

C05431961

TOP SECRET [Redacted]

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

US Classification//Non US//SCU//Codeword//FGU//Dissem Controls//Non-Intell//Declass (as appropriate)

ROUTING AND RECORD SHEET

SUBJECT (Optional) (U) Status of Action Pending on Inspector General Report

FROM Acting Director of Central Intelligence	Extension	NO.
	DATE 09/16/2004	

TO (Officer designation, room, and building)	DATE		OFFICIAL'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. Deputy Director for Operations				Please note response date no later than 22 September 2004.
2. Acting General Counsel [Redacted]				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				

TOP SECRET [Redacted]

EYES ONLY

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0000041

15 September 2004

MEMORANDUM FOR: Acting General Counsel
Deputy Director for Operations

FROM: Acting Director of Central Intelligence

SUBJECT: (U) Status of Action Pending on Inspector General Report

REFERENCE: (TS/ [redacted]) DCI Memo to the Inspector General, dtd 21 June 2004, "Recommendations Contained in the Special Review of Counterterrorism Detention and Interrogation Activities"

1. (U//AFUO) I have recently reviewed the former DCI's decisions regarding the Inspector General's recommendations as set forth in the referenced memorandum.

2. (TS/ [redacted]) Please prepare a status report on those actions undertaken to comply with the former DCI's decisions concerning [redacted] contained in the "Special Review of Counterterrorism Detention and Interrogation Activities" [redacted]. Your response should be provided to me and to the Inspector General no later than 22 September 2004.

[redacted signature block]
John E. McLaughlin

[redacted block]

~~TOP SECRET~~ [redacted]

DOC 27

1 November 2006

MEMORANDUM FOR: Inspector General

FROM: [redacted]
Chief, Legal Group
CIA CounterTerrorism Center

SUBJECT: (TS) [redacted] Updated DCIA Guidelines on
Confinement Conditions, Responsive to
Recommendation 1 of the Inspector General's
Special Review of Counterterrorism Detention
and Interrogation Activities (2003-7123-IG)

1. (TS) [redacted] Action: None, this memorandum
forwards a copy of the updated Guidelines on Confinement
Conditions for CIA Detainees, signed by the Director of the
Central Intelligence Agency on 31 October 2006. These updated
guidelines respond, in part to Recommendation #1 of the
Inspector General's Special Review 2003-7123-04.

2. (U//AFOU) We continue to work on other updated
guidelines and would expect them to be completed within the next
several weeks. [redacted]

Attachment

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TOP SECRET [redacted]

SUBJECT: (TS) [redacted] Updated DCIA Guidelines on
Confinement Conditions, Responsive to Recommendation I
of the Inspector General's Special Review of
Counterterrorism Detention and Interrogation Activities
(2003-7123-IG)

(1 Nov 2006)

Confinement Guidelines.doc

Distribution:

Original - Addressee

~~From~~ Acting GC-

1 - O/AEDCIA

1 - [redacted]

1 - CTC/LGL Files

[redacted]
TOP SECRET [redacted]

US Classification/Non US/SCJ/Codeword/FBI/ID Sent Control/Non-Intell/Docless (as appropriate)

ROUTING AND RECORD SHEET

SUBJECT (Do Not Fill) (ITS) [redacted] UPDATED GUIDELINES ON CONFINEMENT CONDITIONS FOR DETAINEES

Extension NO. CTG: 1027(400)/2006
DATE 10/27/2006

TO (Officer designation, room, and building)	DATE		OFFICIAL'S INITIALS	COMMENTS (Number, each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
	10/27	10/27		
	10/27	10/27		
	OCT 27 2006			
	27 Oct 2006			
	27 Oct.			
6. JOHN RIZZO, h/ncc		10/30		
7. NCS SECRETARIAT				
8. NCS/RAF				
9. NCS/INT				
10.				
11.				
12. JOSE A. RODRIGUEZ, JR, h/ncc				
13.				
14.				

Please call [redacted] for hand carry.



US Classification/NON US Classification

EXECUTIVE CORRESPONDENCE ROUTING SHEET

1. Origination Office C/SMD		2. Date 10/27/2006
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Name	Room No. and Building	Phone
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4. Subject (TS/ **UPDATED GUIDELINES ON CONFINEMENT CONDITIONS FOR DEVIANTS**)

5. Originating Office Control # CTC: 1027(400)/2006	5a. Response to DAC # (Originating Office to Complete)	5b. DAC Control # (DAC Use Only)
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6. Justification / Summary (Required for Immediate and Priority Actions)

Routine
 Priority
 Immediate

7. Coordination
C/SMD, CTC/LGL, CTC/COPS, D/CTC, AGC/NCS, OGC, DD/NCS, D/NCS



TITLE DNCS	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input checked="" type="checkbox"/> FYI		
SIGNATURE			
TITLE DDCI	<input type="checkbox"/> SIGNATURE <input checked="" type="checkbox"/> CONCUR <input checked="" type="checkbox"/> FYI	<i>See attached note.</i>	10/30/06
SIGNATURE			
TITLE DAC	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input checked="" type="checkbox"/> FYI		
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TITLE DDCIA	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input checked="" type="checkbox"/> FYI		
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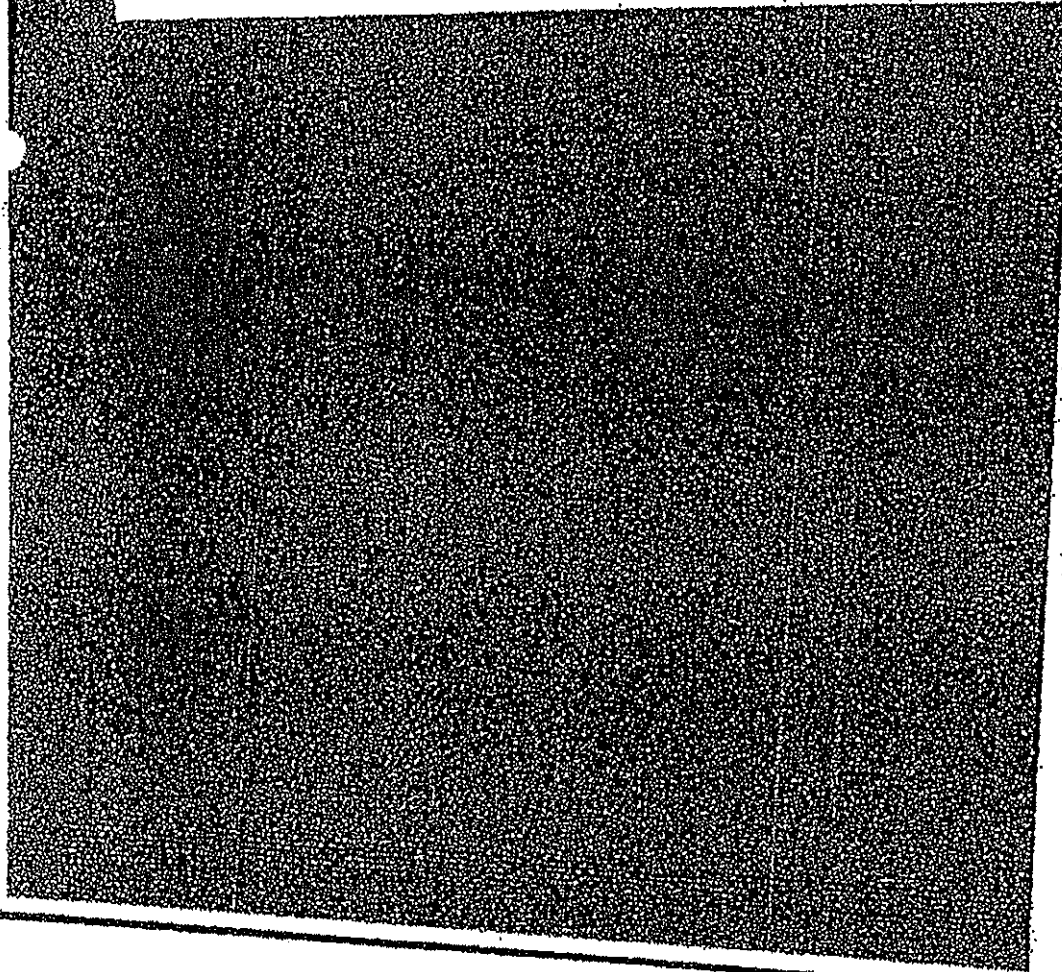
10/30/06



A/GENERAL COUNSEL
WASHINGTON, D.C. 20505

To: D/NS
DDCIA
DCIA

N.B. The specific conditions of confinement listed in Att. A have been specifically approved in a recent memorandum to me from Steve Brudney, Asst. AG (Acting), OLC + DOJ.



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CTC: 1027(400)/2006

MEMORANDUM FOR: Director of the Central Intelligence Agency

FROM:

[REDACTED]
Chief, [REDACTED]
CIA Counterterrorism Center

SUBJECT:

(TS/ Updated Guidelines on
Confinement Conditions for CIA Detainees

1. (TS/ [REDACTED]) Action Requested: Your approval on the attached Updated Guidelines on Confinement Conditions for CIA Detainees.

2. (TS/ [REDACTED]) Background: The attached guidelines govern the conditions of confinement for CIA High Value Detainees (HVDs) who are detained at a CIA Detention Facility. They have been updated from the previous guidelines, issued in 2003, to reflect the recent enactments of the Detainee Treatment Act and the Military Commissions Act of 2006. These guidelines offer broad coverage in recognition that environmental and other conditions will vary from case to case and location to location.

3. (TS/ [REDACTED]) The CIA Counterterrorism Center (CTC) remains responsible for ensuring that these standards for confinement conditions will be followed. Director/CTC shall ensure that at all times a specific Agency staff employee is designated as responsible for each detention facility.

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SUBJECT: (TS) [redacted] Updated Guidelines on Confinement
Conditions for CIA Detainees

That individual will be responsible for ensuring that all Agency personnel operating at the CIA detention facility adhere to these guidelines.

4. (TS) [redacted] Recommendation: That you approve the attached Updated Guidelines on Confinement Conditions for CIA Detainees. It has been reviewed by [redacted] and CTC/LGL.

Attachments

- A. (TS)
- B. (TS)

Standard Conditions of
CIA Detention
Updated Guidelines on
Confinement Conditions for
CIA Detainees

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C05431964

~~TOP SECRET~~

SUBJECT: (TS) [redacted] Updated Guidelines on Confinement
Conditions for CIA Detainees

(27 October 2006)
Updated Guidelines on Confinement

Distribution:

Orig - D/CTC
1 - D/NCS
1 - NCS/EA
1 - NCS Secretariat
1 - [redacted]
1 - CTC/LGL

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [REDACTED]

STANDARD CONDITIONS OF CIA DETENTION

(TS/ [REDACTED] CIA security needs require that the conditions of detention for all detainees held in CIA facilities include the following:

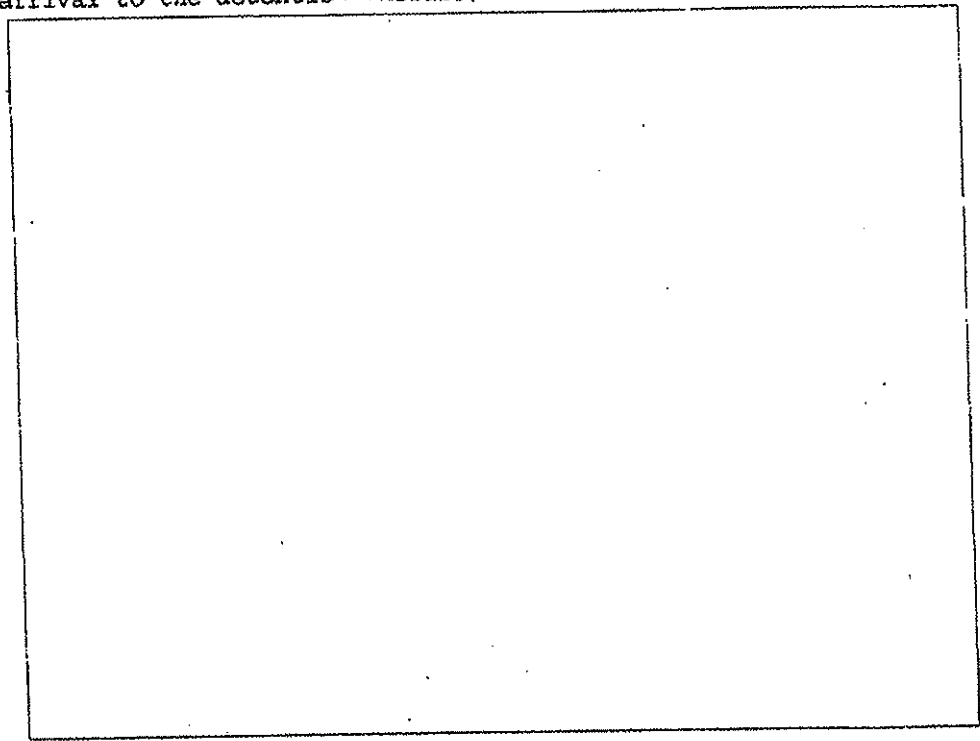
- [REDACTED]
- USE of White Noise
- Constant Light
- Shackling

[REDACTED]
~~TOP SECRET~~

~~TOP SECRET~~ [redacted]

(TS) ~~Shaving~~
[redacted]

[redacted] Application: A detainee is shaved (head and face) upon arrival to the detention facility



(TS) [redacted] White Noise:

-- Purpose: white noise is used for security purposes to mask sound and prevent communication among detainees.

[redacted]
~~TOP SECRET~~ [redacted]

~~TOP SECRET~~//

-- Application: White noise is kept at a decibel level less than 79 dB (calculated to avoid damage to detainees' hearing).

In general, sound in the dB 80-99 range is experienced as loud; above 100 dB as uncomfortably loud. OSHA guidelines require employers to establish a noise monitoring program when continuous noise is 85 dB or above. See 29 CFR 1910.95 App G.

Common reference points include garbage disposer (80 dB), cockpit of propeller aircraft (88 dB), shouted conversation (90 dB), motorcycles at 25 feet (90 dB), inside of subway car at 35 mph (95 dB), power mower (96 dB), chain saw (110 dB), and live rock band (114 dB).

there is no risk of permanent hearing loss for continuous, 8-hour-a-day exposures to sound at 82 dB

~~(TS)~~//

//MR) Constant Light:

~~(TS)~~//

//MR) Shackling:

-- Purpose: Shackling is used for security purposes.

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Restraints should not impede circulation or lead to permanent damage.

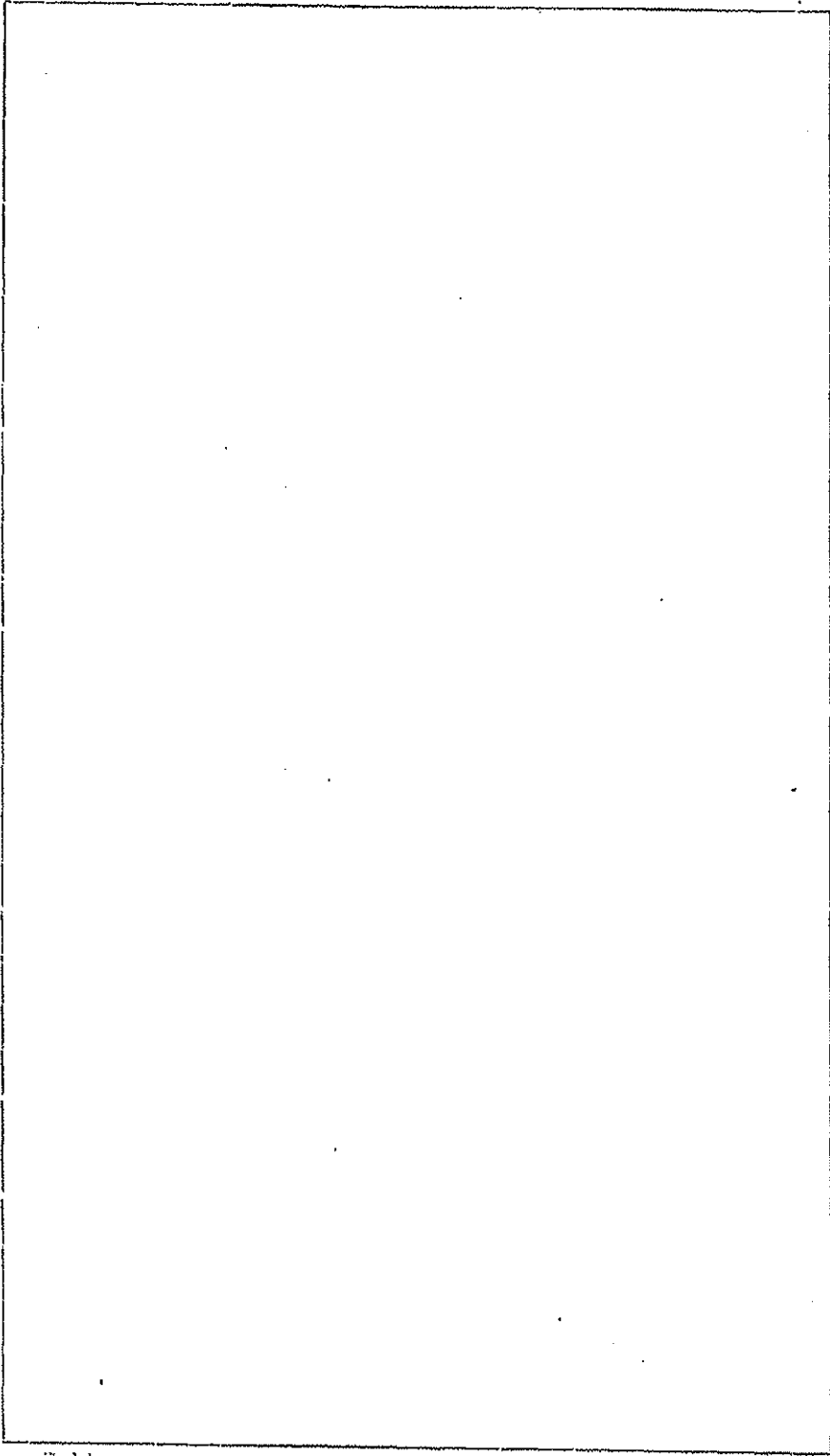
-- Application: Shackling is done in such a manner as to not restrict the flow of blood or cause any bodily injury.

Restraints should neither impede circulation nor lead to abrasions.

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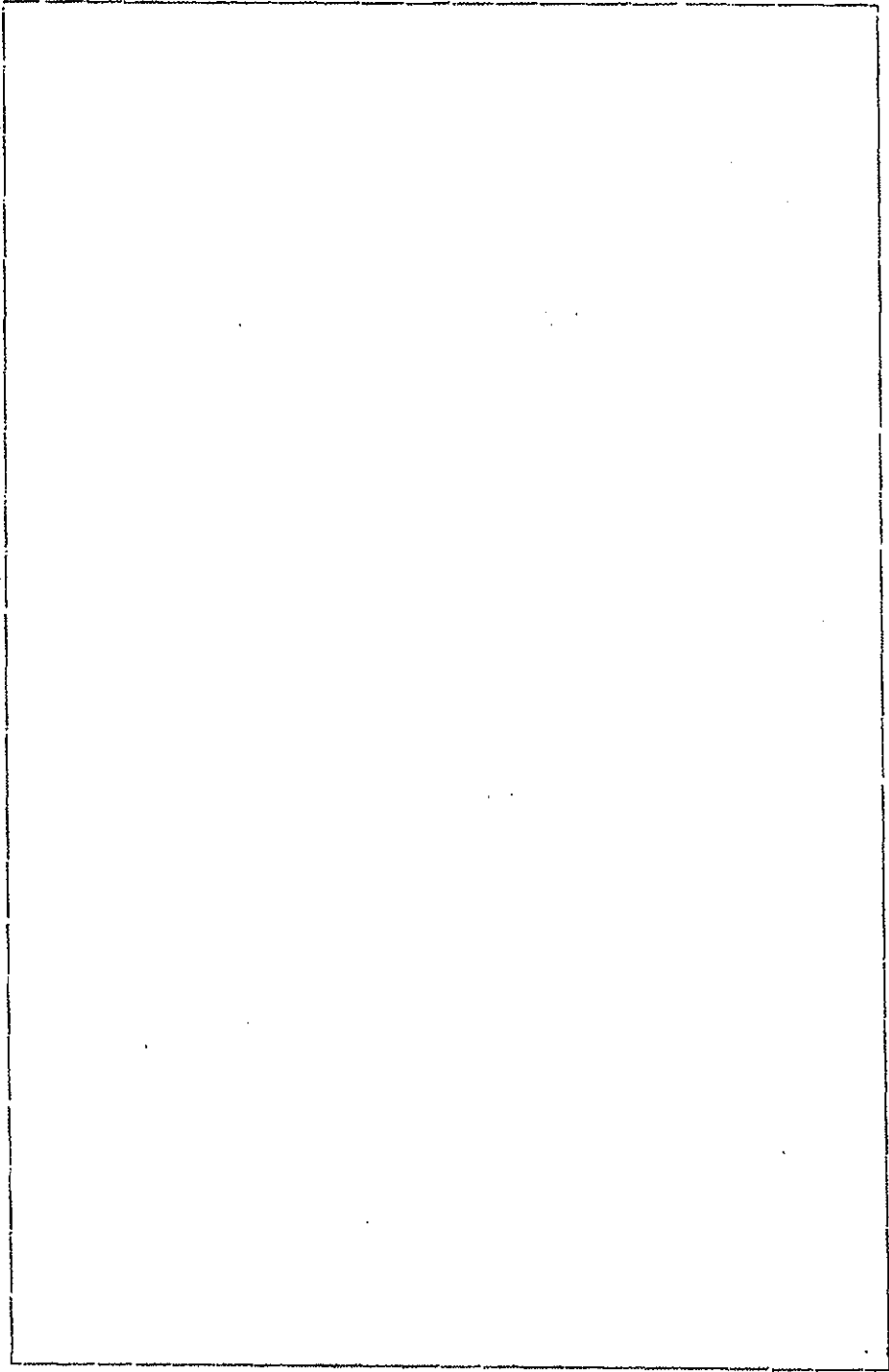
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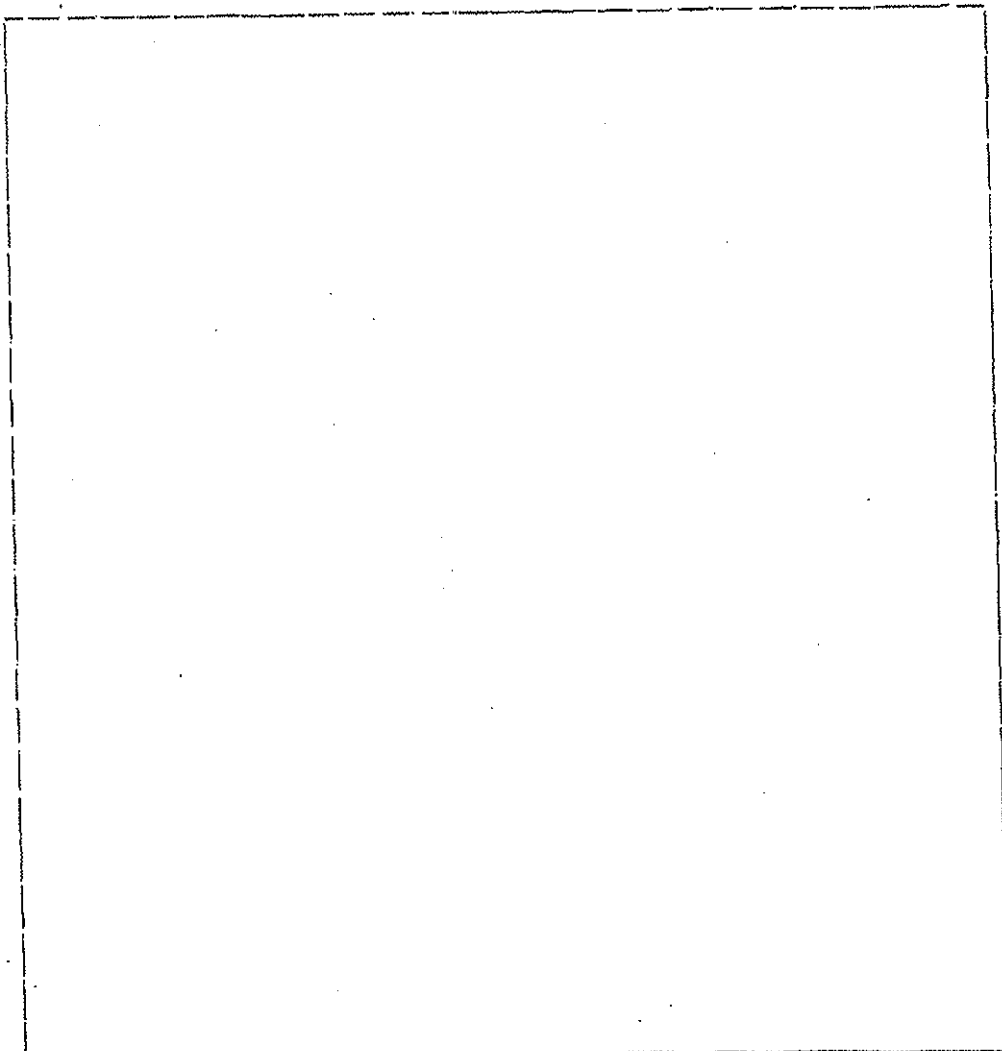
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~~TOP SECRET~~ [Redacted]

