

*IN THE COUR D'APPEL DE PARIS*

**TRIBUNAL DE GRANDE INSTANCE DE PARIS**

Case No. 2300/12/67

JOINT EXPERT OPINION by:

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## **I. INTRODUCTION**

The Center for Constitutional Rights (CCR) and the European Center for Constitutional and Human Rights (ECCHR) present this dossier containing key information regarding the role played by **DONALD H. RUMSFELD**, the former U.S. Secretary of Defense, in the torture and other cruel, inhuman, and degrading treatment of detainees held in U.S. custody in Guantánamo Bay, Cuba.

An extensive investigation in 2008 by the U.S. Senate Committee on Armed Services into the treatment of detainees in U.S. custody at Guantánamo Bay concluded that

The abuse of detainees in U.S. custody cannot simply be attributed to the actions of a “few bad apples” acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.<sup>1</sup>

The U.S. Senate Committee on Armed Services concluded that torture was official Department of Defense (DoD) policy. This dossier sets out RUMSFELD’s individual responsibility for this policy, detailing the role RUMSFELD played in the torture of detainees captured in the “war on terror” and detained at Guantánamo Bay as well as other locations. It describes how RUMSFELD oversaw the introduction of and approved the use of abusive interrogation techniques. It also describes how RUMSFELD exerted pressure on military personnel to use all necessary means, including unlawful means, to extract intelligence from detainees.

Founded in 1966, the Center for Constitutional Rights (CCR) has a long history of engaging in litigation and advocacy related to the respect and enjoyment of international human rights.<sup>2</sup> In 1980, lawyers from CCR opened U.S. federal courts to international human rights claims through its victory in the landmark case, *Filártiga v. Peña-Irala*.<sup>3</sup> CCR has litigated cases on behalf of survivors of human rights abuses from numerous countries, including Nicaragua, Haiti, Guatemala, Bosnia-Herzegovina, Burma, Iraq, and Palestine, brought against U.S. and foreign officials as well as multinational corporations. CCR staff and board members have

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<sup>1</sup> UNITED STATES SENATE COMMITTEE ON ARMED SERVICES, INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY xii (Nov. 20, 2008), [https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final\\_April-22-2009.pdf](https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf) [hereinafter SENATE ARMED SERVICES REPORT].

<sup>2</sup> The Center for Constitutional Rights (CCR) is a legal and educational organization based in New York. For more information about CCR, visit: [www.ccrjustice.org](http://www.ccrjustice.org).

<sup>3</sup> *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).

authored a number of leading books and articles on international human rights, and CCR is a recognized authority on the subject, including universal jurisdiction.<sup>4</sup>

ECCHR is an independent, nonprofit legal and educational organization dedicated to upholding human rights.<sup>5</sup> Founded in Berlin in 2007, ECCHR pursues litigation under international, European, and national legal frameworks to enforce human rights standards and hold state and non-state actors accountable for grave crimes. Over the past ten years, ECCHR has been involved in numerous transnational legal actions, including on behalf of Syrian survivors of systematic torture, family members of Yemeni civilians killed by weapons exported by European companies, and survivors of torture and enforced disappearance under military dictatorships in Latin America.

CCR and ECCHR have long-standing expertise on the factual and legal questions at issue in this case. On 10 January 2013, both organizations were accepted as parties (*acusación particular*) in an investigation by the Spanish National Appellate Court (*Audiencia Nacional*) into “an approved systematic plan of torture and ill-treatment on persons deprived of their freedom without any charge and without the basic rights of all detainees” perpetrated by U.S. government officials against persons detained in Guantánamo and other locations.<sup>6</sup> CCR and ECCHR have submitted numerous legal and factual expert opinions in a second, related criminal case in Spain brought against six former U.S. government officials.<sup>7</sup> CCR and

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<sup>4</sup> See, e.g., B. STEPHENS, J. CHOMSKY, J. GREEN, P. HOFFMAN & M. RATNER, INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS (2nd ed. 2008); Baher Azmy, *An Insufficiently Accountable Presidency: Some Reflections on Jack Goldsmith’s Power and Constraint*, 45 CASE WESTERN RES. J. INT’L L. 23 (2012) THE PINOCHET PAPERS: THE CASE OF AUGUSTO PINOCHET IN SPAIN AND BRITAIN (Reed Brody & Michael Ratner, eds., 2000); INTERNATIONAL PROSECUTION OF HUMAN RIGHTS CRIMES (W. Kaleck, M. Ratner, T. Singelstein & P. Weiss, eds., 2007); Katherine Gallagher, *Universal Jurisdiction in Practice: Efforts to Hold Donald Rumsfeld and Other High-level United States Officials Accountable for Torture*, 7 J. INT’L CRIM. JUST. 1087 (2009).

<sup>5</sup> For more information about ECCHR, visit: [www.ecchr.eu/en/home.html](http://www.ecchr.eu/en/home.html).

<sup>6</sup> *Sentencia* (S.) (decision) from the investigation by *Audiencia Nacional* (A.N.) (national appellate courts of ordinary jurisdiction) in the Central Court for Preliminary Criminal Proceedings No. 5, Madrid, Spain (Preliminary Investigation 150/09--N) (27 April 2009). Unofficial translation of the decision available at: [www.ccrjustice.org/sites/default/files/assets/files/Unofficial%20Translation%20of%20the%20Spanish%20Decision%2004-27-2009\\_0.pdf](http://www.ccrjustice.org/sites/default/files/assets/files/Unofficial%20Translation%20of%20the%20Spanish%20Decision%2004-27-2009_0.pdf). This investigation examines alleged acts of torture by the “possible material and instigating perpetrators, necessary collaborators and accomplices.” As *acusación particular* in this proceeding, CCR and ECCHR sought to assist the investigating magistrate by *inter alia* gathering and analyzing information about specific persons believed to have ordered, directed, conspired, aided and abetted, or otherwise participated directly, indirectly or through command responsibility in the torture and other serious mistreatment of persons detained at U.S. run detention facilities. Select filings regarding accountability for U.S. torture in Spain available at: <https://ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-spain>.

<sup>7</sup> Joint Expert Opinion by M. Ratner (CCR), K. Gallagher (CCR), W. Kaleck (ECCHR) & G. Sullivan (ECCHR) submitted to *Audiencia Nacional* (A.N.) (national appellate courts of ordinary jurisdiction) in the Central Court for Preliminary Criminal Proceedings No. 6, Madrid, Spain (Preliminary Procedure 134/2009) (26 April 2010), [www.ccrjustice.org/sites/default/files/assets/files/FINAL%20EXPERT%20OPINION%20ENG\\_0.pdf](http://www.ccrjustice.org/sites/default/files/assets/files/FINAL%20EXPERT%20OPINION%20ENG_0.pdf); Supplemental Filing to 26 April 2009 Joint Expert Opinion (11 December 2010), [www.ccrjustice.org/sites/default/files/assets/files/Spain%20Supplemental%20Final\\_English%20-%20EXHIBITS.pdf](http://www.ccrjustice.org/sites/default/files/assets/files/Spain%20Supplemental%20Final_English%20-%20EXHIBITS.pdf); Supplemental Joint Expert Opinion on Liability of Six Defendants (4 January 2011),

ECCHR have also sought accountability for criminal violations committed by U.S. government officials against specific individuals by initiating proceedings in several countries, including Canada, Germany, Spain, and Switzerland.<sup>8</sup> Additionally, since 2002, CCR has represented plaintiffs subjected to many different facets of the United States' torture program—from Guantánamo detainees, to Abu Ghraib torture survivors, and victims of CIA extraordinary rendition and ghost detention. CCR has represents current detainees in habeas corpus proceedings in U.S. federal courts as well as former detainees in civil actions seeking habeas relief, injunctions, or damages.<sup>9</sup> The undersigned CCR attorney currently serves as legal representative for victims of U.S. torture in proceedings at the International Criminal Court.<sup>10</sup> ECCHR represents former Guantánamo detainees as well as torture survivors from Abu Ghraib and has represented a victim of extraordinary rendition and CIA secret detention before German courts.<sup>11</sup>

It is recalled that CCR and ECCHR have made previous submissions in this case, including a joint expert opinion on the role of Geoffrey Miller, former Commander of the Joint Task Force Guantánamo (JTF-GTMO), in acts of torture and other cruel, inhuman, and degrading treatment inflicted on detainees held in U.S. custody in Guantánamo Bay and Iraq,<sup>12</sup> and a

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<https://ccrjustice.org/sites/default/files/assets/FINAL%20English%20Lawyers%20Responsibility%20Submission.pdf>.

<sup>8</sup> See MICHAEL RATNER & THE CENTER FOR CONSTITUTIONAL RIGHTS, *THE TRIAL OF DONALD RUMSFELD: A PROSECUTION BY BOOK* (The New Press, 2008) as an example of CCR and ECCHR efforts to hold a U.S. official accountable for criminal violations. For more examples of CCR and ECCHR efforts, visit: [www.ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-canada](http://www.ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-canada), for legal pleadings and background information discussing case in Canada against George W. Bush; [www.ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-switzerland](http://www.ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-switzerland), for legal pleadings and background information discussing case in Switzerland against George W. Bush; [www.ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-germany](http://www.ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-germany), for legal pleadings and background information discussing case in Germany against Donald Rumsfeld and others.

<sup>9</sup> For examples of CCR representation of current and former detainees, visit: [www.ccrjustice.org/home/what-we-do/our-cases/al-zahrani-v-rumsfeld-al-zahrani-v-united-states](http://www.ccrjustice.org/home/what-we-do/our-cases/al-zahrani-v-rumsfeld-al-zahrani-v-united-states), for legal pleadings and background information about Al-Zahrani v. Rumsfeld; [www.ccrjustice.org/home/what-we-do/our-cases/celikgogus-v-rumsfeld-allaithi-v-rumsfeld](http://www.ccrjustice.org/home/what-we-do/our-cases/celikgogus-v-rumsfeld-allaithi-v-rumsfeld), for legal pleadings and background information about Celikgogus v. Rumsfeld and Allaithi v. Rumsfeld; [www.ccrjustice.org/home/what-we-do/our-cases/rasul-v-rumsfeld](http://www.ccrjustice.org/home/what-we-do/our-cases/rasul-v-rumsfeld), for legal pleadings and background information about Rasul v. Rumsfeld; [www.ccrjustice.org/home/what-we-do/our-cases/arar-v-ashcroft-et-al](http://www.ccrjustice.org/home/what-we-do/our-cases/arar-v-ashcroft-et-al), for legal pleadings and background information about Arar v. Ashcroft; [www.ccrjustice.org/home/what-we-do/our-cases/al-qahtani-v-obama](http://www.ccrjustice.org/home/what-we-do/our-cases/al-qahtani-v-obama), for legal pleadings and background information about al Qahtani v. Obama; [www.ccrjustice.org/home/what-we-do/our-cases/al-shimari-v-caci-et-al](http://www.ccrjustice.org/home/what-we-do/our-cases/al-shimari-v-caci-et-al), for legal pleadings and background information about Al Shimari v. CACI.

<sup>10</sup> Submission of Sharqawi Al Hajj and Guled Hassan Duran, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, 31 January 2018 at <https://ccrjustice.org/sites/default/files/attach/2019/04/AI%20Hajj%20and%20Duran%20ICC%20Victim%20Representation%20FINAL.pdf>.

<sup>11</sup> For legal pleadings and background information of ECCHR representation of a German citizen abducted, rendered, and tortured by the CIA, visit: <https://www.ecchr.eu/en/case/germany-must-enforce-criminal-prosecution-of-cia-agents-and-demand-an-apology-and-compensation-for-c/>.

