

## **Declaration of Gitanjali S. Gutierrez, Esq., Lawyer for Mohammed al Qahtani**

I am a lawyer with the Center for Constitutional Rights (“CCR”), a New York-based international human rights organization. Together with Michael Ratner, President of CCR, and William Goodman, Legal Director of CCR, I represent Mr. Mohammed al Qahtani. Mr. al Qahtani is a Saudi citizen who has been detained in United States custody since January 2002 at the Guantánamo Bay Naval Station, Guantánamo Bay, Cuba (“Guantánamo”). 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. 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, forty-eight days of severe sleep deprivation and 20-hour interrogations, forced nudity, sexual humiliation, religious humiliation, physical force, prolonged stress positions and prolonged sensory overstimulation, and threats with military dogs. The aggressive techniques, standing alone and in combination, resulted in severe physical and mental pain and suffering. To this day, Mr. al Qahtani has not received any therapeutic medical evaluation of or treatment for the physical or psychological injuries from his abuse. He continues to suffer from ongoing psychological pain and suffering arising from his torture and cruel, inhuman and degrading treatment.

Despite evidence of U.S. officials’ responsibility for and complicity in his torture and cruel, inhuman and degrading treatment, no U.S. official has ever been held accountable.

At his father’s request, CCR filed a habeas petition in U.S. federal court on Mr. al Qahtani’s behalf in October 2005. As a result of a court order, I have conducted six client interviews with Mr. al Qahtani at Guantánamo from December 2005 through September 2006. Other than a few meetings with representatives from the International Committee of the Red Cross (“ICRC”), these attorney-client interviews have been Mr. al Qahtani’s first and only contact since January 2002 with people who are not military intelligence or other government personnel. At times, the U.S. military has forced us to conduct our meetings in the same type of cells in which Mr. al Qahtani was held in isolation for months and subjected to severe sleep deprivation and other abuses. U.S. military and intelligence personnel have also lied repeatedly to Mr. al Qahtani and denied him the most fundamental human rights. As a result of his physical and psychological torture, the conditions surrounding our meetings, and his ongoing suffering from the effects of his torture, we have focused extensively upon establishing an attorney-client relationship built upon trust.

During our more recent meetings, we have discussed the abuses perpetrated during interrogations upon Mr. al Qahtani by U.S. personnel under the authorization and supervision of Secretary Rumsfeld and Major General Miller, and pursuant to the legal guidance provided by Attorney General Alberto Gonzales, former General Counsel of the Department of Defense William J. Haynes II, former Deputy Assistant Attorney General John Yoo and former Assistant Attorney General Jay Bybee. U.S. military and other

government documents evidence these government officials' awareness and authorization of, and/or involvement in, Mr. al Qahtani's torture and inhumane treatment. The specific methods interrogators used against Mr. al Qahtani have also been evidenced by government documents, including a military intelligence interrogation log leaked from Guantánamo, an internal memorandum reporting his treatment as potential prisoner abuse, and government documents disclosed through Freedom of Information Act ("FOIA") litigation. These documents are annexed hereto as corroborating evidence. Overall, the "First Special Interrogation Plan" and other interrogation methods were authorized at the highest levels of the chain of command.

### U.S. Officials' Authorization for Torture

Government personnel raised concerns in early 2002 about the legality of interrogation methods inflicted upon Mr. al Qahtani. Despite internal objections, however, these tactics received authorization, and reauthorization, by Secretary of Defense Rumsfeld and were implemented by General Miller. Moreover, the reauthorization of interrogation occurred with explicit reliance upon the legal memorandum produced by the Office of Legal Counsel. The extensive prior reporting of Mr. al Qahtani's abuse indicates that Secretary Rumsfeld, and others, knew or should have known that their recommendations and authorization of the tactics in Secretary Rumsfeld's December 2, 2002 memorandum<sup>1</sup> and the Secretary's reauthorization in March 2003,<sup>2</sup> would lead to the torture of Mohammad al Qahtani.

The U.S. military transferred Mohammed al Qahtani to Guantánamo in January 2002. At least three separate interrogation teams questioned Mr. al Qahtani: the Defense Department's Criminal Investigation Task Force ("CITF")<sup>3</sup>; a military intelligence interrogation team; and agents from the Federal Bureau of Investigation ("FBI"). Each of these entities operated under different legal guidelines in Guantánamo. Increasingly, CITF objected to the aggressive interrogation tactics used by military intelligence interrogators.

Leaders of CITF "repeatedly warned senior Pentagon officials beginning in early 2002 that the harsh interrogation techniques used by a separate [military] intelligence team would not produce reliable information, could constitute war crimes, and would embarrass the nation when they be came public knowledge."<sup>4</sup> As described in more

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<sup>1</sup> Memorandum from Secretary of Defense Donald Rumsfeld to the Commander of U.S. Southern Command (Dec. 2, 2002) ("Rumsfeld Memorandum").

<sup>2</sup> Memorandum from Secretary of Defense Donald Rumsfeld to the Commander of U.S. Southern Command (April 16, 2003) ("Reauthorization Memorandum").

<sup>3</sup> CITF's primary mission was to conduct interrogations for purposes of criminal prosecution via military commissions. In contrast, military intelligence personnel sought information concerning al Qaeda activities and operations for purposes of tactical intelligence.

<sup>4</sup> Bill Dedman, *Battle Over Tactics Raged at Gitmo*, MSNBC.COM, Oct. 24, 2006, available at <http://www.msnbc.msn.com/id/15361458/> ("Battle Over Tactics"). One of the CITF members interviewed for this report, Mark Fallon, the deputy commander and special agent in charge of the CITF from 2002 to 2004, recalls that "[w]e were told by the Office of Military Commissions, based on what was done to [Mr. al Qahtani], it made his case unprosecutable" and "would taint any confession if obtained under coercion."

detail below, by August 2002, Mr. al Qahtani's interrogations involved very aggressive techniques including a three-month period of severe, prolonged isolation that began that month.

Tensions continued to develop between CITF investigators using traditional, non-coercive law enforcement investigation techniques and military intelligence interrogators using new aggressive interrogation methods. Throughout August and September 2002, CITF leaders raised their concerns about illegal interrogation tactics on a weekly basis with lawyers from the Pentagon, including Pentagon General Counsel William J. Haynes II.

At some point in early September 2002, military intelligence personnel at Guantánamo began planning a new, more aggressive interrogation regime for Mr. al Qahtani. Military intelligence officials wanted to apply the training tactics used in the "SERE" program, the Survival, Evasion, Resistance and Escape training program for U.S. Special Forces. The SERE program is designed to teach U.S. soldiers how to resist torture techniques if they are captured by enemy forces. In Guantánamo, though, military intelligence officials wanted to use the training methods as interrogation techniques against Mr. al Qahtani and others. The SERE training program involves forms of torture such as religious and sexual humiliation, and waterboarding. As a first step in implementing this new interrogation program, military intelligence personnel from Guantánamo attended SERE training at Fort Bragg, North Carolina on September 16-20, 2006.<sup>5</sup> In response to these developments, the CITF leaders memorialized in writing in September 2002 orders prohibiting their agents from engaging in coercive interrogations, especially those involving SERE techniques. *See Aggressive Interrogation.*

On September 25, 2002, CITF members were not permitted to participate in briefings at Guantánamo with senior lawyers from the Bush administration, at the same time that the military intelligence officials were planning the aggressive interrogation program for Mr. al Qahtani. *See Battle Over Tactics.* The senior lawyers included White House Counsel Alberto Gonzales, Vice President Dick Cheney, and Office of Legal Counsel ("OLC") lawyer John Yoo.

After the meeting with Administration officials at Guantánamo, and after CITF officials had raised numerous objections to the legality of the methods, Major General Michael Dunlavey, the Commander of the Guantánamo detention center, sent a request up the chain of command on October 11, 2002 for approval for an interrogation plan for Mr. al Qahtani that included 19 techniques outside the traditional guidelines for military interrogations.

These techniques included:

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<sup>5</sup> See Bill Dedman, *Can '20<sup>th</sup> Hijacker' Ever Stand Trial? Aggressive Interrogation at Guantanamo May Prevent His Prosecution*, MSNBC.COM, Oct. 26, 2006, available at <http://www.msnbc.msn.com/id/15361462/> ("Aggressive Interrogation").

