Memo in Support of Finding #2

In the immediate aftermath of September 11, the nation's leaders determined that they needed to invoke extraordinary powers to prevent terrorists from committing similar atrocities.

On September 16, Vice President Dick Cheney told Tim Russert on "Meet the Press" that the United States would have to work on "the dark side, if you will. We've got to spend time in the shadows in the intelligence world." Russert asked whether this meant the United States would lift restrictions on seeking the assistance of human rights violators to gather intelligence, and Cheney replied, "Oh, I think so. … It is a mean, nasty, dangerous dirty business out there, and we have to operate in that arena." [1]

Cofer Black, the head of the counterterrorism center at the CIA, expressed similar sentiments, explaining that he wanted to prepare operatives for a drastic change from their previous rules of engagement "where we were staked to the ground like a junkyard dog. … I was fully expecting a nasty, nasty war and I wanted the guys ready for a nasty war." [2]

The administration began to take the steps it believed were necessary to untie the intelligence community's hands. A classified presidential finding signed on September 17, 2001, gave the CIA broad authority to capture suspected terrorists. On November 13, the president signed an order authorizing the secretary of defense to establish military commissions to try terrorism suspects.[3] On December 28, 2001, the Office of Legal Counsel (OLC) concluded that federal courts did not have *habeas corpus* jurisdiction over detainees held at Guantánamo Bay.[4]

The most crucial legal question, though, was whether captives would be protected by the 1949 Geneva Conventions, which forbid all acts of torture, cruelty, violence or degrading treatment of detainees. The United States had applied the Conventions' protections to every enemy it faced since 1949, even in the face of gross violations of the treaties by communist North Korea and North Vietnam. But this time, the president reached a different decision.

The Decision Not to Apply the Geneva Conventions

On February 7, 2002, President George W. Bush issued an order formally finding that the Geneva Conventions did not apply to the United States' conflict with Al Qaeda, and that "Taliban detainees are unlawful combatants" not entitled to the Conventions' protection. The order states:

> As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.[5]

This confirmed Secretary of Defense Donald Rumsfeld's earlier order overriding the military's initial decision to apply Geneva in Afghanistan. General Tommy Franks, the commander of U.S. forces in Afghanistan, had ordered the military to apply the Conventions' requirements on October 17, 2001.[6] But on January 19, 2002, a little over a week after the first prisoners arrived at Guantánamo, Rumsfeld rescinded Franks's order,[7] in reliance on legal advice from the OLC that Geneva did not apply. Rumsfeld made his decision without consulting the military services' judge advocates general (JAGs), who would later oppose the decision not to apply Geneva.[8]

Department of State (DOS) legal advisor William H. Taft IV also strongly disagreed with Rumsfeld's decision. He acknowledged that detainees might not ultimately be entitled to prisoner of war status, but argued that at least with regard to Taliban fighters, "under the Geneva Conventions, these persons would be entitled to have their status determined individually" at a hearing known as an Article 5 tribunal.[9] As Taft later told the Task Force staff, these tribunals would have had the additional policy benefit of determining whether detainees were combatants at all, or whether "actually it just turns out that he's a person the other person hates, just had a family feud. … [Y]ou should be a little careful about that."

But the "War Council" of lawyers closest to the White House on these issues — among them White House counsel Alberto Gonzales, OLC attorney John Yoo, and counsel to the vice president David Addington — strongly disagreed with Taft, and their position ultimately prevailed. A January 25 memo signed by Gonzales acknowledged that "[s]ince the Geneva Conventions were concluded in 1949, the United States has never denied their applicability to either U.S. or opposing forces engaged in armed conflict, despite several opportunities to do so." [10] He nevertheless recommended that the president set them aside. "The war against terrorism is a new kind of war," the memo said, in which it was essential to

> quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians. … In my judgment, this new paradigm renders obsolete Geneva's strict limits on questioning enemy prisoners.

Finding that Geneva did not protect any captured detainee, the memo noted, "[s]ubstantially reduces the threat of domestic prosecution under the War Crimes Act." [11]

The CIA: High-Level Authorization of Brutal Techniques

The policy statement regarding "humane treatment" and "the principles of Geneva" in President Bush's February 7 order applied only to the military, not the CIA. This distinction was not accidental. Taft's notes summarizing discussions leading up to that decision state that "CIA lawyers believe," to the extent that Geneva protections are applied as a policy matter, "it is desirable to circumscribe that policy so as to limit its application to the CIA." [12]

In December 2001, the CIA had asked psychologist James Mitchell to review the "Manchester Manual," an Al Qaeda manual seized in the United Kingdom that advised operatives on

resisting interrogations. Mitchell was a retired psychologist from the military's Survival, Evasion, Resistance, and Escape program (SERE), which trains U.S. troops to resist interrogation if captured by enemy forces that do not follow the Geneva Conventions. The training is based, in part, on treatment of American POWs during the Vietnam and Korean Wars. The SERE program is administered through the Joint Personnel Recovery Agency (JPRA) of the Department of Defense (DOD). Mitchell contacted another SERE psychologist, Bruce Jessen, and the two drafted a proposal to use those techniques against captured members of Al Qaeda.[13]

On March 28, 2002, Abu Zubaydah was captured in a gunfight in Faisalabad, Pakistan. He was believed at the time to be the highest level Al Qaeda suspect in U.S. custody. He was transported to a secret CIA site, most likely in Thailand. There, FBI interrogators Ali Soufan and Stephen Gaudin began interviewing Abu Zubaydah while doctors worked to stabilize his condition. Soon after, according to Soufan, a CIA team including contractor James Mitchell began directing the interrogation, and using "enhanced" techniques such as nudity and sleep deprivation. When Soufan argued that his questioning had gained valuable intelligence and expressed skepticism about the new techniques, Mitchell reportedly replied, "This is science." [14]

Not long after that, Soufan saw a "confinement box" that "looked like a coffin," in which Mitchell was seeking authorization to place Abu Zubaydah.[15] He concluded that "the interrogation was stepping over the line from borderline torture. Way over the line." Soufan left the interrogation, with the approval of his FBI superiors, Assistant Director Pat D'Amuro and FBI Director Robert Mueller.[16]

CIA officials, particularly former counterterrorism center director Jose Rodriguez, have disputed Soufan's account. Most of the disputes concern whether the FBI agents using traditional interrogation techniques or CIA interrogators using "enhanced" methods had more success in obtaining intelligence from Abu Zubaydah — an issue discussed elsewhere. Rodriguez also asserted that Soufan[17] overestimated the contract psychologist's role, and "seemed to blame our contractor for everything," even threatening the contractor with violence at one point. Rodriguez wrote that "[a]t the time the contractor was just an advisor. He was not in charge of the interrogation." Rodriguez, however, does not dispute that the contract psychologist was advising FBI agents as well as CIA interrogators from the beginning, and Soufan does not dispute that Mitchell had CIA headquarters' authorization for his actions.[18]

According to Rodriguez, after Soufan and the FBI left, he met with the contract psychologist and CIA personnel involved in the interrogation and asked the psychologist how long it would take for more aggressive techniques to be effective:

> "Thirty days" was his estimate. I thought about it overnight and the next morning asked the contractor if he would be willing to take charge of creating and implementing such a program. He said he would be willing to take the assignment but could not do it himself. … I agreed that the contractor should bring in someone from the outside to help him work with Agency officers in crafting a program we hoped would save lives.[19]

The program had approval from the highest levels of the U.S. government, as Bush wrote in his memoirs:

> CIA experts drew up a list of interrogation techniques that differed from those Zubaydah had successfully resisted. George [Tenet] assured me all interrogations would be performed by experienced intelligence professionals who had undergone extensive training. Medical personnel would be on-site to guarantee that the detainee was not physically or mentally harmed.
>
> At my direction, Department of Justice and CIA lawyers conducted a careful legal review. They concluded that the enhanced interrogation program complied with the Constitution and all applicable laws, including those that ban torture.
>
> I took a look at the list of techniques. There were two that I felt went too far, even if they were legal. I directed the CIA not to use them. Another technique was waterboarding, a process of simulated drowning. No doubt the procedure was tough, but medical experts assured the CIA that it did no lasting harm.[20]

It is unclear what techniques Bush determined went too far. The ones that the OLC deemed legal included not only waterboarding, but: (1) sleep deprivation for up to 11 consecutive days; (2) "cramped confinement" in small, darkened boxes; (3) the placement of an insect inside a confinement box, which the suspect could be told was a stinging insect but was in fact "a harmless insect such as a caterpillar"; (4) "wall standing" and other stress positions; (5) physical techniques including grabbing a suspect's collar, grabbing his face, slapping him, and slamming him into a specially constructed "flexible wall." [21]

Years later, after he was transferred to Guantánamo Bay, Abu Zubaydah described the "confinement box" to the International Committee of the Red Cross (ICRC):

> Then the real torturing started. Two black boxes were brought into the room outside my cell. One was tall, slightly higher than me, and narrow. Measuring perhaps in area 1 m x 0.75 m and 2 m in height. The other was shorter, perhaps only 1 m in height. … After the beating I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air supply. As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed. I don't know how long I remained in the small box, I think I may have slept or maybe fainted.
>
> I was then dragged from the small box, unable to walk properly and put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds was very painful. I vomited. The bed was then again lowered to a horizontal position and the same torture carried out again with the black cloth over my face and water poured on from a

> bottle. On this occasion my head was in a more backward, downwards position and the water was poured on for a longer time. I struggled against the straps, trying to breathe, but it was hopeless. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress.[22]

None of the other 13 high-value CIA detainees the ICRC interviewed at Guantánamo alleged placement in the "confinement box." Two others were subjected to waterboarding, which the ICRC termed "suffocation by water."

