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Q: One of the questions was on your 2004 Memo; I have a hunch who ordered the hygiene investigations...was it you who ordered it?

A: No, I think it may have been Rumsfeld who ordered the investigation, following Abu Ghraib. But I don't know exactly who it was.

Q: Your understanding was that the investigation....

A: There were a number of investigations of course, each of them inadequate, by the way. We did a number of internal investigations, something like 12 or 14, and the number has probably increased since I was there at the Navy. But this happened after Abu Ghraib, of course, when it came to the public attention.

Q: And those were just the number of Navy investigations?

A: No, no, this is the Inspector General—like for example, after Abu Ghraib, and again, let me preface this, that, in my vantage point, I had very imperfect knowledge about these kind of matters. I wasn't in the chain of decision or chain of command for detainee operations or detainee policy. None of the service secretaries were, with the exception of the secretary of the army, who had executive agent responsibility for detainee operations very early after 9/11. Cause they had the bulk of the assets, so Secretary White at the time had been in charge of matters. After Abu Ghraib, then clearly there's pressure on Secretary Rumsfeld and the department, to investigate. And I say that "investigate," somewhat within quotation marks, because they had, at least at a certain level, a pretty clear sense of what was going on. And they also had a sense of the interagency picture, which we completely lacked at...anyways, going back to my situation. My involvement in detainee management was at first wholly self-initiated, because I did not, in the ordinary course of business receive any kind of reports, as the Secretary of Labor did not have any responsibilities for any of these kinds of matters. So take Guantanamo for example, it was a naval base, the department of the navy had no operational responsibility for the FAT operations which were part of SOUTHCOM, then reporting to the Joint Staff and Secretary of Defense through normal operational military channels, so Navy was the custodian and the landlord of the base, we maintain the facility, but what happened within the detention camp - Camp X-Ray and then the other detention facilities - was in a separate chain of command which the Department of the Navy did not have visibility to, at first.

Q: Maybe it would be more efficient to do it chronologically, and again these are some of the things you have said before. So I apologize. So you got involved not directly, but this is when Dave Brant came to you essentially. He comes to you and tells you about this, and your reaction is, you're a bit shocked and appalled?

A: We were meeting on other matters, Dave Brant--- reported to me as the navy general counsel, *inaudible* started reporting to the Navy General Counsel after Tailhook – it was taken away from the JAG chain, it was reported when NCIS became unable to investigate what happened in that hotel hallway and the rooms for a few hours. And the first person to lose his job as a result of the failure to investigate was the Secretary of the Navy. And the subsequent Secretary of the Navy said I'm never going to be in a position again where the quality of the investigations is compromised. I'm pooling NCIS who bring it directly into myself, reporting to me and I'm going to task the General Counsel ---- the day-to-day supervisor—

Q: Did the first Secretary of the Navy then become head of the Secret Service?

A: No. No. What happened was, Dave Brant was a former Secret Service.

Q: So your reaction is not only shocked and appalled, but your first presumption is that this is not official policy, this is a rogue group?

A: Dave Brant comes to me, takes me aside, so I'm in my first office when I was in the Pentagon, because business renovations, then the *inaudible* but it was in the Naval Leadership Corridor, next to the Commandant of the Marine Corps on the one hand, and the Vice Chief of Naval Operations, and a very large room with a conference table, we had a meeting and then he takes me aside and says, "Look we're getting credible reports of detainee abuse in Guantanamo. Do you want to hear more?" And David and I had a very close relationship at this point because after 9/11, and we had it before 9/11, the relationship accelerated after 9/11 because he's just a great guy, a great outfit.

Q: But he wanted to know if you wanted to hear?

A: Yeah, which was a very elegant way of asking in an unspoken subtext is, "Or is this too hot for you?"

Q: Do you want to get involved?

A: This was an elegant way to give me the option to get engaged or to not get engaged. And my instantaneous response was, *inaudible*. And he said, "Okay, we'll come back tomorrow with the full team and some people who have been down at Guantanamo. We'll give you the whole account tomorrow morning." And they did. They came back tomorrow with a larger team. And that took me through, and at that meeting I invited my Deputy General Counsel Bill Molzahn, I invited Mike Lohr, who is the Navy JAG, Kelly Sandkuhler who was the Marine Corps SJA. I think Kevin couldn't attend that meeting—I've indicated who was present at the meeting in other records, I think Kevin was out of the office so I'm not sure *inaudible*. I say this because, from the start of my tenure, I had a policy which I maintained throughout that I'm regarding my JAG colleagues as full partners in the operation, even though I was Chief Legal Officer of the Department of the Navy, I never felt it appropriate or wise to act as the Chief Legal Officer of the Navy. I wanted to move forward as a team, so I needed a policy to discuss all matters of significance to them and to get *inaudible* to the

operations of the Office of General Counsel. And work on these kinds of issues before. Also, the role of Chief Legal Officer of any military department is not without a degree of controversy and subtlety, because the military is not in the chain of command, civilian military chain of command, and I was always very careful not to presume or interfere with that, so the JAG officers, “The JAGs,” also have a degree of autonomy from the civilian—from both the Secretary of Navy and the General Counsel—and I didn’t want to presume that, and to rule by brute force. And I never did, I never exercised—

Q: We’re going to come to a situation where a DOD Chief, General Counsel, had a different approach.

A: And Mary Walker had a very different approach as Air Force General Counsel, which—and the Army General Counsel had very different approaches to these kinds of matters—so I was very much kind of like the odd man out from the Civilian General Counsel too. I mention this because it’s important to recognize that Mike was in the room from the very first moment

Q: Lohr?

A: Mike Lohr. And my practice throughout these events was, I would learn things as a result of my inquiries, or have conversations, and I would fairly regularly go back to Mike and Kevin and give them an account of what I had done when I learned where I intended to go.

Q: So when Brant shows up the next day, at your invitation, Lohr and Sandkuhler are there?

A: No. Lohr was there, I don’t think Sandkuhler was there. And Bill Molzahn, my Deputy General Counsel, was there.

Q: And then at some point you reach out to your counterpart in the Army?

A: Exactly. Immediately after that meeting, it was clear that there was abuse of a sort occurring at Guantanamo. You know, Dave came in, Mike Gelles, who is chief psychologist for NCIS and a national asset because he had been called on by all the other services, by CIA, by FBI, so he was regarded by an expert in the use of psychology in law enforcement and national security issues. For example, he was active at the Ana Belen Montes case. Ana Belen Montes was the DIA officer who was a Cuban spy in working—but, so, understanding her motivation, for example, using tools of psychology to understand the motivation of a spy. But many others, some on the law enforcement side, not the national security side. So they came in with an on-the-run account and what they said was, “Look, we weren’t present, because there are two task forces. There is the criminal task force – this is the team that is entrusted and in charge with, or tasked with, developing the evidence for criminal prosecutions, you know, somewhere down the road. And then there was the intelligence task force that was tasked with developing from the same witnesses or sources, actual intelligence that can be used to defend the country and then to engage in warfighting operation, and it was the intelligence task force that was using these abusive kinds of methods, and NCIS had not been invited to attend, they were not present in the room. But, Guantanamo being a small community,

they heard about this at the mess halls and recreation facilities and gyms and so-forth. And then they went snooping, and because there had not been, then, the secure communications, particularly on the information networks, they were able to tap into the intelligence task force's computers and they extracted transcripts of interrogation sessions, of which they gave me one.

Q: NCIS personnel?

A: NCIS personnel gave me fragments of one interrogation. This is Al-Qahtani though I only learned that years after the fact. It was a number, I think it was like 13 or something like that, so they did not know the name of the detainee, and—(Q: They took it from a computer?) From a computer. So, it was the clearly abusive techniques were going there, but it wasn't, you know, clearly torture. It was just abusive techniques, and they indicated it was used with some, like slapping, and physical pressure, what they described, was the situation where – as they described it, we're seeing the force creep phenomenon. This is an inexperienced, relatively undisciplined (Q: Young) untrained, undertrained group of people that are frustrated. They feel the threat to the United States. They, as well as all of us, were operating under the assumption that there are probably other Al-Qaeda cells in operation and the next attack could come tomorrow or the next hour, and that everything possible had to be done to protect the country, so—what the interrogation task forces evidenced was the phenomenon where they were allowed to use force, coercive force to extract and, given the tenor down in Guantanamo, they all feared that they would be force-creeped, so that they would be using more and more force to the point that it got into brutal and inhumane treatment. It could, if left unchecked, reach to the levels of torture.

Q: And Gelles was the fellow who was most articulate or eloquent about the force creep theory?

A: All of them were articulate. Gelles was—

Q: How about this "force drift" part?

A: Yes. Gelles was completely, he was familiar with all of the literature about interrogation. He was familiar with the medical and scientific literature. There was the Zimbardo experiments, the Stanford experiments, the rest of it, and—knew all this, and was very eloquent, and was very clear about the fact that they thought that [something] was going on. But there were others as well, like *inaudible*. There was another individual who was Deputy Head of the Criminal Investigative Task Force, who had also been in Guantanamo, and another person who was down on the ground ahead of the NCIS mission in Guantanamo—all of them were categorical about their experience. And, by the way, let me mention that, after this presentation came in, Brant and the entire team was very clear that they felt this was almost *inaudible* illegal, it was contrary to all of their training, and they wouldn't participate in this kind of activity even if ordered to do so.

Q: Where did this meeting take place?

A: In my office.

Q: In your office?

A: The same office where Brant came to me the day before and told me about the—

Q: Okay, so they had come as a summons from you and your agreement.

A: Yes. And my reaction, by way of summing up was, I felt that this was un-American, illegal, contrary to international interest, and was an explosive situation that had to be stopped. If—I would try to find out more about it. They also said, by the way, which is important, that there was a rumor in Guantanamo that this had been approved by the higher—the highest authorities.

Q: That was just a—that was in the atmosphere without knowing exactly—

A: Rumor in Guantanamo that this had been approved at the highest levels of the Pentagon, although they had not seen any paper about this matter.

Q: Could we go to the Army General Counsel. That's the next sort of moment in this, is it not? That afternoon?

A: I think it was that afternoon or, at most the next day. Now, this is in my memorandum.

Q: Okay.

A: I have no knowledge of this but what I did know was, because Army was the executive agent, the first place for me to start in inquiring more deeply about this would be Army—and Steve Morello was the Army General Counsel, a colleague, and a friend, and so I placed a call to him. I said, "Look, Steve, I'm hearing reports that there's abuse of detainees in Guantanamo. Do you know anything about this?" And he says, "I know a lot about it. Come on down." It almost knocked me off my chair, you know? Because it was not the answer I was expecting to hear, you know, it's a—typically when you do these kinds of things, you know, the answer you get back, even if somebody's holding a bloody cudgel in his hand, you know, he's taking the call from an interrogation room. "Do you abuse prisoners? No, I—gee," you know, that's the typical reaction, you know, one finds, usually, is to say no. So when Steve said "I know a lot about it, come on down," it was not what I expected to hear.

Q: Did you detect in him that he was uneasy about it, he didn't know what to do until you called, he was—

A: No, he just said—I mean, he was uneasy, you could see that in his voice, but all he said was, "Come on down."

Q: Well, this might be sensitive then, to ask, because he was a friend and he shared it with you immediately. Did you have a view, at some point, that he should have done more before you asked?

