evidence established that LTG Sanchez recognized and addressed the challenges inherent in re-establishing an Iraqi national prison system while concurrently identifying, detaining and interrogating persons of intelligence value. He pro-actively sought assistance and additional resources to address shortfalls in both the detention and interrogation operation. In the summer of 2003, LTG Sanchez requested assistance that resulted in the Ryder visit in October 2003. LTG Sanchez was personally briefed by MG Ryder on the results of his detention operations assessment, and he directed the implementation MG Ryder's recommendations. LTG Sanchez also recognized that CJTF-7's interrogation operations were not configured to produce the actionable intelligence required to fight the insurgency, and identified this as a shortfall to his chain of command. Consequently, MG Fast was sent to direct the establishment of a viable intelligence architecture. In response to the requirement to develop operational intelligence capabilities, MG G. Miller's assessment team provided feedback on the establishment of effective interrogation operations that could produce the intelligence needed to address the growing insurgency. MG G. Miller out-briefed LTG Sanchez personally on the results of his assessment, and later sent interrogation Tiger Teams to assist the 205th MI BDE in establishing this capacity. As such, the evidence established that LTG Sanchez was actively and personally involved in the establishment and assessment of detention and interrogation operations, and was pro-active in responding to identified shortcomings by requesting appropriate assistance.

(f) (U) AR 600-100 stated that strategic leaders established structure, allocated resources, and articulated strategic vision. As a three-star CG of a combined joint task force, LTG Sanchez properly exercised his responsibilities at the strategic level of leadership. In addition to his responsibilities commanding CJTF-7, LTG Sanchez was heavily focused on supporting the CPA, interfacing with DOD and the National Command Authority, and contributing to the effort to re-build Iraq's infrastructure. He directed MG Wojdakowski to focus on fighting the coalition's counter-insurgency fight, resourcing CJTF-7's operations, and providing strategic-level oversight of detention and interrogation operations. AR 600-100 further stated that the senior level of leadership included leaders at the BDE through corps level, and the core responsibility of senior level leaders was the need to develop, motivate, and coach subordinate leaders. LTG Sanchez expected COL Pappas and BG Karpinski, as senior leaders, to exercise aggressive and appropriate supervision of their units at AGP through their subordinate staffs and CDRs who, in turn, were required to execute their supervisory responsibilities at the direct level of leadership. As such, LTG Sanchez, as a strategic leader, was not responsible for the direct supervision of Soldiers operating at AGP.

(g) (U) Direct supervision of the MP Soldiers at AGP was the responsibility of the MP BN CDR, LTC Phillabaum, and his subordinate leaders. Prior to COL Pappas'

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arrival at AGP in November 2003, direct supervision of the MI Soldiers at AGP was the responsibility of LTC Jordan and subordinate MI leaders in the JIDC. AR 600-100 stated that leaders at the direct level affected values and behavior by establishing day-to-day procedures, practices, and working norms, by their personal example, and by building discipline. The evidence established that the abuses at AGP, most of which were clearly criminal acts, were committed by morally corrupt and unsupervised Soldiers and civilians whose actions went undetected for weeks, and were the result of supervisory failures below the strategic level of leadership. The command and staff failures cited by the Schlesinger report and attributed directly to detainee abuse were failures in leadership at the brigade and battalion levels. These failures were not attributable to a lack of oversight by LTG Sanchez.

(h) (U) The evidence established that LTG Sanchez' ability to provide a higher degree of oversight was hampered by the corps staff's lack of preparation and training as a CJTF; the low manning and experience level of the CJTF-7 staff, to include an initial lack of GO staff officers; CJTF-7's significant support to the CPA; and the demands of the growing insurgency. Both testimony and reports revealed that CJTF-7 was never fully resourced in terms of personnel - in raw numbers, experience, and grade-level. The CJTF-7 staff did not undergo a BCTP normally afforded to new corps-level staffs and CDRs prior to assuming the CJTF mission. The JMD reached no more than a 60% fill, and much of the available staff's effort was directed towards support of the CPA. A portion of the staff, to include the CofS, moved from the Main HQs CP to co-locate with the CPA. CJTF-7's challenges were exacerbated by the slow fill and short-duration personnel rotations at the CPA attributed to various Service and CPA rotation policies. As a result, a significant portion of the already under-strength staff was devoted to assisting the CPA with the huge mission of the reconstruction of Iraq's infrastructure and internal security forces, adversely affecting LTG Sanchez' ability to provide the additional oversight cited critically in several reports.

(i) (U) In conclusion, the preponderance of the evidence indicated that LTG Sanchez provided proper oversight of detention and interrogation operations IAW Army doctrine and regulation, in a manner that could reasonably be expected considering the broad range of his and his subordinate's responsibilities and the available resources. Given the enormity of CJTF-7's mission and the lack of adequate personnel resources, LTG Sanchez properly subdivided responsibility and authority for detention and interrogation operations to the appropriate subordinate CDRs and staff. In spite of multiple responsibilities and significant resource challenges, numerous witnesses testified to efforts made by LTG Sanchez to inform, mentor, direct, resource and supervise his subordinates through a variety of mechanisms. The evidence also established that LTG Sanchez held his staff and subordinate CDRs accountable for

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their responsibilities, and he expected them to fully employ their own leadership and internal resources prior to asking for additional resources in a constrained environment.

(2) **With respect to the establishment of a single POC on the CJTF-7 staff to oversee both detention and interrogation operations:** The Jones Report stated that CJTF-7 responsibility for staff oversight of detention operations, facilities, intelligence analysis and fusion, and the limits of authority on interrogation techniques was dispersed among the CJTF-7 staff. The lack of one person on the staff to oversee detention operations and facilities complicated the coordination among the staff. The Schlesinger Report stated that LTG Sanchez delegated responsibility for detention operations to MG Wojdakowski, and intelligence personnel at AGP reported through the C-2. These arrangements had the damaging result that no single individual was responsible for overseeing operations at AGP.

