

## ACLU 2004 Remand Documents

### OLC Releases

1. 13 July 2002 Letter from John Yoo to John Rizzo [OLC Vaughn Index #1]
2. 24 July 2002 fax between CIA and OLC regarding psychological assessment of Abu Zubaydah [OLC Vaughn Index #4]
3. 28 January 2003 Guidelines on confinement signed by DCI George Tenet [OLC Vaughn Index #11]
4. 28 January 2003 Guidelines on interrogations signed by DCI George Tenet [OLC Vaughn Index #12]
5. 28 April 2003 Draft list of bullet points discussing legal principles applicable to the CIA interrogation program [OLC Vaughn Index #17]
6. 16 June 2003 Draft list of bullet points discussing legal principles applicable to the CIA interrogation program w/attachment [OLC Vaughn Index #19]
7. 02 March 2004 Draft letter from CIA to OLC w/attached bullet points discussing legal principles applicable to the CIA interrogation program [OLC Vaughn Index #22]

8. 25 May 2004 Letter from OLC to CIA  
discussing CIA OIG 2004 Special Review  
[OLC Vaughn Index #26]
9. 27 May 2004 Letter from OLC to CIA  
discussing CIA OIG 2004 Special Review  
[OLC Vaughn Index #28]
10. 10 June 2004 Letter from OLC to CIA  
discussing CIA's request for  
reaffirmation of a previous OLC document  
[OLC Vaughn Index #29]
11. 10 June 2004 Letter from OLC to CIA  
discussing CIA's request for  
reaffirmation of a previous OLC document  
[OLC Vaughn Index #30]
12. 18 June 2004 Letter from OLC to CIA  
discussing CIA OIG 2004 Special Review  
[OLC Vaughn Index #36]
13. 22 June 2004 Letter from CIA to OLC  
discussing CIA OIG 2004 Special Review  
[OLC Vaughn Index #38]
14. 02 July 2004 Letter from CIA OIG to OLC  
discussing CIA OIG 2004 Special Review  
[OLC Vaughn Index #42]
15. 02 July 2004 Letter from CIA to  
Department of State [OLC Vaughn Index  
#43]

16. 07 July 2004 Letter from OLC to CIA discussing the proposed interrogation of a detainee [OLC Vaughn Index #48]
17. 13 July 2002 Letter from John Yoo to John Rizzo [OLC Vaughn Index #49]
18. 22 July 2004 Letter from OLC to CIA requesting information on certain techniques [OLC Vaughn Index #65]
19. 22 July 2004 Letter from AG Ashcroft to ADCI McLaughlin [OLC Vaughn Index #64]
20. 05 August 2004 Letter from CIA to OLC discussing guidelines for a certain technique [OLC Vaughn Index #72]
21. 05 August 2004 Letter from CIA to OLC discussing guidelines for a certain technique [OLC Vaughn Index #73]
22. 6 August 2004 Letter from Daniel Levin to John Rizzo [OLC Vaughn Index #74]
23. 20 September 2004 Letter from Daniel Levin to John Rizzo [OLC Vaughn Index #79]
24. 26 August 2004 Letter from Daniel Levin to John Rizzo [OLC Vaughn Index #85]

25. 6 September 2004 Letter from Daniel Levin to John Rizzo [OLC Vaughn Index #88]
26. September 2004 Memo reflecting OLC's view on the previous and current guidance it provided to CIA and DOD [OLC Vaughn Index #89]
27. 30 December 2004 OLC memo prepared for James Comey [OLC Vaughn Index #96]
28. 30 December 2004 Fax from CIA to OLC providing generic description of the CIA's combined use of various interrogation techniques [OLC Vaughn Index #97]
29. 15 January 2005 Fax from CIA to OLC providing information on medical guidelines for detainees [OLC Vaughn Index #101]
30. 22 April 2005 Fax CIA to OLC elements of CIA's use of techniques in combination [OLC Vaughn Index #107]
31. Undated draft memo analyzing the CIA's interrogation program under the Convention Against Torture (CAT) [OLC Vaughn Index #112]
32. Undated draft memo analyzing the CIA's interrogation program under the CAT [OLC Vaughn Index #113]

33. Undated handwritten notes of an OLC attorney [OLC Vaughn Index #129]
34. Undated draft memo analyzing the CIA's interrogation program under the CAT [OLC Vaughn Index #134]
35. Undated Notes [OLC Vaughn Index #136]
36. Undated Notes [OLC Vaughn Index #137]
37. Undated draft memo listing proposed techniques and the effect of the McCain Amendment on the CIA's RDI program [OLC Vaughn Index #138]
38. Undated draft memo discussing legal principles applicable to the CIA's RDI program [OLC Vaughn Index #151]
39. Undated Notes [OLC Vaughn Index #159]
40. Undated draft memo analyzing the CIA's interrogation program under the CAT [OLC Vaughn Index #163]
41. Undated memo outlining three previous OLC opinions [OLC Vaughn Index #164]
42. Undated Notes [OLC Vaughn Index #174]

43. 18 June 2004 Memorandum from OLC to CIA  
OIG regarding 2004 OIG Special Review  
[Not previously identified in OLC Vaughn  
Index]





U.S. Department of Justice

Office of Legal Counsel

Office of the  
Deputy Assistant Attorney General

Washington, DC 20530

July 13, 2002

John Rizzo  
Acting General Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Mr. Rizzo:

This letter is in response to your inquiry at our meeting today about what is necessary to establish the crime of torture, as set forth in 18 U.S.C. § 2340 *et seq.* The elements of the crime of torture are: (1) the torture occurred outside the United States; (2) the defendant acted under the color of law; (3) the victim was within the defendant's custody or physical control; (4) the defendant specifically intended to cause severe mental or physical pain or suffering; and (5) the act inflicted severe mental or physical pain or suffering. See 18 U.S.C. § 2340(1); *id.*, § 2340. With respect to severe mental pain or suffering specifically, prolonged mental harm must be established. That prolonged mental harm must result from one of the following acts: intentional infliction or threatened infliction of severe physical pain or suffering; administration or application of or threatened administration or application of mind-altering drugs or other procedures designed to profoundly disrupt the senses or personality; threat of imminent death; or threatening to subject another person to imminent death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. See 18 U.S.C. § 2340(2).

Moreover, to establish that an individual has acted with the specific intent to inflict severe mental pain or suffering, an individual must act with specific intent, i.e., with the express purpose, of causing prolonged mental harm in order for the use of any of the predicate acts to constitute torture. Specific intent can be negated by a showing of good faith. Thus, if an individual undertook any of the predicate acts for severe mental pain or suffering, but did so in the good faith belief that those acts would not cause the prisoner prolonged mental harm, he would not have acted with the specific intent necessary to establish torture. If, for example, efforts were made to determine what long-term impact, if any, specific conduct would have and it was learned that the conduct would not result in prolonged mental harm, any actions undertaken relying on that advice would have been undertaken in good faith. Due diligence to meet this standard might include such actions as surveying professional literature, consulting with experts, or evidence gained from past experience.



~~SECRET~~

As you know, our office is in the course of finalizing a more detailed memorandum opinion analyzing section 2340. We look forward to working with you as we finish that project. Please contact me or if you have any further questions.

Sincerely,

*John Yoo*

John Yoo  
Deputy Assistant Attorney General

~~SECRET~~



To: John Yoo

[REDACTED]

Phone:

[REDACTED]

Fax:

From:

[REDACTED]

Phone:

Date: 24 July 2002

Pages including this  
cover page: 7

[REDACTED]

Here is the psychological assessment. Please feel free to call  
me at work or at home, whenever.

Thanks -

[REDACTED]

56998

DRAFT  
TOP SECRET

Psychological Assessment of  
Zain al-'Abidin al-Abideen Muhammad Hassan, a.k.a. Abu Zubaydah

The following psychological assessment of Zain al-'Abidin al-Abideen Muhammad Hassan, (a.k.a. Abu Zubaydah) is based upon the results of direct interviews with and observations of the subject, and from information obtained from collateral sources such as intelligence and press reports. [REDACTED]

Background Information. For at least a decade, subject has lived and worked within an environment that has condoned, nurtured, intensified, and rewarded his radical beliefs. The following is a partial list of responsibilities that the subject has held (no particular order). Subject is currently 31 years old.

Abu Zubaydah worked from very low-level mujahidin (called courier by some) by age of 31 to third or fourth man in al-Qa'ida. No one rises to that level in such a short period of time without being dedicated, trusted, and strong.

Alleged to have written al-Qa'ida's manual on resistance techniques and lectured on the topic.

Involved in every major al-Qa'ida terrorist operation; served as the operational planner for the millennium plot (2000), the Paris embassy (2001) and a planner of the 11 September hijackings which killed and maimed thousands of Americans.

Served as senior Usama Bin Ladin lieutenant and played a key role in the movement and training of operatives on behalf of al-Qa'ida, the Egyptian Islamic Jihad, and other terrorist elements inside Pakistan and Afghanistan. He was a key player in the Millennium threat last year and appears to be engaged in ongoing terrorism planning against US interests. Zubaydah is wanted in Jordan for his role in the Millennium plot.

