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14. ABSTRACT In recent operations, Regional Combatant Commanders (RCCs) have been tasked with new challenges in providing for the treatment, care, and accountability of detainees. Included in this tasking is the responsibility to insure detainees have the latitude to exercise their religious faith. This is an unfamiliar territory for many, and certainly not an art in practiced recent memory. These new challenges in relationship to religious support include understanding the boundaries set in the law of armed conflict, coming to terms with the definitions of detainees categories, religious support, and roles of providers, as well as understanding and tackling emerging concepts relating to enemy combatant detainees and the Global War on Terror. Headlines since 2002 have reminded us of the unintended consequences of what happens when we get it wrong. Remember the news stories of LT Saif-ul-Islam in Guantanamo Bay? We saw what happened when a chaplain trained at a tactical level, assigned to an operational staff, was given a role of great significance. Did we get it right the first time? Were his taskings appropriate? How does the RCC balance religious confidence with the requirement to gather intelligence?					
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**NAVAL WAR COLLEGE
Newport, R.I.**

**THE COMMANDER'S RESPONSIBILITIES FOR THE DELIVERY OF
RELIGIOUS SUPPORT TO DETAINEES IN THE JOA:**

Accommodation of Religious Needs Balanced with Necessary Security Concerns

by

Robert T. Williams

CDR, CHC, USN

**A paper submitted to the Faculty of the Naval War College in partial satisfaction of
the requirements of the Department of Joint Military Operations.**

**The contents of this paper reflect my own personal views and are not necessarily
endorsed by the Naval War College or the Department of the Navy.**

Signature:

23 October 2006

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“Commanders need to be aware of (new) challenges, or they and the men and women that lead may fall victim to the law of unintended consequences which, during times of chaos, operates at exponential levels.” Andrew Natsios

In recent operations, Regional Combatant Commanders (RCCs) have been tasked with new challenges in providing for the treatment, care, and accountability of detainees. Included in this tasking is the responsibility to insure detainees have the latitude to exercise their religious faith. This is unfamiliar territory for many, and certainly not an art practiced in recent memory.¹ These new challenges in relationship to religious support include understanding the boundaries set in the law of armed conflict, coming to terms with the definitions of detainee categories, religious support, and roles of providers, as well as understanding and tackling emerging concepts relating to enemy combatant detainees and the Global War on Terror.

Headlines since 2002 have reminded us of the unintended consequences of what happens when we get it wrong. Remember the news stories of LT Saif-ul-Islam in Guantanamo Bay?² We saw what happened when a chaplain trained at a tactical level, assigned to an operational staff, was given a role of great strategic significance. Did we get it right the first time? Were his taskings appropriate? How does the RCC balance religious confidence with the requirement to gather intelligence?

¹ For a more complete discussion of the challenges Combatant Commanders face in this regard see Andrew Natsios, “Commander’s Guidance: A Challenge of Complex Humanitarian Emergencies,” *Parameters*, Summer 1996 issue, pp. 50-66.

² See Laura Brown, *Muslim Chaplain Sees to Detainees’ Needs at Guantanamo*, The Washington File, Office of International Information Program, U.S. Department of State. LT Saif-Islam was the first Muslim chaplain assigned to Camp X-Ray in Cuba. According to Brown he “developed a rapport with the detainees who sought his counsel” and saw himself as “ministering to the needs of the detainees.”

Then there was the extraordinary case of Chaplain Yee.³ What happened when the chaplain's dual roles of: (1) building and providing spiritual relationships with the faithful came into direct conflict with (2) advising the commander about the gathering of intelligence from enemy detainees under his spiritual direction?

Most recently there was Abu Ghraib where one editorial asked: "Where were the chaplains?"⁴ Did the chaplain give timely and appropriate advice to the RCC on the welfare and care of the detainees? Did the chaplain provide religious support and moral guidance to the guards on duty?

This paper will address the RCC's responsibilities in relation to the delivery of Religious Support to Detainees in the Joint Theater of Operations by asking a series of questions:

1. What are the boundaries for Detainee support?
2. How are Detainees classified, and how does that effect entitlements?
3. What is the definition of religious support to Detainees?
4. What is the role of the chaplain in the delivery of religious support?
5. What went wrong with the delivery of religious ministry to detainees?

In conclusion, this paper will provide recommendations for product improvement and discuss the existing process for the way ahead.

