

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Colonel Brittain Mallow

Columbia Center for Oral History

Columbia University

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PREFACE

The following oral history is the result of a recorded interview with Colonel Brittain Mallow conducted by Myron A. Farber on November 29, 2011. This interview is part of the Rule of Law Oral History Project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose.

VJD

Session One

Interviewee: Colonel Brittain Mallow

Location: Washington, D.C.

Interviewer: Myron A. Farber

Date: November 29, 2011

Q: This is Myron Farber, on November 29, 2011, interviewing Colonel Brittain Mallow, U.S. Army retired, for Columbia University's oral history project on Guantánamo Bay detention camp and related matters.

Colonel Mallow, you were born in 19—?

Mallow: 1956.

Q: In Japan.

Mallow: Japan. An Army post.

Q: And you've been career Army until your retirement—when?

Mallow: In 2005.

Q: Okay. May I ask what you're doing now?

Mallow: I work for a not-for-profit entity that provides services to the United States government. It's a federally funded research and development activity.

Q: Okay. And before—let's say the couple of years at least—before 9/11, what was your position in the Army?

Mallow: From the time I joined the Army in 1977 through the events of 9/11, I was a military police officer. That was my primary specialty. My secondary specialty was as a Middle East foreign area specialist. Most of my assignments were military police assignments all over the world, and I had several assignments over in the Middle East for my secondary specialty. On 9/11 I was the deputy commander of the Army's Criminal Investigation Command, which is, in effect, the Army's detective bureau that investigates all felony crimes of interest to the Army. So I was the number-two in that agency, reporting to the commanding general of that organization.

Q: Those are felony crimes committed by U.S. servicemen?

Mallow: The Army CID—Criminal Investigation Command—investigates all felony crimes of interest to the Army. It may be where an Army person is the suspected perpetrator of the crime, where the Army or an Army person is a victim of the crime, or, where it is of interest to the Army, such as certain economic crimes that involve Army interests.

Q: You were based where in that job?

Mallow: That was at Fort Belvoir, Virginia, just about fifteen miles south of the city here.

Q: You mentioned the Middle East. Do you have any language facility in Middle Eastern languages?

Mallow: I was trained in Arabic, modern standard Arabic, and I spent two tours over in the Middle East trying to improve my capabilities there.

Q: Whereabouts in the Middle East?

Mallow: My training year as a foreign area officer was spent in Amman, Jordan, where I did some travel around, and I attended the Jordanian infantry school, along with some colleagues. Then a second year, at the conclusion of the First Gulf War, I was stationed in Riyadh and Dhahran, Saudi Arabia. I was liaison to the Ministry of Defense there, in Saudi.

Q: Where were you on 9/11?

Mallow: On 9/11 I was in the headquarters of the Criminal Investigation Command. Our normal routine on weekday mornings was for the leadership of the command to meet and discuss the reports of what had gone on over the last twenty-four hours, in terms of crime reports and so forth. We were preparing for our morning briefing with the commanding general. We were having some preliminary meetings before we went into the general's office to talk to him about what the reports were for the day.

Q: This was at Fort Belvoir.

Mallow: That's correct.

Q: And Fort Belvoir, in relation to the Pentagon, geographically—?

Mallow: It's about fifteen miles south.

Q: So that's where you were when the planes hit the towers in New York?

Mallow: That's right.

Q: And hit the Pentagon.

Mallow: Well, the first reports, of course, were the towers in New York. We had televisions that were on to news channels at that time, in the headquarters, so we saw the report of that. It was shortly thereafter—actually, after we saw the second plane hit—that we got the reports about the Pentagon.

Q: How did you spend that day, briefly?

Mallow: That was a chaotic day. Obviously, like everybody else, we spent a good part of the initial phases of looking at all this, trying to figure out what was going on. But, particularly when we had the reports about the Pentagon—and there were many other reports of other events that were going on—some of them turned out to be spurious. We had reports of explosions, shooting incidents and so forth, that turned out to be either unrelated or not true. When the Pentagon was affected, of course—we had agents who were in the Pentagon who were doing protective service operations for top DOD [Department of Defense] officials, so our first concern was our mission there at the Pentagon. What were our agents doing to protect the secretary of defense [Donald H. Rumsfeld], the secretary of the Army [Thomas E. White, Jr.], the chairman of the Joint Chiefs [Henry H. Shelton], and so forth. We were very intimately involved in that. Of course, secondarily, this incident that had taken place at the Pentagon was within our jurisdiction for criminal investigation as well.

We, along with other first responders, had special agents who were sent to the scene shortly after the incident had occurred, and at the same time, we were monitoring what was going on in other places. Like so much of the rest of the country, we were waiting for the next event to happen. We felt sure there was going to be something else.

Q: In the weeks and months after 9/11 then, your agency was occupied with investigating the events of 9/11?

Mallow: We were from the standpoint that, particularly, the scene at the Pentagon was a crime scene that was of interest to multiple agencies, obviously. You had the Federal Bureau of

Investigation [FBI] and you had all three of the services' investigative agencies. The Army, the Navy, and the Air Force criminal investigative organizations were all involved in that crime scene, as were the local Arlington officials, and a number of others. There was a massive crime scene, sort of ongoing operation at the Pentagon. We were certainly involved in operations to look at protecting the other interests of the United States Army—another part of our force protection mission—and in about the first thirty days after the attacks, that's probably what we spent the majority of our time with—the reaction to that, and the preparation for what we thought might be other events that were coming.

Then it was in October of 2001 that we began to receive information that there was going to be—well, we knew there was going to be a military response. There was going to be a Department of Defense response to go after Al-Qaeda in the region, and as part of that, we were informed that the Army would receive an investigative mission to deal with captured suspected terrorists. They were anticipating that the operation would yield captured persons in the Middle East who would then fall under the jurisdiction of a military commission process, which was envisioned to try these suspected terrorists as war criminals. The Army was going to be given a mission to investigate and provide evidence to this military judicial process. When the secretary of defense issued an order on 21 November 2001, it included a tasking to the secretary of the Army to stand up an investigative organization to do this mission. The commanding general of Army CID and I decided that we would request assistance from the other services in putting together our response for this mission.

He and I contacted the Naval Criminal Investigative Service [NCIS], the Air Force Office of Special Investigations, and several other agencies in order to request their support for putting together a joint investigative task force.

Q: That was authorized by the secretary of defense?

Mallow: That's correct.

Q: That came to be known as the Criminal Investigations Task Force [CITF]?

Mallow: That's correct. Criminal Investigation Task Force.

Q: And your position with them became—?

Mallow: When we were going to stand up that organization, my boss—the commanding general of Army CID—asked me to organize, stand-up, and command that task force.

Q: Okay, and that included personnel from these other investigative agencies of the other departments.

Mallow: Yes. With the approval of their organizational chain of command, we had agents and others from the Navy and from the Air Force who were attached to our task force. We also, under the secretary of defense's authority, were permitted to task the other services, and the

Army itself, for support personnel to create our task force. We didn't do it just out of Army CID, we reached out and got logistics personnel, and personnel, and administrative people, and we asked for legal personnel, and we basically put together a task force that consisted of constituents from all the services.

Q: And you were located at—?

Mallow: We were located at Fort Belvoir. Our initial plan was that we would deploy elements of this task force forward to Afghanistan, where the persons were initially being captured, and we would also deploy them to Guantánamo, once it was known that that was going to be a detention center.

Q: But you didn't know that then.

Mallow: We didn't know it in November, but by the December time frame, we knew that that plan was going to be put in place.

Q: Did you hear any discussion of why Guantánamo, or were you party to any discussion about the choice of Guantánamo?

Mallow: We weren't really party to the discussion, but we heard elements of it. Of course, what they were looking for was a location that was out of the combat theatre, away from Afghanistan, and away from the combat operations, so that both the detainees and their security forces would

be secure from the fighting. We knew that they were looking for a location that would be outside of the continental United States so that it wouldn't have some of the security and legal implications of bringing them all the way back to the United States. They were looking for a location that could be secured not only from the combat operations, but also secured from the general public and any other security threats.

Guantánamo was a place that I was familiar with. I had been there in 1995 for some of the refugee operations that had taken place at that time. Of course, its sort of remote status and sort of unique legal status made it a good possibility for a place to operate.

Q: When you say that there were going to be detainees in, I presume, Afghanistan, certainly, as a result of the U.S. forces going in there, had you, in your mind, among those who were running this show with you, any idea of the number of—did you envision, "Oh, I guess we'll round up maybe a hundred persons of interest, or five thousand persons of interest"? Did you have any idea at that time what you were getting into, in terms of numbers of people?