(a) (U) The evidence established that LTG Sanchez exercised oversight of detention and interrogation operations IAW Army doctrine and regulation. FM 101-5 stated that command included the authority and responsibility for effectively using available resources for the employment of military forces for the accomplishment of assigned missions. AR 600-20 stated that CDRs subdivided responsibility and authority and assigned portions of both to subordinate CDRs and staff members. The evidence established that command responsibility for detention and interrogation operations was executed through the CDRs of the 800th MP BDE and 205th MI BDE, respectively. FM 101-5 also stated that CDRs delegated authority to staff members to accomplish their missions. As the de facto CofS, MG Wojdakowski was LTG Sanchez' principal assistant with executive management authority for directing and supervising the CJTF-7 staff at Camp Victory. IAW Army doctrine, the C-2 was the principal staff officer responsible for MI operations; and the C-3, through the PM, was responsible for detention operations. The evidence established that staff oversight of detention and interrogation operations was appropriately executed through the C-3 and C-2.

(b) (U) Army doctrine was silent as to who should have overall responsibility for detention operations. There was no joint or Army doctrine that suggested a single staff officer or CDR oversee a combined MI and MP operation. While the desirability for a GO in charge of both operations may have been obvious in hindsight, this approach was not doctrinal. As early as November 2003, during the Ryder visit, LTG Sanchez discussed his desire for a MP GO staff principal, and instead received a colonel to serve as the PM. CJTF-7 did not have the resources to create an additional GO position, and the JMD process could not support such a position in a timely manner. Eventually, MG G. Miller was assigned DCG for Detainee Operations, CJTF-7, in April 2004. As such, the initial absence of such a position was not indicative of a lack of action on the part of LTG Sanchez, or of impropriety on his part.

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(3) (U) With respect to resourcing detention and interrogation operations:

(a) (U) The Jones report stated the TACON relationship of the 800th MP BDE to CJTF-7 resulted in disparate support from the CJTF-7 staff and lower priority for resources needed for detention operations. The Schlesinger report stated that LTG Sanchez should have ensured his staff dealt with the command and resource problems, and should have ensured that urgent demands were placed for appropriate support and resources through CFLCC and CENTCOM to the JCS.

(b) (U) The evidence established that LTG Sanchez and CJTF-7 provided significant resources and took corrective action, within their capability and authority, to improve security and living conditions at AGP. CJTF-7 operated in an austere environment from May-December 2003. Sustaining the force was difficult and dangerous, as all supplies were brought in from outside Iraq and convoys were routinely attacked. LTG Sanchez characterized the challenging logistics posture throughout 2003 as "expeditionary logistics." In addition, much of Iraq's infrastructure, such as water treatments plants, electrical plants, and government buildings were severely damaged and looted, far beyond predictions. While the CPA and CJTF-7 hoped to leverage existing Iraqi infrastructure and institutions, the extreme level of degradation and damage became an additional inhibitor rather than a multiplier. As a direct result, Soldiers' and detainees' living conditions alike were difficult and austere throughout Iraq, to include AGP.

(c) (U) When BG Karpinski raised resourcing concerns to LTG Sanchez during his visit to AGP in October 2003, LTG Sanchez directed that AGP be declared an "enduring base." AGP was originally intended by CPA to be a temporary facility until a new prison could be built. The status of "enduring base" gave AGP a higher priority for reconstruction funds from the CPA. As a result, MG Wojdakowski directed that additional funds and engineering effort be applied towards AGP to improve the facilities, and conditions at AGP slowly improved throughout November-December 2003. When the shortage of prisoner clothing was brought to MG Wojdakowski's attention, he directed the CJTF-7 staff to purchase additional jumpsuits. Furthermore, testimony indicated that the 800th MP BDE received support in a manner similar to that of CJTF-7's assigned or OPCON units, and the TACON relationship with CJTF-7 did not materially affect their resourcing by CJTF-7. Although the TACON relationship did not require CJTF-7 to provide the 800th MP BDE's logistical support, (b)(7)(D)

(b)(7)(D)

(b)(7)(D)

There was no evidence that BG Karpinski raised critical logistics issues to the 377th TSC, the 800th MP BDE's OPCON HQs. In sum, the evidence

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established that LTG Sanchez and his staff were responsive to resource shortcomings that were brought to their attention, and they responded in a manner consistent with their authority and resourcing level in an "expeditionary logistics" environment.

(d) (U) The evidence further established that LTG Sanchez acted appropriately when apprised of personnel shortfalls in the 800th MP BDE. The RC had no replacement system for individual losses. The 800th MP BDE, as well as other RC units, was eroded in personnel strength due to losses by illness, injury, or demobilization requirements. The shortages were systemic RC issues and not due to lack of oversight on the part of CJTF-7. While CJTF-7 recognized these personnel shortages, they had no means to alleviate them. The theater rotation plan was the only means to significantly affect MP unit strength.