Directed the start-up of a Bin Ladin cell in Jordan that was disrupted in Amman in December 1999 for plotting terrorist acts against US and Israeli targets during the Millennium celebrations in Jordan. Two central figures of the plot, under arrest, identified Abu Zubaydah as being the primary supporter of this cell and the plot.

Managed a network of training camps, safehouses, and *mujahedin*-related offices in Peshawar and Afghanistan, assisted in other extremist networks, by moving men, money and materials in support of various *jihad*s [REDACTED] around the world.

DRAFT  
TOP SECRET

~~DRAFT~~  
TOP SECRET

Served as Deputy Camp Commander for al-Qa'ida training camp in Afghanistan.

Personally approved entry and graduation of all trainees [REDACTED] -- circa 1999-2000. From 1996-1999, approved all individuals going in and out of Afghanistan to the training camps. No one came in and out of Peshawar, Pakistan without his knowledge and approval. Served as al-Qa'ida's coordinator of external contacts, or foreign communications.

Acted as al-Qa'ida's CI officer and was trusted to find spies in their midst.

Relevant History: Subject reported that he persisted for a few years in holding onto the possibility that he could eventually transition from jihad life back into college and pursuit of his traditional educational, career, and family goals. As time passed he appeared to find a special niche for himself. He became increasingly integrated into the jihadist ideology and lifestyle. He periodically felt pangs of homesickness, longed for the company of family, and fantasized about a future as a computer expert or engineer. However, overtime, the frequency and intensity of these thoughts and feelings diminished. He began to think of any activity outside jihad as "silly". Eventually, he understood that his mind and heart were devoted to serving Allah and Islam through his jihad. He asserted that he has had "no" doubts or regrets about choosing to pursue and devote himself to jihad since the mid-1990's.

Personality: Subject is a highly self-directed individual who prizes his independence. He seeks to express his independence by doing things his own way and having his own style to the extent that he can within the structure of radical salafist environments. When he makes concessions, it is within the context of his ideological and religious convictions. He has narcissistic features that are evident in his attention to his appearance and in his obvious "efforts" to demonstrate that he is really a rather "humble and regular guy." Subject clearly possesses an air of confidence, self-assurance, and authority.

[REDACTED] He is somewhat compulsive in how he organizes his environment and conducts his business. [REDACTED]

[REDACTED] He conceded that he still wrestles with issues regarding the killing of civilians and how to determine who is "innocent." [REDACTED]

[REDACTED] He acknowledged that he celebrated the destruction of the World Trade Center.

He is intellectually curious, skeptical and wary of others' intentions, possesses excellent self-discipline and readily sets aside his own interests to meet his responsibilities. [REDACTED]

[REDACTED] Subject is perfectionistic [REDACTED]

~~DRAFT~~  
TOP SECRET

~~DRAFT~~  
~~TOP SECRET~~

[REDACTED] persistent [REDACTED] private (highly cautious regarding opening up to others), and highly capable in interactions with others from a variety of backgrounds. Not surprisingly, he possesses the discipline, drive, creativity and pragmatism that characterize effective leaders.

Social Skills and Relationships: Subject has excellent social skills and social

[REDACTED] He is highly socially perceptive and quick to recognize and assess the moods and motivations of others. He is alert and keenly observant of others' interactions. He is strongly inclined to carefully gauge a situation before voicing opinions or revealing feelings. He is adept at choosing to conceal or convey a particular attitude or emotion depending on the context and immediate utility. Subject tends to be a very private person who is skeptical of others' intentions and alert for ulterior motives. He is markedly vigilant and tends not to trust others easily.

Emotional/Mental Status/Coping Skills: Overall, subject's background as revealed by self-report (including diaries and interview) does not indicate that he has a history of mood disturbance or other psychiatric pathology. Indeed, his reported and known history indicates that he is remarkably resilient and confident that he can overcome adversity. During the occasions that he experiences increased stress and/or low mood, he may become somewhat more withdrawn, melancholy, and reflective. However, this shift in mood will likely last a relatively short time. He denies and there is no evidence in his reported history of thought disorder or enduring mood or mental health problems.

[REDACTED] subject is generally self-sufficient and relies on his understanding and application of religious and psychological principles, intelligence, and discipline to avoid and overcome problems. His faith, the blessings of religious leaders, and camaraderie of like-minded mujahedin brothers have provided him with a reliable and durable support system.

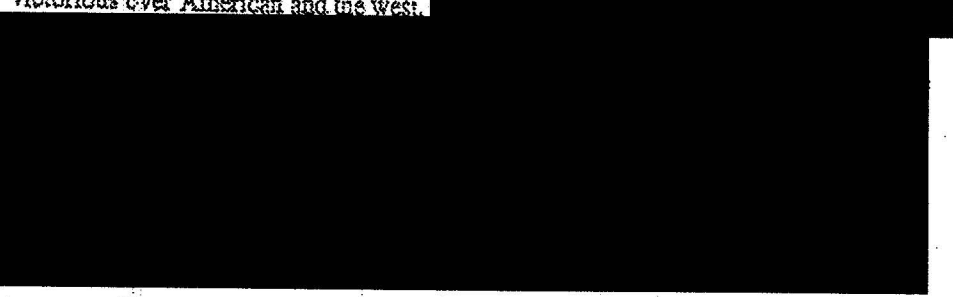
Of particular note has been subject's ability to manage his mood and emotions during detention. Being circumspect, calm, controlled, and deliberate is likely characteristic of subject's demeanor under pressure prior to capture.

~~DRAFT~~  
~~TOP SECRET~~

~~DRAFT~~  
~~TOP SECRET~~



addition, he showed strong signs of sympathetic nervous system arousal (possibly fear) when he experienced the initial "confrontational" dislocation of expectation during an interrogation session. Due to his incredibly strong resolve, expertise in civilian warfare, resistance to interrogation techniques (the latter two which he trained hundreds of others on), this experience was one of the few that led to him providing significant actionable intelligence. As has been observed throughout his recent detention, he was able to quickly bounce back from these most disconcerting moments and regain an air of calm confidence, and strong resolve in not parting with other threat information.

Future Worldview: According to the subject, the jihad will ultimately be victorious over American and the west.



Motivations. Subject's primary motivations are (in no particular order): status/prestige, power, influence, serving the Ummah, serving the prophet and Allah, pursuing a "pure jihad", contributing to the establishment of Shari'a among Muslim countries, contributing to the "lifting up" of Muslims throughout the world, and contributing to the restoration of the Palestinian homeland.

Primary Strengths. (in no particular order) Ability to focus, goal-directed discipline, intelligence, emotional resilience, street savvy, ability to organize and manage people, ability to delegate tasks, keen observation skills, fluid adaptability (can anticipate and adapt under duress and with minimal resources), capable of assessing and exploiting the needs of others, ability to adjust goals to emerging opportunities.

~~DRAFT~~  
~~TOP SECRET~~

DRAFT  
TOP SECRET

[REDACTED]

Detention and Interrogation. Subject recognizes that his duty as a soldier/warrior/mujahid is to delay, mislead, and lie to protect what is most critical to the success of his cause. He assumes that we understand this. Thus, he is not likely to be intimidated or weakened by being "caught" in lies. His job is to lie. During interview he explained that he lied to his neighbors, to shopkeepers, to bankers, travel agents, airport personnel, and many others in order to protect his people and activities. He said, "I lie, lie, lie, lie, lie, and lie." He prides himself in regard to past deceptions he managed with great success.

[REDACTED]

He acquired a United Nations refugee identification card by persistently telling the same lie over a period of several weeks or months. He has learned that the combination of skillful deception and lying pays off.

[REDACTED]

He has talked with Ayman al-Zawahiri and it is likely that Zawahiri talked about his experience as a captive of the Egyptians and Russians. In addition, subject is familiar and probably well versed regarding al-Qa'ida's detention and resistance training materials. Thus, one would expect that subject would draw upon this fund of knowledge as he attempts to cope with his own detention.

[REDACTED]

subject believes in the ultimate destiny of Islam is to dominate the world. He believes that global victory is inevitable. Thus, there is the chance that he could rationalize that providing information will harm current efforts but represent only a temporary setback.

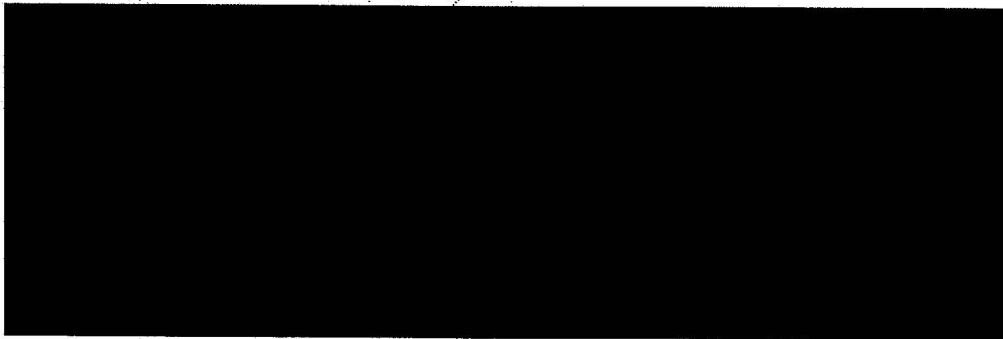
[REDACTED]

DRAFT  
TOP SECRET



7/25/82 5:04 PM

~~DRAFT~~  
~~TOP SECRET~~



~~DRAFT~~  
~~TOP SECRET~~



~~TOP SECRET~~ [REDACTED]

## Guidelines on Confinement Conditions For CIA Detainees

These Guidelines govern the conditions of confinement for CIA Detainees, who are persons detained in detention facilities that are under the [REDACTED] control of CIA ("Detention Facilities").

