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A Competition of Minds and a Penetration of Souls: How Short-Term Interrogation Tactics After 9/11 Led to Grave Long-Term Unintended Consequences Today (As Told Through the Voices of Four Interrogators)

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Peter Jan Honigsberg*

Introduction

In a decision written in 1999, the Israeli Supreme Court described an interrogation as a “competition of minds in which the investigator attempts to penetrate the suspect’s thoughts and elicit from him the information the investigator seeks to obtain.”¹ It added that an interrogation “intrudes his conscience [and] penetrates the deepest crevices of his soul.”²

A few paragraphs later, the court reminds the reader that a “reasonable investigation is necessarily one free of torture, free of cruel, inhuman and degrading treatment of the subject.... Human dignity also includes the dignity of the suspect being interrogated.... These prohibitions are ‘absolute.’ There are no exceptions to them and there is no room for balancing.”³

Penetrating the minds and souls of alleged terrorists while still upholding the constitution, federal law, and the human rights obligation to treat the suspects with dignity and without torture or cruel, inhuman and degrading treatment was not the immediate objective for high-ranking American officials and military interrogators in the early years following the attacks on the World Trade Center in New York and the Pentagon in Washington DC on September 11, 2001. Although the United States was a party to the Geneva Conventions (GC), the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) -- all three of which prohibit torture and cruel, inhuman and degrading treatment (CIDT) -- the U.S. chose to ignore the restrictions of these documents. Propelled by the fear of another attack comparable to that of September 11th,⁴ the administration violated these treaties, focusing instead on the short-term goal of obtaining intelligence at any cost to deter another major attack.

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¹ Judgment Concerning the Legality of the General Security Service’s Interrogation Methods, 38 I.L.M. 1471, 1481.

² Judgment Concerning the Legality of the General Security Service’s Interrogation Methods, 38 I.L.M. 1471, 1481 (citing to another quote)

³ Judgment Concerning the Legality of the General Security Service’s Interrogation Methods, 38 I.L.M. 1471, 1482.

⁴ Interview with Lawrence Wilkerson, in Wash. D.C. (Mar. 19, 2011).

Today, anyone who has followed the evolution of U.S. interrogation methods post 9/11 knows all too well that the United States pursued an admitted policy of harsh treatment, which has been defined by many commentators as comparable to CIDT and torture.⁵ And the lessons that can be drawn from our unlawful behavior have become evident over the years.

In order to find actionable intelligence, the Department of Defense (DoD) acted inconsistently, irrationally, ineffectively and, when conducting abusive interrogations, illegally. Because the U.S. military did not know what techniques would succeed, it attempted a plethora of short-term strategies and untested interrogation techniques. The initial interrogation tactics and procedures have been described as “ad hoc [and] very helter-skelter.”⁶

In addition, it often did not even matter which interrogation technique or how much force was used by the military. As one expert told the Witness to Guantanamo project,⁷ the screening process of determining which captives actually had intelligence value was “terrible,” and that many of the detainees sent to Guantanamo had neither prosecutorial nor intelligence value.⁸

Tensions existed between experienced federal law enforcement agents and the DoD, where often young and inexperienced military soldiers and reservists who did not have the proper training, interrogated alleged terrorist prisoners.⁹ In Bagram, Afghanistan, where many detainees were sent before being transported to Guantanamo, inexperienced and aggressive military interrogators were given wide latitude.¹⁰ Federal law enforcement agents -- who focused on “rapport-based” (also known as rapport- building)

⁵ <http://jurist.org/feature/2011/03/07/guantanamo-bay-torture-allegations.php>; http://www.huffingtonpost.com/2014/04/11/cia-harsh-interrogations_n_5130218.html President George W. Bush proclaimed that we do not torture. “Bush Declares ‘We do not torture’” Deb Riechmann, Washington Post, Nov. 7, 2001, 1:39pm, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/07/AR2005110700521.html>. However, Vice President Dick Cheney announced that it was necessary to “work, though, sort of the dark side.” “The Vice President Appears on Meet the Press with Tim Russert,” White House, Vice President Speeches (Sep. 16, 2001), available at <http://georgewbush-whitehouse.archives.gov/vicepresident/news-speeches/speeches/vp20010916.html>

⁶ Interview with Manuel Supervielle, General Counsel, U.S. Army, in S.F., Cal. (Sep. 8, 2012). In one example provided by Supervielle, intelligence agencies interrogated for intelligence on the war, while law enforcement built and prosecuted cases without coordinating their processes and interests. Consequently, law enforcement read detainees their rights. Then when intelligence interrogated the same detainees, the detainees would say that they had the right not to talk.

⁷ The Witness to Guantanamo project has filmed interviews with over 100 former detainees and others who have lived or worked or are otherwise connected to Guantanamo. The project has interviewed prison guards, interrogators, interpreters, chaplains, habeas lawyers, JAG lawyers, prosecutors, medical personnel, psychologists, FBI agents, CIA personnel, NCIS officials, high-ranking military officials, high-ranking government officials, and family members of the detainees. witnessstoguantanamo.com

⁸ Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013). Fallon was Chief of Counter Intelligence Operations for the Europe, Africa, and Middle East Division of the Naval Criminal Investigative Service

⁹ Interview with Mark Fallon, in S.F., Cal., (Oct. 25, 2013).

¹⁰ Tim Golden, “In U.S. Report, Brutal Details of 2 Afghan Inmates Deaths”, New York Times, May 20, 2005, page 3.

interrogations -- contrasted with the military's harsh techniques, including such techniques as "fear up,"¹¹ "pride up and ego down" and "ego down harsh."¹²

According to the Army Field Manual, there is a fine line between lawful and unlawful conduct that can be determined in part by two tests to consider in making the determination as to whether an interrogator has crossed the line.¹³ In the early years post 9/11, the military either ignored the safeguards that the tests provided or defined its strategies and interrogation tactics very broadly in order to avoid colliding with the tests' safeguards. As David Becker, the head of the Department of Homeland Security Human Intelligence Services, noted, interrogation approaches were limited to the imagination of the interrogators.¹⁴

A number of federal agencies represented the split in the approach to interrogations. The FBI, the Counter Intelligence Task Force (CITF) and the Naval Criminal Investigative Service (NCIS),¹⁵ supporting the rapport-based strategies, were on one side. The Department of Defense (DoD) leadership and the CIA were on the other side.¹⁶ In the

¹¹ Interview with Jim Clemente, S.F., Cal. (June 13, 2013)., see later text

¹² Similar phrases such as fear up/down and pride/ego up/down, as well as developing rapport appear in both the 1992 Army field and its replacement in the 2006 Manual. DEPARTMENT OF THE ARMY, FIELD MANUAL 34-52, INTELLIGENCE INTERROGATION (1992) at 3-12, 3-16 – 3-18.. See also prohibited conduct and a test for the interrogator to determine whether his conduct is lawful or unlawful, page 1-9 of 1992 manual. DEPARTMENT OF THE ARMY, FIELD MANUAL 34-52, INTELLIGENCE INTERROGATION (1992) at 1-9. *See also*, Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013), Interview with Jim Clemente, S.F., Cal.,(June 13, 2013).

Torin Nelson, an interrogator who worked in Guantanamo in 2002 and who interviewed with W2G (see Part II *infra*) explained these and other interview techniques used by the military in an article by: Pratrap Chatterjee, "An Interrogator Speaks Out," AlterNet, March 6, 2005. Nelson noted that Army manual FM 34/52 listed 17 methods of interrogation. These included "Direct Approach," "Silence," "Rapid Fire," "Pride and Ego Up," "Pride and Ego Down," "Fear Up Mild" and "Fear Up Harsh." In the article, Nelson explained several of these techniques: "Fear Up Harsh" is the most heavy-handed technique. It involves yelling, accusing the subject of lying and banging one's fist on the table. "Fear Up Mild" might involve pulling out a file and reciting the information in a calm voice — where they were caught, the charges being brought against them, such as carrying a weapon while not in uniform, and the possible consequences. "Pride and Ego Down" is revealing that you know they were caught in an embarrassing situation." This technique might involve divulging knowledge that the subject was caught dressed in women's clothing to get across a checkpoint, or that he had failed to save the life of a colleague. According to the former interrogator, "you might make fun of them or you might promise to erase it from the record. More often that not, you use "Pride & Ego Up," because your subject is [already] shattered emotionally, so you build up their morale, say they've acted like a hero." The "Rapid Fire" technique involves two or three interrogators asking questions simultaneously.

¹³ DEPARTMENT OF THE ARMY, FIELD MANUAL 34-52, INTELLIGENCE INTERROGATION (1992) at 1-9. Both tests centered on whether U.S. or international law would be, or was being, violated.

¹⁴ Inquiry into the treatment of Detainees in U.S. Custody, Report of the Committee of Armed Services, United States Senate, November 20, 2008, page 113.

¹⁵ Although the NCIS is part of the DoD, it split with the DoD leadership regarding the use of the implementation of harsh interrogations in 2002 and 2003. Interview with David Brant, Director NCIS, Washington, D.C., March 11., 2011.

¹⁶ The CIA carried out the administration's policy of "extraordinary rendition." CIA agents seized alleged high-value detainees and transported them to other countries or to CIA controlled black sites where they were brutalized and tortured. See Honigsberg, *Our Nation Unhinged*, Part Four (2009). Because W2G has interviewed several military interrogators who worked in Bagram and Guantanamo, but no CIA

early years, the military advocated and implemented harsh interrogation methods that were counter-productive to intelligence gathering. For example, when a detainee provided valuable evidence to the FBI, the DoD would often demand to take over the interrogation of the detainee and apply its harsh interrogation methods. The rapport that the FBI created with the suspect was then often destroyed, and the detainee would no longer cooperate with anyone, including the FBI.¹⁷

The military's abusive, punitive and unlawful interrogation tactics over a decade ago, during the years 2002-2003, led to damaging unintended consequences that are still with us today. The long-term consequences include:

1 We have been unable to successfully prosecute and convict detainees after subjecting them to cruel, inhuman and degrading treatment, as well as torture. As a result, the detention center in Guantanamo Bay, Cuba --which President Bush wanted to close in 2008 and President Obama proclaimed he would close on his second day of office in 2009 -- remains open and more than 140 detainees continue to be held at the detention center;

2 Noncombat personnel who worked with detainees suffered PTSD;

3 By ignoring and circumventing the Geneva Conventions, the Convention Against Torture and the International Covenant on Civil and Political Rights, we abandoned the rule of law and human rights at home and suffered serious costs to our reputation abroad. That is, America has lost its standing and reputation as the world's foremost defender of human rights and the rule of law. Other nations now believe that we have given them permission to replicate our shameful behavior in treating their own captives.¹⁸

When countries are not mindful of their behaviors, they suffer going forward. The U.S. cannot move on and return to its position as the defender of human rights and the rule of law until it has taken full, unambiguous and unequivocal responsibility for the abusive interrogations.

Part I of this article discusses, through the voice of a former interrogator, as well as with references to government and military documents the "anything goes" attitude toward obtaining intelligence through the military's short-term interrogation tactics following 9/11. This attitude was prevalent in Bagram, Afghanistan and in Guantanamo Bay, Cuba in both 2002 and 2003. Additionally, this attitude was reflected in abusive detention

interrogators who admitted participating in extraordinary rendition, this article will focus on military interrogations. W2G did interview, however, three former detainees who were held in CIA black sites. Their stories will briefly appear following the Guantanamo section in Part I.

¹⁷ Interview with Mark Fallon, in S.F. (Cal., Oct. 25, 2013) As Fallon explained it, "We would make progress with the detainee at some point and find that the JTF [military] folks went in the middle of the night and started interrogating them very harshly. It would disrupt the progress we made and we'd have to rehabilitate" them and had essentially taken a few steps backward.

¹⁸ "Absent Moral Authority," Tom Malinowsky, <http://www.hrw.org/de/news/2004/02/01/absent-moral-authority>; Jeffrey K Cassin, "United States Moral Authority Undermined: The Foreign Affairs Costs of Abusive Detentions," 4 Cardozo Pub. L. Pol'y & Ethics J. 421 at 447.

practices, intended to soften up the detainees, making them less resistant in interrogations. **Part II** describes, through the voices of several interrogators, law enforcement's alternative approach to gathering intelligence through the more mindful and humane rapport-based interrogation tactics. This section will discuss the attempts to integrate the rapport-based approach into military interrogations, the initial rejection of that approach and its subsequent adoption by 2004. **Part III** sets out and explains the long-term injurious and costly unintended consequences of the short-term brutal interrogation tactics. It also suggests how we can correct the wrongs and return the U.S. to its former position as the world's leader on human rights and the rule of law.

The Witness to Guantanamo project (W2G)¹⁹ was fortunate to film interviews with four interrogators. The project also interviewed 48 detainees who spoke of their treatment while held at American bases in Kandahar and Bagram, Afghanistan, and in Guantanamo Bay, Cuba. The project spoke to civilian habeas lawyers and military JAG (Judge Advocate General) lawyers who represented the detainees, military prosecutors, and many other people who lived and worked in Guantanamo. These included prison guards, medics, interpreters, interrogators, and chaplains. The project also interviewed many high-ranking government and military officials. All of these people provided insights into the tactics of the jailers and their treatment of the detainees. Through 121 interviews, we can paint a picture of the evolution of interrogations post 9/11 beginning with the harsh approach adopted by the military in early 2002 up to the military's return to the more humane law enforcement approach in 2004.

Although commentators and researchers have identified the breadth and boundaries of the interrogations throughout the early years after 9/11,²⁰ no one has painted the picture through the words of identified and named interrogators who conducted them. The interrogators who spoke to the Witness to Guantanamo project provided fascinating insights into the processes of their interrogations. The interrogators gave first-hand accounts of whether and how their interrogation methods worked in attaining their goals of obtaining credible and actionable intelligence that would be of assistance to the national security of the United States.

Because these named interrogators are telling their stories in their own words, their stories are unique. Although the interrogators have spoken in other forums including Congressional and government investigations, as well as in military tribunals, much of the information in this article is not found to the same extent and detail anywhere else in the literature. These three men and one woman tell a remarkable story of the evolution of interrogations in those early years after the attacks on September 11, 2001.

Part I

Short-Term Abusive and Punitive Interrogation Practices in Afghanistan, and Guantanamo Bay, Cuba, 2002-2003

¹⁹ see fn above describing the project

²⁰ See e.g., Report of the Constitution Project's Task Force on Detainee Treatment, April 2013

1. Afghanistan

In interviews with the Witness to Guantanamo project, former German detainee of Turkish descent, Murat Kurnaz told how he was treated while held at the Kandahar Air Force Base in Afghanistan. For five days, the American authorities hung him on chains. His legs were shackled. Twice a day, he was lowered for medical personnel to examine his eyes and fingernails. When he was lowered, an interrogator asked him to sign papers admitting to being a “terrorist.” He refused each time, and was hoisted back up. On the third day, Kurnaz passed out. While hanging and still conscious, he observed a man hanging in front of him. His face was beaten so badly that Kurnaz could not identify him. The man died on the second day of Kurnaz’s ordeal. Kurnaz told W2G that he thought he was “next.” He added,

“I was sure I could be the next one because it’s a place with no rules and the only rule is that they can make everything what they want to and nobody except those people who were working there know anything what’s going on, nobody knows. So it’s a place with no rules and there everything can happen.”²¹

The interrogation practices described by one interrogator in this Part I were without rules. Many of the interrogators in Afghanistan in 2002 participated in the harsh kinds of treatments detainees suffered.²² And the one interrogator we profile in this section personified the brutal approach.

In the days immediately following the United States’ armed forces entry into Afghanistan in late 2001, captured alleged terrorists were transported to Kandahar Air Base. Kandahar was the only American prison in operation in Afghanistan at that time. Bagram Air Base was opened as a temporary facility in January 2002.²³ Bagram became a permanent “collection and interrogation point” and then hub for the U.S. government’s global detention and rendition practices in May of that year. It soon replaced Kandahar as the principle site for prisoner detention in Afghanistan.²⁴ However, in the very early days of 2002, Kandahar held most of the captives, and Bagram held relatively few.²⁵ However, in May 2002, Bagram was designated as the “primary collection and interrogation point,” while Kandahar became a “short term detention facility.”²⁶ The

²¹ Interview with Murat Kurnaz, in Bremen, Ger. (Aug. 19, 2009).

²² Salena Salcedo, Special Court-Martial Order, Number 23, Nov. 9, 2005; Jamie Sterling, “Military Interrogator Pleads Guilty to Afghan Detainee Assault,” *Jurist*, <http://jurist.org/paperchase/2005/08/military-interrogator-pleads-guilty-to.php>; Alexandria Samuel, “Army Interrogator Charged with Abusing Afghan Detainees to Plead Guilty,” *Jurist*, <http://jurist.org/paperchase/2005/09/army-interrogator-charged-with-abusing.php>.

²³ Reprieve, Briefing: Bagram Airbase Prison, page 1

²⁴ Reprieve, Briefing: Bagram Airbase Prison, page 1

²⁵ Amnesty International, “U.S.A. Out of sight, out of mind, out of court, the right of Bagram detainees to judicial review,” February 18, 2009, page 5.

²⁶ Amnesty International, “U.S.A. Out of sight, out of mind, out of court, the right of Bagram detainees to judicial review,” February 18, 2009, page 6.

military stopped using Kandahar as a major detention facility in June 2002, while the number of detainees sent to Bagram increased.²⁷

Because Bagram replaced Kandahar as the major detention center in Afghanistan, and because the interrogator we interviewed worked at Bagram, this article will focus on the detention center at Bagram Air Base.