More common techniques were "prolonged stress standing," in which detainees were shackled upright, and sleep deprivation for extended periods. According to the ICRC,

> Ten of the fourteen alleged that they were subjected to prolonged stress standing positions, during which their wrists were shackled to a bar or hook in the ceiling above the head for periods ranging from two or three days continuously, and for up to two or three months intermittently. All those detainees who reported being held in this position were allegedly kept naked throughout the use of this form of ill-treatment. …
>
> While being held in this position some of the detainees were allowed to defecate in a bucket. A guard would come to release their hands from the bar or hook in the ceiling so that they could sit on the bucket. None of them, however, were allowed to clean themselves afterwards. Others were made to wear a garment that resembled a diaper. … Many of the detainees who alleged that they had undergone this form of ill-treatment commented that their legs and ankles swelled as a result of the continual forced standing with their hands shackled above their head. They also noted that while being held in this position they were checked frequently by US health personnel. …
>
> Although this position prevented most detainees from sleeping, three of the detainees stated that they did fall asleep once or more while shackled in this position. These include Mr. Khaled Shaikh Mohammed and Mr. Bin Attash; the third did not wish his name to be transmitted to the authorities. When they did fall asleep held in this position, the whole weight of their bodies was effectively suspended from the shackled wrists, transmitting the strain through the arms to the shoulders. …
>
> Eleven of the fourteen alleged that they were deprived of sleep during the initial interrogation phase from seven days continuously to intermittent sleep deprivation that continued up to two or three months after arrest.[23]

It is not clear how many other detainees were subjected to these techniques by the CIA. Administration officials, in defending the program, have argued that it was carefully limited in scope. Former CIA Director Michael Hayden testified at a congressional hearing on February 5, 2008, that "[i]n the life of the CIA detention program, we have held fewer than 100 people. And actually, fewer than one-third of those people have had any techniques used against them, enhanced techniques." [24] Acting OLC director Steven Bradbury gave similar estimates in a May 30, 2005, legal memorandum, stating that the CIA had taken custody of 94 detainees and had

employed "enhanced" interrogation techniques on 28 of them.[25] But these appear to exclude all prisoners interrogated by the CIA in Iraq, and may also exclude those held at CIA-run facilities in Afghanistan.

There were at least three such prisons in Afghanistan: a section of Bagram Air Base; a prison northeast of Kabul, known as the "Salt Pit"; and another location closer to the center of Kabul. Of these, the Salt Pit is likely the best known, as the site of both a death in custody and the erroneous detention of an innocent German citizen, Khaled El-Masri.

The prisoner who died was a suspected militant named Gul Rahman. Rahman was captured in Pakistan on October 29, 2002, and taken to the Salt Pit. He died less than a month later. The Associated Press (AP), which first publicly identified Rahman by name, has reported that after he threatened guards and threw a latrine bucket at them, his hands were shackled over his head and he was soaked with water. The morning of his death, the temperature was 36 degrees, and Rahman was in his cell naked from the waist down. CIA physicians concluded that he died of hypothermia. It is not known what happened to his body.[26]

During the Bush administration, the Department of Justice (DOJ) reviewed the case, but declined to bring charges against either "Matt," the top CIA officer at the prison, or "Paul," the Afghanistan Station Chief. (AP has identified both by their first names.) The CIA held an internal review board, which found that Matt had not intentionally killed Rahman, and that he had made requests for guidance about detainee treatment that his superiors had disregarded. They did not recommend disciplinary action against Paul or any higher officials. Eventually, Dusty Foggo, the third-highest ranking official at the agency, decided that Matt should not be disciplined either. According to AP, both continue to work for the CIA, and Paul had been promoted to head of the Near East division.[27]

Several dozen detainees have given accounts of abuse at CIA prisons in Afghanistan, at least some of which come with some form of credible corroboration.[28] Many of these refer to a site near Kabul, which they call either the "Dark Prison," or the "Prison of Darkness," where they were kept shackled to the wall in complete darkness for weeks at a time, deprived of adequate food, and subjected to constant loud music to deprive them of sleep. Federal courts have examined these allegations in several Guantánamo detainees' *habeas cases*, and, in varying degrees, have treated them as credible.

In *Anam v. Obama*, for example, a district court judge evaluated Yemeni detainee Musa'ab Omar Al Madhwani's allegations of being mistreated for 30 days in the "dark prison" in Afghanistan, including

> being suspended in his cell by his left hand. To this day he suffers pain in his left arm. Petitioner also alleges guards blasted his cell with music twenty-four hours a day. The sole respite from the deafening noise was the screams of other prisoners.[29]

The court notes that "[t]he Government made no attempt to refute the Petitioner's description of his confinement conditions" in Afghanistan. Rather, medical records showed that when he was transferred to Guantánamo he weighed 104 pounds; was suffering from severe post-traumatic stress disorder; and his low blood pressure indicated "severe dehydration that would normally require hospitalization in the United States." [30] Several other prisoners captured in the

same raid as Madhwani have made similar allegations about their treatment in the Dark Prison in their *habeas cases,* combatant status review tribunals, or both.

In *Ali Ahmed v. Obama,*[31] the court found that the government could not rely on statements from a witness who "spent time at Bagram and the Dark Prison, and alleges that he has been tortured. … The Government has presented no evidence to dispute the allegations of torture at Bagram or the Dark Prison." In *Mohammed v. Obama,* the court found that statements from Binyam Mohammed to interrogators were tainted based on Mohammed's detailed allegations of abuse in Morocco and the Dark Prison. Again, the government did not deny Mohammed's allegations that he was subject to near-continual darkness; deprived of sleep; and shackled in painful positions, including "once for eight days on end in a position that prevented him from standing or sitting." [32]

Detainees held at other CIA prisons in Afghanistan allege similarly brutal conditions. The German citizen Khaled El-Masri and the Algerian Laid Saidi, two detainees apparently held because of mistaken identity, have given reporters detailed accounts of their abusive treatment in the Salt Pit.[33]

In an interview with Task Force staff, Libyan former detainee Khalid al-Sharif said that he was tortured by U.S. interrogators at a prison in Kabul, including being suffocated by water:

> *Al-Sharif:* …And then the interrogator starts pouring the water on your face and your face is, of course, covered — there's a cover on your face.
>
> *Q:* Covered like with a cloth?
>
> *Al-Sharif:* It's that bag that they put on the detainees.
>
> *Q:* A hood?
>
> *[clarification by translator]* The whole face.
>
> *Q:* What is it made of, is it cloth?
>
> *Al-Sharif:* Yes, it's cloth. You can't see from it but you can breathe and water could obviously come in.
>
> *Q:* There's a bag on your face and the water is poured on it?
>
> *Al-Sharif:* Yes. So with the constant pouring of water on your face you start suffocating.
>
> *Q:* Did you think you were going to drown?
>
> *Al-Sharif:* Of course, because you start moving your face to the right and left and looking to breath and you completely smothered by the water pouring on you.
>
> *Q:* How long did this go on?
>
> *Al-Sharif:* Depends on the interrogation.

> *Q:* How many times did it happen? They were asking questions at the same time?
>
> *Al-Sharif:* While pouring the water they are asking questions.
>
> *Q:* How many times?
>
> *Al-Sharif:* I don't remember. It was several times. [34]

Another Libyan detainee, Mohammed Shoroeiya, has described being waterboarded by the CIA in Afghanistan to Human Rights Watch.[35] According to Human Rights Watch, Sharif, Shoroeiya and three other Libyan detainees described other abuses in CIA facilities, including

> being chained to walls naked — sometimes while diapered — in pitch dark, windowless cells, for weeks or months at a time; being restrained in painful stress positions for long periods of time, being forced into cramped spaces; being beaten and slammed into walls.[36]

Sharif and Shoroeiya are not among the three detainees whose waterboarding the United States has publicly acknowledged.

Mohamed Farag Bashmilah, a Yemeni citizen, has described and drawn diagrams of a facility in Afghanistan where he was held for months. In sworn court documents, Bashmilah alleges treatment that includes being shackled to the wall, deprived of sleep, and made to wear a soiled diaper for weeks at a time. [37] His attorneys believe this occurred in Bagram.

The allegations of abuses in CIA custody at Bagram are consistent with press reports from late 2002 and 2003. In December 2002, *The Washington Post* described the CIA holding and interrogating high-value detainees in a makeshift prison made out of metal shipping containers and razor wire at Bagram. The Post alleged based on accounts from witnesses that "captives are often "softened up" by MPs and U.S. Army Special Forces troops who beat them up and confine them in tiny rooms … blindfolded and thrown into walls, bound in painful positions, subjected to loud noises and deprived of sleep." One intelligence official told the Post, "If you don't violate someone's human rights some of the time, you probably aren't doing your job." [38] A few months later, *The New York Times* described the detention and interrogation of Omar al-Faruq at the CIA facility in Bagram after his capture in Indonesia in June 2002. Officials told the Times it was "likely" that Faruq was kept naked with his hands and feet bound; deprived of food, sleep and light; and subjected to prolonged isolation and extreme temperatures. One Western intelligence official said Faruq's interrogation was "not quite torture, but about as close as you can get." [39] Faruq later escaped from Bagram in 2005, and was killed in Iraq in 2006.

