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INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY

R E P O R T

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(U) Contents

Note on Source Material Used in the Preparation of the Report (U) viii

List of Acronyms Used in the Report (U). ix

Executive Summary and Conclusions (U). xii

I. Early Influences on Interrogation Policy (U).....1

A. *Redefining the Legal Framework For the Treatment of Detainees* (U).....1

B. *Department of Defense Office of General Counsel Seeks Information from the Joint Personnel Recovery Agency (JPRA)* (U) 3

C. *JPRA Collaboration with Other Government Agencies (OGAs)* (U).....6

D. *JPRA Support to the Defense Intelligence Agency (DIA)* (U).....8

E. *JPRA Recommendations for GTMO* (U).....11

F. *Colonel Herrington's Assessment of GTMO* (U).....12

G. *JPRA Prepares Draft Exploitation Plan* (U).....14

II. Development of New Interrogation Authorities (U).....16

A. *CIA's Interrogation Program and the Interrogation of Abu Zubaydah (U)*.....16

B. *JPRA Assistance to Another Government* Agency (U).....19

C. *Senior SERE Psychologist Detailed From Department of Defense to Other Government Agency* (U).....23

D. *Department of Defense General Counsel Seeks Information on SERE Techniques From JPRA* (U).....24

E. *The Department of Justice Changes the Rules* (U).....31

F. *JPRA's Special Program In Support of* [redacted] (U).....35

1. *August 2002 Training Proposal* (U).....35

2. *JPRA Creates Project 22B* (U).....37

III. Guantanamo Bay as a "Battle Lab" for New Interrogation Techniques (U).....38

A. *GTMO Stands Up a Behavioral Science Consultation Team (BSCT)* (U).....38

B. *Behavioral Science Consultation Team (BSCT) Personnel Contact the U.S. Army Special Operations Command (USASOC)* (U).....39

C. *U.S. Southern Command Seeks External Review of GTMO* (U).....42

D. *GTMO Personnel Attend Training at Fort Bragg* (U).....43

E. *Delegation of Senior Government Lawyers Visits Guantanamo* (U).....49

F. *JTF-170 BSCT Produces Interrogation Policy Memo* (U).....50

G. *CIA Lawyer Advises GTMO on Interrogations* (U).....53

H. *DoD Takes Lead on the Interrogation of Mohammed al Khatani* (U).....57

IV. GTMO Seeks Authority to Use Aggressive Interrogation Techniques (U).....61

A. *GTMO Requests Counter-Resistance Techniques Influenced by SERE* (U).....61

B. *GTMO Staff Judge Advocate Conducts "Legal Review of Aggressive Interrogation Techniques"* (U).....63

C. *Chain of Command Considers the Request for Interrogation Techniques as CITF and FBI Raise Objections* (U).....65

D. *Military Services React to GTMO Request for Interrogation Techniques* (U).....67

E. *Department of Defense General Counsel Quashes Joint Staff Legal Review* (U).....70

F. *GTMO and JPRA Plan for Additional Interrogation Training* (U).....72

V. Command Change at Guantanamo as Dispute over Aggressive Techniques Continues (U).....73

A. *Major General Geoffrey Miller Takes Command of JTF-GTMO* (U).....73

B. *Khatani Interrogation Plan Fuels Dispute Over Aggressive Techniques* (U).....74

1. *JTF-GTMO Staff Circulate Khatani Interrogation Plan* (U).....75

2. *CITF and FBI Object to Proposed Interrogation Techniques* (U).....78

3. *JTF-GTMO Briefs DoD General Counsel's Office on Interrogation Plan* (U).....79

4. *"Final" Khatani Interrogation Plan* (U).....81

5. *FBI and CITF Continue to Object to Khatani Interrogation Plan* (U).....84

6. *Khatani Interrogation Begins, CITF Directed To "Stand Clear"* (U).....87

7. *Techniques Used During Khatani Interrogation* (U).....88

VI. JPRA's Assistance to Another Government Agency (U).....91

VII. Secretary Rumsfeld Approves Interrogation Authorities, GTMO Plans to Implement SERE Techniques (U).....94

A. *Secretary of Defense Authorizes Aggressive Techniques for use at GTMO* (U).....94

B. *JTF-GTMO Develops Standard Operating Procedure (SOP) for the Use of SERE Techniques in Interrogations* (U).....97

C. *SERE School Trainers Provide Instruction for GTMO Interrogators* (U).....103

D. *Navy General Counsel Raises Concerns About Interrogation Techniques, Secretary Rumsfeld Rescinds Authority* (U).....105

E. *National Security Council (NSC) Principals Discuss DoD Interrogations* (U).....109

VIII. New Interrogation Policy Developed for GTMO (U).....110

A. *The Working Group Solicits Information on Interrogation Techniques*.....110

1. *The Defense Intelligence Agency Provides Information on Specific Interrogation Techniques* (U).....110

2. *The Working Group Solicits Information About Interrogation Techniques From CENTCOM and SOUTHCOM* (U).....113

3. *The Working Group Requests Information from JPRA* (U).....116

B. *Department of Justice Office of Legal Counsel's Analysis Is Presented As Controlling Authority* (U).....118

C. *Working Group Drafts Report Recommending Interrogation Techniques* (U).....122

D. *SOUTHCOM Presses for Additional Techniques* (U).....128

E. *JPRA Briefs Members of the Working Group on SERE Techniques, Including Physical Pressures* (U).....130

F. *The Working Group Finalizes Its Report and the Secretary of Defense Issues a New Interrogation Policy For GTMO* (U).....130

IX. Aggressive Interrogations at GTMO (U).....132

A. *Allegations of Detainee Mistreatment* (U).....132

B. *Special Interrogation Plans Modeled on Khatani Interrogation* (U).....135

1. *JTF-GTMO Plans for Interrogation of Slahi* (U).....135

2. *JTF-GTMO Formally Submits Special Interrogation Plan for Slahi (ISN 760)* (U).....136

3. *Interrogation Begins Before the Special Interrogation Plan Is Approved* (U).....138

4. *Special Interrogation Plan Approved and Implemented Despite Apparent Cooperation* (U).....140

5. *FBI Concerns with Special Interrogation* (U).....141

6. *Special Project at GTMO Uses Aggressive Interrogation Techniques* (U).....141

7. *CITF Reissues Order for Agents to "Stand Clear" of Aggressive Interrogations* (U).....143

8. *GTMO Seeks Approval for Two Additional Special Interrogation Plans* (U).....143

a. *Special Interrogation Plan #3* (U).....143

b. *Special Interrogation Plan #4* (U).....144

c. *SOUTHCOM and OSD SO/LIC Recommend Approval of Special Interrogation Plans #3 & #4* (U).....145

X. DOJ Office of Legal Counsel Withdraws March 14, 2003 Legal Opinion Governing DoD Interrogations (U).....146

XI. Development of Interrogation Policy in Afghanistan (U).....148

A. *Assessment Team Visit to Guantanamo Bay* (U).....149

B. *The Deaths of Dilawar and Habibullah* (U).....151

C. *Questions Raised About Task Force Participation in OGA Interrogations* (U).....152

D. *January 2003 Task Force Interrogation SOP (Afghanistan)* (U).....153

E. *CJTF-180 Produces Memorandum on Interrogation Techniques* (U).....154

F. *CENTCOM Raises Concerns About Interrogation Techniques* (U).....156

XII. Development of Interrogation Policy in Iraq (U).....157

A. *Special Mission Unit Task Force Interrogation Policies* (U).....158

1. SMU *Task Force Uses Afghanistan Interrogation Policy* (U).....158

2. *OGA Comments on SMU TF Interrogation Techniques* (U).....159

3. *July 2003 Interrogation SOP Drafted for Iraq SMU TF* (U).....159

4. *Iraq Survey Group Concerns with SMU TF Detainee Treatment* (U).....162

B. *Interrogation Policies for Conventional Forces in Iraq* (U).....164

1. *CJTF-7 Stands Up (Summer 2003)* (U).....164

2. *Interrogation Operations Begin at Abu Ghraib* (U).....165

3. *519th MI Battalion at Abu Ghraib Seeks Additional Guidance* (U).....166

4. *519th MI BN Proposes Interrogation Policy* (U).....166

5. *CJTF-7 Solicits "Wish List" of Interrogation Techniques* (U).....167

6. *Interrogation OIC at Abu Ghraib Resubmits the Proposed Interrogation Policy for 519th MI BN* (U).....169

C. *JPRA Provides "Offensive" SERE Training in Iraq* (U).....170

1. *Special Mission Unit Task Force in Iraq Seeks Assistance from JPRA* (U).....170

2. *Awareness of the JPRA Trip to Iraq at Headquarters, Joint Forces Command (JFCOM)* (U).....171

3. *JPRA Provides Interrogation Support to the Special Mission Unit Task Force in Iraq* (U).....173

4. *JPRA Team Authorized to Participate in Interrogations* (U).....174

5. *JPRA Present as Interrogator Uses Stress Positions and Slaps* (U).....176

6. *JPRA Team Authorized to Use SERE Techniques* (U).....179

7. *JPRA Team Chief Seeks Legal Guidance* (U).....179

8. *JPRA Training Manager and Contractor Participate in an Interrogation* (U).....181

9. *JPRA Team Chief Objects to SMU TF Interrogation* (U).....182

10. *JPRA Develops a Concept of Operations (CONOP)* (U).....184

11. *JPRA Team Leaves Iraq* (U).....186

12. *U.S. Joint Forces Command (JFCOM) Reviews JPRA Concept Of Operations (CONOP)* (U).....187

13. *JFCOM Verifies Team Chief's Account of Events in Iraq* (U).....188

D. *Major General Geoffrey Miller Leads GTMO Assessment Team to Iraq* (U).....189

1. *CJTF-7 Commander Identifies Deficiencies* (U).....189

2. *GTMO Assessment Team Travels to Iraq* (U).....190

3. *GTMO Team Visits Iraq Survey Group (ISG)* (U).....191

4. *GTMO Team Visits Special Mission Unit Task Force* (U).....193

5. *GTMO Team Discusses Interrogations with CJTF-7* (U).....194

6. *GTMO Commander Recommends CJTF-7 Develop an Interrogation Policy* (U).....197

7. *JTF-GTMO Assessment Team Produces Trip Report* (U).....198

8. *MG Miller Briefs Senior DoD Officials on Assessment Visit* (U).....199

E. *Interrogation and Counter-Resistance Policy Established* (U).....200

1. *CJTF-7 Commander Issues Policy Including Aggressive Interrogation Techniques* (U).....200

2. *Interrogation and Counter Resistance Policy Implemented at Abu Ghraib* (U).....201

3. *CENTCOM Raises Concerns About CJTF-7 Policy* (U).....202

4. *CJTF-7 Issues New Interrogation Policy* (U).....204

F. *SMU Task Force Issues a New Interrogation SOP* (U) 206

XIII. Interrogation Techniques and Detainee Mistreatment at Abu Ghraib (U).....207

A. *Use of Military Working Dogs* (U).....208

B. *Stress Positions and Physical Training* (U).....210

C. *Removal of Clothing* (U).....211

D. *Sleep Adjustment/ Sleep Management* (U).....213

E. *Sensory Deprivation and Isolation* (U).....215

F. *"Lost Opportunity" to Fix Problems at Abu Ghraib* (U) 216

1. *Retired Army Intelligence Officer Leads Assessment Team* (U).....216

2. *Assessment Team Visits Abu Ghraib and CJTF-7 Headquarters* (U).....217

3. *Team Hears Reports of Detainee Mistreatment* (U).....218

4. *COL Herrington Reports Findings* (U).....218

XIV. Interrogation Policies Following Abu Ghraib (U).....219

A. *February 2004 CJSOTF Interrogation SOP* (U).....219

B. *Interrogation Plan in Iraq Derived from SERE* (U).....221

C. *March 2004 Interrogation SOP for Conventional Forces in Afghanistan* (U).....221

D. *Special Mission Unit Task Force Interrogation Polices* (U).....222

XV. CENTCOM Seeks JPRA Interrogation Assistance in Afghanistan (U).....224

A. *May 2004 CENTCOM Request* (U).....224

B. *CENTCOM Makes Another Request for JPRA Interrogation Assistance in Afghanistan* (U).....228

C. *U.S. Joint Forces Command Issues Policy Guidance For JPRA "Offensive" Support* (U)...230

Note on Source Material Used in the Preparation of the Report

(U) Over the course of the its inquiry into the treatment of detainees in U.S. custody, the Committee reviewed more than 200,000 pages of classified and unclassified documents, including detention and interrogation policies, memoranda, electronic communications, training manuals, and the results of previous investigations into detainee abuse. The majority of those documents were provided to the Committee by the Department of Defense. The Committee also reviewed documents provided by the Department of Justice, documents in the public domain, a small number of documents provided by individuals, and a number of published secondary sources including books and articles in popular magazines and scholarly journals.

(U) The Committee interviewed over 70 individuals in connection with its inquiry. Most interviews were of current or former Department of Defense employees, though the Committee also interviewed current and/or former employees of the Department of Justice and the Federal Bureau of Investigation. The Committee issued two subpoenas and held two hearings to take testimony from subpoenaed witnesses. The Committee also sent written questions to more than 200 individuals. The Committee held public hearings on June 17, 2008 and September 25, 2008.

(U) Military personnel referred to in the report are identified by their rank at the time the events in question took place.

List of Acronyms (U)

AAR	After Action Report
AOR	Area of Responsibility
BCP	Bagram Collection Point, Bagram Air Field, Afghanistan
BDE	Brigade
BN	Battalion
BSCT	Behavioral Science Consultation Team
CCJ-2	Intelligence directorate at U.S. CENTCOM.
CENTCOM	U.S. Central Command
CFLCC	Coalition Forces Land Component Command
CIA	Central Intelligence Agency
CID	Army Criminal Investigative Division
CITF	Criminal Investigation Task Force
CJ-2	Combined J-2 (Intelligence directorate at combined organization)
CJ2X	Combined J-2X; See J-2X
CJCS	Chairman of the Joint Chiefs of Staff
CJTF-180	Combined Joint Task Force 180
CJTF-7	Combined Joint Task Force 7
CONOP	Concept of Operations
CTC	Central Intelligence Agency's CounterTerrorist Center
DHS (DH)	Defense Human Intelligence Service, part of DIA
DIA	Defense Intelligence Agency
DoD	Department of Defense
DoJ	Department of Justice
DPMO	Defense Prisoner of War/Missing Personnel Office
DUC	Designated Unlawful Combatant
EPW	Enemy Prisoner of War
FBI	Federal Bureau of Investigation
FM 34-52	US Army Field Manual on Interrogation (1987, 1992)
G-2	Intelligence directorate at Army Staff
GTMO (GITMO)	U.S. Naval Base Guantanamo Bay
HUMINT	Human Intelligence
HVD	High Value Detainee
HVT	High Value Target
ICE	Interrogation Control Element
ICRC	International Committee of the Red Cross

IROE	Interrogation Rules of Engagement
ISG	Iraq Survey Group
ISN	Internment Serial Number
J-2	Intelligence directorate within a joint organization, e.g. Joint Staff
J-2X	Counterintelligence and Human Intelligence officer or organization
J-3	Operations directorate within a joint organization, e.g. Joint Staff
JAG	Judge Advocate General
JFCOM	U.S. Joint Forces Command
JIDC	Joint Interrogation and Debriefing Center
JIG	Joint Interrogation Group
JPRA	Joint Personnel Recovery Agency
JSOC	Joint Special Operations Command
JTF-160	Joint Task Force 160 at U.S. Naval Base Guantanamo Bay
JTF-170	Joint Task Force 170 at U.S. Naval Base Guantanamo Bay
JTF-GTMO	Joint Task Force Guantanamo Bay
MWD	Military Working Dog
NCIS	Naval Criminal Investigative Service
OEF	Operation Enduring Freedom
OGA	Other Government Agency
OI	Operating Instruction
OIC	Officer in Charge
OIF	Operation Iraqi Freedom
OLC	Department of Justice Office of Legal Counsel
OSD	Office of the Secretary of Defense
OSI	Air Force Office of Special Investigations
OSO	Operational Support Office (JPRA)
OTJAG	Office of The Judge Advocate General
PAD	Psychological Applications Directorate
POW	Prisoner of War
PRA	Personnel Recovery Agency
ROE	Rules of Engagement
S-3	Army operations directorate at brigade level or below
SERE	Survival Evasion Resistance Escape
SJA	Staff Judge Advocate
SMU	Special Mission Unit
SO/LIC	Special Operations/Low Intensity Conflict
SOCOM	U.S. Special Operations Command

SOP	Standard Operating Procedure
SOUTHCOM	U.S. Southern Command
S-V91	Department of Defense High Risk Survival Training
TF	Task Force
TJAG	The Judge Advocate General
TTPs	Tactics, Techniques, and Procedures
UCMJ	Uniform Code of Military Justice
USASOC	U.S. Army Special Operations Command
USDI	Under Secretary of Defense for Intelligence
VTC	Video Teleconference
WMD	Weapons of Mass Destruction

Executive Summary

"What sets us apart from our enemies in this fight... is how we behave. In everything we do, we must observe the standards and values that dictate that we treat noncombatants and detainees with dignity and respect. While we are warriors, we are also all human beings."

-- General David Petraeus

May 10, 2007

(U) The collection of timely and accurate intelligence is critical to the safety of U.S. personnel deployed abroad and to the security of the American people here at home. The methods by which we elicit intelligence information from detainees in our custody affect not only the reliability of that information, but our broader efforts to win hearts and minds and attract allies to our side.

(U) Al Qaeda and Taliban terrorists are taught to expect Americans to abuse them. They are recruited based on false propaganda that says the United States is out to destroy Islam. Treating detainees harshly only reinforces that distorted view, increases resistance to cooperation, and creates new enemies. In fact, the April 2006 National Intelligence Estimate "Trends in Global Terrorism: Implications for the United States" cited "pervasive anti U.S. sentiment among most Muslims" as an underlying factor fueling the spread of the global jihadist movement. Former Navy General Counsel Alberto Mora testified to the Senate Armed Services Committee in June 2008 that "there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantanamo."

