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THE CONSEQUENCES TODAY OF THE UNITED STATES' BRUTAL POST-9/11 INTERROGATION TECHNIQUES

PETER JAN HONIGSBERG*

INTRODUCTION

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

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

Penetrating the minds and souls of alleged terrorists while still upholding the constitution, federal law, and the human rights obligation to treat the suspects with dignity and without torture or cruel, inhuman, and degrading treatment was not the immediate objective for high-ranking American officials and military interrogators in the early years following the attacks on the World Trade Center in New York and the Pentagon in Washington, D.C. on September 11, 2001. Although the United States was a party to the Geneva Conventions (GC), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT)—all three of which prohibit torture and cruel, inhuman, and degrading treatment (CIDT)—the U.S. chose to ignore the restrictions of these documents.⁴ Propelled by the fear of

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1. *Supreme Court of Israel: Judgment Concerning the Legality of the General Security Service’s Interrogation Methods*, 38 I.L.M. 1471, 1481 (1999).

2. *Id.*

3. *Id.* at 1482.

4. See S. REP. NO. 113-288 (2014), <https://www.intelligence.senate.gov/sites/default/files/documents/CRPT-113s rpt288.pdf> (focusing on how the CIA tortured detainees at black sites around the world post-9/11). This article concentrates on torture and harsh treatment committed by the Department of Defense.

another attack comparable to that of September 11th,⁵ the administration violated these treaties, focusing instead on the short-term goal of obtaining intelligence at any cost to deter another major attack.⁶

Today, anyone who has followed the evolution of U.S. interrogation methods post-9/11 knows all too well that the United States pursued an admitted policy of harsh treatment, which has been defined by many commentators as comparable to CIDT and torture.⁷ And the devastating consequences of our unlawful behavior have become evident over the years.

In order to find actionable intelligence, the Department of Defense (DoD) acted inconsistently, irrationally, ineffectively, and, when conducting abusive interrogations, illegally. Because the U.S. military did not know what techniques would succeed, it attempted a plethora of short-term strategies and untested interrogation techniques. The initial interrogation tactics and procedures have been described as “ad hoc [and] very helter-skelter.”⁸

In addition, it often did not even matter which interrogation technique was applied, how much force was used, or even who was being interrogated. As one expert told the Witness to Guantanamo project,⁹ the screening process of determining which captives actually had intelligence value was “terrible” and many of the detainees sent to Guantanamo had neither prosecutorial nor intelligence value.¹⁰

Tensions existed between experienced federal law enforcement agents and the DoD, where often young and inexperienced military

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

6. S. REP. NO. 113-288 (2014), <https://www.intelligence.senate.gov/sites/default/files/documents/CRPT-113srpt288.pdf>.

7. Zachariah Rivenbark, *Torture Allegations*, JURIST (July 20, 2013, 10:39 AM), <http://www.jurist.org/feature/2013/07/guantanamo-bay-torture-allegations.php>; see also Patricia Zengerle, *CIA's 'Harsh Interrogations' Exceed Legal Authority, Report Finds*, HUFFINGTON POST (Apr. 10, 2014, 11:47 PM), http://www.huffingtonpost.com/2014/04/11/cia-harsh-interrogations_n_5130218.html; Deb Riechmann, *Bush Declares: 'We Do Not Torture'*, WASH. POST (Nov. 7, 2005, 11:39 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/07/AR2005110700521.html>; *The Vice President appears on Meet the Press with Tim Russert*, THE WHITE HOUSE (Sept. 16, 2001), <http://georgewbush-whitehouse.archives.gov/vicepresident/news-speeches/speeches/vp20010916.html> (announcing that it was necessary to “work, though, sort of the dark side”).

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

9. The Witness to Guantanamo project has filmed interviews with 132 former detainees and others who have lived or worked or are otherwise connected to Guantanamo. The project has interviewed prison guards, interrogators, interpreters, chaplains, habeas lawyers, JAG lawyers, prosecutors, medical personnel, psychologists, FBI agents, CIA personnel, NCIS officials, high-ranking military officials, high-ranking government officials, and family members of the detainees. WITNESS TO GUANTANAMO, <http://witness-toguantanamo.com> (last visited Feb. 25, 2017).

10. Interview with Mark Fallon, Chief of Counterintelligence Operations for the Europe, Africa, and Middle East Divisions of the Naval Criminal Investigative Service, in S.F., Cal. (Oct. 25, 2013).

soldiers and reservists who did not have the proper training, interrogated alleged terrorist prisoners.¹¹ In Bagram, Afghanistan, where many detainees were sent before being transported to Guantanamo, inexperienced and aggressive military interrogators were given wide latitude.¹² Federal law enforcement agents—who focused on “rapport-based” (also known as rapport-building) interrogations—contrasted with the military’s harsh techniques, including such techniques as “fear up,”¹³ “pride up and ego down,” and “ego down harsh.”¹⁴

According to the Army Field Manual, there is a fine line between lawful and unlawful conduct that can be determined in part by two tests to consider in making the determination as to whether an interrogator has crossed the line.¹⁵ In the early years post-9/11, the military either ignored the safeguards that the tests provided or defined its strategies and interrogation tactics very broadly in order to avoid colliding with the tests’ safeguards. As David Becker, the head of the Department of Homeland Security Human Intelligence Services, noted, interrogation approaches were limited to the imagination of the interrogators.¹⁶

11. *Id.*

12. Tim Golden, *In U.S. Report, Brutal Details of 2 Afghan Inmates’ Deaths*, N.Y. TIMES (May 20, 2005), <http://www.nytimes.com/2005/05/20/world/asia/in-us-report-brutal-details-of-2-afghan-inmates-deaths.html>.

13. Interview with Jim Clemente in S.F., Cal. (June 13, 2013); *see also infra* Part II.

14. DEPARTMENT OF THE ARMY, FIELD MANUAL 34-52, INTELLIGENCE INTERROGATION (1992) at 3-12, 3-16–3-18 (showing that similar phrases such as fear up/down and pride/ego up/down, as well as developing rapport appear in both the 1992 Army field and its replacement in the 2006 Manual); *see also id.* at 1–9 (outlining prohibited conduct and a test for the interrogator to determine whether his conduct is lawful or unlawful); *see also* Interview with Mark Fallon, *supra* note 10; *see also* Interview with Jim Clemente in S.F., Cal. (June 13, 2013); *see also* Pratrapp Chatterjee, *An Interrogator Speaks Out*, ALTERNET (Mar. 6, 2005), http://www.alternet.org/print/story/21423/an_interrogator_speaks_out. Torin Nelson, an interrogator who worked in Guantanamo in 2002 and who interviewed with W2G (*see infra* Part II) explained these and other interview techniques used by the military. Nelson noted that Army manual FM 34-52 listed seventeen methods of interrogation. These included “Direct Approach,” “Silence,” “Rapid Fire,” “Pride and Ego Up,” “Pride and Ego Down,” “Fear Up Mild,” and “Fear Up Harsh.” In the article, Nelson explained several of these techniques: “Fear Up Harsh” is the most heavy-handed technique. It involves yelling, accusing the subject of lying and banging one’s fist on the table. “Fear Up Mild” might involve pulling out a file and reciting the information in a calm voice—where they were caught, the charges being brought against them, such as carrying a weapon while not in uniform, and the possible consequences. “‘Pride and Ego Down’ is revealing that you know they were caught in an embarrassing situation.” This technique might involve divulging knowledge that the subject was caught dressed in women’s clothing to get across a checkpoint, or that he had failed to save the life of a colleague. According to the former interrogator, “you might make fun of them or you might promise to erase it from the record. More often than not, you use ‘Pride & Ego Up,’ because your subject is [already] shattered emotionally, so you build up their morale, say they’ve acted like a hero.” The “Rapid Fire” technique involves two or three interrogators asking questions simultaneously.

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

16. *The Treatment of Detainees in U.S. Custody: Hearing on S. Before the Comm. on Armed Services*, 110th Cong. (2008).

A number of federal agencies represented the split in the approach to interrogations. The FBI, the Counter Intelligence Task Force (CITF), and the Naval Criminal Investigative Service (NCIS),¹⁷ supporting the rapport-based strategies, were on one side. The DoD leadership and the CIA were on the other side.¹⁸ In the early years, the military advocated and implemented harsh interrogation methods that were counterproductive to intelligence gathering. For example, when a detainee provided valuable evidence to the FBI, the DoD would often demand to take over the interrogation of the detainee and apply its harsh interrogation methods. The rapport that the FBI created with the suspect was then often destroyed, and the detainee would no longer cooperate with anyone, including the FBI.¹⁹

The military's abusive, punitive, and unlawful interrogation tactics over a decade ago, during the years 2002–2003, led to damaging unintended consequences that are still with us today. Other headlining events such as the beheadings of American and British citizens by the Islamic State in Iraq and Syria, known as ISIS or ISIL, may overshadow and divert attention away from the short-term interrogation techniques post-9/11. However, these post-9/11 techniques continue to impact and inform our world today. For example, ISIS has forced the men it has beheaded to wear the orange jumpsuit associated with what detainees wear in Guantanamo. Major long-term consequences include:

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

(2) Noncombat personnel who worked with detainees suffered PTSD;

(3) By ignoring and circumventing the Geneva Conventions, the Convention Against Torture, and the International Covenant on Civil

17. Interview with David Brant, Director NCIS, in Wash., D.C. (Mar. 11, 2011). Although the NCIS is part of the DoD, it split with the DoD leadership regarding the use of the implementation of harsh interrogations in 2002 and 2003.

18. The CIA carried out the administration's policy of "extraordinary rendition." CIA agents seized alleged high-value detainees and transported them to other countries or to CIA controlled black sites where they were brutalized and tortured. See PETER JAN HONIGSBERG, *OUR NATION UNHINGED: THE HUMAN CONSEQUENCES OF THE WAR ON TERROR* Part IV (2009). Because W2G has interviewed several military interrogators who worked in Bagram and Guantanamo, but no CIA interrogators who admitted participating in extraordinary rendition, this article will focus on military interrogations. W2G did interview, however, three former detainees who were held in CIA black sites. Their stories will briefly appear following the Guantanamo section in Part I.

19. Interview with Mark Fallon, *supra* note 10. As Fallon explained it, "[w]e would make progress with the detainee at some point and find that the JTF [military] folks went in the middle of the night and started interrogating them very harshly. It would disrupt the progress we made and we'd have to rehabilitate" them and had essentially taken a few steps backward.

and Political Rights, we abandoned the rule of law and human rights at home and suffered serious costs to our reputation abroad. That is, America has lost its standing and reputation as the world's foremost defender of human rights and the rule of law. Other nations now believe that we have given them permission to replicate our shameful behavior in treating their own captives.²⁰

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

Part I of this article discusses, through the voice of a former interrogator, as well as with references to government and military documents the "anything goes" attitude toward obtaining intelligence through the military's short-term interrogation tactics following 9/11. This attitude was prevalent in Bagram, Afghanistan, and in Guantanamo Bay, Cuba in both 2002 and 2003. Additionally, this attitude was reflected in abusive detention practices, intended to soften up the detainees, making them less resistant in interrogations. **Part II** describes, through the voices of several interrogators, law enforcement's alternative approach to gathering intelligence through the more mindful and humane rapport-based interrogation tactics. This section will discuss the attempts to integrate the rapport-based approach into military interrogations, the initial rejection of that approach and its subsequent adoption by 2004. **Part III** sets out and explains the long-term, injurious, and costly unintended consequences of the short-term brutal interrogation tactics. It also suggests how we can correct the wrongs and return the U.S. to its former position as the world's leader on human rights and the rule of law.

The Witness to Guantanamo project (W2G)²¹ was fortunate to film interviews with five interrogators. The project also interviewed 50 detainees who spoke of their treatment while held at American bases in Kandahar and Bagram, Afghanistan, and in Guantanamo Bay, Cuba. The project spoke to civilian habeas lawyers and military JAG (Judge Advocate General) lawyers who represented the detainees, military prosecutors, and many other people who lived and worked in Guantanamo. These included prison guards, medics, interpreters, interrogators, and chaplains. The project also interviewed many high-ranking government and military officials. All of these people provided insights into the tactics of the jailers and their treatment of the detainees. Through 132 interviews, we can paint a picture of the evolution of interrogations post-9/11 beginning with the harsh approach adopted by the military in early 2002 up to the military's transition to the more humane law enforcement approach in 2004.

20. Tom Malinowski, *Absent Moral Authority*, HUM. RTS. WATCH (Feb. 1, 2004, 7:00 PM), <http://www.hrw.org/de/news/2004/02/01/absent-moral-authority>; Jeffrey K. Cassin, *United States' Moral Authority Undermined: The Foreign Affairs Costs of Abusive Detentions*, 4 CARDOZO PUB. L. POL'Y & ETHICS J. 421, 447 (2006).

21. See WITNESS TO GUANTANAMO, *supra* note 9.

Although commentators and researchers have identified the breadth and boundaries of the interrogations throughout the early years after 9/11,²² no one has painted the picture through the words of identified and named interrogators who conducted them. The interrogators who spoke to the Witness to Guantanamo project provided fascinating insights into the processes of their interrogations. The interrogators gave firsthand accounts of whether and how their interrogation methods worked in attaining their goals of obtaining credible and actionable intelligence that would be of assistance to the national security of the United States.

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

PART I. SHORT-TERM ABUSIVE AND PUNITIVE INTERROGATION
PRACTICES IN AFGHANISTAN AND GUANTANAMO BAY, CUBA,
2002 – 2003

A. *Afghanistan*

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

I was sure I could be the next one because it’s a place with no rules and the only rule is that they can make everything what they want to and nobody except those people who were working there know anything what’s going on, nobody knows. So it’s a place with no rules and there everything can happen.²³

The interrogation practices described by one interrogator in this Part I were without rules. Many of the interrogators in Afghanistan in 2002

22. See, e.g., THE CONSTITUTION PROJECT, THE REPORT OF THE CONSTITUTION PROJECT’S TASK FORCE ON DETAINEE TREATMENT (2013).

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

participated in the harsh kinds of treatments detainees suffered.²⁴ And the one interrogator we profile in this section personified the brutal approach.

In the days immediately following the United States Armed Forces' entry into Afghanistan in late 2001, captured alleged terrorists were transported to Kandahar Air Base. Kandahar was the only American prison in operation in Afghanistan at that time. Bagram Air Base was opened as a temporary facility in January 2002.²⁵ Bagram became a permanent "collection and interrogation point" and then hub for the U.S. government's global detention and rendition practices in May of that year.²⁶ It soon replaced Kandahar as the principle site for prisoner detention in Afghanistan.²⁷ However, in the very early days of 2002, Kandahar held most of the captives, and Bagram held relatively few.²⁸ However, in May 2002, Bagram was designated as the "primary collection and interrogation point," while Kandahar became a "short term detention facility."²⁹ The military stopped using Kandahar as a major detention facility in June 2002, while the number of detainees sent to Bagram increased.³⁰

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

Bagram was a cavernous converted aircraft machine shop.³¹ There were five wire cages on the main floor.³² Approximately twenty people were in each cage, sleeping on foam mats spread on the ground.³³ Plastic buckets served as toilets.³⁴ Prisoners passed through crude rope-operated sally ports for shackling on their way to interrogation.³⁵ Along one wall was a catwalk for guards and interrogators to observe the detainees.³⁶ Isolation rooms and isolation cells were on the second floor.³⁷

24. See Salena Salcedo, Special Court-Martial Order, No. 23 (Nov. 9, 2005); see also Jamie Sterling, *Military interrogator pleads guilty to Afghan detainee assault*, JURIST TWENTY (Aug. 23, 2005), <http://jurist.org/paperchase/2005/08/military-interrogator-pleads-guilty-to.php>; see also Alexandria Samuel, *Army interrogator charged with abusing Afghan detainees to plead guilty*, JURIST TWENTY (Sept. 28, 2005), <http://jurist.org/paperchase/2005/09/army-interrogator-charged-with-abusing.php>.