[REDACTED]

These Guidelines recognize that environmental and other conditions, as well as particularized considerations affecting any given Detention Facility, will vary from case to case and location to location.

### 1. Minimums

Due provision must be taken to protect the health and safety of all CIA Detainees, including basic levels of medical care [REDACTED]

### 2. Implementing Procedures

a. [REDACTED]

[REDACTED]

[REDACTED]

~~TOP SECRET~~ [REDACTED]

Guidelines on Confinement Conditions for CIA Detainees

b. [REDACTED]

c. [REDACTED]

3. Responsible CIA Officer

The Director, DCI Counterterrorist Center shall ensure (a) that, at all times, a specific Agency staff employee (the "Responsible CIA Officer") is designated as responsible for each specific Detention Facility, (b) that each Responsible CIA Officer has been provided with a copy of these Guidelines and has reviewed and signed the attached Acknowledgment, and (c) that each Responsible CIA Officer and each CIA officer participating in the questioning of individuals detained pursuant to [REDACTED]

[REDACTED] has been provided with a copy of the "Guidelines on Interrogation Conducted Pursuant [REDACTED] and has reviewed and signed the Acknowledgment attached thereto. Subject to operational and security considerations, the Responsible CIA Officer shall be present at, or visit, each Detention Facility at intervals appropriate to the circumstances.

4. [REDACTED]

APPROVED:

George J. [REDACTED]  
Director of Central Intelligence

1/28/03  
Date

Guidelines on Confinement Conditions for CIA Detainees

ACKNOWLEDGMENT

I, \_\_\_\_\_, am the Responsible CIA Officer for the Detention Facility known as \_\_\_\_\_. By my signature below, I acknowledge that I have read and understand and will comply with the "Guidelines on Confinement Conditions for CIA Detainees" of \_\_\_\_\_, 2003.

ACKNOWLEDGED:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



~~TOP SECRET~~ [REDACTED]

~~Guidelines on Interrogations Conducted Pursuant to the~~  
[REDACTED]

These Guidelines address the conduct of interrogations of persons who are detained pursuant to the authorities set forth in [REDACTED]

These Guidelines complement internal Directorate of Operations guidance relating to the conduct of interrogations. In the event of any inconsistency between existing DO guidance and these Guidelines, the provisions of these Guidelines shall control.

1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers and other personnel acting on behalf of CIA may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.

Standard Techniques are techniques that do not incorporate physical or substantial psychological pressure. These techniques include, but are not limited to, all lawful forms of questioning employed by US law enforcement and military interrogation personnel. Among Standard Techniques are the use of isolation, sleep deprivation not to exceed 72 hours, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee), deprivation of reading material, use of loud music or white noise (at a decibel level calculated to avoid damage to the detainee's hearing), and the use of diapers for limited periods (generally not to exceed 72 hours, [REDACTED])

~~ALL PORTIONS OF  
THIS DOCUMENT ARE  
CLASSIFIED TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Guideline on Interrogations Conducted Pursuant to the [REDACTED]

Enhanced Techniques are techniques that do incorporate physical or psychological pressure beyond Standard Techniques. The use of each specific Enhanced Technique must be approved by Headquarters in advance, and may be employed only by approved interrogators for use with the specific detainee, with appropriate medical and psychological participation in the process. These techniques are, the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, the use of diapers for prolonged periods, the use of harmless insects, the water board, and such other techniques as may be specifically approved pursuant to paragraph 4 below. The use of each Enhanced Technique is subject to specific temporal, physical, and related conditions, including a competent evaluation of the medical and psychological state of the detainee.

2. Medical and Psychological Personnel

Appropriate medical and psychological personnel shall be [REDACTED] readily available for consultation and travel to the interrogation site during all detainee interrogations employing Standard Techniques, and appropriate medical and psychological personnel must be on site during all detainee interrogations employing Enhanced Techniques. In each case, the medical and psychological personnel shall suspend the interrogation if they determine that significant and prolonged physical or mental injury, pain, or suffering is likely to result if the interrogation is not suspended. In any such instance, the interrogation team shall immediately report the facts to Headquarters for management and legal review to determine whether the interrogation may be resumed.

3. Interrogation Personnel

The Director, DCI Counterterrorist Center shall ensure that all personnel directly engaged in the interrogation of persons detained pursuant [REDACTED] [REDACTED] have been appropriately screened (from the medical, psychological, and security standpoints), have reviewed these Guidelines, have received appropriate training in their implementation, and have completed the attached Acknowledgment.



Guideline on Interrogations Conducted Pursuant to the  
[REDACTED]

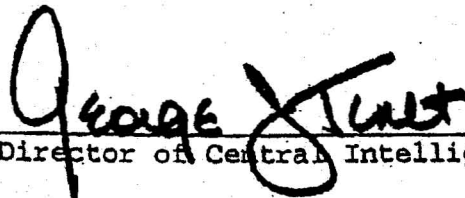
4. Approvals Required

Whenever feasible, advance approval is required for the use of Standard Techniques by an interrogation team. In all instances, their use shall be documented in cable traffic. Prior approval in writing (e.g., by written memorandum or in cable traffic) from the Director, DCI Counterterrorist Center, with the concurrence of the Chief, CTC Legal Group, is required for the use of any Enhanced Technique(s), and may be provided only where D/CTC has determined that (a) the specific detainee is believed to possess information about risks to the citizens of the United States or other nations, (b) the use of the Enhanced Technique(s) is appropriate in order to obtain that information, (c) appropriate medical and psychological personnel have concluded that the use of the Enhanced Technique(s) is not expected to produce "severe physical or mental pain or suffering," and (d) the personnel authorized to employ the Enhanced Technique(s) have completed the attached Acknowledgment. Nothing in these Guidelines alters the right to act in self-defense.

5. Recordkeeping

In each interrogation session in which an Enhanced Technique is employed, a contemporaneous record shall be created setting forth the nature and duration of each such technique employed, the identities of those present, and a citation to the required Headquarters approval cable. This information, which may be in the form of a cable, shall be provided to Headquarters.

APPROVED:

  
Director of Central Intelligence

January 28, 2003  
Date

~~TOP SECRET~~ [REDACTED]

Guideline on Interrogations Conducted Pursuant to the  
[REDACTED]

ACKNOWLEDGMENT

I, \_\_\_\_\_, acknowledge that I have read and understand and will comply with the "Guidelines on Interrogations Conducted Pursuant to \_\_\_\_\_" of \_\_\_\_\_, 2003.

ACKNOWLEDGED:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

~~TOP SECRET~~ [REDACTED]



~~TOP SECRET~~  
(Security Classification)

ROUTING			
TO:	NAME AND ADDRESS	DATE	INITIALS
1			
2			
3			
4			
	ACTION	DIRECT REPLY	PREPARE REPLY
	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE
REMARKS:			
FROM: NAME, ADDRESS, AND PHONE NO.			DATE

CONTROL NO. \_\_\_\_\_

COPY \_\_\_\_\_ Refer CIA

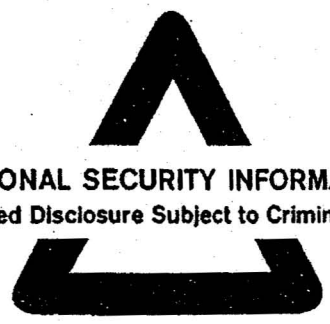
Handle Via

Channels

Access to this document will be restricted to those approved for the following specific activities:

_____	_____	_____	_____
_____	_____	_____	_____

NATIONAL SECURITY INFORMATION  
Unauthorized Disclosure Subject to Criminal Sanctions



~~TOP SECRET~~  
(Security Classification)

17

7

~~TOP SECRET//~~

~~//NOFORN//X1~~



*This document  
has not been  
sent via  
fax.  
Thank you.*

Central Intelligence Agency  
Office of General Counsel  
Washington, D.C. 20505

(28 April 2003)

<b>To:</b>	John Yoo
<b>Organization:</b>	DoJ
<b>Phone:</b>	
<b>Fax:</b>	
<b>Subject:</b>	Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel
<b>From:</b>	Scott W. Muller
<b>Organization:</b>	Office of General Counsel
<b>Phone:</b>	
<b>Fax:</b>	

Number of Pages (Including Cover) 3

Comments: I would like to discuss this with you as soon as you get a chance. Thank you. Scott

~~TOP SECRET//~~

~~//NOFORN//X1~~

DRAFT

**Legal Principles Applicable to  
CIA Detention and Interrogation  
of Captured Al-Qa'ida Personnel**

- The international Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment applies to the United States only in accordance with the reservations, declarations and understandings articulated by this country in connection with the Convention. Accordingly, the United States prohibits torture only as proscribed in 18 U.S.C. §2340; and prohibits otherwise "cruel, inhuman and degrading" treatment only where, in all the circumstances (including the justification for the treatment), the treatment would violate the Eighth Amendment prohibition against cruel and unusual punishment or the Fifth and Fourteenth Amendment prohibitions against conduct that "shocks the conscience."
- Customary international law imposes no limitation on the treatment of al-Qa'ida detainees beyond the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, as interpreted by the United States.
- The United States is at war with al-Qa'ida. Accordingly, US criminal statutes do not apply to official government actions directed against al-Qa'ida detainees except where those statutes are specifically applicable in the conduct of war or to official actions.
- The federal war crimes statute (18 U.S.C. §2441) does not apply to al-Qa'ida, since al-Qa'ida is not subject to the Geneva Conventions or any other applicable conventions.
- CIA interrogations of foreign nationals are not within the "special maritime or territorial jurisdiction" of the United States where the interrogation takes place on foreign territory in buildings that are not owned or

DRAFT

~~TOP SECRET//~~

~~/NOFORN//X1~~

DRAFT

leased by or under the legal jurisdiction of the US Government.