<sup>12</sup> Joint Expert Opinion by Katherine Gallagher (CCR) & Wolfgang Kaleck (ECCHR) regarding criminal responsibility of Geoffrey Miller, submitted to Cour d'appel [CA] [regional court of appeal] in the Tribunal de Grande Instance [TGI] [ordinary court of original jurisdiction] Paris, Feb. 26, 2014, 2275/05/10 (Fr.) [hereinafter Miller Dossier], <http://ccrjustice.org/sites/default/files/assets/MILLER-DOSSIER->

joint expert opinion on the role of William J. Haynes II, former General Counsel of the DoD, for the development, planning, approval, and continued use of torture and other cruel, inhuman, and degrading treatment inflicted on detainees held in U.S. custody in Guantánamo Bay.<sup>13</sup>

## **II. POTENTIAL DEFENDANT: DONALD RUMSFELD**

### **A. Background**

DONALD H. RUMSFELD was born on 9 July 1932 in Chicago, Illinois,<sup>14</sup> and is a citizen of the United States. RUMSFELD served in the United States Navy from 1954 to 1957.<sup>15</sup>

Prior to his appointment in 2001 as Secretary of Defense under President George W. Bush, RUMSFELD served in various positions in the White House for almost 30 years. RUMSFELD joined the Nixon administration in 1969 to serve in several cabinet-level positions including Counselor to the President and U.S. Ambassador to NATO.<sup>16</sup> Under the Ford administration, RUMSFELD was White House Chief of Staff from September 1974 to November 1975 until his appointment as 13th Secretary of Defense from November 1975 to January 1977.<sup>17</sup> Under the Reagan, Bush, and Clinton administrations, while simultaneously employed in the private sector, RUMSFELD served in several administration positions, including Special Envoy to the Middle East under Reagan (1983)<sup>18</sup> and Chairman of the Commission to Assess the Ballistic Missile Threat to the United States under Clinton (1998).<sup>19</sup>

He can be served under the following address of his Foundation of which he is the President:

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[FINAL\\_en\\_20140226\\_public.pdf](#); Supplemental Filing to 26 February 2014 Joint Expert Opinion regarding criminal responsibility of Geoffrey Miller (28 March 2015), [https://ccrjustice.org/sites/default/files/attach/2015/05/CCR\\_EECHR\\_France%20Submission\\_Guantanamo\\_Miller\(March2015\).pdf](https://ccrjustice.org/sites/default/files/attach/2015/05/CCR_EECHR_France%20Submission_Guantanamo_Miller(March2015).pdf).

<sup>13</sup> Joint Expert Opinion by Katherine Gallagher (CCR) & Wolfgang Kaleck (ECCHR) regarding criminal responsibility of William J. Haynes II, submitted to Cour d'appel [CA] [regional court of appeal] in the Tribunal de Grande Instance [TGI] [ordinary court of original jurisdiction] Paris, 12 October 2016, 2275/05/10 (Fr.) [hereinafter Haynes Dossier], [https://ccrjustice.org/sites/default/files/attach/2016/10/2016-10\\_UJFrance\\_ExpertReport\\_Haynes\\_English.pdf](https://ccrjustice.org/sites/default/files/attach/2016/10/2016-10_UJFrance_ExpertReport_Haynes_English.pdf).

<sup>14</sup> Office of the Secretary of Defence, Historical Office, <https://history.defense.gov/Multimedia/Biographies/Article-View/Article/571288/donald-h-rumsfeld/>.

<sup>15</sup> *Biography of Donald H. Rumsfeld, Former Secretary of Defense*, U.S. DEPARTMENT OF DEFENSE, <https://www.defense.gov/About/Biographies/Biography-View/Article/602800/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Shaking Hands with Saddam Hussein: The U.S. Tilts Towards Iraq, 1980-1984*, NATIONAL SECURITY ARCHIVE, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB82/> (discussing Rumsfeld's role as Special Envoy to the Middle East in implementing Reagan's National Security Decision Directives (NSDD) concerning U.S. policy toward Iraq).

<sup>19</sup> *Biography of Donald H. Rumsfeld, Former Secretary of Defense*, U.S. DEPARTMENT OF DEFENSE, <https://www.defense.gov/About/Biographies/Biography-View/Article/602800/>.

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## **B. Roles and Functions of Donald RUMSFELD as Secretary of Defense from January 2001 to December 2006 and Role in Torture and other Cruel, Inhuman, and Degrading Treatment of Detainees at Guantánamo during this period**

### **i. Overview of RUMSFELD’s Roles and Responsibilities**

Donald RUMSFELD served as 21st Secretary of the Department of Defense from his appointment in January 2001 until his resignation in December 2006.<sup>20</sup> As Secretary of Defense, RUMSFELD was the “principal assistant to the President in all matters relating to the Department of Defense” and had statutorily prescribed “authority, direction, and control over the Department of Defense.”<sup>21</sup> In this role, RUMSFELD was responsible for all agencies of government concerning the United States Military—the Joint Chiefs of Staff, Combatant Commands, and Departments of the Army, Navy, and Air Force—and all their functions.<sup>22</sup> RUMSFELD was second in military command authority only to the President.<sup>23</sup>

As Secretary of Defense within the Bush administration, RUMSFELD planned and executed the U.S. military response to the 11 September 2001 attacks, including war in Afghanistan and Iraq, detention and interrogation at Guantánamo Bay, and restructuring the U.S. military to mobilize for the so-called “war on terror.”<sup>24</sup>

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<sup>20</sup> *Biography of Donald H. Rumsfeld, Former Secretary of Defense*, U.S. DEPARTMENT OF DEFENSE, <https://www.defense.gov/About/Biographies/Biography-View/Article/602800/>.

<sup>21</sup> 10 U.S.C. § 113(b).

<sup>22</sup> See 10 U.S. Code § 162, for chain of command from President to Secretary of Defense to Combatant Commanders; See 10 U.S. Code § 3013 - Secretary of the Army, 10 U.S. Code § 5013 - Secretary of the Navy, 10 U.S. Code § 8013 - Secretary of the Air Force, for chain of command from President to Secretary of Defense to Military Departments.

<sup>23</sup> *Id.*

<sup>24</sup> See Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57831 (16 November 2001), [www.federalregister.gov/documents/2001/11/16/01-28904/detention-treatment-and-trial-of-certain-non-citizens-in-the-war-against-terrorism](http://www.federalregister.gov/documents/2001/11/16/01-28904/detention-treatment-and-trial-of-certain-non-citizens-in-the-war-against-terrorism). See also Thom Shanker & Eric Schmitt, *Rumsfeld Seeks Leaner Army, and a Full Term*, NEW YORK TIMES, 11 May 2005, <https://www.nytimes.com/2005/05/11/politics/rumsfeld-seeks-leaner-armyand-a-full-term.html>.

**ii. Role of RUMSFELD in the Torture and Other Cruel, Inhuman, and Degrading Treatment of Detainees at Guantánamo**

As Secretary of Defense, RUMSFELD was one of the principal architects of a policy of torture and other cruel, inhuman, and degrading treatment, and other violations of international law against detainees in DoD-run detention facilities. As examined in more detail below, RUMSFELD:

- a. oversaw and took an active role in the design of new policies for detention and interrogation after 9/11;
- b. ordered that detainees at Guantánamo Bay be denied Geneva Convention protections while ignoring warnings that to do so violated international law;
- c. personally authorized specific unlawful interrogation techniques for use at Guantánamo;
- d. personally authorized—for at least two detainees—detailed interrogation plans amounting to torture and other cruel, inhuman, and degrading treatment;
- e. further contributed to the torture of detainees by exerting pressure on commanders to “maximize” intelligence by any means;
- f. oversaw the exportation of the DoD’s policy of torture and other cruel, inhuman, and degrading treatment beyond Guantánamo Bay, including to Afghanistan and Iraq.

**a. RUMSFELD Oversaw and Took an Active Role in the Design of New Policies for Detention and Interrogation after 9/11**

Following the attacks of 11 September 2001, President Bush issued Military Order of November 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism,<sup>25</sup> which placed detainees, their interrogations and detention under the direct control of Secretary of Defense Donald RUMSFELD.<sup>26</sup>

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<sup>25</sup> Military Order of Nov. 13, 2001, 66 Fed. Reg. 57831, *supra* note 24.

<sup>26</sup> Military Order of Nov. 13, 2001, 66 Fed. Reg. at 57834, *supra* note 24 (“Sec 2. (b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4. (c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.”).

In addition to the statutorily prescribed authority, direction, and control already held by RUMSFELD as Secretary of Defense,<sup>27</sup> the Military Order specifically granted RUMSFELD broad autonomy to issue orders and regulations to exert his authority over detainees.<sup>28</sup> Bush's Military Order granted RUMSFELD the authority to hold detainees at any location, anywhere in the world.<sup>29</sup> Every U.S. agency was placed at RUMSFELD's disposal.<sup>30</sup>

RUMSFELD was actively and closely involved in designing a new system to detain and interrogate persons captured in the "war on terror". Available evidence suggests that RUMSFELD at an early stage wanted interrogators to use unlawful and abusive techniques on detainees in order to "extract intelligence". Under President Bush's military order from November 2001, "enemy combatants" were to be detained "at an appropriate location designated by the Secretary of Defense". After extensive debate, RUMSFELD settled on Guantánamo Bay, in part because the site was located on Cuban soil and thus believed to be outside of American legal jurisdiction.<sup>31</sup> As a next step, RUMSFELD sought to facilitate torture by declaring that the Geneva Conventions did not apply to detainees captured in the context of the "war on terror". The implications of this decision are explored in more detail in the following section.

RUMSFELD also oversaw the search for new interrogation techniques. In December 2001, the office of RUMSFELD's chief lawyer, Defense General Counsel William J. Haynes, began seeking information from the Joint Personnel Recovery Agency (JPRA) on potential "exploitation" techniques to be used in detainee interrogations.<sup>32</sup> The JPRA is a Department of Defense agency that trains U.S. military personnel in Survival Evasion Resistance and Escape (SERE). As part of their resistance training by JPRA, soldiers are taught how to survive and resist torture techniques which may be used on U.S. soldiers by enemy forces who do not abide by the Geneva Conventions. The techniques used at SERE schools included stress positions, sleep deprivation, face and abdominal slaps, isolation, degradation (including treating the subject like an animal), walling (placing a rolled up towel around the subject's

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<sup>27</sup> 10 U.S.C. § 113(b).

<sup>28</sup> Military Order of Nov. 13, 2001, 66 Fed. Reg. at 57835, *supra* note 24 ("Sec. 6. *Additional Authorities of the Secretary of Defense*. (a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.").

<sup>29</sup> Military Order of Nov. 13, 2001, 66 Fed. Reg. at 57834, *supra* note 24 ("Sec. 3. *Detention Authority of the Secretary of Defense*. Any individual subject to this order shall be — (a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States.").

<sup>30</sup> Military Order of Nov. 13, 2001, 66 Fed. Reg. at 57835, *supra* note 24 ("Sec. 5. *Obligation of Other Agencies to Assist the Secretary of Defense*. Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.").

<sup>31</sup> DONALD RUMSFELD, *KNOWN AND UNKNOWN* (2011) at 566.

