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U.S. Department of Justice

Office of Legal Counsel

Office of the Principal Deputy Assistant Attorney General — Washington, D.C. 20530

May 10, 2005

MEMORANDUM FOR JOHN A. RIZZO
SENIOR DEPUTY GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees

In our Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: 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* (May 10, 2005) ("*Techniques*"), we addressed the application of the anti-torture statute, 18 U.S.C. §§ 2340-2340A, to certain interrogation techniques that the CIA might use in the questioning of a specific al Qaeda operative. There, we considered each technique individually. We now consider the application of the statute to the use of these same techniques in combination. Subject to the conditions and limitations set out here and in *Techniques*, we conclude that the authorized combined use of these specific techniques by adequately trained interrogators would not violate sections 2340-2340A.

Techniques, which set out our general interpretation of the statutory elements, guides us here.[1] While referring to the analysis provided in that opinion, we do not repeat it, but instead

[1] As noted in *Techniques*, the Criminal Division of the Department of Justice is satisfied that our general interpretation of the legal standards under sections 2340-2340A, found in *Techniques*, is consistent with its concurrence in our Memorandum for James B. Comey, Deputy Attorney General, from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A* (Dec. 30, 2004). In the present memorandum, we address only the application of 18 U.S.C. §§ 2340-2340A to combinations of interrogation techniques. Nothing in this memorandum or in our prior advice to the CIA should be read to suggest that the use of these techniques would conform to the requirements of the Uniform Code of Military Justice that governs members of the Armed Forces or to United States obligations under the Geneva Conventions in circumstances where those Conventions would apply. We do not address the possible application of article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for U.S. Nov. 20,

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presume a familiarity with it. Furthermore, in referring to the individual interrogation techniques whose combined use is our present subject, we mean those techniques as we described them in *Techniques*, including all of the limitations, presumptions, and safeguards described there.

One overarching point from *Techniques* bears repeating: Torture is abhorrent and universally repudiated, *see Techniques* at 1, and the President has stated that the United States will not tolerate it. *Id.* at 1-2 & n.2 (citing Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167-68 (July 5, 2004)). In *Techniques*, we accordingly exercised great care in applying sections 2340-2340A to the individual techniques at issue; we apply the same degree of care in considering the combined use of these techniques.

I.

Under 18 U.S.C. § 2340A, it is a crime to commit, attempt to commit, or conspire to commit torture outside the United States. "Torture" is defined as "an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 U.S.C. § 2340(1). "Severe mental pain or suffering" is defined as "the prolonged mental harm caused by or resulting from" any of four predicate acts. *Id.* § 2340(2). These acts are (1) "the intentional infliction or threatened infliction of severe physical pain or suffering"; (2) "the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality"; (3) "the threat of imminent death"; and (4) "the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality."

In *Techniques*, we concluded that the individual authorized use of several specific interrogation techniques, subject to a variety of limitations and safeguards, would not violate the statute when employed in the interrogation of a specific member of al Qaeda, though we concluded that at least in certain respects two of the techniques presented substantial questions under sections 2340-2340A. The techniques that we analyzed were dietary manipulation, nudity, the attention grasp, walling, the facial hold, the facial slap or insult slap, the abdominal slap, cramped confinement, wall standing, stress positions, water dousing, extended sleep deprivation, and the "waterboard." *Techniques* at 7-15.

1994), nor do we address any question relating to conditions of confinement or detention, as distinct from the interrogation of detainees. We stress that our advice on the application of sections 2340-2340A does not represent the policy views of the Department of Justice concerning interrogation practices. Finally, we note that section 6057(a) of H.R. 1268 (109th Cong. 1st Sess.), if it becomes law, would forbid expending or obligating funds made available by that bill "to subject any person in the custody or under the physical control of the United States to torture," but because the bill would define "torture" to have "the meaning given that term in section 2340(1) of title 18, United States Code," § 6057(b)(1), the provision (to the extent it might apply here at all) would merely reaffirm the preexisting prohibitions on torture in sections 2340-2340A.

Techniques analyzed only the use of these techniques individually. As we have previously advised, however, "courts tend to take a totality-of-the-circumstances approach and consider an entire course of conduct to determine whether torture has occurred." Memorandum for John Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Interrogation of al Qaeda Operative* at 9 (Aug. 1, 2002) ("*Interrogation Memorandum*") (TS). A complete analysis under sections 2340-2340A thus entails an examination of the combined effects of any techniques that might be used.

In conducting this analysis, there are two additional areas of general concern. First, it is possible that the application of certain techniques might render the detainee unusually susceptible to physical or mental pain or suffering. If that were the case, use of a second technique that would not ordinarily be expected to—and could not reasonably be considered specifically intended to—cause severe physical or mental pain or suffering by itself might in fact cause severe physical or mental pain or suffering because of the enhanced susceptibility created by the first technique. Depending on the circumstances, and the knowledge and mental state of the interrogator, one might conclude that severe pain or suffering was specifically intended by the application of the second technique to a detainee who was particularly vulnerable because of the application of the first technique. Because the use of these techniques in combination is intended to, and in fact can be expected to, physically wear down a detainee, because it is difficult to assess as to a particular individual whether the application of multiple techniques renders that individual more susceptible to physical pain or suffering, and because sleep deprivation, in particular, has a number of documented physiological effects that, in some circumstances, could be problematic it is important that all participating CIA personnel, particularly interrogators and personnel of the CIA Office of Medical Services ("OMS"), be aware of the potential for enhanced susceptibility to pain and suffering from each interrogation technique. We also assume that there will be active and ongoing monitoring by medical and psychological personnel of each detainee who is undergoing a regimen of interrogation, and active intervention by a member of the team or medical staff as necessary, so as to avoid the possibility of severe physical or mental pain or suffering within the meaning of 18 U.S.C. §§ 2340-2340A as a result of such combined effects.

Second, it is possible that certain techniques that do not themselves cause severe physical or mental pain or suffering might do so in combination, particularly when used over the 30-day interrogation period with which we deal here. Again, depending on the circumstances, and the mental state of the interrogator, their use might be considered to be specifically intended to cause such severe pain or suffering. This concern calls for an inquiry into the totality of the circumstances, looking at which techniques are combined and how they are combined.