1. Category I: Yelling, deception, use of multiple interrogators, misrepresenting the identity of the interrogation (as if from a country with a reputation for harsh treatment of prisoners);
2. Category II: Stress positions (such as standing for up to four hours), use of falsified documents or reports, isolation for 30 days or longer, interrogation in places other than the interrogation booth, deprivation of light and sound, hooding, interrogation for up to 20 hours straight, removal of all comfort items (including religious items), switching from hot food to military meals ready to eat, removal of clothing, forced grooming and shaving of facial hair, use of phobias (such as fear of dogs) to induce stress; and
3. Category III: Uses of scenarios to persuade the detainee that death or pain is imminent for him or his family, exposures to cold or water, use of mild non-injurious physical contact, use of a wet towel or water-boarding to simulate drowning or suffocation.

Southern Command, the U.S. military command unit overseeing Guantánamo, issued preliminary approval of these techniques in early November 2002.<sup>6</sup> In response, on November 22, 2002, the CITF leaders prepared an alternative interrogation plan proposal, noting that the aggressive techniques sought by military intelligence interrogators were “possibly illegal.” *See Aggressive Interrogation Techniques*.

As described in detail below and in an interrogation log leaked from Guantánamo, military intelligence interrogators began using aggressive interrogation techniques against Mr. al Qahtani on November 23, 2002. *See Aggressive Interrogation Techniques*. By November 27, 2002, FBI officials, the third investigative agency at Guantánamo, had prepared a legal analysis warning that several of the proposed tactics could constitute torture. *Id.*

Despite these controversies and protests about the military intelligence interrogation tactics, on December 2, 2002, Secretary Rumsfeld approved 16 of the aggressive interrogation techniques for use against Mr. al Qahtani. *See Action Memo Approved by Donald L. Rumsfeld, December 2, 2002, annexed hereto as Exhibit A*. The memorandum authorized techniques, used alone or in tandem, such as forced nudity; stress positions; religious humiliation (removal of religious items and forcible shaving of beards and hair); isolation of up to 30-days with extensions possible after command approval; light and sound deprivation; exploitation of phobias (such as fear of dogs); and “mild” physical contact. He only approved one tactic in Category III, “mild non-injurious physical contact.” The Secretary’s approval, however, was not made public or made known to CITF or other law enforcement investigators. CITF agents began to hear, though, that the military interrogators were “authorized” to use the aggressive methods. By December 14, 2002, General Miller had proposed “standard operating procedures” for the use of

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<sup>6</sup> Prior to this time, a military dog was used to threaten Mr. al Qahtani on October 1, 2002. *See Aggressive Interrogation Techniques*.

SERE techniques against detainees during interrogations. *See Aggressive Interrogation Techniques.*

Accordingly, on December 16, 2002, CITF officials ordered their agents to disengage from any inhuman interrogations, to document any abuses they witnessed, and to report it up the chain of command. *See Aggressive Interrogation Techniques.* On December 17, 2002, Alberto Mora, then-General Counsel of the Navy, received a report from a Navy Criminal Investigative Service (“NCIS”) Director concerning detainee abuse occurring at Guantánamo that was reported by an NCIS agent at the base. *See Alberto J. Mora Memorandum to Inspector General, Department of the Navy, Re: Statement for the Record: Office of General Counsel Involvement in Interrogation Issues (July 7, 2004), at 2 (“Mora Memo”).* The NCIS agent believed that the treatment had been authorized at a “high level” in Washington. *Id.* at 3. Mr. Mora subsequently learned that certain of these techniques had been approved in Secretary Rumsfeld’s December 2, 2002 Memorandum. *See Mora Memo at 5.* The request for this authorization originated with the October 11, 2002 memorandum from General Dunlavey, the commander of the Guantánamo detention center, and had proceeded up the chain of command to the Secretary. *Id.* At the time the original request was made, military authorities were already subjecting Mr. al Qahtani to severe isolation, sensory overstimulation (in the form of 24-hour lighting), and, possibly, threats by military dogs.

After reading the Secretary’s December 2, 2002 memorandum and the accompanying legal memorandum, Mr. Mora concluded that:

the interrogation techniques approved by the Secretary 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.

*See Mora Memo at 6.* Mr. Mora informed Department of Defense General Counsel William Haynes II of these concerns on December 20, 2002 and sought rescission of the Secretary’s December 2, 2002 authorizing memorandum.

On January 6, 2003, Mr. Mora returned to work and learned that the authorization was still in place for the aggressive interrogation methods at Guantánamo. On January 8, 2003, Mr. Mora met with a Special Assistant to Secretary Rumsfeld and Deputy Secretary Paul Wolfowitz.

The following day, Mr. Mora confronted Mr. Haynes about the failure to withdraw authorization for the unlawful interrogation techniques. Mr. Haynes “said that some U.S. officials believed the techniques were necessary to obtain information from the few Guantanamo detainees who, it was thought, were involved in 9/11 attacks and had knowledge of other al Qaeda operations planned against the United States.” Mr. Mora warned that “[t]he coercive interrogations in Guantánamo were not committed by rogue

elements of the military acting without authority . . . In this situation, the authority and direction to engage in the practice issues from and was under review by the highest DOD authorities, including the Secretary of Defense.” See Mora Memo at 12. Secretary Rumsfeld was briefed about Mr. Mora’s concerns on January 10, 2003.

Meanwhile, on January 8, 2003, Secretary Rumsfeld called General James T. Hill, Commander of the Southern Command, to speak about Mr. al Qahtani’s interrogation and its progress. General Hill, in turn, spoke with General Miller, and remembers General Miller, saying that “[w]e think we’re on the right on the verge of making a breakthrough.”<sup>7</sup> General Miller advised that the harsh interrogation techniques continue and General Hill provided this information to Secretary Rumsfeld.

A December 20, 2005 Army Inspector General Report concerning Mr. al Qahtani’s interrogation, the Schmidt Report, describes the involvement of Secretary Rumsfeld and General Miller in Mr. al Qahtani’s interrogation during late 2002 and early 2003. The Schmidt Report contains a sworn statement by Lieutenant General Randall M. Schmidt that Secretary Rumsfeld was “personally involved” in the interrogation of Mr. al Qahtani and spoke “weekly” with General Miller during the interrogations. General Miller has publicly claimed that he was unaware of the specific details of the interrogation methods that were used on Mr. al Qahtani. General Schmidt stated, however, that based upon his investigation, General Miller’s comments were “hard to believe.” The Army investigators also found his denial “inconsistent” with a letter General Miller sent to his superiors on January 31, 2003 stating that “he approved the interrogation plan and that it was followed ‘relentlessly’.” See *Aggressive Interrogation Techniques*.

According to the testimony for the Schmidt Report, General Miller has given inconsistent statements about his knowledge of the treatment of Mr. al Qahtani. General Schmidt, in his August 24, 2005 interview with the Army Inspector General, reports that he interviewed General Miller twice: once before and once after he had obtained access to Mr. al Qahtani’s Interrogation Log; and that between the first and the second interview, Maj, General Miller substantially changed his statements regarding what he knew about the treatment of Mr. al Qahtani. In his first interview, General Miller indicated that he was fully aware of what was occurring at Guantánamo and in the interrogation of Mr. al Qahtani. General Schmidt, noting that the Special Interrogation plan had “started about two weeks earlier [than December 2, 2002] because of the verbal [order/approval] that was passed down,” states that “General Miller was clear about it. Now, he knew who he had [i.e. Mr. al Qahtani]. He also knew in his testimony with me that he knew all aspects of what was going on with the special interrogation plan... They were on this. The JTF is on this. [General Miller and his team] are watching this. This is a very important thing. This [the interrogation of Mr. al Qahtani] is his most important thing [General Miller’s] got going.” General Schmidt adds that in his first interview with General Miller, he asks him “were you aware of the interrogation plan for Mister Khatani?” and General Miller answers “Oh, yeah.” Schmidt concludes “He knew everything that was going on” and quotes General Miller as saying “I’m always aware of everything that happened to 063

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<sup>7</sup> Michael Scherer & Mark Benjamin, *What Rumsfeld Knew*, Salon.com, Apr. 14, 2006.

[al Qahtani]”. He also notes that General Miller used the word “meticulous” to describe his monitoring of Mr. al Qahtani’s interrogation and that he “told me in the first interview how he was aware of everything and he was responsible. And he was.”

However, in the second interview, when General Schmidt confronted General Miller with a full list of the treatment to which Mr. al Qahtani was subjected, General Miller totally denied knowing about the specific techniques used in Mr. al Qahtani’s interrogation. General Schmidt highlights the apparent inconsistency between General Miller’s denials, and the attention given to Mr. al Qahtani by the administration and the Secretary of Defense, stating he “finds it hard to believe, as does anybody, that where the Secretary of Defense has that kind of interest... [that somehow General Miller]... doesn’t know anything that’s going – and he doesn’t even know what they’re doing with this guy?” General Schmidt also reports, as described above, that FBI agents raised concerns regarding abuse and mistreatment of detainees with General Miller, and that General Miller failed to either further investigate or act on these reports.

