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Gitmo interrogations spark battle over tactics

The inside story of criminal investigators who tried to stop abuse

PART ONE OF TWO

By Bill Dedman

Investigative reporter

MSNBC

Updated: 10:34 p.m. ET Jan 2, 2007



Bill Dedman

Investigative reporter

- Profile
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Speaking publicly for the first time, senior U.S. law enforcement investigators say they waged a long but futile battle inside the Pentagon to stop coercive and degrading treatment of detainees by intelligence interrogators at Guantanamo Bay, Cuba.

Their account indicates that the struggle over U.S. interrogation techniques began much earlier than previously known, with separate teams of law enforcement and intelligence interrogators battling over the best way to accomplish two missions: prevent future attacks and punish the

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That's Defense Secretary Donald Rumsfeld's description of the detainees housed at the U.S. military prison at Guantanamo Bay, Cuba, which has been a lightning rod for criticism in the Bush administration's war on terror. See the prison and its unwilling inhabitants.

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Inside Gitmo



Ed Buice / NCIS

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PART TWO OF TWO

By **Bill Dedman**

Investigative reporter

MSNBC

Updated: 5:34 p.m. ET Oct 26, 2006



Mohammed al-Qahtani, detainee No. 063, was forced to wear a bra. He had a thong placed on his head. He

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- Part 1: Interrogations spark battle over tactics
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By **Bill Dedman**

Investigative reporter

MSNBC

Updated: 4:29 a.m. ET Oct 24, 2006



Bill Dedman

Investigative reporter

- [Profile](#)
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Speaking directly to terrorists in his speech on this year's fifth anniversary of Sept. 11, President Bush said, "America will find you, and we will bring you to justice."

But because of a lack of evidence, most of the suspected terrorists taken to the detention center at Guantanamo Bay, Cuba, will not see the inside of a courtroom.

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Battle over tactics raged at Gitmo

The inside story of criminal investigators who tried to stop abuse

PART ONE OF TWO

By Bill Dedman

Investigative reporter

Updated: 10:34 p.m. ET Jan 2, 2007

Speaking publicly for the first time, senior U.S. law enforcement investigators say they waged a long but futile battle inside the Pentagon to stop coercive and degrading treatment of detainees by intelligence interrogators at Guantanamo Bay, Cuba.

Their account indicates that the struggle over U.S. interrogation techniques began much earlier than previously known, with separate teams of law enforcement and intelligence interrogators battling over the best way to accomplish two missions: prevent future attacks and punish the terrorists.

In extensive interviews with MSNBC.com, former leaders of the Defense Department's Criminal Investigation Task Force said they repeatedly warned senior Pentagon officials beginning in early 2002 that the harsh interrogation techniques used by a separate intelligence team would not produce reliable information, could constitute war crimes, and would embarrass the nation when they became public knowledge.

The investigators say their warnings began almost from the moment their agents got involved at the Guantanamo prison camp, in January 2002. When they could not prevent the harsh interrogations and humiliation of detainees at Guantanamo, they say, they tried in 2003 to stop the spread of those tactics to Iraq, where abuses at Abu Ghraib prison triggered worldwide outrage with the publishing of graphic photos in April 2004.

Their account, confirmed by the Navy's former general counsel, outlines a fierce debate within the Defense Department over the competing goals of justice and security in the war on terror. President Bush has said repeatedly that the detentions at Guantanamo were intended not only to secure intelligence information to prevent al-Qaida attacks, but also to "bring to justice" the terrorists.

As a result, a dual structure of intelligence gathering and criminal investigation, with two arms of the U.S. military, with overlapping missions, interrogating the same prisoners, continues today.

The law enforcement agents, who were building criminal cases against the detainees, also say that military prosecutors told them that abusive interrogations at Guantanamo compromised the chance to bring some suspected terrorists to trial. Among them, the agents say, is Mohammed al-Qahtani, a Saudi whom the Pentagon has described as the intended 20th hijacker in the Sept. 11, 2001, terror attacks.

"We were told by the Office of Military Commissions, based on what was done to him, it made his case unprosecutable," said Mark Fallon, the deputy commander and special agent in charge of the Criminal Investigation Task Force from 2002 to 2004. "It would taint any confession if obtained under coercion. They were unwilling to move forward with any prosecution of al-Qahtani."

A Pentagon spokesman on Friday dismissed this as "speculation," but would not say whether al-Qahtani would be tried. He is not among the 10 detainees who have been approved for a military trial.

It was two years before the photos emerged from Abu Ghraib, the Pentagon cops said, when they began arguing that coercive or abusive interrogations would not serve war-fighting or justice.

"No. 1, it's not going to work," said Col. Brittain P. Mallow, the commander of the task force from 2002 to 2005.

"No. 2, if it does work, it's not reliable. No. 3, it may not be legal, ethical or moral. No. 4, it's going to hurt you when you have to prosecute these guys. No. 5, sooner or later, all of this stuff is going to come to light, and you're going to be embarrassed."

The members of the criminal task force who spoke with MSNBC.com are experienced criminal investigators.

The task force drew from the Army, Navy and Air Force, as well as from the FBI, Secret Service and other law enforcement agencies. These agents are not whistleblowers. Those still serving inside the Department of Defense received authorization to be interviewed by MSNBC.com.

Working in the shadow of Sept. 11, under pressure to prevent another attack on the nation, the investigators found themselves pitted in a war of principle against a unit of young intelligence interrogators, often reservists, with little or no experience.

Based on their experience interrogating al-Qaida members involved in the bombing of the USS Cole and other attacks, the agents preferred an approach to interrogation they called "rapport building."

"We had agents who knew how to do adversarial interviews, had sat across from bad guys," Col. Mallow said. "Interviews and interrogations are not about making someone talk. They are about making them want to."

Early in 2002, when the first detainees were brought from the Afghan front to the barbed wire of Guantanamo, the law enforcement agents said, they saw intelligence interrogators struggle to apply to suspected al-Qaida terrorists the techniques taken from the Army Field Manual. They said frustrated intelligence interrogators were trying whatever they thought might work: One interrogator fancied blaring country and western music and a full cowboy getup during his sessions.

