

Hoffman's Key Conclusion Demonstrably False: The Omission of Key Documents and Facts Distorts the Truth

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Based upon documents described in this response, we can now demonstrate the following:

Despite eight months of research and more than \$4.1 million in fees, Mr. Hoffman's report omits the key Department of Defense documents that governed military interrogations in the period leading up to the PENS report. Only that omission enables him to make the false claims at the core of his major conclusion: that DoD guidelines did not prohibit abusive interrogation techniques and that we wanted the PENS guidelines to be similarly "loose." In fact, the DoD policies – some of which we helped to draft – were very restrictive. Moreover, the PENS report clearly states that psychologists are bound by those policies as well as by the relevant international treaties.

In the face of the documents Mr. Hoffman ignored, his major conclusion collapses. As this response will also demonstrate, that omission is part of a pattern of omissions, factual mistakes, and unsupported inferences that pervade the rest of his report.

Background

In November 2014, the Board of Directors of the American Psychological Association (APA) engaged David H. Hoffman, a partner in the law firm of Sidley Austin, to conduct an independent investigation of the process leading up to the report issued by the APA's Presidential Task Force on Ethics and National Security (PENS) that provided guidelines for psychologists involved in interrogations. Mr. Hoffman delivered his report on June 27, 2015. It was accepted immediately and uncritically by the APA, and those attacked in it were given no meaningful opportunity to reply before the APA Board and Council acted on it, and its conclusions were reported in the *New York Times*. As we said in our initial response on July 31, even a superficial reading of the report shows that it is written as a prosecutorial brief, not an objective review of the facts. At that time, we promised further, fact-based responses. This is the first such response, issued on behalf of the following individuals named in the report: Colonels (Ret.) L. Morgan Banks, Debra L. Dunivin and Larry C. James, and Dr. Russ Newman (APA Executive Director for Professional Practice until December 31, 2007).

Our findings

The documents Mr. Hoffman omitted clearly show that, prior to the work of the PENS Task Force in late June of 2005, restrictive DoD interrogation policies were already in place prohibiting the abusive interrogation tactics, including sleep deprivation and stress positions, that the Hoffman report erroneously claims we colluded to enable. It is only by omitting a meaningful analysis of these documents that he is able to:

- Claim incorrectly that the DoD interrogation policies in place at the time of PENS relied on “high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation....”¹
- Claim incorrectly that we and others had motives to keep the PENS guidelines “loose” so that they would not constrain abusive interrogations. That claim is nonsensical in the face of the restrictive military policies issued in 2004 and early 2005, some of which we participated in creating.

These policies – not the earlier guidelines and outdated Bush-administration policies on which Mr. Hoffman relies – provide the critical context for the PENS report. And, in fact, language was inserted into the PENS guidelines to make it clear that military psychologists were bound by these most recent policies, as well as by the U.N. Convention Against Torture and the Geneva Conventions governing the treatment of prisoners of war. (See pages 13-14 for the facts that support this statement.)

In the coming weeks, we will demonstrate that the report’s other major findings rest similarly on omissions and factual errors, as well as mischaracterizations and unsupported inferences. The result is a story that, while plausible to those not involved in the events it describes, turns truth on its head. The consequence has been to wreak irreparable damage upon our reputations and our careers and, more importantly and shamefully, upon the reputation of the APA and our profession. All this has happened without the APA having given us the opportunity to state our case to its Board or Council.

Far from enabling abusive interrogations, those of us in the military were working successfully to put in place the restrictive policies that ended the abuses. We outline those efforts on page 11 and will provide more details about them in our more comprehensive response.

That full response will take more time given not only the length of Mr. Hoffman’s report, but also the volume of key documents and facts that it omits and that we have had to gather ourselves.² For the time being, we list several of the most obvious errors at the end of this response.

We believe objective observers, once they review all of the documents and facts, not only those Mr. Hoffman chooses to present, will conclude that his report’s conclusions are profoundly wrong. The report’s omissions, factual errors and mischaracterizations are difficult to attribute to anything other than a prosecutorial zeal to reach a pre-ordained conclusion, the conclusion reached by those whose attacks he describes on the report’s first page. We have tried not to let our outrage infect the tone of this response. But we find it reprehensible that any reputable law firm would issue such a deeply misleading report, and that the APA would rush to accept and thereby sanction the report without carefully reviewing it and giving those attacked a chance to respond.

¹ [Hoffman report](#), page 12; pdf page 27.

² As we have stated previously, our investigation has been hampered by lack of access to Mr. Hoffman’s notes and the emails, and other documents provided to him by the APA, or others, that he did not include in his document binders. Given the pattern of omissions in the report, and our knowledge that the report does not reflect the full content of at least some interviews, those notes gain added importance. The APA, through its counsel, refused our request; Mr. Hoffman has not had the courtesy even to respond to a request made by Dr. Newman for those materials on August, 27, 2015.

THE FACTS: AN EXECUTIVE SUMMARY

1. The report's central conclusion is that APA officials *"colluded with important DoD officials to have APA issue loose, high-level ethical guidelines that did not constrain DoD in any greater fashion than existing DoD interrogation guidelines."*³ The DoD guidelines, the report claims, *"used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation...."*⁴

The facts: As the documents Mr. Hoffman omitted show, the DoD interrogation policies in effect in June 2005, when the PENS report was created, were very restrictive. For example, the Standard Operating Procedures (SOP) for Iraq issued on January 27, 2005, specifically prohibited sleep management and stress positions, among several other techniques. The policies also incorporated the provisions of the relevant Geneva Conventions. ***Mr. Hoffman's report never refers to these restrictive DoD policies.*** Given these policies, the claim that we wanted loose APA guidelines so that DoD could continue abusive interrogations simply makes no sense, especially given that those of us in the military were involved in creating some of these military guidelines.

2. The report also concludes that *"there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue"* and that we and others exhibited *"substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques."*⁵

The facts: As the documents we cite demonstrate, by the time of the PENS report all evidence showed that abusive interrogations within DoD had ended and were highly unlikely to resume, given the prohibitions against them and the penalties for violating those prohibitions.⁶ Here as elsewhere, Mr. Hoffman conflates times periods in order to ignore the major changes in interrogation policies and practices that took place in 2004, after the Office of Legal Counsel (OLC) memos that provided an expanded view of permissible interrogation techniques were withdrawn.

3. Mr. Hoffman concludes that the PENS guidelines were unduly loose in a way that did not constrain abusive interrogations. In particular, he makes two claims. Although those claims lose their force given the restrictive military guidelines already in place, they are in themselves false.

The first claim:

The leading ethical constraint in the report was that psychologists could not be involved in any way in torture or cruel, inhuman or degrading treatment. But it was well known to APA officials at the time of the report that the Bush Administration had defined "torture" in a very narrow fashion,

³ [Hoffman report](#), page 9, pdf page 24.

⁴ [Hoffman report](#), page 12, pdf page 27.

⁵ [Hoffman report](#), page 9, pdf page 24.

⁶ Our response relates only to DoD; we cannot speak to policies or practices within the Central Intelligence Agency (CIA) or to the activities of Dr. James Mitchell and Dr. Bruce Jessen, whose company contracted with the CIA to conduct interrogations. **We note, however, that the Hoffman report regularly ignores the clear difference between the approaches of the DoD and the CIA that had developed in late 2003, 2004 and 2005.** DoD was governed by its own policies which, by that time, clearly did not authorize abusive techniques. We note that Mr. Hoffman states that Dr. Mitchell told him (emphasis added): ***"DoD was genuinely interested in adhering to the Ethics Code and was seeking clarity about its guidelines, whereas the CIA would not have changed its operational decisions based on the ethical statements of a professional association."*** [Hoffman report](#), page 144, pdf page 162.

and was using the word “humane” to describe its treatment of detainees despite the clear indications that abusive interrogation techniques had been approved and used. Thus, APA knew that the mere use of words like “torture,” “inhuman,” or “degrading” was not sufficient to provide guidance or draw any sort of meaningful line under the circumstances.⁷

The facts: The Bush Administration memos providing a narrow definition of torture had been withdrawn by the time of PENS insofar as they applied to the DoD. As a report of the Office of Professional Responsibility (OPR) made clear, as of December of 2003 the “Yoo memo” underpinning an expansive view of permissible DoD interrogation techniques was verbally withdrawn.⁸ At some point after Deputy Attorney General Patrick Philbin testified before the House Permanent Select Committee on Intelligence on July 14, 2004, the DoD informed the OLC that it did not need a replacement for the Yoo memo.⁹ The verbal withdrawal of the Yoo memo in December of 2003 was then reiterated in writing in February of 2005.¹⁰ The more general OLC “Bybee memo” giving an expanded view of permissible interrogation techniques was withdrawn in June of 2004, and the OLC memo issued in December 2004 made it very clear that torture would be defined with reference to the United Nations Convention Against Torture (CAT) as well as U.S. law.¹¹ (A second, classified Bybee memo applied to the CIA and was replaced by memos in May of 2005 that were also specific to the CIA.) Mr. Hoffman’s conclusion rests on ignoring developments in 2004 and 2005 and the distinction between CIA and DoD policies.¹²

The second claim:

Mr. Hoffman concludes that the PENS guidelines did not require adherence to the Geneva Conventions. His language also clearly implies that we were unconcerned with the Conventions.

Although the relatively small number of non-DoD voting members of the task force made some efforts to push for greater specificity and for definitions based on the Geneva Conventions, their efforts were rejected by the DoD members of the task force, the APA Ethics Director, and the other key APA officials who were included in the meeting.¹³

... the PENS report does not fully embrace international legal standards.¹⁴

The [PENS] statement also makes reference to, at Wessells’s behest, the Geneva Convention Relative to the Treatment of Prisoners of War and the U.N. Convention Against Torture. But as discussed earlier, these provisions are not made binding on psychologists in these detainee settings.¹⁵

The facts: As we demonstrate below in section 3, the actual language of PENS guidelines made it clear that U.S. law incorporates all treaties to which the U.S. is a party, including the CAT. It also makes clear that psychologists must “follow” the most recent applicable regulations, and that those regulations

⁷ [Hoffman report](#), page 12, pdf page 27.

⁸ [Office of Professional Responsibility Report](#), page 112, pdf page 118.

⁹ [Office of Professional Responsibility Report](#), page 121, pdf page 127.

¹⁰ [Levin Memo, February 4, 2005](#).

¹¹ [Levin Memo, December 30, 2004](#).

¹² **Mr. Hoffman did not find that APA officials colluded with the CIA.** [Hoffman report](#), page 10, pdf page 25.

¹³ [Hoffman report](#), page 12, pdf page 27.

¹⁴ [Hoffman report](#), page 251, pdf page 270.

¹⁵ [Hoffman report](#), page 305, pdf page 324.

incorporate the Geneva Conventions and the CAT. (The PENS Task Force Report even contained links to those texts.¹⁶) As DoD psychologists were aware and as we discuss in Section I below, the regulations governing DoD interrogations had become tight, not loose.

In the face of the actual PENS language, it is difficult to see any basis for Mr. Hoffman's characterization of the report. The PENS guidelines could be considered "loose" only by those who wanted policy outcomes – for example, that psychologists should have no involvement in interrogations – that the Board of Directors and the PENS Task Force as a whole did not accept, or wanted a degree of specificity about which there was no consensus and which ethical guidelines in other professions do not attempt.¹⁷

In the following pages, we provide supporting details for each of these three points. In the concluding pages, we describe some of the report's many other factual inaccuracies and mischaracterizations.

THE FACTS: THE SPECIFICS

1. Mr. Hoffman's Central Conclusion Collapses in the Face of the Timeline of Events Pre-PENS

Hoffman states as fact the following conclusion (emphases added):

Our investigation determined that key APA officials, principally the APA Ethics Director joined and supported at times by other APA officials, colluded with important DoD officials to have APA issue loose, high-level ethical guidelines that did not constrain DoD in any greater fashion than existing DoD interrogation guidelines.... Thus, we conclude that in colluding with DoD officials, APA officials acted (i) to support the implementation by DoD of the interrogation techniques that DoD wanted to implement without substantial constraints from APA; and (ii) with knowledge that there likely had been abusive interrogation techniques used and that there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue; and (iii) with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques.¹⁸

This conclusion rests on the assumption, for which Mr. Hoffman provides no facts, that at the time of the PENS report the existing DoD interrogation guidelines allowed for abusive interrogations. They did not.

¹⁶ Dr. Mike Wessells, [PENS listserv notes](#), page 91. The day after the PENS Task Force meeting, Dr. Wessells states: "One very small but important suggested change is that yesterday, we had agreed to include under the fourth point reference (in two places) to both the Geneva Conventions and the Convention Against Torture (which applies to detainees who are not Prisoners of War)." And in fact, those references are included in the final text of the report. [Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security \(PENS\)](#), June 2005, page 5, pdf page 6.

¹⁷ For example, the [American Bar Association Model Rules of Professional Conduct](#) state: "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent..." The ethics code doesn't list all the specific ways that an attorney should not assist a client in committing a crime or fraud.

¹⁸ [Hoffman report](#), page 9, pdf page 24.

He states essentially the same conclusion on pages 65 and 68. He further states:

During the task force's pre-meeting communications, during its three-day meetings, and in preparing the task force report, Behnke [Dr. Stephen Behnke, the APA Ethics Director at the time of PENS] and Banks closely collaborated to emphasize points **that followed then-existing DoD guidance (which used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation)**, to suppress contrary points, and to keep the task force's ethical statements at a very general level in order to avoid creating additional constraints on DoD.¹⁹

Although Mr. Hoffman refers to "existing interrogation" policies and guidelines, he *never* provides the actual DoD policies that were in place as of June 2005 when the PENS Task Force convened. Instead, he refers to DoD policies in place in 2002, 2003, and late 2004, or to CIA policies. (The late 2004 document is a SOP for BSCTs²⁰ at Guantanamo that was replaced on March 28, 2005, by a SOP that Colonel Dunivin drafted. That later document is actually included in the report's document binders but not listed in their index or referred to in the report.)²¹

Here as in many other places, the Hoffman report relies on both omissions and misstatements to reach its conclusions. **As the documents we describe and attach to this response demonstrate, Mr. Hoffman's main conclusion is false.**

The Documentation Mr. Hoffman Didn't Provide or Analyze

As the documents demonstrate, military personnel were under clear orders to treat detainees humanely. This had manifested in a number of policies prohibiting abusive interrogations and defining abuse quite specifically. The policies in place incorporated the relevant Geneva Conventions as well as the provisions of the Army Field Manual (FM 34-52). As the charts on pages 9 and 10 show, policies for Iraq and Afghanistan specifically prohibited sleep deprivation and stress positions (among other things). For Guantanamo, the policies we have obtained contained a list of permitted techniques that did not include, among other techniques, sleep deprivation and stress positions. In addition, in a statement included in the Hoffman Report (Binder 5, HC00022699), General Randall Schmidt (as the first author of that report) said that sleep deprivation was barred in Guantanamo in March 2004, and The Review of the FBI's Involvement In and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq (Reference 12) states that specific stress positions were expressly prohibited in May 2004. All of the documents to which we refer were freely available to Mr. Hoffman on the internet.

To understand how these changes had come about, an understanding of the timeline of events in 2004 and 2005 – which Mr. Hoffman ignores – is critical.

- Prior to 9/11, Army interrogators had relied on the guidance of the FM 34-52, which contains explicit directions as to which interrogation techniques are allowed and which are considered abusive or cruel, inhumane or degrading treatment.²²

¹⁹ [Hoffman report](#), page 12, pdf page 27.

²⁰ A "BSCT" is a Behavioral Science Consultation Team whose members are trained military health professionals. BSCT's monitoring of interrogations helps ensure compliance with U.S. law, DoD regulations, local guidelines, and ethical standards.

²¹ [Hoffman report](#), footnote 923, pdf page 233, and the references to the supporting documents in [Binder 3](#), pdf page 978, DODDON-000760-000772.

²² [Army Field Manual](#), 34-52; pages I-6 through I-9.

- After 9/11, memos issued by the OLC expanded the range of interrogation techniques that would not be regarded as “torture.” When those legal memos were withdrawn in 2003 and 2004, the OLC affirmed that interrogations were governed by the CAT, and it became clear to the military that interrogations were once again governed primarily by the restrictions in FM 34-52.
- **During mid-2004 and early 2005, the FM 34-52 restrictions against abusive interrogations were reinforced by a series of specific policies governing Iraq, Afghanistan and Guantanamo.** As a result – and as many members of the PENS Task Force were aware and as was discussed on the PENS listserv – at the time of the PENS deliberations, the DoD interrogation policies were specific and forceful in their prohibitions against abusive interrogations.

The following charts provide the details of these developments. The relevant portions of the documents to which they refer are appended and the reference for the full document is listed in the reference table.