25. Reprieve, Briefing: Bagram Airbase Prison 1 (Aug. 14, 2009) (on file with author).

26. *Id.* at 1.

27. *Id.*

28. AMNESTY INT'L, U.S.A. OUT OF SIGHT, OUT OF MIND, OUT OF COURT, THE RIGHT OF BAGRAM DETAINEES TO JUDICIAL REVIEW 6 (Feb. 18, 2009).

29. *Id.* at 6.

30. *Id.*

31. Reprieve, *supra* note 25, at 4.

32. *Id.*

33. *Id.* at 4–5.

34. *Id.* at 5.

35. Lisa Hajjar, *Bagram, Obama's Gitmo*, MIDDLE EAST RESEARCH AND INFO. PROJECT (2011), http://www.merip.org/mer/mer260/bagram-obamas-gitmo#_6.

36. *Id.*

37. *Id.*

Reprieve, a highly-respected London-based human rights nongovernmental organization that advocates on behalf of prisoners worldwide, collected data on the treatment of prisoners in Bagram in 2002–2003. The torture and CIDT they found included goggling and shackling detainees, stripping detainees naked, forbidding them to look at each other, humiliating them, stepping on the neck of a prostrate detainee, kicking a detainee in the genitals, forcing a detainee to kiss the boots of an interrogator, forcing a detainee to pick out bottle caps out of a drum mixed with excrement and water, depriving detainees of sleep for weeks, chaining detainees to ceilings and doors, forcing them to stand while wearing hoods or spray-painted goggles, subjecting them to electrocution and beatings with whips, beatings with baseball bats in a practice referred to as “beat down,” feeding the detainees very little, adjusting room temperatures from one hundred degrees to ten degrees, dousing the detainees with freezing water in the winter resulting in frostbite and amputation, subjecting them to light deprivation, using dogs, threatening mock executions and rape, placing detainees in prolonged isolation for up to a year, interrogating them while they could hear the terrifying screams of others, and desecrating the Quran.³⁸

B. *Damien Corsetti and the Early Interrogation Period Limited Only by An Interrogator’s Imagination in Bagram*

Damien Corsetti arrived in Bagram on July 29, 2002.³⁹ He was sent as an interrogator, although his training had been in military intelligence. His training as an interrogator was limited to two weeks in Fort Polk, Louisiana, with no training after arriving in Afghanistan.⁴⁰ He told the Witness to Guantanamo project that he was sent by the U.S. as an agent of America’s anger. He was there to carry out America’s demand for revenge.⁴¹ The military placed this young man of twenty-two, still coming of age, with little to no training and a volatile personality, in this exceptionally complex and stressful position. His mission was to interrogate “high-value” detainees to obtain actionable intelligence. As the representative of America, he embodied, internalized, and embraced America’s anger. Nevertheless, when he first arrived, he was terrified. “I was scared of the whole horror of war,” he said.⁴²

When Corsetti enlisted in 2000, he had asked to be placed in intelligence services. He intended to sidestep combat. The military, realizing that he was smart, accepted him into a counter-intelligence/human intelligence collection, an overt espionage operation.⁴³ But after 9/11,

38. Reprieve, *supra* note 25, at 6–7.

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

40. Investigating Officer’s Report of Testimony of Jennifer N. Higginbotham, Appendix A, Charge 1, Specification 2 (Dec. 7, 2005) [hereinafter Testimony of Higginbotham].

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

42. Interview with Damien Corsetti, *supra* note 39.

43. Interview with Damien Corsetti, *supra* note 41. A human intelligence collector does more than conduct interrogations. According to the U.S. Army, an intelligence col-

everything changed. The military, having been caught as unaware as everyone else, initiated unmindful, on-the-fly⁴⁴ policies, and redirected Corsetti into interrogation of “high-value detainees.”

Corsetti was “super angry”⁴⁵ after seeing the damage to the Pentagon. And he carried that super anger with him on the plane to Bagram. Apparently, the military either never assessed or inadequately assessed whether Corsetti had the maturity and character appropriate for the role of an effective interrogator.⁴⁶ Whether Corsetti was the best they could find, or even an appropriate choice, was never clear. He told W2G: “You’re like, I’m going to go over there and I’m going to have to go kill some poor motherfucker and he’s going to be trying to kill me and what good can come of this?”⁴⁷

Corsetti may not be typical of the military interrogators in Bagram, but he is not unique. In the years following, the government prosecuted and convicted three former military interrogators and three guards in Bagram for mistreating the detainees.⁴⁸ Interrogators were also accused of the death of two Afghani detainees, Dilawar and Habibullah.⁴⁹ W2G only interviewed one of the other interrogators, Glendale Walls.

Walls told W2G that he was the main interrogator for Dilawar, and that Dilawar was put on sleep deprivation, where he would be handcuffed to the ceiling of his cell with his feet on the floor, but so that he could not bend his knees. Walls described sleep deprivation as allowing

lector, among other tasks, supervises and conducts debriefings, interrogations, and elicitation for positive intelligence and force protection information; screens human intelligence sources and documents; exploits captured enemy documents, foreign language and open source publications; and conducts liaison and coordination in foreign language with host nation agencies. *See generally Human Intelligence Collector*, ARMY.COM, <http://army.com/info/mos/human-intelligence-collector>.

44. Interview with Mark Fallon, *supra* note 10.

45. Interview with Damien Corsetti, *supra* note 39.

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

47. *Id.*

48. *See* Sterling, *supra* note 24; *see also* Holly Manges Jones, *US interrogator demoted for assaulting Afghan prisoner*, JURIST TWENTY (Aug. 4, 2005), <http://jurist.org/paperchase/2005/08/us-interrogator-demoted-for-assaulting.php>; Tom Henry, *US soldier sentenced to 3 months, demoted in Afghan assault*, JURIST TWENTY (May 23, 2005), <http://www.jurist.org/paperchase/2005/05/us-soldier-sentenced-to-3-months.php>; Associated Press, *Soldier Gets 75 Days in Afghan Abuse Case*, MILITARY.COM (Aug. 31, 2005), <http://www.military.com/NewsContent/0,13319,76351,00.html?ESRC=eb.nl>.

49. Golden, *supra* note 12. The murder of Dilawar, an innocent taxi driver, was memorialized in the Academy Award winning film, *Taxi to the Dark Side*. Corsetti was not involved in the killing of either man.

“two hours of sleep. But it didn’t have to be consecutive. So it could have been 10 minutes here, you know, stretched throughout the day.”

Walls told W2G, “In my eyes, like I had no reason to believe that he’d ever die from anything that was going on that I was aware of. I was aware that they had him on the sleep dep chart, the sleep deprivation chart. At some point, Dilawar was hallucinating that his wife had visited him.” He continued, “And I asked that he’d be removed because basically he’s speaking gibberish at this point.” Walls added that at that point Dilawar “was barely there anymore.”

Walls also told W2G that, although he had not seen it happen, one of the military police officers had given Dilawar “personal knee strikes.” In describing the knee strikes he said, “I guess it’s a strike to the back of the knee which eventually formed a blood clot that went to his heart.” When we asked what he had thought when Dilawar died, he told us, “I thought it was some kind of freak accident or something.”⁵⁰

Years later, when Corsetti was tried for crimes he allegedly committed as an interrogator, a witness described Corsetti as taking the “role of the intimidator, because he was much larger than the rest of us.”⁵¹ The same witness understood that he had been known in Bagram as the “King of Torture.”⁵² The witness, Jennifer Higginbotham, was a fellow interrogator.⁵³ She testified after she was granted immunity.⁵⁴ She stated that SSG Loring, the Platoon Sergeant responsible for the interrogators at Bagram, had employed Corsetti as the intimidator and had also referred to Corsetti as the “King of Torture.”⁵⁵ According to Higginbotham, Corsetti “acknowledged that he was known as the ‘King of Torture.’”⁵⁶

Corsetti described his training as approach training, rather than textbook training.⁵⁷ That is, his superiors told him, “[h]ere will be a good way to do this . . . [T]his is how it is done here and just do it.”⁵⁸ Nobody questioned the training, even though this training was without standard operating procedures.⁵⁹

50. Walls was prosecuted for assault and battery. He described the assault as grabbing Dilawar’s shirt, and the battery as moving Dilawar against his will. Walls agreed to plea, and was sentenced to two months in military prison in Fort Lewis, Washington, a reduction in pay grade, and a \$750 fine. He was also given a bad conduct discharge and lost all military benefits such as the GI bill and VA healthcare.

51. Sworn statement of Jennifer N. Higginbotham at 26 [hereinafter Higginbotham Sworn Statement].

52. *Id.* at 24.

53. *See id.*

54. *See id.* at 1.

55. *Id.* at 24, 26.

56. *Id.* at 24. When W2G asked Corsetti about being the “King of Torture,” he told us that he had not heard the term before she said it at his trial. However, he said that he had great respect for Higginbotham and believed that she thought she was telling the truth. He did not consider her histrionic or malicious. He found her integrity to be above reproach. To Corsetti, Higginbotham was merely repeating what someone else had said. Interview with Damien Corsetti, *supra* note 39.

57. Interview with Damien Corsetti, *supra* note 39.

58. *Id.*

59. *See* Higginbotham Sworn Statement, *supra* note 51, at 6.

Corsetti worked twelve-hour days.⁶⁰ He had complete control over the prisoners.⁶¹ The Department of Defense (DoD) phoned the base daily with particular requests for information, usually focusing on specific prisoners.⁶² The DoD did not care how the interrogators obtained the information. That was the interrogators' domain. Interrogators could do what they needed to do to satisfy the DoD's demands for actionable intelligence.

During the interrogations, the interrogators explained to the detainees that everything was a privilege, including their clothing.⁶³ Detainees went to the restroom, ate and drank, and even slept with the interrogators' consent.⁶⁴

If Corsetti did not like what he was hearing from a detainee, or if the detainee chose to say nothing, Corsetti had no problem in turning up the heat. For example, he would punch detainees in the stomach or put his crotch up against their faces. He would make them sit in a stress position for five hours without moving, while he sat by smoking, dumping his ashes into the man's pockets.⁶⁵ He kept one detainee on his knees for two hours, while he read a book and spat on him.⁶⁶ Corsetti admitted that when Sgt. Higginbotham testified that Corsetti would sit on a detainee's chest, even though he did not remember doing it, instead, he stated it "[s]ounds like something I would do."⁶⁷ He wore \$300 gloves so he would not get their sweat on him when he manhandled the prisoners.⁶⁸

Corsetti's notes disappeared before his trial occurred. The last thing he and the other interrogators did when they left was burn all their books, he told W2G.⁶⁹ Interrogations were never videotaped.⁷⁰

After working for a few months, presumably gathering actionable intelligence, Corsetti began to wonder whether all the men he was interrogating were actually connected to the attacks. It seemed to him that a number of the captives were swept up in a wide net, and did not belong at Bagram. They had little to nothing to offer.⁷¹

60. Interview with Damien Corsetti, *supra* note 41.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

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

66. Interview with Damien Corsetti, *supra* note 39.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Fallon confirmed this. The reality was that they weren't terrorists. At the time of 9/11, the estimate range or the number of people who would consider al Qaeda probably range between two and four hundred. Interview with Mark Fallon, *supra* note 10.

Around the same time, Corsetti and a few of his colleagues began to question the tactics they used to obtain information. He wondered out loud whether they were violating the GC, which, in requiring humane treatment of all captives, forbids torture and cruel, inhuman, and degrading treatment. Corsetti's supervisor arranged a meeting with the military's JAG lawyers.⁷² The military lawyers explained to Corsetti and the other interrogators that they were not violating American law or the GC and could continue with their interrogation techniques.⁷³

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

Corsetti began to reflect and continued to understand over the years that, "the treatment of the prisoners would create the terrorists tomorrow."⁷⁴ You figure out very early that there are "innocent people here" who should have been released.⁷⁵ He added, "I treat my dog better than we treat the prisoners and all that[the treatment of the prisoners is] going to do is grow animosity in the future."⁷⁶

After Corsetti served seven months in Afghanistan, he was posted to Iraq.⁷⁷ On October 6, 2005, Corsetti returned home from Iraq, with so many ribbons that he "looked like a general."⁷⁸ However, within twenty-four hours after his return, he was placed in handcuffs. He was arrested for the mistreatment of certain detainees in Afghanistan from August 2002 to February 2003. The charges included dereliction of duty, maltreatment, assault, and performing an indecent act with another person.⁷⁹

Corsetti was accused of sitting on top of a detainee, throwing garbage on him, putting cigarette ash on him, walking across a detainee's handcuffed hands, pulling hairs out of his chest, pulling the head and

72. See also Interview with Damien Corsetti, *supra* note 39.

73. In spring 2002, the Bush Administration had determined that the GC did not apply to the prisoners captured in Afghanistan. See Memorandum from George W. Bush, President of the U.S., on Humane Treatment of Taliban & al Qaeda Detainees, to Dick Cheney, Vice President of the U.S. et al. (Feb. 7, 2002), http://www.google.com/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.peg.c.us%2Farchive%2FWhite_House%2Fbush_memo_20020207_ed.pdf&ei=m0rhU9C3KM3soASz04HIIBg&usq=AFQjCNEqX7mt9011m6m6jxHJfnGvXAM2A&bvm=bv.72389368,d.cGU; see also Peter J. Hongisberg, *Chasing 'Enemy Combatants' and Circumventing International Law: A License for Sanctioned Abuse*, 12 UCLA J. INT'L L. & FOREIGN AFF. 1 (2007).

74. Interview with Damien Corsetti, *supra* note 39.

75. *Id.*

76. *Id.*

77. *Id.* In Iraq, he worked as an intelligence officer and also conducted interrogations. He was one of the first interrogators to arrive in Abu Ghraib, although he stated that he was not aware of the abusive actions by the MPs before the horrifying photos of torture and CID of Iraqi prisoners were published.