Mallow: Well, actually, we kind of thought that the numbers that we would ultimately deal with would be relatively small, initially, because it was envisioned that while there would be a lot of key persons ostensibly captured in theatre, that there would need to be some sort of a process by which we would winnow down the suspects, if you will, and decide which ones we would concentrate on. I think we had a vague impression that the number of captured persons would be relatively high, but the ones of particular interest to our process would be relatively small.

Q: Did you or anyone from your task force go to Afghanistan to be involved in who was going to be detained?

Mallow: We had, at the beginning of our mission—the military operation had already begun in Afghanistan. As you know, it began relatively soon after the events.

Q: October.

Mallow: Correct, so by the October-November time frame, not only were there combat forces in Afghanistan, but there were also support elements which included criminal investigators from Army CID. We already had a small detachment of investigators who normally travel with deployed Army combat forces. They were already in place in Afghanistan, and when our task force was organized it was envisioned that all or a portion of those criminal investigators would then be detailed to my command so that I would have control over an element that was already present in Afghanistan.

The original mission for CID agents in Afghanistan was to support the U.S. Army in traditional investigative operations, but when they were allocated to my task force, their initial job was to make contact with the detention operation personnel. This was initially in Kandahar, down in the southern part of Afghanistan, and in Bagram Air Base, in northeast Afghanistan, in order to try to determine which of the detained persons would be of interest to our particular investigative mission.

We made contact relatively early. The conditions in Kandahar and in Bagram were pretty rudimentary in those days. Everyone was living out of tents, including the detained persons. As you might expect, the mission of our organization was not well understood at first, because it was not part of the major combat operation. It took quite a bit of adjustment for our people over there to get in touch with the right people and to help them understand what our mission was.

Q: Have you heard it said that perhaps before Guantánamo was chosen as a site, General [Tommy R.] Franks didn't want to be rounding up these detainees and keeping them in Afghanistan?

Mallow: I wasn't party to the actual conversations, but I do know that one of the concerns with combat operations in the combat theatre was that they don't want to be preoccupied with detaining people, whether it's civilians or military. The general precept in combat operations is that if you collect prisoners, you move them to the rear, and get them out of the way of the combat operations. The idea that some of these persons would ultimately be suspect or subject to a judicial process was a different sort of approach. Combat commanders are concerned with prosecuting the destruction of the enemy and getting everybody else out of the way. Prisoner operations are a normal part of combat operations. You find out if they have any intelligence that you can use, you move them to the rear, safeguard them, and secure them until you can decide what to do with them. The idea that some of these persons would be tried by some sort of a judicial process as criminals was out of the ordinary.

Q: Well, perhaps this is not so well understood, but yes, there were hundreds of people who were ultimately sent to Guantánamo—actually, 779 in total—but there were thousands who weren't, who were detained but not sent to Guantánamo. Where were those people held, and were they held for years on end? Indeed, are some even still being held?

Mallow: The detention operations in Afghanistan consisted of prisoner-of-war-type operations/detention facilities, as I said. First in Kandahar—which is one of the first places we went into—later in Bagram, and those facilities were expanded. I think in the first couple of years of operation, there were over ten thousand persons ultimately detained. Most of those were detained for a certain period of time, and then were either released or turned over to Afghan authorities for their disposition—in other words, to either be detained someplace else, or determine whether they could be released. As you said, there was a process by which we only transmitted back to Guantánamo six or seven hundred persons over the course of a few years. The remainder of persons were either detained and then ultimately turned over to the Afghan government or detained for a longer term, but ultimately with the intention to turn them over. But there was a process by which we had to determine who were the ones of most interest, and that process required quite a bit of collection of information in-theatre. So before we could transfer somebody from Afghanistan to Guantánamo, there had to be a consensus among the military, law enforcement, and intelligence communities that that person was a likely suspect. We had a procedure by which we would look at bits of information, and there was actually sort of a formal decision process before anyone was transferred.

Q: Who was running that process on the ground?

Mallow: On the ground, the U.S. Central Command was in charge of combat operations in Afghanistan. They were the ultimate detainee authority there. But in order for a detainee to be approved and transferred to Guantánamo, it required the concurrence of the Department of Defense, and that would be with input from the other departments—the Department of State, the intelligence community, the law enforcement community.

Q: Do you know Michael Gelles?

Mallow: Yes.

Q: He's a Navy psychologist, or was, right?

Mallow: Correct.

Q: He would be down at Guantánamo in time, right?

Mallow: No, he was never permanently assigned down there. Mike Gelles was the forensic psychologist for the Naval Criminal Investigative Service, and when we began our mission, we recruited Dr. Gelles and several other persons to advise our task force on behavioral science. Dr. Gelles was still in his role as the NCIS forensic psychologist, doing missions for them, but he was, part-time to us, a consultant to our mission as a behavioral science advisor.

Q: And part-time down at Guantánamo.

Mallow: Well, he made trips down there. He never actually was on the ground for longer than a few days at the time.

Q: Okay. I'm looking at a report called "Guantánamo and its Aftermath," put out by the University of California at Berkeley in November of 2008, and it quotes Dr. Gelles as saying that the process that you're talking about in screening detainees to decide who was going to go to Guantánamo was "pure chaos." The report goes on to say, "Fearful of making a mistake and releasing dangerous or valuable detainees, the interrogators often signed off on the transfer of detainees they thought might be innocent. This became a dire situation for the affected detainees, given the reality that 'once a prisoner's name was on a manifest for Cuba, it was next to impossible to get the name off.'"

Now that report is hardly the only one to suggest that the process in Afghanistan for winnowing out those people who went to Guantánamo was dicey. These were basically, according to these reports, young people making these decisions who didn't have much language capability, who were being guided to people as a result of captures by the Northern Alliance, and unfamiliar with local customs and language. Decisions were made in a way that wouldn't be made, let's say, in an American court room—whether you belonged someplace or not.

Mallow: Right. Well, I'll tell you this. I would use the word "unsophisticated" rather than "chaotic," although there were elements of chaos in quite a bit of operations. Combat operations

and their aftermath are almost always characterized by some degree of chaos. Regarding the detainees, most of them were captured on a battlefield, or in the aftermath of a battle. They had no identification documents in many cases. They spoke dozens of different languages, and we knew that some of them weren't Afghans. Many weren't speaking Afghan native languages—Pashto, Urdu—so they were suspect from the standpoint of the circumstances of their capture. Many of them were captured while in combat operations against the United States or the Northern Alliance or both, so they were suspected as, at the very least, combatants. None of them wore uniforms, so you don't know whether they were true members of a military force, or they were just agents, or they were just peasants who were handed a rifle.

Because of the circumstances of their capture, the various languages, and the fact that you didn't have identification documents or biometrics against which you could identify these people, you basically had to make your decisions about the disposition of each one of these people from what they said, and from what others that you captured with them said, unless you had any physical or documentary evidence that also concerned them. Physical evidence would be if you captured them with, let's say, some bomb-making materials, some documents that had Al-Qaeda-related writings on them, or if you had intelligence reports that named this particular detainee and described them in enough detail that you could identify them.

The decisions about what these persons were, who they were, and what they were involved with were very difficult. Second, they were not simply the decisions of the young interrogators, but the entire chain of command that had been responsible for their capture. As I said, this process, while it was quite unsophisticated, did include—wherever it possibly could—the consideration

of evidence from elsewhere in the intelligence community and law enforcement. So from time to time, we would have information from the State Department, from intelligence organizations, and from law enforcement that would corroborate or refute what some of the detainees had said. All of that was taken into consideration, but the process was quite immature. We didn't have a lot of evidence to consider.

You're quite right in saying that the persons who did the interrogations, particularly in the early days of Operation Enduring Freedom, were not very well prepared for their mission. Most didn't speak the languages, so they had to go through third-party translators or interpreters. They had to rely upon their own skills that were not really tailored for this sort of operation. If you think back, the intelligence community prior to 9/11, going all the way back to the Second World War, was not accustomed to adversarial interrogations. During the Cold War, the intelligence community's experience with interrogations was limited to line-crossers and defectors who have quite a different mindset from the ones you'd capture elsewhere. When we did capture spies or others, the intelligence community's principal way of dealing with that was to ultimately bargain them away for our own persons who were captured. In the world of terrorism, interrogations were almost exclusively the realm of law enforcement officials who had dealt with true terrorists, as opposed to intelligence operatives who dealt with them when they were still suspect but not in custodial environments. The U.S. Intelligence Community's doctrine and state of expertise in adversarial interrogations in 2001, in my opinion, was not current, nor was it sophisticated.

