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TOT: [Redacted] DEC 02 [Redacted]

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TO: [Redacted]

FROM: [Redacted]

SUBJECT: EYES ONLY - LEGAL BACKGROUND ON THE USE OF ENHANCED INTERROGATION TECHNIQUES

REF: NONE

TEXT:

1. ACTION REQUIRED: --PLEASE SEE BELOW.

2. THIS CABLE PROVIDES BACKGROUND ON THE LEGAL ASPECTS OF THE USE OF ENHANCED INTERROGATION TECHNIQUES AND IS PROVIDED IN THE HOPE THAT IT WILL PROVE USEFUL.

3. IN GENERAL, THE APPLICABLE FEDERAL LAW DESCRIBED IN PARAGRAPHS 6-9 BELOW SETS FORTH CERTAIN OUTER LIMITS FOR THE CONDUCT OF INTERROGATIONS BY USG PERSONNEL, AND REQUIRES THAT THE USE OF INTERROGATION TECHNIQUES IN SPECIFIC INSTANCES WILL NOT ENGENDER LASTING AND SEVERE MENTAL OR PHYSICAL HARM TO THE DETAINEE. IT IS UNDERSTOOD THAT SOME INTERROGATION TECHNIQUES INCORPORATE MILD PHYSICAL PRESSURE, WHILE OTHERS MAY PLACE A DETAINEE IN FEAR FOR HIS LIFE. IT IS NOT INTENDED, HOWEVER, THAT THE DETAINEE ACTUALLY SUFFER SEVERE PHYSICAL OR MENTAL PAIN; IN ADDITION, APPROPRIATELY TRAINED MEDICAL AND PSYCHOLOGICAL PERSONNEL ARE PRESENT THROUGHOUT THE PROCESS. OUR ATTORNEYS HAVE PRESENTED OUR LEGAL ANALYSIS TO THE LEGAL ADVISER TO THE NSC, TO THE OFFICE OF LEGAL COUNSEL AT THE DEPARTMENT OF JUSTICE, AND TO THE CRIMINAL DIVISION AT JUSTICE, AND THE COUNSEL TO THE PRESIDENT HAS BEEN BRIEFED AS WELL.

4. THE ENHANCED TECHNIQUES.

SPECIFIC INTERROGATION TEAM MEMBERS MAY REQUEST PRIOR APPROVAL FROM HQS TO EMPLOY ANY OR ALL OF THE FOLLOWING ENHANCED TECHNIQUES, WHICH ARE MORE FULLY DESCRIBED IN PARAGRAPH 5 BELOW, AGAINST A SPECIFIC DETAINEE: THE ATTENTION GRASP; WALLING; FACIAL HOLD; FACIAL SLAP (INSULT SLAP); CRAMPED CONFINEMENT; WALL STANDING; STRESS POSITIONS; SLEEP DEPRIVATION; USE OF DIAPERS; USE OF HARMLESS INSECTS; AND THE WATER BOARD. WE NOTE THAT THESE

TECHNIQUES ARE USED ON U.S. MILITARY PERSONNEL DURING SERE TRAINING (WITH THE EXCEPTION OF DIAPERS AND REAL INSECTS, ALTHOUGH SERE TRAINING DOES MAKE USE OF SIMULATED SNAKES, INSECTS, ET CETERA, AS WELL AS FORCED CROSS-DRESSING). NORMALLY, A MEDICAL EXPERT WITH SERE EXPERIENCE WILL BE PRESENT THROUGHOUT THE

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IMPLEMENTATION OF THESE PROCEDURES; PER THE SERE PSYCHOLOGISTS, THE ANTICIPATION OF THESE TECHNIQUES IS OFTEN WORSE THEN THE ACTIONS THEMSELVES.