In December 2004, six months before PENS, the Office of Legal Counsel memos that expanded permissible interrogation techniques were withdrawn, and a new memo made it very clear that the United Nations Convention Against Torture applied to all interrogations

- The OLC memo (one of the “Bybee memos”) underlying an expanded view of permissible interrogation techniques was withdrawn in **June of 2004** and a new memo substituted in **December of 2004**, almost six months before PENS convened. The substitute memorandum made it clear that “[t]orture is abhorrent,” that interrogators were bound by the United Nations Convention Against Torture, and that the prohibitions in CAT were reflected in US criminal laws. There was no question what the law was at the time of PENS. Reference 1.
- **On February 4, 2005** the General Counsel of DoD was reminded in writing by the OLC that the Yoo OLC memo that underpinned the DoD interrogation program (issued in 2003) had been withdrawn verbally in December of 2003, and that the memorandum was being formally withdrawn. Reference 2.
- Consistent with the issuance of the new local policy guidance memos, in the **late summer of 2004**, DoD notified the OLC that it did not need a replacement for the Yoo 2003 memo. Reference 3.

Thirteen senior-level government investigations and hearings prior to PENS had produced changes in policies and procedures as early as May of 2004, just after the abuses at Iraq were discovered

- **On May 6, 2004**, General Abizaid, the senior command officer for the Central Command area of responsibility (encompassing Iraq and Afghanistan), ordered all of the Central Command to conduct interrogations in accordance with FM 34-52. That Manual prohibits, for example, food deprivation, prolonged stress positions, and abnormal sleep deprivation. Reference 4.
- **On May 18, 2004**, CNN reported that the Army had banned “sleep and sensory deprivation and keeping prisoners in stressful positions” in Iraq and was reviewing the policies in Afghanistan. Reference 5.
- **On March 10, 2005**, testifying before the Senate, Admiral Church had the following exchange with Senator McCain: **Senator McCain:** “Are all the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?” **Admiral Church:** “Yes, sir.” **Senator McCain:** “In your mind there is no doubt?” **Admiral Church:** “There is no doubt in my mind.” Reference 6.
- **In April of 2005**, the *New York Times* reported that DoD was working on a revision to the Army Field Manual which would contain even more specifics about prohibited interrogation techniques. Reference 7.

IRAQ POLICIES

- **On May 13 2004**, the commander of Combined Joint Task Force 7, then the command structure for Iraq, issued a policy that specifically prohibited the use of six interrogation techniques, including sleep management, stress positions, change of scenery, dietary manipulation, environmental manipulation, and sensory deprivation. Reference 8.
- The Schlesinger report made it clear that restrictive interrogation policies for Iraq were in place beginning **May 13, 2004**. That report is in Mr. Hoffman's Binder 4 and is linked to FN 1640 but never analyzed.
- **On January 27, 2005**, the May 6, 2004, policy for all of CENTCOM was reinforced by SOP for everyone in Iraq that stated (emphasis added): "All interrogations and tactical questioning will comply with the applicable provisions of the Law of War, the Geneva Conventions, and with US policy, which require us to treat all persons humanely and with dignity and respect. This policy also expressly prohibits acts of violence or intimidation and physical or mental torture. Humiliation is a violation of the **Geneva Conventions** and is therefore prohibited. Threats, insults, and exposure to inhumane treatment as a means of or aid to interrogation are not authorized and will not be condoned... **Under no circumstances will the following interrogation techniques be approved or utilized: sleep management, stress positions, diet manipulation, environmental manipulation, removal of clothing, or sensory deprivation. Military working dogs will not be used for, or be present during, interrogations.**" Reference 9.

AFGHANISTAN POLICIES

- **On May 16, 2004**, an order to the Combined Forces Command-Afghanistan stated unequivocally (emphasis added): "Intelligence questioning of detainees will be conducted strictly [n] A[ccordance] W[ith] the **Geneva Conventions. Physical abuse of any type, any form of intentional humiliation, verbal abuse, or deprivation of sleep, food or water are explicitly forbidden. Intelligence value remains secondary to treating all detainees humanely with a view to their ultimate release and reconciliation as a part of Afghanistan's future.**" The order also stated that "**Persons subject to the U[niform]C[ode]M[ilitary]J[ustice]** (UCMJ) may be punished thereunder" for violating that prohibition. Reference 10.
- The Schlesinger report makes clear that restrictive policies were in place for Afghanistan since **June of 2004**.

GUANTANAMO POLICIES

- The Guantanamo (or "Camp Delta") SOP issued in **March 2004** prohibited abuse, "any form of corporal punishment," physical exercise as punishment (considered a stress position), and "verbal harassment." It also mandated that "detention operations meet with the principals of the **Geneva Conventions**," and stated that violations of the SOP could be punished under the UCMJ. Reference 11.
- General Schmidt has stated publicly that sleep deprivation was barred in Guantanamo in **March 2004** (Hoffman report; Binder 5), and the Schlesinger Report makes it clear that, since **April of 2003**, the only techniques specifically authorized did not include sleep deprivation, stress positions, or exploiting phobias. The Review of the FBI's Involvement In and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq states that in May 2004, specific stress positions were again expressly prohibited. Reference 12.
- The SOP governing BSCT personnel at Guantanamo, issued on **March 28, 2005**, states (emphasis added): "Use psychological expertise to provide monitoring, consultation, and feedback regarding the entire detainee environment in order to assist the command in **ensuring humane treatment of detainees**, the prevention of abuse, and the safety of U.S. personnel. In addition to the other duties and qualifications noted in this document, **it is the responsibility of all BSCT personnel to familiarize themselves with and adhere to the UCMJ, Geneva Conventions, applicable rules of engagement, local policies, as well as professional ethics and standards of psychological practice. All BSCT personnel will be expected to:...Immediately report any suspicions of abuse of detainees or misconduct by U.S. personnel** to JIG Director who is responsible for further reporting to JTF Commander." Reference 13.

Hoffman refers to none of the documents described above, although they could have been easily found. (For example, buried in Binder 4 of his supporting materials is a chart in the August 2004 Schlesinger Report (The Final Report of the Independent Panel to Review Department of Defense Detention Operations) that could have guided him to many of these documents and, therefore, through an analysis of the “existing DoD guidelines” in June of 2005.)

Participation of Military Members in Drafting Policies to End Abuses and Prevent Future Abuses

When the March 2005 BSCT SOP was put into effect, Colonel Dunivin was stationed at Guantanamo and had participated in drafting it. She alluded to this in an email contained in Mr. Hoffman’s binders.²³ Colonel Banks was an author of the Army Inspector General’s report, issued in July of 2004, on interrogations in Iraq and Afghanistan, and was responsible for listing in the report all of the provisions of the Geneva Conventions that applied to interrogations, including, for example, “No degrading treatment.”²⁴ And, at the time of PENS, Colonel Banks was consulting to the Army on a revision to the Army Field Manual that, as a *New York Times* article reported, was to contain even more specifics about prohibited interrogation techniques.²⁵

Additionally, after the pictures of abuse from Iraq surfaced, Colonel James met with Dr. Phil Zimbardo, the author of the Stanford prison experiments, to discuss how to minimize abuses. While on a plane to Iraq, Colonel James outlined the beginnings of a SOP to prevent abuses. The first restrictive SOP was put in place in May of 2004, expressly prohibiting sleep deprivation and stress positions and incorporating the Geneva Conventions. While in Iraq, Colonel James trained staff on appropriate interviewing techniques that were consistent with those documents. He noted at least twice on the PENS listserv that restrictive policies were in place at the time of PENS, but he could speak about those prohibitions only in general terms since their contents were still classified.

Mr. Hoffman failed to ask about any of these activities during his multiple interviews with us. When we tried to bring up these facts, he told us they “weren’t relevant” and he wanted to know only about our interactions with APA. We even offered to try to have the general topics Mr. Hoffman wanted to speak about cleared in advance with the military but were rebuffed by him. Yet these topics are clearly relevant to the tale Mr. Hoffman spins, and our attorney – without the resources of a major law firm – was able to gather the relevant documents simply by searching the internet.²⁶

2. All Available Evidence Showed that Abusive Interrogations in the Military Had Ended

The Hoffman report states that the “collusion” to create loose PENS guidelines took place (emphasis added):

... (ii) with knowledge that there likely had been abusive interrogation techniques used **and that there remained a substantial risk, that without strict constraints, such abusive interrogation**

²³ Hoffman report, [Binder 1](#), pdf page 895, APA 0035139.

²⁴ [Department of the Army the Inspector General \(DAIG\) Report](#), page E-9, pdf page 211.

²⁵ [New York Times article concerning the new Army Field Manual](#), April 28, 2005.

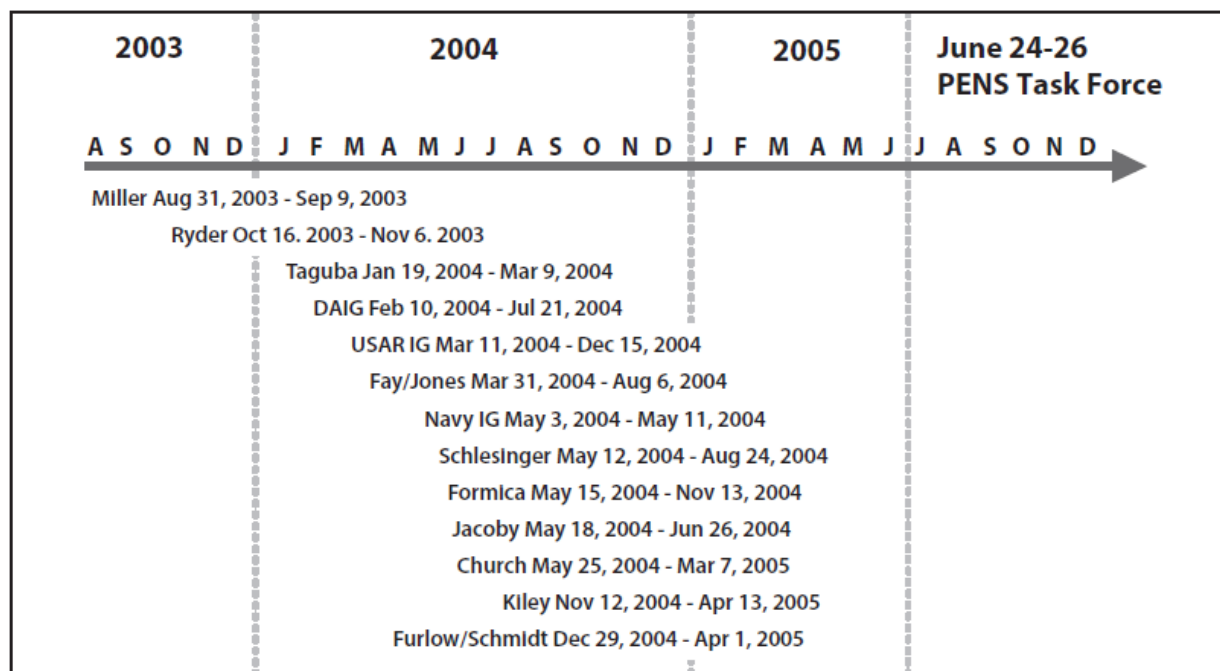
²⁶ The first Iraq SOP is still classified; however, its contents were partially disclosed in the Formica report (Reference 8). The Iraq SOP from January 2005, cited herein, is still mostly classified but is publicly available (Reference 9). To the extent it is classified we have refused to discuss its contents or comment on it with our attorney.

techniques would continue; and (iii) with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques.²⁷

These APA officials took this position while intentionally avoiding an effort to gather information about whether “enhanced” interrogation techniques were still occurring—although they would have had every reason to believe that stress positions and sleep deprivation (among others) were still being used at the time of PENS because of the reluctance of Banks and other DoD officials to declare them prohibited. We would not call this “supporting the implementation of enhanced interrogation techniques,” but we would say this was supporting the implementation by DoD of the interrogation techniques it wanted to implement, without substantial constraints from APA, and with knowledge that there likely had been abusive interrogation techniques used, and there remained a substantial risk that without strict constraints, such abusive interrogation techniques would continue.²⁸

Before the time of PENS, as the chart below illustrates, 13 senior-level investigations into detainee abuse had taken place (additional reports were released after PENS). All of those reports are either publicly available in some form or have been publicly reported on. Yet Mr. Hoffman gives very short shrift to their contents, and ignores most of their findings.²⁹

TIMELINE: MAJOR SENIOR LEVEL REPORTS AND INVESTIGATIONS PRIOR TO PENS



Everyone knew that abuses had occurred. However, Mr. Hoffman provides no evidence – and there is none – to back up his assertion that there was a “substantial risk” abuses were likely to continue in DoD interrogations. Instead, his assertion relies solely on the fact that abuses had occurred and the

²⁷ [Hoffman report](#), page 9, pdf page 24.

²⁸ [Hoffman report](#), page 68, pdf page 83.

²⁹ Chart adapted from [Office of the Inspector General of the Department of Defense, Review of DoD-Directed Inspections of Detainee Abuse](#), August 25, 2006; page 32, pdf page 42.

mistaken assertion that there were no restrictive guidelines in place. Given the guidelines actually in place, the bright light cast onto abuses by many reports, the commitment of military leadership to preventing abuses, the authority given military psychologists to report abuses, and the realization that the whole world was watching, it was highly unlikely that abusive interrogations would be attempted or, if attempted, could take place undetected within the DoD. (Again, our knowledge is limited to the DoD, not the CIA.)

In the chart on page 9, we cited an exchange between Senator McCain and Admiral Church during Admiral Church's March 2005 testimony before the Committee on Armed Services, which was charged with reviewing the interrogation policies. The exchange deserves repetition (See Reference 6):

Senator McCain: "Are all the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?"

Admiral Church: "Yes, sir."

Senator McCain: "In your mind there is no doubt?"

Admiral Church: "There is no doubt in my mind."

Here again, Mr. Hoffman conflates time periods and ignores the specifics of what transpired between the post-9/11 period and the period preceding PENS, as well as the differences between CIA and DoD approaches to interrogation policies.

3. The PENS Guidelines Were Understood by Military Psychologists to Prohibit Abusive Interrogations

As we explained above, the claim that the PENS guidelines were too general to constrain abuses loses its significance if military psychologists were already bound by strict military guidelines, as they were. However, there was no doubt among military psychologists that the PENS guidelines themselves prohibited techniques that contravened the FM 34-52 or the international conventions incorporated in U.S. laws. It is striking that Mr. Hoffman avoids backing up his characterization of the guidelines by actually quoting them.

In direct contrast to Mr. Hoffman's characterizations of the PENS guidelines, they make it clear that psychologists are obligated to follow the most recent regulations governing their roles, and that those regulations incorporate the U.N. Convention Against Torture as well as the Geneva Convention Relative to the Treatment of Prisoners of War. (And, as we have demonstrated, the DoD regulations include even more specific restrictions.) In addition, the governing OLC guidance – the two memos issued by Acting Assistant Attorney General Daniel Levin in December 30, 2004 and February 4, 2005 – that applied to the DoD made clear that the CAT as well as relevant U.S. laws applied to military interrogations. No military psychologist could rationally have believed at the time of PENS that relevant Geneva Conventions and the CAT should not apply to their work, nor did the military psychologists involved with PENS take that position.

Statement four of the PENS Guidelines states (emphasis added):

Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights. Psychologists involved in national security-related activities **follow all applicable rules and regulations that govern their roles.** Over the course of the recent United States military presence in locations such as Afghanistan, Iraq, and Cuba, **such rules and regulations have been significantly developed and refined.** Psychologists have an ethical responsibility to be informed of, familiar with, **and follow the most recent applicable regulations and rules.** The Task Force notes that **certain rules and regulations incorporate texts that are fundamental to the treatment of individuals whose liberty has been curtailed, such as the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.** *(The original PENS document then includes a link to those two documents.)*

Mr. Hoffman simply assumes that, because the PENS guidelines did not ultimately reflect the views of some of the Task Force's members (views he clearly adopts as his own), malign motives were in play to make the guidelines ineffective. Aside from that obvious bias, his assertions contain the following mistakes:

- As we discussed above, although he emphasizes the outdated Bush administration OLC memos (the "Bybee" and "Yoo" memos) as the appropriate context within which words such as "torture" would be interpreted, he ignores the fact that the Bybee and Yoo memos had been withdrawn and that the military had been issuing stringent interrogation guidelines (as had been reported in the press). No military psychologist involved in national security interrogations was in doubt that the military had increasingly adopted a very different attitude toward what were permissible interrogation techniques. The local rules and regulations governing interrogations, and therefore military psychologists' behavior, all incorporated the Geneva Conventions and contained strict prohibitions against abusive techniques.³⁰ Although some of the regulations were still classified at that time and could not be discussed in detail, they were well known to and governed the conduct of the PENS Task Force military members.
- Mr. Hoffman states that, because efforts by some PENS Task Force members to push for definitions based on the Geneva Conventions were rejected, the report did not ethically bind psychologists by human-rights standards. This vastly oversimplifies and distorts the debate within the Task Force. Statement Four states clearly that psychologists are bound by the Geneva Conventions. The debate was not about that question. Federal employees and military members pledge adherence to the laws of the United States – but those laws automatically encompass treaties to which we are a party. Military members expressed concern that they could not commit to a broad adherence to international law because it could conflict with the wording of the oath that they take. The debate, therefore, was about whether the PENS guidelines, if they were to be effective for military psychologists, should refer directly to international laws or to the U.S. laws that incorporate the relevant

³⁰ Colonel James made this point several times on the [PENS listserv](#), pages 47; 144.

international laws. This is a debate about the relationship between U.S. and international law that is conducted in many settings, not just this one.