- The use by CIA of the following techniques (and of comparable, approved techniques) in the interrogation of al-Qa'ida detainees is lawful, and violates neither Federal criminal law nor the Fifth, Eighth, or Fourteenth Amendments, in circumstances where the interrogators do not have the specific intent to cause the detainee to undergo severe physical or mental pain or suffering: isolation, sleep deprivation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee), deprivation of reading material, loud music or white noise (at a decibel level calculated to avoid damage to the detainee's hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, the use of diapers, the use of harmless insects, and the water board.

DRAFT

2

~~TOP SECRET~~

~~//NOFORN//X1~~

-----

**Legal Principles Applicable to CIA  
Detention and Interrogation of Captured Al-Qa'ida Personnel**

- The Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment ("the Convention") applies to the United States only in accordance with the reservations, understandings, and declarations that the United States submitted with its instrument of ratification of the Convention.
  - The Convention's definition of torture, as interpreted by U.S. understandings, is identical in all material ways to the definition of torture contained in 18 U.S.C. § 2340. The standard for what constitutes torture under section 2340 and under the Convention is therefore identical.
  - The Convention also requires that state parties undertake to prevent other cruel, inhuman, or degrading treatment or punishment. Because of U.S. reservations to the Convention, the U.S. obligation to undertake to prevent such treatment or punishment extends only to conduct that would constitute cruel and inhuman treatment under the Eighth Amendment or would "shock the conscience" under the Fifth and Fourteenth Amendments. Moreover, the Convention permits the use of such treatment or punishment in exigent circumstances, such as a national emergency or war.
- Customary international law imposes no obligations regarding the treatment of al-Qa'ida detainees beyond that which the Convention, as interpreted and understood by the United States in its reservations, understandings, and declarations, imposes. The Convention therefore definitively establishes what constitutes torture and cruel, inhuman, or degrading treatment or punishment for the purposes of U.S. international law obligations.
- CIA interrogations of foreign nationals are not within the "special maritime and territorial jurisdiction" of the United States where the interrogation occurs on foreign territory in buildings that are not owned or leased by or under the legal jurisdiction of the U.S. government. The criminal laws applicable to the special maritime and territorial jurisdiction therefore do not apply to such interrogations. Additionally CIA interrogations of foreign nationals are not within the sovereign territory of the United States. Thus, the federal criminal laws that apply within that territory do not apply to these interrogations. The only two federal criminal statutes that might apply to these interrogations are: the War Crimes Statute, 18 U.S.C. § 2441, the prohibition against torture, 18 U.S.C. § 2340-2340A.
- The federal War Crimes Statute, 18 U.S.C. § 2441, does not apply to al-Qa'ida because the Geneva Conventions and the Hague Convention IV, the conventions that the conduct must violate in order to violate section 2441, do not apply to al-Qa'ida. Al-Qa'ida is a non-governmental international terrorist organization whose members cannot be considered POWs within the meaning of the Geneva

~~TOP SECRET//~~

~~/NOFORN//X1~~

1



Conventions or receive the protections of the Hague Convention IV. Because these conventions do not protect al-Qa'ida members, conduct toward those members cannot violate section 2441.

- The interrogation of al-Qa'ida detainees does not constitute torture within the meaning of section 2340 where the interrogators do not have the specific intent to cause the detainee to experience severe physical or mental pain or suffering. The absence of specific intent is demonstrated by a good faith belief that severe physical or mental pain or suffering will not be inflicted upon the detainee. A good faith belief need not be a reasonable belief. The presence of good faith can be established through evidence of efforts to review relevant professional literature, consulting with experts, or reviewing evidence gained from past experience.
- The interrogation of members of al-Qa'ida, who are foreign nationals, does not violate the Fifth, Eighth, and Fourteenth Amendments because these amendments do not apply. The Due Process Clauses of the Fifth and Fourteenth Amendments, which would be the only clause in these amendments that could arguably apply to the conduct of interrogations, do not apply extraterritorially to aliens. The Eighth Amendment has no application because it applies solely to those persons upon whom criminal sanctions have been imposed. The detention of enemy combatants is in no sense the imposition of a criminal sanction and thus the Eight Amendment does not apply.

~~TOP SECRET//~~

~~NOFORN//X1~~

2



~~TOP SECRET~~  
(Security Classification)

ROUTING			
TO:	NAME AND ADDRESS	DATE	INITIALS
1			
2			
3			
4			
ACTION	DIRECT REPLY	PREPARE REPLY	
APPROVAL	DISPATCH	RECOMMENDATION	
COMMENT	FILE	RETURN	
CONCURRENCE	INFORMATION	SIGNATURE	
REMARKS:			
FROM: NAME, ADDRESS, AND PHONE NO.		DATE	

CONTROL NO. 68257

COPY 1 OF 1

Handle Via

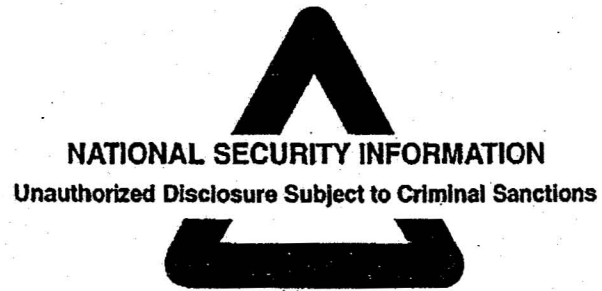
Channels

Access to this document will be restricted to those approved for the following specific activities:

\_\_\_\_\_

\_\_\_\_\_

Refer CIA



~~TOP SECRET~~  
(Security Classification)

49



~~Top Secret//~~

Classification

//NOFORN//X/

6-16-03  
Date

From: \_\_\_\_\_ Phone: \_\_\_\_\_

Subject: Bullet Points - Final Summary

TO: [ ]

Patrick Philbin [ ]

ix: [ ]

For your records - copy of final legal summary

Thank you.

