

THE CITY UPON THE HILL

For we must consider that we shall be as a city upon a hill. The eyes of all people are upon us. So that if we shall deal falsely with our God in this work we have undertaken . . . we shall be made a story and a by-word throughout the world. . . . We shall shame the faces of many of God's worthy servants, and cause their prayers to be turned into curses upon us til we be consumed out of the good land whither we are a-going.¹

— John Winthrop

Well, we started to connect the dots, in order to protect the American people. And, yes, I'm aware our national security team met on this issue [of enhanced interrogation techniques]. And I approved. I don't know what's new about that; I'm not so sure what's so startling about that.²

— President George W. Bush

The naval base at Guantanamo Bay, Cuba, is not only the oldest overseas U.S. naval base, but it also is the only U.S. military base located in a country with which the U.S. does not share diplomatic relations. Since 2002, this naval base has been the site of the U.S. government's only strategic internment facility. During OIF I, this strategic internment facility (often shortened as "Gitmo") consisted of three camps located on a series of low, rolling hills overlooking the eastern side of Guantanamo Bay.

Almost since its inception, this detention facility has served as a lightning rod for international controversy. One of the most hotly debated issues regarding the facility was whether the Bush Administration was legally correct when it suspended Geneva Convention protections for detainees at this facility. (The U.S. Supreme Court decided in June 2006 that, as a minimum, all detainees at this facility were entitled to the general protections offered by Common Article 3 of the Geneva Conventions.) Other much-debated issues were whether the Bush Administration and the U.S. Congress made constitutionally lawful decisions when they suspended the rights of detainees at this

facility to the due process of law as described in the Fifth Amendment of the U.S. Constitution and to the right of habeas corpus appeals as expressed in Article One of the Constitution. (Although the *Detainee Treatment Act of 2005* and the *Military Commissions Act of 2006* denied due process and habeas corpus appeals to Gitmo detainees, a June 12, 2008, Supreme Court decision subsequently ruled that these denials were unconstitutional.)³ The most hotly debated legal question concerning Gitmo, however, was whether the Bush Administration sanctioned "torture" during the interrogations of certain detainees at the facility, interrogations that included the use of such coercive techniques as "Waterboarding," "Isolation," and "Forced Nudity" to break the will of detainees.

The net result of this controversy has been the empowerment of our nation's jihadist enemies at the expense of the U.S. government's standing as a moral leader in the world. Speaking to this, Vice Admiral Alberto Mora, the U.S. Navy General Counsel, testified to the Senate Armed Services Committee in June 2008 that "there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq--as judged by their effectiveness in recruiting insurgent fighters into combat--are, respectively the symbols of Abu Ghraib and Guantanamo."⁴

The twin scandals of Gitmo and Abu Ghraib are intimately entwined with interrogations. Here, we explore how these scandals could have occurred when existing U.S. military regulations, directives, and doctrine should have prevented such scandals.

The Bush Administration and Interrogation Policy

Within the U.S. government, two individuals have the authority to suspend or override Department of Defense (DoD) directives, Army regulations, and Army doctrine.

These two individuals are the President and the Secretary of Defense. Both the President and the Secretary of Defense began asserting their authority in this regard soon after the fall of the Taliban government in Afghanistan.

In December 2001, the DoD General Counsel requested information regarding the interrogation of detainees from the Joint Personnel Recovery Agency,⁵ the component of U.S. Joint Forces Command with oversight of SERE training for U.S. military personnel. SERE training is designed to prepare U.S. military personnel to survive capture by nations that do not adhere to the Geneva Conventions. This training subjects U.S. military personnel to interrogation techniques largely gleaned from the Korean War, where the Chinese Communist Army had used illegal interrogation techniques to extract false confessions for these confessions' propaganda value.⁶ At the time of the September 11 attacks, interrogation techniques used within the U.S. military's SERE schools included forced nudity, sleep deprivation, use of extreme temperatures, use of prolonged and uncomfortable "stress positions," use of loud music and flashing lights, putting hoods over subjects' heads, and slapping the face and body.⁷ Until recently, "interrogators" at the U.S. Navy SERE School even employed "waterboarding," the controversial interrogation technique that simulates drowning.⁸

The SERE schools' "interrogators," who are not usually real world U.S. military interrogators but rather actors playing the role of hostile enemy interrogators, are legally able to employ such interrogation techniques against U.S. service members because of the "safeguards" that accompany these techniques.⁹ The most important of these safeguards is the fact that a U.S. service member attending a SERE school can at any point choose to stop the training (and thus fail the school). Through this safeguard and

others, U.S. service members attending SERE school are given some measure of control over their environment.¹⁰ Of course, subjects of real world hostile interrogations do not enjoy similar control.

It is unclear from unclassified sources exactly why the DoD General Counsel's request to the Joint Personnel Recovery Agency was made. Certainly, by 2002, there was dissatisfaction at high levels of command with the intelligence that was being produced via conventional, rapport-building "soft" interrogation techniques. For example, one of the behavioral science consultants at Gitmo later testified that his chain-of-command had become frustrated over the inability of interrogators to establish a link between al Qaeda and Iraq.¹¹ Supporting this psychologist's assertion, David Becker, the Chief of the Interrogation Control Element at Gitmo, told the Senate Armed Services Committee that the office of the Deputy Secretary of Defense, Paul Wolfowitz, had called Major General Michael Dunlavey, the commander of Joint Task Force 170 at Gitmo, on multiple occasions to express concern about insufficient intelligence production.¹² Becker also alleged that Wolfowitz had personally told Dunlavey that his interrogators should use more aggressive interrogation techniques to extract this intelligence.¹³ Thus, it seems likely that, in December 2001, there was already a perception within the Bush Administration that "soft" interrogation techniques were not producing the desired intelligence, and because of this perception, DoD leaders moved to consult their only source of expertise regarding non-doctrinal techniques, the Joint Personnel Recovery Agency.