I. Defining the playing field: "What Are the Boundaries for Detainee Support?"

RCCs have the overall responsibility for Detainee programs, operations, and facilities in their theater of operations. These responsibilities are derived from International Law, delineated in U.S. Law and Military Policy, and outlined in Joint

³ For a thorough retelling see James Yee, *"For Goad and Country: Faith and Patriotism Under Fire"* (PublicAffairsBooks, 2005). Chaplain Yee was one of the first Muslim chaplains in the Army and posted to Camp X-Ray in 2002. He was later accused of espionage, spying, and sedition. He was arrested and jailed for 56 days although charges were later dropped.

⁴ Washington Post, Letter to the Editor, 22 September, 2004.

Doctrine. RCCs must fulfill these responsibilities efficiently and effectively. More importantly to the American public, however, they must fulfill them humanely, from the moment of capture to the moment of release.⁵

A. Policy Definitions

“Detainee operations must comply with the law of armed conflict (LOAC) and implement US Policy.”⁶ The LOAC encompasses international law that regulates the conduct of armed forces and is derived from codified and customary sources. Codified law includes treaties, international agreements, or conventions to which the US is a party. Customary law includes principles developed through time that have now become accepted as being legally binding.

The principal convention to the LOAC relating to Detainees is the Geneva Conventions (GC). The GC is actually comprised of four separate treaties designed to be a set of internationally agreed upon standards that provide a comprehensive humanitarian rule for treatment of war victims.⁷ The GC was ratified by the US in February of 1956, giving them the full status of US law. The specific conventions or treaties are:

- The First GC Relative to the Treatment of Prisoners of War
- The Second GC Relative to the Protection of Civilian Personnel in Time of War
- The Third GC for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field
- The Fourth GC for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces.

The GC serves as the basis for the multi-service directive that outlines joint requirements regarding Enemy Prisoners of War, Retained Personnel, Civilian Internees

⁵ Not only is this requirement (humanitarian care and treatment from the moment they fall into the hands of US Forces until final release) a derivative of American moral values, but it is also a matter of General Policy (Multi-service regulation AR 190-8, OPNAVINST 3461.6, AFJI 31-304, and MCO 3461.1).

⁶ JP 3-63 Joint Doctrine for Detainee Operations, p. I-2.

⁷ Victim is a term defined in GC. It is a collective meant to define and describe all on the battlefield: prisoners, wounded and sick of the armed forces, shipwrecked, civilians retained, and civilians interned.

and Other Detainees.⁸ It also serves as the basis for Joint Doctrine for Detainee Operations (JP 3-63) and for other joint and service directives on Detainees and Enemy Prisoners of War.

B. Detainee Categories: “How Are Detainees Classified?”

The DOD definition of the word “Detainee” refers “to any person captured or otherwise detained by an armed force.”⁹ The policy of the U.S. is that all Detainees will be treated in accordance with the principles applicable to Enemy Prisoners of War until competent authority grants them a different status.¹⁰

The GC delineates four classifications of Detainees. 1) Enemy Prisoner of War (EPW): A detained enemy force that, while engaged in combat, is captured by the armed force of the enemy and as such is entitled to the combatant’s privilege of immunity as prescribed in Article 4 and 5 of the GC Relative to the Testament of Prisoners of War. 2) Civilian Internee (CI): A civilian interned during armed conflict or occupation for security reasons or for protection or because they committed an offense against the detaining power. 3) Retained personnel (RP): Enemy personnel (medical, chaplain, or staff of Red Cross or other volunteer organizations duly recognized) who when captured are not considered EPWs but who are retained for the purpose of providing medical or religious care to their own EP personnel. 4) Other Detainees (OD): Persons in custody that have not yet been classified as an EPW, CI, or RP.

In addition to the four GC classifications, and in reference to the Global War on Terror, the U.S. created the additional classification of Enemy Combatant (EC). An EC

⁸ Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees (AR 190-8; OPNAVINST 3461.6; AFJI 31-304; and MCO 3461.1 of 01 Oct 1997).