In this setting, the debate was further complicated by the fact that the U.S. government held that the Geneva Conventions applied only to certain enemy combatants, and not all national security detainees.³¹ Clearly, throughout this period there were significant disputes about the law governing detainee interrogations, disputes conducted at levels of government beyond ours. *Those of us in the military set out to change the policies on the ground that governed psychologists' conduct to make it clear that, at each site, the Geneva and U.N. Conventions applied and abusive interrogations were not permitted. This approach allowed us to bring about these changes while staying in the chain of command and without contradicting our government's stated policy on this legal issue.*³² *All of our work was motivated by a desire to provide all psychologists who would work in these settings in the future with guidance that would allow them to resist abusive techniques and obligated them to report any suspected abuses that might occur. All of us believed this was extremely important work for our profession. All of us also firmly believe that the standards defined by the Geneva and U.N. Conventions should apply to all detainees – and, in fact, some of the guidelines we have described make that clear.* As even Jean Marie Arrigo, one of our most vocal critics, noted, Colonel James and Colonel Banks both stated that they believed that the relevant Geneva Conventions should apply.³³ None of us doubted for a minute that we should abide by the Geneva Conventions in every circumstance, whether or not detainees were considered enemy combatants.³⁴

- Mr. Hoffman ignores that Dr. Behnke had clearly studied the scope of U.S. laws and the appropriate approach to relying on U.S. law in the PENS guidelines. As indicated by Dr. Behnke's handwritten notes, his position was informed by a May 2005 article by the Physicians for Human Rights that described all the applicable U.S. laws that allowed sanctions, including criminal sanctions, to be imposed on psychologists who participated in abusive or cruel, inhumane or degrading treatment.³⁵ Those laws incorporate the prohibitions of the Geneva Conventions and of the CAT to which the United States is a signatory. (For example, the 1999 Initial Report of the United States to the U.N. Committee against Torture states that "Every act of torture within the meaning of the [CAT] is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes."³⁶) Dr. Behnke's reliance on that careful legal analysis is clearly shown in

³¹ [The Obama Administration has dropped the term "enemy combatant" but retains the right to detain those who provide "substantial" assistance to al-Qaeda and its associates globally.](#)

³² [Understanding the Oath of Office](#) taken by military members and federal employees.

³³ Hoffman report, [Binder 3](#), Arrigo notes pdf pages 805-830; 815.

³⁴ In stark contrast to what Mr. Hoffman concludes, Senator Levin, in his remarks when releasing the Senate Armed Services Committee Report in April of 2009, noted that military psychologists – including Colonel Banks – warned against the use of harsh techniques as early as 2002: ["On October 2, 2002, Lieutenant Colonel Morgan Banks, the senior Army SERE psychologist, warned against using SERE \[Survival Evasion Resistance and Escape\] training techniques during interrogations in an email to personnel at GTMO"](#)

³⁵ [Break Them Down](#), May 2005; Hoffman report, [Binder 4](#), pdf page 985. HC 00008888.

³⁶ Human Rights Watch, quoting from the [U.N. Committee Report Against Torture](#), March 11, 2003.

notes from his files that were given to Mr. Hoffman. Although Mr. Hoffman includes them in his document binders, he does not discuss them in his report.

Within the PENS Task Force, there was at times heated debate, even among the various members of the military branches, about whether the guidelines should be more specific about permissible and prohibited techniques and whether the guidelines should rely on the Geneva Conventions directly or on the U.S. laws that incorporated the Conventions. Throughout Mr. Hoffman's report, it is clear that he takes sides on those issues, despite his claim to neutrality. (See, for example, page 27, where he concludes, without any evidence, that it is "naïve or intentionally disingenuous" to believe that psychologists can simultaneously prevent abusive interrogations and encourage effective techniques.) But the outcome of the debates was entirely reasonable and, we believe, correct.

Other Conclusions in the Report Rest on Similar Factual Inaccuracies

Our more detailed reply will respond to Mr. Hoffman's other major conclusions, all of which rest similarly on omissions, opinions masquerading as fact, and unsupported inferences about motives. At this time, we set forth only a few of these inaccuracies.

Appropriately disclosing and navigating the alleged conflict of interest

The report asserts that, because Dr. Newman is married to Colonel Dunivin, he had a "classic conflict of interest" that was not adequately disclosed and should have barred him from participating in any aspect of the PENS process.³⁷ As is the case again and again, a paragraph that states a conclusion is not accompanied by any of the facts or documents that depict a different or more complex story, although they are sometimes buried deep inside the report.

- **Disclosure.** Although the report acknowledges³⁸ that various APA officials were aware of the marriage, it does not make it clear that Dr. Newman had disclosed the marriage to the Board of Directors and his superiors, as well as to others in the APA. The marriage was referenced in October 2002 in the *Monitor*, the official publication of the APA, which is sent to all members, with a picture listing their respective titles and positions.³⁹ In addition, based on an email drafted by Nathalie Gilfoyle, the APA's General Counsel, in the context of the issue described in the fourth of these bullet points, it appears that the marriage had been disclosed to the APA Council in 2004.⁴⁰ In sum, all of Dr. Newman's superiors and many members of the Task Force, including the person who nominated him for inclusion as an observer, were aware of the relationship.⁴¹ Moreover, it was also commonly known that Colonel Dunivin was deployed to Guantanamo. As Geoff Mumford, an APA staff member, said in an email to which Mr. Hoffman refers, "it doesn't appear to be a secret that she's been down there."⁴²

³⁷ [Hoffman report](#), pages 13-14, pdf pages 28-29.

³⁸ [Hoffman report](#), pages 13-14, pdf pages 28-29.

³⁹ APA Monitor, October 2002, Reference 14.

⁴⁰ Hoffman report, [Binder 2](#), pdf pages 1401-1404, APA 0138161.

⁴¹ [Hoffman report](#), page 258, pdf page 277.

⁴² [Hoffman report](#), page 218, pdf page 237; [Binder 1](#), pdf page 797, APA 0030060.

- **General Counsel's Awareness.** Ms. Gilfoyle was presumably fully capable of deciding whether Dr. Newman's role as an observer constituted a conflict and, if she thought it might be, of saying so. Although Mr. Hoffman states that "Gilfoyle ... was surprised to learn of Newman's involvement during the meetings,"⁴³ on Sunday, June 26, she and others received an email from a member of the Task Force **listing Dr. Newman (and her) as among those who consulted on the project**. She then emailed Dr. Behnke about her concerns about how the draft would be reviewed before it was released, **and copied Dr. Newman**. In those exchanges, she did not express surprise or concern about his involvement. Moreover, although we cannot tell from the documents in the Hoffman report the degree of Ms. Gilfoyle's ongoing involvement in the PENS discussions, she was apparently sufficiently involved to be able to tell Dr. Behnke, when she received the draft report, "I think this looks great and captures the discussion well."⁴⁴
- **Colonel Dunivin and Dr. Newman's Role.** Colonel Dunivin **was not a member** of the PENS Task Force, **did not attend** the Task Force meeting, and **did not participate in its deliberations** at all. Although she submitted names for inclusion on the Task Force based on competencies and appropriate expertise, the decisions about whom to include were made by those to whom the marriage and potential conflict had been fully disclosed. Dr. Newman **was not a member of the Task Force** or of its listserv and did not help to draft its report. Instead, he was **a non-voting observer**, chosen by people to whom the marriage had been fully disclosed. A review of the notes of the Task Force meetings finds that he spoke less frequently than many others. His comments focused appropriately on the role of psychology and psychologists in the interrogation process, and were consistent with, and appropriate for, his duty of loyalty to his employer and his position as the Executive Director for Professional Practice for APA.
- **Previous consideration of a potential conflict issue.** In a footnote, the Hoffman report says that the marriage had previously raised concerns and that, in late 2004 (just three months before the PENS Task Force was approved by the Board), a Council member flagged it as a potential conflict of interest when Dr. Dunivin was running for a position on the APA Finance Committee. The footnote adds, without detail, that she withdrew her candidacy. It cites to, but does not describe, a document buried in the document binders.⁴⁵ That document includes a description, in an email, of advice requested by Ms. Gilfoyle on behalf of the APA Board from PriceWaterhouseCoopers (PwC). According to the email, PwC advised that "... this type of service [that is, service on the committee] is not prohibited." The email went on to state that full disclosure would minimize the risk of a conflict, that actual conflicts could be dealt with by recusal on an issue-by-issue basis, and that recusal "should be adequate to address an actual conflict or the appearance of a conflict regarding a matter directly affecting the Practice Directorate."⁴⁶ The document also makes clear that Dr. Dunivin was not required to withdraw her candidacy for the Finance Committee because the marriage was regarded as a

⁴³ [Hoffman report](#), page 257, pdf page 276.

⁴⁴ Hoffman report, [Binder 1](#), pdf page 1064, APA 0040782.

⁴⁵ Hoffman report, [Binder 2](#), pdf pages 1401-1404, APA 0138161.

⁴⁶ *Id.*

conflict in and of itself, an inference that the wording of Mr. Hoffman's footnote encourages. Although the existence of this advice from PwC was never disclosed to Dr. Newman, Ms. Gilfoyle as General Counsel of APA had the benefit of the guidance at the time of the PENS meetings. Because we do not have the full language of the PwC advice, we cannot determine its more specific relevance to the PENS discussions. However, the failure to disclose it or include the full text of the advice – yet another omission – distorts Mr. Hoffman's description of the entire conflict issue.

The proper handling of an ethics complaint against Colonel James

As one of his three main conclusions, Mr. Hoffman states broadly that ethics complaints were handled improperly to protect psychologists involved in interrogations.⁴⁷ As evidence for that conclusion, Mr. Hoffman cites an ethics complaint filed against Colonel James. Despite acknowledging that, if there was a flaw in how ethics complaints were handled, it was systemic and not related specifically to psychologists involved in interrogations, and despite acknowledging on page 522 of the 528-page text of the report that its handling was "technically permissible," he says it demonstrated a lack of diligence and, by implication, a desire to protect Colonel James.⁴⁸ **But Mr. Hoffman fails to state that the same complainant filed multiple complaints concerning Colonel James with two state licensing boards, and that no board, and no court reviewing any of those state board decisions, has found those allegations to have merit or to have been handled improperly.** At this point, Colonel James' conduct has been the subject of at least seven actions. Once again, the report's omission of easily available facts distorts the story it tells.⁴⁹

⁴⁷ [Hoffman report](#), page 10, pdf page 25.

⁴⁸ [Hoffman report](#), pages 58-60, pdf pages 73-75.

⁴⁹ One of the associates whose name appears on the report, Ms. Heather Benzmilller, completed a fellowship that appears to have been sponsored by Sidley Austin at the McArthur Justice Center. While Ms. Benzmilller was completing her fellowship, Mr. Joseph Margulies, Associate Director of the Center, represented Mr. Zayn al Abidin Mohamed Hussein, known as Abu Zubaydah. [His interrogation became the subject of the Office of Legal Counsel memos](#) justifying an expanded view of permissible enhanced interrogation techniques. While we do not know the nature of Ms. Benzmilller's involvement, if any, in that representation, and we believe the representation was important work, that relationship should have been disclosed. That is especially the case given the Center's quite small staff, which suggests Ms. Benzmilller would have been aware of the representation even if she was not involved in it. Additionally, another associate who was listed on the brief and attended many of our interviews, Mr. S. Yasir Latifi, was an intern at WilmerHale, counsel to the APA, for two years prior to attending law school.

Conclusion

Mr. Hoffman asserts that he set out to “follow the evidence” wherever it led him. If that was indeed his aim, he failed. He omits key evidence, misstates facts, makes assertions backed by no evidence, and draws conclusions about intent and motives that are based on his own inferences rather than facts. Far from conducting an objective review, he has created a brief to support the charges leveled by those who attacked us and, more generally, attacked the role of psychologists in military interrogations. His bias has done untold damage to individual reputations and careers, and to the profession.

That damage has been compounded by the APA’s wholly uncritical acceptance of the report, its refusal to give those attacked a meaningful opportunity to respond, and its lack of any due process before taking actions on the basis of the report. We urge those of you concerned about our profession to press the APA to review the Hoffman report with the rigor we would hope all psychologists would apply to any document, much less one with such drastic consequences.

Most importantly, given that so many questions remain, a fair process is necessary to review the report, hear both sides, and separate fact from fiction. This process should not involve those in the APA governance structure or those who by word or action have already taken sides. Rather, it should involve a truly neutral third party such as a respected former judge without political leanings.

Please join us in requesting that the APA Board meet with those individuals most deeply affected by the report, along with their legal counsel, in order to work out a mutually acceptable process for moving forward to achieve a fair resolution. (We have supplied the Board members’ email addresses and the text of a suggested email to them in a separate cover letter to this document.)

We are in the process of drafting a more complete reply and will publish that as soon as possible.⁵⁰ In the meantime, we suggest that anyone who wants to read more about these issues can begin with the government investigations into detainee abuse set forth above, none of which support Mr. Hoffman’s version of the truth. In particular, the Senate Armed Services Committee and Church Reports provide an excellent context in which to view Mr. Hoffman’s factual inaccuracies.⁵¹

For ease of reference, we have attached and highlighted the relevant portions of documents that we have referenced. Here we also provide links to the full text of those documents where appropriate.

⁵⁰ That reply will also list the many documents that appear in duplicate in Mr. Hoffman’s binders, or lengthy documents that were unnecessarily included. We believe that, once those documents are stripped out, the relevant time periods made clear, and the CIA references deleted, Mr. Hoffman’s report rests on very thin support.

⁵¹ [Condensed Public Broadcasting Timeline of selected reports](#); [Senate Armed Service Committee Report](#); [Church Report](#).

References:

1. [Levin, OLC Memo, December 30, 2004.](#)
2. [Levin Memo, reminding the General Counsel of DoD that the Yoo OLC workgroup memo supporting enhanced interrogation techniques within the DoD had been withdrawn in December of 2003, and appending testimony of the Associate Deputy Attorney before the House of Representatives, February 4, 2005.](#)
3. [Office of Professional Responsibility report, stating DoD stated they did not need to replace the Yoo OLC memo, after testimony of Patrick Philbin, the Associate Deputy Attorney General, July 14, 2004.](#)
4. [Senate Armed Services Committee Report stating General Abizaid ordered that the Army Field Manual \(34-52\) applied to all interrogations in Iraq and Afghanistan, May 6, 2004; also stated in the Church report, March of 2005 \(Executive Summary released; subsequently redacted document released\).](#)
5. [CNN news article stating that sleep and sensory deprivation and keeping prisoners in stressful positions had been banned in Iraq and was under review in Afghanistan, May 18, 2004.](#)
6. [Testimony of Admiral Church before the Committee on Armed Services and Subcommittee on Personnel of the Committee on Armed Services, United States Senate, March 10, 2005.](#)
7. [New York Times article reporting on the new limits of the Army Field Manual \(for which Colonel Banks was a consultant\), April 28, 2005.](#)
8. [Formica Report listing techniques prohibited in Iraq on May 13, 2004.](#)
9. [MNF-I policy governing interrogations](#), January 27, 2005; **PORTIONS OF THIS DOCUMENT ARE STILL CLASSIFIED.**
10. [Afghanistan Order prohibiting specific techniques including sleep deprivation, verbal abuse or any form of intentional humiliation, May 16, 2004.](#)
11. [Guantanamo Camp Delta SOP, March 2004.](#)
12. [A Review of the FBI's Involvement In and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq, May 2008;](#) revised October 2009.
13. [BSCT SOP Colonel Dunivin drafted, March 28, 2005.](#)
14. October 2002, Monitor Article and photo of Colonel Dunivin and Dr. Newman (attached to this response).

CHART REFERENCE 1



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

December 30, 2004

MEMORANDUM FOR JAMES B. COMEY
DEPUTY ATTORNEY GENERAL

Re: *Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A*

Torture is abhorrent both to American law and values and to international norms. This universal repudiation of torture is reflected in our criminal law, for example, 18 U.S.C. §§ 2340-2340A; international agreements, exemplified by the United Nations Convention Against Torture (the "CAT")¹; customary international law²; centuries of Anglo-American law³; and the longstanding policy of the United States, repeatedly and recently reaffirmed by the President.⁴

This Office interpreted the federal criminal prohibition against torture—codified at 18 U.S.C. §§ 2340-2340A—in *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (Aug. 1, 2002) ("August 2002 Memorandum"). The August 2002 Memorandum also addressed a number of issues beyond interpretation of those statutory provisions, including the President's Commander-in-Chief power, and various defenses that might be asserted to avoid potential liability under sections 2340-2340A. *See id.* at 31-46.