78. *Id.*

79. General Court-Martial Order, 25 July 2006, No. 20.

beard of a detainee, removing a detainee's pants to expose his genitalia to a female interrogator, bending him over a table and waving a bottle in close proximity of his buttocks, striking the detainee in the leg, groin, and chest with his hands and knees, showing a detainee a condom and his penis and saying, "[t]his is special for you," "[t]his is your god," and "I'm going to fuck you," and placing his penis near the detainee's face and placing his groin against the detainee's buttocks.⁸⁰

The charges were partly based on statements by a Guantanamo detainee, Ahmed al-Darbi. Al-Darbi accused Corsetti of kicking him in the stomach and groin, stepping on his handcuffed hands, showing him a condom and telling him that he is going to rape him, as well as other abuses.⁸¹

Jennifer N. Higginbotham testified that she had witnessed Corsetti pulling a detainee's beard and also sitting on a detainee.⁸² She indicated that the interrogators were not permitted to inflict harm, or strike a detainee except in self-defense. However, she also testified that there was no standard operating procedure when they first arrived.⁸³

Corsetti said that he never pressed his penis against someone's face. It was either an exaggeration or a mix-up in interpretation, he explained. However, he did use the detainee's shirt as an ashtray, plucked hairs out of his chest, poked him in the chest, poured water over him, and made him pick up feces with latex gloves and cardboard. Corsetti also confirmed that people were hung by their wrists.⁸⁴

According to Corsetti, the other interrogators either agreed to plead to certain charges or turned as State's witnesses to testify against him.⁸⁵ Corsetti refused a plea bargain because the pleas included crimes he did not believe he had committed. He told W2G that he would have pled to some of the charges including one assault (moving a man's head by his beard).⁸⁶ But, he would not plead guilty to something he did not do or to a tactic that the JAG lawyers told him was not torture or CIDT.⁸⁷ Even if the tactic had been wrong, he had obtained JAG approval.⁸⁸ In discussing the charges, Corsetti explained to W2G, "I do want to clarify that I'm not innocent of everything they accused me of. [However,] on a legal basis, I was innocent of everything they accused me of."⁸⁹ Corsetti admitted that he did "some horrible things. Legally, not really. Legally, on paper I didn't, but on a moral level, ethical level, I definitely did, you know."⁹⁰

80. *Id.*

81. Ahmed al Darbi Dep., Guantanamo Bay, Cuba, March 8, 2006.

82. Higginbotham Sworn Statement, *supra* note 51, at 21.

83. *Id.* at 6.

84. *See* Interview with Murat Kurnaz, *supra* note 23.

85. Interview with Damien Corsetti, *supra* note 39; Interview with Damien Corsetti, *supra* note 41.

86. Interview with Damien Corsetti, *supra* note 39.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

The trial was a court-martial before a jury of military officials. He was convinced he was going to prison.⁹¹ To his great surprise, Corsetti was acquitted of every charge, including those to which he would have pled guilty in a plea deal.⁹² He believed his acquittal was a result of jury nullification.⁹³ Corsetti believed that the jury was composed of people who had been in “special operations” and understood the pressures that the military placed on Corsetti to obtain intelligence at any cost at that time in 2002.⁹⁴

Corsetti believed that his behavior, as well as that of the other interrogators, was standard policy.⁹⁵ “Basically, just that everything that we did was acceptable, that this is not the work of this loose cannon rogue wolf Corsetti. This was institutionalized and this is how shit went down.”⁹⁶ They made decisions “facilitated through a system. It really was systematic torture.”⁹⁷ He compared his work and the work of the other interrogators to working at a Ford plant: “[y]ou just fuckin’ do it the way the assembly line’s done and you go along with it, and you stamp your fuckin’ sheet metal and go home. Well, my assembly line job was in a prison with high-level prisoners and that was it.”⁹⁸

When W2G asked him to describe the moral and ethical violations that he admitted to committing, he replied,

I started not looking at these people as human and looking at them as numbers, and looking at them as evil. But these people, even the terrorists, are not evil. They’re good and evil. They have good and bad in them, as all of us do. We all have our demons and hey, they chose a different way, but you can’t really say that you wouldn’t have turned out like that if you were raised and sent to a Madrasah and raised in the environment that they were raised in. You can’t say that you would be any different I didn’t treat human beings like human beings I worsened humanity during a time of my life.⁹⁹

In both of his interviews with W2G, Corsetti apologized on camera.¹⁰⁰

I guess I’d really want to emphasize to people that, hey, this could be you. If you were taken from your situation and put into this, don’t think that your decisions would be greatly different than my own. I wasn’t this person when I went there. I became this person

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Corsetti was the only person interviewed by W2G twice.

and it was through the environment I was in that that happened.¹⁰¹

C. Guantanamo Bay, Cuba¹⁰²

On August 4, 2001, Mohammed al Qahtani, a Saudi citizen, detainee number 063, was flying to the U.S. from Dubai to meet up with colleagues. Presumably, his intent was to join with others in flying planes into the World Trade Center, the Pentagon, and perhaps another iconic structure such as the Capitol or the White House. However, upon his arrival in Florida, an observant and conscientious customs official turned him away and sent him back to Dubai. Had he been allowed into the U.S., al Qahtani would have likely been the twentieth hijacker, the fifth hijacker on the plane that was forced down over the fields in Pennsylvania.¹⁰³ He was captured after 9/11 in Tora Bora, Afghanistan, and transported to Guantanamo.¹⁰⁴ It was after he arrived in Guantanamo that the military made the connection between him and the other hijackers.

In March 2006, Time Magazine released the military's interrogation log describing the torture that al Qahtani suffered in Guantanamo in late 2002. The log begins on November 23, 2002. It details his day-to-day treatment as he is psychologically and physically tortured.¹⁰⁵ He suffered sleep deprivation, was forced to urinate on himself; had his head and beard shaved; was subjected to the air conditioning turned up to freezing and then turned off so the tropical heat in the room became stifling; felt a female intrude on his personal space, possibly touching and fondling him; was made to wear a mask and dance while hooded; was bombarded with white noise; was forced to look at and answer questions about bikini clad models; and endured water repeatedly poured over his head.¹⁰⁶

101. Interview with Damien Corsetti, *supra* note 39. At the end of both interviews, it seemed to W2G personnel that becoming accountable was transformative for Corsetti.

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

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

104. *Id.*

105. Interrogation Log of Detainee 063, Mohammed al Qahtani, published by Time Magazine, Mar. 3, 2006, <http://content.time.com/time/2006/log/log.pdf>.

106. All of these incidents appeared in the Interrogation Log of Detainee 063, Mohammed al Qahtani, published by Time Magazine, June 20, 2005. In January 2009, Susan Crawford, the convening authority of the military commissions, dropped all

During this same period in November, Jim Clemente, an FBI agent then in Guantanamo,¹⁰⁷ observed a female officer whispering into a detainee's ear, putting lotion on his arm, and moving her hands to the lap of the detainee. A marine told Clemente that the female also grabbed the detainee's genitals. Given the context of Clemente's observation, it is likely that the detainee Clemente observed was al Qahtani.¹⁰⁸ These details are included in a letter in which another agent offers his own observations of the treatment of al Qahtani.¹⁰⁹

FBI agents also reported observing how a dog was used to intimidate al Qahtani and how al Qahtani had been totally isolated during a three-month period in a cell flooded with light.¹¹⁰ These agents noticed that by late November 2002, al Qahtani was talking to non-existent people, reported hearing voices, and crouched in a corner covered with a sheet—all consistent with extreme psychological trauma.¹¹¹ In addition, al Qahtani suffered severe physical consequences of his treatment, including swollen extremities and a life-threatening precipitous drop in his heart rate.¹¹²

Mark Fallon of CITF told W2G that it was with al Qahtani that the interrogators "started going down the road that I felt was illegal."¹¹³ Clemente described the personnel in Guantanamo as "just gung ho U.S. military wanting to save their country, and the leaders were telling them what to do." Apparently, many of the interrogators in Guantanamo had attitudes that were similar to those of Damien Corsetti and others who worked in Bagram.¹¹⁴ Clemente was concerned that the military would blame the abusive behavior he observed on the "lowly 'rogue' military personnel" similarly to what later happened in Abu Ghraib.¹¹⁵

charges against al Qahtani on the grounds that he had been tortured and that the evidence against him was tainted and inadmissible. William Glaberson, *Case Against 9/11 Detainee Is Dismissed*, N.Y. TIMES (May 14, 2008), <http://www.nytimes.com/2008/05/14/washington/14gitmo.html>.

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

108. Letter from T.J. Harrington, Deputy Assistant Dir., Counterterrorism Division, to Major Gen. Donald J. Ryder, Department of the Army (July 14, 2004).

109. *Id.*

110. *Id.*

111. *Id.*

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

113. Interview with Mark Fallon, *supra* note 10 (stating how earlier that year, CITF had moved away from the military approach and aligned with the FBI to become a "unified team, with focus on the law enforcement, rapport-based, approach"); see also Memorandum from Michael E. Dunlavey, Commander of the Joint Task Force 170, to Commander Diane E. Beaver, United States Southern Command (Oct. 11, 2002).

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

115. In W2G conversations with Damian Corsetti, the same concept of blaming the lowly personnel—or what Clemente described as "pushing it downhill"—happened in Bagram as well.

The abuse in Guantanamo went significantly beyond the abuse of al Qahtani, and was not confined to the time the detainees spent in the interrogation booth. That is, the Guantanamo detention center was a lot more than a prison of holding cells. An important goal of the detention center was to soften up detainees and weaken their resistance in preparation for interrogation and intelligence gathering.¹¹⁶ In fact, this objective was implemented as early as summer 2002, when Major General Dunlavey arrived as Camp Commander.

From the start, Dunlavey intended to exploit the detainees for their intelligence value. As Mark Fallon explained to W2G,¹¹⁷ before Dunlavey arrived, Joint Task Force (JTF) 160, which had experience in custodial operations, governed as the jailers. However, Dunlavey changed the approach by creating JTF 170. JTF 170 was designed to directly seek intelligence from the detainees. At the time that JTF 170 was formed, Deputy Commander Mark Fallon's law enforcement Criminal Investigation Task Force (CITF) was responsible for the investigations. And, CITF continued to interrogate detainees immediately after JTF 170 was created. But soon after JTF 170 was formed, a conflict between General Dunlavey and CITF surfaced.¹¹⁸ General Dunlavey decided he needed to control the jailing process along with the interrogation process, and combined JTF 160 and 170. CITF's law enforcement approach to interrogations ended.¹¹⁹

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

For example, JAG attorney Lt. Col. David Frakt told W2G how he noticed while reviewing military documents that his client Mohamed Jawad, a juvenile from Afghanistan, had been moved from cell to cell every three hours for over two continuous weeks. This process became known as "frequent flyer."¹²⁰ As Frakt understood it, the frequent flyer program was designed as a sleep-deprivation technique, often used to

116. See THE CONSTITUTION PROJECT, *supra* note 22. Geoffrey Miller supported the use of military police to facilitate interrogation as evidenced by his recommendation that this practice be instituted in Iraq. See also Testimony of Higginbotham, *supra* note 40. Higginbotham said the same thing about Bagram in her sworn statement. See Higginbotham Sworn Testimony, *supra* note 51.

117. Interview with Mark Fallon, *supra* note 10.

118. *Id.* JTF 170's operations reported to Jim Haynes and his Office of the General Counsel. Haynes reported directly to Rumsfeld. CITF reported to the Joint Chiefs of Staff.

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

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

soften the detainees for interrogation. That is, the program intended, in addition to punishing detainees, to disorient them and weaken their resistance.¹²¹

Another inhumane technique used by the military was isolation. Michael Gelles, a psychologist who worked with the Naval Criminal Intelligence Service explained how physical isolation could be used as an interrogation device. By isolating the detainee, the military prevented him from having “access to lots of other people who can support [his] being resistant.”¹²² Then, as Gelles explained in talking about meetings with detainees, “if you’re going to talk and you need to have a relationship, I want you to have it with me. And, I want you to talk to me . . . and that’s who you’re going to talk to for a while.”¹²³

The problem, however, is that in isolation detainees can suffer CIDT and even torture after only a short period of fifteen days.¹²⁴ Two detainees talked to W2G about being held in isolation for particularly long periods. One was held for a year, the other for over two years. Feroz Ali Abbasi,¹²⁵ from the U.K., told how he had first believed that he could hold out during his long year of isolation and not reveal confidences to the interrogators. He kept himself going by concentrating on one particular item each day, such as each step of his walk. But although he believed that he could hold out, after a year, “I broke,” he told W2G.

Moazzam Begg, also from the U.K., was held in isolation for nearly two years. At one point, he was so desperate for human contact that he asked to speak to someone. The military sent him a psychologist. The psychologist asked him “have you thought about removing your trousers, threading your trousers with a sheet, putting the crocheted part around your neck so you can make a strong noose, and then tying it to the top corner of your cell and jumping off to commit suicide?”¹²⁶

Another detainee was not physically isolated, but linguistically isolated for not only the early years of 2002–2003, but for much of the

121. *Id.* In his interview, Frakt notes that the frequent flyer program was used both to soften up a detainee for interrogation purposes, as well as for punishment purposes.

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

123. *Id.*

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

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

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

time he was in Guantanamo, until he was released in 2010. He was from Uzbekistan, and only spoke Uzbek. Despite the existence of other Uzbek speakers in Guantanamo, he was housed where the people around him spoke only Arabic or English.¹²⁷ He would awake each morning and weep.

Another detainee told W2G how he was interrogated while undergoing surgery on his back.¹²⁸ He was under a local anesthetic. A second detainee, Tarek Dergoul, told us a similar story of being interrogated as military doctors surgically worked on his arm.¹²⁹

Several detainees explained to W2G that they believed Guantanamo was designed as an experimental lab for psychological torture. For example, a detainee from the U.K., Bisher al Rawi, noted that when he was released his friends did not believe that he had been tortured because they saw no physical scars on him. As he explained to W2G, his friends could not visibly see the psychological scars he suffered and had continued to suffer for years after release.¹³⁰

A French detainee, Mourad Benchellali, reiterated the effects of psychological scars, also stressing that he believed Guantanamo was a psychological prison.¹³¹ A psychological prison, he indicated, was significantly worse than a prison whose emphasis was solely on physical torture. The effects of psychological torture are far more lasting, if not permanent, he believed.

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

The SERE program was originally created in the 1950s to train military and special operations personnel to resist Chinese and North Korean torture and inhumane interrogation techniques during the Korean War. However, in 2002, Bruce Jessen, a senior psychologist for SERE training and working for the Joint Personnel Recovery Agency—which trained CIA agents in “SERE derived techniques”—prepared a report to “reverse-engineer” the SERE training. The report’s purpose was to apply SERE-based approaches to captives in the Global War on

127. Interview with Detainee in Riga, Lat. (Aug. 4, 2011). For a full treatment of the concept of linguistic isolation, see Peter Jan Honigsberg, *Linguistic Isolation: A New Human Rights Violation Constituting Torture, and Cruel, Inhuman and Degrading Treatment*, 12 NW. J. INT’L HUM. RTS. 22 (2014).

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

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

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

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

Terror.¹³² That is, rather than use SERE solely as a training program to assist special operations personnel who might be captured in dangerous war zones, the program was reviewed to see how it could be used proactively in eliciting intelligence information from prisoners post 9/11.¹³³

A BSCT memorandum written on October 2, 2002 suggested certain detention and interrogation techniques, designed for intelligence gathering, that were linked to the SERE training program.¹³⁴ Among the tactics used in the SERE program was one that maintained that daily activities be provided on random schedules. Another tactic was the disruption of prisoners' sleep cycles. The same memorandum proposed that detainees who resisted be limited to four hours of sleep per day.¹³⁵

The SERE-based interrogation techniques have been described as creating a syndrome of "learned helplessness."¹³⁶ The intent was that the detainee become more compliant when interrogated. However, Mark Fallon of CITF describes the effect of learned helplessness this way: "if you put a dog in a cage and you just beat the dog for whatever they did, they wouldn't know it was right or wrong and they'd start complying to whatever."¹³⁷ As Fallon explains, compliance is, of course, different from cooperation.¹³⁸

During that fall of 2002 and winter of 2003, personnel from the DoD as well as the Department of Justice ("DOJ") issued a flurry of additional memoranda addressing interrogation tactics. The memoranda, short-sighted, haphazard, and condoning an "anything goes" approach, appeared to be issued in two streams. One stream was through the DoD chain of command. The other was through the DoJ Office of Legal Counsel and the White House, and focused on CIA interrogations.¹³⁹ All the memoranda seemed designed to document

132. *Torture, Rendition, and other Abuses against Captives in US Custody*, HISTORY COMMONS, http://www.historycommons.org/timeline.jsp?hr_types_of_abuses_performed_by_americans=torture,_rendition,_and_other_abuses_against_captives_in_iraq,_afghanistan,_and_elsewhere_sere_techniques&timeline=torture,_rendition,_and_other_abuses_against_captives_in_iraq,_afghanistan,_and_elsewhere.