Further contradicting General Miller’s claims that he was not present during the interrogation of Mr. al Qahtani, General Hill has testified that “Miller, told me that he would go down [to visit Mr. al Qahtani’s interrogation] at least once a day to see what was going on, to check on the fact that there was a doctor there; that they were in fact conducting interrogation in the way that we’d set out. And he assured me that he was very comfortable with that interrogation process from a personal standpoint.” General Hill also emphasizes General Miller’s meticulousness, highlighting that General Miller was an “artilleryman, and an artilleryman checks and rechecks, and there are set ways of doing it, A, B, C, D, E, F, G...” although he does add that General Miller would not have been there 24 hours a day. When asked whether General Miller ever observed the interrogation of Mr. al Qahtani, General Hill answered “Oh, I’m sure he did. He said he did.” Similarly, when General Hill, on behalf of Secretary Rumsfeld, asked General Miller to cease the interrogation plan, Miller further responded that “I’ve been personally looking at it.... We ought to continue it.”

Similarly, the Schmidt Report also notes Secretary Rumsfeld’s close involvement in Mr. al Qahtani’s interrogation during this time. In addition to General Hill’s testimony, General Schmidt implicates Secretary Rumsfeld in the abuse of Mr. al Qahtani. The Schmidt report involved two interviews with Secretary Rumsfeld, and General Schmidt describes the Secretary as being “personally involved” in and “personally briefed” on Mr. al Qahtani’s interrogation.

General Schmidt’s testimony describes how the chain of command directly links Secretary Rumsfeld with the interrogation of Mr. al Qahtani. He discusses how Secretary Rumsfeld takes the interrogation memorandum prepared by his General Counsel “and chops it down and submits it and says this is approved to be used in special circumstances which I will approve and it’s for Mister Khatani number one. So this becomes a special interrogation plan.... It is promulgated through US Southern Command with almost no other guidance attached to it. It goes to the JTF. The JTF now implements it regarding Mister Khatani.” General Schmidt later reiterates that the guidance is “promulgated

down from the Secretary of Defense, through SOUTHCOM to JTF-Guantanamo and now General Miller is there.”

As Secretary Rumsfeld and General Miller moved forward with approval for and implementation of the First Special Interrogation Plan, Mr. Mora continued to raise his concerns that the methods contained in the December 2, 2002 memorandum could lead to torture of Mr. al Qahtani or other detainees. Frustrated with the lack of response to his verbal objections to the unlawful interrogation tactics, Mr. Mora prepared a draft memorandum on January 15, 2003 and delivered it to Mr. Haynes’ office. *See id.* at 14-15. Later that day, Secretary Rumsfeld suspended his December 2, 2002 authorization of the interrogation techniques.

From around January 18, 2003 through the end of the month, Secretary Rumsfeld, through General Counsel Haynes, established a Working Group to develop recommendations for detainee interrogations.

The Working Group was guided by an OLC memorandum written by OLC Deputy Director John Yoo and Special Counsel Robert J. Delahunty on January 9, 2002.<sup>8</sup> Mr. Mora describes the flawed legal analysis in that memorandum, which “explicitly held that the application of cruel, inhuman, and degrading treatment to the Guantanamo detainees was authorized with few restrictions or conditions.” *See Mora Memo* at 17. Mr. Mora later described the OLC Memorandum as creating a risk: “Because it identified no boundaries to action – more, it alleges there are none – it is virtually useless as guidance as now drafted and dangerous in that it might give some a false sense of comfort.” *Id.* at 17.

Despite these concerns, Secretary Rumsfeld secretly authorized 24 techniques in March 2003, including isolation, “environmental manipulation,” “sleep adjustment,” and threats to send the detainee to a county allowing torture.” *See Aggressive Interrogation Techniques*. The Secretary’s March 2003 approval relied upon the Working Group Report, which in turn was based upon the flawed OLC Memorandum. The Working Group Report and the Secretary’s renewed authorization was issued and presented to General Miller in March 2003. As result of these authorizations for aggressive interrogation tactics, Mr. al Qahtani’s abuse continued during 2003.

Throughout the chain of command, U.S. government officials knew or should have known that the interrogation methods authorized for use against Mr. al Qahtani constituted torture, either standing alone or in combination, when applied for such prolonged periods of time.

#### Torture & Abuse of Mohammed al Qahtani During Interrogations

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<sup>8</sup> John Yoo & Robert J. Delahunty, Memorandum for William J. Haynes, General Counsel, Dep’t of Defense, Application of Treaties and Laws to al Qaeda and Taliban Detainees (Jan. 9, 2002) (“Yoo Memo”).

Military personnel began interrogating Mr. al Qahtani at Guantánamo in January 2002, applying the routine tactics in use at Guantánamo during that time. By July 2002, however, agents from the FBI also started interrogating Mr. al Qahtani. Military intelligence interrogators then began using methods against Mr. al Qahtani that became increasingly aggressive on or around August 2002.

From August 2002 through October 2002, the military held Mr. al Qahtani in severe isolation in a cell with constant bright lights. In October 2002, military dogs were also used in an aggressive manner to intimidate him. As a result of this treatment, an FBI Deputy Director reported to the Army that in November 2002 he observed a detainee, later identified as Mr. al Qahtani, exhibiting symptoms of “extreme psychological trauma”:

In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee [redacted] and, in November 2002, FBI agents observed Detainee [redacted] after he had been subjected to intense isolation for over three months. During that time period, [redacted] was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reportedly hearing voices, crouching in a corner of the cell covered with a sheet for hours on end). It is unknown to the FBI whether such extended isolation was approved by appropriate DoD authorities.

*See Exhibit B (Letter re: Suspected Mistreatment of Detainees, from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division, FBI, to Major General Donald R. Ryder, Criminal Investigation Command, Department of the Army, July 14, 2006. )*

Mr. al Qahtani was not provided with any break in the isolation or his interrogations, nor treatment for his symptoms of “extreme psychological trauma” in November 2002. Instead, on or around November 23, 2002 through January 11, 2003, Mr. al Qahtani was subjected to an official interrogation regime known as the “First Special Interrogation Plan.” *See, Exhibit C (Army Regulation 15-6 Final Report, Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility (Apr. 1, 2005) (“Schmidt Report”)).* Some details of the First Special Interrogation Plan emerged when a military interrogation log for Mr. al Qahtani was leaked from Guantánamo. *See Exhibit D (Interrogation Log of Mohammed al Qahtani).* The log describes a six-week program of physical and psychological interrogation methods that involved prolonged sleep deprivation; painful stress positions; physical abuses; sexual, physical, psychological and religious humiliation; the use of military dogs; and sensory overstimulation. According to some news accounts, Mr. al Qahtani endured at least 160 days of severe isolation in a cell constantly flooded with light, with much of this time also including interrogations using aggressive tactics as part of the First Special Interrogation Plan.

In September 2006, Mr. al Qahtani has described to his attorney some of the methods used against him during interrogations in 2002 and 2003:

- Severe sleep deprivation combined with 20-hour interrogations for months at a time;
- Severe isolation;
- Religious and sexual humiliation
- Threats of rendition to countries that torture more than the United States;
- Threats made against his family, including female members of his family;
- Strip searching, body searches and forced nudity, including in the presence of female personnel;
- Denial of the right to practice his religion, including prohibiting him from praying for prolonged times and during Ramadan;
- Threatening to desecrate the Koran in front of him;
- Placing him in stress positions for prolonged times;
- Placing him in tight restraints repeatedly for many months or days and nights;
- Threats and attacks by dogs;
- Beatings;
- Exposure to low temperatures for prolonged times;
- Exposure to loud music for prolonged times;
- Forcible administration of frequent IVs by medical personnel during interrogation, which Mr. al Qahtani described as feeling like “repetitive stabs” each day.

The use of some of these methods against Mr. al Qahtani are described in detail below.

### Sleep Deprivation

Mr. al Qahtani reports severe sleep deprivation, often being permitted only to sleep four or fewer hours at a time, over prolonged periods of time. U.S. military authorities imposed this sleep deprivation through the use of interrogations lasting 20-hours; shifting Mr. al Qahtani to a new cell throughout the night; imprisoning him in cells with 24-hour lighting; altering his sleep patterns by only allowing him to sleep during the day; and/or creating disruptive noise to wake him up. In order to facilitate 20-hour interrogations, if Mr. al Qahtani began to fall asleep from exhaustion, military police or interrogators would forcibly make him stand and sit, pour water on him or otherwise physically abuse him. (See Exhibit D) The interrogators also worked in three teams consisting of a linguist and at least two interrogators. They conducted one interrogation shift after another to keep the interrogators refreshed and active while Mr. al Qahtani continued to deteriorate from exhaustion.