A: Well see, then there's a meeting in his room, and it wasn't in his office, it was a Department of the General Counsel—like, hideaway is probably too lurid a term. It was an office, but it wasn't in the central General Counsel spaces, and the reason why Steve told me is, he wanted to get a bit away from the front office staff and the rest of them and he wanted to have a more private meeting. So I go down there, it's a circular table a lot like this one, wooden table, and he was there with his Deputy General Counsel whose name I forget. He was a stellar guy I mean he was regarded as one of the finest civil servants in the building and just a lawyer's lawyer, then-retired from the Army. And I sit down and Steve has a document which was a stack of paper, and he pushes it across the table at me. He says, "Here, don't tell anybody where you got this." He says, "We tried to stop it, but were told to go away."

Q: Ah, okay, well that answers it.

A: And I look at this and it's the Jim Haynes memo to Rumsfeld requesting authorization to employ enhanced interrogation techniques in Guantanamo. It was actually the typical government stack of documents, so the lowest document was the memorandum from Diane Beaver providing legal analysis of a sort (Q: Of a sort?) to requested interrogation techniques and indicating that it was legal to apply those techniques, but then sending a memo to SOUTHCOM in turn, requesting the authority. And then the next memo was a memo from SOUTHCOM up to the Joint Staff endorsing the request, finding it was appropriate and seeking DOD Joint Staff approval. Then the memos indicated that Haynes had taken this away from the Joint Staff before there had been Joint Staff evaluation of this thing and then the cover memo was Haynes and the Secretary saying, convey the memorandum from JTF, I forget what it was called, South, or whatever it was, and request the authorities, you know, this is considered without traditional restraint, and it provides the legal authorities, and then—you had the usual approval boxes or disapprove boxes. You had Rumsfeld signing on the approval box and then the famous handwritten comment saying, "I stand at my desk from six to eight hours a day. Why are they limited to like three or four hours," I forget the exact context. And I'm looking at this memorandum and then I see the Rumsfeld comment and I'm—first of all, this is completely astonishing to me. It was astonishing that the issue of interrogation had been allowed to go to the Secretary. And I'm familiar—still in a relatively early period in my term in office, and I was even more familiar with DOD paperwork and protocol and decision-making authorities so, you know, that I felt, even if you wanted to do this, why on earth would you get the Secretary of Defense within a million miles of this memo. Why would you allow, as the General Counsel, your client to put this kind of handwritten notation on this thing in the memo? That was a screaming red flag. From a—

Q: Legal position

A: Legal standpoint. And then I was looking at the interrogation techniques, and then I started very quickly thumbing through the document because what I was looking for, almost instantaneously, was the words of limitation. What I was looking for was a phrase that said, "And you may apply these techniques only until the point where they reach a level of cruel, inhuman and degrading

treatment, at which point you were to cease and desist and not cross the line. And there were no words of limitation anywhere in the memo, so what you had was the authority to apply these kinds of techniques without any government authority or control that would align this with what were the Geneva requirements or what would be the US domestic legal requirements as well. So I felt this was an explosive memo. I thought it was an incompetent memo. I thought Diane Beaver's memo was incompetent. As a legal analysis of the issues, and that the memorandum, for a whole variety of reasons, was unwise, wrong, misguided and explosive, because they potentially authorized the abuse of prisoners that in ways that would be, all of the above counterproductive and illegal. I—as I looked at the memorandum, the only thing I thought was, "What a mistake." Jim failed to catch this. Just, the poor guy was overworked, and he was working 16 hours a day at one point, and I don't know whether it was before or after this, he was telling me about how, a couple of weeks before, he had fallen asleep at the wheel driving home, and he caught himself. I could easily see Jim doing that, because he was nothing if not a hard worker, completely dedicated to his mission responsibility. And what I was thinking at the time was that Jim had a four foot stack high of incoming, every single day, and simply hadn't read through this one closely enough.

Q: You thought it was a lawyer's mistake.

A: This is—Jim Haynes was DOD General Counsel. So he was Rumsfeld's General Counsel. And then I felt that Rumsfeld, poor guy, he'd gotten this endorsement from his General Counsel, which in turn had come from a four or five-layer chain of other attorneys, including that it had been up and down the chain of command. So he'd been told by the whole legal chain that this was legal and authorized, and he had a six foot stack of documents in his desk every single day. So he had signed off on it, not recognizing the full implications of this thing. So I thought, simple mistake. Just simple mistake. Overwork. Lack of enough attention or lack of the application of sufficient imagination to what was requested, what would have been authorized, and that, as soon as I were to bring the group's attention to this thing, the mistake would be corrected. Kind of like the – "Oh god, I missed that one, you know, thanks for bringing it to my attention, I'll take care of it." You know, so—. And then the next day I was in Jim Haynes' office, with the document. And had about an hour meeting with him.

Q: And who's in this meeting?

A: Just Jim Haynes and myself.

Q: Okay.

A: So you know, this, if I was—I mean I'm proud of a lot of things I did in this thing, but one of the things that gives me particular satisfaction is that there was not a single day that didn't pass until the authorities were rescinded that I didn't do something. With actually one exception—this is, and this is the following. I went and saw Jim, and the next day I was leaving for Christmas vacation. The next day I was leaving to Miami for Christmas vacation. So, I come in with the document, I give it to Jim. "You know, Jim, I just got this."

Q: Was he, by the way, stunned that you had it?

A: He never said anything. Doesn't express any surprise, you know, didn't say, "How did you get this?" you know, never expressed any inappropriateness in that matter at all.

Q: Do you know how Steve Morello had come across these documents, since this wouldn't have been something in his purview to gain?

A: I had suspected it was, Secretary White was executive agent, so, because he was executive agent, then he had delegator authorities from the Secretary of Defense to stand in the shoes of the Secretary of Defense with respect to the coordination of detainee interrogation, detainee handling issues. So. And actually he and I didn't become—you know, get into that kind of detail but this is my assumption that this is how it came to be, but it was never explored, so it's only an assumption.

Q: So you engaged with Haynes?

A: But actually, going back to the Steve Morello conversation, Steve said, "We tried to stop it and were told to go away." You know, they made clear that they were tired of this thing, didn't want to hear any more about it. Steve embarrassed by the whole thing, he seemed truly regretful, by way of body language.

Q: He was troubled.

A: He was troubled by the whole thing.

Q: So, now you're in Haynes' office.

A: Haynes' office. And it was a full hour meeting and it was, in retrospect, I recognize this now, it was almost completely a monologue. And I said, you know Jim, I got this and I've been reviewing this, and the memorandum I provided was much more detailed as to what the arguments were. But, there were a lot of arguments, but it was, one of the first things I said was "Look, I—this thing authorizes torture." And he says, "No it doesn't." And I said, you know, "Jim. Think through this a little carefully. I mean, what is sensory deprivation mean? It means the soundproof room for how long is it? An hour in it a day for thirty days until the guy guys mad? Light-proof room.

Q: Because—this has to do with your observation—no limitations! No limitations.

A: This is, yes exactly. This is, chatting, this is actually, among the things I actually told Jim. "Light proof room - no light for an hour a day a month until the guy goes mad. Detainee-specific phobia techniques. What is that? The rats, the bats, the snakes? You know, I mean just think about it Jim. Individually, but then in combination, there's no restriction here. There's no limitation. It doesn't say, "Until you reach the level of cruel, inhuman and degrading treatment." There's no—this document provides the authority to apply each of these techniques in combination over an

unspecified period of time to an unspecified degree. Of course it can reach the level of torturous.” You know, he said almost—he kind of looked at me intently and said almost nothing the entire time. I almost think the only thing he said was, “No it doesn’t reach the level of torture.” And I said, “Look, I’ve gotten this. You need to know that people are talking about this in Guantanamo. My understanding is that there is growing understanding among the military teams down there that this is going on, and that there is, as I understand it, growing opposition to this thing. This is going to ring. I mean this is going to be opposed, it’s going to get out—which I thought was going to be the critical argument, you know. As I was going in there if I had any kinds of thoughts at all--- and I went in there thinking, as I described to you, that this is something that was a product of a simple mistake, and that as soon as I would be leaving the door—. I mean, this was my actual thought—Jim had a huge office. I mean, his office was, I don’t know, maybe if you just paced all the way to the back wall, or even from here, all the way to the wall, so it was one of the classic, massive DOD-type offices. It took a while for me to walk from the circular desk where he and I were meeting to the exit door, then, to the inner room. And I was convinced that, before I would reach the door, he’d be on the phone, picking up the phone. Certainly as the door was swinging, Rumsfeld, saying something like, “Boss, I need to reel something back in. Remember that memo on detainees. I just want to rethink it. I want to kind of—“ I was absolutely—I left that office convinced, “problem solved.” That, and I left on vacation, and I was thinking, “No more. Taken care of. This is a mistake.” Halfway through my vacation then, I get a phone call from Dave Brant, saying—

Q: You’re in Miami?

A: I’m in Miami. He says, “Still getting word of detainee abuse in Guantanamo.” And that was a shock. I mean, it was a shock because I was so convinced that this had been simple error, and as soon as Jim would work that—but then instantaneously, it dawned on me that it was all still a mistake, but it had not been inadvertent. And that the problems we were facing, myself and Brant and those of us that felt that his was the wrong thing to do, now is much more complex because now we had to—my challenge was to build, then, the consensus within the Pentagon, around the Secretary, that would convince him that, in fact, this had been a mistake. So it was more of, now, a question of coalition building, consensus building, and achieving a critical mass within the Pentagon to reverse that kind of policy.

Q: And you realize at this time, I’m aware, as you are now, you know when I spoke with Haynes for an hour, he never really reacted.

A: See, I didn’t realize that until later, because what happened was, as soon as I got off the phone with David, then I called back Mike Lohr. Because it’s the JAG corps that has the expertise in military law – Geneva Conventions, and the rest of it—so, even though I had some former, some retired JAGs with me in the office of General Counsel, we were a very large outfit. We had, what, 640 attorneys when I was there, so it was one of the large legal departments, and much larger than Army General Counsel, Air Force General Counsel who had miniscule staffs. But we didn’t have the expertise in the OGC to really analyze it. It was Navy JAG primarily, and also Marine Corps SJA that had the expertise. But Mike and his team were really the ones who had the knowledge. I called Mike, and

said “Look, we need to research this more. We have to then develop the—not only the research but the arguments, you know, as to this thing. Could you put a team on this thing?” And then Mike started organizing and got some Navy JAGs to start looking at this and start writing and performing some, providing some research. And they provided a memorandum and then—which was more elaborate—going back to Haynes. I trotted out a number of arguments to Jim. One of the arguments was that these authorities reversed sixty years of American foreign policy after World War II. Geneva, Nuremburg, the adoption of human rights advocacy as a central pillar of American foreign policy. This was a repudiation of that, so, among other effects of this kind of memorandum is that somebody decided it was more important for the country, and for our foreign policy, and for our national security strategy, to provide authorities to slap around a few detainees, thus breaching the human rights provisions that prohibited cruel, inhuman, and degrading treatment, that— notwithstanding the fact that that was the central arc of our foreign policy, it was no longer as important as being able to apply cruel, inhuman, and degrading treatment to a few detainees. It’s— these are incompatible policy objectives. You can’t say you support human rights and support the cruel, inhuman interrogation of detainees. You just can’t. I mean, it’s too removed from the pillar of our analysis: the fact that every individual has the right to be free from cruel, inhuman and degrading treatment. If you take this away from a matter of individual rights and make this now a matter of state policy as to whether any individual has a right to be abused, then you obliterate the foundation of rights, and you obliterate the foundation of human rights. And you obliterate then, the coherency of our foreign policy.

I said, “Who made this decision, Jim? You know, it’s like, this is a matter for a national debate, and this is one of the critical issues that any government—it’s foundational to our country, to our government. Who decided that this was more important than this?” So I mean, those were—and there were a number of other arguments there at the initial meeting. But then when I came back, I asked for a meeting with Jim, again, and I met with him in his office, again.