Bagram was a cavernous converted aircraft machine shop. There were five wire cages on the main floor. Approximately 20 people were in each cage, sleeping on foam mats spread on the ground. Plastic buckets served as toilets.²⁸ Prisoners passed through crude rope-operated sally ports for shackling on their way to interrogation. Along one wall was a catwalk for guards and interrogators to observe the detainees. Isolation rooms and isolation cells were on the second floor.²⁹

Reprieve, a highly respected London-based human rights nongovernmental organization that advocates on behalf of prisoners world-wide, collected data on the treatment of prisoners in Bagram in 2002-2003. The torture and CIDT they found included goggling and shackling detainees, stripping detainees naked, forbidding them to look at each other, humiliating them, stepping on the neck of a prostrate detainee, kicking a detainee in the genitals, forcing a detainee to kiss the boots of an interrogator, forcing a detainee to pick out bottle caps out of a drum mixed with excrement and water, depriving detainees of sleep for weeks, chaining detainees to ceilings and doors, forcing them to stand while wearing hoods or spray-painted goggles, subjecting them to electrocution and beatings with whips, beatings with baseball bats in a practice referred to as “beat down,” feeding the detainees very little, adjusting room temperatures from 100 degrees to 10 degrees, dousing the detainees with freezing water in the winter resulting in frostbite and amputation, subjecting them to light deprivation, using dogs, threatening mock executions and rape, placing detainees in prolonged isolation for up to a year, interrogating them while they could hear the terrifying screams of others, and desecrating the Quran.³⁰

1. Damien Corsetti and the Rough and Tumble Early Interrogation Period in Bagram

Damien Corsetti arrived in Bagram on July 29, 2002.³¹ He was sent as an interrogator, although his training had been in military intelligence. His training as an interrogator was limited to two weeks in Fort Polk, Louisiana, with no training after arriving in Afghanistan.³² He told the Witness to Guantanamo project that he was sent by the U.S.

²⁷ Amnesty International, “U.S.A. Out of sight, out of mind, out of court, the right of Bagram detainees to judicial review,” February 18, 2009, page 6.

²⁸ Reprieve, Briefing: Bagram Airbase Prison, pages 4-5

²⁹ Lisa Hajjar, “Bagram, Obama’s Gitmo,” Middle East Research and Information Project, Fall, 2011 http://www.merip.org/mer/mer260/bagram-obamas-gitmo#_6

³⁰ Reprieve, Briefing: Bagram Airbase Prison, pages 6 and 7

³¹ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

³² Appendix A, Investigating Officer’s Report, Dec 7, 2005, Charge 1, Specification 2, testimony of Jennifer N. Higginbotham.

as an agent of America's anger. He was there to carry out America's demand for revenge.³³ The military placed this young man of 22, still coming of age, with little to no training and a volatile personality, in this exceptionally complex and stressful position. His mission was to interrogate "high-value" detainees to obtain actionable intelligence. As the representative of America, he embodied, internalized and embraced America's anger. Nevertheless, when he first arrived, he was terrified. "I was scared of the whole horror of war,"³⁴ he said.

When Corsetti enlisted in 2000, he had asked to be placed in intelligence services. He intended to sidestep combat. The military, realizing that he was smart accepted him into a counter-intelligence/human intelligence collection, an overt espionage operation.³⁵ But after 9/11, everything changed. The military, having been caught as unawares as everyone else, initiated unmindful, on-the-fly,³⁶ policies and redirected Corsetti into interrogation of "high-value detainees."

Corsetti was "super angry"³⁷ after seeing the damage to the Pentagon. And he carried that super anger with him on the plane to Bagram. Apparently, the military never assessed or inadequately assessed whether Corsetti had the maturity and character appropriate for the role of an effective interrogator.³⁸ Whether Corsetti was the best they could find, or even an appropriate choice, was never clear. He told W2G:

"You're like, I'm going to go over there and I'm going to have to go kill some poor motherfucker and he's going to be trying to kill me and what good can come of this?"³⁹

Corsetti may not be typical of the military interrogators in Bagram, but he is not unique. In the years following, the government prosecuted and convicted three former military

³³ Interview with Damien Corsetti, in Ga. (Mar. 4, 2013).

³⁴ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

³⁵ Interview with Damien Corsetti, in Ga. (Mar. 4, 2013). A human intelligence collector does more than conduct interrogations. According to the U.S. Army, an intelligence collector, among other tasks, supervises and conducts debriefings, interrogations, and elicitation for positive intelligence and force protection information; screens human intelligence sources and documents; exploits captured enemy documents, foreign language and open source publications; and conducts liaison and coordination in foreign language with host nation agencies. <http://army.com/info/mos/human-intelligence-collector>.

³⁶ Mark Fallon, CITF chief, said in his interview that "There were a lot of things that were done on the fly." Interview with Mark Fallon, in S.F., Cal., (Oct. 25, 2013).

³⁷ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

³⁸ Even when Corsetti was young, he knew that he "wanted to do his own thing. I was bored with society's norms." He grew up outside Washington, D.C., in a middle class family. He knew that school was not for him. "I would rather smoke pot and play the Nintendo than go to class and so I was really lacking a lot of discipline." In September 2000, at the age of 20 and realizing that he would not obtain college and graduate degrees, Corsetti decided that to obtain decent work without the education, he needed a security clearance. His choices were either becoming a defense contractor or working for a government agency. He chose the army because he could enroll into a counterintelligence program. "It was very important to me to have a top secret" clearance for jobs after leaving the military." His long-term goals did not include the military. Rather, "I wanted to be James Bond." Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

interrogators and three guards in Bagram for mistreating the detainees.⁴⁰ Interrogators were also accused of the death of two Afghani detainees, Dilawar and Habibullah.⁴¹ Because W2G did not interview these other interrogators or their superiors, we cannot speak directly to their characters and motivations. However, their inhumane actions toward detainees mirrored, and possibly were even worse than, those behaviors committed by Corsetti.

Years later, when Corsetti was tried for crimes he allegedly committed as an interrogator, a witness described Corsetti as taking the “role of the intimidator, because he was much larger than the rest of us.”⁴² The same witness understood that he had been known in Bagram as the “King of Torture.”⁴³ The witness, Jennifer Higginbotham, was a fellow interrogator. She testified after she was granted immunity. She stated that SSG Loring, the Platoon Sergeant responsible for the interrogators at Bagram, had employed Corsetti as the intimidator and had also referred to Corsetti as the “King of Torture.” According to Higginbotham, Corsetti “acknowledged that he was known as the ‘King of Torture.’”⁴⁴

Corsetti described his training as approach training, rather than textbook training.⁴⁵ That is, his superiors told him, “Here will be a good way to do this.”⁴⁶ “[T]his is how it is done here and just do it.”⁴⁷ Nobody questioned the training, even though this training was without standard operating procedures.⁴⁸

Corsetti worked 12-hour days. He had complete control over the prisoners. The Department of Defense (DoD) phoned the base daily with particular requests for information, usually focusing on specific prisoners.⁴⁹ The DoD did not care how the

⁴⁰ Jamie Sterling, “Military Interrogator Pleads Guilty to Afghan Detainee Assault,” Jurist, <http://jurist.org/paperchase/2005/08/military-interrogator-pleads-guilty-to.php> (Glendale Walls and Willie Brand); Holly Manges Jones, “US Interrogator Demoted for Assaulting Afghan Prisoner,” Jurist, <http://jurist.org/paperchase/2005/08/us-interrogator-demoted-for-assaulting.php> (Selena Salcedo); Tom Henry, “US Soldier Sentenced to 3 Months, Demoted in Afghan Assault,” Jurist, <http://jurist.org/paperchase/2005/08/us-interrogator-demoted-for-assaulting.php> (Brian Camack); (Joshua Clause); “Soldier Gets 75 Days in Afghan Abuse Case,” <http://www.military.com/NewsContent/0,13319,76351,00.html?ESRC=eb.nl> (Anthony Morden)

⁴¹ Tim Golden, “In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths,” New York Times. May 20, 2005. The murder of Dilawar, an innocent taxi driver, was memorialized in the Academy Award winning film, *Taxi to the Dark Side*. Corsetti was not involved the killing of either man.

⁴² Higginbotham Sworn Statement, Page 26.

⁴³ Higginbotham Sworn Statement, Page 24

⁴⁴ Higginbotham Sworn Statement, page 24 When W2G asked Corsetti about being the King of Torture, he told us that he had not heard the term before she said it at his trial. However, he said that he had great respect for Higginbotham and believed that she thought she was telling the truth. He did not consider her histrionic or malicious. He found her integrity to be above reproach. To Corsetti, Higginbotham was merely repeating what someone else had said. Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁴⁵ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁴⁶ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁴⁷ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁴⁸ Higginbotham Sworn Statement, p. 6

⁴⁹ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

interrogators obtained the information. That was the interrogators' domain. Interrogators could do what they needed to do to satisfy the DoD's demands for actionable intelligence.

During the interrogations, the interrogators explained to the detainees that everything was a privilege, including their clothing.⁵⁰ Detainees went to the restroom, ate and drank, and even slept with the interrogators' consent.

If Corsetti did not like what he was hearing from a detainee, or if the detainee chose to say nothing, Corsetti had no problem in turning up the heat. For example, he would punch detainees in the stomach (check) or put his crotch up against their faces. He would make them sit in a stress⁵¹ position for five hours without moving, while he sat by smoking, dumping his ashes into the man's pockets. He kept one detainee on his knees for two hours, while he read a book and spit on him.⁵² Corsetti admitted that when Sgt. Higgenbotham testified that Corsetti would sit on a detainee's chest, even though he did not remember doing it, it "[s]ounds like something I would do."⁵³ He wore \$300 gloves so he would not get their sweat on him when he manhandled the prisoners.⁵⁴

Corsetti's notes disappeared before his trial occurred. The last thing he and the other interrogators did when they left was burn all their books, he told W2G.⁵⁵ Interrogations were never videotaped.⁵⁶

After working for a few months presumably gathering actionable intelligence, Corsetti began to wonder whether all the men he was interrogating were actually connected to the attacks. It seemed to him that a number of the captives were swept up in a wide net, and did not belong at Bagram. They had little to nothing to offer.⁵⁷

Around the same time, Corsetti and a few of his colleagues began to question the tactics they used to obtain information. He wondered out loud whether they were violating the Geneva Convention (GC), which, in requiring humane treatment of all captives, forbids torture and cruel, inhuman and degrading treatment. Corsetti's supervisor arranged a meeting with the military's Judge Advocate General (JAG) lawyers.⁵⁸ The military

⁵⁰ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁵¹ According to Sgt. Higgenbotham, the military substituted the term "safety positions" for "stress positions." (Higginbotham Sworn Statement, Page 18) However, the positions were seen as "safety" for the interrogator, not the detainee. "You never feel completely safe, she testified." (Higginbotham Sworn Statement, Page 19) Corsetti agreed. According to Higgenbotham, stress or safety positions included requiring the detainee to kneel with his hands behind his head; sit on an invisible chair or wall; or stand with his feet more than shoulder width apart. (Higginbotham Sworn Statement, Page 18)

⁵² Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁵³ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁵⁴ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁵⁵ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁵⁶ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁵⁷ Fallon confirmed this. The reality was that they weren't terrorists. At the time of 9/11, the estimate range or the number of people who would consider al Qaeda probably range between 2 and 400. Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

⁵⁸ see also Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

lawyers explained to Corsetti and the other interrogators that they were not violating American law or the GC, and could continue with their interrogation techniques.⁵⁹

Because Corsetti had received training in the GC before he arrived in Afghanistan, he questioned that legal advice. However, he also knew that if he did not comply, after being advised that his interrogation practices were legal, he would be disciplined, and perhaps prosecuted, for not following orders. Consequently, he continued his abusive intelligence-gathering techniques.

Corsetti began to reflect and continued to understand over the years that, “the treatment of the prisoners would create the terrorists tomorrow.” You figure out very early “that there are “innocent people here” who should have been released. He added, “I treat my dog better than we treat the prisoners and all that’s [the treatment of the prisoners] going to do is grow animosity in the future.”⁶⁰

After Corsetti served seven months in Afghanistan, he was posted to Iraq.⁶¹ On October 6, 2005, Corsetti returned home from Iraq, with so many ribbons that he “looked like a general.”⁶² However, within 24 hours after his return he was placed in handcuffs. He was arrested for the mistreatment of certain detainees in Afghanistan from August 2002 to February 2003. The charges included dereliction of duty, maltreatment, assault and performing an indecent act with another person.⁶³

Corsetti was accused of sitting on top of a detainee, throwing garbage on him, putting cigarette ash on him, walking across a detainee’s handcuffed hands, pulling hairs out of his chest, pulling the head and beard of a detainee, removing a detainee’s pants to expose his genitalia to a female interrogator, bending him over a table and waving a bottle in close proximity of his buttocks, striking the detainee in the leg, groin and chest with his hands and knees, showing a detainee a condom and his penis and saying, “This is special for you,” “This is your god,” and “I’m going to fuck you,” and placing his penis near the detainee’s face and placing his groin against the detainee’s buttocks.⁶⁴

The charges were partly based on statements by a Guantanamo detainee, Ahmed al-Darbi. Al-Darbi, accused Corsetti of kicking him in the stomach and groin, stepping on

⁵⁹ In spring 2002, the Bush Administration had determined that the GC did not apply to the prisoners captured in Afghanistan. See Bush memo, February 7, 2002, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.pegc.us%2Farchive%2FWhite_House%2Fbush_memo_20020207_ed.pdf&ei=m0rhU9C3KM3soASz04HIBg&usg=AFQjCNEqX7mt9011m6m6jxHJfnGvXAM2A&bvm=bv.72389368,d.cGU; see also see, Chasing 'Enemy Combatants' and Circumventing International Law: A License for Sanctioned Abuse; *UCLA Journal of International Law and Foreign Affairs*, Vol. 12, No. 1, Spring 2007..

⁶⁰ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁶¹ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013). In Iraq, he worked as an intelligence officer and also conducted interrogations. He was one of the first interrogators to arrive in Abu Ghraib, although he stated that he was not aware of the abusive actions by the MPs before the horrifying photos of torture and CID in the treatment of Iraqi prisoners were published.⁶¹

⁶² Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁶³ General Court-Martial Order, 25 July 2006, Number 20.

⁶⁴ General Court-Martial Order, 25 July 2006, Number 20.

his handcuffed hands, showing him a condom and telling him that he is going to rape him, as well as other abuses.⁶⁵

Jennifer N. Higginbotham testified that she had witnessed Corsetti's pulling a detainee's beard and also sitting on a detainee.⁶⁶ She indicated that the interrogators were not permitted to inflict harm, or strike a detainee except in self-defense. However, she also testified that there was no standard operating procedure when they first arrived.⁶⁷

Corsetti said that he never pressed his penis against someone's face. It was either an exaggeration or a mix-up in interpretation, he explained. However, he did use the detainee's shirt as an ashtray, plucked hairs out of his chest, poked him in the chest, poured water over him, and made him pick up feces with latex gloves and cardboard. Corsetti also confirmed that people were hung by their wrists.⁶⁸

According to Corsetti, the other interrogators either agreed to plead to certain charges, or turned State's witness to testify against him.⁶⁹ Corsetti refused a plea bargain because the pleas included crimes he did not believe he had committed. He told W2G that he would have pled to some of the charges including one assault (moving a man's head by his beard).⁷⁰ But, he would not plead guilty to something he did not do, or to a tactic that the JAG lawyers told him was not torture or CIDT. Even if the tactic had been wrong, he had obtained JAG approval.⁷¹ In discussing the charges, Corsetti explained to W2G, "I do want to clarify that I'm not innocent of everything they accused me of. [However,] on a legal basis, I was innocent of everything they accused me of."⁷² Corsetti admitted that he did "some horrible things. Legally, not really. Legally, on paper I didn't, but on a moral level, ethical level, I definitely did, you know."⁷³

The trial was a court-martial, before a jury of military officials. He was convinced he was going to prison.⁷⁴ To his great surprise, Corsetti was acquitted of every charge, including those to which he would have pled in a plea deal. He believed his acquittal was a result of jury nullification. Corsetti believes that the jury was composed of people who had been in "special operations" and understood the pressures that the military placed on Corsetti to obtain intelligence at any cost at that time in 2002.⁷⁵

Corsetti believed that his behavior, as well as that of the other interrogators, was standard policy. "Basically, just that everything that we did was acceptable, that this is not the

⁶⁵ deposition of Ahmed al Darbi, Guantanamo Bay, Cuba, 8 March 2006

⁶⁶ Higginbotham Sworn Statement, p. 21

⁶⁷ Higginbotham Sworn Statement, p. 6.

⁶⁸ See Murat Kurnaz above re Kandahar

⁶⁹ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013); Interview with Damien Corsetti, in Ga. (Mar. 4, 2013).

⁷⁰ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷¹ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷² Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷³ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷⁴ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷⁵ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

work of this loose cannon rogue wolf Corsetti. This was institutionalized and this is how shit went down.” They made decisions “facilitated through a system. It really was systematic torture.” He compared his work and the work of the other interrogators to working at a Ford plant.

“You just fuckin’ do it the way the assembly line’s done and you go along with it, and you stamp your fuckin’ sheet metal and go home. Well, my assembly line job was in a prison with high-level prisoners and that was it.”⁷⁶

When W2G asked him to describe the moral and ethical violations that he admitted to committing, he replied, “I started not looking at these people as human and looking at them as numbers, and looking at them as evil. But these people, even the terrorists, are not evil. They’re good and evil. They have good and bad in them, as all of us do. We all have our demons and hey, they chose a different way, but you can’t really say that you wouldn’t have turned out like that if you were raised and sent to a Madrasah and raised in the environment that they were raised in. You can’t say that you would be any different.”⁷⁷ “I didn’t treat human beings like human beings...I worsened humanity during a time of my life.”⁷⁸

In both of his interviews with W2G, Corsetti apologized on camera.⁷⁹ “I guess I’d really want to emphasize to people that, hey, this could be you. If you were taken from your situation and put into this, don’t think that your decisions would be greatly different than my own. I wasn’t this person when I went there. I became this person and it was through the environment I was in that that happened.”⁸⁰

2. Guantanamo Bay, Cuba⁸¹

On August 4, 2001, Mohammed al Qahtani, a Saudi citizen, detainee number 063, was flying to the U.S. from Dubai to meet up with colleagues. Presumably, his intent was to join with others in flying planes into the World Trade Center, the Pentagon and perhaps

⁷⁶ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷⁷ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷⁸ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

⁷⁹ Corsetti was the only person interviewed by W2G twice.

⁸⁰ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013). At the end of both interviews, it seemed to W2G personnel that becoming accountable was transformative for Corsetti.

⁸¹ The Witness to Guantanamo project was not able to find an interrogator in Guantanamo who had participated in harsh interrogations, and was willing to talk to W2G. The two Guantanamo interrogators, Jennifer Bryson and Torin Nelson, who agreed to talk to W2G (See Part II) implemented the rapport-based approach. W2G did, however, interview former detainees and others who described some of the inhumane treatment that they were forced to endure or observe. The experiences of two detainees who suffered extended and brutal periods of isolation are described later in this section, as are the experiences of two detainees who were interrogated while undergoing surgery under a local anesthetic. Other stories of abuse told to W2G by detainees are also included in this Part. Accordingly, although this Part includes formerly published materials, it also includes newly-learned information obtained from W2G interviews. Taken together the formerly published materials and the newly learned information provide a rich context in support of the article’s thesis.

another iconic structure such as the Capitol or the White House. However, upon his arrival in Florida, an observant and conscientious custom official turned him away, and sent him back to Dubai. Had he been allowed into the U.S., al Qahtani would have likely been the, 20th hijacker, the fifth hijacker on the plane that was forced down over the fields in Pennsylvania.⁸² He was captured after 9/11 in Tora Bora, Afghanistan, and transported to Guantanamo.⁸³ It was after he arrived in Guantanamo that the military made the connection between him and the other hijackers.

