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(b)(3) NatSecAct

(b)(3) CIAAct  
26 May 2005

**MEMORANDUM FOR:** Director, Central Intelligence Agency

**FROM:** John L. Helgerson  
Inspector General

**SUBJECT:** (TS) Recommendation for Additional Approach to Department of Justice Concerning Legal Guidance on Interrogation Techniques  
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**REFERENCE:** (TS/ [redacted] Two Memoranda for the Acting General Counsel, fm Office of Legal Counsel, Department of Justice, dtd 10 May 2005, SUBJECTS: Application of 18 U.S.C. 2340-2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee, and Application of 18 U.S.C. 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees

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1. (TS/ [redacted] As you are aware, the Acting General Counsel recently received two long-awaited opinions from the Department of Justice, referenced above, that provide critical legal guidance for the conduct of some of the Agency's most sensitive intelligence activities.

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2. (TS/ [redacted] The Department found that CIA's use of certain interrogation techniques in the manner and to the extent described by the Agency does not violate a specific U.S. statute that implements the U.N. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment. However, the opinions are carefully circumscribed and limited to that federal criminal statute prohibiting torture and to the particular circumstances of interrogation as defined by the Agency. The Department specifically does not

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address the issue of the possible application of Article 16 of the Convention Against Torture to the interrogation techniques utilized by the Agency. The Department also notes that it was not asked to opine on the legality of the conditions of detention per se and does not do so. The Department, finally, restricts its opinion to the outer limits of the "prototypical interrogation" lasting no more than 30 days and including many other particular limits on the circumstances and duration of using individual techniques, e.g., no more than 180 hours of continuous sleep deprivation. Thus it does not rule on the lawfulness of interrogations (if any) that extend beyond 30 days or use of techniques in excess of the times defined in the opinions.

3. (TS) [redacted]

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4. (TS) [redacted] By way of background, Article 16 of the Torture Convention provides that each state party to the Convention "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 16." In light of the findings of the Office of Inspector General (OIG) over the past three years, I believe a strong case can be made that the Agency's authorized interrogation techniques are the kinds of actions that Article 16 undertakes to prevent. By any common understanding of the term, for example, use of the waterboard may well be "cruel." Extended detention with no clothing would be considered "degrading" in most cultures, particularly Muslim.

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5. ~~(TS)~~ / (b)(1) The conditions of detention likewise need to be included in the examination of compliance with Article 16. OIG's Investigations Staff has found a number of instances of detainee treatment which arguably violate the prohibition on cruel, inhuman, and/or degrading treatment.

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7. (S) For the reasons stated above, therefore, I urge you to seek further legal guidance from the Department of Justice on the application of Article 16 to interrogation techniques and to the conditions of detention apart from interrogation techniques. I strongly urge you to restrict, in writing, the current use of interrogation techniques to the specific terms and conditions found to be lawful in the two Department opinions of 10 May.

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J. L. Helgefson

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