Q: This is one-on-one again?

A: This is—he invited one of his military assistants, I think it was an Air Force JAG who was there. I don’t think I ever got his name. He was there as a witness.

Q: But it was a small meeting?

A: It was a small meeting. I think that’s actually—I may be confused now. Because certainly Bill asked me when I gave my proposed memo to Rumsfeld, there was certainly a witness there, so I now don’t remember, recall whether there was a witness in the second one, but, it was either Jim and me alone, or there was another man there.

Q: Small meeting.

A: But by then we had, through Mike, looked at this in greater detail. For example, there was the— now Mike had provided me some detailed analysis of Ireland v. UK. Which of course is both the European Court of Human Rights and the Human Rights Commission, and the Human Rights

Commissioner had found that it had been torture. Almost exactly the same kinds of authorities as practiced by British police against IRA suspects. The Court of Human Rights then, to note in a sharply divided opinion, found that it was not necessarily torture, but it certainly was cruel, inhuman and degrading treatment, and he believed a violation of European rights and legal standards. So part of the argument with Jim was, “what is authorized here are criminal acts.”

Q: I’m sorry, we’re now at the second meeting and you have martialed this through Mike Lohr and his people, is that it?

A: We’re back at the second meeting. Yeah, that’s exactly—an additional battery of arguments.

Q: And you’re bringing it to him at the second meeting?

A: I’m coming back to him at a second meeting and saying, “Jim, I’m surprised but what I hear is that abuse is still going on. So clearly, you know—.” I didn’t ask him, I never asked him, “what’s happened, what have you done?” Abuse is still going on, and you know, let’s think through this again. I mean, this is Ireland v. UK. Clear precedent on this thing constitutes criminal acts under the jurisdiction. And when you think about the War on Terror, how can you expect that Tony Blair or somebody else to be able to continue to support us in the War on Terror? This is aiding and abetting. Their knowing participation amid these matters would be aiding and abetting criminal activity. Which might open them up individually, and anybody down the chain of command to prosecution under European law. Why do we think that this is going to enable us to sustain the current alliance that we have in the war on terror, or even to build a larger alliance? Who makes the decision that it’s more important to abuse a few prisoners rather than have the have the UK as a full partner in the War on Terror? Or Spain? Or anybody else we want to enlist in the European community, in the War on Terror?

Q: So at this point you’re still talking to him. You’re advocating, but you’re still talking collegially? As a fellow lawyer, collegially trying to make your case that you have the same ends in mind. Same interests.

A: Exactly. That he hadn’t thought through this clearly enough. You know, that he was still making mistakes, he wasn’t really rising and recognizing all of the issues that were necessarily implicated in the decision to authorize that kind of treatment, and that when you put all this together—

Q: It should be apparent.

A: It had to be, by a growing and even more evident margin, that this was the wrong thing for the United States to do. Wrong legally, wrong as a policy matter, wrong operationally, and profoundly contrary to our national interest, broadly defined. Segregated, if you take any component of our national interest individually, or put it together, each strand of analysis led to the conclusion that this was the wrong decision.

Q: Was he any more responsive?

A: No. He wasn't any more responsive. I was launching the broader—I knew I had to then socialize the issue more broadly and discuss it more broadly. I spoke to individuals within—I brought it to the attention of the Deputy Secretary of the Navy, Susan Livingstone, who was absolutely great about this. Was very much alarmed. I brought it to the attention of the Vice Chief of Naval Operations, and people within the staff, and all of them—

Q: All of them were on board.

A: I never spoke to a military officer at the Pentagon during my time that was not appalled by these policies. And, as I say at every opportunity, you know I get, if anything, too much credit for what I did because the reality is that there was a unanimous consensus, as far as I could tell within the Pentagon, certainly within the uniformed ranks, senior and other ranks, that this was wrong and profoundly contrary to our national security interests. I then went to all the General Counsels more formally, so I then went back to Steve Morello to give him—to kind of report back to him and take him through my analysis, okay? I'd spoken to Jim. Now on a couple of occasions. Not sure what kind of response I'm kind of getting, but this is what I think. These are the issues implicated in this matter. Steve was less patient with me the second time around. Steve—and I never knew what happened, but he—and, by the way, I'm forever grateful to Steve, because I think I can quibble about other things he may have done or not done down the road as the debate deepened and got more acute, but for him to convey to me the document and to essentially inform me as to what was happening was a service to me and to all of us that is incalculably valuable. I'm not sure that we ever would have gotten, any one of us would have gotten, a copy of the Rumsfeld memo. It certainly would have come out after Abu Ghraib, but to the extent that I or all of us, because the JAGs were also independently active in thing after all of this came to light, because I socialized the memo. As far as I know, I was the one who informed the other JAGs of the existence of this memo, because I talked to all of them. And I said, look, this is what I've found. This is my analysis, this is my analysis of the memo. None of the JAGs needed any kind of convincing. They were all, from the very first moment, just completely aligned as to what this authority represented and what the legal issues, the national security issues, the moral issues were, in this matter.

Q: The various TJAGs here, did you, had you reached out to them before? General Rives and the others, or was this fairly unusual?

A: I had spoken to Mike and Kevin, so it was the Navy Marine Corps, early. And I'm sure I spoke to Kevin early on in the process as well, and had the same analysis. And then I went then to the TJAGs individually. And I don't know whether Mike or Kevin reached out to them individually. I had, after I had gone to them and kind of shared the initial memo. After that initial wave, so I'm—I've never learned that the TJAGs learned of this before I brought this to their attention. But then again, there was a lot of stuff that the TJAGs did that I never learned about. So I never required Mike, for example, to come back to me and report on what he was doing, so I never—it was never that kind of reporting. There were some issues in which I asked him, and he did. But, well actually, let me take it,

because it's important you know this. When I first saw the memorandum and I recognized it was a mistake, I thought it was a—my first obligation was to Jim. I had complete respect for Jim. He was working hard, all of us were working hard, but he was just—this was his responsibility. He was fighting a war with the Secretary. We were training and equipping the military services, so we were in a different kind of function, it was not the front-line function. Jim was front-line. Secretary Rumsfeld was front-line. I felt that this was a mistake that had been done by the, in some measure by the DOD General Counsel. A political appointee, you know a fellow Republican, but a member of the administration, the Bush administration, and my obligation, being where I was and what I was doing, was to go to Jim, and as the fellow political appointee, and give him an opportunity to correct the mistake. And when that didn't work, then I thought it was up to the rest of us who were political appointees, sort of like the concentric circles you know? So it was the Mary Walkers and the Steve Morellos collectively, as representatives of the President, the appointees of the President in the office, then, to come in and give the right advice and kind of correct that. And then, you know, when that didn't work, then it was more broadly. But, so it was like a concentric set of activities and then I would escalate it to the next level when it was clear that the current effort was not sufficient.

Q: So I'm trying to collate these accounts and the like, I ask you to read—do you know whether Jack Rives, his circle of concern, came from when you tried to socialize the issue or did he get it from Morello separately? Did the JAGS know themselves?

A: The answer is, I don't know, fully. I doubt it was through Morello. It's interesting to track the history of civilian/military relationships, just generally. It was a fascinating topic over history. Part of the fascination is also the history of civilian/military relationships in the legal chains within the Pentagon, and this part of history goes back a long way. I mean the civilians didn't get started until World War II, and it was really in Navy when Secretary Knox, the Navy Secretary had, literally, a six foot stack of shipbuilding contracts by his desk, and he went to the Navy TJAG and said, "You guys want to handle this? And Navy TJAG, in which, the Navy JAG Corps now recognizes as a historical failure, he said, "No sir, we'd rather not do that. We've got different things to do." So Knox, having come out of Wall Street, and used to having the kind of support provided by the Sullivan & Cromwells and Cravaths of this world said, "Well I'm going to have to build up a legal team." You know? Give me Wall Street legal support, you know, in order to support the Navy effort in World War II, and he hired the first Navy General Counsel. So I was the twentieth. The first General Counsel was hired by Frank Knox to help him work through the shipbuilding contracts and that's how the government procurement expertise got built. It was through the Office of the Navy General Counsel, working for Frank Knox, developing support capability on shipbuilding and other procurement contracts, which is why the Office of the Navy General Counsel would be 640 strong, and Mary Walker's office at Air Force, she may have 12 attorneys. She probably had less than that. Steve Morello at Army had probably about the same sort of size. Steve and Mary were extraordinarily frustrated, because they would look at me and, here's a guy who's got just a huge team of very competent individuals. You know, they're recognized as the go-to, the authority on the entire federal government on federal procurement law, they're just an outstanding bunch. I may have the title of General Counselmen, but I've got nothing. I have no analysis and so forth. It's Jack Rives, over at the Air Force, and who was the Army counterpart? Gosh, I'm blanking out on who the

Army TJAG was, but, first Steve locked horns with his counterpart. He was wanting to expand. I mean, he was a little bit, not mindless, but he was just so profoundly unwise. I mean, they wanted to have more authority, which I kind of sympathize with, but they lack horns. And they got in a turf fight and then the whole thing escalated. Mary was even, if anything, worse. And Mary was very clumsy about this, and she had a way of alienating people, and so she locked horns with Jack almost immediately. Made a power grab which spilled out. I mean Jack went to Lindsay Graham. Mary, in case nobody told you, Lindsay and Jack are like *this*, and you know, and we've been down this road before in Bush 1, when Dave Addington was Dick Cheney's General Counsel, and Jim Haynes was Army General Counsel. Dick and Jim working together towards the tail end of the Bush 1 administration, Jim made a move to try to expand the authority of the civilian general counsels at the expense of the JAGs. The JAG community pushed back, ended up in a stalemate, but all these relationships and memories carry over into Bush 2, post 9/11. So you have the strongest possible bond between Addington and Haynes. Haynes was Addington's protégé, and they had they had this shared experience concerning the civilian military legal relationships. So both on the substantive side and the bureaucratic side, and the personal side—

Q: Because you had the same people coming back.

A: You had the same people coming back in higher positions. So you had Addington and Cheney of course coming back with a Theory of Unitary Executives and Presidential Commander in Chief authorities, and Dick Cheney's well-documented position was that, ever since Nixon, it's been a steady downhill slide for Executive Branch authorities. And one of his primary missions in life was to claw back the Commander in Chief authorities that had been wisely cast away or eroded ever since the Watergate years. Parenthetically, a bizarre kind of concept because, you know, you can make the case that exactly the opposite happened and there's been a steady increase in presidential authorities, you know, and there'd been no – whatever you're talking about. You know it's, quite to the contrary, there's been a steady growth of presidential prerogatives, actions, you know, at the expense of Congress. And this doesn't make any kind of sense. We were to see this, then later, displayed more prominently in John Yoo—a series of memoranda, the Commander in Chief sections of his memorandum. But, the point was that Haynes came into his office and then started exercising his authorities with this background, meaning that there had been inadequate civilian control of the military in a lot of different spheres. And actually, this was one of the major Rumsfeld themes. If you look back at Rumsfeld's various actions, one of the strong themes early on in Rumsfeld's tenure was that there had been an erosion of civilian control of the military. There had been too much deference given to the chiefs and to the military heads, and that it was important for the president to reassert this authority. And this manifests itself in a number of ways, but you may remember the dust-up in the Crusader artillery piece. The Crusader was a huge tracked artillery piece that the Army wanted very badly. But the Crusader was not air-transportable. The Crusader, you know, is the kind of piece that could not safely cross most of the bridges in Europe, much less be available for the kind of lightning, expeditionary kind of warfare—low footprint, shock and awe type of war— that Rumsfeld was espousing earlier on. The Army Chief of Staff Shinseki publicly clashed, opposed Rumsfeld on this matter and was seen to be—and he was fired. I'm sure there were other reasons, but, so, Rumsfeld was losing no opportunity to reassert military control, or control of the

military. And then, certainly – I say this by way of speculation and inference, because I never had these discussions with Jim. Jim is the most private individual you’ve ever met. Jim.