Mr. al Qahtani's description of his sleep deprivation is supported by government documents and information provided to the media by military personnel. According to findings in the Schmidt Report, for example, between November 23, 2002, and January 16, 2003, Mr. al Qahtani was interrogated for eighteen to twenty hours per day for forty-eight days. *See* Schmidt Report at 17; *see also* Interrogation Log. Thus, during this particular two month period of the First Special Interrogation Plan, military authorities subjected Mr. al Qahtani to extreme interrogation techniques, while simultaneously allowing him only four hours of sleep per day. In addition, military authorities subjected Mr. al Qahtani to frequent sleep disruption during 2002 and 2003, when interrogators moved him from one cell to another throughout the night in order to alter his sleep patterns. *See id.* at 27; *see also* Neil A. Lewis, *Broad Use of Harsh Tactics Is Described at Cuba Base*, NY Times, Oct. 17, 2004 (describing this method as: “[A]n inmate was awakened, subjected to an interrogation in a facility known as the Gold Building, then returned to a different cell. As soon as the guards determined the inmate had fallen into a deep sleep, he was awakened again for interrogation after which he would be returned to yet a different cell. This could happen five or six times during a night”). Secretly, Rumsfeld and General Miller calculated these procedures to disrupt profoundly the senses or personality.

The psychological and physiological effects of sleep deprivation have been well documented. *See, e.g.*, Physicians for Human Rights, *Break Them Down: The Systematic Use of Psychological Torture by US Forces 11* (2005) (“PHR Report”). According to the PHR Report, for example:

The most pronounced impact of total sleep deprivation is cognitive impairment, which can include “impairments in memory, learning, logical reasoning, arithmetic skills, complex verbal processing, and decision making.” Sleep-deprived individuals take long to respond to stimuli, and sleep loss causes “attention deficits, decreases in short-term memory, speech impairments, perseveration, and inflexible thinking.” These symptoms may appear after one night of total sleep deprivation, after only a few nights of sleep restriction (5 hours of sleep per night). Sleep restriction also can result in hypertension and other cardiovascular disease. One study correlates sleep deprivation with decreased pain tolerance, which has significant implications for torture and other situations in which sleep restrictions are implemented in tandem with other torture techniques.

*Id.* (citations omitted). Because Mr. al Qahtani's sleep deprivation was only one act in a course of torturous conduct, his sleep deprivation should also be considered in relation to other torturous acts occurring during his interrogation. These acts included sexual and religious humiliation, stress positions, sensory deprivation and isolation, and various forms of physical degradation including the use of dogs.

Mr. al Qahtani has not received any medical assessment of the physiological impact of his sleep deprivation. He has experienced, however, symptoms of prolonged sleep deprivation that have caused severe pain and suffering. The cumulative effect of at least

the two months of severe sleep deprivation combined with these other methods was to reduce Mr. al Qahtani's blood pressure and general health to the point that he required hospitalization. As a result of his torture, Mr. al Qahtani began hallucinating and hearing voices; he urinated on himself multiple times; and frequently broke down into tears. Thus, his sleep deprivation, when considered in light of the intensity and duration of the overall course of conduct he was subjected to, constituted torture.

The defendants expressly authorized prolonged and severe sleep deprivation as an interrogation tactic for use against Mr. al Qahtani. Secretary Rumsfeld officially authorized the use of 20-hour interrogations without limit in his memorandum of December 2, 2002. *See* Rumsfeld Memorandum; *See also* Schmidt Report at 17. Following Secretary Rumsfeld's rescission on January 15, 2003 of the more aggressive tactics in the First Special Interrogation Plan, the U.S. military codified the definition of "sleep deprivation" as keeping a detainee awake for more than sixteen hours for four or more days in succession. *See* Schmidt Report at 18. The military's subsequent definition of sleep deprivation allowed interrogators to keep a detainee awake for more than sixteen hours per day for four consecutive days. *See* Schmidt Report at 18. For at least two months, and likely for additional periods, military authorities under the command of Secretary Rumsfeld and General Miller authorized and implemented practices intended to keep Mr. al Qahtani awake for twenty hours per day for two months. *See* Schmidt Report at 18. Thus, Mr. al Qahtani was subjected to treatment far in excess of what constitutes sleep deprivation under the military's current rules.

Moreover, his prolonged and severe sleep deprivation, alone or in combination with the other interrogation methods, constituted torture under international law. In a 1997 report on interrogation tactics used by the Israeli Defense Forces, for example, the UN Committee against Torture ("CAT Committee") concluded that sleep deprivation for "prolonged periods" constitutes torture for purposes of Article 1 of the Convention Against Torture. *See* Office of the High Commissioner for Human Rights, *Concluding observations of the Committee against Torture: Israel. 09/05/97. A/52/44, ¶257*. The Committee does not state what constitutes a "prolonged period." In making this determination, however, the CAT Committee considered a case in which a detainee was "interrogated and tortured over the course of . . . 30 days, including further violent shaking and sleep deprivation while seated on a low bench." *Report of the Special Rapporteur, Mr. Nigel S. Rodley*, submitted to the UN Commission on Human Rights, E/CN.4/1998/38/Add.1 (Dec. 24, 1997). Another prisoner was "forced to sit handcuffed and hooded in painful and contorted positions, subjected to prolonged sleep deprivation and beaten over the course of three weeks" *Id.* Given that Mr. al Qahtani's sleep deprivation lasted at least forty-eight days, it was significantly longer than the deprivations in the two cases in which the CAT Committee found the sleep deprivation to be "prolonged." Thus, Mr. al Qahtani's sleep deprivation was sufficiently "prolonged" to constitute torture under Article 1 of the CAT.

The CAT Committee also examined the use of sleep deprivation by the Israeli Security Agency in 2001, following the Israeli Supreme Court's determination that the use of certain interrogation methods, when not inherent to an interrogation, is prohibited. *See*

*Consideration of Reports Submitted by States Parties Under Article 10 of the Convention*, Committee Against Torture, 2001, U.N. Doc. CAT/C/54/Add.1. As regards sleep deprivation, the Court declared that interrogations may be lengthy and as a “side effect” may cause a person not to be able to sleep during the interrogation. *Public Committee Against Torture in Israel v. Israel*, HCJ 5100/94, Sept. 1999 (“Israel Report”). This is not the case, however, if “sleep deprivation shifts from being a ‘side effect’ inherent to the interrogation, to [being] an end in itself. If the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or ‘breaking’ him—it shall not fall within the scope of a fair and reasonable investigation.” *See Israel Report* at ¶14 (viii) (quoting Israel Supreme Court decision ¶31).

The Committee further spoke on sleep deprivation after considering reports regarding North Korea’s use of methods of ill-treatment against political suspects. In doing so, the Committee singled out sleep deprivation: “The sleep deprivation practiced on suspects, which may in some cases constitute torture and which seems to be routinely used to extract confessions, is unacceptable.” *Concluding Observations of the Committee against Torture: Republic of Korea*, Committee Against Torture, Nov. 13, 1996, ¶56. U.N. Doc. A/52/44.

The UN Special Rapporteur on Torture has also declared that prolonged denial of rest or sleep is an act that involves the infliction of suffering sufficient to constitute torture amounting to a violation of the CAT. *See UN Commission on Human Rights, Report of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Visit by the Special Rapporteur to Pakistan*, U.N. Doc E/CN.4/1997/7/Add.2 (1996) (Nigel Rodley, Special Rapporteur); *See also Press Release, Special Rapporteur on Torture Highlights Challenges at End of Visit to China* (Dec. 2, 2005).

Accordingly, U.S. officials authorized prolonged and severe sleep deprivation that constituted torture of Mr. al Qahtani.

### Severe Isolation Combined with Sensory Deprivation/Overstimulation

For 160 days within his first two years of imprisonment, military authorities held Mr. al Qahtani in severe isolation, in which he could not communicate with other detainees in any fashion.<sup>9</sup> During these times, he was imprisoned in cells or a section of the prison camp apart from other prisoners. The only other human beings he had contact with were the interrogation teams and military guards. He currently remains in Camp 5, a maximum security prison consisting of isolation cells. Apart from a few letters he received from his family through the ICRC, Mr. al Qahtani was also isolated from the outside world and his family from January 2002 through December 2005, when he received his first lawyer visit. Prior to meeting with his lawyer, Mr. al Qahtani was completely dependent upon his interrogators for any information, including information concerning his family.