(e) (U) Although the Ryder report identified that the 800th MP BDE was under-strength, it also stated that the BDE had a "clear and logical plan" to realign its remaining BN and company sized units to meet its mission requirements. (b)(7)(D)



(f) (U) Testimony indicated that up to 75% of the Army's MP assets were already in Iraq. Additional MP companies were not available, and some replacement companies for the 800th MP BDE would be ILO companies. ILO companies were non-MP units, such as field artillery batteries, who were trained to perform MP missions. The most feasible solution for the immediate shortage of MPs was the internal redistribution of the 800th MP BDE's units. The evidence indicated that upon becoming aware of BG Karpinski's personnel concerns and the lack of theater replacements, multiple leaders attempted to influence BG Karpinski to internally redistribute her own resources between detention facilities. Testimony indicated she was reluctant to move her units. BG Karpinski did bring reasonable concerns about her personnel strength to MG Wojdakowski, and he properly indicated to her that he could not help her with replacements due to the lack of a replacement system for reservists and the lack of an Army stop loss policy at the time. Both LTG Sanchez and MG Wojdakowski were aware that there were few, if any, MP units remaining in the Army available for deployment to Iraq, and in December 2004, MG Wojdakowski moved MPs from the 1st AD to AGP to relieve some of the pressure. LTG Sanchez' and his staff's actions regarding the 800th MP BDE's personnel shortages were appropriate in light of the limited resources available.

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(4) **With respect to the establishment of COL Pappas as the FOB CDR at AGP:** The Schlesinger Report stated that LTG Sanchez was responsible for establishing the confused command relationship at AGP. There was no clear delineation of command responsibility between the 320th MP BN and the 205th MI BDE.

(a) The evidence indicated that when force protection issues concerning AGP arose, LTG Sanchez took appropriate action. The C-3 worked battle space management and friendly unit boundary issues external to AGP to reduce instances of mortar attacks.

(b)(7)(D) [Redacted text block]

(b) Although the Schlesinger Report indicated that there was no clear delineation of command responsibility between the 320th MP BN and the 205th MI BDE, COL Pappas indicated that he understood his responsibilities with respect to force protection of the FOB and that LTC Phillabaum understood that he still had the responsibility to run the detention operation. In fact, by making COL Pappas the FOB CDR, FRAGO 1108 fixed responsibility for force protection at AGP with the senior CDR present at the prison. FRAGO 1108 did not relieve the 800th MP BDE of its detention operations responsibilities, nor did it place MP Soldiers under the command of the MI BDE. The Kern Report stated that it appeared that BG Karpinski was the only person among the Army leadership involved who misunderstood the FRAGO. There was no credible evidence that LTG Sanchez' designation of COL Pappas as the FOB CDR of AGP resulted in a confused relationship between the two units at the prison. LTG Sanchez took appropriate and responsible actions to enhance the protection of both Soldiers and detainees at AGP.

(4) **With respect to the ICRC Working Paper and reporting procedures:** The Kern Report stated that the ICRC's allegations of abuse were not believed, nor were they adequately investigated. There was neither a defined procedure nor specific responsibility within CJTF-7 for dealing with ICRC visits.

(a) The evidence established that initially, procedures for dealing with the ICRC were not specifically defined. Prior to October 2003, CJTF-7 enjoyed a good working relationship with the ICRC and worked closely with its members. Following the bombing

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of the ICRC compound in Baghdad in October 2003, the ICRC moved its operation to Jordan, and the previously close relationship with CJTF-7 waned due to the arrival of new ICRC personnel with whom CJTF-7 had no previous working relationship and to the long travel distance. The ICRC's visit to AGP in early October 2003 did not go well due to this loss of a routine working relationship and poor execution by the 320th MP BN. Until the procedure was changed by LTG Sanchez, the ICRC's established procedure was to provide its reports at the lowest level of command in order to preserve the confidentiality of the ICRC process. As such, the ICRC provided its Working Paper on the results of the October 2003 visits to AGP that included allegations of detainee abuse to BG Karpinski in November 2003. She provided a response to the ICRC in late December 2003.

(b) Copies of the Working Paper were made available to members of the Office of the SJA (OSJA), CJTF-7, the 205th MI BDE, the 800th MP BDE, as well as others on the CJTF-7 staff. The few staff members and CDRs who were made aware of the Working Paper's allegations testified they considered many of the allegations to be non-credible based on their inquiries with personnel who spent time at the prison, and did not report or investigate them further. In December 2003, COL Warren informed LTG Sanchez of the procedural problems with the October 2003 ICRC visit. LTG Sanchez directed COL Warren to clarify ICRC visit procedures and directed that all ICRC reports would be reported out through him so that he could remain fully informed and direct corrective action as required. LTG Sanchez was not made aware of the allegations of abuse contained in the Working Paper until February 2004, after the Taguba Investigation had started. Upon being informed by COL Warren of the specifics of the allegations, LTG Sanchez ensured that the allegations were being investigated by MG Taguba. As such, the evidence established that once apprised of the ICRC procedural issues and allegations of abuse, LTG Sanchez took appropriate corrective action to ensure better procedures were established and that the allegations were properly and thoroughly investigated.

(5) (U) With respect to developing alternative courses of action pertaining to detention operations:

(a) (U) The Schlesinger Report stated if CDRs and staffs at the operational level had been more adaptive in the face of changing conditions, a different approach to detention operations could have been developed by October 2003. Responsible leaders, to include the CG, CJTF-7, could have set in motion the development of a more effective alternative course of action. AR 600-100 stated that leaders were responsible for anticipating, managing, and exploiting change; anticipating and solving problems; acting decisively under pressure; and evaluating and accepting risk to exploit opportunity. GOs at the strategic level were responsible for creating structures and

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programs for ensuring that procedures developed at lower levels further supported Army policies and values.