5. BRIEF DESCRIPTIONS OF THE PARA 4 TECHNIQUES FOLLOW:

-- ATTENTION GRASP: IN A CONTROLLED AND QUICK MOTION, GRASP THE DETAINEE WITH BOTH HANDS, ONE ON EACH SIDE OF THE COLLAR OPENING. IN THE SAME MOTION, DRAW HIM TOWARDS YOU.

-- WALLING: THE DETAINEE IS STOOD IN FRONT OF A SPECIALLY CONSTRUCTED FLEXIBLE WALL. HIS HEELS TOUCH THE WALL. THE DETAINEE IS PULLED FORWARD AND THEN QUICKLY AND FIRMLY PUSHED INTO THE WALL. THE HEAD AND NECK ARE SUPPORTED WITH A ROLLED HOOD OR TOWEL THAT PROVIDES A C-COLLAR EFFECT TO HELP PREVENT WHIPLASH. CONTACT WITH THE WALL IS MADE WITH THE DETAINEE'S SHOULDER BLADES. TO REDUCE THE PROBABILITY OF INJURY, THE DETAINEE IS ALLOWED TO REBOUND FROM THE WALL.

-- FACIAL HOLD: ONE OPEN PALM IS PLACED ON EITHER SIDE OF THE INDIVIDUAL'S FACE, FINGERTIPS WELL AWAY FROM THE INDIVIDUAL'S EYES. THE GOAL IS TO HOLD THE HEAD IMMOBILE.

-- FACIAL SLAP (INSULT SLAP): THE SLAP IS DELIVERED WITH FINGERS SLIGHTLY SPREAD. CONTACT SHOULD BE MADE WITH THE AREA DIRECTLY BETWEEN THE TIP OF THE CHIN AND THE BOTTOM OF THE CORRESPONDING EARLOBE. THE GOAL OF THE FACIAL SLAP IS TO INDUCE SHOCK AND SURPRISE, NOT SEVERE OR LASTING PAIN.

-- CRAMPED CONFINEMENT: INDIVIDUALS ARE PLACED IN A CONFINED SPACE THE DIMENSION OF WHICH RESTRICTS MOVEMENT. THE CONTAINER IS USUALLY DARK. INDIVIDUALS MAY BE KEPT IN LARGER CONFINEMENT SPACES FOR UP TO 18 HOURS, AND SMALLER CONFINEMENT BOXES FOR ONE HOUR.

-- WALL STANDING: THIS TECHNIQUE IS USED TO INDUCE FATIGUE. THE INDIVIDUAL STANDS APPROXIMATELY 4 OR 5 FEET FROM A WALL, WITH HIS FEET SPREAD APPROXIMATELY SHOULDER WIDTH. WITH ARMS OUTSTRETCHED IN FRONT, FINGERS RESTING ON THE WALL SUPPORTING BODY WEIGHT. INDIVIDUALS ARE NOT ALLOWED TO MOVE OR REPOSITION THEIR FEET OR HANDS.

-- STRESS POSITIONS: A VARIETY OF STRESS POSITIONS ARE POSSIBLE. THEY FOCUS ON PRODUCING MILD PHYSICAL DISCOMFORT FROM PROLONGED MUSCLE USE, RATHER THAN PAIN ASSOCIATED WITH CONTORTIONS OR TWISTING OF THE BODY. AMONG THESE ARE HAVING (A) THE DETAINEE SIT ON THE FLOOR WITH LEGS EXTENDED STRAIGHT OUT IN FRONT OF HIM WITH HIS ARMS RAISED ABOVE HIS HEAD; AND (B) HAVING THE DETAINEE KNEEL ON THE FLOOR AND LEAN BACK AT A 45 DEGREE ANGLE.

