

IN THE COUR D'APPEL DE PARIS
TRIBUNAL DE GRANDE INSTANCE DE PARIS

Case No. 2275/05/10

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 criminal role played by **GEOFFREY MILLER**, a retired U.S. Major General in the United States army, who served as Commander of Joint Task Force Guantánamo and Deputy Commanding General of Detention Operations in Iraq, in the torture and other serious abuse of detainees held in U.S. custody in Guantánamo and Iraq. With this dossier, we seek to assist the investigations by the honorable *Tribunal de Grande Instance de Paris* (file no. 2275/05/10).

Founded in 1966, CCR has a long history of engaging in litigation and advocacy related to the respect and enjoyment of international human rights.¹ In 1980, lawyers from CCR opened U.S. federal courts to international human rights claims through its victory in the land-mark case, *Filártiga v. Peña-Irala*.² CCR has litigated cases on behalf of survivors of human rights abuses from numerous countries, including Nicaragua, Haiti, Guatemala, Bosnia-Herzegovina and Burma, brought against U.S. and foreign officials as well as multi-national corporations.³ CCR staff or board members have authored a number of leading books and articles on international human rights, and CCR is recognized as an authority on the subject.⁴ This expertise extends to the area of universal jurisdiction.⁵

ECCHR is a Berlin-based human rights organization that focusses on enforcing human rights by legal means.⁶ Since its foundation in 2007, ECCHR acted before national prosecution services and courts as well as before the International Criminal Court to bring perpetrators of

¹ The Center for Constitutional Rights (CCR) is a legal and educational organization based in New York. For more information on CCR, visit: www.ccrjustice.org.

² 630 F.2d 876 (2d Cir. 1980).

³ For more information, see: <http://www.ccrjustice.org/past-cases> and <http://www.ccrjustice.org/current-cases>.

⁴ See e.g., B. Stephens, J. Chomsky, J. Green, P. Hoffman and M. Ratner, *International Human Rights Litigation in U.S. Courts* (Martinus Nijhoff, 2d ed., 2008); J. Green, R. Copelon, P. Cotter and B. Stephens, *Affecting the Rules for the Prosecution of Rape and Other Gender-Based Violence before the International Criminal Tribunal for the Former Yugoslavia: A Feminist Proposal and Critique*, 5 *Hastings Women's Law Journal* 171 (1995).

⁵ Reed Brody and Michael Ratner, (eds) *The Pinochet Papers: The Case of Augusto Pinochet in Spain and Britain* (Kluwer Law International: The Hague, 2000); W. Kaleck, M. Ratner, T. Singelstein, P. Weiss, (eds) *International Prosecution of Human Rights Crimes* (Springer: Berlin, 2007). K. Gallagher, *Universal Jurisdiction in Practice: Efforts to Hold Donald Rumsfeld and Other High-level United States Officials Accountable for Torture*, 7 *Journal of International Criminal Justice* 1087-1116 (2009), available at: <http://jicj.oxfordjournals.org/cgi/content/full/mqp077?ijkey=ATpEUad4WQbfcB&keytype=ref>.

⁶ The European Center for Constitutional and Human Rights (ECCHR) is a legal and educational organization based in Berlin. For more information on ECCHR, visit: www.ecchr.eu.

international crimes to justice.⁷ From the very beginning, ECCHR pursued cases against U.S. officials for their responsibility within the U.S. torture and rendition programs.⁸

CCR and ECCHR organizations have long-standing expertise on the factual and legal questions at issue in this case. On 10 January 2013, both organizations were accepted as a party (*acusación particular*) in an on-going investigation by the Spanish *Audiencia Nacional* into “an authorized and systematic plan of torture and ill-treatment on persons deprived of their freedom without any charge and without the basic rights of any detainee,” perpetrated by U.S. government officials against persons detained in Guantánamo and other locations (file no. 150/09-P).⁹ CCR and ECCHR have submitted numerous legal and factual expert opinions in a second criminal proceeding in Spain brought against six former U.S. officials.¹⁰ CCR and ECCHR have also sought accountability for the criminal violations committed by U.S. officials against specific individuals through its initiation of proceedings, including in Canada, Germany, Spain and Switzerland.¹¹ Additionally, since 2002, CCR has represented plaintiffs who have been subjected to every facet of the United States’ torture program, from Guantánamo detainees, to Abu Ghraib torture survivors, and victims of extraordinary rendition and CIA ghost detention. CCR has represented former detainees in U.S. federal courts in habeas corpus proceedings and civil actions, seeking habeas relief, injunctions or damages.¹² Furthermore, ECCHR has represented a victim of extraordinary rendition and CIA secret detention before German courts.¹³

⁷ For more information, see: <http://www.ecchr.de/index.php/accountability.html>.

⁸ For more information, see: http://www.ecchr.de/index.php/us_accountability.html.

⁹ See Decision, 27 Apr. 2009, available at:

https://www.ccrjustice.org/files/Unofficial%20Translation%20of%20the%20Spanish%20Decision%2004-27-2009_0.pdf. The investigation is to examine alleged acts of torture by the “possible material and instigating perpetrators, necessary collaborators and accomplices of the same.” As *Acusación Particular* in that proceeding, the CCR and the ECCHR seek 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 available at: <https://www.ccrjustice.org/ourcases/current-cases/spanish-investigation-us-torture>.