(b) (U) The evidence established that LTG Sanchez took appropriate action with respect to developing courses of action and procedures for detention operations. Testimony indicated that in the summer of 2003, LTG Sanchez anticipated shortcomings in CJTF-7's ability to execute detention operations of the magnitude that was required and recognized that expert assistance was needed. LTG Sanchez raised his concerns to higher HQs. Subsequently, several assistance teams, to include the Miller and Ryder teams, arrived in the ITO to provide guidance on both detention and interrogation operations. These assistance teams provided on-site training to units involved in the detention and interrogation mission and provided examples of applicable SOPs and policies. LTG Sanchez was briefed on and considered the teams' findings. Additionally, interrogation Tiger Teams were sent to the 205th MI BDE to assist with interrogations, and a MTT from Ft. Huachuca was sent to AGP to provide more intelligence operations training.

(c) (U) The CJTF-7 leadership directed the 800th MP BDE to move its HQs to Iraq in order to more closely supervise the detention mission for which it was responsible. Testimony indicated that the C-3 published several FRAGOs providing detention operations guidance and direction. Detention summits were held in order to assess the on-going mission, during which issues were raised and corrective action was directed. When LTG Sanchez declared AGP an enduring base in November 2003, additional resources were directed towards the improvement of AGP's facilities. The number of detainees was tracked regularly, and as capacities were reached, detainees were cross-leveled between detention facilities. LTG Sanchez was aware that additional MP units were not available, and the Army was using ILO units to replace MP companies in the ITO. As such, his decision to not initiate a request to higher HQs for additional MP forces was reasonable, and instead, BG Karpinski was encouraged to internally redistribute her own resources. Additionally, in December 2003, MPs from the 1st AD were moved to AGP to augment the MP force.

(d) (U) In conclusion, the evidence established that the detention mission in Iraq was conducted with the benefit of on-going analysis, periodic assessment, and modification as the mission required and as limited resources allowed. LTG Sanchez' actions with respect to anticipating and developing alternative courses of action as the detention and interrogation mission evolved were appropriate.

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(6) (U) **With respect to LTG Sanchez' actions regarding BG Karpinski's leadership:** The Schlesinger Report stated that LTG Sanchez should have taken more forceful action in November 2003 when he fully comprehended the depths of the leadership problem at AGP. His apparent attempt to mentor BG Karpinski was insufficient in a combat zone in the midst of a serious and growing insurgency.

(a) (U) The evidence indicated that by November 2003, LTG Sanchez was seriously concerned about the leadership of the 800th MP BDE at AGP, and he took appropriate action. During his visit to AGP in November 2003, he noted the lack of improvement in the defense preparations by the 320th MP BN and the 800th MP BDE and their failure to follow his previous directives. As a result, he directed that COL Pappas, as the senior CDR present and, in several witnesses' view, a more competent leader, be the FOB CDR in charge of force protection at AGP. He counseled BG Karpinski during this visit regarding his concerns about the lack of force protection improvements, and told her she needed to take all actions commensurate with her rank and authority to take care of her Soldiers, and that if she did not receive the support she needed from his staff, to raise the issue to his level. LTG Sanchez' counsel to BG Karpinski was appropriate and consistent with the unsatisfactory conditions that LTG Sanchez observed at AGP. In January 2004, LTG Sanchez issued BG Karpinski a memorandum of admonishment concerning the reported detainee abuse, and other incidents, which reflected a lack of clear standards, proficiency, and leadership within the BDE.

(b) (U) During MG Ryder's out-brief on 6 November 2003, LTG Sanchez asked MG Ryder for his considered opinion on BG Karpinski's leadership. MG Ryder indicated that he thought BG Karpinski was a weak leader, but that his team provided her command the requisite tools and resources she needed to order to succeed pending their scheduled redeployment in early 2004. The evidence indicated that LTG Sanchez considered seeking BG Karpinski's relief, but decided that since her unit had just undergone a thorough, constructive assessment by MG Ryder's team of detention experts, he should provide her an opportunity to improve her command. Additionally, had he chosen to remove BG Karpinski from command, the evidence established that there were no readily available backfills. MG Ryder had informed LTG Sanchez that there were no available MP GOs in the AC or RC, and the number of MP COLs was very limited. Replacement units for the 800th MP BDE were scheduled to start arriving in January 2004, and the CDRs of those units were reputed to be competent officers. LTG Sanchez believed that BG Karpinski was provided the information she needed to successfully accomplish the detention mission, and, given that he did not have a viable replacement, justifiably made the decision to retain her in command. LTG Sanchez' decision to retain BG Karpinski as the CDR, 800th MP BDE, was a considered one, and

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was within his authority as the CG, CJTF-7. As such, his decision did not violate an Army standard.

(7) (U) **With respect to the categorization of detainees by CJTF-7:** The Schlesinger Report stated that CJTF-7 determined that some of the detainees held in Iraq were to be categorized as unlawful combatants. Despite lacking specific authorization to operate beyond the confines of the GCs, CJTF-7 nonetheless determined it was within their command discretion to classify as unlawful combatants individuals captured during OIF. CJTF-7 concluded it had individuals in custody who met the criteria for unlawful combatants set out by the President and extended it in Iraq to those who were not protected as combatants under the GCs. CJTF-7 had no means of discriminating detainees among the various categories of those protected under the Geneva Conventions and those unlawful combatants who were not.

(a) (U) The evidence indicated that LTG Sanchez and other leaders in CJTF-7 understood the difference between the categorization of a detainee as an enemy combatant and an unlawful combatant, and as such, applied the proper categorization to the detainees held at AGP. (b)(7)(D)

(b)(7)(D) The term "unlawful combatant" applied to a category of terrorist to whom the GCs did not apply as a matter of law, such as those detainees held at GTMO. Unlawful combatants were persons who took up arms against occupation forces and did not meet the criteria for EPW status and, accordingly, immunity from prosecution for war-like acts. CJTF-7's position was that unlawful combatants were nonetheless protected persons under the fourth GC and were afforded the protected status of civilian security detainee. This allowed internees to be prosecuted before the Central Criminal Court of Iraq for attacks on coalition forces, but still afforded them protections under the GCs.

