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To: John.Elwood@usdoj.gov (John.Elwood@usdoj.gov @ inet [UNKNOWN])
Subject: : If you get asked about the detainees at Guantanamo
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James R. Wilkinson
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To: See the distribution list at the bottom of this message
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Here is a Q&A from NSC for you to use.....

Message Sent

To:

P6/b(6)

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TREATMENT AND STATUS OF DETAINEES AT GUANTANAMO

January 22, 2002

What is the legal status of the prisoners at Guantanamo? Are they prisoners of war?

- We are treating all of the detainees at Guantanamo humanely and consistent with the principles of the Third Geneva Convention of 1949. The legal status of the detainees has not yet been determined.
- All detainees are being provided three appropriate meals a day, medical care, clothing, shelter, showers, and the opportunity to worship. The detainees will not, of course, be subjected to physical or mental abuse. The International Committee of the Red Cross is being allowed to visit each detainee privately. We are building enclosed, long-term facilities to house the detainees.

What do you mean when you say that prisoners will be treated “consistent with” the principles of the Geneva Convention? Are the conditions at Guantanamo “consistent with” the principles of the Geneva Convention?

- The conditions in Guantanamo are fully consistent with the Third Geneva Convention's core requirement that all detainees be treated humanely. We are treating all detainees humanely. All detainees are being provided shelter, food, water, and medical care. They are, of course, not being tortured or subjected to any physical or mental abuse. Moreover, we are providing all detainees the treatment provided to POWs under the Convention taking into account appropriate factors such as security and the temporary nature of the facilities in Guantanamo. The International Committee of the Red Cross is being allowed to visit each detainee privately. Other than the fact that the detainees are in detention, their material living conditions are substantially better than they were before they were captured. When in their separate enclosures, detainees are NOT handcuffed or shackled; they are free to move about in their separate enclosures.

What specific benefits are the detainees receiving?

- All detainees are being provided three meals a day that meet Muslim laws with regard to diet; water; medical care; clothing and shoes; shelter; showers; soap and toilet articles; and the opportunity to worship.
- Detainees are being given foam sleeping pads and blankets as well as towels and washcloths.

- They are given correspondence materials and will be allowed to send and receive mail. They will be allowed to receive packages of food and clothing, subject to security screening.
- Money or other personal effects collected from each detainee will be accounted for in his name and safeguarded.
- We will re-evaluate continuously the conditions of the detainees. Detainees will be permitted to raise their concerns and we will attempt to address them to the extent consistent with security.

So what's the practical effect of the determination that the detainees are not prisoners of war? What will they be denied that they would otherwise be entitled to receive as POWs?

- The legal status of the detainees has not yet been determined. Some of the specific treatment conditions provided to POWs by the Third Geneva Convention were suitable for regular soldiers in 1949 but are not appropriate for terrorists in 2002. Some treatment conditions are not compatible with the extraordinary security risk posed by these detainees, who are extremely violent and dangerous and pose a threat to the U.S. forces who are guarding them and to each other.
- For example, we do not plan to install canteens where detainees may purchase food, soap, and tobacco. We will not be giving the detainees at Guantanamo a monthly advance of pay, or allow them to have and consult personal financial accounts. Detainees will not be allowed to receive scientific equipment, musical instruments, or sports outfits.

Some experts have said that the open-air cages in which the prisoners are being held are not consistent with the Geneva Convention? Is that right?

- We do not have facilities in place at Guantanamo ready to house several hundred extremely dangerous individuals. The detainees at Guantanamo are being housed in temporary open-air shelters until long-term facilities can be arranged; these shelters are fully appropriate given the mild climate of Cuba. But we are building facilities in Guantanamo that are more appropriate for housing the detainees on a long-term basis.
- Many detainees at Guantanamo pose a severe security risk both to those responsible for guarding them and to each other. Clearly, many of the detainees have not "surrendered" and continue to fight even while detained. Some of these individuals demonstrated how dangerous they are in uprisings at Mazar-e-Sharif and in Pakistan. The United States must take into account the need for security in establishing the conditions of detention at

Guantanamo. It is not possible for us to house them collectively in tents or other open spaces without undue threat to our personnel who are guarding and detaining them.

Will you seek to amend the Geneva Conventions to address the new realities of the war against terrorism?

- I am not aware of any effort to amend the Geneva Conventions at this time. Our conflict with the Taliban and al-Qaida is much different from past conflicts, however. The Taliban and al-Qaida have demonstrated their contempt for the traditional laws and customs of war accepted by all civilized states.

How long will you hold detainees? Until the end of hostilities in Afghanistan? Until the conclusion of the war against terrorism?

- We will hold the detainees until an appropriate disposition can be made for each detainee. We may prosecute certain detainees found to have committed crimes. We will turn other detainees over to their home countries or to third countries for detention and/or prosecution. We may hold other detainees for a longer period if we believe that they still pose a threat to safety and security of our forces or nationals. We may need to detain people if they clearly plan to commit further terrorist attacks against us or others.

How will you decide the disposition of each individual? When will you do this? If they are tried, where will they be tried?

- We will make an individual determination in each case. We may prosecute detainees who have committed specific crimes against us. We may, in some cases, turn detainees over to their home countries or to third countries if those countries request that they be returned for detention and prosecution.

Will this decision affect treatment of U.S. forces in future operations or conflicts? Will it open them to prosecution before foreign civil courts or international tribunals such as the ICC?

- Our detention of members of the Taliban and al-Qaida should have no legal or practical effect on our own forces.