Your office has outlined the manner in which many of the individual techniques we previously considered could be combined in *Background Paper on CIA's Combined Use of Interrogation Techniques* (undated, but transmitted Dec. 30, 2004) ("*Background Paper*"). The *Background Paper*, which provides the principal basis for our analysis, first divides the process of interrogation into three phases: "Initial Conditions," "Transition to Interrogation," and "Interrogation." *Id.* at 1. After describing these three phases, *see id.* at 1-9, the *Background Paper* "provides a look at a prototypical interrogation with an emphasis on the application of

interrogation techniques, in combination and separately," *id.* at 9-18. The *Background Paper* does not include any discussion of the waterboard; however, you have separately provided to us a description of how the waterboard may be used in combination with other techniques, particularly dietary manipulation and sleep deprivation. *See* Fax for Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, CIA, at 3-4 (Apr. 22, 2005) ("*April 22* [redacted] *Fax*").

Phases of the Interrogation Process

The first phase of the interrogation process, "Initial Conditions," does not involve interrogation techniques, and you have not asked us to consider any legal question regarding the CIA's practices during this phase. The "Initial Conditions" nonetheless set the stage for use of the interrogation techniques, which come later.[2]

According to the *Background Paper*, before being flown to the site of interrogation, a detainee is given a medical examination. He then is "securely shackled and is deprived of sight and sound through the use of blindfolds, earmuffs, and hoods" during the flight. *Id.* at 2. An on-board medical officer monitors his condition. Security personnel also monitor the detainee for signs of distress. Upon arrival at the site, the detainee "finds himself in complete control of Americans" and is subjected to "precise, quiet, and almost clinical" procedures designed to underscore "the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread [a detainee] may have of US custody." *Id.* His head and face are shaved; his physical condition is documented through photographs taken while he is nude; and he is given medical and psychological interviews to assess his condition and to make sure there are no contraindications to the use of any particular interrogation techniques. *See id.* at 2-3.

The detainee then enters the next phase, the "Transition to Interrogation." The interrogators conduct an initial interview, "in a relatively benign environment," to ascertain whether the detainee is willing to cooperate. The detainee is "normally clothed but seated and shackled for security purposes." *Id.* at 3. The interrogators take "an open, non-threatening approach," but the detainee "would have to provide information on actionable threats and location information on High-Value Targets at large—not lower-level information—for interrogators to continue with [this] neutral approach." *Id.* If the detainee does not meet this "very high" standard, the interrogators submit a detailed interrogation plan to CIA headquarters

[2] Although the *OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention* (Dec. 2004) ("*OMS Guidelines*") refer to the administration of sedatives during transport if necessary to protect the detainee or the rendition team, *id.* at 4-5, the *OMS Guidelines* do not provide for the use of sedatives for interrogation. The *Background Paper* does not mention the administration of any drugs during the detainee's transportation to the site of the interrogation or at any other time, and we do not address any such administration. OMS, we understand, is unaware of any use of sedation during the transport of a detainee in the last two years and states that the interrogation program does not use sedation or medication for the purpose of interrogation. We caution that any use of sedatives should be carefully evaluated, including under 18 U.S.C. § 2340(2)(B). For purposes of our analysis, we assume that no drugs are administered during the relevant period or that there are no ongoing effects from any administration of any drugs; if that assumption does not hold, our analysis and conclusions could change.

for approval. If the medical and psychological assessments find no contraindications to the proposed plan, and if senior CIA officers at headquarters approve some or all of the plan through a cable transmitted to the site of the interrogation, the interrogation moves to the next phase. *Id.*[3]

Three interrogation techniques are typically used to bring the detainee to "a baseline, dependent state," "demonstrat[ing] to the [detainee] that he has no control over basic human needs" and helping to make him "perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting." *Id.* at 4. The three techniques used to establish this "baseline" are nudity, sleep deprivation (with shackling and, at least at times, with use of a diaper), and dietary manipulation. These techniques, which *Techniques* described in some detail, "require little to no physical interaction between the detainee and interrogator." *Background Paper* at 5.

Other techniques, which "require physical interaction between the interrogator and detainee," are characterized as "corrective" and "are used principally to correct, startle, or . . . achieve another enabling objective with the detainee." *Id.* These techniques "are not used simultaneously but are often used interchangeably during an individual interrogation session." *Id.* The insult slap is used "periodically throughout the interrogation process when the interrogator needs to immediately correct the detainee or provide a consequence to a detainee's response or non-response." *Id.* at 5-6. The insult slap "can be used in combination with water dousing or kneeling stress positions"—techniques that are not characterized as "corrective." *Id.* at 6. Another corrective technique, the abdominal slap, "is similar to the insult slap in application and desired result" and "provides the variation necessary to keep a high level of unpredictability in the interrogation process." *Id.* The abdominal slap may be simultaneously combined with water dousing, stress positions, and wall standing. A third corrective technique, the facial hold, "is used sparingly throughout interrogation." *Id.* It is not painful, but "demonstrates the interrogator's control over the [detainee]." *Id.* It too may be simultaneously combined with water dousing, stress positions, and wall standing. *Id.* Finally, the attention grasp "may be used several times in the same interrogation" and may be simultaneously combined with water dousing or kneeling stress positions. *Id.*

Some techniques are characterized as "coercive." These techniques "place the detainee in more physical and psychological stress." *Id.* at 7. Coercive techniques "are typically not used

[3] The CIA maintains certain "detention conditions" at all of its detention facilities. (These conditions "are not interrogation techniques," *id.* at 4, and you have not asked us to assess their lawfulness under the statute.) The detainee is "exposed to white noise/loud sounds (not to exceed 79 decibels) and constant light during portions of the interrogation process." *Id.* These conditions enhance security. The noise prevents the detainee from overhearing conversations of staff members, precludes him from picking up "auditory clues" about his surroundings, and disrupts any efforts to communicate with other detainees. *Id.* The light provides better conditions for security and for monitoring by the medical and psychological staff and the interrogators. Although we do not address the lawfulness of using white noise (not to exceed 79 decibels) and constant light, we note that according to materials you have furnished to us, (1) the Occupational Safety and Health Administration has determined that there is no risk of permanent hearing loss from continuous, 24-hour per day exposure to noise of up to 82 decibels, and (2) detainees typically adapt fairly quickly to the constant light and it does not interfere unduly with their ability to sleep. *See* Fax for Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, Central Intelligence Agency at 3 (Jan. 4, 2005) ([redacted] Fax").

in combination, although some combined use is possible." *Id.* Walling "is one of the most effective interrogation techniques because it wears down the [detainee] physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the [detainee] knows he is about to be walled again." *Id.*[4] A detainee "may be walled one time (one impact with the wall) to make a point or twenty to thirty times consecutively when the interrogator requires a more significant response to a question," and "will be walled multiple times" during a session designed to be intense. *Id.* Walling cannot practically be used at the same time as other interrogation techniques.