(b) (U) The term "unlawful combatant" was never adopted by CJTF-7 because the leadership understood that the GCs were fully applicable to Iraq. The Schlesinger Panel apparently confused the terms and contended that CJTF-7 adopted the unlawful combatant approach. This course of action was rejected by CJTF-7 because the GCs were fully applicable to Iraq. As such, there was no credible evidence that LTG Sanchez improperly permitted the incorrect categorization of detainees in Iraq as "unlawful combatants" who were not subject to the GCs.

d. (U) The standard required that to prove dereliction of duty, the person, who had a duty and was knowledgeable of such duty, was required to be derelict in the performance of the duty through willfulness, neglect, or culpable inefficiency. The preponderance of the evidence indicated that LTG Sanchez was not willfully derelict,

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negligent, or culpably inefficient with respect to his duties regarding detention and interrogation operations.

(1) (U) Multiple senior leaders, either in LTG Sanchez' chain of command or in positions to make such judgments, unanimously testified to the overwhelming responsibilities placed on LTG Sanchez and CJTF-7 and to his admirable performance of duty in a resource-constrained and hazardous combat theater. No senior leader interviewed believed that LTG Sanchez was derelict in his duties. On the contrary, the Jones Report indicated that the CJTF-7 staff performed above expectations in the overall scheme of OIF, in a "tremendously horrid environment" while confronting "a faceless enemy whose hatred of the US knew no limits." The report further stated that had the pace of combat operations and the support to the CPA not been so overwhelming, the CJTF-7 staff might have been able to provide additional oversight to interrogation operations at AGP. LTG Sanchez had a huge scope of responsibility with respect to the support of the CPA, the building of an Iraqi security force, and the reconstruction of Iraq, but he also had to focus on the defeat of the insurgency that was killing his Soldiers. When the complexity, circumstances, and scope of the insurgency were considered, the evidence indicated LTG Sanchez exceeded expectations. His accomplishments were especially noteworthy given the under-resourced and inexperienced staffs in CJTF-7 and CPA with which LTG Sanchez had to work. (b)(7)(D)

(b)(7)(D) LTG Sanchez reported it quickly once it was brought to his attention because he recognized that it was a major problem, and promptly initiated an investigation. When the Taguba investigation was complete, LTG Sanchez took the additional step of requesting a second investigation, which was ultimately completed by GEN Kern, to thoroughly and completely investigate all the abuse incidents at AGP. There was no effort by LTG Sanchez or his staff to minimize, hide, or ignore the situation. The evidence established that LTG Sanchez accepted responsibility for his command, held those within his command responsible for their actions, and directed investigations to identify failures and fix responsibility.

(2) (U) There was no evidence that LTG Sanchez was derelict in his duties with respect to detention and interrogation operations through willfulness, neglect, or culpable inefficiency. On the contrary, the evidence established that LTG Sanchez consistently and pro-actively took appropriate action at the strategic level of leadership regarding the oversight, resourcing, and planning for both missions. There was no evidence of negligence, culpable inefficiency, or willful dereliction. LTG Sanchez recognized early on that there were shortfalls in the detention and interrogation missions, and immediately requested assistance, resulting in the Ryder and Miller team visits and the subsequent deployment of follow-on training and assistance teams. LTG Sanchez pushed for a greater fill of GOs on the staff to provide the level of authority and experience needed to operate at a CJTF level, and received GOs for

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several key staff positions. He requested a GO for detention operations in recognition of the challenges that remained in that area, but a GO did not arrive until March-April 2004. When resourcing shortcomings at AGP were brought to his attention, he declared AGP an enduring base and additional funds and engineering effort were directed to the prison. He personally inspected the force protection preparations at AGP, and upon determining that the defense measures were unsatisfactory, immediately made the decision to change the TACON relationship at AGP to ensure force protection improvements were made. He emphasized the humane treatment of Iraqi citizens and the applicability of the GCs in multiple FRAGOs and during his personal visit with the interrogators at AGP.

(3) By all accounts, LTG Sanchez was an involved leader who took the time to visit his units and Soldiers and readily directed corrective action when he observed problems or when issues were brought to his attention. While certain alternative actions, in hindsight, might have been more effective or beneficial, LTG Sanchez' actions, in the context of the environment in which they occurred, were not willfully derelict, negligent, or culpably inefficient. Rather, the austere environment, lack of staff, and growth of responsibilities all created obstacles that LTG Sanchez and the CJTF-7 staff successfully overcame through, by all accounts, heroic efforts. As such, LTG Sanchez' actions regarding detention and interrogation operations were not indicative of an impropriety. Instead, LTG Sanchez' efforts to provide appropriate oversight of detention and interrogation operations were pro-active, continuous, doctrinal, and properly within the scope of responsibility attributed to a strategic level leader.

2. (U) Allegation #2: LTG Sanchez improperly communicated interrogation policies.

a. (U) AR 600-100 stated that all leaders were responsible for effectively communicating vision, purpose, and direction. General officers at the strategic levels of the Army were responsible for creating policies, structures, and programs. They affected all members junior to them by formulating policies that supported and sustained Army values, and by ensuring that procedures developed at lower levels further supported Army policy and values. (EXHIBIT B-2)

b. (U) The allegation that LTG Sanchez improperly communicated interrogation policy was derived from the following statements in the reports reviewed for this investigation:

(1) (U) From the Jones Report: Policy memorandum promulgated by LTG Sanchez led indirectly to some of the non-violent and non-sexual abuses.