¹⁰ Preliminary Procedure 134/2009 (*Audiencia Nacional*, Court Six). Expert Opinion (27 April 2010) available at https://www.ccrjustice.org/files/FINAL%20EXPERT%20OPINION%20ENG_0.pdf; Supplemental Expert Opinion (14 Dec. 2010) available at: https://www.ccrjustice.org/files/Spain%20Supplemental%20Final_English%20-%20EXHIBITS.pdf; Expert Opinion on Lawyers’ Responsibility (7 Jan. 2011) available at: <https://www.ccrjustice.org/files/FINAL%20English%20Lawyers%20Responsibility%20Submission.pdf>

¹¹ See, e.g., <https://www.ccrjustice.org/ourcases/current-cases/bush-torture-indictment> (discussing cases in Canada and Switzerland against George W. Bush) and <https://www.ccrjustice.org/ourcases/current-cases/german-war-crimes-complaint-against-donald-rumsfeld-et-al> (discussing cases in Germany against Donald Rumsfeld and others); See also THE TRIAL OF DONALD RUMSFELD: A PROSECUTION BY BOOK, Michael Ratner and the Center for Constitutional Rights ,(The New Press: New York, 2008).

¹² See, e.g., *Al-Zahrani v. Rumsfeld* (legal pleadings and background information about the case available at: <http://www.ccrjustice.org/ourcases/current-cases/al-zahrani-v.-rumsfeld>) and *Celikogus v. Rumsfeld*, (legal pleadings and background information about the case available at: <http://www.ccrjustice.org/ourcases/current-cases/celikogus-v.-rumsfeld>); *Rasul v. Rumsfeld* (legal pleadings and background information about the case

II. Potential Defendant: Geoffrey Miller

A. Background

Geoffrey D. Miller was born on October 8, 1949 in the United States and is a citizen of the United States. Miller joined the United States Army in 1972 and rose to the rank of Major General (MG). Among the positions he held in the U.S. Army were assistant chief of staff for operations, and deputy commanding general, Eighth U.S. Army, in Korea, and deputy chief of staff for personnel and installation management. Relevant to the current investigation, Miller was commander of Joint Task Force-Guantánamo (JTF-GTMO) from November 2002 until April 2004¹⁴ -- a time period which during which all three plaintiffs in these proceedings (Nizar Sassi, Mourad Benchellali and Khaled Ben Mustapha) were detained at Guantánamo. Miller left Guantánamo to become Deputy Commanding General of Detention Operations in Iraq, a position he held until 31 July 2006.¹⁵ As commander of JTF-GTMO, MG Miller oversaw both military intelligence and military police functions, during which time the number of detainees peaked at 680 persons.¹⁶ Miller was also responsible for all U.S. detainee operations and interrogation operations in Iraq.

Geoffrey Miller retired from the U.S. Army on 31 July 2006. According to publically available information, Miller currently resides in Spring Branch, Texas, where he is President of a consulting company, FBR Inc. *See* Confidential Exhibit B.

B. Role and Functions of Geoffrey Miller: 2002-2006

i. Overview of Miller's Roles and Responsibilities

On 8 November 2002, MG Geoffrey Miller took command of JTF-GTMO. As commander of JTF-GTMO, MG Miller's mission at Guantánamo was "to integrate both the detention and intelligence function to produce actionable intelligence for the nation... operational and

available at <http://www.ccrjustice.org/ourcases/current-cases/rasul-v.-rumsfeld>); *Arar v. Ashcroft* (legal pleadings and background information about the case available at: <https://www.ccrjustice.org/ourcases/current-cases/arar-v-ashcroft>); *al Qahtani v. Obama* (legal pleadings and background information about the case available at: <https://www.ccrjustice.org/ourcases/current-cases/al-qahtani-v.-bush%2C-al-qahtani-v.-gates>); and *Al Shimari v. CACI* (legal pleadings and background information about the case available at: <https://www.ccrjustice.org/ourcases/current-cases/al-shimari-v-caci-et-al>).

¹³ For more information, see: http://www.ecchr.de/index.php/el_masri_case.html.

¹⁴ Department of Defense News Release, No. 479-02, 20 September 2002, available at <http://www.defense.gov/Releases/Release.aspx?ReleaseID=3482>.

¹⁵ Department of Defense News Release, No. 203-04, 22 March 2004, available at: <http://www.defense.gov/Releases/Release.aspx?ReleaseID=7152>; Josh White, *General Who Ran Guantanamo Bay Retires*, Washington Post, 1 August 2006, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/31/AR2006073101183.html>.

¹⁶ *Guantanamo Bay Timeline*, Washington Post, available at: http://www.washingtonpost.com/wp-srv/world/daily/graphics/guantanomotime_050104.htm.

strategic intelligence to help the [United States] win the global war on terror.”¹⁷ MG Miller unified the command over military intelligence units and military police units, and had them work together to ‘soften up’ detainees for interrogation. Miller implemented newly established interrogation techniques that violated the 1949 Geneva Conventions. Notably, when Miller took command of JTF-GTMO, he had no first-hand experience with detainees or interrogations.¹⁸ Miller reported to Donald Rumsfeld, then Secretary of Defense, and was in regular contact with Rumsfeld during his time at Guantánamo.¹⁹

While in the position of commander of JTF-GTMO, MG Miller travelled to Iraq, and specifically to Abu Ghraib prison, in August–September 2003.²⁰ MG Miller was sent to Iraq to bring Secretary Rumsfeld’s 16 April 2003 policy guidelines²¹ for Guantánamo to the Combined Joint Task Force 7 (CJTF-7)²² in Iraq as a possible model for the command-wide Iraq policy; Miller recommended that such a model be adopted.²³ In September 2003, General Ricardo Sanchez, Commander of Coalition Ground Forces in Iraq, authorized the use of techniques that largely reflected Miller’s recommendations and the 16 April 2003 memorandum.²⁴

MG Miller became Deputy Commanding General of Detention Operations in Iraq in April 2004. This newly-established position created a unity of command in Iraq for all detention and interrogation operations.²⁵ Among the detention facilities under Miller’s command was the notorious Abu Ghraib prison.

¹⁷ Testimony of General Miller to Sen. Ben Nelson at Senate Armed Services Committee Hearing, 19 May 2004, transcript available at: <http://www.washingtonpost.com/wp-dyn/articles/A39851-2004May19.html>.

