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Miami Lawyer Fought Against Detainee Abuse

A once-secret memo shows how a top Navy lawyer fought to rescind Defense Department interrogation techniques at Guantánamo Bay, Cuba.

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WASHINGTON -- In 2002, the Navy's top lawyer, a Cuban American with Miami ties, fought a secret internal Pentagon battle to stop coercive interrogation practices at the prison for terrorism suspects at Guantánamo Bay, Cuba, according to a Defense Department document made public on Monday.

The lawyer, University of Miami Law School graduate Alberto Mora, describes in detail how he had concluded that a variety of interrogation techniques used on prisoners ``could rise to the level of torture."

His 22-page memo was posted on The New Yorker magazine website Monday.

Mora, 53, retired from the Pentagon post seven weeks ago to become Wal-Mart's counsel for international operations after serving four-plus years in the job that carried the seniority of a four-star general. Pentagon officials did not respond to requests for comment.

'What did `deprivation of light and auditory stimuli' mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer?' Mora wrote, describing how he challenged the Pentagon's chief lawyer, William J. Haynes II, after learning of secret tactics being used on prisoners at the U.S. Navy base in Cuba.

``What precisely did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in? Not only could individual techniques applied singly constitute torture but also the applications of combinations of them must surely be recognized as potentially capable of reaching the level of torture."

INTERNAL EYES ONLY

Mora wrote the document for internal consumption only, in his capacity as the Navy's general counsel in 2004. It was a memo to the service's inspector general, who was investigating U.S. interrogation tactics following disclosure of photos of prisoners being abused by U.S. Military Police in Abu Ghraib, Iraq.

In perhaps the greatest detail so far, it illustrates a behind-the-scenes Defense Department debate in the Guantánamo prison's first year over whether it was legal to use dogs to exploit prisoners' phobias and whether sensory deprivation and hooding could be calibrated enough not to become abusive.

The memo became public just days after a report by United Nations human rights fact-finders called on the Bush administration to close the detention center, which today houses fewer than 500 ``enemy combatants."

In the memo, Mora does not challenge President Bush's power to take, hold or try enemy combatants at the detention center in Cuba, the land Mora fled for the United States as an 8-year-old early on in Fidel Castro's revolution.

However, he worked the Defense Department chain of command to get classified Army techniques being used on the base withdrawn. They had been implemented under a secret Dec. 2, 2002, memo signed by Secretary of Defense Donald Rumsfeld.

The former Greenberg, Traurig international law attorney, who had been the top Navy lawyer since July 2001, wrote in his memo that he went to Miami for a Christmas vacation confident that the interrogation tactics he deemed abusive would be rescinded. They were not.

"This came as an unpleasant surprise since I had been confident that the abusive activities would have quickly ended once I brought them to the attention of higher levels within DOD," he wrote.

He argued that beyond the abusive techniques, an Army intelligence legal analysis cleared by the Miami-based Southern Command was flawed when it said certain practices could be carried out outside U.S. soil and out of reach of U.S. civilian courts.

As part of his argument, Mora also raised alarm bells over a remark Rumsfeld wrote in the margins of a December 2002 document laying out coercive interrogation techniques, including one that let interrogators leave a prisoner standing in a "stress position" for four hours.

'WHY ONLY 4 HOURS?'

Rumsfeld scrawled, "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

"Unless withdrawn rapidly," Mora advised, "the memo was sure to be discovered and used at trial in the military commissions."

By Jan. 15, 2003, he said, the Navy's counsel had drafted a memo that raised his objections for the record and warned of international political and diplomatic consequences for what he saw as abusing prisoners.

Before Mora formally filed the memo, Haynes, who disagreed with his analysis, said Rumsfeld had suspended the techniques.

Since then, Mora wrote, he was satisfied that interrogation techniques "authorized for use in Guantánamo fell well within the boundaries authorized by law."