By the summer of 2002, the agents said, the intelligence unit was experimenting with harsher tactics, such as using a cinderblock to hold a detainee in a "stress position" by forcing him to sit on it with his hands chained to the floor.

By the fall of 2002, believing that some detainees had al-Qaida training in resisting interrogation, the intelligence team sought greater leeway from Secretary of Defense Donald H. Rumsfeld. He approved new rules allowing stress positions for up to four hours, deprivation of light and sound, interrogation for up to 20 hours straight, removal of all comfort items (including the Koran and toilet paper), removal of clothing, forced shaving of facial hair, and use of military dogs to scare detainees.

In practice, these new rules were interpreted broadly: According to interrogation logs made public, al-Qahtani, the suspected 20th hijacker, was dressed in women's clothing and led around on a leash while performing dog tricks.

Warnings and alternatives

With increasing frustration, the agents said, they worked for change within the Pentagon in these ways:

- Suggested alternatives to the Army commanders in charge of the Guantanamo intelligence interrogations, Maj. Gen. Michael E. Dunlavey and his replacement, Maj. Gen. Geoffrey D. Miller. They said Dunlavey wouldn't listen, and Miller questioned their loyalty and patriotism, saying, "If you want to be on the team, you've got to put on the uniform." Miller acknowledges saying this. He said he was trying to get the intelligence and law enforcement groups to work together, to repair a situation where they were barely speaking. Dunlavey says he was a supporter of the rapport-building approach, and "torture doesn't work," but he can't say more because he is a defendant in two lawsuits brought by former detainees.
- Refused to participate in interrogations they felt were abusive; reported any signs of criminal acts by the intelligence interrogators; blocked an FBI plan to move al-Qahtani to another country where he could be tortured; and threatened to remove their investigators from Guantanamo entirely if they were forced to watch abusive interrogations.
- Pushed their warnings up the chain of command to the Pentagon's general counsel, William J. Haynes III, and to officials in Rumsfeld's office. "In some cases, they listened to what we said," said Col. Mallow, the unit's commander. "In other cases, we just got head nods."

The agents said they were shut out of briefings when senior lawyers from the Bush administration toured Guantanamo on Sept. 25, 2002, while the plan for the aggressive interrogation of al-Qahtani was being formed. The VIP visitors included White House counsel Alberto R. Gonzales, now the attorney general; David S. Addington, legal counsel to Vice President Dick Cheney, now his chief of staff; and Justice Department attorney John Yoo, who helped write memos narrowly defining torture.

They also were surprised not to be contacted during subsequent Pentagon investigations of detainee treatment at Abu Ghraib and Guantanamo, which concluded that there was no policy of abuse. Fallon, Col. Mallow and other investigators recently provided written answers to questions from Sen. Carl Levin of Michigan, the ranking Democrat on the Senate Armed Services Committee, who has told the investigators he

plans to issue a report as soon as this week calling for an investigation of Bush administration policies on detainees.

'We will not be a party to this'

"What makes me intensely proud of all these individuals was they said, 'We will not be party to this, even if we're ordered to do so,'" said Alberto J. Mora, the former general counsel of the Navy, who ultimately got Secretary Rumsfeld to roll back permission for some of the harshest interrogation techniques. "They are heroes, and there's no other way to describe them. They demonstrated enormous personal courage and personal integrity in standing up for American values and the system we all live for."

In the end, the law enforcement investigators said, they were not able to stop abusive interrogations, but they were able to slow them.

"We always said, there are no secrets, just delayed disclosures," said Fallon, the chief investigator. "And what we told our folks is, your grandchildren are going to ask, 'What did you do during the war?' We wanted our folks to be proud of what they did."

Mark Fallon is a cop.

The grandson of a police commissioner and son of a deputy chief, he married the daughter of his father's partner from the detective bureau. He grew up in Harrison, N.J., now best known as "Sopranos" family territory. (The television version of Big Pussy's auto body shop is just down the street from Fallon's boyhood home, and his boat is the "Bada Bing.") After college, Fallon took his father's advice to "go federal," first as a deputy U.S. marshal and then in 1981 as an agent for the Naval Criminal Investigative Service.

Working undercover and wearing a rattail haircut as a young agent, he busted Filipino drug dealers in Subic Bay before the ships came in, hoping to discourage sales to American sailors. In 1993, he worked with the FBI on the investigation of the blind sheik, Abdul Omar Abdel-Rahman, who planned to blow up the United Nations and other New York City landmarks. In 1998, he was the lead agent investigating the joyriding Marine aviators from Aviano Air Base who clipped a cable-car wire in Italy, killing 20 tourists. As chief of counterintelligence operations in Europe and the Middle East, Fallon commanded the Navy's USS Cole Task Force, investigating with the FBI the 2000 al-Qaida suicide bombing that killed 17 sailors in the Yemeni port of Aden.

As an investigator, Fallon has been trained to collect the facts and challenge assumptions. As a civilian who has served the Navy and Marine Corps in 31 countries, he has grown accustomed to speaking truth to people in uniforms – with a New Jersey bluntness if necessary. "If you're honest and act with integrity," he says, "what else do you need?"

'This Is Your Life'

In January 2002, Fallon was lent by the Navy to the Army to serve as deputy commander and special agent in charge of a new Criminal Investigation Task Force. Based at Fort Belvoir, Va., he supervised agents working in Afghanistan, Iraq and Naval Station Guantanamo Bay, commonly known as "Gitmo," building cases against detainees believed to be al-Qaida members or supporters.

The investigators faced an almost insurmountable challenge at Guantanamo.

They didn't have names for many of the detainees. It often wasn't clear what country they were from. A detainee might claim he was a Saudi, then visiting law enforcement agents would recognize him as a Yemeni. Most weren't picked up by U.S. forces, but were handed over by bounty hunters in the early days of the war in Afghanistan. They were transferred with scant records, often without any "pocket litter," the possessions and documents that can be invaluable to investigators.