My estimation is that the intelligence community was woefully unprepared for this mission, and the overall process by which we sorted and decided who would be sent to Guantánamo was, as I

observed it, immature, unsophisticated, and with elements of chaos because there was a great deal of uncertainty in all the information that was provided.

Q: Do you think if you took a random sample of the detainees taken in detention in, let's say, 2002 to 2005, who never were sent to Guantánamo and compared it against the people who were sent to Guantánamo, you would find much of a difference?

Mallow: I think in terms of circumstantial evidence, yes—because, as I said—a lot of times those decisions were based on that. They were based on where the person was captured, the context of their capture, that is what they were doing at that time, with whom they were captured, what they said—sometimes it was very little that the detainees said—and what others said about them, which might or might not be accurate.

So there was some difference. I know there were many who were left behind who were probably good suspects, but we simply didn't have enough information of any type to corroborate that.

Q: Well, you know that around that time, December of 2001 to January 2002, when the first detainees arrived at Guantánamo, they were being described by the secretary of defense as the "worst of the worst."

Mallow: Yes.

Q: I think Vice President Cheney was using even stronger language. The chairman of the Joint Chiefs of Staff [Richard B. Myers] was talking about people who would "gnaw through the hydraulic lines of the planes transporting them to bring the plane down." That's pretty dramatic. That is what was told to the American people.

Mallow: Yes. Well, I think that had we been certain we had captured Al-Qaeda operatives who had been involved in the 9/11 plot, and if that's who we were talking about, there might have been some truth in it. Of course, the hyperbole was extreme. It was absolutely clear to all of us that we had a mixture of some suspected and probably very bad and dangerous people, and others who, for whatever reasons, we just had a lot of suspicions about, or we had very little information about, but they appeared to be someone of interest.

So we knew we had a mixed bag from the very start, and I will validate one thing that Mike Gelles said, which is absolutely true, and that is that there was an overwhelming sense in the early days following 9/11 that there was to be a next attack. And there was a clear understanding that the principal mission of the entire security apparatus of the United States was to prevent that attack at all costs. So the suspicion that we might leave behind or we might overlook somebody who was of great danger led to some very unsophisticated decision-making.

Q: You mentioned some of the other service units that were brought into the Criminal Investigation Task Force. You didn't mention the CIA [Central Intelligence Agency]. Were you aware at this time, when you started this work or into in 2002, of the CIA's own interest in finding those responsible for 9/11?

Mallow: We were certainly aware of the mission. We did not have direct participation by the CIA in our task force. We did have mechanisms to conduct liaison with the CIA and other parts of the intelligence community, but we did not have direct involvement in our task force from them. We were well aware of their mission and well aware of their interest. We exchanged some information with the CIA, as well as other elements of the government, but we were not directly involved.

Q: You were commander of this Criminal Investigation Task Force from its inception until—

Mallow: —until May of 2005.

Q: Okay. And during that time—and as the CIA's involvement with the so-called high-value detainees who eventually, maybe even after you left, were transferred to Guantánamo Bay—were you aware of the CIA's involvement in what are called extraordinary renditions of detainees to third countries, or the operation by the CIA of so-called "black sites?"

Mallow: We had our suspicions about that, but we were not read into—in other words, we were not privy to the specific information about those things. What we knew—what myself and the members of my task force knew—was anecdotal information, or what we saw in reports and so forth. We did not have direct knowledge of all those operations in any intimate fashion.

Q: Or of the enhanced interrogation techniques that were being used, either in the countries where these detainees were rendered to, or by the United States' own CIA in its "black prisons"—the techniques themselves, were you aware of those?

Mallow: Not specifically, no. Not until later were we really knowledgeable of any of that. We knew that there were some other detention operations that were going on elsewhere in the world, and we knew that there were other interrogation operations that were going on elsewhere, and that they were outside of our control and outside of our purview. But the information that we received about them was pretty much after the fact, and anecdotal. We were not specifically read-in to to the point where we would know exactly what was going on with them.

Q: Okay. With respect to Guantánamo Bay, though, the first detainees were sent there in something like January of 2002.

Mallow: Right.

Q: January 12 or something. Did you already have a presence there at Guantánamo?

Mallow: The first detachment from my task force that we sent to Guantánamo, we sent toward the end of January 2002. We sent about two dozen personnel down there. They were from all three services, and I went down there for the first time at the end of January. My agents had just arrived several days before.

Q: Can it fairly be said that there was a dual mission down there? There were some folks down there whose job was to extract intelligence from these detainees who were coming in, these "worst of the worst," or whatever they were, and there was also a mission down there to gather information that could be used to prosecute at least some of these detainees in some judicial forum, be it a military commission that had been approved by the president, or in some other forum. You see what I'm getting at?

Mallow: Yes. There was absolutely a dual mission. The principal mission and the primary purpose for the establishment of Guantánamo was the first part of that mission—intelligence collection. That was that it would be, in the words of, I believe, the secretary of defense, "a strategic debriefing and interrogation center for the purpose of gathering intelligence that would be actionable elsewhere in military operations to prevent the next attack." That was the number-one and predominant mission at Guantánamo.

The secondary mission at Guantánamo that took place really belonged to my task force, and to the FBI, and that was to determine and collect evidence that might be used in a judicial process. In the early days there, we suspected that there might be some persons who would ultimately end up in a U.S. court process, or who might lend themselves and their evidence to a U.S. court process—of someone who was already captured elsewhere, or already in the system. Our mission was principally directed toward the military commission process. So our mission was specifically that, and any intelligence that we gathered in the course of our investigative functions was to be fed back into the intelligence process that would prevent the next attack. But our mission was quite separate from the intelligence one.

Q: Well, how does that work in practice?

Mallow: Not very well. [Laughter] With some difficulty, for a number of reasons.

Q: Okay. Well, what are those reasons? And as you tell me those reasons, tell me, who, literally, is doing the intelligence interrogations, as opposed to the others?

Mallow: At Guantánamo, the chain of command for the intelligence operations there fell under a separate command from mine. Initially they had two task forces on the Guantánamo base. They had a detention task force in charge of the actual detention facility. Their job was to secure the detainees, and they started out at a place called Camp X-Ray that was created back during the refugee operations of the mid-1990s, and then ultimately they built Camp Delta, which is the more “built-from-the-ground-up” detention facility.

That task force was called JTF-160. JTF-160 was for detention operations alone. Then they had a second task force called Joint Task Force—or JTF—170, and that was the task force that was in charge of intelligence, interrogations, and the collection of intelligence for what I described before. Then there were other entities that were on the island. There was the naval command that ran the base. Our task force element down there was completely separate. The CITF—the Criminal Investigation Task Force—detachment that was in place at Guantánamo did not report to either one of those other JTFs. Later, they combined JTF-160 and 170, and made it Joint Task Force Guantánamo—JTF-GTMO.

Q: I'd heard the names JTF-160 and 170, etc., but who is doing these interrogations for intelligence? Who are these people?

Mallow: JTF-170 was commanded early on by Major General Michael E. Dunlavey, a U.S. Army Reserve general who had worked in the Intelligence Community as a Reservist, and in his civilian job was a judge. He was put in charge of Joint Task Force 170. His interrogation assets, if you will—his personnel for that—were taken from, first, primarily, the Army military intelligence community—the Army's MI community. They were augmented by folks out of the defense intelligence agency and interrogators from the other services. He had contract translators who were involved. Those were the ones who were doing the principal intelligence interrogations at Guantánamo. My task force had about two dozen personnel down there in January, and over the course of the first several years, there were varying numbers of federal investigators—FBI agents and others—who were also there. They also were separate. While at different times we had some FBI agents attached to our task force, and others were attached to JTF Guantánamo, they were, in effect, doing a separate mission as well. The ones who were actually doing the intelligence interrogation were military personnel or Department of Defense personnel under the command of General Dunlavey and that task force.

Q: Literally, did your task force do its information gathering separate from the other interrogations? Try to draw a picture for me.