⁹ JP 3-63, p. I-8

¹⁰ JP 3-63, pp I-8.

is any person in an armed conflict who could be properly detained under the laws and customs of war (Deputy Secretary of Defense global screening criteria, Feb 20 2004).¹¹

C. “What is the Definition of Religious Support to Detainees?”

1). Religious Support to EPW. The basic requirements for religious support to prisoners of war were secured in the Hague Convention of 1907¹² and strengthened and reaffirmed in the Geneva Conventions of 1949. These grant EPWs “complete latitude in the exercise of their religious duties.”¹³ It is interesting to note the GC use of the word “duty.” It implies that the drafters thought that an EPW might have a religious requirement (duty) that they were obligated to fulfill. The implication is that the free exercise of religion is a crucial aspect of human dignity that must be protected. The GC does not attempt to define those duties other than to include “attendance at the service of their faith” and to guarantee adequate premises are provided to hold the service.¹⁴ The assumption is that the EPW inherently understands their own religious duties and should be granted reasonable accommodations to perform them. The Detaining Power is therefore not tasked with providing the religious practice, but protecting it.

The only restriction (of course it is a very large restriction) that the GC places on an EPW’s exercise of his/her religious duties is that he/she comply with the disciplinary

¹¹ JP 3-63, p. I-12. Enemy Combatants are sub-divided into five sub-categories: Low Level EC, High Value EC, Criminal Detainee, High Value Criminal and Security Detainee.

¹² Annexed Regulations to the Hague Convention IV. “Respecting the Laws and Customs of War on Land” (18 October 1907). “*Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the service of whatever church they belong, on the sole condition that they comply with the measures of order ... issued by military authorities.*” (Art. 18)

¹³ See Appendix A, Geneva Conventions of War, 12 August 1949.

¹⁴ GC, Part I, Chapter V, Article 34.

routines imposed on him/her by the Detaining Power.¹⁵ This broad security restriction is removed from the detaining power in their role of assisting the EPWs.

The GC, interestingly enough, outlines the role of the retained chaplain (RP) to continue his/her spiritual functions for the benefit of the EPWs (in Article 33) before it describes the EPW's latitude to exercise those religious duties (in Article 34). The GC seems to assume that a Detainee would logically be suspicious of the Detaining Power. Therefore, the obligation to assist the EPW in the exercise of his/her religious duties belongs to the detained and not the Detaining Power. It is therefore the obligation of a RP with necessary skill and the trust of fellow Detainees (retained medical personnel and chaplains) to voluntarily remain in detention in order to provide a service, otherwise suspect (medical and religious)¹⁶ or unattainable (religious).¹⁷

In this regard the GC assumes that the RP chaplain will not provide something new but rather "continue to exercise his/her ... spiritual functions for the benefit of the EPW ...in accordance with their professional etiquette."¹⁸ To help the RP chaplain in this the GC grants broad benefits, including: authority to visit working detachments, other camps, and hospital,¹⁹ along with the means of transportation to make those visits and freedom to correspond (subject to censorship) concerning their religious duties.²⁰

The GC also outlines a process for EPWs to enjoy access to their religious duties in the absence of a RP chaplain. This includes appointing EPWs who are ministers but not chaplains. In the absence of both an RP chaplain and EPW minister it allows for an

¹⁵ GC, Part I, Chapter V, Article 34.

¹⁶ The GC requires that adequate medical care be provided by the Detaining Power in the absence of medically retained personnel. The GC does not require religious support be provided, it only guarantees Detainees latitude in exercising their religious duties.

¹⁷ GC, Part I, Chapter IV, Article 33.

¹⁸ GC, Part I, Chapter IV, Article 33

¹⁹ GC, Part I, Chapter IV, Article 33.

²⁰ GC, Part I, Chapter V, Article 35.

appointed minister or qualified layman from the EPW's faith.²¹ The GC also requires the Detaining Power to insure that EPWs who die in captivity are honorably buried according to the rites of their religion.²²

2). Religious Support to RP. The GC (as stated earlier) distinguishes EPW from RP in terms of combatant and noncombatant status. It states that an RP is not to be considered a prisoner, that they maintain the protections afforded them in the GC, and it grants them broad access and means to perform their functions for the benefit of the EPW. RP are to be retained only in proportion to the number needed to provide their functional requirement and then must be released when their service is no longer required.²³ In U.S. military policy there is absolutely no distinction made between EPW and RP in terms of religion and religious support.²⁴

3). Religious support to CI. Religious activities granted to a CI are similar in nature and scope to those granted to an EPW. They have freedom of religion, including attendance at worship services, and are granted access to sacramental wine. Provisions are made for them to have access to clergy of their faith and the clergy are granted privileges of communication and transportation.²⁵

4). Religious support to EC. Joint Policy affirms that, even though ECs are not covered by the GC, they will be treated humanely and in a manner consistent with the GC. In addition it allows them the "free exercise of religion consistent with the

²¹ GC, Part I, Chapter V, Article 37.