133. In fact, the SERE techniques are still included in a course for military personnel today. See *Gosere*, U.S. AIR FORCE, <http://www.gosere.af.mil/SERE.aspx>; see also *Center for Security Forces*, NAVAL EDUCATION AND TRAINING COMMAND, <http://www.netc.navy.mil/centers/csf/What.htm#tab4>.

134. THE CONSTITUTION PROJECT, *supra* note 22.

135. *Id.* at 220.

136. *Id.* at 206.

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

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

139. Although this article focuses on military interrogations in the early years of 2002-2003 in Bagram and Guantanamo, W2G interviewed three former detainees who were brutalized by the CIA in its extraordinary rendition program, which was designed to torture detainees while also seeking actionable intelligence from them. Bisher al Rawi (see above) and Jamil el-Bamma, both residents of the U.K., were held in the underground, pitch black, "Dark Prison" in Kabul Afghanistan, for several weeks. Interview with Bisher al Rawi in London, U.K. (Aug. 2, 2011); Interview with Jamil el-Bamma in London, U.K. (Aug. 2, 2011). The only light they saw during the entire time was when the jailor

and support cruel, inhuman and degrading treatment, as well as torture.

Three DoD memoranda were dated October 11, 2002. The first, by Lt.Col. Jerald Phifer, detailed three categories of “Counter-Resistance Strategies.”¹⁴⁰ Category I included yelling, deception, and multiple interrogators. Category II included stress positions, including standing for four hours, using false documents, isolation for up to 30 days with requests for extensions,¹⁴¹ interrogating in other than a standard interrogation booth, deprivation of light and auditory stimuli, 20-hour interrogations, placing a hood over the detainee during questioning, removing all clothing, forced removal of hair, and using individual phobias, such as fear of dogs, to induce stress. Category III techniques included convincing detainee that death or severely painful consequences are imminent to him or his family, exposure to cold weather or water, use of a “wet towel and rippling water to induce the misperception of suffocating (this was a precursor to what has become known as waterboarding), poking in the chest or other “non-injurious” physical contact.¹⁴²

Commander Major General Michael Dunlavey then wrote to the United States Southern Command (SouthCom) requesting permission to approve Phifer’s Counter-Resistance strategies in order to “enhance our efforts to extract additional information.” He concluded that the techniques “do not violate U.S. or international laws.”¹⁴³

In the third memorandum, Senior Judge Advocate Lt.Col. Diane Beaver justified Phifer’s Counter-Resistance Strategies under federal law, the constitution, and international law treaties and declarations.¹⁴⁴ Although she requested legal review of her memorandum, Beaver, nevertheless, approved the Category I and II techniques.

She also approved Category III techniques, although she requested that the Commanding General and the Commander of SouthCom also

walked by with a dim flashlight to briefly check on them, and toss them food. On the first day, Bisher, not being able to see anything, kicked over his “honey bucket.” The sensory deprivation suffered by these men was severe. Both men quickly lost all sense of time and space. Mamdouh Habib, an Australian national, was held incognito, beaten severely and tortured in Egypt, under CIA direction, for six months. Interview with Mamdouh Habib in Sydney, Austl. (Dec. 30, 2011). His wife, Maha Habib, had no idea where he was for much of that time. Interview with Maha Habib in Sydney, Austl. (Jan. 5, 2012). All three men were brought to Guantanamo after their torments in the CIA program. See PETER JAN HONIGSBERG, *supra* note 18 (describing and analyzing the CIA’s extraordinary rendition program).

140. Memorandum from Dep’t of Defense to the Commander of the Joint Task Force 170 (Oct. 11, 2002).

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

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

143. Memorandum from Dep’t of Defense to the Commander of the United States Southern Command (October 11, 2002).

144. Memorandum from Dep’t of Defense to the Commander of the Joint Task Force 170 (October 11, 2002).

endorse these techniques. That is, although she did not find that these techniques violated federal law or the constitution, she asked for affirmation by military personnel higher up the chain of command.

In a memorandum to Secretary of Defense Donald Rumsfeld, William Haynes, General Counsel to the DoD, recommended that Rumsfeld approve Categories I and II and only the mild physical contact procedure in Category III.¹⁴⁵ He indicated that although “all Category III techniques may be legally available,” the other Category III techniques should not be adopted at that time. At the bottom of the memorandum, date-stamped December 2, 2002, Rumsfeld scribbled, “However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?”¹⁴⁶

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

Beaver determined that because the detainees were not prisoners of war but were “enemy combatants,”¹⁴⁷ the GC did not apply to them. She also decided that CAT and the ICCPR only bound the U.S. to the standard articulated by the 8th Amendment’s prohibition against cruel and unusual punishment, and not to any higher standards. She concluded her analysis by deducing that the interrogators could not be in violation of the 8th Amendment standard because they acted in “good faith” and that there was a legitimate governmental interest and objective in obtaining the information. She also noted that the interrogators were also excused because they had no specific intent to cause harm.

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

145. Memorandum from Dep’t of Defense to the Secretary of Defense (Nov. 27, 2002).

146. *Id.*

147. For an analysis of the term enemy combatants and how the administration used it to circumvent the GC, see Peter Jan Honigsberg, *Chasing Enemy Combatants’ and Circumventing International Law: A License for Sanctioned Abuse*, 12 UCLA J. INT’L L. & FOREIGN AFF. 1, (2007).

memorandum “undergo a legal review prior to their commencement.”¹⁴⁸

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

In her public statements, she seems to waver between defending her actions and apologizing if she was mistaken. In later years, Beaver claimed surprise that her memorandum was accepted as is.¹⁴⁹ She maintained before the Senate Armed Services Committee that the tactics she had authorized would not have been unlawful if the approval and control procedures had been followed.¹⁵⁰ She also defended her position by testifying that, “under great stress and danger I tried to do everything in my lawful power to protect the American people.”¹⁵¹

On August 1, 2002, two months before Beaver wrote her memorandum, John Yoo, Assistant Attorney General, and Jay Bybee, his supervisor in the Office of Legal Counsel (OLC), in the Department of Justice, issued what have been described as several “Torture Memos.” One torture memorandum indicated that before tactics could rise to the level of torture, “[t]he victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure or permanent damage resulting in loss of significant body function will likely result.”¹⁵² Yoo and Bybee’s definition of torture was exceedingly narrow when compared to the definition of torture found in the internationally recognized “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (CAT).¹⁵³ Under CAT, “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . . when such pain or suffering is inflicted by or at the instigation of or

148. Memorandum from Dep’t of Defense to Commander of the Joint Task Force 170 (Oct. 11, 2002).

149. Diane E. Beaver, Lieutenant Colonel, Remarks before the U.S. Armed Services Committee (June 18, 2008), at 2.

150. *Id.* at 3.

151. *Id.* One might have the impression that Beaver was made to take the blame because she was a low-ranking woman in the military’s high-testosterone male culture. However, if she saw herself as a victim in that environment, she may also have had to view herself with diminished status and independence as a military lawyer. Consequently, she has never publicly stated that she was used by the administration to take the fall.

152. Memorandum from U.S. Dep’t of Justice, Office of Legal Counsel to Alberto R. Gonzales (Aug. 1, 2002), at 13.

153. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1994), <http://www.hrweb.org/legal/cat.html>. The U.S. is a signatory of CAT. However, the U.S. reserved the right to define CIDT differently.

with the consent or acquiescence of a public official or other person acting in an official capacity.”¹⁵⁴

Another Yoo and Bybee memorandum reviewed and sanctioned ten torture and cruel, inhuman and degrading techniques for a particular captured “high-level” detainee named Abu Zubaydah.¹⁵⁵ The ten techniques were attention grasp; walling, i.e., pushing detainee into flexible wall; facial hold; facial slap; cramped confinement in a confined space or container; wall standing, where he is 4–5 feet from the wall, his arms stretched out and his fingers resting on the wall; stress positions, such as kneeling on the floor while leaning back at a 45 degree angle; sleep deprivation; insects placed in a confinement box; and waterboarding.¹⁵⁶ A number of other OLC memos also approving inhumane techniques were drafted and used over the next two years.¹⁵⁷

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

Although Beaver did not link her memo to the torture memoranda, the August 1st torture memo seemed to set the groundwork for Beaver’s memo. Her memo mirrors the conceit of the OLC memo in justifying coercive interrogation techniques. It is unimaginable that either Beaver did not see at least one of these OLC memos, or that someone did not tell her of the analysis and outcome of the OLC’s memos before she drafted her own memo.

In approving the techniques, Yoo and Bybee protected government officials and interrogators from any consequences of their behavior. Those who advocated rapport-based approaches, or who opposed or even voiced doubts about the use of harsh interrogations including torture and CIDT, were marginalized from the seats of power and decision-making.¹⁵⁸

154. *Id.* at Part I, art. 1.1.

155. Memorandum from U.S. Dep’t of Justice, Office of Legal Counsel to John Rizzo 13 (Aug. 1, 2002).

156. *Id.* at 2–3.

157. OLC FOIA Electronic Reading Room, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/olc/olc-foia1.htm>.

158. Two examples of people with high-ranking positions who were marginalized were Alberto Mora, General Counsel of the Navy, and William Howard Taft IV, Chief Legal Advisor to the Department of State. When Mora reported to General Counsel for the Department of Defense, Jim Haynes, that interrogators in Guantanamo were conducting unlawful interrogation techniques, Haynes assured Mora that he would instruct the military to eliminate any unlawful methods. However, instead of instructing the military to terminate the abuse, Haynes, at Secretary Rumsfeld’s order, permitted and even encouraged the abuse to continue. Interview with Alberto Mora in Wash., D.C. (Dec. 4, 2010). In addition, from then on, Haynes excluded Mora from all high-level policy meetings. Interview with Alberto Mora in Wash., D.C. (Dec. 4, 2010) (Mora’s story is recounted in more detail in Part II, *supra*). Similarly, after Taft wrote a memo arguing that the detainees brought to Guantanamo should be guaranteed the protections of the Geneva

PART II. EXAMPLES OF LAW ENFORCEMENT “RAPPORT BUILDING”
INTERROGATION TECHNIQUES AND APPROACHES FROM FALL
2002 TO EARLY 2004 (AS TOLD THROUGH THE
VOICES OF INTERROGATORS)

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

This Part will look at the approaches, techniques, and impact of two Guantanamo interrogators who pursued rapport-building techniques. Torin Nelson worked in 2002, Jennifer Bryson in 2004 and 2005. This Part will also review the efforts of Jim Clemente, an FBI agent who traveled to Guantanamo in fall 2002 to assist in training interrogators. Although Clemente believed he would succeed in convincing the military of the value of a rapport-based approach, his labors were largely futile.¹⁵⁹ All three spoke with W2G about their work.

A. *Jim Clemente, FBI Agent*

From 1998 to 2009, Jim Clemente worked as a profiler in the FBI's Behavioral Analysis Unit (BAU), in Quantico, Virginia. His focus was on sex crimes and sexual offender behavior. As he explained, the FBI's profiling approach is analogous to the “reverse engineering of a crime.”¹⁶⁰ He described it this way:

We look at the behavioral evidence at that crime scene and then we work backwards towards the kind of person who committed this particular crime. And what it does is it narrows down the field of suspects and helps police officers focus their investigation so they can resolve crimes a lot faster.¹⁶¹

Clemente also taught interviewing and interrogation skills at the FBI's National Academy. Interrogation is “the most dynamic form of profiling,” he told W2G.¹⁶² The more the person talks, the more the agency will learn about the person. The interrogator is constantly shifting gears as he or she reads the words and body language, as well as the

Conventions, he became marginalized. The administration excluded him from receiving important documents and reports addressing international law issues, including the famed “Torture Memos” written by John Yoo, for review. Interview with William Howard Taft, IV in S.F., Cal. (Nov. 13, 2012).

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

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

161. *Id.*

162. *Id.*

personality,¹⁶³ of the detainee. That is, the essence of interrogation is “human interaction.”¹⁶⁴

Clemente also emphasized the FBI’s core value of “rigorous obedience to the constitution.”¹⁶⁵ “I don’t care who he was or what he did or didn’t do. We have a mandate to uphold the Constitution and that’s what we had to do,”¹⁶⁶ he emphasized.

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

As a behavioral expert, Clemente flew down to Guantanamo in mid-October, staying for nearly two months, until early December. As a behavioral analysis expert, Clemente planned to study the body language of detainees. He also planned to conduct interviews for military interrogators to observe. Clemente, reflecting the FBI’s core approach to interrogation, believed that rapport-building techniques would work best for detainees who resisted.¹⁶⁷

Clemente gave an example to W2G on the rapport-based approach he used on one detainee. When he arrived in Guantanamo, he was introduced to an uncooperative detainee who “was doing nothing but sitting mute during interrogations or reciting the Koran from memory.”¹⁶⁸ Clemente believed that the man was uncooperative because the military was using the “fear up” and “anxiety up,” harsh interrogation approaches, where “you reinforce that belief that we’re the devil, that we’re evil.”¹⁶⁹ This approach was counterproductive because “you help them do what they’re doing, resisting you Instead, you want them to work with you, not against you.”¹⁷⁰

163. *Id.*

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

165. *Id.*

166. *Id.*

167. A BAU memorandum dated May 5, 2003, and directed to Marion Bowman, Senior Counsel for National Security Affairs, and two others, confirmed Clemente’s statement that the FBI was sent to Guantanamo to train the military interrogators in more effective and less harsh interrogation methods. The memo indicated that the FBI was available at Guantanamo to: assist agents conducting interviews and provide training to FBI/CITF personnel. Of particular importance were a series of successful interviews which SSA conducted with [known as detainee] who had stopped talking to interrogators. “Utilizing interviewing techniques taught by the BAU, SSA was gradually able to re-establish a dialogue . . . which ultimately led to the detainee’s renewed cooperation.” Memorandum from the Critical Incident Response Group and Behavioral Analysis Unit to the Counterterrorism General Counsel 5 (May 30, 2003).

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

169. *Id.*

170. *Id.*

Clemente met with the detainee. He began by saying that he did not care what the detainee had done. Rather, Clemente told the detainee that he was meeting with him to learn about his culture and religion. According to Clemente, because this particular detainee had an engineering degree and was an educated man, he was smarter, perhaps, than anyone else in the camp. The two men started talking, comparing Christianity with Islam. Over a 21-day period, they bonded and the detainee became “extremely cooperative.”¹⁷¹

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

Clemente also told W2G of another slapdash military interrogation tactic where the interrogator would duct tape a detainee’s mouth shut for four hours, and “bombard” him with questions during the full four hours.¹⁷² The military assumed that when they tore off the tape, the detainee would blurt out secrets.