-- SLEEP DEPRIVATION: PREVENTING SLEEP IS INTENDED TO HAVE THE EFFECT OF REDUCING A DETAINEE'S ABILITY TO THINK ON HIS FEET AND TO MOTIVATE HIM TO COOPERATE BECAUSE OF THE DISCOMFORT ASSOCIATED WITH THE LACK OF SLEEP. FOR MOST PEOPLE, THE EFFECTS OF SLEEP DEPRIVATION REMIT AFTER ONE OR TWO NIGHTS OF UNINTERRUPTED SLEEP. IN RARE CIRCUMSTANCES, INDIVIDUALS PREDISPOSED TO PSYCHOLOGICAL PROBLEMS MAY DISPLAY ABREACTIONS, BUT THESE TOO GENERALLY REMIT AFTER THE INDIVIDUAL SLEEPS. THE RECORD (GUINNESS BOOK OF WORLD RECORDS) FOR VOLUNTARY SLEEP DEPRIVATION IS 205 HOURS WITH THE SUBJECT SHOWING NO SIGNIFICANT PSYCHOLOGICAL PROBLEMS AND QUICK RECOVERY AFTER ONE OR TWO DAYS OF SLEEP.

-- USE OF DIAPERS: [REDACTED]

[REDACTED] CARE MUST BE TAKEN TO KEEP HUMAN WASTE FROM CREATING OR ENHANCING INFECTIONS.

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-- INSECTS: WHERE A DETAINEE APPEARS TO HAVE A FEAR OF INSECTS, ONE POSSIBILITY IS TO THREATEN TO PLACE STINGING INSECTS INTO THE CRAMPED CONFINEMENT BOX WITH HIM, BUT INSTEAD PLACE HARMLESS INSECTS. THE PURPOSE OF THIS WOULD BE TO PLAY OFF HIS FEARS AND INCREASE HIS SENSE OF DREAD AND MOTIVATE HIM TO AVOID THE BOX IN THE FUTURE BY COOPERATING WITH THE INTERROGATOR'S REQUESTS.

-- THE WATER BOARD: THE DETAINEE IS BOUND SECURELY TO AN INCLINED BENCH. INITIALLY A CLOTH IS PLACED OVER HIS FOREHEAD AND EYES. AS WATER IS APPLIED IN A CONTROLLED MANNER, THE CLOTH IS SLOWLY LOWERED UNTIL IT ALSO COVERS THE MOUTH AND NOSE. ONCE THE CLOTH IS SATURATED AND COMPLETELY COVERING THE MOUTH AND NOSE, THE DETAINEE WOULD BE EXPOSED TO 20 TO 40 SECONDS OF RESTRICTED AIRFLOW. WATER IS APPLIED TO KEEP THE CLOTH SATURATED. AFTER THE 20 TO 40 SECONDS OF RESTRICTED AIRFLOW, THE CLOTH IS REMOVED AND THE DETAINEE IS ALLOWED TO BREATHE UNIMPEDED. AFTER 3 OR 4 FULL BREATHS, THE PROCEDURE MAY BE REPEATED. WATER IS USUALLY APPLIED FROM A CANTEN CUP OR SMALL WATERING CAN WITH A SPOUT.

6. LEGAL BACKGROUND.

IN GENERAL, THE LAW PROVIDES THAT IT IS A FEDERAL CRIME FOR ANY PERSON ACTING "UNDER COLOR OF LAW" (WHICH WOULD INCLUDE, OF COURSE, ALL MEMBERS OF THE INTERROGATION TEAM AND OTHER PERSONNEL AS WELL) TO ENGAGE IN CONDUCT THAT IS "SPECIFICALLY INTENDED TO INFLICT SEVERE PHYSICAL OR MENTAL PAIN OR SUFFERING . . . UPON ANOTHER PERSON WITHIN HIS CUSTODY OR PHYSICAL CONTROL." THE STATUTE PROVIDES THAT ANY PERSON WHO VIOLATES THOSE PROHIBITIONS "SHALL BE FINED UNDER (THE U.S. CRIMINAL CODE) OR IMPRISONED NOT MORE THAN 20 YEARS, OR BOTH, AND IF DEATH RESULTS TO ANY PERSON FROM CONDUCT PROHIBITED BY THIS SUBSECTION (I.E., THAT QUOTED ABOVE), SHALL BE PUNISHED BY DEATH OR IMPRISONED FOR ANY TERM OF YEARS OR FOR LIFE."