~~TOP SECRET~~ [redacted]



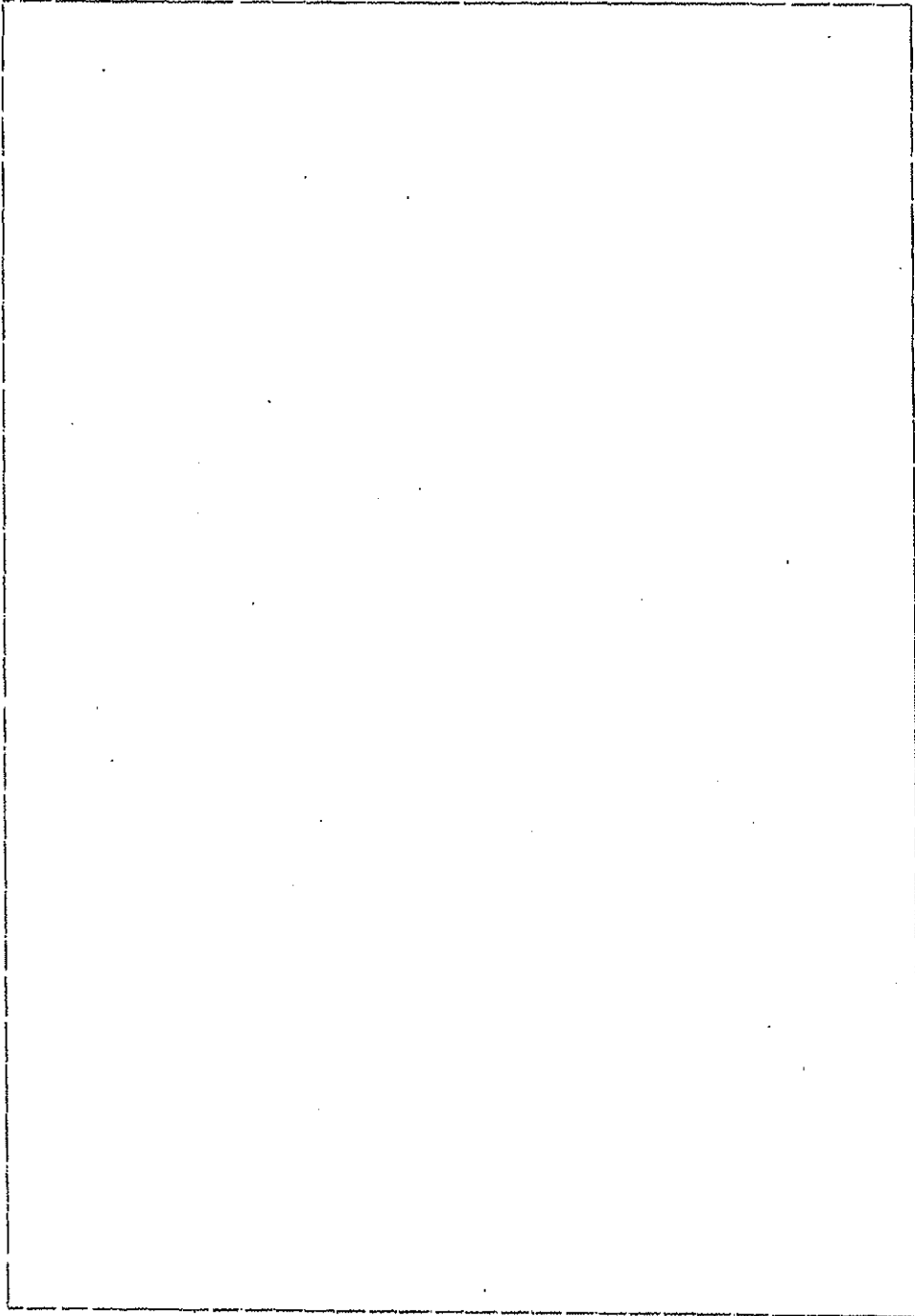
APPROVED:

Director Central Intelligence Agency

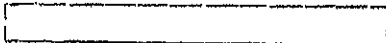
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DOC 35

----- Forwarded by [redacted] 09/03/04 07:40 AM -----

HANDLE VIA [redacted] CHANNELS ONLY



09/02/04 07:11 PM

To:

cc:

[redacted]

Rizzo/STF/AGENCY@DCI,
Subject: Approval Authority to Extend Use [redacted]

Per our conversation regarding the need to obtain approvals for EITs [redacted] spoke with [redacted] to confirm that (1) the NSC does not need to be involved in extending the use of EITs [redacted] that it is within CIA's authority to extend the EITs if needed; and (2) that he will ask the ADCI whether he wishes to be involved in the approval of the extension, but advised me to consider the DDO to be the approval authority for an extension and reapprovals unless he calls me and tells me the ADCI wants to be involved.

C05417001

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~~/ORCON, NOFORN//MR~~

HANDLE VIA COMSEC CHANNELS ONLY



09/07/04 03:50 PM

To:
cc:

John A. Rizzo/STF/AGENCY@DCI,

Subject: Re: Approval Authority to Extend Use of EITs v

Your understanding is correct.
Original text of [redacted]

HANDLE VIA COMSEC CHANNELS ONLY



09/07/04 12:06 PM

To:
cc:

Subject: Approval Authority to Extend Use of EITs

Nice to talk to you -- the above is my lotus notes address for future. Per our conversation and re the DDO's questions, I understand that for extensions of EIT there is no requirement to revert back to the NSC (as in the extension for [redacted] unless there is a request for additional measures or techniques. That is, the NSC does not need to vet the authority every 30 days but the required extension (30 day review) is under DDO authority only. Thanks for confirming.

----- Forwarded by [redacted] on 09/07/04 11:41 AM -----

HANDLE VIA COMSEC CHANNELS ONLY



09/03/04 07:41 AM

To: [redacted] AGENCY @ [redacted]
cc: [redacted] AGENCY@DCI

Subject: Approval Authority to Extend Use of EITs

TOP SECRET//C

0000043

~~TOP SECRET~~ / [redacted] 20300202

[redacted]
[redacted]



02/02/05 01:38 PM

To: John A. Rizzo/STF/AGENCY@DCI

cc: [redacted]

Subject: Re: Draft OLC opinion on combined techniques has arrived

Agree this should be limited to lawyers. I thought, though, that perhaps [redacted] was EIT briefed. The expert, of course, is [redacted].
Original Text of John A. Rizzo@DCI

[redacted]

John A. Rizzo@DCI
OGC

02/02/05 01:26 PM

To: [redacted]
cc: [redacted]

Subject: Re: Draft OLC opinion on combined techniques has arrived

Who are "a few others" at DOD? [redacted] cleared into EITs, and perhaps [redacted] (check on this) but no one else in DOD OGC, as far as I know. Outside of lawyers, I don't see this is any of anyone else's business on the DOD policy side.

Original Text of [redacted]

[redacted]

[redacted]



02/02/05 12:58 PM

To: John A. Rizzo/STF/AGENCY@DCI

cc: [redacted]

Subject: Draft OLC opinion on combined techniques has arrived

~~TOP SECRET~~ / [REDACTED] / 20300202

OLC wants our comments ASAP (if we have any hopes of having it completed and signed by COB Friday).

OLC also asks if its OK to share this draft opinion with appropriately cleared DOD (Jim Haynes, [REDACTED]
[REDACTED] and a few others) and State attorneys (currently only two, Will Taft and now also John
Bellinger).

~~TOP SECRET~~ / [REDACTED] / 20300202

C01425585

③ (b)(3)

OCA 02255-04
0000003

DCI/OCA/LIAISON, _____ ext. _____ 9/16/04
OCA 2004-1323 _____
File: _____
Markey.doc _____ The Honorable Edward J.

Distribution:

- Original - Addressee
- 1 - D/OCA
- 1 - EXO/OCA _____
- 1 - _____ Chron File
- 1 - DAC (Official OCA File)

PO LIAS 0811010
(+1 Markey)

C01525585

Central Intelligence Agency



Washington, D.C. 20505

23 September 2004

The Honorable Edward J. Markey
House of Representatives
Washington, D.C. 20515-2107

Dear Mr. Markey:

I appreciate your interest in and concerns about the important issue of terrorist renditions as reflected in your letter to the Acting Director of Central Intelligence dated 15 July 2004.

Your concerns about renditions and the questions about them raised in your letter are matters that are subject to the regular and necessary oversight functions of the various congressional oversight committees, as well as to the applicable laws and conventions of the United States. I can assure you that it remains the policy and practice of this Agency to be fully and promptly compliant with these authorities as they apply to the matter of renditions.

Thank you again for your concerns and attention to this issue.

Sincerely,

A rectangular box with a black border, used to redact the signature of Stanley M. Moskowitz.

Stanley M. Moskowitz
Director of Congressional Affairs



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2006

John A. Rizzo
Acting General Counsel
Central Intelligence Agency

Dear John:

You have asked for our opinion whether the conditions of confinement used by the Central Intelligence Agency ("CIA") in covert overseas facilities that it operates as part of its authorized program to capture and detain individuals who pose serious threats to the United States or who are planning terrorist attacks are consistent with common Article 3 of the 1949 Geneva Conventions. On Friday, June 30, 2006, I advised you orally that the conditions of confinement described herein are permitted by common Article 3. This letter memorializes and elaborates upon that advice.

Common Article 3, which appears in all four of the Geneva Conventions of 1949, applies in the "case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." *E.g.*, Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. 3364 ("GPW"). It had been the longstanding position of the Executive Branch that the phrase "not of an international character" limited the applicability of common Article 3 to internal conflicts akin to a civil war and thus that the provision was not applicable to the global armed conflict against al Qaeda and its allies. *See* Memorandum of the President for the National Security Council, *Re: Humane Treatment of al Qaeda and Taliban Detainees* at 2 (Feb. 7, 2002) (accepting the legal conclusion of the Department of Justice that common Article 3 "does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to 'armed conflicts not of an international character'").

In *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2795 (2006), however, the Supreme Court, by a 5-3 vote, concluded instead that the "term 'conflict not of an international character' is used here in contradistinction to a conflict between nations." On that basis, the Court determined that common Article 3 does apply to the armed conflict between the United States and al Qaeda. *See id.* at 2795-97. The Supreme Court's decision means that the "minimum protection" afforded by common Article 3, *id.* at 2795, to "those placed *hors de combat* by sickness, wounds, detention,

or any other cause" now applies, as a matter of treaty law, to detainees held by the CIA in the Global War on Terror. GPW Art. 3. Where common Article 3 applies, the obligation to follow it is also enforced by statute, as the War Crimes Act provides that "any conduct" that "constitutes a violation" of common Article 3 is a federal crime, punishable in some circumstances by the death penalty. 18 U.S.C. § 2441 (2000).

Common Article 3 has been described as a "Convention in miniature." 3 ICRC, *Commentary: Geneva Convention Relative to the Treatment of Prisoners of War* 34 (Jean Pictet, ed. 1960) ("GPW Commentary"). It establishes a set of minimum standards applicable to the treatment of detainees held in non-international conflicts. The most important aspect of common Article 3 is its overarching requirement that detainees "shall in all circumstances be treated humanely, without any adverse distinction based on race, color, religion or faith, sex, birth or wealth, or any other similar criteria." 6 U.S.T. at 3318. This requirement of humane treatment is supplemented and focused by the enumeration of four more specific categories of acts that "are and shall remain prohibited at any time and in any place whatsoever." *Id.* Those forbidden acts are:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Id. As applied to the conditions of confinement used by the CIA, the prohibitions imposed by subparagraphs (a) and (c) are clearly the most relevant.

The five conditions you have asked us to consider are standard in the covert overseas facilities that the CIA uses to detain individuals [REDACTED]. You have advised us that those conditions are used to address the unique and significant security concerns associated with holding extremely dangerous terrorist-detainees in the kinds of covert facilities used by the CIA. The facilities in which the CIA houses these high-value detainees were not built as ordinary prisons, much less as high-security detention centers for violent and sophisticated terrorists. In order to keep their

¹ This letter is limited to evaluating the specific conditions of confinement discussed herein, as described to us by the CIA. We understand that the CIA is not currently using any interrogation practices at its overseas facilities that would raise questions under common Article 3.

location secret. [REDACTED]

Those

limitations, in turn, require that special security measures be used inside the facilities to make up for the buildings' architectural shortcomings. It is in this unique context that the CIA has imposed the conditions of confinement described herein.

To be sure, the nature and location of these facilities, which prevent more elaborate and conspicuous external security measures, is due to a choice that the United States made to hold these persons secretly. As explained below, however, such secret detention is a condition expressly countenanced by the Conventions themselves for the detention of some persons. And accomplishing such secret detention has required increasingly discreet methods given the advances in intelligence technology since 1949. There is some evidence that common Article 3 establishes certain "minimum" requirements for the treatment of detainees that cannot be loosened by sole reference to the purpose of the condition of confinement. See, e.g., GPW Art. 3(1) (providing that "the following acts [subsections (a)-(d)] are and shall remain prohibited at any time and any place whatsoever"); 3 Pictet, *Commentary*, at 140 ("The requirements of humane treatment and the prohibition of certain acts inconsistent with it are general and absolute in character."). That does not mean, however, that the purpose underlying the conditions is irrelevant to evaluating the nature of its prohibitions. Rather, some specific prohibitions in common Article 3 specifying the overarching requirement of humane treatment, however, may very well turn on an evaluation of necessity and purpose. See GPW Art. 3(1)(a) (prohibiting "cruel treatment"); see also *Hope v. Pelzer*, 536 U.S. 730, 737 (2002) (holding the "unnecessary and wanton infliction of pain" to be "cruel" under the Eighth Amendment). As explained below, we believe the conditions of confinement imposed in these secret detention facilities meet those minimum standards of treatment. And we make reference to the challenges posed by the secret and unfortified nature of these facilities to underscore that the United States is not imposing wantonly whatever discomfort that these conditions might cause.

Before specifically evaluating each of the conditions of confinement under common Article 3, we offer some general observations on the scope of that provision. In doing so, we begin with the text of the treaty. See *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court*, 482 U.S. 522, 534 (1987). There are other resources relevant here, including Pictet's Commentaries, which were prepared on behalf of the International Committee of the Red Cross shortly after the treaties were signed and on which the Supreme Court relied in *Hamdan* in its interpretation of common Article 3. In addition, the Supreme Court has held that the decisions of foreign tribunals charged with adjudicating disputes between signatories should be given "respectful consideration." *Sanchez-Llamas v. Oregon*, slip op. at 21 (June 28, 2006); see also *Breard v. Greene*, 523 U.S. 371, 375 (1998). While not a tribunal given authority by the treaty to resolve such disputes, the International Criminal Tribunal for the former Yugoslavia ("ICTY") has adjudicated war crimes prosecutions under common Article 3, and we address

certain decisions of that tribunal below.²

First, common Article 3's overarching requirement of "humane" treatment clearly would forbid housing detainees in conditions of confinement that are inhumane. That term suggests conditions that are "not worthy of or conforming to the needs of human beings." *Webster's Third New International Dictionary* 1163 (1967) (defining "inhuman"). Conditions that fail to satisfy the basic needs of all human beings—to food and water, to shelter from extremes of heat or cold, to reasonable protections from disease and infection—are thus obvious candidates for violating common Article 3. This focus on the basic necessities of life in the requirement of humane treatment is further emphasized by GPW Article 20, which includes its own humane treatment requirement for prisoners of war under transport and explicates that requirement with minimum standards of food, clothing, and shelter. There is no indication, however, that the CIA's facilities fall short on this score. To the contrary, we understand that all CIA detainees are given adequate food and water. The cells in which those detainees live are kept at normal temperatures and are clean, hygienic, and protected from the elements. In addition, you have informed us, and we consider it significant for purposes of common Article 3, that the CIA provides regular medical care to all detainees in its custody. Please take careful note that to the extent these basic obligations are included in common Article 3, they are binding as a matter of domestic criminal law through the additional basis of the War Crimes Act, 18 U.S.C. § 2441.

Second, the text, structure, and purpose of common Article 3 suggest that its strictures are aimed at treatment that rises to a certain level of gravity and severity. After all, the provision "reflects the fundamental humanitarian principles which underlie international humanitarian law." *Prosecutor v. Delalic*, ICTY-96-21-A (App.) (Feb. 20, 2001) ¶ 143. It protects against treatment that is widely, if not universally, condemned as inconsistent with basic human values. *See id.* (observing that common Article 3 incorporates the "most universally recognised humanitarian principles"); *GPW Commentary* at 35 (common Article 3 "at least ensures the application of the rules of humanity which are recognized as essential by civilized nations"). Only conduct that is sufficiently severe can properly be characterized as warranting and receiving such widespread condemnation. This severity requirement is illustrated by the specific examples that common Article 3 gives of acts that are "prohibited at any time and in any place," particularly those found in subparagraphs (a) and (c). As the ICRC Commentaries explain, "[i]tems (a) and (c) concern acts which world public opinion finds particularly revolting—acts which were committed frequently during the Second World War." *Id.* at 39.

More specifically, the prohibition in subparagraph (a) on "violence to life and person" suggests that not all physical contact with detainees is banned; the word "violence" connotes "an

² The analysis set forth in this letter represents our best interpretation of common Article 3 based on a rigorous examination of the text, history, and structure of the Conventions, as well as other interpretive resources. As we have stressed on numerous occasions, however, there are vague terms in common Article 3 that the United States has had little or no opportunity previously to apply in an actual conflict, that are potentially malleable, and that could be interpreted by courts to reach different results.

exertion of physical force so as to injure or abuse." *Webster's Third New International Dictionary* 2554; see also *id.* (defining "violent" as "characterized by extreme force"). The text's examples of forbidden forms of violence only reinforce this meaning: "murder of all kinds, mutilation, cruel treatment and torture." This list suggests that, although the use of physical force certainly need not rise to the level of torture to be forbidden, it does need to be more than incidental or de minimis and must at least have the potential to cause a degree of actual harm to the detainee. See, e.g., *Delalic, supra*, ¶ 443 ("[C]ruel treatment is treatment which causes serious mental or physical suffering or constituted a serious attack upon human dignity, which is equivalent to the offense of inhuman treatment in the framework of the grave breaches of the Geneva Conventions."); cf. *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (observing that the term "cruel" in the Eighth Amendment, requires "unnecessary or wanton infliction of pain"). What murder, mutilation, cruel treatment, and torture have in common is an element of depravity and viciousness; that common element suggests the kinds of force that common Article 3 seeks to prohibit. See generally *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990) ("The traditional canon of construction, *noscitur a sociis*, dictates that words grouped in a list should be given related meaning."). Also, the structure of the Geneva Conventions makes clear that violence necessary to effect detention is permitted. See GPW Art. 42 (permitting the use of force against prisoners of war attempting to escape).