Cover + 3

Total Pages

~~Top Secret//~~

Classification

//NOFORN//X/



**Legal Principles Applicable to CIA  
Detention and Interrogation of Captured Al-Qa'ida Personnel**

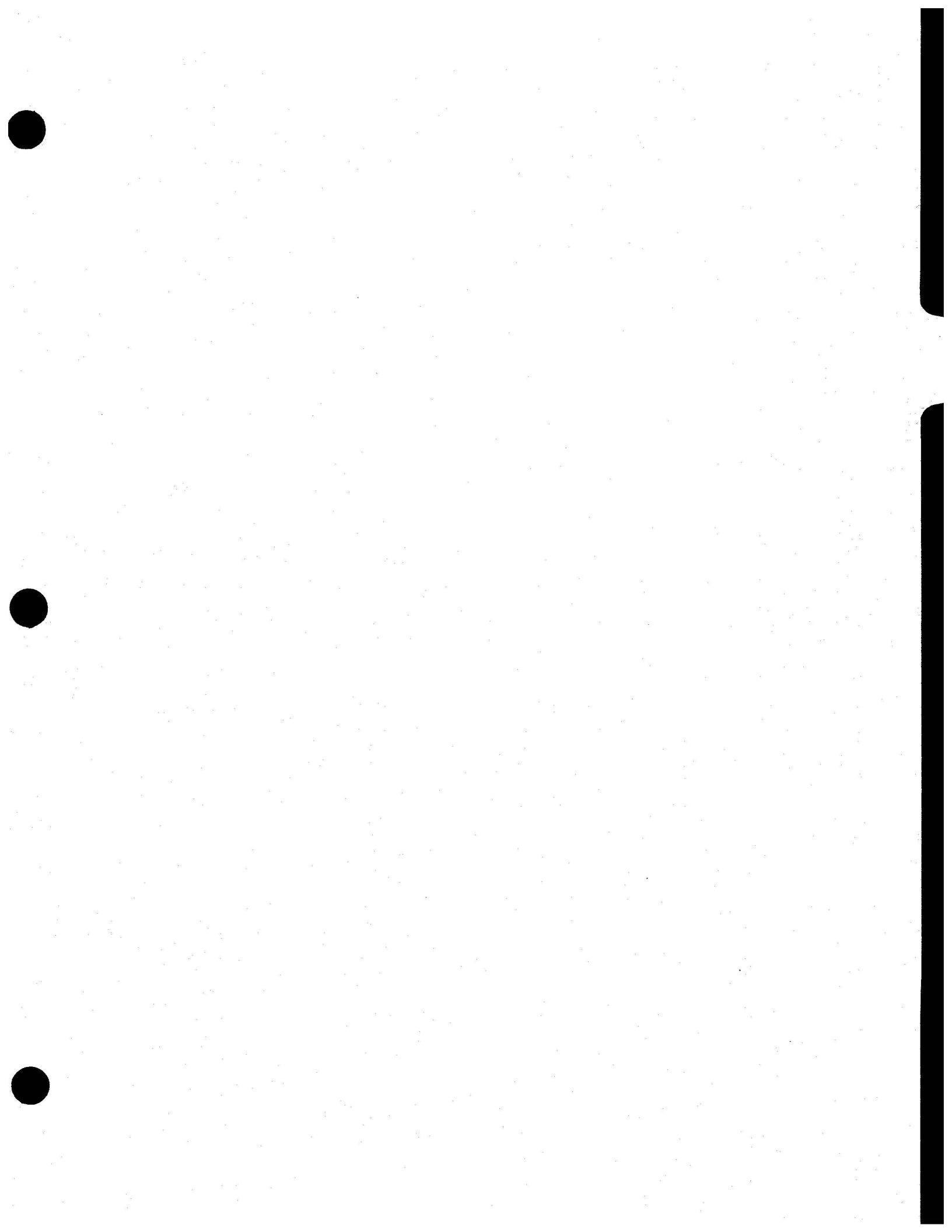
- The Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment ("the Convention") applies to the United States only in accordance with the reservations, understandings, and declarations that the United States submitted with its instrument of ratification of the Convention.
  - The Convention's definition of torture, as interpreted by the U.S. understandings, is identical in all material ways to the definition of torture contained in 18 U.S.C. §2340-2340A. The standard for what constitutes torture under §2340-2340A and under the Convention is therefore identical.
  - The Convention also provides that state parties are to undertake to prevent other cruel, inhuman, or degrading treatment or punishment. Because of U.S. reservations to the Convention, the U.S. obligation to undertake to prevent such treatment or punishment extends only to conduct that would constitute cruel and inhuman treatment under the Eighth Amendment or would "shock the conscience" under the Fifth and Fourteenth Amendments. Additionally, the Convention permits the use of such treatment or punishment in exigent circumstances, such as a national emergency or war.
- Customary international law imposes no obligations regarding the treatment of al-Qa'ida detainees beyond that which the Convention, as interpreted and understood by the United States in its reservations, understandings, and declarations, imposes. The Convention therefore definitively establishes what constitutes torture and cruel, inhuman, or degrading treatment or punishment for the purposes of U.S. international law obligations.
- CIA interrogations of foreign nationals are not within the "special maritime and territorial jurisdiction" of the United States where the interrogation occurs on foreign territory in buildings that are not owned or leased by or under the legal jurisdiction of the U.S. government. The

criminal laws applicable to the special maritime and territorial jurisdiction therefore do not apply to such interrogations. The only two federal criminal statutes that might apply to these interrogations are the War Crimes Statute, 18 U.S.C. §2441, and the prohibition against torture, 18 U.S.C. §2340-2340A.

- The federal War Crimes Statute, 18 U.S.C. §2441, does not apply to al-Qa'ida because the Geneva Conventions and the Hague Convention IV, the conventions that the conduct must violate in order to violate section 2441, do not apply to al-Qa'ida. Al-Qa'ida is a non-governmental international terrorist organization whose members cannot be considered POWs within the meaning of the Geneva Conventions or receive the protections of the Hague Convention IV. Because these conventions do not protect al-Qa'ida members, conduct toward those members cannot violate section 2441.
- The interrogation of al-Qa'ida detainees does not constitute torture within the meaning of section 2340 where the interrogators do not have the specific intent to cause "severe physical or mental pain or suffering." The absence of specific intent (i.e., good faith) can be established through, among other things, evidence of efforts to review relevant professional literature, consulting with experts, reviewing evidence gained from past experience where available (including experience gained in the course of U.S. interrogations of detainees), providing medical and psychological assessments of a detainee (including the ability of the detainee to withstand interrogation without experiencing severe physical or mental pain or suffering), providing medical and psychological personnel on site during the conduct of interrogations, or conducting legal and policy reviews of the interrogation process (such as the review of reports from the interrogation facilities and visits to those locations). A good faith belief need not be a reasonable belief; it need only be an honest belief.
- The interrogation of members of al-Qa'ida, who are foreign nationals, does not violate the Fifth, Eighth, and Fourteenth Amendments because those amendments do not apply. The Due Process Clauses of the Fifth and Fourteenth Amendments, which would be the only clauses in those amendments that could arguably apply to the conduct of interrogations, do not apply extraterritorially to aliens. The Eighth Amendment has no application because it applies solely to those persons upon whom criminal sanctions have been imposed. The detention of enemy combatants is in no

sense the imposition of a criminal sanction and thus the Eighth Amendment does not apply.

- Taking all of the relevant circumstances into account (such as the Government's need for information to avert terrorist activities against the United States and its citizens, the good faith efforts to avoid producing severe physical or mental pain or suffering, and the absence of malicious or sadistic purpose by those conducting the interrogations), the use of the techniques described below and of comparable, approved techniques would not constitute conduct of the type that would be prohibited by the Fifth, Eighth, or Fourteenth Amendments even were they to be applicable.
- The use of the following techniques and of comparable, approved techniques in the interrogation of al-Qa'ida detainees by the CIA does not violate any Federal statute or other law, where the CIA interrogators do not specifically intend to cause the detainees to undergo severe physical or mental pain or suffering (i.e., they act with the good faith belief that their conduct will not cause such pain or suffering): isolation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainees), deprivation of reading material, loud music or white noise (at a decibel level calculated to avoid damage to the detainees' hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, the use of diapers, the use of harmless insects, and the water board.





~~TOP SECRET//~~ ~~//CODEWORD~~

Central Intelligence Agency  
Office of General Counsel  
Washington, D.C. 20505

Date: 03/02/04

To: Jack Goldsmith  
Organization: DOJ/OLC  
Phone: [ ]  
Fax: [ ]

From: Scott W. Muller  
Organization: Office of General Counsel  
Phone:  
Fax:

Number of Pages (Including Cover) 13

Comments:

22

~~TOP SECRET//~~ ~~//CODEWORD~~



General Counsel

~~TOP SECRET//~~~~//NOFORN//X1~~

## CENTRAL INTELLIGENCE AGENCY

Washington, D.C. 20505

2 March 2004

The Honorable Jack L. Goldsmith III  
Assistant Attorney General  
Office of Legal Counsel  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Goldsmith:

~~(TS)~~ As you know, the Central Intelligence Agency's (CIA) Counterterrorism Detention and Interrogation program has expended considerable effort to ensure that it operates in accordance with applicable law and guidance provided by the Department of Justice's Office of Legal Counsel (OLC) and the Attorney General. In light of the ongoing nature of this program, I am requesting that OLC reaffirm its analyses set forth in the following documents:

- The unclassified letter from John C. Yoo, Deputy Assistant Attorney General, to the Counsel to the President, dated 1 August 2002, concerning interrogation methods that may be used during the war on terrorism.
- The unclassified memorandum by Jay S. Bybee, Assistant Attorney General, for the Counsel to the President, dated 1 August 2002, concerning the standards of conduct for interrogation under 18 U.S.C. 2340-2340A.
- The classified memorandum from Jay S. Bybee, Assistant Attorney General, to the Acting General Counsel of the CIA, dated 1 August 2002, concerning the interrogation of an al Qaeda operative.

~~TOP SECRET//~~~~//NOFORN//X1~~

The Honorable Jack L. Goldsmith III

- The classified memorandum entitled "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel" (hereafter "summary points"), which was prepared with OLC's assistance and received the concurrence of your office in June 2003. (Enclosed with this letter is a copy of the summary points along with a covering memorandum.)

~~(TS//~~ We rely on the applicable law and OLC guidance to assess the lawfulness of detention and interrogation techniques. For example, using the applicable law and relying on OLC's guidance, we concluded that the abdominal slap previously discussed with OLC (and mentioned in the June 2003 summary points) is a permissible interrogation technique. Similarly, in addition to the sitting and kneeling stress positions discussed earlier with OLC, the Agency has added to its list of approved interrogation techniques two standing stress positions involving the detainee leaning against a wall.

~~(TS//~~ We also would like to share with you our views on three additional interrogation techniques, and two uses of water not involving the waterboard. ↓

such as the attention grasp, walling and the facial slap, all of which have been reviewed by your office. Like other approved interrogation techniques, is used as part of the Survival, Evasion, Resistance, Escape (SERE) training provided to US Military personnel.

~~(TS//~~ The use of water with detainees has proven to be a very effective part of some detainee interrogations. Uses of water (other than with the waterboard) range from pouring, flicking, or tossing (i.e., water PFT) a relatively small amount of water on detainees, to dousing detainees with water from a bucket or garden hose (i.e., water dousing). (We describe both techniques in greater detail below.) Both water PFT and water dousing are used as part of the SERE training provided to US Military personnel. We believe these techniques clearly fall

~~TOP SECRET//~~~~//NOFORN//X1~~

The Honorable Jack L. Goldsmith III

within the legal parameters establish by applicable law and are consistent with OLC's 2002 and 2003 guidance set forth in the documents identified above.