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Interrogation technique memorandums did not adequately set forth the limits on interrogation techniques. Existence of confusing and inconsistent interrogation technique policies contributed to the belief that additional interrogation techniques were condoned in order to gain intelligence. Lack of consistent policy and command oversight regarding interrogation techniques, coupled with changing policies, contributed to the confusion concerning what techniques could be used, which required higher level approval, and what limits applied to permitted techniques. (EXHIBIT C-25)

(2) (U) From the Schlesinger Report: The policy memoranda promulgated at the CJTF-7 level allowed for the interpretation in several areas and did not adequately set forth the limits of interrogation techniques. The existence of confusing and inconsistent interrogation technique policies contributed to the belief that additional interrogation techniques were condoned. (EXHIBIT C-26)

c. (U) With respect to the development of the September and October 2003 CJTF-7 interrogation policies:

(1) (U) The evidence established that the development of CJTF-7 interrogation policy was part of a broad, deliberate and iterative effort by LTG Sanchez to meet recognized needs in detention and interrogation operations. As cited previously, AGP was re-opened by the CPA in May 2003 to begin to reestablish the Iraqi prison system. As CJTF-7 became increasingly involved in counter-insurgency operations, AGP was also used for the detention of civilian security detainees suspected to be involved in the insurgency. MI units were assigned to AGP to establish an initial interrogations capacity. MG Fast arrived at CJTF-7 and was charged to develop an operational intelligence capability for CJTF-7 and the CPA. In August 2003, CJTF-7 requested the MG Ryder assessment, a strategic look at both military and Iraqi national detention systems. At about this time, LTG Sanchez determined that the current interrogation efforts were not producing the actionable intelligence needed to fight the insurgency. He was concerned about the training and experience level of the interrogators and the lack of a theater-level interrogation policy. Early in September 2003, MG G. Miller visited the ITO to provide recommendations in support of improved operational interrogation capabilities.

(2) During his out-brief to LTG Sanchez in September 2003, MG G. Miller recommended that CJTF-7 develop interrogation authorities and promulgate a memorandum because the interrogators were unsure of their authorities. LTG Sanchez agreed, and directed COL Warren to take the lead on the development of a CJTF-7 interrogation policy. A working group consisting of SJA officers and MI personnel from the 205th MI BDE drafted the interrogation policy. The 14 September 2003 policy drew heavily from the GWOT policy, the 1987 version of FM 34-52, the prior experience of MI

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personnel in Afghanistan, and it included several safeguards. Although the evidence indicated that the policy was not staffed with MG Fast, mitigating circumstances included her absence during the period the policy was drafted, the limitations of internal secure communications within CJTF-7, the physical dispersion of the staff, and the urgency of the tasking. The final policy was reviewed by COL Warren, whom LTG Sanchez trusted as an acknowledged Army expert on operational law. COL Warren personally briefed LTG Sanchez on the policy, and after he was assured the policy adequately defined the interrogation authorities while complying with the GCs, LTG Sanchez signed the memorandum. Based on his determination that the need for an interrogation policy was urgent, LTG Sanchez made the conscious decision to implement the 14 September 2003 policy while simultaneously sending it to CENTCOM for comment.

(3) (U) The CENTCOM SJA was concerned that while the interrogation techniques were not illegal per se, the policy should more closely follow FM 34-52 and be more restrictive. As a result, the policy was modified to include only techniques found in the 1987 version of FM 34-52, plus segregation, and additional restrictions were applied. The 12 October 2003 policy was disseminated through the normal FRAGO process, and copies were distributed to unit LNOs on the CJTF-7 staff. The CENTCOM SJA had no objections to the October policy memorandum. MG Fast recalled reviewing the policies later and had no objections. She was aware that the SJA had determined they were legally sufficient with respect to the GCs.

(4) (U) Internal CJTF-7 staffing of the interrogation policies was not ideal and this was influenced by several factors. As cited previously, interrogation experience and expertise in CJTF-7 resided in the 205th MI BDE. Operational law expertise lay with COL Warren, the SJA. MG Fast, the C-2, was not in theater during preparation of the 14 September 2003 policy. (b)(7)(D)

(b)(7)(D) Interrogation expertise in the 205th MI BDE was greater than in her C-2 organization. The evidence indicated that limitations of internal secure communications within CJTF-7, the physical dispersion of the staff, and the urgency of the requirement also hampered traditional staffing procedures. In retrospect, while a broader staffing of the policy with MG Fast was desirable, and could have potentially improved clarity, the evidence indicated such staffing would not have significantly affected the substance of the policy.

(5) (U) The evidence established that the development of the CJTF-7 interrogation policy was a deliberate, iterative process that involved appropriately knowledgeable personnel in the 205th MI BDE, who would be implementing the policy, and the SJAs of CJTF-7 and CENTCOM. The absence of staffing with MG Fast was a

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potential shortcoming, although mitigated by urgent and difficult circumstances. In light of LTG Sanchez' concern over the need for a theater interrogation authority to define the interrogators' limits, a failure to publish such policy would have potentially been a far greater shortcoming. Additionally, CJTF-7's publication of two different interrogation policies within a month of each other was not improper, nor did that render the policies inconsistent. Although the policy changed significantly from September to October, those changes were in response to identified CENTCOM concerns that were then considered and accepted by the SJA, CJTF-7. Both policies were rooted in FM 34-52, and both required that all interrogations be conducted in accordance with the GCs. As such, the policies' fundamental focus was not inconsistent from one version to the next.

d. (U) With respect to the adequacy of the September and October 2003 CJTF-7 interrogation policies:

(1) (U) The Jones Report stated that the CJTF-7 interrogation policies were confusing. The confusion contributed to the belief that additional techniques were authorized and the policies did not adequately set forth the limits on interrogation techniques. The Schlesinger Report stated interrogation policies were inadequate or deficient, and techniques for GTMO migrated to Iraq, where they were neither limited nor safeguarded.