Mallow: Sure. The difficulties were as I described. We had two separate missions, and while they're not diametrically opposed, there are organization and functional conflicts. The organizational conflicts were, if you're in charge of what's going on at Guantánamo and you have the biggest mission, you'd like to have everyone report to you. From an organizational standpoint, my task force, being separate, was an irritant. We were separate; we didn't report to the people on the island. From a functional point of view, criminal investigation operations differ from intelligence operations in that the focus of our information is about attribution. We're really focusing on evidence—information that can be turned into legal evidence—that would attribute culpability or innocence to a particular individual. So the questions that we ultimately want to ask are not about what's going to happen in the future, but what has already happened, and what was your part in it?

In the early days down at Guantánamo, we did joint interviews with the intelligence personnel. In the early stages of interrogation, when you first brought a detainee in, they did what would be considered sort of a baseline interview, to say, "All right. Who are you? How were you captured? What's your story?" In those early interviews, we did them jointly with intelligence personnel and law enforcement personnel working together. As time went on, we found that that wasn't really useful because the kinds of questions that the intelligence personnel wanted to ask were really oriented towards where they could find Osama bin Laden and other terrorist suspects in the region, and their operations, and what were they planning to do next, and so forth. Our questions tended to be, "Well, what part did you play in the planning of this event, and what do you know about these events that have taken place in the past?"

Our questions were more individual-oriented, and they were more oriented on past behaviors. The questions that the intelligence community, including the military intelligence community, wanted to ask were really focused on what actions they could take. In other words, what could they get from this detainee that would now guide operations to gather more terrorists and stop attacks?

Q: Now you say that in the beginning you would do these sort of joint, baseline interviews. As time went on, you did separate interviews, basically.

Mallow: Correct.

Q: Does that mean that detainees—I don't want to make this up out of a hat, but Detainee #063, let's say. Or, maybe I shouldn't say Detainee #063. Detainee #1—he's had this kind of joint interview in the beginning. Then over time he's interviewed again, and interrogated again, and on a given day he could be interviewed by the military intelligence people and by you? Or you would make sure that you didn't interview him at the same time? Or you might want to interview him, and he was in a different condition than you thought because he'd just been interviewed by the military?

Mallow: Yes. Well, even from the standpoint of scheduling, it was quite often awkward. If the military interrogators, the intelligence interrogators, wanted to talk to somebody for six hours, it would be virtually useless for us to come in right after that and try to sit with them for a couple more hours. So scheduling was one part of it. Another part of it was the questions, as I said,

tended to end up being different. The strategies—which we'll ultimately, I'm sure, talk about—ended up being different. Our interrogations tended to not be as confrontational, at least we tried for them not to be. The training of our interrogators, our military investigators from the CITF side, was different from that of the intelligence interrogators who were trained to extract intelligence. Our personnel were trained to extract evidence. So the techniques were different. The scheduling was quite difficult from time to time. The sequence in which people were asked questions—you quite rightfully pointed out that in the course of a single day or a few days, an individual might be interviewed or interrogated by three or four different entities because there were, from time to time, other intelligence agencies that came to talk to the detainees. We sometimes had foreign delegations that came and talked to the detainees. We had FBI, which sometimes conducted its interviews with us and sometimes separately. Hypothetically, you had a situation where, over the course of a few days, a single detainee might be interviewed four or five times by four or five different interrogators, or interviewers, and the focus of each interview was completely separate and completely different.

Q: And the approach? The approach is different, too, I think you're suggesting.

Mallow: Yes, the approach was quite different.

Q: Did you suggest before that as far as Washington was concerned, or SOUTHCOM [United States Southern Command], the primary utility of Guantánamo was to head off another attack, and to interrogate these people in such a way as to gather useful, reliable information—actionable intelligence? Was that the primary focus?

Mallow: I think that the overwhelmingly primary focus of intelligence operations at Guantánamo was to determine information that might lead to the capture of other terrorists and the prevention of attacks.

Q: I might as well ask you this now because I'm going to get around to it at some point—did they gather such information, as far as you know?

Mallow: I think that there was a significant amount of information collected, the value of which varied.

Q: I mean the people at Guantánamo?

Mallow: Yes. In large. Yes. I think there was useful information that was gathered from intelligence interrogations at Guantánamo. Sometimes it was gathered on its own; sometimes it was a bit of information when added to something that came out of a law enforcement interview or another piece of intelligence. It was often a corroboration of other collected intelligence, or a piece of the puzzle, if you will. I think there certainly was useful intelligence information that was extracted at Guantánamo, in general.

Q: Would you still say that, by comparison with the information that the high value detainees had who were not in the custody at Guantánamo at all?

Mallow: You know, trying to evaluate which element of information is more valuable than another is difficult. On its surface, you would think that the high-valued detainees, the high-valued persons that we captured—because they were more ostensibly in-the-know about operations and they were more involved in planning and so forth—they probably had the potential of more valuable information. But you know, you never know what's going to be the most valuable thing. It could be an off-hand comment by a detainee who happened to see something at a safe house that he simply passed through on a given night, but he saw somebody there that he'd never seen before, and that particular individual, because of their physical description, you could identify as a high-value target. That tiny piece of information that just passed out of a detainee of no particular import otherwise might lead you to the arrest of a critical suspect or terrorist somewhere, whereas a high-valued detainee who was at a completely different location had no knowledge of that.

It's really hard to say which information was the most important. I think, on its surface, you'd think that the capture of Khalid Sheikh Mohammed or somebody like that would probably give you greater potential to get timely information about what was going to be planned. But you never know when that nugget of information is going to come from a relatively low-level guy who just happened to be in the right place at the right time.

In general, I think we gathered information that was useful. Was it critically useful? Did it constitute a key piece of information that broke things open? It's really hard to say.

Q: Well, your job in the CITF, primarily, was to gather information for prosecution purposes.

Mallow: Correct, but we freely shared all our information with the other U.S. entities, both intelligence and law enforcement.

Q: You were there until 2005, in charge of the task force. How many people were prosecuted, even put in line for prosecution, by that time?

Mallow: In 2005, we had put together recommendations for, I think, several dozen primary candidates for military commission, and we had estimated that there might be somewhere around a hundred persons who would be good candidates for possible future military commissions. The charges for these people ranged from conspiracy and actual involvement in the planning of terrorist acts, to violations of war crimes—you know, targeting civilians or targeting U.S. military personnel in violation of the laws of land warfare. They ranged from acts committed sort of on the battlefield to true terrorism planning and conspiracy.

Q: Actually, there have been very few military commissions.

Mallow: That's correct. They have not gone through with all the ones that were contemplated.

Q: Well, there have been very few, and I think that in the six or so commissions that have concluded, the defendant took a plea, and only one detainee from Guantánamo, I believe, has been tried in the United States—[Ahmed Khalfan] Ghailani. It doesn't seem as if it's likely that there's going to be another one in his wake.

To go back to the situation in Guantánamo, your approach to talking to detainees was essentially one that was based on rapport-building, isn't that correct?

Mallow: Right.

Q: Is that true of the military intelligence folks? Are they seeking to build rapport? Or is there an acceptable interrogation technique, proven to be useful, that everybody was using, as opposed to any other technique that was used down there?

Mallow: Well, you have to define what you mean by "acceptable." One of the principles that was taught to the intelligence interrogators, as well as criminal investigators, from the very start, is that the establishment of rapport with another human being is one of the ways to open the door to a conversation. An interrogation, at its heart, is an interaction between two humans or more, and in order to sort of get a conversation going, the very first thing you have to do is establish who's who and what's the reason for having a conversation. Then you initiate questions, or an interrogation process, or whatever. At its base, everyone understands that there has to be some sort of a relationship. Now it might be an adversarial one. There is clearly a power dynamic in the relationship, but at its heart, there has to be a relationship between the people who are talking, and you have to get something going for the conversation.

In the sort of tool kit that intelligence interrogators and criminal investigators are all given, rapport is one of those tools—establishment of rapport, and the beginnings of a conversation on

some sort of common ground, if you will. That's one of the tools. The difference is that criminal investigators who are trained and practiced, quite often, in the interrogation of criminal suspects—who often do not want to tell the truth, or do not want to tell you things—the criminal investigators are trained to work within strict legal guidelines, and rapport becomes a larger piece of their tool kit, because they're not allowed to, nor are they trained to go beyond those basic techniques. The culture of U.S. law enforcement is based in the rule of law.

Going back to the doctrine that was built back in World War II, the intelligence interrogators have been associated, or they have been made familiar with, other ways of conducting interrogations, which include the establishment of a dominant relationship, the introduction of fear or the suspicion that there's going to be some sort of physical danger to the person, increasing anxiety, and so forth. All of those are things that are used to one degree or another, even in criminal investigations, but the intelligence interrogators, as I pointed out before, for the large part, were less trained or practiced in the rapport-building techniques where our criminal investigators were more accustomed to that being the baseline of their operations.