Whatever the reason for the request, this request was unusual. After all, SERE schools specialize in training U.S. soldiers on how to resist providing intelligence when

tortured, not in training interrogators how to extract reliable intelligence.¹⁴ One would think that the Joint Personnel Recovery Agency would have been the last place that DoD leaders consulted for reliable interrogation practices, since the Federal Bureau of Investigation (FBI) and various law enforcement agencies had accumulated millions of man-hours of experience extracting information from real-world, non-compliant suspects. Unfortunately, though, the experience of these agencies had led them to depend on rapport-building techniques that were falling out of favor with certain members of the Bush Administration.

Ali Soufan, a former FBI agent who took part in the initial interrogations of Abu Zubaydah (an al Qaeda leader captured in Afghanistan) claims today that the FBI's "soft" techniques were indeed effective when he applied them to Abu Zubaydah. Soufan cites his extracting from Abu Zubaydah the identity of Khalid Sheikh Mohammed as the mastermind of the September 2001 terrorist attacks on U.S. soil as an example of this effectiveness.¹⁵ Regrettably, he says, he was pulled off the case too soon because of his resistance to the plan of the CIA to use harsh interrogation methods on the captured al Qaeda leader. A *Newsweek* writer describes what happened when Soufan then went to train interrogators in early 2002 at Gitmo:

He [Soufan] gave a powerful talk, preaching the virtues of the FBI's traditional rapport-building techniques. Not only were such methods the most effective, Soufan explained that day, they were critical to maintaining America's image in the Middle East. 'The whole world is watching what we do here,' Soufan said. 'We're going to win or lose this war depending on how we do this.' As he made these comments, about half the interrogators in the room--those from the FBI and other law-enforcement agencies--were 'nodding their heads' in agreement,' recalls [Robert] McFadden [a U.S. Naval Criminal Investigator]. But the other half--CIA and military officers--sat there 'with blank stares. It's like they were thinking, 'This is bull crap.' Their attitude was, 'You guys are cops; we don't have time for this.'¹⁶

Despite the strangeness of the DoD General Counsel's request, this initial contact with the Joint Personnel Recovery Agency would develop into a two-year relationship between this agency and certain interrogation units abroad.¹⁷

Rumsfeld helped set the stage for this relationship in a January 19, 2002, memo to the Chairman of the Joint Chiefs of Staff. In this memo, Rumsfeld stated that, although Geneva protections did not technically apply to unlawful combatants such as al Qaeda and Taliban, U.S. detainees belonging to these organizations should be treated humanely "and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949."¹⁸ What was important in Rumsfeld's memo was not that members of al Qaeda and the Taliban should, if captured, be treated in accordance with Geneva Conventions: existing DoD directives, regulations, and doctrine already required that. Rather, what Rumsfeld was saying that was truly significant was, one, the Geneva Conventions did not technically apply to members of al Qaeda and the Taliban, and two, the U.S. Armed Forces did not have to apply the Geneva Conventions to members of al Qaeda and the Taliban in cases of "military necessity."¹⁹

Rumsfeld's stand here would be supported by President Bush. In a February 7, 2002, memo to his national security advisors, Bush borrowed Rumsfeld's language, stating that he expected U.S. Armed Forces to "continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."²⁰ Also noteworthy in Bush's memo were his assertions that, because of the transnational nature of al Qaeda, none of its members were entitled to Geneva protections since "al Qaeda is not a High Contracting Party to Geneva,"²¹ and

that, because members of the Taliban are "unlawful combatants," they did "not qualify as prisoners of war under Article 4 of the Third Geneva Convention, nor did they qualify for the general protections offered in common Article 3 of the Geneva Conventions."²²

Thus, essentially, President Bush was directing the application of Fourth Geneva Convention protections to members of these two organizations, except in cases of "military necessity." In cases of "military necessity," it would seem, almost any treatment of al Qaeda and Taliban detainees might be permissible.

In late July 2002, Joint Personnel Recovery Agency provided the DoD General Counsel's office with several documents, including a list of SERE interrogation techniques and extracts from training modules for SERE schools' mock interrogators.²³ A week later, the Department of Justice's Office of Legal Counsel issued a legal opinion that "redefined torture" as prohibited in the 1994 Torture Convention and this convention's implementing U.S. legislation. This opinion stated that pain was only "severe" if it caused lasting physical or psychological pain--pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."²⁴ Thus, with President Bush and his Secretary of Defense formally expressing their willingness to suspend the Geneva protections of "unlawful combatants" in cases of "military necessity" and with the infliction of non-enduring pain and suffering now, according to the U.S. Department of Justice, permissible under the 1994 Torture Convention, the stage was set for the U.S. government to employ SERE interrogation techniques against suspected real-world adversaries.