Questions have since been raised, both by this Office and by others, about the

¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. *See also*, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

² It has been suggested that the prohibition against torture has achieved the status of *jus cogens* (i.e., a peremptory norm) under international law. *See*, e.g., *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714 (9th Cir. 1992); *Regina v. Bow Street Metro. Stipendiary Magistrate Ex Parte Pinochet Ugarte* (No. 3), [2000] 1 AC 147, 198; *see also* Restatement (Third) of Foreign Relations Law of the United States § 702 reporters' note 5.

³ *See generally* John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (1977).

⁴ *See*, e.g., Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167 (July 5, 2004) ("Freedom from torture is an inalienable human right . . ."); Statement on United Nations International Day in Support of Victims of Torture, 39 Weekly Comp. Pres. Doc. 824 (June 30, 2003) ("Torture anywhere is an affront to human dignity everywhere."); *see also* Letter of Transmittal from President Ronald Reagan to the Senate (May 20, 1988), in *Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, S. Treaty Doc. No. 100-20, at iii (1988) ("Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.").

CHART REFERENCE 2



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

February 4, 2005

Honorable William J. Haynes II
General Counsel
Department of Defense
1600 Defense Pentagon
Washington, D.C. 20101-1600

Re: Memorandum for William J. Haynes II, General Counsel of the Department of Defense, from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States* (March 14, 2003) ("March 2003 Memorandum")

Dear Jim:

In December 2003, then-Assistant Attorney General Jack Goldsmith advised you that the March 2003 Memorandum was under review by this Office and should not be relied upon for any purpose. Assistant Attorney General Goldsmith specifically advised, however, that the 24 interrogation techniques approved by the Secretary of Defense for use with al Qaeda and Taliban detainees at Guantanamo Bay Naval Base were authorized for continued use as noted below. I understand that, since that time, the Department of Defense has not relied on the March 2003 Memorandum for any purpose. I also understand that, to the extent that the March 2003 Memorandum was relied on from March 2003 to December 2003, policies based on the substance of that Memorandum have been reviewed and, as appropriate, modified to exclude such reliance. This letter will confirm that this Office has formally withdrawn the March 2003 Memorandum.

The March 2003 Memorandum has been superseded by subsequent legal analyses. The attached Testimony of Patrick F. Philbin before the House Permanent Select Committee on Intelligence, July 14, 2004, reflects a determination by the Department of Justice that the 24 interrogation techniques approved by the Secretary of Defense mentioned above are lawful when used in accordance with the limitations and safeguards specified by the Secretary. This also accurately reflects Assistant Attorney General Goldsmith's oral advice in December 2003. In addition, as I have previously informed you, this Office has recently issued a revised interpretation of the federal criminal prohibition against torture, codified at 18 U.S.C. §§ 2340-2340A, which constitutes the authoritative opinion of this Office as to the requirements of that statute. See Memorandum for Deputy Attorney General James B. Comey from Daniel Levin,

Acting Assistant Attorney General, Office of Legal Counsel, Re: Legal Standards Applicable
Under 18 U.S.C. §§ 2340-2340A (Dec. 30, 2004) (copy attached).

Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Levin", with a long horizontal flourish extending to the right.

Daniel Levin
Acting Assistant Attorney General

Attachments

CHART REFERENCE 3

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~~NOFORN~~

2. The Withdrawal of the Yoo Memo

Goldsmith's reaction to the Yoo Memo was that it was "deeply flawed,"⁸⁵ and his immediate concern was that the Defense Department might improperly rely on the opinion in determining the legality of new interrogation techniques.⁸⁶ The broad nature of the memorandum's legal advice troubled him because it could have been used to justify many additional interrogation techniques. As he later explained in an email to other OLC attorneys, he saw the Yoo Memo as a "blank check" to create new interrogation procedures without further DOJ review or approval.⁸⁷

Accordingly, Goldsmith telephoned Haynes in late December 2003 and told him that the Pentagon could no longer rely on the Yoo Memo, that no new interrogation techniques should be adopted without consulting OLC, and that the military could continue to use the noncontroversial techniques set forth in the Working Group Report, but that they should not use any of the techniques requiring Secretary of Defense approval without first consulting OLC. Having

⁸⁵ [REDACTED] told us that after Goldsmith read the Yoo Memo, he told her it was "riddled with error."

⁸⁶ Goldsmith told us that he approached his review of the Yoo Memo with great caution, because he was reluctant to reverse or withdraw a prior OLC opinion. In reviewing the memorandum, he did not intend to identify any and all possible errors, but was looking for the "really big fundamental mistakes that couldn't be justified and that were perhaps unnecessary."

⁸⁷ Philbin responded to that email as follows:

John's March memorandum was not a blank check at least as of the time [REDACTED] started work at DoD OGC (Summer 2003) because I told her to make sure that they did not go beyond the Rumsfeld approved procedures and did not rely on the memo. This was only an oral caution but please do not sell us short by ignoring it.

Goldsmith answered as follows: "I'm not selling anyone short - It's just that Haynes said he heard nothing about that advice."

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Goldsmith left the Justice Department on July 17, 2004, before he was able to finalize a replacement for the Yoo Memo. On July 14, 2004, then Associate Deputy AG Patrick Philbin testified before the House Permanent Select Committee on Intelligence as to the legality of the 24 interrogation methods that had been approved for use by the Defense Department. Sometime thereafter, the Defense Department reportedly informed OLC that it no longer needed a replacement for the Yoo Memo.

5. The Withdrawal of the Bybee Memo

On June 8, 2004, the Washington Post reported that "[i]n August 2002, the Justice Department advised the White House that torturing al Qaeda terrorists in captivity abroad 'may be justified,' and that international laws against torture 'may be unconstitutional if applied to interrogations' conducted in President Bush's war on terrorism, according to a newly obtained memo." On June 13, the *Washington Post* made a copy of the Bybee Memo available on its web site.

Up until this time, Goldsmith's focus had been on the Yoo Memo, rather than the Bybee Memo. Shortly after the Bybee Memo was leaked, Goldsmith was asked by the White House if he could reaffirm the legal advice contained in the Bybee Memo. Because the analysis in that document was essentially the same as the Yoo Memo, which he had already withdrawn, Goldsmith concluded that he could not affirm the Bybee Memo. He consulted with Comey and Philbin, who agreed with his decision, and on June 15, 2004, Goldsmith informed Attorney General Ashcroft that he had concluded that the Department should withdraw the Bybee Memo. Although Ashcroft was "not happy about it," according to Goldsmith, he supported the decision. The following day, June 16, 2004, Goldsmith submitted a letter of resignation to become effective August 6, 2004.

Later that week, Goldsmith notified the White House Counsel's Office that he was planning to withdraw the Bybee Memo. According to Goldsmith, this caused "enormous consternation in the Executive Branch because basically they thought the whole program was in jeopardy," but the White House did not resist his decision.

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CHART REFERENCE 4

[REDACTED]

use” at Bagram.¹⁷²⁹ That list included the use of “safety positions,” “sleep adjustment,” “sensory overload,” invading a detainee’s personal space to “increase psychological discomfort,” “dietary manipulation,” adjusting temperature or introducing an unpleasant smell to “create moderate discomfort,” and using blacked out goggles as an interrogation technique.¹⁷³⁰

D. Special Mission Unit Task Force Interrogation Policies (U)

[REDACTED]

Prior to March 2004, however, each operated under a distinct interrogation SOP. On March 26, 2004 the SMU TF implemented a single interrogation policy that covered SMU TF operations in both Iraq and Afghanistan.¹⁷³¹

[REDACTED] The March 26, 2004 SMU SOP authorized 14 “interrogation techniques” not explicitly listed in FM 34-52, including use of muzzled dogs, “safety positions (during interrogations),” sleep adjustment/management, mild physical contact, isolation, sensory overload, sensory deprivation, and dietary manipulation.¹⁷³²

[REDACTED] According to the Church Special Focus Team Report, the March 26, 2004 SMU TF SOP included a larger number of interrogation techniques outside of FM 34-52 than the SOPs of any other military organization at the time.¹⁷³³ In fact, many of the techniques in that SOP had been abandoned by conventional forces in Afghanistan months earlier, after CENTCOM identified legal concerns with the techniques.¹⁷³⁴ Although the authority in the March SOP to use “muzzled dogs” was rescinded on April 22, 2004, the remainder of the techniques remained authorized until May 6, 2004, when GEN John Abizaid, the CENTCOM Commander, suspended use of all non-FM 34-52 techniques.¹⁷³⁵ The Church Special Focus Team report said the techniques were suspended as a result of detainee abuse at Abu Ghraib.¹⁷³⁶ GEN Abizaid stated

¹⁷²⁹ CJTF-180 SJA Memorandum for Record, *CJTF-180 Detainee Operations Standard Operating Procedures* (March 27, 2004).

¹⁷³⁰ Ibid.

¹⁷³¹ *Church Special Focus Team Report* at 15.

¹⁷³² [REDACTED] The 14 techniques were the use of military working dogs, safety positions (during interrogations), use of blackened goggles/ear muffs during interrogation, sleep adjustment/sleep management, use of female interrogators, sensory deprivation, sensory overload, change of environment/ environmental manipulation, diet manipulation, use of falsified documents or reports and deception, use of individual fears, use of isolation, fear of long-term incarceration, and mild physical contact. Battlefield Interrogation Team and Temporary Screening Facility Standing Operating Procedures (SOP), Change 2 Dated May 18, 2004.

¹⁷³³ *Church Special Focus Team Report* at 15.

¹⁷³⁴ Ibid.

¹⁷³⁵ Ibid. at 16; Memorandum from SMU TF Commanding General to USCENTCOM, [REDACTED] *Request for Use of Interrogation Techniques* (May 27, 2004); CENTCOM/SOCOM Briefing to Committee Staff (December 21, 2007).

¹⁷³⁶ *Church Special Focus Team Report* at 16.

[REDACTED]

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was based in part on interrogation techniques being used at the time by units in Afghanistan. On August 18, 2003, the Joint Staff's Director for Operations (J-3) sent a message requesting that the SOUTHCOM Commander provide a team of experts in detention and interrogation operations to provide advice on relevant facilities and operations in Iraq. As a result, from August 31 to September 9, 2003, the Joint Task Force Guantanamo (JTF-GTMO) Commander, Major General Geoffrey Miller, led a team to assess interrogation and detention operations in Iraq. One of his principal observations was that CJTF-7 had "no guidance specifically addressing interrogation policies and authorities disseminated to units" under its command.

(U) To rectify this apparent problem, the CJTF-7 Commander, Lieutenant General Ricardo Sanchez, published the first CJTF-7 interrogation policy on September 14, 2003. This policy was heavily influenced by the April 2003 JTF-GTMO interrogation policy, which MG Miller had provided during his visit, and was also influenced by the A/519 draft policy which, as noted above, contained some interrogation techniques in use in Afghanistan. However, LTG Sanchez and his staff were well aware that the Geneva Conventions applied to all detainees in Iraq, and thoroughly reviewed the CJTF-7 policy for compliance with the Conventions prior to its approval.

(U) After reviewing the September policy

once it was issued, CENTCOM's Staff Judge Advocate considered it overly aggressive. As a result, CJTF-7 promulgated a revised policy on October 12, 2003 that explicitly superseded the previous policy. This new policy removed several techniques that had been approved in the September 2003 policy, rendering the October 2003 policy quite similar to the guidance found in FM 34-52. It should be noted that none of the techniques contained in either the September or October 2003 CJTF-7 interrogation policies would have permitted abuses such as those at Abu Ghraib.

(U) On May 13, 2004, CJTF-7 issued another revised interrogation policy, which remains in effect today. The list of approved techniques remained identical to the October 2003 policy; the principal change from the previous policy was to specify that under no circumstances would requests for the use of certain techniques be approved. While this policy is explicit in its prohibition of certain techniques, like the earlier policies it contains several ambiguities, which - although they would not permit abuse - could obscure commanders' oversight of techniques being employed, and therefore warrant review and correction. (The details of these ambiguities remain classified, but are discussed in the main body of this report.) As noted above, in June 2004 this policy was adopted for use in Afghanistan.

(U) Subsequent to the completion of this

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report, we were notified that the Commander, Multi-national Forces Iraq (MNF-I), General George W. Casey, Jr., had approved on January 27, 2005 a new interrogation policy for Iraq. This policy approves a more limited set of techniques for use in Iraq, and also provides additional safeguards and prohibitions, rectifies ambiguities, and - significantly - requires commanders to conduct training on and verify implementation of the policy and report compliance to the Commander, MNF-I.

Interrogation Techniques Actually Employed by Interrogators (U)

(U) Guantanamo Bay, Cuba

(U) In GTMO, we found that from the beginning of interrogation operations to the present, interrogation policies were effectively disseminated and interrogators closely adhered to the policies, with minor exceptions. Some of these exceptions arose because interrogation policy did not always list every conceivable technique that an interrogator might use, and interrogators often employed techniques that were not specifically identified by policy but nevertheless arguably fell within the parameters of FM 34-52. This close compliance with interrogation policy was due to a number of factors, including strict command oversight and effective leadership, adequate detention and interrogation resources, and GTMO's secure location far from any combat zone. And although

conditions at GTMO were initially spartan, relying on improvised interrogation booths and pre-existing detention facilities (Camp X-Ray, constructed in the 1990s to house Cuban and Haitian refugees), these conditions continuously improved over time. The most important development was establishment in November 2002 of a command organization that placed detention and intelligence operations under the command of a single entity, JTF-GTMO, superseding the bifurcated organization which had at times impeded intelligence collection due to lack of proper coordination between interrogators and military police. JTF-GTMO, with its well-developed standard operating procedures and clear lines of authority, enabled effective coordination.

(U) In light of military police participation in many of the abuses at Abu Ghraib, the relationship between military police (MP) and military intelligence (MI) personnel has come under scrutiny. Under the GTMO model of MP/MI relations, military police work closely with military intelligence in helping to set the conditions for successful interrogations, both by observing detainees and sharing observations with interrogators, and by assisting in the implementation of interrogation techniques that are employed largely outside the interrogation room (such as the provision of incentives for cooperation). When conducted under controlled conditions, with specific guidance and rigorous command oversight, as at GTMO, this is an effective model that greatly

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WORLD

Interrogation techniques banned in Iraq

Tuesday, May 18, 2004 Posted: 1:28 PM EDT (1728 GMT)

BAGHDAD, Iraq (CNN) -- The U.S. military will not use certain prisoner interrogation techniques in Iraq following the Abu Ghraib prison scandal, Pentagon officials said Friday.

Among the tactics barred are sleep and sensory deprivation and keeping prisoners in stressful positions for periods of time.

According to the military, none of the tactics -- which required the approval of the commanding general before use -- had been requested in Iraq.

Gen. Ricardo Sanchez, commander of U.S. forces in Iraq, completed a review this week of approved interrogation techniques for detainees in Iraq, in the wake of concern and criticism that they violate the Geneva Conventions, two senior defense officials told CNN Friday.

Seven U.S. soldiers have been charged with abusing prisoners at Abu Ghraib prison near Baghdad. Three of the soldiers face general courts-martial arraignments Thursday, a session used for felony-level offenses. A fourth soldier faces a special court-martial -- the military equivalent of a civilian misdemeanor court -- on Wednesday.

On Capitol Hill on Thursday, top officials acknowledged some of the techniques under review could violate the Geneva Conventions.

Also Friday, the ranking U.S. military leader in Afghanistan announced changes at the main detainee camp at Bagram.

Lt. Gen. David Barno, who leads the Combined Forces Command in Afghanistan, confirmed he is "in the midst of putting out some new policy guidance" to underscore a mandate of "treating all of our detainees with dignity and respect."

Barno, speaking at a policy forum in Washington, said a newspaper's report of mistreatment of an Afghan police colonel in U.S. custody was the "first indication" he had of any problems among detainees.

He said the new policy guidance is intended to "make sure those rules are enforced across all our operations in Afghanistan."

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About 300 detainees are freed from Baghdad's Abu Ghraib prison.



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Spc. Jeremy Sivits has given U.S. officials a detailed statement describing instances of abuse at Abu Ghraib prison.



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An Army investigation is focusing on whether the military intelligence unit at Abu Ghraib encouraged abuse.



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Gallery: Abuse at Abu Ghraib prison (Contains graphic content. Viewer discretion advised.)



He did not describe any shortcomings the new guidance will address.

Prisoners released

U.S. authorities released 293 prisoners Friday from the prison near Baghdad, the first mass prisoner release since images of abuse at the hands of the U.S. military surfaced several weeks ago.

Earlier, officials had said 315 prisoners were freed, but Brig. Gen. Mark Kimmitt said the release of 22 prisoners was delayed.

Kimmitt told reporters Friday that the next prisoner release will be next Friday.

"We anticipate 475 prisoners to be released. Twenty-two prisoners delayed today are expected to be released on May 21st," he said.