(U) The abuse of detainees in U.S. custody cannot simply be attributed to the actions of "a few bad apples" acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees. Those efforts damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemies, and compromised our moral authority. This report is a product of the Committee's inquiry into how those unfortunate results came about.

Presidential Order Opens the Door to Considering Aggressive Techniques (U)

(U) On February 7, 2002, President Bush signed a memorandum stating that the Third Geneva Convention did not apply to the conflict with al Qaeda and concluding that Taliban detainees were not entitled to prisoner of war status or the legal protections afforded by the Third Geneva Convention. The President's order closed off application of Common Article 3 of the Geneva Conventions, which would have afforded minimum standards for humane treatment, to al Qaeda or Taliban detainees. While the President's order stated that, as "a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions," the decision to replace well established military doctrine, i.e., legal compliance with the Geneva Conventions, with a policy subject to interpretation, impacted the treatment of detainees in U.S. custody.

(U) In December 2001, more than a month before the President signed his memorandum, the Department of Defense (DoD) General Counsel's Office had already solicited information on detainee "exploitation" from the Joint Personnel Recovery Agency (JPRA), an agency whose expertise was in training American personnel to withstand interrogation techniques considered illegal under the Geneva Conventions.

(U) JPRA is the DoD agency that oversees military Survival Evasion Resistance and Escape (SERE) training. During the resistance phase of SERE training, U.S. military personnel are exposed to physical and psychological pressures (SERE techniques) designed to simulate conditions to which they might be subject if taken prisoner by enemies that did not abide by the Geneva Conventions. As one JPRA instructor explained, SERE training is "based on illegal exploitation (under the rules listed in the 1949 Geneva Convention Relative to the Treatment of Prisoners of War) of prisoners over the last 50 years." The techniques used in SERE school, based, in part, on Chinese Communist techniques used during the Korean war to elicit false confessions, include stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures. It can also include face and body slaps and until recently, for some who attended the Navy's SERE school, it included waterboarding.

(U) Typically, those who play the part of interrogators in SERE school neither are trained interrogators nor are they qualified to be. These role players are not trained to obtain reliable intelligence information from detainees. Their job is to train our personnel to <u>resist</u> providing reliable information to our enemies. As the Deputy Commander for the Joint Forces Command (JFCOM), JPRA's higher headquarters, put it: "the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations." Given JPRA's role and expertise, the request from the DoD General Counsel's office was unusual. In fact, the Committee is not aware of any similar request prior to December 2001. But while it may have been the first, that was not the last time that a senior government official contacted JPRA for

advice on using SERE methods offensively. In fact, the call from the DoD General Counsel's office marked just the beginning of JPRA's support of U.S. government interrogation efforts.

Senior Officials Seek SERE Techniques and Discuss Detainee Interrogations (U)

(U) Beginning in the spring of 2002 and extending for the next two years, JPRA supported U.S. government efforts to interrogate detainees. During that same period, senior government officials solicited JPRA's knowledge and its direct support for interrogations. While much of the information relating to JPRA's offensive activities and the influence of SERE techniques on interrogation policies remains classified, unclassified information provides a window into the extent of those activities.

(U) JPRA's Chief of Staff, Lieutenant Colonel Daniel Baumgartner testified that in late 2001 or early 2002, JPRA conducted briefings of Defense Intelligence Agency (DIA) personnel on detainee resistance, techniques, and information on detainee exploitation.

(U) On April 16, 2002, Dr. Bruce Jessen, the senior SERE psychologist at JPRA, circulated a draft exploitation plan to JPRA Commander Colonel Randy Moulton and other senior officials at the agency. The contents of that plan remain classified but Dr. Jessen's initiative is indicative of the interest of JPRA's senior leadership in expanding the agency's role.

(U) One opportunity came in July 2002. That month, DoD Deputy General Counsel for Intelligence Richard Shiffrin contacted JPRA seeking information on SERE physical pressures and interrogation techniques that had been used against Americans. Mr. Shiffrin called JPRA after discussions with William "Jim" Haynes II, the DoD General Counsel.

(U) In late July, JPRA provided the General Counsel's office with several documents, including excerpts from SERE instructor lesson plans, a list of physical and psychological pressures used in SERE resistance training, and a memo from a SERE psychologist assessing the long-term psychological effects of SERE resistance training on students and the effects of waterboarding. The list of SERE techniques included such methods as sensory deprivation, sleep disruption, stress positions, waterboarding, and slapping. It also made reference to a section of the JPRA instructor manual that discusses "coercive pressures," such as keeping the lights on at all times, and treating a person like an animal. JPRA's Chief of Staff, Lieutenant Colonel Daniel Baumgartner, who spoke with Mr. Shiffrin at the time, thought the General Counsel's office was asking for the information on exploitation and physical pressures to use them in interrogations and he said that JFCOM gave approval to provide the agency the information. Mr. Shiffrin, the DoD Deputy General Counsel for Intelligence, confirmed that a purpose of the request was to "reverse engineer" the techniques. Mr. Haynes could not recall what he did with the information provided by JPRA.

(U) Memos from Lieutenant Colonel Baumgartner to the Office of Secretary of Defense General Counsel stated that JPRA would "continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy

detainees." Lieutenant Colonel Baumgartner testified that he provided another government agency the same information he sent to the DoD General Counsel's office.

(U) Mr. Haynes was not the only senior official considering new interrogation techniques for use against detainees. Members of the President's Cabinet and other senior officials attended meetings in the White House where specific interrogation techniques were discussed. Secretary of State Condoleezza Rice, who was then the National Security Advisor, said that, "in the spring of 2002, CIA sought policy approval from the National Security Council (NSC) to begin an interrogation program for high-level al-Qaida terrorists." Secretary Rice said that she asked Director of Central Intelligence George Tenet to brief NSC Principals on the program and asked the Attorney General John Ashcroft "personally to review and confirm the legal advice prepared by the Office of Legal Counsel." She also said that Secretary of Defense Donald Rumsfeld participated in the NSC review of the CIA's program.

(U) Asked whether she attended meetings where SERE training was discussed, Secretary Rice stated that she recalled being told that U.S. military personnel were subjected in training to "certain physical and psychological interrogation techniques." National Security Council (NSC) Legal Advisor, John Bellinger, said that he was present in meetings "at which SERE training was discussed."

Department of Justice Redefines Torture (U)

(U) On August 1, 2002, just a week after JPRA provided the DoD General Counsel's office the list of SERE techniques and the memo on the psychological effects of SERE training, the Department of Justice's Office of Legal Counsel (OLC) issued two legal opinions. The opinions were issued after consultation with senior Administration attorneys, including then-White House Counsel Alberto Gonzales and then-Counsel to the Vice President David Addington. Both memos were signed by then-Assistant Attorney General for the Office of Legal Counsel Jay Bybee. One opinion, commonly known as the first Bybee memo, was addressed to Judge Gonzales and provided OLC's opinion on standards of conduct in interrogation required under the federal torture statute. That memo concluded:

> [F]or an act to constitute torture as defined in [the federal torture statute], it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under [the federal torture statute], it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.

(U) In his book The Terror Presidency, Jack Goldsmith, the former Assistant Attorney General of the OLC who succeeded Mr. Bybee in that job, described the memo's conclusions:

> Violent acts aren't necessarily torture; if you do torture, you probably have a defense; and even if you don't have a defense, the torture law doesn't apply if you act under the color of presidential authority.

(U) The other OLC opinion issued on August 1, 2002 is known commonly as the Second Bybee memo. That opinion, which responded to a request from the CIA, addressed the legality of specific interrogation tactics. While the full list of techniques remains classified, a publicly released CIA document indicates that waterboarding was among those analyzed and approved. CIA Director General Michael Hayden stated in public testimony before the Senate Intelligence Committee on February 5, 2008 that waterboarding was used by the CIA. And Steven Bradbury, the current Assistant Attorney General of the OLC, testified before the House Judiciary Committee on February 14, 2008 that the CIA's use of waterboarding was "adapted from the SERE training program."

(U) Before drafting the opinions, Mr. Yoo, the Deputy Assistant Attorney General for the OLC, had met with Alberto Gonzales, Counsel to the President, and David Addington, Counsel to the Vice President, to discuss the subjects he intended to address in the opinions. In testimony before the House Judiciary Committee, Mr. Yoo refused to say whether or not he ever discussed or received information about SERE techniques as the memos were being drafted. When asked whether he had discussed SERE techniques with Judge Gonzales, Mr. Addington, Mr. Yoo, Mr. Rizzo or other senior administration lawyers, DoD General Counsel Jim Haynes testified that he "did discuss SERE techniques with other people in the administration." NSC Legal Advisor John Bellinger said that "some of the legal analyses of proposed interrogation techniques that were prepared by the Department of Justice... did refer to the psychological effects of resistance training."

(U) In fact, Jay Bybee the Assistant Attorney General who signed the two OLC legal opinions said that he saw an assessment of the psychological effects of military resistance training in July 2002 in meetings in his office with John Yoo and two other OLC attorneys. Judge Bybee said that he used that assessment to inform the August 1, 2002 OLC legal opinion that has yet to be publicly released. Judge Bybee also recalled discussing detainee interrogations in a meeting with Attorney General John Ashcroft and John Yoo in late July 2002, prior to signing the OLC opinions. Mr. Bellinger, the NSC Legal Advisor, said that "the NSC's Principals reviewed CIA's proposed program on several occasions in 2002 and 2003" and that he "expressed concern that the proposed CIA interrogation techniques comply with applicable U.S. law, including our international obligations."

JPRA and CIA Influence Department of Defense Interrogation Policies (U)

(U) As senior government lawyers were preparing to redefine torture, JPRA – responding to a request from U.S. Southern Command's Joint Task Force 170 (JTF-170) at Guantanamo Bay (GTMO) – was finalizing plans to train JTF-170 personnel. During the week of September 16, 2002, a group of interrogators and behavioral scientists from GTMO travelled to Fort Bragg, North Carolina and attended training conducted by instructors from JPRA's SERE school. On September 25, 2002, just days after GTMO staff returned from that training, a delegation of

senior Administration lawyers, including Mr. Haynes, Mr. Rizzo, and Mr. Addington, visited GTMO.

(U) A week after the visit from those senior lawyers, two GTMO behavioral scientists who had attended the JPRA-led training at Fort Bragg drafted a memo proposing new interrogation techniques for use at GTMO. According to one of those two behavioral scientists, by early October 2002, there was "increasing pressure to get 'tougher' with detainee interrogations." He added that if the interrogation policy memo did not contain coercive techniques, then it "wasn't going to go very far."

(U) JPRA was not the only outside organization that provided advice to GTMO on aggressive techniques. On October 2, 2002, Jonathan Fredman, who was chief counsel to the CIA's CounterTerrorist Center, attended a meeting of GTMO staff. Minutes of that meeting indicate that it was dominated by a discussion of aggressive interrogation techniques including sleep deprivation, death threats, and waterboarding, which was discussed in relation to its use in SERE training. Mr. Fredman's advice to GTMO on applicable legal obligations was similar to the analysis of those obligations in OLC's first Bybee memo. According to the meeting minutes, Mr. Fredman said that "the language of the statutes is written vaguely... Severe physical pain described as anything causing permanent damage to major organs or body parts. Mental torture [is] described as anything leading to permanent, profound damage to the senses or personality." Mr. Fredman said simply, "It is basically subject to perception. If the detainee dies you're doing it wrong."

(U) On October 11, 2002, Major General Michael Dunlavey, the Commander of JTF-170 at Guantanamo Bay, sent a memo to General James Hill, the Commander of U.S. Southern Command (SOUTHCOM) requesting authority to use aggressive interrogation techniques. Several of the techniques requested were similar to techniques used by JPRA and the military services in SERE training, including stress positions, exploitation of detainee fears (such as fear of dogs), removal of clothing, hooding, deprivation of light and sound, and the so-called wet towel treatment or the waterboard. Some of the techniques were even referred to as "those used in U.S. military interrogation resistance training." Lieutenant Colonel Diane Beaver, GTMO's Staff Judge Advocate, wrote an analysis justifying the legality of the techniques, though she expected that a broader legal review conducted at more senior levels would follow her own. On October 25, 2002, General Hill forwarded the GTMO request from Major General Dunlavey to General Richard Myers, the Chairman of the Joint Chiefs of Staff. Days later, the Joint Staff solicited the views of the military services on the request.

(U) Plans to use aggressive interrogation techniques generated concerns by some at GTMO. The Deputy Commander of the Department of Defense's Criminal Investigative Task Force (CITF) at GTMO told the Committee that SERE techniques were "developed to better prepare U.S. military personnel to resist interrogations and not as a means of obtaining reliable information" and that "CITF was troubled with the rationale that techniques used to harden resistance to interrogations would be the basis for the utilization of techniques to obtain information." Concerns were not limited to the effectiveness of the techniques in obtaining reliable information; GTMO's request gave rise to significant legal concerns as well.

Military Lawyers Raise Red Flags and Joint Staff Review Quashed (U)

(U) In early November 2002, in a series of memos responding to the Joint Staff's call for comments on GTMO's request, the military services identified serious legal concerns about the techniques and called for additional analysis.

(U) The Air Force cited "serious concerns regarding the legality of many of the proposed techniques" and stated that "techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely..." The Air Force also called for an in depth legal review of the request.

(U) CITF's Chief Legal Advisor wrote that certain techniques in GTMO's October 11, 2002 request "may subject service members to punitive articles of the [Uniform Code of Military Justice]," called "the utility and legality of applying certain techniques" in the request "questionable," and stated that he could not "advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business."

(U) The Chief of the Army's International and Operational Law Division wrote that techniques like stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress "crosses the line of 'humane' treatment," would "likely be considered maltreatment" under the UCMJ, and "may violate the torture statute." The Army labeled GTMO's request "legally insufficient" and called for additional review.

(U) The Navy recommended a "more detailed interagency legal and policy review" of the request. And the Marine Corps expressed strong reservations, stating that several techniques in the request "arguably violate federal law, and would expose our service members to possible prosecution." The Marine Corps also said the request was not "legally sufficient," and like the other services, called for "a more thorough legal and policy review."

(U) Then-Captain (now Rear Admiral) Jane Dalton, Legal Counsel to the Chairman of the Joint Chiefs of Staff, said that her staff discussed the military services' concerns with the DoD General Counsel's Office at the time and that the DoD General Counsel Jim Haynes was aware of the services' concerns. Mr. Haynes, on the other hand, testified that he did not know that the memos from the military services existed (a statement he later qualified by stating that he was not *sure* he knew they existed). Eliana Davidson, the DoD Associate Deputy General Counsel for International Affairs, said that she told the General Counsel that the GTMO request needed further assessment. Mr. Haynes did not recall Ms. Davidson telling him that.

(U) Captain Dalton, who was the Chairman's Legal Counsel, said that she had her own concerns with the GTMO request and directed her staff to initiate a thorough legal and policy review of the techniques. That review, however, was cut short. Captain Dalton said that General Myers returned from a meeting and advised her that Mr. Haynes wanted her to stop her review,

in part because of concerns that people were going to see the GTMO request and the military services' analysis of it. Neither General Myers nor Mr. Haynes recalled cutting short the Dalton review, though neither has challenged Captain Dalton's recollection. Captain Dalton testified that this occasion marked the only time she had ever been told to stop analyzing a request that came to her for review.

Secretary of Defense Rumsfeld Approves Aggressive Techniques (U)

(U) With respect to GTMO's October 11, 2002 request to use aggressive interrogation techniques, Mr. Haynes said that "there was a sense by the DoD Leadership that this decision was taking too long" and that Secretary Rumsfeld told his senior advisors "I need a recommendation." On November 27, 2002, the Secretary got one. Notwithstanding the serious legal concerns raised by the military services, Mr. Haynes sent a one page memo to the Secretary, recommending that he approve all but three of the eighteen techniques in the GTMO request. Techniques such as stress positions, removal of clothing, use of phobias (such as fear of dogs), and deprivation of light and auditory stimuli were all recommended for approval.

(U) Mr. Haynes's memo indicated that he had discussed the issue with Deputy Secretary of Defense Paul Wolfowitz, Under Secretary of Defense for Policy Doug Feith, and General Myers and that he believed they concurred in his recommendation. When asked what he relied on to make his recommendation that the aggressive techniques be approved, the only written legal opinion Mr. Haynes cited was Lieutenant Colonel Beaver's legal analysis, which senior military lawyers had considered "legally insufficient" and "woefully inadequate," and which LTC Beaver herself had expected would be supplemented with a review by persons with greater experience than her own.

(U) On December 2, 2002, Secretary Rumsfeld signed Mr. Haynes's recommendation, adding a handwritten note that referred to limits proposed in the memo on the use of stress positions: "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

(U) SERE school techniques are designed to simulate abusive tactics used by our enemies. There are fundamental differences between a SERE school exercise and a real world interrogation. At SERE school, students are subject to an extensive medical and psychological pre-screening prior to being subjected to physical and psychological pressures. The schools impose strict limits on the frequency, duration, and/or intensity of certain techniques. Psychologists are present throughout SERE training to intervene should the need arise and to help students cope with associated stress. And SERE school is voluntary; students are even given a special phrase they can use to immediately stop the techniques from being used against them.

(U) Neither those differences, nor the serious legal concerns that had been registered, stopped the Secretary of Defense from approving the use of the aggressive techniques against detainees. Moreover, Secretary Rumsfeld authorized the techniques without apparently providing any written guidance as to how they should be administered.

SERE Techniques at GTMO (U)

(U) Following the Secretary's December 2, 2002 authorization, senior staff at GTMO began drafting a Standard Operating Procedure (SOP) specifically for the use of SERE techniques in interrogations. The draft SOP itself stated that "The premise behind this is that the interrogation tactics used at U.S. military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to 'break' SERE detainees. The same tactics and techniques can be used to break real detainees during interrogation." The draft "GTMO SERE SOP" described how to slap, strip, and place detainees in stress positions. It also described other SERE techniques, such as "hooding," "manhandling," and "walling" detainees.