Similarly, subparagraph (c)'s use of the phrase "outrages upon personal dignity" should be understood to mean a relatively significant form of ill-treatment. In this context, "outrage" appears to carry the meaning of "an act or condition that violates accepted standards." *Webster's Third* at 1603; see also *id.* (defining "outrageous" as conduct that "is so flagrantly bad that one's sense of decency or one's power to suffer or tolerate is violated" and giving as synonyms "monstrous; heinous, [and] atrocious"); cf. Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court* 315-16 (2002) ("*Elements of War Crimes*") (observing that the *Cambridge International Dictionary of English* (1995) defines "outrage" as "shocking, morally unacceptable and usually violent action"). Under these definitions, to constitute an "outrage upon personal dignity" within the meaning of common Article 3, an act must violate some relatively clear and objective standard of behavior or acceptable treatment; it must be something that does not merely insult the dignity of the victim, but that does so in an obvious or particularly significant manner.

The fact that the basic prohibition of subparagraph (c) focuses on "outrages" also must inform any analysis of what is covered by that provision's prohibition of "humiliating and degrading treatment," suggesting that conduct must rise to a significant level of seriousness in order to be forbidden. Importantly, the text is clear that "humiliating and degrading treatment" is merely a subset of "outrages upon personal dignity." This text stands in contrast to provisions in other treaties, such as Article 16 of the Convention Against Torture, in which prohibitions on "degrading" treatment stand alone. As the ICTY has explained in addressing common Article 3:

[O]utrages upon personal dignity refer to acts which, without directly causing harm to the integrity and physical and mental well-being of persons, are aimed at humiliating and ridiculing them. . . . An outrage upon personal dignity is an act

which is animated by contempt for the human dignity of another person. The corollary is that the act must cause serious humiliation or degradation to the victim.

Prosecutor v. Aleitkovski, ICTY-95-14/1, Trial Chamber I (June 25, 1999) ¶¶ 55-56. Similarly, in discussing an identical prohibition in Article 75 of Protocol I to the Geneva Conventions, the ICRC observed that it "refers to physical acts, which, without directly causing harm to the integrity and physical and mental well-being of persons, are aimed at humiliating and ridiculing them, or even forcing them to perform degrading acts." ICRC, *Commentary on Additional Protocols of 8 June 1977*, at 873 (1987) ("*Additional Protocols Commentary*"). In addition to being purposive, "outrages upon personal dignity" generally must be defined in relation to an objective standard of unacceptable behavior. Thus, according to ICTY, the subjective element of an outrage "must be tempered by objective factors; otherwise, unfairness to the accused would result because his/her culpability would depend not on the gravity of the act but wholly on the sensitivity of the victim. Consequently, an objective component to the *actus reus* is apposite: *the humiliation to the victim must be so intense that the reasonable person would be outraged.*" *Aleitkovski*, *supra*, ¶ 56 (emphasis added).

As with subparagraph (a), therefore, subparagraph (c) is properly understood as proscribing conduct of a particularly serious nature, conduct that is characterized by hostility to human dignity. The prohibition does not reach trivial slights or insults, but instead reaches only those that represent a more fundamental assault on the dignity of the victim. *See, e.g., id.* ¶ 37 ("The victims were not merely inconvenienced or made uncomfortable; what they had to endure, under the prevailing circumstances, were physical and psychological abuse and outrages that any human being would have experienced as such."). At the same time, however, it seems clear from the text that subparagraph (c) prohibits a broader range of conduct than does subparagraph (a). Subparagraph (a) is focused primarily, if not exclusively, on physical violence; the actions that it forbids are those that can be expected to impose some direct physical harm on the detainee. In contrast, the text of subparagraph (c) does not necessarily include an element of physical force; it reaches actions that assault the detainee's mental or psychological well-being, treatment that amounts to a significant attack on his dignity as a human being without necessarily causing him to suffer physically.

This element of intent and purpose also raises the relevance of context in applying subparagraph (c). Certain activities may well be intended solely to humiliate and to degrade in certain settings, but may be undertaken for a legitimate purpose in others. For example, a systematic practice of marching detainees blindfolded in public with the intent to humiliate may so evince a "hostility to human dignity" as to run afoul of common Article 3. In contrast, obstructing the vision of the detainee during transport, with no needless exposure to the public, for the purpose of maintaining the security of the facility would not trigger the same concerns under subparagraph (c).

With these basic principles in mind, we turn to an evaluation of each of the conditions of confinement used by the CIA in its covert overseas detention facilities.

1. We begin with the CIA's practice of blocking detainees' vision by covering their eyes with some opaque material [REDACTED]

[REDACTED] Accordingly, detainees' vision is blocked only during those times when allowing them to see could permit them to gain information—such as their location, the layout of the facility [REDACTED]—that could compromise the security of the facility. Used in this way, blindfolding is less a general condition of confinement than a special security measure employed on the relatively infrequent occasions when the detainee is moved into or around the detention facility. We see nothing in common Article 3 that would forbid the CIA from taking this precaution. Blindfolding no doubt requires minimal physical contact, but it hardly involves "violence"; none of the methods the CIA uses to prevent detainees from seeing is painful or poses any risk of physical harm, and the detainees have no difficulty breathing freely while their vision is obstructed. Nor does this limited use of blindfolds amount to an "outrage[] upon personal dignity." Neither its purpose nor effect is to humiliate the detainees; rather, the aim is to ensure the security of the facilities. And the use of blindfolds is carefully limited in scope so that it directly serves that end. Moreover, the detainee is not needlessly exposed to other persons during this process, underscoring that the intent is not to humiliate. More generally, such blindfolding is not inhuman; although this may still not be enough to raise problems under common Article 3, this condition is not "sensory deprivation" aimed at weakening the detainees psychologically and undermining their sense of personality. Accordingly, we conclude that the use of non-injurious means of temporarily blocking detainees' vision when allowing them to see could jeopardize institutional security is consistent with common Article 3's requirement of humane treatment.

2. The CIA keeps the detainees isolated from the outside world and from one another. The detainees are housed [REDACTED]

[REDACTED] In addition, the detainees have no contact with the outside world, [REDACTED] They are not, however, completely cut off from human contact. You have informed us that each detainee [REDACTED] Detainees also have access to gym equipment and physical exercise. [REDACTED]

[REDACTED] You also have indicated that detainees have access to books, music, and movies. These practices help relieve the strain of prolonged isolation by providing mental and intellectual stimulation to the detainees. We also note that each detainee receives [REDACTED] psychological examination to ensure that he is suffering no adverse effects as a result of this aspect of his confinement. We do not conclude that these measures are necessary to satisfy common Article 3, but they do provide significant comfort that the CIA's detention condition does not approach common Article 3 limits.

We first address whether the incommunicado nature of the detention, whereby the detainees are not allowed to communicate with the outside world, is prescribed by common

Article 3. Examining the overall structure of the Geneva Conventions makes clear that common Article 3 does not give detainees an absolute right of communication that would forbid detention of the sort used by the CIA in its covert facilities. As described above, common Article 3 sets a minimum level of treatment; its protections are thus clearly less robust than those afforded to other categories of privileged persons whose treatment is regulated by the Geneva Conventions, in particular, prisoners of war (protected by the Third Convention) and "protected persons" (protected by the Fourth Convention). Indeed, the provisions of the Conventions dealing with POWs and protected persons demonstrate that the drafters knew how to afford communication rights to individuals held in detention: For example, Article 71 of the Third Convention requires that POWs "shall be allowed to send and receive letters and cards." Article 107 of the Fourth Convention gives the same right to protected persons who have been interned. Moreover, other provisions in the Geneva Conventions expressly allow for access to detention facilities by representatives of the International Committee of the Red Cross and other state parties, and by family members for particular protected groups. See GPW Art. 126 (permitting ICRC and state party representatives to visit prisoner of war detention facilities); GCIV Art. 76 (allowing visits by ICRC representatives to protected persons); GCIV Art. 116 (allowing detained protected persons to receive visitors). In contrast, persons protected only by common Article 3 do not share this express right of communication or to inspection by or notification to international bodies.

Even more important to our analysis is the fact that Article 5 of the Fourth Convention specifically provides that where in occupied territory "an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention." See generally 4 ICRC, *Commentary: Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 57 (Jean Pictet, ed. 1958) (observing that the rights of communication "obviously refer to [the detained person's] relations with the outside world"). The fact that the Fourth Convention allows protected persons, who are afforded a panoply of rights and protections that go well beyond the "minimum" that common Article 3 provides, to be stripped of their otherwise expressly protected right to communicate with the outside world where "absolute military security so requires" is powerful evidence that common Article 3 was not meant to confer on individuals ineligible for any specially protected status under the Geneva Conventions a protection against incommunicado detention. Such a reading of common Article 3 would upset the structural integrity of the Conventions. That approach also would be textually unsound. For, immediately after allowing protected persons held as spies or saboteurs to be stripped of their express right to communicate, Article 5 insists that such persons "shall nevertheless be treated with humanity." This proviso clearly illustrates that the Conventions do not view incommunicado detention as incompatible with the obligation of humane treatment that undergirds common Article 3. We therefore conclude that detainees may be prohibited from communicating with the outside world without rendering their treatment inhumane.

Nor do we perceive a basis for a blanket conclusion that not allowing detainees to interact or speak with *one another* violates common Article 3. In considering whether such isolation is

consistent with the requirement of humane treatment, it is appropriate to look to cases evaluating isolation under the Eighth Amendment of the Constitution. After all, like common Article 3, the Eighth Amendment has been held to require "humane conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); cf. *Trop v. Dulles*, 356 U.S. 86, 100 (1958) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."). Conditions that our own courts have consistently found to be humane with regard to ordinary prisoners are thus likely to meet the comparable standard imposed by common Article 3 and applicable to unlawful combatants.

Accordingly, it is of great significance that the federal courts have generally held that holding prisoners in solitary confinement, with little or no personal contact with their fellow inmates, does not constitute "cruel and unusual punishment" in violation of the Eighth Amendment. See *Novack v. Beto*, 453 F.2d 661, 665 (5th Cir. 1972) (noting the "long line of cases, to which we have found no exception, holding that solitary confinement is not itself constitutionally objectionable"); cf. *Hutto v. Finney*, 437 U.S. 678, 686 (1978) (observing that it is "perfectly obvious that every decision to remove a particular inmate from the general prison population for an indeterminate period could not be characterized as cruel and unusual"). In *Jackson v. Meachum*, 699 F.2d 578, 581 (1st Cir. 1983), for instance, the First Circuit held that even "very extended indefinite segregated confinement in a facility that provides satisfactory shelter, clothing, food, exercise, sanitation, lighting, heat, bedding, medical and psychiatric attention, and personal safety, but virtually no communication or association with fellow inmates" is not cruel and unusual. Our courts also have rejected claims that isolation becomes unconstitutionally cruel or inhumane merely because of its indefinite or extended nature, though they have noted that the temporal element may be a factor. See *In re Long Term Administrative Segregation of Inmates Designated as Five Percenters*, 174 F.3d 464, 472 (4th Cir. 1999); *Sweet v. South Carolina Dep't of Corrections*, 529 F.2d 854, 861 (4th Cir. 1975). The cases illustrate that isolating detainees and limiting their ability to communicate with other detainees, even if psychologically taxing, is not inherently inhumane. Indeed, as Knut Dörmann, a leading commentator on international humanitarian law, has observed, "[s]olitary confinement, or segregation, of persons in detention, is not itself inhumane treatment. It is permissible for reasons of security or discipline or to protect the segregated prisoner from other prisoners or vice versa." *Elements of War Crimes* 68 (further suggesting that such measures should be evaluated on a case-by-case basis).

Nevertheless, we recognize the strain that extended isolation may exact, particularly if that isolation is not relieved by giving detainees access to other forms of mental stimulation, such as books, writing materials, games, and music. We understand that all detainees currently have access to such materials. We further understand that some of these detainees have been subject to this condition for a few years. However, we do not believe that the duration of the isolation exceeds the strictures of common Article 3. We view it as important that the isolation imposed is tailored to security and intelligence purposes—that is, preventing the coordination of attacks on facility personnel or false stories among co-conspirators. But we think that, at least at present, the CIA's practice of keeping detainees in solitary confinement in which they are unable to see or talk with other detainees is not forbidden by common Article 3.

3. The CIA plays white noise in the walkways of the detention facilities to prevent the detainees from being able to communicate with each other while they are being moved within the facility. Significantly, the noise is not piped directly into the detainees' cells, although it is possible that the detainees are able to hear some of that noise in their cells, as the walls that separate the walkway from the cells are not soundproof. Nevertheless, we can safely assume that the noise level in the cells is considerably lower than the level in the walkways; recent measurements indicated that the noise level in the cells was in the range of 56-58 dB, compared with a range of 68-72 dB in the walkways. The volume in the cells is thus comparable to that of normal conversation. There is no risk of hearing damage or loss even from 24-hour-a-day exposure to sound at that level. We also understand that the CIA has observed the noise to have no effect on the detainees' ability to sleep.

Used in this very limited way you have described, white noise does not violate common Article 3. There is nothing inhumane about the incidental exposure of detainees to noise that is no louder than the level of ordinary conversation and that is certainly not loud enough to cause physical harm or to interfere with sleep. Being exposed to such relatively insignificant noise levels can in no way be described as an act of violence. Nor does it represent an "outrage upon personal dignity" within the meaning of common Article 3. Neither the purpose nor effect of the white noise is to "cause serious humiliation or degradation" to the detainees, *Aletkowski, supra*, ¶ 56; instead, the noise, much like temporary blindfolding, is simply a limited measure aimed at protecting the security of the detention facility by preventing the detainees from communicating with each other. It cannot be characterized as an affront to human dignity.

4. The CIA also keeps the detainees' cells illuminated 24-hours-a-day. This condition of confinement allows CIA staff to monitor the detainees at all times. In evaluating this condition, we find it significant that the light is not unusually bright and that it has not been observed to interfere with the detainees' ability to sleep normally. Indeed, if they wish, the detainees are permitted to cover their eyes with the blankets in their cells (or with eyeshades) in order to block out the light while they are sleeping. Although this practice presents a closer issue than some of the other conditions of confinement used by the CIA, we ultimately believe that it is consistent with common Article 3.

The full-time illumination of the detainees' cells is not inherently inhumane; it is not used in a manner that impairs the basic human needs of the detainees. Nor is the security surveillance that the illumination makes possible inhumane or otherwise contrary to common Article 3. To be sure, we recognize that being monitored around the clock could result in some degree of humiliation. But the very nature of detention, which common Article 3 certainly does not forbid, is such that one must surrender a certain degree of privacy along with one's personal freedom. See, e.g., *Bell v. Wolfish*, 441 U.S. 520, 537 (1979) (observing that "[l]oss of freedom of choice and privacy are inherent incidents of confinement"). This inescapable fact must inform any analysis of the sorts of humiliations and degradations forbidden by common Article 3. And where, as here, the surveillance is not undertaken gratuitously, with the purpose and effect of stripping detainees of their human dignity, but

instead for entirely legitimate security reasons, we think that it does not represent an "outrage[] upon personal dignity" within the meaning of common Article 3. (It is significant in this regard

[REDACTED]

Our conclusion should not be understood to suggest that concerns about security will negate common Article 3's prohibitions on inhumane treatment and outrages upon personal dignity. Cf. *GPW Commentary* at 140 ("The requirement of humane treatment and the prohibition of certain acts inconsistent with it are general and absolute in character."). Instead, the point, which is reflected in the international case law applying common Article 3, is that in determining whether certain forms of treatment are in fact sufficiently outrageous to warrant condemnation, one must consider the context in which that treatment is used and the reasons for which it was imposed. See, e.g., *Prosecutor v. Mucic*, ICTY 96-12 (Nov. 16, 1998), ¶ 514 (holding that whether treatment is inhumane is a "question of fact to be judged in all the circumstances of the particular case"); *Alelkovski, supra*, ¶ 57 ("An outrage upon personal dignity is an act which is *animated by* contempt for the human dignity of another person.") (emphasis added). Conduct, like the CIA's use of constant illumination, that is not characterized by a desire to humiliate or degrade, but that instead is carefully tailored to advance a specific and manifestly legitimate security objective, and does so without causing unnecessary hardship, will generally fall outside the proscriptions of subparagraph (c).

There is also support for this condition in other provisions of the Conventions. GPW Article 92 allows the detaining authority to subject even prisoners of war recaptured after an unsuccessful escape to "special surveillance." This term is not further defined, except to exclude surveillance that "affects the state of their health" or suppresses "safeguards granted them by the present Convention." In Pictet's *Commentary*, this "special surveillance" has been referred to as a "tightened guard." 3 Pictet, *Commentary*, at 452. Given that the illumination and the constant [REDACTED] do not threaten the health of CIA detainees, [REDACTED] unavailable at the time the Conventions were drafted, may very well constitute permissible "special surveillance" under Article 92. As explained above, the structure of the Conventions makes clear that treatment explicitly permitted in certain circumstances as to prisoners of war or protected persons cannot be understood to violate the minimum protections provided by common Article 3.

5. We next consider the practice of shackling detainees when they are being moved around the detention facilities or when CIA personnel are in the room with them. You have informed us that detainees are only shackled in situations where the CIA believes they might pose a threat to the facility or those who work there. Detainees thus are not shackled in their cells unless they have previously demonstrated that they are a threat while in their cells. Like blindfolding, therefore, shackling is less a general condition of the detainees' confinement than a particularized security measure limited in its scope and duration. Indeed, we understand that, at present, no detainee is shackled 24 hours per day. In addition, shackling is done in such a

means as not to restrict the flow of blood or cause any bodily harm to the detainees. While

shackled, detainees are able to walk comfortably. Used in this limited and carefully calibrated way, shackling does not violate common Article 3.

In setting minimum standards specifically intended to apply to those "placed *hors de combat* by . . . detention," common Article 3 plainly contemplates that detention may be effectuated by restricting the freedom of movement of detainees. That, after all, is inherent in the nature of detention. As such, common Article 3 cannot be read as proscribing the use of restraints, such as shackles, in all circumstances. Indeed, if using physical restraints were inherently inhumane, common Article 3 would effectively prohibit the involuntary detention of anyone covered by the provision, a result that the text clearly does not contemplate. At the same time, however, it seems obvious that shackles could be used in ways inconsistent with the general obligation of humane treatment. To restrain a detainee with shackles that injure the body or cut off the flow of blood could represent "violence to life and person," if the resulting suffering or physical harm were expected to be severe. Similarly, to keep a detainee in highly restrictive shackles around the clock, at least where no genuine security concern justifies such restraint, might well raise questions. Where no security rationale exists, and the purpose of the shackling is merely to humiliate the detainee or to break his spirit, additional common Article 3 considerations would be present. In evaluating the use of shackling, therefore, the task set by common Article 3 is to determine whether the restraints are being used legitimately and in ways that minimize the potential for injury or suffering.

Judged by these standards, the CIA's use of shackling, as a limited security measure, and as you have described it, is permissible. Critical to our analysis is the fact that the CIA carefully tailors its shackling regime to the danger posed by an individual detainee. The shackles are thus used only when the detainee is in a situation in which he might pose a threat (such as when he is being moved around the facility) or when his past conduct has clearly demonstrated his danger. Also significant is our understanding that, while shackled, detainees are able to move comfortably and that the shackles are fitted to avoid causing any bodily harm. These points illustrate that the shackling here is linked to genuine and legitimate concerns about institutional security, and is not imposed on detainees vindictively or in a way indifferent to their well-being. Indeed, our conclusion might well be different were detainees routinely shackled in such a way as to cause them physical pain or suffering without regard to the security risks they pose. But to shackle a demonstrably violent or escape-minded detainee while he is in close proximity to CIA personnel, where the shackles are merely a restraint and not a source of injury, is not inconsistent with the requirement of humane treatment.

6. The next condition we consider is the CIA's practice of shaving the head and facial hair of each detainee with an electric razor when the detainee initially arrives at the detention facility. The shaving is not done as a punitive measure; its primary purpose is to prevent detainees from hiding small items in their hair or beards, as well as to ensure the hygiene of the detainees. Importantly, mandatory shaving only occurs upon arrival; once the detainee is situated in the facility, he is allowed to grow his hair and beard to whatever length he desires (within limits of hygiene and safety). Moreover, you have informed us that the CIA provides detainees with the option of shaving other parts of their bodies, in recognition of specific Islamic

practices. Although we recognize that facial hair has an important cultural and religious dimension, and that some might perceive being involuntary shorn of their hair and beard as degrading, we conclude that the very limited form of shaving that the CIA practices is consistent with common Article 3. Context is important here. The shaving is a one-time measure, performed at the moment when it most clearly and directly advances the CIA's interest in the security of its facilities. The fact that the CIA subsequently allows detainees to grow their hair and beards in a manner dictated by cultural or religious preferences illustrates that shaving is not used here as a form of humiliation or degradation, but instead as a bona fide security measure. The CIA does not shave detainees in order to take advantage of their cultural or religious sensitivities, or to exploit whatever psychological vulnerability that practice may create. To the contrary, the agency makes every effort, consistent with its overall security objectives, to accommodate their detainees' desires, if any, to grow their hair and thereby to *avoid* humiliating them. Used as described above, therefore, shaving is not "aimed at humiliating and ridiculing" the detainees, *Additional Protocols Commentary* at 873, and does not amount to the kind of outrageous or inhumane treatment forbidden by common Article 3. Nor does the incidental force needed to accomplish the shaving remotely rise to the level of "violence to . . . person" prohibited by subparagraph (a).

Finally, we discuss whether the use of these conditions in combination complies with common Article 3. To this point, we have discussed whether any one of these conditions would violate common Article 3. We understand, however, that the collective weight of these conditions may raise different questions. The detainee is isolated from companions of his choosing, confined to his cell for much of each day, under constant surveillance, and is never permitted a moment to rest in the darkness and privacy that most people seek during sleep. These are not conditions that humans strive for. But they do reflect the realities of detention, realities that the Geneva Conventions accommodate, where persons will have to sacrifice some measure of privacy and liberty while under detention. They also are justified by the extraordinarily dangerous nature of these detainees, and the risk that they will conspire to compromise the security of the detention facility.