Q: Okay. Would you say that you were operating under the restraints of the Army Field Manual for Interrogation?

Mallow: We were not. The Army Field Manual for Interrogation was not our way of operating. Our agents operated with the training that they received as criminal investigators.

Q: Okay. But you're still operating under the Uniform Code of Military Justice [UCMJ], right?

Mallow: That's correct. But the Field Manual for Interrogation is quite more specific than the UCMJ. The UCMJ was clearly a guideline for our interrogation.

Q: Okay. As far as you knew, were the military intelligence people obligated to follow the restraints of the guidelines of Army Field Manual 34-52 at that time?

Mallow: As far as it went. If you look at the field manual that was in place in 2002, it was really an antiquated document. It was based, like I say, on doctrine that goes all the way back to World War II, and it was not really based on—or validated in practice for many, many years. It goes back to the KUBARK manual of the CIA from the 1950s. A lot of that theory was never really validated in practice, in my opinion.

Q: Right. But there came a time when some of your agents down there in Guantánamo, including this Dr. Michael Gelles, among others, and an agent named Mark Fallon, I think—

Mallow: He was my number two, yes.

Q: —became concerned about the techniques that were being used by the military intelligence folks. Isn't that true?

Mallow: Absolutely.

Q: How would you characterize what they had been doing, as opposed to what your people were now observing, that was disturbing you?

Mallow: I think probably by mid-2002, when we had a fairly significant population of detainees at Guantánamo, and in Afghanistan, as well, the perceived lack of actionable intelligence that was coming out of the interrogation centers both in Afghanistan and in Guantánamo led to increased pressure for results on the intelligence side. What we saw was, as we kind of moved away from these joint, baseline interviews, and we were separating and doing our interviews separately—one of the reasons was, as I said, we wanted to ask different questions. But one of the other observations was the frustration and sort of desperation of the intelligence community's interrogators—the military intelligence community's interrogators, particularly—we saw this was leading to them using ad hoc techniques, trying whatever they thought might work: increasing stress, putting people in uncomfortable positions, increasing noise levels, manipulating temperatures, manipulating sleep patterns, and so forth. We did not feel that those were going to be productive ways of doing business. Also, our agents, experienced investigators such as Mark Fallon and others, felt very strongly that we could not be involved in any way with those sorts of interrogations. That, too, led us to separate ourselves, and we were very uncomfortable with the things that we were observing that were taking place in the intelligence interrogations.

Q: Well, couldn't somebody say, "Wait a minute. Wait a minute. That's none of your business. You people are gathering information for criminal prosecution. We're trying to get actionable intelligence out of this. You're doing your thing. We'll do our thing the way we think it ought to

be done, the way perhaps Washington or CENTCOM [United States Central Command] indicated they would like it to get done,” and say, "Butt out?"

Mallow: Well, I was basically told that several times, that it was none of our business how they conducted their operations. And I was also often told that we, the law enforcement interrogators, were not right in how we did ours, that we were not experts. That also led for us to kind of separate ourselves and report back to our chains of command what we thought was incorrect.

Q: As you and your people on the ground observed these increasingly harsh techniques, do you think it was a question of unproductive techniques, or illegal or unethical techniques, that were now starting to be employed?

Mallow: All of the above. I mean, one of our principal arguments from the start was a very practical one, and that was that what you're doing, even at the lesser extremes, was not going to be productive. Just yelling at somebody, and screaming at somebody, and making them uncomfortable isn't necessarily immoral or unethical, but it's also not particularly productive. In our opinions, the more productive interviews were going to be ones where you could get them to talk voluntarily, and give up information—wittingly or not—that would ultimately assist in intelligence or in prosecution.

That was our first argument. The second set of arguments, of course, was that the things that were increasingly being done with some of these what they called "enhanced interrogations" were not only not productive, but were not correct. They may be borderline illegal. In spite of the

fact that certain legal authorities had said no, they're not, we felt they might be. When you hit somebody, in the criminal investigative world, that's an assault. One of the reasons why we did not want our agents to be present when somebody was subjected to some sort of enhanced interrogation was if it bordered on an assault, it would be the duty of our agent to intervene, as a law-enforcement professional under the UCMJ. If they didn't, they would be subject to sanction for not having done so.

We believed at first that they were unproductive. As things became more extreme, we not only felt they were unproductive, but they were also borderline illegal, and they were certainly improper and unethical from our standpoint because degrading treatment is not the character of how the American military or the American national security operation should function.

Q: Well, why didn't you say to General Dunlavey, who was there until November of 2002, or his successor, General Geoffrey [D.] Miller—why didn't you tell them that?

Mallow: I did.

Q: Did you go down there and tell them that?

Mallow: I did. I had conversations with General Dunlavey, who basically told me that I didn't know what I was talking about, and that he knew how to conduct interrogations. I had many conversations with General Miller both on the island and off, and in writing, and in person at the Pentagon, where I told him that I thought that their path and the methods they were using were

not only unproductive but were incorrect, and were going to cause trouble. Not only did I talk to them, but I also talked to my chain of command, and I also made the secretary of the Army and the DOD general counsel [W. James "Jim" Haynes II] aware of our concerns.

Q: You've had a number of meetings with Jim Haynes, I take it.

Mallow: Yes.

Q: Briefing meetings.

Mallow: Yes.

Q: Right. And in one of those meetings there was a Marshall Billingsley, the acting assistant secretary, isn't that correct?

Mallow: Yes.

Q: What happened at that meeting?

Mallow: That was probably one of our more interesting meetings. Haynes wasn't present at that meeting, as I recall. I think his deputy was there. It might have been Charles Allen, but I don't think Haynes was specifically there. Billingsley was there, and as we got into the conversation and I brought up the point that we did not agree with the interrogation tactics that were being

conducted on the island, Billingsley asserted that he had personal knowledge that these tactics were being useful in other places, and were producing useful intelligence. I asked him if he'd personally witnessed this, because I had reports from people that I knew personally had witnessed some of these other interrogations, and I couldn't discuss who they were. He told me that he hadn't personally seen them, but he knew it for a fact. He knew that he was right, that this was going to be the right way to proceed and so forth, and I told him he was wrong.

Q: Around when was that? Do you recall?

Mallow: It was in late 2002, but I don't recall the exact date. It had to be that summer, I would expect.

Q: Your increasing concern, and those of Mark Fallon, etc., was primarily because of the treatment that had begun on Mohammed al-Qahtani at Guantánamo?

Mallow: No, that was just the culmination of it. During the earlier part of that summer, we had witnessed sort of this increasing frustration level and increasing tendency to reach for new ways of extracting intelligence. We were concerned through that whole summer, so by the time we got to the end of the summer, when they were talking about a particular interrogation plan for that detainee, that was kind of the culmination, and he became sort of the watershed for our arguments.

Q: A symbol, also?

Mallow: Perhaps. It became a symbol, later. But his was not the only case in which we were concerned. There had been a number of others.

Q: Do you know whether any valuable, actionable intelligence was ever gotten out of al-Qahtani, either before or after that quite harsh treatment that was rendered on him?

Mallow: Without going into specifics, I can say that I believe that there was useful intelligence that was garnered from al-Qahtani. Much of it was before the enhanced interrogation, and some of it was after. As to what specifically was extracted during that particular period, I can't answer for all of that. But I know that the law enforcement and intelligence interrogations that took place prior to this plan being put in place were quite useful, and I know that later interrogations after this plan was abandoned, produced further intelligence that I believe was quite useful. And there was information that was quite useful for our purposes in investigations as well.

Q: When you say "useful intelligence," it's often said that if you treat somebody roughly, they'll tell you any damn thing they think you want to hear to stop the pain. Isn't the ultimate reliability of the intelligence of consequence?

Mallow: Well, of course it is, especially if you're going to make decisions—

Q: It could be measured, maybe, in months or years.

Mallow: The reliability is critically important, especially if you're going to make important decisions based on that intelligence. In other words, if I do something to you that elicits you to tell me that there is something dangerous in a closet down the hall, and I send a bunch of agents or soldiers down there, and it turns out there's nothing in that hallway, but there's one in the hallway down below, I may just have made a really poor and very costly decision based on unreliable information.