(U) On December 30, 2002, two instructors from the Navy SERE school arrived at GTMO. The next day, in a session with approximately 24 interrogation personnel, the two SERE instructors demonstrated how to administer stress positions, and various slapping techniques. According to two interrogators, those who attended the training even broke off into pairs to practice the techniques.

(U) Exemplifying the disturbing nature and substance of the training, the SERE instructors explained "Biderman's Principles" – which were based on coercive methods used by the Chinese Communist dictatorship to elicit false confessions from U.S. POWs during the Korean War – and left with GTMO personnel a chart of those coercive techniques. Three days after they conducted the training, the SERE instructors met with GTMO's Commander, Major General Geoffrey Miller. According to some who attended that meeting, Major General Miller stated that he did not want his interrogators using the techniques that the Navy SERE instructors had demonstrated. That conversation, however, took place after the training had already occurred and not all of the interrogators who attended the training got the message.

(U) At about the same time, a dispute over the use of aggressive techniques was raging at GTMO over the interrogation of Mohammed al-Khatani, a high value detainee. Personnel from CITF and the Federal Bureau of Investigations (FBI) had registered strong opposition, to interrogation techniques proposed for use on Khatani and made those concerns known to the DoD General Counsel's office. Despite those objections, an interrogation plan that included aggressive techniques was approved. The interrogation itself, which actually began on November 23, 2002, a week before the Secretary's December 2, 2002 grant of blanket authority for the use of aggressive techniques, continued through December and into mid-January 2003.

(U) NSC Legal Advisor John Bellinger said that, on several occasions, Deputy Assistant Attorney General Bruce Swartz raised concerns with him about allegations of detainee abuse at GTMO. Mr. Bellinger said that, in turn, he raised these concerns "on several occasions with DoD officials and was told that the allegations were being investigated by the Naval Criminal Investigative Service." Then-National Security Advisor Condoleezza Rice said that Mr. Bellinger also advised her "on a regular basis regarding concerns and issues relating to DoD detention policies and practices at Guantanamo." She said that as a result she convened a "series

of meetings of NSC Principals in 2002 and 2003 to discuss various issues and concerns relating to detainees in the custody of the Department of Defense."

(U) Between mid-December 2002 and mid-January 2003, Navy General Counsel Alberto Mora spoke with the DoD General Counsel three times to express his concerns about interrogation techniques at GTMO, at one point telling Mr. Haynes that he thought techniques that had been authorized by the Secretary of Defense "could rise to the level of torture." On January 15, 2003, having received no word that the Secretary's authority would be withdrawn, Mr. Mora went so far as to deliver a draft memo to Mr. Haynes's office memorializing his legal concerns about the techniques. In a subsequent phone call, Mr. Mora told Mr. Haynes he would sign his memo later that day unless he heard definitively that the use of the techniques was suspended. In a meeting that same day, Mr. Haynes told Mr. Mora that the Secretary would rescind the techniques. Secretary Rumsfeld signed a memo rescinding authority for the techniques on January 15, 2003.

(U) That same day, GTMO suspended its use of aggressive techniques on Khatani. While key documents relating to the interrogation remain classified, published accounts indicate that military working dogs had been used against Khatani. He had also been deprived of adequate sleep for weeks on end, stripped naked, subjected to loud music, and made to wear a leash and perform dog tricks. In a June 3, 2004 press briefing, SOUTHCOM Commander General James Hill traced the source of techniques used on Khatani back to SERE, stating: "The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK." General Hill said "we began to use a few of those techniques ... on this individual..."

(U) On May 13, 2008, the Pentagon announced in a written statement that the Convening Authority for military commissions "dismissed without prejudice the sworn charges against Mohamed al Khatani." The statement does not indicate the role his treatment may have played in that decision.

DoD Working Group Ignores Military Lawyers and Relies on OLC (U)

(U) On January 15, 2003, the same day he rescinded authority for GTMO to use aggressive techniques, Secretary Rumsfeld directed the establishment of a "Working Group" to review interrogation techniques. For the next few months senior military and civilian lawyers tried, without success, to have their concerns about the legality of aggressive techniques reflected in the Working Group's report. Their arguments were rejected in favor of a legal opinion from the Department of Justice's Office of Legal Counsel's (OLC) John Yoo. Mr. Yoo's opinion, the final version of which was dated March 14, 2003, had been requested by Mr. Haynes at the initiation of the Working Group process, and repeated much of what the first Bybee memo had said six months earlier.

(U) The first Bybee memo, dated August 1, 2002, had concluded that, to violate the federal torture statute, physical pain that resulted from an act would have to be "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of

bodily function, or even death." Mr. Yoo's March 14, 2003 memo stated that criminal laws, such as the federal torture statute, would not apply to certain military interrogations, and that interrogators could not be prosecuted by the Justice Department for using interrogation methods that would otherwise violate the law.

(U) Though the final Working Group report does not specifically mention SERE, the list of interrogation techniques it evaluated and recommended for approval suggest the influence of SERE. Removal of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, increasing anxiety through the use of a detainee's aversions like dogs, and face and stomach slaps were all recommended for approval.

(U) On April 16, 2003, less than two weeks after the Working Group completed its report, the Secretary authorized the use of 24 specific interrogation techniques for use at GTMO. While the authorization included such techniques as dietary manipulation, environmental manipulation, and sleep adjustment, it was silent on many of the techniques in the Working Group report. Secretary Rumsfeld's memo said, however, that "If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee."

(U) Just a few months later, one such request for "additional interrogation techniques" arrived on Secretary Rumsfeld's desk. The detainee was Mohamedou Ould Slahi. While documents relating to the interrogation plan for Slahi remain classified, a May 2008 report from the Department of Justice Inspector General includes declassified information suggesting the plan included hooding Slahi and subjecting him to sensory deprivation and "sleep adjustment." The Inspector General's report says that an FBI agent who saw a draft of the interrogation plan said it was similar to Khatani's interrogation plan. Secretary Rumsfeld approved the Slahi plan on August 13, 2003.

Aggressive Techniques Authorized in Afghanistan and Iraq (U)

(U) Shortly after Secretary Rumsfeld's December 2, 2002 approval of his General Counsel's recommendation to authorize aggressive interrogation techniques, the techniques – and the fact the Secretary had authorized them – became known to interrogators in Afghanistan. A copy of the Secretary's memo was sent from GTMO to Afghanistan. Captain Carolyn Wood, the Officer in Charge of the Intelligence Section at Bagram Airfield in Afghanistan, said that in January 2003 she saw a power point presentation listing the aggressive techniques that had been authorized by the Secretary.

(U) Despite the Secretary's January 15, 2003 rescission of authority for GTMO to use aggressive techniques, his initial approval six weeks earlier continued to influence interrogation policies.

(U) On January 24, 2003, nine days after Secretary Rumsfeld rescinded authority for the techniques at GTMO, the Staff Judge Advocate for Combined Joint Task Force 180 (CJTF-180),

U.S. Central Command's (CENTCOM) conventional forces in Afghanistan, produced an "Interrogation techniques" memo. While that memo remains classified, unclassified portions of a report by Major General George Fay stated that the memo "recommended removal of clothing – a technique that had been in the Secretary's December 2 authorization" and discussed "exploiting the Arab fear of dogs" another technique approved by the Secretary on December 2, 2002.

(U) From Afghanistan, the techniques made their way to Iraq. According to the Department of Defense (DoD) Inspector General (IG), at the beginning of the Iraq war, special mission unit forces in Iraq "used a January 2003 Standard Operating Procedure (SOP) which had been developed for operations in Afghanistan." According to the DoD IG, the Afghanistan SOP had been:

> [I]nfluenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002 and incorporated techniques designed for detainees who were identified as unlawful combatants. Subsequent battlefield interrogation SOPs included techniques such as yelling, loud music, and light control, environmental manipulation, sleep deprivation/adjustment, stress positions, 20-hour interrogations, and controlled fear (muzzled dogs)...

(U) Techniques approved by the Secretary of Defense in December 2002 reflect the influence of SERE. And not only did those techniques make their way into official interrogation policies in Iraq, but instructors from the JPRA SERE school followed. The DoD IG reported that in September 2003, at the request of the Commander of the Special Mission Unit Task Force, JPRA deployed a team to Iraq to assist interrogation operations. During that trip, which was explicitly approved by U.S. Joint Forces Command, JPRA's higher headquarters, SERE instructors were authorized to participate in the interrogation of detainees in U.S. military custody using SERE techniques.

(U) In September 2008 testimony before the Senate Armed Services Committee, Colonel Steven Kleinman, an Air Force Reservist who was a member of the interrogation support team sent by JPRA to the Special Mission Unit Task Force in Iraq, described abusive interrogations he witnessed, and intervened to stop, during that trip. Colonel Kleinman said that one of those interrogations, which took place in a room painted all in black with a spotlight on the detainee, the interrogator repeatedly slapped a detainee who was kneeling on the floor in front of the interrogator. In another interrogation Colonel Kleinman said the two other members of the JPRA team took a hooded detainee to a bunker at the Task Force facility, forcibly stripped him naked and left him, shackled by the wrist and ankles, to stand for 12 hours.

(U) Interrogation techniques used by the Special Mission Unit Task Force eventually made their way into Standard Operating Procedures (SOPs) issued for all U.S. forces in Iraq. In the summer of 2003, Captain Wood, who by that time was the Interrogation Officer in Charge at Abu Ghraib, obtained a copy of the Special Mission Unit interrogation policy and submitted it, virtually unchanged, to her chain of command as proposed policy.

(U) Captain Wood submitted her proposed policy around the same time that a message was being conveyed that interrogators should be more aggressive with detainees. In mid-August 2003, an email from staff at Combined Joint Task Force 7 (CJTF-7) headquarters in Iraq requested that subordinate units provide input for a "wish list" of interrogation techniques, stated that "the gloves are coming off," and said "we want these detainees broken." At the end of August 2003, Major General Geoffrey Miller, the GTMO Commander, led a team to Iraq to assess interrogation and detention operations. Colonel Thomas Pappas, the Commander of the 205th Military Intelligence Brigade, who met with Major General Miller during that visit, said that the tenor of the discussion was that "we had to get tougher with the detainees." A Chief Warrant Officer with the Iraq Survey Group (ISG) said that during Major General Miller's tour of the ISG's facility, Major General Miller said the ISG was "running a country club" for detainees.

(U) On September 14, 2003 the Commander of CJTF-7, Lieutenant General Ricardo Sanchez, issued the first CJTF-7 interrogation SOP. That SOP authorized interrogators in Iraq to use stress positions, environmental manipulation, sleep management, and military working dogs in interrogations. Lieutenant General Sanchez issued the September 14, 2003 policy with the knowledge that there were ongoing discussions about the legality of some of the approved techniques. Responding to legal concerns from CENTCOM lawyers about those techniques, Lieutenant General Sanchez issued a new policy on October 12, 2003, eliminating many of the previously authorized aggressive techniques. The new policy, however, contained ambiguities with respect to certain techniques, such as the use of dogs in interrogations, and led to confusion about which techniques were permitted.

(U) In his report of his investigation into Abu Ghraib, Major General George Fay said that interrogation techniques developed for GTMO became "confused" and were implemented at Abu Ghraib. For example, Major General Fay said that removal of clothing, while not included in CJTF-7's SOP, was "imported" to Abu Ghraib, could be "traced through Afghanistan and GTMO," and contributed to an environment at Abu Ghraib that appeared "to condone depravity and degradation rather than humane treatment of detainees." Major General Fay said that the policy approved by the Secretary of Defense on December 2, 2002 contributed to the use of aggressive interrogation techniques at Abu Ghraib in late 2003.

OLC Withdraws Legal Opinion - JFCOM Issues Guidance on JPRA "Offensive" Support (U)

(U) As the events at Abu Ghraib were unfolding, Jack Goldsmith, the new Assistant Attorney General for the Office of Legal Counsel was presented with a "short stack" of OLC opinions that were described to him as problematic. Included in that short stack were the Bybee memos of August 1, 2002 and Mr. Yoo's memo of March 2003. After reviewing the memos, Mr. Goldsmith decided to rescind both the so-called first Bybee memo and Mr. Yoo's memo. In late December 2003, Mr. Goldsmith notified Mr. Haynes that DoD could no longer rely on Mr. Yoo's memo in determining the lawfulness of interrogation techniques. The change in OLC guidance, however, did not keep JPRA from making plans to continue their support to interrogation operations. In fact, it is not clear that the agency was even aware of the change.

(U) In 2004, JPRA and CENTCOM took steps to send a JPRA training team to Afghanistan to assist in detainee interrogations there. In the wake of the public disclosure of detainee abuse at Abu Ghraib, however, that trip was cancelled and JFCOM subsequently issued policy guidance limiting JPRA's support to interrogations.

(U) On September 29, 2004 Major General James Soligan, JFCOM's Chief of Staff, issued a memorandum referencing JPRA's support to interrogation operations. Major General Soligan wrote:

> Recent requests from [the Office of the Secretary of Defense] and the Combatant Commands have solicited JPRA support based on knowledge and information gained through the debriefing of former U.S. POWs and detainees and their application to U.S. Strategic debriefing and interrogation techniques. These requests, which can be characterized as 'offensive' support, go beyond the chartered responsibilities of JPRA... The use of resistance to interrogation knowledge for 'offensive' purposes lies outside the roles and responsibilities of JPRA.

(U) Lieutenant General Robert Wagner, the Deputy Commander of JFCOM, later called requests for JPRA interrogation support "inconsistent with the unit's charter" and said that such requests "might create conditions which tasked JPRA to engage in offensive operational activities outside of JPRA's defensive mission."

(U) Interrogation policies endorsed by senior military and civilian officials authorizing the use of harsh interrogation techniques were a major cause of the abuse of detainees in U.S. custody. The impact of those abuses has been significant. In a 2007 international BBC poll, only 29 percent of people around the world said the United States is a generally positive influence in the world. Abu Ghraib and Guantanamo have a lot to do with that perception. The fact that America is seen in a negative light by so many complicates our ability to attract allies to our side, strengthens the hand of our enemies, and reduces our ability to collect intelligence that can save lives.

(U) It is particularly troubling that senior officials approved the use of interrogation techniques that were originally designed to simulate abusive tactics used by our enemies against our own soldiers and that were modeled, in part, on tactics used by the Communist Chinese to elicit false confessions from U.S. military personnel. While some argue that the brutality and disregard for human life shown by al Qaeda and Taliban terrorists justifies us treating them harshly, General David Petraeus explained why that view is misguided. In a May 2007 letter to his troops, General Petraeus said "Our values and the laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy. This fight depends on securing the population, which must understand that we - not our enemies - occupy the moral high ground."

Senate Armed Services Committee Conclusions

Conclusion 1: On February 7, 2002, President George W. Bush made a written determination that Common Article 3 of the Geneva Conventions, which would have afforded minimum standards for humane treatment, did not apply to al Qaeda or Taliban detainees. Following the President's determination, techniques such as waterboarding, nudity, and stress positions, used in SERE training to simulate tactics used by enemies that refuse to follow the Geneva Conventions, were authorized for use in interrogations of detainees in U.S. custody.

Conclusion 2: Members of the President's Cabinet and other senior officials participated in meetings inside the White House in 2002 and 2003 where specific interrogation techniques were discussed. National Security Council Principals reviewed the CIA's interrogation program during that period.

Conclusions on SERE Training Techniques and Interrogations

Conclusion 3: The use of techniques similar to those used in SERE resistance training – such as stripping students of their clothing, placing them in stress positions, putting hoods over their heads, and treating them like animals – was at odds with the commitment to humane treatment of detainees in U.S. custody. Using those techniques for interrogating detainees was also inconsistent with the goal of collecting accurate intelligence information, as the purpose of SERE resistance training is to increase the ability of U.S. personnel to resist abusive interrogations and the techniques used were based, in part, on Chinese Communist techniques used during the Korean War to elicit false confessions.

Conclusion 4: The use of techniques in interrogations derived from SERE resistance training created a serious risk of physical and psychological harm to detainees. The SERE schools employ strict controls to reduce the risk of physical and psychological harm to students during training. Those controls include medical and psychological screening for students, interventions by trained psychologists during training, and code words to ensure that students can stop the application of a technique at any time should the need arise. Those same controls are not present in real world interrogations.

Conclusions on Senior Official Consideration of SERE Techniques for Interrogations

Conclusion 5: In July 2002, the Office of the Secretary of Defense General Counsel solicited information from the Joint Personnel Recovery Agency (JPRA) on SERE techniques for use during interrogations. That solicitation, prompted by requests from Department of Defense General Counsel William J. Haynes II, reflected the view that abusive tactics similar to those used by our enemies should be considered for use against detainees in U.S. custody.

Conclusion 6: The Central Intelligence Agency's (CIA) interrogation program included at least one SERE training technique, waterboarding. Senior Administration lawyers, including Alberto

Gonzales, Counsel to the President, and David Addington, Counsel to the Vice President, were consulted on the development of legal analysis of CIA interrogation techniques. Legal opinions subsequently issued by the Department of Justice's Office of Legal Counsel (OLC) interpreted legal obligations under U.S. anti-torture laws and determined the legality of CIA interrogation techniques. Those OLC opinions distorted the meaning and intent of anti-torture laws, rationalized the abuse of detainees in U.S. custody and influenced Department of Defense determinations as to what interrogation techniques were legal for use during interrogations conducted by U.S. military personnel.

Conclusions on JPRA Offensive Activities

Conclusion 7: Joint Personnel Recovery Agency (JPRA) efforts in support of "offensive" interrogation operations went beyond the agency's knowledge and expertise. JPRA's support to U.S. government interrogation efforts contributed to detainee abuse. JPRA's offensive support also influenced the development of policies that authorized abusive interrogation techniques for use against detainees in U.S. custody.

Conclusion 8: Detainee abuse occurred during JPRA's support to Special Mission Unit (SMU) Task Force (TF) interrogation operations in Iraq in September 2003. JPRA Commander Colonel Randy Moulton's authorization of SERE instructors, who had no experience in detainee interrogations, to actively participate in Task Force interrogations using SERE resistance training techniques was a serious failure in judgment. The Special Mission Unit Task Force Commander's failure to order that SERE resistance training techniques not be used in detainee interrogations was a serious failure in leadership that led to the abuse of detainees in Task Force custody. Iraq is a Geneva Convention theater and techniques used in SERE school are inconsistent with the obligations of U.S. personnel under the Geneva Conventions.