Gitmo Adopts SERE Interrogation Techniques

In mid-September 2002, interrogators and behavioral scientists traveled from Gitmo to attend training conducted by SERE instructors.²⁵ Soon after this trip, two behavioral scientists began drafting a list of proposed interrogation techniques for Gitmo that would include several SERE techniques.²⁶ During their drafting process, Jonathan Fredman, Chief Counsel to the CIA's Counterterrorist Center, visited Gitmo, telling leaders that, "It [torture] is basically subject to perception. If the detainee dies you're doing it [the interrogation] wrong."²⁷

When finalized, the list of techniques drafted by these two scientists served as the basis of an October 11, 2002, memo sent from Major General Dunlavey to his superior, General James Hill, the commander of U.S. Southern Command. In this memo, Dunlavey explicitly requested approval for techniques that derived from "U.S. military interrogation resistance training" (SERE schools).²⁸ Hill forwarded this documentation on October 25, 2002, to General Richard Myers, the Chairman of the Joint Chiefs of Staff, for approval.²⁹

Upon receipt of Hill's request, Myers asked the various military services to review the request.³⁰ Soon after, each military service replied to Meyers that they had serious legal reservations regarding the request. The Chief of the Army's International and Operational Law Division, for example, pointed out that the implementation of some of the techniques would probably constitute violations of the U.S. "torture statute" and of the Uniform Code of Military Justice.³¹ All services also called for an extensive legal review of the proposal, and Navy Captain Jane Dalton, who was Myers' senior legal counsel, began just such a review.³² However, due perhaps to pressure from Rumsfeld

for a quick decision,³³ the DoD General Counsel, William Haynes II, largely ignored the reservations expressed by Dalton and the various military services.³⁴ On November 27, 2003, Haynes produced a memo for Rumsfeld's endorsement that had Rumsfeld approving all but three of the requested interrogation techniques.³⁵ On December 2, 2003, Rumsfeld endorsed the memo, and by doing so, formally authorized the use of enhanced interrogation techniques at Gitmo.³⁶ Myers then directed Dalton to stop her legal review of the initial request.³⁷ According to Dalton, Haynes ordered her to stop the review because of concerns that people would see the military services' analysis of the Gitmo request as non-supportive.³⁸ She also stated that this was the only time she was ever ordered to halt a legal review.³⁹

There has been a great deal of speculation that a still-classified Executive Order signed by President Bush further sanctioned Rumsfeld's approval of enhanced interrogation techniques for use at Gitmo and elsewhere. This speculation derives chiefly from one of the redacted documents provided by the FBI to the American Civil Liberties Union. This redacted document is a May 22, 2004, email from the "On Scene Commander" of the FBI in Baghdad to another agent (presumably his boss). In this email, this "On Scene Commander" refers to interrogation techniques authorized by "an Executive Order signed by President Bush," an order allegedly including such techniques as "sleep management," "use of MWDs (military working dogs)," "stress positions," "loud music," and "sensory deprivation."⁴⁰ Adding fuel to this speculation was the CIA's admission to a U.S. federal court on January 5, 2007, that a document existed that matched the American Civil Liberty Union's description of a "Directive signed by President Bush that grants CIA the authority to set up detention facilities outside the

United States and/or outlining interrogation methods that may be used against Detainees."⁴¹ However, since the Bush Administration consistently denied the existence of this classified executive order, at this point in history, this speculation remains precisely that--speculation.⁴²

In part due to growing service concerns, Rumsfeld rescinded his blanket approval of enhanced interrogation techniques on January 15, 2003, stating that he would only approve the use of such techniques on a case-by-case basis.⁴³ On the same day, Rumsfeld ordered the establishment of a working group to review the legal considerations of U.S. interrogation operations and to propose legally acceptable techniques.⁴⁴ As this working group conducted this legal review, various senior lawyers tried unsuccessfully to have their concerns about harsh interrogation techniques incorporated into the working group's report; however, their attempts were unsuccessful.⁴⁵ Their concerns were dismissed in favor of a second legal opinion (years later rescinded) which had just been issued by the U.S. Justice Department and which supported the use of harsh interrogation techniques. According to Haynes, this opinion was to be considered "authoritative" by the working group and was to "supplant the legal analysis being prepared by the Working Group action officers."⁴⁶

The working group adhered to Haynes' guidance, publishing a final report on April 4, 2003, that supported the use of 35 interrogation techniques.⁴⁷ The enhanced interrogation techniques that this report recommended for approval included "removal of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, increasing anxiety through the use of a detainee's aversions like dogs, and face and stomach slaps."⁴⁸ The final report was so contentious among Working Group members

that, apparently, the members who had argued most vociferously against its reasoning were never directly informed of its publication.⁴⁹

Despite his securing legal cover for the use of enhanced interrogation techniques, Rumsfeld continued to deny blanket approval for the use of most SERE techniques at Gitmo. On April 16, 2003, Rumsfeld issued a memo approving 24 interrogation techniques for Gitmo, also stating that, for the use of "additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee."⁵⁰ Rumsfeld also directed that interrogators obtain his specific approval for the use of four of the most potentially controversial techniques in the memorandum, which were the Incentive/Removal of Incentive (such as removal of the Koran), Pride and Ego Down, Mutt and Jeff, and Isolation techniques.⁵¹ After an April 22, 2003, case of substantiated detainee abuse, Brigadier General Miller, Gitmo Commander, restricted controversial interrogation techniques further, prohibiting interrogators from using the Fear-Up Harsh approach⁵² Nonetheless, Rumsfeld later approved the use of enhanced interrogation techniques on at least one Gitmo detainee.⁵³

Enhanced Interrogation Techniques Migrate to Iraq

Rumsfeld's blanket approval for the use of enhanced interrogation techniques at Gitmo on December 2, 2002, influenced the adoption of similar techniques by U.S. forces in Afghanistan.⁵⁴ From Afghanistan, these techniques migrated to Iraq.