So that's one of the concerns. The other basic thing about this is no two people are absolutely alike. We cannot predict how two people will react to the same stimulus. If I take your hand, put it on the table and hit it with a hammer, I know you're going to react in some way. But can I say, with absolute certainty, that that will make you cooperative and answer my questions truthfully, and with absolute information that you believe is correct? Or do I just know that it's going to make you say something? It's really almost impossible for me to predict how two people will react to the same overwhelming stimulus. So, on a psychological level, if you ask someone like Mike Gelles, or you ask someone who's a behavioral scientist, they will tell you that you can't predict exactly how people are going to react to that stimulus. Some people might tell you the absolute truth, and you might win. Some people might tell you absolute nonsense just to get you to stop.

Q: Okay. Now you say that neither Dunlavey nor General Miller were receptive to your concerns about the increasingly harsh treatment. Is that correct?

Mallow: Correct.

Q: That's fair to say?

Mallow: Yes.

Q: Were you aware of, in October, a request by Dunlavey of a ratcheting up of the treatment?

Maybe it was just Qahtani, or maybe it was larger than that.

Mallow: There was a general request that he made. It was somewhat spurred by the Qahtani plan.

But yes. I was aware of that.

Q: Then General Miller came in. I think he started November 7, or something of that sort, succeeding General Dunlavey.

Mallow: Right.

Q: In that time-frame, in November to December, Miller was passing on—I believe it was Miller—to Jim Haynes, who was signing off, and then going to Donald Rumsfeld, who signed off on December 2 on a long list of very harsh treatment of detainees. Did you know that this was going on?

Mallow: We didn't have prior knowledge of the request. We found out about it after it was already in process.

Q: Okay. But it was during that time, which is, frankly, several months after September of 2002, when you felt the need to send out a memo—which you did on the second of September, I think it was—telling your folks that, therefore, CITF "will employ interview methods or techniques that are consistent with the Geneva protections and the president's [George W. Bush] memo," and you outlined the things that are acceptable and the things that are unacceptable. You felt the need to send this memo as early as September 2002?

Mallow: As I said, in the summer of 2002 was when we first began to become concerned with the difference in methods that we saw. We felt it was important that we set out for our agents very clear guidelines on what should constitute their activities—what they should or should not be involved in and what they should report back to us if they observed. We first sent out guidance to all our elements, all our investigators by email in late summer 2002, and we followed this up with a more formal Policy Statement.

Q: Indeed, on December 2, the very same day that Donald Rumsfeld in Washington is signing off on a list of very harsh techniques, you wrote another memo in which you say that your people can sit in on meetings with the Army intelligence people down there who were talking about aggressive strategies. You could sit in because you need to know what's going on, but your agents—"CITF agents and all other personnel will not participate in the use of any questionable techniques" and "any agent has the authority to withdraw from any environment or action which he/she feels is inappropriate," and has to report it up the line.

Mallow: Yes.

Q: So you're getting increasingly concerned. You only learn later that people like Miller, Haynes, and Rumsfeld are pushing enhanced techniques.

Mallow: I knew they were pushing. The coincidence of that particular date is just that. I was not aware of the specific document signed by Secretary Rumsfeld until later. We did know that there were requests in process that would formalize this new structure of interrogation techniques. Since we had previously put it out sort of informally in December, we decided to make those instructions quite explicit, and put them into a more formal policy for our people.

Q: Right. Somebody in that time frame goes to Alberto [J.] Mora, the general counsel of the Navy. What was that all about?

Mallow: The personnel we had in our task force, including Mark Fallon, Mike Gelles, and others, felt that they needed to let their Navy chain of command know—their home command, if you will—what was going on. At the same time, we had already made our concerns known through the DOD general counsel, the Army chain of command, etc., but Mark and others wanted to inform their Navy chain of command of what was going on. Mr. Mora, as general counsel for the Navy, wanted to become personally involved. He was the one who spurred some other conversations that went all the way up through the general counsel ranks.

Q: Did you ever go to Mora yourself?

Mallow: I did not. My sort of counterpart to Mr. Mora was the Army general counsel [Steven J. Morello], and the Army judge advocate general [Thomas J. Romig], and both of them had already been made aware of our concerns from me.

Q: Right. Would you say that it was unusual, really, for Mora to take the steps that he took?

Mallow: Well, I think Mr. Mora decided to become personally involved. He was outraged with what he heard, and he decided to begin his own conversations, and basically insure that something was going to happen. He was not the first or the only person to be aware of this, but he was one who felt very strongly about it, so he personally sort of championed the cause.

Q: Did it have consequences?

Mallow: I know that after Mr. Mora and others—

Q: —including some of the TJAGs, no?

Mallow: Right, including the TJAGs—General Romig, and the other general counsels, and so forth brought these concerns up. It resulted in sort of a re-look of the whole process at the DOD level.

Q: Did that have consequences?

Mallow: Ultimately, they came back and made changes. That's correct.

Q: Have you ever heard of the working group that was appointed? Rumsfeld backed off this December 2 approval of these very, very harsh techniques, and appointed a working group that was guided by an Office of Legal Counsel memo from John [C.] Yoo. Then they came up with thirty-five techniques, and in April 2003, Rumsfeld signed off on twenty-four of the thirty-five, including extended isolation for up to a month at a time, reversal of sleep cycles, dietary and environmental manipulation, including sensory assault with sound and light and prolonged exposure to extreme heat or cold, and manipulating fear levels. Some of these are in the Army Field Manual, but certainly some of them aren't. Did you know that this working group had produced this, or that Rumsfeld had signed off on these, and that these were being put in practice? You were there until 2005.

Mallow: We didn't see those documents until later.

Q: But did you see the result of those documents? In other words, the kind of treatment that was giving you such concern in 2002, did you see it go away?

Mallow: We did not, which is why, increasingly, from 2002 onward, our operations became more and more isolated from the intelligence operations. We pulled back from many of the joint activities that we had conducted early on. Our personnel were, I would say, increasingly isolated from the chain of command of the JTF down at Guantánamo for those reasons. I was told by

General Miller one time that we would not see the results of their interrogations because we “weren't on the same team.”

Q: Well, actually, some of your people had seen interrogation logs, hadn't they?

Mallow: They had.

Q: Were they computerized?

Mallow: Some of our people had gotten access to the results of the intelligence.

Q: This was 2002.

Mallow: And in 2003.

Q: And 2003. Is it fair to say that Alberto Mora led this fight over the use of these techniques after people like Fallon and Gelles had gone to him?

Mallow: He was a catalyst for it. He was by no means the only one who had raised the flag.

Q: Okay. But in June of 2004, Mora wrote a long memo for the Navy inspector general [Albert T. Church III] that included this sequence of events. He does it by—obviously, he kept a diary of some sort. For example, he recalls that on December 18 of 2002 he met with Dr. Gelles, and Dr.

Gelles explained to him some of the things that were going on down there. These techniques included physical contact—"Dr. Gelles described conditions in Guantánamo and stated that guards and interrogators with JTF-170," that's the intelligence, "who were under pressure to produce results, had begun using abusive techniques with some of the detainees. These techniques included physical contact, degrading treatment (including dressing detainees in female underwear, among other techniques), the use of 'stress' positions, and coercive psychological procedures."

Now he's recalling this for the Navy inspector general in June of 2004. In the last paragraph, he says this: "NCIS advised me," NCIS being Naval—

Mallow: —Criminal Investigative Service. Yes.

Q: —"advised me, following Secretary Rumsfeld's January 15, 2003 suspension of the interrogation authorities contained in the December 2 memo"—this is before the working group. It's sort of in the middle there—"that the reports of detainee abuses at Guantánamo had ceased. At no subsequent time, up to and including the present, did NCIS or any other person or organization forward to me any report of further detainee abuse. Because of NCIS's demonstrated integrity and ability to detect detainee abuse at Guantánamo, I felt a high degree of confidence that the prisoner abuses at Guantánamo had indeed stopped after January 15, 2003."
Signed, Alberto J. Mora.

They stopped?

Mallow: You kind of have to decide what you mean by "abusive techniques." I think that the community at Guantánamo continued to use methods that we wouldn't approve of beyond 2003. What happened beyond 2003, you also have to put in context, was Iraq. It was not until 2004 that we began to become concerned about detention operations in Iraq. The Abu Ghraib business and all that came to light, and then there were a number of investigations and inquiries and so forth that were initiated. Between 2003 and 2005, we had probably no less than four or five major inquiries into detainee operations. Some of those were predicated on this sort of earlier reporting, but most of them were spurred after the Abu Ghraib concerns, and largely because of perceived connections between operations at Guantánamo, operations in Iraq, and, later, concerns about connections between both of those, and operations of other intelligence community agencies.