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<sup>9</sup> According to several reports, Mr. al Qahtani was held in isolation for 160 days, during which he was subjected to a variety of other interrogation methods, including 20-hour long interrogations combined with severe sleep deprivation. *See Schmidt Report* at 20.

While in isolation in 2002 and 2003, military officials also subjected him to sensory deprivation techniques, such as holding him in prolonged semi-darkness (on 1/23/03), and denying him access to sunlight for weeks or months. Military authorities also subjected Mr. al Qahtani to interrogation methods using sensory overload. One instance of this can be found where interrogators placed him in a room with red lighting (on 1/3/03). Officials also frequently played loud music in the interrogation room (referred to as “white noise” in the interrogation log), for periods ranging from twenty minutes to three hours (on 12/3/02, 12/4/02, 12/5/02, 12/6/02, 12/7/02, 12/8/02, 12/10/02, 12/11/02, 12/12/02, 12/13/02, 12/14/02, 12/15/02, 12/16/02, 12/17/02, 12/18/02, 12/19/02, 12/23/02, 12/24/02, 12/30/02, 12/31/02, 1/2/03, and 1/5/03). At times, officials would yell at Mr. al Qahtani or ridicule him while the loud music was playing. Occasionally the white noise technique was used multiple times in one day. In addition to the psychological and physical stress caused by the white noise method, Mr. al Qahtani repeatedly protested that listening to this music was against his religion.

As described above, these interrogation techniques, particularly the isolation, had a severe impact upon Mr. al Qahtani. This is evidenced by the observations of the FBI official who stated that Mr. al Qahtani was exhibiting symptoms of severe psychological trauma after three months of isolation.

Again, these methods constituted torture under international legal standards. The United Nations Committee Against Torture (“CAT Committee”) expressly stated its concern about the publication of the revised U.S. Army Field Manual’s authorization of questionable interrogation techniques, including sensory deprivation methods. *See* United Nations Committee Against Torture, 36<sup>th</sup> Session, Geneva, May 2006, U.S. (“36<sup>th</sup> Session, May 2006, U.S.”). The CAT Committee has also concluded that holding prisoners in conditions of sensory deprivation and isolation consisting of an almost complete prohibition of communication caused “persistent and unjustified suffering which amounts to torture.” *See* 36<sup>th</sup> Session, May 2006: Peru. Similarly, the Special Rapporteur on Torture has enumerated acts severe enough to constitute torture, including beating, extraction of nails, teeth, etc., burns, electric shocks, suspension, suffocation, exposure to excessive light or noise, sexual aggression, administration of drugs in detention or psychiatric institutions, prolonged denial of rest or sleep, food, sufficient hygiene, or medical assistance, *total isolation and sensory deprivation*, being held in constant uncertainty in terms of space and time, threats to torture or kill relatives, and simulated executions. *See Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Report of the Special Rapporteur, Mr. P. Kooijmans, appointed pursuant to Commission on Human Rights res. 1985/33 E/CN.4/1986/15, 19 Feb. 1986, ¶119 (emphasis added). Either standing alone or in combination with the other interrogation methods, Mr. al Qahtani’s isolation and sensory deprivation/overstimulation constitute torture.

Secretary Rumsfeld and General Miller authorized, were aware of, and supervised Mr. al Qahtani’s isolation and sensory deprivation. These were not single acts of misconduct by rogue individuals but rather an intentional and official aspect of Mr. al Qahtani’s

interrogation at Guantánamo. On November 27, 2002, William J. Haynes II, General Counsel for the Department of Defense, sought approval from Secretary Rumsfeld for these techniques as described in an October 25, 2002 memorandum to Mr. Haynes from General James T. Hill, commander of the U.S. Southern Command, which has command authority over Guantánamo. As documented above, military authorities were already subjecting Mr. al Qahtani to severe isolation combined with sensory deprivation and overstimulation at the time the request was made for approval of these methods. As explained above, on December 2, 2002, Secretary Rumsfeld approved the tactics, including subjecting a prisoner to solitary confinement for up to thirty days at a time and depriving them of “light and auditory stimuli.” *See* Rumsfeld Memorandum. The thirty-day limit upon isolation was easily overcome by allowing a prisoner to see another prisoner for a few hours during “recreation” (standing outside in a dog cage) and then beginning a new round of thirty days of isolation. Secretary Rumsfeld’s December 2, 2002 memorandum also approved the use of 20-hour interrogations and interrogations “in an environment other than the standard interrogation booth.” *Id.* According to testimony taken during the Schmidt investigation, General Miller and Secretary Rumsfeld spoke weekly about Mr. al Qahtani’s interrogation. At the time of Secretary Rumsfeld’s December 2, 2002 approval of the aggressive interrogation tactics, military interrogators were already using methods such as sleep deprivation, isolation, and sensory deprivation/overstimulation against Mr. al Qahtani. These methods were documented in detail in the interrogation log. General Miller’s Staff Judge Advocate, the military lawyer at Guantánamo, in turn, also reviewed the log and reported back to General Miller. *See* Interrogation Log (1/7/06; 1/10/06). As described above, General Miller then spoke to Secretary Rumsfeld on a weekly basis concerning the interrogation of Mr. al Qahtani.

### Religious, Sexual and Moral Humiliation

One of the most widely-reported aspects of Mr. al Qahtani’s interrogation was the use of sexual, religious and moral humiliation. In general, there is extensive evidence of United States interrogators using humiliation, often with religious or sexual elements, as a method of interrogation in numerous military detention facilities. Many of the humiliating techniques deliberately degrade the Islamic faith of detainees, violating taboos relating to, *inter alia*, female contact, pornography and homosexuality.

Because U.S. personnel’s humiliation of Muslim and Arab detainees has taken a variety of forms, it is difficult to articulate a generalized and all-encompassing description of what constitutes “humiliation” in the context of U.S. interrogations. Instead, the use of humiliation by U.S. interrogators is best understood by considering illustrative examples, such as the following:

1. Forced nudity, sometimes for prolonged periods and in stress positions;
2. Female interrogators straddling male detainees, invading the personal space of detainees or otherwise being used in the humiliation of detainees;

3. Placing leashes on detainees and making them act like dogs.

More specifically, Mr. al Qahtani was subjected to combinations of all of these tactics. The Schmidt Report and the Interrogation Log contain numerous details of Mr. al Qahtani's interrogation. It is important to note, however, that these sources are limited in terms of the incidents that they report, the level of description used (the interrogation log in particular is very sparse and often euphemistic in its descriptions) and the time period covered. Despite these limitations, it is nonetheless clear that the humiliation of Mr. al Qahtani formed a central part of the interrogation plan, and that interrogators subjected him to various types of treatment that involved humiliating him, particularly denigrating, either explicitly or implicitly, his religious beliefs.

Humiliating treatment designed to degrade Mr. al Qahtani's religious beliefs included:

1. Constructing a shrine to Bin Laden and informing Mr. al Qahtani that he could only pray to Bin Laden;<sup>10</sup>
2. "Forced grooming,"<sup>11</sup> including forcibly shaving Mr. al Qahtani's beard;<sup>12</sup>
3. Commandeering the call to prayer as a "call to interrogation";<sup>13</sup> and
4. Interrupting Mr. al Qahtani's prayer or attempting to control or deny his right to pray.<sup>14</sup>

In addition, many other aspects of his treatment were designed to implicate his culture or religious beliefs, such as techniques involving dogs and techniques involving contact with female interrogators.

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<sup>10</sup> Interrogation Log 01/02/03 at 0100.

<sup>11</sup> See PHR Report at 5.

<sup>12</sup> It is unclear how often this occurred. The Log documents it explicitly twice: "Detainee's head and beard were shaved with electric clippers. Detainee started resistance when beard was shaved and MPs had to restrain. Shaving was halted until detainee was once more compliant. LTC P supervised shaving. No problems occurred. Photos were taken of detainee when the shaving was finished." (12/03/2002 at 2105); "Detainee's head and beard were shaved with electric clippers. Detainee started to struggle when the beard was touched but quickly became compliant." (12/18/2002 at 1415); "Lt G entered the interrogation booth and gave detainee an even shave. The detainee did not resist." (12/20/2002 at 2020); "Source received haircut. Detainee did not resist until the beard was cut. Detainee stated he would talk about anything if his beard was left alone. Interrogator asked detainee if he would be honest about himself. Detainee replied "if God wills". Beard was shaven." (01/11/03 at 0230) Military authorities have forcibly shaved Mr. al Qahtani in violation of his religious beliefs and practices as recently as the end of 2005, prior to his first meeting with his attorney.

