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From: Johnson, Thomas A
Sent: Wednesday, June 23, 2004 1:27 PM
To: Legal-L-HRR (SBU); Legal-L-PM (SBU); Cummings, Edward R (L-ACV); Camponovo, Christopher N (DRL)
Subject: FW: WH PRESS BRIEFING BY JUDGE GONZALES, etc. (6/22/04)

FYI

-----Original Message-----
From: Starr, Katherine L
Sent: Wednesday, June 23, 2004 8:32 AM
To: IO Front Office users; IO-PPC users; IO-SHA users; Mathias, D Stephen (SBU); Lamotte, Russ K. (SBU); Cogan, Jacob K (SBU); IO-UNP users; IO-PHO users; 'Rosemary_A._DiCarlo@nsc.eop.gov'; Suh, Susan P; Chapman, Jana ; Grenell, Richard ; Cummings, Monica L; Conaway, Mary; Owens, Eric L
Subject: WH PRESS BRIEFING BY JUDGE GONZALES, etc. (6/22/04)

-----Original Message-----
From: Eckert, Ellen E. [mailto:Ellen_E._Eckert@who.eop.gov]
Sent: Tuesday, June 22, 2004 9:56 PM
Subject: PRESS BRIEFING BY JUDGE GONZALES, etc.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 22, 2004

PRESS BRIEFING BY
WHITE HOUSE COUNSEL JUDGE ALBERTO GONZALES,
DOD GENERAL COUNSEL WILLIAM HAYNES,
DOD DEPUTY GENERAL COUNSEL DANIEL DELL'ORTO
AND ARMY DEPUTY CHIEF OF STAFF FOR INTELLIGENCE
GENERAL KEITH ALEXANDER

Room 350
Eisenhower Executive Office Building

3:12 P.M. EDT

JUDGE GONZALES: I've got a fairly lengthy opening statement, but there are some important points I need to make in order to frame our discussion this afternoon. And I want to begin by reminding everyone who we're fighting and what our enemy is trying to do to us, from using airplanes to kill thousands of citizens, to using daggers to behead our citizens. And so we must -- (inaudible) -- American citizens and manage our solemn obligation under the law.

America today does face a different kind of enemy in al Qaeda and its affiliates. And we face an enemy that targets innocent civilians, and we have seen certainly graphic evidence of that in recent days. We face an enemy that lies in the shadows, an enemy that doesn't sign treaties, they don't wear uniforms, an enemy that owes no allegiance to any country, they do not cherish life. An enemy that doesn't fight, attack or plan according to accepted laws of war, in particular Geneva Conventions.

President Bush knows his most important job is to protect this nation. At the same time, he's made it clear, in the war against al Qaeda and its supporters, the United States will follow its treaty obligations and U.S. law, both of which prohibit the use of torture. And this has been firm U.S. policy since the outset of this administration and it remains our policy today.

We're releasing a series of documents this afternoon that highlight the thorough deliberative process the administration used to make policy decisions on how we wage a global war against a teacher organization.

Now, we have been attacked by terrorists prior to September 11th -- the Khobar Towers bombing, the attack on the USS Cole, and the bombings of our embassies in East Africa, among others -- the government had previously dealt with these attacks as primarily a law enforcement matter. But after September 11th, President Bush shifted our nation from the law enforcement approach to dealing with terrorism to a strategy that marshals all elements of national power to help fight terrorism.

After President Bush declared that the U.S. was at war with al Qaeda and its supporters, he made clear that our military would respond in al Qaeda attacks. Our government had fundamental decisions to make concerning how to apply treaties and U.S. law to an enemy that did not wear uniform, owed no allegiance to any country, and was committed to no treaty, and did not fight -- most importantly -- according to the laws of war. I must tell you that these differences really imposed legal and practical questions for policymakers trying to defend the United States against the deadly and shadowy adversary, unlike any enemy we've ever seen before.

Now, some questions we faced were, for example: What is the legal status of individuals caught in this battle? How will they be treated? To what extent can those detained be questioned to attain information concerning possible future terrorist attacks? What are the rules? What will our policies be?

As we debated these questions, the President made clear that he was prepared to protect and defend the United States and its citizens, and he would do so vigorously, but as the documents we are

releasing today show, that he would do so in a manner consistent with our nations values and applicable law, including our treaty obligations.

You have two distinct set of documents, those that were generated by government lawyers to explore the limits of the legal landscape as to what the Executive Branch can do within the law and the Constitution as an abstract matter; you also have documents that reflect the actual decisions issued by the President and senior administration officials directing the policies that our military would actually be obliged to follow. So you have before you the legal theory and you have before you the actual policy guidance that the President and his team directed. And as these documents show, the policies ultimately adopted by the President are more narrowly tailored than advised by his lawyers, and are consistent with our treaty obligations, our Constitution and our laws.

As you look through the first set, you can see lawyers trying to think through the potential legal implications of the war on al Qaeda and it supporters. Just as military theorists thought about new strategies and tactics to fight terrorists, so, too, did lawyers in looking at how this war fit into the current legal landscape.

These are tough issues, and some of the conclusions by the lawyers you may find controversial. These opinions set forth a broad legal framework in which the President and his team considered and ultimately adopted more narrowly tailored policies.

Now, to the extent that some of these documents, in the context of interrogations, explored broad legal theories, including legal theories about the scope of the President's power as Commander-in-Chief, some of their discussion, quite frankly, is irrelevant and unnecessary to support any action taken by the President. The administration has made clear before, and I will reemphasize today that the President has not authorized, ordered or directed in any way any activity that would transgress the standards of the torture conventions or the torture statute, or other applicable laws.

Unnecessary, over-broad discussions in some of these memos that address abstract legal theories, or discussions subject to misinterpretation, but not relied upon by decision-makers are under review, and may be replaced, if appropriate, with more concrete guidance addressing only those issues necessary for the legal analysis of actual practices. But I must emphasize that the analysis underpinning the President's decisions stands and are not being reviewed.

It's also important to note that these opinions were circulated among lawyers and some Washington policymakers only. To my knowledge, they never made it to the hands of soldiers in the field,

nor to the President. Now, they're interesting for lawyers to debate, and for the public to debate what the rules should be as we try to deal with this new threat. But, in reality, they do not reflect the policies that the administration ultimately adopted.

The other set of documents you have consists of the President's February 2002 directive and the memorandum issued by Secretary Rumsfeld in the fall of 2002 and the winter of 2003. And these demonstrate clearly the limits that the administration actually placed on treatment and questioning of detainees in this war. These are our policies, and they guide those in the field who are responsible for implementing policies regarding treatment and questioning of detainees in this conflict.

Now, there's been much confusion because of the leaks of legal opinions concerning whether the administration in any way encouraged or authorized torture, and what policies were actually authorized. We are releasing these documents to highlight the policies that were, in fact, authorized to give you insight into the great degree of care taken in the policy-making process, and to inform the public that the policy decisions made by the President are in keeping with the values of our nation, our Constitution, our laws, and our treaty obligations. And we believe the American people, when they understand the policies that have actually been adopted to help us prevent future terrorist attacks and save innocent lives, will understand and support what has been done.

But if there still remains any question, let me say that the U.S. will treat people in our custody in accordance with all U.S. obligations including federal statutes, the U.S. Constitution and our treaty obligations. The President has said we do not condone or commit torture. Anyone engaged in conduct that constitutes torture will be held accountable. The President has not directed the use of specific interrogation techniques. There has been no presidential determination necessity or self-defense that would allow conduct that constitutes torture. There has been no presidential determination that circumstances warrant the use of torture to protect the mass security of the United States.

The President has given no order or directive that would immunize from prosecution anyone engaged in conduct that constitutes torture. All interrogation techniques actually authorized have been carefully vetted, are lawful, and do not constitute torture.

Now, a few of the misinformed have asked whether the President's February 7th determination contributed to the abuses at Abu Ghraib. We categorically reject any connection. There are two separate legal regimes that govern action in those arenas. In Iraq, it has always been U.S. position that Geneva applies. From the early days of the

conflict, both the White House and the Department of Defense have been very public and clear about that.

The President made no formal determination with respect to our conflict in Iraq because it was automatic that Geneva would apply. Our soldiers are trained from the first day in our service to follow the Geneva Conventions.

Now, interrogation and detention policies in Iraq were issued by General Sanchez in the field. They do not involve input from Washington and are not related to legal opinions I have discussed concerning the war against al Qaeda. The war in Iraq is covered by the Geneva Conventions, so our policies there must meet those standards, in addition to the torture convention. And military lawyers in the field determine that the policies embodied in those memos comply with Geneva Conventions.

As for the incidents at Abu Ghraib, they were not authorized and have nothing to do with the policies contained in any of these memos. The President has made clear that he condemns this conduct. He has made clear that these activities are inconsistent with the specific policy guidance. As you know, full investigations into the abuses at Abu Ghraib are ongoing, and those engaged in this conduct will be held accountable.