Conclusion 9: Combatant Command requests for JPRA "offensive" interrogation support and U.S. Joint Forces Command (JFCOM) authorization of that support led to JPRA operating outside the agency's charter and beyond its expertise. Only when JFCOM's Staff Judge Advocate became aware of and raised concerns about JPRA's support to offensive interrogation operations in late September 2003 did JFCOM leadership begin to take steps to curtail JPRA's "offensive" activities. It was not until September 2004, however, that JFCOM issued a formal policy stating that support to offensive interrogation operations was outside JPRA's charter.

Conclusions on GTMO's Request for Aggressive Techniques

Conclusion 10: Interrogation techniques in Guantanamo Bay's (GTMO) October 11, 2002 request for authority submitted by Major General Michael Dunlavey, were influenced by JPRA training for GTMO interrogation personnel and included techniques similar to those used in SERE training to teach U.S. personnel to resist abusive enemy interrogations. GTMO Staff Judge Advocate Lieutenant Colonel Diane Beaver's legal review justifying the October 11, 2002 GTMO request was profoundly in error and legally insufficient. Leaders at GTMO, including Major General Dunlavey's successor, Major General Geoffrey Miller, ignored warnings from

DoD's Criminal Investigative Task Force and the Federal Bureau of Investigation that the techniques were potentially unlawful and that their use would strengthen detainee resistance.

Conclusion 11: Chairman of the Joint Chiefs of Staff General Richard Myers's decision to cut short the legal and policy review of the October 11, 2002 GTMO request initiated by his Legal Counsel, then-Captain Jane Dalton, undermined the military's review process. Subsequent conclusions reached by Chairman Myers and Captain Dalton regarding the legality of interrogation techniques in the request followed a grossly deficient review and were at odds with conclusions previously reached by the Army, Air Force, Marine Corps, and Criminal Investigative Task Force.

Conclusion 12: Department of Defense General Counsel William J. Haynes II's effort to cut short the legal and policy review of the October 11, 2002 GTMO request initiated by then-Captain Jane Dalton, Legal Counsel to the Chairman of the Joint Chiefs of Staff, was inappropriate and undermined the military's review process. The General Counsel's subsequent review was grossly deficient. Mr. Haynes's one page recommendation to Secretary of Defense Donald Rumsfeld failed to address the serious legal concerns that had been previously raised by the military services about techniques in the GTMO request. Further, Mr. Haynes's reliance on a legal memo produced by GTMO's Staff Judge Advocate that senior military lawyers called "legally insufficient" and "woefully inadequate" is deeply troubling.

Conclusion 13: Secretary of Defense Donald Rumsfeld's authorization of aggressive interrogation techniques for use at Guantanamo Bay was a direct cause of detainee abuse there. Secretary Rumsfeld's December 2, 2002 approval of Mr. Haynes's recommendation that most of the techniques contained in GTMO's October 11, 2002 request be authorized, influenced and contributed to the use of abusive techniques, including military working dogs, forced nudity, and stress positions, in Afghanistan and Iraq.

Conclusion 14: Department of Defense General Counsel William J. Haynes II's direction to the Department of Defense's Detainee Working Group in early 2003 to consider a legal memo from John Yoo of the Department of Justice's OLC as authoritative, blocked the Working Group from conducting a fair and complete legal analysis and resulted in a report that, in the words of then-Department of the Navy General Counsel Alberto Mora contained "profound mistakes in its legal analysis." Reliance on the OLC memo resulted in a final Working Group report that recommended approval of several aggressive techniques, including removal of clothing, sleep deprivation, and slapping, similar to those used in SERE training to teach U.S. personnel to resist abusive interrogations.

Conclusions on Interrogations in Iraq and Afghanistan

Conclusion 15: Special Mission Unit (SMU) Task Force (TF) interrogation policies were influenced by the Secretary of Defense's December 2, 2002 approval of aggressive interrogation techniques for use at GTMO. SMU TF interrogation policies in Iraq included the use of aggressive interrogation techniques such as military working dogs and stress positions. SMU TF

policies were a direct cause of detainee abuse and influenced interrogation policies at Abu Ghraib and elsewhere in Iraq.

Conclusion 16: During his assessment visit to Iraq in August and September 2003, GTMO Commander Major General Geoffrey Miller encouraged a view that interrogators should be more aggressive during detainee interrogations.

Conclusion 17: Interrogation policies approved by Lieutenant General Ricardo Sanchez, which included the use of military working dogs and stress positions, were a direct cause of detainee abuse in Iraq. Lieutenant General Sanchez's decision to issue his September 14, 2003 policy with the knowledge that there were ongoing discussions as to the legality of some techniques in it was a serious error in judgment. The September policy was superseded on October 12, 2003 as a result of legal concerns raised by U.S. Central Command. That superseding policy, however, contained ambiguities and contributed to confusion about whether aggressive techniques, such as military working dogs, were authorized for use during interrogations.

Conclusion 18: U.S. Central Command (CENTCOM) failed to conduct proper oversight of Special Mission Unit Task Force interrogation policies. Though aggressive interrogation techniques were removed from Combined Joint Task Force 7 interrogation policies after CENTCOM raised legal concerns about their inclusion in the September 14, 2003 policy issued by Lieutenant General Sanchez, SMU TF interrogation policies authorized some of those same techniques, including stress positions and military working dogs.

Conclusion 19: The abuse of detainees at Abu Ghraib in late 2003 was not simply the result of a few soldiers acting on their own. Interrogation techniques such as stripping detainees of their clothes, placing them in stress positions, and using military working dogs to intimidate them appeared in Iraq only after they had been approved for use in Afghanistan and at GTMO. Secretary of Defense Donald Rumsfeld's December 2, 2002 authorization of aggressive interrogation techniques and subsequent interrogation policies and plans approved by senior military and civilian officials conveyed the message that physical pressures and degradation were appropriate treatment for detainees in U.S. military custody. What followed was an erosion in standards dictating that detainees be treated humanely.

I. Early Influences on Interrogation Policy (U)

A. *Redefining the Legal Framework For the Treatment of Detainees* (U)

(U) From the time of their ratification until the invasion of Afghanistan in 2001, the United States government had accepted the terms of the Geneva Conventions and the U.S. military had trained its personnel to apply the Conventions during wartime. Soon after the launch of Operation Enduring Freedom (OEF), however, Administration lawyers constructed a new legal framework that abandoned the traditional U.S. application of the Geneva Conventions.[1]

(U) On January 9, 2002 attorneys at the Department of Justice wrote a memorandum to Department of Defense (DoD) General Counsel William "Jim" Haynes II, advising him that the Third Geneva Convention did not apply to the conflict with al Qaeda or the Taliban in Afghanistan.[2] The attorneys wrote the memo with the understanding that the Defense Department had established a long-term detention site at the U.S. Naval Base, Guantanamo Bay, Cuba (GTMO) for al Qaeda and Taliban members captured by U.S. military forces or transferred from U.S. allies in Afghanistan.[3]

(U) On January 18, 2002, White House Counsel Alberto Gonzales advised the President of the Department of Justice (DoJ) opinion.[4] After being briefed by Judge Gonzales, the President concluded that the Third Geneva Convention did not apply to the conflict with al Qaeda or to members of the Taliban, and that they would not receive the protections afforded to Prisoners Of War (POWs).[5]

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[1] According to Jack Goldsmith, Special Counsel in the Department of Defense (2002-2003) and Assistant Attorney General, Office of Legal Counsel (2003-2004): "never in the history of the United States had lawyers had such extraordinary influence over war policies as they did after 9/11. The lawyers weren't necessarily expert on al Qaeda, or Islamic fundamentalism, or intelligence, or international diplomacy, or even the requirements of national security. But the lawyers—especially White House and Justice Department lawyers—seemed to 'own' issues that had profound national security and political and diplomatic consequences." These Administration lawyers "dominated discussions on detention, military commissions, interrogation, GTMO, and many other controversial terrorism policies." Jack Goldsmith, The Terror Presidency: Law and Judgment Inside the Bush Administration (New York: W.W. Norton & Company 2007) at 130-31 (hereinafter "Goldsmith, The Terror Presidency").

[2] Memo from Deputy Assistant Attorney General John Yoo and Special Counsel Robert Delahunty of Defense General Counsel William J. Haynes II, *Application of Treaties and Laws to al Qaeda and Taliban Detainees* (January 9, 2002).

[3] Ibid.; Department of Defense News Briefing (December 27, 2001), *available at* http://www.defnselink.mil/Transcripts/Transcript.aspx?TranscriptID=2696 (Secretary of Defense Donald Rumsfeld announced plans to hold detainees at the U.S. Naval Station at Guantanamo Bay, Cuba in a news conference).

[4] Memo from White House Counsel Alberto Gonzales to President George W. Bush, *Decision Re Application Of The Geneva Convention on Prisoners Of War To The Conflict With Al Qaeda And The Taliban* (January 25, 2002).

[5] In a memo to the President, White House Counsel Gonzales noted "I understand that you decided that the [Third Geneva Convention] does not apply [to the conflicts with al Qaeda or the Taliban] and, "accordingly, that al Qaeda and Taliban detainees are not prisoners of war" under the [Third Geneva Convention]. *See* Memo from White House Counsel Alberto Gonzales to President George W. Bush, *Decision Re Application Of The Geneva Convention on Prisoners Of War To The Conflict With Al Qaeda And The Taliban* (January 25, 2002).

(U) On January 19, 2002, Secretary of Defense Donald Rumsfeld instructed the Chairman of the Joint Chiefs of Staff, General Richard Myers, to inform all Combatant Commanders that al Qaeda and Taliban members are "not entitled to prisoner of war status" under the Geneva Conventions.[6] Secretary Rumsfeld added that combatant commanders should "treat [detainees] humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949."[7] Secretary Rumsfeld also instructed that his order be transmitted to the subordinate command at Guantanamo Bay for implementation. On January 21, 2002 the Chairman informed the combatant commanders of the new policy.[8]

(U) During the next few weeks – after Secretary of State Colin Powell asked the President to reconsider his decision – Administration attorneys debated the rationale for denying legal protections under the Geneva Conventions to members of al Qaeda and the Taliban.[9] On January 25, 2002, Judge Gonzales argued in a memorandum to the President that the war on terror had "render[ed] obsolete Geneva's strict limitations on questioning of enemy prisoners and render[ed] quaint some of its provisions . . ." He recommended that the President stand by his order to set aside the Geneva Conventions.[10]

(U) On February 7, 2002, President Bush signed a memorandum stating that the Third Geneva Convention did not apply to the conflict with al Qaeda and concluding that Taliban detainees (designated as "unlawful combatants" in the memorandum) were not entitled to POW status or the legal protections afforded by the Third Geneva Convention.[11] While the President also found that Common Article 3 (requiring humane treatment) did not apply to either al Qaeda or Taliban detainees, his order stated that as "a matter of policy, the United States Armed Forces

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[6] Memo from Secretary of Defense Donald Rumsfeld to Chairman of the Joint Chiefs of Staff General Richard Myers *Status of Taliban and Al Qaeda* (January 19, 2002).

[7] Ibid.

[8] Cable from the Chairman of the Joint Chiefs of Staff Richard Myers to U.S. Military Unified Commands and Services (January 21, 2002).

[9] Memo from White House Counsel Alberto Gonzales to President George W. Bush, *Decision Re Application Of The Geneva Convention on Prisoners Of War To The Conflict With Al Qaeda And The Taliban* (January 25, 2002).

[10] Judge Gonzales dismissed as "unpersuasive" legal and policy arguments that such an order would reverse longstanding U.S. policy and practice; undermine the protections afforded to U.S. or coalition forces captured in Afghanistan; limit prosecution of enemy forces under the War Crimes Act (which only applies if the Geneva Conventions apply); provoke widespread international condemnation, even if the U.S. complies with the core humanitarian principles of the treaty as a matter of policy; may encourage other countries to look for "technical loopholes" to avoid being bound by the Geneva Conventions; may discourage allies from turning over terrorists to the U.S. or providing legal assistance to the U.S.; may undermine U.S. military culture which emphasizes maintaining the highest standard of conduct in combat; and could introduce an element of uncertainty in the status of adversaries. According to Gonzales, the "positive" consequences of setting aside the Third Geneva Convention included "preserving flexibility" in the war and "substantially reduc[ing] the threat of domestic criminal prosecution under the War Crimes Act." Memorandum from White House Counsel Alberto Gonzales to President George W. Bush, *Decision Re Application Of The Geneva Convention on Prisoners Of War To The Conflict With Al Qaeda And The Taliban* (January 25, 2002).

[11] Memo from President George W. Bush, *Humane Treatment of al Qaeda and Taliban Detainees* (February 7, 2002).

shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions."[12]

(U) The President's policy statement was directed at the United States Armed Forces. The Committee is unaware of a similar Presidential policy statement governing other agencies' treatment of detainees. A February 2, 2002 State Department memo reflected that Administration lawyers involved in the discussion about the application of the Third Geneva Convention to the Taliban and al Qaeda had "all agree[d] that the CIA is bound by the same legal restrictions as the U.S. military."[13] The memo also stated, however, that "CIA lawyers believe[d] that, to the extent that the [Third Geneva Convention's] protections do not apply as a matter of law but those protections are applied as a matter of policy, it is desirable to circumscribe that policy so as to limit its application to the CIA."[14] According to the memo, "other Administration lawyers involved did not disagree with or object to the CIA's view."[15] Months later, in an October 2, 2002 meeting with DoD officials at Guantanamo Bay, Chief Counsel to the CIA's CounterTerrorist Center (CTC) Jonathan Fredman reportedly stated that the "CIA rallied" for the Conventions not to apply.[16]

(U) Several military officers, including members of the Judge Advocate General (JAG) Corps, have described difficulties in interpreting and implementing the President's February 7, 2002 order. A former Staff Judge Advocate (SJA) for the Joint Forces Command (JFCOM) stated that he thought the President's order was a tough standard for the Department of Defense (DoD) to apply in the field because it replaced a well-established military doctrine (legal compliance with the Geneva Conventions) with a policy that was subject to interpretation.[17] The President's order was not, apparently, followed by any guidance that defined the terms "humanely" or "military necessity." As a result, those in the field were left to interpret the President's order.

B. Department of Defense Office of General Counsel Seeks Information from the Joint Personnel Recovery Agency (JPRA) (U)

(U) As Administration lawyers began to reconsider U.S. adherence to the Geneva Conventions, the DoD Office of the General Counsel also began seeking information on detention and interrogation. In December 2001, the DoD General Counsel's office contacted the

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[12] Memo from President George W. Bush, *Humane Treatment of al Qaeda and Taliban Detainees* (February 7, 2002).

[13] The State Department memo reflected the views of lawyers from the Department of Justice, Department of Defense, Department of State, White House Counsel's office, Office of the Vice President, Joint Chiefs of Staff, and the Central Intelligence Agency. Memorandum from State Department Legal Adviser William Taft, IV to White House Counsel Alberto Gonzales, *Comments on Your Paper on the Geneva Convention* (February 2, 2002).

[14] Ibid.

[15] Ibid.

[16] *Counter Resistance Strategy Meeting Minutes* (undated) at 4, attached to email from Blaine Thomas to Sam McCahon, [redacted] and Mark Fallon (October 24, 2002) (hereinafter "*Counter Resistance Strategy Meeting Minutes*").

[17] Committee staff interview of Daniel Donovan (November 28, 2007).

Joint Personnel Recovery Agency (JPRA), headquartered at Fort Belvoir, Virginia, for information about detainee "exploitation."[18]

(U) JPRA is an agency of the Department of Defense under the command authority of the U.S. Joint Forces Command (JFCOM). Part of JPRA's mission is to oversee military Survival Evasion Resistance and Escape (SERE) training.[19] In the "resistance" phase of SERE training, students are subject to physical and psychological pressures (SERE techniques) designed to simulate conditions to which they might be subject if captured by an enemy that did not abide by the Geneva Conventions. Exposing U.S. military personnel to these physical and psychological pressures in a highly controlled environment equips them with the skills needed to increase resistance to hostile interrogations. Among the physical and psychological pressures used at SERE schools are stress positions, sleep deprivation, face and abdomen slaps, isolation, degradation (such as treating the student like an animal), and "walling." Until November 2007, waterboarding was also an approved training technique in the U.S. Navy SERE school.[20]

The SERE schools employ a number of strict controls to limit the physical or psychological impact of these techniques on their students.[21] For example, there are limits on the frequency, duration, and/or intensity of certain techniques. Instructors are also required to consider the extensive medical and/or psychological screening records of each student before administering any technique.[22] Students are even given a phrase they can use to make the instructor immediately cease application of all pressures.[23]

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[18] "Exploitation" is a term that JPRA uses to describe the means by which captors use prisoners for their own tactical or strategic needs. Interrogation is only one part of the exploitation process. Other examples of exploitation Hearing to Receive Information Relating To The Treatment of Detainees, Senate Committee on Armed Services, 110th Cong. (August 3, 2007) (Testimony of Terrence Russell) at 32 (hereinafter "Testimony of Terrence Russell (August 3, 2007)"); Fax cover sheet from Lt Col Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

[19] Oversight of SERE training is only part of JPRA's mission. JPRA is responsible for coordinating joint personnel recovery capabilities. Personnel recovery is the term used to describe efforts to obtain the release or recovery of captured, missing, or isolated personnel from uncertain or hostile environments and denied areas.

[20] Joint Personnel Recovery Agency, *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees* (undated), attached to Memo from Lt Col Daniel Baumgartner to Office of the Secretary of Defense General Counsel (July 26, 2002) (hereinafter "*Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees*").

[21] Responses of Jerald Ogrisseg to Questions for the Record (July 28, 2008); Testimony of Terrence Russell (August 3, 2007) at 123.