Q: You mean he gives away very little?

A: He gives absolutely nothing away, and we’re not engaged in conversation, we’re just—he would listen and look at you intently but rarely would he engage, and you always had the sense that he was never sharing. Actively not sharing stuff that he wanted to know. But, you know, back to the point: Jim’s tangle with the JAGs and then, there were various different episodes within the tenure in which, seeking to assert DOD General Counsel control group of JAGs was a theme in which a lot of these issues can be informed, in part, or explained by the effort to continue exercising—for example, Jim tried to take away from the Chairman of the Joint Staff the authority to appoint the Chairman’s Legal Advisor. And Dick Myers kind of surprised him and pushed back at that. Dick, who is criticized by many to have been too subservient to Rumsfeld, you know. There is a body of opinion that wonders where Dick Myers was during all these kinds of issues, you know, these legal military decisions, Guantanamo decisions, invasion of Iraq decisions. But Myers woke up to the fact that he could not afford to lose the ability to designate his own legal advisor, his own JAG at Basra, pushed back and then successfully fended off an effort by Jim to assume control. But this was – it was always something—and you saw this part in the Rives memorandum and the Mary Walker discussions with Rives concerning this issue. Mary, who was completely the same with Jim on these kinds of issues, felt that the entire JAG community simply needed to salute and fall in line with what was an administration, a Secretary of Defense position, which was also an administration position, concerning what the president and the secretary had decided on the legal contours on the War on Terror. And so that was *inaudible* so I’m sorry, going back to—long way of answering, after this issue got more engaged in the Pentagon, then all of the JAGs and each of the JAGs would be acting in ways consistent with the opposition of this thing whereas I never asked them, I never required them to report back to me, I didn’t have the Marine Corps or anybody else on this matter, so—but I know they did a lot— (Q: So they were a separate power center pushing back, allied with you, but also on their own, independently) Independently. Yeah, so you mean—they were certainly—we were all allied. In fact, there was an episode after I had left the Navy which was very touching and gratifying to me personally but also somewhat illustrative of all this. Bruce McDonald’s retirement ceremony at the Navy Yard. I had left the Navy and was back in the private sector and I get invited to the retirement ceremony and I go to the Navy yard and I get there a little bit early. It’s like, one by one the JAGs come, so I think Jack Rives is no longer in there and it was his successor. Who’s inside of JAG?

Q: General Harding?

A: Colonel?

Q: His predecessor?

A: Who succeeded him?

Q: Who succeeded Jack Rives?

A: TJAG of the Air Force. Do you remember?

Q: Well, because of the problems with General Fiscus, General Rives-- No, I'm sorry, it was Rives. So let me amend some of this it was Fiscus who I dealt with originally on these matters, then Jack came in.

Q: Fiscus got distracted.

A: He got distracted. Separate story altogether. That was a bizarre episode and we got called in, Navy got called in.

Q: To consult?

A: We actually took this over, the investigation. And it was actually Mike Lohr. I was involved because Mike would keep me advised of this thing but Air Force Secretary lost confidence. And Fiscus was of course the TJAG, so anybody else within the Air Force chain of command would have been individuals who reported to, or had been promoted or endorsed by Fiscus. So, Air Force came to Navy and asked to use our JAG chain in order to investigate and then advise the Secretary on the proper disciplinary actions to be taken. And I know who's involved in that because Mike and I were *inaudible*. So it was Fiscus who was very soldered on this thing by the way, so Fiscus was not distinguishable in any particular from Jack Rives' position on these kinds of issues, or any other TJAG who was involved in these matters during the course of the matter. Power center, they are a power center, because of course they are the experts in military law. But they were not consulted, as none of us were by the administration or else Military Order Number One, which is that Geneva didn't apply—it's kind of like, we were all standing around and, you know, where'd this come from? And I am not expected that I would be consulted on this, both I was too *inaudible* with the Pentagon so I really had no expectations, much less knowledge, as to chain of command and consultative relationships and things of the sort, so to me the fact that the President should be issuing out Order Number One without having gone to the Navy General Counsel was not surprising, perhaps in the last. But for the TJAGs it was very surprising because this was an order that went to the heart of the legal issues in the War on Terror. They were the experts, they'd not been consulted, so their question was, "Where did this come from?" And now, there wasn't much opposition to it, at first. Nobody kind of foresaw what would happen down the road. But the truth of the matter is that, you know, as we now know, this was done, it was Addington and Haynes, it was Gonzales at the White House, but Gonzales had—Gonzales, I think the view was he was completely out of his depths on these kinds of issues. And then John Yoo, I'm not sure exactly when John Yoo came on board, whether he was being consulted by JAG—but the Deputy White House Counsel at the time (Flannigan?) Flannigan, was somebody who—another guy who was very able, but also extraordinarily conservative (Q: Yes) on these kinds of issues, you know? Flannigan, I think he was also consulted. Anyway, it was a very small circle of attorneys responding to the

Rumsfeld/Gonzales/Cheney then-authorities. And obviously, CIA—and I should mention, you know, give you example of how people’s attitudes and focuses and assumptions are often completely divorced from reality: when I first saw the memorandum in Steve Morello’s office, and for the entire time I thought this was just a DOD issue. I never suspected that this was an agency matter. I think we now know that it’s likely that DOD came in there second. DOD came second to the issue of detainee interrogation after the agency. It’s, and I don’t know of the fact that the chronology has been fully established but it’s likely that CIA had these individuals in detention and originated their requirement to apply brutal interrogation tactics to them, and that that had gone early—at the earliest moment to the White House for approval, and then came back down the military chain of command. Diane Beaver, you know it’s very interesting. I told Jim in the first meeting. I said, I turned to Diane’s analysis: “This is an incompetent piece of work.” That’s exactly the word I used at this thing. It just doesn’t do justice. It doesn’t capture the issue. This doesn’t adequately address them. You can’t rely on this single memorandum to carry the weight—you know this is the only legal memorandum on something as fundamental as this. To apply cruelty and torture to individuals in battlefields, and understanding American domestic law, international law, Geneva Conventions, Nuremberg principles, national interest. This is the memorandum you’re riding on? It’s an incompetent piece of work. Jim didn’t say anything about this. But what later became known—you know, I knew Diane and I’d met her in Guantanamo before and had a number of conversations with her. And then I could be sitting next to her when was it, in 2008 I think is when I testified before the Senate Armed Forces Committee. So I’m sitting next to Diane and then Jane Dalton who was the Chairman’s Legal—Jane was General Chairman of the Chiefs, so the three of us were on the same panel and Diane and—her testimony has been captured in a number of books as well. Philippe Sands’ book, for example. She was a military officer and a military lawyer on the front line in Guantanamo and had ten days to turn this around.

Q: She didn’t claim it was a complete and accurate and wonderful thing

A: She did her best. Her testimony has always been, privately and then publicly was, “I knew I was in over my head, this was well beyond me. I did the best I could. I reached out repeatedly for help, in fact—”

Q: And she thought it would be, you know, done over.

A: Exactly. She testified a number of times, “Never in my wildest dreams did I think that this would not be reviewed by higher authorities and there would be layers of other analysis.” In fact, in the Senate Armed Forces Committee, and this was the heartbreaking kind of testimony, she was— it was highly emotional testimony by her to Lindsay Graham and others on the panel. She says, Manny Supervielle, Lt. Col. Manny Supervielle, was the SJA to the SOUTHCOM commander and her supervisor. And she says, “I kept trying to get Manny. He would never return my phone calls. I tried and tried. I placed message after message. He would never return my phone calls. Once I got through, he was on the golf course, and he must have answered the phone by mistake.” And I know Manny, you know, Manny’s another Cuban-American who I’ve known now, first time I went to Guantanamo now I got to meet him, and he’s a great guy, but God, you’ve got to wonder, you know,

and I've never had the heart to ask Manny what happened here. It's the kind of thing that, it beggars the imagination. You know, beggars the imagination that when you think about any—partner to an associate, military superior to subordinate in the chain of command— in a wartime situation, Diane Beaver calling a SOUTHCOM SJA and saying “help me,” and not getting her phone calls returned—I don't know.

Q: I don't know about that, but the reason the opinion got used was because it had the right answer.

A: Right, exactly. Exactly. But, when you think about the incompetence of this, and I don't mean to say that Diane Beaver didn't try or that her memorandum wasn't written in good faith, but the answers weren't the right ones, the analyses weren't the right ones, certainly the conclusions were the wrong ones. But she deserved support. And in fact she even tried to call the Chairman's Legal. She tried to get through when Superveille wouldn't return her calls. Her testimony to Senate Armed Services was, “And I tried to call Jane Dalton, and I couldn't get an answer from them either.” And then Jane's testimony's also—because I had the highest respect for Jane and Jane retired as an Admiral, was a Captain. Just a hard worker, very bright. And she's one of the people I reached out to, by the way, that second or third round of meetings. So I come back, I talk to the General Counsels and I talk to the SJAs and I call Jane, and Jane comes to my office. And I said, you know Jane, I want to talk to you about the Secretary's authorization to this thing. And she was impatient, you know, “What's there to talk about?” I said, “Jane, this memorandum authorizes torture.” “What?” “This is an incompetent piece of work?” “What?” And then, I had a conversation, and then I could see her—it was starting to dawn on her during the course of the meeting that we've got a problem here. She didn't say that to me. She never—She at least had a problem with me. But you know, in my approach, like to her, to a lot of the people, I treat—this was like, as a friend and a colleague, so I wasn't hard-nosed about this, I wasn't, “You and me are gonna scrap on this.” That wasn't my style. Not generally my style. It certainly wasn't my style with these kinds of individuals. So I never asked Jane, “So, what did you do with this and what did you advise the Chairman on these kinds of matters, and how could you?” In fact, what she testified to the Senate Relations was that she had this memorandum and was working on it, and then it got taken away, and then she kind of dropped it because she thought, and Lindsay Graham is many things, but he is a brilliant cross-examiner, and he was nodding his head, and he turns to me and he says, “General Counsel Mora, how long did it take you to realize that this was the wrong analysis, you need to do something about it?” Said, I think my testimony was, “Mr. Senator, it took me about two hours.” “Admiral Dalton, how long did it take you?” “And she was—truth is, you never got back to Jim Haynes, right? And you never got back to the Secretary on—you never completed the analysis, did you?” “No.” She was just standing there.

Q: Wasn't she short-circuited though? Isn't that my memory? Like she was told to stand down?

A: That's right. The Joint Staff and the Chairman never responded to the SOUTHCOM request for authorities because Haynes went in there and withdrew this and took direct control over the memorandum, and then sent this directly to the—there's a word in the memorandum in which he says that he consulted with the Chairman and the Chairman consents. So that's the issue that Graham was getting at. What did you do with respect to advice and what seemed to be Jane's

testimony was, she never really gave the said Chairman advice on this issue. They punted as well. So what you see is that, you had poor Diane Beaver, dangling.

Q: Doing her best.

A: In the battle field, doing her best, dangling in the battlefield. And then, up the military chain, all the lawyers in the military chain of command up to the Chairman's Legal, punted.

Q: Right. Of course, Diane Beaver did okay, eventually. Career-wise

A: No. I don't think she did.