Two final points before quickly summarizing documents. First, this briefing does not include CIA activities. I will say that all interrogation techniques authorized for use by the Agency against the Taliban and al Qaeda and in Iraq are lawful and do not constitute torture. But to disclose anything more would be irresponsible during this period of ongoing conflict.

And finally, the government is releasing an extraordinary set of documents today; and this should not be viewed as setting any kind of precedent. But we felt it important to set the record straight. Additional documents may be withheld in the future for national security and other reasons.

Now, let me very quickly just walk you through the documents. The most important document is under Tab A, the President's February 7th determination regarding humane treatment of al Qaeda and Taliban detainees.

This is the only formal, written directive from the President regarding treatment of detainees. The President determined that Geneva does not apply with respect to our conflict with al Qaeda. Geneva applies with respect to our conflict with the Taliban. Neither the Taliban or al Qaeda are entitled to POW protections.

But the President also determined -- and this is quoting from

the actual document, paragraph 3; this is very important -- he said, "Of course, our values as a nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our nation has been, and will continue to be, a strong supporter of Geneva and its principles. As a matter of policy, the Armed Forces are to treat detainees humanely, and to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

Now, of course, the logic of Geneva applies to reciprocal behavior. I agree to treat your captured soldiers in accordance with certain standards in exchange for similar treatment. But to protect terrorists when they ignore the law is to give incentive to continued ignoring that law.

The President's determination is not controversial within the Executive Branch. It is supported by various opinions from the Department of Justice, and the legal advisor at the State Department agrees that the President's decisions are consistent with our treaty obligations and customary with international law.

Tab B is a memo to me from Jay Bybee, Assistant Attorney General, regarding the application of treaties and laws to al Qaeda and Taliban detainees. And basically, this memorandum provides the advise concerning the application of Geneva Conventions and formed sort of the basis for the President's February 7th determination.

Tab C is a letter to the President from the Attorney General confirming that under either two legal theories, the Taliban fighter is not eligible for POW status under the Geneva Convention, and explains that both theories are available for the President to act upon.

Tab D has an information paper from the Department of Defense confirming facts relating to the legal status of Taliban forces.

Tab E is a memo to me from Jay Bybee at the Department of Justice, entitled, "Status of Taliban Forces under Article 4 of the Third Geneva Convention," and this memo, again, provides a more detailed analysis of the status of the Taliban forces, assuming that Geneva Convention really applies to the conflict with them.

Now, the next set of documents are Department of Defense determinations and related documents under Tabs F through I. I believe all these documents had previously been provided to Congress. They've now been declassified and are now available to the American people.

Tab F is a December 2nd action memo prepared by Secretary

Rumsfeld relating to interrogation techniques at Guantanamo during the period of late 2002, early 2003. There is, at the end of the information under Tab F, a summary of techniques actually authorized, and a summary of techniques actually used.

Tab G is a January 15, 2000 decision document suspending the December 2nd techniques.

Under Tab H is a January 2003 memo from Secretary Rumsfeld establishing a working group to assess interrogation techniques at Guantanamo.

Tab I is a working group report on interrogation dated April 4th, a draft copy of which has been in the press.

Tab J, April 16 DOD memorandum regarding revised interrogation techniques -- at Guantanamo.

Tab K is a memo to Jim Haynes from Jay Bybee, Office of Legal Counsel for the Department of Justice, regarding potential legal constraints applicable to interrogation of persons captured by U.S. Armed Forces in Afghanistan. This memo addresses a narrow set of questions raised by DOD related to the application of Miranda warnings, and the 6th Amendment right to counsel for interrogations. So we were concerned about whether or not we need to respect the Miranda rights and the 6th Amendment right to counsel in Guantanamo. And we sought legal guidance with respect to that.

Tab L is a letter to me from John Yoo addressing two issues, whether or not comment that violates the standard of torture convention might, nevertheless, violate -- that does not violate the standard of torture convention might, nevertheless, violate the torture prohibition and the prevention against torture, and also addressed whether the International Criminal Court could assert jurisdiction over U.S. personnel that were accused of wrongdoing in interrogations.

And finally, Tab M is an August 1 memo to me from Jay Bybee. This was leaked sometime ago and has been the subject of substantial discussion. And let me just make a few points about this. The questions were posed about the torture convention and the anti-torture statute because our values call for humane treatment. And our soldiers need to know the limits of permissible conduct. We're going to be aggressive in our interrogations, there's no question about that. But always, within the requirements of applicable law.

Now, the memo was written in response to questions only about the scope of the torture convention and the anti-torture act. There was no request for a discussion of the pr's authority as Commander-in-Chief to ignore existing statutes or treaties. And the questions

were posed, quite frankly, in August 2002, six months after the President's determination about the application of Geneva to our conflict with al Qaeda and the Taliban.

Thus that decision, the President's earlier decision, was not affected or motivated in any way by the opinion in the August 1st memo. The Commander-in-Chief override power discussed in the opinion is, on its face -- on its face -- limited to our conflict with al Qaeda. There is no indication that it applies to our conflict in Iraq. Since the analysis is in the context of the current war against the al Qaeda terrorist network, application with reason to Iraq would, in my judgment, require additional analysis.

I don't want to get further into a discussion about the merits of the opinion. I understand the Department of Justice is holding a briefing later this afternoon to go into much greater detail about these memos. But I want to reaffirm yet again that the United States has very high values. We do not engage in torture. We are bound by the convention against torture, as ratified by the United States. Whatever broad language might be included in this legal memo, the United States government has never authorized torture in reliance on the argument that the convention against torture, or the torture statute are somehow inapplicable to the current conflict. To the contrary. All interrogation techniques authorized for use against the Taliban and al Qaeda and in Iraq have been carefully vetted and determined to not constitute torture under the definition provided by Congress and the convention against torture, as ratified by the United States.

We are a nation of rules and values. It's as simple as that. And we are fighting this war accordingly.

And with that, I'll turn it over to Jim Haynes.

Q That's the definition on torture that you used? That's the standard --

Q When you say, no torture, you mean --

MR. McCLELLAN: We'll come back to questions at the end. Let's let everybody go through.

MR. HAYNES: I promise I won't spend as much time. I want to introduce Mr. Dell'Orto in just a minute. But let me say a couple of things echoing Judge Gonzales. One of them is, this is an extraordinary session in a number of ways. We're providing extraordinary amount of legal advice provided to senior decision-makers --

Q Can you just introduce yourself?

Q Give your name, and spell your name.

MR. HAYNES: I'm sorry, I'm -- my name is William Haynes. I'm the General Counsel of the Department of Defense.

Q Can you spell your last name?

MR. HAYNES: H-a-y-n-e-s. As I said, this is extraordinary in a number of ways. It's extraordinary in what we're disclosing -- legal opinions, advice to senior decision-makers, a whole lot of the deliberative process of some of the most sensitive decision-making in the course of conduct of a war -- two wars, as you'll see later. But we're going to focus, for the most part, on global war on terror, in particular, when Mr. Dell'Orto speaks, about the process by which we, in the Defense Department decided how one should interrogate unlawful combatants outside the United States in a conflict not governed by the Geneva Conventions, strictly speaking, in a unique circumstance.

It's also a reflection of the extraordinary war we are in. Judge Gonzales talked about the type of enemy we face, the type of enemy that doesn't have armies, that doesn't have major combat vehicles and equipment, that don't limit their targets to military targets, but rather, do exactly the opposite. They seek to exploit the values that we hold most dear, the values that are sacrosanct in centuries of the kind of war, that is one should distinguish between lawful military targets and civilian targets to protect innocent people from harm when the terrible powers of war are unleashed.

Indeed, al Qaeda trains to that. Their manual spends -- their training manual spends an extraordinary amount of time talking about how to resist interrogation.

It's also a war in which one of the principal tools, for both sides, is information, both on the side of the al Qaeda to seek to exploit what we hold most dear, and in our case, to know what's coming to protect the American people. So care with which the President instructed us to treat people and in which the Secretary of Defense employed in deciding what interrogation methods ought to be employed, had to look at that unique circumstance. It had to consider both values that we hold dear, standards that we wanted to uphold, as well as the type of information that we were seeking to derive and try to get that.

Now, as you listen to this next briefing, I'd like you to remember a couple of things. When one talks about interrogation techniques, one must remember that they always come in a context. They come in the context of a governing legal regime, first off. They come in the context of an individual who interrogates with particular characteristics. They come in the context of the

circumstances under which somebody is questioned. They come in the context of how techniques may be combined under certain circumstances and, of course, the context of how they're all applied with all those in place.

But the bottom line, from the Defense Department's perspective, is that they must be lawful. As the President has told us, they also must be humane. The President told the Secretary of Defense that the detainees held by the Department of Defense must be treated humanely and consistent with military necessity, consistent with the principles of Geneva Convention.
The values that America holds dear must also be in mind as we do that. And, of course, an important value is to continue to protect the American people.