In March 2006, Time Magazine released the military's interrogation log describing the torture that al Qahtani suffered in Guantanamo in late 2002. The log begins on November 23, 2002. It details his day-to-day treatment as he is psychologically and physically tortured.⁸⁴ He suffered sleep deprivation; was forced to urinate on himself; had his head and beard shaved; was subjected to the air conditioning turned up to freezing and then turned off so the tropical heat in the room became stifling; felt a female intrude on his personnel space, possibly touching and fondling him; was made to wear a mask and dance while hooded; was bombarded with white noise; was forced to look at and answer questions about bikini clad models; and endured water repeatedly poured over his head.⁸⁵

During this same period in November, Jim Clemente, an FBI agent then in Guantanamo,⁸⁶ observed a female officer whispering into a detainee's ear, putting lotion on his arm, and moving her hands to the lap of the detainee. A marine told Clemente that the female also grabbed the detainee's genitals. Given the context of Clemente's observation, it is likely that the detainee Clemente observed was al Qahtani.⁸⁷ These details are included in a letter in which another agent offers his own observations of the treatment of al Qahtani.⁸⁸

FBI agents also reported observing how a dog was used to intimidate al Qahtani and how al Qahtani had been totally isolated during a three-month period in a cell flooded with light.⁸⁹ These agents noticed that by late November 2002, al Qahtani was talking to non-

⁸² Adam Zagorin, "20th Hijacker" Claims that Torture Made Him Lie, Time Magazine, Mar. 3, 2006, <http://content.time.com/time/nation/article/0,8599,1169322,00.html>

⁸³ Adam Zagorin, "20th Hijacker" Claims that Torture Made Him Lie, Time Magazine, Mar. 3, 2006, <http://content.time.com/time/nation/article/0,8599,1169322,00.html>

⁸⁴ <http://content.time.com/time/2006/log/log.pdf>, http://ccrjustice.org/files/Publication_AlQahtaniLog.pdf

⁸⁵ All of these incidents appeared in the Interrogation Log of Detainee 063, Mohammed al Qahtani, published by Time Magazine, June 20, 2005. In January 2009, Susan Crawford, the convening authority of the military commissions dropped all charges against al Qahtani on the grounds that he had been tortured and that the evidence against him was tainted and inadmissible. William Glaberson, "Case Against 9/11 Detainee Dismissed," NY Times, May 14, 2008, <http://www.nytimes.com/2008/05/14/washington/14gitmo.html>

⁸⁶ See Part II infra on Clemente's role in advocating for rapport-building interrogations.

⁸⁷ Letter to General Donald J. Ryder July 14, 2004, from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division.

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existent people, reported hearing voices and crouched in a corner covered with a sheet -- all consistent with extreme psychological trauma.⁹⁰ In addition, Al Qahtani suffered severe physical consequences of his treatment, including swollen extremities and a life-threatening precipitous drop in his heart rate.⁹¹

Mark Fallon of CITF told W2G that it was with al Qahtani that the interrogators “started going down the road that I felt was illegal.”⁹² Clemente described the personnel in Guantanamo as “just gung ho U.S. military wanting to save their country, and the leaders were telling them what to do.” Apparently, many of the interrogators in Guantanamo had attitudes that were similar to those of Damien Corsetti and others who worked in Bagram.⁹³ Clemente was concerned that the military would blame the abusive behavior he observed on the “lowly ‘rogue’ military personnel” similarly to what later happened in Abu Ghraib.⁹⁴

The abuse in Guantanamo went significantly beyond the abuse of al Qahtani, and was not confined to the time the detainees spent in the interrogation booth. That is, the Guantanamo detention center was a lot more than a prison of holding cells. An important goal of the detention center was to soften up detainees and weaken their resistance in preparation for interrogation and intelligence gathering.⁹⁵ In fact, this objective was implemented as early as summer 2002, when Major General Dunlavey arrived as Camp Commander.

From the start, Dunlavey intended to exploit the detainees for their intelligence value. As Mark Fallon explained to W2G,⁹⁶ before Dunlavey arrived, Joint Task Force (JTF) 160, which had experience in custodial operations, governed as the jailers. However, Dunlavey changed the approach by creating JTF 170. JTF 170 was designed to directly seek intelligence from the detainees. At the time that JTF 170 was formed, Deputy Commander Mark Fallon’s law enforcement Criminal Investigation Task Force (CITF)

⁹⁰ Letter to General Donald J. Ryder July 14, 2004, from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division.

⁹¹ Interrogation Log of Detainee 063, Mohammed al Qahtani, published by Time Magazine, June 20, 2005.

⁹² Interview with Mark Fallon, in S.F., Cal., (Oct. 25, 2013). Earlier that year, CITF had moved away from the military approach and aligned with the FBI to become a “unified team, with focus on the law enforcement, rapport-based, approach. See footnote that begins “Memorandum for Commander, United States Southern Command; Subject: Counter-Resistance Strategies, October 11, 2002.” Currently number 99, but will, obviously, change.

⁹³ Jennifer Bryson’s description of an interrogator asking her, as Team Chief, to approve the use of strobe lights and “head-banger” music in his interrogation of a detainee. See Part II infra, section on Jennifer Bryson.

⁹⁴ In W2G conversations with Damian Corsetti,⁹⁴ the same concept of blaming the lowly personnel -- or what Clemente described as “pushing it downhill” --happened in Bagram as well.

⁹⁵ Geoffrey Miller supported the use of military police to facilitate interrogation as evidence by his recommendation that this practice be instituted in Iraq. Report of the Constitution Project’s Task Force on Detainee Treatment, p. 40. Higginbotham also said the same thing about Bagram in her sworn statement (p. 7).

⁹⁶ Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

was responsible for the investigations. And, CITF continued to interrogate detainees immediately after JTF 170 was created. But soon after JTF 170 was formed, a conflict between General Dunlavey and CITF surfaced.⁹⁷ General Dunlavey decided he needed to control the jailing process along with the interrogation process, and combined JTF 160 and 170. CITF's law enforcement approach to interrogations ended.⁹⁸

Consequently, as detentions and interrogations became intertwined, detainees were made to suffer cruel, inhuman and degrading treatment, as well as torture. W2G documented the CIDT and torture and the interrelationship between detention and interrogation. Former detainees, as well as others who lived or worked at the detention center, informed W2G of many instances of inhumane treatment at the Guantanamo detention center, particularly during those early years from 2002 to 2004.

For example, JAG attorney Lt.Col. David Frakt told W2G how he noticed while reviewing military documents that his client Mohamed Jawad, a juvenile from Afghanistan, had been moved from cell to cell every three hours for over two continuous weeks. This process became known as "frequent flyer."⁹⁹ As Frakt understood it, the frequent flyer program was designed as a sleep-deprivation technique, often used to soften the detainees for interrogation. That is, the program intended, in addition to punishing detainees, to disorient them and weaken their resistance.¹⁰⁰

Another inhumane technique used by the military was isolation. Michael Gelles, a psychologist who worked with the Naval Criminal Intelligence Service explained how physical isolation could be used as an interrogation device. By isolating the detainee, the military prevented him from having "access to lots of other people who can support [his] being resistant."¹⁰¹ Then, as Gelles explained in talking about meetings with detainees, "if you're going to talk and you need to have a relationship, I want you to have it with me. And, I want you to talk to me....and that's who you're going to talk to for a while."¹⁰²

⁹⁷ JTF 170's operations reported to Jim Haynes and his Office of the General Counsel. Haynes reported directly to Rumsfeld. CITF reported to the Joint Chiefs of Staff. Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

⁹⁸ To Fallon, the interrogators in JTF 170 had based their training on the "pride up and ego down, and ego down harsh" approach. Consequently, CITF moved away from the military approach and aligned with the FBI to become a "unified team" with focus on the law enforcement, rapport-building, approach. See Part II, *infra*.

⁹⁹ Interview with David Frakt, in Irvine, Cal. (May 17, 2010).

¹⁰⁰ Interview with David Frakt, in Irvine, Cal. (May 17, 2010) In his interview, Frakt notes that the frequent flyer program was used both to soften up a detainee for interrogation purposes, as well as for punishment purposes.

¹⁰¹ Interview with Michael Gelles, in Wash, D.C., (Mar. 11, 2011).

¹⁰² Interview with Michael Gelles, in Wash, D.C. (Mar. 11, 2011).

The problem, however, is that in isolation detainees can suffer CIDT and even torture after only a short period of 15 days.¹⁰³ Two detainees talked to W2G about being held in isolation for particularly long periods. One was held for a year, the other for over two years. Feroz Ali Abbasi,¹⁰⁴ from the U.K., told how he had first believed that he could hold out during his long year of isolation and not reveal confidences to the interrogators. He kept himself going by concentrating on one particular item each day, such as each step of his walk. But although he believed that he could hold out, after a year, “I broke,” he told W2G.

Moazzam Begg, also from the U.K., was held in isolation for over two years. At one point, he was so desperate for human contact that he asked to speak to someone. The military sent him a psychologist. The psychologist asked him “have you thought about removing your trousers, threading your trousers with a sheet, putting the crotched part around your neck so you can make a strong noose, and then tying it to the top corner of your cell and jumping off to commit suicide?”¹⁰⁵

Another detainee was not physically isolated, but linguistically isolated for not only the early years of 2002-2003, but for much of the time he was in Guantanamo, until he was released in 2010. He was from Uzbekistan, and only spoke Uzbek. Despite the existence of other Uzbek speakers in Guantanamo, he was housed where the people around him spoke only Arabic or English.¹⁰⁶ He would awake each morning and weep.

Another detainee told W2G how he was interrogated while undergoing surgery on his back.¹⁰⁷ He was under a local anesthetic. A second detainee, Tarek Dergoul, told us a similar story of being interrogated as military doctors surgically worked on his arm.¹⁰⁸

¹⁰³ Importantly, the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman and degrading treatment has defined prolonged solitary confinement as any period in excess of 15 days. *Interim Rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 60, G.A., U.N. Doc. A/66/268 (May 8, 2011) (Juan Méndez) hereinafter “Interim Rep. of the Special Rapporteur”. The Special Rapporteur chose this limit because some of the literature identifies harmful psychological effects of isolation that can become irreversible after 15 days. (id.) The U.S. has not adopted the 15-day standard. Instead the U.S. uses a 30-day cycle of review, but not necessarily release. Despite the required reviews, U.S. detainees may spend years in solitary confinement. See Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 60, 61 (“In a joint report on the situation of detainees at Guantanamo Bay, experts found that although 30 days of isolation was the maximum period permissible, some detainees were returned to isolation after very short breaks over a period of 18 months.”)

¹⁰⁴ Interview with Feroz Ali Abbasi in London, U.K. (Aug. 7, 2010). Mr. Ali Abbasi was in Guantanamo from January 2002 until January 2005.

¹⁰⁵ Interview with Moazzam Begg in Birmingham, U.K. (Aug. 17 2009) Mr. Begg was in Guantanamo from February 2003 until January 2005.

¹⁰⁶ Interview with Detainee in Riga, Latvia (Aug. 4, 2011). For a full treatment of the concept of linguistic isolation, see “Linguistic Isolation: A New Human Rights Violation Constituting Torture, and Cruel, Inhuman and Degrading Treatment. Northwestern University Journal of International Human Rights, Vol. 12. No. 1, (2014).

¹⁰⁷ Interview with Brahim Yadel, in Paris, Fr. (Aug. 15, 2009)

¹⁰⁸ Interview with Tarek Dergoul in London, U.K. (Aug. 20, 2009)

Several detainees explained to W2G that they believed Guantanamo was designed as an experimental lab for psychological torture. For example, a detainee from the U.K., Bisher al Rawi, noted that when he was released his friends did not believe that he had been tortured because they saw no physical scars on him. As he explained to W2G, his friends could not visibly see the psychological scars he suffered and had continued to suffer for years after release.¹⁰⁹

A French detainee, Mourad Benchellali,¹¹⁰ reiterated the effects of psychological scars, also stressing that he believed Guantanamo was a psychological prison. A psychological prison, he indicated, was significantly worse than a prison whose emphasis was solely on physical torture. The effects of psychological torture are far more lasting, if not permanent, he believed.

The aggressive approach to detention and interrogation at Guantanamo was addressed in a series of high-level policy decisions and memos. For example, in September 2002, three Department of Defense Behavioral Science Consultation Team, or BSCT (Biscuit) members – Major Paul Burney, Major John Leso, and a third person who is still publically unknown – along with four interrogators, received military interrogation training at Fort Bragg in North Carolina. The interrogation training included instruction on the “Survival, Evasion, Resistance and Escape” (SERE) techniques.

The SERE program was originally created in the 1950s to train military and special operations personnel to resist Chinese and North Korean torture and inhumane interrogation techniques during the Korean War. However in 2002, Bruce Jessen, a senior psychologist for SERE training and working for the Joint Personnel Recovery Agency -- which trained CIA agents in “SERE derived techniques” -- prepared a report to “reverse-engineer” the SERE training. The report’s purpose was to apply SERE-based approaches to captives in the Global War on Terror.¹¹¹ That is, rather than use SERE solely as a training program to assist special operations personnel who might be captured in dangerous war zones, the program was reviewed to see how it could be used pro-actively in eliciting intelligence information from prisoners post 9/11.¹¹²

A BSCT memo written on October 2, 2002 suggested certain detention and interrogation techniques, designed for intelligence gathering, that were linked to the SERE training program.¹¹³ Among the tactics used in the SERE program was one that maintained that daily activities be provided on random schedules. Another tactic was the disruption of prisoners’ sleep cycles. The same memo proposed that detainees who resisted be limited to four hours of sleep per day.¹¹⁴

¹⁰⁹ Interview with Bisher al Rawi in London, U.K. (Aug. 2, 2011)

¹¹⁰ Interview with Mourad Benchellali in Lyon, Fr. (Aug. 9, 2009)

¹¹¹ http://www.historycommons.org/timeline.jsp?hr_types_of_abuses_performed_by_americans=torture,rendition,_and_other_abuses_against_captives_in_iraq_afghanistan_and_elsewhere_sere_techniques&timeline=torture,rendition,_and_other_abuses_against_captives_in_iraq_afghanistan_and_elsewhere

¹¹² In fact, the SERE techniques are still included in a course for military personnel today.

<http://www.gosere.com/> (Air Force); <http://www.netc.navy.mil/centers/csf/What.aspx?ID=0> (Navy)

¹¹³ Report of the Constitution Project’s Task Force on Detainee Treatment, at 38.

¹¹⁴ Report of the Constitution Project’s Task Force on Detainee Treatment, at 220.

The SERE-based interrogation techniques have been described as creating a syndrome of “learned helplessness.”¹¹⁵ The intent was that the detainee become more compliant when interrogated. However, Mark Fallon of CITF describes the effect of learned helplessness this way: “if you put a dog in a cage and you just beat the dog for whatever they did, they wouldn’t know it was right or wrong and they’d start complying to whatever.”¹¹⁶ As Fallon explains, compliance is, of course, different from cooperation.¹¹⁷

During that fall of 2002 and winter of 2003, personnel from the DoD as well as the Department of Justice (DoJ) issued a flurry of additional memos addressing interrogation tactics. The memos, short-sighted, haphazard and condoning an “anything goes” approach, appeared to be issued in two streams. One stream was through the DoD chain of command. The other was through the DoJ Office of Legal Counsel and the White House, and focused on CIA interrogations.¹¹⁸ All the memos seemed designed to document and support cruel, inhuman and degrading treatment, as well as torture.

Three DoD memos were dated October 11, 2002. The first, by Lt.Col. Jerald Phifer, detailed three categories of “Counter-Resistance Strategies.”¹¹⁹ Category I included yelling, deception, and multiple interrogators. Category II included stress positions, including standing for four hours, using false documents, isolation for up to 30 days with requests for extensions¹²⁰, interrogating in other than a standard interrogation booth, deprivation of light and auditory stimuli, 20-hour interrogations, placing a hood over the detainee during questioning, removing all clothing, forced removal of hair, and using individual phobias, such as fear of dogs, to induce stress. Category III techniques included convincing detainee that death or severely painful consequences are imminent to him or his family, exposure to cold weather or water, use of a “wet towel and rippling

¹¹⁵ Report of the Constitution Project’s Task Force on Detainee Treatment, at 206.

¹¹⁶ Transcript of Interview with Mark Fallon, in S.F., Cal., Oct. 25, 2013

¹¹⁷ Fallon believes that the decision to adopt SERE techniques was sanctioned by the White House, Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

¹¹⁸ Although this article focuses on military interrogations in the early years of 2002-2003 in Bagram and Guantanamo, W2G interviewed three former detainees who were brutalized by the CIA in its extraordinary rendition program, which was designed to torture detainees while also seeking actionable intelligence from them. Bisher al Rawi (see above) and Jamil el-Bamma, both residents of the U.K., were held in the underground, pitch black, “Dark Prison” in Kabul Afghanistan, for several weeks. Interview with Bisher al Rawi in London, U.K. (Aug. 2, 2011); Interview with Jamil el-Bamma in London, U.K. (Aug. 2, 2011). The only light they saw during the entire time was when the jailor walked by with a dim flashlight to briefly check on them, and toss them food. On the first day, Bisher, not being able to see anything, kicked over his “honey bucket.” The sensory deprivation suffered by these men was severe. Both men quickly lost all sense of time and space. Mamdouh Habib, an Australian national, was held incognito, beaten severely and tortured in Egypt, under CIA direction, for six months. Interview with Mamdouh Habib in Sydney, Austl. (Dec. 30, 2011). His wife, Maha Habib, had no idea where he was for much of that time. Interview with Maha Habib in Sydney, Austl. (Jan. 5, 2012). All three men were brought to Guantanamo after their torments in the CIA program. See *Our Nation Unhinged* for more description and analysis of the CIA’s extraordinary rendition program.