The Military: The Old Rules Gone and No Clear Replacement

Lieutenant General Ricardo Sanchez, the commander of U.S. coalition troops in Iraq from 2003 to 2004, later wrote in his memoirs of the decision not to apply Geneva in Afghanistan:

> In essence, the administration had eliminated the entire doctrinal, training, and procedural foundations that existed for the conduct of interrogations. It

> was now left to individual interrogators to make the crucial decisions of what techniques could be utilized. …
>
> Having eliminated the Conventions, it was the responsibility of the Department of Defense and the U.S. Army (as the executive agent) to publish new standards to steer our soldiers away from techniques that could be deemed torture. The fact that this was not done constitutes gross negligence and dereliction of duty.[40]

In an interview with Task Force staff, Rear Admiral James McPherson, the top Navy JAG from 2004 to 2006 offered a cogent explanation of why a directive to treat detainees in a "manner consistent with the principles of Geneva" was not an adequate substitute. Military personnel, McPherson said, are accustomed to being told rules in simple and explicit terms. "You can't tell a soldier or sailor or airman what the policy is," he said. "You have to tell them what they can do and what they can't do." Rules of engagement for battlefield troops can be reduced to 3 x 5 cards that can be understood at the platoon level. "The problem with the abuses [involving interrogation and detention] was that there was no 3 x 5 card," he said. "No 'do's" and 'don'ts'." [41]

An example McPherson gave involved Navy pilots who are given explicit rules on when they may engage in firing on an enemy. These rules, McPherson said, are in the form of a simple checklist that each combat pilot carries on his kneeboard. If an adversary "paints" the pilot's plane with radar, the instructions are to veer away. If it happens a second time, the pilot must again veer away. The third time, the aircraft is "painted" with hostile radar, the pilot is supposed to return fire. A pilot may be disciplined for not following those rules, McPherson said, although the pilot is allowed to argue mitigating circumstances for any deviation. But the rules are clean and straightforward and discourage any improvisation or freelancing.[42]

Guantánamo

Some commanders, understanding soldiers' need for clear rules, simply ordered them to comply with Geneva, with the exception of some of the heightened protections that prisoners of war receive. This happened during the early days of Guantánamo Bay. General Michael Lehnert, the first commander of the prison, and Manuel Supervielle, the lead JAG at SOUTHCOM, had made repeated requests up the chain of command to authorize ICRC presence in Cuba. With a request still pending, and the first transports of prisoners set to leave Afghanistan, Supervielle simply called Geneva and invited the Red Cross himself. DOD General Counsel William J. Haynes later made clear that he disagreed with this decision, but Supervielle's chain of command decided it was too late to un-invite the ICRC. Supervielle also thoroughly analyzed each article of the Third Geneva Convention, and recommended that U.S. troops comply fully with most of them.[43]

Conditions of confinement at Camp X-Ray were austere at best; Colonel Terry Carrico, the head of the military police at the camp, acknowledged to Task Force staff that the original wire-mesh cells were "essentially dog pens." But Carrico stated that he told the troops under his command to treat the detainees as prisoners of war, and MPs observed interrogations to ensure that there was no abuse.[44]

In February 2002, the Department of Defense set up a new task force, JTF-170, to run military

interrogations at Guantánamo. Its first commander was Major General Michael Dunlavey. Donald Rumsfeld had personally selected Dunlavey for the job, and told Dunlavey to report directly to him each week about the interrogations of detainees Rumsfeld had described as "among the most dangerous, best trained vicious killers on the face of the earth." [45] Dunlavey later told Philippe Sands, "No one ever said to me 'the gloves are off.' But I didn't need to talk about the Geneva Conventions, it was clear that they didn't apply." [46]

Dunlavey's subordinates included Lieutenant Colonel Jerald Phifer, JTF-170's head of intelligence; David Becker, the head of Guantánamo's Interrogation and Control Element (ICE), and Lieutenant Colonel Diane Beaver, his staff judge advocate.

During the summer of 2002, a military psychiatrist, psychologist, and psychiatric technician were deployed to Guantánamo Bay, and told that they had been assigned to a Behavioral Science Consultation Team (BSCT or, colloquially, "biscuit team") in support of interrogations. In September, the three BSCT members and four interrogators received training in SERE techniques at Fort Bragg, N.C. On October 2, 2002, the BSCT team signed a memo requesting authorization to use additional interrogation techniques. "Category II techniques" included stress positions; the use of isolation for up to 30 days (with the possibility of consecutive 30-day periods if authorized by the chain of command); deprivation of food for 12 hours; handcuffing; hooding; and consecutive 20-hour interrogations once a week. "Category III" techniques included daily 20-hour interrogations; isolation without access to medical professionals or the ICRC; removal of clothing; exposure to cold or cold water; and "the use of scenarios designed to convince the detainee he might experience a painful or fatal outcome." [47] While these and even harsher techniques had been authorized for use against high-value detainees in CIA custody, this would apply to a far larger population in military custody at Guantánamo. At its peak in 2003, the prison in Cuba held 680 inmates.

On October 11, 2002, General Dunlavey submitted a request to SOUTHCOM's commanding general, James Hill, for authorization to use Category I, II and III techniques. In addition to the Category III techniques listed in the BSCT memo, there was an addition, which had been discussed at the October 2 meeting with the CIA: "use of a wet towel and dripping water to induce the misperception of suffocation." [48] The list of techniques stated, however, that Category III techniques were only intended for use against "exceptionally resistant detainees … less than 3%" of the detainee population at Guantánamo," [49] which at that time numbered close to 600.[50]

Dunlavey's request was accompanied by a legal memorandum by Beaver, who wrote that neither the Geneva Conventions nor the dictates of the Army's interrogation Field Manual 34-52 were binding at Guantánamo. She wrote that the "enhanced" techniques would not violate the Torture Statute

> because there is a legitimate governmental objective in obtaining the information necessary … for the protection of the national security of the United States, its citizens, and allies. Furthermore, these methods would not be used for the "very malicious and sadistic purpose of causing harm." [51]

Beaver acknowledged that the techniques might "technically" violate several articles of the Uniform Code of Military Justice. She nevertheless recommended that they be approved, and

suggested that "it would be advisable to have permission or immunity in advance … for military members utilizing these methods." [52]

Beaver's analysis has been widely criticized, and she herself has stated that she did not have adequate time to research it:

> I wanted to get something in writing. That was my game plan. I had four days. Dunlavey gave me just four days. But I was in Guantánamo, there wasn't access to much material, books and things.[53]

On October 25, Hill forwarded Dunlavey's request to the General Richard Myers, chairman of the Joint Chiefs of Staff, who sent it to the individual services for comment. JAGs from all four services recommended against approval of the techniques without more careful review. The Air Force, Army and Marine Corps JAGs warned that several techniques could subject service members to prosecution under the Torture Statute or the UCMJ. The Guantánamo Criminal Investigative Task Force (CITF), which carried out interrogations and conducted investigations of potential war crimes by detainees, had similar concerns.[54]

Captain Jane Dalton, the legal counsel to the Joint Chiefs, began her own review, finding Lieutenant Colonel Beaver's analysis "woefully inadequate." [55] General Myers, however, instructed her to stop the review, telling Dalton that Haynes was concerned about too many people seeing the paper trail.[56] On November 27, Haynes recommended to Rumsfeld that he approve all of the Category I and II techniques and one Category III technique (noninjurious physical contact). Rumsfeld gave his sign-off on December 2, adding the following handwritten note: "However, I stand for 8–10 hours a day. Why is standing limited to 4 hours?" [57]

Haynes' recommendation contained no legal analysis. Beaver later told Senate investigators that she was "shocked" that her opinion, which she expected the chain of command to review thoroughly and independently, "would become the final word on interrogation policies and practices within the Department of Defense." [58]

Before Rumsfeld approved them for more general use at Guantánamo, the techniques were being implemented against detainee number 63, Mohammed al Qahtani. Al Qahtani was suspected of being the intended 20th hijacker in the September 11 attacks. In October, he was interrogated with military dogs present, deprived of sleep, and placed in stress positions, all while in isolation.[59] When this failed to yield intelligence, JTF-170 halted the interrogation and began developing a new "Special Interrogation Plan." Al Qahtani remained in isolation, however, and, according to an FBI agent, by the end of November he was "evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reportedly hearing voices, crouching in a corner of the cell covered with a sheet for hours on end)." [60]

A publicly released interrogation log, dated from November 23, 2002, to January 11, 2003, shows that his treatment only became harsher.[61] Al Qahtani was interrogated for approximately 20 hours a day for seven weeks; given strip searches, including in the presence of female interrogators; forced to wear women's underwear; forcibly injected with large quantities of IV fluid and forced to urinate on himself; led around on a leash; made to bark like a dog; and subjected to cold temperatures. Not surprisingly, his condition deteriorated further. On December 7, 2002, al

Qahtani's heartbeat slowed to 35 beats per minute, and he had to be taken to the hospital for a CT scan of his brain and ultrasound of a swollen leg to check for blood clots.[62]

Al Qahtani's interrogation plan was approved by and implemented under the supervision of Major General Geoffrey Miller, who replaced Dunlavey as the commanding general in Guantánamo in November 2002.[63]

The Schmidt-Furlow Report, the official DOD investigation into allegations of abuse at Guantánamo, found that "every technique employed against [al Qahtani] was legally permissible under the existing guidance," but "the creative, aggressive, and persistent interrogation of [al Qahtani] resulted in the cumulative effect being degrading and abusive." It criticized Miller for failing to adequately supervise al Qahtani's interrogators, which "allowed subordinates to make creative decisions." The investigation nevertheless concluded that al Qahtani's interrogation "did not rise to the level of inhumane treatment." [64]

Others have strongly disagreed. Susan Crawford, the convening authority of the Guantánamo military commissions during the latter part of the Bush administration, told *The Washington Post* in January 2009 that "[w]e tortured Qahtani. … His treatment met the legal definition of torture." [65]

There were also contemporaneous objections to the coercive techniques from FBI agents and agents of the Naval Criminal Investigative Service (NCIS). In December 2002, David Brant, the head of NCIS, told Navy General Counsel Alberto Mora that NCIS agents stationed in Guantánamo had witnessed detainees being abused.[66] On December 18, Mora and Brant met with NCIS chief psychologist Dr. Michael Gelles, who told them that guards and interrogators had started using "abusive techniques" including "physical contact, degrading treatment (including dressing detainees in female underwear, among other techniques), the use of "stress" positions, and coercive psychological procedures." [67] Gelles said that he believed these techniques were unlawful in themselves, and would also open the door to worse abuses. As recounted by Mora in a statement to the Navy's inspector general,

> [Gelles] believed that commanders took no account of the dangerous phenomenon of "force drift." Any force utilized to extract information would continue to escalate, he said. If a person being forced to stand for hours decided to lie down, it probably would take force to get him to stand up again and stay standing. … [T]he level of force applied against an uncooperative witness tends to escalate such that, if left unchecked, force levels, to include torture, could be reached.[68]

After Mora reviewed the request for coercive techniques at Guantánamo, Beaver's legal analysis, and Rumsfeld's authorization, he met with DOD General Counsel Haynes and told him that "some of the authorized techniques could rise to the level of torture." When Haynes disagreed, Mora:

> urged him to think about the techniques more closely. What did "deprivation of light and auditory stimuli" mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What precisely did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in? Not only could individual techniques applied singly constitute torture, I said, but also the application

> of combinations of them must surely be recognized as potentially capable of reaching the level of torture.[69]

On January 15, 2003, Mora presented Haynes with a draft memorandum advising that most Category II techniques and all Category III techniques were unlawful "in that they constituted, at a minimum, cruel and unusual treatment and, at worst, torture," and told him he would sign it unless Rumsfeld's December 2 authorization was suspended. That day, Rumsfeld rescinded the authorization for Category II and III techniques, and directed Haynes to set up a "Detainee Interrogation Working Group" to evaluate the law and policy for DOD interrogations.[70] The group consisted of JAGs as well as civilian attorneys at the Pentagon. Mary Walker, the Air Force general counsel, Mora's counterpart for the Air Force, had volunteered to lead the Working Group, which would ultimately produce a report with its findings. Rumsfeld wanted the work to be done quickly — the group had a tight deadline.