Q: I thought she got the next promotion. Dalton served as a captain, right, and she promoted, right? Subsequently?

A: Jane Dalton got promoted, she retired as an admiral and she went, Jane's a wonderful person. You know, if I sound judgmental—one of the things I've been by the way, and I've made comments fairly openly about some of these individuals—I tend not to criticize any of my peers, and when I talk about this matter in public, you know, as opposed to these kinds of conversations, for me it's always been about the issues, for a number of reasons. One of them is that, almost without exception, these individuals are friends or kind of friends, and I don't really know what happened, you know, I wasn't in their shoes. The other thing is that, I knew very early on that—this is now when I've left the Pentagon, and when I talked about these issues, I never wanted to get into the personalities of this thing, because if you get into the personalities, then you lose the focus, and you can very easily get criticized for doing that. If it's a matter about, well you know this is legal malpractice. Or worse. So, so and so attorney did this or that, then I felt it would reduce the, in some respects the potency of my observations or position on the cruelty issue. I've always been—for me there's only one issue. Should the United States use cruelty? It's never been about torture, because there's a consensus about that. But the real issue is, is the standard going to be "cruel, inhuman or degrading treatment," or not? Is that the international standard or not? Is that the American legal standard in our constitution and internal jurisprudence, or not? Is this the standard that we should apply as matter of policy, never mind the law? As a matter of policy, is that the standard that we should apply going forward? That's been the only issue, but recognizing or having said that, I recognize that this issue and what's happened here historically can be analyzed in many different ways and should be analyzed many ways because it represents not only an issue about cruelty and what the legal standard should be, but it's an issue also about how bureaucracies function or not function; how attorneys function or not function; what the interplay between law and foreign policy should be; what the interplay between law, foreign policy and national security should be. And the policy analysis of this as well. I tend to focus on the policy analysis and the operational analysis because those are under-discussed areas in the field. There are a lot of people who've got opinions about the legality of this thing, but few people understand that we are weaker as a nation because we adopted the policy to apply cruelty to individuals as an operation conclusion. When you think about how you fight the War on Terror effectively, we weakened our defenses, we weakened our

offenses, by adopting, in a misguided kind of fashion, cruelty as a weapon of war. And the nation doesn't understand that. In part, because you have the Dick Cheneys of the world, who are making the argument that, "Hey, we never would have gotten Osama bin Laden, and the information we got from the enhanced interrogations was priceless and fundamental in everything we did after that."

Q: Let me take you, move ahead in the chronology. We don't want to take up too much of your time. Let's take it up to the—you have your statement that you offer, lease. And then there is a rescission of the rules by Rumsfeld, like Haynes informs you of. And once again you get wrong-footed, eventually, because the next step is—correct me on all these things—next step is the Working Group. And the Working Group, from your perspective, seems to peter out, or something happens.

A: You know, I go and see Jim, and it's about two weeks after my last conversation with him, and I'm clearly not making traction. And by then I am mortified and uneasy because I have failed. I haven't succeeded in turning this around, but there's also the sense I have that I can't do this any longer and not be on the record. And by the way, there's almost no emails because as you would know, and this has been true in the government now for decades, if something is truly sensitive, you often don't put it on paper, because you're afraid of leaks. You're afraid, precisely what's happened afterwards, that there's a paper trail and you know, somebody's—the document's going to get out and get discussed. So there's a lot that occurs in government that is done verbally by recognizing this kind of reality, and I recognize it myself. I had meetings, I had conversations. But I wasn't writing memoranda, I wasn't—because I wanted to handle this verbally and quasi-informally and give people a chance to then discuss these issues without getting into a battle of the memos and having—

Q: But you've come to a different conclusion?

A: I've come to a different conclusion. I can no longer not put my observations down in writing and fail to document what was my judgments about the legalities and the policy wisdom of these kinds of decisions. So what I did was write a draft memo and gave Jim the courtesy. You know, I delivered it to him one morning and I said, "Jim, look, as a courtesy, I'm going to be sending this memorandum out at close of business today."

Q: To whom?

A: It was to Haynes. I think it was to Haynes. I forget if it was to Haynes, I think it was to Haynes.

Q: I thought the point was you were going to spread it wider.

A: No, I was put it to Jim, but in writing. In a memorandum, but I think this is also in the record. Or actually I'm not sure. I think it's in the record. I think this was also released as part of the packets and so forth, but it was—purposefully, I didn't focus on the Haynes memorandum that was authorized by Rumsfeld. I focused on the Diane Beaver memorandum, because still I wanted to give, you know, Rumsfeld and others one opportunity to maneuver around this. And it was that,

individual and in combination these constitute torture, could constitute torture, depending upon how applied. It is contrary to our legal, national, ethical, operational, national security interests, and there were a number of other conclusions I had put in, and then Jim calls me, and he says, "Come on in." He calls me to his office, back, this is the third time around the table on this particular issue. And Jim—he was very affable and courteous. He may not have talked, he may not have been candid, you know, but he did give you the meeting, and he was willing to sit there as long as you wanted to talk. You know, he'd look at you always from, *like this*, but always giving you full attention. And he said—I was, I think quite nervous going into this particular meeting. Jim says, "I don't know what you're trying to do with this memo." And I almost leaped at him across the table. My impulse was to go for his throat. And I was thinking, "How dare you?" But then the next words out of his mouth were, "Surely you must know the impact your words have had on me." And I started laughing. I said, "Look, Jim, let me tell you. I don't have the slightest idea what effect my words have had on you, because you never say anything." I said, "For all know, you think that everything I've said is the gospel truth or you might think I'm full of shit or anything in between." And he starts laughing and he says, "Yeah, I'm kind of silent." And then he says, "I want you to know the Secretary is considering rescinding his memorandum." And I'm thinking—I kind of don't respond immediately—I'm thinking, God, that sounds great. You know, but what does it mean "considering,"? He says, "I know, I know. It's not good enough." And, you know frankly I don't know how I reacted. If Jim had gone back to his silent mode, I'm not sure I would said, "It's not good enough." Because I had not really fully processed what that meant. It sounded good, you know, it was a good start. But in any event, he never got any further because he said, "Look, I know. Not good enough. Tell you what, let me talk to the Secretary. I'll get back to you." "Sounds good." I go back to my office two to three hours later I get a phone call with Jim. "Good news, Secretary has rescinded his memorandum." And I'm sky-high. This is the first, the actual first action that's taken place and I'm thinking, this is the best thing I've ever done for my country. You know, it's—nobody will ever know this. And I thought, it was a blip. You know, we had a little brain fever, but it took longer than I would have wished but we caught ourselves, now we're back on the right track. Jim's next words, "You know, but the Secretary has commanded me to set up a Working Group. I'm going to ask Mary to head it. It's going to be full exploration. The command is to look at this in full panoply. All legal, policy, military, all issues. Gather the data. Come back to him within, I think, 30 days. Fairly fast timeline. And then come back to me with a full report. Everybody's going to participate in this, you know the JAGs, the general counsels, all of us are going to participate in this. It sounded great. But very quickly it started going off the rails. The TJAGs appointed their reps to the Working Group, the General Counsel's Office appointed their representatives to the Working Group. Let's see, I think NCIS had a representative and I think the other investigative services had representatives on the group, and when I started hearing back from—and then the assignments were partialled out. Every different participant had an area of the law or policy which they were required to participate. My analysis, which in retrospect I didn't give justice to, was applicability to the Constitution to these issues in detention. And you know, back then the black-letter law was fundamentally that it didn't apply for interrogations outside the United States. The cases generally held that there was no applicability to, via the Eighth and Fourteenth Amendment to these kinds of issues. And actually now, I think I could have done a lot more with that assignment than I did do. And I talked to Jim about this before, because I had always been of the view that, and I had told him

this before, that on the wide set of cases, and this was a wide set of cases, meaning abuse of a detainee that potentially reached the level of torture but certainly, cruel, inhuman and degrading treatment. Even in Guantanamo, in a Guantanamo setting. When there'd been abuse there'd been the direct result of a decision issuing from the Secretary of Defense personally. It was easily foreseeable that a court would intervene and found that the Constitution did apply under those set of circumstances, which by the way, I'm kind of interrupting the chain of thought—at one point, when I had my—It was actually my first meeting with Jim, no my second meeting with Jim, I went into the Rumsfeld memorandum and I said to Jim, “You know, Jim, there will come a time where Secretary Rumsfeld will be on the stand and the question will go something like this: ‘Is that your handwriting, Mr. Rumsfeld? Is that your signature? Would you read to the jury what you said here? You’re providing a wink and a nod, aren’t you, Mr. Rumsfeld, to the interrogator that, never mind what might be the words of limitation or the constraints of this memorandum. What you were truly signaling to the interrogators was, ‘Do what it takes to get the information, we don’t care how.’ That’s what you had in mind.” There may be an objection to that, but that will be the last question asked of your client. Protect your client. You’ve got to protect your client. And Jim was—didn’t say anything, but my sense was that that gave him an argument that—for perspective of this.

Q: So we’re now in the Working Group, which peters away somewhat, or—

A: No, the Working Group—the report back I get from all the Navy, Marine Corps participants is, this is going off the rails. I mean there’s a predetermined objective, they’re not really listening to the arguments. Mary Walker is certainly not listening. Mary Walker is railroading this kind of -- She’s concluded where she wants to be in this, and it’s for show. There’s not really a conclusion, and it’s all steering towards a predetermined objective. And then my concern, which I shared and discussed with the other TJAGs, was: we’re all concerned, because this had the possibility of being something, a more serious threat to the position that we didn’t apply cruelty than had been the earlier unilateral Rumsfeld memo, because this could be a dictated Working Group paper that would not represent the consensus of the group, that does not really represent the analysis, but would have the appearance of being an inter-service consensus document as to which the services would agree to. Like, for example, NCIS. NCIS would come back and say, “They’re not listening to us on the issues of interrogation. You know, we’re trying to convey to them the fact that these brute-force forms of interrogation is just counterproductive. That in fact, the literature is to the contrary. That in fact, the better interrogation techniques is relationship-based. At which point then, then I had a conversation with Gelles in which I said, “Look, Mike, our problem is that we’re only saying, ‘No, you can’t do this.’ And you really can’t fight—just as a general argumentation style within government, you can’t simply say, ‘No, no, no, no,’ and not provide an alternative. What we need to do is, ‘If not this, then this.’” And I said, “Is there any literature that supports the notion?” I was completely clueless, I mean I’d never, ever looked into the literature of interrogation. I had no idea. And Mike says, “Here is some literature.” There’s tons of literature. All of it is supportive of this thing. So I said, “Look, let’s do this. Let’s develop very quickly a placeholder. So we prepare a quick memorandum that you inject formally into the Working Group that says, “the course of interrogation is counterproductive to the military objectives,” while we then develop the longer paper. Mike produced very quickly, I mean he’s just a brilliant scholar and just a complete

professional—produced very quickly a, I forget the exact size, but it was, he was either, fifty or eighty pages long, I forget now. I mean he just very quickly produced a very compelling, closely reasoned, highly documented presentation of the literature concerning interrogations, that—

Q: By the way, is that something you think would be available to us?

A: I think that's a classified document, it was classified. I don't know that that document's ever been declassified. I don't know. And then, a couple of weeks later, then we produced something like a 200 page document that was even more compelling. So he and his team, you know, just crashed on this. But it's an example of what we try to do to bring this to a point and kind of turn the Working Group around. The Working Group was working very rapidly, you know, because there were all different kinds of work teams providing document. So the draft Working Group paper would be changing constantly. It seemed pointless then for me to do a responsive memorandum to this thing, because the target kept moving, and any memorandum that would then provide, I as Navy General Counsel, and speaking for the Department of the Navy would be overtaken by events. By the way this is John Yoo surfaced during this and the Yoo memo surfaced at this point. And Jack Rives then talks about that in the memorandum

Q: Right. You had the same experience with you having to view it in a SKIF?