-- THE STATUTE DEFINES "SEVERE MENTAL PAIN OR SUFFERING" AS "THE PROLONGED MENTAL HARM CAUSED BY OR RESULTING FROM: (A) THE INTENTIONAL INFLICTION OR THREATENED INFLICTION OF SEVERE PHYSICAL PAIN OR SUFFERING; (B) THE ADMINISTRATION OR APPLICATION, OR THREATENED ADMINISTRATION OR APPLICATION, OF MIND-ALTERING SUBSTANCES OR OTHER PROCEDURES CALCULATED TO DISRUPT PROFOUNDLY THE SENSES OR PERSONALITY; (C) THE THREAT OF IMMINENT DEATH; OR (D) THE THREAT THAT ANOTHER PERSON WILL IMMINENTLY BE SUBJECTED TO 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."

7. ACCORDINGLY, THE JUSTICE DEPARTMENT APPROVAL FOR HQS TO AUTHORIZE THE USE OF ENHANCED TECHNIQUES IN SPECIFIC INSTANCES RELIES UPON OUR REPRESENTATION THAT THOSE TECHNIQUES, WHEN APPLIED BY APPROPRIATELY TRAINED PERSONNEL, SHOULD NOT PRODUCE SEVERE MENTAL OR PHYSICAL PAIN OR SUFFERING. FOR EXAMPLE, THE USE OF SPECIFIC ENHANCED TECHNIQUES MAY BE AUTHORIZED WHERE, IN LIGHT OF THE SPECIFIC INTERROGATOR'S EXPERIENCE WITH THOSE PROCEDURES AND THE SPECIFIC DETAINEE'S OWN CHARACTERISTICS, NEITHER ANY SEVERE PHYSICAL INJURY (SUCH AS THE LOSS OF A LIMB OR ORGAN), NOR DEATH, NOR PROLONGED MENTAL HARM CONTINUING FOR A PERIOD OF MONTHS OR YEARS (SUCH AS THE CREATION OF PERSISTENT POST-TRAUMATIC STRESS DISORDER) SHOULD RESULT FROM THEIR USE. INDEED, JUSTICE CONCLUDED THAT THE USE OF ENHANCED TECHNIQUES CAREFULLY APPLIED BY APPROPRIATE PERSONNEL PURSUANT TO PRIOR HQS APPROVAL WOULD NOT VIOLATE THE "SPECIFIC INTENT" TO INFLICT SEVERE MENTAL OR PHYSICAL PAIN OR SUFFERING, AND THEREFORE WOULD NOT VIOLATE THE LAW.

-- FOR EXAMPLE, THE DEPARTMENT OF JUSTICE CONCLUDED THAT ALTHOUGH "THE USE OF THE WATERBOARD CONSTITUTES A THREAT OF IMMINENT

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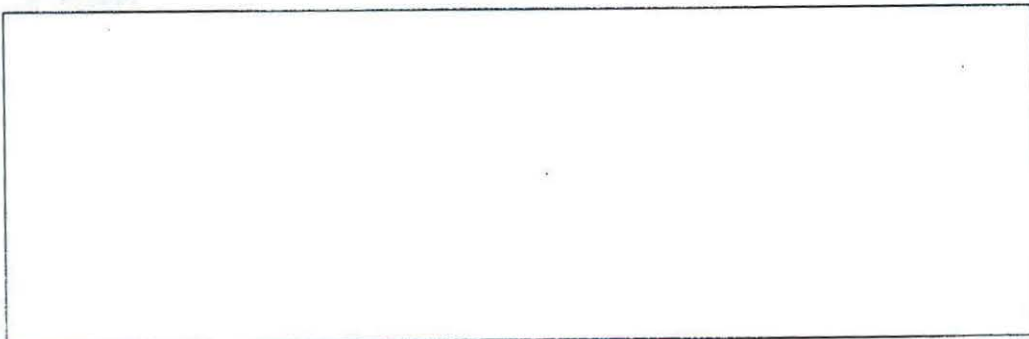
DEATH", NO "SEVERE PHYSICAL OR MENTAL PAIN OR SUFFERING" IS ACTUALLY EXPECTED TO BE PRODUCED WHEN THE TECHNIQUE IS APPLIED WITH PRIOR HQS APPROVAL BY TRAINED AND EXPERIENCED PERSONNEL.