¹⁸ See, e.g., *Senate Armed Services Committee, Inquiry into the Treatment of Detainees in U.S. Custody*, 20 November 2008 (“SASC Report”), p.73 available at http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf.

¹⁹ See e.g., *Id.* (Miller had been authorized by SOUTHCOM Commander General Hill to speak directly with the Joint Chiefs of Staff and Office of the Secretary of Defense. (SOUTHCOM, or Southern Command, is the U.S. military command overseeing Guantánamo.)).

²⁰ See, e.g., SASC Report, *supra* n. 18, pp.189-200.

²¹ Secretary of Defense Rumsfeld’s “Memorandum for the Commander, US Southern Command: Counter-Resistance Techniques in the War on Terrorism,” 16 April 2003 (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 Guantanamo 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, 25 August 2006 (“DoD IG Report”), Appendix S, pp. 84-89, available at: <http://www.fas.org/irp/agency/dod/abuse.pdf> and at: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/03.04.16.pdf>

²² CJTF-7 was later replaced by Multinational Forces-Iraq on 15 May 2004.

²³ See, e.g., SASC Report, *supra* n. 18, pp. 197-198.

²⁴ *Id.*, pp. 200-201.

²⁵ DoD IG Report, *supra* n. 21, p. 13. Prior to MG Miller assuming this position, the Combined Joint Task Force-7 (CJTF-7), the Iraq Survey Group (tasked with searching for weapons of mass destruction), the Special Mission Unit Task Force (SMU TF), and Other Government Agencies all operated detention and interrogation operations separately.

ii. Role of Miller in Torture and other Serious Violations of International Law at Guantánamo

MG Miller became commander of the newly formed JTF-GTMO, a unit that combined the detention and security operations (JTF-160) and interrogators and intelligence gathering function (JRF-170), in November 2002. JTF-GTMO ran the U.S. detention facilities, including Camp X-Ray, Camp Delta and Camp Echo. Immediately prior to his arrival at Guantánamo, new interrogation techniques were drawn up that did not conform to the Geneva Conventions and went beyond those approved in the U.S. Army Field Manual;²⁶ MG Miller supported and implemented these techniques.²⁷ On 2 December 2002, Secretary Rumsfeld formally approved these additional interrogation techniques, which included hooding, stress positions, removal of clothing, forced grooming, exploitation of individual and cultural phobias (e.g. dogs), isolation for up to 30 days, and removal of all comfort items, including religious items.²⁸ MG Miller implemented techniques designed to ‘soften up’ detainees, including sleep deprivation, extended isolation, forcing detainees to stand or crouch in ‘stress positions,’ stripping detainees and exposure to extremes of heat and cold.²⁹

Secretary Rumsfeld rescinded permission for the more controversial techniques on 15 January 2003, although under MG Miller’s command at Guantánamo, these techniques continued to be used in certain cases.³⁰

When MG Miller was solicited for his input on interrogation techniques in January 2003, he stated: “The command must have the ability to conduct interrogations using a wide variety of techniques,” listing the following techniques as “essential”: use of an isolation facility;

²⁶ See, e.g., SASC Report, *supra* n. 18, p. 38, section III (“Guantanamo Bay as a ‘Battle Lab’ for New Interrogation techniques”). These techniques drew on the Survival Evasion Resistance Escape (SERE) techniques, which were part of a U.S. training program for U.S. military members on how to resist hostile interrogations used by countries or groups that did not abide by the Geneva Conventions; the techniques were not intended to be used offensively for conducting interrogations, and thus were improperly “reverse-engineered.” See *id.*, p. 26. For a description of the initial proposal for new techniques, see *id.*, at pp. 50-52, 61-62. Alberto Mora, General Counsel for the Navy, declared “the majority of the proposed category TT and all of the proposed category III techniques [...] violative of domestic and international norms in that they constituted, at a minimum, cruel and unusual treatment, and at worse, torture.” *Id.*, p. 108.

²⁷ MG Miller referred to Guantánamo as a “‘battle lab’ meaning that interrogations and other procedures were to some degree experimental and their lessons would benefit [the Department of Defense] in other places.” SASC Report, *supra* n. 18, p. 43. Miller also had direct discussions with the DoD General Counsel’s office, which was instrumental in developing the techniques. *Id.*, p. 73.

²⁸ See, e.g., Schlesinger Report at Appendices E, F. Rumsfeld’s 2 December 2002 memorandum approving counter resistance techniques for SOUTHCOM, is available: <http://f1.findlaw.com/news.findlaw.com/hdocs/docs/dod/gcrums1127120202mem.pdf>, with appendixes available here: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.12.02.pdf>.

²⁹ See, e.g., SASC Report, *supra* n. 18, p. 97.

³⁰ See, e.g., *id.*, pp. 108-109.

interrogating detainee in an environment other than a standard interrogation room; varying levels of deprivation of light and auditory stimuli to include the use of a white room for up to three days; the use of up to 20-hour interrogations; the use of a hood during transportation and movement; removal of all comfort items, including religious items; serving of “meals ready to eat” instead of hot rations; forced grooming, including shaving of facial hair and head; and use of false documents and reports.³¹ In February 2003, Miller again pressed to be able to isolate detainees and interrogate them up to 20 hours, calling this the “hallmark” interrogation technique.³² Miller later also requested that sound modulation be authorized for interrogations at Guantánamo.³³

Around the same time as Secretary Rumsfeld issued new interrogation guidelines, which authorized 24 techniques including dietary manipulation, environmental manipulation, sleep adjustment and “false flag,”³⁴ reports surfaced of detainee mistreatment at Guantánamo. MG Miller’s response to the allegations of mistreatment of detainees was subsequently criticized in the Senate Armed Services Committee as inadequate.³⁵ Serious mistreatment of detainees continued. Even after MG Miller purportedly ordered that “fear up harsh”³⁶ not be used, he sought approval for an interrogation plan in July 2003 that included previously banned interrogation techniques;³⁷ that plan was subsequently authorized by Rumsfeld.³⁸

The serious violations of international law, including violations of the Torture Convention and Geneva Conventions, are well documented.³⁹ Released detainees describe the serious

³¹ *Id.*, p. 114. Miller stated that these techniques were intended to “weak[en] the detainee’s mental and physical ability to resist.”