Now, what I'd like you to take away, you will form your own judgment, but from Mr. Dell'Orto's briefing, who is intimately familiar with the process that we employed in coming up with our techniques and who has briefed a number of people on Capitol Hill, is the attention and care with which we went about this process.

MR. DELL'ORTO: Hi, I'm Daniel J. Dell'Orto. The last name is spelled D-e-l-l-'-O-r-t-o. I'm the Principle Deputy General Counsel of the Department of Defense, and I report directly to Mr. Haynes.

What I want to do is talk to you about the development and maturation of Guantanamo as a strategic intelligence center, and how that came about. We go back to September 11th, 2001. On that day, the existing doctrine dealing with interrogation of enemy combatants is the Army field manual, 34-52 -- which it had several iterations, one in 1987, and the most recent one in 1992. It is designed for a Geneva conflict, and specifically designed for the interrogation of enemy prisoners of war, among the highest of protected parties in a Geneva-governed conflict. And as both the Judge and Mr. Haynes have indicated, we were dealing with an enemy on September 11th, and hence, that did anything but act in a way that lawful combatants and armies -- professional armies had in the past.

Professional armies, whether they're constricted or volunteer, at the end are disciplined. They fight in a disciplined way. They answer to a chain of command, and, when they surrender and put down their arms and are taken into custody, await the termination of hostilities so they can go back to their farms and their shops and to their factories, and their families.

The detainees at Guantanamo, many of them, have vowed to fight us to their death or ours. And they vow to fight without following rules of law, rules according to -- (inaudible) -- conflict.

And so in October of 2001, we commence active combat hostilities

in Afghanistan, and shortly thereafter, particularly as the war turns quickly in our favor, we start to pick up combatants on the battlefield. These are not people in uniform. They don't come with unit rosters, manning documents, ID tags, or anything to indicate what their ranks are, where they fit in the organization, where they stand in the hierarchy. And so from that, you're not able to glean immediately who they might be or who they might have -- or what they might have in the way of information.

And so you have to sort them out. And, indeed, we sorted out more than 10,000 in Afghanistan and reduced their number to a select few who would make their way to Guantanamo, all enemy combatants, unlawful combatants, and skinny down, if you will, to a number that we could assess on the battlefield as having either significant intelligence value or posing a continuing and significant threat to our nation. And those select few make their way to Guantanamo for development of their intelligence value.

We have not engaged in this type of activity -- that is strategic intelligence-gathering -- coming from the battlefield environment in quite some time. And so when we bring them to Guantanamo to a secure base and begin the intelligence-gathering, we are, in essence, in uncharted waters. So we're starting from ground zero. We have our doctrine, and our doctrine is what we followed in the past. We followed it in Desert Storm and in conflicts before.

And we put that doctrine to use. Now, significantly, you've got copies of that report -- there's 52 extracts that talk about interrogation techniques. There's nothing sacrosanct about those techniques in terms of their exclusiveness. The commanders always have their doctrine. And so commanders may supplement, as necessary, as long as they've got the requisite legal review and other review that goes along with them, and that they're implemented appropriately.

And so at Guantanamo, over time, the first detainees arriving on 11th of January, 2002, and from there on, going through the effort of sorting them and trying to gain intelligence from them, we start a process that matures at Guantanamo, from relatively little organization to much greater organization through the spring and summer of 2002. By that time, we're starting to sort who we have and get a feel for who these guys are and where they may fit in the al Qaeda structure, the Taliban structure.

As we come through the summer of 2002, a couple of things become apparent: One, some of these people have been trained in counter-interrogation techniques, resistance techniques. We have found, by that time, on the battlefield, the al Qaeda training manual to which Mr. Haynes alluded. In that manual is a chapter devoted to resisting our techniques. Those techniques are published. They're

unclassified. The field manual is out on the street for anyone to look at. And if you look at the document, the training manual, you'll see how they go and prepare their fighters to resist our techniques.

The other thing we determined is that we've got some key people there. Among them is a guy named al Khatani, a Saudi Arabian national born in 1975 who was picked up on the battlefield at the Pakistan-Afghani border in December of 2001. And we discovered and learned during the course of this period of time that al Khatani had taken a flight from the Toronto airport to the Orlando, Florida on the 4th of August, 2001. Waiting for him at the airport is Muhammad Atta, one of the 9/11 hijackers. It's previously been reported that there was a Customs agent on the ground at the airport in Orlando who found something quite suspicious about al Khatani and, properly, turned him away.

So al Khatani leaves the Orlando airport and makes his way back to Afghanistan, where he's picked up in December of 2001. We have him in Guantanamo during the summer, fall of 2002, and he is demonstrating that he has been trained to resist our interrogation techniques.

As you may recall, in the fall of 2002, we have a spike in the intelligence. We're coming across -- we're coming on to the first anniversary of 9/11, and the intelligence is indicating we may very well be threatened with another attack. Al Khatani is a person in which -- whom we have considerable interest. He has resisted our techniques. And so it is concluded at Guantanamo that it may be time to inquire as to whether there may be more flexibility in the type of techniques we use on him.

And so on the 11th of October of 2002, Guantanamo generates a request to the Commander of Southern Command that additional techniques beyond those in the field manual be approved for use against high-value detainees, but most specifically, al Khatani. You have the request in your documents.

That request makes its way up to the Commander of South Com. Part of that request includes a multi-page, single-spaced legal review supporting those techniques they requested -- they were in three categories. The Commander of Southern Command, General Hill, forwards those to the Joint Staff for review at the Pentagon on the 25th of October of 2002. That request arrives at the Pentagon and it is reviewed during November. And on the 2nd of December, 2002, the Secretary of Defense approves, I think, all but three of the requested techniques. And you'll see in your packet of information those techniques that are requested and those that were ultimately approved. The most severe of those approved is mild, non-injurious physical contact -- poking, grabbing, lightly shoving.

Included in the request -- and you don't have it here because it's classified -- is a detailed interrogation plan, as alluded to by Mr. Haynes. It outlines the military necessity for doing this. It outlines, in detail, the way the techniques are to be employed, safeguards that would be employed. And, as I said, it had an accompanying legal review.

Those techniques are put in place in early December, and not all are approved or used. You'll also see in the chart that you have that a subset of those approved are actually used. And so they're used in December. During the latter stages of December, it comes to our attention in our office, the Office of General Counsel, that there is concern being expressed at Guantanamo about the techniques. Not clear whether it is the techniques that are being used, the techniques that have been requested, or somebody's speculation about a change in techniques at Guantanamo. We're not clear on that. We do some checking. We still can't get to ground truth on it. But in any event, in early January, the General Counsel, determines that it may be time to go to the Secretary and inform him of these concerns and to suggest that perhaps we step back for a moment and conduct a more broad review of interrogation techniques in the war on terror.

And so on the 12th of January, 2003, Mr. Haynes goes to the Secretary of Defense and discusses this with him, who picks up the phone and calls General Hill and suspends the use of the category two and the single category three technique that the Secretary had previously approved in December of 2002. And on January 15th of 2003, the Secretary follows that up with a written directive to General Hill to rescind his December 2nd, 2002 memo, except where those category one techniques, which are part of existing army doctrine.

The Secretary also directs the General Counsel to form a working group to study the issue of interrogation techniques in the war on terror. It's to be a multi-disciplinary group that would be comprised of lawyers, intelligence experts who can inform the group of effective techniques, representatives of the Joint Staff, representatives from the office of Secretary of Defense Office of Policy. That group forms and begins its work, pursuant to the General Counsel's directive, on January 17th of 2003, and the Chairperson of that group is Mary Walker, the General Counsel of the Department of the Air Force.

That group initially undertakes to complete its work in two weeks, because, again, al Khatani is essentially on hold at that point for gathering intelligence, and we want to get back to him. It becomes a hotly debated issue among the group, because we are dealing with the law, we're dealing with history, we're dealing with tradition, we're dealing with many things that factor into the survey

on what to do in a new kind of war involving unlawful enemy combatants, one we had not dealt with certainly in the history -- the nation's recent history.

And so the time to complete this extends beyond the end of January, and goes through March and, ultimately -- through February/March, and ultimately concludes on April 4th with a report to the Secretary.

The legal analysis is broad. It is informed by the DOJ Office of Legal Counsel views on this. And again, because the Office of Legal Counsel speaks with authority for the Executive Branch, we take pains to ensure that that legal analysis comports with the Department of Justice view on this issue.

It is also supplemented on the legal piece by the considerations of the Uniform Code of Military Justice, which certainly had applicability to the uniform services worldwide. And so that is a significant portion of the legal analysis. It has a historical piece and considerable policy analysis that is also part of the ultimate report.