Hundreds of Iraqis gathered around the prison after hearing about the imminent prisoner release. The first bus, with about 70 released prisoners, left Abu Ghraib around 9:20 a.m. (1:20 a.m. ET) heading toward Baghdad. The other four buses emerged hours later -- one headed to Fallujah and the other three to Ba'qubah, coalition officials said.

About a week ago, there were about 3,800 prisoners at Abu Ghraib. The new U.S. commander of detention operations in Iraq, Maj. Gen. Geoffrey Miller, said he plans to reduce that number to somewhere between 1,500 and 2,000.

Miller took over for Brig. Gen. Janis Karpinski, who was relieved of duty on January 17, a day after the coalition military announced an investigation into abuse in the prison.

Seven soldiers face criminal charges in the abuse case, and four of them have been formally referred for court-martial. ([Full story](#))

Photos of the abuse have prompted outrage -- particularly in the Arab world -- and led to days of hearings on Capitol Hill.

The Army has been investigating the treatment of prisoners at Abu Ghraib since January, but the case erupted last month when CBS broadcast graphic photographs of American troops posing for photographs with naked, hooded prisoners.

Defense Secretary Donald Rumsfeld has been criticized for not alerting the president and Congress sooner about the pictures.

Lawmakers are focusing on how high up the chain of command culpability for the abuse goes.

While Rumsfeld and other Pentagon officials have described the abuse as an aberration, some lawmakers have suggested in their questions that the military police -- who acted as guards for the prisoners -- may have been taking their cues from military intelligence.

The author of a military report on Abu Ghraib, Maj. Gen. Antonio Taguba, has also questioned the role of military intelligence at the prison. But he told a Senate panel Tuesday that there were no "direct orders" or written policies that sanctioned the abuse of prisoners.

CNN's Ed Henry, Joe Johns, Ted Barrett and Steve Turnham contributed to this report.

- Gallery: Soldiers charged
- [Taguba: No direct order](#)
- FindLaw: [Taguba Report](#)
- Timeline: Iraq abuse case
- [Inhofe: Prisoners 'terrorists'](#)
- [Soldier's attorney disputes abuse claims](#)

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between--and I understand this can be a slippery slope-- detainees who may have general knowledge of enemy plans and detainees who we have reason to believe may have knowledge of an imminent terrorist operations?

I know that there are circumstances in the so-called ticking time bomb case, where in other countries which attempt to live by the rule of law the standards of what can--of the nature of an interrogation of a detainee, can be quite simply more aggressive if there is a conclusion, reasonably arrived at, that the detainee has knowledge of the allegorical ticking time bomb, and if you break that detainee you can stop the bomb from exploding.

Do our procedures now allow for those kinds of distinctions?

Admiral Church. I will try to answer that, sir. The policy, the doctrine, the approved interrogation techniques, would not change based on what you know the intelligence, the value of the intelligence of the detainee. What might change is the interrogation plan of how you approach that, how you might use techniques in combination to try to get the information you use, and each interrogation plan might be different.

I doubt that you would waste much time on somebody who was of little intelligence value, but you would probably spend a lot of time on somebody who had actionable intelligence that might save lives.

Senator Lieberman. Thank you, Admiral.

My time is up. Thanks, Mr. Chairman.

Chairman Warner. Thank you, Senator.

Senator McCain.

Senator McCain. Admiral, thank you for your report.

Are all of the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?

Admiral Church. Yes, sir.

Senator McCain. In your mind there is no doubt?

Admiral Church. There is no doubt in my mind.

Senator McCain. Is there in your mind a difference in the status of a Taliban prisoner who was captured in the war in Afghanistan and that of a terrorist who was apprehended in Omaha, Nebraska?

In other words, is the Taliban guy, fighter, eligible for the Geneva Conventions for the Treatment of Prisoners of War, and is the terrorist caught in Omaha eligible?

Admiral Church. The latter is. The first, as you remember from the President's---

Senator McCain. The latter is eligible for Geneva Conventions?

Admiral Church. A terrorist caught in the United States? Well, I am sorry---

Senator McCain. Is he eligible for---

Admiral Church. He is not a prisoner of war, so he would not fall into that category.

Senator McCain. Okay. Is the Taliban prisoner fighting for the then-government of Afghanistan eligible for Geneva Conventions for the Treatment of Prisoners of War?

Admiral Church. As you will remember, the President said that the Taliban had not conducted themselves in a manner that they would be considered parties to the Geneva. So the answer to your question is no, sir.

Senator McCain. So the President of the United States has

CHART REFERENCE 7

New York Times Article, Army Limits Tactics in Interrogations, April 2008

This article can also be accessed through our reference list (number 7), on our website, or by cutting and pasting the link below:

http://www.nytimes.com/2005/04/28/politics/in-new-manual-army-limits-tactics-in-interrogation.html?_r=3

CHART REFERENCE 8

~~SECRET/NOFORN~~

SUMMARY OF FINDINGS & RECOMMENDATIONS

(U) In this section I review my major findings and overarching recommendations. Specific findings and recommendations are included throughout the report.

NOTE ON APPLICABLE POLICY

(U) In my assessment of the specific allegations of abuse and CJSOTF-AP detention operations, I considered relevant regulatory and policy guidance, including:

- CJTF-7 FRAGO 749, controlling CJTF-7 policy regarding detention operations;
- CJTF-7 Interrogation and Counter-Resistance Policy memorandum, dated 12 October 2003³;
- CJTF-7 Interrogation Policy memorandum, dated 14 September 2003 (rescinded);
- AR 190-8 and relevant provisions of the Geneva Conventions to provide minimum standards of humane treatment, incorporated into CJTF-7 policy by FRAGO 749.

These policies are discussed in detail in PART III.

MAJOR FINDINGS

2. (S/NF) CJSOTF-AP [REDACTED] operated six (6) tactical interrogation facilities: [REDACTED]

[REDACTED] These were not internment facilities, i.e. facilities intended for long-term detention, but rather temporary facilities to elicit tactical intelligence coincident to capture. These facilities at least met the minimum standards for tactical interrogation facilities, except as noted below. Only [REDACTED] facility remains in operation at this time.

³ On 13 May 2004, the Commander of CJTF-7 issued a new CJTF-7 Interrogation and Counter-Resistance Policy. This new policy superseded the 12 October 2003 policy. The 13 May 2004 policy specifically prohibits the use of six interrogation techniques, including Sleep Management, Stress Positions, Change of Scenery, Dietary Manipulation, Environmental Manipulation, and Sensory Deprivation. In all other respects the 13 May 2004 policy is identical to the 12 October 2003 policy. Because the new 13 May 2004 policy was not in effect during the relevant time period preceding the initiation of this investigation and for the sake of clarity, the 12 October 2003 policy will be referred to as the controlling CJTF-7 policy throughout this report.

-7-

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Final - 08 November 2004

CHART REFERENCE 9



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REPLY TO
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27 Jan 05

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

1. (U) References.

a. (U) CJTF-7 Memorandum, subject: Interrogation and Counter-Resistance Policy, 13 May 2004 (Superceded by this Memorandum).

b. (U) US Army Field Manual 34-52, Intelligence Interrogation, 28 September 1992.

c. (U) Geneva Conventions Relative to the Protection of Civilian Persons in a Time of War, 12 Aug 1949.

d. (U) Geneva Conventions Relative to the Treatment of Prisoners of War, 12 Aug 1949.

e. (U) UN Security Council Resolution 1546 (2004).

f. (U) Executive Order 12333.

2. (U) Purpose. This memorandum establishes the interrogation policy for all detained persons under the control of any unit under the command and control of Multi-National Force-Iraq (MNF-I). This memorandum supercedes reference a.

3. (FOUO) Applicability. This policy applies to all commands and organizations under MNF-I command, operational, or tactical control. It applies to and limits interrogations in interrogation facilities, tactical interrogations, and tactical questioning by units in the field. Finally, it applies to interrogations of MNF-I detained persons, even if conducted by other government agencies, non MNF-I commands and units, Iraqi government representatives, or in any other circumstance. Non-US coalition forces will comply with their own national guidelines provided that they are not less restrictive than this policy.

4. (U) Policy. All interrogations and tactical questioning will comply with the applicable provisions of the Law of War, the Geneva Conventions, and with US policy, which require us to treat all persons humanely and with dignity and respect. This policy also expressly prohibits acts of violence or intimidation and physical or mental torture. Humiliation is a violation of the

Classified by: Cdr, MNF-I
Reason: 1.4(a) and (c)
Declassify on: January 27, 2015

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Geneva Conventions and is therefore prohibited. Threats, insults, and exposure to inhumane treatment as a means of or aid to interrogation are not authorized and will not be condoned.

a. (FOUO) Multi-National Force-Iraq interrogations ordinarily should take place within a fixed facility, such as the Theater Interrogation Facility, approved Brigade or Division Interrogation Facilities, the Joint Interrogation and Debriefing Center (JIDC) or an authorized co-use Iraqi government facility.

b. (FOUO) When authorized in accordance with procedures outlined in Enclosure 1, subordinate units are authorized to conduct tactical interrogations outside of fixed facilities using Human Intelligence or interrogation trained personnel at brigade level and below.

c. (U) All MNF-I interrogations will employ the general and specific safeguards listed in Enclosure 1.

d. (U) Multi-National Force-Iraq personnel are prohibited from circumventing this policy through the use of agents who are not bound by the policy. Personnel who receive information that they believe was obtained in ways that would, if used by MNF-I personnel, violate this policy shall report their beliefs and the underlying circumstances immediately to their chain of command.

e. (FOUO) Only the interrogation approaches contained in Enclosure 2 are approved for use in accordance with this policy. See paragraph 11 for handling requests for exceptions.

f. (FOUO) Segregation of detained persons will only be authorized as described in Enclosure 3.

5. (U) Dissemination. Commanders will ensure dissemination of this policy and appropriate policy implementation at all levels of command that conduct tactical questioning, interrogations, and debriefing of detained persons. Subordinate units will report completion of dissemination and the conformance of subordinate command policies and procedures to the Commanding General no later than seven days from the date of this policy memorandum.

6. (U) Detained Persons. Throughout this policy memorandum, the term "detained person" refers to security internees, criminal detainees, and enemy prisoners of war (EPW). For purposes of this policy, security internees and criminal detainees are defined as civilians who are detained pursuant to Articles 5 and 78 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereinafter GC IV), and United Nations Security Council Resolution 1546 (2004) (UNSCR 1546). Enemy prisoners of war are military or militia personnel captured and held under Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (hereinafter GC III), and UNSCR 1546.

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7. (S/REL) Combined MNF-I and Iraqi Interrogations. Combined MNF-I and Iraqi Interrogations require submission and approval of an Interrogation Concept of the Operation to the MNF-I Deputy Chief of Staff for Intelligence (DCSINT) prior to conducting the interrogation operation. Combined MNF-I and Iraqi interrogation or bilateral Human Intelligence (HUMINT) collection efforts require all participants to adhere to the guidance of this policy. Any exceptions to this policy requirement must be approved in writing by the Commanding General, MNF-I, or his designee.

8. (U) Certification and Training of Interrogators.

a. (FOUO) Certification. Only trained military intelligence personnel, other qualified government interrogators, and trained contractors working under the supervision of military intelligence personnel are authorized to conduct interrogations. Personnel need not be certified interrogators to use the direct approach as part of tactical questioning as provided in Enclosure 1, paragraph 2.j. and Enclosure 2, paragraph 1.a.

b. (U) Indoctrination. Before conducting their first interrogation in theater, each interrogator will undergo a left-seat, right-seat procedure with an interrogator experienced in conducting interrogations under this policy. For unit rotations, this procedure shall be incorporated into the RIP/TOA process.

c. (U) Sustainment Training. Unit Commanders will develop and conduct sustainment training so that each interrogator receives training at least once every 90 days on the following: this policy, unit SOPs and implementing policies, the 1949 Geneva Conventions, the use of authorized approaches, and interrogation plan development and implementation.

9. (U) Good Order and Discipline. Nothing in this policy limits existing command authority for maintenance of good order and discipline among persons under MNF-I control.

10. (U) Compliance. Deputy Commanding General (Detainee Operations) (DCGDO) will verify compliance with this policy by all MNF-I units and commands. Deputy Commanding General (Detainee Operations) and the DCSINT will employ a system of periodic inspections and other mechanisms and coordinate inspections of MNC-I units with Commander, MNC-I.

11. (S/REL) Exceptions to Policy for Approaches. Only the approaches contained in Enclosure 2 are approved for use in accordance with this policy. I will consider for approval at my level only additional approaches that comply with the limitations of the doctrine in FM 34-52 (reference b).

a. (S/REL) Commanders requesting exceptions to policy will submit written requests for additional approaches to include a description of each proposed approach and recommended safeguards through the DCSINT and the SJA, MNF-I, for written technical and legal review prior to staffing through the DCGDO for submission to Commander, MNF-I. All approvals will

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be documented in writing. The Commander requesting such an exception will be responsible for maintaining all paperwork associated with such a request, to include copies of the requests and records of approvals or denials.

b. (S/REL) Any requests for approaches that exceed the limitations of FM 34-52, reference b, require approval by Commander, US Central Command, or higher authority. A copy of all such approvals applicable to commands and organizations under MNF-I command or operational or tactical control will be provided to and maintained by the DCGDO and SJA.

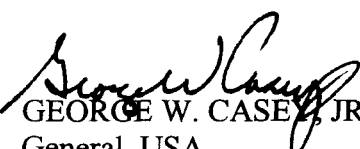
c. (S/REL) Under no circumstances will the following interrogation techniques be approved or utilized: sleep management, stress positions, diet manipulation, environmental manipulation, removal of clothing, or sensory deprivation. Military working dogs will not be used for, or be present during, interrogations.

12. (U) Violations of this Policy. Commanders are responsible for ensuring that all interrogations and tactical questioning are conducted in accordance with this policy. Suspected or alleged violations will be reported through the chain of command and intelligence oversight channels to Commander, MNF-I, appropriately investigated, and if appropriate, referred to competent authority for criminal investigation and disposition. Commanders will report through command channels the final disposition of cases involving violations of this policy. Suspected or alleged violations may also be reported through other appropriate military officials, such as criminal investigators, Inspectors General, Chaplains, or Judge Advocates.

13. (U) Point of contact for this memorandum is COL Charvat, DSN 318 822-2502.

3 Encls

1. Safeguards
2. Approaches
3. Segregation


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MINFI-SJA

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

ENCLOSURE 1: Safeguards

1. (U) General Safeguards. General safeguards are essential in conducting interrogation operations and include the following:

a. (FOUO) Proper task organization and resources are required before conducting interrogation operations. Trained interrogation personnel are the only personnel authorized to implement interrogation approaches with the exception of the "Direct" approach. Interrogation operations rely on proper screening to determine whether the detained person possesses information of intelligence value and to determine whether the detained person is medically fit for the proposed interrogation plan. To safely execute the interrogation plan, Standing Operating Procedures (SOPs) must include reasonable safeguards, limits on duration, termination criteria, the presence or availability of qualified medical support, required supervision, security personnel/Military Police (MP), and command presence.

b. (S/REL) Interrogations are always planned, deliberate actions that take into account factors such as a detained person's current and past responses in both detention and interrogation, a detained person's strengths and weaknesses, assessment of approaches and individual techniques that may be effective, and relative capabilities of interrogators. Successful interrogation requires the interrogator to take the initiative, gain control, and employ approach strategies that leverage cooperation, and ultimately establish a baseline rapport. Therefore, interrogators must always be in control of the interrogation. In demonstrating this control, interrogators may not deprive a detained person of services, support, or other conditions that are required for humane treatment under the Geneva Conventions or other law. Everything the interrogator says and does must be within the limits of this policy, the Geneva Conventions, the Law of War, and other US policy. It is important that interrogators be allowed reasonable latitude to vary approved approaches depending on the detained person's cultural background, strengths, weaknesses, environment, and extent of resistance training.

c. (S/REL) Interrogation approaches are designed to manipulate the detained person's emotions and weaknesses to gain willing cooperation. Especially critical is the requirement that these approaches be used only in accordance with this policy, the doctrinal guidance of FM 34-52 (reference b), and any implementing locally approved SOPs. While approaches are considered individually within the interrogation planning phase, it must be understood that in practice, approaches are usually used in combination and may include multiple interrogators. The cumulative effect of all approaches to be employed must be considered before any decision is made regarding approval of a particular interrogation plan.

d. (FOUO) Security personnel/MP and other detaining units will not actively participate in interrogations. Their involvement with interrogations is strictly limited to passive intelligence gathering, such as reporting on conversations that are overheard, noting mood, leadership, and group dynamics. Security personnel/MP and other detaining units may not interrogate detained

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persons. Security personnel/MP and other detaining units are permitted to ask direct questions in the course of daily duties with detained persons for the purpose of in-processing, safety, security, and administration. Detaining units must also ensure that detention regulations, SOPs, and policies are not in conflict with the interrogation policies of the intelligence collection unit. The unit's servicing Staff Judge Advocate (SJA) will review all SOPs prior to implementation. This will help maximize the credibility of the commands conducting detainee operations, the effectiveness of the interrogation operations, and ensure compliance with law and policy. Strict adherence to such regulations, policies, and SOPs is essential to conducting safe and effective interrogation operations.

e. (FOUO) Detainee medical information will be protected in accordance with all applicable laws and regulations. Routine detainee healthcare is separated from interrogation operations. Healthcare providers engaged in daily healthcare for detained persons will not be required to verbally provide detainee medical information to intelligence collectors. This applies to all agencies conducting interrogations. Medical personnel shall provide interrogators such information as they believe necessary to protect the health and safety of the detainee or to prevent the commission of a crime.