(2) (U) The Jones Report found that some personnel at AGP were confused regarding which interrogation techniques were authorized for use, in spite of LTG Sanchez' attempt to specify a range of interrogation techniques and safeguards. The Jones Report further stated that misinterpretation of CJTF-7 policy memorandums led to some of the non-violent and non-sexual abuses at AGP. The Kern Report cited portions of the September and October 2003 policies that, in the report author's view, were confusing. The portions pertained to the concept of the interrogator's control of all aspects of the interrogation, use of military working dogs, and isolation vs. segregation. However, both MG Fast and LTG Sanchez personally visited with the interrogators in October 2003, inquired into the interrogators' understanding of the policy, and stressed the importance of conducting interrogations within the constraints of the GCs. Neither noted any confusion among the interrogators with whom they met, nor were questions raised regarding the policies. The Church Report found that even if interrogators were confused by the issuance of multiple interrogation policies, none of the approved policies would have permitted the types of abuses that occurred. There was no evidence that clarification of the policies was ever sought by anyone in the 205th MI BDE that may have resulted in a subsequent review and modification of the policy.

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(3) (U) Additionally, the 14 September 2003 policy was an amalgam of interrogation techniques already in use at GTMO and Afghanistan. While this "migration" of interrogation techniques was criticized by the Schlesinger Report, it was not unreasonable for the drafters of the policies to incorporate techniques used successfully in other theaters as they attempted to identify all current effective techniques. It was noted that the FM used by the drafters was 16 years old at the time, and LTG Sanchez already determined that interrogations using only techniques specified by the FM were not producing the intelligence needed to fight the growing insurgency. MG G. Miller confirmed this shortcoming during his assessment visit, and provided the GWOT memorandum as a resource for the development of a CJTF-7 policy with the caveat that it required modification for the ITO because the GCs applied. These non-FM techniques were not specifically prohibited for use in Iraq, as was suggested by some of the reports reviewed. The GWOT memorandum was addressed only to the CDR, SOUTHCOM. No DOD or CENTCOM guidance existed that specified or limited interrogation authorities for any other theater. As such, it was not improper for LTG Sanchez to include techniques previously approved for other theaters in his interrogation policy for the ITO.

(4) (U) The evidence established that both the September and October 2003 policies included adequate limits and safeguards for the conduct of interrogations. The PSI investigating officer found that neither policy violated the GCs. Additionally, the Church Report found no direct or indirect link between interrogation policy and detainee abuse. The Church Report further found that much of the substantiated abuse was unconnected to any interrogation technique or policy, as it was committed by personnel who were not MI interrogators and who almost certainly did not know the details of the policies. Both CJTF-7 policies required that interrogators conduct interrogations in accordance with the GCs and detailed safeguards. Both policies prescribed specific techniques authorized for use and required personal approval by LTG Sanchez for the use of any technique not listed in the policy. The C-2 and SJA were required to review any written request for use of a non-specified technique prior to forwarding to LTG Sanchez for approval. No requests for additional techniques were ever sent to LTG Sanchez. Both policies required the development of specific interrogation plans, trained interrogators, and appropriate supervision during execution.

(5) (U) A proper analysis of the CJTF-7 interrogation policies cannot be conducted without a consideration of the responsibilities of leaders below LTG Sanchez' level. As the CG, CJTF-7, LTG Sanchez operated at the strategic level of leadership. AR 600-100 stated that all leaders were responsible for effectively communicating vision, purpose, and direction. GOs at the strategic level were responsible for creating policies, structures, and programs that supported and sustained Army values, and for ensuring that procedures developed at lower levels further supported Army policy and

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values. By promulgating the CJTF-7 interrogation policies, LTG Sanchez properly communicated explicit interrogation authorities for implementation by the 205th MI BDE and provided the overarching structure by which the 205th MI BDE would conduct interrogation operations. These policies provided the guidance COL Pappas, as a senior leader, was to use to develop the specific implementation guidance and standard operating procedures for the execution of the interrogation policies. In turn, MI leaders at the direct level of leadership in the JIDC were responsible for developing interrogation plans, training their interrogators, and supervising the execution of interrogations in accordance with the CJTF-7 policies and, accordingly, the GCs. The Jones Report found that leaders at AGP failed to supervise their units or provide direct oversight of the interrogation mission. This failure of leadership occurred at the 205th MI BDE level or below. It was not attributable to LTG Sanchez, who, in fact, acted properly as a strategic leader by communicating direction and guidance via the CJTF-7 interrogation policies. These policies ultimately required interrogations be conducted in accordance with the GCs. In hindsight, the policies could have been written in a more clear fashion. However, LTG Sanchez' decisions to promulgate interrogation policies in the absence of any other guidance, revise the policies when provided valid constructive concerns, and disseminate the policies to the senior MI CDR in the ITO for implementation, were appropriate and properly within his scope of responsibilities as a strategic leader. As such, his actions did not violate an Army standard.

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Testimony of MAJOR GENERAL GEORGE R. FAY

Was taken on 13 September, 2004 at the Pentagon, Washington, DC between the hours of 1310 and 1415

By [redacted] and Lieutenant Colonel [redacted] Department of the Army Inspector General Agency, Crystal City, Virginia,

[U] [redacted] The time is 1310. This inquiry is directed by The Inspector General of the Army.

[U] An Inspector General is an impartial fact-finder for the Directing Authority. Testimony taken by an IG and reports based upon that testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons may be required by law or regulation or may directed by proper authority.