~~(TS//~~ Water PFT is intended to create a distracting effect, to startle, humiliate, and cause insult. Water PFT is intended to wear down the detainee physically and psychologically. Up to one pint of potable water may be used so long as it is applied in such a manner as to prevent its inhalation or ingestion. Water PFT may be used as a stand-alone interrogation technique or in conjunction with other techniques in an approved interrogation plan such as sleep deprivation. No more than one pint of water every 15 to 20 minutes may be applied. Given the relatively small amount of water that is applied and the method of application, there are virtually no health or safety concerns with water PFT as part of an approved interrogation plan.

~~(TS//~~ Water dousing is intended to weaken the detainee's overall resistance posture and persuade him to cooperate with interrogators by removing his sense of predictability and control. The detainee, dressed or undressed, is restrained by shackles and/or interrogators in a standing, sitting or supine position on the floor, bench or similar level surface. Potable water is poured on the detainee from a container or garden hose connected to a water source. Water is applied so as to not enter the nose or mouth. A session can last from 10 minutes (a single application) to an hour (multiple applications). The detainee's resilience, level of cooperation, amount and temperature of water, temperature of the ambient air, and physical and mental state are all factors regulating the length of the water dousing session. A medical officer is present to monitor the detainee's physical condition during the water dousing session(s), including any indications of hypothermia. Upon completion of the water dousing session(s), the detainee is moved to another room, monitored as needed by a medical officer to guard against hypothermia, and steps are taken to ensure the detainee is capable of generating necessary body heat and maintain normal body functions.

~~TOP SECRET//~~~~//NOFORN//X1~~

The Honorable Jack L. Goldsmith III

(~~TS//~~) I greatly appreciate the assistance of your office and the Department of Justice with the CIA's Detention and Interrogation program. If possible, we request reaffirmation of the legal guidance provided by OLC in the documents cited above within 60 days. Moreover, any guidance you choose to provide on the interrogation techniques described in this letter or any other techniques used in this program also would be appreciated. Of course, at your request, we will brief you or cleared members of your staff on any of the interrogation techniques used by the CIA as part of this program.

Sincerely,

Scott W. Muller

Enclosure

~~TOP SECRET//~~~~//NOFORN//X1~~

Legal Principles Applicable to CIA  
Detention and Interrogation of Captured Al-Qa'ida Personnel

- The Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment ("the Convention") applies to the United States only in accordance with the reservations, understandings, and declarations that the United States submitted with its instrument of ratification of the Convention.
  - The Convention's definition of torture, as interpreted by the U.S. understandings, is identical in all material ways to the definition of torture contained in 18 U.S.C. §2340-2340A. The standard for what constitutes torture under §2340-2340A and under the Convention is therefore identical.
  - The Convention also provides that state parties are to undertake to prevent other cruel, inhuman, or degrading treatment or punishment. Because of U.S. reservations to the Convention, the U.S. obligation to undertake to prevent such treatment or punishment extends only to conduct that would constitute cruel and inhuman treatment under the Eighth Amendment or would "shock the conscience" under the Fifth and Fourteenth Amendments. Additionally, the Convention permits the use of such treatment or punishment in exigent circumstances, such as a national emergency or war.
- Customary international law imposes no obligations regarding the treatment of al-Qa'ida detainees beyond that which the Convention, as interpreted and understood by the United States in its reservations, understandings, and declarations, imposes. The Convention therefore definitively establishes what constitutes torture and cruel, inhuman, or degrading treatment or punishment for the purposes of U.S. international law obligations.
- CIA interrogations of foreign nationals are not within the "special maritime and territorial jurisdiction" of the United States where the interrogation occurs on foreign

~~TOP SECRET//~~

~~TOP SECRET//~~~~//NOFORN//X1~~

territory in buildings that are not owned or leased by or under the legal jurisdiction of the U.S. government. The criminal laws applicable to the special maritime and territorial jurisdiction therefore do not apply to such interrogations. The only two federal criminal statutes that might apply to these interrogations are the War Crimes Statute, 18 U.S.C. §2441, and the prohibition against torture, 18 U.S.C. §2340-2340A.

- The federal War Crimes Statute, 18 U.S.C. §2441, does not apply to al-Qa'ida because the Geneva Conventions and the Hague Convention IV, the conventions that the conduct must violate in order to violate section 2441, do not apply to al-Qa'ida. Al-Qa'ida is a non-governmental international terrorist organization whose members cannot be considered POWs within the meaning of the Geneva Conventions or receive the protections of the Hague Convention IV. Because these conventions do not protect al-Qa'ida members, conduct toward those members cannot violate section 2441.
- The interrogation of al-Qa'ida detainees does not constitute torture within the meaning of section 2340 where the interrogators do not have the specific intent to cause "severe physical or mental pain or suffering." The absence of specific intent (i.e., good faith) can be established through, among other things, evidence of efforts to review relevant professional literature, consulting with experts, reviewing evidence gained from past experience where available (including experience gained in the course of U.S. interrogations of detainees), providing medical and psychological assessments of a detainee (including the ability of the detainee to withstand interrogation without experiencing severe physical or mental pain or suffering), providing medical and psychological personnel on site during the conduct of interrogations, or conducting legal and policy reviews of the interrogation process (such as the review of reports from the interrogation facilities and visits to those locations). A good faith belief need not be a reasonable belief; it need only be an honest belief.
- The interrogation of members of al-Qa'ida, who are foreign nationals, does not violate the Fifth, Eighth, and Fourteenth Amendments because those amendments do not apply. The Due Process Clauses of the Fifth and Fourteenth Amendments, which would be the only clauses in those

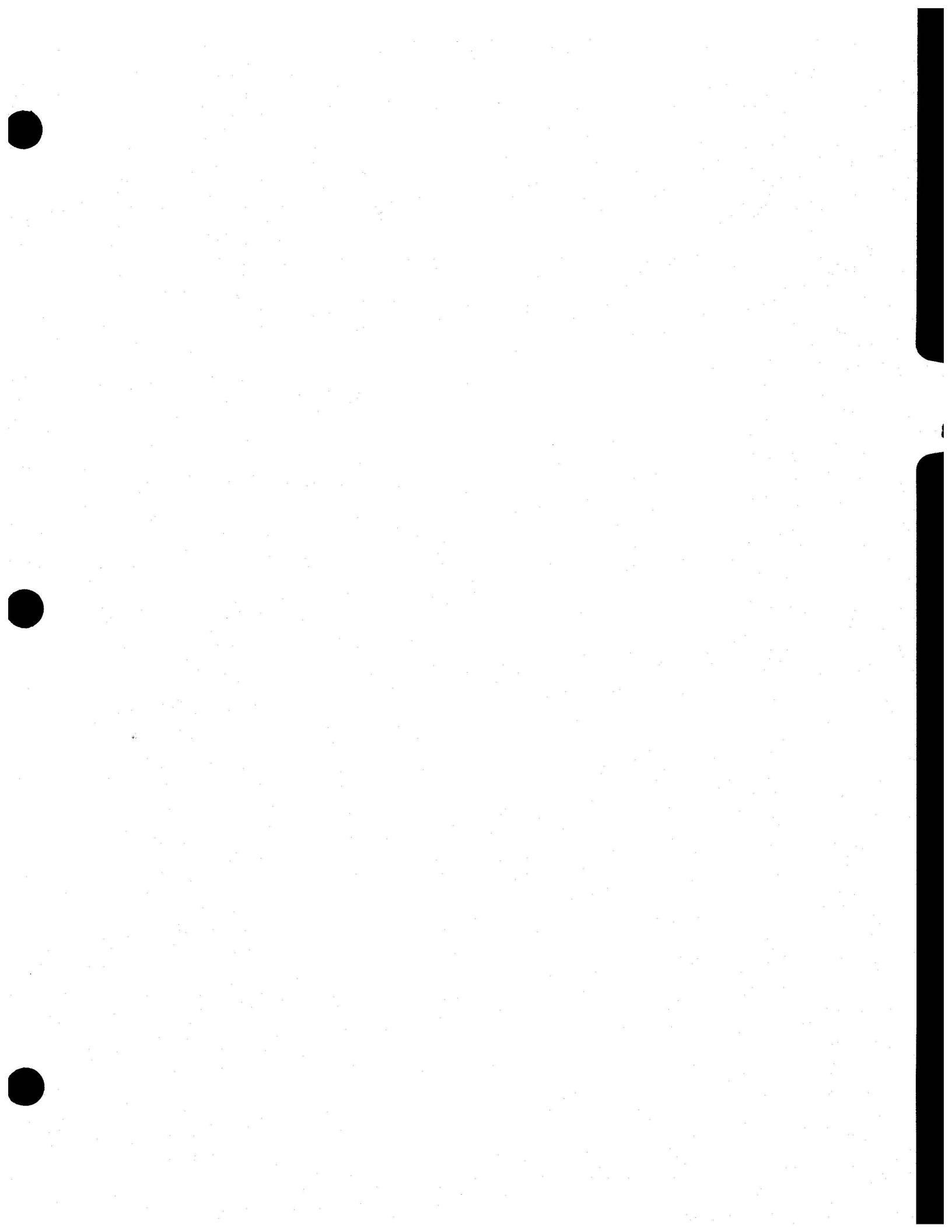
~~TOP SECRET//~~

'NOFORN//X1

amendments that could arguably apply to the conduct of interrogations, do not apply extraterritorially to aliens. The Eighth Amendment has no application because it applies solely to those persons upon whom criminal sanctions have been imposed. The detention of enemy combatants is in no sense the imposition of a criminal sanction and thus the Eighth Amendment does not apply.