2. (U) Specific Safeguards. These specific safeguards must be applied whenever interrogations using the approaches in Enclosure 2 are undertaken.

a. (FOUO) Commanders conducting detainee operations will ensure that detained persons are allowed adequate sleep and that diets provide adequate food and water as required by the Geneva Conventions and cause no adverse medical effects, taking into account the detainee's cultural diet. Where segregation is necessary and properly authorized, detained persons must be monitored for adverse physical or mental reactions. Approaches must in no way endanger the detainee. An interrogation plan must be developed and approved for each interrogation that includes reasonable safeguards, limits on duration, an assessment of the detainee, termination criteria, and provisions for qualified medical personnel to be present or available. Interrogation approaches may only be used by specifically trained interrogation personnel (with the exception of the "Direct" approach as discussed in enclosure 2).

b. (U) Prior to conducting an interrogation, there must be a reasonable basis to believe that the detained person possesses information of intelligence value.

c. (U) Detained persons selected for interrogation must undergo a medical exam or assessment before the beginning of interrogation. The exam or assessment will record the physical and medical condition of the detainee and ensure the detainee is medically cleared to undergo interrogation.

(1) (U) At theater-level internment facilities, a medical exam is required upon entry into the facility. If the start of interrogation must be delayed beyond 14 days after the initial medical

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exam, an additional medical assessment must be conducted prior to interrogation. At division-level and below, a medical assessment must be conducted prior to the start of interrogation.

(2) (FOUO) No interrogation of hospitalized (in-patient) detained persons may be conducted without first obtaining the approval of DCGDO / Commander, TF 134, in consultation with the Chief of Medical Staff (DCCS) at the hospital. Requests for approval must be submitted in writing and be reviewed by the servicing Staff Judge Advocate.

(3) (U) The requirement for a medical exam or assessment does not prohibit tactical questioning or acceptance of information voluntarily provided prior to a medical exam.

d. (U) Medically trained personnel must be available within the interrogation facility and together with security personnel and interrogators are responsible to the commander for ensuring the health and safety of interrogation subjects.

e. (U) Interrogation of wounded personnel will not delay or interfere with the evacuation of wounded personnel to the appropriate level for medical care.

f. (S/REL) A Behavioral Scientist (BSCT), when assigned to an interrogation case, is in an advisory role to the interrogation operations officer. A BSCT is not authorized to lead interrogations or to function in the role of or in lieu of an interrogation operations officer.

g. (FOUO) All interrogations must be monitored and supervised by leaders. A leader's monitoring may be assisted by the use of closed circuit television.

h. (FOUO) Except as provided below for tactical interrogations and tactical questioning, all MNF-I interrogations must take place within a fixed facility, such as the Theater Interrogation Facility, approved Brigade or Division Interrogation Facilities, the Joint Interrogation and Debriefing Center (JIDC) or an authorized co-use Iraqi government facility.

i. (FOUO) Tactical interrogations outside fixed facilities are conducted when the combat situation requires immediate actionable intelligence. In this event, skilled HUMINT personnel will be attached temporarily to committed units to conduct the tactical interrogations. Such interrogations are brief and concerned only with information of an imminent threat nature usually supporting the combat mission of the detaining unit (reference b). Tactical interrogations take advantage of the psychological effects of the "shock of capture" and provide invaluable intelligence information and timely targeting information. These interrogations also serve to assist with detention screening at the scene and maximize the intelligence value of detained persons held by MNF-I. Units are authorized to conduct tactical interrogations using HUMINT or interrogation trained personnel at brigade and below when authorized by the first O6 Commander in the chain of command in accordance with the general and specific safeguards discussed in this enclosure.

MNFI-SJA

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

j. (U) Tactical questioning is employed when interrogator support is unavailable. The purpose of tactical questioning is to obtain combat information of immediate use to the unit commander. When authorized by the unit commander, and in accordance with these procedures, subordinate units are authorized to conduct tactical questioning when HUMINT or interrogation trained personnel are not available at brigade and below. In addition to the general and specific safeguards discussed in this enclosure, the following additional safeguards must be observed:

(1) (U) Only the interrogation technique Direct Approach, discussed in Enclosure 2, may be employed in tactical questioning.

(2) (U) Unit commanders will ensure that individuals engaging in tactical questioning have received training on this policy as well as any pertinent local SOPs.

MINFI-SJA

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

ENCLOSURE 2: Approaches

1. (S/REL) The specified interrogation approaches described below are approved. They must be used in combination with the general and specific safeguards in enclosure 1. Subordinate commanders are encouraged to provide additional consistent implementation guidance and add more specific local safeguards in their SOPs. No additional approaches are approved or are to be used. A more detailed description of the tactics, techniques, and procedures applicable to these approaches may be found in FM 34-52 at the pages indicated following each approach.

a. (FOUO) Direct Approach: The interrogator asks questions directly related to the information sought, making no effort to conceal the interrogator's purpose. The direct approach, always the first to be attempted, is used on detained persons who the interrogator believes will cooperate. This is the only interrogation approach approved for tactical questioning at the brigade level or below. (FM 34-52, p. 3-14)

b. (S/REL) Incentive/Removal of Incentive Approach: Providing a reward or removing a privilege, beyond those required by the Geneva Convention. Possible incentives may include favorite food items or regional comforts not required by the Geneva Convention. Any denial of basic human needs under any circumstances is prohibited. Note: Interrogators may not withhold a source's rights under the Geneva Conventions, but can withhold a source's privileges. Granting incentives must not infringe on these rights, but they can be things to which the source is already entitled. This can be effective only if the source is unaware of his rights or privileges. (FM 34-52, p. 3-14)

c. (S/REL) Emotional Approach: Through EPW or detainee observation, the interrogator can often identify dominant emotions which motivate. The motivating emotion may be greed, love, hate, revenge, or others. The interrogator employs verbal and emotional ruses in applying pressure to the EPW's or detainee's dominant emotions. (FM 34-52, p.3-14)

(1) (S/REL) Emotional Love Approach: Playing on the love a detained person has for family, homeland, or comrades. This may involve an incentive, such as allowing communication with the individual or group. (FM 34-52, p. 3-15)

(2) (S/REL) Emotional Hate Approach: The emotional hate approach focuses on any genuine hate, or possibly desire for revenge, the source may feel. (FM 34-52, p. 3-15)

d. (S/REL) Fear-Up Approach: The fear-up approach is the exploitation of a source's preexisting fear during the period of capture and interrogation. This approach has the greatest potential to violate the law of war. Accordingly, great care must be taken to avoid threatening or coercing a source in a way that is violative of laws and regulations. The fear up approach can be either harsh or mild. (FM 34-52, p. 3-15)

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SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

(1) (S/REL) Fear-Up (Harsh): In this approach, the interrogator behaves in an overpowering manner with a loud and threatening voice in order to convince the source he does indeed have something to fear; that he has no option but to cooperate. (FM 34-52, p. 3-16)

(2) (S/REL) Fear-Up (Mild): Moderately increasing the fear level in a detained person, usually by helping the source realize the unpleasant consequences his situation may cause and by presenting an alternative, which, of course, can be brought about by answering some simple questions. (FM 34-52, p. 3-16)

e. (S/REL) Fear-Down Approach: Reducing the fear level in a detained person by nothing more than calming the person and convincing him that he will be properly and humanely treated. This often creates rapport and usually nothing else is needed to get the person to cooperate. (FM 34-52, p. 3-16)

f. (S/REL) Pride and Ego-Up: Flattering or boosting the ego of a detained person. The strategy of this approach is to trick the source into revealing desired information by flattering him. It is usually effective with sources who have displayed weakness or feelings of inferiority. (FM 34-52, p. 3-17)

g. (S/REL) Pride and Ego-Down: This approach is based on attacking the source's sense of personal worth. Any source who shows any real or imagined inferiority or weakness about himself, loyalty to his organization, or if captured under embarrassing circumstances, may be made to talk quite easily with this technique. The objective is for the interrogator to pounce on the source's sense of pride by attacking his loyalty, intelligence, abilities, leadership qualities, slovenly appearance, or any other perceived weakness. (FM 34-52, p. 3-18)

h. (S/REL) Futility: Invoking the feeling in a detained person that resistance to questioning is futile by playing on the doubts that already exist in his mind. (FM 34-52, p. 3-18)

i. (S/REL) We Know All: Convincing a detained person that the interrogator already knows the answers to questions being asked. (FM 34-52, p. 3-19)

j. (S/REL) File and Dossier: Convincing a detained person that the interrogator has a voluminous, damning and inaccurate file, which must be corrected by the detained person. (FM 34-52, p. 3-19)

k. (S/REL) Establish Your Identity: Convincing the detained person that the interrogator has mistaken the detained person for someone else. The detained person is encouraged to "clear his name." (FM 34-52, p. 3-19)

l. (S/REL) Repetition: Continuously repeating the same question to the detained person during an interrogation to encourage full and candid answers to questions. (FM 34-52, p. 3-20)

MNFI-SJA

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

m. (S/REL) Rapid Fire: Questioning in rapid succession without allowing the detained person to answer questions fully in order to create inconsistencies or confusion that can lead to further exploitation. (FM 34-52, p. 3-20)

n. (S/REL) Silent: Staring at the detained person to create an atmosphere of discomfort. (FM 34-52, p. 3-20)

o. (S/REL) Change of Scene: Includes strategies of disguise and meeting in a relaxing atmosphere not associated with interrogation and employing elicitation skills as opposed to interrogation. Some examples of this strategy include conducting an interrogation in a nicely furnished room and having a pleasant conversation over coffee, or presenting the interrogator as a member of internment facility staff as opposed to an interrogator. (FM 34-52, p. 3-20)

2. (FOUO) Commanders will submit written requests for additional approaches through the DCSINT and the DCGDO to Commander, MNF-I. The request for exception to policy must include a description of the proposed approach and recommended safeguards. The DCSINT will provide staff input on the recommendation and a legal review from the SJA, MNF-I, will accompany each request. All approvals will be documented in writing. The interrogation facility requesting such an exception will be the repository for all paperwork associated with such a request, to include copies of the requests and records of approvals or denials. Any requests for approaches that exceed the limitations of FM 34-52, reference b, require approval by Commander, USCENTCOM or higher authority.

3. (S/REL) Under no circumstances will the following interrogation techniques be approved or utilized: sleep management, stress positions, diet manipulation, environmental manipulation, removal of clothing, or sensory deprivation. Military working dogs will not be used for, or be present during, interrogations.

MNFI-SJA

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

ENCLOSURE 3: Segregation

1. (U) Definition. "Segregation" is the temporary physical separation of detained persons from other detained persons in order to prevent direct communications. Segregation is not an interrogation approach. The permissible duration and purposes of segregation are discussed below. This enclosure is not applicable when segregation is directed as a disciplinary measure.

2. (U) Purposes of Segregation.

a. (U) Interrogation segregation of detained persons ensures the success of interrogations by preventing the sharing of interrogation methods among detained persons.

b. (FOUO) When making the decision to segregate, commanders must weigh the need to segregate against the detained person's right to communication pursuant to the Geneva Conventions. For EPWs, this right to communicate is expressed in Chapter XIII, Section V of GC III (reference d). For Security Internees, this right to communicate is expressed in Chapter VIII of GC IV (reference c). When making this decision, the commander should seek advice from his servicing Judge Advocate. Commanders retain the authority to segregate for reasons of good order and discipline.

c. (FOUO) The place and conditions of detention for segregated detained persons are to be of a similar standard to the facilities housing non-segregated detained persons. Interrogation segregation is not punishment. At a minimum, the place of segregation must allow the detainee to stand straight and sleep prone, and the environmental quality must be reasonably controlled to protect the health and safety of the detainee.

3. (FOUO) Approval Authorities. The following personnel may direct segregation of detained persons for purposes of interrogation for the number of days indicated. When computing the number of days in the following paragraphs, do not include any days in segregation mandated by the commander for reasons of good order and discipline.

a. (S/REL) The JIDC Director and O6-level commanders are the approval authority for immediate segregation of persons of "intelligence value" for up to seven days at MNF-I interrogation facilities.

b. (S/REL) The first general or flag officer in the chain of command may approve segregation up to and including fourteen days in duration. This authority may also be delegated, in writing, to O6-level commanders at division or brigade level, or at other detention facilities.

c. (S/REL) After fourteen days, the first general or flag officer in the chain of command may approve additional segregation totaling up to and including thirty days in duration.

MNFI-SJA

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

d. (S/REL) Only Commander, MNF-I, or his delegatee, may approve segregation in cases where such segregation will exceed thirty days in duration. Submit written requests with supporting rationale to Commander, MNF-I, through the DCSINT and the DCGDO /Commander, TF 134. A legal review from the SJA, MNF-I, must accompany each request.

CHART REFERENCE 10



COMBINED FORCES COMMAND - AFGHANISTAN
KABUL, AFGHANISTAN
APO AE 09358

Full Release

CFC-A

15 May 2004

**GENERAL ORDER NUMBER 2 (COE) DETAINEE PROCEDURES IN COMBINED
FORCES COMMAND AFGHANISTAN (CFC-A)**

STATEMENT OF MILITARY PURPOSE AND NECESSITY: The citizens of Afghanistan remain CFC-A's center of gravity. CFC-A personnel have a responsibility to treat all Afghani citizens with utmost respect and courtesy. This moral and legal obligation as a member of the United States and Coalition armed forces is necessary to ensure the partnership of the Afghani people in CFC-A's counterinsurgency campaign. The requirements set forth in paragraphs 2 and 3 are essential to preserving U.S. / Host Nation (HN) relations, combined operations between U.S. and friendly forces, and to maintain good order and discipline and protect human rights within the CFC-A AOR. This General Order Number 2 underscores conduct which is prejudicial to the maintenance of good order and discipline of CFC-A forces and ensures the appropriate level of policy uniformity throughout the CFC-A AOR.

AUTHORITY: Title 10, United States Code, Section 164 (c) and the Uniform Code of Military Justice (UCMJ); Title 10 United States Code, Sections 801-940.

1. APPLICABILITY: This General Order Number 2 is applicable to all United States (U.S.) military personnel; all U.S. civilians serving with, employed by, or accompanying the Armed Forces of the United States; and all Coalition Forces while present anywhere in the CFC-A AOR. All alternative or less restrictive guidance with regard to detainee and PUC handling in Combined Joint Operating Area-Afghanistan are hereby revoked. JSOTF forces and all forces operating under CFC-A command in CJOA-A will fully comply with the letter and intent of this policy. All CFC-A military and civilian personnel will be briefed on this order NLT 1 Jun 04. This order supplements USCENTCOM General Order Number 1A and CFC-A General Order Number 1. This General Order Number 2 reflects the fact that the Afghan people remain the center of gravity of our operations, and that we remain guests in their country as we conduct a counter-insurgency campaign in partnership with them.

2. GENERAL REQUIREMENTS:

a. All detainees collected as a result of Coalition operations in Combined Joint Operations Area-Afghanistan (CJOA-A) will be treated with dignity and respect. Any potential intelligence value from detainees will remain subordinate and secondary to treating all detainees with dignity and respect.

c-5

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b. All detainees will be considered as potential supporters of the Afghan Transitional Authority (ATA) and the Coalition until substantial evidence is clearly established otherwise. Treatment of detainees will reflect this characterization at all times.