The Third Geneva Convention strikes a different balance between security, on the one hand, and privacy and liberty, on the other, with regard to prisoners of war. That Convention also establishes a reciprocal arrangement between captor and detainee under which detainees, in exchange for these greater privileges, have an international law obligation to follow the reasonable rules of the facility. Al Qaeda detainees, who do not follow the laws of war, are not part of such a reciprocal arrangement. Common Article 3 rests on the premise that certain persons, not subject to the elaborate protections of the Third or Fourth Geneva Conventions, will have to be detained during the course of non-international armed conflicts, and we do not believe that conditions in CIA facilities fall below the minimum standards that common Article 3 mandates for such persons.

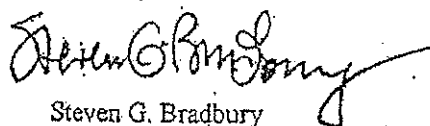
The detainees subject to the program are kept in sanitary conditions and are provided with the necessities of adequate food, clothing, shelter, and medical care. The CIA takes reasonable steps to mitigate the psychological strain of isolation through

[REDACTED] and other diversions in the form of books, music, videos, and games, short of interactions with their co-combatants. Other measures—obstructing vision and shackling—are limited to the times when detainees pose the greatest risk to the security of the facility and those who work there. We do not believe that the combination of these features falls below the “minimum standard” of humanity specified in common Article 3.

For the foregoing reasons, we conclude that none of the conditions of confinement used by the CIA at its covert, overseas detention facilities, as you have described those conditions to us, violates common Article 3.

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

Sincerely,



Steven G. Bradbury
Acting Assistant Attorney General

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30 December 2004

Transmitted by Secure Facsimile
Dan Levin
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, DC 20530

Dear Mr. Levin:

(TS/) Please find enclosed a paper describing a generic interrogation process that sets forth how the Agency would expect to use approved interrogation measures, both in combination and in sequence with other techniques. Our hope is that this letter will permit your office to render advice that an interrogation following the enclosed description would not violate the provision of 18 U.S.C. § 2340A.

(U//FOUO) If you have any questions, or would like briefings, please contact me and I will obtain answers and/or arrange the required briefings.

Sincerely,

Associate General Counsel

Enclosure

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Submitted to OLC
30 Dec 04
By CTR/LCA

Background Paper on CIA's Combined Use of Interrogation
Techniques

Note: This paper provides further background information and details on High-Value Detainee (HVD) interrogation techniques to support documents CIA has previously provided the Department of Justice.

This paper focuses strictly on the topic of combined use of interrogation techniques.

The purpose of interrogation is to persuade High-Value Detainees (HVD) to provide threat information and terrorist intelligence in a timely manner, to allow the US Government to identify and disrupt terrorist plots,
and to collect critical intelligence on al-Qa'ida

In support of information previously sent to the Department of Justice, this paper provides additional background on how interrogation techniques are used, in combination and separately, to achieve interrogation objectives. Effective interrogation is based on the concept of using both physical and psychological pressures in a comprehensive, systematic, and cumulative manner to influence HVD behavior, to overcome a detainee's resistance posture. The goal of interrogation is to create a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner. For the purpose of this paper, the interrogation process can be broken into three separate phases: Initial Conditions; Transition to Interrogation; and Interrogation.

A. Initial Conditions. Capture, contribute to the physical and psychological condition of the HVD prior to the start of interrogation. Of these, "capture shock" and detainee reactions are factors that may vary significantly between detainees

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Regardless of their previous environment and experiences, once an HVD is turned over to CIA a predictable set of events occur:

1) Rendition.

a. The HVD is flown to a Black Site

A medical examination is conducted prior to the flight. During the flight, the detainee is securely shackled and is deprived of sight and sound through the use of blindfolds, earmuffs, and hoods.

There is no interaction with the HVD during this rendition movement except for periodic, discreet assessments by the on-board medical officer.

b. Upon arrival at the destination airfield, the HVD is moved to the Black Site under the same conditions and using appropriate security procedures.

2) Reception at Black Site. The HVD is subjected to administrative procedures and medical assessment upon arrival at the Black Site.

the HVD finds himself in the complete control of Americans;

the procedures he is subjected to are precise, quiet, and almost clinical; and no one is mistreating him. While each HVD is different, the rendition and reception process generally creates significant apprehension in the HVD because of the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread an HVD might have of US custody. Reception procedures include:

a. The HVD's head and face are shaved.

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b. A series of photographs are taken of the HVD while nude to document the physical condition of the HVD upon arrival.

c. A Medical Officer interviews the HVD and a medical evaluation is conducted to assess the physical condition of the HVD. The medical officer also determines if there are any contraindications to the use of interrogation techniques.

d. A Psychologist interviews the HVD to assess his mental state. The psychologist also determines if there are any contraindications to the use of interrogation techniques.

Transitioning to Interrogation - The Initial Interview.

Interrogators use the Initial Interview to assess the initial resistance posture of the HVD and to determine--in a relatively benign environment--if the HVD intends to willingly participate with CIA interrogators. The standard on participation is set very high during the Initial Interview. The HVD would have to willingly provide information on actionable threats and location information on High-Value Targets at large--not lower level information--for interrogators to continue with the neutral approach.

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to HQS. Once approved, the interrogation process begins provided the required medical and psychological assessments contain no contraindications to interrogation

C. Interrogation.

For descriptive purposes, these techniques can be separated into three categories: Conditioning Techniques; Corrective Techniques; and Coercive Techniques. To more completely describe the three categories of techniques and their effects, we begin with a summary of the detention conditions that are used in all CIA HVD facilities and that may be a factor in interrogations,

1) Existing detention conditions. Detention conditions are not interrogation techniques, but they have an impact on the detainee undergoing interrogation. Specifically, the HVD will be exposed to white noise/loud sounds (not to exceed 79 decibels) and constant light during portions of the interrogation process. These conditions provide additional operational security: white noise/loud sounds mask conversations of staff members and deny the HVD any auditory clues about his surroundings and deter and disrupt the HVD's potential efforts to communicate with other detainees. Constant light provides an improved environment for Black Site security, medical, psychological, and interrogator staff to monitor the HVD.

2) Conditioning Techniques. The HVD is typically reduced to a baseline, dependent state using the three interrogation techniques discussed below in combination. Establishing this baseline state is important to demonstrate to the HVD that he has no control over basic human needs. The baseline state also creates in the detainee a mindset in which he learns to perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting. The use of these

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conditioning techniques do not generally bring immediate results; rather, it is the cumulative effect of these techniques, used over time and in combination with other interrogation techniques and intelligence exploitation methods, which achieve interrogation objectives. These conditioning techniques require little to no physical interaction between the detainee and the interrogator. The specific conditioning interrogation techniques are:

a. Nudity. The HVD's clothes are taken and he remains nude until the interrogators provide clothes to him.

b. Sleep Deprivation. The HVD is placed in the vertical shackling position to begin sleep deprivation. Other shackling procedures may be used during interrogations. The detainee is diapered for sanitary purposes, although the diaper is not used at all times.

c. Dietary manipulation. The HVD is fed Ensure Plus or other food at regular intervals. The HVD receives a target of 1500 calories per day per OMS guidelines.

3) Corrective Techniques. Techniques that require physical interaction between the interrogator and detainee are used principally to correct, startle, or to achieve another enabling objective with the detainee. These techniques—the insult slap, abdominal slap, facial hold, and attention grasp—are not used simultaneously but are often used interchangeably during an individual interrogation session. These techniques generally are used while the detainee is subjected to the conditioning techniques outlined above (nudity, sleep deprivation, and dietary manipulation). Examples of application include:

a. Insult Slap. The insult slap often is the first physical technique used with an HVD once an interrogation begins. As noted, the HVD may already be nude, in sleep deprivation, and subject to dietary manipulation, even though the detainee will likely feel little effect from these techniques early in the interrogation. The insult slap is used sparingly but periodically throughout the interrogation process when the interrogator needs to immediately correct the

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detainee or provide a consequence to a detainee's response or non-response. The interrogator will continually assess the effectiveness of the insult slap and continue to employ it so long as it has the desired effect on the detainee. Because of the physical dynamics of the various techniques, the insult slap can be used in combination with water dousing or kneeling stress positions. Other combinations are possible but may not be practical.

b. Abdominal Slap. The abdominal slap is similar to the insult slap in application and desired result. It provides the variation necessary to keep a high level of unpredictability in the interrogation process. The abdominal slap will be used sparingly and periodically throughout the interrogation process when the interrogator wants to immediately correct the detainee

, and the interrogator will continually assess its effectiveness. Because of the physical dynamics of the various techniques, the abdominal slap can be used in combination with water dousing, stress positions, and wall standing. Other combinations are possible but may not be practical.

c. Facial Hold. The facial hold is a corrective technique and is used sparingly throughout interrogation. The facial hold is not painful and is used to correct the detainee in a way that demonstrates the interrogator's control over the HVD.

Because of the physical dynamics of the various techniques, the facial hold can be used in combination with water dousing, stress positions, and wall standing. Other combinations are possible but may not be practical.

d. Attention Grasp.

It may be used several times in the same interrogation. This technique is usually applied

grasp the HVD and pull him

into close proximity of the interrogator (face to face). Because of the physical dynamics of the various techniques, the attention grasp can be used in combination with water dousing or kneeling stress positions. Other combinations are possible but may not be practical.

4) Coercive Techniques. Certain interrogation techniques place the detainee in more physical and psychological stress and, therefore, are considered more effective tools in persuading a resistant HVD to participate with CIA interrogators. These techniques-- walling, water dousing, stress positions, wall standing, and cramped confinement--are typically not used in combination, although some combined use is possible. For example, an HVD in stress positions or wall standing can be water doused at the same time. Other combinations of these techniques may be used while the detainee is being subjected to the conditioning techniques discussed above (nudity, sleep deprivation, and dietary manipulation). Examples of coercive techniques include:

a. Walling. Walling is one of the most effective interrogation techniques because it wears down the HVD physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the HVD knows he is about to be walled again.

interrogator

An HVD may be walled one time (one impact with the wall) to make a point or twenty to thirty times consecutively when the interrogator requires a more significant response to a question. During an interrogation session that is designed to be intense, an HVD will be walled multiple times in the session. Because of the physical dynamics of walling, it is impractical to use it simultaneously with other corrective or coercive techniques.

b. Water Dousing. The frequency and duration of water dousing applications are based on water temperature and other safety considerations as

established by OMS guidelines. It is an effective interrogation technique and may be used frequently within those guidelines. The physical dynamics of water dousing are such that it can be used in combination with other corrective and coercive techniques. As noted above, an HVD in stress positions or wall standing can be water doused. Likewise, it is possible to use the insult slap or abdominal slap with an HVD during water dousing.

c. Stress Positions. The frequency and duration of use of the stress positions are based on the interrogator's assessment of their continued effectiveness during interrogation. These techniques are usually self-limiting in that temporary muscle fatigue usually leads to the HVD being unable to maintain the stress position after a period of time. Stress positions requiring the HVD to be in contact with the wall can be used in combination with water dousing and abdominal slap. Stress positions requiring the HVD to kneel can be used in combination with water dousing, insult slap, abdominal slap, facial hold, and attention grasp.

d. Wall Standing. The frequency and duration of wall standing are based on the interrogator's assessment of its continued effectiveness during interrogation. Wall standing is usually self-limiting in that temporary muscle fatigue usually leads to the HVD being unable to maintain the position after a period of time. Because of the physical dynamics of the various techniques, wall standing can be used in combination with water dousing and abdominal slap. While other combinations are possible, they may not be practical.

e. Cramped Confinement. Current OMS guidance on the duration of cramped confinement limits confinement in the large box to no more than 8 hours at a time for no more than 18 hours a day, and confinement in the small box to 2 hours.

Because of the unique aspects of cramped confinement, it cannot be used in

combination with other corrective or coercive techniques.

D. Interrogation - A day-to-day look. This section provides a look at a prototypical interrogation with an emphasis on the application of interrogation techniques, in combination and separately.

2). Session One.

a. The HVD is brought into the interrogation room, and under the direction of the interrogators, stripped of his clothes, and placed into shackles

b. The HVD is placed standing with his back to the walling wall. The HVD remains hooded.

c. Interrogators approach the HVD, place the walling collar over his head and around his neck, and stand in front of the HVD.

d. The interrogators remove the HVD's hood and

explain the HVD's situation to him, tell him that the interrogators will do what it takes to get important information, and that he can improve his conditions immediately by participating with the interrogators. The insult slap is normally used as soon as the HVD does or says anything inconsistent with the interrogators' instructions.

e.

If appropriate, an insult slap or abdominal slap will follow.

f. The interrogators will likely use walling once it becomes clear that the HVD is lying, withholding information, or using other resistance techniques.

g. The sequence may continue for several more iterations as the interrogators continue to measure the HVD's resistance posture and apply a negative consequence to the HVD's resistance efforts.

h. The interrogators, assisted by security officers (for security purposes) will place the HVD in the center of the interrogation room in the vertical shackling position and diaper the HVD to begin sleep deprivation. The HVD will be provided with Ensure Plus (liquid dietary supplement) to begin dietary manipulation. The HVD remains nude. White noise (not to exceed 79db) is used in the interrogation

room. The first interrogation session terminates at this point.

1.

3. This first interrogation session may last from 30 minutes to several hours based on the interrogators' assessment of the HVD's resistance posture.

The three Conditioning Techniques were used to bring the HVD to a baseline, dependent state conducive to meeting interrogation objectives in a timely manner.

3) . Session Two.

a. The time period between Session One and Session Two could be as brief as one hour or more than 24 hours

In addition, the medical and psychological personnel observing the interrogations must advise there are no contraindications to another interrogation session.

b.

c. Like the first session, interrogators approach the HVD, place the walling collar over his head and around his neck, and stand in front of the HVD.

d.

Should the HVD not respond appropriately to the first questions, the interrogators will respond with an insult slap or abdominal slap to set the stage for further questioning.

e.

The interrogators will likely use walling once interrogators determine the HVD is intent on maintaining his resistance posture.

f. The sequence may continue for multiple iterations as the interrogators continue to measure the HVD's resistance posture.

g. To increase the pressure on the HVD,

water douse the HVD for several minutes.

h. The interrogators, assisted by security officers, will place the HVD back into the vertical shackling position to resume sleep deprivation. Dietary manipulation also continues, and the HVD remains nude. White noise (not to exceed 79db) is used in the interrogation room. The interrogation session terminates at this point.

i. As noted above, the duration of this session may last from 30 minutes to several hours based on the interrogators' assessment of the HVD's resistance posture. In this example of the second session, the following techniques were used: sleep deprivation, nudity, dietary manipulation, walling, water dousing, attention grasp, insult slap, and abdominal slap. The three Conditioning Techniques were used to keep the HVD at a baseline, dependent state and to weaken his resolve and will to resist. In combination with these three techniques, other Corrective and Coercive Techniques were used throughout the interrogation session based on interrogation objectives and the interrogators' assessment of the HVD's resistance posture.

4) Session Three.

a.

In addition, the medical and psychological personnel observing the interrogations must find no contraindications to continued interrogation.

b. The HVD remains in sleep deprivation, dietary manipulation and is nude.

c. Like the earlier sessions, the HVD begins the session standing against the walling wall with the walling collar around his neck.

d. If the HVD is still maintaining a resistance posture, interrogators will continue to use walling and water dousing. All of the Corrective Techniques (insult slap, abdominal slap, facial hold, attention grasp) may be used several times during this session based on the responses and actions of the HVD. Stress positions and wall standing will be integrated into interrogations

Intense questioning and walling would be repeated multiple times.

Interrogators will often use one technique to support another. As an example, interrogators would tell an HVD in a stress position that he (HVD) is going back to the walling wall (for walling) if he fails to hold the stress position until told otherwise by the HVD. This places additional stress on the HVD who typically will try to hold the stress position for as long as possible to avoid the walling wall.

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interrogators will remind the HVD that he is responsible for this treatment and can stop it at any time by cooperating with the interrogators.

e. The interrogators, assisted by security officers, will place the HVD back into the vertical shackling position to resume sleep deprivation. Dietary manipulation also continues, and the HVD remains nude. White noise (not to exceed 79db) is used in the interrogation room. The interrogation session terminates at this point. In this example of the third session, the following techniques were used: sleep deprivation, nudity, dietary manipulation, walling, water dousing, attention grasp, insult slap, abdominal slap, stress positions, and wall standing.

5) Continuing Sessions.

Interrogation techniques assessed as being the most effective will be emphasized while techniques with little assessed effectiveness will be minimized.

a.

b. The use of cramped confinement may be introduced if interrogators assess that it will have the appropriate effect on the HVD.

c.

d. Sleep deprivation may continue to the 70 to 120 hour range, or possibly beyond for the hardest resisters, but in no case exceed the 180-hour time limit. Sleep deprivation will end sooner if the medical or psychologist observer finds

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H.

contraindications to continued sleep deprivation.

e.

f.

g. The interrogators' objective is to transition the HVD to a point where he is participating in a predictable, reliable, and sustainable manner. Interrogation techniques may still be applied as required, but become less frequent.

. This transition period lasts from several days to several weeks based on the HVDs responses and actions.

h. The entire interrogation process outlined above, including transition, may last for thirty days

On average, the actual use of interrogation techniques can vary upwards to fifteen days based on the resilience of the HVD.

If the interrogation team anticipates the potential need to use interrogation techniques beyond the 30-day approval period, it will submit a new interrogation plan to HQS for evaluation and approval.

2. Summary.

- * Since the start of this program, interrogation techniques have been used in combination and separately to achieve critical intelligence collection objectives.
- The use of interrogation techniques in combination is essential to the creation of an interrogation environment conducive to intelligence collection. HVDs are well-trained, often battle-hardened terrorist operatives, and highly committed to jihad. They are intelligent and resourceful leaders and able to resist standard interrogation approaches.

However, there is no template or script that states with certainty when and how these techniques will be used in combination during interrogation. However, the exemplar above is a fair representation of how these techniques are actually employed.

- All CIA interrogations are conducted on the basis of the "least coercive measure" principle. Interrogators employ interrogation techniques in an escalating manner consistent with the HVD's responses and actions. Intelligence production is more sustainable over the long term if the actual use of interrogation techniques diminishes steadily and the interrogation environment improves in accordance with the HVD's demonstrated consistent participation with the interrogators.

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QUESTION: Under what conditions were you holding these HVDs?"

ANSWER

- We are not going to discuss the details of the program.
- I can advise you, however, that the conditions were not abusive and complied with U.S. obligations under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and, more recently, with the provisions of the Detainee Treatment Act of 2005.

QUESTION: What interrogation techniques did you use against these people? Did you torture them? Did you use waterboarding?

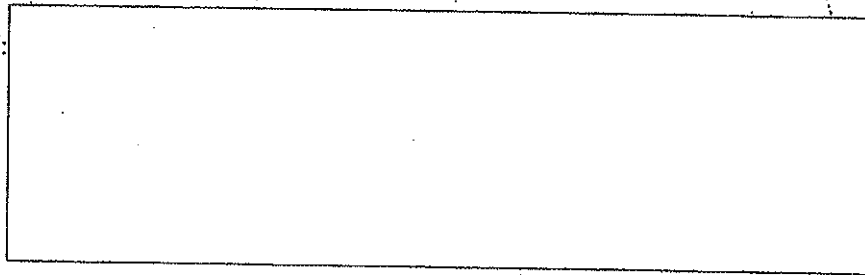
ANSWER:

- We are not going to discuss the details of the program.
- I can advise you, however, that interrogations were conducted in conformance with the US Constitution, US statutes, including the federal anti-torture statute, and US obligations under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

QUESTION:

ANSWER:

*



QUESTION: Why did you need to detain these individuals in secret facilities for up to four and 1/2 years?

ANSWER:

- Some of these individuals continued to provide important and valuable intelligence during the entire period of their detention.
- The primary reason to keep them detained was to keep them from returning to the fight; to keep AQ off balance on exactly who we had captured and might be cooperating; and so that at the appropriate time, they could be brought to justice in America.

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QUESTION: Why didn't you move the individuals to Guantanamo once you detained them? What was accomplished by a secret detention program that couldn't be accomplished at Guantanamo?

ANSWER:

- There was and is no legal requirement to move them to Guantanamo.
- By keeping their detention secret, we gained an advantage over al-Qa'ida because they could not be certain who was in US custody and possibly cooperating.

QUESTION: Did their countries of nationality know that you were holding them?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: Where were you holding them?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: Did the countries in which you were holding them know that you were running secret detention facilities in their territory?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: How did each individual come into your custody?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: Did you transfer any of these individuals to other countries and later re-assume custody of them?

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ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: What were the criteria for holding someone in secret detention, as opposed to transferring them to Guantanamo?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: Were they individually screened? By whom?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: Did you pick up anyone who was not who you thought he was?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: How many people have been subject to this program over its lifetime?

ANSWER:

- We are not discussing any operational aspects of the program.

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QUESTION: Did you transfer everyone who had been in your custody? Did you transfer every to Guantanamo?

ANSWER:

- *We recommend not answering this question because once we answer, we will be expected to answer whenever we take a new detainee.*

QUESTION: What did you do with the people you didn't transfer to Guantanamo?

ANSWER:

- We are not discussing any operational aspects of the program.

QUESTION: If you transferred some back to their countries of origin, did you seek humane treatment assurances? Are these people now being secretly held in those countries?

ANSWER:

- The CIA complies with US law and does not render any person to a country in which if it is more likely than not that he would be tortured.
- CIA obtains credible assurances from foreign governments that the rendered person will be treated humanely and that their human rights will be respected.

QUESTION: Do any HVDs remain in undisclosed locations?

ANSWER:

- *We recommend not answering this question because once we answer, we will be expected to answer whenever we take a new detainee.*
- If we answer, no.