The law enforcement team's mission was to conduct criminal investigations, prepare cases for prosecution, recommend which detainees should be released or held, and pass on intelligence information to other agencies.

But this was no ordinary criminal case. Rumsfeld had called the detainees "the worst of the worst," but what crime had they committed?

"Instead of having a crime scene, a suspect, we had suspects," Fallon said. "So we had to take a suspect ...

then track that particular person, once we identified who they actually were, through various levels of their life, through possible radicalization, through a possible visit to ... a training camp in Afghanistan or elsewhere where they might have learned some of the tradecraft of terrorism. We would then have to determine where they might have been at any particular point in their life, from there determine if any acts occurred in that particular area, and then if the individual might have been involved in any of those acts, and if those acts then would have been a criminal violation. So it was very much different from the way you would traditionally work a criminal investigation."

They called the process "This Is Your Life," after the biographical radio and television show.

Although Pentagon officials have referred to an "elaborate screening process" before detainees were sent to Guantanamo, the law enforcement agents said evidence of criminal activity or intelligence value in some cases was flimsy.

Fallon said two detainees were suspected in a rocket attack against U.S. forces in Afghanistan. The evidence against them was that they were found wearing dark olive green jackets similar to the one worn by the attacker. "I've been to Kabul," he said. "That's the only color jacket I've seen."

Because they saw so many detainees they thought didn't belong there, the investigators decided early in 2002 to expand operations to Afghanistan, to help evaluate detainees before they were sent to Guantanamo. In the end, they were able to develop criminal cases against only about 100 of the roughly 775 detainees who came to Guantanamo.

Out of 445 detainees still remaining at Guantanamo, the Pentagon says "more than 70" are in line for military trials. (See sidebar, In Limbo: Cases are few against Gitmo detainees.)

"There are some mean, nasty people down there," said Jeffery K. Sieber, a former resident agent in charge of the law enforcement task force at Guantanamo. "There's always been some hard-core people down there who want to do very bad things to the United States. And some who weren't — but now they're very upset."

Intelligence unit held lead role

The law enforcement investigators don't control the operations at Guantanamo. The lead role is played by a separate military intelligence unit, the Army's Joint Task Force 170, later known as the Joint Task Force Guantanamo, which runs the prison and interrogates detainees for intelligence information. Rumsfeld has made clear in public statements that the Bush administration considers the intelligence mission more important than the law enforcement mission.

"Once September 11th occurred and the global war on terror began, people ... had in their mind that when you arrested somebody like a car theft or a bank robber, what you do is you put him in jail, then you give him a lawyer, then you have a trial, and then you punish them," Rumsfeld said in a 2004 radio interview. "Of course in this instance, the people in Guantanamo Bay, these are people that were picked up on the battlefield for killing innocent men, women and children in Afghanistan. ... They're not car thieves. The purpose is to keep them off the battlefield so they don't kill more innocent men, women and children, and to try to interrogate them and find out what they know so we can stop other terrorists from killing still additional Americans and friends of ours. It isn't a law enforcement task. It's a war on terrorism task."

The Pentagon also has said that the intelligence interrogations at Guantanamo are "guided by a very detailed plan, conducted by trained professionals in a controlled environment, and with active supervision."

But the cops at Guantanamo said the intelligence interrogators were "very challenged."

"The first time most of these interrogators were actually ... in the room with a real bad guy was at Guantanamo Bay," Fallon said, "with this tremendous challenge of trying to elicit information from someone who's a suspected terrorist."

'Futility' or French fries?

The intelligence team had mostly completed a course at the U.S. Army Intelligence Center at Fort Huachuca in Arizona, where they learned a series of interrogation scenarios described in the Army Field Manual with catchy names: Fear Up Harsh, Pride and Ego Down, Mutt and Jeff, We Know All, Isolation, Futility.

These scenarios are open to wide interpretation. An intelligence officer in Afghanistan was asked by an Army

investigator to describe the Fear Up scenario. "Disrespect for the Koran," he began, though there's nothing about that in the Army Field Manual. "Insult the PUC," or person under custody, "throw a chair inside a room. Have a room upstairs with spotlights. Turn on music very loud, under constant supervision of an MP guard."

The law enforcement investigators, on the other hand, had their own ways of making the detainees talk.

In captured al-Qaida training handbooks, jihadists are told what to expect during interrogation. The U.S. will whip you, use dogs, give you water but not allow you to urinate, isolate you, insult your family. The handbooks say nothing of French fries.

"Some of them really became fond of some fast food French fries, and cheeseburgers," Fallon said, noting that the law enforcement agents made frequent visits to a McDonald's on the U.S. base.

Wearing polo shirts instead of uniforms, the law enforcement investigators would take off the detainees' leg irons and handcuffs. Aside from the lack of a lawyer and a Miranda warning, the investigators said they tried to treat the captives as they would any suspect.

The cops call it rapport-building.

"Our folks would sit on the ground with detainees having tea," Fallon said. "Many of the detainees wanted also to be released. And our goal was to obtain accurate information. A good investigator works hard to prove guilt or innocence."

Before the interrogation, they would study. Fallon sought help from a friend from the Naval Criminal Investigative Service, chief psychologist Michael Gelles, to develop training that included Arab culture and social networking, tribal origins, al-Qaida camps, the roles of shame, obedience and secrecy. They brought in Arabic speakers and agents with Middle Eastern experience, who had worked on the USS Cole and East African embassy bombings.

But their main weapon was their experience as cops.

"We were not browbeating them. We were not fussing with them," said Randy Carter, the director of operations at the Guantanamo interrogation "boxes" for the task force.

'In the tropics, beautiful views of the ocean'

"We would create an environment where they were comfortable talking with us. Asking about their families. Have they had any correspondence with them? Is their food acceptable?"

Agents would say, 'You're in the tropics, beautiful views of the ocean,' and some of them would chuckle with that, and that would bring down the barriers that they had built up on themselves," Carter said.

Some were "head hangers," who wouldn't even acknowledge an interrogator, but others loved to talk.