3. REQUIREMENTS / PROHIBITED ACTIVITIES: The specific requirements and prohibited activities listed in this document supplement and are in addition to those activities specifically proscribed by USCENTCOM General Order 1A and CFC-A General Order 1.

a. Detainees will not be held at remote detainment sites for processing beyond 96 hours from time of detainment. Exceptions to this rule require COMJTF 78 approval at the Major General level, and is non-delegable. Under no circumstances will detainees be held outside the Bagram Collection Point (BCP) cumulatively beyond one week (168 hours). Detainees who exceed this time limit will be unconditionally released, unless COMCFC-A personally determines otherwise.

b. Intelligence questioning of detainees will be conducted strictly IAW the Geneva Conventions. Physical abuse of any type, any form of intentional humiliation, verbal abuse, or deprivation of sleep, food or water are explicitly forbidden. Intelligence value remains secondary to treating all detainees humanely with a view to their ultimate release and reconciliation as a part of Afghanistan's future.

c. Detainees will not be completely stripped of their clothing at any time, with particular consideration given to Muslim sensitivities with regard to covering of private parts. Private parts will always remain covered for all detainees. Security wand type devices will be used to insure detainees are not concealing weapons or other dangerous items in areas that remain covered. Body cavity searches will not be performed unless security wand evidence indicates the presence of concealed items.

d. Restraints on detainees will be the minimum required by the tactical situation and threat. Hoods will not be used. Blindfolds consisting of bandages, goggles or like items are permissible for limited periods of time to maintain operational security. Blindfolds will never be used to disorient detainees or deny light over extended periods. Flexcuffs will be used for limited periods only when detainees are judged a threat to Coalition forces.

e. Photography will only be allowed to record the identity of detainees while fully clothed. Detainees who become Persons Under Control (PUCs) may be photographed over their exposed body less private parts to establish a record of scars, pre-existing injuries, identifying marks, etc. At no time will the dignity of the individual be compromised.

f. Any required medical examination of a detainee will be accomplished at the BCP only. Exceptions will only be made in the event of obvious injury requiring immediate medical aid. Medical attention will never be denied, but medical exams

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beyond immediate treatment needs of the detainee will be restricted to the BCP only.

g. Detainees undergoing medical exams at the BCP will be fully informed of the purpose and nature of the exam in a language they understand. All medical procedures will be fully explained prior to initiation.

h. Interrogations will be conducted by trained and certified military intelligence personnel only. Additional CJOA-A-wide certification training of all in-country military intelligence interrogators will be completed under CJTF-76 control NLT 15 Jun 04 with update reports to CFC-A when accomplished. The concept of using other elements (e.g. military police, guards) to "soften up" detainees prior to interrogation is absolutely prohibited. No interrogation techniques will take precedence over treating all detainees with dignity and respect.

i. All individuals participating in questioning detainees are prohibited from concealing their identities from the detainees being questioned, to include by wearing masks, causing the detainee to be blindfolded or in the dark during interrogations, or by concealing themselves in any other way.

j. Interpreters interacting with detainees will be trained and counseled on their duties to set a proper tone of professionalism, dignity and respect during all interactions with detainees. Laughter, taunting, seeking detainee embarrassment or humiliation as a form of leverage is absolutely prohibited. Coalition soldiers and leaders will be held accountable for the demeanor and performance to standards of their interpreters. Frequent cross-checks of interpreter translation are required.

k. Photography of detainees, holding facilities, interrogations, and the BCP are expressly forbidden except as noted above for identity and documentation purposes. Personal possession of cameras or photography equipment of any type is prohibited on the grounds of any detainee holding or transfer facility. Detainees will not be photographed by service members or civilians during the course of any military operations at any time.

4. **PUNITIVE ORDER:** Paragraph 3 of this General Order Number 2 is punitive. Persons subject to the UCMJ may be punished thereunder. Civilians serving with, employed by, or accompanying the Armed Forces of the United States in the CFC-A AOR may face criminal prosecution or adverse administrative action for violation of this General Order.

5. **INDIVIDUAL DUTY:** All persons, military and civilian, subject to this General Order Number 2 are charged with the individual duty to become familiar with and respect the laws, regulations, and customs of Afghanistan insofar as they do not interfere with the execution of their official duties. Acts of disrespect or violations of Afghan law, regulation or customs may be punished under applicable criminal statutes and administrative regulations.

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6. UNIT COMMANDER RESPONSIBILITY: Commanders, Security Assistance Office Chiefs, and military/civilian supervisors are charged with ensuring that all personnel are briefed on the prohibitions and requirements of this General Order Number 2. Commanders and supervisors are expected to enforce both the letter and the spirit of this General Order.

7. EFFECTIVE DATE / EXPIRATION: This General Order is effective immediately and will expire only when rescinded by Commander, Combined Forces Command – Afghanistan or higher authority.

DAVID W. BARNO
Lieutenant General, USA
Commanding

CHART REFERENCE 11

Camp Delta Standard Operating Procedures (SOP)

Headquarters,
Joint Task Force - Guantanamo (JTF-GTMO)
Guantanamo Bay, Cuba
1 March 2004

Chapter 1†**Introduction****1-1. Purpose**

a. This standard operating procedure (SOP) provides policy, procedures, and responsibilities for the security, administration, and treatment of detainees in custody at Camp Delta. This SOP also establishes procedures for transfer or release of custody from Camp Delta.

b. This SOP is consistent with the intent and spirit of the Geneva Conventions for the Protection of War Victims, dated 12 August 1949, in accordance with directives from the National Command Authority (NCA) and chain of command.

c. All personnel will enforce all orders and regulations pertaining to the daily operation of the facility and their assigned posts. Further, all personnel will be familiar with all facility directives, emergency plans and all post and special orders pertaining to their post; carry out all general orders for a sentry on post, and wear the prescribed uniform of the day.

d. This policy is punitive in that a violation of any provision of this policy may provide a basis for appropriate administrative or judicial/disciplinary action under the Uniform Code of Military Justice (UCMJ), or appropriate military/civilian personnel regulations, ejection from Camp Delta, and/or denial of entry.

e. All personnel will sign a statement of understanding/acknowledgement that they have read and will adhere to the provisions of all SOPs for Camp Delta.

1-2. Minor SOP Modifications

a. Any personnel may send suggestions for improvement of the SOP through their chain of command to the JDOG S-3.

b. Minor revisions will be made in a memorandum format, appropriately staffed, and approved by the CJDOG.

c. Copies of memorandums will be distributed and placed in the front of all SOP books.

d. SOPs may be modified through a Guard Mount message. JDOG S-3 must approve these messages prior to their release.

e. The SOP will be reviewed every 30 days to incorporate any changes. Submit all suggested changes in procedures for operations electronically to JDOG S-3 to include the following:

- (1) Name of the submitter
- (2) Date of submission
- (3) If a modification, the current verbiage along with the chapter and paragraph of the text in the SOP. "N/A – addition to SOP"

(4) The new verbiage of the addition or modification to the SOP. "Add Koran to the list of inbound items contained in paragraph 4-20a."

(5) The reason why this change should be made such as "CG has directed all inbounds will now have Korans".

f. No SOP modification is valid unless approved by CJDOG or in an approved Guard Mount message. The memorandum or guard mount message must state that it is a modification to the SOP.

g. The JDOG Detention Services Branch (DSB) will file a copy of all Guard Mount messages approved. This file will be used to update the SOP during the revision process. After the Guard Mount message is included in the SOP through rewrite, it will be placed in a separate file of items included in the SOP.

h. Each manned position will train on or become familiar with one chapter per shift until the SOP has been reviewed.

(1) Verification will be monitored by a signature roster that is turned into the SOG and forwarded to the respective company's training NCO for documentation.

(2) To ensure that each chapter is read and studied, a specific chapter will be assigned to the manned position.

(3) The roster will ensure that each individual has read, studied, reviewed and become familiar with the prescribed chapter.

(4) Training NCOs will ensure all soldiers are familiar with the SOP.

(5) SOP training will be conducted with or instead of regular block training as determined by the block NCO for that shift.

(6) The block NCO must inform SOG of their intention to train on the SOP in lieu of regular block training for documentation purposes. The SOG will then inform the CO as to each block's intent to train on what task for that specific shift.

1-3. References Appendix "A" lists required and related publications along with prescribed and referenced DOD and DA forms. Appendix "B" contains all local forms.

1-4. Explanation of Abbreviations and Terms

The glossary explains abbreviations and special terms used in this SOP.

1-5. JDOG Mission and Commander's Intent

a. The Joint Detention Operations Group (JDOG) conducts detention and area security operations in assigned sector of the Joint Operational Area (JOA) in support of intelligence operations in the Global War on Terrorism (GWOT).

b. The JDOG Commander's (CJDOG) intent is to conduct detention and security operations with

emphasis on force protection, humane treatment of detainees, and an aggressive mobile defense in sector. Conduct detention operations in a manner that supports the intelligence gathering efforts of the Joint Interrogation Group (JIG), the Criminal Investigation Task Force (CITF), and the Counter-Terrorism Cell (CTC) while providing for the safety, security and care of the detainees. Assigned/attached security forces provide the external security necessary to detect, deter, and defend against enemy sabotage, surveillance, and attack. End state is an efficiently run detention facility, a secure operating environment, and a force protection posture that provides for the safety and security of all service members, civilian personnel, and detainees.

1-6. Responsibilities

a. Commander, Joint Detention Operations Group (CJDOG) will:

(1) Be responsible for all facets of the operation of Camp Delta and outlying detention facilities, and all facility-related administrative matters.

(2) Ensure detention operations meet with the principals of the Geneva Convention and the intent of the Commander-In-Chief (CINC) and Commander, Joint Task Force-Guantanamo (CJTF).

(3) Support and improve the intelligence gathering process with all those who have contact with detainees.

(4) Provide effective liaison with the ICRC within the limits of military necessity.

b. Subordinate Unit Commanders, JDOG. The commander will:

(1) Train all assigned personnel on this SOP within 72 hours of assignment.

(2) Conduct SOP refresher training at least every three months thereafter, and whenever any portion is changed.

(3) Ensure all assigned personnel carry the "US SOUTHCOM Human Rights Standing Orders" card on them at all times.

(4) Ensure all assigned personnel carry the "JTF-GTMO ROE/RUF" card on them at all times.

c. All personnel entering Camp Delta. All military and civilian personnel assigned to, having access to, or working at Camp Delta or other JTF-GTMO detention facilities are required to read and adhere to the standards set forth in this SOP.

d. Contractor and Vendor Personnel. Contractor and vendor personnel will:

(1) Strictly comply with the rule against bringing prohibited items into or out of Camp Delta or other JTF-GTMO detention facilities.

(2) Never communicate in any manner with any detainee.

(3) Ensure that workers properly clean the work area to preclude leaving any debris or material that might be taken and modified into a weapon.

1-7. U.S. Personnel Standards of Conduct

a. Personnel assigned to JDOG will familiarize themselves with the references and comply with them and other related regulations in letter and spirit. The following will govern the conduct of all personnel assigned to JDOG or working within the confines of Camp Delta or other JTF-GTMO detention facilities.

(1) Security Mission. Security is the primary mission of all personnel who work at Camp Delta or other JTF-GTMO detention facilities, regardless of job, military occupational specialty (MOS), section, or office. All personnel will be alert for security violations or discrepancies and immediately report any unusual, questionable incidents, or observations to their immediate supervisor. Supervisors will report all violations to the Detention Operations Center (DOC) and/or JDOG S3.

(2) Humane Treatment. Treat detainees humanely. Abuse, or any form of corporal punishment, is prohibited. Verbal harassment, interrogation except by proper authority, and the imposing of physical exercise as punishment is prohibited.

(3) Professionalism. Maintain a fair, firm, impartial, and professional demeanor toward detainees at all times.

(4) Use of Force. Personnel will not strike nor lay hands upon a detainee except in self-defense, to prevent a serious injury to a person or damage to property, to quell a disturbance, or for purposes of escorting, properly restraining, or searching a detainee. In such cases, exercise only the amount of force necessary to gain the compliance of the detainee. Apply all uses of force in accordance with JTF-GTMO ROE/RUF, dated 30 Nov 02. Immediately report all uses of force to the DOC and/or JDOG S3. Report to CJDOG any excessive use of force as expeditiously as feasible. All personnel will carry JTF-GTMO RUE/RUF card at all times.

(5) Alertness. Personnel will be alert to detect and prevent a detainee from escaping or harming himself or others.

(6) Contraband. Contraband is any item, article, or substance not authorized to be in the possession of personnel while within the confines of Camp Delta or other JTF-GTMO detention facilities. Personnel will not bring or permit others to bring any item(s) for detainees into the facility. Do not give or make accessible contraband to detainees. Anything not issued to detainees or authorized for their use is contraband. A partial list of contraband follows:

- (a) Guns or firearms of any type
- (b) Explosives or munitions

such medications should immediately notify their chain of command and fitness for shift determinations will be made on a case-by-case basis. The consumption of alcoholic beverages and/or other mind-altering substances is sufficient cause to effect relief from duty and disciplinary action.

b. All violations of the Standards of Conduct will be promptly reported to the chain of command.

1-8. General Protection Policy

a. Give all persons detained at Camp Delta and other JTF-GTMO detention facilities humanitarian care and treatment within the spirit of the Geneva Conventions.

b. The inhumane treatment of detainees is prohibited and is never justified. Further, any one who treats a detainee inhumanely, or fails to report such an incident, is subject to punishment under the Uniform Code of Military Justice and/or other applicable laws and statutes.

c. Respect all detainees as human beings and protect them against all acts of violence.

Chapter 28†

Public Affairs

28-1. Operations

- a. When possible and properly requested through JTF-GTMO Public Affairs Office (PAO), the Facility Commander will grant access within the facility to representatives of the media.
- b. Press/media will not photograph, videotape, or interview any detainee. Rights to privacy will be preserved at all times.
- c. Safety/security and order must be obtained at all times. The Facility Commander or senior cadre member in the facility may terminate any media visit if it is determined to jeopardize custody and control.
- d. PAO will accompany all media/press tours, as well as a JTF-GTMO and/or JDOG command designated personnel.
- e. No detainee information, records, or files will be released. The Facility Commander must authorize any release to the media.
- f. All press releases for both emergency and non-emergency situations will be done through JTF-GTMO PAO. News will not be released from the facility to any media agency. The JTF-GTMO PAO will release all information in accordance with their policies and regulations.
- g. The Facility Commander and Camp Superintendent are the only individuals authorized to speak with media on behalf of the facility, unless designated by JTF-GTMO and/or CJDOG.

28-2. Themes for Global War On Terrorism (GWOT)

- a. We are making progress in the GWOT through a concerted effort with our coalition partners.
- b. The U.S. will use all elements of national power and international influence to defeat global terrorism.
- c. USSOUTHCOM remains committed to working with our partner nations to support democracy, military professionalism, and the observance of human rights.
- d. The U.S. respects all religions. Our enemies are terrorists and the states and organizations that support them.
- e. The U.S. will take all necessary steps to ensure that operations target global terrorist networks while protecting innocent lives.

28-3. Detainee International Public Information Themes

- a. Detaining these people in Guantanamo Bay supports the smooth transition to a stable and secure environment in Afghanistan.
- b. Guantanamo Bay affords a safe facility to secure and provide appropriate care for detainees.

c. All detainees will be treated humanely and consistent with the principles of the Geneva Conventions.

d. These detainees are the most dangerous of the Al-Qaida and Taliban. They continue to pose a threat and must be under tight control.

e. Guantanamo Bay and the detention facilities are secure and well defended.

CHART REFERENCE 12

A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq



Oversight and Review Division
Office of the Inspector General
May 2008

UNCLASSIFIED

According to Brandon, Wyatt stated that stress positions were a commonly used technique at GTMO. Stephenson and the OSC both told the OIG that they understand that this was an approved technique for the military. However, military documents indicate that stress positions were not approved at that time. Although “stress positions (like standing) for a maximum of four hours” was on the list of approved counter resistance interrogation techniques permitted at GTMO under the memorandum approved by Secretary Rumsfeld on December 2, 2002, that list was rescinded on January 15, 2003.²⁰⁹ On April 16, 2003, Secretary Rumsfeld approved a new list of permissible techniques for use at GTMO that did not include “stress positions.”

This incident again illustrates the inadequacy of the guidance provided to FBI agents regarding what techniques were approved for use by the military and how the agents were to conduct themselves in joint interrogations. The FBI agents thought that this was an approved military technique; they apparently were not aware that the Secretary of Defense had rescinded his approval of stress positions 9 months before the Al Qarani incident took place. According to the *Church Report*, short chaining was a form of stress position, a technique that was removed from the pre-approved list in January 2003. Yet, the military at GTMO apparently did not consider short-shackling to be a prohibited “stress position” at least until May 2004, when the military commander at GTMO prohibited this practice. *Church Report* at 168.

Although the FBI’s May 2004 Detainee Policy had not yet been issued, the FBI agents involved in this matter told us they knew they should not engage in techniques that would be prohibited in the United States. However, it was not clear what an agent should do if another agency’s interrogator utilized such a technique without the prior agreement of the FBI agent. Moreover, there was no evidence that Brandon knew in advance that Wyatt would put Al Qarani in a stress position. Under the circumstances, we did not find that Brandon violated any FBI policy in connection with Wyatt’s conduct. However, we are troubled by the fact that Brandon and Stephenson did not recognize more quickly that Wyatt’s conduct was inappropriate for an interview in which the FBI was participating. Brandon and Stephenson should have acted more quickly to object to the conduct and attempt to stop it.

²⁰⁹ Moreover, we believe there is very significant doubt that short chaining a detainee to the floor would have been considered to be “like standing” within the meaning of the December 2 memorandum.

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**Behavioral Science Consultation Team
Joint Intelligence Group, Joint Task Force-GTMO
Standard Operating Procedures (U)**

28 March 2005

1. (U) Purpose. The purpose of this document is to establish Standard Operating Procedures (SOP) for the daily operation and administration of the Behavioral Science Consultation Team (BSCT), Joint Interrogation Group (JIG), Joint Task Force-Guantanamo Bay, Cuba (JTF-GTMO).