³² *Id.*, p. 129.

³³ *Id.*, p. 142.

³⁴ *Id.*, p. 132. These guidelines were issued on 16 April 2003.

³⁵ *Id.*, pp. 132-135.

³⁶ “Fear up harsh” is an interrogation technique that is intended raise the fear level of the detainee, through yelling and physical intimidation, including the throwing of furniture. *See* Tony Lagouranis and Allen Mikaelian, *Fear Up Harsh: An Army Interrogator’s Dark Journey Through Iraq*, NAL Caliber: 2007.

³⁷ SASC Report, *supra* n. 18, pp. 136-137.

³⁸ *Id.*, p. 138. Again, in relation to this interrogation, CITF ordered that its agents not participate in the interrogation because of concern that the interrogation violated U.S. law and policy. *Id.* at p. 143. That interrogation, which included 20-hour a day interrogations use of military working dogs, breaking down the detainee’s ego through various forms of humiliation, forced grooming and hooding/use of white and strobe lights, apparently affected the mental state of the detainee, Mahamadou Walid Slahi, such that he was “hearing voices,” among other adverse responses. *Id.*, p. 140.

³⁹ *See, e.g.*, UN Economic and Social Council, Commission on Human Rights, *Situation of detainees at Guantánamo Bay*, E/CN.4/2006/120, 27 February 2006, *available at* <http://www.unhcr.org/refworld/country,,UNCHR,,CUB,,45377b0b0,0.html> (“UN Report on Guantánamo”); House of Commons Foreign Affairs Committee, Human Rights Annual Report 2005, Session 2005-6, H.C. 574, *available at* <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmfa/574/574.pdf>; Physicians for Human Rights, *Broken Lives, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact* (June 2008), *available at* http://brokenlives.info/?page_id=69; Report on Torture and Cruel, Inhuman and Degrading Treatment of Prisoners at Guantanamo Bay, Cuba, July 2006, *available at*

abuse to which they were subjected during the time that MG Miller was commander of Guantánamo: being short shackled in painful “stress positions” for many hours at a time, causing deep flesh wounds and permanent scarring; threats with unmuzzled dogs; forced stripping; being photographed naked; being subjected to repeated forced body cavity searches; being exposed to extremes of heat and cold for the purpose of causing suffering; being kept in filthy cages for 24 hours per day with no exercise or sanitation; denial of access to necessary medical care; deprivation of adequate food, sleep, communication with family and friends, and of information about their status; and violent beatings by the “Extreme Reaction Force”.⁴⁰ It is recalled that twelve years since the opening of Guantánamo, none of the detainees – the vast majority of whom have never been charged with any crime and will not be charged with any crime, despite continued detention– have been permitted to have any visits with their families and have had very limited contact with the outside world. These acts constitute torture,⁴¹ and violate, at a minimum, the Geneva Conventions prohibition on coercive interrogations.⁴²

In October 2003, the International Committee of the Red Cross (ICRC) conducted more than 500 interviews at Guantánamo before meeting with MG Miller and his top aides. The ICRC voiced its concern regarding the lack of a legal system for the detainees, the continued use of steel cages, the ‘excessive use of isolation’ and the lack of repatriation for the detainees. The ICRC concluded that the interrogators had “too much control over the basic needs of detainees... the interrogators have total control over the level of isolation in which detainees were kept; the level of comfort items detainees can receive; and the access to basic needs of the detainees.”⁴³ MG Miller objected at the comment and told the ICRC that interrogation

http://www.ccrjustice.org/files/Report_ReportOnTorture.pdf. See also Neil A. Lewis, *Red Cross Finds Detainee Abuse at Guantánamo*, N.Y. Times, 30 November 2004, available at:

<http://www.nytimes.com/2004/11/30/politics/30gitmo.html?pagewanted=1&r=1>.

⁴⁰ See, e.g., *Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and Their Impact On Former Detainees*, November 2008, available at

http://ccrjustice.org/files/Report_GTMO_And_Its_Aftermath_1.pdf; *Composite statement: Detention in Afghanistan and Guantanamo Bay*, Shafiq Rasul, Asif Iqbal and Ruhel Ahmed, 26 July 2004 available at: http://ccrjustice.org/files/report_tiptonThree.pdf.

⁴¹ Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Docs. A/39/51 (1984). Art.1; *Prosecutor v. Brđjanin*, Case No, IT-99-36-A, Appeal Judgment, 3 April 2007, paras. 242-252; *Prosecutor v. Kunarac*, Case No, IT-96-23&23/1-A, Appeal Judgment, 20 June 2002, paras. 150-154. See, e.g., U.N. Comm. Against Torture: Conclusions and Recommendations of the Committee Against Torture, United States Of America, CAT/C/USA/CO/2, 26 July 2006, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/432/25/PDF/G0643225.pdf?OpenElement>; UN Report on Guantánamo, *supra* n. 39, paras. 87-90; *Prosecutor v. Furundžija*, Case No, IT-95-17/1-T, Trial Judgment, 10 December 1998, paras. 264-269; *Prosecutor v. Delalić et al*, IT-96-21-T, Trial Judgment, 16 November 1998, paras. 936-943, 955-965, 970-977 and 993-998.