[22] Responses of Jerald Ogrisseg to Questions for the Record (July 28, 2008) ("Military SERE training students are screened multiple times prior to participating in training to ensure that they are physical and psychologically healthy. They get screened prior to entering the service to ensure that they don't have certain disorders. Students are required to get screened by military doctors at their home bases prior to traveling for SERE training to ensure that they meet the physical and psychological standards for participating in training. Most SERE schools also mandate that students complete screening questionnaires after they arrive at SERE school as a final safety check and for additional help or interventions if needed, to include being restricted from experiencing particular training procedures. Furthermore, the students arrive with their medical records in hand or available electronically to document their entire medical history, and indications of prior psychological diagnoses since their original military-entry physicals. These procedures are used not only to screen people out of participating in training, but also for

(U) SERE instructors are themselves psychologically prescreened prior to hiring, and must submit to a nearly year-long training process, annual psychological screening, and extensive monitoring and oversight during practical exercises. These requirements are designed to prevent instructor behavioral drift, which if left unmonitored, could lead to abuse of students.[24]

(U) JPRA's expertise lies in training U.S. military personnel who are at risk for capture, how to respond and resist interrogations (a defensive mission), not in how to conduct interrogations (an offensive mission).[25] The difference between the two missions is of critical importance. SERE instructors play the part of interrogators, but they are not typically trained interrogators. SERE instructors are not selected for their roles based on language skills, intelligence training, or expertise in eliciting information.[26]

(U) The risk of using SERE physical pressures in an interrogation context, instead of in the highly controlled SERE school environment, was highlighted by the senior Army SERE psychologist LTC Morgan Banks in an email to personnel at Guantanamo Bay, Cuba. He stated:

> Because of the danger involved, very few SERE instructors are allowed to actually use physical pressures. It is extremely easy for U.S. Army instructors, training U.S. Army soldiers, to get out of hand, and to injure students. The training, from the point of the student, appears to be chaotic and out of control. In reality, everything that is occurring [in SERE school] is very carefully monitored and paced; no one is acting on their own during training. Even with all these

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identifying people who could be provided preventative interventions in order to increase their probab[ility] of success in training.")

[23] The Origins of Aggressive Interrogation Techniques: Part I of the Committee's Inquiry Into the Treatment of Detainees in U.S. Custody, Senate Committee on Armed Services, 110th Cong. (June 17, 2008) (hereinafter "SASC Hearing (June 17, 2008)"); FASO Detachment Brunswick Instruction 3305.C (January 1, 1998).

[24] According to Dr. Jerald Ogrisseg, the former Chief of Psychology Services at the Air Force SERE school and current JPRA Chief Human Factors, instructors are constantly monitored by other JPRA personnel, command staff, and SERE psychologists to minimize the potential for students to be injured. These oversight mechanisms are designed to ensure that SERE instructors are complying with operating instructions and to check for signs that instructors do not suffer from moral disengagement (e.g., by becoming too absorbed in their roles as interrogators and starting to view U.S. military SERE students as prisoners or detainees). These oversight mechanisms are also designed to watch students for "indications that they are not coping well with training tasks, provide corrective interventions with them before they become overwhelmed, and if need be, re-motivate students who have become overwhelmed to enable them to succeed." Responses of Jerald Ogrisseg to Questions for the Record (July 28, 2008); Committee staff interview of Jerald Ogrisseg (June 26, 2007).

[25] Department of Defense Office of the Inspector General, *Review of DoD-Directed Investigations of Detainee Abuse* (U) (August 25, 2006) at 24 (hereinafter "DoD IG Report").

[26] A trained interrogator is expected to be familiar with the social, political and economic institutions and have an understanding of the geography, history and language of "target" countries. Additionally, the more proficient an interrogator is with languages the "better he will be able to develop rapport with his source" and "follow up on source leads to additional information." Army Field Manual (FM) 34-52, 1-14.

safeguards, injuries and accidents do happen. The risk with real detainees is increased exponentially.[27]

(U) Despite the differences between the simulated interrogations at SERE school and real world interrogations of detainees, in December 2001, the DoD General Counsel's office sought JPRA's advice on the "exploitation" of detainees. The Committee is not aware of JPRA activities in support of any offensive interrogation mission prior to that request from the General Counsel's office. In response to the request, JPRA Chief of Staff Lt Col Daniel Baumgartner sent Deputy General Counsel for Intelligence Richard Shiffrin a memorandum on the "exploitation process" and a cover note offering further JPRA assistance on "exploitation and how to resist it."[28]

[redacted] The memorandum outlined JPRA's view on "obtaining useful intelligence information from enemy prisoners of war" (EPWs).[29]

(U) [redacted] The memo provided the JPRA perspective on how their SERE school staff would handle the "initial capture," "movement," and "detention" of prisoners.[30] It also provided advice on interrogation and recommended various approaches, including the use of undefined "deprivations."[31]

[redacted] The memo cautioned, however, that while "[p]hysical deprivations can and do work in altering the prisoners' mental state to the point where they will say things they normally would not say," use of physical deprivations has "several major downfalls."[32] JPRA warned that physical deprivations were "not as effective" a means of getting information as psychological pressures, that information gained from their use was "less reliable," and that their use "tends to increase resistance postures when deprivations are removed."[33] JPRA also warned that the use of physical deprivations has an "intolerable public and political backlash when discovered."[34]

C. JPRA Collaboration with Other Government Agencies (OGAs) (U)

[redacted] In December 2001 or January 2002, a retired Air Force SERE psychologist, Dr. James Mitchell, [redacted] asked his former colleague, the senior SERE psychologist at JPRA, Dr. John "Bruce" Jessen, to review documents

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[27] Email from LTC Morgan Banks to MAJ Paul Burney and [redacted] (October 2, 2002).

[28] Fax cover sheet from LTC Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

[29] *Exploitation Process* at 1, attached to fax from LTC Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

[30] [redacted] *Exploitation Process* at 1-3 [redacted]

[31] Ibid. at 3-4.

[32] Ibid. at 4.

[33] Ibid.

[34] Ibid.

describing al Qaeda resistance training.[35] The two psychologists reviewed the materials, and generated a paper on al Qaeda resistance capabilities and countermeasures to defeat that resistance.

On February 12, 2002, Dr. Jessen sent the paper to JPRA Commander Colonel John "Randy" Moulton, who in turn, emailed the paper to his chain of command at JFCOM with a recommendation that it be forwarded to the Joint Staff for dissemination.[36] In his email, Col Moulton wrote:

> While JPRA is not in the business of strategic debriefing (interrogation), we do apply the most sophisticated techniques available in order to better prepare our [personnel] for resistance. After over 30 years of training we have become quite proficient with both specialized resistance and the ways to defeat it.[37]

Col Moulton also recommended in his email that a JPRA team travel to Guantanamo Bay, Cuba to "provide instruction on basic and advanced techniques and methods" that JPRA had found effective in countering resistance in students at SERE courses.[38] Col Moulton suggested that JPRA create a "short course" to teach relevant U.S. personnel about "interrogation from the resistance side," noting that JPRA had already received an informal request to conduct training for the whose personnel were supporting interrogation operations at Guantanamo Bay and in Afghanistan.[39] The JPRA Commander described the potential collaboration between JPRA and as a "win-win opportunity."[40]

In a subsequent email to Brigadier General (BG) Galen Jackman, the Operations Chief at United States Southern Command (SOUTHCOM), Brigadier General (Brig Gen) Thomas Moore, JFCOM's Director for Operations and Plans (J3), stated that JPRA was "prepared to support [SOUTHCOM] in any potential collaboration," but that they would not assist without an official request from SOUTHCOM or GTMO.[41]

The JPRA paper and Col Moulton's recommendations were further circulated by email from JFCOM to officers at the Joint Staff and to several Combatant Commands, including those with responsibility for Afghanistan, Iraq, and Guantanamo Bay.[42]

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[35] Committee staff interview of Bruce Jessen (July 11, 2007); Email from Col John R. (Randy) Moulton to MAJ Jack Holbein, BGen Thomas Moore, CAPT Darryl Fengya, and (February 14, 2002).

[36] Email from Bruce Jessen to Col Randy Moulton (February 12, 2002).

[37] Email from Col Randy Moulton to MAJ Jack Holbein, BGen Thomas Moore, CAPT Darryl Fengya, (February 14, 2002).

[38] Ibid.

[39] Ibid.; Memo from Col Mary Moffitt (via BG Ronald Burgess) to BGen Thomas Moore (undated) at 1.

[40] Email from Col Randy Moulton to MAJ Jack Holbein, BGen Thomas Moore, CAPT Darryl Fengya, (February 14, 2002).

[41] Email from BGen Thomas Moore to BG Galen Jackman et al. (February 14, 2002).

[42] Email from LTC Michael McMahon to Lt Col Steven Ruehl, COL Jim Sikes, COL Daniel Bolger, Steve Wetzel, CAPT Bill Pokorny, COL Cos Spofford, COL Edward Short, Col Kevin Kelley (February 14, 2002).

D. *JPRA Support to the Defense Intelligence Agency (DIA) (U)*

[redacted] In February 2002, the Defense Intelligence Agency's (DIA) [redacted] sent an official request for support to JFCOM's J3, Brig Gen Moore.[43]

[redacted] The request memo stated that [redacted]

[redacted] ([redacted] In response to the request, two JPRA personnel – senior SERE psychologist Bruce Jessen and JPRA instructor Joseph Witsch – [redacted] The two week class was described as an "ad hoc 'crash' course on interrogation" for the "next crew (rotation) going to SOUTHCOM."[46] The JPRA team also participated in a separate video teleconference with [redacted] leadership and GTMO interrogation staff where issues [redacted] were discussed.[47] Dr. Jessen said that he and Mr. Witsch went to make a "pitch" to [redacted] about how JPRA could assist.[48]

[redacted] Mr. Witsch stated that he worked with Dr. Jessen to develop a set of briefing slides for the [redacted] training.[49] The Department of Defense provided the Committee with slide presentations that appeared to have been produced by JPRA for the March 8, 2002 training. Mr. Witsch testified that two slide presentations (1) [redacted] Based on Recently Obtained Al Qaeda Documents" and (2) "Exploitation" – appeared to be the same as those used by JPRA in the March 8, 2002 training.[50] Dr. Jessen told the Committee that he did not recognize the slides as those that he presented [redacted] but that the vast majority of the slides were consistent with what he would have taught at the training session.[51]

[redacted] The "Al Qaeda Resistance Contingency Training" presentation described methods used by al Qaeda to resist interrogation and exploitation and [redacted]

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[43] Memo from Col Mary Moffitt (via BG Ronald Burgess) to BGen Thomas Moore (undated).

[44] Ibid.

[45] Email from Bruce Jessen to Col Randy Moulton (March 12, 2002); *see also* SASC Hearing (June 17, 2008) (Testimony of Lt Col Daniel Baumgartner) ("DIA accepted [JPRA's] help . . . with their deploying groups" and JPRA instruction "centered on resistance techniques, questioning techniques, and general information on how exploitation works.")

[46] Email from Jim Perna to Christopher Wirts, Bruce Jessen, and Joseph Witsch (February 20, 2002).

[47] Email from Bruce Jessen to Col Randy Moulton (March 12, 2002).

[48] Committee staff interview of Bruce Jessen (November 13, 2007).

[49] Hearing to Receive Information Relating To The Treatment of Detainees, Senate Committee on Armed Services, 110th Cong. (September 4, 2007) (Testimony of Joseph Witsch) at 20 (hereinafter "Testimony of Joseph Witsch (September 4, 2007)").

[50] Testimony of Joseph Witsch (September 4, 2007) at 20.

[51] Committee staff interview of Bruce Jessen (November 13, 2007).

The presentation also described countermeasures to defeat al Qaeda resistance, including [redacted][53] Mr. Witsch testified to the Committee that the countermeasures identified in the slides were "just an interpretation of what we were doing at the time and what we constantly did when we trained SERE students."[54]

[redacted] The presentation on detainee "exploitation" described phases of exploitation and included instruction on initial capture and handling, conducting interrogations, and long-term exploitation.[55] The exploitation presentation also included slides on "isolation and degradation," "sensory deprivation," "physiological pressures," and "psychological pressures."[56] At SERE school, each of these terms has special meaning.

[redacted] ([redacted] The [redacted] instructor guide describes "isolation" as "a main building block of the exploitation process" and says that it "allows the captor total control over personal inputs to the captive."[57] With respect to degradation, the guide contains examples of the methods used by SERE instructors to take away the "personal dignity" of students at SERE school.[58] Examples of degradation techniques used at SERE school include [redacted] Mr. Witsch, the JPRA instructor who led the March 8, 2002 training, told the Committee that stripping could also be considered a degradation tactic.[60]

[redacted] Mr. Witsch could not recall what the JPRA team discussed as part of the instruction to [redacted] relating to degradation.[61]

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[52] [redacted] Joint Personnel Recovery Agency, *Al Qaeda Resistance Contingency Training: Contingency Training for [redacted] Personnel Based on Recently Obtained Al Qaeda Documents* (undated).

[53] Ibid.

[54] Testimony of Joseph Witsch (September 4, 2007) at 46.

[55] Joint Personnel Recovery Agency, *Exploitation* (undated).

[56] ([redacted] Another slide describing captor motives states: establish absolute control, induce dependence to meet needs, elicit compliance, shape cooperation. Joint Personnel Recovery Agency, *Exploitation* (undated). In other JPRA materials, techniques designed to achieve these goals include isolation or solitary confinement, induced physical weakness and exhaustion, degradation, conditioning, sensory deprivation, sensory overload, disruption of sleep and biorhythms, and manipulation of diet. *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees.*

[57] Level C Peacetime Governmental Detention Survival JPRA Instructor Guide, *Exploitation: Threats and Pressures*, Module 6.0, Lesson 6.1, para 5.3.1 (Version G01.1).

[58] Ibid. at para 5.3.3.

[59] Ibid.

[60] Testimony of Joseph Witsch (September 4, 2007) at 22.

[61] Ibid.

[redacted] ([redacted] JPRA materials also describe "sensory deprivation" and its place in the exploitation process.[62] In testimony to the Committee, Mr. Witsch described hooding (placing a hood over the head of a student) and white noise (such as radio static) as sensory deprivation methods used on students in SERE school.[63] In materials provided to Department of Defense lawyers in July 2002, JPRA explained that "[w]hen a subject is deprived of sensory input for an [un]interrupted period, for approximately 6-8 hours, it is not uncommon for them to experience visual, auditory and/or tactile hallucinations. If deprived of input, the brain will make it up."[64]

[redacted] Mr. Witsch could not recall the discussion of "sensory deprivation" at the [redacted] training.[65]

(U) When used in the context of simulated interrogations conducted at SERE school, JPRA uses the term "physiological pressures" synonymously with approved physical pressures.[66]

[redacted] Mr. Witsch could not recall what the discussion of "physiological and psychological pressures" at [redacted][67] He said that he provided [redacted] personnel with a "vision of how we (JPRA) prepare, train, and equip our personnel" in SERE school.[68] Mr. Witsch could not recall if physical pressures were discussed at the training.[69] Dr. Jessen, the senior SERE psychologist who also provided instruction to [redacted] personnel, said that physical pressures were not discussed at the March 8, 2002 training.[70]

[redacted] ([redacted] Following the training, Dr. Jessen sent an email to JPRA Commander Col Randy Moulton stating that the JPRA team "provided instruction to [redacted] personnel on the content of US Level "C" Resistance to Interrogation training and how this knowledge can be used to exploit al Qaeda detainees."[71] Level "C" training includes the physical and psychological pressures used at SERE school. Dr. Jessen also stated, however, that the JPRA team provided suggestions on "how to exploit al Qaeda detainees for intelligence within the confines of the Geneva Conventions."[72] Dr. Jessen told the Committee, however, that he would

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[62] *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees.*

[63] Testimony of Joseph Witsch (September 4, 2007) at 23-24.

[64] *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees*; *See* Section II D, *infra.*

[65] Testimony of Joseph Witsch (September 4, 2007) at 22.

[66] Committee staff interview of Bruce Jessen (July 11, 2002).

[67] Testimony of Joseph Witsch (September 4, 2007).

[68] Ibid. at 44.

[69] Ibid. at 25.

[70] Committee staff interview of Bruce Jessen (July 11, 2002).

[71] Email from Bruce Jessen to Col Randy Moulton (March 12, 2002).

[72] Ibid.

not have known at the time if isolation, degradation, sensory deprivation, or other topics referenced in the slides would have been within the confines of the Geneva Conventions.[73]

[redacted] Days later, Dr. Jessen sent Col Moulton another email with his thoughts about additional training for interrogators. Dr. Jessen explained that for future training, one day would be sufficient to "cover the basics of DOD Level 'C' Resistance training and the special contingency information" that they addressed [redacted]. However, he said that if he added "role-play" to the curriculum, he would need at least four days.[74]

[redacted] Dr. Jessen stated: "My impression is [redacted] requires a more 'exploitation oriented' approach than the students received. [JPRA's Personnel Recovery Academy (PRA)] instructors do this better than anyone. If JPRA provided role play it would be manpower intensive, require more time and space (rooms) and video monitor equipment (which PRA has)."[75] Dr. Jessen recommended that he come up with a course curriculum with input from others, if JPRA planned to "go[] this direction."[76]

E. JPRA Recommendations for GTMO (U)

[redacted] training was not the first time JPRA provided advice to GTMO personnel. Just before [redacted] training, JPRA prepared a memo on "Prisoner Handling Recommendations" at GTMO for Col Cooney, the Executive Officer for the Directorate of Operations (J3) at SOUTHCOM.[77] The memo had been drafted by Dr. Jessen, the senior SERE psychologist, and Christopher Wirts, the Chief of JPRA's Operational Support Office (OSO).[78] The memo noted that its recommendations were based on a "limited understanding of the procedures and conditions that exist[ed]" at the detention facility at Guantanamo Bay.[79]

[redacted] ([redacted] The JPRA memo contained specific recommendations for GTMO, including that GTMO "enforce the strictest 'base line' prison behavior policy possible within [Rules of Engagement]" by imposing and enforcing punishment consequences more restrictive than base line rules, and [redacted][80] JPRA also recommended that GTMO tailor punishment to maximize cultural undesirability and tailor rewards to maximize cultural desirability.

