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In the summer of 2002, Michael Chertoff, then head of the Justice Department's Criminal Division, offered assurances to the CIA that its interrogators would not face prosecution under anti-torture laws if they followed guidelines on aggressive techniques approved by the Department's Office of Legal Counsel, where Deputy Assistant Attorney General and torture memo author John Yoo worked.

Those guidelines stretched the rules on permissible treatment of detainees by narrowly defining torture as intense pain equivalent to organ failure or death. Specific interrogation techniques were gleaned from a list of methods that the U.S. military feared might be used against American soldiers if they were captured by a ruthless enemy.

Four years ago, when Chertoff was facing confirmation hearings to be Homeland Security chief, the New York Times cited three senior-level government sources as describing Chertoff's Criminal Division as fielding questions from the CIA about whether its officers risked prosecution if they employed certain harsh techniques.

"One technique the CIA officers could use under circumstances without fear of prosecution was strapping a subject down and making him experience a feeling of drowning," the Times reported.

In other words, Chertoff appears to have green-lighted the technique known as "waterboarding," which has been regarded as torture since the days of the Spanish Inquisition.

Chertoff reportedly did object to some other procedures, such as death threats against family members and mind-altering drugs that would change a detainee's personality, the Times reported. [ [NYT, Jan. 29, 2005](#) ]

During his Senate confirmation hearings in February 2005, Chertoff denied providing the CIA

with legal guidance on the use of specific interrogation methods, such as waterboarding. Rather, he said he gave the agency broad guidance in response to questions about interrogation methods.

"You are dealing in an area where there is potential criminality," Chertoff said in describing his advice to the CIA. "You better be very careful to make sure that whatever you decide to do falls well within what is required by law."

Nevertheless, the evidence continues to build that Chertoff's assurances gave CIA interrogators confidence they would avoid prosecution as long as they stayed within the permissive guidelines devised by deputy assistant attorney general John Yoo and his boss at the Office of Legal Counsel, Jay Bybee.

### **The Abu Zubaydah Case**

Chertoff's reported assurances to CIA agents appear to have led directly to the use of waterboarding against alleged al-Qaeda operative Abu Zubaydah in August 2002.

"The CIA was seeking to determine the legal limits of interrogation practices for use in cases like that of Abu Zubaydah, the Qaeda lieutenant who was captured in March 2002," according to the New York Times article.

The Abu Zubaydah case was the first time that waterboarding was used against a prisoner in the "war on terror," according to Pentagon and Justice Department documents, news reports and several books written about the Bush administration's interrogation methods.

In [\*The One Percent Doctrine\*](#), author Ron Suskind reported that President George W. Bush had become obsessed with Zubaydah and the information he might have about pending terrorist plots against the United States.

"Bush was fixated on how to get Zubaydah to tell us the truth," Suskind wrote. Bush questioned one CIA briefer, "Do some of these harsh methods really work?"

The waterboarding of Abu Zubaydah was videotaped, but that record was destroyed in November 2005 after the Washington Post published a story that exposed the CIA's use of so-called "black site" prisons overseas to interrogate terror suspects.

John Durham, an assistant attorney general in Connecticut, was appointed special counsel last year to investigate the destruction 92 videotapes, a dozen of which the CIA confirmed showed Zubaydah and another detainee being tortured.

The CIA officials who pressed Chertoff to give assurances protecting CIA interrogators included former CIA General Counsel Scott Muller and his deputy, John Rizzo, according to the New York Times. Muller and Rizzo, who is now the CIA's general counsel, are at the center of Durham's probe.

The Times also reported that Chertoff participated in the drafting of a second still-secret memo in August 2002, which allegedly described specific interrogation methods that CIA interrogators could use against detainees.

Those interrogation techniques were derived from the Army and Air Force's Survival, Evasion, Rescue, and Escape (SERE) training program. But those techniques were meant to prepare U.S. soldiers for abuse they might suffer if captured by a brutal regime, not as methods for U.S. interrogations.

### **ACLU Document Release**

The American Civil Liberties Union has released more than 300 pages of documents showing that in 2003 military interrogators used methods they learned during SERE training against eight Afghanistan detainees held at the Gardez Detention Facility in southeastern Afghanistan.

Those methods included forcing a detainee to kneel outside in wet clothing, spraying the person with cold water, and punching and kicking a detainee over the course of three weeks.