In January of 2003, things did not become pristine at Guantánamo. They became a little bit more circumscribed, perhaps, because now it was pretty much out in the open that these methods had been requested and modified, and now there had been this working group, and DOD had come to some sort of conclusion about its methods. But I still don't subscribe to some of those methods that were approved beyond January 2003. I don't agree with all of those. I think that they're still unproductive, and I still think that many of them are unethical if not illegal.

Q: All right. You mentioned Abu Ghraib. Did you know what was going on at Abu Ghraib before it hit the newspapers?

Mallow: Well, I knew something about the events before because I had been to Abu Ghraib, and I had seen some of the conditions there, although I didn't witness any abusive techniques. I saw what the conditions were, and I saw what the chain of command was like there. I didn't think that the command climate for discipline was particularly strong. I also did see some of the criminal investigative reports before they appeared in the newspaper, and that was a function of my being in the CID chain of command.

Q: Well, were you surprised? What, truly, without covering it with any language, what was your reaction to these reports by—I suppose it was the specialist, or whoever it was—about what was happening at Abu Ghraib?

Mallow: I was appalled.

Q: But were you surprised?

Mallow: I was somewhat surprised, because the degree of severity of these incidents really surprised—I mean, it would not have surprised me to hear about some isolated incidents of physical abuse, or some incidents of psychological abuse. But this sort of mass punishment, this extreme sort of indiscipline and lawlessness that had taken place there was surprising to me. Even though I did not think it was a very strong chain of command there, I didn't think it would have gone to that level of lack of control.

So I was surprised. I was appalled by it. I did not believe that it was a direct result of the intelligence interrogation operations, and I still don't believe that to this day. I believe this was a function of failure of the chain of command, a failure of the command climate there. It may have been influenced by sort of a permissive environment, and the suggestion made that we should soften these prisoners up by treating them roughly so when we talk to them they'll do whatever we want. But I did not believe that the specific incidents that came to light in Abu Ghraib were a function of the interrogation process.

Q: Well, General Miller actually was over there, was he not?

Mallow: He came over there afterward.

Q: After the events in Abu Ghraib?

Mallow: Yes. I don't believe he was in—

Q: He visited in 2003.

Mallow: Yes, he visited, but he did not come over and was not assigned there until afterward. He had visited, that's correct.

Q: Well, at Guantánamo, do you know whether SERE [Survival, Evasion, Resistance, and Escape] techniques were applied?

Mallow: The whole question of SERE techniques—this was something that the JTF at Guantánamo kind of toyed with the idea. There was some research and there were some suggestions, and I don't know from where they originated. But there were some suggestions that techniques that were used in SERE training might lend themselves toward interrogations. We actually, at the CITF, had a conversation about this, and we very quickly came to the conclusion that that has no relevancy whatsoever. SERE are training techniques. They are designed to put people under stress, to sort of accustom them to what their feelings might be if they're captured. They're not designed to produce actionable, truthful intelligence. They were never designed for that. They're a training technique.

So we became aware of it. We very quickly, in the conversation, decided what our position was—that they had no relevancy whatsoever. But we were aware that that conversation had taken place at Guantánamo, and that there were considerations of using some of those techniques down there.

Q: People had been brought from the SERE unit at Fort Bragg down to Guantánamo, right?

Mallow: Right. But we did not participate in the conversations at Guantánamo about that.

Q: Okay. Now, surely you were mindful of the fact that the president had issued a directive that the Taliban and Al-Qaeda were not covered by the Geneva Conventions, including Common Article 3?

Mallow: Yes.

Q: You had been in the military for some time. You were surrounded by people in the military. What was the reaction to that? Did that bother you at all? Did you find that a departure of any consequence?

Mallow: I think when we first came across that issue it was—before we actually began operations of our task force, the question came up as to how would we deal with detainees? One of the first questions we wrestled with was should there be any sort of a rights warning procedure for our questioning. It was determined that, well, you can't really use Miranda. You can't really use those sorts of rights. You can't use Article 32 out of the UCMJ because they really don't apply. We're not going to provide counsel for these people just during questioning, so those didn't apply. But then the question came up of the Article 3 tribunals under the Geneva Convention—the idea that you would have to have some sort of a legal process to decide whether somebody is a prisoner of war or an unlawful combatant, and therefore a potential war criminal, and you could treat them differently.

I did not fully understand all the legal nuances of that until much later, but I believe, in retrospect, it was one of the most poorly thought-out decisions that we made. I personally felt that the use of a military commission process and the idea that we would try international terrorists as war criminals was brilliant. I think that was actually a very interesting and potentially useful mechanism. But one of the biggest mistakes we made was not more strictly

following the Geneva Convention protocols for separating who would be potential war criminals, and which ones would be treated as prisoners of war. I think that was a big mistake, but it took me some time to realize what the import of that was.

Q: Well, in effect, the president was saying, "You don't have to worry about that."

Mallow: Yes. He said it's automatic. If you're affiliated with the Taliban or Al-Qaeda, you were automatically considered a war criminal. Then the question is, what does "affiliated" mean? Impressed into service? How does that status affect? And do we really want to treat a Taliban foot soldier the same way we would an Al-Qaeda operative who swore *bay'at* [allegiance] to Osama bin Laden. Do we want to treat them the same?

Q: Well, when the president said that as a matter of policy—not as a matter of law, or international treaty—we're going to treat them humanely. Were you aware that that was the instruction?

Mallow: Yes.

Q: Is that enough? He's saying we're going to treat them humanely, right?

Mallow: That's one of the cruxes of the whole problem here. How do you define "humane?" How do you define "abuse?" How do you define "illegal, immoral, unethical" behavior? How do

you define torture? The definitions are arguable for every one of those things, and the idea of humane treatment sounds fine, but what does it mean?

Q: Let me take a simpler example. You know what Common Article 3 says about degrading treatment and that sort of thing. Let us say that you've got a detainee, you put him in a room, and you turn up the heat so that the heat is tremendous, or, you turn it down so the guy is freezing. Let me make that very simple.

Mallow: Well, how hot? How cold? Because the operators will hold you to, do you turn it up beyond a certain temperature? Do you truly make it threatening to the individual for their permanent health? That's where you get into these arguments about things. On a common sense level? Absolutely. That's beyond what you should do with people.

But you know, carry it to the other extreme—can you make a prisoner uncomfortable? Investigators can often make a subject, a criminal suspect, uncomfortable with words. Is that degrading? Is that torturous? If I threaten that he may go to prison for life, or that he may never see his family again because he's going to prison, or that he may be subject to execution, is that not threatening? It's all how you define it.

Now from a common sense level, yes. You put somebody in a room and you make it hot as hell, hotter than anyone should be subjected to under normal conditions, or colder. Or you keep them awake for days on end. Common sense will tell you that those are improper.

Q: Right. Let me quickly have you take a look at this FBI report from July 29, 2004, this paragraph here. It begins down here, and continues here. Perhaps you know of this. Is there any doubt that this detainee has been treated inhumanely?

Mallow: Absolutely not.

Q: This is July of 2004, right?

Mallow: Right.

Q: This is after—maybe Alberto Mora isn't hearing anything more—

Mallow: There are clearly still certain practices going on. I'm aware of some of the FBI agents' reports and so forth, and some of them were from before the time, and some were after. But, like I said, things didn't just dramatically change in 2003.

Q: How about the Red Cross? Did you have contact with the Red Cross while they were down there?

Mallow: I knew they were there. I had no contact with them.

Q: Did you know that in 2004 they issued a report saying that what was going on down there was tantamount to torture? Now one of the reasons they say that is because these people are being

held down there indefinitely. By then, even without lawyers, without access to lawyers, without even the simple things like the Combatant Status Review Tribunals that were done later, that critics will tell you were wholly inadequate, in terms of fair due process—but the Red Cross is saying that because this is the situation at that time. They're psychologically [unclear].

Mallow: I was aware later, I wasn't aware at the time. But simply to say that because people were being held without any timeline, to say that that, in itself, is torture, is yet another definition problem. Because, let's say you were following the Geneva Convention to the letter of the law, the letter of how it is actually written. What does the Geneva Convention say about how long you hold prisoners of war?

Q: Well, you can hold them until the end of—

Mallow: Ah! Until the end of hostilities.

Q: Right.

Mallow: When is the end of hostilities in a conflict such as this?