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[73] Dr. Jessen told the Committee that, at the time, he did not know that the scope of the Geneva Conventions protections were different for Prisoners of War than they were for al Qaeda or Taliban detainees. Committee staff interview of Bruce Jessen (November 13, 2007).

[74] Email from Bruce Jessen to Col Randy Moulton et al. (March 18, 2002).

[75] Ibid.

[76] Ibid.

[77] Memo for Col Cooney, *Prisoner Handling Recommendations* (February 28, 2002), attached to email from Bruce Jessen to Joseph Witsch (March 13, 2002).

[78] Email from Bruce Jessen to Joseph Witsch (March 13, 2002). Committee staff interview of Bruce Jessen (November 13, 2007).

[79] Memo for Col Cooney, *Prisoner Handling Recommendations* (February 28, 2002).

[80] Memo for Col Cooney, *Prisoner Handling Recommendations* (February 28, 2002), attached to email from Bruce Jessen to Joseph Witsch (March 13, 2002).

F. Colonel Herrington's Assessment of GTMO (U)

(U) At the time of the JPRA memo, GTMO was seeking assistance from other quarters as well. In March 2002, Commander of Joint Task Force 170 (JTF-170) Major General (MG) Michael Dunlavey invited Colonel Stuart A. Herrington (Ret.), an experienced Army intelligence officer, to Guantanamo Bay to conduct an assessment of operations at the facility.[81] Following his three day assessment visit, COL Herrington submitted a formal written report on March 22, 2002 to MG Dunlavey as well as to the Command at SOUTHCOM and the Army Deputy Chief of Staff for Intelligence.[82]

(U) At the time of COL Herrington's visit, the mission at Guantanamo was under the control of two different task forces, each commanded by a different Major General: JTF-170 for intelligence exploitation and JTF-160 for detention and security operations.[83] COL Herrington noted in his assessment that there was "unanimity among all military and interagency participants in TF-170 that the security mission is sometimes the tail wagging the intelligence dog" and stated:

> To effectively carry out its intelligence exploitation mission, TF 170 and its interagency collaborators need to be in full control of the detainees' environment. Treatment, rewards, punishment, and anything else associated with a detainee should be centrally orchestrated by the debriefing team responsible for obtaining information from that detainee.[84]

(U) COL Herrington also expressed concern that actions (positive or negative) which guards might take as routine, such as singling a detainee out for a shakedown or providing an extra chaplain's visit, might impact the ability of interrogators and debriefers from setting the tone of the questioning sessions.[85]

(U) COL Herrington found that facilities and procedures at GTMO for handling detainees posed serious problems. He said that design flaws at GTMO's current and planned detention sites hampered intelligence collection, noting that the "open" facilities, for example, facilitated communications among the detainees and discouraged detainee cooperation by permitting detainees to support each other's resistance efforts.[86]

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[81] COL Herrington had acquired experience in interrogation and debriefing during more than thirty years of military service. Memo from COL Stuart Herrington to MG Michael Dunlavey, *Report of Visit and Recommendations* (March 22, 2002) at 8.

[82] *See* COL Herrington, *Report of Visit and Recommendations*; COL Herrington also provided an additional list of "suggestions" for MG Dunlavey and his J2, LTC Ron Buikema. *See* Memo from COL Stuart Herrington to MG Michael Dunlavey, *Suggestions* (March 25, 2002)

[83] JTF-160 was established at Guantanamo Bay in the mid-1990s to support relief and migrant processing centers for Haitian and Cuban migrants.

[84] COL Herrington, *Report of Visit and Recommendations* at 1-2.

[85] Ibid. at 2.

[86] Ibid. at 3.

(U) COL Herrington also warned that certain security procedures in place at the time could have a negative impact on intelligence collection, stating:

> The austere nature of the facilities and the rigorous security movement procedures (shackles, two MPs with hands on the detainee, etc.) reinforces to detainees that they are in prison, and detracts from the flexibility that debriefers require to accomplish their mission. . . These views have nothing to do with being "soft" on the detainees. Nor do they challenge the pure security gains from such tight control. The principal at work is that optimal exploitation of a detainee cannot be done from a cell . . .[87]

(U) Specifically, COL Herrington recommended that MPs not be in the room during interrogations and warned that, while shackling a detainee might make sense from a security standpoint, it could be counterproductive to intelligence collection:

> Shackling one of the detainee's feet to the floor during interrogation might make sense from a security perspective (although, with one or two MPs present, it is arguable overkill). However, such shackling is either a) humiliating, or b) sends a message to the detainee that the debriefer is afraid of him, or c) reminds him of his plight as a prisoner.[88]

(U) COL Herrington observed that most of the interrogators at GTMO lacked the requisite training in strategic elicitation or the experience required to be effective with the detainees.[89] He said that, of the 26 interrogators present at the time, only one had enough Arabic language experience to interrogate without an interpreter.[90]

[redacted] A memo written by Colonel Mike Fox (SOUTHCOM's Director of Intelligence Operations) just a month after COL Herrington's report, also discussed how conditions at GTMO inhibited successful interrogations. [redacted]

[87] Ibid. at 4.

[88] COL Herrington also identified additional deficiencies in intelligence collection, which he said could be improved by arming GTMO with the ability to translate and review relevant documents onsite and monitor interrogations using video technology. Ibid.

[89] Ibid. at 6.

[90] COL Herrington's report also criticized the screening criteria in place, which may have resulted in detainees with less intelligence value being sent to GTMO and those with more valuable detainees being set free. COL Herrington, *Report of Visit and Recommendations* at 6.

[91] COL Mike Fox, *JTF-170 Methods and Techniques Info Paper* (April 22, 2002).

[redacted]

G. *JPRA Prepares Draft Exploitation Plan* (U)

(U) As experienced intelligence officers were making recommendations to improve intelligence collection, JPRA officials with no training or experience in intelligence collection were working on their own exploitation plan. In April 2002, senior SERE psychologist Bruce Jessen drafted an exploitation plan and circulated that plan to Commander of the JPRA, Col Randy Moulton, and the senior civilian leadership of the organization.[94]

[redacted] The exploitation plan drafted by the senior SERE psychologist contained recommendations for JPRA involvement in the detainee exploitation process at an undisclosed facility.

[redacted] The "Exploitation Draft Plan," which was circulated on April 16, 2002, stated that its objective was to "[h]old, manage and exploit detainees to elicit critical information."[95] The plan proposed an "exploitation facility" be established at a [redacted] off limits to non-essential personnel, press, ICRC, or foreign observers."[96] The plan also described the fundamentals – [redacted] "exploitation of select al Qaeda detainees."[97]

[redacted] The first option was for JPRA to field, deploy, direct, and sustain an entire interrogation team.[98] The plan recommended that JPRA not pursue this course stating, "No – Too much of a manpower drain and we [JPRA] are not prepared to provide this kind of support infrastructure."[99] A second option was for JPRA to field a "lead captivity/ exploitation expert (JPRA Senior SERE Psychologist) to advise and support" the exploitation process and to

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[92] Ibid.

[93] Ibid.

[94] Email from Dr. Bruce Jessen to Christopher Wirts, Mike Dozier and Randy Moulton (April 16, 2002).

[95] Joint Personnel Recovery Agency, *Exploitation Draft Plan* (undated), attached to email from Bruce Jessen to Col Randy Moulton, Christopher Wirts, and Mike Dozier (April 16, 2002) (hereinafter "JPRA, *Exploitation Draft Plan*").

[96] Ibid.

[redacted]

[98] Ibid.

[99] Ibid.

have a "sponsor" provide all other personnel and direct the process. This option was also rejected as "ineffective," noting that if JPRA could "direct" the exploitation process, there would be a
"good chance of [JPRA] making a real difference," but "if not," there are "too many other responsibilities to expend . . . energy on."[100]

[redacted] The third option was described as follows:

> JPRA fields and deploys core captivity/exploitation team – This team directs the process under the lead of the JPRA Senior SERE Psychologist and receives all additional specified support from a sponsor – Those sponsor individuals who directly assist in the exploitation process will receive training from the JPRA cadre.[101]

[redacted] While this option was recommended as the "[b]est match of expertise and capability," the plan cautioned that JPRA "need[ed] to be careful in establishing this relationship" and that JPRA should retain "the authority to direct the entire process or current mistakes will be repeated (GTMO, lack of experience of in-theater interrogators, ineffective captivity handling and facility routine) – [The] JPRA plan should be implemented from the start of detention through holding, transport, and exploitation."[102]

[redacted] Dr. Jessen's draft exploitation plan described the means by which JPRA would implement that recommendation, and included requirements for an undisclosed exploitation facility and the means by which detainees would be transported and held there.[103]

[redacted] A section of Dr. Jessen's draft exploitation plan also identified "Critical Operational Exploitation Principles" for interrogation operations. Those principles included:

> [redacted]
> *(The only restricting factor should be the Torture Convention)*, [7] Established latitude and process to offer and validate information for concessions, [redacted]

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[100] Ibid.

[101] Ibid.

[102] Ibid.

[103] The plan also described requirements for the management of the facility identical to those included in the "Prisoner Handling Recommendations" previously prepared by JPRA for SOUTHCOM. Ibid.; Memo for Col Cooney, *Prisoner Handling Recommendations* (February 28, 2002).

[104] JPRA, *Exploitation Draft Plan* (emphasis added).

[redacted]

[redacted] When asked about the plan, which his email referred to as "my" plan, Dr. Jessen said that there are elements that he did not draft.[105] For example, he told the Committee that he did not believe that the Torture Convention was the only controlling authority for exploitation Rules of Engagement.[106] Dr. Jessen, however, did not reject the idea of having JPRA support the exploitation process. Dr. Jessen said that he knew how to set up training programs, had observed numerous "interrogations" at SERE school, and thought that some JPRA instructors could make excellent interrogators.[107] He also told the Committee that he supported having SERE psychologists observe interrogations and provide advice and assistance to interrogators, but that that he did not support having SERE psychologists in the interrogation booth with interrogators and detainees.

(U) Upon receiving the plan, JPRA Commander Col Randy Moulton asked Dr. Jessen to craft a briefing to "take up for approval," which included "why we (USG) need it, how it falls within our chartered responsibilities (or if not, why we should do it) and then make a recommendation."[108] Col Moulton testified to the Committee that he did not recall any subsequent JPRA briefings for U.S. Joint Forces Command on Dr. Jessen's draft exploitation plan and did not remember whether or not the plan was implemented.[109]

II. Development of New Interrogation Authorities (U)

A. CIA's Interrogation Program and the Interrogation of Abu Zubaydah (U)

(U) Abu Zubaydah was captured by Pakistani and CIA forces on March 28, 2002. According to former CIA Director George Tenet, once Zubaydah was in custody, the CIA "got into holding and interrogating high-value detainees" (HVDs) "in a serious way."[110] Then-National Security Advisor Condoleezza Rice said that "in the spring of 2002, CIA sought policy approval from the National Security Council to begin an interrogation program for high-level al-Qaida terrorists."[111] Then-NSC Legal Advisor John Bellinger said that he asked CIA to have the proposed program reviewed by the Department of Justice and that he asked CIA to seek advice not only from DoJ's Office of Legal Counsel (OLC) but also from the Criminal Division.[112] Ms. Rice said that she asked Director of Central Intelligence George Tenet to brief NSC Principals on the proposed CIA program and asked Attorney General Ashcroft "personally to review the

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[105] The Department of Defense confirmed that the "Exploitation Draft Plan" in the Committee's possession was, in fact, attached to Dr. Jessen's April 16, 2002 email, making it the same document Dr. Jessen referred to as "my initial draft plan."

[106] Committee staff interview of Bruce Jessen (July 11, 2007).

[107] Committee staff interview of Bruce Jessen (November 13, 2007).

[108] Email from Col Randy Moulton to Bruce Jessen, Christopher Wirts, Mike Dozier (April 17, 2002).

[109] The Authorization of Survival Evasion Resistance and Escape (SERE) Techniques for Interrogations in Iraq: Part II of the Committee's Inquiry Into the Treatment of Detainees in U.S. Custody, Senate Committee on Armed Services, 110th Cong. (September 25, 2008) (hereinafter "SASC Hearing (September 25, 2008)").

[110] George Tenet, At The Center Of The Storm (New York: Harper Collins Publishers 2007) at 241.

[111] Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[112] John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[redacted]

legality of the proposed program.[113] She said that all of the meetings she attended on the CIA's interrogation program took place at the White House and that she understood that DoJ's legal advice "was being coordinated by Counsel to the President Alberto Gonzales."[114]

(U) According to President Bush, the agency developed an "alternative set" of "tough" interrogation techniques, and put them to use on Zubaydah and other HVDs.[115] Though virtually all of the techniques that were used on Zubaydah remain classified, CIA Director Michael Hayden confirmed that waterboarding was used on Zubaydah.[116] Assistant Attorney General for the Office of Legal Counsel (OLC) Steven Bradbury testified before Congress that the "CIA's use of the waterboarding procedure was adapted from the SERE training program."[117] When asked whether she was present for discussions about physical and/or psychological pressures used in SERE training, Secretary Rice recalled "being told that U.S. military personnel were subjected in training to certain physical and psychological interrogation techniques."[118] Mr. Bellinger, the NSC Legal Advisor, stated that he was "present in meetings at which SERE training was discussed."[119]

(U) Public reports have identified a retired U.S. Air Force SERE psychologist, Dr. James Mitchell, as having participated in the CIA's interrogation of Zubaydah.[120] Dr. Mitchell, who retired from the Air Force in 2001, agreed to speak to the Committee about his time at DoD.

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[113] Secretary Rice said that in 2002-2003, she 'participated in a number of discussions of specific interrogation techniques proposed for use by the CIA." Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[114] Ibid.

[115] In a September 6, 2006 speech, President Bush stated that since September 11, 2001, a "small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency." The President stated that the CIA used "an alternative set of procedures" in interrogating the detainees. According to the President, the CIA techniques "were tough, and they were safe, and lawful, and necessary." The President identified Abu Zubaydah as one detainee who was subject to the CIA's alternative techniques. Press Briefing with President George W. Bush (September 6, 2006); *see also* Tenet, At The Center Of The Storm at 241.

[116] Current and Projected National Security Threats, Senate Select Committee on Intelligence, 110th Cong. (February 5, 2008).

[117] Justice Department's Office of Legal Counsel, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (February 14, 2008).

[118] Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[119] John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[120] Jane Mayer, *The Experiment*, The New Yorker (July 11-18, 2005); Jane Mayer, *The Black Sites*, The New Yorker (August 13, 2007) ("According to an eyewitness, one psychologist advising on the treatment of Zubaydah, James Mitchell, argued that he needed to be reduced to a state of 'learned helplessness.' (Mitchell disputes this characterization)."); Katherine Eban, *Rorschach and Awe*, Vanity Fair Online (July 17, 2007), *available at* http://www.vanityfair.com/politics/features/2007/07/torture200707.

[121] Committee staff interview of James Mitchell (July 10, 2007); Letter to Senator Carl Levin (June 22, 2007).

(U) An unclassified version of a May 2008 report by the Department of Justice (DoJ) Inspector General (IG) confirmed that FBI agents "initially took the lead in interviewing Zubaydah at the CIA facility," but that "CIA personnel assumed control over the interviews" when they arrived at the facility.[125]

[122] Committee staff interview of FBI Special Agent (December 21, 2007).

[123] Ibid.

[124] Ibid.

[125] DoJ IG Report at 68.

[126] Committee staff interview of James Mitchell (July 10, 2007); Committee staff interview of FBI Special Agent (December 21, 2007).

[127] Committee staff interview of FBI Special Agent (December 21, 2007).

[128] Ibid.

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(U) The FBI Special Agent told the DoJ Inspector General that he also "raised objections to these techniques to the CIA and told the CIA it was 'borderline torture.'"[130] According to the unclassified DoJ Inspector General's report, a second FBI agent present did not have a "'moral objection'" to the techniques and noted that he had "undergone comparable harsh interrogation techniques as part of the U.S. Army Survival, Evasion, Resistance and Escape (SERE) training."[131]

(U) According to the DoJ Inspector General's report, FBI Counterterrorism Assistant Director Pat D'Amuro gave the instruction to both FBI agents to "come home and not participate in the CIA interrogation." The first FBI Special Agent left immediately, but the other FBI agent remained until early June 2002.[133] The report said that around the time of Zubaydah's interrogation, FBI Director Robert Mueller decided that FBI agents would not participate in interrogations involving techniques the FBI did not normally use in the United States, even though the OLC had determined such techniques were legal.[134] Then-National Security Advisor Condoleezza Rice said that she had a "general recollection that FBI had decided not to participate in the CIA interrogations" but "was not aware that FBI personnel objected to interrogation techniques used or proposed for use with Abu Zubaydah."[135]

B. JPRA Assistance to Another Government Agency (U)

( ) As interrogation of Abu Zubaydah was ongoing, The Chief of JPRA's Operational Support Office (OSO), Christopher Wirts, told the Committee that he had five or fewer meetings with where they discussed interrogations.[136]

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[130] U.S. Department of Justice, Office of the Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq* (May 2008) at 68 (hereinafter "DoJ IG Report").

[131] Ibid. at 69.

[132] Committee staff interview of FBI Special Agent (December 21, 2007).

[133] DoJ IG Report at 69; *see also Counter Resistance Strategy Meeting Minutes* at 4. (Months later, in an October 2, 2002 meeting with DoD officials at Guantanamo Bay, Chief Counsel to the CIA's CounterTerrorist Center (CTC) reportedly Jonathan Fredman confirmed that "[w]hen the CIA has wanted to use more aggressive techniques in the past, the FBI has pulled their personnel from theater.")

[134] DoJ IG Report at 73.

[135] Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[136] Committee staff interview of Christopher Wirts (January 4, 2007); *see also* JPRA/OSO, *Concept of Operations for JPRA support to anticipated requirements* (October 3, 2002). The memo states, has made informal requests for JPRA support to prepare to use exploitation/interrogation techniques . . . Five separate meetings have been conducted between and JPRA representatives. . ."