<sup>32</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 3-4.



neck to form a collar, grasping the collar and slamming the subject into a wall to create a whiplash effect) and waterboarding.<sup>33</sup>

In September 2002, SERE instructors held training sessions for interrogators and behavioral scientists who were stationed at Guantánamo.<sup>34</sup> This was part of an effort to find new techniques that could be used on detainees.<sup>35</sup> Closely involved in this process were members of the “War Council”, a group of administration lawyers including RUMSFELD’s General Counsel.<sup>36</sup> Major General Michael E. Dunlavey, who oversaw military interrogations at Guantánamo, confirmed that RUMSFELD was “directly and regularly involved” throughout the whole process of brainstorming new techniques for interrogations at Guantánamo.<sup>37</sup>

While outside the scope of this dossier, which focuses on the torture and abuse of detainees at Guantánamo, RUMSFELD was also involved in certain decisions on the treatment of detainees held by the CIA.<sup>38</sup>

#### **b. RUMSFELD Ordered that Detainees at Guantánamo Bay be Denied Geneva Convention Protections While Ignoring Warnings That To Do So Violated International Law**

On 19 January 2002, one week after the first detainees arrived at Guantánamo Bay, RUMSFELD ordered that “Al Qaida and Taliban individuals” under the control of the Department of Defense be denied prisoner-of-war status for the purposes of the Geneva Conventions of 1949 (see Annex 1)<sup>39</sup>. Geneva Convention III regulates the treatment of

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<sup>33</sup> *Id.* See also Joint Personnel Recovery Agency, *Physical Pressures Used in Resistance Training and Against American prisoners and Detainees* (undated) attached to Memo from Lt Col Daniel Baumgartner to Office of the Secretary of Defense General Counsel (July 26, 2002), included in Annex A (2) of *The Treatment of Detainees in U.S. Custody, Hearings before the Committee on Armed Services United States Senate, One Hundred Tenth Congress, Second Session, June 17 and September 25, 2008*, available at [https://fas.org/irp/congress/2008\\_hr/treatment.pdf](https://fas.org/irp/congress/2008_hr/treatment.pdf).

<sup>34</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 49.

<sup>35</sup> According to Major General Dunlavey, see SENATE ARMED SERVICES REPORT, *supra* note 1, at 40.

<sup>36</sup> The group was comprised of Alberto Gonzales, Counsel to President George W. Bush; William J. Haynes, General Counsel to Secretary of Defense Donald Rumsfeld; David Addington, General Counsel and Chief of Staff to Vice President Dick Cheney; John Yoo, Deputy Assistant U.S. Attorney General, Department of Justice Office of Legal Counsel (OLC); and Timothy Flanigan, Deputy White House Counsel. See JACK GOLDSMITH, *THE TERROR PRESIDENCY 22-3* (2007); JANE MAYER, *THE DARK SIDE* (2009) at 66 (where Mayer describes the “War Council” as an “insular, unelected, self-reinforcing group, with virtually no experience in law enforcement, military service, counterterrorism, or the Muslim world” with the power to make “many of the most fateful legal decisions in the post 9/11 era.”).

<sup>37</sup> PHILIPPE SANDS, *TORTURE TEAM* (2008), at 47.

<sup>38</sup> SENATE SELECT COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM, 13 December 2012, at 23. [https://fas.org/irp/congress/2014\\_rpt/ssci-rdi.pdf](https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf).

<sup>39</sup> Memorandum from Donald Rumsfeld, Secretary of Defense to General Richard B. Myers, Chairman of the Joint Chiefs of Staff, Re: Status of Taliban and Al Qaeda (19 January 2002),

prisoners-of-war during an international armed conflict and stipulates that they must be at all times humanely treated. The Geneva Conventions also specify minimum standards for the treatment of persons who are not or no longer taking part in hostilities during a non-international armed conflict. The Conventions prohibit torture, cruel treatment and humiliating and degrading treatment of such persons.

RUMSFELD's 19 January 2002 memorandum instructed Combatant Commanders to "treat [detainees] humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949."<sup>40</sup> The memo asks for "consistency" with, not adherence to, Geneva principles. Crucially, it permits inhumane treatment where "military necessity" allows. RUMSFELD never provided the military personnel under his command with any policy guidance on what constitutes "military necessity".<sup>41</sup> This introduced uncertainty, euphemistically referred to by RUMSFELD's office as "flexibility",<sup>42</sup> as to what standards would now apply to detainees, which cleared the way for torture techniques to be used.

RUMSFELD's 19 January 2002 memorandum, which represented a radical move away from the laws that had bound the U.S. military for several decades, set detainee policy throughout the U.S. military and became official presidential policy shortly afterwards when President Bush signed a Presidential Order confirming that the Geneva Conventions would not apply to

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<https://nsarchive2.gwu.edu/torturingdemocracy/documents/20020119.pdf> [hereinafter Rumsfeld's Memorandum, Re: Status of Taliban and Al Qaeda (19 January 2002)] (attached as Annex 1). RUMSFELD received prior advice that the Conventions did not apply, and those who advised him did so "with the understanding that the Defense Department had established a long-term detention site at the U.S. Naval Base, Guantánamo Bay, Cuba, for al Qaeda and Taliban members capture by U.S. military forces or transferred from U.S. allies in Afghanistan." SENATE ARMED SERVICES REPORT, *supra* note 1 at 1.

<sup>40</sup> Rumsfeld's Memorandum, Re: Status of Taliban and Al Qaeda (19 January 2002) (attached as Annex 1) (clarification added).

<sup>41</sup> Republican U.S. Senator John McCain, a torture survivor himself, understood that the wording of RUMSFELD's 19 January 2002 memorandum created a fog of ambiguity about what was appropriate and lawful treatment of detainees. In July 2005, before the U.S. Senate Armed Services Committee Hearing on Guantánamo Bay Detainee Treatment, upon hearing General Craddock, then commander of the U.S. Southern Command (SOUTHCOM), repeat that "as a matter of policy, the United States armed forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva," McCain interrupted to chastise General Craddock:

You know, when you say you adhere to some principles, lots of us adhere to principles and practices, then vary—rather dramatically. And, as I say, that is a legalistic statement and one that is ridden with loopholes. And it's clear to me that one of the reasons why we're sitting here today was, at least at the working level, the interrogators did not understand—at least some of them did not understand—that, quote, "humane treatment" might be in the eye of the beholder.

Senate Armed Services Committee Hearing on Guantánamo Bay Detainee Treatment, 13 July 2005, <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-the-defense-department/senate-armed-services-committee-hearing-on-guantanamo-bay-detainee-treatment>.

<sup>42</sup> See, e.g., Jane Mayer, *The Memo*, NEW YORKER (27 February 2006), <http://www.newyorker.com/magazine/2006/02/27/the-memo>, highlighting repeated uses of "flexibility" by RUMSFELD and several Department of Defense lawyers.

the conflict with Al Qaeda.<sup>43</sup> The structure of the military chain of command under the President and RUMSFELD meant that to defy the order – e.g. by insisting that detainees were entitled to humane treatment in all circumstances – would be tantamount to an act of insubordination.<sup>44</sup>

Despite clear and persistent warnings from high-level officials within the Bush Administration about the potential issues of criminal liability in connection with RUMSFELD’s order, including warnings by Secretary of State Colin Powell and Department of State General Counsel William Taft,<sup>45</sup> RUMSFELD continued to insist that Geneva protections were inapplicable.<sup>46</sup> RUMSFELD ignored strong dissent and warnings from the military and Washington,<sup>47</sup> as well as from the Secretary General of Amnesty International,<sup>48</sup>

<sup>43</sup> On 7 February 2002, President Bush signed a Presidential Order addressed to his highest-level officials stating that “none of the provisions of Geneva apply to [the] conflict with al Qaeda in Afghanistan or elsewhere throughout the world,” and concluded that neither al Qaeda nor Taliban detainees were entitled to prisoner-of-war status or the legal protections afforded under common article 3 and the Third Geneva Convention. Bush repeated RUMSFELD’s language that detainees should be treated “humanely” but only “to the extent military necessity required.” In other words, if torturing detainees was “necessary,” it was permissible. Memorandum from George W. Bush, President of the United States to Dick Cheney, Vice President; Colin Powell, Secretary of State; Donald Rumsfeld, Secretary of Defense; Alberto Gonzales, Attorney General; Andrew Card, Chief of Staff; George Tenet, Director of CIA; Condoleezza Rice, Assistant to the President for National Security Affairs (National Security Advisor); General Richard B. Myers, Chairman of the Joint Chiefs of Staff, Subject: Humane Treatment of al Qaeda and Taliban Detainees (7 February 2002), <http://nsarchive.gwu.edu/NSAEBB/NSAEBB127/02.02.07.pdf>.

<sup>44</sup> Once RUMSFELD, and ultimately the President, rescinded Geneva protections, providing advice on potential criminal liability connected with committing war crimes became difficult for everyone under their command, from their General Counsel to the reservist soldiers carrying out their orders on the ground. “To address [Common Article 3] as binding law was to repudiate the President directly,” said Alberto Mora, General Counsel for the Navy. Author Philippe Sands notes that questioning the President is tantamount to insubordination. SANDS, *supra* note 37, at 138.

John Barry & Michael Hirsh & Michael Isikoff, *The Roots of Terror*, NEWSWEEK (24 May 2004) [emphasis added], <https://www.globalpolicy.org/component/content/article/157/26905.html>.

<sup>45</sup> See e.g., Memorandum from Colin L. Powell, Secretary of State to Alberto R. Gonzales, Counsel to the President & Condoleezza Rice, Assistant to the President for National Security Affairs, Subject: Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan (26 January 2002), <https://nsarchive2.gwu.edu/torturingdemocracy/documents/20020126.pdf> (where Powell warned to reconsider the Administration’s stance on al Qaeda and Taliban members as not entitled to POW status, as, among other things, the decision “will reverse over a century of U.S. policy . . . and undermine the prosecutions of the law of war for our troops . . .” and “it may provoke some individual foreign prosecutors to investigate and prosecute our officials and troops.”); Memorandum from William H. Taft, IV, General Counsel, U.S. Department of State to Alberto R. Gonzales, Counsel to the President, Comments on Your Paper on the Geneva Convention (2 February 2002), [https://static01.nyt.com/packages/html/politics/20040608\\_DOC.pdf](https://static01.nyt.com/packages/html/politics/20040608_DOC.pdf).

<sup>46</sup> The day after receiving Powell’s memorandum warning him of potential criminal liability, RUMSFELD stood at the infamous Camp X-Ray at Guantánamo Bay and told reporters that prisoners there “are unlawful combatants and as a result, they are detainees, not prisoners-of-war.” John Zarrella, *Rumsfeld Visits Camp X-Ray*, CNN, 27 January, 2002, [www.cnn.com/TRANSCRIPTS/020127/sun.09.html](http://www.cnn.com/TRANSCRIPTS/020127/sun.09.html).

<sup>47</sup> During 2002 and early 2003, RUMSFELD was in meetings in which Washington officials raised concerns over the treatment of detainees at Guantánamo. The National Security Council’s legal advisor, John Bellinger, stated that he raised these concerns with the DoD on “several occasions with DoD officials.” National Security Advisor Condoleezza Rice convened a series of meetings of National Security Council principals, including RUMSFELD, so that they were briefed on the issue. SENATE ARMED SERVICES REPORT, *supra* note 1, at 109.

concerning the Administration's unprecedented move away from the Geneva Conventions and domestic U.S. law and its obligation to treat detainees humanely.

**c. RUMSFELD Personally Authorized Specific Unlawful Interrogation Techniques for use at Guantánamo**

Efforts within the Department of Defense to brainstorm new interrogation techniques<sup>49</sup> led to the drafting of a list of interrogation techniques derived from SERE counter-resistance training. In late 2002, RUMSFELD wanted to officially approve the techniques as soon as possible, pressing his senior advisors to provide him with a recommendation to approve the techniques.<sup>50</sup> General Counsel Haynes responded by sending the list of techniques to RUMSFELD in a memo dated 27 November 2002 with a note that said "Good to go".<sup>51</sup> On 2 December 2002, RUMSFELD signed Haynes' memo, thereby authorizing the use of 15 listed techniques for use on detainees at Guantánamo Bay.<sup>52</sup>

The list set out a total of 18 techniques, divided into three categories:

Category I included only two techniques, authorized for use if "the detainee is determined by the interrogator to be uncooperative":

- Deception techniques (e.g. having the interviewer identify himself as an interrogator from a country with a reputation for harsh treatment of detainees)
- Yelling

If Category I techniques did not produce the desired effect, the interrogator was permitted to escalate the torture to Category II techniques. Category II included twelve techniques, aimed mainly at humiliation and sensory deprivation:

- Stress positions (e.g. standing for four hours)
- The use of falsified documents and reports
- Isolation up to 30 days
- Interrogation outside the standard interrogation room

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<sup>48</sup> See e.g., Letter from Irene Khan, Secretary General of Amnesty International to Donald Rumsfeld, Secretary of Defense (7 January 2002), <https://nsarchive2.gwu.edu/torturingdemocracy/documents/20020107.pdf>.