There are conclusions in the report, and you'll see those in the packet which you have, recommendations in the report, and a list of 35 techniques that are the result of the working group's work. They are those techniques that the working group recommends for consideration for approval. In the recommendations and the conclusions, you see the sort of things that Mr. Haynes has already spoken about -- detailed interrogation files, safeguards, legal reviews, medical care available, things like that, to ensure that they have an orderly, organized, structured process for dealing with interrogations.

I will say this about interrogation plans: An interrogator going to talk to a detainee for the first time may simply go in with a very informal plan, because all he will do is employ the direct approach. He will sit down with him and discuss things with him. And so you may not have a very detailed plan. As your interrogation becomes more sophisticated, as it relies on more sophisticated techniques, that interrogation plan becomes much more sophisticated, both in terms of the detail and in terms of the safeguards that go along with it.

In late March, as the working group is finalizing it's report -- and there is a final draft available at that particular point in time -- the matter of which techniques will ultimately be approved by the Secretary is undertaken for decision. And the working group bubble chart, if you will, that outlines the 35 techniques is presented to the operational deputies for each of the military departments, each of the military services, and ultimately to the chiefs for review.

Also during that time period, the Secretary, the General Counsel, the Undersecretary for Policy, Deputy Secretary of Defense, Chairman of the Joint Chiefs gather and they discuss their views on this. And ultimately, from those processes come 24 techniques that the Chairman of the Joint Chiefs of Staff recommends to the Secretary of Defense for approval for use at Guantanamo against unlawful enemy combatants in the war on terror -- specific to that group of people, specific to that location, a strategic intelligent center, that by that time has matured under General Miller's leadership to a very well-organized and structured operation.

Several things about the Secretary's guidance. It outlines techniques, it outlines requirements of safeguards, it outlines requirements for notification to the Secretary for four of the 24 techniques. Interestingly, 17 of the 24 are from the existing doctrine, and, arguably, 18 because the existing doctrine in FM34-52 actually combines two of those that are broken out in the working group report. So either seven or six techniques are new, if you will, and one of those had actually been in the manual -- so in some respects, that's not even new.

The Secretary sent us his memo, which you have a copy of, to General Hill on the 24th -- excuse me, the 16th of April, and also directs the General he'll be briefed and that General Miller will be briefed on the working group's efforts. Both are briefed subsequently, and they are provided not the full 35 techniques; they are provided, by way of the briefing, only the 24 that the Secretary approved.

The report, itself, is not distributed. It is not distributed because, again, we have a fairly expansive legal analysis and we have a range of techniques that go beyond what the Secretary has approved for Guantanamo. We are not expecting, nor do we desire, nor do we intend that that working group report its legal analysis for the full range of techniques be exposed to the field at Guantanamo or anywhere else. The guidance to Guantanamo is explicit, it's direct, and it circumscribed with 24 techniques that are listed in detail. And that's where those techniques go.

The commanders at both CENTCOM and Guantanamo are told, if you want more than what's here, you have to come up, outline the military necessity for those additional techniques, tell us what the techniques are, give us the interrogation plan, give us the safeguards that are going to be employed and the legal review that would go along with it.

And the Secretary, as I told you earlier, has told General Hill and General Miller, for four of the techniques that I've approved, you need to tell me before you use them, just to be on the safe

side. Interestingly, two of those four are under the existing guidance in the manual.

And so that is the doctrine that is promulgated and then sent down to Guantanamo. And that's as far as it goes.

What about Khatani? Did these techniques have any effect? Well, let's see. Al-Khatani had told us when he was first captured that he was in Afghanistan innocently, he was there to procure falcons because he was selling -- he was an expert in falconry and he was going to sell these falcons. He ultimately tells us that that cover story is false when he's challenged on his inability to explain any details about falconry. He admits that he met Osama bin Laden on several occasions. He provides detailed information on the following people: Jose Padilla, the dirty bomber; Richard Reid, the shoe bomber; and an individual by the name of Adnan El Shukrijumah, otherwise known Tayar Jafar, who, by the way, in the fall of 2002 was an individual we were seeking based upon the threat information, and who, by the way, was one of the six or seven people the Attorney General identified several weeks ago when he listed the number of people in whom the Department of Justice is interested, who may be wandering about the United States.

Al-Khatani also admitted that he knew one of the 9/11 pilots and admitted that he had been sent to the United States by Khalid Shaykh Muhammad. The joint task force at Guantanamo assesses that al-Khatani was sent to the United States on August 4, 2001, to be a member of the 9/11 hijacking plot.

One last point. We talk about the structure at Guantanamo. And while I want to make sure that I keep Guantanamo distinct from Iraq and Abu Ghraib, two things of note. One, we were working on the working group as we're building up to the war in Iraq. There was never any misunderstanding or any thought that what we were doing there was going to be used in Iraq. Everybody understood Iraq was going to be all Geneva, all the time; what we were doing at Guantanamo was predicated on the President's February 7, 2002 determination.

Here is a listing of what has happened by way of discipline at Guantanamo. On September 17, 2002, a detainee threw toilet water at a guard, who responded by attempting to spray the detainee with a water hose. The guard was offered and accepted non-judicial punishment. He was reduced a grade, he had a one-grade, one-rank reduction and was restricted for several days.

On March 26, 2003, another detainee threw what was believed to be toilet water, perhaps urine, on another guard. That guard attempted to spray him -- actually, he did spray him with pepper

spray. That guard was offered non-judicial punishment. He declined and ultimately was court-martialed. He was found not guilty at his court martial.

On April 10, 2003, a detainee was unruly, he was subdued. In the course of that behavior, he bit a guard. After he was subdued, the guard hit him with his hand-held radio. That guard was punished under Article 15 of the Uniform Code of Military Justice, reduced in grade and punished with extra duty for 45 days.

And those were guards. The only incident of misbehavior by an interrogator was a female interrogator who went into the room to interrogate a detainee, took off her uniform blouse, had her T-shirt on, sat on the detainees lap as part of her interrogation technique, and began to run her hands through his hair. The non-commissioned officer who was observing the interrogation from the adjacent room immediately went into the room, stopped the interrogation, pulled the interrogator out and admonished her, counseled her -- she was suspended from duties for 30 days.

Those are the incidents of misbehavior by the guards and interrogators at Guantanamo that have been reported and that have been dealt with. You should note that the al Qaeda training manual with respect to resistance of interrogation techniques teaches its trainees to report -- to claim alleged torture at virtually every turn, and mistreatment at virtually every turn.

That completes my remarks on Guantanamo and the development of that process. I'll introduce Lieutenant General Keith Alexander, who is the G2, Deputy Chief of Staff for Intelligence in the United States Army, who will talk about Iraq.

GENERAL ALEXANDER: What I'm going to do is describe how the policy in Iraq was developed. What I want to do is take you back to the summer of 2003, to the June-July time frame and bring you back to what was going on in Iraq at that time.

As many of you will recall, we had just finished up operations, we were replacing the combined force land component commander with 5th Corps. General Sanchez was taking over. And our forces were starting to take increased casualties. It was determined that we would set up an operation called "Victory Bounty," which would go out and help sweep up some of the Saddam fedayeen that we thought was causing the attacks on our soldiers -- that we would also set up a place to interrogate the Saddam fedayeen, and that place that was picked was Abu Ghraib.

Now, Abu Ghraib had been almost completely destroyed by the Iraqi people after the completion of the hostilities in May. So we had at Abu Ghraib was about 100 criminals going into this operation,

and a company of MPs. What we set there was the 519th MI Battalion, one company of them with interrogators were sent to Abu Ghraib. They had come out of Afghanistan at the end of December 2002 and spent most of the war working with 5th Corps elements going up to Baghdad, and were now set up to set up an interrogation center there at Abu Ghraib.

The officer in charge at Abu Ghraib, of interrogations, understood the requirement to set up what she called the rules of engagement. Those rules of engagement were a set of techniques that she would use for her soldiers, because her soldiers had come from Europe, from Afghanistan, from Guantanamo and from the United States, all those various backgrounds, and she wanted to make sure that they had the rules of engagement in their minds correct.

She got the sets of techniques that she and her deputy -- a warrant officer interrogator -- felt were the correct sets of techniques to use. They set that up in a memorandum with help from their battalion commander. That memorandum went up to the 205th Middle East Brigade and up to the combined joint task force seven. And it went between 4 and 25 August, it was looked at, at various levels. And on the 25th, or thereabouts, two lawyers from the joint task force seven in Baghdad came down -- one Australian, one U.S. They looked at those techniques and said, these techniques look appropriate; what we're going to do is take this back, have the staff judge advocate, Colonel Warren, look at these and then send them up through the chain for approval.

On the 31st of August, General Miller comes from Guantanamo to Baghdad, at the request of the joint staff. His mission was to help get the most that we could out of human intelligence operations in Iraq as a whole. We had learned a great deal in Guantanamo and we wanted to ensure that the lessons that we had in Guantanamo were also in Iraq.