²² GC, Part IV, Section III, Art. 120.

²³ GC, Part I, Chapter IV, Article 33

²⁴ AR 190-8; OPNAVINST 3461.6; AFJI 31-304; and MCO 3461.1 of 01 Oct 1997: Section 1-5. General protection policy, g. Religion, p. 2

²⁵ AR 190-8; OPNAVINST 3461.6; AFJI 31-304; and MCO 3461.1 of 01 Oct 1997: Section 6-7. social, Intellectual, and Religious, 22-23, p. 2

requirement of detention.”²⁶ Religious support (accommodation of religious needs) to Detainees (EPW, RP, CI and EC) can be defined as the complete latitude in the exercise of religious duties consistent with the requirements of detention.

D. “What is the Role of the Military Chaplain in the Delivery of Religious Support to Detainees in the Joint Theater of Operations?”

The role of the chaplain in joint operations is to provide religious support to meet the personal free exercise of religious needs of military members and authorized personnel and to advise the RCC on matters pertaining to religion and religious support.²⁷ Historically this has been described as performing the “dual role” of ordained minister and commissioned staff corps officer.²⁸

1). The Role of Provider: Provision of religious support includes worship, sacraments, spiritual counsel, religious education, spiritual/moral fitness, etc. It includes coordinating a comprehensive religious support plan that makes these activities available to all members of the command. It also includes coordinating these tasks with all Religious Support Teams in the AOR.

2). The Role of Advisor: The role of advisement regarding religion and religious support includes knowledge and advice on religious doctrine, practice, and customs in the AOR along with basic understandings of indigenous religious history and culture. A RCC chaplain would also be responsible for coordinating religious support and training to forces assigned to the AOR. Included in coordinating religious support

²⁶ JP 3-63, p. I-11.

²⁷ See JP 1-05 Religious Support in Joint Operations.

²⁸ For a more complete discussion of the classical understanding of the dual roles of chaplains in (1) providing religious ministry to eligible persons and (2) advising the commander and/or fulfilling staff corps responsibilities see Hutcheson, “The Churches and the Chaplaincy,” (John Knox Press, 1975) and Zahn, “The Military Chaplaincy: A Study of Role tension in the Royal Air Force.” (University of Toronto Press, 1969).

would be the task of providing the RCC advice on the religious support needs and practices of Detainees and in developing policies for their support.²⁹ Advisement also includes sharing with the RCC judgments on the moral well being and treatment of Detainees in the AOR. As we have seen, recent changes in joint doctrine now specifically outline that detainees have no privilege for direct chaplain services and warn the RCC about using the chaplain for more than advisement.³⁰

The requirements and tasks for religious support in theater and for religious support to Detainees are listed on the Universal Joint Task List. This common listing of joint tasks is used as the starting point by the RCC chaplain to develop appropriate inputs (Appendix 1 to Annex E: Enemy Prisoner of War, Civilian Internees, and Other Retained Persons; and Appendix 6 to Annex E: Chaplain Activities) to the RCC Operational Plan (OPLAN) and/or Operation Order (OPORD).

3). Role Confusion: The products of advisement and provision are both primarily delivered by the chaplain. Chaplains advise on how, when, and where to provide religious support. They also advise on how, when, and where religious support should not be provided, but rather accommodation made to insure the right of free exercise for others.

The problem is that chaplains really are, at heart, providers. Chaplains are faithfully in the business to provide religious support. It is in their nature and it is their calling. It takes a conscious effort for most chaplains to step back and view religious support as advice on accommodation and access. Most chaplains would rather be out in front, delivering religious support, caring, helping, and comforting.

²⁹ Outlined in JP 3-63, pp. II-10 and JP 1-05, pp. II1.

³⁰ JP 3-63, pp. II-22

This role confusion was evident in the mission creep environment in the 1990s. At that time doctrine writers and RCC chaplains were trying to define the emerging role of tactical, operational and strategic religious support across the AORs.