Water temperature and other considerations of safety established by OMS limit the use of another coercive technique, water dousing. *See id.* at 7-8. The technique "may be used frequently within those guidelines." *Id.* at 8. As suggested above, interrogators may combine water dousing with other techniques, such as stress positions, wall standing, the insult slap, or the abdominal slap. *See id.* at 8.

The use of stress positions is "usually self-limiting in that temporary muscle fatigue usually leads to the [detainee's] being unable to maintain the stress position after a period of time." *Id.* Depending on the particular position, stress positions may be combined with water dousing, the insult slap, the facial hold, and the attention grasp. *See id.* Another coercive technique, wall standing, is "usually self-limiting" in the same way as stress positions. *Id.* It may be combined with water dousing and the abdominal slap. *See id.* OMS guidelines limit the technique of cramped confinement to no more than eight hours at a time and 18 hours a day, and confinement in the "small box" is limited to two hours. *Id.* Cramped confinement cannot be used in simultaneous combination with corrective or other coercive techniques.

We understand that the CIA's use of all these interrogation techniques is subject to ongoing monitoring by interrogation team members who will direct that techniques be discontinued if there is a deviation from prescribed procedures and by medical and psychological personnel from OMS who will direct that any or all techniques be discontinued if in their professional judgment the detainee may otherwise suffer severe physical or mental pain or suffering. *See Techniques* at 6-7.

A Prototypical Interrogation

In a "prototypical interrogation," the detainee begins his first interrogation session stripped of his clothes, shackled, and hooded, with the walling collar over his head and around

[4] Although walling "wears down the [detainee] physically," *Background Paper* at 7, and undoubtedly may startle him, we understand that it is not significantly painful. The detainee hits "a flexible false wall," designed "to create a loud sound when the individual hits it" and thus to cause "shock and surprise." *Interrogation Memorandum* at 2. But the detainee's "head and neck are supported with a rolled hood or towel that provides a c-collar effect to help prevent whiplash"; it is the detainee's shoulder blades that hit the wall; and the detainee is allowed to rebound from the flexible wall in order to reduce the chances of any injury. *See id.* You have informed us that a detainee is expected to feel "dread" at the prospect of walling because of the shock and surprise caused by the technique and because of the sense of powerlessness that comes from being roughly handled by the interrogators, not because the technique causes significant pain.

his neck. *Background Paper* at 9-10. The interrogators remove the hood and explain that the detainee can improve his situation by cooperating and may say that the interrogators "will do what it takes to get important information." *Id.*[5] As soon as the detainee does anything inconsistent with the interrogators' instructions, the interrogators use an insult slap or abdominal slap. They employ walling if it becomes clear that the detainee is not cooperating in the interrogation. This sequence "may continue for several more iterations as the interrogators continue to measure the [detainee's] resistance posture and apply a negative consequence to [his] resistance efforts." *Id.* The interrogators and security officers then put the detainee into position for standing sleep deprivation, begin dietary manipulation through a liquid diet, and keep the detainee nude (except for a diaper). *See id.* at 10-11. The first interrogation session, which could have lasted from 30 minutes to several hours, would then be at an end. *See id.* at 11.

If the interrogation team determines there is a need to continue, and if the medical and psychological personnel advise that there are no contraindications, a second session may begin. *See id.* at 12. The interval between sessions could be as short as an hour or as long as 24 hours. *See id.* at 11. At the start of the second session, the detainee is released from the position for standing sleep deprivation, is hooded, and is positioned against the walling wall, with the walling collar over his head and around his neck. *See id.* Even before removing the hood, the interrogators use the attention grasp to startle the detainee. The interrogators take off the hood and begin questioning. If the detainee does not give appropriate answers to the first questions, the interrogators use an insult slap or abdominal slap. *See id.* They employ walling if they determine that the detainee "is intent on maintaining his resistance posture." *Id.* at 13. This sequence "may continue for multiple iterations as the interrogators continue to measure the [detainee's] resistance posture." *Id.* The interrogators then increase the pressure on the detainee by using a hose to douse the detainee with water for several minutes. They stop and start the dousing as they continue the interrogation. *See id.* They then end the session by placing the detainee into the same circumstances as at the end of the first session: the detainee is in the standing position for sleep deprivation, is nude (except for a diaper), and is subjected to dietary manipulation. Once again, the session could have lasted from 30 minutes to several hours. *See id.*

Again, if the interrogation team determines there is a need to continue, and if the medical and psychological personnel find no contraindications, a third session may follow. The session begins with the detainee positioned as at the beginning of the second. *See id.* at 14. If the detainee continues to resist, the interrogators continue to use walling and water dousing. The corrective techniques—the insult slap, the abdominal slap, the facial hold, the attention grasp—"may be used several times during this session based on the responses and actions of the [detainee]." *Id.* The interrogators integrate stress positions and wall standing into the session. Furthermore, "[i]ntense questioning and walling would be repeated multiple times." *Id.* Interrogators "use one technique to support another." *Id.* For example, they threaten the use of walling unless the detainee holds a stress position, thus inducing the detainee to remain in the position longer than he otherwise would. At the end of the session, the interrogators and security

[5] We address the effects of this statement below at pp. 18-19.

personnel place the detainee into the same circumstances as at the end of the first two sessions, with the detainee subject to sleep deprivation, nudity, and dietary manipulation. *Id.*

In later sessions, the interrogators use those techniques that are proving most effective and drop the others. Sleep deprivation "may continue to the 70 to 120 hour range, or possibly beyond for the hardest resisters, but in no case exceed the 180-hour time limit." *Id.* at 15.[6] If the medical or psychological personnel find contraindications, sleep deprivation will end earlier. *See id.* at 15-16. While continuing the use of sleep deprivation, nudity, and dietary manipulation, the interrogators may add cramped confinement. As the detainee begins to cooperate, the interrogators "begin gradually to decrease the use of interrogation techniques." *Id.* at 16. They may permit the detainee to sit, supply clothes, and provide more appetizing food. *See id.*

The entire process in this "prototypical interrogation" may last 30 days. If additional time is required and a new approval is obtained from headquarters, interrogation may go longer than 30 days. Nevertheless, "[o]n average, the actual use of interrogation techniques covers a period of three to seven days, but can vary upwards to fifteen days based on the resilience of the [detainee]." *Id.* As in *Techniques*, our advice here is limited to an interrogation process lasting no more than 30 days. *See Techniques* at 5.