⁴² See, e.g., Geneva Convention (No. III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 17 U.N.T.S. 135, Arts. 3, 13, 17, 34, 38 and 130 .

⁴³ Scott Higham, *A Look Behind the ‘Wire’ at Guantánamo; Defense Memos Raise Questions About Detainee Treatment as Red Cross Sought Changes*, Washington Post 13 June 2004, available at: <http://www.washingtonpost.com/wp-dyn/articles/A37364-2004Jun12.html>.

techniques were none of their concern.⁴⁴ The ICRC told MG Miller that those methods and the lengths of interrogations were coercive and having a “cumulative effect” on the mental health of the detainees and that the steel cages, coupled with the maximum security nature of the facility and the isolation techniques, constituted harsh treatment.⁴⁵ Following that visit, the ICRC expressed rare public criticism of the treatment of detainees at Guantánamo under MG Miller’s authority, stating that “the US authorities have placed the internees in Guantanamo beyond the law. This means that, after more than eighteen months of captivity, the internees still have no idea about their fate, and no means of recourse through any legal mechanism.” The ICRC continued, stating that there is “worrying deterioration in the psychological health of a large number.”⁴⁶ Ten years ago, the ICRC expressed concern with the “seemingly open-ended system of internment,”⁴⁷ that existed under MG Miller’s watch; with only minor modifications, that system continues to operate.

iii. Role of Miller in Torture of Mohammed al Qahtani

Mohammed al Qahtani, a detainee from Saudi Arabia, was transferred to Guantánamo in early 2002.⁴⁸ He was subjected to a prolonged, aggressive interrogation that violated international law, known as the “First Special Interrogation Plan.” The interrogation plan was authorized by then-Secretary of Defense Rumsfeld shortly after MG Miller took over command of JTF-GTMO. Despite objections to the plan by the Federal Bureau of Investigations (FBI), the Department of Defense (DoD) Criminal Investigation Task Force (CITF), and the Naval Criminal Investigative Service,⁴⁹ Miller authorized use of the interrogation plan and played a key role in its execution.⁵⁰ Indeed, Miller allowed the interrogation to proceed while the CITF refused to allow any of its agents to be involved in any way with it.⁵¹ This interrogation plan included 48 days of severe sleep deprivation and

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Guantanamo Bay: Overview of the ICRC’s work for internees, ICRC, 30 January 2004, available at: <http://www.icrc.org/eng/resources/documents/misc/5qrc5v.htm>.

⁴⁷ *Id.*

⁴⁸ SASC Report, *supra* n. 18, p. 58; Decl. of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani, Criminal Complaint Against Donald Rumsfeld, The Prosecutor General at the Federal Supreme Court, Federal Republic of Germany (filed 14 November 2007) (“Gutierrez Declaration”), available at http://www.ccrjustice.org/files/Gutierrez%20Declaration%20re%20A1%20Qahtani%20Oct%202006_0.pdf.

⁴⁹ SASC Report, *supra* n. 18, pp. 78-81, 84-87. Notably, the FBI warned Miller that the methods considered in the al Qahtani interrogation plan “are considered coercive by Federal Law Enforcement and [Uniform code of Military Justice] standards,” SASC Report, at. 84, and violate the U.S. Constitution, if not the U.S. Torture Statute. *Id.* at 85.

⁵⁰ *See Id.*, pp. 74-76.

⁵¹ *Id.*, p. 87. Rather than heed the concerns of CITF, Miller responded to CITF’s objections to the proposed interrogation techniques by threatening to cut-off information sharing: “COL Mallow [CITF

20-hour interrogations,⁵² forced nudity, sexual humiliation,⁵³ religious humiliation,⁵⁴ dehumanizing treatment,⁵⁵ the use of physical force against him, prolonged stress positions, prolonged sensory overstimulation, and threats with military dogs.⁵⁶

MG Miller played a direct role in the torture of Mr. al Qahtani when he authorized the sleep deprivation program under which Mr. al Qahtani was kept awake for twenty hours, and authorized and supervised the state of severe isolation and sensory deprivation to which Mr. al Qahtani was subjected, among other acts.⁵⁷ The Schmidt Report recommended that Miller be held accountable and admonished for his role – as both a direct participant and for failing to prevent his subordinates from abusing – in the interrogation of Mr. Al Qahtani.⁵⁸

Mohammed al Qahtani was interrogated from 23 November 2002 through 16 January 2003. The techniques were directly inspired by the “Survival Evasion Resistance Escape (SERE)” techniques, which are techniques taught to U.S. military members on how to resist hostile interrogations. These techniques were later widely acknowledged as torture. Indeed, the former convening officer of the military commissions at Guantánamo declared that she could

Commander] said that MG Miller told him in a meeting that “if [CITF] did not want to participate in interrogations with the intelligence community because of our objections to methods, that [CITF] would not have the benefit of information resulting from any of those interrogations.” *Id.*, p. 78.

⁵² See, e.g., *Id.*, p. 76 (“The interrogation would be conducted for ‘20-hour sessions’ and at the completion of each session, Kahtani would be permitted four hours of rest, and then ‘another 20 hour interrogation session [would] begin.’”); Gutierrez Declaration, *supra* n. 48, pp. 10-15.

⁵³ Among the forms of sexual humiliation to which Mr. al Qahtani was subjected were use of female interrogators to who straddled, touched or otherwise molested him (known as “Invasion of Space by a female”); forced to wear a woman’s bra and had a thong placed on his head during the course of an interrogation; told that his mother and sisters were whores; and forced to wear, look at or study pornographic images. See Gutierrez Declaration, *supra* n. 48, pp. 15-20; SASC Report, *supra* n. 18, p. 90.