¹¹⁹ Memorandum for Commander, Joint Task Force 170. Subj: Request for Approval of Counter-Resistant Strategies, October 11, 2002

¹²⁰ Many detainees were held in isolation for longer than 30 days. In fact, two detainees interviewed by W2G, Feroz Ali Abbasi and Moazzam Begg, were held for a year or longer. see above.

water to induce the misperception of suffocating (this was a precursor to what has become known as waterboarding), poking in the chest or other “non-injurious” physical contact.¹²¹

Commander Major General Michael Dunlavey then wrote to the United States Southern Command (SouthCom) requesting permission to approve Phifer’s Counter-Resistance strategies in order to “enhance our efforts to extract additional information.” He concluded that the techniques “do not violate U.S. or international laws.”¹²²

In the third memo, Senior Judge Advocate Lt.Col. Diane Beaver justified Phifer’s Counter-Resistance Strategies under federal law, the constitution, and international law treaties and declarations.¹²³ Although she requested legal review of her memo, Beaver, nevertheless, approved the Category I and II techniques.

She also approved Category III techniques, although she requested that the Commanding General and the Commander of SouthCom also endorse these techniques. That is, although she did not find that these techniques violated federal law or the constitution, she asked for affirmation by military personnel higher up the chain of command.

In a memo to Secretary of Defense Donald Rumsfeld, William Haynes, General Counsel to the Department of Defense, recommended that Rumsfeld approve Categories I and II and only the mild physical contact procedure in Category III.¹²⁴ He indicated that although “all Category III techniques may be legally available,” the other Category III techniques should not be adopted at that time. At the bottom of the memo, date-stamped December 2, 2002, Rumsfeld scribbled, “However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?”

In her legal analysis supporting the inhumane treatment of the detainees, Beaver considered and weighted the effect of the world’s leading humanitarian and human rights treaties: the Geneva Conventions (GC), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), and the International Covenant on Civil and Political Rights (ICCPR). All three documents were signed and ratified by the United States.

¹²¹ Clemente also indicated that David Becker, the head of the Department of Homeland Security Human Intelligence Services (Humint), was also involved in developing the interrogation plans described in Phifer’s memo.

¹²² Memorandum for Commander, United States Southern Command; Subject: Counter-Resistance Strategies, October 11, 2002.

¹²³ Memorandum for Commander, Joint Task Force 170; Subj: Legal Review of Aggressive Interrogation Techniques; October 11, 2002.

¹²⁴ Action Memo for Secretary of Defense From William J. Haynes, General Counsel, Subject Counter-Resistance Techniques, November 27, 2002.

Beaver determined that because the detainees were not prisoners of war but were “enemy combatants,”¹²⁵ the GC did not apply to them. She also decided that CAT and the ICCPR only bound the U.S. to the standard articulated by the 8th Amendment’s prohibition against cruel and unusual punishment, and not to any higher standards. She concluded her analysis by deducing that the interrogators could not be in violation of the 8th Amendment standard because they acted in “good faith” and that there was a legitimate governmental interest and objective in obtaining the information. She also noted that the interrogators were also excused because they had no specific intent to cause harm.

Although she was a Judge Advocate General (JAG) lawyer, Lt.Col, Beaver was neither an expert in international law nor likely an expert in the rules of interrogation under American law. She should have not been assigned to draft the memo on the treatment of detainees, and certainly not to be the sole signatory to the memo. However, because the military assigned the task of drafting this memo to her, the military’s chain of command should have been earnestly involved in reviewing and vetting her work. She, herself, was aware of her limited knowledge and expertise in these areas, as indicated by her request that the harsher methods suggested in Phifer’s memo “undergo a legal review prior to their commencement.”¹²⁶

Nevertheless, either no one in the chain of command seriously reviewed her work or, if someone did review her analysis, no other military official acknowledged accountability by signing the memo. The military left her to defend her position alone. Because her signature was the only one on the memo, civil libertarians, international and constitutional law scholars, and human rights advocates pointed to her as the person who provided legal cover for the inhumane interrogation techniques in Guantanamo.

In her public statements, she seems to waver between defending her actions and apologizing if she was mistaken. In later years, Beaver claimed surprise that her memo was accepted as is.¹²⁷ She maintained before the Senate Armed Services Committee that the tactics she had authorized would not have been unlawful if the approval and control procedures had been followed.¹²⁸ She also defended her position by testifying that, “under great stress and danger I tried to do everything in my lawful power to protect the American people.”¹²⁹

¹²⁵ For an analysis of the term enemy combatants and how the administration used it to circumvent the GC, see, Chasing 'Enemy Combatants' and Circumventing International Law: A License for Sanctioned Abuse; *UCLA Journal of International Law and Foreign Affairs*, Vol. 12, No. 1, Spring 2007.

¹²⁶ Memorandum for Commander, Joint Task Force 170; Subj: Legal Review of Aggressive Interrogation Techniques; October 11, 2002.

¹²⁷ Statement, Lieutenant Colonel (Retired) Diane E. Beaver, USA, June 17th, 2008, The United States Senate Armed Services Committee, p. 2

¹²⁸ Statement, Lieutenant Colonel (Retired) Diane E. Beaver, USA, June 17th, 2008, The United States Senate Armed Services Committee, p. 3.

¹²⁹ Statement, Lieutenant Colonel (Retired) Diane E. Beaver, USA, June 17th, 2008, The United States Senate Armed Services Committee, p. 3. One might have the impression that Beaver was made to take the blame because she was a low-ranking woman in the military’s high-testosterone male culture. However, if she saw herself as a victim in that environment, she may also have had to view herself with diminished status and independence as a military lawyer. Consequently, she has never publicly stated that she was used by the administration to take the fall.

On August 1, 2002, two months before Beaver wrote her memo, John Yoo, Assistant Attorney General, and Jay Bybee, his supervisor in the Office of Legal Counsel (OLC), in the Department of Justice, issued what have been described as several “Torture Memos.” One torture memo indicated that before tactics could rise to the level of torture, “[t]he victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure or permanent damage resulting in loss of significant body function will likely result.”¹³⁰ Yoo and Bybee’s definition of torture was exceedingly narrow when compared to the definition of torture found in the internationally recognized “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (CAT).¹³¹ Under CAT, “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹³²

Another Yoo and Bybee memo reviewed and sanctioned ten torture and cruel, inhuman and degrading techniques for a particular captured “high-level” detainee named Abu Zabaydah.¹³³ The ten techniques were attention grasp; walling, i.e. pushing detainee into flexible wall; facial hold; facial slap; cramped confinement in a confined space or container; wall standing, where he is 4-5 feet from the wall, his arms stretched out and his fingers resting on the wall; stress positions such as kneeling on the floor while leaning back at a 45 degree angle; sleep deprivation; insects placed in a confinement box; and waterboarding.¹³⁴ A number of other OLC memos also approving inhumane techniques were drafted and used over the next two years.¹³⁵

The OLC provides legal counsel to the president. Its role is to provide objective analyses of the law. With the appropriate legal information, the president can then make an informed decision. However, Yoo and Bybee politicized the office. Their memos were not objective. Rather the memos were designed to condone and endorse illegal and inhumane interrogation techniques undertaken by the CIA and the military.

Although Beaver did not link her memo to the torture memos, the August 1st torture memo seemed to set the groundwork for Beaver’s memo. Her memo mirrors the conceit of the OLC memo in justifying coercive interrogation techniques. It is unimaginable that

¹³⁰ Memorandum for Alberto R. Gonzales, Re: Standards of Conduct for Interrogation under 18 USC Sections 2340-2340A, August 1, 2002, from Jay Bybee, page 13.

¹³¹ <http://www.hrweb.org/legal/cat.html>, The U.S. is a signatory of CAT. However, the U.S. reserved the right to define CIDT differently.

¹³² <http://www.hrweb.org/legal/cat.html>, Part I, Article 1, 1

¹³³ Memorandum to John Rizzo, Interrogation of al Qaeda Operative, August 1, 2002, from Jay Bybee.

¹³⁴ Memorandum to John Rizzo, Interrogation of al Qaeda Operative, August 1, 2002, from Jay Bybee, pages 2 and 3.

¹³⁵ U.S. Dept. of Justice, OLC FOIA Electronic Reading Room, <http://www.justice.gov/olc/olc-foia1.htm>

either Beaver did not see at least one of these OLC's memos, or that someone did not tell her of the analysis and outcome of the OLC's memos before she drafted her own memo.

In approving the techniques, Yoo and Bybee protected government officials and interrogators from any consequences of their behavior. Those who advocated rapport-based approaches, or who opposed or even voiced doubts about the use of harsh interrogations including torture and CIDT, were marginalized from the seats of power and decision-making.¹³⁶

Part II

Examples of Law Enforcement “Rapport Building” Interrogation Techniques and Approaches from Fall 2002 to Early 2004, (as told through the Voices of Interrogators)

Unlike the harsh interrogation practices and policies condoned by high-ranking military officials described in Part I, law enforcement agencies, as well as certain individual military interrogators, followed the rapport-based approach when interrogating detainees. As explained in Part I, law enforcement and the military had, what appeared to be, competing goals. The military wanted to gather intelligence at any cost, even if it meant conducting coercive interrogations. Law enforcement would not rely on evidence that was derived from abusive interrogations, and sought untainted evidence that could be used in prosecutions.

This Part will look at the approaches, techniques and impact of two Guantanamo interrogators who pursued rapport-building techniques. Torin Nelson worked in 2002, Jennifer Bryson in 2004 and 2005. This part will also review the efforts of Jim Clemente, an FBI agent who traveled to Guantanamo in fall 2002 to assist in training interrogators. Although Clemente believed he would succeed in convincing the military of the value of a rapport-based approach, his labors were largely futile.¹³⁷ All three spoke with W2G about their work.

¹³⁶ Two examples of people with high-ranking positions who were marginalized were Alberto Mora, General Counsel of the Navy, and William Howard Taft IV, Chief Legal Advisor to the Department of State. When Mora reported to General Counsel for the Department of Defense, Jim Haynes, that interrogators in Guantanamo were conducting unlawful interrogation techniques, Haynes assured Mora that he would instruct the military to eliminate any unlawful methods. However, instead of instructing the military to terminate the abuse, Haynes, at Secretary Rumsfeld's order, permitted and even encouraged the abuse to continue. Interview with Mora on 12.04.10 in Washington, D.C.) In addition, from then on, Haynes excluded Mora from all high-level policy meetings. (Id.) [Mora's story is recounted in more detail in Part II infra]. Similarly, after Taft wrote a memo arguing that the detainees brought to Guantanamo should be guaranteed the protections of the Geneva Conventions, he became marginalized. The administration excluded him from receiving important documents and reports addressing international law issues, including the famed “torture memos” written by John Yoo, for review. Interview with William Howard Taft, IV, in S.F., Cal. (Nov. 13, 2012).

¹³⁷ His observations and experiences are supported by several other government officials also interviewed by W2G and mentioned in this Part.

1. Jim Clemente, FBI agent

From 1998 to 2009, Jim Clemente worked as a profiler in the FBI's Behavioral Analysis Unit (BAU), in Quantico, Virginia. His focus was on sex crimes and sexual offender behavior. As he explained, the FBI's profiling approach is analogous to the "reverse engineering of a crime." He described it this way: "We look at the behavioral evidence at that crime scene and then we work backwards towards the kind of person who committed this particular crime. And what it does is it narrows down the field of suspects and helps police officers focus their investigation so they can resolve crimes a lot faster."

Clemente also taught interviewing and interrogation skills at the FBI's National Academy. Interrogation is "the most dynamic form of profiling," he told W2G.¹³⁸ The more the person talks, the more the agency will learn about the person. The interrogator is constantly shifting gears as he or she reads the words and body language, as well as the personality,¹³⁹ of the detainee. That is, the essence of interrogation is "human interaction."¹⁴⁰

Clemente also emphasized the FBI's core value of "rigorous obedience to the constitution."¹⁴¹ "I don't care who he was or what he did or didn't do. We have a mandate to uphold the Constitution and that's what we had to do,"¹⁴² he emphasized.

In fall 2002, the military invited unit chiefs from the BAU to fly to Guantanamo and analyze the military's interview and interrogation program. The military wanted to adopt new interrogation tactics to obtain the intelligence they believed the detainees were concealing from their interrogators.

As a behavioral expert, Clemente flew down to Guantanamo in mid-October, staying for nearly two months, until early December. As a behavioral analysis expert, Clemente planned to study the body language of detainees. He also planned to conduct interviews for military interrogators to observe. Clemente, reflecting the FBI's core approach to interrogation, believed that rapport-building techniques would work best for detainees who resisted.¹⁴³

¹³⁸ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹³⁹ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴⁰ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013). Bowman also confirmed what Clemente had said about the BAU. He explained how the BAU "tries to figure out how best to do an interrogation for a particular person." The FBI learns "about an individual's background, what his likes and dislikes were, what his family was like, who he grew up with, does he like sports, what food does he like, everything, and try to develop a line of questioning for agents to better elicit cooperation from a person." Bowman also described it as a rapport-building activity. Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁴¹ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴² Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴³ A BAU memo dated May 5, 2003 and directed to Marion Bowman, Senior Counsel for National Security Affairs, and two others, confirmed Clemente's statement that the FBI was sent to Guantanamo to train the military interrogators in more effective and less harsh interrogation methods. The memo indicated that the FBI was available at Guantanamo to: assist agents conducting interviews and provide training to FBI/CITF personnel. Of particular importance were a series of successful interviews which SSA conducted

Clemente gave an example to W2G on the rapport-based approach he used on one detainee. When he arrived in Guantanamo, he was introduced to an uncooperative detainee who “was doing nothing but sitting mute during interrogations or reciting the Koran from memory.” Clemente believed that the man was uncooperative because the military was using the “fear up” and “anxiety up,” harsh interrogation approaches, where “you reinforce that belief that we’re the devil, that we’re evil.”¹⁴⁴ This approach was counterproductive because “you help them do what they’re doing, resisting you.... Instead, you want them to work with you, not against you.”¹⁴⁵

Clemente met with the detainee. He began by saying that he did not care what the detainee had done. Rather, Clemente told the detainee that he was meeting with him to learn about his culture and religion. According to Clemente, because this particular detainee had an engineering degree and was an educated man, he was smarter, perhaps, than anyone else in the camp. The two men started talking, comparing Christianity with Islam. Over a 21-day period, they bonded and the detainee became “extremely cooperative.”

The problem, as Clemente saw it, was that the military neither understood how to interview nor how to analyze what it was hearing. Clemente believed that in its abusive interrogation process, the military hardened the people against us. Clemente explained to the military that Guantanamo was not on the battlefield. That is, in Guantanamo the military was not waging a war, but running a prison. As Clemente understood the law, because the detainees were in American custody, they had the right to be treated like anyone else in U.S. custody.

Clemente also told W2G of another slapdash military interrogation tactic where the interrogator would duct tape a detainee’s mouth shut for four hours, and “bombard” him with questions during the full four hours. The military assumed that when they tore off the tape, the detainee would blurt out secrets.

Clemente explained that this tactic of duct-taping a detainee was another example of the military’s being completely misguided, if not senseless, in its approach to interrogation. He added that he believed the military was “unsupervised by anyone who had any kind of morals.”¹⁴⁶ Similarly, although Clemente did not witness waterboarding while in Guantanamo, he acknowledged that military officials “spoke of it as if it was a completely accepted practice there,”¹⁴⁷ and that it was in the plan for detainee 063, Mohammed al Qahtani.¹⁴⁸

with [known as detainee] who had stopped talking to interrogators. Utilizing interviewing techniques taught by the BAU, SSA was gradually able to re-establish a dialogue... which ultimately led to the detainee's renewed cooperation.” Memo dated 05.30.2003 to Raymond May and Marion Bowman, from CIRG and BAU, page 5.

¹⁴⁴ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴⁵ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴⁶ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴⁷ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁴⁸ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013)

To Clemente, the methodologies used by the FBI and the military collided. “You have the U.S. military, who in the middle of the military action has apparently standards that are vastly different than what our standards are in the FBI. And now you’ve put them both together in a situation where those standards are in conflict, direct conflict with each other. And I think that was the basis of the problem. It was bound to happen.”¹⁴⁹

Clemente emphasized to W2G that by treating the detainees coercively, the military could have “ruined”¹⁵⁰ the cases that the government would have wanted to prosecute in court. Any evidence obtained by harsh mistreatment would likely be inadmissible at a trial. Moreover, he noted, “I’m not aware of any successes [of the military] in obtaining actionable intelligence, and the whole reason we were there was because they were failing.”¹⁵¹

Before he arrived in Guantanamo, Clemente had thought that he would be “sitting down with reasonable [military] people who actually wanted to get the most unbiased and accurate information from these people.” Instead he was “exposed...[to] sadistic people who took advantage of the situation.”¹⁵²

Clemente repeatedly stressed the importance of treating the detainees humanely, especially because they were powerless. “You have to be a sadist to be able to hurt somebody who is completely helpless,” he said. “And not only that, but it’s counterproductive to our mission. Our mission is to get these people to give us the information that they have in order to protect our country and help prosecute people that are, you know, committing crimes against the country.”¹⁵³

While in Guantanamo, Clemente met with Diane Beaver, who had written the memo approving the Counter-Resistance Strategies described in Part I. She had given him a copy of the memo. He told W2G that he “was aghast. I could not believe what I had read there.” He pointed out that federal law, particularly the “torture statute,”¹⁵⁴ prohibited these tactics. According to Clemente, Beaver replied that since the goal of the tactics was not to cause serious physical or mental injury or death, but to get information, the statute did not apply.¹⁵⁵ She added, “The general believes me and not you.”¹⁵⁶

Clemente also told W2G that, “she said that when they [the military] ran out of ideas they were actually watching the show *24* to get ideas on what to do with the detainees.”¹⁵⁷ In this widely-popular television show that began in November 2001, the plot lines focused on the hero thwarting terrorist attacks, assassinations, and use of weapons of mass

¹⁴⁹ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵⁰ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵¹ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵² Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵³ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵⁴ 18 USC Sections 2340-2340A

¹⁵⁵ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵⁶ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵⁷ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

destruction with harsh interrogation techniques. The show's powerful message was that saving American lives justified harsh, cruel and inhumane treatment.