Clemente explained that this tactic of duct-taping a detainee was another example of the military being completely misguided, if not senseless, in its approach to interrogation. He added that he believed the military was “unsupervised by anyone who had any kind of morals.”¹⁷³ Similarly, although Clemente did not witness waterboarding while in Guantanamo, he acknowledged that military officials “spoke of it as if it was a completely accepted practice there,”¹⁷⁴ and that it was in the plan for detainee 063, Mohammed al Qahtani.¹⁷⁵

To Clemente, the methodologies used by the FBI and the military collided:

You have the U.S. military, who in the middle of the military action has apparent standards that are vastly different than what our standards are in the FBI. And now you’ve put them both together in a situation where those standards are in conflict, direct conflict with each other. And I think that was the basis of the problem. It was bound to happen.¹⁷⁶

Clemente emphasized to W2G that by treating the detainees coercively, the military could have “ruined”¹⁷⁷ the cases that the government would have wanted to prosecute in court. Any evidence obtained by harsh mistreatment would likely be inadmissible at a trial. Moreover,

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

he noted, "I'm not aware of any successes [of the military] in obtaining actionable intelligence, and the whole reason we were there was because they were failing."¹⁷⁸

Before he arrived in Guantanamo, Clemente had thought that he would be "sitting down with reasonable [military] people who actually wanted to get the most unbiased and accurate information from these people."¹⁷⁹ Instead he was "exposed . . . [to] sadistic people who took advantage of the situation."¹⁸⁰

Clemente repeatedly stressed the importance of treating the detainees humanely, especially because they were powerless. "You have to be a sadist to be able to hurt somebody who is completely helpless," he said. "And not only that, but it's counterproductive to our mission. Our mission is to get these people to give us the information that they have in order to protect our country and help prosecute people that are, you know, committing crimes against the country."¹⁸¹

While in Guantanamo, Clemente met with Diane Beaver, who had written the memo approving the Counter-Resistance Strategies described in Part I. She had given him a copy of the memorandum. He told W2G that he "was aghast. I could not believe what I had read there."¹⁸² He pointed out that federal law, particularly the "torture statute,"¹⁸³ prohibited these tactics. According to Clemente, Beaver replied that since the goal of the tactics was not to cause serious physical or mental injury or death, but to get information, the statute did not apply.¹⁸⁴ She added, "The general believes me and not you."¹⁸⁵

Clemente also told W2G that, "she said that when they [the military] ran out of ideas they were actually watching the show *24* to get ideas on what to do with the detainees."¹⁸⁶ In this widely-popular television show that began in November 2001, the plot lines focused on the hero thwarting terrorist attacks, assassinations, and use of weapons of mass destruction with harsh interrogation techniques. The show's powerful message was that saving American lives justified harsh, cruel, and inhumane treatment.

Clemente also met with LTC Jerald Phifer, who had set out the Counter-Resistance Strategies in his memorandum to Major General Michael Dunlavey. Clemente explained to Phifer that he would not sign off on the harsh interrogation Counter-Resistance Strategies. According to Clemente, Phifer had already told people that other agents of the FBI had signed off on Phifer's interrogation plan.¹⁸⁷ Clemente assured him that the FBI would never sanction such tactics. Cle-

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. 18 U.S.C. §§2340–2340A (2001).

184. Interview with Jim Clemente, *supra* note 160.

185. *Id.*

186. *Id.*

187. *Id.*

mente added that after his meetings with Phifer, he decided to document his experiences and observations in Guantanamo, thinking that he was not certain “how high up people knew of what was going on down here.”¹⁸⁸

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

However, confirming the attitude that Clemente discovered when dealing with the military in Guantanamo, Bowman explained how the FBI was “basically told to go pound sand.” That is, the military told them that this “is not an FBI thing. It’s a military thing and we’ll do it our way.”¹⁸⁹ When Bowman contacted the DoD’s Principal Deputy General Counsel Daniel Dell’Orto to question the military’s approach, Dell’Orto said he would inquire into it. However, “nothing happened.”¹⁹⁰

Bowman then contacted Pentagon General Counsel Jim Haynes, Dell’Orto’s supervisor. Haynes dismissed the concern, saying that Dell’Orto was handling the issues. Bowman knew that Haynes was lying and was “flabbergasted.” In speaking of himself and a handful of senior military officers who manage rules of engagement and law of armed conflict training throughout the DoD, “[e]verything we had been teaching for so very long was just being tossed out the window, just virtually overnight. And all of us were simply stunned that this could go on because each one of us, in our own sphere of influence, who was really quite influential didn’t do any good.”¹⁹¹

Bowman also acknowledged to W2G that the FBI observed mistreatment at the detention center. He believed that what the military was doing was “dysfunctional,” and that there was a “better way to get [actionable intelligence].”¹⁹² Throughout his W2G interview, Bowman made it clear that the FBI would not “go to the dark side,” but rather “stay with the rules that you’d been taught.”¹⁹³ He added that, similar to Clemente’s visit, he too went to Guantanamo to advise interrogators tied to various agencies about proper interrogation techniques and the rights of people who are captured.

Bowman faults the military for making a “fundamental change in the role of the interrogator,”¹⁹⁴ and in training the military interro-

188. *Id.*

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

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

gators in the SERE program and adopting SERE techniques in interrogations. Bowman noted, “[t]he purpose of SERE school is not to elicit information. It’s to resist information.”¹⁹⁵ “You don’t take that kind of mistreatment and try to elicit information out of it.”¹⁹⁶ It is just “fundamentally flawed.”¹⁹⁷

However, although some military interrogators were, according to Bowman, “relieved” and “grateful” for the FBI guidance, Bowman’s and Clemente’s trips to Guantanamo had little effect. Soon after Bowman’s visit, the DoD issued to the interrogators “specific marching orders.”¹⁹⁸ Bowman repeatedly stressed that FBI and NCIS objections made no difference, and the fact that the FBI had had decades of training was “ignored.”

The irony of the FBI’s influence and effect in those early days of Guantanamo is reflected in the May 5th, 2003 BAU memorandum. The BAU author wrote of several examples where military personnel have awaited the departure of an FBI supervisor “before embarking on aggressive, unilateral interrogation which they knew would not have been endorsed by the FBI.”¹⁹⁹

Mark Fallon, who on 9/11 was Chief of Counter Intelligence Operations for the Europe, Africa, and Middle East Division of the NCIS,²⁰⁰ reaffirmed Clemente’s approach to interrogation and the conflicting issues with military interrogations. When interrogations began in Guantanamo, Fallon became the deputy commander of the DoD’s Criminal Investigation Task Force (CITF), composed of representatives from the military’s criminal investigative organizations. CITF’s interrogations were rapport-based.

195. *Id.*

196. *Id.*

197. Bowman had comments on several of the men in power, whom he had known. He thought that John Yoo, who worked across the street from him, and who drafted the torture memos, “believed in what he was writing.” Bowman understood that the harsh interrogation issues were made known to Attorney General Ashcroft, although he does not know how Ashcroft responded. He believed that David Addington, Cheney’s Legal Counsel in 2001–2005 and then became Cheney’s Chief of Staff, was “heavily involved” in Guantanamo issues and that with Cheney, they were the “driving forces behind the policies.” He also believed that White House Counsel Alberto Gonzales was “way over his head,” in understanding and dealing with the issues. And Bowman had “very little respect” for Rumsfeld. Bowman believed that Rumsfeld did not try to find solutions to contemporary problems, but ignored them. Bowman told W2G that when Cheney was Secretary of Defense in the elder Bush’s administration, he was “very kind, jovial, focused” and “personable.” However, when he became vice president, “he was an entirely different personality.” He was “driven in ways that I’d never seen as Secretary of Defense.” *Id.* This remark is similar to that made by Col. Lawrence Wilkerson who described Cheney as power hungry. Wilkerson indicated that when Cheney was hired as chair of the search committee to find a vice president, Cheney intended all along to become the VP on his own. “He picked himself,” Wilkerson said of Cheney. Interview with Lawrence Wilkerson in Wash., D.C. (Mar. 9, 2011).

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

199. Memorandum from Critical Incident Response Grp. (CIRG) & Behavioral Analysis Unit to Raymond May and Marion Bowman (May 30, 2003).

200. David Brant, Director of the Naval Criminal Investigative Service (NCIS) confirmed to W2G that the NCIS also believes in rapport-based interrogations. Interview with David Brant, *supra* note 17.

Fallon explained to W2G that the humane treatment of a detainee, as undertaken by the CITF at Guantanamo, was nearly no different from the interrogation of any other person in the U.S. prison system, with two exceptions: detainees in Guantanamo were not read their Miranda rights and did not have the right to an attorney present at questioning.²⁰¹

Fallon added that, “You can’t make somebody talk. There is no truth serum It’s developing rapport.” He also seconded Clemente’s belief that military interrogation tactics prevented the military from obtaining actionable intelligence.²⁰² He too became frustrated with the changes that the military adopted in conducting interrogations. In fact, Fallon was the person who initiated the chain reaction of protests, led by General Counsel of the Navy Alberto Mora that went all the way up to the desk of Secretary of Defense Donald Rumsfeld.

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

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

As Mora explained to W2G, in December 2002 David Brant, the director of the NCIS informed Mora that interrogations in Guantanamo were not conducted according to the Army Field Manual. Brant had heard this from Mark Fallon.²⁰³ Then, Brant, along with Dr. Michael Gelles, a senior psychologist, met with Mora. They disclosed that they had reliable information indicating that abusive interrogations were occurring in Guantanamo, and that interrogations could continue to deteriorate under the theory of “force creep.”²⁰⁴ That theory, according to Mora, was that because the interrogators were untrained, undisciplined, and possibly authorized, the abuse could get much worse and could reach levels of torture.²⁰⁵

Mora sought out General Counsel of the Army, Steve Morello for further verification. Morello showed him the memos by Phifer,

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

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

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

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

205. *Id.*

Dunlavey, and Beaver. Mora had not been aware of the existence of the memoranda. Mora also noticed Rumsfeld's handwritten comment that because he stands for eight hours a day, why is it a problem for a detainee to be required to stand for four hours?²⁰⁶ Mora saw these memos and the direction in which they were going as a legal, political, and policy "disaster." He decided to make an appointment with Jim Haynes, the chief Pentagon lawyer.²⁰⁷

When they met, Mora spent nearly the entire meeting laying out arguments as to why these techniques should not be implemented, and that the techniques violated constitutional standards and American values. He called Beaver's memorandum "incompetent" and that her conclusions were "all wrong."²⁰⁸ Haynes said very little, other than that the techniques in the documents were not torture.²⁰⁹ When he left Haynes' office, Mora believed that Haynes would phone Rumsfeld and inform him that Rumsfeld and he (Haynes) had made a mistake in approving them.²¹⁰ That next day, an optimistic Mora "was absolutely confident that this was resolved."²¹¹ He expressed to W2G, "[a]ctually I thought, you know, this is the best work I've ever done as a lawyer, best work I've ever done in government. This is the greatest service I've ever rendered for my country."²¹²

Mora asked Gelles to write a comprehensive memo explaining that, in the literature, relationship based interrogations, where one builds trust, were the gold standard. The memorandum's conclusion was well supported. The memorandum was submitted to the working group, but had little effect. As Mora described it, people were compelled, as working groups often are, to assume various positions "channeling them back into the same old Guantanamo projections."²¹³

To compound the problem for Mora, and help entrench a harsh interrogation policy in Guantanamo, someone asked the Office of Legal Counsel to submit a memorandum to the task force. The memorandum was by John Yoo, and it was one of his torture memoranda. Mora had not heard of Yoo at that time. However, when he read the memorandum, he was appalled by the standards and levels of cruelty and torture justified by the memorandum. He told Walker that the memorandum was terribly reasoned and not good law. She disagreed with him. She added that Haynes also thought that it was good analysis and good law.²¹⁴

If the Yoo memo were applied to the working group, the working group would have to accept the Yoo analysis as its foundation, Mora explained to W2G. The consequence of incorporating Yoo's memoran-

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

dum would allow all “that Rumsfeld had authorized in Guantanamo be reauthorized again under the pretense of a greater authority.”²¹⁵

Mora contacted Haynes and emphasized that the Yoo memo was wrong on the law and in its analysis, and that the working group should not adopt it. Mora heard no more about the task force memo after that. A final draft of the task force’s work was never circulated, and the working group was disbanded. Mora, consequently and to his short-term relief, believed that Haynes never finalized the task force document, a document that would have relied on Yoo’s memorandum.²¹⁶

However, months later Mora learned that although Haynes had never sought final approval of the document from the task force, the document had been formally approved by the Office of the Secretary. On his own authority, Haynes had signed out the report. As Mora tells it, Haynes had taken the document out of the working group process, authorized the document and kept his actions and the document hidden from the military services except for Mary Walker. The document was then circulated into the military channels.²¹⁷

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

B. *Torin Nelson, Guantanamo Interrogator in 2002*

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

Torin Nelson was well-trained as a military interrogator before 9/11. He began his career in 1992. However, he and the other interrogators in those years were trained in cold war interrogation tactics. He knew five languages including Russian. As he told W2G, “I was a foreign Soviet Union Eastern European specialist When 9/11 occurred, I was re-stamped as counter terrorism, counter extremist Middle East Central Asian Expert.”²¹⁸ Even the best trained were not trained in the culture of the Middle East, much less in learning about the Taliban. When 9/11 happened, interrogators were unprepared for interrogating al Qaeda or Taliban. Nelson prepared himself after 9/11 by reading a book on the Taliban.

215. *Id.*

216. *Id.*

217. *Id.*

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

According to Nelson, there were only 1200 interrogators before 9/11.²¹⁹ There was no need for more during the Cold War. Then, after 9/11, the military increased the number tenfold over the decade, adding approximately 3000 interrogators per year from the U.S. Army Intelligence Center.²²⁰ The problem, as Nelson understood it, was that the new interrogators were not well trained, but rather were rushed into duty. The need was great, and quality control was not a primary concern. Damien Corsetti presented a similar observation when he described the minimum training he received before becoming an interrogator in Bagram.²²¹

When Nelson arrived in Guantanamo, they put him into an interrogation unit without any training or background on the people he would be interrogating.²²² Although he had thought that with his background in Russian and eastern European culture, he would be one of the least experienced interrogators, he turned out to be one of the most experienced. He was assigned to, as he explained it, the most difficult detainees to interview, the Saudis and Yemenis.²²³

Nelson worked as a military interrogator in Guantanamo from July 2002 to February 2003. He told W2G that unlike some of his colleagues he adhered to the rapport-based approach. However, Nelson was required to interrogate 40 detainees per month,²²⁴ which would, seemingly, limit his ability to establish a relationship with them. Nevertheless, he told W2G that he believed he was successful in obtaining relevant intelligence in his interrogations. As he explained, his focus was on military and insurgent capabilities, as well as on morale, methodologies, tactics and strategies.²²⁵

Detainees had told W2G that they would have to make all their requests to their interrogators. That is, the interrogators would control their comfort items, their visits to the doctor or dentist, and other requests that they made.²²⁶

Nelson explained to W2G that the military's attitude toward gathering intelligence was backwards in thinking. That is, when other interrogators in Guantanamo were not obtaining the intelligence that the military expected, the military did not take a self-reflective look into its own programs and examine whether the interrogators were doing their jobs correctly and effectively. Instead, the military placed the blame on the detainees for holding out. As Nelson described it, the leadership did not look into what it would take to "become a better interrogator, it was mostly, well what can we do to the detainees to get them to talk?"²²⁷

219. *Id.*

220. *Id.*

221. *See* Part I.