Jack Rives, the Deputy Air Force JAG and a member of the Working Group, told Task Force staff that its meetings were contentious. Mary Walker, the lawyer in the DOD general counsel's office who headed the group, was an adamant supporter of the harsh detention and interrogation regimes. She believed that Mora and the service JAG lawyers were overstepping their bounds in pressing their objections. They were, she said, bound to obey the directives of the general counsel and accept fully the opinions of the OLC. "Haynes was frustrated that he couldn't make it just go away," Rives said.

Rather than the JAGs, Haynes relied on advice from John Yoo, the deputy at the Office of Legal Counsel who had drafted the August 2002 "torture memos" for the CIA. Over the objections of the service JAGs and the legal counsel to the Joints Chiefs of Staff, Haynes directed that the Working Group would be bound by Yoo's analysis of the laws governing interrogation. Yoo's final memo, signed on March 14, 2003, adopted many of the same conclusions as the August 2002 memos. It also concluded that federal criminal statutes prohibiting torture, assault, and maiming could not constitutionally apply to the Armed Forces in wartime, because "it is for the president alone to decide what methods to use to best prevail against the enemy." [71]

The Working Group report was finalized and issued on April 4, 2003. In addition to the Army Field Manual techniques, it recommended the approval of hooding; isolation; "sleep adjustment"; 20-hour interrogations; sleep deprivation "not to exceed four days in succession"; prolonged standing (not to exceed four hours); "mild physical contact"; "dietary manipulation"; "environmental manipulation," (which could include raising or lowering the cell temperature); "false flag" (convincing a detainee that individuals from another country were interrogating him); the threat of transfer "to a third country … [that would] subject him to torture or death"; forcibly shaving detainees' hair and beards; forcing detainees to exercise; slapping the detainee on the face or stomach ("limited to two slaps per application, no more than two applications per interrogation"); nudity; and "increasing anxiety by use of aversions," such as the presence of a dog.[72] The final report was not sent to the lawyers who had objected to the techniques, nor did they even know it had been completed.[73]

On April 16, 2003, Rumsfeld authorized a list of techniques that included dietary manipulation, environmental manipulation, sleep adjustment, false flag, and isolation — although the last was authorized only if the SOUTHCOM commander were to "specifically determine that military necessity requires its use and notify me in advance." [74] Other additional techniques

were available if the commander sent a written request. Rumsfeld's memorandum concludes by stating that "[n]othing in this memorandum in any way restricts your existing authority to maintain good order and discipline among detainees" [75] — most likely a reference to the practices of Guantánamo's Extreme Reaction Force, which forcibly removed detainees from cells for disciplinary action and was repeatedly accused of using excessive force.

In July 2003, Miller submitted a request for approval for a "Special Interrogation Plan" for Mohamedou Ould Slahi, which was approved by Rumsfeld on August 13. The plan included moving Slahi on a boat to make him believe he had been taken away from Guantánamo; the presence of military working dogs; shackling Slahi to the floor and leaving him there for hours at a time; prolonged standing; limiting sleep to four hours every 16 hours; and isolation in an interrogation room designed to reduce "outside stimuli" such as light. These techniques were designed to show Slahi that "the rules have changed and nobody knows he is there." [76]

Interrogators apparently began implementing the plan before securing formal approval. On August 2, an interrogator told Slahi he would "very soon disappear down a very dark hole. His very existence will become erased. … [N]o one will know what happened to him and eventually, no one will care." Slahi was also shown a letter falsely stating that his mother had been detained, and that if she did not cooperate with interrogators she might be transferred to Guantánamo.[77]

On August 7, Slahi told his interrogator that he would cooperate fully.[78] Nonetheless, interrogators continued to carry out the interrogation plan through September and October. The Senate Armed Services Committee uncovered documents suggesting that interrogators eventually became concerned about Slahi's mental state. On October 17, an interrogator emailed a BSCT psychologist that Slahi "told me he is 'hearing voices' now. … He is worried as he knows this is not normal. … [I]s this something that happens to people who have little external stimulus such as daylight, human interaction etc???? Seems a little creepy." [79] A Guantánamo prosecutor, Lieutenant Colonel Stuart Couch, eventually refused to prosecute Slahi because he concluded that his statements to interrogators were tainted by torture and coercion.[80]

Two other "Special Interrogation Plans" for Guantánamo detainees are referenced in the Senate Armed Services Committee's Investigation, but virtually all details about them are redacted and it is unclear if they were implemented.[81]

The use of harsh tactics was not restricted to the "Special Interrogation Plans," however. Detainees' allegations of brutal treatment have been corroborated by the FBI and the ICRC's continued objections to the treatment of detainees at Guantánamo. An FBI agent sent the following email to a superior on August 2, 2004, describing an incident she had witnessed earlier:

> On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they had urinated or defecated on themselves and had been left there for 18, 24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room that the barefooted detainee was shaking with cold. When I asked the (military police) what was going on I was told that interrogators from the day prior had ordered this treatment and the detainee was not to be moved.[82]

A second FBI agent reported a detainee being short-shackled for 12 hours after an interrogation. The Schmidt-Furlow Report said it could not corroborate these allegations. This conclusion, however, may have overlooked an interview included in the annexes to the report, in which an operations offer stated

> The detainee might be left in the booth for an extended period of time after interrogations awaiting MPs. The short chain was done as a control measure. The chain was close to the floor. The interrogator would ask the MPs to put the detainee in that position.[83]

The interviewee did not specify how long the "extended" period was.

After a June 2004 visit to the camp, the Red Cross charged in a confidential report obtained by *The New York Times* that detainees in Guantánamo were being subjected to a systematic effort to break them, through

> humiliating acts, solitary confinement, temperature extremes, use of forced positions. … The construction of such a system, whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture.

The ICRC had criticized interrogation methods before, but said that had grown "more repressive and refined" over time.[84]

Afghanistan

In Afghanistan, there was less legal guidance, and less high-level involvement. But it was there that replacement of the Geneva Conventions' detailed requirements with an ill-defined "humane treatment" standard proved most destructive. By the time that Michael Gelles and Alberto Mora warned the Pentagon about "force drift" in December 2002, it had already lead to pervasive abuse and two deaths in custody.

In December 2002, two Afghans, named Dilawar and Habibullah, were beaten to death at Bagram Air Base, the United States' largest detention facility in Afghanistan. In each case, the beating was delivered as the men were cuffed with their hands high so they could not sleep. In each case, there is evidence that they were being "sleep adjusted" at the request of interrogators, and that the soldiers who suspended them from the ceiling believed they were using an authorized technique.

The autopsy showed that the men had been beaten on their legs, and the investigation uncovered that they had been kneed by the MPs repeatedly. In Habibullah's case, the beating dislodged a blood clot that may have formed partially as a result of his being forced to stand for an extended period.[85] Angela Birt, who investigated the case for the Army's Criminal Investigative Division (CID), stated in an interview with Task Force staff,

> they chained them in a standing position. And doing that you can cause deep vein thrombosis, just like you can get on an aircraft, and that was one contributing things that killed one of the detainees. One of them had very serious thrombosis in his lower legs.[86]

According to the coroners who examined Dilawar's body, the beatings had "pulpified" his legs, which would likely have needed to be amputated had he survived. Dilawar had actually been approved for release at the time of his death.[87] By the time of his final interrogation, his legs had been kicked repeatedly as he hung from the doorway, and he could barely walk. He was delirious, and believed his wife had died and that her ghost had come to the interrogation cell.[88]

Joshua Claus was one of the interrogators, and he was convicted for his conduct, which included grabbing Dilawar by the collar and yanking his head straight, forcing him to drink water, and ramming his hood down on his head. In an interview with Task Force staff, Claus asserted that his commanding officer, Captain Carolyn Wood, had repeatedly asked for guidance about how to treat detainees and received no answers:

> We had no lines. And we asked thousands of times. Where are our lines? Define it! Captain Wood would ask that once a week. Ok, what's our rules? Where are our boundaries. You are saying these don't matter but what are the new ones?…
>
> I remember Captain Wood and Sgt. Loring in our meetings saying: OK, we have no guidelines but we are going to try to get some for you. And she'd go to those meetings. That's why JAG would come through. We would randomly see her wandering through with eagles, stars, and in suits and ties. And you are like, who are you people? Please give us something we could use.
>
> So I don't understand why people kept bitching at us saying we are evil. [89]

The initial investigation of the deaths was abortive. The MPs convinced the first set of criminal investigators that the blows they'd dealt to the legs of Dilawar and Habibullah were completely authorized and routine. Angela Birt was at the Criminal Investigative Division and told Task Force staff she was shocked that the investigators didn't pursue it at first.