Soon after being formed, Rumsfeld's working group asked U.S. Central Command for a list of interrogation techniques being used in Afghanistan.⁵⁵ In response,

Lieutenant Colonel Robert Cotell, the Deputy Staff Judge Advocate for the highest military headquarters in Afghanistan, Combined Joint Task Force 180 (CJTF-180), produced a January 24, 2003, memo describing techniques used by CJTF-180 interrogators and recommending the use of five more techniques.⁵⁶ Techniques identified as having been previously used by CJTF-180 interrogators included "the use of female interrogators to create 'discomfort' and gain more information; sleep adjustment, defined as 'four hours of sleep every 24 hours, not necessarily consecutive;' use of individual fears; removal of comfort items; use of safety positions; isolation; deprivation of light and sound in living areas; the use of a hood during interrogation; and mild physical contact."⁵⁷ The employment of some (if not all) of these techniques required approval on a case-by-case basis from unknown CJTF-180 military intelligence and legal personnel,⁵⁸ and the use of these techniques began at approximately the same time that Rumsfeld approved the use of harsh techniques for Gitmo.⁵⁹ Cotell's memo also recommended that the DoD working group approve the use of "deprivation of clothing," "food deprivation," "sensory overload -- loud music or temperature regulation," "controlled fear through the use of muzzled, trained, military working dogs," and "use of light and noise deprivation."⁶⁰

Cotell acknowledged in his memo that Rumsfeld had rescinded authority for the use of these enhanced interrogation techniques at Gitmo.⁶¹ Nonetheless, in the absence of any specific higher guidance contradicting the use of these techniques in Afghanistan, CJTF-180 leadership concluded that the use of these techniques was acceptable in Afghanistan.⁶² In fact, Lieutenant General Dan McNeill, the CJTF-180 commander, endorsed such harsh techniques as "individual fears [exploiting], black out goggles,

deprivation of light and sound, sleep adjustment, threat of transfer to another agency or country, and safety positions."⁶³

Enhanced interrogation techniques continued to be used in Afghanistan until May 6, 2004, when General Abizaid directed that all U.S. military forces operating in the U.S. Central Command Area of Responsibility (AOR) use only doctrinal Field Manual 34-52 techniques. Some of these enhanced techniques (as described in the March 27, 2004, CJTF-180 interrogation standard operating procedures) included the use of "safety positions," "sleep adjustment," "sensory overload," "dietary manipulation," "adjusting temperature or introducing an unpleasant smell," and the use of "blacked out goggles."⁶⁴

Leaders and interrogators who, during their previous deployments to Gitmo or Afghanistan had gained knowledge of the SERE techniques sanctioned in these two other theaters, often employed these techniques in Iraq. For example, Chief Warrant Officer 3 Lewis Welshofer, the 3ACR warrant officer who was later convicted in the interrogation homicide of an Iraqi general, employed harsh interrogation techniques that he claimed had been effective for him in Afghanistan. Captain Carolyn Wood, who later led the first contingent of interrogators at Abu Ghraib, is an even more important example of this occurrence. Wood was in charge of the intelligence section at Bagram Airfield in Afghanistan until January 2003. In this position, she had become familiar with the enhanced interrogation techniques approved for use in that theater. She had also become familiar with the techniques used at Gitmo: she later said that, after asking Gitmo for their interrogation "parameters," she had received a faxed PowerPoint slide from Gitmo that had listed the harsh techniques approved by Rumsfeld for the facility on December 2, 2002.⁶⁵ Based on this experience and knowledge, she allowed her interrogators at Abu

Ghraib to use the enhanced techniques of "sleep adjustment" and "stress positions" even before Lieutenant General Sanchez temporarily approved the use of these techniques. Said Wood: "Because we had used the techniques in Afghanistan, and I perceived the Iraq experience to be evolving into the same operational environment as Afghanistan, I used my best judgment and concluded they would be effective tools for interrogation operations at AG [Abu Ghraib]." ⁶⁶

Special operations units were also a significant conduit for the migration of SERE techniques to Iraq. The Special Mission Unit (SMU) in Afghanistan that was responsible for tracking down high-profile al Qaeda and Taliban targets sent a team to Gitmo from October 8-10, 2002, to assess interrogation operations. ⁶⁷ This visit occurred when behavioral scientists at Gitmo were drafting the list of harsh interrogation techniques that Rumsfeld would approve for use at Gitmo on December 2, 2002. ⁶⁸ This team returned with recommendations that the SMU adopt numerous SERE techniques. ⁶⁹

On January 10, 2003, the SMU Task Force Commander approved the unit's first interrogation standard operating procedures. ⁷⁰ This rulebook included four enhanced techniques, specifically, "isolation, multiple interrogators, stress positions, and sleep deprivation." ⁷¹ In February 2003, the SMU added the use of military working dogs as an approved interrogation technique. ⁷²

With the start of OIF in March 2003, a separate SMU Task Force was established in Iraq. According to unclassified news reports, this Joint Special Operations Command task force included members of "the Army unit Delta Force, Navy's Seal Team 6 and the 75th Ranger Regiment." ⁷³ Also, interrogators from the Defense Intelligence Agency and Army reserve units were temporarily assigned to the task force, and CIA and FBI agents

worked closely with the unit.⁷⁴ During OIF I, the name of this task force evolved from Task Force (TF) 20 to TF 121 to TF 6-26.⁷⁵