<sup>13</sup> "Upon entering the booth, lead played the call to prayer with a special alarm clock. Detainee was told, "this is no longer the call to prayer. You're not allowed to pray. This is the call to interrogation. So pay attention." (12/12/2002 at 0001).

<sup>14</sup> Numerous instances are recorded. For example "When control entered booth, detainee stated in English "Excuse me sergeant, I want to pray." Control said "Have you earned prayer? I know you have a lot to ask forgiveness for, but I already told you that you have to earn it." Detainee says "Please, I want to pray here" (pointing to floor next to his chair). Control responds no." (11/28/2002 at 0630); "Detainee allowed to pray after promising to continue cooperating." (12/06/2002 at 1600); "Detainee's hands were cuffed at his sides to prevent him from conducting his prayer ritual." (12/14/2002 at 0001).

With respect to expressly sexual humiliation, reports indicate that the use of sexual humiliation by U.S. interrogators against Mr. al Qahtani took a number of forms. However, identifying these incidents with precision is difficult due to the opaque and euphemistic language used in the interrogation log and these incidents are understandably difficult for Mr. al Qahtani to discuss while still imprisoned by the perpetrators. The Schmidt report describes a number of incidents where “female military interrogators performed acts designed to take advantage of their gender in relation to Muslim males” and notes that these techniques fell under different types of officially sanctioned and euphemistically named interrogation techniques, particularly “Futility”<sup>15</sup> and “Invasion of Space by a Female.”

The interrogation log explicitly documents several instances where Mohammad al Qahtani is subjected to sexual humiliation techniques:

1. There are at least ten separate instances when the interrogation log reports that interrogators used a technique labeled “invasion of space by a female” or that Mr. al Qahtani is repulsed, angered or otherwise bothered by a female interrogator invading his personal space. The details of what this involved are generally lacking.<sup>16</sup> “Invasion of Space by a Female” is used

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<sup>15</sup> Both of the following incidents, used on the General Detainee Population, were characterized as use of the “Futility” technique: “a female interrogator approached a detainee from behind, rubbed against his back, leaned over the detainee touching him on his knee and shoulder and whispered in his ear that his situation was futile, and ran her fingers through his hair.” (Schmidt Report at 7) and “In March 2003, a female interrogator told a detainee that red ink on her hand was menstrual blood and then wiped her hand on the detainee’s arm.” (*Id.* at 8). In the context of the Special Interrogation Plans, female interrogators straddled detainees, massaged the detainee’s back and neck, and “invaded the private space of the detainee” (pp15-16). It was reported that the following techniques were used on a subject of the First Special Interrogation Plan was (i) “On 06 Dec 02, the subject of the first Special Interrogation Plan was forced to wear a woman’s bra and had a thong placed on his head during the course of the interrogation.” (ii) “On 17 Dec 02, the subject of the first Special Interrogation Plan was told that his mother and sister were whores.” (iii) “On 17 Dec 02, the subject of the first Special Interrogation Plan was told that he was a homosexual, had homosexual tendencies, and that other detainees had found out about these tendencies.” (iv) “On 20 Dec 02, an interrogator tied a leash to the subject of the first Special Interrogation Plan’s chains, led him around the room, and forced him to perform a series of dog tricks.”; (v) “On 20 Dec 02, an interrogator forced the subject of the first Special Interrogation Plan to dance with a male interrogator.” (vi) “On several occasions in Dec 02, the subject of the first Special Interrogation Plan was subject to strip searches. These searches, conducted by the prison guards during interrogation, were done as a control measure on direction of the interrogators.” (vii) “On one occasion in Dec 02, the subject of the first Special Interrogation Plan was forced to stand naked for five minutes with females present. This incident occurred during the course of a strip search.” (viii) “On three occasions in Nov 02 and Dec 02, the subject of the first Special Interrogation Plan was prevented from praying during interrogation.” (ix) “Once in Nov 02, the subject of the first Special Interrogation Plan became upset when two Korans were put on a TV, as a control measure during interrogation, and in Dec 02 when an interrogator got up on the desk in front of the subject of the first Special Interrogation Plan and squatted down in front of the subject of the first Special Interrogation Plan in an aggressive manner and unintentionally squatted over the detainee’s Koran.” (x) “On seventeen occasions, between 13 Dec 02 and 14 Jan 03, interrogators, during interrogations, poured water over the subject of the first Special Interrogation Plan head.”

<sup>16</sup> (1) 12/04/02 at 1800 “The detainee was bothered by the presence and touch of a female.”; (2) 12/05/02 at 1800 “Detainee became irritated with the female invading his personal space.”; (3) 12/06/02 at 1930 “The approaches employed [included] Invasion of Space by a Female.”; (4) 12/09/02 at 2340 “Detainee was repulsed by the female invasion of his personal space.”; (5) 12/10/02 at 1830 “Detainee became very

- to describe a number of tactics, from a female interrogator straddling Mr. al Qahtani and molesting him while other military guards pin his body to the floor against his will to a female interrogator rubbing his neck and hair, often until Mr. al Qahtani resists with force and is subdued by military guards;
2. There are documented instances of forced nudity;<sup>17</sup>
  3. “Dance instruction”:
    - a. In one incident, a mask was placed on Mr. al Qahtani and he was forced to undergo “dance instruction” with a male interrogator;<sup>18</sup>
    - b. In another incident, he was forced to wear a towel “like a burqa” and undergo “dance instruction” with a male interrogator;<sup>19</sup>
  4. The interrogators made sexual insults and sexually offensive comments about Mr. al Qahtani and about his female family members, specifically his mother and sisters,<sup>20</sup> and;
  5. Mr. al Qahtani was forced to either wear<sup>21</sup> or to look at and study<sup>22</sup> pornographic pictures. Interrogators required him to memorize details of

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annoyed with the female invading his personal space.”; (6a) 12/12/02 at 1830 “SGT L started “invasion of personal space” approach.”; (6b) 12/12/02 at 2312 “The detainee is still annoyed with the female invasion of space.”; (7) 12/19/02 at 2320 “He attempts to resist female contact.”; (8) 12/21/02 at 2223 “He was laid out on the floor so I straddled him without putting my weight on him.”; (9) 12/23/02 at 2245 “Female interrogator used invasion of personal space and detainee cried out to Allah several times.”; (10) 12/25/02 at 1929 “Detainee spoke in English when the female interrogator invaded his personal space.”

<sup>17</sup> See, e.g., 12/20/02 at 2200 “The detainee was stripped searched. Initially he was attempting to resist the guards. After approximately five minutes of nudity the detainee ceased to resist. He would only stare at the wall with GREAT focus. His eyes were squinted and stuck on one point on the wall directly in front of him. He later stated that he knew there was nothing he could do with so many guards around him, so why should he resist. He stated that he did not like the females viewing his naked body while being searched and if felt he could have done something about it then he would have.”

<sup>18</sup> 12/12/03 at 1115 “In order to escalate the detainee’s emotions, a mask was made from an MRE box with a smiley face on it and placed on the detainee’s head for a few moments. A latex glove was inflated and labeled the “sissy slap” glove. This glove was touched to the detainee’s face periodically after explaining the terminology to him. The mask was placed back on the detainee’s head. While wearing the mask, the team began dance instruction with the detainee. The detainee became agitated and began shouting.”

<sup>19</sup> 12/20/02 at 1300 “A towel was placed on the detainee’s head like a burka with his face exposed and the interrogator proceeded to give the detainee dance lessons. The detainee became agitated and tried to kick an MP. No retaliation was used for the kick and the dance lesson continued.”

<sup>20</sup> 12/17/02 at 2100 “Detainee appeared to have been disturbed by the word homosexual. He did not appear to appreciate being called a homosexual. He denies being a homosexual. He also appeared to be very annoyed by the use of his mother and sister as examples of prostitutes and whores.”

<sup>21</sup> (1) 12/19/02 at 0200 “While walking out, detainee pulled a picture of a model off (it had been fashioned into a sign to hang around his neck)...”; (2) 12/23/02 at 0001 “Upon entering booth, lead changed white noise music and hung pictures of swimsuit models around his neck. Detainee was left in booth listening to white noise.”; (3) 12/24/02 at 0001 “Control entered booth, changed music playing, and hung binder of fitness models around detainee’s neck.”; (4) 12/26/02 at 0001 “Detainee was eating his food (given by the previous team). Lead walked into booth turned on white noise and put picture binder of swimsuit models over detainees neck.”