Use of the Waterboard in Combination with Other Techniques

We understand that for a small number of detainees in very limited circumstances, the CIA may wish to use the waterboard technique. You have previously explained that the waterboard technique would be used only if: (1) the CIA has credible intelligence that a terrorist attack is imminent; (2) there are "substantial and credible indicators the subject has actionable intelligence that can prevent, disrupt or delay this attack"; and (3) other interrogation methods have failed or are unlikely to yield actionable intelligence in time to prevent the attack. *See* Attachment to Letter from John A. Rizzo, Acting General Counsel, CIA, to Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel (Aug. 2, 2004). You have also informed us that the waterboard may be approved for use with a given detainee only during, at most, one single 30-day period, and that during that period, the waterboard technique may be used on no more than five days. We further understand that in any 24-hour period, interrogators may use no more than two "sessions" of the waterboard on a subject—with a "session" defined to mean the time that the detainee is strapped to the waterboard—and that no session may last more than two hours. Moreover, during any session, the number of individual applications of water lasting 10 seconds or longer may not exceed six. The maximum length of any application of water is 40 seconds (you have informed us that this maximum has rarely been reached). Finally, the total cumulative time of all applications of whatever length in a 24-hour period may not exceed 12 minutes. *See* Letter from [redacted] Associate General Counsel, CIA, to Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel, at 1-2 (Aug. 19, 2004).

[6] As in *Techniques*, our advice here is restricted to one application of no more than 180 hours of sleep deprivation.

You have advised us that in those limited cases where the waterboard would be used, it would be used only in direct combination with two other techniques, dietary manipulation and sleep deprivation. *See April 22* [redacted] *Fax* at 3-4. While an individual is physically on the waterboard, the CIA does not use the attention grasp, walling, the facial hold, the facial or insult slap, the abdominal slap, cramped confinement, wall standing, stress positions, or water dousing, though some or all of these techniques may be used with the individual before the CIA needs to resort to the waterboard, and we understand it is possible that one or more of these techniques might be used on the same day as a waterboard session, but separately from that session and not in conjunction with the waterboard. *See id.* at 3.

As we discussed in *Techniques*, you have informed us that an individual undergoing the waterboard is always placed on a fluid diet before he may be subjected to the waterboard in order to avoid aspiration of food matter. The individual is kept on the fluid diet throughout the period the waterboard is used. For this reason, and in this way, the waterboard is used in combination with dietary manipulation. *See April 22* [redacted] *Fax* at 3.

You have also described how sleep deprivation may be used prior to and during the waterboard session. *Id.* at 4. We understand that the time limitation on use of sleep deprivation, as set forth in *Techniques*, continues to be strictly monitored and enforced when sleep deprivation is used in combination with the waterboard (as it is when used in combination with other techniques). *See April 22* [redacted] *Fax* at 4. You have also informed us that there is no evidence in literature or experience that sleep deprivation exacerbates any harmful effects of the waterboard, though it does reduce the detainee's will to resist and thereby contributes to the effectiveness of the waterboard as an interrogation technique. *Id.* As in *Techniques*, we understand that in the event the detainee were perceived to be unable to withstand the effects of the waterboard for any reason, any member of the interrogation team has the obligation to intervene and, if necessary, to halt the use of the waterboard. *See April 22* [redacted] *Fax* at 4.

II.

The issue of the combined effects of interrogation techniques raises complex and difficult questions and comes to us in a less precisely defined form than the questions treated in our earlier opinions about individual techniques. In evaluating individual techniques, we turned to a body of experience developed in the use of analogous techniques in military training by the United States, to medical literature, and to the judgment of medical personnel. Because there is less certainty and definition about the use of techniques in combination, it is necessary to draw more inferences in assessing what may be expected. You have informed us that, although "the exemplar [that is, the prototypical interrogation] is a fair representation of how these techniques are actually employed," "there is no template or script that states with certainty when and how these techniques will be used in combination during interrogation." *Background Paper* at 17. Whether any other combination of techniques would, in the relevant senses, be like the ones presented—whether the combination would be no more likely to cause severe physical or mental pain or suffering within the meaning of sections 2340-2340A—would be a question that cannot be assessed in the context of the present legal opinion. For that reason, our advice does not extend to combinations of techniques unlike the ones discussed here. For the same reason, it is especially important that the CIA use great care in applying these various techniques in

combination in a real-world scenario, and that the members of the interrogation team, and the attendant medical staff, remain watchful for indications that the use of techniques in combination may be having unintended effects, so that the interrogation regimen may be altered or halted, if necessary, to ensure that it will not result in severe physical or mental pain or suffering to any detainee in violation of 18 U.S.C. §§ 2340-2340A.

Finally, in both of our previous opinions about specific techniques, we evaluated the use of those techniques on particular identified individuals. Here, we are asked to address the combinations without reference to any particular detainee. As is relevant here, we know only that an enhanced interrogation technique, such as most of the techniques at issue in *Techniques*, may be used on a detainee only if medical and psychological personnel have determined that he is not likely, as a result, to experience severe physical or mental pain or suffering. *Techniques* at 5. Once again, whether other detainees would, in the relevant ways, be like the ones previously at issue would be a factual question we cannot now decide. Our advice, therefore, does not extend to the use of techniques on detainees unlike those we have previously considered. Moreover, in this regard, it is also especially important, as we pointed out in *Techniques* with respect to certain techniques, *see, e.g., id.* at 37 (discussing sleep deprivation), that the CIA will carefully assess the condition of each individual detainee and that the CIA's use of these techniques in combination will be sensitive to the individualized physical condition and reactions of each detainee, so that the regimen of interrogation would be altered or halted, if necessary, in the event of unanticipated effects on a particular detainee.

Subject to these cautions and to the conditions, limitations, and safeguards set out below and in *Techniques*, we nonetheless can reach some conclusions about the combined use of these techniques. Although this is a difficult question that will depend on the particular detainee, we do not believe that the use of the techniques in combination as you have described them would be expected to inflict "severe physical or mental pain or suffering" within the meaning of the statute. 18 U.S.C. § 2340(1). Although the combination of interrogation techniques will wear a detainee down physically, we understand that the principal effect, as well as the primary goal, of interrogation using these techniques is psychological—"to create a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner," *Background Paper* at 1—and numerous precautions are designed to avoid inflicting "severe physical or mental pain or suffering."

For present purposes, we may divide "severe physical or mental pain or suffering" into three categories: "severe physical . . . pain," "severe physical . . . suffering," and "severe . . . mental pain or suffering" (the last being a defined term under the statute). *See Techniques* at 22-26; Memorandum for James B. Comey, Deputy Attorney General, from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A* (Dec. 30, 2004).

As explained below, any physical pain resulting from the use of these techniques, even in combination, cannot reasonably be expected to meet the level of "severe physical pain" contemplated by the statute. We conclude, therefore, that the authorized use in combination of these techniques by adequately trained interrogators, as described in the *Background Paper* and the *April 22 [redacted] Fax*, could not reasonably be considered specifically intended to do so.

