

May 11, 2004

MEMORANDUM FOR THE FILES

From: Jack L. Goldsmith III *JL*  
Assistant Attorney General

Re: Advice to the Department of Defense on Interrogations

On April 23, 2004, OLC advised the Department of Defense that four techniques for interrogation of a prisoner at Guantanamo would be lawful, if justified by military necessity and if conducted in accordance with the Secretary of Defense's memorandum of April 15, 2003, including Attachment B, which specified a variety of safeguards (such as "appropriate supervision" and an interrogation plan including "limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel"). Two of these techniques involved only verbal tactics to be used in the interrogation: (1) verbal stratagems, "not beyond the limits that would apply to a POW," aimed at breaking down a detainee's pride and ego; (2) "Mutt and Jeff" tactics, in which one interrogator is friendly to the detainee and the other might employ the verbal stratagem under (1). The third technique consisted of providing a reward or removing a privilege, "above and beyond those that are required by the Geneva Convention." The fourth technique was isolation for a limited period. We had earlier advised the Department of Defense that "[a] brief stay in solitary confinement alone is insufficient to state a deprivation" of basic human needs and thus would not constitute "cruel, inhuman, or degrading" treatment under the Convention Against Torture, let alone meet the higher standard for "torture" under that Convention and the United States criminal law implementing it, 18 U.S.C. §§ 2340-2340A. See Memorandum for William J. Haynes II, General Counsel of the Department of Defense, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States* at 64 (Mar. 14, 2003). The Department of Defense proposed that the solitary confinement might continue as long as 60 days, with an internal review after 30. We stated, however, that our advice was limited to the legality of the 30-day period and that we ought to be consulted again if the Department of Defense wished to extend that time.

We note here that the Department of Defense, in its Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations (Apr. 4, 2003), concluded that all four techniques, as described, not only were lawful under all pertinent laws, but also were of high utility and consistent with the historical role of United States forces in interrogations.

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