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Qs & As - CIA

- Q: Under what conditions were you holding these HVDs?
- Q: What interrogation techniques did you use against these people? Did you torture them? Did you use waterboarding?
- Q: Why did you need to detain these individuals in secret facilities for up to five years?
- Q: Why didn't you move the individuals to Guantanamo once you detained them? What was accomplished by a secret detention program that couldn't be accomplished at Guantanamo?
- Q: Did their countries of nationality know that you were holding them?
- Q: Where were you holding them?
- Q: Did the countries in which you were holding them know that you were running secret detention facilities in their territory?
- Q: How did each individual come into your custody?
- Q: Did you transfer any of these individuals to other countries and later re-assume custody of them?
- Q: What were the criteria for holding someone in secret detention, as opposed to transferring him to Guantanamo?
- Q: Were they individually screened? By whom?
- Q: Did you pick up anyone who was not who you thought he was?
- Q: How many people have been subject to this program over its lifetime?
- Q: Did you transfer everyone who had been in your custody? Did you transfer everyone to Guantanamo?
- Q: What did you do with people you didn't transfer to Guantanamo?
- Q: If you transferred some people back to their countries of origin, did you seek humane treatment assurances? Are these people now being secretly held in those countries?
- Q: Do any HVDs remain in undisclosed locations?

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Qs & As - CIA

Q: Under what conditions were you holding these HVDs?

Q: What interrogation techniques did you use against these people? Did you torture them? Did you use waterboarding?

[REDACTED]

Q: Why did you need to detain these individuals in secret facilities for up to five years?

Q: Why didn't you move the individuals to Guantanamo once you detained them? What was accomplished by a secret detention program that couldn't be accomplished at Guantanamo?

Q: Did their countries of nationality know that you were holding them?

Q: Where were you holding them?

Q: Did the countries in which you were holding them know that you were running secret detention facilities in their territory?

Q: How did each individual come into your custody?

Q: Did you transfer any of these individuals to other countries and later re-assume custody of them?

Q: What were the criteria for holding someone in secret detention, as opposed to transferring him to Guantanamo?

Q: Were they individually screened? By whom?

Q: Did you pick up anyone who was not who you thought he was?

Q: How many people have been subject to this program over its lifetime?

Q: Did you transfer everyone who had been in your custody? Did you transfer everyone to Guantanamo?

Q: What did you do with people you didn't transfer to Guantanamo?

Q: If you transferred some people back to their countries of origin, did you seek humane treatment assurances? Are these people now being secretly held in those countries?

Q: Do any HVDs remain in undisclosed locations?

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Office of the Assistant Attorney General

Washington, D.C. 20530

August 26, 2004

John A. Rizzo, Esq.
Acting General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear John:

(TS [REDACTED] NF) You have asked our advice regarding whether the use of four particular interrogation techniques (dietary manipulation, nudity, water dousing, and abdominal slaps) in the ongoing interrogation of [REDACTED] would violate any United States statute (including 18 U.S.C. § 2340A), the United States Constitution, or any treaty obligation of the United States. We understand that [REDACTED] a high-value al Qaeda operative who is believed to possess information concerning an imminent terrorist threat to the United States. This letter confirms our advice that the use of these techniques [REDACTED] outside territory subject to United States jurisdiction would not violate any of these provisions. We will supply, at a later date, an opinion that explains the basis for this conclusion. Our advice is based on, and limited by, the following conditions:

1. The use of these techniques will conform to: (i) the representations made in [REDACTED] letters to me of July 30, 2004 (and attachment) and August 25, 2004; and (ii) the representations made by CIA officials, including representatives of the Office of Medical Services, during our August 13, 2004 meeting. Based on that meeting, we understand that ambient air temperature is the most important determinate for hypothermia in water dousing. Additionally, we were informed that the Agency has based the safety margins set forth in its water dousing procedures on experience with actual extended submersion in water of comparable temperature. Thus, although water as cold as 41 degrees may be used for short periods of time, in view of these factors and the comparatively small amount of water used, especially compared to submersion, we were advised that the dousing technique as it will be employed poses virtually no risk of hypothermia or any other serious medical condition. We were further advised that the dousing technique is designed to get the detainee's attention and it is not intended to cause, and does not cause, any appreciable pain.

2. There is no material change in the medical and psychological facts and assessments for

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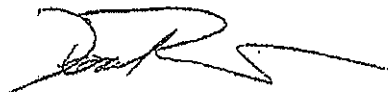
██████████ in the attachment to your August 2 letter, and in ██████████ August 25, 2004, letter, including that there are no medical or psychological contraindications to the use of these techniques as you plan to employ them on ██████████

3. Medical officers will be present to observe ██████████ whenever water dousing and/or abdominal slaps are used and will closely monitor him while he is subject to dietary manipulation (in addition to the normal monitoring of him throughout his detention) to ensure that he does not sustain any physical or mental harm. This includes making sure that ██████████ can sustain a normal body temperature after dousing and that his intake of fluids and nutrition are adequate.

4. We understand the statements in ██████████ August 25, 2004, letter that the measures are "designed ... to weaken ██████████ physical ability and mental desire to resist interrogation over the long run" (Letter at 3), and that "water dousing sessions, in conjunction with sleep deprivation, facilitates in weakening a detainee's ability and motivation to resist interrogations" (Letter at 4), to be consistent with the prior representations we have received – i.e., these techniques are not physically painful and are not intended to, or expected to, cause any physical or psychological harm. Rather, they are intended to reduce ██████████ desire to continue to engage in the counter-interrogation techniques he has been utilizing to date. Indeed, you consider these four techniques to be "more subtle" than some of the interrogation measures used to date (Letter at 3.)

~~(S ██████████ (NF) ██████████)~~ We express no opinion on any other uses of these techniques, nor do we address any techniques other than these four or any conditions under which ██████████ or other detainees are held. Furthermore, this letter does not constitute the Department of Justice's policy approval for use of the techniques in this or any other case.

Sincerely,



Daniel Levin
Acting Assistant Attorney General



U.S. Department of Justice

Office of Legal Counsel

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Office of the Assistant Attorney General

Washington, D.C. 20530

August 6, 2004

John A. Rizzo, Esq.
 Acting General Counsel
 Central Intelligence Agency
 Washington, D.C. 20505

Dear John:

(TS [REDACTED] NF) This letter will confirm our advice that, although it is a close and difficult question, the use of the waterboard technique in the contemplated interrogation of [REDACTED] outside territory subject to United States jurisdiction would not violate any United States statute, including 18 U.S.C. § 2340A, nor would it violate the United States Constitution or any treaty obligation of the United States. We will supply, at a later date, an opinion that explains the basis for this conclusion. Our advice is based on, and limited by, the following conditions:

1. The use of the technique will conform to the description attached to your letter to me of August 2, 2004 ("Rizzo Letter").
2. A physician and psychologist will approve the use of the technique before each session, will be present throughout the session, and will have authority to stop the use of the technique at any time.
3. There is no material change in the medical and psychological facts and assessments set out in the attachment to your August 2 letter, including that there are no medical or psychological contraindications to the use of the technique as you plan to employ it on [REDACTED].
4. The technique will be used in no more than two sessions, of two hours each, per day. On each day, the total time of the applications of the technique will not exceed 20 minutes. The period over which the technique is used will not extend longer than 30 days, and the technique will not be used on more than 15 days in this period. These limits are consistent with the Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, *Re: Interrogation of al Qaeda Operative* (Aug. 1, 2002), and with the previous uses of the technique, as they have been described to us. As we understand the facts, the detainees previously subjected to the technique "are in good physiological and

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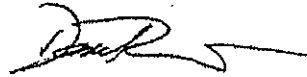
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psychological health," see Rizzo Letter at 2, and they have not described the technique as physically painful. This understanding of the facts is material to our conclusion that the technique, as limited in accordance with this letter, would not violate any statute of the United States.

(TS/[REDACTED]/NF) We express no opinion on any other uses of the technique, nor do we address any techniques other than the waterboard or any conditions under which [REDACTED] or other detainees are held. Furthermore, this letter does not constitute the Department of Justice's policy approval for use of the technique in this or any other case.

Sincerely,



Daniel B. Levin
Acting Assistant Attorney General

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FAX COVER SHEET
Central Intelligence Agency



Washington, DC 20505

5 August 2004

To:	DOJ Command Center For Dan Levin
Organization:	Office of Legal Counsel U.S. Department of Justice
Phone:	
Fax:	
From:	
Organization:	
Phone:	
Fax:	

Number of pages (including cover sheet): 3

Comments: (S//NF) Dan, A letter responding to the questions you posed at yesterday's meeting. Thank you.

NOTICE TO RECIPIENT

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Central Intelligence Agency



Washington, D.C. 20505

5 August 2004

Transmitted by Secure Facsimile
Dan Levin
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, DC 20530

Dear Mr. Levin:

(TS/ ,OC) This letter responds to the questions you and members of your office raised in a meeting yesterday with officers from the DCI Counterterrorist Center regarding use of the waterboard as an interrogation technique. Specifically, you asked whether the Agency had limits in place for the duration of each application of water, for each session of the waterboard, for how many waterboard sessions may be held in any one day, and for how many days the waterboard technique could be applied. Answers to your questions follow.

(TS/ ,OC) Our guidelines.

a. Approvals for use of the waterboard last for only 30 days. During that 30-day period, the waterboard may not be used on more than 20 days during that 30-day period.

b. The number of waterboard sessions on a given day may not exceed four.

c. A waterboard "session" is the period of time in which a subject is strapped to the waterboard before being removed. It may involve multiple applications of water. You were informed yesterday that our Office of Medical Services had established a 20-minute time limit for waterboard sessions. That was in

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Dan Levin, Esq.

error. OMS has not established any time limit for a waterboard session.

d. An "application" during a waterboard session is the time period in which water is poured on the cloth being held on the subject's face. Under the DCI interrogation guidelines, the time of total contact of water with the face will not exceed 40 seconds. The vast majority of applications are less than 40 seconds, many for fewer than 10 seconds. Individual applications lasting 10 seconds or longer will be limited to no more than 10 applications during any one waterboard session.

(U//FOUO) If you have any questions, or would like briefings, please contact . . . He will obtain answers and/or arrange those briefings.

Sincerely,

Associate General Counsel

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18 pages are withheld in full
pursuant to FOIA exemption b(5)

THE SECRETARY OF STATE
WASHINGTON

Dear Mr. Chairman:

Yesterday we discussed how the Department of State viewed the international legal obligations that flow from Common Article 3 of the Geneva Conventions, in comparison with other relevant legal standards in U.S. law.

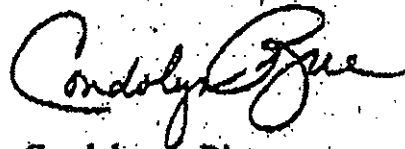
Our international partners expect that we will undertake good faith interpretations of the Conventions' text, consistent with their object and purpose. In a case where the treaty's terms are inherently vague, it is appropriate for a state to look to its own legal framework, precedents, concepts, and norms in interpreting these terms and carrying out its international obligations. Such practice in the application of a treaty is an accepted reference point in international law. The proposed legislation would strengthen U.S. adherence to Common Article 3 of the Geneva Conventions because it would add meaningful definition and clarification to vague terms in the treaties.

In the Department's view, there is not, and should not be, any inconsistency with respect to the substantive behavior that is prohibited in paragraphs (a) and (c) of Section 1 of Common Article 3 and the behavior that is prohibited as "cruel, inhuman, or degrading treatment or punishment," as that phrase is defined in the U.S. reservation to the Convention Against Torture. That substantive standard was also utilized by Congress in the Detainee Treatment Act. Thus it is a reasonable, good faith interpretation of Common Article 3 to state, as the proposed legislation does, that the prohibitions found in the Detainee Treatment Act of 2005 fully satisfy the obligations of the United States with respect to the standards for detention and treatment established in those paragraphs of Common Article 3.

The Honorable
John Warner,
Chairman,
Committee on Armed Services,
United States Senate.

The Department of State supports this legislation and we believe it will help demonstrate to our international partners that we are committed to compliance with Common Article 3.

Sincerely,



Condoleezza Rice

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US Classification//Non US//SCI//Codeword//FGI//Dissem. Control//Non-Intell//Declass (as appropriate)

EXECUTIVE CORRESPONDENCE ROUTING SHEET

1. Origination Office OGC/FO		2. Date 01/16/2007	
3. FROM	Name John Rizzo	Room No. and Building	Phone
4. Subject Letter to SSCI Chairman regarding John Rizzo's nomination and offer to brief SSCI on the legal bases for the CIA's detention program.			
5. Originating Office Control # OGC-FO-2007-50003	5a. Response to DAC # (Originating Office to Complete) DAC -04001-2006-1	5b. DAC Control # (DAC Use Only) DAC - 00005-2007	
6. Justification / Summary (Required for Immediate and Priority Actions) <input type="checkbox"/> Routine <input type="checkbox"/> Priority <input checked="" type="checkbox"/> Immediate Per request of ODCIA's office.			

7. Coordination
 Please note that the letter is unclassified, but the reference attached to the left side of the folder is classified.
Letter has been coordinated with DoCA

NOTE: All correspondence sent to DoC must be sent via Ex Dir and ODCI

DATE	TITLE	SIGNATURE	STATUS	DATE
JAN 16 2007	DAC		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	JAN 16 2007
JAN 16 2007	DCIA		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	16 Jan 07
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THE DIRECTOR
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 January 2007

The Honorable John D. Rockefeller IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510-2202

Dear Mr. Chairman:

I am writing concerning the President's nomination of John Rizzo to be the Central Intelligence Agency's (CIA) General Counsel. As you know, I fully support John's nomination and look forward to his confirmation.

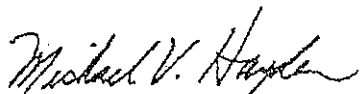
Since your August 23, 2006 letter, which, among other things, requested information concerning the legal basis for the CIA's detention program, I have provided comprehensive briefings to the Senate Select Committee on Intelligence regarding the details of the CIA's detention program. In those briefings, I made it clear that the CIA's detention program had been, and would continue to be, in full compliance with the Constitution, U.S. law, and U.S. treaty obligations. I also informed the Committee that I would work with the Administration to provide you additional information about the program, to include its legal foundation.

After discussions with the Attorney General and others within the Administration, and in keeping with my previous statements to the Committee, I am offering your Committee a briefing by officials from the CIA's Office of General Counsel and the Department of Justice's Office of Legal Counsel on the legal bases for CIA's detention program. By doing so, we can address the Committee's outstanding concerns about the program, as well as address the issues

The Honorable John D. Rockefeller IV

in your August 23 letter. My Office of Congressional
Affairs will contact your staff to schedule this briefing.

Sincerely,

A handwritten signature in cursive script that reads "Michael V. Hayden".

Michael V. Hayden
General, USAF

cc: The Honorable Christopher Bond, Vice Chairman, SSCI

The Honorable John D. Rockefeller IV

DEI/OGC/FOI

(12 January 07)

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Rockefeller Letter re Rizzo nomination.doc

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1 - OAC

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~~ALL INFORMATION CONTAINED~~

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OFFICE OF THE DIRECTOR
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, DC 20505

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20540-2025

JAMES P. HERRICK, CLIA DIRECTOR AND CHIEF OF BUREAU
ANDREW R. GIBSON, CLIA DEPUTY DIRECTOR
PATRICK W. SULLIVAN, CLIA DEPUTY DIRECTOR

August 23, 2006

SSM# 2006-3305

General Michael V. Hayden
Director of the Central Intelligence Agency
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Hayden:

(U) John Rizzo's nomination to be General Counsel of the Central Intelligence Agency is one of the Select Committee on Intelligence's important remaining items of business this Congress.

(U) I very much hope that the hearing on the nomination will achieve two objectives. It should provide a fair opportunity for Mr. Rizzo to present to the Committee his long experience at the CIA, with a special focus on his leadership role in the General Counsel's office since September 11. It should also provide the Committee with a fair opportunity to assess Mr. Rizzo's performance of that responsibility. To that end, I urge you to facilitate the provision to the Committee of the documentary record that will make it possible to attain both objectives. I have spoken to Director Negroponte about the importance of providing to the Committee key documents. Because the nomination is to a high position at your Agency, I thought I should also communicate directly to you and request that you take the necessary steps to ensure that the Members of the Committee receive what they require.

(U) Mr. Rizzo served as CIA Acting General Counsel from November 2001 to November 2002. During that time, fundamental decisions were made about the legal rules for the Nation's counterterrorism efforts. Since that time, as Senior Deputy General Counsel and again as Acting General Counsel, he has continued to have a leadership role in formulating and implementing CIA legal policy. For

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most nominations, the Senate's task is to project how a nominee will perform new responsibilities. In Mr. Rizzo's case, he has held the job for which he has been nominated. It is essential to carefully examine what he has done.

(U) 1. The Nominee's Writings

(S) The nominee has been employed in the Office of CIA General Counsel for thirty years. He does not have published writings. In addition to his answers and supplementary response to our prehearing questions, the Committee has received one document authored by Mr. Rizzo, the nominee's response to the draft CIA IG report on nonregistration of detainees:

In order to be able to fully and fairly understand the work he has done, it is important to review other documents he may have written or for which he had major supervisory responsibility.

(S) As is clear from the nominee's written answers to the Committee's prehearing questions, one of his major responsibilities has been to present to DOJ's Office of Legal Counsel requests for legal opinions. In his July 18, 2006 letter to Committee counsel, Mr. Rizzo described OGC's role as providing OLC with "an objective, complete, detailed factual presentation of our proposed activity."

(S) As I will reiterate below, the Committee should receive for the consideration of all Members the opinions of the Office of Legal Counsel that constitute (in Mr. Rizzo's words) "final, definitive" determinations of law for the CIA. But even apart from access to OLC's opinions, the documentary record of OGC presentations to OLC that were authored by or with the nominee's participation form a key part of his work. Any OGC memoranda to OLC setting forth the presentation that led to the Second Bybee Memo should be among the documents provided to the Committee. Also, based on Mr. Rizzo's submission to

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us and as discussed below, OLC has provided written guidance applicable to CIA counterterrorism activities. Once a list of those is provided, it may be possible to identify other OGC documents, written by Mr. Rizzo or for which he had responsibility, that should be provided to the Committee.

(PS)) The Committee requested that the nominee identify documents authored or reviewed by him, or to which he had made a significant contribution, that conveyed to CIA personnel directions or guidance for actions that they could or could not take on detention, interrogation, or rendition matters. He answered that since September 11, OGC has regularly provided guidance to the field consistent with OLC legal guidance. We are interested in the best documentary evidence of that.

(PS)) Mr. Rizzo has told the Committee that neither he nor other OGC lawyers produced legal opinions or memoranda "per se" about detention, interrogation, or rendition issues, but that those matters were addressed case-by-case through operational cables. He related that typically this review and approval was done by OGC lawyers assigned to operational components rather than by the General Counsel or Acting General Counsel personally. However, as Acting General Counsel, the nominee, in his words, was

(PS)) It is important for the Committee to assess how the nominee applied OLC guidance. The OLC guidance appears to have been applied in at least two ways: (a) through

(PS)) With respect to
; please provide documentation of the OGC's participation in the formulation of those guidelines. Further, the entire Committee, and the members of our staff who have responsibility to assist in the nominee's hearing, should have access to the guidelines.

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~~(PS)~~

~~(PS)~~) The focus of the requests described above concerns matters relating to and following the August 2002 Second Bybee Memo. There were also important decisions about U.S. legal policies related to counterterrorism, including on such matters as the application of the Geneva Conventions, that preceded the Bybee Memos. It is my understanding that the nominee had a role in that process, both within the CIA and outside of it. It will therefore be important to assess his participation in the formulation of those policies. Accordingly, in addition to documents relating directly to the Second Bybee Memo, please provide documents authored by the nominee, or prepared under his supervision, that set forth the nominee's contribution to the development of U.S. legal policy after the September 11 attacks.

(b) 2. IG Reports

~~(PS)~~) In his answer to a prehearing question about reports of the CIA Inspector General, the nominee identified the OIG Special Review of Counterterrorism Detention and Interrogation Activities (May 7, 2004) as a report that was critical of the Office of General Counsel. In his subsequent letter to Committee counsel, the nominee explained that the Special Review was critical of the Agency generally and that he construed that criticism as including OGC. The copies of the IG report that are at the Committee are restricted to the Chairman and Vice Chairman; also three staff members have been able to read it -- our Staff Directors and the Chairman's Senior Policy Advisor. In preparing for the hearing on Mr. Rizzo's nomination, all Members of the Committee and the members of our staff who have responsibility for the hearing should have access to it.

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(S) J. If the Inspector General has any other report commenting on the Office of General Counsel, or a report in progress (such as on any rendition) that discusses the work of the OGC, your assistance would be appreciated in making the necessary arrangements for the provision to the Committee of completed reports or a briefing by the IG about reports in progress.

(U) 3. OLC Opinions

(S) J. The Committee requested that the nominee provide a list of all opinions and memoranda of the Office of Legal Counsel that have been provided to the CIA, either directly or through another office or officer of the Executive Branch, that set forth legal guidance for the CIA, or applicable to the CIA, on detention, interrogation, or rendition. For each, the Committee requested the date, the author, the addressee, the title or subject, and the classification.

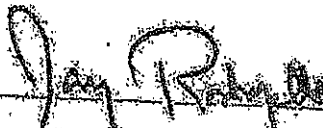
(S) J. One value of a list is that it would enable the Committee to discuss with you whether particular items on it should be provided for this nomination proceeding. It is hard to imagine a justification for not providing a classified list. Accordingly, it should be provided. But even as that is being resolved, we all know about one item that is on it, namely, the Second Bybee Memo. For that opinion, the question is not whether it should be delivered here, for it is here, but whether all Members of the Committee and the staff assisting them in preparing for the hearing may read it. The Senate has referred the nomination to the full Committee, not to the Chairman and Vice Chairman alone. Each Member must decide how to vote. In doing that, each should be able to ask those questions that he or she deems necessary for an informed vote. The memo was requested from OLC for the CIA by the nominee and he had responsibility for implementing it. Members may therefore wish to question him about it.

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(U) We have received strong words of support from people who have worked with Mr. Rizzo. I am committed to a process that is fair to him. But that process also needs to be a fully informed one. To the extent that decisions in the White House are necessary for this to happen, I urge you to be a strong advocate along with the DNI and to advise us as soon as possible about the results of your effort.