A: Yes, exactly. It was just, absurd and ridiculous.

Q: And offensive, right?

A: Insulting. It was just absolutely insulting. Mary Walker calls and says, "Look, Office of Legal Counsel—" John Yoo's name meant nothing to me at the time. At some point I learned that he was involved in the Bush v. Gore recount efforts, so he'd been one of the lawyers, the senior attorneys consulted by the republican party and was actually, by all accounts, an important player in helping design legal strategy in the recount effort. So, known to be a conservative scholar. Known to be somebody who worked into the national security/presidential powers space. And I knew he was at the Office of Legal Counsel. So Mary calls and says, "Look, we got a memo from OLC that is *inaudible* and in draft form, but it's—we've been told that it represents the opinion, and it's binding." You know, in the course of my governmental career, when I was USIA General Counsel, I'd work with OLC and seen OLC memos before and, you know, if you've done this in government, you actually relish the opportunity to work with OLC materials, because every OLC memorandum I've ever read, with the exception of John Yoo's memorandum, had been exemplars of the legal craft. I've never read an OLC memorandum and just didn't marvel at the, just the brilliance of the argumentation, the clarity of the writing, the exhaustive—

Q: In both Republican and Democratic administrations.

A: Well, I think in my case only in the Republican administrations, because of course I was in Bush I and then worked with OLC on a number of matters, and I was in, for example, I was appointed by

the Clinton administration to be on the Broadcasting Board of Governors as a part-time non-lawyer, so I was working as a governor in the BBG, but I don't think I saw OLC memos written during a Democratic administration.

Q: But the Yoo memo stood out for its lack of quality.

A: Absolutely. And I say this because—actually, there have been times I disagree with OLC, in fact I have one situation in which, and I forget now whether it was before or after the detention matters, but, we had a retired Marine General who then started working as a security—or working with a company in Iraq, and his people, civilians, were getting shot up. And he went to a neighboring Marine base and then asked the Marines to provide security. And the issue was whether the retired general had breached his ethical obligations, post-government employment ethical obligations, because he used his former position in order to secure an advantage or benefit. And OLC had concluded that he had breached his ethical obligations. And I went ballistic. “How could you possibly say this? How could you possibly come to this kind of conclusion? You’ve got, okay, maybe a Marine general, but he’s an American citizen, being shot at, and anybody in that position has an obligation to go to the nearest military unit and seek military advice. This doesn’t fall within the four corners of the post-employment ethical restrictions. You can’t possibly apply this to this individual.” And I appealed and lost that. So it’s the kind of thing that— they’re capable of making mistakes as well. But going back to my central point. When I’ve read OLC opinions, part of me reads it for the actual opinion, but part of it just savors it as just a model of what a legal memorandum should be like. So it’s always an enjoyable task. You know, how did they come up with that argument and look at the level of analysis, and how do you know that? It’s just spectacular capability. But I was reading John’s memo, and it started not making sense. Which, you know, gets back into assumptions and knowledge and it was—I was fighting it. I was fighting the notion that the memorandum could not be making sense . . . fundamentally John’s position was that, when the Commander in Chief puts on his Commander in Chief’s hat, he is subject to no constraints on that authority. And any attempts to do so would be unconstitutional exercises of assertions of authority in derogation of the President’s Commander in Chief authorities. It’s crap. It’s just absolute crap. You know, it wasn’t—but, you know, for example there’s constitutional authority to give it to Congress, for the treatment and detention of prisoners of war. You know, for example. I said, it’s a very different picture, and *Youngstown Sheet*, it’s the first case you’re required to address when you get to presidential Commander in Chief wartime authorities because, of course, the situation in which Truman seized the steel mills under the pretense that his Commander in Chief authorities were unconstrained and he has complete authority under the command—that was shot down. So, of course John’s overarching—I mean it was just false, as a matter of constitutional law. But Con Law. I mean, Con Law I, constitutional law. It was just a fundamentally fatal mistake. So, you know, but then you get into the question of detainee treatment and then John’s analysis was never—I mean, because I always look at these memoranda and I’m always looking for cruel, inhuman and degrading treatment as the bench line and of course that’s nowhere to be found. John’s analysis was, that well you know, the standard is “level of injury and severe cruelty that approaches death.” Dismemberment. Things like that. What? What? It doesn’t make any sense, but I’m sitting in Mary Walker’s office being watched by Mary Walker, so Mary, you know, I get into her office—

Q: She's in the office while you're there?

A: She's in her office. This is Mary's Air Force General Counsel office. She goes into her safe, because all of us had safes in our offices for particularly classified documents, and she pulls this out, and then—same thing as Jack Rives, meaning you were, “Read this but you're not to make any notes, you can't take it with you, take as long as you want to but then give it back to me and then I'll put it back in the safe.” So I'm reading this and—of course, that was insulting, because, okay I'm glad to have access to the document, but wait a second—you know, that's not the way it's supposed to work because you know, we all need to have these documents and kind of sit with them and kind of then be able to then use the document as a springboard for analysis and a written counter-response, and that was not—but it wasn't making any sense. And then what happened was that I go back and, I discuss this in my memorandum, you know, with a chronology, and I tell Mary that, “Mary, you can't rely on this memorandum. It's flawed. It's not the correct legal analysis.” She takes offense of that. Kind of like, some of like, the Rives memorandum. “No, no, you don't understand. We don't have the discretion to disagree with a memorandum. You don't have the discretion to disagree with a memorandum. As a matter of law and of administrative procedure, when OLC issues an opinion, it is binding on Executive Agencies who are required to follow it. Now, by the way, this comes on the heels of what had been one of the main threads of discussion within the Pentagon, which is a related sort of argument. It's like, the President's determination of Military Order Number One that the Geneva Convention does not apply to anything in [?][1:43:55-4]. Whenever I or others would try to talk about Geneva, Haynes or his surrogates would say, “Wait a second, the President has already ruled on this. We're no longer—we're beyond that. We're no longer able to discuss it, because we can't. Even any discussion as to whether Geneva might apply given the President's Military Number One, is insubordination. I mean, it's fundamentally, then asserting or suggesting the President may have made a mistake or his decision is not right. We can't do that.” So this was a constant. You know, a constant. And of course then it tinged everything because it's the—as we would later increasingly learn, the Geneva does not apply then-order became determinative and shut off a lot of the debate within the Pentagon that otherwise may have been had. And this is, in fact, true even before the first Supreme Court case, Boumediene. It was clearly going to be a loser. I mean it's the kind of thing that—and by the way, this is another argument that I had with Jim over the course of the year—“You know, Jim, I think we're exactly right about this, why would we play litigation roulette on a matter of—On these matters of principle. These critical matters of War on Terror kinds of policies. You know, Jim, even if we wanted to support these kinds of policies, we don't want to litigate them, you know? What you want to do is you want to go to Congress and you want to develop a consensus with the administration, you want to go to Congress and seek statutory authority for these kinds of things. You don't want to duke it out with the courts. We're going to lose on these kinds of things. Boumediene was clearly postured for that. So I would be saying, by then, Secretary of the Navy Gordon England, who was back out and then back in, he'd been given executive agent's authority to develop the CSRTs, Combatant Status Review Tribunals, and the ARBs Administrative Review Boards, and then by virtue of being Gordon's General Counsel I was deeply engaged, then, in the creation of those two bodies so that I, really, for the first time was deeply engaged front-line in developing aspects of this situation. And my discussion to Jim and the

others in the area would be, “You know, Jim, this is, what is it, Article VIII of Geneva, about the tribunals? If we do something like that with the equivalent to this, let’s adopt it, this will be a judicial fact and they might—” “No, no. We’re not gonna go there. We can’t even say that we’re going to do something ‘a Geneva equivalent.’” Because the use of the word Geneva is corrosive. So it’s the kind of thing that these earlier issues, the earlier determinations, Military Order Number One, and the underlying legal philosophy that, to acknowledge any potential limitation on presidential Commander in Chief authority is to potentially continue to erode it, or to then stake out a position that the views of the unitary executive and the OLC, as articulated by John Yoo, might not be correct, and you can’t go there. In reality, a lot of what happened during the Bush administration in the War on Terror issues is governed by this overall principle. You couldn’t get to the merits of this case, you couldn’t even have a discussion on these kinds of matters, because it necessarily would implicate the possibility that the President had something less than uncabined Commander in Chief authorities. And that explains a lot of what happened in the administration.

Q: Now, at some point, you have John Yoo come over to see you, and you have a discussion with John Yoo, and you put it to him directly about the President’s capability of sanctioning torture.

A: Yes, exactly. I forget exactly what happened, but at some point Mary sends me an e-mail, which is almost like the first piece of writing on the Working Group situation, in which I tell her that you can’t rely on the John Yoo memo. She says you have to, then she sends me a memorandum, an email—first time she puts anything in writing—and then I respond back to her, which I talk about in my memorandum, which is why I say, in writing, “You can’t rely on the OLC memorandum, it’s flawed.” Then she responds back, and says, “Look, I disagree. I think it’s good analysis, and what’s more important, Jim Haynes thinks so too.” And I tell her, well, you need to know, because by then we’d gone through several drafts of the Working Group memorandum. It was clear where this was going to end up, and it was clear that it was going to essentially reaffirm the Diane Beaver view of the world, and then the John Yoo view of the world, that I felt and all the other TJAGs felt was simply wrong as a matter of law and policy, and I communicated to them that I would not concur with a memorandum on behalf of the Navy. John Yoo comes over, and I can’t go to the meeting that he’s there [for]. He meets with the other TJAGs and general counsels, and I’m not able to be there but I want to speak to him, and then Yoo comes over to my office as a favor to have that kind of discussion with me.

Q: And that’s a one-on-one?

A: No, Bill Molzahn was there. So Bill, my Deputy General Counsel, was there. So John, who is, I mean, just, he’s a brilliant individual, very glib, very facile, and is the kind of attorney who dominates constitutional law. Very orderly, capacious mind, having taught it for a number of years. So he understands, he’s got a view, of course, of what it provides and of the precedent chain and so forth, and he’s talking—and in very dismissive kind of fashion—“Well, you know, this is very clear. President has the authority to do this, and then he’s got the ability, and this is what the law provides with respect to—” And I say, “John, wait a second. Are you telling me that the President has the authority under the commander in chief powers to order torture? I don’t think—” And then he kind

of holds up his hand and interrupts me mid-sentence, “Wait a minute, I know what you’re going to say. You need to understand that what I’ve written in the memo is the law. What you’re articulating is policy. It may be the better policy, but it’s not the law. The law is that the president can do this. Order torture.”

Q: The moment that—the most gobsmacked—if I recall, your follow up comment to him is, “Where can I have this policy discussion, and he says: I don’t know, the Pentagon?”

A: Six barrel policy discussion. Yeah exactly, so, he’s going to say—he looks around, “You know I don’t know, at the Pentagon, you guys are the experts on the law of war.” Okay. You know, and I’m thinking, of course, I didn’t fully understand the comment, or the disingenuousness of the comment until years later, post-Abu Ghraib, and then post two years or three years afterwards, John had been having these policy discussions from day one into the War on Terror. As soon as, whoever it was that first called the White House and sought guidance on the limitations on presidential that—but I’m not sure that’s really been nailed down fully. Of course, as I understand it, John Yoo’s emails disappeared mysteriously, and of course are not available to the DOJ Office of Professional Responsibility or whatever the name of the office is—never been explained exactly how it came to be lost. You know, so—and this gets back to the issue that, in fact, contrary to my assumptions, this is a matter that had been discussed from the earliest days at the White House to the DOJ levels, at the Ashcroft/Gonzales Office of Legal Counsel, Dave Addington, White House Counsel Office, from the start. And there had been, I’m sure, thousands of hours of discussions on this. Which had not included, you know, us.