Moreover, although it presents a closer question under sections 2340-2340A, we conclude that the combined use of these techniques also cannot reasonably be expected to—and their combined use in the authorized manner by adequately trained interrogators could not reasonably be considered specifically intended to—cause severe physical suffering. Although two techniques, extended sleep deprivation and the waterboard, may involve a more substantial risk of physical distress, nothing in the other specific techniques discussed in the *Background Paper* and the *April 22* [redacted] *Fax*, or, as we understand it, in the CIA's experience to date with the interrogations of more than two dozen detainees (three of whose interrogations involved the use of the waterboard), would lead to the expectation that any physical discomfort from the combination of sleep deprivation or the waterboard and other techniques would involve the degree of intensity and duration of physical distress sufficient to constitute severe physical suffering under the statute. Therefore, the use of the technique could not reasonably be viewed as specifically intended to cause severe physical suffering. We stress again, however, that these questions concerning whether the combined effects of different techniques may rise to the level of physical suffering within the meaning of sections 2340-2340A are difficult ones, and they reinforce the need for close and ongoing monitoring by medical and psychological personnel and by all members of the interrogation team and active intervention if necessary.

Analyzing the combined techniques in terms of severe mental pain or suffering raises two questions under the statute. The first is whether the risk of hallucinations from sleep deprivation may become exacerbated when combined with other techniques, such that a detainee might be expected to experience "prolonged mental harm" from the combination of techniques. Second, the description in the *Background Paper* that detainees may be specifically told that interrogators will "do what it takes" to elicit information, *id.* at 10, raises the question whether this statement might qualify as a threat of infliction of severe physical pain or suffering or another of the predicate acts required for "severe mental pain or suffering" under the statute. After discussing both of those possibilities below, however, we conclude that the authorized use by adequately trained interrogators of the techniques in combination, as you have described them, would not reasonably be expected to cause prolonged mental harm and could not reasonably be considered specifically intended to cause severe mental pain or suffering. We stress that these possible questions about the combined use of the techniques under the statutory category of severe mental pain or suffering are difficult ones and they serve to reinforce the need for close and ongoing monitoring and active intervention if necessary.

Severe Physical Pain

Our two previous opinions have not identified any techniques that would inflict pain that approaches the "sever[ity]" required to violate the statute. A number of the techniques—dietary manipulation, nudity, sleep deprivation, the facial hold, and the attention grasp—are not expected to cause physical pain at all. *See Techniques* at 30-36. Others might cause some pain, but the level of pain would not approach that which would be considered "severe." These techniques are the abdominal slap, water dousing, various stress positions, wall standing, cramped confinement, walling, and the facial slap. *See id.* We also understand that the waterboard is not physically painful. *Id.* at 41. In part because none of these techniques would individually cause pain that even approaches the "severe" level required to violate the statute, the combined use of the techniques under the conditions outlined here would not be expected to—

and we conclude that their authorized use by adequately trained interrogators could not reasonably be considered specifically intended to—reach that level.[1]

We recognize the theoretical possibility that the use of one or more techniques would make a detainee more susceptible to severe pain or that the techniques, in combination, would operate differently from the way they would individually and thus cause severe pain. But as we understand the experience involving the combination of various techniques, the OMS medical and psychological personnel have not observed any such increase in susceptibility. Other than the waterboard, the specific techniques under consideration in this memorandum—including sleep deprivation—have been applied to more than 25 detainees. *See* [redacted] *Fax* at 1-3. No apparent increase in susceptibility to severe pain has been observed either when techniques are used sequentially or when they are used simultaneously—for example, when an insult slap is simultaneously combined with water dousing or a kneeling stress position, or when wall standing is simultaneously combined with an abdominal slap and water dousing. Nor does experience show that, even apart from changes in susceptibility to pain, combinations of these techniques cause the techniques to operate differently so as to cause severe pain. OMS doctors and psychologists, moreover, confirm that they expect that the techniques, when combined as described in the *Background Paper* and in the *April 22* [redacted] *Fax*, would not operate in a different manner from the way they do individually, so as to cause severe pain.

We understand that experience supports these conclusions even though the *Background Paper* does give examples where the distress caused by one technique would be increased by use of another. The "conditioning techniques"—nudity, sleep deprivation, and dietary manipulation—appear designed to wear down the detainee, physically and psychologically, and to allow other techniques to be more effective, *see Background Paper* at 5,12; *April 22* [redacted] *Fax* at 4; and "these [conditioning] techniques are used in combination in almost all cases," *Background Paper* at 17. And, in another example, the threat of walling is used to cause a detainee to hold a stress position longer than he otherwise would. *See id.* at 14. The issue raised by the statute, however, is whether the techniques would be specifically intended to cause the detainee to experience "severe . . . pain." 18 U.S.C. § 2340(1). In the case of the conditioning

[1] We are not suggesting that combinations or repetitions of acts that do not individually cause severe physical pain could not result in severe physical pain. Other than the repeated use of the "walling" technique, however, nothing in the *Background Paper* suggests the kind of repetition that might raise an issue about severe physical pain; and, in the case of walling, we understand that this technique involves a false, flexible wall and is not significantly painful, even with repetition. Our advice with respect to walling in the present memorandum is based on the understanding that the repetitive use of walling is intended only to increase the shock and drama of the technique, to wear down the detainee's resistance, and to disrupt expectations that he will not be treated with force, and that such use is not intended to, and does not in fact, cause severe physical pain to the detainee. Along these lines, we understand that the repeated use of the insult slap and the abdominal slap gradually reduces their effectiveness and that their use is therefore limited to times when the detainee's overt disrespect for the question or questioner requires immediate correction, when the detainee displays obvious efforts to misdirect or ignore the question or questioner, or when the detainee attempts to provide an obvious lie in response to a specific question. Our advice assumes that the interrogators will apply those techniques as designed and will not strike the detainee with excessive force or repetition in a manner that might result in severe physical pain. As to all techniques, our advice assumes that the use of the technique will be stopped if there is any indication that it is or may be causing severe physical pain to the detainee.

techniques, the principal effect, as you have described it, is on the detainee's will to resist other techniques, rather than on the pain that the other techniques cause. *See Background Paper* at 5, 12; *April 22 [redacted] Fax* at 4. Moreover, the stress positions and wall standing, while inducing muscle fatigue, do not cause "severe physical . . . pain," and there is no reason to believe that a position, held somewhat longer than otherwise, would create such pain. *See Techniques* at 33-34.[8]

In any particular case, a combination of techniques might have unexpected results, just as an individual technique could produce surprising effects. But the *Background Paper* and the *April 22 [redacted] Fax*, as well as *Techniques*, describe a system of medical and psychological monitoring of the detainee that would very likely identify any such unexpected results as they begin to occur and would require an interrogation to be modified or stopped if a detainee is in danger of severe physical pain. Medical and psychological personnel assess the detainee before any interrogation starts. *See, e.g., Techniques* at 5. Physical and psychological evaluations are completed daily during any period in which the interrogators use enhanced techniques, including those at issue in *Techniques* (leaving aside dietary manipulation and sleep deprivation of less than 48 hours). *See id.* at 5-7. Medical and psychological personnel are on scene throughout the interrogation, and are physically present or are otherwise observing during many of the techniques. *See id.* at 6-7. These safeguards, which were critically important to our conclusions about individual techniques, are even more significant when techniques are combined.