Let me give you an example of some of those lessons, something that I think you will all understand quickly. As a reporter, as you go out and talk to people you ask them questions. The best thing that you can do in asking those questions is know information about those people. How do you do that? The way that we were doing it was the interrogator was left to come up with his analysis. The best way is to get an analyst to go out and get the information on the people that you're going to interrogate and help set up a plan -- something that we would call, as an example, a tiger team, where an analyst and an interrogator would work together and have the full power of all of our intelligence community behind you.

It is those sorts of recommendations that General Miller would make to the combined joint task force, to General Sanchez and others. He went to Abu Ghraib with his team on 2 September. He had

been in the combined joint task force from 31 August and the 1st of September; they had gotten briefings from the staff judge advocate and others, and he had a copy of the techniques that the OIC at Abu Ghraib had recommended.

When they went down and looked at operations at Abu Ghraib, one of their recommendations was to better codify the techniques, make them more transparent, make sure everybody understands them, walk through and train your people on these techniques. That, as all have just said, Colonel Warren understood that Iraq was under the Geneva Convention. He taught that at the JAG school. That was clear in his mind and is clear in the documents that will come up.

From the 4th of September on, they worked on setting up what will become the first set of techniques that will be used in Iraq. They come up with a draft set of documents on the 10th of September and the first one on the 14th of September, General Sanchez signs, reflecting that this is in lines with the Geneva Convention and sends it to his boss, General Abizaid, asked for his concurrence, and implements that guidance pending concurrence.

General Abizaid's folks looks at that and says, okay, we do have some concerns on some of these, we want to start to discuss those, what techniques you're going to approve and what ones you're going to require approval from. They will, on the 28th, come up with a third -- the third draft, the 5th of October, a fourth draft, and on the 12th of October, a signed copy that is the practice in effect.

I want to now just cover a couple of key points, because these dates, I think, are important. So we have a signed set of techniques on the 12th of October that has gone through a set of reviews with the lawyers, the intel analysts there and others within both the combined joint task force in Iraq and at Central Command. Those two go back and forth and we get an approved copy.

First, the actions that took place at Abu Ghraib was not in any of those documents that I talked about. It was reprehensible, it was immoral, it was wrong. And that is the subject of ongoing investigations today. I will tell you the second thing is, the dates of the 12th of October, when we looked at the military police units that go through there and the units that are coming in, the joint interrogation and debriefing center will be stood up around the 20th of September. We will transition the MP units and we will start to stand up what's called the hard site around the 20th of September, and we'll transition the MP units on the 1st of October from what was the 72nd to the 372nd. The 372nd will go through a right seat ride from 1 October to when we take over on 15 October.

That's a real quick overview of the evolution of the rules of engagement in Iraq. Thank you.

MR. McCLELLAN: All right, we'll take questions now, and let me just try to do this in an organized format. If whoever is asking the question will direct it to a specific person that they want to answer that question, that would be appreciated. Also you might let these individuals know who you are with and what organizations and introduce yourself, as well.

Jim, do you want to start off?

Q Yes, if I could. I think this is for you, Judge Gonzales, I'm not sure. One, I gather what you were saying was that the definition of torture that you referred to is the one in the torture convention? If you could clarify that. And, two, what is the distinction between terrorists, between the Khalid Shaykh Muhammads and al Qaeda people we're arresting and the rest of the group? Is there a difference in the interrogation techniques that are allowed for those two different groups?

JUDGE GONZALES: Okay, I'll defer on second one to DOD. The definition of torture that the administration uses is the definition that Congress has given us in the torture statute and the reservation of the torture convention. And that is -- that definition is a very -- I mean, Congress looked at conduct of the various leaders. The definition that Congress used was a specific intent to inflict severe physical or mental harm or suffering. That's the definition that Congress has given us and that's the definition that we use.

Q If you would, as we're talking about the difference between al Qaeda, for instance, and other people, would prolonged isolation, for instance, be considered torture or no? And what is the difference between al Qaeda and other sorts of people that are detained, other detainees?

MR. HAYNES: The best answer to your question will be reflected in the document dated April 16th from the Secretary of Defense to the Commander of the Southern Command about how individuals detained at Guantanamo would be interrogated. In each case, starting at the interrogator level, there will be an evaluation of an individual involved -- and I may even be supplementing in just a minute -- but the individual involved, the information the interrogators believe he may have. His particular physical circumstances, the circumstances of what we know about him from other sources of information of prior interrogations and the like, and there will be a specific plan developed with input from lawyers and medical people about how best to question, starting with the least intrusive means available. But a plan that is very elaborate, the documents are often very (inaudible). And depending on what techniques may be applied, will need to be approved at various levels in the chain of command.

JUDGE GONZALES: But, Jim, let me -- didn't understand your question. One thing that's clear, whether you're talking about in Guantanamo and Afghanistan, the President said, we don't torture people. And so it doesn't matter where you're at, we don't torture people.

Q So it doesn't matter whether you're talking about Khalid Shaykh Muhammad and Bin al-Shibh or --

JUDGE GONZALES: The President said we don't commit torture, we don't condone torture.

MR. HAYNES: But the reason I -- and the Judge is correct to say that, and there is no question -- no question in the chain of command that torture is not allowed. Indeed, the President has said all detainees held by the Department of Defense shall be treated humanely. There is a floor below which we cannot go.

And the reason I was referring to the April 16th document is because you will see that -- and Mr. Dell'Orto described -- the vast majority of the techniques employed are an existing Army doctrine, decades old, which were developed in the context of Geneva governing conflicts for prisoners of war, which are so much more protected than unlawful combatants in it's conflict. So there the standard --

Q Just one clarification --

MR. HAYNES: -- well below torture.

Q Just one clarification, and then I'll defer to my colleagues. The question that I think there's a lot of confusion about whether or not things like stress techniques and prolonged isolation, those kinds of things are considered torture under U.S. laws and treaties, or whether those are just more aggressive interrogation techniques?

MR. HAYNES: Well, one of the points I tried to make earlier is that techniques cannot be considered an isolation. Certainly, any one technique improperly applied could, you know, produce all sorts of undesirable consequences, including perhaps torture. But we -- the United States is not permitted to go near that.

Q I have two questions based on the documents for Judge Gonzales. First, in the presidential determination that (inaudible) read us about, the President -- it's the United States Armed Forces to treat detainees in a manner consistent with the principles of Geneva -- there's an "except" clause -- to the extent appropriate and consistent with military necessity.

Well, why is that in there? It seems like some people could

argue that those would be appropriate exceptions -- it's a pretty broad word -- and the "consistent with military necessity" exception could swallow the rule.

And then the -- I didn't understand, is it the opinion of this administration that "just as statutes that order a President to conduct warfare in a certain manner would be unconstitutional, so, too, are laws that seek to prevent the President from gaining the intelligence he believes necessary to prevent attacks." Is that good law in this administration?

JUDGE GONZALES: Terry, it's a scenario we've never even come close to confronting. And so, you know, whether the lawyers have drawn this box in terms of what is permitted, this President has drawn this box -- hasn't even come close. And so whether or not it's good law or not, that's not what the President has done.

What he has done is ordered a standard of conduct that is clearly lawful. He has not had to -- as I indicated, in terms of what he has done or has not done, he has not exercised his Commander-in-Chief override, he has not determined that torture is, in fact, necessary to protect the national security of this country.

Q But, Your Honor, If I may, as his lawyer, (inaudible) -- or the next President, whoever that might be -- might have to face that moment. And is it incumbent on you to come up with a legal opinion on whether or not he can?

JUDGE GONZALES: Perhaps if that hypothetical became a reality, that would be something that I would be giving advice to the President. But that is a hypothetical. And I know at least one senator has said that we should never ever say that torture should never, ever be used if it meant saving the lives of thousands of Americans. But that is a hypothetical that we may not deal with. This President has said we're not going to torture people.

Q Okay. How about the appropriate "military necessity"?

JUDGE GONZALES: I am not aware of -- that language was intended to reflect the fact that as a legal matter, Geneva doesn't apply. And there may be circumstances that conduct may be necessary, for military necessity, to protect the troops, force protection, for example, that might be necessary or appropriate. But I think you're focusing on the exception and the President is very clear about the need to treat -- by the Armed Forces, to treat detainees humanely and consistent with the Geneva Convention and that has been their practice.

MR. HAYNES: If I may, just one follow up. The Geneva Conventions include a number of requirements or provisions,

including, for example, that prisoners of war -- and prisoners of war are the ones that are governed by that particular convention -- shall have access to a canteen, musical instruments, periodic pay in Swiss francs, things of that nature.

So that language is part of what's reflected in that. And the "military necessity" component of it builds in the fact that -- which is also within the Geneva Conventions -- that military necessity can sometimes allow deviations from some of the principles, allow warfare to be conducted in ways that might infringe on the otherwise applicable articles of the convention that would be applicable.