Q: Well one thing in our report or our whole venture, which I’ve used as a kind of touchstone is that this is unprecedented in US history, in that we surely have mistreated captives before, as any army has, but there’s no time in US history that, at the level of the President, the Secretary of Defense, DCI, they sat around and discussed the propriety, wisdom, and legality of inflicting torment on people. Never.

A: To my knowledge it’s unprecedented.

Q: I wanted to bring you to, because of time running, to the conclusion about the Working Group that seemed to have been abandoned but then you find it actually gets out because that brings me to my largest question, which I’ll preview for you now, if I may, which is, you’re again stunned that the Working Group report actually gets signed and becomes operational in effect. So my question here, which is, isn’t this the time when—this is what gives the opening, where people have said in the field have said so often, we felt that the gloves were off. We had the green light.

A: Here’s what happened. There was a final draft report of the Working Group memorandum which was circulated for comments. (Q: Right.) And while that’s happening, Jim detaches the kind of green light, yellow light, red light then-matrix that was an attachment to the memo. So this was a matrix that had a variety of interrogation techniques, and then the green/yellow/red lights were seen as whether or not these things were lawful. And there’s one of the periodic meetings in his office in

which the General Counsel and TJAGs are together in the DOJ counsel's conference room. And he says, "Never mind the memorandum; let's deal with the matrix independently. We'll get to the memorandum later. Are you guys in agreement that the matrix is accurate?" And I think all of us had qualms about this, because in essence, the matrix didn't make much sense, divorced from the memorandum. But I know that I felt that it was roughly accurate, that the matrix as presented was roughly accurate, so Jim says, "Okay, let's have a show of hands, you know, and just get this out of the way." And all of us included myself voted that it seemed like roughly, roughly right. Then Jim said "Look, what I'm going to do is have you guys—we're going to have one-on-ones with me with each one of you individually and privately and then you can tell me whatever you want me to about the Working Group memorandum. I go in, and then my conversation with Jim is, "Jim. Navy will not concur with this memorandum when it's circulated for it is deficient in any number of ways, permits the use of cruel, inhuman and degrading treatment, doesn't adequately deal with the various issues under consideration, it's just a bad piece of work. Here's my recommendation to you: I would call Mary into the room. I would shake her hand and thank her for her service to the country, then I would put the memorandum in my top desk drawer and never let it see the light of day again. You don't want to do it and again, so you know, Naval will not concur." The memorandum was never circulated to the departments, or for comments.

Q: And you assume it is shelved?

A: I would assume—in fact I discussed it with the other TJAGs because after a while we never saw this and months would go by, and we never saw the memorandum and then all of us, you know, what happened to the memorandum? And you know we all guess, you know, Jim took our advice. By the way, Mike Lohr never told me what he told Haynes, but Haynes later said "I had a meeting with Lohr. He was abusive." And Mike was very private about these matters, you know, Mike would never really discuss with me and I always respected you know, his sense of confidentiality on these kinds of matters, but what I've heard from various people is that Lohr took a strip off his hide in the—in his contempt for the memorandum. And most of the TJAGs wrote memoranda, you know, to the, like Sandkuhler wrote a memorandum, I think Rives may have as well (Q: He did yes sir.) I think Scott Black was there at the time, or may have been there, and you know—I mean everyone, all of them were—

Q: But eventually I was wanting to get to my question. So it eventually gets signed to Miller, right?

A: Well what happens is, we all think it goes away. And then after Abu Ghraib, I'm sitting in my office looking at my television, and on the television is the Congressional hearings and this Army general is being raked over the coals and the question—I don't recall who the questioner was and I don't recall the general's name—but the question was, "So what kind of written advice did you, or what kind of written guidance did you have on interrogation techniques?" And the guy says, "Oh, we had blah blah blah blah blah and we had a Working Group report from the Pentagon. And I'm looking at the television, I'm thinking, "What? How did a draft of an un-issued working group report possibly get out to somebody in Iraq?" And I pick up the phone and I call Mary Walker. Mary's not there, but her deputy was. Dan—Air Force Deputy General Counsel—forgetting his last name. "Dan,

I'm looking at the television, and this Army general is testifying about—heads up, that he got a copy of the Working Group report? You know how—what happened here? How could he have gotten a copy of the draft? And Dan says, "Oh didn't you know? Mary and Jim signed it out. And it was delivered to the Secretary of Defense. It was—"What?" And then I call around and talk to my, you know, Mike and the others, maybe Bruce was the Navy TJAG at the time, and it's kind of like all of us are—"What?" And then, this is a question that is asked at a Pentagon press briefing of Rumsfeld or the head of public relations for the Pentagon, and—who's name I'm also blanking out on— he was Rumsfeld's chief PR guy, or public spokesman during most of the time there. (Q: This is after Torie Clarke?) After Torie Clark. Torie was out relatively early, you know, she was—and then, this was the guy that replaced her, I think for the balance of her time in office. And he's describing the Working Group report, you know, well you know we had this in, there was an inter-service Working Report, represented our consensus, and I write him in an email. You know, point of clarification, I thought this was just a mistake. You know, I thought, "You need to know, this is not an inter-service Working Group report. The service has never approved it, Navy, and I think the other services, never would have approved it. So it's inaccurate to characterize it as having any kind of service endorsement." His response was somewhat rude, you know, "Wait a second!" you know, "Who are you working for, what is this all about, what are you talking about," you know, "Check again." To me. You know, when I said, "Don't characterize it as this, because it's inaccurate. What you'll find if you dig a little further is that, in fact, the services would have opposed the Working Group, so don't ascribe inter-service endorsement of the report." And then he checked with Haynes because he'd been told differently by Haynes and his team, and that created a little tension between myself and DOJ when I pointed this out to them. But that's how it happened, you know, it's like—Jim did sign it out with Mary. And Mary was always a true believer, you know, Mary—

Q: But they clearly were less than honest in how they portrayed it. They may have believed in it, but it was not honest to say that it was widely approved.

A: Yes. And the truth is, I don't know how they portrayed it, you know? Because all of that is a mystery. I didn't—we didn't see it, it went the military chain of command, you know, into

Q: You saw that they misrepresented it, right?

A: Misrepresented to us by silence. So that's as much as I know, because I never heard, of course, that it was approved, so I really don't know who, to this day, how they got to us.

Q: So it gets to Miller though, it does get to Miller. I mean, it becomes operational for Miller and the people in Abu Ghraib. It becomes a guideline.

A: I guess. I mean, that's what I've heard.

Q: So, since you have seen it earlier, and expressed your disapproval, it gets used, is this not sort of a key moment in which the word is propagated that the gloves are off, everything is permitted, the higher-ups have in fact, okayed coercive treatment.

A: See, and that's—I don't know that directly. It may be, but it gets into the—

Q: I mean it's used as an authority, right?

A: In broad terms, what happened, as I've mentioned, I think the military had a subsidiary role to play in developing those authorities. My belief, without any personal knowledge but based upon the readings that I've done is that, in fact, it was the Agency that went in first to seek this kind of authority and then the authorities were in the kind of White House, DOJ sort of—

Q: But we're interested in how it spread through the military.

A: This is where I think that there's a lot that isn't yet understood, you know. The Diane Beaver memorandum and Diane's testified. I don't know the truth of this. There are a lot of people that suspect that Diane didn't do this as a solo kind of efforts, there was some sort of guidance. There was a lot of parallel discussion—it's like, for example, you talk to General Taguba. I didn't meet Taguba until after I'd left the Pentagon and both coincided at a seminar at West Point, three day seminar in which the West Point Department of Law was discussing Guantanamo, Abu Ghraib and the War on Terror. It was a great seminar, it just speaks to the intellectual honesty and freedom that you find, that the military academy talk about these things. And, Taguba had known of me, and made it a point to introduce himself. And he was white-hot with rage, and from what I understand he still is. Taguba, who'd given his life to the Army, who completely believes and subscribes to the "Duty, Honor, Country" ethic of the military, was going to do an investigation that was straight up-and-down. Now the terms of his referral were such that he was ordered only to look at that military police battalion that was doing some of the interrogation. But Taguba knew from his experience that this was only a small slice of the reality. You had Agency operations there and you had contractor operations there, and they represented a much broader realm of activity than the narrower military police. But his order are, "Go do the military police." And he gets called up to see Rumsfeld. And as he comes up, Taguba's talking about this, he's told, "General, you know, careful about this. Be very careful about this. This could have career consequences depending on how you handle it." Goes off, does a report, gets passed over for promotion, and then he gets called to go back to the Pentagon, Rumsfeld rakes him over the coal for having written a report that was, even within its narrow confines, too candid. And then the friends that had warned him about not exercising care called him and said, "We tried to talk to you, we tried to warn you about this." So Taguba—and obviously he'll will tell you what he does—I don't mean to testify for him, but you know, this is what I took from the meeting, that Taguba felt that, as candid as his report was, it was a misleading report because it didn't capture the reality (Q: The larger—) of Abu Ghraib. The larger picture of Abu Ghraib. So this gets back to the issue about what is the role of the Working Group report. I think what happened was that after Rumsfeld rescinded his authorities and then there was a military pushback, not only from the JAGs, but from the other military leaders (Q: You as well.) and I was present at a meeting that took place when Gordon England shipped it over from Navy to become Deputy Secretary of Defense and we were then dealing with the areas of detainee operations and other matters. But Gordon convened and all had these meetings, so there was, every General

Counsel, every TJAG was present, and then every Vice Chief was present. Rod *inaudible* was there for the Navy. And the issue was about detainee treatment and Jim gives his presentation and never describes a Torture Act. And then he turns to me, and my statement was, "Wait a second, when we're talking about what guidance to give our men and women in uniform, our only obligation, if that's the question that's posed, is to recognize that the Torture Acts criminalize—make it a criminal act, to apply torture to a prisoner. And our obligation is to advise every member of Congress precisely what the statutory black-line requires and not treat this issue as a matter of discretion. We don't have discretion. We're bound by the statute to a certain course of behavior and we're required to do this. But that was not Jim's—"

Q: I'm sorry this meaning is where and when?

A: This is later, this is now Deputy Secretary of Defense, so this is towards the tail end, this would have been like in 2005.

Q: This is Gordon England's called meeting.

A: That's right. And there was—now that the Supreme Court is getting engaged, the issue is getting broader, there is McCain, and McCain Amendment gets thrown into the picture, the White House is pushing back, the White House is threatening veto of the McCain Amendment, and so Gordon was trying to unravel these kinds of knots and to push the White House in a different direction. So we had, then, other discussions at the time on those kinds of issues. But you were asking about Miller. And I was talking about the broader picture. I think the military was chilled. The military had, from the Joint Staff, every member of the Joint Staff had communicated that the military doesn't do abuse. The military subscribes to the Geneva Convention, as it has ever since they were enacted and as military tradition, over decades, has provided. So the White House, and I think even the Rumsfeld team, recognized that the military wasn't the right tool for the enhanced interrogation, and so what you had was then the military putting the stake in the ground, particularly after the McCain Amendment was enacted. And then you have the detainee treatment handbook that was almost passed immediately by the military. The military was ready to go, and to some extent, my understanding was that they issued it without White House clearance. So with that the military kind of preempted the military position on this, and in fact I remember I was in Arkansas working out in a gym, and there was a C-SPAN hearing. All the TJAGs. There was Bruce McDonald, Scott Black, and Rives and who else was there? Sandkuhler was there. So all of them in uniform and Lindsay Graham, "Do you believe that the authorities to interrogate detainees in this certain fashion violated or were consistent with the Geneva Convention." And down the line, every one of the JAGs said, "violated, violated, violated." This is at a time when the White House was defending, still, abusive interrogations. You had all of the TJAGs in a televised congressional hearing saying, "The White House has it wrong."