Carter recalled an Australian detainee "coming in to discuss things, and just loving a pepperoni pizza, which is pork, and him being a good Muslim. He knew it. And smoking his Marlboros. Building a rapport is not what they're used to, and it worked for us. As we built a rapport, it would be 'yes' or 'no.' Then it would be telling us whether they did or did not do it, and if they didn't, who did."

At first, the two sets of interrogators, intelligence and law enforcement, tried to work together, crowding into the box with the detainee and an interpreter. These efforts did not go well. The scripted scenarios of the intelligence interrogators, such as Rapid Fire – repeatedly asking the same question with slightly different phrasings no matter what the answer - frustrated the criminal investigators as well as the detainees.

In August 2002, the two teams agreed to take turns, each choosing 200 detainees for an exclusive period of interrogation. But that plan broke down frequently, because the intelligence group had priority.

"If we had a cooperating detainee," Carter said, "we would share that information, but then JTF 170 would get him up in the middle of the night to have him tell them the same information. It impeded our process."

Of greater concern was a different attitude toward abusing or degrading the detainees.

The law enforcement investigators said they saw early on in Afghanistan, before the detainees were shipped to Guantanamo, that the temptation to cross the line would be great - not out of sadism in most cases, but out of confusion about what would work.

"I watched the intelligence community, military and civilian, struggle with how to develop a coherent strategy to deal with terrorist subjects," Col. Mallow said.

"I wish they had asked our law enforcement folks more, had invited us to the table more. We sure did not have all the answers, but I think we could have helped."

On guard against runaway emotions

The messages from the Bush administration and the Pentagon had been mixed: The detainees were to be treated humanely, "consistent with" the Geneva Conventions on treatment of prisoners of war. But they also said that the Geneva Conventions did not apply: These were not prisoners of war, but "enemy combatants."

"We were very, very concerned," Fallon said, "to ensure that we would not, in the heat of battle, in a highly emotional period, in an effort to do the right thing, commit criminal acts."

That moral and legal line was patrolled by Carter, who monitored the interrogation booths in Guantanamo's Camp Delta. From his observation booth in a triple-wide interrogation trailer, where he could see into two interrogation boxes at once, he was charged with ensuring that the intelligence interrogations, with their flashing lights, stress positions or the man in the cowboy outfit, didn't contaminate the evidence from legal investigations.

"I told ICE — Interrogation Control Element — I do not want any of our interrogations or interviews in the same trailer as the intel collectors are," Carter said. "We are not to partake of any of their tactics, we are not to witness any of their tactics. We can't have the foolishness from those folks in the mix."

At this stage, in the summer of 2002, said Col. Mallow, the commander of the law enforcement unit, "We're not talking about grievous abuse. But frankly some of the things my agents saw were just plain silly and stupid. They were obviously amateurish and not likely to produce good results.

"It would get worse."

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Can '20th hijacker' ever stand trial?

Aggressive interrogation at Guantanamo may prevent his prosecution

PART TWO OF TWO

By Bill Dedman

Investigative reporter

Updated: 5:34 p.m. ET Oct 26, 2006

Mohammed al-Qahtani, detainee No. 063, was forced to wear a bra. He had a thong placed on his head. He was massaged by a female interrogator who straddled him like a lap dancer. He was told that his mother and sisters were whores. He was told that other detainees knew he was gay. He was forced to dance with a male interrogator. He was strip-searched in front of women. He was led on a leash and forced to perform dog tricks. He was doused with water. He was prevented from praying. He was forced to watch as an interrogator squatted over his Koran.

That much is known. These details were among the findings of the U.S. Army's investigation of al-Qahtani's aggressive interrogation at Guantanamo Bay, Cuba.

But only now is a picture emerging of how the interrogation policy developed, and the battle that law enforcement agents waged, inside Guantanamo and in the offices of the Pentagon, against harsh treatment of al-Qahtani and other detainees by military intelligence interrogators.

In interviews with MSNBC.com — the first time they have spoken publicly — former senior law enforcement agents described their attempts to stop the abusive interrogations. The agents of the Pentagon's Criminal Investigation Task Force, working to build legal cases against suspected terrorists, said they objected to coercive tactics used by a separate team of intelligence interrogators soon after Guantanamo's prison camp opened in early 2002. They ultimately carried their battle up to the office of Secretary of Defense Donald H. Rumsfeld, who approved the more aggressive techniques to be used on al-Qahtani and others.

Although they believed the abusive techniques were probably illegal, the Pentagon cops said their objection was practical. They argued that abusive interrogations were not likely to produce truthful information, either for preventing more al-Qaida attacks or prosecuting terrorists.

And they described their disappointment when military prosecutors told them not to worry about making a criminal case against al-Qahtani, the suspected "20th hijacker" of Sept. 11, because what had been done to him would prevent him from ever being put on trial.

When Gen. Geoffrey D. Miller, the U.S. Army general in charge of detainees at Guantanamo Bay, flew to Iraq on Aug. 31, 2003, to advise on operation of a little-known prison called Abu Ghraib, his plane also carried something of a stowaway.

An agent of the Pentagon's Criminal Investigation Task Force went along to warn U.S. prison officials in Iraq that Gen. Miller's aggressive interrogation techniques were not the only way, that there were legal and effective ways of building rapport with detainees to get them to talk.

The task force's top cop, Mark Fallon, had sent the agent. Fallon said he feared that the Guantanamo techniques would spread.

"I wanted to tackle the general, anything to stop him from getting on that plane," Fallon said. "The best I could do was to send along a chaperone."

Gen. Miller resisted the agent, Blaine Thomas, joining his team, according to Fallon and his commander, Col. Brittain P. Mallow. He eventually relented, they said, but in Iraq he told the agent three times that he wasn't needed in meetings. So the agent made the best of his time in Iraq, meeting with the FBI.

The general, now retired, says the cops have it backward. "I'm the one who asked their guy to come" on the Abu Ghraib trip, Gen. Miller said, "and when they sent him, he was the one who decided to work with the FBI and other agencies instead of coming to the briefings. He had free and open access like everyone else."