- Taking all of the relevant circumstances into account (such as the Government's need for information to avert terrorist activities against the United States and its citizens, the good faith efforts to avoid producing severe physical or mental pain or suffering, and the absence of malicious or sadistic purpose by those conducting the interrogations), the use of the techniques described below and of comparable, approved techniques would not constitute conduct of the type that would be prohibited by the Fifth, Eighth, or Fourteenth Amendments even were they to be applicable.
- The use of the following techniques and of comparable, approved techniques in the interrogation of al-Qa'ida detainees by the CIA does not violate any Federal statute or other law, where the CIA interrogators do not specifically intend to cause the detainees to undergo severe physical or mental pain or suffering (i.e., they act with the good faith belief that their conduct will not cause such pain or suffering): isolation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainees), deprivation of reading material, loud music or white noise (at a decibel level calculated to avoid damage to the detainees' hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, the use of diapers, the use of harmless insects, and the water board.







U.S. Department of Justice

Office of Legal Counsel

~~TOP SECRET//~~

~~//NOFORN~~

Office of the Assistant Attorney General

Washington, D.C. 20530

May 25, 2004

Mr. John L. Helgerson  
Inspector General  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Mr. Helgerson:

I understand that your office has been working on a report that, in part, discusses advice provided to the CIA by my Office concerning interrogations in the war on terrorism. Scott Muller, the General Counsel at CIA, recently provided me with a copy of the report and I would appreciate it if I could have time to review the description of my Office's advice and provide comments before the report is sent to Congress.

Thank you for your assistance.

Sincerely,

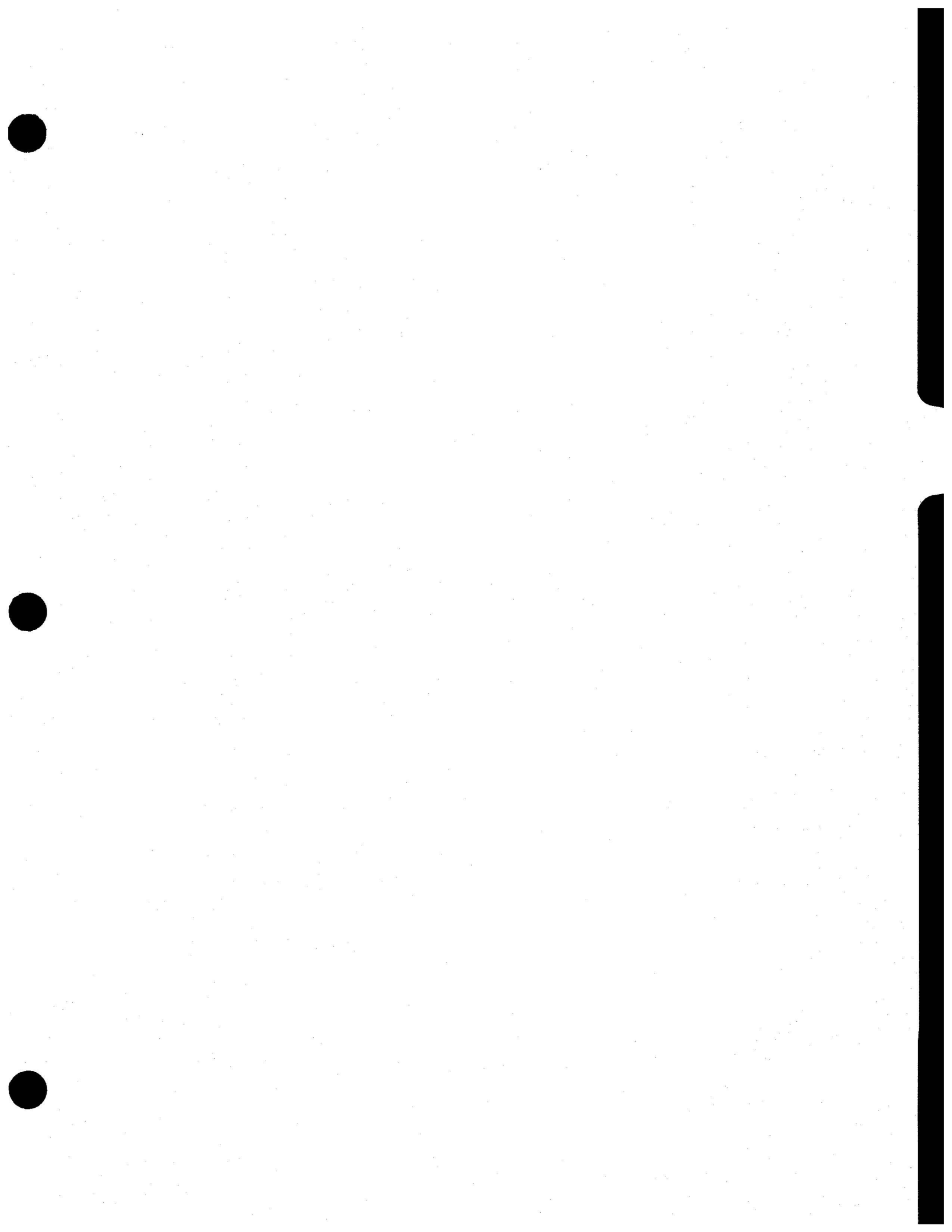
Jack L. Goldsmith III

~~TOP SECRET//~~

~~//NOFORN~~

26

74





U.S. Department of Justice

Office of Legal Counsel

~~TOP SECRET/~~

~~/ORCON,NOFORN/MR~~

Office of the Assistant Attorney General

Washington, D.C. 20530

May 27, 2004

Mr. Scott Muller  
General Counsel  
Central Intelligence Agency  
Room 7C24 Headquarters Bldg.  
Washington, D.C. 20505

Dear Scott:

Thank you for sending us a copy of the Inspector General Report concerning the Central Intelligence Agency's program for enhanced interrogation techniques.

Information in that report has raised concerns about certain aspects of interrogations in practice. As you know, the opinion that the Office of Legal Counsel provided to John Rizzo in August 2002 addressing ten enhanced interrogation techniques depended upon a number of factual assumptions as well as limitations concerning how those techniques would be applied, and it is my understanding that this Office subsequently agreed that the same legal principles, subject to the same factual assumptions and limitations, could be applied for interrogations of persons other than the specific individual addressed in that August 2002 opinion. Our initial review of the Inspector General's Report raises the possibility that, at least in some instances and particularly early in the program, the actual practice may not have been congruent with all of these assumptions and limitations.

In particular, it appears that the application of the waterboard technique may have deviated in some respects from the descriptions in our opinion. We have not yet reviewed all the pertinent facts to determine whether such deviations are material for purposes of the advice we provided. Some facts discussed by the Report had clearly been discussed with Department of Justice personnel in 2003. Some other information, however, appears to have been generated in the course of the Inspector General's inquiry. It raises a concern, for example, that the Inspector General has suggested, among other things, that the "SERE waterboard experience is so different from the subsequent Agency usage as to make it almost irrelevant." IG Report at 22 n.26. As you know, the use of the waterboard in SERE training was a significant factor in this Office's legal analysis. I understand that the waterboard technique has not been used since March 2003. In light of

~~TOP SECRET/~~

~~/ORCON,NOFORN/MR~~

~~TOP SECRET/~~

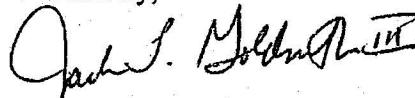
~~/ORCON,NOFORN/MR~~

the assertions in the Inspector General's Report, and the factual assumptions underlying our advice, we strongly recommend that any use of this technique remain suspended until we have had a more thorough opportunity to review the Report and the factual assertions in it.

We recommend that with respect to the use of the other nine techniques, you review the steps you have already taken to ensure that in actual practice any use of those techniques adheres closely to the assumptions and limitations stated in our opinion of August 2002.

Finally, the Report also includes information concerning interrogations that are not part of the enhanced interrogation techniques program. As you know, we have not provided advice on practices described in those portions of the Report.

Sincerely,



Jack L. Goldsmith III

~~TOP SECRET/~~

~~/ORCON,NOFORN/MR~~





U.S. Department of Justice

Office of Legal Counsel

~~TOP SECRET~~

Office of the Assistant Attorney General

Washington, D.C. 20530

June 10, 2004

Scott W. Muller, Esq.  
General Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Scott:

By a letter dated March 2, 2004, you asked me to "reaffirm" three pages of bullet points, entitled "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel." You indicated that our Office had approved these bullet points in June 2003.