222. Interview with Torin Nelson, *supra* note 218.

223. *Id.*

224. *Id.*

225. *Id.*

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

227. Interview with Torin Nelson, *supra* note 218.

While in Guantanamo, Nelson was aware of the cruel and abusive treatment that al Qaeda suffered. It was hard not to be aware, he said. It was such a small community, and the interrogators would gather together and talk when they had down times. However, according to Nelson, it was not until General Geoffrey Miller arrived in Guantanamo in November 2002 that the culture dramatically changed and all interrogators were expected to use harsher methods to obtain intelligence.²²⁸ He also believed that many of the newly hired, younger and less experienced interrogators “may have been more susceptible to coercive techniques.”²²⁹ When W2G asked Nelson whether he ever thought of speaking out against any of the abuses occurring in Guantanamo, he replied, “[w]ell in that time period you basically kept quiet about it, if you had any disagreements . . . [t]he attitude was . . . even at the four star general level—was, f these guys, they’re all terrorists . . . I’m an E-5 ‘buck’ sergeant at the time . . . [and] had no voice at that point.”²³⁰

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

Nelson believed that a significant portion of the detainees should not have been held in Guantanamo. They were not a threat to the U.S. and should have been released soon after they had arrived in Guantanamo, or “should never been sent to Gitmo to begin with.”²³¹

C. Jennifer Bryson

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

228. It was believed that Miller instituted harsh interrogation practices, including CIDT and torture in interrogation techniques in Iraq, perhaps contributing, if not directly causing, the notorious event of American soldiers torturing and brutalizing detainees at Abu Ghraib prison. Miller was targeted as the person who “Gitmoized” Iraq, instituting the culture that caused Abu Ghraib. *Interview with Janis Karpinski*, FRONTLINE (Aug. 5, 2005), <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/karpinski.html#3> (stating that Miller said he was going to “Gitmoize” the operations at Abu Ghraib). See also THE CONSTITUTION PROJECT, *supra* note 22, at 22, 40.

229. Interview with Torin Nelson, *supra* note 218.

230. *Id.*

231. *Id.*

extent interrogators can . . . speak publicly, I think interrogators themselves need to be part of the public discussion.²³²

This statement is a rare declaration from an interrogator. Few interrogators have agreed to speak to W2G, often out of fear of reprisals to them and their families if they go public. Jennifer Bryson has always placed ethics and doing good over herself. And in the fall of 2011, she courageously went public, aware of the risks in being identified as an interrogator. As she explained to W2G, after 9/11 she wanted to do something for her country, to defend her country, to “protect the country in my own small way that I could.”²³³ And she found the opportunity.

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

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

The fact that Bryson underwent a rigorous training program based on the Army Field Manual’s humane treatment standards in fall 2003 was in marked contrast to the minimal, if any, training the military provided interrogators in 2002, as described by both Damien Corsetti in Part I and Torin Nelson above.²³⁴

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

In February 2004, Bryson began her job as a DoD interrogator, and was appointed as the first civilian and female²³⁵ team chief interrogator

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

233. *Id.*

234. *See supra* Section II.2.

235. The fact that Bryson became the first female and civilian team chief was a huge step for the military, but not one that went over well with every interrogator in Guantanamo. One administrator in the training program said to her, “you’re a woman, they’re not going to speak to you. There’s no point in you getting this training.” Bryson told W2G, “[a]nd, indeed, he proved to be wrong.” Interview with Jennifer Bryson, *supra* note 232. Mark Fallon told W2G that in the CTF, “some of our better interrogators were

in Guantanamo. The team chief's responsibilities were to supervise a team of interrogators and analysts that focused on a specific group of detainees.²³⁶ Before she became team chief, the officers who were in charge of the interrogation units were intelligence officers and not trained interrogators.²³⁷ Similar to Nelson's group of detainees, Bryson was also assigned to the Saudis.

In explaining her training, Bryson emphasized how she learned to both let go of her assumptions and become aware of her assumptions. She added that "interrogators don't just walk in and talk about whatever they feel like asking about that day."²³⁸ Rather, the intelligence analysts determined the topics. However, the interrogation was never scripted and would constantly divert to new topics and issues as necessary. The team chief, in this case Bryson herself, would discuss with each interrogator the detainee to be interviewed, the approaches the interrogator planned to use, and the areas of inquiry. Bryson emphasized several times during her interview with W2G that the Army Field Manual guided all interrogations in Guantanamo during her tenure there.

As Bryson described it, the DoD returned to a more humane approach in fall 2003 when she began her training. In addition to possibly finding that over the past two plus years that the military's harsh interrogation techniques did not result in obtaining much, if any, actionable intelligence, there are likely several other reasons why this change occurred. The war in Iraq had begun in spring 2003, and unlike the war in Afghanistan, the U.S. had decided to abide by the Geneva Conventions (GC) in Iraq. Consequently, the captives were treated as prisoners of war in Iraq, unlike the captives in Afghanistan and Guantanamo who were deemed "enemy combatants," a term used by the administration to circumvent the GC.²³⁹ By applying the GC to the Iraq War, the military intended to return to a humane interrogation policy in Iraq.²⁴⁰ The DoD may have seen the need to return to a similar humane interrogation approach in Guantanamo.

There were other indicia indicating that times were changing. The United States Supreme Court announced on November 10, 2003, that it would hear arguments in the case of *Rasul v. Bush*.²⁴¹ *Rasul* challenged

women." He continued, "some of our more effective elicitors, those who got us good information just happen to be a woman. And initially we thought that would not be the case." Interview with Mark Fallon, *supra* note 10.

236. Interview with Jennifer Bryson, *supra* note 232.

237. *Id.*

238. *Id.*

239. See Honigsberg, *supra* note 73; see also Peter Jan Honigsberg, *The Real Origin of the Term 'Enemy Combatant'*, HUFFINGTON POST (Jan. 9, 2014); http://www.huffingtonpost.com/peter-jan-honigsberg/the-real-origin-of-the-te_b_4562216.html.

240. Abu Ghraib excepted, see *infra* text accompanying notes 225–226.

241. *Rasul v. Bush*, 542 U.S. 466 (2004).

the Bush administration's refusal to grant habeas hearings to the men in Guantanamo.²⁴²

Although the Bush officials and lawyers must have thought that they would prevail in the Supreme Court, there was always the fear that they could lose. And if they lost, lawyers would be permitted to fly to Guantanamo to meet with the detainees and help prepare their cases. Up until then, no lawyers were permitted to represent the detainees,²⁴³ except to represent the very few detainees selected to be tried in a military tribunal. Once lawyers would regularly travel to Guantanamo, the government would no longer be able to interrogate the detainees with impunity. A lawyer would be watching.

In April 2004, while Bryson was in Guantanamo, photos of horrific torture practices in the Iraqi Abu Ghraib prison were released. And, although the government argued that the torturers in Abu Ghraib were rogue soldiers,²⁴⁴ the Senate Committee on Armed Services in its report rejected that idea. According to the report,

Secretary of Defense Donald Rumsfeld's December 2, 2002 authorization of aggressive interrogation techniques and subsequent policies and plans approved by senior military and civilian officials conveyed the message that physical pressures and degradation were appropriate treatment for detainees in military custody. What followed was an erosion in standards dictating that detainees be treated humanely.²⁴⁵

Abu Ghraib may have again confirmed to the military the logic and value in following the Army Field Manual.

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

Bryson explained that an interrogator did not make determinations as to the value of the intelligence obtained. That was the job of the military analyst. And, each analyst in Guantanamo worked in coordination with a particular interrogator. The interrogator's job was to obtain whatever she could and to write it down while interrogating. She noted that on television shows like *24*, the viewer "never sees the interrogators writing because writing might be boring."²⁴⁶ Taking extensive

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

243. See *Rasul*, 542 U.S. at 466 (granting detainees statutory rights to habeas).

244. See *Rumsfeld visits Iraq's Abu Ghraib prison*, CNN.COM (Mar. 4, 2005, 12:22 PM), <http://www.cnn.com/2004/WORLD/meast/05/13/iraq.abuse/> (quoting Rumsfeld as stating "there's been a focus on a few who've betrayed our values . . ."); George W. Bush, President of the U.S., Remarks at the U.S. Army War College on Iraq and the War on Terror (May 24, 2004) (calling Abu Ghraib "a symbol of disgraceful conduct by a few American troops who dishonored our country and disregarded our values").

245. *The Treatment of Detainees in U.S. Custody*, *supra* note 16.

246. Interview with Jennifer Bryson, *supra* note 232.

notes while interviewing seemed surprising. Why not audiotape the interrogations? W2G asked her.

Bryson responded that there was no tradition of audiotaping in the military. The rationale was that the interrogator may be conducting interrogations on the battlefield, where she would not have access to technology. Hence, note taking was a critical skill. As Bryson explained it, there was a difference between listening and hearing. Because the interrogator often had only one chance to talk to that person on the battlefield, she needs to learn to record it carefully in writing. Interrogators were trained to “maintain human connection and eye connection and take notes.”²⁴⁷

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

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

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

And I remember the request said the music will only be up to such-and-such decibel and research has shown that this level, you know, cannot harm the hearing . . . it was absolutely disturbed and baffled and perplexed, because this had absolutely nothing to do with how I had been trained. This had absolutely nothing to do with what the army had taught us was allowed . . . [a]nd it just seemed wrong and I could not rationally imagine how this would work.²⁴⁸ When I arrived, it was assumed that I would just say yes. I don’t know how long this had been going on, and I can only speak to my experience when I was there But when I said no I said no and there was going to be no choice.

. . . And the interrogator who had been using this was having zero success. And my interrogators who were learning to really

247. *Id.*

248. *Id.*

develop rapport-based interrogation, developing a human connection with the detainee, were having success.²⁴⁹

To Bryson, the first step in interrogation is “preparation, preparation, preparation.”²⁵⁰ This includes background information about the detainee, aspects of his personality, personal interests, and personal values. The information is taken from intelligence reports, previous interrogator notes, and analysts’ contributions.

Bryson also indicated that interrogation is extremely exhausting, “it felt like somebody had put my brain in a blender on, you know, crush.”²⁵¹ Pacing oneself is critical here so that the interrogator goes into the interrogation with a clear mind.

At the interrogation, food and drink mattered. “Food was very, very, very important for many of the interrogations,” she noted.²⁵² Bryson always made it her habit to have tea present, using china cups, and to share tea with the detainee. According to Bryson, sometimes detainees who were on hunger strikes would break their hunger strike and eat during an interrogation. They were assured that other detainees with whom they wanted to be in allegiance and solidarity would not know.

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

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

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

As she explained it, “[w]ithout trust, at least the tiniest amount of trust, things didn’t work.”²⁵³ Again she reminded us that although understanding body language or narrative discourse can be helpful, it is up to the analysts to assess the validity of the information. The interro-

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

gator's role is to collect and record the information, even if something "bizarre" is said.

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

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

Unless the room was booked for a certain time, and someone else was set to use it, she relied on intuition to terminate the interrogation. For example, the detainee was worn out or tired. She would also terminate if necessary to maintain control of the session. Similarly, if it was a difficult session and all that could be done had been done for the day, she ended it. However, she noted that terminations needed to be handled very carefully. She would let the detainee know that if he had any additional information, he should send her a message through the guard force and she would meet him. "You don't just ask questions and walk out of the room. That simply is rude. We would sort of close down for the day, say farewell, and then close."²⁵⁴

When we asked her about former detainees who had told W2G that they were not able to obtain medical help, see a doctor or dentist, or obtain comfort items without the approval of the interrogator, she responded, "[t]his is not true."²⁵⁵ She added that the interrogators had no contact with the medical personnel and no access to medical records. Rather, the interrogator would have to speak to an army officer to get to the medical team, if an issue arose such as whether the detainee had food allergies. And it was up to the medical team to determine what to do. She added that interrogators were not permitted in the medical facility, although they could visit a detainee in the cellblock, under certain conditions.

She then told of a Saudi detainee, "somebody who had been involved in planning an attack that you would have heard of . . . [a]nd who was no fan of Americans." He said to her, "you know, I've noticed that you Americans are providing medical care for all the detainees including the ones who don't talk. You know, I have to admit that in my country, I don't think we would do that. I respect you for this."²⁵⁶

Although she would not talk about specific questions she had asked, Bryson discussed some of the topics in which detainees were

254. *Id.*

255. *Id.* Cf. Torin Nelson's remarks on this issue, *supra* Section II.2. Bryson was not clear as to whether the policy had changed by the time she arrived or whether it was only her team that did not have this power over their detainees.

256. Interview with Jennifer Bryson, *supra* note 232.

interested. These included a detainee's training to help predict potential types of attacks.

Bryson also expressed disappointment that the military, although interested in how the men became attached to their ideology and violence in support of their ideology, was not even more interested in these areas. She believed that the military was still coming out of a system based on the Cold War and the technicalities of a military situation.²⁵⁷ Yet, to her, these questions of how they became attached to violent ideologies were of long-term significance.

She explained that when she first arrived, the previous interrogation team was not having success with the Saudi detainees in gathering intelligence. She believed that prior to her arrival there was an environment of opposition to the detainees. She noted that many of them "would have been thrilled to kill us." Nevertheless, she believed that the military did not have to take an oppositional posture to them, and that there was a "tremendous human side to every single detainee."²⁵⁸

She believed that the Saudis who were in Afghanistan in fall of 2001, "weren't there growing pear trees."²⁵⁹ Many of the younger detainees "had gone there tremendously idealistic and committed" and then became disillusioned over time.

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

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

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

[T]he reason I was doing it was because I thought we had a country worth protecting. And I was deeply concerned and didn't understand the point of – I mean if you add cruelty and torture as a systematic officially-approved part of what we do, it's not a country I'd want to defend. And it was also completely counter to the training that I had. It was completely counter to military interrogators I had taught and it was counter to my experience as an interrogator.²⁶⁰

She added that the work was very meaningful and that "I experienced interrogation as a non-violent way to prevent future violence Every

257. Nelson also confirmed this in his interview. *See supra* Section II.2.

258. Interview with Jennifer Bryson, *supra* note 232.

259. *Id.*

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

single person, even people who want to kill us, is—individuals are human.”²⁶¹ Each of the detainees had his own individual story and motivation as to why he was there.

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

Something that I emphasized to my interrogators, by which I mean the interrogators I supervised from the beginning, is probably all these detainees at some point are going home. And when they’re home and they think American and if let’s say, an idea comes up to attack an American hotel, they’re going to think of you. Leave with them an impression of a human being who has treated them respectfully.²⁶²

PART III. SIX LONG-TERM UNINTENDED CONSEQUENCES OF THE MILITARY’S SHORT-TERM HARSH INTERROGATION TACTICS

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

1. The U.S. is constrained in prosecuting dangerous detainees successfully, and accordingly, Guantanamo is still open.
2. America’s reputation at home and abroad has gravely suffered.
3. As the symbol of our violations of human rights and the rule of law, Guantanamo has become a terrorist recruitment tool.
4. For young Americans, Guantanamo, torture and CIDT have always existed and have become ingrained in our culture.
5. The harsh treatment motivated detainees to become violent, and/or to turn their anger against the U.S., after their release.
6. Noncombatant personnel who worked with detainees and participated in or observed mistreatment suffered PTSD.