Sincerely,



John D. Rockefeller IV
Vice Chairman

cc: The Honorable John D. Negroponte

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U.S. Department of Justice

Office of Legal Counsel

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Office of the Assistant Attorney General

Washington, D.C. 20530

September 6, 2004

John A. Rizzo, Esq.
Acting General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear John:

(TS [REDACTED] NE) You have asked our advice regarding whether the use of twelve particular interrogation techniques (attention grasp, walling, facial hold, facial slap (insult slap), cramped confinement, wall standing, stress positions, sleep deprivation, dietary manipulation, nudity, water dousing, and abdominal slap) in the interrogation of [REDACTED] would violate any United States statute (including 18 U.S.C. § 2340A), the United States Constitution, or any treaty obligation of the United States. We understand that [REDACTED] is an al-Qa'ida operative who "is believed to be involved in the operational planning of an al-Qa'ida attack or attacks to take place in the United States prior to the November elections." September 5, 2004 letter from [REDACTED] to Dan Levin. This letter confirms our advice that the use of these techniques on [REDACTED] outside territory subject to United States jurisdiction would not violate any of these provisions. We will supply, at a later date, an opinion that explains the basis for this conclusion. Our advice is based on, and limited by, the following conditions:

1. The use of these techniques will conform to all representations previously made to us, including those listed in my August 26, 2004 letter to you.
2. The medical and psychological facts and assessments for [REDACTED] indicate that there are no medical or psychological contraindications to the use of any of these techniques as you plan to employ them.
3. Medical officers will be present to observe [REDACTED] whenever any enhanced techniques are applied and will closely monitor him while he is subject to sleep deprivation or dietary manipulation, in addition to the normal monitoring of him throughout his detention, to ensure that he does not sustain any physical or mental harm.

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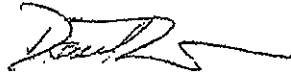
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(TS [REDACTED] NF) We express no opinion on any other uses of these techniques, nor do we address any other techniques or any conditions under which [REDACTED] or other detainees are held. Furthermore, this letter does not constitute the Department of Justice's policy approval for use of the techniques in this or any other case.

Sincerely,



Daniel Levin
Acting Assistant Attorney General

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~~NOFORN/MR~~



U.S. Department of Justice

Office of Legal Counsel

~~TOP SECRET~~~~NOFORN/MR~~

Office of the Assistant Attorney General

Washington, D.C. 20530

August 6, 2004

John A. Rizzo, Esq.
 Acting General Counsel
 Central Intelligence Agency
 Washington, D.C. 20505

Dear John:

(TS//NF) This letter will confirm our advice that, although it is a close and difficult question, the use of the waterboard technique in the contemplated interrogation of [REDACTED] outside territory subject to United States jurisdiction would not violate any United States statute, including 18 U.S.C. § 2340A, nor would it violate the United States Constitution or any treaty obligation of the United States. We will supply, at a later date, an opinion that explains the basis for this conclusion. Our advice is based on, and limited by, the following conditions:

1. The use of the technique will conform to the description attached to your letter to me of August 2, 2004 ("Rizzo Letter").
2. A physician and psychologist will approve the use of the technique before each session, will be present throughout the session, and will have authority to stop the use of the technique at any time.
3. There is no material change in the medical and psychological facts and assessments set out in the attachment to your August 2 letter, including that there are no medical or psychological contraindications to the use of the technique as you plan to employ it on [REDACTED].
4. The technique will be used in no more than two sessions, of two hours each, per day. On each day, the total time of the applications of the technique will not exceed 20 minutes. The period over which the technique is used will not extend longer than 30 days, and the technique will not be used on more than 15 days in this period. These limits are consistent with the Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, *Re: Interrogation of al Qaeda Operative* (Aug. 1, 2002), and with the previous uses of the technique, as they have been described to us. As we understand the facts, the detainees previously subjected to the technique "are in good physiological and

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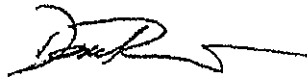
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~~NOFORN/MR~~

psychological health," see Rizzo Letter at 2, and they have not described the technique as physically painful. This understanding of the facts is material to our conclusion that the technique, as limited in accordance with this letter, would not violate any statute of the United States.

(TS/[REDACTED]/NF) We express no opinion on any other uses of the technique, nor do we address any techniques other than the waterboard or any conditions under which [REDACTED] or other detainees are held. Furthermore, this letter does not constitute the Department of Justice's policy approval for use of the technique in this or any other case.

Sincerely,



Daniel B. Levin
Acting Assistant Attorney General

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~~NOFORN/MR~~

UNCLASSIFIED
US Classification//Non US//SC//Codeword//FG//Dissem Controls//Non-Intell//Declass (as appropriate)

0000061

EXECUTIVE CORRESPONDENCE ROUTING SHEET

1. Origination Office: OGC/FO

2. Date: 01/04/2007

3. Name: [] Room No. and Building: [] Phone: []

4. Subject: Letter to Senator Carl Levin in response to his 14 December 06 letter regarding the detention of high value terrorists.

5. Originating Office Control #: OGC-FO-2007-50001

5a. Response to DAC # (Originating Office to Complete): DAC-06049-2006

5b. DAC Control # (DAC Use Only): DAC-06049-2006

6. Justification / Summary (Required for Immediate and Priority Actions):
 Routine Priority Immediate
 Letter is to be processed ASAP per request by []

7. Coordination: OGC/FO coordinated with OCA and CTC/LGL.

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JAN 04 2007	TITLE: DCIA SIGNATURE	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	
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THE DIRECTOR
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

4 January 2007

The Honorable Carl Levin
United States Senate
Washington, D.C. 20510-2202

Dear Senator Levin:

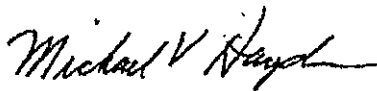
Thank you for your letter of December 14, 2006 regarding the detention of high value terrorists. As you know, on September 6, 2006, all 14 of the high value terrorists held by the Central Intelligence Agency (CIA) were transferred to custody of the Department of Defense at Guantanamo Bay, Cuba. I was pleased to brief you and the other members of the Senate Select Committee on Intelligence in advance of the President's public announcement regarding the transfer because it served as an excellent opportunity to discuss a wide range of issues related to these detainees, including their previous conditions of confinement and the critically important intelligence information obtained from them.

As you are also aware, on November 16, 2006, consistent with my obligations under the National Security Act, I provided a comprehensive briefing to the Senate Select Committee on Intelligence regarding detainees and also briefed the House Permanent Select Committee for Intelligence and House and Senate leadership as well. I hope you would agree that the questions posed in your letter, as well as many other issues, have been fully briefed to the members of both Committees. During these briefings, I made it clear that the CIA's detention program had been, and would continue to be, in full compliance with the Constitution, U.S. law, and U.S. obligations under international treaties. I also committed to provide additional briefings to the Committees on these issues when the need arises. That commitment remains true today.

The Honorable Carl Levin

Again, thank you for your letter. I look forward to speaking to you and the other members of the Intelligence Oversight Committees on these issues in the future.

Sincerely,



Michael V. Hayden
General, USAF

C05431979

The Honorable Carl Levin

DCI/OGC/FO [redacted] (3 January 07)

[redacted]
Levin Ltr re detainees.doc

OGC-FO-2007-50001

Distribution:

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1 - OGC FO

1 - DAC

Central Intelligence Agency



Washington, D.C. 20505

0000064

Inspector General

5 April 2006

The Honorable John D. Rockefeller IV
 Vice Chairman
 Select Committee on Intelligence
 United States Senate
 Washington, D.C. 20510-6475

Dear Mr. Vice Chairman:

(TS [redacted]) This letter responds to your correspondence of 10 March 2006 concerning the status of significant recommendations identified in the Office of Inspector General (OIG) Special Review, entitled "Counterterrorism Detention and Interrogation Activities (September 2001 - October 2003)," (2003-7123-IG). This Report was issued on 7 May 2004. Your letter asked for a description of the corrective actions that have been taken by CIA in respect to each recommendation and the Inspector General's evaluation of whether the corrective actions adequately resolved the issues addressed in the Report.

(TS/[redacted]) The following list provides the status of actions taken in response to the ten recommendations in the Report. The recommendations are briefly summarized; the full text of each recommendation is contained on pages 106-109 of the Report. In nine cases, OIG has judged that the actions taken by the Agency have been sufficient to warrant closing the recommendation. In some of those cases, the action taken by the Agency clearly and definitively disposed of the matter. In some other cases, although the recommendation is closed, the follow-up actions are being implemented over a period of time. Where appropriate, the OIG will continue to monitor the effectiveness of these actions in its ongoing program of audits, inspections and investigations.

TOP SECRET

[Redacted]

The Honorable John D. Rockefeller IV

- Recommendation 1

[Redacted]

- Recommendation 2

[Redacted]

- Recommendation 3

[Redacted]

- Recommendation 4

[Redacted]

~~TOP SECRET~~

The Honorable John D. Rockefeller IV

- Recommendation 5

- Recommendation 6

- Recommendation 7

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[Redacted]

The Honorable John D. Rockefeller IV

- Recommendation 8

[Redacted]

- Recommendation 9

[Redacted]

- Recommendation 10

[Redacted]

(U//FOUO) Given the classification and sensitive issues discussed in this letter, I would ask that you handle it in the same restrictive way the Committee has handled the OIG report of May 2004 to which it refers. Thank you for your support as we continue to examine Agency activities concerning detentions, renditions, and interrogations. If you have any questions about these matters, please contact me or Assistant Inspector General for Investigations

Sincerely,

[Redacted Signature]

John L. Helgerson

cc: Chairman, Senate Select Committee on Intelligence
 Director of National Intelligence
 Director, Central Intelligence Agency

[Redacted]

~~TOP SECRET~~ [redacted]

Central Intelligence Agency
Office of General Counsel
Washington, D.C. 20505

Date: 12/19/05

To: Steve Bradbury
Organization: Department of Justice/OLC
Phone: [redacted]
Fax: [redacted]

From: John A. Rizzo
Organization: Office of General Counsel
Phone: [redacted]
Fax: [redacted]

Number of Pages (Including Cover) 5

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

0000071

Office of General Counsel

19 December 2005

Transmitted by Secure Facsimile
Steve Bradbury
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, DC 20530

Dear Mr. Bradbury:

(TS) [redacted] In furtherance of your telephone conversation today with [redacted] of my office, the Central Intelligence Agency (CIA) requests the Department of Justice to review its opinion of 25 May 2005 with the assumption the McCain Amendment to the Defense Appropriations Act for FY 2006 is enacted, and advise whether CIA's interrogation techniques would constitute cruel, inhuman or degrading treatment as defined in the McCain Amendment.

(TS) [redacted] In addition, we request the Department of Justice review the CIA's standard conditions of detention and advise whether those conditions would constitute cruel, inhuman or degrading treatment as defined in the McCain Amendment. Enclosed please find a description of our standard conditions of detention.

(U//FOUO) If you have any additional questions, please call

Sincerely,

[Signature Box]

JOHN A. RIZZO
Senior Deputy General Counsel

Enclosure

Thanks, Steve

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]

STANDARD CONDITIONS OF CIA DETENTION

CIA security needs require that the conditions of detention for all detainees held in CIA facilities include the following:

- Hooding [redacted]
- Shaving [redacted]
- [redacted]
- Use of Loud Music or White Noise (at a decibel level <79db - calculated to avoid damage to detainees' hearing)
- Constant Light
- Shackling

Hooding:

-- Purpose: Hooding is used for security purposes [redacted]

[redacted]

[redacted]

[redacted]

Shaving:

[redacted]

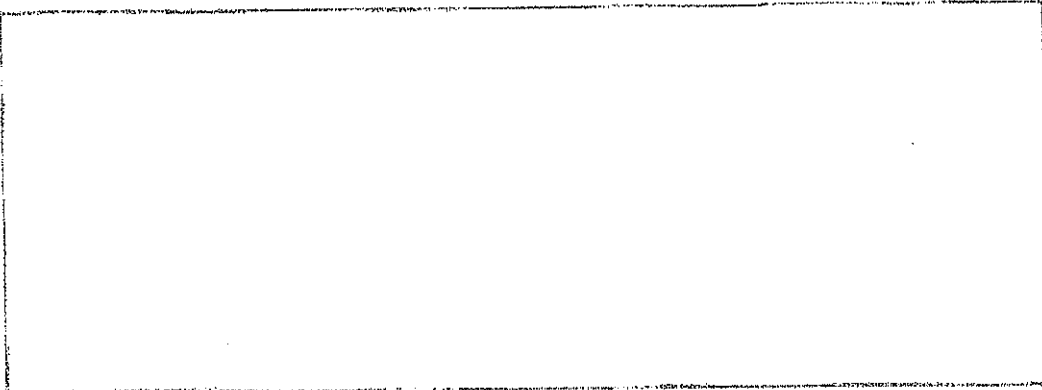
-- Application: A detainee is shaved (head and face) upon arrival to the detention facility [redacted]

[redacted]

ALL PORTIONS CLASSIFIED
~~TOP SECRET~~

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]



Loud Music or White Noise:

-- Purpose: Loud music or white noise is used for security purposes to mask sound and prevent communication among detainees.

-- Application: Loud music or white noise is kept at a decibel level less than 79 dB (calculated to avoid damage to detainees hearing).

In general, sound in the dB 80-99 range is experienced as loud; above 100 dB as uncomfortably loud. OSHA guidelines require employers to establish a noise monitoring program when continuous noise is 95 dB or above. See 29 CFR 1910.95 App G.

Common reference points include garbage disposer (80 dB), cockpit of propeller aircraft (88 dB), shouted conversation (90 dB), motorcycles at 25 feet (90 dB), inside of subway car at 35 mph (95 dB), power mower (96 dB), chain saw (110 dB), and live rock band (114 dB).

[redacted]
[redacted] there is no risk of permanent hearing loss for continuous, 24-hours-a-day exposures to sound at 82 dB [redacted]



Constant Light:

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]

[redacted]

[redacted] detainees generally adapt fairly soon to the constant light and can sleep.

Shackling:

-- Purpose: Shackling is used for security purposes. Shackling enhances security in all aspects of detainee management and movements. [redacted]

[redacted]

Restraints should not impede circulation or lead to permanent damage.

-- Application: Shackling is done in such a manner as to not restrict the flow of blood or cause any bodily injury.

[redacted]

[redacted] Restraints should neither impede circulation nor lead to abrasions.

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]

Steve Bradbury, Esq.

[redacted] (ARizzo: [redacted]) (19 December 2005)
[redacted] John A. Rizzo\Letter to Bradbury to
revalidate.doc

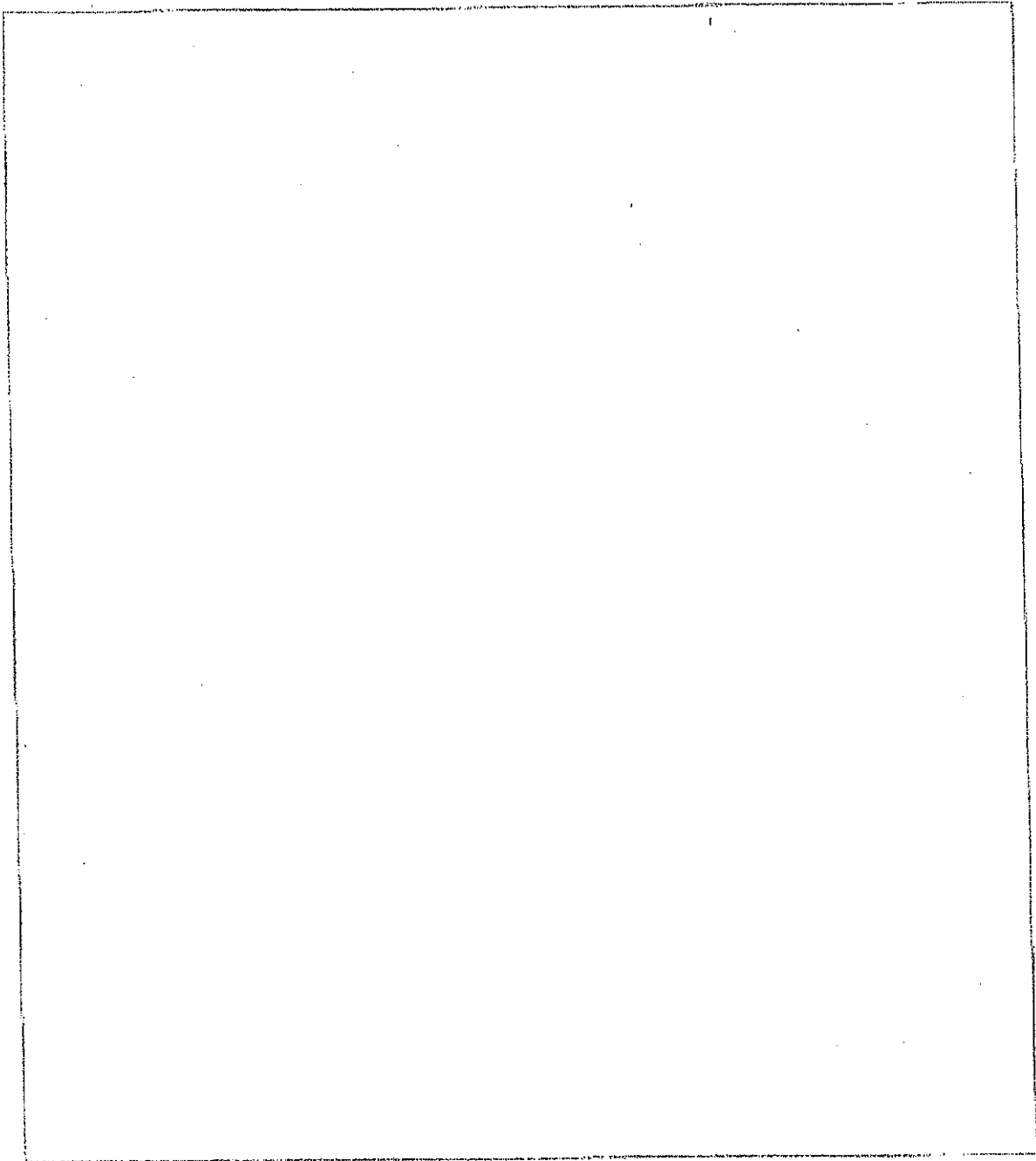
OGC-FO-2005-50063

Distribution:

Orig - Addressee

- 1 - CTC/LGL (w/encl)
- 1 - SDGC Signer (w/encl)

C05432619



TOP SECRET / [redacted]

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FAX COVER SHEET

Central Intelligence Agency



Office of General Counsel
Washington, DC 20505

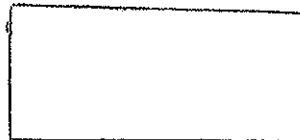
22 April 2005

To:	Steve Bradbury [redacted]
Organization:	DoJ/OLC
Phone:	[redacted] (Bradbury)
Fax:	[redacted]
From:	[redacted]
Organization:	[redacted]
Phone:	[redacted]
Fax:	[redacted]

Number of pages (including cover sheet): 4

Comments: Per your request...

No Dissem - This Note and Attachment
are Attorney Work Product



TOP SECRET / [redacted]

~~TOP SECRET~~ /
HANDLE VIA

/20300422
CHANNELS ONLY

Horizontal Sleep Deprivation

On three occasions early in the program, the interrogation team and the attendant medical officers identified the potential for unacceptable edema in the lower limbs of detainees undergoing interrogation. In order to permit the limbs to recover without impairing sleep deprivation requirements, the subjects underwent horizontal sleep deprivation. Horizontal sleep deprivation occurs when a detainee is placed prone on the floor on top of a thick towel or blanket, a precaution designed to prevent reduction of body temperature through direct contact with the cell floor. The detainee's hands are manacled together and the arms placed in outstretched position -- either extended beyond the head or extended to either side of the body -- and anchored to a far point on the floor in such a manner that the arms cannot be bent or used for balance or comfort. At the same time, the ankles are shackled together and the legs are extended in a straight line with the body, and anchored to a far point on the floor in such a manner that the legs cannot be bent or used for balance or comfort. The manacles and shackles are anchored without additional stress on any of the arm or leg joints that might force the limbs beyond natural extension or create tension on any joint. The position is sufficiently uncomfortable to deprive them of unbroken sleep, while allowing their lower limbs to recover from the effects of standing sleep deprivation. All standard precautions and procedures for shackling are observed for both hands and feet while in this position. Horizontal sleep deprivation has been used until the detainee's affected limbs have demonstrated sufficient recovery to return to sitting or standing sleep deprivation mode, as warranted by the requirements of the interrogation team, and subject to determination by medical officer that there is no contraindication to resuming other sleep deprivation modes.

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22 April 2005

Transmitted by Secure Facsimile

~~(TS/~~ ~~NE,OC)~~ The following is the Central Intelligence Agency's use of the "waterboard" in combination with two other techniques. The waterboard is an interrogation technique as described in our Background Paper on CIA'S Combined Use of Interrogation Techniques, provided to you previously.

~~(TS/~~ ~~NE,OC)~~ We also previously provided the Department of Justice with our description of the waterboard. The following is our description of the two interrogation techniques we use in conjunction with the waterboard. These techniques are dietary manipulation and sleep deprivation. While an individual is physically on the waterboard, we do not use the insult slap, belly slap, attention grasp, facial hold, walling, water dousing, stress positions, or cramped confinement. Many or all of those techniques almost certainly will have been used before the Agency needs to resort to the waterboard (and, indeed, since March 2003, the Agency has not had to resort to use of the waterboard to transition an individual from resistance to cooperation). Further, it is possible that one or more of these interrogation techniques might be used the same day as a waterboard session.

~~(TS/~~ ~~NE,OC)~~ As you are aware, the Central Intelligence Agency has established specific guidelines for the use of each of these two interrogation techniques and the waterboard. These guidelines incorporate the guidelines established by the CIA Office of Medical Services (OMS).

~~(TS/~~ ~~NE,OC)~~ As we briefed you previously, an individual is always placed on a fluid diet before he may be subjected to the waterboard in order to avoid aspiration of regurgitated food. The individual is kept on the fluid diet throughout the period the waterboard is used.