Q: And you mentioned Miller?

A: Sorry, back to Miller. I met Miller my first time at Guantanamo, well actually my second time. The two individuals—they had a bifurcated command structure at Guantanamo initially, so you had, you know, Bacchus I think was one of the individuals and then there was another person there and the two were butting heads all the time. It was clear to see it was dysfunctional and so-forth and then, word of this got up to the Pentagon and it was decided to bring in somebody new to unify the military operations on the base. I was very favorably impressed by Miller when I met him the first time. And throughout, I mean, but I went down there, as is often the case of these senior officer visits to a place, you have the commanding officer who will be the personal escort who will take you to the base. And Miller had been on Guantanamo probably less than a month, and he was completely in command. He had mastered the brief, he knew exactly what he was doing and what he was supposed to be saying. And I walk into that command—not bunker, but it was like, well, the headquarters at Guantanamo—and then before him *inaudible* body of briefing concerning the mission of the Task Force. JTF Gitmo. And it was all consistent with upholding the Rule of Law, observing the best traditions of the military and so-forth. I told people this any number of occasions afterwards—I came away feeling that if I had a son in the military, I would want an officer like Geoffrey Miller being his commanding officer. He was that impressive, that disciplined, that buttoned-up, that intelligent. Although I tell you, I went out to our—Mike Lohr and I were together—and I came out to the car, and I had already written—my opposition to the Guantanamo, you know, interrogation techniques was already well-known—and had gotten down to the, I mean it was throughout the command structure—and I’m in the car. And my kind of delays are, you know, we’ve had the meeting from Miller, the initial meeting, three hours. I was really impressed by Miller. And Mike comes into the car and he kind of smugly -- Mike Lohr. Mike Lohr’s shaking his head, he says, “You won’t believe this.” He says, “I just got taken aside by one of my Navy JAGs down here. He said Miller had a pre-brief to his command. He said Alberto Mora’s coming down as part of the delegation. Nobody will speak to him. I’m the only person.” So Miller had essentially communicated to him that he was going to be completely in control of the message. Any messaging, any communications with me *inaudible*. Now, you can take this two ways, you know, in light of Miller doing this. He was either trying to be the appropriate command, so there’s no mixed messages and so forth, or he was attempting, you know, to make sure I didn’t hear something I didn’t want to hear or shouldn’t be hearing.

Q: But if he told—Clearly it’s that. He told you that they were upholding the finest traditions of military honor and Geneva. We know they were beating the shit out of people.

A: And this is where I’m always curious—this gets back to the difficulties about making a personal judgment about individuals: I came away from my meeting with Miller, as I’ve mentioned, impressed by his military bearing, and what I felt was a strong sense of discipline, and his intelligence, and his energy, and his command power as a leader. And my impression to this day is that Geoff Miller is an officer who will follow orders. So what does this mean? I happen to think that Geoff Miller would not disobey an order. That if he’d been ordered, “Follow Geneva,” that is exactly what he would do. There is a speculation, or perhaps more than speculation as to what happened in Guantanamo. And of course there’s this quoted remark that he was there in Abu Ghraib “to Gitmo-ize Abu Ghraib.” “Gitmo-ize Abu Ghraib” could mean bring it under the policy guidelines and orders

as articulated by the Secretary of Defense which would include observing Geneva. And this is where, now, the Working Group report comes in, and my lack of knowledge. But I don't know what kind of—because Miller by all accounts, met privately, or met with Rumsfeld and his crew all the time. All the time. So this might be one of those areas where, notwithstanding the suspension, there may have been a private communication. I'm told that Miller was told, you know, "Never mind, general, what's in writing. This is what you will do in the War on Terror." So I don't know. You know, and then this gets back to it.

Q: It's a fair speculation but we don't know.

A: Exactly. I don't know. And I've seen the, I guess the positive side of Miller, and I don't want to speculate. . . . [T]here was almost from the start, a parallel interrogation track, largely concentrated in the intelligence community, and the intelligence community was often co-located in military facilities. And until Abu Ghraib, there was a lack—see, here's what I think. The abuse of prisoners was a combination of three factors. One factor was the sadistic tendencies that you find in every military force, in all countries including the United States. We do a much better job than most of controlling it through our training and the fact that our culture is not a culture of brutality. We believe in treating people fairly, so we learn this as we grow up as children and then high school students, and then as members of the military. The principles of military conduct are trained to every soldier in all the services, but you always have some that don't get them—the message, or the individuals, the Lt. Calleys of this world who don't absorb it and go rogue. Lack of military training, inadequate leadership, is the second kind of category. And the third kind of category is, of course, then, the affirmative order, that you're ordered to do something inappropriate, as initially in Guantanamo, the intelligence task force was ordered, or under supervision, authorized to use abusive interrogation techniques. When Abu Ghraib first hit, I thought the problem had been solved in the military. And when these images started coming up on the screen, and I heard that Guantanamo's going to break shortly before it actually did break in the news, my first reaction was, "What happened? How did we fail? Did we not sufficiently communicate our decision not to apply cruelty to the troops? Failure of leadership, failure of training, lack of clarity, combination of all of the above?" So to this day, I think, first of all I think we don't know a lot of it, despite all of the investigations and all of the administrations positions and so-forth. I think a lot of what happened isn't yet fully understood yet. And I think it's probably worse than we think it was.

Q: Somewhat along those same lines—in your memo that you wrote for the Inspector General's investigation, you talked about you didn't get any further reports of any inappropriate conduct?

A: Actually I got a report that the abuse had stopped. So. Not only had Jim told me, communicated to everybody that the Secretary had ordered the, had rescinded the memorandum, but then Dave Brant immediately came back a day or two days later and says, "Look, the word now we're getting from Guantanamo is that the abuse has stopped." So it was a combination of the two, and by then I was relying fully on NCIS, so NCIS had proven ability and of course the proven values to monitor and report back on these kinds of matters. It was the combination of two that convinced me that the abuse at Guantanamo had stopped.

Q: Looking back down do you have any reason to believe that information was withheld from Brant or yourself in that regard?

A: Well I think it was clear that, you know, the interrogation task force understood at some point that Brant and others had taken advantage of what was lax security in order to obtain documents from them, so the firewall between then the interrogation and the others then came up. So that at some point somewhere in the process, NCIS lost the ability to look over the fence into the interrogation task force activities and then to get direct information from that. But I have—I tell you, with respect to Guantanamo, I think that the place is small enough that if abuse had continued, I think NCIS would have learned about it.

Q: A couple of quick, just very quick things regarding—where's Gordon England these days?

A: I haven' spoken to him now in several years. My understanding is he's still back in the area, he's got a defense consulting business. Gordon, by the way, was a spectacular leader . . .

Q: We think it's an important venture and we know you're a supporter and sponsor and we're most grateful.

A: I can't applaud you guys enough for doing this thing. You know, it was, as we said at the start of the meeting, the country doesn't really understand the cost of what we paid. And at the tail end of my tenure there I would get typically JAG officers would come to me and say this or that. For example, one officer came to me and said, "British military captured a terrorist. Not a terrorist suspect, a terrorist in Basra and released him, and they gave him 48 hours head start, and only then notified American authorities what they had done, because they did not have the detention facilities and they did not trust either the United States or the Iraqi forces not to abuse this individual. So rather than potentially engage in aiding and abetting criminal activity, they thought the least-worst option was to release the terrorist back into the field. British deputy military commander of NATO forces in Afghanistan would get up and leave any meeting in which detention operations were discussed, because he would not take a role in this. Australian Navy refused to train with the United States Navy in detention operations because—" I was at a meeting once, and this is close to my departure from Singapore, this is the Pacific JAG Military Law Conference. This is the premiere kind of international meeting of military lawyers in the world and initially it was the United States, Canada, Australia, New Zealand, Japan, now it's become an international kind of gathering. Even China sends their military JAGs to attend this conference. And I happened to be the most-senior Pentagon official at one meeting, and at one point I get cornered, literally cornered, by the uniformed TJAGs of the UK, Canada, Australia and New Zealand and they're around me, fingers in my chest, and they're saying, "You know, we trained with the United States military all our lives and we deeply respect everything you do including everything you're doing in the War on Terror, but you need to know that on issues of detainee treatment, and particularly on interrogation, we can't ever go along with that. And our countries won't do it. And you need to understand as the American representative that the level of our national cooperation is going to continue to decrease. And don't

worry about him—it's not a question we don't understand what you're trying to do and the rationales. It's not a question of a failure to communicate actively. We know what you're doing. And I'm telling you, it's criminal activity in our countries and we can't be a party to this." So, towards the tail end of my tenure, my last major effort was to try to—and I spoke to all the service Vice Chiefs about this—we need to, you need to document the military impact, the operational impact of these War on Terror legal decisions, because it's sizeable. And I said, in upstate, the military doesn't get in these kinds of political issues, but I'm saying, in the Joint Staff, this needs to be couches as not a political issue, but you're essentially data-gathering these—I've got some anecdotes, but I have no idea what the whole range of these kinds of matters is, and what the operational impact is. I always knew that this was exacting a cost. I knew the Europeans couldn't—and the Canadians and the Australians and the New Zealanders couldn't go along with this thing because of criminal liability. This was always clear. But not quoted directly from our military officers and, I've heard it from our own JAGs who had operational billets in which they saw these kinds of consequences. In the Red Sea, you had NATO Naval Task Forces. The Rules of Engagement required that, for any detention operations, there be an American on-scene commander to take custody of the detained terrorist suspect or terrorist. But there were cases in which there were not American on-scene commander because the sort of—the frigate got called off to another higher-priority mission, so it was a NATO fleet or unit that was boarding or stopping the vessels. But even though there may be suspected terrorists on board, they would allow the ships to sail on, because none of these individuals will take into custody an individual and hand him over to American detention, and then run the risk that the person would be abused contrary to Geneva and contrary to the international laws. So this was my effort, which I don't think it ever bore fruit. I discussed it with Jake Johnson when he became the General Counsel under Obama, "You know, Jake, you need to know this. That this is what was happening, it was a military operational impact, and to my knowledge it was never quantified. The American public doesn't understand this, because the story they've heard from Dick Cheney and the others is that, hey, this is all on the plus side. This is all to the good because we got actionable intelligence. It helps save American lives. Not so. In fact, when I was in the same event in West Point, Taguba was introduced by a military officer who had served under—was a high-ranking officer in the West Point administration. And this guy had been at the Joint Staff as Head of Counterterrorism, and he told me that the Joint Staff recognized that the number one and number two causes of identifiable combat deaths in Iraq, number one Abu Ghraib, number two Guantanamo. And that that was, by virtue of their function as recruiting tools serving to recruit Jihadists into combat into American forces in the field. (Q: How did they know that?) I don't know. I mean, I think, not a question I asked of the individual, but I figured anybody who was in the position of being Joint Staff Head of Counterterrorism was in a position to know what he was—and this was consistent with these other kinds of—. We've known this. We've known that Abu Ghraib and Guantanamo have been political symbols of American injustice

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