Q Mr. Dell'Orto, a question for you. There seems to be in the presentation you gave an assumption chain, if you will, having to do with those who end up in Guantanamo, that they were selected from a group captured in Afghanistan, therefore, there seems to be an assumption that they're terrorists; there's an assumption that they've been trained in techniques to avoid interrogation pressures, therefore, if they're giving no information there's an assumption that they have information to give and the pressure must be ramped-up.

As we've seen, there have been, I think, some very credible accounts that there have been all kinds of mix up in people who got brought into Guantanamo. And so how do you make the determination that the person you've got whose not giving you information is somebody who's trained in denying you information, versus just some guy who was just rounded up with the usual suspects and has no business being there?

MR. DELL'ORTO: Well, I don't accept the various premises of your question. First, the determinations made on the battlefield are that we have an unlawful enemy combatant. It's based upon all manner of things that are considered -- is he carrying a weapon, who was he with at the time he's captured. I mean, it's the traditional analysis you go through -- that a commander in the field goes through when he picks up a person. Is it hard in this instance because the guy may not be wearing a uniform? It probably is.

But, still, given the fact that we go from 10,000 down to something considerably less in number shows that there's quite a bit of care taken to cull out, in this instance, not who is an enemy combatant versus who isn't, but among the enemy combatants who are found on the battlefield, who have significant intelligence value or pose a very significant threat. So I would say, in the first instance, it's not a presumption, it's a finding on the battlefield that you have an unlawful enemy combatant.

Once you get him to Guantanamo, simply because he doesn't give you a lot of information, doesn't necessarily lead you to conclude

that he has a lot more. It may be that he is a relatively -- a lower level al Qaeda fighter, who may not have more information. But you piece all of that together, the more people you talk to, the more linkage you develop among these folks.

And so it may be that you never go to any additional techniques, because you determine there's not much more information that he has. He may, in fact, be a person, as we have had in over a hundred cases, where we determined -- contrary to what we've done in previous conflicts -- that we're going to release people prior to the end of hostilities, even though we could have held him, because he is determined to be of relatively low threat at this particular point in time, and he has relatively low intelligence value to cause us to retain him any longer.

And so we transfer him back to his country of origin, his home country, either for an outright release, subject to a parole agreement to which he agrees, so that he doesn't rejoin the fight, we hope, and/or that he is returned to his home country for continued detention by that country, if it has a basis to for detaining him, or for close observation, to make sure that he doesn't leave the borders and return to the fight somewhere.

So we don't necessarily -- we do pick up unlawful combatants, and we screen them and get to those that we think are of particular value for the purposes of Guantanamo, but once we get them there, if he turns out not to have the intelligence that we thought he might, it doesn't mean that we necessarily go to the next step in the interrogation techniques. We may conclude that's as much as there is with him. And so he becomes -- assuming he doesn't say, "I'm going to kill every American I can get my hands on any time I see one" -- he doesn't pose a particular threat, he becomes a candidate for release, as have over a hundred of his compatriots, if you will.

Q And a quick follow. The particular al Qaeda member you talked about, I believe there have been some published reports that he was put through a process where he was being, you know, dunked in water and made to believe he was going to drown. Are those reports accurate? And is that a technique that's part of this approval?

MR. DELL'ORTO: It is not a technique that's part of this approval, and based on everything I know, that is an absolute false report.

Q I'd like to push Judge Gonzales, if I could, just a little bit on why you convened this today? You said it was to clear up, in your words, much confusion. Mr. Haynes used the word "extraordinary" to describe this session and this release several times in your presentation. And, certainly, I've covered this White House since day one and never seen anything like this. It is extraordinary.

(Laughter.) So, thank you, but also, is it fair to assume you think you have an extraordinary public relations problem on your hands, is that why you're doing this?

JUDGE GONZALES: I think -- what's your name, I'm sorry?

Q Scott Lindlaw, AP.

JUDGE GONZALES: Scott, we thought a lot about this, because we know that all the information that we convey to you and to the world also goes to our enemies. And that's something we had to consider very, very carefully. On the other hand, we also felt that it was harmful to this country, in terms of the notion that perhaps we may be engaging in torture. That's contrary to the values of this President and this administration. And we felt that was harmful, also.

And so weighing those considerations and the fact that, regrettably, some of these techniques have already been leaked, and probably are already known by the enemy, we made the decision that this was probably the right thing to do at this particular time.

Q And apart from public perception, Secretary Rumsfeld cited three very concrete reasons, in terms of national security. He said the perception of torture raised questions among American troops, raised doubts, reduced the willingness of Iraqis and Afghans to cooperate, and could possibly encourage torture by other countries against American civilians, against American soldiers. Did that go in to your calculation to do this today?

MR. McCLELLAN: Let me come back to what I said earlier in the briefing. I think what went into our consideration was that there is a lot of interest in the policies and the techniques that were put in place. And so we wanted to make sure that you all have an accurate account of the great lengths we went to, to come up with these policies and make sure that the techniques were consistent with our policies and with our values and with our laws. And so I think that's the context you have to look at it in.

We also wanted to make sure that we set the record straight. There's been a lot of reporting of bits and pieces, and this gives you a comprehensive look at the great lengths we went to, to come up with these techniques that are consistent with the policy the President developed.

Q Judge Gonzales, and Mr. Haynes, if you would comment on this, as well. Judge, I just wanted to clarify what you said in your opening statement, that a lot of the discussion that you described is theory and in the abstract. Did I hear you correctly to say that that was considered to be unnecessary at a particular point? I just

wanted -- I may have that wrong. I just want to make sure I understand what it is.

And then separate from that, I'm wondering if it's the view -- you took great pains to say this was a very thoughtful and deliberative process, which apparently it was. Mr. Haynes, if you would comment -- I mean, does this reflect the fact that the President may be taking an overly narrow view of the legal options available to him, given the fact that based on Mr. Dell'Orto's presentation, the more aggressive interrogation techniques appear to work rather well with Mr. al-Khatani, that maybe more aggressiveness is needed, and not less.

JUDGE GONZALES: Well, we obviously want to be as effective as we can in our interrogations and getting information that will help this country win the war against terrorism. But the President is very clear that we're not going to do it in a way that jeopardizes our values, is contrary to our values, and we're not going to engage in torture. That's just his position.

In terms of my comment about the legal analysis, I'll give you an example. The August 1 memo -- even though the questions presented to the Department of Justice related to the torture convention, and related to the torture statute and its application in this current conflict, there was an analysis on a question that was not presented, which was the President's constitutional authority as Commander-in-Chief. He hasn't exercised that authority. It's unnecessary. And so that would be one example of something that is being looked at, and may -- the Department of Justice will make a decision as to whether or not that's something that should continue to remain, in their opinion.

Q I just want to follow up on Mr. Haynes' comment, as well. Are you suggesting, Judge, that therefore it was counterproductive, that analysis was counterproductive?

JUDGE GONZALES: No, I'm not suggesting that it was counterproductive. As a lawyer, part of your job is to present options to decision makers, you know? And I think that's what the Department of Justice was doing here, was presenting options to the decision maker. But they weren't necessary to the decision the President ultimately made. They don't serve as the underpinnings for those decisions.

Q If Mr. Haynes could comment on, doesn't this process of these various meetings reflect a good deal of disagreement within this administration about the best way to balance the values we have as a country and this need to gather intelligence?

MR. HAYNES: I won't speak for the entire administration. I can

speak for the Defense Department, and confirm that there was a very, very lively debate. It's what the Secretary wanted, in asking me to convene this group, to get all the stakeholders, not just the lawyers, because there are very important concerns that are not legal concerns. And maybe I can use that and jump back to your first question, and if I may, do a follow up to an earlier question.

I don't want to get too deep here, but the role of a lawyer must not be understated or overstated. There can be a tendency to clothe policy decisions in legal terms. And that's an overstep, overstepping by a lawyer if he or she doesn't make that point clear. I don't mean to say that a lawyer should step back and be very austere and discuss only the law, but he must -- he or she must make the distinction between what the law is and what the policy is, and in certain cases, make recommendations -- make clear what is what.

This working group that got together included very, very good lawyers and very, very good professionals in other fields. And they disagreed. And you won't be surprised to hear the fact that when you get more than one lawyer together, you sometimes get more than one opinion. That certainly was and remains the case, particularly about some of the aspects of the legal analysis. But I think that's healthy, and the Secretary thinks that's healthy. And there were -- at the end of the day, there were and remain differences of opinion on both ends of the spectrum about what ought to be employed. So I think that answers your question.

I'd like to briefly follow up on a question this gentleman asked earlier, about how do you know whether you've got somebody that really has more information or not. I'd invite you to look at some of the other procedures that our department, the Defense Department has made available to the public about how we look at detainees in Guantanamo. There is so much process at Guantanamo. Judge Gonzales and Mr. Dell'Orto talked about determinations on the battlefield about whether somebody is an enemy combatant. There was an on the ground determination, there was a screening that led to people coming to Guantanamo.