Clemente also met with Lt.C. Jerald Phifer, who had set out the Counter-Resistance Strategies in his memo to Major General Michael Dunlavey. Clemente explained to Phifer that he would not sign off on the harsh interrogation Counter-Resistance Strategies. According to Clemente, Phifer had already told people that other agents of the FBI had signed off on Phifer's interrogation plan.¹⁵⁸ Clemente assured him that the FBI would never sanction such tactics. Clemente added that after his meetings with Phifer, he decided to document his experiences and observations in Guantanamo, thinking that he was not certain "how high up people knew of what was going on down here."¹⁵⁹

Marion (Spike) Bowman held a position as Senior Executive Service in the FBI in Washington, D.C. after 9/11. As senior lawyer, he was responsible for providing legal advice for all national security investigations, espionage, industrial espionage, terrorism, weapons of mass destruction, as well as some of the fledgling cyber issues at that time. When he spoke to W2G, Bowman confirmed that FBI behavioral scientists were sent down to Guantanamo in November 2002 to help establish a protocol for doing interrogations that the FBI had found successful.

However, confirming the attitude that Clemente discovered when dealing with the military in Guantanamo, Bowman explained how the FBI was "basically told to go pound sand." That is, the military told them that this "is not an FBI thing. It's a military thing and we'll do it our way."¹⁶⁰ When Bowman contacted the DoD's Principal Deputy General Counsel Daniel Dell'Orto to question the military's approach, Dell'Orto said he would inquire into it. However, "nothing happened."¹⁶¹

Bowman then contacted Pentagon General Counsel Jim Haynes, Dell'Orto's supervisor. Haynes dismissed the concern, saying that Dell'Orto was handling the issues. Bowman knew that Haynes was lying and was "flabbergasted." In speaking of himself and a handful of senior military officers who manage rules of engagement and law of armed conflict training throughout the DoD, "[e]verything we had been teaching for so very long was just being tossed out the window, just virtually overnight. And all of us were simply stunned that this could go on because each one of us, in our own sphere of influence, who was really quite influential didn't do any good."¹⁶²

Bowman also acknowledged to W2G that the FBI observed mistreatment at the detention center. He believed that what the military was doing was "dysfunctional," and that there was a "better way to get [actionable intelligence]."¹⁶³ Throughout his W2G interview, Bowman made it clear that the FBI would not "go to the dark side," but rather "stay with

¹⁵⁸ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁵⁹ Interview with Jim Clemente, in S.F., Cal. (June 13, 2013).

¹⁶⁰ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶¹ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶² Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶³ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

the rules that you'd been taught."¹⁶⁴ He added that, similar to Clemente's visit, he too went to Guantanamo to advise interrogators tied to various agencies about proper interrogation techniques and the rights of people who are captured.

Bowman faults the military for making a "fundamental change in the role of the interrogator,"¹⁶⁵ and in training the military interrogators in the SERE program and adopting SERE techniques in interrogations. Bowman noted, "The purpose of SERE school is not to elicit information. It's to resist information."¹⁶⁶ "You don't take that kind of mistreatment and try to elicit information out of it."¹⁶⁷ It is just "fundamentally flawed."¹⁶⁸

However, although some military interrogators were, according to Bowman, "relieved" and "grateful" for the FBI guidance, Bowman's and Clemente's trips to Guantanamo had little effect. Soon after Bowman's visit, the DoD issued to the interrogators "specific marching orders."¹⁶⁹ Bowman repeatedly stressed that FBI and NCIS objections made no difference, and the fact that the FBI had had decades of training was "ignored."

The irony of the FBI's influence and effect in those early days of Guantanamo is reflected in the May 5th 2003 BAU memo. The BAU author wrote of several examples where military personnel have awaited the departure of an FBI supervisor "before embarking on aggressive, unilateral interrogation which they knew would not have been endorsed by the FBI."¹⁷⁰

Mark Fallon, who on 9/11 was Chief of Counter Intelligence Operations for the Europe, Africa, and Middle East Division of the Naval Criminal Investigative Service (NCIS),¹⁷¹

¹⁶⁴ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶⁵ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶⁶ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶⁷ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁶⁸ Bowman had comments on several of the men in power, whom he had known. He thought that John Yoo, who worked across the street from him, and who drafted the torture memos "believed in what he was writing." Bowman understood that the harsh interrogation issues were made known to Attorney General Ashcroft, although he does not know how Ashcroft responded. He believed that David Addington, Cheney's Legal Counsel in 2001-2005 and then became Cheney's Chief of Staff, was "heavily involved" in GTMO issues and that with Cheney, they were the "driving forces behind the policies." He also believed that White House Counsel Alberto Gonzales was "way over his head," in understanding and dealing with the issues. And Bowman had "very little respect" for Rumsfeld. Bowman believed that Rumsfeld did not try to find solutions to contemporary problems, but ignored them.

Bowman told W2G that when Cheney was Secretary of Defense in the elder Bush's administration, he was "very kind, jovial, focused" and "personable." However, when he became vice president, "he was an entirely different personality." He was "driven in ways that I'd never seen as Secretary of Defense." This remark is similar to that made by Col. Lawrence Wilkerson who described Cheney as power hungry. Wilkerson indicated that when Cheney was hired as chair of the search committee to find a vice president, Cheney intended all along to become the VP on his own. "He picked himself," Wilkerson said of Cheney. Interview with Lawrence Wilkerson, in Wash. D.C. (Mar. 9, 2011).

¹⁶⁹ Interview with Marion Bowman, in Wash. D.C. (Mar. 10, 2011).

¹⁷⁰ ¹⁷⁰ Memo dated 05.30.2003 to Raymond May and Marion Bowman, from CIRG and BAU, page ?

¹⁷¹ David Brant, Director of the Naval Criminal Investigative Service (NCIS) confirmed to W2G that the NCIS also believes in rapport-based interrogations. Interview on March 11, 2011 in Washington DC.

reaffirmed Clemente's approach to interrogation and the conflicting issues with military interrogations. When interrogations began in Guantanamo, Fallon became the deputy commander of the DoD's Criminal Investigation Task Force (CITF), composed of representatives from the military's criminal investigative organizations. CITF's interrogations were rapport-based.

Fallon explained to W2G that the humane treatment of a detainee, as undertaken by the CITF at Guantanamo, was nearly no different from the interrogation of any other person in the U.S. prison system, with two exceptions: detainees in Guantanamo were not read their Miranda rights and did not have the right to an attorney present at questioning.¹⁷²

Fallon added that, "You can't make somebody talk. There is no truth serum.... It's developing rapport...." He also seconded Clemente's belief that military interrogation tactics prevented the military from obtaining actionable intelligence.¹⁷³ He too became frustrated with the changes that the military adopted in conducting interrogations. In fact, Fallon was the person who initiated the chain reaction of protests, led by General Counsel of the Navy Alberto Mora that went all the way up to the desk of Secretary of Defense Donald Rumsfeld.

As documented below, efforts by Mora and others to inform the upper reaches of government and the military of the dangers of pursuing a harsh interrogation program were, ultimately, futile. Secretary of Defense Rumsfeld and Pentagon lawyer Jim Haynes actively ignored the complaints and refused to put a brake on CIDT and torture at Guantanamo. The problem, it turned out, was systemic.

Alberto Mora was one of the highest-ranked civilians in the DoD who had tried to do the right thing and put an end to the torture at Guantanamo. Instead, he was misled and even lied to by people in the highest echelons of the administration.

As Mora explained to W2G, in December 2002 David Brant, the director of the Naval Criminal Intelligence Service (NCIS) informed Mora that interrogations in Guantanamo were not conducted according to the Army Field Manual. Brant had heard this from Mark Fallon.¹⁷⁴ Then, Brant, along with Dr. Michael Gelles, a senior psychologist, met with Mora. They disclosed that they had reliable information indicating that abusive interrogations were occurring in Guantanamo, and that interrogations could continue to deteriorate under the theory of "force creep."¹⁷⁵ That theory, according to Mora, was that

¹⁷² Of course, civil liberties advocates would argue that these two exceptions are quintessential under American law.

¹⁷³ Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

¹⁷⁴ Both Brant and Fallon confirmed this in their interviews with W2G. Interview with David Brant, in Wash., D.C. (Mar. 11, 2011). Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013). Fallon told W2G that it was with al Qahtani that the interrogators "started going down the road that I felt was illegal." Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013). It was then that Fallon decided to stand up and speak out against what was happening in Guantanamo. Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

¹⁷⁵ Interview with Alberto Mora, in Wash., D.C. (Dec 4, 2010). According to Mora, Force creep is in the psychological literature of interrogation.

because the interrogators were untrained, undisciplined and possibly authorized, the abuse could get much worse and could reach levels of torture.¹⁷⁶

Mora sought out General Counsel of the Army, Steve Morello for further verification. Morello showed him the memos by Phifer, Dunlavey and Beaver. Mora had not been aware of the existence of the memos. Mora also noticed Rumsfeld's handwritten comment that because he stands for eight hours a day, why is it a problem for a detainee to be required to stand for four hours?¹⁷⁷ Mora saw these memos and the direction in which they were going as a legal, political and policy "disaster." He decided to make an appointment with Jim Haynes, the chief Pentagon lawyer.¹⁷⁸

When they met, Mora spent nearly the entire meeting laying out arguments as to why these techniques should not be implemented, and that the techniques violated constitutional standards and American values. He called Beaver's memo "incompetent" and that her conclusions were "all wrong."¹⁷⁹ Haynes said very little, other than that the techniques in the documents were not torture.¹⁸⁰ When he left Haynes' office, Mora believed that Haynes would phone Rumsfeld and inform him that Rumsfeld and he (Haynes) had made a mistake in approving them.¹⁸¹ That next day, an optimistic Mora "was absolutely confident that this was resolved."¹⁸² He expressed to W2G, "Actually I thought, you know, this is the best work I've ever done as a lawyer, best work I've ever done in government. This is the greatest service I've ever rendered for my country."¹⁸³

However, several days after Mora reported the harsh practices to Haynes, David Brant called Mora to tell him that the abuse in Guantanamo was continuing. Mora was shocked by the news, not only because of the news, but because it meant that the abuse was not "inadvertent" but "deliberate."¹⁸⁴

Mora then reached out to high-ranking military and government officials. He hoped that they would initiate a movement to push back against the abusive behavior in Guantanamo. When he did not see any results, Mora wrote a memorandum to Jim Haynes criticizing the Beaver, Dunlavey and Phifer memos. He added that the CIDT and torture

¹⁷⁶ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010)..

¹⁷⁷ Interview with Alberto Mora, in Wash. D.C. (Dec. 4, 2010).

¹⁷⁸ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁷⁹ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸⁰ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸¹ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸² Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸³ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸⁴ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010). Although on December 2nd, Secretary Rumsfeld had approved the harsher techniques identified in the Phifer memo, and supported by the Beaver memo, in January 2003, he rescinded some of the harsher techniques, and placed them on a case-by-case basis, after having received Mora's memo. Memorandum for Commander USSOUTHCOM, Subject: Counter-Resistance Techniques, date stamped Jan. 15, 2003. According to Alberto Mora, the change in Rumsfeld's position was due to Mora's reporting of harsh interrogation techniques in Guantanamo to Jim Haynes, the Pentagon's General Counsel. Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010). Although the harsh interrogations continued, perhaps Rumsfeld and Haynes decided to moderate the memo to at least give them cover, if ever the harsh interrogations were publicly acknowledged.

in Guantanamo could threaten Rumsfeld's tenure and reputation, and perhaps even the presidency.¹⁸⁵ He met with Haynes to discuss his memo on January 13, 2003.

At the meeting, Haynes told Mora that Rumsfeld was considering rescinding the authorizations. And indeed, two hours later, after the meeting, Haynes phoned Mora to say that Rumsfeld had rescinded the authorizations on Guantanamo. However, Haynes then asked Mora to put together an inner service task force to look at the issues and provide him with recommendations.¹⁸⁶ A few days later, David Brant informed Mora that the abuse has stopped.¹⁸⁷ Mora was elated. However, his joy subsided soon thereafter.

The very next day, the task force under air force general counsel Mary Walker was created. It met nearly every day and it appeared that the Pentagon was on turbo-drive to find results. Meanwhile, "[v]ery quickly, [Mora] started hearing back from the delegates that it was business as usual."¹⁸⁸ It turned out that the task force "was being pressured to reiterate the same kinds of decisions that had led to" the harsh treatment at Guantanamo with the same authorizations.¹⁸⁹

Mora saw this task force movement as potentially an even worse disaster than before. Now it was not just a few individuals who were making the decision to use CITD and even torture. This time, the military had a task force open to all the services and had broad participation reaching the same conclusions. Thus, as Mora saw it, "individuals who still wanted to apply abuse in interrogation techniques could now claim, this was carefully studied and this is the legal conclusions, the policy conclusions, interrogation conclusions. So that could be a worse situation."¹⁹⁰

Mora asked Gelles to write a comprehensive memo explaining that, in the literature, relationship based interrogations, where one builds trust, were the gold standard. The memo's conclusion was well supported. The memo was submitted to the working group, but had little effect. As Mora described it, people were compelled, as working groups often are, to assume various positions "channeling them back into the same old Guantanamo projections."¹⁹¹

To compound the problem for Mora, and help entrench a harsh interrogation policy in Guantanamo, someone asked the Office of Legal Counsel to submit a memorandum to the task force. The memo was by John Yoo, and it was one of his torture memos. Mora had not heard of Yoo at that time. However when he read the memo, he was appalled by the standards and levels of cruelty and torture justified by the memo. He told Walker that

¹⁸⁵ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸⁶ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸⁷ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸⁸ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁸⁹ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁹⁰ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁹¹ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

the memo was terribly reasoned and not good law. She disagreed with him. She added that Haynes also thought that it was good analysis and good law.¹⁹²

If the Yoo memo were applied to the working group, the working group would have to accept the Yoo analysis as its foundation, Mora explained to W2G. The consequence of incorporating Yoo's memo would allow all "that Rumsfeld had authorized in Guantanamo be reauthorized again under the pretense of a greater authority."¹⁹³

Mora contacted Haynes and emphasized that the Yoo memo was wrong on the law and in its analysis, and that the working group should not adopt it. Mora heard no more about the task force memo after that. A final draft of the task force's work was never circulated, and the working group was disbanded. Mora, consequently and to his short-term relief, believed that Haynes never finalized the task force document, a document that would have relied on Yoo's memo.¹⁹⁴

However, months later Mora learned that although Haynes had never sought final approval of the document from the task force, the document had been formally approved by the Office of the Secretary. On his own authority, Haynes had signed out the report. As Mora tells it, Haynes had taken the document out of the working group process, authorized the document and kept his actions and the document hidden from the military services except for Mary Walker. The document was then circulated into the military channels.¹⁹⁵

In looking back at those early days today, one can see that Clemente, Bowman, Fallon, Brant and, of course, Mora, were well-intentioned but, perhaps, too optimistic in expecting that the leaders of our government would do the right thing when errors were revealed. Mora and the others had grown up in a world where American values meant something, where other nations and peoples looked to us for leadership on the rule of law and human rights. However, the Cheney-Rumsfeld train had pulled out of the station before any of the protesting men and women arrived on the platform.

2. Torin Nelson, Guantanamo Interrogator in 2002

As former Guantanamo interrogator Torin Nelson saw it, interrogation for purposes of intelligence gathering is "not just a necessary evil in my opinion. It's a good thing but it can be used for bad like a gun. They could be used to enforce the law or to break the law."

Torin Nelson was well-trained as a military interrogator before 9/11. He began his career in 1992. However, he and the other interrogators in those years were trained in cold war interrogation tactics. He knew five languages including Russian. As he told W2G, "I was

¹⁹² Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁹³ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010)..

¹⁹⁴ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

¹⁹⁵ Interview with Alberto Mora, in Wash., D.C. (Dec. 4, 2010).

a foreign Soviet Union Eastern European specialist.... When 9/11 occurred, I was re-stamped as counter terrorism, counter extremist Middle East Central Asian Expert.”¹⁹⁶ Even the best trained were not trained in the culture of the Middle East, much less in learning about the Taliban. When 9/11 happened, interrogators were unprepared for interrogating al Qaeda or Taliban. Nelson prepared himself after 9/11 by reading a book on the Taliban.

According to Nelson, there were only 1200 interrogators before 9/11.¹⁹⁷ There was no need for more during the Cold War. Then, after 9/11, the military increased the number tenfold over the decade, adding approximately 3000 interrogators per year from the U.S. Army Intelligence Center.¹⁹⁸ The problem, as Nelson understood it, was that the new interrogators were not well trained, but rather were rushed into duty. The need was great, and quality control was not a primary concern. Damien Corsetti presented a similar observation when he described the minimum training he received before becoming an interrogator in Bagram. See Part I.

When Nelson arrived in Guantanamo, they put him into an interrogation unit without any training or background on the people he would be interrogating.¹⁹⁹ Although he had thought that with his background in Russian and eastern European culture, he would be one of the least experienced interrogators, he turned out to be one of the most experienced. He was assigned to, as he explained it, the most difficult detainees to interview, the Saudis and Yemenis.²⁰⁰

Nelson worked as a military interrogator in Guantanamo from July 2002 to February 2003. He told W2G that unlike some of his colleagues he adhered to the rapport-based approach. However, Nelson was required to interrogate 40 detainees per month,²⁰¹ which would, seemingly, limit his ability to establish a relationship with them. Nevertheless, he told W2G that he believed he was successful in obtaining relevant intelligence in his interrogations. As he explained, his focus was on military and insurgent capabilities, as well as on morale, methodologies, tactics and strategies.²⁰²

Detainees had told W2G that they would have to make all their requests to their interrogators. That is, the interrogators would control their comfort items, their visits to the doctor or dentist, and other requests that they made.²⁰³ Nelson confirmed this procedure. Although his response may seem contrary to the rapport-building technique, Nelson believed that controlling all requests was an effective interrogation tactic. As Nelson saw it, the detainee would become dependent on the interrogator, learning quickly

¹⁹⁶ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

¹⁹⁷ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

¹⁹⁸ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

¹⁹⁹ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²⁰⁰ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²⁰¹ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²⁰² Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²⁰³ e.g. Interview with Sami al Hajj in Casablanca, Morocco (July 13, 2012). “In Guantanamo, if you complained to the doctor, he would tell you, “Go talk to the interrogator. Answer the questions of the interrogator so that I can treat you.”

that if he wanted anything at the camp, he had to comply with the interrogator's wishes.²⁰⁴

Nelson explained to W2G that the military's attitude toward gathering intelligence was backwards in thinking. That is, when other interrogators in Guantanamo were not obtaining the intelligence that the military expected, the military did not take a self-reflective look into its own programs and examine whether the interrogators were doing their jobs correctly and effectively. Instead, the military placed the blame on the detainees for holding out. As Nelson described it, the leadership did not look into what it would take to "become a better interrogator, it was mostly what more can we do to the detainees to get them to talk."²⁰⁵

While in Guantanamo, Nelson was aware of the cruel and abusive treatment that al Qahtani suffered. It was hard not to be aware, he said. It was such a small community, and the interrogators would gather together and talk when they had down times. However, according to Nelson, it was not until General Geoffrey Miller arrived in Guantanamo in November 2002 that the culture dramatically changed and all interrogators were expected to use harsher methods to obtain intelligence.²⁰⁶ He also believed that many of the newly hired, younger and less experienced interrogators "may have been more susceptible to coercive techniques."²⁰⁷ When W2G asked Nelson whether he ever thought of speaking out against any of the abuses occurring in Guantanamo, he replied,

"Well, in that time period you basically kept quiet about it if you had any disagreements. The attitude was even at the four star general level was F these guys, they're all terrorists. I'm an E5 Buck Sergeant at the time [and] had no voice at that point."²⁰⁸

As Nelson understood it, the officers who held middle-rankings would listen to his concerns and suggestions for improvement, and often agree with him. However, they too had no real authority. The senior leaders would not care to listen to him. To Nelson, they were both "ignorant and arrogant."