Interrogation Policies in Guantanamo, Afghanistan and Iraq

Number of Authorized Techniques				Number of Authorized Techniques				Number of Authorized Techniques			
Policy	Date	Notes		Policy	Date	Notes		Policy	Date	Notes	
17	FM 34-52 (1992)	Jan 02 - 01 Dec 02		17	FM 34-52 (1992)	27 Oct 01 - 24 Jan 03		17	FM 34-52 (1992)		
33	Secretary of Defense Approved Tiered System	02 Dec 02 - 15 Jan 03	1	33	CJTF 180 Response to Director, Joint Staff	24-Jan-03	1, 3, 6	29	CJTF-7 Signed Policy	14-Sep-03	1
20	FM 34-52 (1992) with 3 Cat 1 Techniques	16 Jan 03 - 15 Apr 03		32	CJTF 180 Detainee SOP	27-Mar-04	1	19	CJTF-7 Signed Policy	12-Oct-03	4
24	Secretary of Defense Memo	16 Apr 03 - Present	1,2	19	CJTF-A Rev 2 Guidance	Jun-04	4	19	CJTF-7 Signed Policy	13-May-04	4

- 1 Some techniques specifically delineated in this memo are inherent to techniques contained in FM 34-52, e.g. Yelling as a component of Fear Up
- 2 Five Approved Techniques require SOUTHCOM approval and SECDEF notification.
- 3 Figure includes techniques that were not in current use but requested for future use.
- 4 Figure includes one technique which requires CG approval.
- 5 Memorandum cited for Afghanistan and Iraq are classified.
- 6 Figure includes the 17 techniques of FM-34-52, although they are not specified in the Memo.

Appendix D
Source: Naval IG Investigation

Figure 1. Interrogation Policies in Guantanamo, Afghanistan and Iraq
Source: James R. Schlesinger, Harold Brown, Tillie K. Fowler, and General Charles A. Horner, "Final Report of the Independent Panel to Review DoD Detention Operations, August 23, 2004," *United States Department of Defense Detainees Investigations*, <http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf> (accessed November 2, 2008), 111.

The SMU Task Force in Iraq had an interrogation policy already in place before the start of Operation Iraqi Freedom, a policy that was copied verbatim from the policy of the SMU Task Force in Afghanistan.⁷⁶ This policy governed SMU Task Force interrogations in Iraq until it was superseded on July 15, 2003, by a new policy adding the technique of "yelling, loud music, and light control" to the techniques that had been previously approved.⁷⁷ According to one of this task force's interrogators, the use of enhanced techniques was approved on a case-by-case basis at Camp Nama, the SMU Task Forces detention facility on the Baghdad Airport:

There was an authorization template on a computer, a sheet that you would print out, or actually just type it in. And it was a checklist. And it was all already typed out for you, environmental controls, hot and cold, you know, strobe lights, music, so forth. Working dogs, which, when I was there, weren't being used. But you would just check what you want to use off, and if you planned on using a harsh interrogation you'd just get it signed off.⁷⁸

While SMU Task Force policy never included "forced nudity," this technique was nonetheless employed at Camp Nama. According to the officer who took command of the SMU Task Force in October 2003, he "discovered that some of the detainees were not allowed clothes" as part of interrogation approaches and that he ended the practice in December 2003 or January 2004.⁷⁹ Although the use of the "forced nudity" technique at the facility may have had its roots elsewhere, its use was reinforced by the assistance visit of a three-man JPRA team to the facility from September 5-23, 2003.⁸⁰ During their visit, this team demonstrated the enhanced interrogation techniques of stress positions, sleep deprivation, and forced nudity.⁸¹ This JPRA team also reported observing an interrogation in which an SMU Task Force interrogator repeatedly slapped a detainee across the face, apparently a common practice at the facility despite its not yet being approved for use by this unit's commander.⁸²

The SMU Task Force in Iraq adopted its most aggressive policy on March 26, 2004, a policy that remained in effect until May 6, 2004, at which time General Abizaid suspended the use of all non-doctrinal techniques in the U.S. Central Command area of responsibility (roughly, the Middle East and the Horn of Africa).⁸³ This March 26, 2004, SMU policy included 14 harsh interrogation techniques, such as the "use of muzzled dogs, 'safety positions (during interrogations),' sleep adjustment/management, mild physical contact, isolation, sensory overload, sensory deprivation, and dietary manipulation."⁸⁴

Interrogation policy for this SMU Task Force directly influenced the drafting of the first interrogation policy for conventional forces in Iraq. This influence began with Captain Wood, who was the de facto head of interrogations at Abu Ghraib from August to December 2003.⁸⁵ Wood stated that she "plagiarized" the interrogation policy of TF 121 (the name of this SMU task force at the time of her plagiarization) to create a draft interrogation policy for her own interrogators at Abu Ghraib.⁸⁶ She then submitted this draft policy to her higher headquarters (the 519th MI Battalion, the 205th MI Brigade and CJTF-7 Headquarters) for approval.⁸⁷ According to the Church Report, CJTF-7's first interrogation policy (published on September 14, 2003) was heavily influenced by Rumsfeld's April 2003 approval memo for Gitmo and by this draft interrogation policy submitted by Captain Wood.⁸⁸

Conclusions

Interrogation techniques that had been designed to train U.S. military personnel on how to resist and survive interrogations by an enemy unconstrained by the Geneva Conventions made their way, via formal and informal means, from U.S. military SERE

schools to Gitmo and Afghanistan, and from these two theaters, to Iraq. While the question of whether certain military leaders, Donald Rumsfeld, and possibly President Bush actually violated U.S. national law with their approval of certain harsh interrogation techniques at our nation's strategic internment facility is much debated, what should not be greatly debated is whether their granting of this approval was unwise. For decades if not centuries to come, the twin symbols of Gitmo and Abu Ghraib and all that these symbols have done to fuel the insurgencies in Iraq and Afghanistan and to incur international condemnation of the U.S., should serve as a cautionary tale for any other senior U.S. leader who might someday consider a similarly unwise course of action.