<sup>22</sup> (1) 12/17/02 at 2200 “He appeared disgusted by the photos of UBL and a variety of sexy females. Detainee would avoid looking at all of the photos shown to him.”; (2) 12/19/02 at 0300 “Interrogators had detainee look at pictures of women in bikinis and identify if the women were the same or different. Detainee refused to look at girls and began struggling. A few drops of water were sprinkled on his head to gain compliance.”; (3) 12/20/02 at 0001 “Detainee listened to white noise while interrogators added photos

the pornographic pictures and answer questions as a means to “test” his willingness to cooperate and to end other abusive interrogation practices.

In addition to explicit sexual and religious humiliation, other aspects of Mr. al Qahtani’s treatment and detention were also morally humiliating and a denial of his human dignity. This included forcing him to urinate in front of U.S. personnel in either a bottle or in his pants while in restraints<sup>23</sup> and then subsequently denying him the opportunity to clean himself. Military authorities also deprived him of privacy in his living conditions, specifically during showers when both female and male personnel were present.<sup>24</sup> On at least one occasion during an interrogation, he was also stripped and forcibly given an enema while military police restrained him in the presence of multiple U.S. personnel. He was also subjected to the following treatment: “On 20 Dec 02, an interrogator tied a leash to the subject of the first Special Interrogation Plan’s chains, led him around the room, and forced him to perform a series of dog tricks.”<sup>25</sup>

Although not concluding that Mr. al Qahtani’s treatment rose to the level of torture, even the military’s own investigation into his interrogation, the Schmidt Report, concludes that “[r]equiring the subject of the first Special Interrogation Plan to be led around by a leash tied to his chains, placing a thong on his head, wearing a bra, insulting his mother and sister, being forced to stand naked in front of a female interrogator for five minutes, and using strip searches as an interrogation technique the AR 15-6 found to be abusive and

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of fitness models to a binder. Once completed, the interrogators began showing the photos and asking the detainee detailed questions about the photos.”; (4) 12/21/02 at 0001 “New interrogation shift enters the booth and begins “attention to detail” approach. Detainee looks at photos of fitness models and answers questions about the photos.”; (5) 12/22/02 at 0030 “Lead began the “attention to detail” theme with the fitness model photos. Detainee refused to look at photos claiming it was against his religion. Lead poured a 24 oz bottle of water over detainee’s head. Detainee then began to look at photos.”; (6) 12/23/02 “The “attention to detail” approach began. Lead pulled pictures of swimsuit models off detainee and told him the test of his ability to answer questions would begin. Detainee refused to answer and finally stated that he would after lead poured water over detainees head and was told he would be subjected to this treatment day after day.”; (7) 12/24/02 at 0200 “Control entered the booth and began the “attention to detail” lesson for the night. The detainee still would not accurately answer questions about the fitness models and control stated that the lesson would continue the next day.”; (8) 12/26/02 at 0030 “Lead entered the booth and began attention to detail approach. Detainee missed 3 of 10 questions. He has learned to provide more details and provides enough information to substantiate his answers.”; (9) 12/27/02 at 0100 “Detainee was taken to bathroom and walked 10 minutes. The “attention to detail” theme was run with the fitness model photos.”

<sup>23</sup> “Detainee again said he has to go to bathroom. SGT R said he can go in the bottle. Detainee said he wanted to go to the bathroom because it’s more comfortable. SGT R said “You’ve ruined all trust, you can either go in the bottle or in your pants.” Detainee goes in his pants.” (11/25/2002 at 1000).

<sup>24</sup> 12/21/02 at 1630 “Detainee given shower, brushed teeth, and given new uniform. The detainee was very shy and asked several times to cover himself with his trousers or a towel while in the shower.”

<sup>25</sup> Schmidt Report. This is documented in the interrogation log as follows: “Told detainee that a dog is held in higher esteem because dogs know right from wrong and know to protect innocent people from bad people. Began teaching the detainee lessons such as stay, come, and bark to elevate his social status up to that of a dog. Detainee became very agitated.” Then: “Dog tricks continued and detainee stated he should be treated like a man. Detainee was told he would have to learn who to defend and who to attack. Interrogator showed photos of 9-11 victims and told detainee he should bark happy for these people. Interrogator also showed photos of Al Qaida terrorists and told detainee he should growl at these people.” (12/20/02 at 1115, 1300)

degrading, particularly when done in the context of the 48 days of intense and long interrogations.”

International law, however, is unambiguous in its condemnation of humiliation, particularly sexual humiliation. Condemnation is particularly vociferous where sexual humiliation is combined with other interrogation techniques to create an atmosphere of fear and confusion inconsistent with a subject’s basic human dignity, as U.S. military authorities did to Mr. al Qahtani. In such circumstances, when the intention is to obtain information or a confession from the detainee, these techniques constitute torture.

Various UN reports have condemned sexual violence and humiliation as torture or as inhuman and degrading treatment. Specifically, the CAT, in their 2006 Periodic Report on the United States, called for the US to “rescind any interrogation technique, including methods involving *sexual humiliation*, “waterboarding,” “short shackling” and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment...”<sup>26</sup> (emphasis added).

UN Reports also frequently condemn the use of sexual humiliation and forced nudity in the context of combined interrogation techniques. For instance, in 2006, the Office of the High Commissioner of Human Rights in Nepal reported the “deeply shocking” incidents of torture and cruel, inhuman and degrading treatment in Nepal, noting that “[I]n almost all cases, victims of this torture, including women, were made first to *remove their clothing*, and were subjected to continuous abusive and degrading language. In addition, there were acts of *torture involving sexual humiliation* of both male and female detainees...” (emphasis added).<sup>27</sup> Similarly, the Special Rapporteur on the question of torture noted that former detainees in Spain had reported that “torture and cruel, inhuman and degrading treatment continues to occur in Spain ... [and] described the following methods of treatment during incommunicado detention: hooding, forced nudity, physical exercise, being forced to stand for prolonged periods facing the wall, sleep deprivation, disorientation, the “bolsa” (asphyxiation with a plastic bag), sexual humiliation, threatened rape, and threats of execution.”<sup>28</sup> Without question, the regime of religious, sexual, and moral humiliation inflicted upon Mr. al Qahtani during his interrogations, alone and particularly in combination with other abuses, consisted torture profoundly injured his personal dignity, mental health, and at time, physical health.

### Stress Positions and Temperature Extremes

Generally, military authorities used stress positions on detainees at Guantánamo by forcing detainees to stand in an erect position for hours at a time, sometimes with arms extended outward to the side. See Emily Bazelon et al., *What is Torture? An Interactive*

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<sup>26</sup> Second Periodic Report of the United Nations under the Convention Against Torture UN Doc CAT/C/USA/2, 25 July 2006, ¶24.

<sup>27</sup> United Nations OHCHR In Nepal, Statement to the Press, Ian Martin, Representative of the HCHR in Nepal, 26 May 2006

<sup>28</sup> Civil And Political Rights, Including The Question Of Torture And Detention, Report of the Special Rapporteur on the question of torture, Theo van Boven, Addendum, Visit to Spain, E/CN.4/2004/56/Add.2, 6 Feb. 2004, ¶27.

*Primer on American Interrogation*, Slate.com, May 26, 2005, at <http://www.slate.com/id/2119122/>. Short shackling involves binding a detainee's wrist to his ankle with metal or plastic handcuffs, and doubling the detainee over, either while lying on the ground or sitting in a chair. *See id.* Prolonged standing produces "'excruciating pain' as ankles double in size, skin becomes 'tense and intensely painful,' blisters erupt oozing 'watery serum,' heart rates soar, kidneys shut down, and delusions deepen." *See id.* (Citations omitted). Military officials familiar with the practice describe short-shackling as routinely employed at Guantánamo. *See* Neil A. Lewis, *Broad Use Cited of Harsh Tactics at Base in Cuba*, NY Times, Oct. 17, 2004.

According to a heavily redacted email, one detainee was observed "chained hand and foot in a fetal position to the floor, with no chair, food, or water." Detainees materials 1760. The email elaborated, "Most times they had urinated or defecated on themselves, and had been left there for 18-24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold...that the barefooted detainee was shaking with cold." *Id.* On another occasion, the air conditioning had been turned off, causing the temperature to rise in the unventilated room to more than 100 degrees. *Id.* "The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night." *Id.* On other occasions this observer found detainees chained hand to foot in the fetal position on the floor. *See id.*

Mr. al Qahtani reports being restrained with very tight handcuffs in painful positions for extended periods of time, both during the day and night. The Schmidt Report also states that Mr. al Qahtani was forced to stand for long periods of time. Schmidt Report at 21. As noted above, he was left in restraints on numerous occasions until he had no recourse but to urinate on himself. Moreover, he was placed in rooms with very cold temperatures and to this day is sensitive to cold temperatures during attorney client meetings. General Schmidt also testified that at times Mr. al Qahtani was suffering from hypothermia.