<sup>49</sup> See above at section B(ii)(a): *RUMSFELD Oversight and Took an Active Role in the Design of New Policies for Detention and Interrogation after 9/11*.

<sup>50</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xix: "With respect to GTMO's October 11, 2002 request to use aggressive techniques, Mr. Haynes said that "there was a sense by the DoD Leadership that this decision was taking too long" and that Secretary Rumsfeld told his senior advisors "I need a recommendation."

<sup>51</sup> JANE MAYER, *THE DARK SIDE* (2009) at 221.

<sup>52</sup> Memorandum from William J. Haynes II, DoD General Counsel to Donald Rumsfeld, Secretary of Defense re: Counter-Resistance Techniques (27 November 2002, signed 2 December 2002), <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/02.12.02.pdf> [hereinafter Rumsfeld's Memorandum re: Counter-Resistance Techniques (2 December 2002)] (attached as Annex 2);

- Deprivation of light and sound
- Hooding during transportation and interrogation
- Interrogation for 20 consecutive hours
- Removal of all comfort items (including religious items)
- Denial of hot meals, and only fed “MREs” (“meal ready to eat,” an individual field ration)
- Removal of clothing
- Forced grooming (e.g. shaving of facial hair kept for religious obligation)
- Using detainee personal phobias (e.g. dogs) to induce stress

If the interrogator was still not satisfied with the detainee’s response, then the interrogator could escalate the interrogation to the four remaining Category III techniques:

- “Use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him and/or his family”
- “Exposure to cold weather or water”
- “Use of a wet towel and dripping water to induce the misperception of suffocating” (i.e. “waterboarding”)
- “Use of mild, non-injurious contact” such as grabbing, poking, and “light pushing”

In accordance with Haynes’ recommendation, RUMSFELD gave blanket approval for all techniques except the first three techniques listed under Category III. The memo stated that these techniques would not be granted blanket approval “at this time” but stated that they “may be legally available”. Some of these techniques were included in separate interrogation plans for specific detainees, which Rumsfeld approved.<sup>53</sup>

At the bottom of the recommendation, RUMSFELD signed his name and added a handwritten note questioning one of the limitations regarding stress positions: “However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?”<sup>54</sup> The remark is reported to have sent a message to those under his command that RUMSFELD encouraged operating beyond the methods described in the memorandum. Alberto Mora, General Counsel to the Navy warned DoD General Counsel Haynes that RUMSFELD’s note at the bottom read as encouragement to disregard the limits the memorandum purported to establish.<sup>55</sup> Chief of Staff to the Secretary of State, Colonel Wilkerson, said the same. “It said, ‘Carte blanche, guys.’ That’s what started them down the slope. You’ll have *My Lai* then.”<sup>56</sup>

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<sup>53</sup> See below in Section B(ii)(d): *RUMSFELD Personally Authorized—for at least Two Detainees—Detailed Interrogation Plans Amounting to Torture and Other Cruel, Inhuman, and Degrading Treatment*.

<sup>54</sup> Rumsfeld’s Memorandum re: Counter-Resistance Techniques (2 December 2002) (attached as Annex 2).

<sup>55</sup> Jane Mayer, *The Memo*, NEW YORKER, 27 February 2006, *supra* note 42.

<sup>56</sup> Jane Mayer, *The Memo*, NEW YORKER, 27 February 2006, *supra* note 42 ; SANDS, *supra* note 37, at 136.

The interrogation techniques were swiftly implemented following RUMSFELD's authorization. Within days, senior staff at Joint Task Force Guantánamo began developing standard operating procedures to implement the techniques, including the use of stress positions as well as stripping and pushing detainees.<sup>57</sup> Interrogation plans were drawn up that included what were referred to as "degradation tactics" and included shoulder slaps, insult slaps, and stomach slaps, forceful stripping, "physical debilitation tactics" aimed at punishing detainees, and other physically abusive tactics including manhandling and "walling."<sup>58</sup>

RUMSFELD's 2 December 2002 memorandum provided no guidance as to how the techniques should be administered. He did not establish any boundaries or limitations for the treatment of detainees. The memorandum provided no limits to the use of these techniques over time, nor did they preclude the use of two or more techniques simultaneously. For example, the use of 20 hours of interrogation was not limited to a single 24-hour period. Therefore, there was approval for interrogators to interrogate for 20 hours continuously, every day, allowing detainees only 4 hours of sleep, for as many days on end as they saw fit. The authorization of the technique of 20 hours of interrogation is, in its application, 20 hours of consecutive interrogation for days, weeks, and for at least one detainee for months at a time.<sup>59</sup>

As stated in a previous submission to this Court,<sup>60</sup> RUMSFELD's authorization, at the very top of the military chain of command, sent a clear message to personnel at Guantánamo and beyond about how interrogations were to be conducted.<sup>61</sup>

Between mid-December 2002 and mid-January 2003, Navy General Counsel Alberto Mora spoke with DoD General Counsel Haynes three times to express his concerns that the techniques authorized by RUMSFELD amounted to torture. On 15 January 2003, Mora went so far as to put his legal concerns in a draft memorandum, and thus create a paper trail. This

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<sup>57</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 97.

<sup>58</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 98-99.

<sup>59</sup> Such was the case with Mr. Mohammed al Qahtani, whose case is described in Section d. of this dossier.

<sup>60</sup> Haynes Dossier, *supra* note 13, at 15.

<sup>61</sup> As the Schlesinger report concludes, "[i]t is clear that the pressure for additional information and the more aggressive methods sanctioned in the Secretary of Defense's memorandum led to tougher interrogation techniques." See SCHLESINGER ET. AL, FINAL REPORT OF THE INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS 7-8, 35 (Aug. 2004), <https://www.antiwar.com/rep2/abughraibrpt.pdf> [hereinafter SCHLESINGER REPORT]; The U.S. Senate Committee on Armed Services Report describes a Commander's Inquiry into "compulsive exercise" of detainees. An interrogator, two analysts, and a member of the GTMO Behavioral Science Consultation Team (BSCT) who were interviewed for the inquiry "believed that the technique was appropriate, approved, applied properly, and was common practice..." SENATE ARMED SERVICES REPORT, *supra* note 1, at 133, citing Memo from Diane Beaver to MG Geoffrey Miller, (U) Results of Commander's Inquiry, re: Allegation of Inhumane Treatment of [redacted] (30 April 2003). See also FAY-JONES REPORT, INVESTIGATION OF 205TH MILITARY INTELLIGENCE BRIGADE'S ACTIVITIES IN ABU GHRAIB DETENTION FACILITY GHRAIB (Aug. 23, 2004), [https://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/fay\\_jones\\_kern\\_report.pdf](https://www.thetorturedatabase.org/files/foia_subsite/pdfs/fay_jones_kern_report.pdf); The Criminal Investigation Task Force (CITF) Special Agent in Charge at GTMO, Timothy James, "said that when he saw the RUMSFELD's authorization, he was 'in shock' and that it 'told us that we had lost the battle.'" SENATE ARMED SERVICES REPORT, *supra* note 1, at 97.

confrontation worked, and that day RUMSFELD rescinded his 2 December 2002 memorandum.<sup>62</sup> With this new memo, RUMSFELD rescinded blanket authorization for use of all Category II and Category III techniques and instead required requests for their use to be authorized by him on a case-by-case basis.<sup>63</sup>

Despite the RUMSFELD's rescinding of blanket authority for the use of 15 of the listed techniques, the U.S. Senate Committee on Armed Services found his initial approval continued to influence interrogation policy after 15 January 2003.<sup>64</sup> This is in part due to RUMSFELD's failure to properly notify his chain of command that permission for these interrogation methods was revoked as well as the pressure exerted by RUMSFELD (examined in more detail in section (e)) to use the harshest possible methods to elicit results.

On 15 January 2003, the same day that RUMSFELD rescinded his 2 December 2002 memorandum authorizing the use of 15 interrogation techniques, RUMSFELD directed the establishment of a "Working Group" to review the interrogation techniques used at Guantánamo Bay.<sup>65</sup> However, according to the U.S. Senate Committee on Armed Services Report, "for the next few months senior military and civilian lawyers tried, without success, to have their concerns about the legality of aggressive techniques reflected in the Working Group's report."<sup>66</sup> Their opinions were rejected in favor of legal opinions authored by members of the "War Council" arguing that criminal laws would not apply to certain military interrogations, and interrogators could not be prosecuted for using methods that otherwise violate the law.<sup>67</sup>

The U.S. Senate Committee on Armed Services Report found that RUMSFELD's General Counsel Haynes "blocked the Working Group from conducting a fair and complete legal analysis".<sup>68</sup> The report also concluded the Working Group's review, without the benefit of senior government and military lawyers' counter-arguments and counter-analysis, was "grossly deficient."<sup>69</sup>

On 4 April 2003 the Working Group, having excluded some of the more critical members from its final deliberations,<sup>70</sup> issued a final report recommending the use of 34 techniques.<sup>71</sup>

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<sup>62</sup> See, e.g., SANDS, *supra* note 37, at 131-143.

<sup>63</sup> Memorandum from Donald Rumsfeld, Secretary of Defense to General James T. Hill, Commander of U.S. Southern Command, Subject: Counter-Resistance Techniques (15 January 2003), <http://nsarchive.gwu.edu/torturingdemocracy/documents/20030115-1.pdf>.

<sup>64</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xxii.

<sup>65</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xxi.

<sup>66</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xxi, 110-132.

<sup>67</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 118-122.

<sup>68</sup> See Haynes Dossier, *supra* note 13, at 20-22, quoting SENATE ARMED SERVICES REPORT, *supra* note 1, at xxviii. See also the same report at 110-132.

<sup>69</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xxviii, 110-132.

<sup>70</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 131.

<sup>71</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 130.

Two weeks later, on 16 April 2003, RUMSFELD authorized the use of 24 interrogation techniques.<sup>72</sup> These techniques included:

- “Fear Up Harsh”: Significantly increasing the fear level in a detainee;
- Invoking the feeling of futility of a detainee;
- Removing the detainee from the standard interrogation setting;
- Dietary manipulation (e.g. switching hot rations to pre-packaged meals);
- Environmental manipulation to create discomfort (e.g. changing the temperature or introducing an unpleasant smell);
- Manipulating the sleeping times of the detainee (e.g. reversing the sleep cycles from night to day);
- “False Flag”: Convincing the detainee that individuals from a country other than the United States are interrogating him.