In a famous sermon delivered in 1630 on board the *Arbella* just prior to its landing, John Winthrop told the Puritan founders of the Massachusetts Bay Colony that their new community would be a "city upon a hill" watched by the world.⁸⁹ This metaphor of a lofty city has been frequently invoked in the modern age by various U.S. politicians and political theorists. In his moving farewell speech to the nation, for example, President Ronald Reagan said the following:

The past few days when I've been at that window upstairs, I've thought a bit of the 'shining city upon a hill'. . . . I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace, a city with free ports that hummed with commerce and creativity, and if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here. That's how I saw it and see it still.⁹⁰

Ironically, considering the long-life this metaphor has enjoyed in the speeches and essays of this nation's political leaders, the interrogation facilities at both Gitmo and Abu Ghraib were situated atop hills. Truly, though, the moral examples set by these two detention

facilities for the world to view did not represent the shining city ("America") envisioned by Winthrop, our Founding Fathers, and our nation's finest leaders.

¹"John Winthrop: 1630," In *Speeches that Changed the World*, edited by Owen Collins, 63-65, Westminster: John Knox Press, 1999, 65.

²ABC News, *Full Transcript of ABC's Martha Raddatz Interview with President Bush*, April 11, 2008, <http://abcnews.go.com/Politics/Story?id=4634219&page=4> (accessed April 20, 2009).

³Supreme Court of the United States, "Boumediene Et Al v. Bush, President of the United States, Et Al," *Supreme Court of the United States*, June 12, 2008, <http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf> (accessed February 10, 2009), 3.

⁴Vice Admiral Alberto Mora, "Statement of Alberto J. Mora," *U.S. Senate Committee on Armed Services*, June 17, 2008, <http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf> (accessed January 17, 2009), 5.

⁵U.S. Senate Armed Services Committee, "Inquiry into the Treatment of Detainees in U.S. Custody," *U.S. Senate Armed Services Committee*, November 20, 2008, <http://levin.senate.gov/newsroom/supporting/2009/SASC.DetaineeReport.042209.pdf> (accessed August 20, 2009), xiii. This report is hereafter referred to as the "U.S. Senate Armed Services Committee Inquiry."

⁶Ibid.

⁷Ibid.

⁸Ibid. Recently declassified CIA memoranda contain many more examples of interrogation techniques which are referred to as employed at SERE schools.

⁹Ibid, xiii, xix.

¹⁰Ibid., xix. According to this Senate Armed Services report, safeguards at U.S. SERE schools include students being subjected to "extensive medical and psychological pre-screening"; the imposing of "strict limits on the frequency, duration, and/or intensity of certain techniques"; the presence of psychologists "to intervene should the need arise"; and giving to students "a special phrase they can use to immediately stop the techniques from being used against them."

¹¹Ibid., 41.

¹²Ibid.

¹³Ibid., 41-42.

¹⁴Ibid., xiii.

¹⁵Michael Isikoff, "We Could Have Done This the Right Way," *Newsweek*, May 4, 2009: 21.

¹⁶Ibid.

¹⁷U.S. Senate Armed Services Committee, "Inquiry," xiv. The JPRA's influence on the development of interrogation techniques for Gitmo is documented in pages xiii to xv of this report.

¹⁸Donald Rumsfeld, "George Washington University's The National Security Archives," *Counter-Resistance Techniques in the War on Terrorism*, April 16, 2003, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/03.04.16.pdf> (accessed November 2, 2008), 1.

¹⁹Ibid., 1.

²⁰President George W. Bush, "Memorandum, Humane Treatment of al Qaeda and Taliban Detainees, 7 February 2002," *George Washington University's The National Security Archive*, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.02.07.pdf> (accessed November 2, 2008), 2.

²¹Ibid., 1. This is a hard argument for someone who is not a lawyer to follow. If another international group, say, the International Rugby Association, were to suddenly commence hostilities against the U.S., should not this group's members, when captured by U.S. forces, be granted Geneva protections based on the country of their citizenship rather than their group membership? The Bush Administration's argument here is certainly not the customary interpretation of the Geneva Conventions, in which there is no such thing as "unlawful combatants" and all detainees are guaranteed either the extended protections of Convention III or of Convention IV. Although it may be a hard argument to follow, there is indeed some ambiguity within the Geneva Conventions-- ambiguity, it should be noted, that is erased in Protocol 1 of the Geneva Conventions of 1949. Protocol 1 binds all signatories to customary interpretations of the Geneva Conventions (or in other words, binds signatories to the judicial opinions rendered by international courts). However, while Protocol I has been ratified by 167 countries, it has not been ratified by the United States. In his inaugural address, President Barack Obama stated that "we are ready to lead once more." Perhaps ratifying Protocols I and II of the Geneva Conventions would send a stronger signal to the world that the U.S. is ready to resume its role as a moral leader than the closure of a facility (Gitmo) that is finally operating effectively and will just need to be reestablished elsewhere.

²²Ibid., 2.

²³U.S. Senate Armed Services Committee, "Inquiry," xiv.

²⁴Ibid., xv.

²⁵Ibid., xvi.

²⁶Ibid., xvii.

²⁷Ibid., xvii.

²⁸Ibid., 4.

²⁹General James T. Hill, "Memorandum for Chairman of the Joint Chiefs of Staff; SUBJECT: Counter-Resistance Techniques," *George Washington University National Security Archive*, October 25, 2002, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.10.25.pdf> (accessed January 17, 2009), 1.