4.) Doctrinal Confusion: This role confusion was written into the doctrine of the time. Joint Religious Doctrine of the day defined chaplains' roles as advising, supporting, and coordination. Under the supporting role it stated that "chaplains provide religious worship, services, rites ... (T)he primary focus of this activity is to nurture the living, care for the sick or wounded, minister to prisoners or prisoners of war."³¹ To further confuse the matter there was no distinction made between U.S. military members held in U.S. custody (prisoner), U.S. Prisoner of War (POW), or to any classification of Detainee. The discussion of Scope of Joint Operations and Planning Requirements states that "chaplains should be prepared to provide religious ministry support to . . . Enemy prisoners of war"(p. I-5). Finally, under a discussion of the roles of chaplains in the area of operations (AOR) the JTF chaplain was tasked "to be responsible to . . . ensure that EPW and civilian internees receive ministry and care appropriate to their needs."(pp. II-6).

This doctrinal confusion was also evident in service doctrine where the Navy and Marine Corps (NWP 1-05 1993) stated that as part of the Command Religious Program chaplains . . . "minister (when authorized and directed) to captives, evacuees, detainees, migrants, refugees, and enemy prisoners of war (EPWs)."³² Similar wording is found in Army and Air Force doctrinal and training publications of that period.

³¹ JP 1-05 (August 1996), p. I-2.

³² NWP 1-05 (2003).

A *Joint Forces Quarterly* Article in 2002 on the emerging role of an RCC chaplain discussed the situation of Chaplain Saif at Camp X-ray and accurately summarized the understanding of the chaplain community at that time. It suggested that ministry to the Detainees by the Navy Chaplain was not only appropriate, but a Public Affairs coup. The article warned of the pending ethical dilemma of confidentiality in relation to information gathering.³³

“The emphasis ought to be on writing and practicing good doctrine . . . soundly conceived, clearly expressed, . . . firmly grasped, and shrewdly interpreted . . . that is energetically and faithfully followed.”³⁴ This is not what happened in Joint Doctrine for Religious Support to Detainees.

II. What went wrong?

“Bad doctrine causes the most harm; mindless application of good doctrine is nearly as bad; and broad freedom to abjure doctrine, be it good or bad, is no solution at all.” Wayne Hughes

A. “Muslim Chaplain Sees to Detainees’ Needs at Guantanamo” or, “Did we get it right the first time?” It might have been bad doctrine, good doctrine poorly applied, or doctrine ignored, but Camp X-Ray resulted in a religious support doctrinal mess. LT Saif-ul-Islam, a Navy chaplain, was ordered to Guantanamo Bay in early 2002 to assist the efforts of the JTF. His presence was requested by the commander³⁵ (USMC commanding general) because he was a Muslim chaplain, not because he was a senior chaplain with JPME or experience and training in Joint Religious Ministry settings.

³³ Bradford Ableson, “A Time For Conversation; Chaplain and Unified Commander,” *Joint Force Quarterly*, Autumn 2002, pp. 98-103.

³⁴ Wayne Hughes, “The Power of Doctrine,” *Naval War College Review*, Summer 1995, page 28.

³⁵ In GTMO the commander is of course a JTFC and not a RCC. The implication in regard to policy application and doctrine seems to apply equally to the RC or JTF commander in their roles of providing religious support to detainees.

Upon arrival at Camp X-ray, he reported that within weeks he was “developing rapport with the detainees who sought his religious counsel and his ear.”³⁶ He gave press briefings to the media, and in published articles he outlined his assigned tasks to include: daily visits to the ECs, leading prayer five times daily over the camp loud speaker, distributing religious supplies, and ensuring proper accommodation was provided in regards to “halal” meals and water and towels for purification before prayers. “He reported that he was ministering to the needs of 224 detainees.”³⁷ He also described and fulfilled the appropriate role of providing religious support and facilitating for the needs of U.S. service members assigned to the facility.

Chaplain Saif’s role was correctly defined in the twofold understanding of chaplaincy: to provide religious support to authorized personnel and to advise the commanding officer on matters pertaining to religion and religious support. As such, he should not have been tasked with “providing religious support to detainees,” but with advising the commander on how to accommodate the provision of their religious support. In reality, as outlined in countless news stories, Chaplain Saif inappropriately “set the standard” by fulfilling the role of provider, serving as the Detainees’ “imam,” providing them religious counsel, and leading them in their holy prayers.³⁸

It can be argued that it was the intention of the JTFC in insisting on having the services of a Muslim chaplain at Camp X-ray that he thought he was fulfilling the presidential order on which the detention was based: “free exercise of religion consistent

³⁶ Laura Brown.

³⁷ Laura Brown.