[redacted]

[redacted] At some point in the first six months of 2002, JPRA assisted with the preparation of a [redacted] sent to interrogate a high level al Qaeda operative.[137] In a June 20, 2002 memo to JPRA's Commander Randy Moulton, JPRA's Deputy Commander Col John Prior, characterized the assistance as "training" and noted that the psychologist had suggested "exploitation strategies" to [redacted] officer.[138]

[redacted] Dr. Bruce Jessen, JPRA's senior SERE psychologist, told the Committee that he had met with a [redacted] who was en route to an interrogation.[139] He said he may have offered the [redacted] but that he did not discuss [redacted]

[redacted] JPRA also conducted training and pre-mission preparation for a group of [redacted] officers.[140] On June 17, 2002, [redacted] sent a request to the Joint Staff seeking DoD approval for the two-day JPRA training.[141] That request was drafted by an [redacted] and Mr. Wirts, JPRA's OSO Chief.[142] DoD General Counsel Jim Haynes told the Committee that he had been made aware of a [redacted] request for JPRA training at least as early as late summer 2002.[143]

[redacted] request asked that JPRA provide training [redacted] on topics such as [redacted] deprivation techniques," "exploitation and questioning techniques," and "developing countermeasures to resistance techniques."[144] The training was intended to "prepare [redacted] officers for rotations in Afghanistan and elsewhere."[145]

[redacted] In response to that request, JPRA Deputy Commander Col John Prior recommended to the JPRA Commander:

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[137] [redacted] Memo from Col John Prior II to JPRA/CC (Col Randy Moulton), *Request from* [redacted] *for Interrogation Training Support* (June 20, 2002).

[138] Ibid.

[139] [redacted] Initially, the senior SERE psychologist could not recall if he provided this assistance to the [redacted] *while* he was still working at JPRA or if the assistance had occurred *after* he left JPRA. After he left JPRA in 2002, the senior SERE psychologist began working as a contractor to [redacted] but was restricted from discussing the nature of his work with the Committee. Committee staff interview of Bruce Jessen (November 13, 2007).

[140] [redacted] Memo from [redacted] Focal Point Branch [redacted] to Joint Staff, J-3/DDIO, Special Activities Branch, (U) *Request for JPRA Personnel for Training* (June 17, 2002) (hereinafter [redacted] *Request for JPRA Personnel for Training* (June 17, 2002)").

[141] [redacted] *Request for JPRA Personnel for Training* (June 17, 2002).

[142] [redacted] Fax cover sheet from [redacted] to Christopher Wirts (via Colin Junkins) (June 18, 2002).

[143] Committee staff interview of William J. Haynes II (April 25, 2008) at 40.

[144] [redacted] *Request for JPRA Personnel for Training* (June 17, 2002). In a draft of the request written by JPRA's OSO Chief Christopher Wirts and sent to [redacted] on June 14, 2002, Mr. Wirts identified the same topics for training. Mr. Wirts explained to his point of contact at [redacted] that their ability to support the request was hindered by Dr. Jessen's availability, who Mr. Wirts described as "critical in providing the degree of support that [redacted] is requiring." Memo from Christopher Wirts (via [redacted]) to [redacted] *Support to Operation Enduring Freedom (OEF)* (June 14, 2002).

[145] [redacted] *Request for JPRA Personnel for Training* (June 17, 2002).

[redacted]

> Because of the urgent need to extract information from captured al Qaeda operatives, and because JPRA has the sole repository of the required skill set, JPRA personnel should provide this expertise and training to [redacted]
>
> To prevent compromise and inadvertent modification of JPRA's charter, personnel will avoid linking JPRA directly to this training.
>
> . . . Having the true exploitation and captivity environment experts and specialists, JPRA may be called upon in extremis to actually participate in future exploitation of foreign prisoners; this request would clearly fall outside JPRA's chartered responsibilities; if this request is made, JPRA would require a SecDef policy determination . . .[146]

[redacted] Col Prior's memo stated that the JFCOM J-3 or his office had been apprised of [redacted] support requests.[147] A Joint Staff Action Processing Form indicated that [redacted] request was endorsed by JPRA, JFCOM, Joint Staff, and the Office of the Undersecretary of Defense for Policy and approved on June 27, 2002.[148]

[redacted] In advance of the training, JPRA developed a two day lesson for [redacted] covering the "full spectrum [of] exploitation," including both explanations and demonstrations of physical pressures that were approved for use at JPRA's SERE school.[149] At the time, JPRA-approved techniques included body slaps, face slaps, hooding, stress positions, walling, immersion in water, stripping, isolation, and sleep deprivation, among others.[150]

[redacted] The two day training took place at [redacted] headquarters on July 1-2, 2002.[151] According to a July 16, 2002 after action memo prepared for Col Moulton, the training covered [redacted][152] Time was also set aside for [redacted] who had recently been conducting interrogations in Afghanistan to discuss their experiences. Other time was spent covering the physical and psychological pressures used at SERE school. Dr. Gary

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[146] [redacted] Memo from Col John Prior II to JPRA/CC (Col Randy Moulton), *Request from* [redacted] *for Interrogation Training Support* (June 20, 2002).

[147] [redacted] Memo from Col John Prior II to JPRA/CC (Col Randy Moulton), *Request from* [redacted] *for Interrogation Training Support* (June 20, 2002). Although Col John Prior told the Committee that he could not recall the June 20, 2002 memo, JPRA Commander Col Randy Moulton recalled receiving it at the time. Since the Committee's interview of Col Prior, the Department of Defense has provided the Committee with a copy of the memo that was signed by him.

[148] [redacted] Joint Staff Action Processing Form, *(U) JPRA Personnel for Training* (June 27, 2002).

[149] Testimony of Joseph Witsch (September 4, 2007) at 63-64, 69.

[150] Ibid. at 64-69.

[151] [redacted] Memo from Joseph Witsch to Col Randy Moulton and Christopher Wirts, *Exploitation Training for* [redacted] (July 16, 2002).

[152] Ibid.

Percival, a JPRA instructor at the training, said that in their demonstration of physical pressures, JPRA instructor Joseph Witsch acted as the "beater" while he was the "beatee."[153]

[redacted] In addition to explaining and demonstrating the physical pressures used at SERE school, the JPRA personnel also provided instruction on waterboarding.[154]

(U) At the time, waterboarding was only used by the U.S. Navy SERE school and its use was prohibited at the JPRA, Army, and Air Force SERE schools.[155] The U.S. Navy has since abandoned its waterboarding at its SERE schools. None of the JPRA personnel who provided the assistance had ever conducted waterboarding and would not have been qualified to do so at SERE school.[156]

[redacted] The July 16, 2002 after action memo stated that two agency legal personnel were also present for the training.[157] According to the memo, [redacted] personnel "requested and were granted time to present the legal limits of physiological and psychological pressures that were acceptable at the present time."[158] The after action memo described the legal briefing:

> Their 30-40 [minute] brief was very supportive. Basically, [redacted] were told they could use all forms of psychological pressure discussed and all of the physiological pressures with the exception of the 'water board.' They were advised that should they feel the need to use the water board, they would need prior approval. They were also briefed on the ramifications for participating in torture, which under international law is defined as a 'capital crime' and could result in a death sentence if convicted. An eye opener to say the least.[159]

[redacted] The JPRA instructors who conducted the training did not recall [redacted] lawyers providing any further guidance about how to seek approval for use of the waterboard in an interrogation.[160]

(U) However, Chief Counsel to the [redacted] Jonathan Fredman later described an approval process for the use of aggressive interrogation techniques

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[153] Committee staff interview of Gary Percival (July 25, 2007).

[154] Testimony of Joseph Witsch (September 4, 2007) at 69.

[155] Memo from Dr. Percival to JPRA CC (Col Moulton), *Comments on Physical Pressures used for CoC Training* (June 18, 2004).

[156] Testimony of Joseph Witsch (September 4, 2007) at 69.

[157] [redacted] Memo from Joseph Witsch to Col Randy Moulton and Christopher Wirts, *Exploitation Training for* [redacted] (July 16, 2002).

[158] Ibid.

[159] Ibid. (emphasis in original).

[160] Testimony of Joseph Witsch (September 4, 2007) at 75.

reportedly explaining that "[t]he CIA makes the call internally on most of the types of techniques," but that "[s]ignificantly harsh techniques are approved through the DoJ."[161]

[redacted] In his after action memo from [redacted] training, JPRA instructor Joseph Witsch stated that "the training seemed well received and beneficial for the majority of the personnel present."[162] He observed that some of the class participants had "little to no[ ] experience" in interrogation and others had "recently returned from conducting actual interrogations in Afghanistan."[163]

[redacted] ([redacted] In his memo, Mr. Witsch also commented on JPRA's future support to interrogations, writing:

> I believe our niche lies in the fact that we can provide the ability to exploit personnel based on how our enemies have done this type of thing over the last five decades. Our enemies have had limited success with this methodology due to the extreme dedication of [American] personnel and their harsh and mismanaged application of technique. The potential exists that we could refine the process to achieve effective manipulation/exploitation. We must have a process that goes beyond the old paradigm of military interrogation for tactical information or criminal investigation for legal proceedings. These methods are far too limited in scope to deal with the new war on global terrorism."[164]

[redacted] Mr. Witsch recommended that JPRA develop two courses for future JPRA customers – a basic course and an advanced course to deal with "senior, hardcore, and resistance trained detainees."[165] The courses, he said, will need "immediate attention and will require a total role reversal from current methodology and our standard approaches to training. It will take a cross section of SERE experienced personnel—SERE instructors, psychologists, MDs and intelligence personnel to effectively develop this new approach to captive handling and manipulation."[166]

C. *Senior SERE Psychologist Detailed From Department of Defense to Other Government Agency* (U)

[redacted] In July 2002, after the JPRA training for [redacted], the senior SERE psychologist, Dr. Bruce Jessen was detailed to [redacted] for several days.[167] At the conclusion of

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[161] *Counter Resistance Strategy Meeting Minutes* at 4.

[162] [redacted] Memo from Joseph Witsch to Col Randy Moulton and Christopher Wirts, *Exploitation Training for* [redacted] (July 16, 2002).

[163] Ibid.

[164] Ibid.

[165] Ibid.

[166] Ibid.

[167] Committee staff interview of Bruce Jessen (July 11, 2007).

this assignment, Dr. Jessen retired from the Department of Defense and began working as an independent contractor to [redacted].[168]

(U) Dr. Jessen did tell the Committee that, in some circumstances, physically coercive techniques are appropriate for use in detainee interrogations. He said that the use of physically coercive techniques may be appropriate when (1) there is good reason to believe that the individual has perishable intelligence, (2) the techniques are lawful and authorized, (3) they are carefully controlled with medical and psychological oversight, (4) someone (who is not otherwise involved in the interrogation) can stop the use of the techniques, and (5) the techniques do not cause long-term physical or psychological harm.[170] Dr. Jessen acknowledged that empirically, it is not possible to know the effect of a technique used on a detainee in the long-term, unless you study the effects in the long-term. However, he said that his conclusion about the long-term effects of physically coercive techniques was based on forty years of their use at SERE school.[171]

(U) Subsequent to his retirement from DoD, Dr. Jessen joined Dr. Mitchell and other former JPRA officials to form a company called Mitchell Jessen & Associates. Mitchell Jessen & Associates is co-owned by seven individuals, six of whom either worked for JPRA or one of the service SERE schools as employees and/or contractors.[172] As of July 2007, the company had between 55 and 60 employees, several of whom were former JPRA employees.[173]

D. Department of Defense General Counsel Seeks Information on SERE Techniques From JPRA (U)

(U) Just weeks after the JPRA provided assistance to the OGA, DoD Deputy General Counsel for Intelligence Richard Shiffrin contacted JPRA Chief of Staff Daniel Baumgartner seeking a list of exploitation and interrogation techniques that had been effective against Americans.[174] In testimony to the DoD Inspector General (IG), Mr. Shiffrin stated that he made

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[168] Ibid.

[169] Ibid.; Letter to Chairman Levin (June 22, 2007).

[170] Committee staff interview of Bruce Jessen (November 13, 2007). Lawyers for Dr. Mitchell informed the Committee that he shares the same view as his colleague, Dr. Jessen.

[171] Committee staff interview of Bruce Jessen (November 13, 2007).

[172] Committee staff interview of James Mitchell (July 10, 2007); Committee staff interview of Bruce Jessen (July 11, 2007).

[173] Committee staff interview of James Mitchell (July 10, 2007); Committee staff interview of Christopher Wirts (January 4, 2008).

[174] Email from Lt Col Dan Baumgartner to Col Randy Moulton et al. (July 25, 2002).

the request after several conversations with General Counsel Jim Haynes.[175] Mr. Shiffrin later said that everything he asked for from JPRA was to respond to requests from Mr. Haynes.[176] Mr. Haynes testified to the Committee that he could not remember "specifically" asking Mr. Shiffrin for information on SERE techniques, but that he "asked generally" about that subject sometime in the summer of 2002. He also said that he remembered being "interested" in that information, and that if he had requested it, he would have requested it through Mr. Shiffrin.[177] Although Mr. Haynes did not say why he was interested in this information, when asked whether he had discussed "SERE techniques with [] Messrs. Gonzales, Addington, Rizzo, Yoo, or any of the other senior lawyers" he met with "regularly," Mr. Haynes testified to the Committee that he "did discuss SERE techniques with other people in the administration."[178]

(U) JPRA Chief of Staff Lt Col Daniel Baumgartner said that when the request from the General Counsel's office came in, he called Col Moulton and Brig Gen Thomas Moore, the JFCOM Director for Operations (J3), and received permission to provide the requested information to the General Counsel's office.[179] JPRA initially responded to the General Counsel's inquiry on July 25, 2002 with a memorandum signed by Lt Col Baumgartner.[180]

[redacted] ([redacted] The JPRA memorandum stated that "JPRA has arguably developed into the DoD's experts on exploitation." It continued:

> Recognizing the typical training for strategic debriefers in the intelligence community did not include either SERE training (as a student) or grounding in exploitation strategy and associated interrogation techniques, JPRA offered assistance to intelligence organizations charged with interviewing enemy detainees. JPRA [redacted] will brief the Criminal Investigative Task Force (CITF) next Tuesday to determine their requirements.[181]

(U) JPRA attached several lesson plans on exploitation and interrogation to the memo.[182] In closing, the memo stated:

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[175] DoD IG, Interview of Richard Shiffrin (July 24, 2006) at 6.

[176] Committee staff interview of Richard Shiffrin (May 22, 2007).

[177] SASC Hearing (June 17, 2008).

[178] Ibid.

[179] Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007); *see also* email from Col Moulton to [redacted] (June 30, 2006) ("We [JPRA] initially received a call from OSD General Counscil (sic) requesting information about resistance techniques used against U.S. POWs. I believe this was early on in Operation Enduring Freedom. We were requested to provide that information within hours and were authorized by JFCOM to forward it to OSD. . . . Once we understood what OSD/GC was looking for, we provided a[] list of techniques.")

[180] Memo from Lt Col Daniel Baumgartner to Office of the Secretary of Defense General Counsel, *Exploitation* (July 25, 2002).

[181] Ibid. at 1.

[182] Ibid. at 2-3.

The enclosed documents provide a thorough academic grounding in exploitation and were built on what has been effective against Americans in the past. The ability to exploit, however, is a highly specialized skill set built on training and experience. JPRA will continue to offer exploitation assistance to those governmental organizations charged with the mission of gleaning intelligence from enemy detainees.[183]

(U) The memorandum and its attachments were delivered to the Deputy General Counsel Richard Shiffrin by a JPRA employee and were emailed to relevant personnel at both JPRA and Brig Gen Moore's office at JFCOM.[184] DoD General Counsel Jim Haynes did not recall whether or not he saw the memo at the time, but said that "in all likelihood," he would have received the memo, and that the timing of the memo coincided with his recollection of his meeting with JPRA personnel.[185]

(U) According to Lt Col Baumgartner, prior to the July 25, 2002 memo being delivered to the General Counsel's office, Mr. Shiffrin called him to ask for additional information, including a list of techniques used by JPRA at SERE school. Mr. Shiffrin testified to the Committee that he was "under pressure" from Mr. Haynes to get the material to his office as quickly as possible.[186]

(U) Lt Col Baumgartner said that he thought the General Counsel's office was asking for information on exploitation and physical pressures to use them in interrogations. Mr. Shiffrin confirmed that one of the purposes for seeking information from JPRA was to "reverse-engineer" the techniques.[187] Lt Col Baumgartner said that he wanted to be helpful, but that he told Mr. Shiffrin that JPRA's techniques were designed to show Americans the worst possible treatment that they may face, and that any recommendation for the use of techniques on detainees would require Administration approval.[188]

(U) On July 26, 2002, JPRA completed a second memorandum with three attachments to respond to the additional questions from the General Counsel's office. The memo stated that "JPRA has arguably developed into the DoD's experts on exploitation and as such, has developed a number of physical pressures to increase the psychological and physical stress on students . . ."[189]

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[183] Ibid. at 2; *see also* email from Lt Col Daniel Baumgartner to Col Randy Moulton et al. (July 25, 2002) (Thanking "the 'exploitation answer stuckee' team" for "an outstanding job answering [] Mr. Hanes (sic) and Mr. Schiffren (sic) (OSD Dep GC for Intel) on their question 'what exploitation techniques have worked against Americans?'")

[184] Email from Lt Col Daniel Baumgartner to Col Randy Moulton et al., copying Darrell Venture (JFCOM Directorate of Operations) (July 25, 2002).

[185] Committee staff interview of William J. Haynes II (April 25, 2008) at 51, 59.

[186] SASC Hearing (June 17, 2008).

[187] Ibid.

[188] Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

[189] Memo from Lt Col Baumgartner to Office of the Secretary of Defense General Counsel, *Exploitation and Physical Pressures* (July 26, 2002) at 1.

In the memo, JPRA informed the General Counsel's office that it had already "assist[ed] in the training of interrogator/exploiters from other governmental agencies charged with OEF exploitation of enemy detainees."[190] The memo also stated:

> Within JPRA's evolving curriculum to train interrogators/exploiters many interrogation approaches are taught along with corresponding options for physical pressures to enhance the psychological setting for detainee interrogation. Several of the techniques highlighted (Atch 1) as training tools in JPRA courses, used by other SERE schools, and used historically may be very effective in inducing learned helplessness and 'breaking' the OEF detainees' will to resist."[191]

The first attachment to the July 26, 2002 memo was "Physical Pressures used in Resistance Training and Against American Prisoners and Detainees."[192] That attachment included a list of techniques used to train students at SERE school to resist interrogation. The list included techniques such as the facial slap, walling, the abdomen slap, use of water, the attention grasp, and stress positions.[193] The first attachment also listed techniques used by some of the service SERE schools, such as use of smoke, shaking and manhandling, cramped confinement, immersion in water or wetting down, and waterboarding.