³⁰U.S. Senate Armed Services Committee, "Inquiry," xvii.

³¹Ibid., xviii.

³²Ibid.

³³Ibid., xix. Mr. Haynes is quoted as saying, "There was a sense by the DoD Leadership that this decision was taking too long." Rumsfeld allegedly prompted his senior advisors, "I need a recommendation."

³⁴The Schlesinger Report later concluded that, if the "Secretary of Defense had [possessed] a wider range of legal opinions and [allowed] a more robust debate regarding detainee policies and operations," the fluctuations in policy that occurred between December 2, 2002, and April 16, 2003, might well have been avoided" (Schlesinger, 10).

³⁵Rumsfeld, *Counter-Resistance Techniques in the War on Terrorism*, April 16, 2003, 1.

³⁶Ibid. These interrogations techniques were tiered, with Category III techniques being the harshest techniques. All interrogation techniques described in the U.S. Senate Armed Services Committee Inquiry as SERE techniques are listed as either Category II or Category III techniques in this Gitmo policy memorandum.

³⁷U.S. Senate Armed Services Committee, "Inquiry," xviii.

³⁸Ibid., xxx.

³⁹Ibid.

⁴⁰Redacted, "Email from REDACTED to Briese, M.C. (Div13) (FBI)," *American Civil Liberties Union: Torture FOIA*, May 22, 2004, http://www.aclu.org/torturefoia/released/FBI.121504.4940_4941.pdf (accessed January 11, 2009), 1. The cited

interrogation techniques are consistent with allegations of the interrogation techniques employed by the secretive Special Mission Unit task force in Iraq. Corroborating this, the FBI agent even mentions this unit by its name at that time ("TF 6-26") in the email.

⁴¹Marilyn Dorn, "Sixth Declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency," *American Civil Liberties Union*, January 5, 2007, http://www.aclu.org/pdfs/safefree/20070110/cia_dorn_declaration_items_1_29_61.pdf (accessed February 10, 2009), 4.

⁴²The ostensible reason for this email was that, in the wake of the Abu Ghraib scandal, the FBI "On Scene Commander" wanted guidance from his superiors regarding which U.S. military interrogation techniques, if observed by his FBI agents, should be reported to his higher. President Bush's later admission to ABC News White House Correspondent Martha Raddatz on April 9, 2008, that he knew of and approved of his national security team meeting to discuss such controversial interrogation techniques as sleep deprivation and waterboarding has further intensified speculation that President Bush did indeed sign a still-classified Executive Order approving SERE interrogation techniques. Altogether, the circumstantial evidence gathered from unclassified sources suggests strongly that President Bush signed a still-classified order authorizing SERE interrogation techniques, though this order--if it indeed existed--probably applied only to CIA interrogation operations.

⁴³Rumsfeld, *Counter-Resistance Techniques in the War on Terrorism*, April 16, 2003, 1.

⁴⁴Donald Rumsfeld, "Memorandum for the General Counsel of the Department of Defense, Subject: Detainee Interrogations," *George Washington University's National Security Archives*, January 15, 2003, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/03.01.15b.pdf> (accessed January 19, 2009), 1.

⁴⁵U.S. Senate Armed Services Committee, "Inquiry," xxi.

⁴⁶*Ibid.*, 120.

⁴⁷*Ibid.*, xxii.

⁴⁸*Ibid.*

⁴⁹*Ibid.*, 131.

⁵⁰Donald Rumsfeld, "Memorandum for the Commander, U.S. Southern Command," 1.

⁵¹*Ibid.*, 1-4.

⁵²Department of the Navy Inspector General, "Review," 55. Although often associated with the Fear-Up Harsh approach, SERE techniques can also be used when implementing other doctrinal approaches, such as the Pride (Ego Down) approach

⁵³U.S. Senate Armed Services Committee, "Inquiry," xxii. It should be noted that the fact that all U.S. detainees (including all unlawful combatants) were entitled to at least the minimum legal protections of U.S. national law held true even where and when Rumsfeld chose to override DoD directives and U.S. Army regulations. Thus, while the interrogation techniques used at Gitmo may have been legally permissible within the letter of international law as agreed upon and ratified by the U.S. government, these techniques when implemented probably constituted, even with the use of substantial safeguards, violations of national law--law that included the 8th Amendment to the Constitution; U.S. Code, title 18, Chapter 113C (prohibition against torture), and the UCMJ. Based on these potential violations of national law, Rumsfeld could conceivably face prosecution for authorizing certain controversial interrogation techniques at Gitmo. Calls for Rumsfeld's prosecution have grown increasingly strident with the December 11, 2008, publication of the Executive Summary of the Senate Armed Services Committee report on the "Treatment of Detainees in U.S. Custody" as well as the April 20, 2009, release of the full report. This summary and report faulted Rumsfeld for approving interrogation techniques at Gitmo that conveyed "the message that physical pressures and degradation were appropriate treatment for detainees in U.S. military custody."

⁵⁴*Ibid.*, 154. Conversely, the Church Report concluded that harsh interrogation techniques in Afghanistan, though nearly identical to the techniques approved by Rumsfeld at Gitmo, evolved independently from techniques approved for use at Gitmo. However, the subsequent DoD Inspector General Report of 2006 and the Senate Armed Services Committee Report of 2008, both of which referenced the Church Report and other sources, concluded that techniques used in Afghanistan had indeed been influenced by Rumsfeld's approval of harsh interrogation techniques for Gitmo. Here, I have chosen the conclusions of the two more recent reports over the conclusions of the earlier Church Report.