> I'll be really candid. [The investigators] drank the Kool-Aid. They wrote reports saying these were authorized use of force and that these were accidental deaths. … They really believed it was authorized, and I could never understand where they got that from. …
>
> To me it was a great big billboard: "Murder, Murder, Murder!" And it was on the death certificate: Homicide. And I didn't understand how we got from there to "Oh, it was just an accident." You don't accidentally hang someone from a ceiling and beat them to death.[90]

Eventually a serious investigation into the deaths led to 27 people being charged for abusing Dilawar, Habibullah, and other Bagram prisoners. But the longest sentence was for Claus, who received a total of five months after pleading guilty. Private William Brand, the MP who allegedly caused Dilawar's death by kneeing him repeatedly in the thigh, was reduced in rank.[91]

The sentences were so low in part because of testimony from multiple witnesses corroborating the defendants' claims that there were no clear rules on how soldiers could treat "persons under control" in Afghanistan, and many of the abusive techniques were common knowledge. Sergeant Betty Jones, a soldier who often passed through the prison but was not assigned as a guard or interrogator, said in a sworn statement to military investigators that:

> when they would first bring the PUC's [persons under control] in, the detainees were thrown on the floor with their feet and hands bound and hoods and they would let the dogs with muzzles walk on the detainees with the dogs growling in their ear. It was a big joke.[92]

Asked who, besides those implicated in the deaths, was aware of the use of sleep deprivation, standing restraints, and "peroneal strikes," Jones replied:

> Everybody. People would come to the prison all the time. Everyone at Bagram wanted to see the prison. Everyone that is anyone went through the facility at one time or another.[93]

Jones said that she had directly witnessed prisoners with their arms handcuffed over their heads for "hours and hours," but had only heard from another soldier about detainees being beaten. She reported this before the deaths, but her commander "told me to stay out of the prison because it was none of my business." [94]

Another Sergeant, Marianne Plummer, testified that

> When they first came in, it was a form of punishment, but it was also used to keep them awake, make sure they stood up, and MI [Military Intelligence] directed that we'd have them stand and be chained.[95]

Plummer said it was "standard procedure" to imprison detainees in the isolation cells when they first came to the facility, and chain them to the ceiling:

> [T]he chaining was over the head with arms outstretched some. The chaining could have had the hands above the head. It was two positions. It was whoever chained them up who made the decision how the hands would be placed.[96]

Major Jeff Bovarnick, the staff judge advocate stationed there, told military investigators that sleep deprivation, enforced by shackling detainees in a standing position, was authorized at Bagram:

> [P]eople were consistently shackled to the airlock, even during the ICRC visits. No effort was made to hide it. They were restrained with their hands cuffed together and the cuffs were affixed to the airlock at about waist level.[97]

Asked what the legal justification was for this, Bovarnick replied that Army Regulation 190-8, which contains detailed prohibitions against mistreatment of detainees, did not apply because of the decision that the detainees were unprotected under the Geneva Conventions. The ICRC argued that violated the administration's stated policy of humane treatment, particularly an incident where a prisoner "was kept chained to the ceiling for over a day." Bovarnick said that the military police captain, Christopher Beiring, denied the allegation about chaining to the ceiling, and he did not believe chaining the hands at waist level or eye level was "inhumane." He stated that Colonel David Hayden, the leading staff judge advocate in Afghanistan, agreed with this conclusion.[98]

Hayden, in a video obtained by documentary filmmaker Alex Gibney, says the following about the prisoners' deaths:

> This is not a hotel. This is not a place for them to get fat, lazy and happy. … There was an approved technique for the MPs when somebody was a difficult prisoner that you could hit them on the legs. It was supposedly considered not a lethal blow. Over two days, everybody's hitting you in the legs, it can cause some severe problems.[99]

In 2004, military investigators asked Hayden if the findings of Dilawar's and Habibullah's autopsies showed that "excessive force" was used. Hayden replied that based on what the first CID agents told him,

> I can't say that. If you wanted to call anything excessive it would have been the repeated blows over time. However, at the time, it was reasonable to conclude … that repetitive administration of legitimate force resulted in all the injuries we saw.[100]

A January 24, 2003 memo from Lieutenant Robert Cotell, the deputy staff judge advocate for Afghanistan to the DOD Working Group describes techniques that had previously been used in Afghanistan, including: (1) sleep "adjustment," defined as "four hours of sleep every 24 hours, not necessarily consecutive"; (2) up to 96 hours of isolation; (3) the use of "safety positions"; (4) hooding during interrogation; (5) removal of light and sound; (6) use of an individual's fears; (7) the use of female interrogators to create "discomfort"; and (8) mild physical contact.[101]

It is not clear exactly where the use of shackling to the ceiling to enforce sleep deprivation originated. Birt believed that the MPs in the 377th were simply "lazy" and wanted to avoid having to check to make sure the detainees were awake. But Marianne Plummer testified that military intelligence directed the MPs to do it. The technique is also strikingly similar to descriptions of prisoners being shackled in standing positions for extended periods at CIA facilities in Afghanistan, one of which was located at Bagram Air Base. The court-martial documents demonstrate that there was some contact between the CIA and the interrogators from the 519th. One interrogator, Jennifer Higginbotham, testified that interrogators from the military and "Other Governmental Agencies" would attend daily briefings together, and sometimes discussed specific interrogation techniques.[102]

Iraq

In Iraq, unlike Afghanistan and Guantánamo, the Geneva Conventions were acknowledged to provide some protections. On May 7, 2004, shortly after photographs of guards abusing prisoners at Abu Ghraib became public, Rumsfeld testified to Congress that soldiers' "instructions are to, in the case of Iraq, adhere to the Geneva Conventions. The Geneva Conventions apply to all of the individuals there in one way or another." [103]

This was not a complete picture, however. First, many prisoners in Iraq were interrogated by the CIA or by Joint Special Operations Command (JSOC) troops, who did not answer to the same chain of command as the regular military and did not consider themselves bound by Geneva. Second, even among the regular military, there was widespread and pervasive confusion as to whether the Geneva Conventions applied and what protections they provided.

Special Forces and "Other Government Agencies"

Many high-value detainees in Iraq were interrogated by a JSOC task force, which over time was known as Task Force 20, Task Force 121, Task Force 6-26, and Task Force 145. The task force was originally based at a facility outside the Baghdad International Airport, known as "Camp Nama." It was not under the authority of General Ricardo Sanchez, the overall commander of U.S. troops in Iraq; Sanchez later said he did not even know what techniques the task force was authorized to use. An interrogator based at Camp Nama in the first half of 2004 described to Human Rights Watch his unusual chain of command:

> I didn't have any contact with my normal uniformed battalion. [Task Force 121/6-26] was my new chain of command for several months. … There was no rank as far as team member or interrogative analyst and so forth. Everybody was in civilian clothes. There was no rank.[104]

The interrogator said there was a colonel who was "actually in charge of this," but

> We called the colonel by his first name, called the sergeant major by his first name. …I couldn't tell you the sergeant major's last name if I tried. Same with the colonel. A lot of my fellow interrogators, I didn't know their last names either. … [W]hen you asked someone their name they don't offer up the last name. … [M]ore often than not, when they gave you their name it probably wasn't their real name anyway.

In addition to Special Forces personnel, the interrogator said, he worked with the CIA, who were stationed at another building nearby. Because of the level of secrecy, "[w]e knew that we were only a couple steps removed from the Pentagon, but it was a little unclear, especially to the interrogators who weren't really part of that task force." [105]

According to the DOD inspector general and the Senate Armed Services Committee, the task force's written standard operating procedures (SOPs) authorized sleep deprivation, loud music, stress positions, "light control," and the use of military dogs. Although not in the written SOPs, nudity was also commonly used, with the knowledge of the task force's commander and legal advisor.[106]

In the summer of 2003, Brigadier General Lyle Koenig, then the head of the task force, asked Colonel Randy Moulton, the commander of the Joint Personnel Recovery Agency (JPRA), for help with interrogation. Moulton had been corresponding with Bruce Jessen and others about the possibility of using SERE techniques against detainees since February of 2002.[107]

JPRA sent a team of three people led by Lieutenant Colonel Steven Kleinman, its senior intelligence officer. On September 6, Kleinman "walked into an interrogation room all painted black." A detainee was kneeling on the floor, and a Special Forces interrogator was asking him questions, and slapping his face with every response. Kleinman stopped the interrogation and told the interrogator it was a violation of the Geneva Conventions. Kleinman later stopped interrogators from implementing a plan that called for sleep deprivation and holding a detainee in stress positions for hours at a time, and informed Moulton and the task force commander of what he had done. [108]

But Moulton, after consulting with task force commander, told Kleinman that the JPRA team

was authorized to use the full range of SERE techniques on prisoners, including "walling, sleep deprivation, isolation, physical pressures (to include various stress positions, facial and stomach slaps, and finger pokes to the chest, space/time disorientation, [and] white noise.)" [109]

Kleinman spoke repeatedly to the special operations task force commander and legal advisor, and got the impression they agreed with his concerns and his decision to refuse to participate in abuse, but "it seemed to fall into a void. … [T]here were never any orders issued." [110] After one Army Ranger sharpened a knife near his face, and warned him not to sleep too soundly, Kleinman wondered if his life was in danger.[111]

Shortly before Kleinman's team visited Iraq, the task force legal advisor expressed similar concerns to Lieutenant Colonel Diane Beaver. As summarized by the Senate Armed Services Committee's Report:

> According to LTC Beaver the SMU TF legal advisor raised concerns with her about physical violence being used by SMU TF personnel during interrogations, including punching, choking, and beating detainees. He told her he was "risking his life" by talking to her about these issues.[112]

Many other sources have made similar allegations about the task force's overt noncompliance with the Geneva Conventions, and hostility to those who reported violations. Retired Colonel Stuart Herrington learned of similar allegations in December 2003, when he visited U.S. interrogation facilities in Iraq at the request of General Barbara Fast. Herrington provided (TCP) Task Force staff with a copy of his report, which states that his team learned from an officer at the Iraq Survey Group (ISG) detention and interrogation facility (JIDC) at Baghdad airport that

> prisoners arriving at his facility who had been captured by Task Force 121 showed signs of having been mistreated (beaten) by their captors. … Detainees captured by TF 121 have shown injuries that caused examining medical personnel to note that "detainee shows signs of having been beaten."… I asked the officer if he had reported this problem. He replied that "Everyone knows about it." [113]