Nelson believed that a significant portion of the detainees should not have been held in Guantanamo. They were not a threat to the U.S and should have been released soon after they had arrived in Guantanamo, or "should never been sent to Gitmo to begin with."²⁰⁹

²⁰⁴ See Jennifer Bryson section 3 below, where she says that interrogators did not have the authority to control all comfort items and visits to the clinic, as Nelson describes.

²⁰⁵ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²⁰⁶ It was believed that Miller instituted harsh interrogation practices, including CIDD and torture in interrogation techniques in Iraq, perhaps contributing, if not directly causing, the notorious event of American soldiers torturing and brutalizing detainees at Abu Ghraib prison. Miller was targeted as the person who "Gitmoized" Iraq, instituting the culture that caused Abu Ghraib. Transcript of Frontline Interview with Janis Karpinski, (Aug. 5, 2005), available at <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/karpinski.html#3> (stating that Miller said he was going to Gitmoize the operations at Abu Ghraib). See also, Report of the Constitution Project's Task Force on Detainee Treatment at 22 and 40.

²⁰⁷ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²⁰⁸ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

3. Jennifer Bryson

“In the spring of 2011 when Osama Bin Laden was killed, I watched a resurgence in public support for cruelty and torture in interrogation, and the implication was that torture was what got us information we needed for Bin Laden, and that therefore it was just fine and it was something we needed to have for U.S. national security. And I was so repulsed and frightened and frustrated to see this. And especially those who were advocating this were not interrogators. They weren’t people who would actually know what interrogation is. And I also found it morally repulsive as a human being and as an American. And I finally realized that, to the extent interrogators can...speak publicly, I think interrogators need to be part of the public discussion.”²¹⁰

This statement is a rare declaration from an interrogator. Few interrogators have agreed to speak to W2G, often out of fear of reprisals to them and their families if they go public. Jennifer Bryson has always placed ethics and doing good over herself. And in the fall of 2011, she courageously went public, aware of the risks in being identified as an interrogator. As she explained to W2G, after 9/11 she wanted to do something for her country, to defend her country, to “protect the country in my own small way that I could.”²¹¹ And she found the opportunity.

Bryson had a very academic background. She earned a BA from Stanford University, an MA in medieval European intellectual history from Yale University, where she also studied the history of philosophy, and a PhD in Arabic and Islamic studies also from Yale, before she became an interrogator. After receiving her Masters, she studied Arabic in Egypt.

After earning her PhD, Bryson had difficulty finding rewarding work where she would be “more engaged in the world,” than in an academic environment. The events of 9/11 changed her life. She found work with the Department of Defense. In 2002, she worked with the Defense Intelligence Agency (DIA), served on the Policy Staff of the Office of the Secretary of Defense, and worked at the U.S. embassies in Egypt and Yemen. In August 2003, while working with the DIA, an official suggested that Bryson be trained as an interrogator for Guantanamo. She began her training in September.

The fact that Bryson underwent a rigorous training program based on the Army Field Manual’s humane treatment standards in fall 2003 was in marked contrast to the minimal, if any, training the military provided interrogators in 2002, as described by both Damien Corsetti in Part I and Torin Nelson above.²¹²

²⁰⁹ Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

²¹⁰ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²¹¹ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²¹² Interview with Torin Nelson, in S.F. Cal. (June 5, 2014).

At the time that Bryson began her training, there was no systematic training program for civilians to become interrogators. Instead, she was slotted into a program for former military interrogators. She was the first “outsider.” She told W2G that she found it interesting that they chose her because of her education in cultural history, religion and language training, rather than someone who could, if necessary, be brutal.

In February 2004 Bryson began her job as a DoD interrogator, and was appointed as the first civilian and female²¹³ Team Chief Interrogator in Guantanamo. The team chief’s responsibility was to supervise a team of interrogators and analysts that focused on a specific group of detainees.²¹⁴ Before she became team chief, the officers who were in charge of the interrogation units were intelligence officers and not trained interrogators.²¹⁵ Similar to Nelsons’ group of detainees, Bryson was also assigned to the Saudis.

In explaining her training, Bryson emphasized how she learned to both let go of her assumptions, and to become aware of her assumptions. She added that “interrogators don’t just walk in and talk about whatever they feel like asking about that day.”²¹⁶ Rather, the intelligence analysts determined the topics. However, the interrogation was never scripted, and would constantly divert to new topics and issues as necessary. The team chief, in this case Bryson herself, would discuss with each interrogator the detainee to be interviewed, the approaches the interrogator planned to use and the areas of inquiry. Bryson emphasized several times during her interview with W2G that the Army Field Manual guided all interrogations in Guantanamo during her tenure there.

As Bryson described it, the DoD returned to a more humane approach in fall 2003 when she began her training. In addition to possibly finding that over the past two plus years, that the military’s harsh interrogation techniques did not result in obtaining much if any actionable intelligence, there are likely several other reasons why this change occurred.. The war in Iraq had begun in spring 2003, and unlike the war in Afghanistan, the U.S. had decided to abide by the Geneva Conventions (GC) in Iraq. Consequently, the captives were treated as prisoners of war in Iraq, unlike the captives in Afghanistan and Guantanamo who were deemed “enemy combatants,” a term used by the administration to circumvent the Geneva Conventions.²¹⁷ By applying the GC to the Iraq war, the

²¹³ The fact that Bryson became the first female and civilian team chief was a huge step for the military, but not one that went over well with every interrogator in Guantanamo. One administrator in the training program said to her, “you’re a woman, they’re not going to speak to you. There’s no point in you getting this training.” Bryson told W2G, “And, indeed, he proved to be wrong. Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011). Mark Fallon told W2G that in the CITF, “some of our better interrogators were women.” He continued, “some of our more effective elicitors, those who got us good information just happen to be a woman. And initially we thought that would not be the case.” Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

²¹⁴ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²¹⁵ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²¹⁶ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²¹⁷ see “Chasing Enemy Combatants and Circumventing International Law; A License for Sanctioned Abuse,” in *UCLA Journal of International Law and Foreign Affairs*, Vol. 12., No. 1, 2007. See also, Honigsberg, “The Real Origin of the Term ‘Enemy Combatant,’” *Huffington Post*, January 9, 2014.

military intended to return to a humane interrogation policy in Iraq.²¹⁸ The DoD may have seen the need to return to a similar humane interrogation approach in Guantanamo.

There were other indicia indicating that times were changing. The United States Supreme Court announced on November 10, 2003 that it would hear arguments in the case of *Rasul v Bush*.²¹⁹ *Rasul* challenged the Bush administration's refusal to grant habeas hearings to the men in Guantanamo.²²⁰

Although the Bush officials and lawyers must have thought that they would prevail in the Supreme Court, there was always the fear that they could lose. And if they lost, lawyers would be permitted to fly to Guantanamo to meet with the detainees and help prepare their cases. Up until then, no lawyers were permitted to represent the detainees,²²¹ except to represent the very few detainees selected to be tried in a military tribunal. Once lawyers would regularly travel to Guantanamo, the government would no longer be able to interrogate the detainees with impunity. A lawyer would be watching.

In April 2004, while Bryson was in Guantanamo, photos of horrific torture practices in the Iraqi Abu Ghraib prison were released. And, although the government argued that the torturers in Abu Ghraib were rogue soldiers,²²² the Senate Armed Services in its report rejected that idea. According to the report, "Secretary of Defense Rumsfeld's December 2, 2002, authorization of aggressive interrogation techniques and subsequent policies and plans by senior military and civilian officials conveyed the message that physical pressures and degradation were appropriate treatment for detainees in military custody. What followed was an erosion in standards dictating that detainees be treated humanely."²²³ Abu Ghraib may have again confirmed to the military the logic and value in following the Army Field Manual.

In June 2004, the Supreme Court ruled in *Rasul* that the detainees did have a right to file a habeas action in federal court. Now lawyers would regularly visit their clients in Guantanamo. Thus, outside events during 2003 and 2004 possibly informed the DoD's policy of keeping faith with the Field Manual.

Bryson explained that an interrogator did not make determinations as to the value of the intelligence obtained. That was the job of the military analyst. And, each analyst in Guantanamo worked in coordination with a particular interrogator. The interrogator's job

²¹⁸ Abu Ghraib excepted, see text below

²¹⁹ 542 U.S. 466 (2004)

²²⁰ In a habeas hearing, the issue is not whether the detainee is innocent or guilty. That issue is decided at trial. Rather, the question is the legality of the detention. Does the jailor have the right to hold the prisoner?

²²¹ See *Rasul v Bush* granting detainees statutory rights to habeas, 542 U.S. 466 (2004)

²²² Rumsfeld Visits Iraq's Abu Ghraib Prison, Mar. 4, 2005, available at <http://www.cnn.com/2004/WORLD/meast/05/13/iraq.abuse/> (quoting Rumsfeld as stating "there's been a focus on a few who have betrayed our values...."); "Steps to Help Iraq Achieve Democracy and Freedom, George W. Bush, Remarks at U.S. Army War College, Carlisle, PA, May 24, 2004 ("disgraceful conduct by a few American troops who dishonored our country and disregarded our values.").

²²³ Report of the Senate Armed Services Committee Inquiry into the Treatment of Detainees in U.S. Custody, Nov. 20, 2008 at xxix.

was to obtain whatever she could, and to write it down while interrogating. She noted that on television shows like *24*, the viewer “never sees the interrogators writing because writing might be boring.”²²⁴ Taking extensive notes while interviewing seemed surprising. Why not audiotape the interrogations? W2G asked her.

Bryson responded that there was no tradition of audiotaping in the military. The rationale was that the interrogator may be conducting interrogations on the battlefield, where she would not have access to technology. Hence, note taking was a critical skill. As Bryson explained it, there was a difference between listening and hearing. Because the interrogator often had only one chance to talk to that person on the battlefield, she needs to learn to record it carefully in writing. Interrogators were trained to “maintain human connection and eye connection and take notes.”²²⁵

According to Bryson, Guantanamo interrogations were held in a trailer, and each room had a two-way mirror. In addition, someone from the guard force would be in a central room to observe all the interrogations -- presumably for safety reasons in case the prisoner became violent. However, the observation would also, presumably, guard against an interrogator who would otherwise exceed DoD guidelines. According to Bryson, the audio was cut to the outside. Consequently, the analysts who watched from outside were dependent on the interrogator’s written notes. Bryson added that the DoD also shared information with the FBI.

Early in her arrival, Bryson had an incident that contradicted what she believed was true at that time – that the DoD had returned to a rapport-based approach to interrogation. Apparently, not all the interrogators at Guantanamo were ready to adopt only rapport-based techniques. The following incident caused her to take charge quickly, and assert her role as team chief. As she tells it,

“I had one interrogator who was asking for permission to bring in a detainee into a room that would be darkened with strobe lights and extremely loud music that was, what one might call kind of head-banger music.

“And I remember the request said the music will only be up to such-and-such decibel and research has shown that this level, you know, cannot harm the hearing. I was absolutely disturbed, and baffled, and perplexed because this had absolutely nothing to do with how I had been trained. This had absolutely nothing to do with what the army had taught us was allowed.

And it just seemed wrong and I could not rationally imagine how this would work.”²²⁶

“When I arrived, it was assumed that I would just say yes. I don't know how long this had been going on and I can only speak to my experience when I was there. ...But when I said no, I said no and there was going to be no choice.”²²⁷

²²⁴ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²²⁵ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²²⁶ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

She added, “And the interrogator who had been using this was having zero success. And my interrogators who were learning to really develop rapport-based interrogation, developing a human connection with the detainee, were having success.”

To Bryson, the first step in interrogation is “preparation, preparation, preparation.”²²⁸ This includes background information about the detainee, aspects of his personality, personal interests and personal values. The information is taken from intelligence reports, previous interrogator notes, and analysts’ contributions.

Bryson also indicated that interrogation is extremely exhausting, “it felt like somebody had put my brain in a blender on, you know, crush.”²²⁹ Pacing oneself is critical here so that the interrogator goes into the interrogation with a clear mind.

At the interrogation, food and drink mattered. “Food was very, very, very important for many of the interrogations,” she noted.²³⁰ Bryson always made it her habit to have tea present, using china cups, and to share tea with the detainee. According to Bryson, sometimes detainees who were on hunger strikes would break their hunger strike and eat during an interrogation. They were assured that other detainees with whom they wanted to be in allegiance and solidarity would not know.

Bryson also considered her dress when interrogating. Because she worked with Saudis, she always dressed modestly and professionally. She wore long sleeves and long skirts or long loose-fitting pants. She never wore a head-scarf, because, as she explained, she was not Muslim.

She began each interrogation by greeting the detainee in Arabic with As-Salamu Alaykum, peace be upon you. She conducted her interrogations in Arabic, her choice. She noted their surprise to see a Caucasian blue-eyed woman speaking their language. After the greeting, she would check in on the detainee and ask whether he had any concerns, to let him know that she was interested in him. As she saw it, it was basic common sense. With a new detainee, she would take her time to begin questioning. During the first meeting, she would only converse.

If the detainee did not want to talk, she would change topics and tell stories. She stressed the importance of stories. She believed stories provided a window to the humanity of each, as each spoke about and reacted to the stories. Her personal goal was always to build a foundation, an individual relationship and a personal connection. She emphasized that she would always treat the detainee with respect, and that harsh and adversarial attitudes did not work.

²²⁷ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²²⁸ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²²⁹ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²³⁰ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

As she explained it, “Without trust, at least the tiniest amount of trust, things didn’t work.”²³¹ Again she reminded us that although understanding body language or narrative discourse can be helpful, it is up to the analysts to assess the validity of the information. The interrogator’s role is to collect and record the information, even if something “bizarre” is said.

She would sometimes play a role within a family context, such as aunt, cousin, daughter or sister to the detainee. The role depended on the age of the detainee. With one particular detainee, she let him assist her with her Arabic. If a detainee was particularly cooperative, she might offer rewards such as watching a movie together, perhaps the Disney film “Monsters Inc.”

Because she was a female and often in the room alone with the detainee, the detainee would at minimum wear an ankle chain. If the detainee requested a bathroom break, she would leave the room and guards would come in to unchain the detainee and take him to the bathroom.

Unless the room was booked for a certain time, and someone else was set to use it, she relied on intuition to terminate the interrogation. For example, the detainee was worn out or tired. She would also terminate if necessary to maintain control of the session. Similarly, if it was a difficult session and all that could be done had been done for the day, she ended it. However, she noted that terminations needed to be handled very carefully. She would let the detainee know that if he had any additional information, he should send her a message through the guard force and she would meet him. “You don’t just ask questions and walk out of the room. That simply is rude. We would sort of close down for the day, say farewell, and then close.”²³²

When we asked her about former detainees who had told W2G that they were not able to obtain medical help, see a doctor or dentist, or obtain comfort items without the approval of the interrogator, she responded, “This is not true.”²³³ She added that the interrogators had no contact with the medical personnel and no access to medical records. Rather, the interrogator would have to speak to an army officer to get to the medical team, if an issue arose such as whether the detainee had food allergies. And it was up to the medical team to determine what to do. She added that interrogators were not permitted in the medical facility, although they could visit a detainee in the cellblock, under certain conditions.

She then told of a Saudi detainee, “somebody who had been involved in planning an attack that you would have heard of.... And who was no fan of Americans.” He said to her, “you know, I’ve noticed that you Americans are providing medical care for all the

²³¹ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²³² Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²³³ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011). Compare Torin Nelson’s remarks on this issue, *supra*. Bryson was not clear as to whether the policy had changed by the time she arrived, or whether it was only her team that did not have this power over their detainees.

detainees including the ones who don't talk. You know, I have to admit that in my country, I don't think we would do that. I respect you for this.”²³⁴

Although she would not talk about specific questions she had asked, Bryson discussed some of the topics in which detainees were interested. These included a detainee's training to help predict potential types of attacks.

Bryson also expressed disappointment that the military, although interested in how the men became attached to their ideology and violence in support of their ideology, was not even more interested in these areas. She believed that the military was still coming out of a system based on the Cold War and the technicalities of a military situation.²³⁵ Yet, to her, these questions of how they became attached to violent ideologies were of long-term significance.

She explained that when she first arrived, the previous interrogation team was not having success with the Saudi detainees in gathering intelligence. She believed that prior to her arrival there was an environment of opposition to the detainees. She noted that many of them “would have been thrilled to kill us.” Nevertheless, she believed that the military did not have to take an oppositional posture to them, and that there was a “tremendous human side to every single detainee.”²³⁶

She believed that the Saudis who were in Afghanistan in fall of 2001, “weren't there growing pear trees.”²³⁷ Many of the younger detainees “had gone there tremendously idealistic and committed,” and then became disillusioned over time.

Bryson noted that even in 2004, there was a great deal of intelligence to gather. She pointed out that information that was needed changed over time. For example, as high-level leaders were removed, new leadership emerged. The new leadership may have been people who had trained with the detainees in the earlier years. The detainees may have known them personally, and in 2004 would have information on these new leaders.

Bryson left Guantanamo in summer 2004, and underwent a second training session. At this session, she was educated in the Convention Against Torture and on the Geneva Conventions. Times had certainly changed. She returned to Guantanamo a few months later, and this time her tour was for 18 months.

When we asked her specifically what motivated her to become involved after 9/11, she eloquently explained,

“[T]he reason I was doing it was because I thought we had a country worth protecting. And I was deeply concerned and didn't understand the point of – I mean if you add cruelty and torture as a systematic officially-approved part of what we do, it's not a

²³⁴ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²³⁵ Nelson also confirmed this in his interview, see *supra*.