One of the prisoners, an 18-year-old Afghan militia fighter named Jamal Naseer, later died. The documents released to the ACLU say his body was so severely beaten by his interrogators that it appeared to be a black and green color at the time of his death.

Amrit Singh, an ACLU attorney, said the SERE tactics that were approved by the Justice Department were never intended to be used by the U.S. government against its detainees.

The latest disclosures further erode claims by President Bush, Vice President Dick Cheney and then-Defense Secretary Donald Rumsfeld that prisoner abuses at Gardez – or the torture of prisoners at Abu Ghraib – were isolated acts by a few “bad apples.”

To the contrary, it appears that the policies approved by Bush and the assurances provided by Chertoff and others led to the atrocities at the CIA detention centers as well as the prisoner abuse at Abu Ghraib and Guantanamo Bay.

An action memorandum, dated Feb. 7, 2002, and signed by President Bush, stated that the Geneva Convention did not apply to members of al-Qaeda or the Taliban.

That, in turn, led Lt. Gen. Ricardo S. Sanchez, the top commander in Iraq to institute a “dozen interrogation methods beyond” the Army’s standard practice under the convention, according to a 2004 report on the prisoner abuse at Abu Ghraib prepared by a panel headed by James Schlesinger.

Sanchez said he based his decision on “the President’s Memorandum,” which he said had justified “additional, tougher measures” against detainees, the Schlesinger report said.

Other prisoner abuses resulted from Rumsfeld’s verbal and written authorization in December 2002 allowing interrogators to use “stress positions, isolation for up to 30 days, removal of clothing and the use of detainees’ phobias (such as the use of dogs),” according to a separate report issued by Army Maj. Gen. George R. Fay.

“From December 2002, interrogators in Afghanistan were removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation,” the Fay report said.

### **Mora’s Complaint**

Rumsfeld’s approval of certain interrogation methods outlined in a December 2002 action memorandum was criticized by Alberto Mora, the former general counsel of the Navy.

“The interrogation techniques approved by the Secretary [of Defense] should not have been authorized because some (but not all) of them, whether applied singly or in combination, could produce effects reaching the level of torture, a degree of mistreatment not otherwise proscribed by the memo because it did not articulate any bright-line standard for prohibited detainee treatment, a necessary element in any such document,” Mora wrote in a 14-page letter to the Navy’s inspector general.

Additionally, a Dec. 20, 2005, Army Inspector General Report relating to the capture and interrogation of Mohammad al-Qahtani included a sworn statement by Lt. Gen. Randall M. Schmidt. It said Secretary Rumsfeld was “personally involved” in the interrogation of al-Qahtani and spoke “weekly” with Maj. Gen. Geoffrey Miller, the commander at Guantanamo, about the status of the interrogations between late 2002 and early 2003.

Gitanjali S. Gutierrez, an attorney with the Center for Constitutional Rights who represents al-Qahtani, said in a sworn declaration that his client, imprisoned at Guantanamo, was subjected to months of torture based on verbal and written authorizations from Rumsfeld.

“At Guantánamo, Mr. al-Qahtani was subjected to a regime of aggressive interrogation techniques, known as the ‘First Special Interrogation Plan,’ that were authorized by U.S. Secretary of Defense Donald Rumsfeld,” Gutierrez said.

“Those techniques were implemented under the supervision and guidance of Secretary Rumsfeld and the commander of Guantánamo, Major General Geoffrey Miller. These methods included, but were not limited to, 48 days of severe sleep deprivation and 20-hour interrogations, forced nudity, sexual humiliation, religious humiliation, physical force, prolonged stress positions and prolonged sensory over-stimulation, and threats with military dogs.”

Gutierrez’s claims about the type of interrogation al-Qahtani endured have since been borne out with the release of hundreds of pages of internal Pentagon documents describing interrogation methods at Guantanamo and at least two independent reports about prisoner abuse.

According to the Schlesinger report, orders signed by Bush and Rumsfeld in 2002 and 2003 authorizing brutal interrogations “became policy” at Guantanamo and Abu Ghraib.

The Justice Department’s Office of Professional Responsibility (OPR) completed an investigation late last year to determine, among other issues, whether agency attorneys, including Chertoff, provided the White House and the CIA with poor legal advice when it said CIA interrogators could use harsh interrogation methods against detainees. The report remains classified.