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~~(TS)~~ ~~//NF-CC)~~ Sleep deprivation may be used prior to and during the waterboard session. As has been previously noted, the time limitation on application of sleep deprivation is strictly monitored. In addition, the detainee's physical and mental state is also monitored to ensure they are not harmed. There is no evidence in literature or experience that sleep deprivation exacerbates any harmful effects of the waterboard, but it does reduce the detainee's will to resist, contributing to the effectiveness of the waterboard as an interrogation technique. In the event a detainee were to be perceived as unable to withstand the affects of the waterboard for any reason, any member of the interrogation team has obligation to voice concern, and if necessary to halt the proceedings.

HANDLE VIA
~~TOP SECRET//~~

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UNCLASSIFIED

DCI ACTION CENTER
ROUTING SLIP

		ACTION	INFO			ACTION	INFO
1	DCIA		X	12			
2	ODDCIA		X	13			
3	EXDIR		E-COPY	14			
4	DI		E-COPY	15			
5	DO		E-COPY	16			
6			E-COPY	17			
7			E-COPY	18			
8	OCA		E-COPY	19			
9	OGC		E-COPY	20			
10	IG	E-COPY		21			
11				22	DAC		

SUSPENSE DATE: 4 November 2005

DOCUMENT NO: DAC-04037-05

Action Officer:

COORDINATION/ROUTING:

OIG to respond as appropriate in coordination with OCA.

SUMMARY:

24 October 2005 letter to CIA, IG, from Senator Levin, Ranking Member SASC, requesting IG report on its investigation of CIA personnel involvement in abuse of detainees.

Date of Document: 24 October 2005
Received in DAC: 28 October 2005

PO-BOARD 07310 1009 P 05

UNCLASSIFIED

DAC-04037-05



**** COMMITTEE ON ARMED SERVICES ****

FAX COVER SHEET

87

TO: MR. JOHN HELGERSON C/O MR. STAN MOSKOWITZ	FAX NUMBER: 703-482-0672 PHONE NUMBER:
--	---

COMMENTS:

*Please see the attached letter
from Senator Helms.*

FROM: <u>BILL MONAHAN</u> Committee on Armed Services United States Senate Room 228 Russell Senate Office Building Washington, D.C. 20516-6050 PHONE NUMBER: 202-224- <u>9353</u>	THIS TRANSMISSION CONSISTS OF <u>5</u> PAGES, INCLUDING THIS COVER SHEET
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United States Senate
 COMMITTEE ON ARMED SERVICES
 WASHINGTON, DC 20510-6050

October 24, 2005

Mr. John Helgerson
 Office of the Inspector General
 Central Intelligence Agency
 2X30 NHB
 Washington, DC 20505

Dear Mr. Helgerson:

Congress and the public have yet to receive an accounting of the role Central Intelligence Agency (CIA) personnel have played in the mistreatment of detainees in U.S. custody in Afghanistan, Iraq, Guantanamo Bay and elsewhere. I request that the Office of Inspector General report on its efforts to assess the responsibility of the CIA and its personnel for alleged abuses of detainees.

Senators have sought information on a number of occasions about the CIA's role in alleged detainee abuses and the steps the CIA has taken to investigate these allegations. For example, in February of this year, I asked Director of Central Intelligence (DCI) Goss about the Inspector General's efforts to look into incidents of detainee abuse involving CIA personnel. At that time, DCI Goss was unable to say when the Inspector General would be completing his review of abuse allegations. More recently, Senator Reed asked Secretary of Defense Rumsfeld at a Senate Armed Services Committee hearing on September 29, 2005, for any information he might have regarding the status of the CIA Inspector General's investigation into the "ghost detainee" matter. Secretary Rumsfeld testified that he had no information about that CIA investigation.

The nearly a dozen reviews conducted by the Department of Defense have shed little light on how CIA personnel may have contributed to detainee abuse. On September 9, 2004, Generals Kern and Fay testified to the Senate Armed Services Committee that, in meetings with the CIA's Inspector General, the CIA denied their request for information relating to detainee abuses, but that the CIA Inspector General agreed to conduct his own investigation. The Schlesinger Panel report states that it "did not have full access to information involving the role of the Central Intelligence Agency in detention operations" and recommended further investigation and review. The Church report states that the CIA's cooperation with his investigation was limited to providing "information only on

activities in Iraq." The lack of CIA cooperation with the investigations to date has left significant omissions in the record.

General Kern also testified in September 2004 that both the Defense Department Inspector General and the CIA Inspector General had undertaken an investigation into "ghost detainee" policy, whereby detainees were held unregistered and hidden from monitoring by the International Committee of the Red Cross (ICRC). To date, the Committee has received no information on the progress of either of these investigations. There have also been press reports of numerous covert CIA-operated detention facilities where detainees are being held incommunicado and outside ICRC monitoring.

Public reports indicate that CIA personnel were involved in numerous abuse incidents, including several involving detainee deaths:

- Manadel Al Jamadi died on November 4, 2003, while under CIA interrogation in a shower stall in Tier 1B of the Abu Ghraib detention facility in Baghdad. At the time of the report of Major General George Fay on the role of military intelligence in the Abu Ghraib abuses, the incident remained under CIA investigation.
- Iraqi Major General Abed Hamed Mowhoush died on November 26, 2003 at the Al Qaim facility. While General Mowhoush appears to have died from suffocation during an interrogation by military intelligence personnel after being stuffed head-first in a sleeping bag, according to news reports a classified Army report found that "the circumstances surrounding the death are further complicated due to Mowhoush being interrogated and reportedly beaten by members of a Special Forces team and other government agency (OGA) employees two days earlier." Your office reportedly initiated an investigation of at least one CIA operative in connection with this incident.
- Abdul Wali died on June 21, 2003 near Asadabad, Afghanistan, after being interrogated for two days by a CIA contractor, David Passaro, who punched, kicked and hit Wali with a large flashlight. The CIA referred the case to the Department of Justice, which has brought criminal charges in connection with this death.
- Iraqi Lt. Col. Abdul Jaleel died on January 9, 2004 at Forward Operating Base (FOB) Rifles, Al Asad, Iraq. Jaleel was reportedly beaten during interrogation by special operations forces, and died later after being tied to the top of his cell door and gagged. A detainee autopsy summary released under a FOIA request lists an early January 2004 death of a detainee at FOB Rifles as a homicide by "blunt force

injuries & asphyxia." News reports indicate possible involvement of CIA personnel in this incident.

- According to news reports, an Afghan detainee died of "hypothermia" in November 2002 after a CIA case officer ordered the detainee to be stripped naked, chained to the floor, and left overnight in an abandoned warehouse known as the Salt Pit. The Salt Pit case was reportedly under investigation by your office.

Finally, the CIA has failed to respond to allegations that the Agency is engaging in a policy of rendition, reportedly resulting in dozens of individuals being secretly transferred for interrogation to foreign countries, including countries with a track record of engaging in torture. An FBI document recently released by the Justice Department suggests that military intelligence at Guantanamo may also have been considering the use of rendition as part of interrogation plans for resistant detainees. The document, entitled "Legal Analysis of Interrogation Techniques" and dated November 27, 2002, includes among the categories of "coercive interrogation techniques" under consideration at Guantanamo the following:

"Category IV--

1. Detainee will be sent off GTMO, either temporarily or permanently, to Jordan, Egypt, or another third country to allow these countries to employ interrogation techniques that will enable them to obtain the requisite information."

The report of Generals Schmidt and Furlow on their investigation of FBI allegations of detainee abuse at Guantanamo failed to address the question of whether U.S. officials at Guantanamo were engaging in or threatening the rendition of detainees as an interrogation technique.

The American people need answers. It is insufficient to say that the Chairman and Vice Chairman of the congressional oversight committee have been briefed on these matters. There must be a forthright accounting of both the CIA's involvement in the treatment of detainees and what steps the CIA has taken to address the policies and practices that may have contributed to alleged detainee abuse.

I request that you provide answers to the following questions:

- Have you completed your investigation into the "ghost detainee" policy referred to by General Kern in his testimony before the Committee? If so, what were the

findings of your investigation? Have you cooperated with the DoD Inspector General in his investigation into the "ghost detainee" policy?

- How many cases of alleged detainee abuse have you investigated? Have you completed your review of these cases? If not, what is the timeline for completing the review of these cases?
- How many cases of detainee abuse involving CIA personnel have been referred to the Justice Department for their review? How many CIA operatives have been named in the cases referred to the Justice Department? To what office within the Justice Department have these cases been referred? How many of these cases does the Justice Department plan to prosecute?
- Is the CIA cooperating fully with the Army's investigations into the allegations raised by Army Captain Ian Fishback and two non-commissioned officers of having witnessed and heard about detainee abuse in Afghanistan and Iraq, including abuse carried out by Other Government Agency, i.e., CIA, personnel?
- Have you investigated cases of individuals alleged to have been subjected to rendition, resulting in their being transferred to foreign countries for interrogation? If so, did you find any case in which these transfers resulted in detainees being subjected to treatment that violated U.S. obligations under the Convention Against Torture and Cruel, Inhuman, or Degrading Treatment or Punishment?
- Did the CIA receive any requests for information from Generals Schmidt or Furlow in connection with their investigation into FBI allegations of detainee abuse at Guantanamo Bay, and if so, was the requested information provided? Have you looked into whether CIA personnel at Guantanamo Bay used rendition or the threat of rendition as an interrogation technique or cooperated with military intelligence in their doing so?

I look forward to receiving your responses. Should you have any questions, please have your staff contact Bill Monahan of my staff at (202) 224-9353.

Sincerely,



Carl Levin
Ranking Member

6 September 2005

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation With U.S. Attorney [redacted]

REF: Case [redacted]
Case [redacted]
[redacted]

1. On 6 September 2005, I told [redacted] Assistant U.S. Attorney, Eastern District of Virginia (EDVA), that defense counsel Frank Spinner is scheduled to visit the Washington area this week in order to review selected materials, especially interview reports, from the case file for case [redacted]. I told [redacted] that I was letting him know this because of the overlap (for example, many interview reports) between the two cases ([redacted]). I also told [redacted] that if he wanted more information about which materials CIA's Office of General Counsel (OGC) intends to show Spinner, he should contact OGC attorneys [redacted].

[redacted] I let [redacted] know, too, that Ft. Carson prosecutor Major Tiernan Dolan will visit here this week in order to review the materials that OGC intends to show to Spinner.

2. [redacted] said that showing case materials to defense counsel is not uncommon, but he said he would prefer that the defense counsel not be given hardcopies of the interview reports.

3. [redacted] is reviewing the contents of the [redacted] case file and expects to consult with Major Dolan later this week about them. I told her about my conversation with [redacted] and she said OGC would contact him to discuss his concerns.

[redacted]

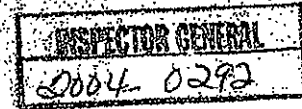
Special Agent



~~CONFIDENTIAL~~
 THE DIRECTOR OF CENTRAL INTELLIGENCE
 WASHINGTON, D.C. 20505

25 May 2004

0000166



MEMORANDUM FOR: See Distribution Sheet

SUBJECT: Detainee Working Group

1. (C) I have established an Detainee Working Group to coordinate the Agency's response to external inquiries concerning its actual and alleged detention, debriefing, interrogation, and rendition practices, especially those relating [redacted] to our worldwide counterterrorist activities.

2. (C) The DWG will serve as the CIA focal point for information relating to Agency detention, debriefing, interrogation, and rendition matters. The work of the DWG will be separate from, and is not intended to duplicate, investigations by the Inspector General related to the Agency's detention and interrogation activities.

- The DWG will assemble relevant documents and materials (e.g., testimonies, investigative reports, legal documents, authorization materials, and operational cables) relating to Agency detention, debriefing, interrogation, and rendition activities.
- The DWG is authorized to task CIA components to provide information, documents, and materials, and will be provided access to Agency programs regardless of compartmentation or organizational entity.
- As appropriate, the DWG will consult with the Office of Inspector General as it conducts its activities.

3. (U//FOUO) The DWG will prepare the DCI, DDCI, and other Agency officials for Congressional hearings, NSC Principals and Deputies meetings, and any other similar engagements.

- The DWG will provide status briefings for the DCI, DDCI, and other senior Agency officials as needed.
- In conjunction with other appropriate components, the DWG will draft statements for the record, oral testimony, and talking points as required.
- In conjunction with other appropriate components, the DWG will prepare background materials, such as issue papers, summaries of relevant reports, and suggested questions and answers.

~~CONFIDENTIAL~~

4. (U/FOUO) The DWG will interact directly with OIG and, through OIG, with other relevant investigative bodies.

- Requests from DoD elements will continue to be provided to OIG. Apart from requests for OIG investigative materials, OIG will forward those requests to the DWG for action and response back through OIG.
- All other requests will be provided through existing liaison channels to CIA. The Agency recipients will forward those requests to the DWG for action and response.

5. (U/FOUO) Working with the Office of Congressional Affairs and the Office of Public Affairs, the DWG will coordinate on any written or verbal communications, such as briefings, correspondence, presentation of data, or other forms of communication to Congress, the press, and other entities.

6. (U/FOUO) The DWG shall report to the Chief of Staff to the DCI. The Chair of the DWG is [redacted] DI, on [redacted] with [redacted] OGC, [redacted] DO, [redacted] DI, [redacted] DI, and [redacted] DI, as members of the Group. Additional Agency officers will assist the Group as well.

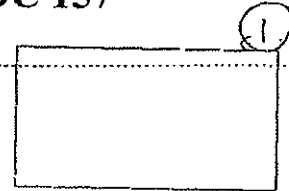
George J. Tenet
George J. Tenet

Attachment: Distribution Sheet

~~CONFIDENTIAL~~

PRINTED: Thursday, August 11, 2005
AT: 14:51

CODEWORDS:



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0000342

Memorandum for the Record

KEY: C/2004-01145

EVENT: MBR PRE-TRIP BRIEF DATE: 12/21/2004 TIME: 10:30 STATUS: COMPLETED
PLACE: 7B42 HEADQUARTERS
FOR: HASC
SUBJECT: IRAQ - INSURGENTS AND TERRORISTS

ATTENDEES:

ASSOCIATION	NAME	ROLE
DC/OCA	<input type="checkbox"/>	SUPPORT
DC/OCA	<input type="checkbox"/>	SUPPORT
DI/CTC	HORACEK, JAMES	BRIEFER
DI/OIA	<input type="checkbox"/>	BRIEFER
DI/OIA	<input type="checkbox"/>	BRIEFER
HASC	MARSHALL (D-GA), JIM	REP

Executive Summary:
(C/NF) A team of and CTC analysts provided Representative Jim Marshall (D/GA), member of the HASC, an analytical, non-oversight briefing to address issues relating to Iraqi insurgents and terrorists.

- Summary Text:**
- (C/NF) A team of and CTC analysts provided Representative Jim Marshall (D/GA), member of the HASC, an analytical, non-oversight briefing to address the following issues:
 - 1) Iraq -- Insurgents and terrorists: Who are they? How much support do they have?
 - 2) How much support is there for the new government? Are Iraqis interested in rebuilding their own society?
 By way of additional background, the briefing was arranged to support Rep. Marshall in his planned late December travel with General Schoomaker, Chief of Staff of the US Army, to Afghanistan and Iraq -- however, when the Representative arrived here at Headquarters, he advised that his trip had been postponed.
 - (S/NF) The session was largely give-and-take because Rep. Marshall, a former Army Ranger who studied insurgencies at Princeton, had some strong opinions of his own. The discussion centered around nation-building and reconstruction efforts in Iraq; counter-insurgency efforts by the US Military and Iraqi security forces; the challenge posed by Zarqawi, including his network's killing of 49 Iraqi national guardsmen fresh out of basic training; and the possible ramifications of a pull-out of Coalition troops. Rep. Marshall was very knowledgeable about the subject matter, but expressed surprise over the analysts' estimate of the number of suicide bombers. Toward the end of the session, the DCI stopped in to say hello to the Representative.

Liaison Officer
Office of Congressional Affairs

~~SECRET~~

C05416919

~~SECRET~~

Distribution:

1 - DAC (Official OCA Record)

1 -

Follow-up Action Items:

Additional Information:

~~SECRET~~

DEPARTMENT OF THE ARMY
1st Squadron, 3rd Armored Cavalry Regiment
TIGER BASE, IRAQ 38S FT 985940

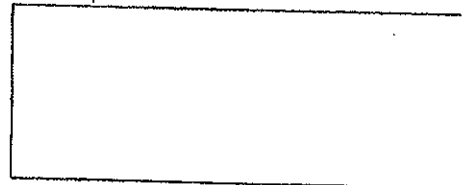
AFZC-R-I-S-3

03 NOVEMBER 2003

MEMORANDUM FOR RECORD

SUBJECT: Standard Operating Procedures for Tiger Base Detention Center

1. Bringing detainee to Base compound/ entering Base compound
 - a. Notify Tiger X-Ray Immediately when detainees are picked up.
 - b. Always utilize the 5 S's (search, segregate, silence, speed, secure)
 - c. Have detainees blindfolded and zip tied for movement.
 - d. Capturing unit will conduct a thorough search of all detainees.
 - e. Capturing unit will complete two copies of DA form 5976. One form is worn by the detainee, the other form will be given to the S2 representative.
 - f. Notify Tiger X-Ray when detainees are inbound.
 - g. Tiger X-Ray will notify S-2, and the guard force NCOIC.
 - h. All personal items and captured weapons will be handed over to the S-2 with a detailed description of who, what, where, and how the items were confiscated.
 - i. A representative from the capturing unit will remain with the detainees until released by the guard NCOIC.
2. Guard Force Responsibilities
 - a. Guards will do a thorough search of all detainees and vehicles.
 - b. Guard detail will inventory personal items on DA 4137 (2 copies) and maintain proper accountability of items.
 - c. One record of items will be placed in a sealed bag along with the items, the other record will be given to the S-2.
 - d. The bag of personal items will be tagged with the detainees serial number.
 - e. All detainees will be separated as the situation permits. They will not be allowed to speak to one another.
 - f. The NCOIC in conjunction with the CI/Interrogator team will determine when the detainees are given food and water.
3. Detention Center Battle Rhythm
 - a. The NCOIC will be overall responsible for ensuring each detainee is properly documented and serve as a liaison between the guard detail and S2/ CI sections.
 - b. Capturing unit representative back briefs the Battle Captain, who then sends report to the S-2.
 - c. Initial Screening of all detainees will be conducted by the guard force NCOIC.
 - d. Detainee Screening reports are then sent to the S-2.
 - e. The S-2 analyzes initial screening, then prepares INTREP for CI/Interrogator team.



- f. CI/Interrogator team conducts further Interrogation to collect intelligence from detainees.
 - g. Interrogation report is sent back to S-2 for analysis.
 - h. The S-2 determines further usefulness of detainee, and determines release time.
 - i. Upon release of detainees, the NCOIC will verify the identity of the detainees and ensure they receive their personal belongings
 - j. If detainees are to be released the NCOIC will escort them to their transportation, ensure they are properly logged out and notify the Battle Captain before they are released.
 - k. If detainees are to be transferred to Al Asad detention center (OBJ Webster) the NCOIC will ensure the guard accompanying the detainee has the DA5976, DA4137 and a copy of the interrogators summary report. He will also ensure that the guard has the detainee's personal belongings. The NCOIC will keep originals of all reports. He will ensure the detainees are properly logged out and notify the Battle Captain before they are released.
4. Personnel Tasking and Logistical Support
- a. The S-3 will ensure the detention center guard force is properly manned with a ratio of 5 detainees to one guard. The minimum is one NCO and one EM.
 - b. Guard shifts should be no longer than 6 hours.
 - c. The NCOIC will send a daily report to the S-3 of the number of detainees in the holding center.
 - d. The S-3 will coordinate with the S-4 to ensure that MREs and Water are being pushed to the Detention Center.
5. POC for this memorandum is Tiger S-2

[Redacted]

MAJ, AH
Squadron XO

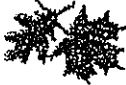
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Priority
by DCE

[Redacted]

[Redacted]
NE/EXC [Redacted]



05/04/04 07:07 PM

To: [Redacted]

cc:

Subject: DDO Talking Points re [Redacted]

These are old DDO TPs from [Redacted] perhaps of use in our current [Redacted] taskings. You will want to scroll down to the bolded background for the DDO. I don't think NE wrote these, although we may have contributed bits as I recognize some from DC/NE's note [Redacted]

~~SECRET~~

Subject: DDO talking Points for HPSCI Leadership on Issues Surrounding [Redacted] Leadership and Management

The Issue:

--I wanted to notify you in person of some potentially very serious leadership lapses by my former [Redacted] and others [Redacted] As soon as we realized the scope of the problems, we moved quickly to implement changes.

--Our findings are preliminary at this point but based on our review of [Redacted] to date we have identified possibly very serious shortcomings in 3 key areas:

[Redacted]

o Managerial and Oversight lapses over [Redacted] administrative issues

[Redacted]

--I will keep you advised of the results of our investigation into these issues.

~~SECRET~~

C05409305

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477-2

~~SECRET~~ []

Actions Taken

■ **Senior Officer Review Team.** Extensive reviews by DC/NE [] in early December identified the management problems and solutions have been and are being implemented. He was assisted by [] with extensive operations management experience who is now []

■ **Changed out []** Based on the initial findings in December of the review team, I decided the [] would not return []. DC/NE returned [] in January until the return [] last week []. We are also pulling back []

■ **Procedures and Organizational Structure:** DC/NE [] moved quickly to put a better management structure in place and to ensure [] knew and followed important procedures. [] in a short time in an extremely dangerous operating environment. []

■ **Accountability Board:** Immediately after learning of potential problems with the [] in early Jan (check date), I tasked ADDO/CI on 12 Jan to chair an Accountability Board [] [] I directed the principal focus to be on the [] but have asked them to identify other leadership failings, as well. I have asked for a preliminary report by 12 February.