~~(TS)~~

I have further inquired into the circumstances surrounding the creation of the bullet points in the spring of 2003. These inquiries have reconfirmed what I have conveyed to you before, namely, that the bullet points did not and do not represent an opinion or a statement of the views of this Office. ~~(TS)~~

As I previously advised you, to respond to your current request for an opinion, my Office will first need your views in writing on the legal questions to be addressed. The longstanding practice of our Department and our Office is to require such an expression of views from an agency seeking our written opinion. The practice extends at least as far back as 1924, when Attorney General Stone issued a letter to all cabinet officers and the Secretary to the President, requesting that agencies submit "the written opinion of the chief law officer of the Department, Board, Bureau, or Commission, based upon the facts and documents" when asking for the opinion of the Attorney General. Letter for Government Officials, from Harlan F. Stone, Attorney General (Sept. 15, 1924) (emphasis deleted). This Office now carries out the Attorney General's opinion-writing function, 28 C.F.R. 0.25(a), and follows the same procedure. The requirement of an opinion from the requesting agency helps to ensure the completeness and legitimacy of the process by which our Office issues opinions. To be sure, our Office has not applied the policy with complete uniformity, especially where operational needs have made such a process impractical or where the White House Counsel, OMB, or our own Department is the

~~TOP SECRET~~

76

~~TOP SECRET/~~

requester. Nevertheless, this practice seems particularly prudent here, where the issues deserve the fullest exploration, and where many of the facts and practices necessary for the analysis fall within your expertise. ~~(TS/~~

I look forward to hearing from you so that we may proceed as expeditiously as possible on your important request.

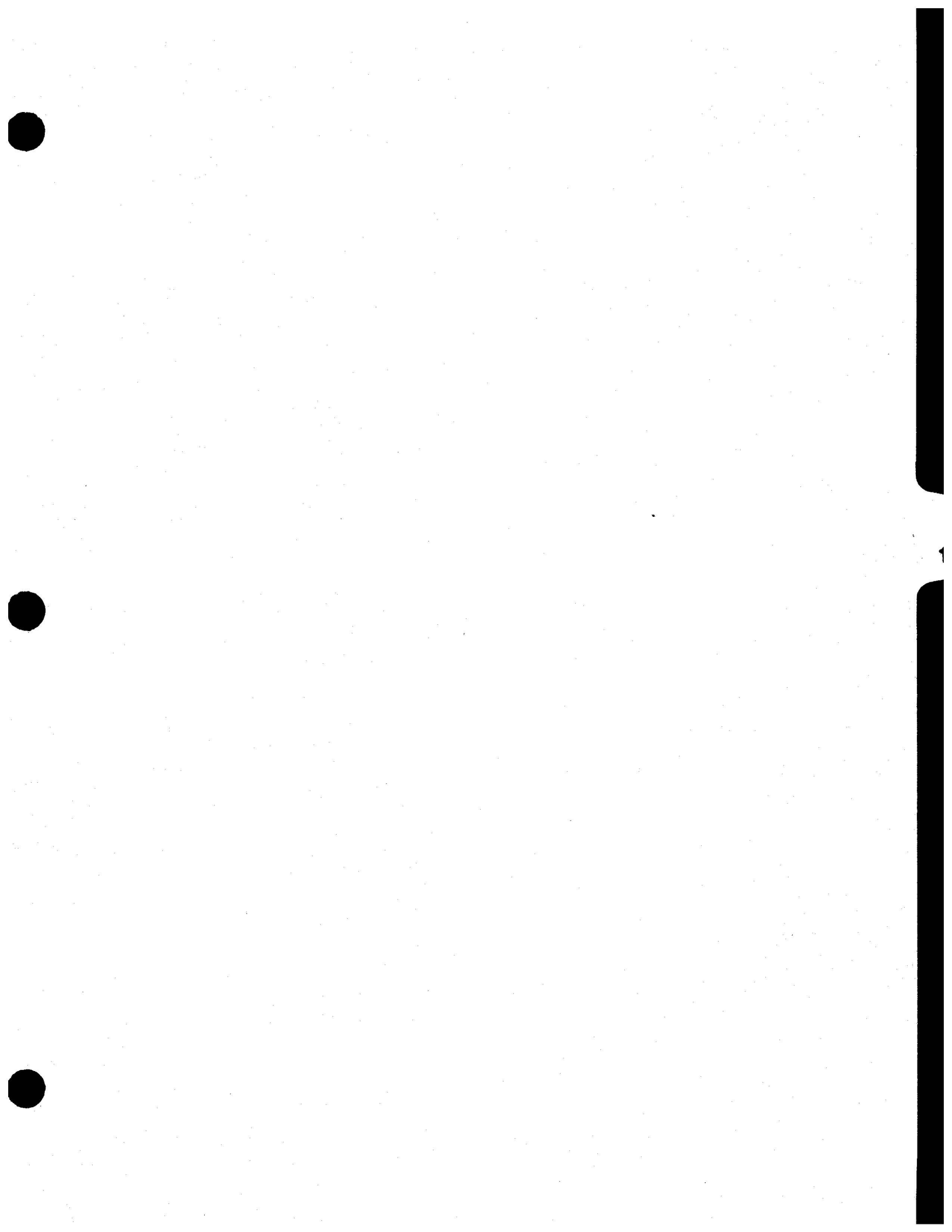
Sincerely,



Jack L. Goldsmith III

~~TOP SECRET/~~







U.S. Department of Justice

Office of Legal Counsel  
~~NOFORN~~

~~TOP SECRET~~

Office of the Assistant Attorney General

Washington, D.C. 20530

June 10, 2004

Scott W. Muller, Esq.  
General Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Scott:

By a letter dated March 2, 2004, you asked me to "reaffirm" three pages of bullet points, entitled "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel." You indicated that our Office had approved these bullet points in June 2003.

~~(TS)~~

I have further inquired into the circumstances surrounding the creation of the bullet points in the spring of 2003. These inquiries have reconfirmed what I have conveyed to you before, namely, that the bullet points did not and do not represent an opinion or a statement of the views of this Office. ~~(TS)~~

As I previously advised you, to respond to your current request for an opinion, my Office will first need your views in writing on the legal questions to be addressed. The longstanding practice of our Department and our Office is to require such a expression of views from an agency seeking our written opinion. The practice extends at least as far back as 1924, when Attorney General Stone issued a letter to all cabinet officers and the Secretary to the President, requesting that agencies submit "the written opinion of the chief law officer of the Department, Board, Bureau, or Commission, based upon the facts and documents" when asking for the opinion of the Attorney General. Letter for Government Officials, from Harlan F. Stone, Attorney General (Sept. 15, 1924) (emphasis deleted). This Office now carries out the Attorney General's opinion-writing function, 28 C.F.R. 0.25(a), and follows the same procedure. The requirement of an opinion from the requesting agency helps to ensure the completeness and legitimacy of the process by which our Office issues opinions. To be sure, our Office has not applied the policy with complete uniformity, especially where operational needs have made such a process impractical or where the White House Counsel, OMB, or our own Department is the

~~TOP SECRET~~

~~NOFORN~~

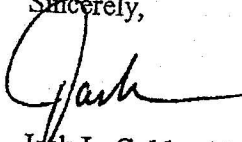
~~TOP SECRET~~

~~NOFORN~~

requester. Nevertheless, this practice seems particularly prudent here, where the issues deserve the fullest exploration, and where many of the facts and practices necessary for the analysis fall within your expertise. (TS)

I look forward to hearing from you so that we may proceed as expeditiously as possible on your important request. (U)

Sincerely,



Jack L. Goldsmith III

~~TOP SECRET~~

~~NOFORN~~

DATE	TIME	ADDRESS	MODE	TIME	PAGE	RESULT	PERS. NAME	FILE
3.	3:47PM	COMPATIBLE	G-TS	2'26"	P. 3	OK		417

# : BATCH  
 M : MEMORY  
 S : STANDARD  
 A : ASYNC MODE

C : CONFIDENTIAL  
 L : SEND LATER  
 D : DETAIL  
 1- : MIL STD MODE

S : TRANSFER  
 @ : FORWARDING  
 F : FINE  
 G- : RICOH-MG3/COMPATIBLE MODE

P : POLLING  
 E : ECM  
 > : REDUCTION





U.S. Department of Justice

Office of Legal Counsel

~~TOP SECRET/~~

~~NOFORN~~

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2004

Mr. George J. Tenet  
Director  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Director Tenet:

I am writing at the Attorney General's request concerning a report that the Inspector General of the CIA has recently forwarded to your office. The Department of Justice did not have an opportunity to review a draft of the report and instead only had a chance to review the final report after it had been forwarded to your office.

The Department of Justice believes that the report contains some ambiguous statements concerning the Attorney General's remarks at a 29 July 2003 meeting of selected NSC principals that should be clarified and that it contains some statements that mistakenly characterize the extent of advice provided by the Department.

The Attorney General requests that you return the report to your Inspector General with a request to make the modifications suggested in the attached document, which we believe are necessary to clarify ambiguities or correct mistaken characterizations.

Sincerely,

Jack L. Goldsmith III

cc: Scott W. Muller, Esq.

~~TOP SECRET/~~

~~/NOFORN~~