A. *Overarching Thoughts*

As John Yoo, the Deputy Assistant Attorney General in the Department of Justice’s Office of Legal Counsel explained,²⁶³ the administration selected Guantanamo, Cuba, because officials thought that the U.S. Constitution did not apply in Guantanamo. Under that theory,

261. *Id.*

262. *Id.* After she left the DoD, Bryson became the Director of the Islam and Civil Society Project at the Witherspoon Institute in Princeton, New Jersey. She has also been a visiting professor and guest instructor at the U.S. Army War College in Carlisle, PA, and sits on the Board of Directors of Peach Catalyst International.

263. JOHN YOO, *WAR BY OTHER MEANS: AN INSIDER’S ACCOUNT OF THE WAR ON TERROR* 142–43 (2006).

detainees would have not been able to file habeas petitions for the right to a hearing before a federal judge. To the administration in the early years following the attacks on 9/11, Guantanamo was a place outside the law. And no one at the highest levels of the administration apparently gave much, if any, thought to the long-term implications of approving and even encouraging the military's short-term unlawful and abusive interrogation strategies.

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

B. *Consequences*

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

As described in Parts I and II, because the U.S. military cared only about gathering intelligence to avert another attack, it did not concern itself with whether the evidence it collected was admissible in a court of law. Consequently, the military hampered law enforcement's goal to gather evidence for prosecution of terrorists. As Mark Fallon and others have explained,²⁶⁴ the abusive interrogation of suspects caused detainees to shut down and no longer talk, even after law enforcement had established a rapport with them.

In addition, evidence obtained through torture and CIDT is prohibited under law from use at a civil trial and even at military commissions. For example, the Pentagon dismissed the military commission case against Qahtani because he had been tortured in Guantanamo.²⁶⁵ In another example, a federal court excluded statements made by Binyam Mohamed, implicating Farhi Said Mohammed in terrorist activity, because Mohamed had been tortured in a black site in Morocco, including having his penis sliced with a scalpel.²⁶⁶ After excluding Binyam Mohamed's statements, the court granted Farhi Said Mohammed's habeas petition.²⁶⁷

Because of the harsh interrogations conducted by the military, rather than the rapport-based interrogations promoted and conducted by federal law enforcement officials, the U.S. is unable to prosecute cer-

264. Interview with Mark Fallon, *supra* note 10.

265. William Glaberson, *Case Against 9/11 Detainee Is Dismissed*, N.Y. TIMES (May 14, 2008), <http://www.nytimes.com/2008/05/14/washington/14gitmo.html>.

266. *Binyam Mohamed: the torture allegations*, TELEGRAPH (Jan. 12, 2012), <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/9010123/Binyam-Mohamed-the-torture-allegations.html>.

267. *Id.*

tain alleged terrorists. Because the U.S. was afraid to release these men and did not know what else to do with them, it continues to hold them at Guantanamo. Consequently, Guantanamo remains open today. Had we conducted humane interrogations, we would have obtained admissible evidence, allowing us to prosecute those who engaged in criminal acts and release those who did not.²⁶⁸

Guantanamo has been open for more than fourteen years after the first planeload of detainees arrived on January 11, 2002. In addition, more than seven years have passed since President Obama declared on his second day in office that he would close Guantanamo within a year.²⁶⁹

As of April 2016, the following numbers apply: eighty-nine men are still living in Guantanamo, most without charges.²⁷⁰ They may live there for the remainder of their lives. Thirty-five of the men remaining in Guantanamo have been cleared for release.²⁷¹ Most of the men cleared for release are from Yemen.²⁷² Ever since the underwear bomber tried to bring down the plane in Detroit on Christmas Day,²⁷³ Obama has refused to send any of the Yemeni detainees back to Yemen,²⁷⁴ although several have been resettled in other countries.²⁷⁵

Forty-eight of the men have been designated for indefinite detention, which means that they may be held in Guantanamo until they die.²⁷⁶ Twenty-three men may be charged with crimes and recom-

268. Under the Geneva Conventions, prisoners of war may be held until the end of hostilities. Geneva Convention Relative to the Treatment of Prisoners of War art. 118, Aug. 12, 1949, 75 U.N.T.S. 135 (“Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.”). However, because the Bush Administration did not apply the Geneva Conventions to the war on terror and to Guantanamo. See Memorandum from George W. Bush, *supra* note 73 (noting that the rules in the GC would not apply).

269. Mark Tran, *Obama signs order to close Guantanamo Bay*, THE GUARDIAN (Jan. 22, 2009), <http://www.theguardian.com/world/2009/jan/22/hillary-clinton-diplomatic-foreign-policy>.

270. Charlie Savage, *2 Libyan Guantanamo Inmates Are Transferred to Senegal*, N.Y. TIMES (Apr. 4, 2016), http://www.nytimes.com/2016/04/05/us/politics/guantanamo-transfers.html?_r=0.

271. *Id.*

272. Cliff Sloan, *The Path to Closing Guantanamo*, N.Y. TIMES (Jan. 5, 2015), <https://www.nytimes.com/2015/01/06/opinion/the-path-to-closing-guantanamo.html>.

273. Charlie Savage, *Christmas Day Bomb Plot Detailed in Court Filings*, N.Y. TIMES (Feb. 10, 2012), http://www.nytimes.com/2012/02/11/us/underwear-bomb-plot-detailed-in-court-filings.html?_r=0; Paul Harris, *‘Underwear bomber’, accused over Christmas Day terror plot, goes on trial*, THE GUARDIAN (Oct. 11, 2011), <http://www.theguardian.com/world/2011/oct/11/underwear-bomber-plot-trial-detroit>.

274. Peter Finn, *Return of Yemeni detainees at Guantanamo is suspended*, WASH. POST (Jan. 5, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/05/AR2010010502850.html>.

275. Sloan, *supra* note 272; Savage, *supra* note 273.

276. Adam Hudson, *“Bush’s Fourth Term Continues”: Guantanamo, Torture, Secret Renditions; Indefinite Detention*, TRUTHOUT (May 30, 2014), <http://truth-out.org/news/item/24030-bushs-fourth-term-continues-guantanamo-torture-secret-renditions-indefinite-detention>.

mended for prosecution.²⁷⁷ The current Military Commissions' prosecutions of the five men accused of orchestrating and participating in the preparation of the attacks on 9/11, as well as the prosecution of the man accused of the bombing of the USS Cole, have been moving so slowly that it is unlikely that even one of the cases will begin, much less end, before Obama leaves office in 2017.²⁷⁸

2. America's reputation at home and abroad has gravely suffered.

Rushan Abbas was a translator for the Uyghurs, first working for the government in Guantanamo and later for the lawyers representing the Uyghurs. She is an immigrant from East Turkestan, the home of the Uyghurs. East Turkestan was absorbed into China in the middle of the last century. In her interview with W2G, Abbas poignantly wondered, "[w]hat if our forefathers, they see, they know what's happening today in Guantanamo, how would they feel about this?"²⁷⁹ "[In] my 20 years in United States, I always want to see the great side of the United States. But the last 8 years, what I have endured, what I have experienced in Guantanamo was not the side that I want to see of my country."

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

In addition, by ignoring the Geneva Conventions, the Convention Against Torture and the International Covenant on Civil and Political Rights, America announced to the world that we would not play by universal rules, even when we sign international treaties that become part of American law. As a consequence, America's reputation for justice and fair treatment suffered not only at home, but also abroad. America lost its reputation as the world's moral compass and foremost defender of human rights and the rule of law. Countries no longer look to the U.S. as the model of decency and promoter of humane values. Other nations now feel that we have also given them permission to replicate our shameful behavior in interrogating and treating their own captives.²⁸⁰

To many people around the world, Guantanamo has become the symbol of America's violation of human rights and the rule of law. That is, whatever the extent of harsh interrogations, torture and CIDT that

277. Stacy Kaper, *Half of the Prisoners at Gitmo Have Been Cleared for Release*, NAT'L J. (June 16, 2014), <http://www.defenseone.com/politics/2014/06/how-close-guantanamo-without-swapping-prisoners/86569/>.

278. Jessica Schulberg et al., *Most of the 9/11 Plotters Haven't Been Convicted or Executed. Blame Gitmo.*, HUFFINGTON POST (Sept. 10, 2016), http://www.huffingtonpost.com/entry/911-terrorists-guantanamo-military-commissions_us_57d308bce4b06a74c9f49858.

279. Interview with Rushan Abbas, Interpreter, in Palau, Micr. (Jan. 5, 2010).

280. Malinowski *supra* note 20; Cassin, *supra* note 20, at 447.

occurred at Guantanamo, even though the interrogation tactics changed in later years, Guantanamo has become synonymous with the harsh tactics used by the military at the outset post 9/11.

In a survey published in October 2007, 87% of foreign policy authorities believed that Guantanamo hurt the U.S. fight against al Qaeda.²⁸¹ A response to the survey noted:

At the strategic level, it has undercut the U.S. case around the world that we represent a world view and a set of values that all can admire, even those who do not wish to replicate our system and society in their own countries. Gitmo has become a symbol for cruelty and inhumanity that is repugnant to a wide sector of the world community and a powerful tool that al Qaeda can use to damage US interest and recruit others to its cause.²⁸²

Another response from this survey said that Guantanamo “has hurt America disastrously. The so-called global war on terrorism depends fundamentally on America’s moral authority, so that other nations will want to cooperate with us. Guantanamo has become a vibrant symbol of American exceptionalism, but this exceptionalism is unwanted around the world.”²⁸³ In addition, “[o]ur strongest asset internationally was our reputation and credibility on human rights. We have squandered that.”²⁸⁴

Senior Intelligence Service Officer for the CIA, Emile Nakhleh, who interviewed 24 detainees in Guantanamo, believed it was critical that we shut down the detention center. He explained to W2G that not only did Guantanamo not assist our national security, but it “undermined even mainstream moderate Muslims in dealing with us because, you know, if we are going to a certain country to teach their budding lawyers and judges about the rule of law, the first question they always ask is, what about Guantanamo.”²⁸⁵

Nakhleh believes that we may have lost the “Guantanamo generation.” America now needs to “reach out to rising generations of youth; the youth that fueled the Arab Spring, the youth that want freedom, that want entrepreneurship, that want jobs, that want dignity. We need to reach out to that generation.”²⁸⁶

As CITF chief Mark Fallon explained, Guantanamo was an “opportunity lost This was an opportunity for us to show the world, set an example for the world.”²⁸⁷ Instead, we abused our authority. Fallon also noted²⁸⁸ that the screening process was “terrible,” that many of the

281. *Guantanamo’s Shadow*, THE ATLANTIC (Oct. 1, 2007), <http://www.theatlantic.com/magazine/archive/2007/10/guantanamos-shadow/306212/>.

282. *Id.*

283. *Id.*

284. *Id.*

285. Interview with Emile Nakhleh, Senior Intelligence Service Officer and Director of the Political Islam Strategic Analysis Program, CIA, in S.F., Cal. (Apr. 10, 2013).

286. *Id.*

287. Interview with Mark Fallon, *supra* note 10.

288. *Id.*

men investigated had done no wrong, had no prosecutorial value, and also had no intelligence value.²⁸⁹

General Counsel of the Navy Alberto Mora told W2G that America's legal policies had affected military operational activities. He explained how British soldiers had captured a terrorist in Iraq, but released him in 48 hours because they could not trust that if he were transferred to the Americans, the Americans would not abuse him.²⁹⁰ Mora also told how the Australian Navy refused to train with U.S. troops because of our mistreatment of captives. And he told how the British deputy commander of all Afghan forces would leave the room whenever detainee operations were discussed because he would not become complicit in any potential criminal activity in which the U.S. engaged.²⁹¹

Mora added how the International Committee of the Red Cross would complain to him that what they heard about abusive treatment of prisoners in detention in rogue countries was exactly what the United States was doing. These rogue nations would ask the Red Cross why the Red Cross would complain to them about abuse in their prisons, if the U.S. was also doing it.²⁹² As Mora told W2G, "for the United States to be responsible for the increase in detainee abuse as a direct consequence of our policy was predictable but also profoundly shameful."²⁹³

Uruguayan President Jose Mujica Cordano, who in 2014 agreed to resettle six detainees in his country,²⁹⁴ called Guantanamo Bay prison a disgrace for the United States. He said that the U.S. "on the one hand wants to waive the flag of human rights, and assumes the right to criticize the whole world, and then has this well of shame."²⁹⁵

Cliff Sloan, who was the State Department's special envoy for closing Guantanamo for 18 months, ending on December 31, 2014, wrote that he was told by a "high-ranking security official from one of our staunchest allies on counterterrorism," that "[t]he greatest single action the United States can take to fight terrorism is to close Guantanamo."²⁹⁶

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

Guantanamo has become a rallying cry for recruitment. By harshly interrogating and mistreating detainees in Guantanamo—along with the reality that America's violations of human rights and the rule of law

289. *Id.*

290. Interview with Alberto Mora, General Counsel, U.S. Navy (Dec. 4, 2010).

291. *Id.*

292. *Id.*

293. *Id.*

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

295. *Id.*

296. Cliff Sloan, *The Path to Closing Guantanamo*, N.Y. TIMES, Jan. 5, 2015, at 23.

have become equated with the term Guantanamo—we have provided terrorist groups the platform to recruit followers and challenge America’s values. As United Nations High Commissioner for Human Rights, Navi Pillay, noted, Guantanamo “has become an ideal recruitment tool for terrorists.”²⁹⁷ And such statements do not only come from human rights activists or from people outside the U.S.

Bagram military interrogator Damien Corsetti also raised the possibility that his brutal interrogations contributed to the recruitment of terrorists and the killing of others. As he told W2G,

I mean, I definitely got good intelligence while I was there. I saved—at the time immediately through direct action of intelligence I gathered I know I’ve saved lives. I know I’ve saved U.S. lives. I know I’ve saved lives outside of the United States as well. However, what I deal with now is did my actions to get that information over a four-year span in the recruitment of terrorists done by my actions in the end cost more lives?²⁹⁸

As long as Guantanamo remains open, it continues as a recruitment tool. The Atlantic magazine wrote that, “[t]he Guantanamo system has hurt the U.S. and our fight against Al Qaeda. We have abandoned the moral high ground and, through our actions, have become one of the principle recruiting agents for Islamic extremism.”²⁹⁹

Jihadist media and propaganda refer to Guantanamo. For example, the Islamic Emirate of Afghanistan, representing the Taliban, has addressed the hunger strikers “in the notorious Guantanamo prison,” noting “the abuse of prisoners by the American wardens” and “the barbaric and inhumane treatment of the prisoners.”³⁰⁰ In another example, Al Qaeda in the Arabian Peninsula has released a number of issues of its magazine “Inspire” prominently featuring Guantanamo.³⁰¹ The terrorist Islamic State known as ISIS or ISIL has forced American and other captives to wear the orange jumpsuit identified with Guantanamo detainees before beheading them.³⁰²

297. *Guantanamo an ideal recruitment tool for terrorists—UN human rights chief*, RT NEWS (May 27, 2013), <https://www.rt.com/news/un-guantanamo-terrorists-violations-857/>.

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

299. *Guantanamo’s Shadow*, *supra* note 281.