⁵⁴ Some instances of the acts of religious humiliation are detailed in a released interrogation log, available at: <http://www.time.com/time/2006/log/log.pdf>. These acts include: constructing a shrine to Osama bin Laden and informing Mr. al Qahtani that he could only pray to bin Laden; “forced grooming,” including forcibly shaving Mr. al Qahtani’s beard; and interrupting, controlling or denying Mr. al Qahtani’s right to pray.

⁵⁵ The interrogation log record the following treatment on 20 December 2002: “an interrogator tied a leash to the subject of the first Special Interrogation’s chains, led him around the room, and forced him to perform a series of dog tricks.”

⁵⁶ For detail of the interrogation of Mr. al Qahtani, which included a simulated rendition, see, SASC Report, *supra* n. 18, pp. 77-78, 88-91; Gutierrez Declaration, *supra* n. 48; *Inside the Interrogation of Detainee 063*, 12 June 2005, Time Magazine, available at: <http://www.time.com/time/magazine/article/0,9171,1071284,00.html>, and 83 pages of interrogation log at <http://www.time.com/time/2006/log/log.pdf>; *Army Regulation 15-6: Final Report Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility*, 1 April 2005 (“Schmidt Report”), pp. 13-21, available at: <http://www.defense.gov/news/Jul2005/d20050714report.pdf>.

⁵⁷ See, e.g., Philippe Sand, *The Torture Team*, Palgrave Macmillan, 2004, p. 143 (Quoting Commander of the Southern Command, General James Hill, discussing the “on-going interrogations” of Mr. al Qahtani: “General Miller said to me I’ve personally been looking at it... We think we’re right on the verge of making a breakthrough. We ought to continue.”)

⁵⁸ Schmidt Report, Recommendation 16, p. 20.

not bring charges against Mr. al Qahtani due to the torture inflicted on him: “we tortured al-Qahtani. ... His treatment met the legal definition of torture. And that's why I did not refer the case for prosecution.”⁵⁹

Rather than receiving treatment and support for the torture he was subjected to, Mr. al Qahtani remains detained at Guantánamo without charge.

iv. Role of Miller in Torture and other Serious Violations of International Law in Iraq and at Abu Ghraib

MG Miller’s responsibility for violations in Iraq relates not only to the time-period during which he was Deputy Commanding General of Detention Operations, but also relates to the period during which the most notorious acts of torture in Iraq occurred. MG Miller was sent to Iraq in August 2003 by the Joint Chiefs of Staff to assess intelligence operations⁶⁰ and, he has said, conduct “strategic interrogation and intelligence development and detention operations in theatre.”⁶¹ It was shortly after this visit by MG Miller that the most serious abuses and torture at Abu Ghraib occurred.⁶²

⁵⁹ Bob Woodward, *Detainee Tortured, Says U.S. Official; Trial Overseer Cites “Abusive” Methods Against 9/11 Suspect*, *Washington Post*, 14 Jan. 2009, at A1, available at: www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html.

⁶⁰ DoD IG Report, *supra* n. 21, p. 27. An overview of Miller’s assessment of interrogation and detention operations in Iraq can be found at DoD IG Report, Appendix C, p. 33. The scope of that mission including meeting with interrogation authorities “to discuss current theater ability to rapidly exploit internees for actionable intelligence.” Significantly, Miller concluded that based on his visit to Iraq, “a significant improvement in actionable intelligence will be realized within 30 days.” As is now known, rather than an improvement in actionable intelligence, torture and serious abuse at Abu Ghraib began within 30 days of Miller’s visit.

⁶¹ SASC Report, *supra* n. 18, p. 190.

⁶² Detailed accounts of the torture and other crimes committed against Iraqi detainees can be found in numerous reports by the U.S. military as well as in an International Commission of the Red Cross (ICRC) report. See MG Antonio Taguba, *Art. 15-6: Investigation of the 800th Military Police Brigade* (2004) (“Taguba Report”) available at http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/taguba/; G. Fay & A. Jones, US Army, *AR 15-6 Investigation of Intelligence Activities At Abu Ghraib Prison and 205th Military Intelligence Brigade* (2004) (“Fay Report”), available at http://www.washingtonpost.com/wp-srv/nationi/documents/fay_report_8-25-04.pdf; *Report of the ICRC on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest Internment and Interrogation*, February 2004, available at http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf; J. Schlesinger, *Final Report of the Independent Panel to Review Department of Defense Detention Operations*, August 2004 (“Schlesinger Report”), available at <http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf> (abuses were ‘widespread’ and serious in numbers and effect). Notably, when MG Miller testified before the Senate Armed Services Committee in May 2004 about the abuse of prisoners in Iraq, he confirmed that at the time he visited Iraq in August-September 2003, there were not reports of prisoner abuse; the only “problems” reported in Iraq were a lack of actionable intelligence – reports of prisoner abuse occurred only after his visit, and the implementation of interrogation techniques that Miller recommended. See Testimony of Geoffrey Miller

MG Miller was explicitly authorized to conform interrogation methods in Iraq to those at Guantánamo. Miller wanted to “Gitmo-ize” Iraq and Abu Ghraib.⁶³ During his visit to Iraq, Miller and his team discussed the 16 April 2003 tactical guidelines for Guantánamo with those involved in interrogations in Iraq, and – despite the clear instruction that these interrogation techniques were limited to “unlawful combatants held at Guantanamo Bay, Cuba” – recommended that it serve as a model for Iraqi-wide policy.⁶⁴ These guidelines were subsequently adopted for use at Abu Ghraib.⁶⁵ It is important to recall that the systems in place in Guantánamo and Iraq were intended to be treated differently under the Bush administration: the Geneva Conventions were declared inapplicable at Guantánamo⁶⁶ – a decision later overturned by the United States Supreme Court in *Hamdan v. Rumsfeld*⁶⁷ – but were always applicable to Iraq. Thus, by recommending interrogation policies from Guantánamo be applied in Iraq, Miller was advising that policies that fell outside the scope of the Geneva Conventions could be applied to a country, a conflict and civilian detainees protected by the Geneva Conventions.