³⁸ Jonathan Odom, “*Beyond Arm Bands and Arms Banned: Chaplains, Armed Conflict, and the Law*, *Naval Law Review*,” Vol. 49, 2002, p. 53.

with the requirements of such detention.”³⁹ If so, this interpretation seems inconsistent with the GC which implies that free exercise is a matter of accommodation and not provision. The duty belongs to the Detainee; latitude in accessing that duty belongs to the Detaining Power.

If the JTF chaplain is to be the holy imam to Detainees, it must be assumed that in that relationship he will form special bonds with his followers seeking his assistance in relating to the Almighty. This context would almost invariably result in a high degree of role conflict for the chaplain who must decide how to be loyal to his religious responsibility as well as to remain loyal in support of the requirements of the command (i.e. information collection).

This fine line between spiritual advisor and intelligence gatherer ignites another firestorm in regards to confidentiality. Were Chaplain Saif’s conversations of religious counsel protected? Initially, he apparently thought so. In reality, they probably weren’t. (Yee reports that a camera/recording device was always in any room with a detainee).⁴⁰ Certainly, it can be assumed that every moment of an EC’s time was strictly monitored. Hypothetically, it doesn’t require much imagination to weigh the risks of what a JTFC might decide. The balance of intelligence gathering for national security reasons and protecting the religious accommodation requirements of ECs would probably weigh heavy on the side of national security.

How would a chaplain deal with the issue of confidentiality vs. the need to gather intelligence? Would one choose the intelligence value of the information (possible

³⁹ See Lunze and Military Order of 13 November 2001, U.S. Federal Register 57.833, Art. 3(d): Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.

⁴⁰ Democracy Now Radio interview with Juan Gonzalez and Chaplain Yee, 06 October 2005.

attack, harm to others) or the understanding of the religious role as God's representative (priest/penitent)? This is not a prudent place for policy or doctrine to place a chaplain.

It is interesting to note that subsequently the Muslim chaplain at Camp X-ray was assigned additional duties to visit with EC detained at Naval Brigs in both Charleston and Norfolk.⁴¹ While the issue of confidentiality worked its way through the military bureaucracy, Chaplain Saif, for reasons never publicly articulated, stopped visiting detainees in Naval Brigs.

B. "The Extraordinary Case of Chaplain James Yee."⁴²

Army Captain James Yee (a Muslim chaplain) was assigned to JTF-GITMO Joint Detention Operations Group in 2002. In this role he was granted unlimited access to the detainees, access that he thought was privileged. He was tasked with providing the detainees religious counseling, provision of religious services, and accommodation requirements.⁴³

In a Democracy Now radio interview with Juan Gonzalez Chaplain, Yee stated that he "had the unique position of being very close to the detainees, being their chaplain, and having one-on-one conversations with the prisoners in the camp." He stated that he "was the only one who was able to engage in free conversation with the prisoners," and that it was his job to listen, assess their concerns, and relay that information to the command.⁴⁴

⁴¹ Charlotte Hunter, "Necessarily Done In Secret: The Ethics of Privileged Communication and Confidentiality in Wartime," Joint Service Conference on Professional Ethics, 2003, (usafa.af.mil/jscope).

⁴² See Gonzalez Interview.

⁴³ See Rowan Scarborough, "Islamic Chaplain is charged as spy," Washington Times and Nicole Guadiano, *Chaplain, prisoners "don't have a counseling relationship,"* US Congress, Nov 21, 2003; and others.

⁴⁴ See Gonzalez Interview.

Chaplain Yee was later arrested and charged with aiding the enemy, espionage, spying, sedition, and failure to obey a general order. Charges were eventually dropped and it is not the point here to discuss his charges, trial, innocence or guilt. The issue is what was his (and his commander's) understandings of the role and assigned tasks of the Muslim chaplain at the detention facility?

MGEN LeClaire (Deputy JTFC) stated in an interview that it was never really Yee's job to counsel detainees, saying "I can't say it was with the approval of his commander."⁴⁵ Chaplain Yee understood his role as "provider." That certainly was the understanding of the chaplain doctrine writers of the time who were defining the role of advisement and provision as growing concepts in the JOA and all the time writing that understanding into chaplain training plans. If you believe Chaplain Yee, what happened wasn't a matter of national security, or a misunderstanding of strategic policy by a tactical level chaplain in the field. He believes he was set up in order to shift focus from breaking news about the poor treatment of the detainees at Camp X-ray. While he probably wasn't set up for that reason, he may have been set up by bad doctrine and bad practice: practice that was later regressively reinterpreted at the strategic level in light of what happened to Chaplain Yee to more appropriately reflect the LOAC and protect the rights of the chaplain and the Detainee.