⁵⁵*Ibid.*, 155.

⁵⁶*Ibid.*

⁵⁷*Ibid.* These techniques approved in Afghanistan are essentially the same that the U.S. Senate Armed Services Committee Inquiry attributed to SERE schools.

⁵⁸Captain Carolyn Wood, "Sworn Statement of CPT, 519th MI BN; Annex to Fay/Jones/Kern Report," *American Civil Liberties Union: Torture FOIA*, May 21, 2004, <http://www.aclu.org/projects/foiasearch/pdf/DOD000598.pdf> (accessed January 10, 2009), 5. Although Captain Wood's name is redacted in this sworn statement, the name of the commander of Company A, 519th MI Battalion, during this time period can be found in thousands of unclassified sources. Captain Wood even has a very extensive entry in Wikipedia, courtesy of the Abu Ghraib scandal.

⁵⁹Department of the Navy Inspector General, "Review," 6; U.S. Senate Armed Services Committee, "Inquiry" 151.

⁶⁰U.S. Senate Armed Services Committee, "Inquiry," xxiii.

⁶¹Ibid., 155.

⁶²Ibid.

⁶³Ibid., 157.

⁶⁴Ibid., 221-222.

⁶⁵Ibid., 155-156.

⁶⁶Captain Wood, "Sworn Statement," 5-6. The Taguba Report rightly found 205th MI Brigade leaders at fault for allowing two of Captain Wood's interrogators to continue to interrogate despite an on-going criminal investigation--later substantiated--that these two interrogators had been involved in the physical abuse and deaths of two detainees in Afghanistan.

⁶⁷U.S. Senate Armed Services Committee, "Inquiry," 149. The composition of this SMU Task Force in Afghanistan was probably similar to the composition of the SMU Task Force in Iraq, namely, select members of Joint Special Operations Command, U.S. Army Rangers, U.S. Navy Seals, and various intelligence units and agencies.

⁶⁸Ibid.

⁶⁹Ibid., 150.

⁷⁰Ibid., 153.

⁷¹Ibid.

⁷²Ibid., 156.

⁷³Eric Schmitt and Carolyn Marshall, *New York Times: In Secret Unit's 'Black Room,' a Grim Portrait of U.S. Abuse*, March 19, 2006, 3. http://www.nytimes.com/2006/03/19/international/middleeast/19abuse.html?_r=2&pagewanted=1 (accessed February 17, 2009), 3.

⁷⁴Ibid.

⁷⁵ABC News, *The Blotter: Secret U.S. Task Force 145 Secretly Changes Its Name, Again*, June 12, 2006, http://blogs.abcnews.com/theblotter/2006/06/ssecret_us_task_.html (accessed February 17, 2009).

⁷⁶U.S. Senate Armed Services Committee, "Inquiry," 149.

⁷⁷Ibid., 159-160.

⁷⁸Human Rights Watch, "No Blood, No Foul," *Human Rights Watch*, July 2006, <http://www.hrw.org/en/reports/2006/07/22/no-blood-no-foul-0> (accessed February 17, 2009), 12. The title of this Human Rights Watch report is a reference to the signs that personnel had allegedly posted at Camp Nama--signs that allegedly condoned the bloodless beatings of detainees.

⁷⁹Ibid., 161. The SMU Task Force Legal Advisor contradicted this statement, stating that the TF SMU commander explicitly directed the continuation of the "Forced Nudity" technique in a meeting that took place in December 2003 or January 2004.

⁸⁰U.S. Senate Armed Services Committee, "Inquiry," 173, 186-187.

⁸¹Ibid., 182-183.

⁸²Ibid., 176-178. According to Lieutenant Colonel Kleinman, who headed the JPRA team, he stopped this interrogation and other interrogations which were conducted by SMU Task Force personnel and which he deemed illegal. He also alleged that one SMU Task Force member subsequently threatened him, sharpening a knife and telling him to "sleep lightly" because they did not "coddle terrorists" at the facility (U.S. Senate Armed Services Committee, "Inquiry into the Treatment of Detainees in U.S. Custody," 186). It should be noted that Kleinman's observations regarding physical abuse at Camp Nama are consistent with other allegations that a special operations unit close to Camp Cropper was regularly dropping off detainees at Camp Cropper with signs of physical abuse. Furthermore, this observation of physical abuse is consistent with testimony concerning Camp Nama that is collected in the Human Rights Watch report, "No Blood, No Foul," <http://www.hrw.org/en/reports/2006/07/22/no-blood-no-foul-0> and in such open-source reports as Eric Schmitt's and Carolyn Marshall's article in the *New York Times*, "In Secret Unit's 'Black Room,' a Grim Portrait of U.S. Abuse," http://www.nytimes.com/2006/03/19/international/middleeast/19abuse.html?_r=2&pagewanted=1.

⁸³Ibid., 222.

⁸⁴Ibid.

⁸⁵According to the Taguba Report (among other reports), the titular head of interrogation operations at Abu Ghraib, Lieutenant Colonel Steve Jordan, had essentially abdicated his operational responsibilities, focusing on force protection and life support issues rather than interrogations.

⁸⁶Captain Wood, "Sworn Statement," 6.

⁸⁷Ibid., 6.

⁸⁸Department of the Navy Inspector General, "Review," 8.

⁸⁹Winthrop, *Speeches that Changed the World*, 63.

⁹⁰Ronald Reagan, *Farewell Address to the Nation*, January 11, 1989, <http://www.reaganfoundation.org/reagan/speeches/farewell.asp> (accessed February 10, 2009).