Herrington said he had heard similar allegations from a former ISG JIDC employee before traveling to Iraq. The same employee told investigators in August 2004 that "by mid-June 2003, a pattern of reports of abuse of prisoners" by the task force "was coming to me" from the interrogators at Camp Cropper.[114] The ISG employee had relayed these reports to his superiors, but nothing came of them. According to Herrington, his source eventually "gave up and asked to leave. Asked to depart theater. He didn't want to have anything do with it." [115]

Herrington's report also describes discussions with "an interagency representative," most likely from the CIA, who told him that the agency had been directed not to have contact with Task Force 121's interrogation facility.[116] This is consistent with a later *New York Times* report that the CIA had barred its personnel from Camp Nama in August 2003. [117] Herrington concluded, "[I]t seems clear that TF 121 needs to be reined in with respect to its treatment of detainees." [118]

In March or April 2004, the CJTF-7 legal advisor's office wrote to Herrington that they had investigated his sources' allegations and found no evidence of mistreatment. Herrington said

he expressed "blunt dismay" and incredulity at this conclusion, and said his source "could be excused for thinking this is a cover-up." [119]

The Camp Nama interrogator who spoke to Human Rights Watch, meanwhile, had witnessed several weeks of abuses. He and several colleagues had gone to the colonel in charge of the facility, and told him they were "uneasy" with the detainees' treatment:

> And within a couple hours a team of two JAG officers, JAG lawyers, came and gave us a couple hours slide show on why this is necessary, why this is legal, they're enemy combatants, they're not POWs, and so we can do all this stuff to them and so forth. … And then they went on to the actual treatment itself … that's not inhumane because they're able to rebound from it. And they claim no lasting mental effects or physical marks or anything, or permanent damage of any kind, so it's not inhumane.[120]

The interrogator said that neither the ICRC nor the Army's Criminal Investigative Division had access to Camp Nama. Theoretically, he could have gone to his normal unit's chain of command and reported to CID, but he had been told on his first day at the camp that he was not allowed to disclose anything that happened at the Special Forces facility to his normal command.[121] According to Angela Birt, if he had reported to Army CID there was little they could have done:

> [A]ny investigations that came out of [JSOC facilities] were referred to a couple of agents embedded with the folks at Fort Bragg. And they operate and work directly for them. And as soon as we saw something visible to us that belonged to them we had to hand it over. You don't see it again. We'd hear about it from other detainees but as soon as we referred something it went into a black hole and we never saw it again.[122]

But the reports of abuse kept coming. According to *The New York Times,* an FBI agent on June 25, 2004, emailed his superiors and alleged that a detainee captured by Task Force 6-26 alleged torture, and had suspicious burn marks on his body.[123] The same day, Vice Admiral Lowell Jacoby wrote to Undersecretary of Defense for Intelligence Stephen Cambone, alleging that two Defense Intelligence Agency (DIA) personnel had observed prisoners arriving at a detention facility "with burn marks on their backs. Some have bruises, and some have complained of kidney pain." A DIA interrogator had also witnessed "TF 6-26 officers punch a prisoner in the face to the point the individual needed medical attention." When DIA personnel objected, task force members confiscated their keys, confiscated their photographs of detainees' injuries, forbade them from leaving the compound, and threatened them.[124]

The next day, Cambone wrote a handwritten note on Jacoby's report to his deputy, Lieutenant General William G. Boykin, ordering him to "[g]et to the bottom of this immediately. This is not acceptable." [125] The results of Boykin's review have never been made public, but a 2006 inspector general's report (OIG report) suggests that DOD leadership ultimately sided with the Special Forces task force. The OIG report states that "the disagreements between the DIA and special mission units were not reconciled to the benefit of all those conducting interrogation operations in Iraq." Instead, the DOD seems to have concluded that the problem was "disaffected interrogators from DIA who were not prepared for the demanding and exacting pace of operations." [126]

The Special Mission Unit task forces and the CIA did not confine their activities to Camp Nama. They also operated at different locations around Iraq, and are connected to several detainees' deaths in detention, including Dilar Dababa, Manadel al-Jamadi, Abed Hamed Mowhoush, and Abdul Jameel.

Manadel al-Jamadi is sometimes called the "Ice Man," because there are notorious photographs of Abu Ghraib guards Sabrina Harman and Charles Graner posing with his ice-packed corpse. On November 4, 2003, he was arrested by a team of Navy SEALs and CIA agents. Al-Jamadi struggled violently; even after he was subdued he was reportedly struck and "body slammed into the back of a Humvee." He was interrogated in a CIA facility, and then driven to Abu Ghraib.[127]

Several of the military police present when al-Jamadi was arrived have spoken to government investigators and journalists about what happened next. One MP, Jason Kenner, told military investigators that al-Jamadi was naked from the waist down when he arrived at the prison, with a bag over his head. Two CIA personnel (whom guards referred to as "OGA," an abbreviation for "Other Government Agency"), an interrogator and a translator, asked Kenner and another MP to take him to tier one. Kenner said they placed al-Jamadi in an orange jumpsuit and steel handcuffs, which was "common procedure" for CIA prisoners, and

> walked the prisoner to the shower room on Tier 1B. … The OGA personnel followed behind us. The interrogator told us that he did not want the prisoner to sit down and wanted him shackled to the wall. I got some leg irons and shackled the prisoner to the wall by attaching one end of the leg irons to the bars on the window and the other end to the prisoner's handcuffs.[128]

The window was five feet off the ground. According to Kenner and another MP, Dennis Stevanus, there was enough slack that al-Jamadi could stand with his legs supporting his weight, but not if he slumped forward or kneeled. The MPs exited the shower room, leaving al-Jamadi with CIA interrogator Mark Swanner and a contract interrogator.[129]

According to a National Public Radio (NPR) report, the CIA personnel involved told investigators that al-Jamadi had been talking "about the city of Mosul and hating Americans, when all of a sudden he dropped, falling to at least one knee. … [T]hey immediately called for a medic." [130]

The MPs contradicted this. Walter Diaz stated that Swanner had called the MPs in, and asked them to re-shackle al-Jamadi's hands higher on the window frame, even though his arms were already

> almost literally coming out of his sockets. I mean, that's how bad he was hanging. The OGA guy, he was kind of calm. He was sitting down the whole time. He was, like, "Yeah, you know, he just don't want to cooperate. I think you should lift him a little higher." [131]

Diaz asked for help from two other MPs, Stevanus and Jeffrey Frost, to lift al-Jamadi up and re-fasten the handcuffs. Frost said that Swanner assured them the detainee was just "playing possum," [132] but when they released him,

> [h]e didn't stand up. His arms just kept on bending at this awkward — not

> awkward position, but it was — you know, I was almost waiting for a bone to break or something and just thinking, you know, this guy — he's really good at playing 'possum.[133]

The MPs removed al-Jamadi's hood, and realized that he was dead. When they lowered him to the floor, according to Frost, "blood came gushing out of his nose and mouth, as if a faucet had been turned on." [134] The military autopsy classified the death as a homicide, caused by "compromised respiration" and "blunt force injuries" to the head and torso, including several broken ribs. Other pathologists who reviewed the autopsy report believed that what was fatal was the combination of the broken ribs and al-Jamadi's position. Dr. Michael Baden, the chief forensic examiner for the New York State police, told Jane Mayer, "You don't die from broken ribs. But if he had been hung up in this way and had broken ribs, that's different. … [A]sphyxia is what he died from — as in a crucifixion." [135]

Lieutenant Andrew Ledford, a Navy SEAL from the unit that captured al-Jamadi was court-martialed, but acquitted based on evidence that he did not cause al-Jamadi's death. No CIA officer was ever charged. According to AP, a grand jury was convened, and focused not on Swanner but on the role of a former CIA officer named Steve Stormoen, who ran the agency's "detainee exploitation cell" at Abu Ghraib. The AP reported that Stormoen had processed al-Jamadi into Abu Ghraib, but was not present in the room where he died, and that he had been reprimanded after an internal CIA probe for permitting agents to "ghost" prisoners, *i.e.,* detain them without registering them or acknowledging their identity, without headquarters authorization. The grand jury also reportedly heard testimony about a CIA employee nicknamed "Chili," who was at Abu Ghraib the day al-Jamadi died and still works for the agency.[136]

But the grand jury did not lead to any indictments, and it is unclear whether the Department of Justice ever proposed any indictments. On August 30, 2012, Attorney General Eric Holder released a statement that no charges would be brought because "the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt." [137] The DOJ declined to elaborate further, or respond to questions about the investigation.

Charles Graner, the soldier who received the longest prison sentence for abusing prisoners at Abu Ghraib, spoke to Army investigators about "Chili" in April 2005. Graner said that Chili had said he was an FBI contract worker, but "lo and behold he ends up being the interrogator over the analyst that the fellow in the shower dies with." [138] He also described another incident where Chili and his colleagues were interviewing a detainee in the back stairwell, and "drug him back unconscious to his cell." [139]

The MPs' handwritten log books corroborate Graner's allegations about CIA involvement in interrogation, though they use euphemisms. The entry that, according to Graner, corresponded to the detainee being carried unconscious from the stairwell reads simply: "OGA in cell 13 was taken away will be taken off of the count at this time." [140] The only record of al-Jamadi's death is an entry stating: "Shift change Normal relief 1 OGA in IB shower not to be used until OGA is moved out." [141]

One entry from November 11, 2003 is more explicit, stating:

> The 4 new OGA's are in 2, 4, 6, and 8 they are to have no contact with each

> other or anyone else — they are not to sleep or sit down until authorized by OGA personnel also we were informed that all four are neither hungry nor thirsty.[142]

Walter Diaz also reported that the CIA routinely interrogated "ghost prisoners" at Abu Ghraib. According to Diaz, the agency "would bring in people all the time to interview them. We had one wing, Tier One Alpha, reserved for the O.G.A. They'd have maybe twenty people there at a time." Diaz said, "We, as soldiers, didn't get involved. We'd lock the door for them and leave. We didn't know what they were doing," but "we heard a lot of screaming." [143]

Major General Antonio Taguba and Major General George Fay confirmed that MPs held "ghost detainees" for the CIA. Taguba reported that one MP unit had helped hide detainees from a visiting Red Cross survey team.[144] Fay found that Lieutenant Colonel Steven Jordan "became fascinated with the 'Other Government Agencies,' a term used mostly to mean Central Intelligence Agency (CIA)," and "allowed OGA to do interrogations without the presence of Army personnel." [145]

In addition to the criminal investigation, the CIA's Office of the Inspector General (OIG) investigated al-Jamadi's killing before the case was referred to DOJ. But the OIG report itself remains classified, and courts have ruled that the CIA is not required to disclose it under the Freedom of Information Act.