2. (U) Scope. This SOP applies to all personnel assigned to the BSCT and supersedes the previous BSCT SOP.

3. (U) BSCT Personnel.

a. (U) BSCT Chief (BSCT1). Clinical Psychologist, USA, 73B. Chief, responsible for all issues relating to BSCT operations. Develops detailed BSCT policies and operating procedures. Reports to the Director, JIG; coordinates with the Commander, Joint Detention Operations Group (JDOG); and, as directed, provides special staff officer functions to the Commander, JTF-GTMO. In the event that the USAF 42P3 is senior in rank to the USA 73B, JIG Director will designate team chief based on experience and training in interrogation support.

b. (U) Assistant BSCT Chief (BSCT2). Clinical Psychologist, USAF, 42P3. Assumes duties of BSCT1 in his/ her absence. Provides consultation and interrogation support to the Interrogation Control Element (ICE). Works with JDOG-S2 (Counter-Intelligence) to identify trends in detainee behavior

(2)

may support Deployment Cycle Support program by providing training on Posttraumatic Stress and Anger Management for personnel departing JTF-GTMO.

c. (U) BSCT NCOIC (BSCT3). Mental Health Specialist, USA, 91X. Provides consultation and interrogation support to the ICE. Assesses camp climate and provides feedback to BSCT1 on issues and trends. May provide training in behavioral principles/ management to ICE and JDOG personnel; may support Deployment Cycle Support program by providing training on Posttraumatic Stress and Anger Management for personnel departing JTF-GTMO.

4. (U) Mission. Provide psychological consultation in order to support safe, legal, ethical, and effective detention and interrogation operations at JTF-GTMO.

5. (U) Objectives.

a. (U) Provide psychological expertise to assess the individual detainee and his environment; provide recommendations to enhance the effectiveness of interrogation operations.

b. (U) Use psychological expertise to provide monitoring, consultation, and feedback regarding the entire detainee environment in order to assist the command in ensuring humane treatment of detainees, the prevention of abuse, and the safety of U.S. personnel.

CLASSIFIED BY: JTF-GTMO Classification Guide dated 10 June 2004
REASON: 1.4(C) or Intelligence Activity, Source, or Methods
DECL ON: 28 March 2030

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JTF-GTMO-JIG-BSCT
SUBJECT: BSCT SOP (U)

6. (U) Mission Essential Tasks.

a. (U) Provides consultation to interrogation staff in support of the intelligence collection mission.

(1) (S)

(b)(1)

(2) (S)

(b)(1)

(a) (U//FOUO)

(b)(2)

(b) (S)

(b)(1)

(b)(1)

(3) (S)

b. (U) Monitors interrogations and other staff-detainee interactions; provides consultation on policies and strategies for ensuring the safety of detainees and JTF-GTMO personnel; provides direct feedback to command on issues involving psychological risk factors affecting detainee operations.

(1) (U) Provide psychological oversight to ensure that staff-detainee interactions are safe for both detainees and U.S. personnel. Immediately call attention to and appropriately report any interactions that are considered unsafe, unethical, illegal or in violation of applicable policies and procedures.

(2) (U) Provide feedback to command in verbal or written form to JIG Director, JDOG Commander, or JTF Commander, as appropriate, regarding potential risks to detainees and U.S. personnel at JTF-GTMO.

(3) (U//FOUO)

(b)(2)

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JTF-GTMO-JIG-BSCT
SUBJECT: BSCT SOP (U)

c. (U) Monitors behavioral trends in the detainee population and integrates findings into consultation in support of interrogation and detention operations.

(b)(1)(1)(S)

(b)(1)(2)(S)

(b)(1)(3)(S)

d. (U) Provides selected JIG and JDOG personnel with training on behavioral, psychological, and cultural issues pertaining to the detainee population.

(b)(2)(1)(U//FOUO)

(b)(2)(2)(U//FOUO)

(3)(U//FOUO) Provides training to facilitate the maintenance of a stable and secure detention environment, such as appropriate ways to respond to detainee misbehavior, recognition and reporting of behavior patterns, minimizing transfer of information from guard staff to detainees, and strategies for increasing pro-American sentiment.

(4)(U) Provides training to increase awareness of religious and cultural issues unique to the detainee population, such as proper handling of Qur'ans, ways to demonstrate respect for religious practices, and special practices during religious holidays (e.g., Ramadan).

e. (U) Advises JIG and JDOG on use of materials for the Detainee Library and sits on the Library Advisory Board.

(1)(U) Participates on Library Advisory Board to review library materials and advise JIG and JDOG on future acquisitions.

(2)(U) As a member of the Board, reviews library operations and forwards recommendations to the JIG Director and JDOG commander

f. (S)

(b)(1)

(1)(S)

(b)(1)

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JTF-GTMO-JIG-BSCT
SUBJECT: BSCT SOP (U)

(2) (S)

(b)(1)

(3) (S)

g. (U) Assists in the development of detention facility behavior management plans.

(1) (U) Consults with JDOG S-3, JDOG S-2, Medical, Behavioral Health, and ICE personnel to develop camp-wide strategies for improving behavioral levels of detainees.

(a) (U) Provides input into the development of strategies for reducing unwanted behavior, such as re-location or movement of detainees, disciplinary actions, structural or procedural changes within the camp.

(b) (U) Provides input into the development of strategies for increasing positive behavior, such as implementation of incentive programs, reinforcement programs for positive behavior, and increasing access to recreational and social activities.

(2) (S)

b(1) h. (U) Consults with JTF Commander on detainee issues, staff issues, and camp dynamics, and provides recommendations on ways to improve camp operations. BSCT personnel have full and direct access to JTF Commander to consult on all aspects of JTF mission.

i. (U) Other duties as assigned.

7. (U) Mental Health and Medical Services.

a. (U) BSCT personnel shall not conduct mental health evaluations or provide mental health treatment to detainees or JTF-GTMO personnel. BSCT personnel will take all reasonable steps to ensure that they are not perceived as healthcare providers for detainees or JTF-GTMO personnel.

(1) (U) The Joint Medical Group (JMG) provides all medical treatment, including mental health evaluation and treatment, for detainees and JTF-GTMO personnel. Services for detainees are provided through the Detention Hospital, Detention Clinic, and Detainee Behavioral Health Service. Services for JTF-GTMO personnel are provided through the Combat Stress Control, Joint Aid Station, and U.S. Naval Hospital, GTMO.

(2) (U) The JMG is responsible for advising JIG personnel (i.e., BSCT and ICE Operations) if there are any known physical, psychological, or medical conditions; limitations to functioning; or restrictions to usual activities that one is required to consider in order to ensure the safety of the detainee and U.S. personnel, e.g., diabetes, heart condition, special diet, psychological instability, contagious conditions.

b. (U) BSCT personnel will function as Medical Liaison Officers for the intelligence unit based on procedures established in conjunction with Joint Medical Group. When concerns about health status or medical condition of detainees are raised through observation by BSCT personnel, inquiries

BSCT SOP 4

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JTF-GTMO-JIG-BSCT
SUBJECT: BSCT SOP (U)

raised by interrogators or other reporting mechanisms, BSCT will convey these concerns to appropriate medical personnel for evaluation, treatment, and disposition.

(1) (U) Neither BSCT personnel nor interrogation teams have access to medical records of detainees. The BSCT acts as medical liaison between interrogation teams and medical personnel in order to maintain the separation between medical care and intelligence-collection.

(2) (U) The BSCT will direct requests for information and issues of medical concerns brought up by interrogation teams to the JTF-GTMO-JMG organizational box. From there it will be routed to the appropriate medical/ dental personnel for response to BSCT personnel who will forward to originator of the inquiry.

(3) (U) The kind of information shared will generally fall into two categories. The first is that of physical or medical conditions, or functional limitations, that one is required to consider in order to ensure the safety of the detainee and U.S. personnel, e.g., diabetes, heart condition, special diet, or contagious conditions. The other category of information shared is whether medical personnel were aware of the condition, if it had been evaluated and treated, or if an appointment is pending to address the concern.

(4) (U) The BSCT will meet on a regular basis with the Director, Joint Medical Group; Director, Medical Plans and Operations; OIC, SMO, and other staff from the Detention Hospital and Detainee Behavioral Health Service in order to discuss any issues related to policies and procedures.

8. (U) **Intelligence Collection with Juveniles.** JTF-GTMO does not normally detain Juvenile Enemy Combatants, however, in order to deal with this possibility, special procedures must be established. Juveniles are defined as any person below the age of 16. Gathering intelligence from juveniles will require special precautions and extra care because juveniles are often more vulnerable with less developed coping skills than adults. In order to ensure proper care for the juvenile detainee, the following procedures will be followed:

a. (U) For any person under the age of 16, a BSCT personnel will be present for the entire time of interrogation. A medical provider will evaluate the juvenile prior to and after the interrogation. The interrogation plan must be reviewed by the BSCT psychologist, ICE Regional Team Chief, ICE Chief, and the JIG Director.

b. (S)

[REDACTED] (b)(1)

c. (S)

[REDACTED] (b)(1)

(1)(S)

[REDACTED] (b)(1)

(2) (U) Since many juvenile detainees have come from deprived environments, special effort will be made to ensure their protection, to provide necessary emotional support, and to provide education as available.

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(3) (U) Transportation and the security of the detainees will be organized and implemented by the JDOG personnel. [REDACTED]

(b)(2)

9. (U) **Other Operational Procedures.** The following procedures apply to the daily BSCT operations.

a. (U) **OPSEC.** All operations of the BSCT must conform to guidance set forth in JTF-GTMO General Order Number 2. Specific considerations for BSCT personnel are as follows.

(1) (U) Ensure that classified material (files, papers, photos, disks) are properly secured in the safe designated for BSCT use; at no time shall classified materials be left unattended in BSCT offices.

(2) (U) Do not discuss detainee operations or other classified information over unclassified phone lines.

(3) (U//FOUO) Sanitize uniforms by placing tape over the name when working in or visiting areas where contact with detainees is possible, including detainee blocks, interrogation buildings, and medical facilities.

(4) (U//FOUO) Use a courier bag when transporting classified or sensitive documents. Do not use courier bags for transportation of unclassified or prohibited materials.

(5) (U) Do not discuss detainee operations in areas where individuals without appropriate clearance or need to know could overhear information.

(6) (U) Do not discuss operations, current events, or personal information in the presence of detainees.

(7) (U) Ensure BSCT offices are locked at the end of the day and that the security checklist is completed. The last person leaving the building must also complete the security checklist for the building and ensure the front door is secured using the combination lock.

b. (U) **Vehicle Operations.** Ensure the BSCT vehicle is taken to motor pool for reassignment and routine maintenance NLT the end of each month.

c. (U) **Supplies.** Required office/administrative supplies can be obtained through the ICE Admin office. Other supplies and equipment can be ordered through ICE Admin office by completing the appropriate purchase order request.

10. (U) **Battle Rhythm.** Successful execution of day-to-day mission requirements requires flexibility, self-discipline, and ability to multi-task and prioritize in all BSCT personnel. There are often competing urgencies. Many tasks are self-directed; many demands are made with little or no notice while others are scheduled in advance. Assessments typically require a series of observations in different settings and hours of research. Many day-to-day activities are determined by response to requests for consultation and observation; often, rapid response is required. Some committee meetings and working groups follow established schedules while others are generated by the BSCT for specific purposes.

a. (U) **Ethical and legal responsibilities.** In addition to the other duties and qualifications noted in this document, it is the responsibility of all BSCT personnel to familiarize themselves with and adhere to

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the UCMJ, Geneva Conventions, applicable rules of engagement, local policies, as well as professional ethics and standards of psychological practice. All BSCT personnel will be expected to:

(1) (U) Read and adhere to JTF-GTMO policy memoranda, regulations, and SOPs.

(2) (U) Immediately report any suspicions of abuse of detainees or misconduct by U.S. personnel to JIG Director who is responsible for further reporting to JTF Commander.

(3) (U) Consult with colleagues and their chain of command regarding any conflicts that may arise between professional requirements and performance of their duties.

b. (U) Referral process for consultations. Interrogators may request consultation to support interrogations or other requirements by contacting any member of the BSCT. This will most typically occur in person at BSCT offices, by telephone, or by email.

c. (U) Committee Membership. BSCT personnel participate in the following committees, working groups, and meetings.

(1) (U) Interrogation Strategy Meeting (ISM, BSCT1): weekly in the JIG conference room.

(2) (U) JIG Command and Staff Meeting (BSCT1): weekly in the JIG conference room.

(3) (U) JIG pre-ISM (BSCT1/2): weekly in the JIG conference room.

(4) (U) ICE Coordination Meeting (BSCT1/2): weekly in the ICE Conference Room.

(5) (U) JDOG Coordination Meeting (BSCT1/2): weekly in the ICE Conference Room.

(6) (U) JDOG Company Training (BSCT1/2/3): Camp America Chapel as convened by JDOG.

(7) (U) ICEbox Review Committee (BSCT1/2/3): ICE Conference Room; convened by BSCT as needed.

(8) (U) Library Advisory Board (BSCT1/2): Meetings as convened by chair.

(9) (U) Other committees/ roundtables/ working groups, as appropriate.

11. (U) Point of Contact. The point of contact for this SOP is BSCT Chief at [REDACTED]

Attachments:

Annex A – BSCT Assessment: Guidelines & Format (U)

Annex B – BSCT Observation Report: Guidelines & Format (U)

Annex C – BSCT Risk Assessment: Guidelines & Format (U)

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PEOPLE

Cedric L. Alexander, PsyD, is the new deputy chief of the Rochester



Alexander

Police Department in Rochester, N.Y. As director of organizational development, his responsibilities include recruitment training and background investigation.

Prior to his appointment, Alexander was an instructor and Postdoctoral fellow at the University of Rochester Medical Center with a specialization in police psychology, family therapy, group process and multiculturalism.

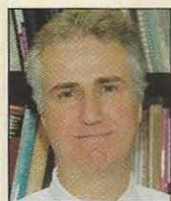
In 1999, Alexander, a former deputy sheriff, combined his academic research and field experience and contributed to the work "Police Trauma: Psychology Aftermath of Civilian Combat," which detailed the psychological impact of police work.

APA's Div. 55 (The American Society for the Advancement of Pharmacotherapy) has established

the **Patrick H. DeLeon Prize** for an outstanding student dissertation or published paper in either clinical psychology or prescription authority advocacy. The \$500 prize will be awarded at the APA annual convention beginning in 2003.

The award was named after DeLeon, a former APA president and an advisor to Sen. Daniel K. Inouye (D-Hawaii).

New York State Senator Kemp Hannon presented **Thomas**



Demaria

Demaria, PhD, with the New York State Senate Liberty Award for Demaria's creation of a special bereavement and trauma counseling center for children

who lost family members in the World Trade Center disaster and for extensive services provided to schools, community groups, religious organizations and businesses traumatized by Sept. 11.

Founded in 2000, the liberty award is given to individuals who display exceptional heroic or humanitarian acts on the behalf of New Yorkers. Demaria is the administrative director of Behavioral Health Services at South Nassau Communities Hospital in New York. His specialties include marriage therapy, behavioral medicine, stress management and trauma counseling.

For 2002-03, **Celia B. Fisher, PhD**, will hold the position of



Fisher

bioethicist in residence at Yale University. Fisher is director of the Fordham University Center for Ethics Education. The center was created

in 1999 to encourage scholarly, scientific and public practices guided by respect for diversity within communities and nations. Her research topics include how teen-agers and parents from different ethnic backgrounds react to racial discrimination and the ability of adults and children with cognitive vulnerability to consent to treatment. Fisher is also professor of applied developmental psychology at Fordham University.

G. Frank Lawlis, PhD, a fellow of APA's Div. 12 (Society of Clinical



Lawlis

Psychology) and Div. 38 (Health), has been named supervisory psychologist of American Mensa in July. He replaces Abbie F. Salny, EdD.

Lawlis will be responsible for ensuring the integrity of American Mensa's testing program and evaluating new tests that determine admission to the organization.

Lawlis is a research professor at the department of rehabilitation, social



Dr. Debra Dunivin's new rank was pinned on by Sen. Daniel Inouye (left) and her husband Russ Newman, PhD, JD, APA's executive director for practice (right).

as deputy director of the department of psychology and director of training for the Clinical Psychology Residency Program at Walter Reed Army Medical Center in Washington, D.C. Other duties include a clinical practice in psychopharmacology and consultation to Walter Reed's Clinical Breast Care Project, conducting research in psycho-oncology and telehealth.

Debra Dunivin, PhD, was promoted in July from the rank of Major to Lieutenant Colonel in the U.S. Army. The ceremony took place in the office of Sen. Daniel K. Inouye (D-Hawaii), where Dunivin worked as a Congressional Science Fellow from 1992 to 1994, prior to entering the Army when she was recruited to participate in the Psychopharmacology Demonstration Project.

Dunivin is currently serving