

Leagal case study



SUMMARY Alberto J. Mora wrote this memorandum (NAVIG Memo 5021 Ser 00/017 of 18 Jun 04) in answer to the request of the Inspector General of the Department of the Navy to write in detail his and the Department of the Navy Office of the General Counsels' (OGC) involvement in the development of the interrogation rules of engagement"(IROE) for Operation Enduring Freedom and Operation Iraqi Freedom. Mora emphasized that the OGC had no official responsibility to be involved in detainee interrogation, practices, procedures or doctrines including IROE except when it was requested to participate. As for himself, he obtained a measure of insight into detainee treatment and interrogation practices commensurate with the scope and degree of involvement by the Naval Criminal Investigative Service (NCIS) for his functions did not end with providing legal counsel but he was also charged with the general oversight responsibility over the NCIS's operations. In December 2002 Mora received a report of detainee abuse at Guantanamo Naval Base, Cuba. Despite the notation that the Navy or Marine Corps and OGC attorneys were not involved, he still went to investigate. Mora admits that this chronological narrative of the significant events pertaining to detainee interrogation, in which he and the OGC participated or had knowledge of, is sadly lacking since he was unable to identify and name all those who participated. Suffice it to say that in other aspects his efforts yielded a lot of good. He was able to uncover an action memo, dated Dec. 2, authorizing entitled " Counter -Resistance Techniques" authorized by Secretary Rumsfeld and rumored to be partly authorized at a " high level" in Washington permitted the use of certain interrogation techniques. Mora understood the necessity of obtaining information to prevent another 9/11 but to condone such practices to him will cause harm to the national legal,

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political, military and diplomatic interests. He met with the necessary people to get his message across. By January 17, 2003 Secretary Rumsfeld suspended the techniques and established a working group to develop recommendations on detainee interrogations by the 29th of January. Mora supported this move and provided counsel. He issues memos and even helped the working group in the report. In conclusion, Mora reported that the abuses had ceased and the interrogation techniques being used after January 15 complied with the law and within the boundaries of the interrogation matrix.

ANSWER TO QUESTION

The President as the head of the executive department and the Chief Commander of the Armed Forces has the power to use military force to "retaliate against any person, organization, or State suspected of involvement in terrorist attacks on the United States, but also against foreign States suspected of harboring or supporting such organization." (10/25/01. Yoo, John, C. Memorandum Opinion for The Deputy Counsel to the President retrieved last 3/27/10 at <http://www.justice.gov/olc/warpowers925.htm>). This power is expressly acknowledged by Congress as the inherent executive power evidenced by both the War Powers Resolution [(Pub. L. No. 93-148 Stat. 555 (1973)], and in its Joint Resolution on [9-14-01, Pub. L. No. 104-40, 115 Stat. 224 (2001)]. By reason of this power the President has the sole determination in the treatment of detainees and such cannot be overruled by an act of congress. Executive, legislative and judicial acts and decisions are subject to review as part of the power of "checks and balances" [Carfer v. Acdwell 200 U. S. 293, 297 (1906)]. Hence review exists to determine if there has been a proper exercise of power or if there was an excess in the

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exercise of such power. The determining guideline is if it conforms with the fundamental law of the land, the same law that grants the power to the President, the Constitution. Aside from this, the act or determination in the treatment of detainees must conform to the law of nations. The rationale behind this is the amity of nations and that if the United States treats detainees of foreign nationality humanely then these nations will also treat detainees who are citizens of the United States in like manner. This is a concern expressly voiced out by Mora (page 6). Hence, the treatment of detainees must conform to the United States Constitution and the Law of Nations. According to this case, there is employment of coercive interrogation techniques that are "cruel, inhuman, or degrading" (p. 6, Mora) which the law of nations have held to constitute torture (Ireland v. United Kingdom). This was later outlawed by the European Law and International Human Rights Standards (p. 12, Mora). The same is violative of the 5th, 8th and 14th Amendment of the Constitution and hence must not be imposed as recommended by Mora (p. 17).

The Commanding General at Camp X-Ray, a base being an extension of the territory of the United States, must treat the U. S. Citizens as well as Foreign detainees in accordance with the Law of Nations and the United States Constitution. They must be accorded rights granted by the United States Constitution. Since they were merely turned over and were not arrested under a legal United States Mission, they might not even be terrorists. The guidelines for possible terrorist detainees do not readily apply. According to the facts of the case "the State Department and certain sectors of the American intelligence and military community based in Afghanistan believe that " 60 U. S citizens who were in the Northwest Frontier Province for one

reason or another." They were not classified as Al Qaeda and/or Taliban Operatives. Therefore no threat to security and safety of the base or the authority of the United States is in jeopardy. If ever they are sympathizers or accomplices is yet to be determined. At present no significant suspicion has arisen to come to the conclusion that they might even be connected with the terrorist group. Hence, they can just be questioned to determine any involvement and released before their detention can be classified as illegal.