²³⁶ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²³⁷ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

country I'd want to defend. And it was also completely counter to the training that I had. It was completely counter to military interrogators I had taught and it was counter to my experience as an interrogator.”²³⁸

She added that, the work was very meaningful, and that “I experienced interrogation as a non-violent way to prevent future violence.” “Every single person, even people who want to kill us, is – individuals are human.” Each of the detainees had his own individual story and motivation as to why he was there.

Her wish was that from the early days of Guantanamo that the U.S. would have had a program of what she called “de-and counter radicalization” for the detainees who were soon to go home. She would have liked to channel the human capacity of the detainees, recognizing their intelligence, self-discipline and hard work, into something positive.

“Something that I emphasized to my interrogators, by which I mean the interrogators I supervised from the beginning, is probably all these detainees at some point are going home. And when they're home and they think American and if let's say, an idea comes up to attack an American hotel, they're going to think of you. Leave with them an impression of a human being who has treated them respectfully.”²³⁹

Part III

Six Long-term Unintended Consequences of the Military's Short-Term Harsh Interrogation Tactics.

Even though the harsh interrogation techniques occurred more than a decade ago, their impact continues to harm America. The following half-dozen long-term consequences have resulted from the military's short-term harsh interrogation tactics in Afghanistan and Guantanamo, tactics that included torture and cruel, inhuman and degrading treatment.

1. The U.S. is constrained in prosecuting dangerous detainees successfully, and accordingly, Guantanamo is still open.
2. America's reputation at home and abroad has gravely suffered.
3. As the symbol of our violations of human rights and the rule of law, Guantanamo has become a terrorist recruitment tool.
4. For young Americans, Guantanamo, torture and CIDT have always existed and have become ingrained in our culture.

²³⁸ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).

²³⁹ Interview with Jennifer Bryson, in S.F., Cal. (Dec. 21, 2011).. After she left the DoD, Bryson became the Director – Research Project on Islam and Civil Society project at the Witherspoon Institute in Princeton, New Jersey. She has also been a visiting professor and guest instructor at the Army War College in Carlisle, PA, and sits on the Board of Directors of Peach Catalyst International.

5. The harsh treatment motivated detainees to become violent, and/or to turn their anger against the U.S., after their release.
6. Noncombatant personnel who worked with detainees and participated in or observed mistreatment suffered PTSD.

Overarching Thoughts

As John Yoo, the deputy assistant attorney general in the Department of Justice's Office of Legal Counsel explained,²⁴⁰ the administration selected Guantanamo, Cuba, because officials thought that the U.S. Constitution did not apply in Guantanamo. Under that theory, detainees would have not been able to file habeas petitions for the right to a hearing before a federal judge. To the administration in the early years following the attacks on 9/11, Guantanamo was a place outside the law. And no one at the highest levels of the administration apparently gave much, if any, thought to the long-term implications of approving and even encouraging the military's short-term unlawful and abusive interrogation strategies.

The following six unintended consequences are identified and briefly addressed. However, these consequences are ongoing and continue their impact. Accordingly, It is recommended that scholars pursue the study of these consequences in detail, in the hope that future generations will better understand the power of the consequences when the U.S. violates its own law, as well as international law. By fully understanding the consequences, our future political leaders will, hopefully, make wiser choices consistent with human rights and the rule of law.

The U.S. is constrained in prosecuting dangerous detainees successfully and, accordingly, Guantanamo is still open.

As described in Parts I and II, because the U.S. military cared only about gathering intelligence to avert another attack, it did not concern itself with whether the evidence it collected was admissible in a court of law. Consequently, the military hampered law enforcement's goal to gather evidence for prosecution of terrorists. As Mark Fallon and others have explained,²⁴¹ the abusive interrogation of suspects caused detainees to shut down and no longer talk, even after law enforcement had established a rapport relationship with them.

In addition, evidence obtained through torture and CIDT is prohibited under law from use at a civil trial and even at military commissions. For example, the Pentagon dismissed the military commission case against al Qahtani because he had been tortured in

²⁴⁰ John Yoo, *War by Other Means: An Insider's Account of the War on Terror*, Atlantic Monthly Press, 2006), 142-43.

²⁴¹ Interview with Mark Fallon, in S.F., Cal. (Oct. 25, 2013).

Guantanamo.²⁴² In another example, a federal court excluded statements made by Binyam Mohamed, implicating Farhi Said Mohammed in terrorist activity, because Mohamed had been tortured in a black site in Morocco, including having his penis sliced with a scalpel.²⁴³ After excluding Binyam Mohamed's statements, the court granted Farhi Said Mohammed's habeas petition.²⁴⁴

Because of the harsh interrogations conducted by the military, rather than the rapport-based interrogations promoted and conducted by federal law enforcement officials, the U.S. is unable to prosecute certain alleged terrorists. Because the U.S. was afraid to release these men, but did not know what else to do with them, it continues to hold them at Guantanamo. Consequently, Guantanamo remains open today. Had we conducted humane interrogations, we would have obtained admissible evidence, allowing us to prosecute those who engaged in criminal acts and release those who did not.²⁴⁵

Guantanamo has been open for more than a dozen years after the first planeload of detainees arrived on January 11, 2002. In addition, more than 5 years have passed since President Obama declared on his second day in office that he would close Guantanamo within a year.²⁴⁶

As of July 1, 2014, the following numbers apply: One hundred forty-nine men are still living in Guantanamo, most without charges.²⁴⁷ They may live there for the remainder of their lives. Seventy-eight of the men remaining in Guantanamo have been cleared for release for more than four years.²⁴⁸ Fifty-eight of the men cleared for release are from Yemen.²⁴⁹ Ever since the underwear bomber tried to bring down the plane in Detroit on

²⁴² William Glaberson, "Case Against 9/11 Detainee Is Dismissed," New York Times, May 14, 2008, <http://www.nytimes.com/2008/05/14/washington/14gitmo.html>

²⁴³ Binyam Mohamed: the torture allegations, The Telegraph, Jan.12, 2012, <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/9010123/Binyam-Mohamed-the-torture-allegations.html>

²⁴⁴ Binyam Mohamed: the torture allegations, The Telegraph, Jan.12, 2012, <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/9010123/Binyam-Mohamed-the-torture-allegations.html>

²⁴⁵ Under the Geneva Conventions, prisoners of war may be held until the end of hostilities. Convention (III) Article 118 of The Geneva Conventions States: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." However, because the Bush Administration did not apply the Geneva Conventions to the war on terror and to Guantanamo, See Bush Memo, August 7, 2002, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.pegc.us%2Farchive%2FWhite%2Fbush%2Fbush_memo_20020207_ed.pdf&ei=ifXDU_6ALcxiwKsh4GAAw&usq=AFQjCNEqX7mt9011m6m6jxHJfnGvXAM2A&bvm=bv.70810081,d.cGE; the rules in the GC would not apply.

²⁴⁶ Mark Tran, "Obama signs order to close Guantanamo Bay, the Guardian, January 22, 2009. <http://www.theguardian.com/world/2009/jan/22/hillary-clinton-diplomatic-foreign-policy>.

²⁴⁷ (<http://www.newyorker.com/online/blogs/newsdesk/2014/07/with-all-deliberate-speed-rasul-v-bush-ten-year-later.html>)

²⁴⁸ <http://www.miamiherald.com/2014/06/06/4160487/how-many-detainees-will-obama.html>

²⁴⁹ <http://www.cochran.senate.gov/public/index.cfm/in-the-news?ID=6638a1dd-7631-43b0-8403-d0d073501566>

Christmas day,²⁵⁰ Obama has refused to send any of the Yemeni detainees back to Yemen.²⁵¹

Thirty-four of the men have been designated for indefinite detention, which means that they be held in Guantanamo until they die.²⁵² Twenty-three men may be charged with crimes and recommended for prosecution.²⁵³ The current military commissions prosecutions of the five men accused of orchestrating and participating in the preparation of the attacks on 9/11, as well as the prosecution of the man accused of the bombing of the USS Cole, have been moving so slowly that it is unlikely that even one of the cases will begin, much less end, before Obama leaves office in 2016.²⁵⁴

America's reputation at home and abroad has gravely suffered

Rushan Abbas was a translator for the Uyghurs, first working for the government in Guantanamo and later for the lawyers representing the Uyghurs. She is an immigrant from East Turkestan, the home of the Uyghurs. East Turkestan was absorbed into China in the middle of the last century. In her interview with W2G, Abbas poignantly wondered, "What if our forefathers, they see, they know what's happening today in Guantanamo, how would they feel about this?"²⁵⁵ "[In] my 20 years in United States, I always want to see the great side of the United States. But the last 8 years, what I have endured, what I have experienced in Guantanamo was not the side that I want to see of my country."

By ignoring and circumventing the Constitution, we did not live up to our own rules and principles. American officials, in promoting torture and CIDT, betrayed our constitutional standards of due process and fair treatment to all. And these same officials did not inadvertently betray our principles, but actively sought out a place that they believed was outside the law. To them, Guantanamo was a place where they could disregard the Constitution with impunity.

In addition, by ignoring the Geneva Conventions, the Convention Against Torture and the International Covenant on Civil and Political Rights, America announced to the world that we will not play by universal rules, even when we sign international treaties that become part of American law. As a consequence, America's reputation for justice and fair treatment suffered not only at home, but also abroad. America lost its reputation as

²⁵⁰ http://www.nytimes.com/2012/02/11/us/underwear-bomb-plot-detailed-in-court-filings.html?_r=0<http://www.theguardian.com/world/2011/oct/11/underwear-bomber-plot-trial-detriot>

²⁵¹ Peter Finn, "Return of Yemeni detainees at Guantanamo is suspended, Washington Post, Jan. 5, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/05/AR2010010502850.html>

²⁵² <http://truth-out.org/news/item/24030-bushs-fourth-term-continues-guantanamo-torture-secret-renditions-indefinite-detention>

²⁵³ <http://www.cochran.senate.gov/public/index.cfm/in-the-news?ID=6638a1dd-7631-43b0-8403-d0d073501566>

²⁵⁴ http://www.huffingtonpost.com/2012/05/05/khalid-sheikh-mohammed-trial-9-11-guantanamo_n_1483513.html

²⁵⁵ Interview of Rushan Abbas, in Palau, Micr. (Jan 5, 2010).

the world's moral compass and foremost defender of human rights and the rule of law. Countries no longer look to the U.S. as the model of decency and promoter of humane values. Other nations now feel that we have also given them permission to replicate our shameful behavior in interrogating and treating their own captives.²⁵⁶

To many people around the world, Guantanamo has become the symbol of America's violation of human rights and the rule of law. That is, whatever the extent of harsh interrogations, torture and CIDT that occurred at Guantanamo, and even though the interrogation tactics changed in later years, Guantanamo has become synonymous with the harsh tactics used by the military at the outset post 9/11.

In a survey published in October 2007, 87% of foreign policy authorities believed that Guantanamo hurt the U.S. fight against al Qaeda.²⁵⁷ The survey noted that "At the strategic level, it has undercut the U.S. case around the world that we represent a world view and a set of values that all can admire, even those who do not wish to replicate our system and society in their own countries. Gitmo has become a symbol for cruelty and inhumanity that is repugnant to a wide sector of the world community and a powerful tool that al Qaeda can use to damage US interest and recruit others to its cause."²⁵⁸

Another statement from this survey said that Guantanamo "has hurt America disastrously. The so-called global war on terrorism depends fundamentally on America's moral authority, so that other nations will want to cooperate with us. Guantanamo has become a vibrant symbol of American exceptionalism, but this exceptionalism is unwanted around the world."²⁵⁹ In addition, "Our strongest asset internationally was our reputation and credibility on human rights. We have squandered that."²⁶⁰

Senior Intelligence Service Officer for the CIA, Emile Nakhleh, who interviewed 24 detainees in Guantanamo, believed it was critical that we shut down the detention center. He explained to W2G that not only did Guantanamo not assist our national security, but it "undermined even mainstream moderate Muslims in dealing with us because, you know, if we are going to a certain country to teach their budding lawyers and judges about the rule of law, the first question they always ask is, what about Guantanamo."²⁶¹

Nekhleh believed that we may have lost the "Guantanamo generation." America now needed to "reach out to rising generations of youth; the youth that fueled the Arab Spring,

²⁵⁶ "Absent Moral Authority," Tom Malinowsky, <http://www.hrw.org/de/news/2004/02/01/absent-moral-authority>; Jeffrey K Cassin, "United States Moral Authority Undermined: The Foreign Affairs Costs of Abusive Detentions," 4 Cardozo Pub. L. Pol'y & Ethics J. 421 at 447.

²⁵⁷ "Guantanamo's Shadow," The Atlantic, Oct 1, 2007.

<http://www.theatlantic.com/magazine/archive/2007/10/guantanamos-shadow/306212/>

²⁵⁸ "Guantanamo's Shadow," The Atlantic, Oct 1, 2007.

<http://www.theatlantic.com/magazine/archive/2007/10/guantanamos-shadow/306212/>

²⁵⁹ "Guantanamo's Shadow," The Atlantic, Oct 1, 2007.

<http://www.theatlantic.com/magazine/archive/2007/10/guantanamos-shadow/306212/>

²⁶⁰ "Guantanamo's Shadow," The Atlantic, Oct 1, 2007.

<http://www.theatlantic.com/magazine/archive/2007/10/guantanamos-shadow/306212/>

²⁶¹ Interview of Emile Nakhleh, in S.F., Cal. (Apr. 10, 2013).

the youth that want freedom, that want entrepreneurship, that want jobs, that want dignity. We need to reach out to that generation.”²⁶²

As CITF chief Mark Fallon explained, Guantanamo was an “opportunity lost.”... This was an opportunity for us to show the world, set an example for the world.”²⁶³ Instead, we abused our authority. Fallon also noted²⁶⁴ that the screening process was “terrible,” that many of the men investigated had done no wrong, had no prosecutorial value and also had no intelligence value.²⁶⁵

Uruguayan President Jose Mujica Cordano, who recently agreed to resettle six detainees in his country,²⁶⁶ called Guantanamo Bay prison a disgrace for the United States. He said, that the U.S. “on the one hand wants to waive the flag of human rights, and assumes the right to criticize the whole world, and then has this well of shame.”²⁶⁷

As the symbol of our violations of human rights and the rule of law, Guantanamo has become a recruitment tool

Guantanamo has become a rallying cry for recruitment. By harshly interrogating and mistreating detainees in Guantanamo – along with the reality that America’s violations of human rights and the rule of law have become equated with the term Guantanamo -- we have provided terrorist groups the platform to recruit followers and challenge America’s values. As United Nations High Commissioner for Human Rights, Navi Pillay noted, Guantanamo “has become an ideal recruitment tool for terrorists.”²⁶⁸ And such statements do not only come from human rights activists or from people outside the U.S.

Bagram military interrogator Damien Corsetti also raised the possibility that his brutal interrogations contributed to the recruitment of terrorists and the killing of others. As he told W2G, “I mean, I definitely got good intelligence while I was there. I saved – at the time immediately through direct action of intelligence I gathered I know I’ve saved lives. I know I’ve saved U.S. lives. I know I’ve saved lives outside of the United States as well. However, what I deal with now is did my actions to get that information over a four-year span in the recruitment of terrorists done by my actions in the end cost more lives?”²⁶⁹

²⁶² Interview of Emile Nakhleh, in S.F., Cal.. (Apr. 10, 2013).

²⁶³ Interview of Mark Fallon, in S.F., Cal. (Nov. 25, 2013).

²⁶⁴ Interview of Mark Fallon, in S.F., Cal (Nov. 25, 2013).

²⁶⁵ Interview of Mark Fallon, in S.F., Cal.)Nov. 25, 2013).

²⁶⁶ Mary Beth Sheridan, Uruguayan president agrees to take six detainees from Guantanamo, Washington Post, May 15, 2014, http://www.washingtonpost.com/world/national-security/uruguayan-president-agrees-to-take-six-detainees-from-guantanamo/2014/05/15/a1a3fca8-dc53-11e3-8009-71de85b9c527_story.html

²⁶⁷ Washington Post, May 13, 2014 in Washington DC

²⁶⁸ “Guantanamo an ideal recruitment tool for terrorists – UN human rights chief, RT, May 27, 2013, <http://rt.com/news/un-guantanamo-terrorists-violations-857/>

²⁶⁹ Interview with Damien Corsetti, in Ga. (Mar. 4, 2013).

As long as Guantanamo remains open, it continues as a recruitment tool. The Atlantic magazine wrote that, “The Guantanamo system has hurt the U.S. and our fight against Al Qaeda. We have abandoned the moral high ground and, through our actions, have become one of the principle recruiting agents for Islamic extremism.”²⁷⁰

Jihadist media and propaganda refer to Guantanamo. For example, the Islamic Emirate of Afghanistan, representing the Taliban, has addressed the hunger strikers “in the notorious Guantanamo prison,” noting “the abuse of prisoners by the American wardens” and the barbaric and inhumane treatment of the prisoners.”²⁷¹ In another example, Al Qaeda in the Arabian Peninsula has released a number of issues of its magazine “Inspire” prominently featuring Guantanamo.²⁷²

General Colin Powell, who was Secretary of State during the first four years of the Bush Administration, has been quoted as saying that unless Guantanamo is closed, it will give “radicals an opportunity to say, you see, this is what America is all about. They’re all about torture and detention centers.”²⁷³

For young Americans, Guantanamo, torture and CIDT have always existed and have become ingrained in our culture.

Recently, a local high school girl interviewed the author of this article for a report she was doing on torture and Guantanamo. As the author described the events leading up to the opening of Guantanamo, he realized that the student did not know about the attacks on the World Trade Center and the Pentagon on 9/11.

September 11, 2001 was a dozen years ago. She was five. Apparently, her history books did not cover such “recent” events. Nor did her civics class address 9/11 and its accompanying critical issues of the rule of law and the due process rights of detainees. It also seemed that her parents had never said anything to her about the events of that day, and how that day had transformed our lives forever. The events on 9/11 did not precipitate her study of torture and Guantanamo. Rather, they had no context to her study. For her, torture and Guantanamo had always existed.

²⁷⁰ “Guantanamo’s Shadow,” The Atlantic, Oct 1, 2007.