[U] Upon completion of this interview, I will ask you whether you consent to the release of your testimony if requested by members of the public pursuant to FOIA. Since I'll ask you to provided your Social Security Number to help identify you as the persons testifying I've previously provided you with an explanation of the Privacy Act.

[U] Did you understand it, Sir?

[U] MG FAY: Yes, I did,

[U] [redacted] You are not suspected of any criminal offense and are not the subject of any unfavorable information, Before we continue I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal Law to knowingly make a false statement under oath.

[U] [redacted] Do you have any questions before we begin, Sir?

[U] MG FAY: I do not.

[U] [redacted] Sir, please raise your right hand so I may administer the oath.

[U] [Major General George R. Fay was sworn and testified under oath as follows:]

BY (b)(6)-2 & (b)(7)(C)-2

[U] Q. Sir, you may lower your hand. For the record, please your name?

[U] A. George R. Fay.

[U] Q. Your rank and component?

[U] A. Major General, united States Army Reserve.

[U] Q. Your current position and organization?

[U] A. I'm the Assistant Deputy Chief of Staff, G2, , Army Staff.

[U] Q. Your Social Security Number, and Sir, this is voluntary.

[U] A. (b)(6)-4 & (b)(7)(C)-4

[U] Q. And an address either home or office keeping in mind that the return address on any correspondence from this office will indicate that it is from the Department of the Army Inspector General.

[U] A. Okay, (b)(6)-4 & (b)(7)(C)-4
(b)(6)-4 & (b)(7)(C)-4

[U] Q. All right, Sir, and a phone number?

[U] A. (b)(6)-4 & (b)(7)(C)-4

[U] Q. Yes, Sir. And a phone number either home or office?

[U] A. Office phone number is Area Code (703) 693-5589.

[U] Q. All right, Sir, thank you. All right, we'll go ahead and get into the questions now. As I indicated to you before, the questions that we have for you today pertain to the findings and conclusions and evidence that were cited in what I will refer to as the Fay Report. It is also called the Kern Report depending on who you ask. So these questions will focus on those particular findings.

[U] A. Since you're asking me I'll call it the Fay Report.

[U] Q. Yes, Sir, it sounds good to me.

[U] A. Okay.

[U] Q. Okay. Sir, one of the findings that you made in the report was that there was a lack of clear command and control of detainee operations at the CJTF-7 level. And by the way, Sir, I have brought the report with me so that if at any report we need to refer to it we can.

Sir, in your view who in CJTF-7 at that time was responsible overall for detainee operations prior to the assignment of Major General Geoff Miller?

[U] A. That was the problem.

[U] Q. Yes, Sir.

[U] A. Is that there was a real confusion as to who was in charge of detainee operation and that was our finding is that there was no clearly one person in charge. It was a shared responsibility amongst a number of staff elements and staff persons and commanders. And because it was so shared because everybody owned it nobody owned it.

[U] Q. Can you cite some of the folks that had a shared responsibility?

[U] A. Yes, well obviously first starting with the overall responsibility being, , Lieutenant General Sanchez as the CJTF-7 Commander, but below him there was the—, Deputy Commander who was—, Major General Wojdakowski, , and he had some responsibilities because he had both the 800th MP Brigade Commander and the Army Military Intelligence Brigade the 203rd?

[U] Q. Fifth.

[U] A. The 205th MI Brigade Commander both reporting to him. , but quite frankly Major General Wojdakowski was mostly involved with the logistics questions and running the huge numbers of logistics issues that concerned CJTF-7 at that time. And although he was somewhat involved with the detainee operations, I wouldn't say that he was focused on that. At least not based on my investigation.

[U] Q. Yes, Sir.

[U] A. And he was—and from that aspect he was even more involved with the MP Detention portions than he was the interrogation

portion. I think when it came to the interrogation area he just relied very heavily on Colonel Pappas as the Commander of the 205th MI Brigade.

[U] Q. Who he rated as well?

[U] A. Who he rated as well. He did not rate General Karpinski who was the Commander of the 800th MP Brigade. Although she thought that he was going to be rating her. But anyway, that—and I cover all that in the report.

[U] Q. Right.

[U] A. It's very—it was very confusing.

[U] Q. Yes, Sir.

[U] A. Additionally you had the Provost Marshal of CJTF-7 who had some responsibilities, but where they began and where they ended no one was quite sure. You had the CJTF-7 C-2 Staff, that would have been Colonel (b)(6)-(2), (b)(7)(C)-(2) in the beginning and then it shifted to Major—well first it was Brigadier General and then Major General Fast, after Colonel (b)(6)-(2), (b)(7)(C)-(2). So—and they had some responsibility relative to the interrogation operations and also the release boards, and then you had the Staff Judge Advocate that was providing legal advice and assistance not only to General Sanchez but each of those staff elements that I mentioned.

[U] So they were all involved. And the reality was because there were so many people involved it wasn't clear. It wasn't a focused issue, until General Miller was named and he did bring it under focus.

[U] How about Major General Tom Miller, Sir, the C-3, did he have a role that you saw?

[U] Well actually, when I was doing my investigation that General Fast informed me that at one point in time General Sanchez at a meeting became so frustrated with the whole detention operations issues, interrogations included with that, that he said, "Who here is responsible for this?" referring to his whole staff. And he then—General Sanchez—turned to General Tom Miller and said, "You're the three. You're responsible." Now, General Fast had first believed at that meeting that occurred in October. General Miller when I interviewed him said, no, no, that did occur but it occurred much latter and in a time period that he thought, as I recall, was some time around February of 2004 when that meeting occurred.

[U] Subsequently General Fast and General Miller talked on the subject and both concurred that the original discussion by General Fast was inaccurate.