In early April 2004, Gen. Miller left Guantanamo for a new role, running all U.S. prisons in Iraq, a few weeks before the name Abu Ghraib became well known. An Army investigation found later that Miller on his first visit had urged that military police with dogs "set the conditions" for interrogations, and that interrogators adopt "emerging strategic interrogation strategies and techniques" being used at Guantanamo.

"When the Abu Ghraib photos were released," Fallon said, "I felt a great disappointment."

"I wasn't there for the meetings with General Miller. I do not know what he told those folks over there, what techniques to employ. ... But I felt a great sense of disappointment that I was not able to effectively influence behaviors that could have contributed to Abu Ghraib."

At Orlando International Airport on Aug. 4, 2001, a Saudi traveler caught the eye of a Customs agent.

The young man had no return ticket, \$2,800 in cash, and wouldn't identify the friend he said would pick him up at the airport. The Customs agent decided this was a potential illegal immigrant. Before being sent on a flight back to the Middle East, Mohammed al-Qahtani turned to the agent and said, "I'll be back."

The Pentagon has said that his friend at the airport was the Sept. 11 ringleader, Mohammed Atta, and that al-Qahtani was apparently intended to be the fifth hijacker on United Airlines Flight 93, which crashed in Pennsylvania when passengers were able to overpower the other four. Al-Qahtani, through his attorney, says he was not involved.

Al-Qahtani was captured in December 2001 on the Afghanistan-Pakistan border and shipped to the U.S. prison camp at Guantanamo Bay.

For awhile he cooperated with FBI interrogators, but by the fall of 2002, he had mostly stopped talking.

The pressure on interrogators to produce information was intense. Less than a year after the Sept. 11 attacks, al-Qaida attacks were continuing: the firebombing of a synagogue in Tunisia in April, a bomb outside the U.S. Consulate in Karachi in June.

In early September 2002, the FBI suggested another option for obtaining information from al-Qahtani, according to the leaders of the law enforcement task force, who shared an office at Guantanamo with the FBI. The plan, they said, was to send al-Qahtani temporarily or permanently to another country, such as Egypt or Jordan, where he could be interrogated with techniques that the FBI could not legally use.

The commander of the law enforcement task force, Col. Britt Mallow, and his chief investigator, Mark Fallon, say they learned of the plan from the Pentagon's Office of General Counsel, which urged them to reach a consensus with the FBI and intelligence interrogators on how to handle al-Qahtani. The cops opposed the plan, which was scrapped. A later FBI legal analysis warned that even discussing such a plan, known as "rendition," could be a crime, conspiracy to commit torture.

The FBI and Justice Department will not comment on any plan for rendition of al-Qahtani. A Pentagon spokesman, Cmdr. Jeffrey D. Gordon, said only, "There is continuous dialogue among interagency staffs about a wide variety of topics of national importance, although we do not typically discuss those talks."

If al-Qahtani wasn't going to talk with the law enforcement agents, then the military intelligence interrogators wanted their shot. By September 2002, they were developing their own interrogation plans for al-Qahtani.

By this time, law enforcement interrogators said, they had seen signs of coercive or abusive techniques being tried by the young, mostly inexperienced, military intelligence personnel: a cinder block left in the interrogation box, apparently used to hold a detainee in a stress position, called short shackling; a detainee wrapped from head to toe in duct tape. These techniques were not in the interrogation bible, the Army Field Manual.

The al-Qahtani plan went much further. The law enforcement agents began to hear a new term, SERE, an acronym for Survival, Evasion, Resistance and Escape. SERE training is provided to U.S. Special Forces and other military personnel to prepare them to withstand torture if they become prisoners of war. It includes mocking of their religious beliefs, sexual taunting, and a technique called water-boarding, which induces water through the nose to make a prisoner feel like he's drowning.

Intelligence interrogators had the idea to "reverse-engineer" SERE, to use its techniques to pry information out of the suspected al-Qaida and Taliban terrorists. Pentagon e-mails seen by MSNBC.com show that at least a half dozen military intelligence personnel from Guantanamo, including at least one medical adviser, went to Fort Bragg, N.C., on Sept. 16-20, 2002, for SERE training. It was an experiment, apparently not unlike what the CIA had been trying on the few high-value detainees kept at secret locations.

The law enforcement agents, who were collecting intelligence information but primarily focused on developing cases for Pentagon prosecutors, say they questioned whether SERE tactics would produce useful information.

"It was the latest gimmick," said Michael Gelles, the chief psychologist for the Naval Criminal Investigative Service and an adviser to the law enforcement agents at Guantanamo. "The problem was these techniques were taught to harden you against interrogation."

Gelles said he called Col. Morgan Banks, the director of the Psychological Applications Directorate at Fort Bragg. "I said it was nuts," Gelles recalls, "and told him we were concerned about this. He said it was used to train for resistance, and would not work as an interrogation approach. But they still teach it." That September of 2002, Col. Mallow and Fallon ordered their agents in writing not to engage in coercive interrogations, particularly using SERE techniques.

They also said they and their agents raised these concerns several times with the commander at Guantanamo, Gen. Michael E. Dunlavey, and his staff, but he "wouldn't listen at all," Col. Mallow said.

Gen. Dunlavey, a lawyer and reserve officer, now a state judge in Erie, Pa., says the law enforcement agents "are absolutely wrong." They didn't speak up to him about any coercive interrogations, he said. Any use of the SERE techniques must have begun after he left. "Whatever happened after Gen. Miller took over, I can't tell you."

Dunlavey said he always believed that "torture is wrong," and that his views were right in line with the law enforcement views. He said couldn't comment further because he is a defendant in two lawsuits brought by detainees.

Back in the states, Col. Mallow and Fallon said, they raised the issue almost weekly in August and September 2002 with lawyers from the office of the Pentagon general counsel, William J. Haynes III, as well as senior Army officials. Mallow said he recalls clearly that one meeting was on Sept. 11, the anniversary of the attacks, because his father died that night.