C. Where were the chaplains? The story of prisoner abuse at the Abu Ghraib prison in Iraq broke in April 2004.⁴⁶ Numerous accounts of abuse and torture of prisoners were reported to have been committed by personnel of the 372nd Military Police Company. An internal investigation by the Army resulted in the court martial of

⁴⁵ Charlie Savage, "Limits put on new Muslim chaplain," Globe Newspaper Company, November 7, 2003.

⁴⁶ Seymour Hirsch, *New Yorker*, 26 April 2004.

seven soldiers and the removal of ten others from duty. The resulting political scandal damaged the credibility and public image of the United States in the prosecution of ongoing military operations. Some have argued that it was representative of a broader American attitude and policy of disrespect and violence toward Arabs.⁴⁷

A *Washington Times* Editorial asked the intriguing question: “Where are the chaplains?”⁴⁸ Reports were that the chaplain was told “not to be in the way” and to let the “soldiers come to her.” Chapel attendance was low with many soldiers reporting that they did not even know the chaplain’s name. All this resulted in an atmosphere where spiritual influence was lacking, and moral presence weak.⁴⁹

Abu Ghraib may have been more of a sin of omission than commission. The absence of religious support in this case certainly contributed to the outcome. The chaplain’s active involvement in advising the commander on the performance, morale, and status of the troops might have made the difference. Timely and accurate advice should have been offered to the commander on the well being of the Detainees, along with advice on how to accommodate for their religious support requirements. The chaplain missed the chance to be a moral compass helping to assist the commander in fulfilling the requirement of humane treatment, from the moment of capture to the moment of release.

III. The Way Ahead.

A. Conclusion: Regressive planning in relationship to emerging concepts.

As we have seen, the laws of unintended consequences often operate at exponential levels during times of chaos. The world of religious support was off base

⁴⁷ See Wikipedia, “Abu Ghraib Torture and Prisoner Abuse.”

⁴⁸ Washington Post, Letter to the Editor, 22 September, 2004.

⁴⁹ *God & Man on the Frontline*, Kathryn Lopez interview with Stephen Mansfield of 27 May 2005.

early on in religious support doctrine to Detainees, and misunderstood the tasking of insuring the “free exercise of religion consistent with the requirements of detention.”

Accommodation was initially confused with provision. Chaplains were placed in untenable positions. The results were a growing challenge to the protection of confidentiality in ministry settings, and a misunderstanding of the chaplain’s role.

Additionally, it appears that on at least one occasion we became so intent on facilitating for others that we might have neglected to provide for our own at Abu Ghraib.

This paper started with a series of questions regarding the Commander’s responsibilities for the delivery of religious support to Detainees in the Joint Theater of Operations. The answers help define the boundaries and playing field needed to set mission requirements. They tell us:

1. The Detaining Power is not tasked with providing the religious practice, but protecting its delivery (accommodation).
2. Detainee is an inclusive term for religious support purposes.
3. Religious support to detainees is best defined as complete latitude in the exercise of religious duties consistent with the requirements of detention.
4. The role of the chaplain is to provide religious support to authorized personnel and to advise the commanding officer on matters pertaining to religion and religious support.
5. That bad doctrine, good doctrine poorly applied, doctrine ignored, and doctrine developed outside of the requirements process does not lead to successful mission completion.

The way ahead for all religious ministry planning in the JOA is found in using the Joint Training System process (JTS).⁵⁰ The JTS requirements process is a mission to task system designed to give the RCC and his staff (including his chaplain) capabilities they need to accomplish their mission. The Joint Religious Support world needs a jump start

⁵⁰ This process could be applied to other requirements in the JOA such as: The Religious Support Requirements for the delivery of religious ministry to civilians in the AOR. Civilians would include: detainees, refugees/evacuee/displaced persons, contractors, and displaced American citizens /CONUS (as in Katrina).

to begin the assessment phase of the JTS in order to exercise our religious support planning and training across the entire joint spectrum.

B. Requirements Process.

JFCOM has the functional responsibility to implement this process, which would include coordinating concept development with the services, and recommending changes in doctrine, training and education. JFCOM would also have the lead in making recommendations for assessment of joint tactics, techniques and procedures, and doctrine publications (see Unified Command Plan 2006).