RUMSFELD also permitted the following four techniques where “military necessity requires” on the condition that RUMSFELD was notified in advance of their use.<sup>73</sup>

- Providing and removing incentives (such as comfort and religious items);
- “Pride and Ego Down”: Attacking or insulting the ego of a detainee;
- A team consisting of a friendly and harsh interrogator, who may employ “Pride and Ego Down”;
- Isolation

The names and short descriptions of the techniques—euphemisms like “Fear Up Harsh” and “Pride and Ego Up”—concealed how they could be used to inflict torture and other cruel, inhuman, and degrading treatment. The Schmidt-Furlow Report, an 2005 internal Army investigation into complaints by FBI agents about the treatment of detainees, concluded that an interrogator pretending to smear menstrual blood on a detainee was an example of the technique of “futility” as approved by RUMSFELD and was thus authorized. In another complaint about a detainee being placed in an extremely cold room called “the freezer,” the investigator concluded the technique was “approved” under the technique of “environmental manipulation,” as “[t]here is no evidence in the medical records of the subject of the second special interrogation being treated for hypothermia or any other condition related to extreme exposure.”<sup>74</sup>

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<sup>72</sup> Memorandum from Donald Rumsfeld, Secretary of Defense to General James T. Hill, Commander of U.S. Southern Command, re: Counter-Resistance Techniques in the War on Terrorism (16 April 2003), <https://nsarchive2.gwu.edu/torturingdemocracy/documents/20030416.pdf> [hereinafter Rumsfeld’s Memorandum re: Counter-Resistance Techniques in the War on Terrorism (16 April 2003)].

<sup>73</sup> *Id.*

<sup>74</sup> BRIGADIER GENERAL JOHN T. FURLOW & LIEUTENANT GENERAL RANDALL M. SCHMIDT, AR 15-6 INVESTIGATION INTO FBI ALLEGATIONS OF DETAINEE ABUSE AT GUANTÁNAMO BAY, CUBA DETENTION FACILITY 13-21 (April 1, 2005),



Like the January 2002 memorandum authorizing torture, the 16 April 2003 memorandum never referred to limitations on the application of the torture program, nor DoD standards that remained in effect prohibiting torture.<sup>75</sup> RUMSFELD's 16 April 2003 memorandum permitted additional techniques to be available with his written approval "where militarily necessary". RUMSFELD stated: "If, in your view, you require 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."<sup>76</sup>

**d. RUMSFELD Personally Authorized—for at least Two Detainees—Detailed Interrogation Plans Amounting to Torture and Other Cruel, Inhuman, and Degrading Treatment**

Internal investigations by the U.S. military concluded that RUMSFELD personally authorized specific techniques for use as part of the interrogation of Mr. Mohammed al Qahtani at Guantánamo Bay.<sup>77</sup> One psychiatrist with the GTMO Behavioral Science Consultation Team, testifying to Congress on the interrogation plan for Mr. al Qahtani, said her team was "routinely told that the interrogation strategy was approved up to [the Secretary of Defense] level."<sup>78</sup> In his autobiography, *Known and Unknown*, RUMSFELD himself acknowledged his direct involvement in and approval of the torture of Mr. al Qahtani.<sup>79</sup> Parts of the interrogation plan for Mr. al Qahtani required RUMSFELD's authorization of the use of SERE techniques, which he officially gave on 2 December 2002. There is evidence to indicate that RUMSFELD also gave a vocal command authorizing the plan to torture Mr. al Qahtani at an earlier point in time, at the very latest by 23 November 2002.<sup>80</sup> The 54 days of torture of Mr. al Qahtani began on 23 November 2002.<sup>81</sup>

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[https://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/schmidt\\_furlow\\_report.pdf](https://www.thetorturedatabase.org/files/foia_subsite/pdfs/schmidt_furlow_report.pdf) [hereinafter SCHMIDT-FURLOW REPORT], at 22.

<sup>75</sup> See e.g., DoD Directives 2310.1 (DoD Program for Enemy Prisoners of War and Other Detainees) and 5100.77 (DoD Law of War Program) (requiring that U.S. military services comply with the principles, spirit, and intent of the international law of wars, DoD observe and enforce U.S. obligations under the laws of war; personnel be made aware of their obligations under the laws of war; and personnel promptly report violations of the laws of war and such violations be investigated).

<sup>76</sup> Rumsfeld's Memorandum re: Counter-Resistance Techniques in the War on Terrorism (April 16, 2003), *supra* note 72.

<sup>77</sup> See THE SCHMIDT-FURLOW REPORT, *supra* note 74, at 18.

<sup>78</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 80 (clarification in original).

<sup>79</sup> DONALD RUMSFELD, KNOWN AND UNKNOWN (2011) at 575-578.

<sup>80</sup> SANDS, *supra* note 37, at 109, 113 (describing testimony from an FBI Special Agent who was told in October of 2002 that the torture of Mr. al Qahtani was approved by "the Secretary"). See also Haynes Dossier, *supra* note 13, at 15-16; Miller Dossier, *supra* note 12, at 9.

<sup>81</sup> Interrogation logs describe continuous torture from 23 November 2002 to 16 January 2003. See Adam Zagorin & Michael Duffy, *Inside the Interrogation of Detainee 063*, TIME (12 June 2005), <http://time.com/3624326/inside-the-interrogation-of-detainee-063/> and <http://www.time.com/time/2006/log/log.pdf> [hereinafter *Interrogation Log of Detainee 063*].

The detailed plan for the interrogation of Mr. al Qahtani was based on the “Category I/II/III” techniques in RUMSFELD’s 2 December 2002 memorandum.<sup>82</sup> The interrogation plan included, among other things, “20-hour sessions” followed by four hours of rest, and then “another 20 hour interrogation session [would] begin,”<sup>83</sup> prolonged stress positions while blindfolded, threats with military dogs, and for interrogators to “induce and exploit Stockholm Syndrome.”<sup>84</sup>

RUMSFELD knew the techniques outlined in the interrogation plan for Mr. al Qahtani rose to the level of torture.<sup>85</sup> At multiple points during the formulation of the interrogation plan, the Naval Criminal Investigative Services (NCIS), the Criminal Investigation Task Force (CITF), the FBI,<sup>86</sup> the Navy, and the Army, were all highly critical of the interrogation techniques outlined in the plan because they believed that these techniques amounted to torture.<sup>87</sup>

<sup>82</sup> This was concluded by the Committee on Armed Services, who pointed out the SERE techniques and “Level III techniques” in the interrogation plan for Mr. al Qahtani mirrored RUMSFELD’s 2 December 2002 memorandum. SENATE ARMED SERVICES REPORT, *supra* note 1 at 77-78, 83 (where CIFT characterized Mr. al Qahtani’s interrogation by referencing its vehement disagreement with using “Category II” and “Category III” techniques—techniques characterized as such in the 2 December 2002 memorandum).

<sup>83</sup> See, e.g., SENATE ARMED SERVICES REPORT, *supra* note 1, at 76, quoting Interrogation Plan for ISN:[redacted] [Khatani] (12 November 2002) (clarification in original); Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani at 10-15 (Oct. 2006), [https://ccrjustice.org/sites/default/files/assets/Gutierrez%20Declaration%20re%20Al%20Qahtani%20Oct%202006\\_0.pdf](https://ccrjustice.org/sites/default/files/assets/Gutierrez%20Declaration%20re%20Al%20Qahtani%20Oct%202006_0.pdf) [hereinafter Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani].

<sup>84</sup> See, e.g., SENATE ARMED SERVICES REPORT, *supra* note 1, at 77, quoting Interrogation Plan for ISN:[redacted] [Khatani] (12 November 2002) (alteration in original). For more detail of the interrogation of Mr. al Qahtani, which included a simulated rendition, see SENATE ARMED SERVICES REPORT, *supra* note 1 at 77-78, 88-91; Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83; *Interrogation Log of Detainee 063*, *supra* note 81; SCHMIDT-FURLOW REPORT, *supra* note 74.

<sup>85</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 80.

<sup>86</sup> See SANDS, *supra* note 37, at 117-121. An unnamed FBI Agent briefed Legal Counsel at the FBI on a 27 November 2002 memorandum: “It is possible that those who employ these techniques may be indicted, prosecuted, and possibly convicted . . . under these circumstances it is recognized that these techniques not be utilized.” See also the same source at 120, quoting a fax titled “Drafted by SSA [redacted] FBI (BAU) at Guantánamo Bay and forwarded to Marion Bowman, Legal Counsel, FBIHQ, on 11/27/2002.” See also SENATE ARMED SERVICES REPORT, *supra* note 1, at 57.

<sup>87</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xx (the CITF and the FBI “made [their] concerns known to the DoD General Counsel’s office”), 19 (FBI told Department of Justice Inspector General that the techniques were “borderline torture” and FBI Director withdrew FBI participation in CIA interrogations already using the techniques in June 2002), 74 (“MG Miller told the Army IG that when he arrived at GTMO, there was significant tension between JTF-GTMO, CIFT, and FBI and that he sought to get all three organizations to work in concert. Despite MG Miller’s stated intent, his decision to approve an interrogation plan for [Mr. al Qahtani] that was opposed by the CITF and FBI, drove a deeper wedge between his organization and both CIFT and FBI . . . the plan [to torture Mr. al Qahtani] would encounter strong resistance from both CIFT and FBI.”), 78-80 (the FBI alerts Miller to FBI “misgivings about the overall coercive nature and possible illegality” of the Qahtani interrogation plan), 81 (Naval Criminal Investigative Services (NCIS) Chief Psychologist Michael Gelles warns Miller in writing that he “would have trouble not finding myself from a professional perspective, being forced into an adversary position through cross examination in a military tribunal as an expert in interrogation.” Gelles also concludes in the same report that the plan induced Stockholm Syndrome where “the subject feels that he is to be killed.”), 57 (Letter from CIFT Deputy Commander Mark Fallon about the impropriety of minutes for a 2

Mr. al Qahtani was held in isolation from other detainees for 160 days.<sup>88</sup> On 48 days over a 54-day period, he was subjected to 18- to 20-hour interrogations.<sup>89</sup> Interrogators let him sleep only four hours or fewer per night.<sup>90</sup> He was prevented from sleeping by having to move cells in the night and having 24 hour lighting in his cell.<sup>91</sup> If he began to fall asleep during interrogations, military police or interrogators would pour water on him, force him to stand or sit or otherwise physically abuse him.<sup>92</sup> Interrogators hooded him,<sup>93</sup> yelled at him,<sup>94</sup> and subjected him to very cold temperatures.<sup>95</sup> Interrogators sexually humiliated him in ways that deeply offended his religious obligations, including forced nudity, sometimes for prolonged periods of time and in stress positions,<sup>96</sup> and in some instances in the presence of female interrogators.<sup>97</sup> Interrogators forcibly shaved his beard (kept for religious obligation) on several occasions, including while restrained.<sup>98</sup> He was “exercised,” sometimes multiple times in a day.<sup>99</sup> He was subjected to “invasion of space by female interrogator,”<sup>100</sup> a euphemism for straddling, touching, and sexual assault.<sup>101</sup> Interrogators forced him to pray to an idol shrine.<sup>102</sup> Interrogators insulted his mother and sister, telling him they were “prostitutes and whores.”<sup>103</sup> Interrogators forced him to wear a bra and had a thong placed on his head during the course of interrogations, and forced him to look at pornographic images.<sup>104</sup> Interrogators brought a dog into his interrogation cell numerous times, and ordered

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October 2002 meeting where torture was planned), 58, 82, 84-86, 137. *See also* SANDS, *supra* note 37, at 129 (Gelles tells Sands that once he saw the Qahtani interrogation plan, he showed his boss, Dave Brant, the head of NCIS, who responded, “No way, no way . . . This is Rumsfeld.” Shortly thereafter, Gelles and other NCIS investigators pulled their teams out of military interrogations.), 133 (the Army’s General Counsel, Steve Morello, tells the Navy’s General Counsel, Alberto Mora, that he tried to stop the interrogation of Qahtani and “[w]e were told to go away.”)

<sup>88</sup> SCHMIDT-FURLOW REPORT, *supra* note 74, at 20.

<sup>89</sup> SCHMIDT-FURLOW REPORT, *supra* note 74, at 20. *See also* *Interrogation Log of Detainee 063*, *supra* note 81.

<sup>90</sup> *See* *Interrogation Log of Detainee 063*, *supra* note 81.

