~~TOP SECRET~~ [redacted] ~~X1~~ 1.4(c)

OGC-FO-2003-50015
12 February 2003

MEMORANDUM FOR THE RECORD

SUBJECT: (S) "Humane" Treatment of CIA Detainees

1. (S) This Memorandum for the Record pulls together in one place various conversations I have had over the past two months concerning the issue of CIA treatment of detainees and the issue of the meaning and applicability to CIA of the Memorandum for the Vice President *et al* from the President dated 7 February 2002 and titled *Humane Treatment of al Qaeda and Taliban Detainee*. That memorandum (the "February Memo") is addressed to, among others, the Secretary of Defense and the Director of Central Intelligence and states in paragraph 3 the following:

> "Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." (Emphasis added).

1.4(c) 2. (TS/[redacted]) Based on a number of conversations starting in early December (a small portion of which are referred to in the Lotus Notes attached hereto), it is, and has been, the consistent understanding of CIA personnel that the foregoing language is not applicable to, was not intended to, and does not prohibit or limit CIA in the use of the type of interrogation techniques approved for use by CIA in the 1 August 2002 Memorandum for John Rizzo from the Assistant Attorney General, Office of Legal Counsel or impose a requirement of "humane" treatment. 3.5(c)

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3. ~~(S)~~ Among other things, after the issuance of the February Memo, the use of enhanced interrogation techniques was approved by the Attorney General through the Office of Legal Counsel and carried on thereafter with the knowledge and concurrence of, among others, the Assistant Attorney General in charge of the Criminal Division, the National Security Adviser, Counsel to the President, Counsel to the National Security Adviser, and Counsel to the Vice President. As of November 2002, others, including the General Counsel to the Department of Defense, were aware generally of the fact that CIA was authorized to conduct interrogations using techniques beyond those permitted under the Geneva conventions. No one ever suggested that there was any inconsistency between the authorized CIA conduct and the February Memo.

1.4(c) 4. ~~(TS)~~ [redacted] Consistent with the foregoing, in conversations in early December, I confirmed that former Acting General Counsel and [redacted] understood, based on the 3.5(c) foregoing and the care with which the issue had been analyzed and decided, that CIA use of interrogation techniques was authorized by the President and that they understood that the February Memo was intended not to be applicable to CIA and in any case predated the subsequent approval of the use of enhanced interrogation techniques. Director of Central Intelligence (DCI) Chief of Staff John Moseman similarly confirmed his clear understanding that the February Memo placed no limit on CIA's authorities.

5. ~~(S)~~ In two conversations before the holidays in December, Counsel to the National Security Counsel John Bellinger confirmed to me that the issue of use of the type of techniques authorized by the Attorney General had been extensively discussed and was consistent with the President's direction as reflected in the February Memo. Bellinger encouraged me to discuss the issue with Deputy Assistant Attorney General John Yoo.

6. ~~(S)~~ In several conversations with John Yoo including one on 13 December 2002, John Yoo informed me that the February Memo was not applicable to or binding on CIA and that the issue of its intent and effect had been considered by the Department of Justice in considering its opinions on enhanced

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interrogation. Yoo stated that the language of the memorandum had been deliberately limited to be binding only on "the Armed Forces" which did not include the CIA. He stated that he would be happy to write a written opinion to that effect. A draft of such an opinion was delivered to me on 9 January. I have provided informal comments to Yoo. The opinion has not yet been finalized. (In the same conversations, Yoo informed me that the Department of Justice had concluded that the use of enhanced interrogation techniques not only did not violate the US criminal torture statute but that it did not violate any other US criminal law. I have asked Yoo to write a formal opinion to that effect).

7. ~~(S)~~ On or about 26 November 2002, CIA received a memorandum from the Secretary of Defense dated 11 October 2002 regarding the transfer of an individual from the Department of Defense (DOD) control to the control of the CIA. The memorandum, addressed to the DCI, asked the DCI to confirm that the detainee would be returned to DOD control at an appropriate time and stated in its second paragraph:

> "Please note that the President's 7 February 2002 determination requires that the United States Armed Forces 'shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

8. ~~(S)~~ I discussed the Secretary of Defense's memorandum to the DCI with the DOD General Counsel on two occasions after we received it. On both occasions, DOD's General Counsel stated his understanding that the February Memo was limited in purpose and effect to the "Armed Forces" and that inclusion of the above quoted language was not intended in any way to reflect a different understanding of the scope, purpose, or effect of the February Memo.

9. ~~(S)~~ At a meeting in the Office of the White House Counsel on 13 January 2003, I discussed with Judge Gonzales, David Addington, John Yoo, and Jim Haynes the issues presented by a letter which had been received over the Holidays from a group called Human Rights Watch. At the meeting, David Addington and Judge Gonzales confirmed that the February Memo

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was applicable only to the Armed Forces. Addington further stated and Yoo agreed that the term "humane treatment" was intended to be no more restrictive than the Eight Amendment's prohibition on cruel and unusual punishment.

1.4(c)

10. (TS/[redacted]) At a meeting with National Security Adviser Condolezza Rice, the Secretary of Defense, the General Counsel to the Department of Defense, the Secretary of State, the Vice President (by video conference), the DCI, and myself on 16 January, I pointed out to the National Security Advisor (as I had in the meeting described in paragraph 9 above) and the others that there was an arguable inconsistency between what CIA was authorized to do and what at least some in the international community might expect in light of the Administration's public statements about "humane treatment" of detainees on and after the February Memo. Everyone in the room evinced understanding of the issue. CIA's past and ongoing use of enhanced techniques was reaffirmed and in no way drawn into question. Questions instead were directed at DOD which, according to DOD General Counsel, was about to commence an internal legal review to determine what interrogation techniques the military would authorize in what circumstances. Rice clearly distinguished between the issues to be addressed by the military and CIA.

3.5(c)

11. (S) At a meeting with, among others Jim Haynes, [redacted] and [redacted] and John Yoo at the Department of Defense on 22 January 2003, John Yoo repeated his statements that the February Memo is not applicable to CIA and that the word "humane" remains consistent with the Eight Amendment.

Scott W. Muller
General Counsel

Attachments:
As stated

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3.5(c)

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