There is in place, and published at DOD, additional process that must be done. Within 90 days of arrival at Guantanamo there must be an additional determination that somebody is an enemy combatant, and then annually thereafter an additional determination. Everybody down there has been through all that.

Now on top of that there are the interrogations that go on. There are the threat assessments that go on. There are the law enforcement evaluations that go on. There are other countries who come and question people that go on. Just a month ago the Secretary issued some new procedures that are to be begun as soon as this week, where a separate official -- and it is the Secretary of the Navy who

has been designated as the deciding official -- will employ, at least annually, for people at Guantanamo under our control, a review process in which the detainee may present his own story to a panel of three military officers who will review that information. That person will be assisted by another military officer. Other departments and agencies will be able to provide that information to those boards, and those boards will make recommendations to the senior official, in this case the Secretary of the Navy, who will make those determinations about whether somebody should be released or transferred or various purposes.

So wholly apart from the interrogators' evaluation of an individual, there are lots of other eyes that look at these people.

Q Judge Gonzales, the presidential memorandum of February 7, '02, was that the last time the President personally weighed-in on this issue of treatment? And, given the atrocities we now know about, has he expressed any interest in getting more involved going forward? And for Mr. Dell'Orto, could you please give us a sense on the techniques -- the new techniques that were approved -- the number or percentage of enemy combatants who were recipients of these techniques?

JUDGE GONZALES: Ed, he weighed in as recently as this afternoon on the issue of the treatment of detainees. On numerous occasions he's talked publicly, and certainly privately, with his advisors about what he expects, in terms of treatment of detainees. I mean, what he has said -- I want people to follow the law, and that we don't torture people, that's what he has said. That's something that he's been very, very consistent, again as I said in my remarks, from the early days of this administration.

MR. DELL'ORTO: I can't deal in precise numbers. I did point out that the Secretary requires notification on four of the 24. Again, I won't give you a precise number, but I would describe the notifications that have come forward to date as being less than a handful; a very, very minuscule percentage.

Q Of individuals?

MR. DELL'ORTO: Of individuals.

Q I was wondering -- I think Judge Gonzales might be the best person to answer this question. As I recall, reading the memo that was leaked in the Washington Post that caused all the controversy --

JUDGE GONZALES: Which memo that was leaked are you referring to? (Laughter.)

Q One of the elements that has caused a lot of controversy

was not just the Commander-in-Chief's authority to allegedly waive it, but the actual definition of the torture. It was criticized as a very narrow definition. I read the memo, like, over a week ago, but there were all sorts of things in there, like, if you didn't -- if you weren't doing it just to make someone suffer, but for the purposes of gathering information, maybe it wasn't torture then. It was just a very narrow construction. And so far I've heard you say that, well, we haven't tortured.

What's your interpretation of the congressional statute? Is it the same one that was in the memo leaked in The Washington Post, or have you adapted a different interpretation of that statute and treaty?

JUDGE GONZALES: I haven't looked at that memo closely recently. So in terms of what that memo actually says, I'm not going to comment specifically on it. I can say, as I said earlier, that the Department of Justice is going to be giving a briefing, and so they can certainly talk about their definition of torture. It is their analysis of Congress' definition of torture.

And as I said earlier, and I said repeatedly, we are going to be very aggressive in the interrogation of these detainees, because they have information that may save American lives and the lives of our allies. But the President has also been very, very clear about the need to do this in a way that is consistent with our domestic and international obligations. So I'm just going to leave it there.

Q Just to follow up, in any place -- in these other holding facilities are you going beyond the 24 methods that the Secretary has approved for Guantanamo, either through a special access program or through another government agency, besides the Defense Department, or just through ordinary Defense Department programs and other --

JUDGE GONZALES: We're not going to comment on anything beyond what is -- accepted Department of Defense. Let me just say that throughout the entire government, the directive is clear: no agency is to engage in torture; every agency is expected to follow the law. As far as I'm told, every interrogation technique that has been authorized or approved throughout the government is lawful and does not constitute torture.

Q On just what the Judge was saying, are we wrong to assume then, that the CIA is not subject to these categories of interrogation technique? For instance, if DOD -- if the military was --

JUDGE GONZALES: I'm not going to get into questions related to the CIA.

Q But we know in certain instances that you had Agency people along with military people, and isn't that just a convenient loophole to allow one person to use certain techniques that are prohibited by the other?

JUDGE GONZALES: I'm not going to get into discussions about the CIA, except to repeat what I just said, and that is that the techniques that they used that have been approved -- they've been approved and vetted by the Department of Justice, are lawful and do not constitute torture.

Q Judge, can you tell us which memos the President actually had access to, or any one of you? I understand that he didn't have access to all the directives -- Pentagon directives.

JUDGE GONZALES: I don't -- I can't say with certainty. I don't believe -- with respect to Pentagon documents, I'm not -- I'd be surprised if he had access to those. But it's possible that the Secretary may have brought them to the President. I don't think so. With respect to the opinions, I don't believe the President had access to any legal opinions from the Department of Justice.

Q You just mentioned that the presidential memo and two directives from Rumsfeld were ones that formed the policy. Can you tell us which ones?

JUDGE GONZALES: The February 7th determination by the President and the current policy -- the interrogation policy -- is the April 16th directive from the Secretary of Defense.

Q Judge, I wanted to follow on what Suzanne and Ed are asking you. I think people here are looking for more specifics about the President's actual involvement, other than signing his name, to this February document. Can you be more specific about how many meetings did he engage in with you to discuss this? Did you put together a memo yourself, because there isn't one here, that would have preceded his signature on his own? Was there a meeting that involved the Vice President? Can you just give us some more idea, because the President has said we should feel comforted, but I'm not sure there's a lot of specifics here about his interest, his personal interest.

JUDGE GONZALES: I'm not going to get into a discussion about the internal deliberations of the White House. I can say that during this period of time there was a great deal of debate, over a period of days, maybe a period of a couple weeks, when the presidential determination was made, all the agencies had actually weighed-in very strongly.

Q With the President, personally?

JUDGE GONZALES: I believe so. But the equities of all the agencies were presented to the President, and they were before the President as he made his decision.

Q And who did that, you?

JUDGE GONZALES: Again, I'm not going to talk about --

Q Well, wait, I'm not sure I understand, why is that a difficult thing to discuss?

JUDGE GONZALES: It's not a difficult thing to discuss, it's just one that I don't choose to discuss.

Q Why?

JUDGE GONZALES: I just don't.

Q Why wouldn't that be helpful?

JUDGE GONZALES: We normally don't talk about the internal deliberations within the White House. I don't think that's appropriate.

Q *Judge Gonzales, maybe this is for you. When we're talking about Afghanistan and the al Qaeda and Taliban detainees that Geneva did not apply to, a variety of you have said that in Iraq it was all Geneva all the time. It seems like that line was drawn pretty quickly. Can you just give us a sense of why that line was drawn so quickly, since the President, himself, talked about al Qaeda and Iraq being allies?*

MR. HAYNES: I can take a stab at answering that. The conflict in Iraq is a conflict between two states that are parties to the Geneva Conventions. It's a traditional war, and the conventions are clear that they apply and that the treaties apply and that's the way the Defense Department has operated.

Q Okay. And just a quick follow up. We hear a lot about Mr. Zarqawi in the context of the conflict in Iraq. How, then, would he be handled, in the context of a place where Geneva rules all the time?

JUDGE GONZALES: Very interesting question.

Q To which the answer is? (Laughter.)

MR. HAYNES: I don't want to get into providing legal opinions on the fly. But the conflict that -- let me try to put it to

approach it this way. The Geneva Conventions govern conflicts between parties, or internal conflicts. Our activity in Iraq, without question, was governed by the Geneva Conventions, whether it's the 3rd (inaudible) treatment of prisoners of war, or the 4th Geneva Convention (inaudible) to the treatment of civilians.

Each of those -- so there's no question but that they apply in Iraq to that conflict, period. How one deals with the conduct of the war, given the fact that they govern, is a matter of treaty application. And as specific circumstances arise, you have to look to the relevant provisions of the treaty. In some cases that may be many relevant provisions that must be considered. But as I've said, I don't want to get into an extended --

Q When we started, Judge Gonzales said we've got to realize the people we're dealing with here, and talked about the beheadings. Zarqawi has been linked to the beheadings. And, Judge, you seemed then to suggest that these -- that Geneva wouldn't apply to the people we're talking about here, if that's in fact Zarqawi, since he's been linked to the beheadings. So then that would seem to rule that Geneva doesn't apply.

JUDGE GONZALES: The only thing I would add to Jim's comment is, these are very difficult legal questions. I can say that irrespective of whether or not we're dealing with al Qaeda in Iraq or Guantanamo or Afghanistan, the President has said the Armed Forces are going to treat people humanely and we're not going to engage in torture.