300. Therese Postel, *How Guantanamo Bay’s Existence Helps Al-Qaeda Recruit More Terrorists*, THE ATLANTIC (April 12, 2013), <http://www.theatlantic.com/international/archive/2013/04/how-guantanamo-bays-existence-helps-al-qaeda-recruit-more-terrorists/274956/>. The full quote is found at: *New statement from the Islamic Emirate of Afghanistan: “Strike of Destitute Inmates in Guantanamo Prison Reaches Forty Days”*, JIHADODOGY (Mar. 26, 2013), <http://jihadology.net/2013/03/26/new-statement-from-the-islamic-emirate-of-afghanistan-strike-of-destitute-inmates-in-guantanamo-prison-reaches-forty-days/>.

301. Postel, *supra* note 300.

302. Dan Lamothe, *Once again, militants use Guantanamo-inspired orange suit in an execution*, WASH. POST (Aug. 28, 2014), <http://www.washingtonpost.com/news/check-point/wp/2014/08/28/once-again-militants-use-guantanamos-orange-jumpsuit-in-an-execution/>.

General Colin Powell, who was Secretary of State during the first four years of the Bush Administration, has been quoted as saying that unless Guantanamo is closed, it will give “radicals an opportunity to say, you see, this is what America is all about. They’re all about torture and detention centers.”³⁰³

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

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

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

Unfortunately, her response was not unusual. After the author published a piece about his meeting with the student on Huffington Post,³⁰⁴ another student posted the following comment on the Huffington Post site:

You make a good point. I’m in high school, and both European and American history end in the 80s. I’ve learned what happened at 9/11 from talking to my parents, but not in school. I have to wonder what other important events I’m missing—after all, recent history affects the world directly.³⁰⁵

Wells Dixon, habeas attorney for the Center for Constitutional Rights, confirmed this cultural shift when he spoke to W2G about his visits to Guantanamo. He noted that Guantanamo has “become part of the American landscape.”³⁰⁶ He continued,

[w]hen you go to Guantanamo now and you see these guards who are 18, 19 years old, you’ll realize, they in all likelihood, don’t remember America without Guantanamo. I mean, they’re too young to remember America before Guantanamo existed. It’s

303. Postel, *supra* note 300.

304. Peter Jan Honigsberg, *9/11, A Mystery to the Young*, HUFFINGTON POST (Sept. 10, 2013), http://www.huffingtonpost.com/peter-jan-honigsberg/911-a-mystery-to-the-young_b_3897362.html.

305. Eleanor E., Comment to *9/11, A Mystery to the Young*, HUFFINGTON POST (Sept. 10, 2013), http://www.huffingtonpost.com/peter-jan-honigsberg/911-a-mystery-to-the-young_b_3897362.html.

306. Interview with J. Wells Dixon, Habeas attorney (May 13, 2014).

been part of their history and their culture forever, as far as they're concerned.³⁰⁷

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

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

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

The statistics on the number of detainees who were violent after release differ substantially depending on who is doing the counting. In January 2014, the U.S. Office of the Director of National Intelligence released a figure of 17%, as to the percentage of prisoners who have engaged in "terrorist activities," and another 12% were suspected of engaging in terrorist activities.³⁰⁸ However, when looking at actions against the U.S. or its citizens, the New America Foundation lists the much smaller number of 2.5% confirmed who have engaged in terrorist activities against the U.S. or its citizens, and 3.5% who are suspected of so engaging.³⁰⁹ The Foundation also identified another 3% of former detainees who are confirmed or suspected of involvement in militant attacks against non-U.S. targets.³¹⁰ Adding these numbers together, one gets 9%, which is approximately 1/3 of the numbers (17% + 12% = 29%) issued by the Director of National Intelligence.

The Witness to Guantanamo project has interviewed 50 detainees. Four of them are known to have participated in violent activities after their release. All four of the men joined one of the militant splinter groups supporting the Sunni rebels in Syria, who are in armed conflict

307. *Id.*

308. Peter Bergen & Bailey Cahall, Opinion, *How big a terror risk are former Guantanamo prisoners?*, CNN.COM (June 8, 2014), <http://www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-convict-terrorists/>.

309. *Id.*

310. *Id.*

with the Assad government. Two of these men, both Moroccans, died in Syria.³¹¹ A third former detainee was threatened with prosecution by his home country of Great Britain, although the charges were later dropped.³¹² The fourth, and another former detainee from Morocco, was convicted of recruiting Moroccans to fight against the U.S. in Iraq in 2007.³¹³ As of June 4, 2014, he has been fighting with the militant Harakat Sham rebels in Syria.³¹⁴ A fifth former detainee from Kuwait, also interviewed by W2G, was accused of belonging to Al Wafi, a terrorist organization, before he was taken to Guantanamo.³¹⁵ He was acquitted of the charge.³¹⁶ One former detainee from Kuwait, not interviewed by W2G, became a suicide bomber in Iraq after he was released.³¹⁷ It is possible that other people W2G interviewed have also participated in violent or terrorist activities after their release, but have not been publicly identified.

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

Damien Corsetti, the Bagram interrogator described in Part I, was assessed a reduced PTSD status after his trial. Corsetti challenged the assessment and, ultimately, the government granted Corsetti 100% disability based on his PTSD.³¹⁸ Corsetti was unable to work at any job. “I have a pretty severe case of PTSD,”³¹⁹ he told W2G.

W2G did not interview other interrogators who conducted harsh interrogations, and medical records are protected from public access. Accordingly, we cannot say whether other Bagram interrogators, who also participated in illegal and inhumane behavior toward detainees, also suffered PTSD, and whether they still suffer today. Nor can we say whether the military interrogators who participated in torturing al-Qahtani suffered PTSD. None of the other three interrogators

311. Maria Abi-Habib, *After Guantanamo, Freed Detainees Returned to Violence in Syria Battlefields*, WALL ST. J. (June 3, 2014), <http://online.wsj.com/articles/after-guantanamo-freed-detainees-return-to-violence-in-syria-battlefields-1401839291>; Interview with Souleimane Laalami Mohamed (July 13, 2012); Interview with Brahim Benchakroun (July 12, 2012).

312. Interview with Moazzam Begg in Birmingham, U.K. (Aug. 17, 2009); Ian Cobain, *Moazzam Begg freed after terrorism case against him collapses*, THE GUARDIAN (Oct. 1, 2014), <http://www.theguardian.com/world/2014/oct/01/moazzam-begg-freed-case-collapses>.

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

314. Abi-Habib, *supra* note 311.

315. *Saad Madhi Saad Howash Al Azmi*, WIKIPEDIA (Dec. 27, 2016, 1:06), https://en.wikipedia.org/wiki/Saad_Madhi_Saad_Howash_Al_Azmi; *see also Lists of former Guantanamo Bay detainees alleged to have returned to terrorism*, WIKIPEDIA (Feb. 26, 2017, 3:16), http://en.wikipedia.org/wiki/Lists_of_former_Guantanamo_Bay_detainees_alleged_to_have_returned_to_terrorism.

316. Saad Madhi Saad Howash Al Azmi, *supra* note 3145

317. Alissa J. Rubin, *Ex-Guantánamo detainee became suicide bomber in Iraq, U.S. says*, N.Y. TIMES (May 8, 2008), http://www.nytimes.com/2008/05/08/world/africa/08iht-gitmo.1.12688332.html?_r=0.

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

319. *Id.*

described in Part II (i.e., Clemente, Nelson, and Bryson), who treated detainees with a rapport-building approach, spoke of suffering from PTSD when W2G interviewed them.

However, at least one study has shown that noncombatants can develop PTSD without having actually engaged in combat. Although the study focused on traumatic combat-related events, it found a correlation between noncombatants witnessing a traumatic event in a hostile environment and the increased risk for PTSD for the noncombatants.³²⁰ Scholars and researchers are encouraged to undertake research projects into whether noncombatants who either participated in or witnessed torture or CIDT in Bagram or Guantanamo suffered a traumatic event leading to PTSD.

In a study of Vietnam veterans, researchers determined that after controlling for combat exposure, “atrocities exposure was found to be significantly related to overall PTSD symptom severity.”³²¹ Researchers have also found that a “moral injury,” causing PTSD-like symptoms, can occur as a result of mistreatment of enemy combatants and acts of revenge.³²²

Professor John Smith, a retired Air Force captain who treated a guard who had worked at Guantanamo, described the prison guards as “an overlooked group of victims.”³²³ One guard reportedly told Smith that he felt “profoundly guilty about his participation,” which included preparing detainees for interrogation by handcuffing them in painful positions, while naked. The guard was also required to make prisoners kneel, naked and shackled, on sharp stones. When he returned to the U.S., after observing and participating in the abuse of the detainees, the guard suffered “panic attacks, insomnia, nightmares, flashbacks and depression,”³²⁴ all symptoms of PTSD.

Albert Shimkus served as the commanding officer of the Naval Hospital at Guantanamo from August 2002 to August 2003. He told W2G that certain noncombatant guards manifested symptoms of aggression and depression because they were affected by their work at the base and the “difficulty in the environment of Gitmo.”³²⁵ These guards would be provided with psychological counseling, and sometimes removed from their positions.³²⁶

A young medic told W2G that after leaving Guantanamo he would get very angry, and then cry. “What’s the matter with me? This is just

320. Alan L. Peterson et al., *Documented Combat-Related Mental Health Problems in Military Noncombatants*, 23 J. OF TRAUMATIC STRESS 674, 674–81 (2010).

321. J.C. Beckham, M.E. Feldman, & A.C. Kirby, *Atrocities Exposure in Vietnam Combat Veterans with Chronic Posttraumatic Stress Disorder: Relationship to Combat Exposure, Symptom Severity, Guilt and Interpersonal Violence*, 11 J. OF TRAUMATIC STRESS 777, 783 (1998).

322. Kent D. Drescher et al., *An Exploration of the Viability and Usefulness of the Construct of Moral Injury in War Veterans*, 17 TRAUMATOLOGY 8, 11 (2001).

323. James Randerson, *Guantanamo guards suffer psychological trauma*, THE GUARDIAN (Feb. 25, 2008), <https://www.theguardian.com/science/2008/feb/25/guantanamo-guards>.

324. *Id.*

325. Interview with Albert Shimkus in Wash., D.C. (Aug. 9, 2011).

326. *Id.*

not the way a guy acts,” he would ask himself. He sought out psychiatric care.³²⁷ The psychiatrist gave him medication. The medic and the psychiatrist only talked briefly about the medic’s experiences in Guantanamo. The psychiatrist was more interested in whether the medication he had prescribed to the medic was working. The medic explained to W2G, “Part of the problem is that the more you talk about it, the more you dredge it up. The more dreams I have about it, the more irritable I get.”

When W2G asked about his parents, he replied, “I don’t know how much my parents even know. They picked me up when I got back and they took me to dinner and they said, well, how was it? I almost started to cry and I said, ‘it’s bad. It’s really not a good place.’”³²⁸ And that was the end of the conversation.

CONCLUSION

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

In other words, Bellinger is indicating that drones are the next iteration of an ill-conceived short-term policy. It seems as if history is again repeating itself. America was not reflective when it initiated harsh interrogation techniques, including torture and CIDT, in Bagram and Guantanamo. The use of drones to kill people as a substitute for bringing suspected terrorists to Guantanamo is another policy fraught with danger to our global reputation. We must evaluate our use of drones as weapons of killing, sometimes indiscriminately, today in light of the lessons we should have learned from Guantanamo.

As Bellinger explained:

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

Bellinger added,

It may well be that it’s appropriate to target some or all of these individuals. And I have confidence in the senior policy officials in

327. Interview with anonymous medic in S.F., Cal. (Apr. 14, 2012).

328. *Id.*

the Obama administration. But much of the rest of the world I think is not convinced by this administration simply saying, trust us, we're doing this right.

A bipartisan panel of former senior intelligence officers and military officials released a report indicating that President Obama's use of drones for targeted killings risks putting the U.S. on a "slippery slope" into a perpetual war. Further, it noted that the drones set a dangerous precedent that other countries could use to conduct lethal operations in the future.³²⁹ The report also raised the issue of whether drones may be creating terrorists even as they are killing them. "There is no indication that a U.S. strategy to destroy Al Qaeda has curbed the rise of Sunni Islamic extremism, deterred the establishment of Shia Islamic groups or advanced long-term U.S. security interests," the report concluded.³³⁰

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

If and when Guantanamo is closed, the U.S. must begin working to reestablish its moral high ground. It must work on again becoming the beacon for human rights and the rule of law. It will be a long process, but it can be done. The US could regain that lead by doing the right thing going forward. Millions of people around the world believed in Obama when he was first elected. He received the Nobel Peace Prize after only four months in office.³³¹ The people around the world cheered for him, and looked to him to reverse Bush-era policies. He brought us hope.

However, he had announced in the early days of his presidency that he had "a belief that we need to look forward as opposed to looking backwards."³³² Unfortunately, that meant that people in the previous administration who had authorized harsh interrogations involving torture and CIDT would not be prosecuted and, if guilty, convicted. By not demonstrating to the nation and the world that people who committed these serious and shameful crimes must be brought to justice, Obama delivered the message that people who committed such behavior will never be held accountable.

329. Mark Mazzetti, *Use of Drones for Killings Risks a War Without End, Panel Concludes in Report*, N.Y. TIMES (June 26, 2014), <https://www.nytimes.com/2014/06/26/world/use-of-drones-for-killings-risks-a-war-without-end-panel-concludes-in-report.html>.

330. *Id.*

331. See *The Nobel Peace Prize 2009*, NOBELPRIZE.ORG (Feb. 28, 2017), http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/.

332. David Johnston & Charlie Savage, *Obama Reluctant to Look into Bush Programs*, N.Y. TIMES (Jan. 11, 2009), http://www.nytimes.com/2009/01/12/us/politics/12inquire.html?pagewanted=all&_r=0; See also David Cole, *Obama's Torture Problem*, N.Y. REV. OF BOOKS (Nov. 18, 2010), <http://www.nybooks.com/blogs/nyrblog/2010/nov/18/obamas-torture-problem/>.

In addition, Obama has not only refused to prosecute, but has also continued many of the Bush policies, and has even gone further in some respects. For example, he has kept Guantanamo open, although President Bush had wanted to close it as his term came to an end.³³³ Obama has also continued to allow the military to commit CIDT, if not torture, when force-feeding detainees on hunger strikes.³³⁴ And, as noted above, he has expanded the use of drones for killing people, including American citizens, without any accountability.³³⁵

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

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

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

333. Melissa McNamara, *Bush Says He Wants to Close Guantanamo*, CBS NEWS (May 8, 2006), <http://www.cbsnews.com/news/bush-says-he-wants-to-close-guantanamo/>; see also *White House Wants to Close Guantanamo 'As Soon as Possible'*, FOX NEWS, (June 22, 2007), <http://www.foxnews.com/story/2007/06/22/white-house-wants-to-close-guantanamo-bay-prison-as-soon-as-possible/>.

334. See Dan Lamothe, *U.S. judge permits Pentagon to force-feed Guantanamo prisoner but issues rebuke*, WASH. POST (May 23, 2014), https://www.washingtonpost.com/world/national-security/us-judge-permits-pentagon-to-force-feed-guantanamo-prisoner-says-pain-possible/2014/05/23/a385cf72-e290-11e3-8dcc-d6b7fede081a_story.html?utm_term=.977e96f4fle9; Jason Leopold, *Judge orders government to stop force-feeding Guantanamo prisoner*, AL JAZEERA AM. (May 17, 2014), <http://america.aljazeera.com/articles/2014/5/16/guantanamo-forcefeeding.html>.

335. See section on drones, *supra*.