<http://www.theatlantic.com/magazine/archive/2007/10/guantanamos-shadow/306212/>

²⁷¹ Therese Postel, “How Guantanamo Bay’s Existence Helps Al-Qaeda Recruit More Terrorists,” the Atlantic, April 12, 2013; <http://www.theatlantic.com/international/archive/2013/04/how-guantanamo-bays-existence-helps-al-qaeda-recruit-more-terrorists/274956/> The full quote is found at: <http://jihadology.net/2013/03/26/new-statement-from-the-islamic-emirate-of-afghanistan-strike-of-destitute-inmates-in-guantanamo-prison-reaches-forty-days/>

²⁷² Therese Postel, “How Guantanamo Bay’s Existence Helps Al-Qaeda Recruit More Terrorists,” the Atlantic, April 12, 2013; <http://www.theatlantic.com/international/archive/2013/04/how-guantanamo-bays-existence-helps-al-qaeda-recruit-more-terrorists/274956/>

²⁷³ Therese Postel, “How Guantanamo Bay’s Existence Helps Al-Qaeda Recruit More Terrorists,” the Atlantic, April 12, 2013; <http://www.theatlantic.com/international/archive/2013/04/how-guantanamo-bays-existence-helps-al-qaeda-recruit-more-terrorists/274956/>

Unfortunately, her response was not unusual. After the author published a piece about his meeting with the student on Huffington Post,²⁷⁴ another student posted the following comment on the Huffington Post site:²⁷⁵

“You make a good point. I'm in high school, and both European and American history end in the 80s. I've learned what happened at 9/11 from talking to my parents, but not in school. I have to wonder what other important events I'm missing- after all, recent history affects the world directly.”

Wells Dixon, habeas attorney for the Center for Constitutional Rights confirmed this cultural shift when he spoke to W2G about his visits to Guantanamo. He noted that Guantanamo has “become part of the American landscape.” He continued, “When you go to Guantanamo now and you see these guards who are 18, 19 years old, you’ll realize, they in all likelihood, don’t remember America without Guantanamo. I mean, they’re too young to remember America before Guantanamo existed. It’s been part of their history and their culture forever, as far as they’re concerned.”²⁷⁶

The harsh treatment motivated detainees to become violent, and/or to turn their anger against the U.S. after their release.

As described in this section, there are detainees who engaged in violent activities following their release. However, although it is not always known whether detainees engaged in such conduct prior to their detention, it is likely that some of the Guantanamo detainees became violent after being subjected to harsh interrogations and held for years without charges. It is also likely that detainees who had been violent when captured turned their anger at the U.S. when released, because of the harsh interrogations they suffered. Perhaps detainees who were not harshly interrogated were, nevertheless, angered by learning that others in the prison were brutally interrogated. One could argue that by unjustly holding and harshly interrogating detainees in Guantanamo for over a decade, we have contributed to creating the terrorists we feared.

The numbers below may provide some indication that the harsh interrogations and military violence in Guantanamo may have led to detainees’ violent behavior after release. However there is no documented link. Sociologists and psychologists are encouraged to study and research this issue in depth.

The statistics on the number of detainees who were violent after release differ substantially depending on who is doing the counting. In January 2014, the U.S. Office of the Director of National Intelligence released a figure of 17%, as to the percentage of prisoners who have engaged in “terrorist activities, and another 12% were suspected of

²⁷⁴ Peter Jan Honigsberg, “9/11, A Mystery to the Young,” September 10, 2013; http://www.huffingtonpost.com/peter-jan-honigsberg/911-a-mystery-to-the-youn_b_3897362.html

²⁷⁵ [Eleanor E. post in response to](#) Peter Jan Honigsberg, “9/11, A Mystery to the Young,” September 10, 2013; http://www.huffingtonpost.com/peter-jan-honigsberg/911-a-mystery-to-the-youn_b_3897362.html

²⁷⁶ Interview with J. Wells Dixon, Habeas attorney, in N.Y., N.Y. (May 13, 2014).

engaging in terrorist activities.²⁷⁷ However, when looking at actions against the U.S. or its citizens, the New America Foundation lists the much smaller number of 2.5% confirmed who have engaged in terrorist activities against the U.S. or its citizens, and 3.5% who are suspected of so engaging.²⁷⁸ The Foundation also identified another 3% of former detainees who are confirmed or suspected of involvement in militant attacks against non-U.S. targets.²⁷⁹ Adding these numbers together, one gets 9%, which is approximately 1/3 of the numbers (17% + 12% = 29%) issued by the Director of National Intelligence.

The Witness to Guantanamo project has interviewed 48 detainees. Four of them are known to have participated in violent activities after their release. All four of the men joined one of the militant splinter groups supporting the Sunni rebels in Syria, who are in armed conflict with the Assad government. Two of these men, both Moroccans, died in Syria.²⁸⁰ A third former detainee may be prosecuted by his home country of Great Britain.²⁸¹ The fourth, and another former detainee from Morocco, was convicted of recruiting Moroccans to fight against the U.S. in Iraq in 2007.²⁸² As of June 4, 2014, he has been fighting with the militant Harakat Sham rebels in Syria.²⁸³ A fifth former detainee from Kuwait, also interviewed by W2G, was accused of belonging to Al Wafi, a terrorist organization before he was taken to Guantanamo.²⁸⁴ He was acquitted of the charge.²⁸⁵ One former detainee from Kuwait, not interviewed by W2G, became a suicide bomber in Iraq after he was released.²⁸⁶ It is possible that other people W2G interviewed have also participated in violent or terrorist activities after their release, but have not been publicly identified.

²⁷⁷ Peter Bergen and Bailey Cahall, "How big a terror risk are former Guantanamo prisoners?" June 8, 2014, CNN.com,

<http://www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-recidivist-terrorists/>

²⁷⁸ Peter Bergen and Bailey Cahall, "How big a terror risk are former Guantanamo prisoners?" June 8, 2014, CNN.com,

<http://www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-recidivist-terrorists/>

²⁷⁹ Peter Bergen and Bailey Cahall, "How big a terror risk are former Guantanamo prisoners?" June 8, 2014, CNN.com,

<http://www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-recidivist-terrorists/>

²⁸⁰ Maria Abi-Habib, "Lessons from Guantanamo: Once Free, a Return to Violence," Wall Street Journal, June 4, 2014, <http://online.wsj.com/articles/after-guantanamo-freed-detainees-return-to-violence-in-syria-battlefields-1401839291>; Souleimane Laalami Mohamed, Interviewed 07.13.12, Brahim Benchakroun, Interviewed 07.12.12 (both in Casablanca)

²⁸¹ Interview with Moazzam Begg, in Birmingham, U.K. (Aug. 17, 2009).

²⁸² Interview with Mohammed Mazouz, in Casablanca, Morocco (July 11, 2012).

²⁸³ Maria Abi-Habib, "Lessons from Guantanamo: Once Free, a Return to Violence," Wall Street Journal, June 4, 2014, <http://online.wsj.com/articles/after-guantanamo-freed-detainees-return-to-violence-in-syria-battlefields-1401839291>

²⁸⁴ Saad Madi Saad al Azmi, Detainee Number 571, see http://en.wikipedia.org/wiki/Lists_of_former_Guantanamo_Bay_detainees_alleged_to_have_returned_to_terrorism

²⁸⁵ Saad Madi Saad al Azmi, Detainee Number 571, see http://en.wikipedia.org/wiki/Lists_of_former_Guantanamo_Bay_detainees_alleged_to_have_returned_to_terrorism

²⁸⁶ Alissa J. Rubin, "Ex-Guantanamo detainee became suicide bomber in Iraq, U.S. says," N. Y. Times, http://www.nytimes.com/2008/05/08/world/africa/08iht-gitmo.1.12688332.html?_r=0

Noncombatant personnel who worked with detainees and participated in or observed mistreatment suffered PTSD

Damien Corsetti, the Bagram interrogator described in Part I, was assessed a reduced PTSD status after his trial. Corsetti challenged the assessment and, ultimately, the government granted Corsetti 100% disability based on his PTSD.²⁸⁷ Corsetti was unable to work at any job. “I have a pretty severe case of PTSD,”²⁸⁸ he told W2G.

W2G did not interview other interrogators who conducted harsh interrogations, and medical records are protected from public access. Accordingly, we cannot say whether other Bagram interrogators, who also participated in illegal and inhumane behavior toward detainees, also suffered PTSD, and whether they still suffer today. Nor can we say whether the military interrogators who participated in torturing al- Qahtani suffered PTSD. None of the other three interrogators described in Part II besides Corsetti (i.e. Clemente, Nelson and Bryson), who treated detainees with a rapport-building approach, spoke of suffering from PTSD when W2G interviewed them.

However, at least one study has shown that noncombatants can develop PTSD without having actually engaged in combat. Although the study focused on traumatic combat-related events, it found a correlation between noncombatants witnessing a traumatic event in a hostile environment and the increased risk for PTSD for the noncombatants.²⁸⁹ Scholars and researchers are encouraged to undertake research projects into whether noncombatants who either participated in or witnessed torture or CIDT in Bagram or Guantanamo suffered a traumatic event leading to PTSD.

In a study of Vietnam veterans, researchers determined that after controlling for combat exposure, “atrocities exposure was found to be significantly related to overall PTSD symptom severity.”²⁹⁰ Researchers have also found that a “moral injury,” causing PTSD-like symptoms, can occur as a result of mistreatment of enemy combatants and acts of revenge.²⁹¹

Professor John Smith, a retired Air Force captain who treated a guard who had worked at Guantanamo, described the prison guards as “an overlooked group of victims.”²⁹² One guard reportedly told Smith that he felt “profoundly guilty about his participation” which included preparing detainees for interrogation by handcuffing them in painful positions, while naked. The guard was also required to make prisoners kneel, naked and shackled,

²⁸⁷ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

²⁸⁸ Interview with Damien Corsetti, in Ga. (Apr. 16, 2013).

²⁸⁹ Alan L. Peterson, “Documented combat-related mental health problems in military noncombatants,” *Journal of Traumatic Stress* 23, pages 674-681 (2010).

²⁹⁰ Beckham, J.C., Feldman, M.E. and Kirby, A.C. (1998) “Atrocities exposure in Vietnam combat veterans with chronic posttraumatic stress disorder: Relationship to combat exposure, symptom severity, guilt and interpersonal violence,” *Journal of Traumatic Stress*, 11(4), page 783.

²⁹¹ “An Exploration of the Viability and Usefulness of the Construct of Moral Injury in War Veterans,” *Traumatology*, 17(1), 2001, page 11.

²⁹² James Randerson, Guantanamo Guards Suffer Psychological Trauma, *The Guardian*, February 25, 2008

on sharp stones. When he returned to the U.S., after observing and participating in the abuse of the detainees, the guard suffered “panic attacks, insomnia, nightmares, flashbacks and depression,”²⁹³ all symptoms of PTSD.

Albert Shimkus served as the commanding officer of the Naval Hospital at Guantanamo from August 2002 to August 2003. He told W2G that certain noncombatant guards manifested symptoms of aggression and depression because they were affected by their work at the base and the “difficulty in the environment of Gitmo.”²⁹⁴ These guards would be provided with psychological counseling, and sometimes removed from their positions.²⁹⁵

A young medic told W2G that after leaving Guantanamo he would get very angry, and then cry. “What’s the matter with me? This is just not the way a guy acts,” he would ask himself. He sought out psychiatric care.²⁹⁶ The psychiatrist gave him medication. The medic and the psychiatrist only talked briefly about the medic’s experiences in Guantanamo. The psychiatrist was more interested in whether the medication he had prescribed to the medic was working. The medic explained to W2G, “Part of the problem is that the more you talk about it, the more you dredge it up. The more dreams I have about it, the more irritable I get.”

When W2G asked about his parents, he replied, “I don’t know how much my parents even know. They picked me up when I got back and they took me to dinner and they said, well, how was it? I almost started to cry and I said, ‘it’s bad. It’s really not a good place.’”²⁹⁷ And that was the end of the conversation.

Concluding Thoughts

John Bellinger was principle lawyer for former Secretary of State Condoleezza Rice and the National Security Counsel. He was also one of the people who had drafted the memoranda justifying the use of drones during the Bush Administration. He told W2G, “It does seem to me – as an objective fact, it is clear that the Obama administration has ramped up dramatically its use of drones while ramping down dramatically its detention of any individual. He observed that, “it appears at least that there has been a preference to simply kill senior Al Qaeda leaders as opposed to attempting to detain them.”

In other words, Bellinger is indicating that drones are the next iteration of an ill-conceived short-term policy. It seems as if history is again repeating itself. America was not reflective when it initiated harsh interrogations techniques, including torture and CIDT, in Bagram and Guantanamo. The use of drones to kill people as a substitute for bringing suspected terrorists to Guantanamo is another policy fraught with danger to our

²⁹³ James Randerson, Guantanamo Guards Suffer Psychological Trauma, The Guardian, February 25, 2008

²⁹⁴ Interview with Albert Shimkus, in Wash., D.C. (August 9, 2011).

²⁹⁵ Interview with Albert Shimkus, in Wash., D.C. (August 9, 2011).

²⁹⁶ Interview with anonymous medic, in S.F., Cal. (April 14, 2012).

²⁹⁷ Interview with anonymous medic, in S.F., Cal. (April 14, 2012).

global reputation. We must evaluate our use of drones as weapons of killing, sometimes indiscriminately, today in light of the lessons we should have learned from Guantanamo.

As Bellinger explained: “One might imagine that they saw what happened to the Bush administration with respect to detention and they've decided that trying to detain suspected terrorists is an unsuccessful policy. The problem with drone strikes though is that it results in killing not only of the people you're targeting but also of civilians as well. And that it's not transparent. I mean, at least the people in Guantanamo, we know who they are. We can argue whether they ought to be there or not.”

Bellinger added, “It may well be that it's appropriate to target some or all of these individuals. And I have confidence in the senior policy officials in the Obama administration. But much of the rest of the world I think is not convinced by this administration simply saying, trust us, we're doing this right.”

A bipartisan panel of former senior intelligence officers and military officials released a report indicating that President Obama's use of drones for targeted killings risks putting the U.S. on a “slippery slope” into a perpetual war. Further, it noted that the drones set a dangerous precedent that other countries could use to conduct lethal operations in the future.²⁹⁸ The report also raised the issue of whether drones may be creating terrorists even as they are killing them. “There is no indication that a U.S. strategy to destroy Al Qaeda has curbed the rise of Sunni Islamic extremism, deterred the establishment of Shia Islamic groups or advanced long-term U.S. security interests,” the report concluded.²⁹⁹

The use of drones today should cause all Americans to pause. Guantanamo should be a cautionary tale for us all. As we hear about the number of targets killed by drones in far away lands like Pakistan and Yemen, we must ask ourselves whether drones will become another stain on America's image, that is, another Guantanamo.

If and when Guantanamo is closed, the U.S. must begin working to reestablish its moral high-ground. It must work on again becoming the beacon for human rights and the rule of law. It will be a long process, but it can be done. The US could regain that lead by doing the right thing going forward. Millions of people around the world believed in Obama when he was first elected. He received the Nobel Peace Prize after only four months in office.³⁰⁰ The people around the world cheered for him, and looked to him to reverse Bush era policies. He brought us hope.

However, he had announced in the early days of his presidency that he had “a belief that we need to look forward as opposed to looking backwards.”³⁰¹ Unfortunately, that meant

²⁹⁸ Mark Mazzetti, “Use of Drones for Killings Risks a War Without End, Panel Concludes in Report,” New York Times, June 26, 2014.

²⁹⁹ Mark Mazzetti, “Use of Drones for Killings Risks a War Without End, Panel Concludes in Report,” New York Times, June 26, 2014.

³⁰⁰ http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/

³⁰¹ David Johnston and Charlie Savage, “Obama Reluctant to Look into Bush Programs,” New York Times, Jan. 11, 2009, <http://www.nytimes.com/2009/01/12/us/politics/12inquire.html?pagewanted=all&r=0>. See

that people in the previous administration who had authorized harsh interrogations involving torture and CIDT would not be prosecuted and, if guilty, convicted. By not demonstrating to the nation and the world that people who committed these serious and shameful crimes must be brought to justice, Obama delivered the message that people who committed such behavior will never be held accountable.

In addition, Obama has not only refused to prosecute, but has also continued many of the Bush policies, and has even gone further in some respects. For example, he has kept Guantanamo open, although President Bush had wanted to close it as his term came to an end.³⁰² Obama has also continued to allow the military to commit CIDT, if not torture, when force-feeding detainees on hunger strikes.³⁰³ And, as noted above, he has expanded the use of drones for killing people, including American citizens, without any accountability.³⁰⁴

Schools should begin educating their students on 9/11 issues. We cannot improve our relations with Muslim countries until we understand why 9/11 happened and how 9/11 was caused by jihadists, and not by all Muslims, as some ignorant people may believe. By learning about 9/11, as well as about Arab culture and the Muslim religion, the next generations will better understand how to improve relations and live with Muslims in harmony.

Further research is necessary to study the extent of PTSD suffered by noncombatants, whether interrogators, medics, guards or others. There seem to be few, if any, well-recognized and established studies on this issue. Yet, after Guantanamo, PTSD has become a critical concern. Government officials and military officials must be informed if Americans who participated in torture or CIDT, or even observed torture or CIDT, suffered PTSD.

Hopefully, scholars will pursue and study the research necessary to support or negate the tentative theories raised in the article.

also David Cole, Obama's Torture Problem, New York Review of Books, Nov. 18. 2010; <http://www.nybooks.com/blogs/nyrblog/2010/nov/18/obamas-torture-problem/>

³⁰² Melissa McNamera, Bush Says He Wants to Close Guantanamo, CBS News, May 8, 2006, <http://www.cbsnews.com/news/bush-says-he-wants-to-close-guantanamo/>; "White House Wants to Close Guantanamo 'As Soon as Possible,'" AP, June 22, 2007, <http://www.foxnews.com/story/2007/06/22/white-house-wants-to-close-guantanamo-bay-prison-as-soon-as-possible/>

³⁰³ See, Dan Lamothe, "U.S. judge permits Pentagon to force-feed Guantanamo prisoner but issues rebuke," May 23, 2014, Washington Post, http://www.washingtonpost.com/world/national-security/us-judge-permits-pentagon-to-force-feed-guantanamo-prisoner-says-pain-possible/2014/05/23/a385cf72-e290-11e3-8dcc-d6b7fede081a_story.html; and see, Jason Leopold, "Judge orders government to stop force-feeding Guantanamo prisoner," al Jazeera, May 17, 2014, <http://america.aljazeera.com/articles/2014/5/16/guantanamo-forcefeeding.html>

³⁰⁴ See section on drones, *supra*