Mr. al Qahtani was placed in painful positions for extended times during interrogations that were also accompanied by sleep deprivation, various forms of humiliation, and other abuses. The additional physical and psychological stress caused by the painful restraints and positions, as well as the temperature extremes, rise to a level of torture under international law. In a 1997 report on interrogation tactics used by Israel, for example, the UN Committee against Torture concluded that the use of stress positions constitutes torture for purposes of Article 1 of the Convention against Torture. *See* Office of the High Commissioner for Human Rights, *Concluding Observations of the Committee against Torture: Israel*. 09/05/97. A/52/44, ¶257. In coming to this determination the Committee considered a report of the Special Rapporteur, which noted a detainee who was "forced to sit handcuffed and hooded in painful and contorted positions, subjected to prolonged sleep deprivation and beaten over the course of three weeks." Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted to the UN Commission on Human Rights, E/CN.4/1998/38/Add.1 (Dec. 24, 1997). In its report, the Committee declared the following interrogation techniques to constitute torture under the CAT: "(1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud

music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill....” Concluding Observations of the Committee against Torture at ¶257 (emphasis added). Mr. al Qahtani was subjected to these techniques to an even more extreme degree than the prisoners in the 1997 Report, and in combination with additional abusive methods of interrogation.

The UN Special Rapporteur on Torture has also declared that the use of stress positions constitutes torture and ill-treatment under the CAT. *See* Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. GAOR. 59th Sess. Agenda Item 107(a), Sept. 1, 2004, ¶17, U.N. Doc. A/59/324. Specially, the Special Rapporteur declared that “the jurisprudence of both international and regional human rights mechanisms is unanimous in stating that such methods,” including “holding detainees in painful and/or stressful positions” and “exposing them to extremes of heat [and] cold,” “violate the prohibition of torture and ill-treatment.” *Id.*

Secretary of Defense Rumsfeld authorized and oversaw, along with General Miller, the use of stress positions during Mr. al Qahtani’s interrogations. Specifically, the Secretary’s December 2, 2002 memorandum approved the use of forced standing as an interrogation method. In a hand-written note on the first page of the December 2 memorandum, Secretary Rumsfeld approved prolonged standing as an interrogation technique, saying “I stand for 8-10 hours a day. Why is standing limited to 4 hours?” Rumsfeld Memorandum at 1.

### Threats with Military Dogs

Mr. al Qahtani reports being threatened with military working dogs on several occasions. The interrogation log corroborates Mr. al Qahtani’s report, stating that: “issues ar[o]se between MPs and dog handler” on December 7, 2002. The Schmidt Report also records a past instance of an officer directing a dog “to growl, bark, and show his teeth at” Mr. al Qahtani. In addition to creating a physical danger for the detainees, military dogs were permitted to growl and threaten them as a means of exploiting cultural and individual phobias associated with dogs.

This use of dogs was authorized pursuant to instructions sanctioned by Secretary Rumsfeld. Secretary Rumsfeld explicitly authorized the use of dogs as a method of interrogation in the “First Special Interrogation Plan.” *See* Schmidt Report pp. 13-14. United States military investigators confirmed Pentagon authorization of the use of dogs during interrogation in their report, which was compiled after the Federal Bureau of Investigation expressed concern about treatment of prisoners in Guantánamo Bay. *See id.* The Schmidt Report recognizes and confirms that prior Pentagon authorization existed to use dogs in interrogation to exploit individual detainee phobias.

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The interrogation log and the enclosed information do not describe everything that happened to Mr. al Qahtani. As with many victims of torture, particularly those who have yet to receive any treatment for their physical and psychological injuries, there are many other methods used against him that Mr. al Qahtani cannot yet discuss — and perhaps may choose never to discuss, including some of the methods used to humiliate and degrade his moral and personal integrity.

Additionally, Mr. al Qahtani has no memory of some of the interrogation methods used against him or events that occurred at Guantánamo, evidencing that he has not fully recovered from the trauma of his torture and still suffers from its impact. For example, according to new accounts of information leaked by intelligence personnel, Mr. al Qahtani was subjected to a “fake rendition” authorized by Secretary Rumsfeld around April 2003:

Mr. Kahtani, a Saudi, was given a tranquilizer, put in sensory deprivation garb with blackened goggles, and hustled aboard a plane that was supposedly taking him to the Middle East.

After hours in the air, the plane landed back at the United States naval base at Guantánamo Bay, Cuba, where he was not returned to the regular prison compound but put in an isolation cell in the base's brig. There, he was subjected to harsh interrogation procedures that he was encouraged to believe were being conducted by Egyptian national security operatives.

The account of Mr. Kahtani's treatment given to the *New York Times* recently by military intelligence officials and interrogators is the latest of several developments that have severely damaged the military's longstanding public version of how the detention and interrogation center at Guantánamo operated.

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In order to carry on the charade that he was not at Guantánamo, the military arranged it so Mr. Kahtani was not visited by the Red Cross on a few of its regular visits, creating a window of several months, said a person who dealt with him at Guantánamo.

*See Neil A. Lewis, Fresh Details Emerge on Harsh Methods at Guantánamo, NY Times, Jan. 1, 2005.* Yet, at this time, Mr. al Qahtani is unable to remember this experience.

In general, Mr. al Qahtani suffered severe physical and psychological injury as a result of his prolonged exposure to these and other methods used against him during interrogations. As a result, Mr. al Qahtani's weight fell from approximately 160 pounds to 100 pounds. During his attorney-client meeting, Mr. al Qahtani also exhibits the signs of an individual suffering from post-traumatic stress syndrome or other trauma-related

condition, including memory loss, difficulty concentrating, and anxiety. He is aware that his interrogation has left him physically and mentally injured from the abuse. He will not seek treatment from any health professional at Guantánamo, however, because of their involvement in his interrogation.

Despite Mr. al Qahtani's lack of therapeutic medical treatment, medical personnel were directly and indirectly involved in his interrogations. With respect to their indirect involvement, between November 2002 and January 2003, medical personnel frequently "cleared" him for interrogations and monitored his vital signs on a daily basis. He was also hospitalized at least twice when he was close to death during interrogations at Guantánamo. On one occasion described in the interrogation log, he was rushed to a military base hospital when his heart rate fell dangerously low during a period of extreme sleep deprivation, physical stress and psychological trauma. The military flew in a radiologist from the U.S. Naval Station in Puerto Rico to evaluate the computed tomography ("CT" or "CAT") scan. After being permitted to sleep a full night, medical personnel cleared Mr. al Qahtani for further interrogation the next day. During his transportation from the hospital, Mr. al Qahtani was interrogated in the ambulance.

With authorization from General Miller and his superior officers, medical professionals were also directly involved in Mr. al Qahtani's interrogation. This involvement ranged from administering medical procedures, such as enemas, as punishment during interrogations to health professionals participating on Behavioral Science Consultation Teams ("BSCT teams") to advise interrogators how to increase the psychological stress on him.

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Mr. al Qahtani strives each day to maintain his mental and physical health while imprisoned at Guantánamo and prevented from obtaining any independent medical treatment. He must live with the knowledge that the United States government has deprived him, and continues to deprive him, of the most basic of human rights. During our meetings, Mr. al Qahtani has described the fundamental nature of the rights the United States authorities stripped from him:

A human being needs four things in life that were taken from me at Guantánamo. First, to honor his religion and freedom to practice religion and respect it. Two, honoring his personal dignity by refraining from humiliating a human being through beating or cursing him and bad treatment in general. Three, respect for his honor, which means not dishonoring him through sexual humiliation or abuse. Four, respect for human rights by allowing a human being to sleep and be comfortable where he is; to be in a warm shelter; to have security for his life; to have sufficient food and beverage; to have means to relieve himself and clean his body; to have humane medical treatment; and to know that his family is safe from threats or harm. Again, all of these rights were taken from me.

Mr. al Qahtani's family has also been deeply impacted by his torture by U.S. personnel. News of their son's torture and interrogation has caused Mr. al Qahtani's parents a tremendous amount of grief and concern. His aging father and mother have not seen Mr. Qahtani for five years and both suffer from physical ailments. Their son's torture and abuse by U.S. personnel has been incomprehensible to them. In the years since his imprisonment, several of his siblings have finished university and many of them have had children. Despite this good fortune, Mr. Qahtani's parent's health continues to decline as a result of their stress over their son's treatment. Mr. al Qahtani's family is haunted each day by the knowledge that he has suffered, and continues to suffer, physical, religious, sexual, and psychological abuse and humiliation.