When MG Miller toured the detention facility used by the Iraq Survey Group (ISG), he remarked that they were “running a country club” and indicated he thought that the treatment of detainees was too lenient.⁶⁸ One member of the U.S. military who accompanied Miller on this tour reported that “Miller recommended the ISG shackle detainees and make them walk on gravel rather than on concrete pathways to show the detainees who was in control.”⁶⁹ Brigadier General Janis Karpinski stated that MG Miller said, during a briefing on interrogations: “Look, you have to treat them like dogs. If they ever felt like anything more than dogs, you have effectively lost control of the interrogation.”⁷⁰ An MG in Iraq reported that MG Miller told him that he was “not getting the maximum” out of his detainees because they “haven’t broken [the detainees]’ psychologically” and that Miller said he would “get

in response to questions by Senator Lieberman, Senate Armed Services Committee hearing, 19 May 2004, available at: <http://www.washingtonpost.com/wp-dyn/articles/A39851-2004May19.html>.

⁶³ SASC Report, *supra* n. 18, p. 191. *Id.*, p. 194 (Cpt. Wood stating Miller wanted to build a “miniature Guantánamo Bay”).

⁶⁴ *Id.*, pp. 194-198. Some caution was expressed about the differing legal environments of Guantánamo and Iraq in relation to the Geneva Conventions.

⁶⁵ Schlesinger Report, *supra* n. 62, p. 9

⁶⁶ Memo from George W. Bush to the Vice President, Secretary of State, Secretary of Defense, Attorney General et. al., *Decision Re: Humane Treatment of Taliban and al-Qaeda* (7 February 2002), available at http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf.

⁶⁷ 548 U.S. 557 (2006).

⁶⁸ SASC Report, *supra* n. 18, p. 191.

⁶⁹ *Id.*, p. 191.

⁷⁰ Affidavit of Brigadier General Janis Karpinski, (commander of the 800th Military Police Brigade and responsible for 17 prison facilities in Iraq, including Abu Ghraib), dated 26 October 2005, available at: <http://ccrjustice.org/files/abu%20KarpinskiTestimony2006.pdf>.

back to [him] with some ideas of how you can perhaps deal with these people where you can actually break them, some techniques you can use.”⁷¹

COL Thomas Pappas, then-commander of the 205th Military Intelligence Brigade at Abu Ghraib, stated that MG Miller told him that at Guantánamo they used military working dogs and that dogs were effective in setting the atmosphere for interrogations.⁷² According to MG Miller, his team recommended a strategy to work the operational schedule of the dog teams so the dogs were present when the detainees were awake, not when they are sleeping.⁷³ Pappas said that the “tenor of the discussions was that we had to get tougher with the detainees.”⁷⁴ As is now known, dog teams arrived at Abu Ghraib in the wake of MG Miller’s visit to Iraq, and these military dogs were used to abuse detainees, including during interrogations.⁷⁵

MG Miller also recommended that the detention and interrogation operations being integrated under one command authority in Iraq, as had been done at Guantánamo.⁷⁶

Following MG Miller’s trip to Iraq, Lieutenant General (LTG) Sanchez adopted a policy that drew heavily from Rumsfeld’s 16 April 2003 memorandum, and included such techniques as the presence of working dogs, stress positions, sleep management, loud music and light control.⁷⁷ The policies were applicable to all detainees, including civilian detainees.⁷⁸ Following a legal review, however, a number of the policies LTG Sanchez approved on 14 September 2003 were deemed to be in contravention of the Geneva Conventions, including Article 17 of the Third Geneva Conventions which prohibits coercive interrogations. LTG Sanchez’s policy was later rescinded and replaced with a new policy on 12 October 2003.⁷⁹ The 12 October 2003 policy allowed for an additional nine techniques, namely those omitted

⁷¹ SASC Report, *supra* n. 18, p. 192

⁷² *Id.*, pp. 196-197. Miller reportedly said “These people are scared to death of dogs, and the dogs have a tremendous effect.” See also Josh White, *General Asserts Right On Self-Incrimination In Iraq Abuse Cases*, 12 January 2006, Washington Post, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/11/AR2006011102502.html>.

⁷³ Fay Report, *supra* n. 62, p. 58.

⁷⁴ SASC Report, *supra* n. 18, p. 194.

⁷⁵ Fay Report, *supra* n. 62, pp. 83, 85-87; SASC Report, *supra* n. 18, pp. 208-209.

⁷⁶ SASC Report, *supra* n. 18, p. 198.

⁷⁷ *Id.*, p. 201. See also DoD IG Report, *supra* n. 21, p. 28 (“The CJTF-7 Staff Judge Advocate attributed the ‘genesis of this product’ to the JTF-Guantanamo assessment team,” which Miller headed.)

⁷⁸ SASC Report, *supra* n. 18, p. 202.

⁷⁹ *Id.*, p. 204. “Techniques removed from the list of authorized techniques included dietary manipulation, environmental manipulation, sleep adjustment, false flag, presence of military working dogs, sleep management, stress positions, and yelling, loud music, and light control.”

because of concern that they violated the Geneva Conventions, upon request and approval.⁸⁰ These prohibited techniques also resurfaced in the policy for interrogations at the SMU TF.⁸¹

Shortly after MG Miller's visit to Iraq, detainees were subjected to "numerous incidents of sadistic, blatant, and wanton criminal abuses."⁸² The migration of interrogation policies and practices from Guantánamo to Iraq was cited as a specific factor in the torture of detainees in Iraq.⁸³ For example, forced nakedness never showed up on any of the interrogation policies authorized in Iraq but were seen as "imported" techniques that "could be traced through Afghanistan and GTMO."⁸⁴