Q: Well, I was hoping that when you came today, you'd tell me.

Mallow: [Laughs] I'd like to know, because then I could put it on the calendar. This is a central issue in the debate over Geneva Convention application to this set of problems.

Q: Well, a State Department official was asked in 2004 by the Foreign Press Association, "When is this ending?" and he said, "One never knows."

Mallow: Well, there's not a good date. Even the Geneva Convention doesn't really take into consideration some of the circumstances of a prospective war, or a situation like we've found ourselves, just like the U.S. judicial system is not designed to deal with combatant detentions and the evidence that's produced from them. One of the reasons for the military commission process even being contemplated was the idea that the U.S. judicial system was not designed for wartime conditions. The collection of evidence and the presentation of evidence before a U.S. federal court would not very easily take into consideration the circumstances.

At a fundamental level, there are parts of this that will require us to relook things like laws of land warfare. What are the laws of land warfare when it comes to non-state conflicts? What are the laws of land warfare? How do they apply to things like global terrorism by a non-state actor?

Q: Are you suggesting that the experience that we've had so far with Guantánamo has raised more questions than it has provided answers about how to operate in things such as this?

Mallow: That's a great way to put it. I think there are certainly many more questions than we can answer.

Q: Well, if somebody said to you tomorrow, "Okay, Mallow, we're re-activating you to active status, and we'll give you twenty-four hours to decide what to do with Guantánamo. Should it be closed?"

Mallow: I'd love to take it on, study this further, and give it a try, but I don't think I'd come up with a miraculous answer.

Q: Well, should it be closed? When President [Barack H.] Obama came out and said he was going to close it, [unclear]?

Mallow: The problem with closing it—I'd say, from a global perspective, it should, and a global perspective takes into consideration public opinion, world opinion, and everything else. The problem is that we need an alternative disposition for the people we still have there. We also need a way forward in dealing with this problem in the future, because we're going to have it again.

So I think, ultimately, yes, it should be closed. But we need to develop an alternative solution, a legal solution for how we handle people who are captured, and who have perpetrated these kinds of acts against the United States.

Q: Or suspected, you mean.

Mallow: Well, if they ultimately have committed terrorist acts, how would we deal with them? But even for those suspected, we have to deal with how we detain and investigate them. What are the rules under which we do so? How long can we hold people, and what legal processes do we have to use?

Q: Apropos of that, during the Bush administration—two terms—the Bush administration returned some 530 or so of the 779 that were already there. That was the total figure. Now what does that tell you, alone? I mean, doesn't that tell you that a good portion of those people—they were never charged with anything. They were just returned.

Mallow: Insufficient evidence. We participated in the reviews that ultimately released a number of detainees—either released them outright, or released them back to their countries, or released them under special security agreements. The vast majority of the ones that were released were not released with a completely clean bill of health, if you will, saying that they were involved in nothing. They were released, basically, under the rules of insufficient evidence, saying that we do not have enough evidence to indicate that this person was involved in war crimes activities, or anything else that should be prosecuted.

I'll tell you one of the concerns we had in doing those, and I voiced this to my agents and analysts quite frequently. I said, "You know, our decisions about whether to release somebody are really kind of momentous decisions." Because on the one hand you're dealing with a human being, and in many cases we've had these guys locked up for four or five years. They're human beings, and they're entitled to the rights of freedom, due process, and everything else. On the

other hand, how will we feel, as Americans, if, two years from now, the DNA of this detainee is splattered on a U.S. target?

Q: Have you ever seen any data that you thought was reliable regarding the recidivism of the five hundred or so who were released by Bush, or any of those released by Obama?

Mallow: I have seen evidence of a number of folks who did get back into the fight, and were involved. I can't give you the exact numbers because I don't know what they are today, but I know that at the time I left there were several dozen who were suspected to have been returned, and there were about half that number who were reliably indicated to have gone back into the fight, some of whom had been involved at a fairly significant level. In other words, they didn't just go back and pick up a rifle. They got involved in the planning of terrorist acts against the government of Afghanistan, against U.S. forces, and against other governments.

Q: So you thought that by my moving away from the question I'd let you off the hook as to whether you would close Guantánamo. But the fact is that no matter what Obama wants to do, Congress isn't going to let him do it. There are some people who have the sense that Obama is as tough on the war on terror as Bush ever was. Is that your sense?

Mallow: I think that President Obama has now come to realize that the decisions are not simple. The alternatives are complex, and the idea of closing Guantánamo and arbitrarily either releasing the people there or bringing them to detention somewhere else and putting them into a U.S. legal process, are fraught with both political and practical concerns. Political concerns because he has

to face the Congress no matter what the decisions are, and he will have to face the election concerns that will accompany those politicians' voices. But practical, also, because do we really want to release outright, or to turn over to other, perhaps unreliable governments the custody of some of these people that we have good reason to believe were involved in terrorist acts, and would continue to do so?

Q: Well, let me wind down by asking this. At the outset of our conversation, you pointed out that after 9/11, everybody—at least the people around you, in the government and in the military—thought that this was going to happen again. Now this is ten years later, and it hasn't happened again, not in the form of anything like a 9/11 attack. What does that tell you?

Mallow: Well, to a certain extent it tell us that we were able to disrupt what was a fairly effective sort of terrorist apparatus in the case of Al-Qaeda—at least the core Al-Qaeda—and that the actions that we took were at least possibly effective in disrupting—by obtaining intelligence, by military operation in sheer destruction of the enemy, we were able to dismantle an enemy capability. So there's some success there.

At the same time, we're no closer to designing the system that will deal with these sorts of legal, ethical, and moral problems, moving forward, than we were when we started. I don't think we've made much progress at all in that regard.

Q: So you think there's another shoe to drop.

Mallow: Eventually. It may not come from this particular group, but now what we're concerned with is not simply Al-Qaeda, or something that's named like it, but potentially somebody who just simply has the inspiration, based on what's taken place over the last ten years—the capability and the intent to act. And the other downside to what we have done is that maybe, by some of our actions, we've encouraged that sort of inspiration.

Q: Okay. Is there anything you'd like to add to our conversation that I haven't mentioned?

Mallow: The only thing I guess I would add, and I've said this before when I've talked to other people, is that I am incredibly sad that this particular portion of our history had so much bad effect in many ways. I mean, we reacted heroically to a series of horrific attacks. We made some very good decisions to act quickly and decisively. Along the way I think we also made some very, very poor decisions, and I think they have hurt our standing in the global community, and perhaps even brought us to questions our own nature and our own identity. At the same time, I am still incredibly proud of the people I worked with—the task force in which I was fortunate enough to be involved. The moral integrity of the people that worked with us and the people we reported to, in many cases, I think was incredible. In spite of all the pressures to do otherwise, the people who worked with us, particularly the agents and the analysts we worked with in our task force, were true patriots, and I think to this day they can be very proud of what they did to try to further our mission. In spite of the fact that we haven't seen a wholly successful military commission process, I think a lot of the information that has come out, a lot of the people who have been detained properly, and will be prosecuted someday—I think that came out of the work that we did. So I'm very proud of that. There is much that remains to be done, to include a re-

visitation of our own laws and policies, and an evaluation of international law. I hope to see that we find a way to deal with these issues, and still remain true to our Nation's ideals.

Q: Very good. Thank you, Colonel Brittain Mallow.

[END OF INTERVIEW]

Allen, Charles	36
al-Qahtani, Mohammed	37, 38, 40
Billingsley, Marshall	36, 37
bin Laden, Osama	24, 52
Bush, George W.	21, 41, 52, 58, 59
Cheney, Richard B.	18
Church, Albert T., III	46
Dunlavey, Michael E.	23, 35, 39, 40
Fallon, Mark	32, 33, 37, 42, 45
Franks, Tommy R.	11
Gelles, Michael	13, 14, 18, 32, 39, 42, 45, 46
Ghailani, Ahmed Khalfan	29
Haynes, W. James, II	36, 40, 42
Miller, Geoffrey D.	35, 39, 40, 42, 45, 49
Mohammed, Khalid Sheikh	28

Mora, Alberto J.	42, 43, 45, 46, 47, 54
Morello, Steven J.	43
Myers, Richard B.	18
Obama, Barack H.	57, 59
Romig, Thomas J.	43, 44
Rumsfeld, Donald H.	5, 6, 7, 17, 21, 40, 41, 42, 44, 46
Shelton, Henry H.	5
White, Thomas E., Jr.	5, 6, 36
Yoo, John C.	44