The Army CID file on al-Jamadi's death does provide some clues as to the CIA OIG's conclusions. According to the CID file, OIG personnel "advised their investigation had revealed that the CIA personnel involved in the interrogation of [al-Jamadi] had not been entirely truthful in their accounts of the incident, but declined to provide specifics." [146] One individual whom the CIA OIG interviewed "had admitted removing the sand bag that was used to hood [al-Jamadi]," and his explanation for its removal was "not believable." [147] The individual in question claimed that he had taken the bag to keep it secure in the event of an investigation, and had given it to a security officer, but "further information had not corroborated this statement." [148] The hood was never recovered.

On November 10, less than one week after Manadel al-Jamadi's death, former General Abed Hamed Mowhoush turned himself in to U.S. troops at Forward Operating Base Tiger near the border with Syria. On November 21, he was moved to a temporary detention facility in an old train station, known as the "Blacksmith Hotel." Chief Warrant Officer Lewis Welshofer, a former SERE trainer, took charge of Mowhoush's interrogation.

On November 24, according to classified documents obtained by *The Washington Post*, Mowhoush was interrogated by a CIA operative referred to as "OGA Brian" and a team of Iraqi paramilitaries working for the CIA, known as "the Scorpions." The Iraqis "were hitting the detainee with fists, a club, and a length of rubber hose." [149] The documents state that this was not uncommon treatment for uncooperative detainees at the Blacksmith Hotel.[150]

At Welshofer's court-martial, the CIA's role in Mowhoush's interrogation was discussed only obliquely. One witness who testified at the court-martial did so anonymously and behind a tarp, to conceal his identity from the public and press.[151] At one point a defense attorney asked the witness if he had reported something "to the CIA," but then stopped himself and apologized to the judge for the reference to the agency.[152]

Several witnesses did testify about the November 24 interrogation. Specialist Jerry Loper, also testifying under a grant of immunity, said that he had escorted Mowhoush to the interrogation room and waited outside. While waiting, "I heard loud thuds and screams. It sounded like he was being beaten." When Mowhoush was brought out half an hour to an hour afterwards, "[h]is hands were severely swollen, and he couldn't walk. His breathing was labored. … It took five of us to get him back."[153] Warrant Officer Jefferson Williams gave a very similar account to Loper's.[154]

Todd Sonnek, a chief warrant officer with the Army Special Forces unit Operational Detachment Alpha, testified that Welshofer had brought in Special Forces troops, civilians, and Iraqis to interview Mowhoush with a "fear-up" technique, and supplied the Iraqis with the questions to ask. Sonnek testified that "from start to finish, this was Chief Welshofer's interrogation," though he acknowledged that Welshofer was not actually the one asking the questions and did not have "supervisory or operational control over the Iraqis." Sonnek claimed that Mowhoush had tried to "strike out" and needed to be subdued, and denied that Mowhoush was unable to walk unassisted afterwards.[155]

Testifying in his own defense, Welshofer acknowledged that he was present for the November 24 incident but denied he was in control of it:

> 5 minutes into his interrogation, when he continued to deny, deny, deny, I noticed other people in the hallway. … I passed control of the interrogation over to these individuals in the hallway. It is not correct that I was in control of the interrogation and that the others were just assisting me. I did not feel I had any command control over those people. … When the general left the room, it was under his own power. I saw what look like a straight piece of radiator hose, a little bit softer material but of the same diameter, as well as a piece of something like insulation that might go around a door, only it was thicker and hollow on the inside with a camouflage net pole down in one end of it. These devices were used to beat the general. There were also some kicks, some slaps.[156]

CIA Director George Tenet refers in his memoirs to "the Agency-sponsored Iraqi paramilitary group known as 'the Scorpions,' " [157] but details of their involvement with Mowhoush's death have not been declassified. The CIA inspector general's office prepared a report on Mowhoush's death, but that also remains classified.

"OGA" and the Scorpions do not appear to have directly caused Mowhoush's death. According to court-martial testimony, on November 26, Mowhoush was having obvious breathing difficulties at the beginning of an interrogation, but Welshofer nonetheless put him into a sleeping bag, and wrapped it in a cord to hold it in place. (Welshofer said that Mowhoush did not appear to require medical assistance, and he concluded he was using a "resistance technique" of "acting excessively fatigued.") Welshofer asked Mowhoush questions while sitting on his chest, and sometimes obstructing his nose or mouth.[158] Mowhoush died soon after of "asphyxia due to smothering and chest compression," according to the autopsy report.[159]

Welshofer was convicted of negligent homicide, but was sentenced to only two months of confinement to barracks. This was in part because of evidence that his commanding officers knew of the sleeping bag technique and allowed him to use it on a number of detainees. They also condoned a similar technique that involved placing detainees in wall lockers.[160]

Welshofer and his unit continued to use "close confinement" after Mowhoush's death. Major Christopher Layton testified that while investigating the homicide in mid-January 2004, he had traveled to Forward Operating Base Rifles near Al Asad, where Welshofer's unit was based. He saw a sleeping bag and wall lockers in an interrogation room there.[161] Another witness, Gerald Pratt, said that after Mowhoush's death, CID took the original sleeping bag, but "Chief Welshofer procured another one. A detainee came in with a sleeping bag, and Chief got it." [162]

Welshofer has denied that his actions caused Mowhoush's death. In a 2009 interview with CBS, he said he only did what was necessary: "I helped save soldiers lives. I'm 100 percent convinced of that." [163]

Welshofer's unit, the Third Armored Cavalry Regiment, operated out of Forward Operating Base Rifles in Al Asad. Another detainee, 47-year-old Abdul Jameel, died there on January 9, 2004. According to Jameel's autopsy, his death was a homicide, caused by

> blunt force injuries and asphyxia. … According to the investigative report provided by U.S. Army CID, the decedent was shackled to the top of a doorframe with a gag in his mouth at the time he lost consciousness and became pulseless.
>
> The severe blunt force injuries, the hanging position, and the obstruction of the oral cavity with a gag contributed to this individual's death.[164]

Another document summarizing the autopsy report describes the circumstances of death as: "Q by OGA, gagged in standing restraint." [165] In addition to being gagged and shackled, the detainee had suffered "the fracturing of most of his ribs and multiple fractures of some of his ribs," and a fractured hyoid bone.[166]

CID investigators concluded that a series of incidents had contributed to Jameel's death. Jameel was captured by Operational Detachment Alpha 525 (ODA 525) of the 5th Special Forces Group on January 4, 2004. CID found that one soldier had kicked Jameel in the chest several times after he was already restrained in zip-ties.

On January 6, 2004, guards and other detainees saw masked interrogators take Jameel out for interrogation. He returned with severe bruises on his abdomen, and told other detainees and guards that he had been beaten.[167] One detainee said Jameel had difficulty breathing. Three soldiers in ODA 525 and one interpreter claimed that Jameel had attacked them, attempted to grab one of their weapons during interrogation, and they had been forced to strike him repeatedly for one to two minutes in order to subdue him because "[h]e was strong and fought back," demonstrating "extreme resistance." [168] CID investigators noted this conflicted with other descriptions of Jameel as appearing to be frail and in poor health.[169] The summary of Jameel's interrogation on January 6 did not mention any struggle, and CID concluded that the interrogators' account of the incident could not credibly account for the extent of Jameel's injuries.[170]

At approximately 2 am on January 9, Jameel allegedly tried to escape from the isolation/sleep deprivation area. After he was re-captured, a soldier in the 3rd Armored Cavalry Unit used an MP baton to force Jameel to a standing position, by placing the baton under Jameel's chin and lifting. CID investigators concluded that this had broken Jameel's hyoid bone, an injury that

directly contributed to his death. CID also found that several soldiers had conspired to give a false account of the details of Jameel's attempted escape.[171]

Finally, shortly after 7 am on January 9, Jameel was "repeatedly ordered … to stand as part of a mass punishment" of detainees for talking.[172] Jameel did not obey. According to military doctors, based on the number and manner of Jameel's broken ribs and other injuries, he "would have been in great pain and would have had great difficulty breathing and would not have been able to walk." [173] Soldiers handcuffed him to the door frame of his cell in a standing position, and forced a gag into his mouth after he "refused to stop making noises." [174] Five minutes later, he was dead.[175]

No one was ever prosecuted for Jameel's death, despite criminal investigators' recommendation of charges against 11 soldiers. According to an Army document,

> The command, with the assistance of advice of command legal counsel, determined that the detainee died as a result of lawful applications of force in response to repeated aggression and misconduct by the detainee.[176]

The use of stress positions and "close confinement" by Special Forces and the CIA continued into mid-2004, and possibly beyond. An investigation into Special Forces task forces' treatment of detainees by General Richard Formica documented one incident in April or May 2004, in which detainees were held for periods between two and seven days in "small cells measuring 20 inches (wide) x 4 feet (high) x 4 feet (deep)," which did not provide enough room "to lie down or stand up. They were removed from the cells periodically for latrine breaks, to be washed, and for interrogations," and were "not kept in the cells for 72 continuous hours." The same detainees were sometimes kept naked, "blindfolded, sometimes with duct tape," and loud music was played to prevent them from communicating with each other and for "sleep management." [177]

Formica recommended against disciplining soldiers for these incidents. He acknowledged that the tiny cells were "inappropriate for long-term detention," but said they were not used for this purpose:

> Rather, special forces secured combative, resistant detainees in these cells for short periods of time in order to elicit tactical intelligence. … It is reasonable to conclude that this would be acceptable for short periods of time. … [T]wo days would be reasonable; five to seven days would not.[178]

The conclusion that 24–48 hours in these conditions would be acceptable far exceeds the duration of "cramped confinement" authorized by the OLC for Abu Zubaydah. The August 2002 OLC techniques memo stated that confinement in the smaller box, in which the subject could not stand up, would be limited to two hours at a time.[179]

Formica also accepted the explanation that detainees were blindfolded with duct tape "for purposes of force protection and to prevent escape," and found that this was not inhumane. In part, this was because an interrogation policy for special forces troops in disseminated in February 2004 permitted interrogation techniques that had been rescinded for ordinary troops, including sleep deprivation, stress positions, and environmental manipulation.[180]

Formica stated that this had been corrected in May 2004. However, in interviews conducted by

attorneys in July 2007, two former detainees gave detailed descriptions of being imprisoned in tiny cells that detainees called "black coffins" in January 2006.[181] They were arrested together and interrogated about the kidnapping of the *Christian Science Monitor* reporter Jill Carroll, and then taken to a prison near Baghdad airport.[182] There, they alleged, they were held in small wooden cells, painted black, at most one meter wide and one meter high. One detainee stated that he was held there for over a week, and the other for 16 days.[183] Both said that they were continuously handcuffed and hooded, and allowed out of the cells only to use the toilet. One of the detainees said that he fainted twice inside his box, and taken out and given an IV nearby, but afterwards he was returned to the cell: "[e]verything was just the same." [184] These accounts, while detailed and consistent with each other, could not be independently corroborated.

Combined Joint Task Force 7 (CJTF-7)

As to the issue of whether abuses in Iraq fit into those committed by sadistic and unsupervised individuals or abuses authorized at high levels of command, John Sifton of Human Rights Watch stated that detainee abuse in Iraq was

> very widespread, but that doesn't mean it's all the same. There's been spontaneous abuse at the troops' level; there's been more authorized abuse; there's been overlap — a sort of combination of authorized and unauthorized. And you have abuse that passed around like a virus; abuse that started because one unit was approved to use it, and then another unit which wasn't started copying them.[185]

During the summer of 2003, 10 or 12 members of the 519th Military Intelligence Battalion, the same unit implicated in Dilawar's and Habibullah's deaths, traveled to Abu Ghraib to set up interrogation operations there. Captain Carolyn Wood became the officer-in-charge. On July 26, 2003, Wood sent a proposed interrogation policy that included sleep management, "comfort positions," the presence of military dogs, 20-hour interrogations, isolation and light control.[186]

Wood did not hear back from her command about the proposal, and resubmitted it on August 27, 2003. This time, two lawyers from CJTF-7 visited Abu Ghraib, and told her that "they did not see anything wrong with it," and would approve it and forward it to higher-ranking officers for review.[187]

In early September, Major General Miller visited Iraq to advise personnel there about improving interrogations. Several soldiers who met with him recalled him saying that they were treating detainees too leniently. For example, Major General Keith Dayton, also of the Iraq Survey Group, remembered Miller telling him that ISG "not getting much out of these people" because "you haven't broken [the detainees] psychologically." [188]

On September 14, CJTF-7 issued its first theater-wide interrogation policy, signed by General Sanchez. The policy stated that the Geneva Conventions applied, but nonetheless authorized sleep "adjustment," stress positions, the presence of military dogs, yelling, loud music, light control, environmental manipulation, and isolation. The policy went into effect immediately. According to Sanchez's autobiography, his legal advisor, Colonel Marc Warren, told him there was "unanimous agreement" among legal experts in Iraq that "every one of these is authorized by the Geneva Conventions." [189]

At a hearing on May 19, 2004, Sen. Jack Reed of Rhode Island asked Warren how he could have concluded that those techniques complied with Article 31 of the Fourth Geneva Convention, which states that "physical or moral coercion shall not be exercised against protected persons, in particular to obtain information from them or from third parties." Warren stated that they were permitted "when applied to security internees, in this case who are unlawful combatants," and who "would have been permissibly under active interrogation."[190]

A December 24, 2003, letter from the military to the Red Cross explains this interpretation in more detail. Warren apparently relied on Article 5 of the Fourth Geneva Convention, which states that if a party to a conflict

> is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State. … [S]uch persons shall nevertheless be treated with humanity.

The letter cites this provision to argue that security detainees are not eligible for full protection under the Fourth Geneva Convention, and "in the context of ongoing strategic interrogation … we consider their detention to be humane." [191] This interpretation replaces the Fourth Geneva Convention's protections with the same vague requirement of "humane treatment" that applied in Guantánamo and Afghanistan.

At Central Command, Major Carrie Ricci disagreed with Warren's interpretation. She stated that many of the techniques in the September 14 policy violated the Third and Fourth Geneva Conventions, and should not be authorized.[192] On October 12, 2003, Sanchez released a new directive, which listed only techniques included in Field Manual, and stated that requests for unlisted techniques had to be submitted to him in writing.[193]

Many have argued that Sanchez's second memo demonstrates that any subsequent abuses in Iraq were a function of undisciplined, sadistic soldiers, not policy. This is particularly true of the notorious Abu Ghraib photographs, which have been denounced by even the most ardent defenders of "enhanced interrogations." Vice President Cheney described them as "deeply disturbing. The behavior recorded in them was cruel and disgraceful and certainly not reflective of U.S. policy." [194] John Yoo denies any connection between the OLC memos he wrote and "what happened at Abu Ghraib. Abu Ghraib featured terrible examples of physical and sexual abuse, imposed not in any interrogation context, but as sadistic entertainment when higher officers were not present." [195]

Some photographs do fit Yoo's description, and it was these incidents on which the court-martial convictions of Charles Graner, Ivan Frederick, Lynndie England, and the other night-shift MPs rested. Captain Christopher Graveline, the lead Army prosecutor on the cases, later stated that his team had avoided "charging MPs if there was even a hint of MI involvement that may have led to confusion about how detainees should be treated." [196] Instead, Graveline focused on a few incidents where the detainees involved were never interrogated by MI — a fact that he believed put "a stake in the heart" of the defendants' claim that they were just following orders from interrogators.[197]

But many of the Abu Ghraib photographs depict abuses that began before Graner's unit arrived at the prison, and were widely condoned if not actually authorized. Brent Pack, the CID agent who examined the Abu Ghraib photographs, later told journalists that he asked of each photo, "[D]oes this one actually constitute a crime or is it standard operating procedure?" Pack regarded nudity and stress positions as "standard operating procedures." [198]

Damien Corsetti, an MP from the 519th Military Intelligence Brigade, has stated that his unit "set the same policies in Abu as we set at Bagram. The same exact rules." [199] A September 16, 2003, entry from the logbooks kept by the 72nd MP Company corroborates this, stating that a detainee "was stripped down per MI and he is [naked] and standing tall in his cell." [200]

The Red Cross came to a similar conclusion based on visits to Abu Ghraib in mid-October 2003, where they "witnessed the practice of keeping persons deprived of their liberty completely naked in totally empty concrete cells and in total darkness, allegedly for several consecutive days." [201] When they demanded an explanation, "[t]he military intelligence officer in charge of the interrogation explained that this practice was 'part of the process.' " The ICRC also witnessed sleep deprivation, threats, and detainees being "handcuffed either dressed or naked to the bed bars or the cell door." Its medical officer observed both physical and psychological symptoms resulting from this treatment, including bruising and cuts around the wrist, "incoherent speech, acute anxiety reactions, abnormal behavior, and suicidal tendencies." [202]

Lewis Welshofer's court-martial demonstrates that the belief that the "gloves were off" extended to the Blacksmith Hotel, FOB Rifles in Al Asad, and FOB Tiger in Al Qaim.[203] Other soldiers have testified to widespread abuse at a facility in Mosul, known informally as "The Disco," [204] and FOB Mercury, in Falluja.[205]

The most troubling report may be the description from a unit stationed at Forward Operating Base Lion, near Balad, where six soldiers told reporter Joshua Phillips that they had routinely tortured detainees.[206] Two soldiers from that unit, Adam Grey and Jonathan Millantz, died in possible suicides, and in Millantz's case, it seems clear that his death was linked to remorse over his actions. Millantz was serving as a medic with his unit, and told Phillips in an initial interview that

> My position pretty much was to take vital signs of prisoners while they were getting, for a lack of better words, questioned or interrogated. And I saw some stuff that really turns my stomach that I'm really not going to disclose.[207]

Millantz later disclosed more details; he said, for example, that one of the techniques they used was stimulated drowning. He also said that he had tried to report the abuse but,

> When I said that these conditions were inhumane for the detainees and, um … All my opinions were shut — shut down, basically. And I just, I was just told to, you know, mind my own business and do my job, and "don't make a fuss, don't make a scene."…
>
> It was beat into our brains the entire time we were there: "This is a company level operation. Do not talk about it. Do not tell anybody about this." [208]

Of course, this is very far from typical of units serving in Iraq, most of whom treated prisoners honorably and in accordance with the law. But it does illustrate the danger of relaxing the long-

standing prohibitions against mistreating detainees whom soldiers may hold responsible for their friends' deaths.

A Pentagon survey of 1,700 U.S. troops serving in Iraq in 2007 found that approximately 10 percent acknowledged gratuitously mistreating civilians or damaging their property. Less than half would report a fellow soldier for immoral actions, and more than a third believed that torture should be allowed to save the lives of another soldier.[209] Soon after that survey was released, General Charles Krulak and General Joseph Hoar, retired commanders of the Marine Corps and U.S. Central Command, wrote:

> As has happened with every other nation that has tried to engage in a little bit of torture — only for the toughest cases, only when nothing else works — the abuse spread like wildfire, and every captured prisoner became the key to defusing a potential ticking time bomb. Our soldiers in Iraq confront real "ticking time bomb" situations every day, in the form of improvised explosive devices, and any degree of "flexibility" about torture at the top drops down the chain of command like a stone — the rare exception fast becoming the rule.[210]