The Taguba Report criticized many of MG Miller's recommendations and his use of Guantánamo operational procedures and interrogation authorities as baselines for his observations and recommendations in Iraq.⁸⁵ Miller's impact is apparent when assessing the impact of creating a unified police and interrogation unit: the torture of detainees involved both the military police and interrogators (as well as private military contractors), with interrogators encouraging military police to isolate, strip and otherwise abuse or humiliate detainees prior to interrogation sessions.⁸⁶ Taguba noted the recommendations of MG Miller's team that "the 'guard force' be actively engaged in setting the conditions for successful exploitation of the internees appears to be in conflict with... Army Regulation (AR 190-8) 'that military police do not participate in military intelligence supervised interrogation sessions,'" and concluded "Military Police should not be involved with setting favorable conditions for subsequent interviews. These actions... clearly run counter to the smooth operation of a detention facility."⁸⁷

MG Miller returned to Iraq to take up his position overseeing detention and interrogation in April 2004 – the same month that the photos of torture at Abu Ghraib became public. Although Miller knew that there were serious concerns about the treatment of detainees there, having been advised of such concerns at least with regards to the Special Mission Unit Task Force during his August-September 2003 visit,⁸⁸ and then the Abu Ghraib torture scandal,

⁸⁰ *Id.*, p. 206.

⁸¹ *Id.*, p. 206.

⁸² Taguba Report, *supra* n. 62, p. 16. According to one military report, "[w]hat started as nakedness and humiliation, stress and physical training (exercise) carried over into sexual and physical assaults." Fay Report, *supra* n. 62, p. 10.

⁸³ Fay Report, *supra* n. 62, p.8. *See also*, Karpinski Affidavit, *supra* n. 70, p.2 ("The problems [at Abu Ghraib] started during MG Miller's visit and grew worse with the arrival of contract interrogators.")

⁸⁴ SASC Report, *supra* n. 18, p. 212, quoting Fay Report, *supra* n. 62, p. 87.

⁸⁵ *See*, Taguba Report, *supra* n. 62.

⁸⁶ SASC Report, *supra* n. 18, pp. 207-208.

⁸⁷ Taguba Report, *supra* n. 62, p. 8.

⁸⁸ SASC Report, *supra* n. 18, p. 194.

allegations of torture and abuse at detention centers across Iraq persisted throughout Miller's time there.⁸⁹

III. Conclusion

The information above demonstrates that Geoffrey Miller bears individual criminal responsibility for the war crimes and acts of torture inflicted on detainees in U.S. custody at Guantánamo and in Iraq. Based on his position as a commander, Miller is responsible for the acts he authorized, commanded or directed his subordinates to commit, as well as for the acts of his subordinates which he failed to prevent or punish.⁹⁰ Based on his leadership position and involvement in developing, authorizing and implementing interrogation policies, Miller can also be held responsible as a member of a joint criminal enterprise for his involvement in the torture of detainees in U.S. custody,⁹¹ or, alternatively, for aiding and abetting torture and other war crimes.

Based on the foregoing there is a sufficient connection between **GEOFFREY MILLER** and the pending torture investigation to warrant issuing a **SUBPOENA TO HEAR THE TESTIMONY OF GEOFFREY MILLER** as it relates to the allegations under investigation and “an authorized and systematic plan of torture and ill-treatment on persons deprived of their freedom without any charge and without the basic rights of any detainee.”

⁸⁹ See, e.g., *Saleh, et al. v. CACI, et al.*, Fourth Amended Complaint, District Court for the District of Columbia, Case No. 05-cv-1165 (JR), 17 December 2007, available at: <http://www.ccrjustice.org/files/CACI%20Fourth%20Amended%20Complaint%2012.17.07.pdf>; *Al Shimari, et al. v. CACI International Inc.*, Third Amended Complaint, District Court for the Eastern District of Virginia, Case No. 08-cv-0827 GBL-JFA, 4 April 2013, available at <http://ccrjustice.org/files/AI%20Shimari%20TAC%20redacted.pdf>; *Al-Quraishi, et al. v. Nakhla and L-3Services, Inc.* Amended Complaint, District Court for Maryland, Case No. 8:08-cv-1696, 5 September 2008, available at: <http://www.ccrjustice.org/files/Amended%20Complaint.pdf>.

⁹⁰ For a discussion on command responsibility under international law, see, e.g., *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeal Judgment, 20 February 2001; *Prosecutor v. Halilovic*, Case No. IT-01-48-A, Appeal Judgment, 16 October 2007.

⁹¹ For a discussion on joint criminal enterprise, see *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeal Judgment, 15 July 1999.

EXHIBIT A



MG Geoffrey D. Miller
Commander
JTF Guantanamo

Retired

**CONFIDENTIAL –
FILED UNDER SEAL**

EXHIBIT B

Geoffrey D. Miller, aka Geoffrey Daniel Miller, is believed to currently reside at, or otherwise be reachable via, [REDACTED].⁹²

⁹² [REDACTED].

Glossary of Terms

CJTF-7	U.S. Combined Joint Task Force 7, Iraq
CITF	Criminal Investigation Task Force
DoD	U.S. Department of Defense
DoD IG Report	Office of the Inspector General of the Department of Defense, Report No. 06-INTEL-10, Review of DoD-Directed Investigations of Detainee Abuse, 25 August 2006
FBI	U.S. Federal Bureau of Investigation
ISG	U.S. Iraq Survey Group
JTF-GTMO	U.S. Joint Task Force-Guantánamo
SASC	U.S. Senate Armed Services Committee
SASC Report	Senate Armed Services Committee, Inquiry into the Treatment of Detainees in U.S. Custody, 20 November 2008
SERE	Survival Evasion Resistance Escape
SMU TF	U.S. Special Mission Unit Task Force, Iraq
SOUTHCOM	U.S. Southern Command, Department of Defense