The cops argued that the al-Qahtani plan not only was illegal and unreliable, but also unnecessary. Mohammed al-Qahtani was not alleged to be a leader of the Sept. 11 plot. He was not trained as a pilot. If he was involved, he was one of the "muscle" hijackers. Everything known about al-Qaida, they said, suggests that information is compartmentalized.

Mallow said the senior Pentagon lawyers were sympathetic, but had limited influence on policy areas handled by the office of the secretary of defense.

A VIP tour

Into the interrogation debate flew a group of legal VIPs from the White House, the Justice Department and the Pentagon.

Defense Department e-mails seen by MSNBC.com show that a delegation visiting Guantanamo on Sept. 25, 2002, included Alberto R. Gonzales, then the White House counsel and now attorney general; David S. Addington, legal counsel to Vice President Dick Cheney, now his chief of staff; Timothy E. Flanigan, the deputy White House counsel; William Haynes III, the Pentagon general counsel; Larry Thompson, then deputy attorney general; Christopher A. Wray, the principal associate deputy attorney general, now head of Criminal Division at the Justice Department; and John Yoo, a lawyer in the Justice Department's Office of Legal Counsel, who reportedly had just helped write an Aug. 1, 2002, "torture memo" to Gonzales, defining torture narrowly as causing pain equivalent to organ failure or death.

The visiting VIPs met with Gen. Dunlavey and his staff, but not with any of the law enforcement investigators who opposed the aggressive interrogations. The White House and the Pentagon will not comment on the visit, other than to say that delegations frequently visited Guantanamo to discuss detainee matters.

Yoo has expressed the administration's position on the balance between anti-terrorist operations and law enforcement in the war on terror.

"You know, the point of the war is not to collect evidence and solve crimes; it's to fight and defeat the enemy," Yoo, now a law professor at the University of California, said in an NPR interview this month. "So I think this sort of flexible process reflects the demands and the nature of warfare."

The Pentagon's law enforcement investigators bristle at the idea that defeating al-Qaida was solely the mission of the intelligence interrogators.

"It was our job to prevent the next attack," Fallon said. "Anyone in the United States government's job, particularly someone who is a federal agent, law enforcement officer, is to prevent the next attack against the United States. ... The question we raised, rather vigorously: Will you really accomplish that objective by using aggressive technique?"

A menu of tactics

On Oct. 11, 2002, Gen. Dunlavey sent a formal plan for al-Qahtani's interrogation up the chain of command. He sought approval for a menu of 19 "counter-resistance techniques" not in the Army Field Manual:

- **Category 1:** Yelling, deception, use of multiple interrogators, misrepresenting identity of the interrogator (as from a country with a reputation for harsh treatment of prisoners).
- **Category 2:** 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.
- **Category 3:** Use of scenarios to persuade the detainee that death or pain is imminent for him or his family, exposure to cold or water, use of mild non-injurious physical contact, use of a wet towel or water-boarding to simulate drowning or suffocation.

When preliminary approval of these techniques came from the Army's Southern Command in Miami in early November, the law enforcement agents at Guantanamo offered an alternative plan to the intelligence side. In writing, they described successes they had seen with rapport-building, and criticized the proposed aggressive techniques as "possibly illegal" and harmful to law enforcement efforts. They also said that agents of the Defense Humint Service, the Defense Department's human intelligence spy agency, "blatantly misled" Pentagon officials by claiming that the FBI endorsed these coercive methods.

The next day, Nov. 23, the military interrogators began using their techniques on al-Qahtani, according to the Army investigation, although written approval had not yet been received. While some aggressive treatment of al-Qahtani had begun months earlier — on Oct. 1, 2002, a military police dog was used to scare the Saudi, an Army investigation found — now it began in earnest.

He was interrogated for 18 to 20 hours per day, for 48 of the next 54 days, according to an Army investigative report. On Dec. 7, 2002, he had to be revived at the detainee hospital when his heart rate fell to 35 beats per minute, according to a log of the interrogation published by Time magazine. Then the interrogation continued.

FBI agents at Guantanamo joined the opposition. A Nov. 27 FBI "legal analysis," since reported by Newsweek, labeled several parts of the plan as "coercive interrogation techniques which are not permitted by the U.S. Constitution." It also warned that several of the proposed tactics could constitute torture, depending on how a judge viewed the intent of the interrogator.

Justice Department spokeswoman Kathleen Blomquist declined to say last week whether the department communicated the FBI objections to the Pentagon or the White House.

'Why is standing limited to 4 hours?'

On Dec. 2, Secretary of Defense Donald H. Rumsfeld signed off, approving most of the tactics for use on al-Qahtani and others, including all of categories 1 and 2, but only one item in category 3: mild, non-injurious physical contact. Mock assassinations and water-boarding were out.

Rumsfeld added an asterisk, a note scrawled on the bottom of the approval memo, asking why stress

positions were limited. "I stand for 8-10 hours a day," the secretary of defense wrote. "Why is standing limited to 4 hours?"

The approval wasn't announced, not even to the law enforcement investigators at Guantanamo. "We continued to push the issue," said Fallon, the chief investigator. "Basically the responses started to come back, 'We're authorized to do this.'"

The Qahtani interrogation was a success, the Pentagon has said. Al-Qahtani admitted he had been sent to the United States by Sept. 11 plotter Khalid Sheik Mohamed, that he had met Osama bin Laden several times, that he had been trained at two al-Qaida camps, that he knew the shoe bomber Richard Reid, and that 30 other detainees he identified had been bodyguards for bin Laden.

The law enforcement investigators, however, say the interrogation produced little new. "I will just say that most of what we knew, we knew before," Col. Mallow said. "A lot of the intelligence 'successes' that have been touted were a result of much earlier disclosures made by detainees to our agents."

Al-Qahtani's lawyer says her client repudiates his statements. "He adamantly denies all of that," said Gitanjali S. Gutierrez, of the Center for Constitutional Rights.

She said al-Qahtani, now in his late 20s, is physically and psychologically broken. In addition to the degrading treatment, she said, al-Qahtani was subjected to a "fake rendition," in which he was tranquilized, flown off the island of Cuba, revived, flown back to Cuba, and told he was in a country that allows torture.