8. FOR THESE REASONS, WE FULLY DOCUMENT IN ADVANCE ANY DECISIONS TO EMPLOY ANY ENHANCED TECHNIQUES, ALONG WITH THE CRITERIA THAT HAVE BEEN EMPLOYED IN MAKING THOSE DECISIONS. THIS HELPS ESTABLISH THAT THERE IS INDEED NO "SPECIFIC INTENT" TO INFLICT "SEVERE PHYSICAL OR MENTAL PAIN OR SUFFERING" UPON ANY DETAINEE. THE CRITICAL NEED FOR SUCH DOCUMENTATION IS REINFORCED BY THE CONCERN THAT A DETAINEE MAY SUFFER A HEART ATTACK, FOR EXAMPLE, AND DIE IN THE COURSE OF HIS DETENTION. THE DOCUMENTATION SERVES A NUMBER OF FUNCTIONS, NOT THE LEAST OF WHICH IS TO PROTECT THE OFFICERS ON OUR INTERROGATION TEAMS.

-- IN THIS RESPECT, THE DEPARTMENT OF JUSTICE ADVISED US BY LETTER ON 13 JULY 2002 THAT "SPECIFIC INTENT CAN BE NEGATED BY A SHOWING OF GOOD FAITH. . . . 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 TAKEN RELYING ON THAT ADVICE WOULD HAVE TO BE 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."

9. ADDITIONALLY, AND AS REPRESENTED TO JUSTICE, WE ALSO DOCUMENT THAT THE PERSONNEL ENGAGED IN THE USE OF ENHANCED TECHNIQUES POSSESS EXTENSIVE EXPERIENCE ON THE PSYCHOLOGICAL AND PHYSICAL METHODS OF INTERROGATION AND THE RESISTANCE TECHNIQUES EMPLOYED AS COUNTERMEASURES TO SUCH INTERROGATION. THE DEPARTMENT OF JUSTICE ALSO HAS RELIED UPON OUR REPRESENTATIONS THAT WE DO NOT INTEND TO PERMIT ANY DETAINEE TO DIE IN THE COURSE OF SUCH ACTIVITIES, AND THAT WE HAVE APPROPRIATELY TRAINED MEDICAL PERSONNEL ON-SITE TO ENSURE THE AVAILABILITY OF EMERGENCY RESPONSE SHOULD A DETAINEE SUFFER A POTENTIALLY LETHAL CONSEQUENCE. NONETHELESS, JUSTICE DOES RECOGNIZE THAT THE RISK IS EVER PRESENT THAT A DETAINEE MAY SUFFER A HEART ATTACK, STROKE, OR OTHER ADVERSE EVENT REGARDLESS OF THE CONDITIONS OF THE DETENTION AND INTERROGATION, AS THAT POTENTIAL IS ALWAYS PRESENT WHETHER AN INDIVIDUAL IS UNDER DETENTION OR NOT.

10. WE HOPE THIS BACKGROUND IS HELPFUL, AND STAND READY TO PROVIDE ANY ADDITIONAL INFORMATION YOU MAY NEED. THANKS AND REGARDS.



END OF MESSAGE

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