In one specific context, monitoring the effects on detainees appears particularly important. The *Background Paper* and the *April 22 [redacted] Fax* illustrate that sleep deprivation is a central part of the "prototypical interrogation." We noted in *Techniques* that extended sleep deprivation may cause a small decline in body temperature and increased food consumption. *See Techniques* at 33-34. Water dousing and dietary manipulation and perhaps even nudity may thus raise dangers of enhanced susceptibility to hypothermia or other medical conditions for a detainee undergoing sleep deprivation. As in *Techniques*, we assume that medical personnel will be aware of these possible interactions and will monitor detainees closely for any signs that such interactions are developing. *See id.* at 33-35. This monitoring, along with quick intervention if any signs of problematic symptoms develop, can be expected to prevent a detainee from experiencing severe physical pain.

We also understand that some studies suggest that extended sleep deprivation may be associated with a reduced tolerance for some forms of pain.[9] Several of the techniques used by

[8] Our advice about wall standing and stress positions assumes that the positions used in each technique are not designed to produce severe pain that might result from contortions or twisting of the body, but only temporary muscle fatigue.

[9] For example, one study found a statistically significant drop of 8-9% in subjects' tolerance thresholds for mechanical or pressure pain after 40 hours of total sleep deprivation. *See* S. Hakki Onen, et al., *The Effects of Total Sleep Deprivation, Selective Sleep Interruption and Sleep Recovery on Pain Tolerance Thresholds in Healthy Subjects*, 10 J. Sleep Research 35, 41 (2001); *see also id.* at 35-36 (discussing other studies). Another study of extended total sleep deprivation found a significant decrease in the threshold for heat pain and some decrease in the cold pain threshold. *See* B. Kundermann, et al., *Sleep Deprivation Affects Thermal Pain Thresholds but not Somatosensory Thresholds in Healthy Volunteers*, 66 Psychosomatic Med. 932 (2004).

the CIA may involve a degree of physical pain, as we have previously noted, including facial and abdominal slaps, walling, stress positions, and water dousing. Nevertheless, none of these techniques would cause anything approaching severe physical pain. Because sleep deprivation appears to cause at most only relatively moderate decreases in pain tolerance, the use of these techniques in combination with extended sleep deprivation would not be expected to cause severe physical pain.

Therefore, the combined use of techniques, as set out in the *Background Paper* and the *April 22* [redacted] *Fax*, would not reasonably be expected by the interrogators to result in severe physical pain. We conclude that the authorized use of these techniques in combination by adequately trained interrogators, as you have described it, could not reasonably be considered specifically intended to cause such pain for purposes of sections 2340-2340A. The close monitoring of each detainee for any signs that he is at risk of experiencing severe physical pain reinforces the conclusion that the combined use of interrogation techniques is not intended to inflict such pain. OMS has directed that "[m]edical officers must remain cognizant at all times of their obligation to prevent 'severe physical or mental pain or suffering.'" *OMS Guidelines* at 10. The obligation of interrogation team members and medical staff to intercede if their observations indicate a detainee is at risk of experiencing severe physical pain, and the expectation that all interrogators understand the important role played by OMS and will cooperate with them in the exercise of this duty, are here, as in *Techniques*, essential to our advice. *See Techniques* at 14.

Severe Physical Suffering

We noted in *Techniques* that, although the statute covers a category of "severe physical . . . suffering" distinct from "severe physical pain," this category encompasses only "physical distress that is 'severe' considering its intensity and duration or persistence, rather than merely mild or transitory." *Id.* at 23 (internal quotation marks omitted). Severe physical suffering for purposes of sections 2340-2340A, we have concluded, means a state or condition of physical distress, misery, affliction, or torment, usually involving physical pain, that is both extreme in intensity and significantly protracted in duration or persistent over time. *Id.* Severe physical suffering is distinguished from suffering that is purely mental or psychological in nature, since mental suffering is encompassed by the separately defined statutory category of "severe mental pain or suffering," discussed below. To amount to torture, conduct must be "sufficiently extreme and outrageous to warrant the universal condemnation that the term 'torture' both connotes and invokes." *See Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 92 (D.C. Cir. 2002) (interpreting the TVPA); *cf. Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1332-40, 1345-46 (N.D. Ga. 2002) (standard met under the TVPA by a course of conduct that included severe beatings to the genitals, head, and other parts of the body with metal pipes and various other items; removal of teeth with pliers; kicking in the face and ribs; breaking of bones and ribs and dislocation of fingers; cutting a figure into the victim's forehead; hanging the victim and beating him; extreme limitations of food and water; and subjection to games of "Russian roulette").

In *Techniques*, we recognized that, depending on the physical condition and reactions of a given individual, extended sleep deprivation might cause physical distress in some cases. *Id.* at 34. Accordingly, we advised that the strict limitations and safeguards adopted by the CIA are

important to ensure that the use of extended sleep deprivation would not cause severe physical suffering. *Id.* at 34-35. We pointed to the close medical monitoring by OMS of each detainee subjected to sleep deprivation, as well as to the power of any member of the interrogation team or detention facility staff to intervene and, in particular, to intervention by OMS if OMS concludes in its medical judgment that the detainee may be experiencing extreme physical distress. With those safeguards in place, and based on the assumption that they would be strictly followed, we concluded that the authorized use of sleep deprivation by adequately trained interrogators could not reasonably be considered specifically intended to cause such severe physical suffering. *Id.* at 34. We pointed out that "[d]ifferent individual detainees may react physically to sleep deprivation in different ways," *id.*, and we assumed that the interrogation team and medical staff "will separately monitor each individual detainee who is undergoing sleep deprivation, and that the application of this technique will be sensitive to the individualized physical condition and reactions of each detainee." *Id.*