"The government," she said, "has never come forward with any evidence that wasn't obtained by torture."

Remembering Nuremberg

Soon other detainees were in line for SERE techniques, under the new leader at Guantanamo. Maj. Gen. Miller, a former artillery officer, had replaced Dunlavey in November. On Dec. 14, according to the law enforcement agents and Pentagon e-mails, the general gave them a proposed "standard operating procedure" for use of SERE techniques.

Here the law enforcement agents had their only internal disagreement. Col. Mallow, the commander, initially took the position that they could watch the intelligence interrogations, to collect information, and perhaps to deter abuses. After all, the secretary of defense had authorized these tactics. Fallon, his deputy and chief investigator, said he would resign from the law enforcement task force — and the Navy if necessary.

"You're talking illegal acts here," Fallon said. "The secretary of defense can't change the law. One of the things that we told all our personnel was the fact that during Nuremberg, Nazi war criminals were actually tried for acts that were perpetrated by them under orders of their superiors."

Col. Mallow said Fallon quickly persuaded him and, on Dec. 16, the colonel ordered his agents to disengage from any inhumane interrogation, to document what they saw, and to report it.

Gen. Miller was displeased, Col. Mallow recalls, saying, "You either are with us or you and your guys are out."

The general does not deny saying this. He said he inherited a situation where the two teams of interrogators "weren't even speaking to one another, and it was unproductive," with two teams duplicating each other.

Still the investigators were unwilling to observe the aggressive interrogations. David L. Brant, the boss of Fallon and Gelles as the director of the Naval Criminal Investigative Service, said he told the Army, "if there's anything that's beyond the boards, we'll just pull our people out." Air Force cops on the task force, from the Office of Special Investigations, said they would go along with a Navy walkout. Finally everyone agreed that the law enforcement investigators would not be forced to watch the intelligence interrogations.

Although they had built a wall separating themselves from the intelligence side, the law enforcement agents knew they had failed to persuade the Pentagon that rapport-building would be more effective than abusive interrogations.

'Put on the same uniform'

They turned back to the Navy for help. On Dec. 17, director Brant from the Naval Criminal Investigative service took the concerns to Alberto J. Mora, the chief lawyer for the Navy.

Mora, whose family had escaped Cuba under Castro, says the interrogation tactics shocked him, reminding him of the internment of Japanese citizens during World War II. While he worked on Pentagon lawyers, he recommended that the investigators take one more shot at persuading the leadership at Guantanamo.

So Fallon, the cop, and Gelles, the psychologist, flew down to see Gen. Miller. They took along a Secret Service expert on threat assessment. In Miller's office, the three cops described the rapport-building approach, how it had worked in terrorism cases, the USS Cole bombing, the embassy bombings in East Africa, even in preventing assassination attempts. The general was unmoved.

"If you want to be on the team," Fallon and Gelles said Gen. Miller told them, "you've got to put on the same uniform." The general says that's a fair description of his reply.

Back in Washington, Mora, the Navy lawyer, resorted to an ultimatum. On Jan. 15, 2003, he prepared a draft memorandum opposing the techniques as clearly illegal, addressed to his boss, general counsel Haynes, as well as to the legal adviser to the Joint Chiefs of Staff. Mora said he would be signing the memo at the end of the day. Before he could sign, Haynes told him that Rumsfeld would stop the aggressive interrogations.

It was true, to a point. Rumsfeld rescinded his blanket approval of the harshest techniques. Rumsfeld then asked a group of lawyers at Justice and the Pentagon to come up with new limits. According to Mora, this group relied heavily on a Justice Department memo, later withdrawn, justifying cruel, inhuman and degrading treatment. In March 2003, Rumsfeld secretly re-authorized 24 techniques, mostly confined to those in the Army Field Manual but also allowing isolation, "environmental manipulation," "sleep adjustment," and threats to send the detainee to a country allowing torture. The new policy required "humane treatment," but did not define it.

'Unanswered questions'

Mora, now the vice president and general counsel for international operations for Wal-Mart, found out about Rumsfeld's reauthorization a year later, watching a congressional hearing on C-SPAN about Abu Ghraib.

"We may have stopped some abuse on the Department of Defense side," Mora said, "but it's clear we had no effect on the national policy, meaning the White House policy, to inflict cruelty on some individuals."

Although the Pentagon has looked at specific allegations made by FBI agents of abusive interrogations, no investigation has untangled how the policy of aggressive interrogation was set, or who influenced it.

"The unanswered questions," Mora said, "are, how much of this was actually applied, what the level of abuse was, who the victims were, and who is responsible for the application of abuse, the cruel treatment? I think the historical record will indicate shifting responsibility for these abuses. ... You've got some abuse that was inflicted as a result of authorizations by the command authority, some from a lack of leadership, suggesting that unlawful combatants could be treated more harshly than POWs, and some from rogue soldiers who have sadistic streaks."

The Bush administration has said that there was no policy to abuse detainees, although some detainees were abused in individual cases, and that those responsible have been held accountable.

"What took place at Guantanamo," Rumsfeld said in January, "is a matter of public record today, and the investigations turned up nothing that suggested that there was any policy in the department other than humane treatment. And it is also clear, by the very fact that some 250 people have been punished in one way or another, that there was behavior that was inappropriate."

'An honest mistake'

The Army's internal Furlow-Schmidt investigation of FBI allegations of detainee mistreatment found in April 2005 that Gen. Miller failed to monitor the interrogation of al-Qahtani, whose interrogation "resulted in degrading and abusive treatment but did not rise to the level of being inhumane treatment."

The general told Army investigators that he was unaware of the extent of the techniques used on al-Qahtani, but they found that statement "inconsistent" with a letter he sent to his superiors on Jan. 21, 2003, saying

that he approved the interrogation plan and that it was followed "relentlessly." "It is clear," the Army found, that the al-Qahtani intelligence interrogation team "believed they were acting within existing guidance."