Q Mr. Haynes pointed out that, you know, in Iraq they had a traditional war. But the President and the Secretary of Defense were on television every day referring to these people as terrorists. Is it possible that the soldiers in the field got the wrong idea about that, and maybe were not treating them with all of the conventions that you assumed in Washington were being applied?

JUDGE GONZALES: That may be more a question for DOD. I will say, soldiers are trained from day one in their service to apply Geneva. I mean, that's sort of the default position, I think, that Geneva is going to apply.

MR. HAYNES: My first response would be not to speculate about what's in any individual's mind.

Q Let me just finish with this. The President repeatedly referred to these people as terrorists, which would suggest that the principles of Geneva do not apply. In retrospect, wouldn't this be confusing?

JUDGE GONZALES: I'm not sure why that would necessarily

follow. I disagree with that.

Q All of you talked about this -- I think, Judge, you refer to this legal box in which the President made more (inaudible) decisions. But you also said that those decisions and those legal analyses were primarily or totally for Guantanamo, but not Iraq, that Iraq was not part of that calculation. How do you reconcile that with General Miller going from Guantanamo to Iraq and making recommendations, at least in part based on what he was doing in Guantanamo? I'm not sure -- I don't quite understand how that's totally separate.

MR. DELL'ORTO: Let me try to describe it. The whole notion of Guantanamo is -- goes well beyond interrogation. And it also includes how you structure a facility, how you merge databases, fuse databases as you're gathering intelligence. I mean, there is much that is technical and structural about what we have learned about Guantanamo. And while Guantanamo has a relatively small number of people compared to the number of detainees we're dealing with in Iraq, certainly there are organizational concepts about Guantanamo that have relevance for dealing with detainees in Iraq. And so there's a lot of technical expertise that General Miller was able to bring, given a lot of success he had at Guantanamo, acknowledged success in putting together standing operating procedures for running a detention center and things like that. So that's a lot of the value that he brought to Iraq.

Maybe General Alexander can add to that.

GENERAL ALEXANDER: Just let me give you the five categories that he brought up, since he asked that question, which was, the recommendations were on integration, how you establish a coordinating authority for all of (inaudible) and work that together; synchronization, how you synchronize the events that are going on; the fusion -- and that was the one example I gave you about how you bring an analyst in to work with the interrogations.

He did talk about interrogations, and one of the lessons that they learned at Guantanamo, and the application of some of the techniques. But those techniques that they used are the ones that were in the field manual, and working those there. The fifth one was detention operations, where the military police sergeant major from Guantanamo talked to the military police there on how to run the facility and train the people up to the standards, the techniques and procedures, because that training was something that they saw as a shortfall.

Q Two things, real quick. One, some are saying, some lawmakers are saying that in light of these prison scandals, there needs to be a retraining of the Geneva Conventions to many of the

U.S. military police. Do you find that is something that needs to be done?

And two, why is it -- many human rights groups, international human rights groups are very upset with the White House because they are not -- well, with the Department of Defense, that they are not allowing these prisoners at Guantanamo Bay to know why they're kept. What is the reason why these prisoners are not told why they're being kept there, as well?
5

MR. HAYNES: It surprises me that somebody would say they don't know why they're being kept.

Q The ICRC is saying they have made that clear that you, that this administration is not allowing them to know why they are being kept at Guantanamo Bay.

MR. HAYNES: Without responding directly to your assertion about what the Red Cross is saying -- not because I disagree necessarily, but because there is an important principle about the Red Cross relationship to countries that engage in combat that those communications should be kept confidential -- let me answer this, or try to address your question this way.

There are critics, without ascribing the criticism to anybody in particular, who say that the United States is wrong in detaining people at Guantanamo without providing them a lawyer, without arraigning them, without guiding them -- pressing charges, and trying them for crimes.

Our view is that that is not required in warfare. For centuries, it has been undisputed that countries at war may detain the enemy for the duration of the hostilities. That's not incarceration for committing crimes. That's protecting the country. And it is lawful, and it is consistent with our tradition and consistent with the tradition of every civilized country in the world. This is not criminal punishment that's going on at Guantanamo. It is protecting the American people and our allies from people who are trying to kill us.

Now, some people think that we're wrong, we're wrongheaded in that. They say you should either charge them with a crime; or you should treat them as prisoners of war, as that term is detailed and I described earlier under the conventions; or you should let them go. Now, we think that there are other options. We're in a unique conflict. We're in a global war on terror against people who are not just committing crimes; they're killing Americans on a scale that amounts to warfare. They've demonstrated that on September 11th. They've demonstrated it in other countries with their attempts. And

they, we believe, want to continue to do that and demonstrate it even more spectacularly.

So the President and the Secretary of Defense and those people in the administration, and the soldiers -- the brave soldiers out there in the world are trying to protect Americans, and they're doing it lawfully. Some people disagree with how we're doing it. Notwithstanding that, as I mentioned earlier, we have so much process at Guantanamo, so much more than is required by the Geneva Conventions -- which, by the way, to those who say that we are not complying with the Geneva Conventions, what they point to is that we did not make a determination under Article V of the Geneva Convention to convene a so-called competent tribunal to resolve doubt about whether a person is a prisoner of war. That's all the convention says. As implemented in the United States military regulations, that means you have three officers on a battlefield and they review the case one time, and once they make a decision, the decision is over with.

As I pointed out to the gentleman earlier, we have required and in place and working multiple layers of periodic review. And we have started yet another one that it is far more generous in process given to the detainees than anything required by the Geneva Conventions. So I just disagree, and I think there are many others that disagree, as well.

Q All right, wait a minute --

MR. McCLELLAN: All right, let's --

Q That didn't answer that question, though, about the Geneva Conventions. Should the U.S. military personnel -- police, rather be retrained on the Geneva Conventions, in light of all these prisoner abuse scandals?

MR. HAYNES: Well, I'll say without drawing any connection between what we've seen in training, regardless there is periodic retraining embedded in the doctrine of the United States military. And it will be done. Whether it's prompted by what we've seen or not, it will be done. And that's a good thing.

MR. McCLELLAN: All right, make this the last one. Over here.

Q Is there any concern within the administration that now that you've released these details and that al Qaeda knows the limits of what they'll be subjected to, that it might embolden al Qaeda, given the fact that you described them as -- they'll fight until the rest of their lives against America?

MR. HAYNES: I think I heard your question. The Judge already

talked about the difficulty of this decision. And we're fighting a war. And to disclose in such a public way exactly what we do, it is -- it hinders us in some way. The enemy now knows what some of the limits are. There's some value in having some uncertainty. But the decision is made, and sometimes you make tough decisions.

Q Would you rather it hadn't been done?

MR. HAYNES: No, actually, I don't. I think this is a good thing. Under the circumstances, this was the right thing to do. And we'll continue to face these kinds of things. I talked earlier about this war. We have to look at how we fight this enemy with a fresh of set of eyes on just about every issue. The Defense Department has dealt with a number of things like this. It's interesting to look at the debate associated with 9/11, and the findings of the 9/11 Commission, which is looking at why was there a wall between those people involved in law enforcement and those people involved in counterintelligence and intelligence.

That wall was there for reasons that seemed very good at the time. But it prevented information sharing. We have had to address questions in our department on questions like data mining. In other words, how does one look at existing databases in a way that might enable the government to learn information about potential attacks, while at the same time protecting many values that are extraordinarily important, like privacy and liberty in the country.

The Secretary of Defense chartered and advisory committee over a year ago chaired by Newt Minow, from Chicago. And had some other quite notable scholars -- I'll leave somebody out -- but Bill Coleman and Jack Marsh and Lloyd Cutler, and Gerhard Caspar, and Zoe Baird, and Floyd Abrams and others -- to look at that question and advise the Secretary. How do you look at -- how do you think about the national security on the one hand, and privacy and liberty of American citizens on the other hand when you're looking at information? There are lots and lots of those kinds of questions that we have to evaluate, oftentimes without much time to think because they come up quickly.

But there are important issues that the country has to face, and this is one of them. I know there's some very good work going on in academia, for example, about highly coercive interrogations is the phrase I've heard up at Harvard. There have been people outside the administration. Judge Gonzales mentioned a senator who spoke the other day. These are national questions that need a lot of thought. Some of that thought has to be done on a split-second basis by people in the government with a lot of secrecy for very good reason. But over time, we have to deal with those things. In my view, this one

of those.

MR. McCLELLAN: And let me just add one thing. And this is a stark contrast here because we are nation of laws, and we are a nation of values. The terrorists follow no rules. They follow no laws. We will wage and win this war on terrorism and defeat the terrorists. And we will do so in a way that's consistent with our values and our laws, and consistent with the direction the President laid out.

Thank you all very much.

END 4:55 P.M. EDT