Although it is difficult to calculate the additional effect of combining other techniques with sleep deprivation, we do not believe that the addition of the other techniques as described in the *Background Paper* would result in "severe physical . . . suffering." The other techniques do not themselves inflict severe physical pain. They are not of the intensity and duration that are necessary for "severe physical suffering"; instead, they only increase, over a short time, the discomfort that a detainee subjected to sleep deprivation experiences. They do not extend the time at which sleep deprivation would end, and although it is possible that the other techniques increase the physical discomfort associated with sleep deprivation itself, we cannot say that the effect would be so significant as to cause "physical distress that is 'severe' considering its intensity and duration or persistence." *Techniques* at 23 (internal quotation marks omitted). We emphasize that the question of "severe physical suffering" in the context of a combination of techniques is a substantial and difficult one, particularly in light of the imprecision in the statutory standard and the relative lack of guidance in the case law. Nevertheless, we believe that the combination of techniques in question here would not be "extreme and outrageous" and thus would not reach the high bar established by Congress in sections 2340-2340A, which is reserved for actions that "warrant the universal condemnation that the term 'torture' both connotes and invokes." *See Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d at 92 (interpreting the TVPA)

As we explained in *Techniques*, experience with extended sleep deprivation shows that "'[s]urprisingly, little seemed to go wrong with the subjects physically. The main effects lay with sleepiness and impaired brain functioning, but even these were no great cause for concern.'" *Id.* at 36 (quoting James Horne, *Why We Sleep: The Functions of Sleep in Humans and Other Mammals* 23-24 (1988)). The aspects of sleep deprivation that might result in substantial physical discomfort, therefore, are limited in scope; and although the degree of distress associated with sleepiness, as noted above, may differ from person to person, the CIA has found that many of the at least 25 detainees subjected to sleep deprivation have tolerated it well. The general conditions in which sleep deprivation takes place would not change this conclusion. Shackling is employed as a passive means of keeping a detainee awake and is used in a way designed to prevent causing significant pain. A detainee is not allowed to hang by his wrists. When the detainee is shackled in a sitting position, he is on a stool adequate to bear his weight; and if a horizontal position is used, there is no additional stress on the detainee's arm or leg

joints that might force his limbs beyond their natural extension or create tension on any joint. Furthermore, team members, as well as medical staff, watch for the development of edema and will act to relieve that condition, should significant edema develop. If a detainee subject to sleep deprivation is using an adult diaper, the diaper is checked regularly and changed as needed to prevent skin irritation.

Nevertheless, we recognize, as noted above, the possibility that sleep deprivation might lower a detainee's tolerance for pain. *See supra* p.13 & n.9. This possibility suggests that use of extended sleep deprivation in combination with other techniques might be more likely than the separate use of the techniques to place the detainee in a state of severe physical distress and, therefore, that the detainee might be more likely to experience severe physical suffering. However, you have informed us that the interrogation techniques at issue would not be used during a course of extended sleep deprivation with such frequency and intensity as to induce in the detainee a persistent condition of extreme physical distress such as may constitute "severe physical suffering" within the meaning of sections 2340-2340A. We understand that the combined use of these techniques with extended sleep deprivation is not designed or expected to cause that result. Even assuming there could be such an effect, members of the interrogation team and medical staff from OMS monitor detainees and would intercede if there were indications that the combined use of the techniques may be having that result, and the use of the techniques would be reduced in frequency or intensity or halted altogether, as necessary. In this regard, we assume that if a detainee started to show an atypical, adverse reaction during sleep deprivation, the system for monitoring would identify this development.

These considerations underscore that the combination of other techniques with sleep deprivation magnifies the importance of adhering strictly to the limits and safeguards applicable to sleep deprivation as an individual technique, as well as the understanding that team personnel, as well as OMS medical personnel, would intervene to alter or stop the use of an interrogation technique if they conclude that a detainee is or may be experiencing extreme physical distress.

The waterboard may be used simultaneously with two other techniques: it may be used during a course of sleep deprivation, and as explained above, a detainee subjected to the waterboard must be under dietary manipulation, because a fluid diet reduces the risks of the technique. Furthermore, although the insult slap, abdominal slap, attention grasp, facial hold, walling, water dousing, stress positions, and cramped confinement cannot be employed during the actual session when the waterboard is being employed, they may be used at a point in time close to the waterboard, including on the same day. *See April 22* [redacted] *Fax* at 3.

In *Techniques*, we explained why neither sleep deprivation nor the waterboard would impose distress of such intensity and duration as to amount to "severe physical suffering," and, depending on the circumstances and the individual detainee, we do not believe the combination of the techniques, even if close in time with other techniques, would change that conclusion. The physical distress of the waterboard, as explained in *Techniques*, lasts only during the relatively short periods during a session when the technique is actually being used. Sleep deprivation would not extend that period. Moreover, we understand that there is nothing in the literature or experience to suggest that sleep deprivation would exacerbate any harmful effects of the waterboard. *See supra* p. 9. Similarly, the use of the waterboard would not extend the time

of sleep deprivation or increase its distress, except during the relatively brief times that the technique is actually being used. And the use of other techniques that do not involve the intensity and duration required for "severe physical suffering" would not lengthen the time during which the waterboard would be used or increase, in any apparent way, the intensity of the distress it would cause. Nevertheless, because both the waterboard and sleep deprivation raise substantial questions, the combination of the techniques only heightens the difficulty of the issues. Furthermore, particularly because the waterboard is so different from other techniques in its effects, its use in combination with other techniques is particularly difficult to judge in the abstract and calls for the utmost vigilance and care.

Based on these assumptions, and those described at length in *Techniques*, we conclude that the combination of techniques, as described in the *Background Paper* and the *April 22* [redacted] *Fax*, would not be expected by the interrogators to cause "severe physical . . . suffering," and that the authorized use of these techniques in combination by adequately trained interrogators could not reasonably be considered specifically intended to cause severe physical suffering within the meaning of sections 2340-2340A.