<sup>91</sup> Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 10.

<sup>92</sup> Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 10.

<sup>93</sup> *See* *Interrogation Log of Detainee 063*, *supra* note 81, at 04/12/2002, 0130.

<sup>94</sup> *See e.g.*, *Interrogation Log of Detainee 063*, *supra* note 81, at 10/12/2002, 0600, 1615.

<sup>95</sup> Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 21.

<sup>96</sup> Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 22.

<sup>97</sup> Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 16.

<sup>98</sup> *See, e.g.*, *Interrogation Log of Detainee 063*, *supra* note 81 (Entries on 3, 18, 20 December 2002 and 11 January 2003).

<sup>99</sup> *See e.g.*, SANDS, *supra* note 37, at 10-11 (describing day 11 and 12 of interrogation log).

<sup>100</sup> *Interrogation Log of Detainee 063*, *supra* note 81, on 6 December 2002, 1930.

<sup>101</sup> Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 18.

<sup>102</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 88. Other acts of religious humiliation are detailed in *Interrogation Log of Detainee 063*, *supra* note 81. These acts include constructing a shrine to Osama bin Laden and informing Mr. al Qahtani that he could only pray to bin Laden, and interrupting, controlling, or denying Mr. al Qahtani’s right to pray.

<sup>103</sup> *Interrogation Log of Detainee 063*, *supra* note 81, on 17 December 2002 at 2100.

<sup>104</sup> THE SCHMIDT-FURLOW REPORT, *supra* note 74, at 19. Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, *supra* note 83, at 15-20; SENATE ARMED SERVICES REPORT, *supra* note 1, at 90.

it to growl, bark, and show its teeth at him.<sup>105</sup> Interrogators tied a leash around Mr. Qahtani's "chains," led him around the room, and made him perform dog tricks.<sup>106</sup>

Medical professions and lawyers were directly involved in Mr. al Qahtani's torture.<sup>107</sup> A Staff Judge Advocate of the Guantánamo Task Force, whose job it was to ensure that RUMSFELD's authorization was followed, reviewed the interrogation logs for Mr. al Qahtani and signed off on them. In other words, a military lawyer had reviewed and signed off on the above torture as compliant with RUMSFELD's orders.<sup>108</sup> The torture of Mr. Qahtani officially stopped on 15 January 2003, the same day that RUMSFELD rescinded his 2 December 2002 memorandum.

The techniques applied to Mr. Mohammed al Qahtani were later widely and publicly acknowledged as torture, including by high-level U.S. officials. Susan Crawford, the top Bush administration official in charge of the deciding whether to bring detainees held in Guantánamo Bay to trial, concluded that Mr. al Qahtani suffered torture that left him in a "life-threatening condition."<sup>109</sup> "We tortured [Mohammed al-] Qahtani . . . His treatment met the legal definition of torture."<sup>110</sup> Crawford was not the only official disturbed by the torture. In a letter to his superiors reporting torture of detainees in U.S. custody, T.J. Harrington, Deputy Assistant Director of the Counterterrorism Division at the FBI described Mr. al Qahtani during this time as "evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reportedly hearing voices, crouching in a corner of the cell covered with a sheet for hours on end)."<sup>111</sup> Mr. al Qahtani is still in Guantánamo Bay. He has never been charged with a crime.

In August 2003, RUMSFELD also personally authorized the torture of Mr. Mohamedou Ould Slahi, giving written authorization to a "Special Interrogation Plan" that described torture designed specifically for Mr. Slahi.<sup>112</sup> Although this "Special Interrogation Plan" is still classified, an inquiry into the treatment of detainees in U.S. custody by the U.S. Senate

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<sup>105</sup> THE SCHMIDT-FURLOW REPORT, *supra* note 74, at 15; SENATE ARMED SERVICES REPORT, *supra* note 1, at 90.

<sup>106</sup> THE SCHMIDT-FURLOW REPORT, *supra* note 74, at 19.

<sup>107</sup> SANDS, *supra* note 37, at 12.

<sup>108</sup> *Id.*

<sup>109</sup> Bob Woodward, *Guantánamo Detainee Was Tortured, Says Official Overseeing Military Trials*, WASHINGTON POST, Jan. 14, 2009, [www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html).

<sup>110</sup> *Id.*

<sup>111</sup> Letter from Deputy Assistant Director T.J. Harrington at Counterterrorism Division of FBI to Major General Donald J. Ryder at Criminal Investigation Command of Department of the Army, Re: Suspected Mistreatment of Detainees (July 14, 2004),

<https://ccrjustice.org/sites/default/files/assets/TJ%20Harrington%20Ltr%207%2014%2004.pdf>.

<sup>112</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 140. Previous submissions to this Court use the name Mohammadou Walid Slahi (ISN: 760). In this submission, we use today's most widely accepted transliteration and the transliteration used today by the U.S. government, Mohamedou Ould Slahi.

Committee on Armed Services provides some details of the plan, the subsequent torture and RUMSFELD's role in approving it.<sup>113</sup>

Mr. Slahi was abducted from his home country of Mauritania by U.S. operatives in November 2001 and rendered by the U.S. government to Jordan where he was secretly detained, interrogated, and tortured for eight months. He was then rendered by U.S. operatives into U.S. custody in Bagram, Afghanistan before he was finally taken to Guantánamo Bay on 4 August 2002.

Joint Task Force Guantánamo prepared the "Special Interrogation Plan" for approval by RUMSFELD. The plan was modeled on the interrogation plan of Mr. Mohammed al Qahtani and the since-rescinded 19 January 2002 memorandum and included hooding; 20-hour interrogations; pouring water on his head; using dogs to agitate and shock him, a technique then-JTF-GTMO Commander Miller had by that time instructed interrogators not to use anymore; degradation; making him bark and perform dog tricks; shaving his head and beard; making him wear a burka; strip searching him "to reduce [his] ego by assaulting his modesty"; exploiting "religious taboos" such as using a female interrogator in "close physical contact"; use of noise and strobe lights to disorient and stress him; use of the "fear up harsh approach,"; and efforts to "replicate and exploit 'Stockholm Syndrome' between detainee and his interrogators" in what a chief psychologist at the Naval Criminal Investigative Services (NCIS) said induced a "subject [to feel] that he is to be killed."<sup>114</sup>

Agencies including the FBI, expressed concerns over the legality of the plan to interrogate Mr. Slahi.<sup>115</sup> When the Criminal Investigation Task Force (CITF) failed to stop the plan from moving forward, it directed FBI personnel to stand clear and refuse to participate in interrogations.<sup>116</sup> Even among clear and persistent warnings that the plan amounted to torture, RUMSFELD approved "Special Interrogation Plan II" on 13 August 2003.<sup>117</sup>

Mohamedou Ould Slahi was tortured in sessions that sometimes went on for over 20 hours.<sup>118</sup> These techniques included the use of strobe lights,<sup>119</sup> playing one rock song at extremely high volume all through the night,<sup>120</sup> sleep deprivation for weeks on end,<sup>121</sup> light deprivation,<sup>122</sup>

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<sup>113</sup> See SENATE ARMED SERVICES REPORT, *supra* note 1 at 135-143.

<sup>114</sup> See SENATE ARMED SERVICES REPORT, *supra* note 1, at 135-139. Miller's instruction not to use dogs appears at 135. Miller's instruction not to use "fear up harsh approach" appears at 136; See also our previous submission to this Court, Haynes Dossier, *supra* note 13, at 16-17, where we detail more of the interrogation plan for Mr. Slahi.

<sup>115</sup> See, e.g., SENATE ARMED SERVICES REPORT, *supra* note 1 at 141.

<sup>116</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 87, 132-133.

<sup>117</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 138.

<sup>118</sup> MOHAMEDOU OULD SLAHI, GUANTÁNAMO DIARY 235-236 (Larry Siems ed., Little, Brown and Co., 2015) [hereafter GUANTÁNAMO DIARY].

<sup>119</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 139; GUANTÁNAMO DIARY, *supra* note 118, at 235.

<sup>120</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 139; GUANTÁNAMO DIARY, *supra* note 118, at 235.

<sup>121</sup> GUANTÁNAMO DIARY, *supra* note 118, at 235-237.

<sup>122</sup> SENATE ARMED SERVICES REPORT, *supra* note 1 at 140.

extreme cold,<sup>123</sup> being doused with ice-cold water while dressed and left in extreme cold,<sup>124</sup> sexual degradation and physical sexual abuse,<sup>125</sup> and forced standing for hours.<sup>126</sup> Mr. Slahi was also subjected to a number of what were known as “fear up harsh” approaches: he was told that he could be killed, that he would be disappeared, and he was even presented with a forged letter stating that his mother had been detained and might be transferred to Guantánamo, with interrogators stressing how she would be the only female detained at the all-male prison.<sup>127</sup> RUMSFELD approved this plan even after interrogators reported up their chain of command that Mr. Slahi was cooperative with his interrogators.<sup>128</sup>

After 15 years of detention in Guantánamo Bay, Mr. Slahi was released from Guantánamo Bay in October 2016 and repatriated to his home country of Mauritania. He was never accused of, or charged with, a crime.<sup>129</sup>

**e. RUMSFELD Further Contributed to the Torture of Detainees by Exerting Pressure on Commanders to “Maximize” Intelligence by any Means**

The details of detainee capture and interrogation was a top priority for RUMSFELD, who closely supervised and, as demonstrated earlier in this dossier, personally approved the torture of detainees. RUMSFELD implemented a structure of control that allowed him to be in direct contact with Guantánamo commanders, bypassing the usual chain of command. He used this direct line of communication to pressure Guantánamo Commanders to “maximize intelligence,” i.e. to torture.

In February 2002, RUMSFELD created Joint Task Force 170 (JTF-170) as an intelligence task force to work with Joint Task Force 160 (JTF-160), which had been responsible for housing and processing detainees at Guantánamo. From January 2002 to November 2002, Dunlavey was Joint Task Force 170 commanding officer. Major General Michael E. Dunlavey was chosen by RUMSFELD to run military interrogations at Guantánamo.<sup>130</sup>

<sup>123</sup> GUANTÁNAMO DIARY, *supra* note 118, at 242-243.

<sup>124</sup> GUANTÁNAMO DIARY, *supra* note 118, at 244.

<sup>125</sup> GUANTÁNAMO DIARY, *supra* note 118, at 230-231.

<sup>126</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 139.

<sup>127</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 139, 140.

<sup>128</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 140 (“On August 7, 2003, Slahi informed an interrogator that he had made a decision to cooperate...Five days after interrogators congratulated Slahi for his decision... the Secretary of Defense approved JTF-GTMO’s Special Interrogation Plan. Notwithstanding Slahi’s apparent decision on 7 August 2003 to cooperate with interrogators, a 21 August 2003 email described preparations made to implement the Special Interrogation Plan...Weekly Reports from the JTF-GTMO Commander in September and October 2003 indicated that Slahi ‘continue[d] to be cooperative.’ Despite that apparent cooperation, those same weekly reports stated that the interrogations were continuing in accordance with the approved interrogation plan. A contemporaneous document suggested that the interrogation may have begun affecting Slahi’s mental state.”).

<sup>129</sup> *Slahi v. Obama – Habeas Challenge to Guantánamo Detention*, AMERICAN CIVIL LIBERTIES UNION (25 October 2016), <https://www.aclu.org/cases/slahi-v-obama-habeas-challenge-guantanamo-detention>.

<sup>130</sup> SANDS, *supra* note 37, at 42 (interview with Dunlavey about meeting with RUMSFELD on 20 February 2002).

