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Military Lawyers Say Tactics Broke Rules

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The top lawyers for the Army, Navy and Marine Corps have told Congress that a number of aggressive techniques used by military interrogators on a detainee at the Guantanamo Bay prison were not consistent with the guidelines in the Army field manual on interrogations.

Their conclusions are in sharp contrast to the findings of a previous military investigation into allegations of abuse at the U.S. military prison.

The judge advocates general, responding in writing to questions from the Senate Armed Services Committee about the treatment of suspected terrorist Mohamed al-Qahtani, found that several techniques used at Guantanamo Bay, Cuba, could be considered violations of interrogation policy because individually they are humiliating or degrading.

In separate statements obtained by The Washington Post, the lawyers wrote that forcing a detainee to wear a woman's bra and thong underwear on his head, insulting a detainee's mother and sister, calling a detainee a homosexual and implying that others know he is a homosexual, forcing a detainee to perform dog tricks, and forcing a detainee to stand naked in the presence of female soldiers would not be consistent with the Army's policy.

Those techniques were used on Qahtani, considered a high-value detainee, after he refused to divulge information to his questioners over months of interrogation at the military prison in Guantanamo Bay.

An investigation by two generals into FBI allegations of abuse at the facility found that all the tactics taken together could be considered abusive and degrading but concluded that each tactic was individually "authorized" under the Army field manual's guidelines for the "pride and ego down" and "futility" approaches. Pentagon and U.S. Southern Command officials have told Congress and reporters that the approaches were consistent with the field manual.

"At Joint Task Force-Guantanamo (JTF-GTMO), the interrogation team devised specific applications for one particular detainee -- Mohamed Qahtani," Gen. Bantz J. Craddock, the head of the U.S. Southern Command, wrote in response to questions from Sen. John McCain (R-Ariz.) after a hearing last July. "These specific applications . . . were creative and aggressive. However, these applications did not violate any U.S. law or policy."

The contradiction of that view by service lawyers highlights the internal debate about the new Army Field Manual, which has been scheduled for release several times but has been held up by high-level administration discussions. Because of a new law written by McCain, the field manual has become the legal standard for all U.S. military interrogation practices, which must not include cruel, inhuman or degrading treatment.

Defense officials said this week that the field manual has not been finalized.

A senior military official said the new manual, as currently written, will include a classified section that will go only to soldiers and leave them less discretion in interrogations. It will not allow the use of tactics inconsistent with the Geneva Conventions, the official said.

Maj. Gen. Thomas J. Romig, who recently retired as Army judge advocate general, wrote in an Aug. 25 statement to Congress that he believes the separate tactics used on Qahtani generally "would not be consistent with the intent and spirit of the Army Field Manual."

Army officials said the field manual applies to detainees protected by the Geneva Conventions. The Bush administration has maintained that the Geneva Conventions do not apply to enemy combatants held in Cuba.

"When it comes to interrogation standards, we must ensure that our men and women in uniform do not receive unclear or misleading guidance," McCain said yesterday, after reviewing the statements. He said Craddock will have to clarify his opinion.

Rear Adm. James E. McPherson, the Navy JAG, wrote that the manual uses two tests to determine whether a tactic is appropriate: Would a reasonable person believe his rights were being violated when subjected to the technique, and would a U.S. service member believe his rights were being violated if an enemy used the tactic on him?

"The FM provides that the Geneva Convention provisions concerning protected persons be strictly adhered to in the quest to identify legitimate threats and gain needed intelligence," McPherson wrote. "Among those provisions are the prohibition on physical or moral coercion and the prohibition on subjecting individuals to humiliating or degrading treatment."

Pentagon spokesmen referred questions to Southern Command officials, who cited Craddock's statements.