Severe Mental Pain or Suffering

As we explained in *Techniques*, the statutory definition of "severe mental pain or suffering" requires that one of four specified predicate acts cause "prolonged mental harm." 18 U.S.C. § 2340(2); *see Techniques* at 24-25. In *Techniques*, we concluded that only two of the techniques at issue here—sleep deprivation and the waterboard—could even arguably involve a predicate act. The statute provides that "the administration or application . . . of . . . procedures calculated to disrupt profoundly the senses or the personality" can be a predicate act. 18 U.S.C. § 2340(2)(B). Although sleep deprivation may cause hallucinations, OMS, supported by the scientific literature of which we are aware, would not expect a profound disruption of the senses and would order sleep deprivation discontinued if hallucinations occurred. We nonetheless assumed in *Techniques* that any hallucinations resulting from sleep deprivation would amount to a profound disruption of the senses. Even on this assumption, we concluded that sleep deprivation should not be deemed "calculated" to have that effect. *Techniques* at 35-36. Furthermore, even if sleep deprivation could be said to be "calculated" to disrupt the senses profoundly and thus to qualify as a predicate act, we expressed the understanding in *Techniques* that, as demonstrated by the scientific literature about which we knew and by relevant experience in CIA interrogations, the effects of sleep deprivation, including the effects of any associated hallucinations, would rapidly dissipate. Based on that understanding, sleep deprivation therefore would not cause "prolonged mental harm" and would not meet the statutory definition for "severe mental pain or suffering." *Id.* at 36.

We noted in *Techniques* that the use of the waterboard might involve a predicate act. A detainee subjected to the waterboard experiences a sensation of drowning, which arguably qualifies as a "threat of imminent death." 18 U.S.C. § 2340(2)(C). We noted, however, that there is no medical basis for believing that the technique would produce any prolonged mental harm. As explained in *Techniques*, there is no evidence for such prolonged mental harm in the CIA's experience with the technique, and we understand that it has been used thousands of times

(albeit in a somewhat different way) during the military training of United States personnel, without producing any evidence of such harm.

There is no evidence that combining other techniques with sleep deprivation or the waterboard would change these conclusions. We understand that none of the detainees subjected to sleep deprivation has exhibited any lasting mental harm, and that, in all but one case, these detainees have been subjected to at least some other interrogation technique besides the sleep deprivation itself. Nor does this experience give any reason to believe that, should sleep deprivation cause hallucinations, the use of these other techniques in combination with sleep deprivation would change the expected result that, once a person subjected to sleep deprivation is allowed to sleep, the effects of the sleep deprivation, and of any associated hallucinations, would rapidly dissipate.

Once again, our advice assumes continuous, diligent monitoring of the detainee during sleep deprivation and prompt intervention at the first signs of hallucinatory experiences. The absence of any atypical, adverse reaction during sleep deprivation would buttress the inference that, like others deprived of sleep for long periods, the detainee would fit within the norm established by experience with sleep deprivation, both the general experience reflected in the medical literature and the CIA's specific experience with other detainees. We understand that, based on these experiences, the detainee would be expected to return quickly to his normal mental state once he has been allowed to sleep and would suffer no "prolonged mental harm."

Similarly, the CIA's experience has produced no evidence that combining the waterboard and other techniques causes prolonged mental harm, and the same is true of the military training in which the technique was used. We assume, again, continuous and diligent monitoring during the use of the technique, with a view toward quickly identifying any atypical, adverse reactions and intervening as necessary.

The *Background Paper* raises one other issue about "severe mental pain or suffering." According to the *Background Paper*, the interrogators may tell detainees that they "will do what it takes to get important information." *Background Paper* at 10. (We understand that interrogators may instead use other statements that might be taken to have a similar import.) Conceivably, a detainee might understand such a statement as a threat that, if necessary, the interrogators will imminently subject him to "severe physical pain or suffering" or to "the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality," or he perhaps even could interpret the statement as a threat of imminent death (although, as the detainee himself would probably realize, killing a detainee would end the flow of information). 18 U.S.C. § 2340(2)(A)-(C).

We doubt that this statement is sufficiently specific to qualify as a predicate act under section 2340(2). Nevertheless, we do not have sufficient information to judge whether, in context, detainees understand the statement in any of these ways. If they do, this statement at the beginning of the interrogation arguably requires considering whether it alters the detainee's perception of the interrogation techniques and whether, in light of this perception, prolonged mental harm would be expected to result from the combination throughout the interrogation process of all of the techniques used. We do not have any body of experience, beyond the CIA's

own experience with detainees, on which to base an answer to this question. SERE training, for example, or other experience with sleep deprivation, does not involve its use with the standing position used here, extended nudity, extended dietary manipulation, and the other techniques which are intended "to create a state of learned helplessness," *Background Paper* at 1, and SERE training does not involve repeated applications of the waterboard. A statement that the interrogators "will do what it takes to get important information" moves the interrogations at issue here even further from this body of experience.

Although it may raise a question, we do not believe that, under the careful limitations and monitoring in place, the combined use outlined in the *Background Paper*, together with a statement of this kind, would violate the statute. We are informed that, in the opinion of OMS, none of the detainees who have heard such a statement in their interrogations has experienced "prolonged mental harm," such as post-traumatic stress disorder, *see Techniques* at 26 n.31, as a result of it or the various techniques utilized on them. This body of experience supports the conclusion that the use of the statement does not alter the effects that would be expected to follow from the combined use of the techniques. Nevertheless, in light of these uncertainties, you may wish to evaluate whether such a statement is a necessary part of the interrogation regimen or whether a different statement might be adequate to convey to the detainee the seriousness of his situation.

* * *

In view of the experience from past interrogations, the judgment of medical and psychological personnel, and the interrogation team's diligent monitoring of the effects of combining interrogation techniques, interrogators would not reasonably expect that the combined use of the interrogation methods under consideration, subject to the conditions and safeguards set forth here and in *Techniques*, would result in severe physical or mental pain or suffering within the meaning of sections 2340-2340A. Accordingly, we conclude that the authorized use, as described in the *Background Paper* and the *April 22* [redacted] *Fax*, of these techniques in combination by adequately trained interrogators could not reasonably be considered specifically intended to cause severe physical or mental pain or suffering, and thus would not violate sections 2340-2340A. We nonetheless underscore that when these techniques are combined in a real-world scenario, the members of the interrogation team and the attendant medical staff must be vigilant in watching for unintended effects, so that the individual characteristics of each detainee are constantly taken into account and the interrogation may be modified or halted, if necessary, to avoid causing severe physical or mental pain or suffering to any detainee. Furthermore, as noted above, our advice does not extend to combinations of techniques unlike the ones discussed here, and whether any other combination of techniques would be more likely to cause severe physical or mental pain or suffering within the meaning of sections 2340-2340A would be a question that we cannot assess here. Similarly, our advice does not extend to the use of techniques on detainees unlike those we have previously considered, and whether other detainees would, in the relevant ways, be like the ones at issue in our previous advice would be a factual question we cannot now decide. Finally, we emphasize that these are issues about which reasonable persons may disagree. Our task has been made more difficult by the imprecision of the statute and the relative absence of judicial guidance, but we have applied our best reading of the law to the specific facts that you have provided.

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Please let us know if we may be of further assistance.

Steven G. Bradbury
Principal Deputy Assistant Attorney General