In that letter, later unclassified in part, Miller wrote that the new techniques approved by Rumsfeld "are within the spirit and intent of humane detention. ... These techniques are not intended to cause gratuitous, severe physical pain or suffering or prolonged mental harm, but are instead intended to induce cooperation over a period of time by weakening the detainee's mental and physical ability to resist."

Beyond al-Qahtani, the investigators found that intelligence interrogators at Guantanamo had impersonated FBI agents and State Department investigators; played loud music with strobe lights (Metallica, Britney Spears and rap were often used); moved the detainees every few hours to disrupt sleep (called the "frequent flyer program"); wrapped a detainee's head in duct tape to stop him from chanting passages from the Koran; and a female interrogator rubbed red ink on a detainee, and said, "By the way, I am menstruating." ("The detainee threw himself on the floor and started banging his head.")

Gen. Miller was recommended for administrative "admonishment" for failing to supervise the al-Qahtani investigation, but the Pentagon declined to impose the penalty. He was allowed to retire. As a condition of that retirement, he agreed to testify before the Senate Armed Services Committee, which is investigating the interrogations, but he has not yet been called.

"There were mistakes made," Miller told MSNBC.com. "I'll be honest with you."

He said that many of the odd tactics tried on al-Qahtani were "authorized within the guidance" from Rumsfeld of Dec. 2, "but not within the plan" of specifics laid out by his staff at Guantanamo. In other words, individual interrogators were using techniques that he had not anticipated.

"One young, very young interrogator who put ladies' panties on al-Qahtani's head, that wasn't authorized," Gen. Miller said. "We relieved that kid the next morning. It was a youngster who made an honest mistake."

'Unprosecutable'

Will Mohammed al-Qahtani, the suspected 20th hijacker, ever face trial?

The cops who directed the investigation, Col. Mallow and Fallon, said they were told several times by prosecutors in the Pentagon's Office of Military Commissions, as the military trials are known, not to keep bringing forward a case against al-Qahtani, that there would be no case.

"The techniques made some detainees unprosecutable," Fallon said. "It would provide the defense counsel a tremendous advantage at trial to sway the presiding officer and members, as well as it would have disclosed those techniques to the public."

A Pentagon spokesman last week dismissed this as "speculation," but wouldn't say whether al-Qahtani would face a military trial, known as a commission. "The detainee you reference," Cmdr. Gordon said, "is not among those 10 already referred to military commissions." (See sidebar, *In limbo: Cases are few against Gitmo detainees.*)

Under the Military Commissions Act signed last week by President Bush, statements made under torture would not be admissible in a military trial.

But the law says a military judge could accept statements made under coercion. A court may have to decide which category, torture or coercion, encompasses such techniques as a fake trip to Egypt, sleep deprivation, and being forced to do dog tricks. The new law also extends legal protection from prosecution for war crimes to any U.S. personnel who used coercive tactics, if they believed in good faith that what they were doing was lawful.

Al-Qahtani's lawyer says she believes he'll never face trial, that eventually the government will have to transfer him back to Saudi Arabia.

"They can't just leave him in Guantanamo to rot and die," Gutierrez said.

In February 2004, just before the Abu Ghraib photos were released, Mark Fallon saw Gen. Geoff Miller one last time, on the tarmac at the Guantanamo airfield. Miller would soon go to Iraq full time, and Fallon was returning to the Naval Criminal Investigative service, where he directs the training academy.

"I frankly was rather surprised because General Miller gave me a hug," Fallon said. "It was the first hug that I received from General Miller.

"And he actually had told me that we were right."

That's true, Miller says.

"To be frank with you," the general says, "I got down there and saw that the rapport-building was more effective. We made significant progress as we moved along. I found the law enforcement techniques to be an effective way to go about doing business.

"But not the only way."

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In limbo: Cases few against Gitmo detainees

Only about 70 out of 775 will face military trials, Pentagon says

By Bill Dedman

Investigative reporter

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Speaking directly to terrorists in his speech on this year's fifth anniversary of Sept. 11, President Bush said, "America will find you, and we will bring you to justice."

But because of a lack of evidence, most of the suspected terrorists taken to the detention center at Guantanamo Bay, Cuba, will not see the inside of a courtroom.

Only one out of 10 is facing a military trial, the Pentagon acknowledges. Hundreds could be held indefinitely.

Out of roughly 775 detainees who have come to Guantanamo, former leaders of the Pentagon's Criminal Investigation Task Force said they were able to develop credible criminal cases against only about 100.

And some of those have been released. The investigators said that some criminal suspects against whom they had good evidence have been among the 340 detainees released, because they were citizens of Great Britain or other cooperating countries who made diplomatic deals with the United States. Citizens of some 40 nations are still at Guantanamo.

Of the 435 who remain in the prison camps, the Pentagon says, another 110 have been labeled as ready to release, but the United States has not been able to find a country willing to take them under terms such as continued confinement or monitoring.

Of the remaining 325, how many will face trial?

At this point, "more than 70," the Pentagon says.

Of those 70, only 10 have been certified by the president as al-Qaida members or supporters eligible for trial. The trials, called military commissions, will allow the detainees some rights, such as advice of an attorney, but will allow evidence that wouldn't be permitted under the rules in U.S. criminal courts. They are expected to begin next year at the earliest.

That leaves approximately 250 detainees, more than half of those still at Guantanamo, who are being held indefinitely, not because they are awaiting a trial, but because the U.S. considers them to be dangerous or to possess intelligence information, the Pentagon said. The Supreme Court has upheld that the government may detain enemy combatants for the duration of hostilities - in an unconventional war that may never end.

The Pentagon notes that any detainee release carries risk. It says about 15 released detainees have returned to the battlefield, taking part in hostile acts against Americans or allies.

"It's important for Americans and others across the world to understand the kind of people held at Guantanamo," Bush said last month.

"These aren't common criminals, or bystanders accidentally swept up on the battlefield. We have in place a rigorous process to ensure those held at Guantanamo Bay belong at Guantanamo. Those held at Guantanamo include suspected bomb makers, terrorist trainers, recruiters and facilitators and potential suicide bombers. They are in our custody so they cannot murder our people."

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