RUMSFELD told Dunlavy to report directly to him, on a weekly basis.<sup>131</sup> This direct reporting from the Guantánamo Commander bypassed U.S. Southern Command (SOUTHCOM), and the well-established chain of command of the U.S. military.<sup>132</sup>

RUMSFELD pressured Dunlavy to “maximize” intelligence, by unlawful means if necessary. Dunlavy said “[RUMSFELD] wanted me to maximize the information . . . There was no question in my mind that they were trying to decide how to handle these guys. Mr. Rumsfeld wanted to know who they were and what they knew . . . I didn’t need to talk about the Geneva Conventions, it was clear that they didn’t apply.”<sup>133</sup> RUMSFELD’S Deputy Secretary of Defense Wolfowitz also called Dunlavy to “express concerns about the insufficient intelligence production at Guantánamo.”<sup>134</sup> In turn, Dunlavy applied pressure to those under his command.<sup>135</sup>

Dunlavy’s Director of Intelligence told the U.S. Senate Committee on Armed Services that Dunlavy pressured him to draft a memorandum requesting authorization for new interrogation techniques.<sup>136</sup> In turn, the Director pressured psychiatrists who attended SERE technique trainings to draft a policy that could be submitted formally up the chain of command.<sup>137</sup> The pressure applied from RUMSFELD down the chain of command resulted in the draft policy for Category I/II/III techniques that ultimately rose back up the chain of command and became the 2 December 2002 memorandum authorizing torture.<sup>138</sup>

Upon identifying Mr al Qahtani as a potential source of intelligence, Dunlavy said he felt he was “under huge pressure” to find out what al Qahtani knew.<sup>139</sup> This pressure came from Washington, from the very top, and Dunlavy said “Somewhere along the line I got the

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<sup>131</sup> SANDS, *supra* note 37, at 42 (interview with Dunlavy).

<sup>132</sup> SANDS, *supra* note 37, at 42.

<sup>133</sup> SANDS, *supra* note 37, at 42.

<sup>134</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 41.

<sup>135</sup> *See, e.g.*, SENATE ARMED SERVICES REPORT, *supra* note 1 at 41 (“The GTMO Interrogation Control Element (ICE) Chief . . . told the Committee that during the summer of 2002, the JTF-170 Commander, MG Dunlavy, and his Director for Intelligence (J-2), LTC Phifer, had urged him to be more aggressive in interrogations. [He] also told the Committee that MG Dunlavy and LTC Phifer repeatedly asked him during this period why he was not using stress positions in interrogations, even though the August 2002 Standard Operating Procedure for JTF-170 expressly prohibited the use of the technique.”). Indeed, RUMSFELD’S 2 December 2002 memorandum authorizing torture still had yet to be signed. *See also Id.* (where a senior SERE psychologist testified to the Army Inspector General that “The more frustrated people got in not being able to establish [a link between al Qaeda and Iraq] . . . there was more and more pressure to resort to measures that might produce immediate results.”).

<sup>136</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 50.

<sup>137</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 50 (“[a BSCT psychiatrist] added that there was ‘a lot of pressure to use more coercive techniques’ and that if the interrogation policy memo that [Dunlavy’s Director of Intelligence] had asked him to write did not contain coercive techniques, then ‘it wasn’t going to go very far.’”).

<sup>138</sup> *See* SENATE ARMED SERVICES REPORT, *supra* note 1, at 50-53; *See also* Rumsfeld’s Memorandum re: Counter-Resistance Techniques (2 December 2002) (attached as Annex 2).

<sup>139</sup> SANDS, *supra* note 37, at 44.

message: ‘are you doing everything humanly possible to get this information?’”<sup>140</sup> RUMSFELD sent him personal memorandums suggesting new approaches to interrogation.<sup>141</sup> Dunlavey in turn urged the Guantánamo Interrogation Control Element Chief to be more aggressive in interrogations, asking why he was not using stress positions in interrogations.<sup>142</sup> He began describing Guantánamo as a “battle lab,” encouraging experimentation for new and unproven techniques.<sup>143</sup> In the meantime, Guantánamo interrogators used SERE techniques well before their formal approval throughout 2002 under the watchful eye of their superiors.<sup>144</sup>

This pressure, combined with the official approval of abusive interrogation techniques and the order that the Geneva Conventions did not apply, sent a clear message along the chain of command that abusive techniques were necessary and appropriate.<sup>145</sup>

**f. RUMSFELD Oversaw the Exportation of the DoD’s Policy of Torture and Other Cruel, Inhuman, and Degrading Treatment Beyond Guantánamo Bay, Including to Afghanistan and Iraq**

The U.S. Senate Committee on Armed Services found that RUMSFELD’s authorization of torture and cruel, inhuman, and degrading treatment at Guantánamo Bay led to a policy of torture that extended to at least Afghanistan and Iraq.<sup>146</sup> While this dossier focuses on torture and abuse of detainees at Guantánamo, the following paragraphs present a brief overview of RUMSFELD’s role on the spread of abusive interrogation techniques to other locations.

The U.S. Senate Committee on Armed Services was not the only U.S.-led investigation to confirm this. Internal investigations by the military, including the Taguba-Schlesinger Report

<sup>140</sup> SANDS, *supra* note 37, at 44 (interview with Dunlavey). Sand’s interview with Michael Gelles, a clinical forensic psychologist with the Naval Criminal Investigation Service (NCIS), and present at Guantánamo as early as February 2002, confirmed this intense pressure. “Gelles’s account was broadly consistent with what others told me. The people at Guantánamo were under intense pressure from Washington to get results and they were following orders rather than generating their own. Things got out of control.” *Id.* at 124. Despite Gelles efforts to personally inform members of RUMSFELD’s office of what was happening at Guantánamo, the members he met with, including Haynes, were according to Gelles “political appointees who were following leadership’s perspective—this was driven by Rumsfeld.” *Id.* at 127.

<sup>141</sup> SANDS, *supra* note 37, at 44.

<sup>142</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 41.

<sup>143</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 43 (“MG Dunlavey and later MG Miller referred to GTMO as a ‘Battle Lab’ meaning that interrogations and other procedures there were to some degree experimental, and their lessons would benefit DOD in other places.” Testimony of COL Britt Mallow, the Commander of the Criminal Investigative Task Force (CIFT)).

<sup>144</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 41.

<sup>145</sup> This was also one of the conclusions of the SCHLESINGER REPORT, *supra* note 61 at 36. On the impact of the authorization of aggressive interrogation techniques see also the SENATE ARMED SERVICES REPORT, *supra* note 1, at xxix.

<sup>146</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xxii-xxv, 148-230. The evidence indicates that the development of CIA detention and interrogation policies, often implemented in still secret locations throughout the world, developed alongside Guantánamo Bay detention and interrogation policies.



and the Fay-Jones Report, criticized the techniques applied in Iraq and confirmed that responsibility for the torture and abuse at the Iraqi prison, Abu Ghraib, extended up the military chain of command.<sup>147</sup>

Shortly after RUMSFELD's 2 December 2002 authorization of torture techniques, the techniques—and the fact RUMSFELD had approved them—became known to interrogators in Afghanistan.<sup>148</sup> Interrogations were governed by a standard operating procedure (SOP), the first of which was authorized on 10 January 2003.<sup>149</sup> This SOP approved all techniques outlined in the Army Field Manual 34-52, plus four additional techniques—isolation, multiple interrogators, stress positions, and sleep deprivation—taken straight from RUMSFELD's 2 December 2002 memorandum authorizing torture.<sup>150</sup> RUMSFELD's rescinding of the December 2002 memorandum on 15 January 2003 came five days after the interrogation SOP in Afghanistan was authorized, thus his initial approval of the Category I/II/III techniques, and lack of clear communication that those techniques were prohibited after 15 January 2003, continued to influence interrogations in Afghanistan.<sup>151</sup>

Despite the fact that the Geneva Conventions clearly governed the war in Iraq, RUMSFELD himself, satisfied with the use of torture against detainees at Guantánamo Bay and concerned at the lack of useful intelligence being gathered by detainees in Iraq,<sup>152</sup> set in motion a process that led to the torture of detainees in Iraq. As stated in a previous submission to this

<sup>147</sup> TAGUBA REPORT: AR 15-6 INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE (27 April 2004), [https://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/DODDOA000248.pdf](https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDOA000248.pdf); FAY-JONES REPORT: INVESTIGATION OF 205TH MILITARY INTELLIGENCE BRIGADE'S ACTIVITIES IN ABU GHRAIB DETENTION FACILITY GHRAIB (23 August 2004), *supra* note 61; John Barry & Michael Hirsh & Michael Isikoff, *The Roots of Terror*, NEWSWEEK (24 May 2004), <https://www.globalpolicy.org/component/content/article/157/26905.html> (“The photos [of Abu Ghraib] clearly demonstrate to me the level of prisoner abuse and mistreatment went far beyond what I expected, and certainly involved more than six or seven MPs,” said GOP Sen. Lindsey Graham, a former military prosecutor. “It seems to have been planned.”).

<sup>148</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at xxii. Captain Caroline Wood, the Officer in Charge of the Intelligence Section at Bagram Airfield in Afghanistan, said that in January 2003 she saw a power point presentation listing the aggressive techniques that had been authorized by the Secretary.” *Id. See generally Id.* at 148-232.

<sup>149</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 153.

<sup>150</sup> *See e.g.*, SENATE ARMED SERVICES REPORT, *supra* note 1, at 153-4. In his legal review of Standard Operating Procedures, the SMU TF Legal Advisor [identity still classified] referred to the techniques authorized by the Secretary of Defense for GTMO, including stress positions, isolation, deprivation of light and auditory stimuli, hooding, 20 hour interrogations, removal of clothing, and the use of dogs to induce stress, and stated: SECDEF's approval of these techniques provides us the most persuasive argument for use of 'advanced techniques' as we capture possible [high value targets] or those that are enablers and have intelligence value of [high value targets] . . . SECDEF approved use of the [CAT I/II/III] techniques at GTMO, subject to the same laws, provides an analogy and basis for use of these techniques.

Legal Review of [redacted] Battlefield Interrogation Team & BIT SOP (11 January 2003) at 11, quoted in SENATE ARMED SERVICES REPORT, *supra* note 1, at 154.

<sup>151</sup> “According to the DoD IG, the Afghanistan SOP had been: ‘[I]nfluenced by the counter-resistance memorandum that the Secretary of Defense approved on 2 December 2002.’” SENATE ARMED SERVICES REPORT, *supra* note 1, at xxiii. *See generally* SENATE ARMED SERVICES REPORT, *supra* note 1, at 148-232.

<sup>152</sup> JANE MAYER, *THE DARK SIDE* (2009) at 241.

Court,<sup>153</sup> JTF-GTMO Commander Major General Miller was sent by RUMSFELD to Iraq<sup>154</sup> to bring RUMSFELD’s 16 April 2003 policy guidelines for Guantánamo<sup>155</sup> to the Combined Joint Task Force 7 (CJTF-7)<sup>156</sup> in Iraq. JTF-GTMO Commander Miller recommended that such a model be adopted and encouraged a view that interrogators should be more aggressive.<sup>157</sup> In September 2003, General Ricardo Sanchez, Commander of Coalition Ground Forces in Iraq, authorized the use of techniques that largely reflected JTF-GTMO Commander Miller’s recommendations and the 16 April 2003 memorandum,<sup>158</sup> despite that Sanchez knew there were ongoing discussions as to the illegality of some of the techniques.<sup>159</sup>

The torture committed by members of the U.S. military in Iraq occurred in part due to RUMSFELD’s approval of abusive techniques as well as serious failings in the chain of command such as improper or a complete lack of training, combined with the pressure applied on interrogators from above. Soldiers on the ground, for the most part, did not know what the rules were. Most of them had never been interrogators before. One such soldier explained how

Interrogation training consisted of, basically, they taught use some approaches . . . you know, how to get people to talk. And then, “Here you go, go watch these guys interrogate,”—which were the people we were replacing—for

<sup>153</sup> Miller Dossier, *supra* note 12, at 11.