The process demands an interactive conversation with doctrine, training, and requirements: a conversation in which the RCC and the RCC chaplain (end users of the product) speak with stake holders (religious support doctrine writers, trainers, service chiefs of chaplains' representatives, and others), to review doctrine and outline training plans in order to prepare forces to respond to operational requirements and successfully execute the mission.

The good news is that there is a well established requirements and training process in place with a built in Lessons Learned corrective procedure:

Training guided by doctrine,
can effectively prepare forces (Religious Support Teams),
to respond to requirements,
determined by the RCC,
to achieve mission accomplishment in the AOR.⁵¹

⁵¹ Norman Wade, "The Joint Forces Operational Warfighting SMARTbook," Joint Training System, p. 4-51.

APPENDIX A:

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

Part I. General Provisions, Medical Personnel and Chaplains Retained to Assist Prisoners of War

Chapter IV, Article 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to, prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties. During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed. None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Chapter V, Article 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labor detachments containing prisoners of war belonging to the same forces, speaking the same language or practicing the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Part IV. Termination of Captivity, Section III. Death of Prisoners of War

Article 120.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honorably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time.

APPENDIX B

TERMS AND DEFINITIONS (from JP 1-02)

Civilian Internee - 1. A civilian who is interned during armed conflict or occupation for security reasons or for protection or because he or she has committed an offense against the detaining power. 2. A term used to refer to persons interned and protected in accordance with the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Geneva Convention). Also called CI. (JP 1-02)

Detainee - A term used to refer to any person captured or otherwise detained by an Armed Force (JP 1-02). Detainees include, but are not limited to, those persons held during operations other than war (DODD 2310.1).

Enemy Combatant - Any person in an armed conflict who could be properly detained under the laws and customs of war. Also called EC. (JP 1-02)

Evacuee - A civilian removed from a place of residence by military direction for reasons of personal security or the requirements of the military situation. (JP 1-02)

Internally Displaced Person - Any person who has left their residence by reason of real or imagined danger but has not left the territory of their own country. (JP 1-02)

Joint Interrogation and Debriefing Center - A physical location for the exploitation of intelligence information from enemy prisoners of war and other non-prisoner sources. It is normally subordinate to the joint force/J-2. Also called JIDC. (JP 1-02)

Law of Armed Conflict (LOAC) - That part of international law that regulates the conduct of armed hostilities. (LOAC) (JP-1-02)

National Detainee Reporting Center - The central tracing agency established by Headquarters, Department of the Army (DAMO-ODL) at the direction of the Secretary of the Army, for the collection, maintenance and reporting of detainee accountability information for the Global War on Terrorism. National Detainee Reporting Center is responsible for reporting to the Army leadership, ASD/SOLIC and the International Glossary-8 FM 3-63.1/MCRP 4-11.8D/NTTP 3-07.8/AFTTP(I) 3-2.51 30 January 2006 Committee of the Red Cross (ICRC) (SecDef Memo of 16 Jan 02). Also called NDRC.

Prisoner of War - A detained person as defined in Articles 4 and 5 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949. In particular, one who, while engaged in combat under orders of his or her government, is captured by the armed forces of the enemy. As such, he or she is entitled to the combatant's privilege of immunity from the municipal law of the capturing state for warlike acts which do not amount to breaches of the law of armed conflict.

For example, a prisoner of war may be, but is not limited to, any person belonging to one of the following categories who has fallen into the power of the enemy: a member of the armed forces, organized militia or volunteer corps; a person who accompanies the armed forces without actually being a member thereof; a member of a merchant marine or civilian aircraft crew not qualifying for more favorable treatment; or individuals who, on the approach of the enemy, spontaneously take up arms to resist the invading forces. Also called POW or PW (JP 1-02)

Retained Personnel - Enemy personnel who come within any of the categories below are eligible to be certified as retained personnel. a. Medical personnel exclusively engaged in the: (1) Search for collection, transport, or treatment of the wounded or sick; (2) Prevention of disease; and/or (3) Staff administration of medical units and establishments exclusively. b. Chaplains attached to enemy armed forces. c. Staff of national Red Cross societies and other voluntary aid societies duly recognized and authorized by their governments. The staffs of such societies must be subject to military laws and regulations. Also called RP. (JP 1-02)

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