[]
[]

Some Preliminary Issues We are Reviewing Related to the Problem

-- The Number of people [] grew very quickly without similar growth in structure and management. []
[]

~~SECRET~~ []

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-- leadership was not experienced enough to manage this size operation as it grew together with such a complex playing field in an extremely very dangerous environment

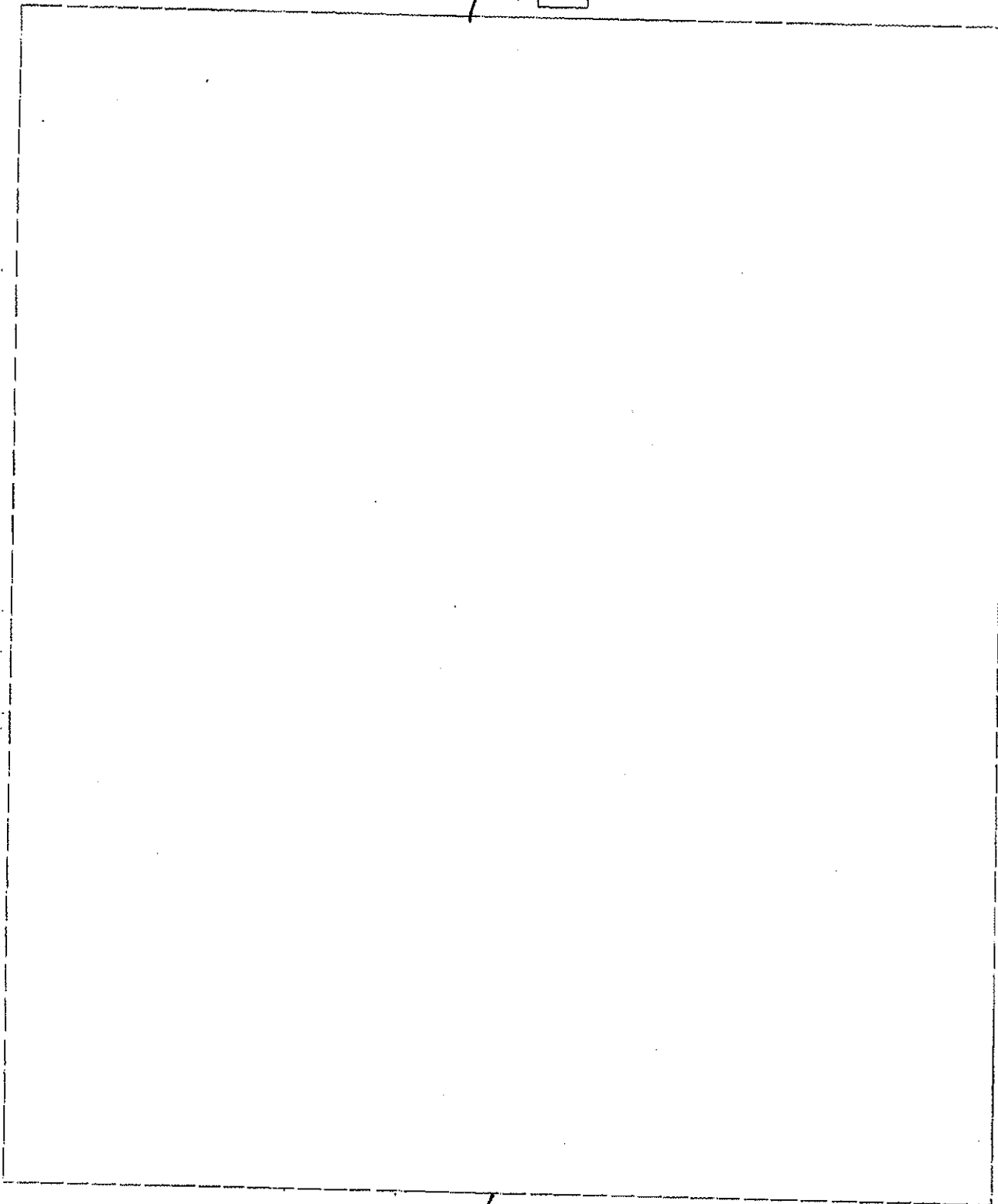
-- DO responded to missions we were given for which in some cases our officers were not properly trained/experienced. (i.e. jailers)

-- officers were very focused on collecting intel to catch HVTs, find WMD and prevent insurgent attacks which were killing Americans; that focus appears to have been at the expense of appropriate attention to policies, management oversight, and basic good ops management procedures.

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C05409305

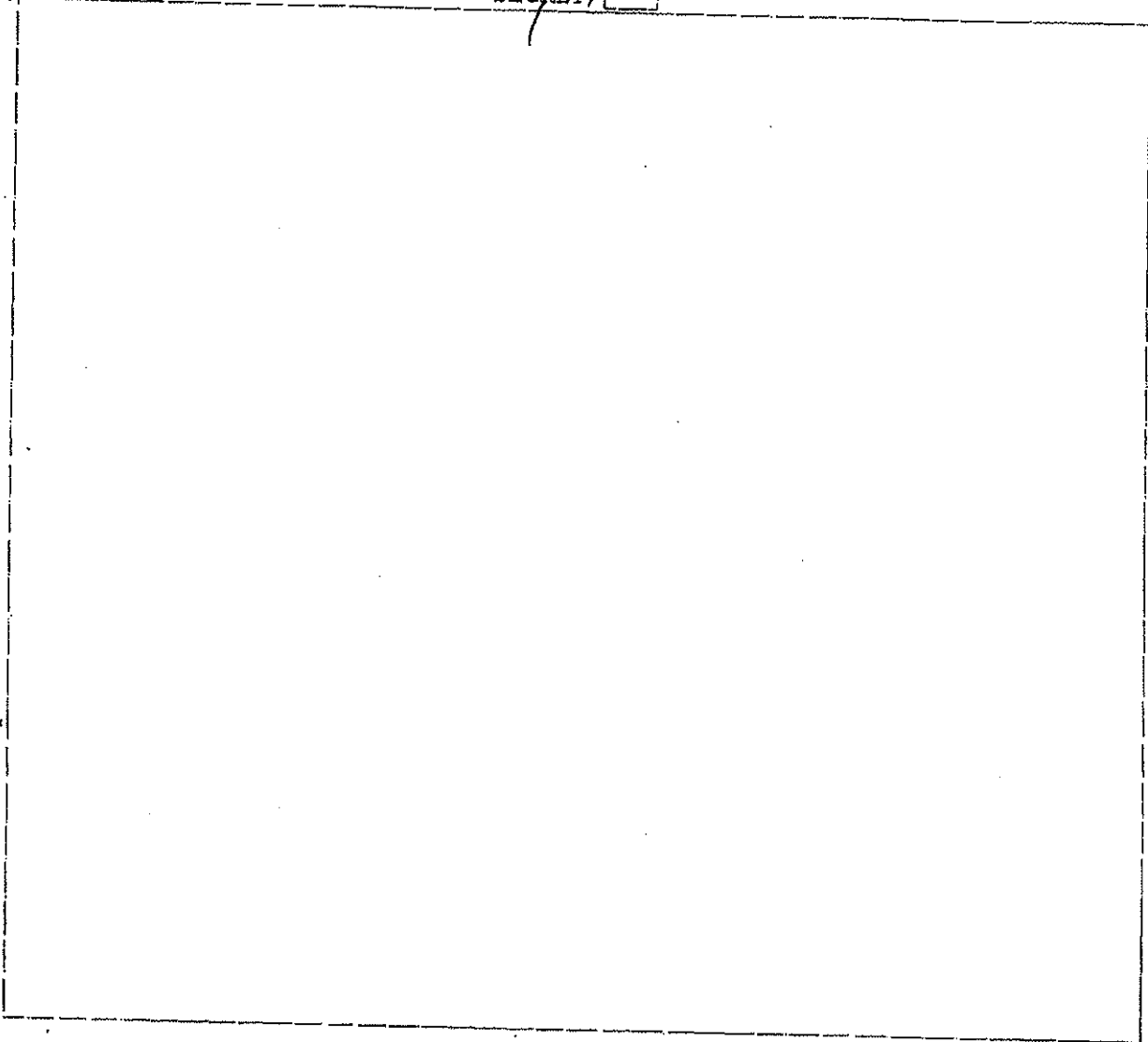
~~SECRET~~ /



~~SECRET~~ /

1177-5

~~SECRET~~ /



----- Forwarded by on 05/04/04 07:06 PM -----

DO/DBO

05/04/04 03:06 PM

To:

cc:

Subject: DBO Talking Points re

Old TPs in for the hill

----- Forwarded by on 05/04/04 03:05 PM -----

~~SECRET~~ /

~~SECRET~~ / []

[]



01/27/04 11:49 AM

To: []
cc: []

Subject: DDO Talking Points re []

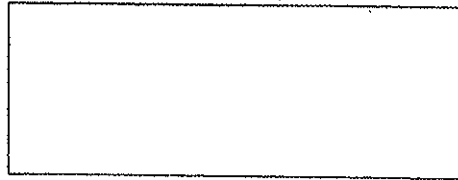
[] - as follow up to your coordination on this here this morning, attached is an electronic copy for you. So far DDO is still scheduled to see HPSCI and SSCI senior leadership late this afternoon, assuming the weather does not cause cancellation. Please advise if after further review there are any additional points you want to add---beyond today this will serve as a backgrounder for ODDO on this issue which we will update as new info/clarifications develop. He also has the comprehensive package you sent up including the various cables DC/NE sent in as well as [] summary of his findings. Thanks again for your quick review.

[] - DDO Talking Points re [] doc

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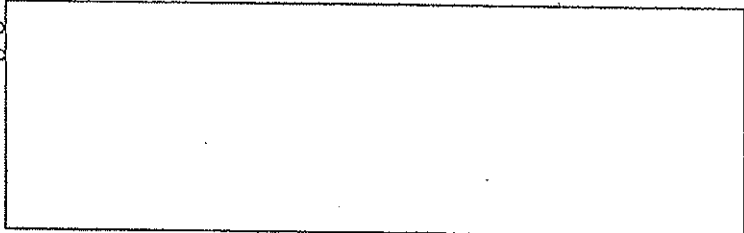
SECRET//20291117

01271



11/17/04 08:53 PM

To
cc



Subject: Discovery Requests impacting OIG documents



Although I have now been in contact with the OIG agents on these cases regarding at least the existence of this discovery requests, I wanted to provide them to you as well so that you can be aware of the issues.

(1) Request from Navy JAG in Navy prosecution of seals involved in Al-Jamadi case. [redacted] will provide you with a copy of this request but basically it requests four types of information (a) a complete copy of the OIG file on Al-Jamadi; (b) any documents in CIA's possession on rules and guidance concerning detention and interrogation techniques [redacted] (c) individuals to be made available for interviews in preparation for hearings/courts martial; and (d) any studies or reports regarding the effects of detainee abuse on insurgent activities [redacted]

As a preliminary matter, given the joint OIG-Navy investigation on Al-Jamadi I think we will need to provide access to the OIG file. As I understand it, [redacted] is providing me all the interview reports from that file and the prosecutor is also going to send me a separate request for those documents. However, I will probably need to review the entire file to ensure we comply with the prosecutor's request. We are considering how to respond the other requests noted above.

(2) Request from Army JAG in Iraqi General prosecution of army individuals (Ft. Carson case). That request is provided below. [redacted] forwarded the request to me. I think we need to know if there are any completed reports of investigation on the following: (a) Detainee abuse [redacted] (b) Interrogation procedures [redacted] (c) Use of [redacted] and (d) MG Mowhosh. Also in general the defense asks for "any other file or record kept by the agency relating to MG Mowhosh" which I think would include the OIG file on this case. Therefore, we probably need to review that file.

As we mentioned, we think these are only the beginning of the requests. If you would like to meet on these issues, please let us know.

Thank you,



- CIA Discovery.doc

C05407469

We're looking for any report of investigation conducted by the CIA or by an Agency investigating CIA practices that covers:

1. Detainee abuse [redacted]
2. Interrogation procedures [redacted]
3. Use of [redacted]
4. MG Mowhosh

This should be construed broadly.

We're also looking for any information maintained by the CIA on:

1. MG Mowhosh and his prospective value as a source of information
2. MG Mowhosh and his medical condition, what was known by the Agency prior to his capture?
3. Any other file or record kept by the Agency relating to MG Mowhosh.

Thanks.

UNCLASSIFIED//~~AFUQ~~

DOC 195

[Redacted]

10/24/03 08:26 AM

To: [Redacted]

cc:

Subject: 2nd Tranche of Documents re: Detainees from DEC at [Redacted]



I have not yet caught up on my lotus notes so I don't know whether you already have the note below. The first document is a set of interrogation guidelines approved by General Sanchez and apparently drafted by or approved by [Redacted] the senior CENTCOM attorney in Iraq. The senior CENTCOM attorneys in Tampa, [Redacted] also approved the document. Yesterday, the General Counsel obtained DOJ's verbal concurrence for the CENTCOM document.

----- Forwarded by [Redacted] on 10/24/03 08:22 AM -----

[Redacted]

Office: [Redacted]

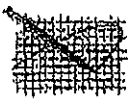
10/22/03 04:03 PM

To: John A. Rizzo@DCI
cc: Scott W. Muller@DCI, [Redacted]
Subject: 2nd Tranche of Documents re: Detainees from DEC at [Redacted]

The first doc below is the Oct 12 document for DOJ
----- Forwarded by [Redacted] on 10/22/03 04:02 PM -----

[Redacted]

Office: [Redacted]



22 October 2003

To: [Redacted]
cc: [Redacted]

0008138

UNCLASSIFIED//~~AFUQ~~

L 288-1

UNCLASSIFIED//~~ATUQ~~

Subject: 2nd Tranche of Documents re: Detainees from DEC at [REDACTED]

Reference:

A couple more documents for you below...

Original Text of [REDACTED]

Original Text of [REDACTED]

NOTE FOR:

FROM:

OFFICE: ITC-COMMO-OFFICER

DATE: 10/22/2003 01:04:45 PM

SUBJECT: floppy docs

Interrogation and Counter-Resistance Policy [REDACTED]

CC:

Sent on 22 October 2003 at 01:04:45 PM

0008139

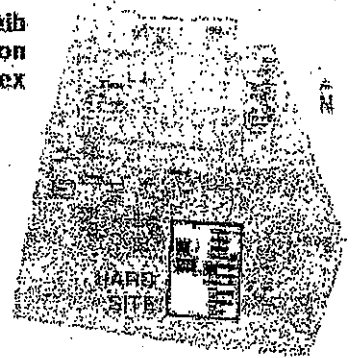
UNCLASSIFIED//~~ATUQ~~

L288-2

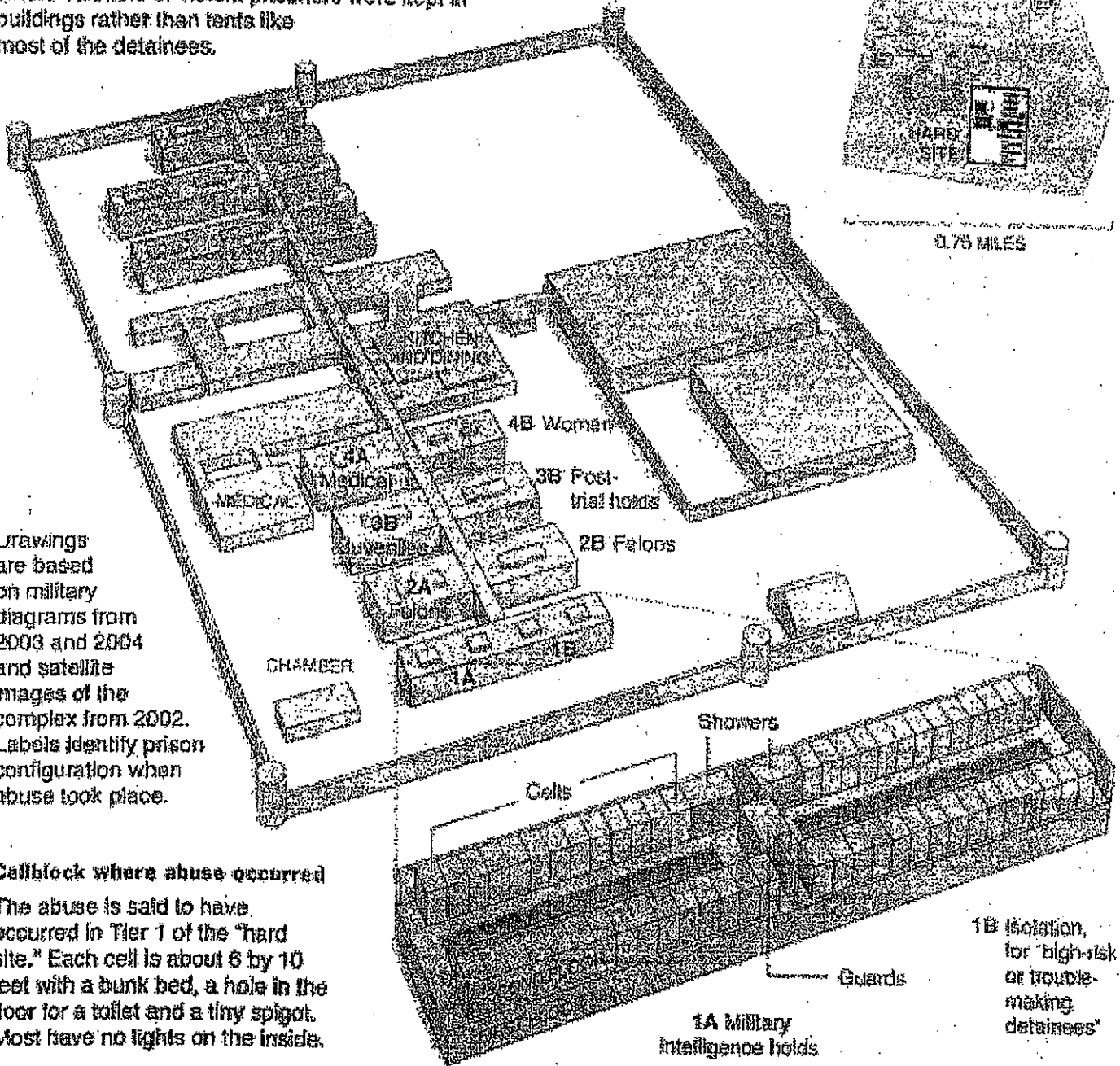
Look at the 'Hard Site'

The abuse at Abu Ghraib took place at the "hard site," where valuable or violent prisoners were kept in buildings rather than tents like most of the detainees.

Abu Ghraib prison complex



0.75 MILES



Drawings are based on military diagrams from 2003 and 2004 and satellite images of the complex from 2002. Labels identify prison configuration when abuse took place.

Callblock where abuse occurred
The abuse is said to have occurred in Tier 1 of the "hard site." Each cell is about 6 by 10 feet with a bunk bed, a hole in the floor for a toilet and a tiny spigot. Most have no lights on the inside.

0540

[redacted]
16 February 2006

FOR: Office of the General Counsel [redacted]
J-5 Detainee Affairs Division [redacted]
Office of Detainee Affairs [redacted]

FROM: Defense Sensitive Support Activity
Special Advisory Staff [redacted]

Subject: Request for Security Review (SRS-D-060154)

(S) The attached is a HQDA request for a security review of an official statement. Specifically, the statement refers to CIA activities on pages 4, 15, and 17.

(U) Since this document will be introduced during a 27 Feb hearing and 11 March trial, request you provide us your review by 25 Feb. Please call me at [redacted] if you have any questions.

[redacted]
Classified by: DoDD 5310.36
Reason: 1.5(a), (c)
Declassify on: 1 February 2031

10000

(b)(3)

SERIAL INNER ENVELOPE

TITLE OF CASE <i>Allegation of Abuse of Detainees</i>	DATE ACQUIRED <i>7/16/05</i>
	DATE FILED <i>7/16/05</i>
	SERIAL NUMBER <i>6</i>
	INVESTIGATOR NAME <input type="text"/>
	FIRE NUMBER <input type="text"/>

DESCRIPTION OF CONTENTS

*The rest of company documents were
removed by [redacted] 7/16/05*

C05409409

CENTRAL INTELLIGENCE AGENCY DOCUMENT RECEIPT		NOTICE TO RECIPIENT <small>Sign and Return as Shown on Reverse Side</small>		COURIER REC. NO.	DATE SENT
SENDER OF DOCUMENT(S) Office of Inspector General/INV		ROOM	BLDG.	DATE DOCUMENT(S) SENT 12 July 2005	
DESCRIPTION OF DOCUMENT(S) SENT					
CIA NO.	DOCUMENT DATE	COPIES	DOCUMENT TITLE (IN BRIEF)	ATTACHMENTS	CLASS
	7/12/05	1 cy ea	10 SITREPS (Army Docs)	<i>Handcarried</i>	<input type="checkbox"/>
RECIPIENT					
ADDRESS OF RECIPIENT					
Assistant United States Attorney Eastern District of Virginia Alexandria, VA 22314					
DATE OF RECEIPT					

FORM 615B 6-86

USE PREVIOUS EDITIONS

(33)

DOC 274

(b)(3)

SERIAL INNER ENVELOPE

TITLE OF CASE <i>Allegations of Abuse of Detainees</i>	DATE ACQUIRED <i>5/12/05</i>
	DATE FILED <i>5/12/05</i>
	SERIAL NUMBER <i>1</i>
	INVESTIGATOR NAME <i>[Redacted]</i>
	FILE NUMBER <i>[Redacted]</i>

DESCRIPTION

*receipt from packet of documents searched up
on 5/12/05 by AUSA [Redacted]*

*receipt from packet of documents searched up
on 5/12/05 by AUSA [Redacted]*

00231

CENTRAL INTELLIGENCE AGENCY DOCUMENT RECEIPT		NOTICE TO RECIPIENT and Return as Shown on Reverse Side		COURIER REC. NO.	DATE SENT 12/28/2005	OTHER <input type="checkbox"/>
SENDER OF DOCUMENT(S) Office of Inspector General / INV		ROOM	BLDG.	DATE DOCUMENT(S) SENT April 28, 2005		
DESCRIPTION OF DOCUMENT(S) SENT						
CIA NO.	DOCUMENT DATE	COPIES	DOCUMENT TITLE (IN BRIEF)	ATTACHMENTS	CLASS	
	4/27/05	Copies	Request for copies of Interview Reports	Seventeen		
ADDRESS OF RECIPIENT				REC		
AUSA 7100 Jamieson Avenue Alexandria, Virginia 22314					RECEIPT	
FORM 6158 6-86 USE PREVIOUS EDITIONS					ISSUED	