<sup>154</sup> John Barry & Michael Hirsh & Michael Isikoff, *The Roots of Terror*, NEWSWEEK (24 May 2004), <https://www.globalpolicy.org/component/content/article/157/26905.html>.

<sup>155</sup> Rumsfeld’s Memorandum re: Counter-Resistance Techniques in the War on Terrorism (16 April 2003), *supra* note 72, at Tab A: Interrogation Techniques (contains 24 approved interrogation techniques, with the proviso that “use of these techniques is limited to interrogations of unlawful combatants held at Guantánamo Bay, Cuba.”); OFFICE OF THE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE, REPORT NO. 06-INTEL-10, REVIEW OF DOD-DIRECTED INVESTIGATIONS OF DETAINEE ABUSE Appendix S 84-89 (25 August 2006), <http://www.fas.org/irp/agency/dod/abuse.pdf> and <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/03.04.16.pdf> [hereinafter DoD IG REPORT].

<sup>156</sup> CJTF-7 was later replaced by Multinational Forces-Iraq on 15 May 2004.

<sup>157</sup> See, e.g., SENATE ARMED SERVICES REPORT, *supra* note 1, at 197-198; John Barry & Michael Hirsh & Michael Isikoff, *The Roots of Terror*, NEWSWEEK (24 May 2004), <https://www.globalpolicy.org/component/content/article/157/26905.html> (By the summer of 2003 “Rumsfeld was getting impatient about the poor quality of the intelligence coming out of Iraq . . . So he directed Steve Cambone, his under secretary for intelligence, to send Gitmo commandant Miller to Iraq to improve what they were doing out there. Cambone in turn dispatched his deputy . . . down to Gitmo to talk with Miller and organize the trip. In Baghdad in September 2003, Miller delivered a blunt message to Brig. Gen. Janis Karpinski, who was then in charge of the 800th Military Police Brigade running Iraqi detentions. According to Karpinski, Miller told her that the prison would thenceforth be dedicated to gathering intel . . . On 19 November, Abu Ghraib . . . intel officials “would interrogate, interview prisoners exhaustively, use the approved measures of food and sleep deprivation, solitary confinement with no light coming into cell 24 hours a day.”).

<sup>158</sup> SENATE ARMED SERVICES REPORT, *supra* note 1, at 200-201.

<sup>159</sup> A decision that the U.S. Senate Committee on Armed Services called “a serious error in judgment.” SENATE ARMED SERVICES REPORT, *supra* note 1, at xxix.

about 5 to 6 hours before I did my first interrogation . . . “Soldiers are dying, get the information,” that’s all you’re told. “Get the information.”<sup>160</sup>

In April 2004, news broke of horrendous prisoner abuse inside Iraq’s Abu Ghraib prison by U.S. soldiers who were guarding and interrogating detainees. Photos depicted detainees subject to mock executions with electrodes, soldiers forcing detainees to lay on top of each other naked, a female soldier “posing as if [she] was sticking the end of a broom stick into the rectum” of a detainee while he was bound and hooded in a stress position, and the dead body of a detainee with a smiling U.S. soldier leaning over it, giving a “thumbs up.” Though the photos triggered many of the investigations that provide the information in this dossier, more remain classified because, the government has argued, the pictures are so heinous their release would incite others to commit violent acts against the United States.<sup>161</sup>

### **III. CONCLUSION**

The above information demonstrates that Donald RUMSFELD bears responsibility for the Department of Defense’s policy of torture and other cruel, inhuman, and degrading treatment of detainees in U.S. custody at Guantánamo Bay during his tenure as Secretary of Defense.

To this day, RUMSFELD has not faced criminal proceedings in connection with these acts, and the United States displays no intention to prosecute him. Indeed, under the current administration, there is a far greater risk of return to torture as official policy with pardons for violators than there is the possibility prosecutions.<sup>162</sup>

Because of the failure of authorities in the United States, Afghanistan, and Iraq to launch any criminal investigation into the responsibility of RUMSFELD and other high-level U.S. officials for torture, it falls to other states such as France to prosecute.

There is a close link between Donald RUMSFELD and the pending torture investigation before this Court that warrants issuing a SUBPOENA TO HEAR THE TESTIMONY OF

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<sup>160</sup> Private First Class Damien Corsetti, 519th Military Intelligence Unit, Bagram Afghanistan, as told in the documentary TAXI TO THE DARK SIDE (ThinkFilm 2007). Corsetti, who served under Lieutenant Carolyn Wood in Abu Ghraib, was charged with dereliction of duty, maltreatment, assault, and performing an indecent act with another person for acts committed in his role as an interrogator, but found not guilty on all counts.

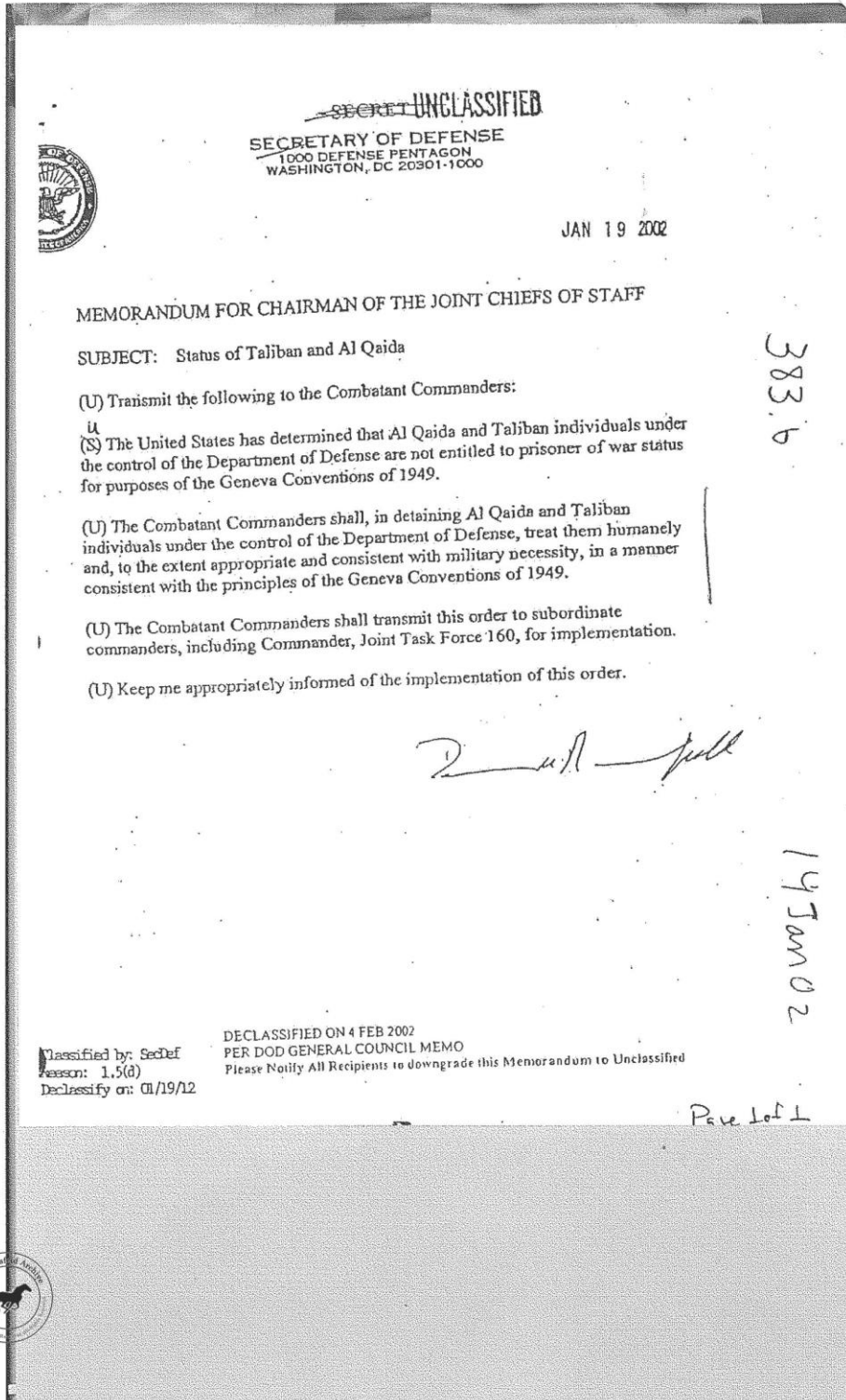
<sup>161</sup> See, e.g., Eliza Relman, A Picture of Torture Is Worth a Thousand Reports, ACLU (April 28, 2015), <https://www.aclu.org/blog/national-security/torture/picture-torture-worth-thousand-reports>.

<sup>162</sup> See, e.g., Dave Philipps, “Trump May be Preparing Pardons for Servicemen Accused of War Crimes,” N.Y. Times, 18 May 2019 at <https://www.nytimes.com/2019/05/18/us/trump-pardons-war-crimes.html>; Gabor Rona, “Can a Pardon Be a War Crime? When Pardons Themselves Violate the Laws of War,” Just Security, 25 May 2019 at <https://www.justsecurity.org/64288/can-a-pardon-be-a-war-crime-when-pardons-themselves-violate-the-laws-of-war/>. See also Salvador Rizzo, “Trump, Mueller and obstruction of justice,” Washington Post, 31 May 2019 at [https://www.washingtonpost.com/politics/2019/05/31/trump-mueller-obstruction-justice/?utm\\_term=.f73fdb93b61c](https://www.washingtonpost.com/politics/2019/05/31/trump-mueller-obstruction-justice/?utm_term=.f73fdb93b61c).

DONALD RUMSFELD as it relates to the allegations under investigation regarding a policy of torture and cruel, inhuman, and degrading treatment of those detained in U.S. custody at Guantánamo Bay.

**ANNEX 1**

Memorandum on the Status of Taliban and Al Qaida, January 19, 2002



ANNEX 2

Action Memo signed by Donald RUMSFELD on December 2, 2002

UNCLASSIFIED



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

2002 DEC -2 AM 11: 03

ACTION MEMO

November 27, 2002 (1:00 PM)

OFFICE OF THE  
SECRETARY OF DEFENSE

DEPSEC \_\_\_\_\_

FOR: SECRETARY OF DEFENSE

FROM: William J. Haynes II, General Counsel *WJH*

SUBJECT: Counter-Resistance Techniques

- The Commander of USSOUTHCOM has forwarded a request by the Commander of Joint Task Force 170 (now JTF GTMO) for approval of counter-resistance techniques to aid in the interrogation of detainees at Guantanamo Bay (Tab A).
- The request contains three categories of counter-resistance techniques, with the first category the least aggressive and the third category the most aggressive (Tab B).
- I have discussed this with the Deputy, Doug Feith and General Myers. I believe that all join in my recommendation that, as a matter of policy, you authorize the Commander of USSOUTHCOM to employ, in his discretion, only Categories I and II and the fourth technique listed in Category III ("Use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing").
- While all Category III techniques may be legally available, we believe that, as a matter of policy, a blanket approval of Category III techniques is not warranted at this time. Our Armed Forces are trained to a standard of interrogation that reflects a tradition of restraint.

RECOMMENDATION: That SECDEF approve the USSOUTHCOM Commander's use of those counter-resistance techniques listed in Categories I and II and the fourth technique listed in Category III during the interrogation of detainees at Guantanamo Bay.

SECDEF DECISION:

Approved *D.A.* Disapproved \_\_\_\_\_ Other \_\_\_\_\_

Attachments  
As stated

cc: CJCS, USD(P)

*However, I stand for 8-10 hours  
A day. Why is stand, limited to 4 hours?*

*D.A.* DEC 02 2002