JPRA's description of the waterboarding technique provided in that first attachment was inconsistent in key respects from the U.S. Navy SERE school's description of waterboarding. According to the Navy SERE school's operating instructions, for example, while administering the technique, the Navy limited the amount of water poured on a student's face to two pints. However, the JPRA attachment said that "up to 1.5 gallons of water" may be poured onto a "subject's face." While the Navy's operating instructions dictated that "[n]o effort will be made to direct the stream of water into the student's nostrils or mouth," the description provided by JPRA contained no such limitation for subjects of the technique. While the Navy limited the use of the cloth on a student's face to twenty seconds, the JPRA's description said only that the cloth should remain in place for a "short period of time." And while the Navy restricted anyone from placing pressure on the chest or stomach during the administration of this technique, JPRA's description included no such limitation for subjects of the technique.[194]

Attachment one also listed tactics derived from JPRA SERE school lesson plans that were designed to "induce control, dependency, complia[n]ce, and cooperation," including isolation or solitary confinement, induced physical weakness and exhaustion, degradation,

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[190] Ibid.

[191] Memo from Lt Col Baumgartner to Office of the Secretary of Defense General Counsel, *Exploitation and Physical Pressures* (July 26, 2002) at 1.

[192] JPRA, *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees*, attached to memo from Lt Col Baumgartner to Office of the Secretary of Defense General Counsel (July 26, 2002).

[193] Ibid.

[194] *Compare* FASO Detachment Brunswick Instruction 3305.C (January 1, 1998) at E-5 *with Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees* at 3-4.

conditioning, sensory deprivation, sensory overload, disruption of sleep and biorhythms, and manipulation of diet.[195]

(U) DoD General Counsel Jim Haynes told the Committee that although he could not recall if he had seen the specific list of SERE physical pressures sent to his office on July 26, 2002, he knew that he had seen a list of physical pressures used in JPRA resistance training.[196]

Mr. Haynes also recalled that he may have been "asked that information be given to the Justice Department for something they were working on," which he said related to a program he was not free to discuss with the Committee, even in a classified setting.[197]

(U) A second attachment to the July 26, 2002 JPRA memo to the General Counsel's office was entitled "Operational Issues Pertaining to the use of Physical/Psychological Coercion in Interrogation."[198] In attachment two, JPRA stated that the memo did not purport to address the "myriad legal, ethical, or moral implications of torture; rather, [the memo focused on] the key operational considerations relative to the use of physical and psychological pressures."[199]

(U) Attachment two described operational risks associated with using "physical and/or psychological duress" (a phrase that JPRA used interchangeably with "torture" throughout most of attachment two) in interrogations.[200] The attachment said that one risk was that the use of these methods would increase the "prisoner's level of resolve to resist cooperating."[201] JPRA explained that "[o]nce any means of duress has been purposefully applied to the prisoner, the formerly cooperative relationship cannot be reestablished. In addition, the prisoner's level of resolve to resist cooperating with the interrogator will likely be increased as a result of harsh or brutal treatment."[202]

(U) According to attachment two, another risk to using techniques that increase physical and psychological duress was that it created doubts about the reliability and accuracy of information obtained.[203] JPRA explained in attachment two that "[i]f an interrogator produces information that resulted from the application of physical and psychological duress, the reliability and accuracy of this information is in doubt. In other words, a subject in extreme pain may provide an answer, any answer, or many answers in order to get the pain to stop."[204]

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[195] *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees.*

[196] Committee staff interview of William J. Haynes II (April 25, 2008) at 87.

[197] Ibid. at 88.

[198] JPRA, *Operational Issues Pertaining to the Use of Physical/Psychological Coercion in Interrogation* (undated), attached to memo from Lt Col Baumgartner to Office of the Secretary of Defense General Counsel (July 26, 2002).

[199] Ibid.

[200] Ibid.

[201] Ibid.

[202] Ibid.

[203] Ibid.

[204] Ibid.

(U) A third operational risk was the potential impact that the physical and psychological duress could have on treatment of U.S. personnel.[205] JPRA explained in attachment two that:

> Another important aspect of the debate over the use of torture is the consideration of its potential impact on the safety of U.S. personnel captured by current and future adversaries. The unintended consequence of a U.S. policy that provides for the torture of prisoners is that it could be used by our adversaries as justification for the torture of captured U.S. personnel. While this would have little impact on those regimes or organizations that already employ torture as a standard means of operating, it could serve as the critical impetus for those that are currently weighing the potential gains and risks associated with the torture of U.S. persons to accept torture as an acceptable option.[206]

(U) The third attachment to JPRA's July 26, 2002 memo was a memo from the Chief of Psychology Services at the Air Force SERE school, Jerald Ogrisseg, on the "Psychological Effects of Resistance Training."[207] That memorandum, which was generated in response to a specific request from the General Counsel's office, described available evidence on the long-term psychological effects of Air Force SERE training on U.S. personnel and commented from a psychological perspective on the effects of using the waterboard.

(U) JPRA Chief of Staff Daniel Baumgartner said that when the General Counsel's office requested a memo on the psychological effects of resistance training, he called Dr. Ogrisseg at the Department of the Air Force's Air Education and Training Command.[208] Dr. Ogrisseg said that Lt Col Baumgartner asked his opinion during the phone call about his thoughts on waterboarding the enemy.[209] Dr. Ogrisseg recalled asking, "wouldn't that be illegal?"[210] According to Dr. Ogrisseg, Lt Col Baumgartner replied that people were asking "from above" about using waterboarding in real world interrogations.[211] Dr. Ogrisseg recalled telling Lt Col Baumgartner, "aside from being illegal, it was a completely different arena that we in the Survival School didn't know anything about."[212]

(U) Subsequent to that call, Dr. Ogrisseg reviewed the data on the effects of Air Force SERE resistance training on students and produced his memo, concluding that "if there are any long-term psychological effects of [U.S. Air Force Resistance Training], they are certainly

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[205] Ibid.

[206] Ibid.

[207] Dr. Jerald Ogrisseg, *Psychological Effects of Resistance Training* (July 24, 2002), attached to memo from Lt Col Daniel Baumgartner to Office of the Secretary of Defense General Counsel (July 26, 2002) (hereinafter "*Psychological Effects of Resistance Training*").

[208] Dr. Jerald Ogrisseg, the Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command, told the Committee that he had accepted a position at JPRA prior to writing the memo but had yet to officially change jobs. Committee staff interview of Jerald Ogrisseg (June 26, 2007).

[209] SASC Hearing (June 17, 2008).

[210] Ibid.

[211] Ibid.

[212] Ibid.

minimal." [213] The memo attributed this conclusion to efforts the Air Force SERE program undertook to minimize the risk of temporary psychological effects of resistance training becoming long-term effects.[214] The Air Force minimized the risk by, among other things, performing three extensive debriefings during training. Dr. Ogrisseg said that "affording students these opportunities to discuss their training experiences in open group environments mitigates the risk of turning a 'dramatic' experience into a 'traumatic' experience." [215] He told the Committee that there are numerous controls in place at SERE school to ensure that the training does not become "traumatic" for its students.[216]

(U) Dr. Ogrisseg said that Lt Col Baumgartner also asked him "to comment on both the physical and psychological effects of the waterboard," which he described in his memo as an "intense physical and psychological stressor" used at the U.S. Navy SERE school.[217] Although Dr. Ogrisseg had not used the waterboard himself, he had observed its use in a visit to the Navy SERE School. He stated that, based on that visit, he did not believe that the "water[] board posed a real and serious physical danger to the students" who experienced it at the SERE school, stating that the "Navy had highly qualified medical personnel immediately available to intervene, and their students had all been medically screened prior to training. Psychologically, however, the water[] board broke the students' will to resist providing information and induced helplessness." [218]

(U) Dr. Ogrisseg said that he was surprised when he found out later that Lt Col Baumgartner had forwarded his memo to the General Counsel's office along with a list of the physical and psychological techniques used in SERE school.[219] Dr. Ogrisseg said that his analysis was produced with students in mind, not detainees. He stated that the conclusions in his memo were not applicable to the offensive use of SERE techniques against real world detainees and he would not stand by the conclusions in his memo if they were applied to the use of SERE resistance training techniques on detainees.

(U) In a written response to a question posed by Senator Carl Levin after the Committee's June 17, 2008 hearing, Dr. Ogrisseg elaborated on that point noting several "important differences between SERE school and real world interrogations that would limit [the]

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[213] *Psychological Effects of Resistance Training*

[214] *Psychological Effects of Resistance Training* at 1.

[215] Ibid.

[216] Committee staff interview of Jerald Ogrisseg (June 26, 2007).

[217] SASC Hearing (June 17, 2008); *Psychological Effects of Resistance Training* at 2.

[218] When providing this memo to the General Counsel's office, Lt Col Baumgartner stated: "While there is not much empirical data on the long term effects of physical pressures used in SERE schools (which fall well short of causing 'grave psychological damage'), the psychological staff at the Air Force SERE school makes some interesting observations [] that suggest training techniques can be very effective in producing compliance while not causing any long term damage." Memo from Lt Col Baumgartner to Office of the Secretary of Defense General Counsel, *Exploitation and Physical Pressures* (July 26, 2002); *Psychological Effects of Resistance Training* at 2.

[219] Committee staff interview of Jerald Ogrisseg (June 26, 2007).

conclusions [in his memo] to the SERE school training population."[220] Among those differences Dr. Ogrisseg identified were (1) the extensive physical and psychological pre-screening processes for SERE school students that are not feasible for detainees, (2) the variance in injuries between a SERE school student who enters training and a detainee who arrives at an interrogation facility after capture, (3) the limited risk of SERE instructors mistreating their own personnel, especially with extensive oversight mechanisms in place, compared to the risk of interrogators mistreating non-country personnel, (4) the voluntary nature of SERE training, which can be terminated by a student at any time, compared to the involuntary nature of being a detainee, (6) the limited duration of SERE training, which has a known starting and ending point, compared to the often lengthy, and unknown, period of detention for a detainee, and (7) the underlying goals of SERE school (to help students learn from and benefit from their training) and the mechanisms in place to ensure that students reach those goals compared to the goal of interrogation (to elicit information).

(U) In addition, Dr. Ogrisseg also stated that, since writing his memo in July 2002, he had reviewed studies about the effects of near death experiences, and that he had become concerned about the use of waterboarding even as a training tool.[221] The U.S. Navy SERE school abandoned its use of the waterboard in November 2007.

(U) Lt Col Baumgartner testified to the Committee that, subsequent to sending his two memos and their attachments – including the list of SERE techniques – to the General Counsel's office, another government agency asked for the same information. Lt Col Baumgartner said that he provided that information to the OGA.[222]

[redacted] In his interview with the Committee, Lt Col Baumgartner said that [redacted] personnel had contacted him requesting a copy of the same information that had been sent to the DoD General Counsel. Lt Col Baumgartner recalled speaking to an attorney and a psychologist at [redacted] about the request and sending the information to the [redacted].[223]

E. The Department of Justice Changes the Rules (U)

(U) On August 1, 2002, less than a week after JPRA sent the DoD General Counsel's Office its memoranda and attachments, the Department of Justice issued two legal opinions signed by then-Assistant Attorney General for the Office of Legal Counsel (OLC) Jay Bybee.

(U) Before drafting the August 1, 2002 opinions, Deputy Assistant Attorney General for the OLC John Yoo had met with Counsel to the President Alberto Gonzales and Counsel to the Vice-President David Addington to discuss the subjects that he intended to address.[224] Then-

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[220] Dr. Ogrisseg also explained that "[w]hile long-term psychological harm can occur from relatively brief distressing experiences, the likelihood of psychological harm is generally increased by more lengthy and uncertain detentions." Responses of Dr. Jerald Ogrisseg to Questions for the Record (July 28, 2008).

[221] Committee staff interview of Jerald Ogrisseg (June 26, 2007).

[222] SASC Hearing (June 17, 2008).

[223] Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

[224] According to Mr. Addington, he met "regularly" with a group of lawyers that included DoD General Counsel Jim Haynes, White House Counsel Alberto Gonzales, and the CIA General Counsel John Rizzo. This group that met

National Security Advisor Condoleezza Rice said that she understood that the Department of Justice's legal advice to the CIA "was being coordinated by Counsel to the President Alberto Gonzales."[225]

(U) The first of the two August 1, 2002 OLC memoranda, known to many as the "First Bybee" memo, presented OLC's narrow interpretation of what constituted torture under U.S. law. The memo stated that the federal anti-torture statute of 1994 prohibited "only extreme acts" and that in order to constitute torture, physical pain would have to be equivalent in intensity to that accompanying "serious physical injury, such as organ failure, impairment of bodily functions or even death."[226] For mental pain to rise to the level of torture, according to the memo, it would have to result in "significant psychological harm of significant duration, e.g., lasting for months or even years."[227] The First Bybee memo also found that the federal anti-torture statute may not be applicable to interrogations ordered by the President if he acted pursuant to his Constitutional commander-in-chief powers. Further, the memo argued that even if the federal anti-torture statute could be construed to apply to such interrogations, the defenses of necessity and self-defense could potentially eliminate criminal liability under the statute.[228]

(U) The First Bybee memo also effectively dispensed with the "specific intent" requirement of the federal anti-torture statute by narrowly defining that requirement. The federal anti-torture statute states that, in order to constitute torture, an act must be "specifically intended to inflict severe physical or mental pain or suffering."[229] The First Bybee memo stated that in order "for a defendant to have acted with specific intent, he must expressly intend to achieve the forbidden act."[230] Under that interpretation, to violate the law, a person must expressly intend to commit torture and the memo stated that "knowledge alone that a particular result is certain to occur does not constitute specific intent."

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regularly – which Mr. Addington said was referred to as the "War Council" by Mr. Haynes – also included OLC lawyers John Yoo and Tim Flanigan. According to Mr. Addington, the group of lawyers met about a "range of issues," including interrogation of enemy combatants in the war on terror. When Mr. Haynes was asked whether he had discussed "SERE techniques with [] Messrs. Gonzales, Addington, Rizzo, Yoo, or any of the other senior lawyers" he met with "regularly," Mr. Haynes testified to the Committee that he "did discuss SERE techniques with other people in the administration." These conversations occurred prior to the December 2, 2002 approval of aggressive interrogation techniques, including those derived from SERE, by the Secretary of Defense. *See* From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (June 26, 2008) (Testimony of David Addington); SASC Hearing (June 17, 2008) (Testimony of William J. Haynes II); The Terror Presidency at 22.

[225] Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[226] The memo was leaked to the press in June 2004 and was rescinded by the OLC later that month. Memo from Assistant Attorney General Jay Bybee to White House Counsel Alberto Gonzales, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (August 1, 2002).

[227] Ibid.

[228] Ibid.

[229] 18 U.S.C. § 2340(1) (2008).

[230] Memo from Assistant Attorney General Jay Bybee to White House Counsel Alberto Gonzales, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (August 1, 2002).

(U) Jack Goldsmith, who succeeded Jay Bybee as Assistant Attorney General of the OLC in 2003, described the First Bybee memo's conclusions and their effect:

> [V]iolent acts aren't necessarily torture; if you do torture, you probably have a defense; and even if you don't have a defense, the torture law doesn't apply if you act under color of presidential authority. CIA interrogators and their supervisors, under pressure to get information about the next attack, viewed the opinion as a 'golden shield,' as one CIA official later called it, that provided enormous comfort. [231]

(U) The second August 1, 2002 OLC legal opinion was also signed by Assistant Attorney General Jay Bybee.[232] According to a declaration made to the United States District Court for the Southern District of New York by the Information Review Officer for the CIA, the so-called "Second Bybee" memo is an 18-page legal memorandum from the OLC to the Office of General Counsel of the CIA containing "information relating to the CIA's terrorist detention and interrogation program" and "advice to the CIA regarding potential interrogation methods." [233] According to the filing, the CIA requested the legal guidance from the Department of Justice.[234] A February 1, 2005 letter from the Justice Department to Senator Arlen Specter, then-Chairman of the Senate Judiciary Committee, stated that the Second Bybee memo gave the CIA "specific advice concerning specific interrogation practices, concluding that they are lawful." [235] And the unclassified report of the Department of Justice Inspector General explained that the opinion analyzed "specific techniques approved for use on Zubaydah includ[ing] waterboarding . . ."[236]

[237] John Bellinger, the NSC Legal Advisor, said

[231] Former Assistant Attorney General for the OLC Jack Goldsmith, who rescinded the memo, criticized the First Bybee memo as legally flawed, redundant and one-sided, tendentious in tone, unnecessarily narrow in its definition of torture, and widely broader than necessary in its assessment of Presidential authorities. The Terror Presidency at 143-51.

[232] The Second Bybee memo has been withheld from the Committee.

[233] Sixth Decl. of Marilyn A. Dorn, ¶ 56, *American Civil Liberties Union, et al. v. Department of Defense, et al.*, No. 04-Civ. 4151 (January 5, 2007).

[234] Sixth Decl. of Marilyn A. Dorn, ¶ 62, *American Civil Liberties Union, et al. v. Department of Defense, et al.*, No. 04-Civ. 4151 (January 5, 2007).

[235] Letter from Assistant Attorney General William E. Moschella to Chairman of the Senate Judiciary Committee Arlen Specter (February 1, 2005); *see also* The Terror Presidency at 150-151 (According to Jack Goldsmith, the First Bybee memo "analyzed the torture statute in the abstract, untied to any concrete practices" and then the Second Bybee Memo, "applied this abstract analysis to approve particular" interrogation techniques.)

[236] DoJ IG Report at 101, fn. 73; *see also* From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (June 26, 2008) (prepared testimony of John Yoo) ("OLC was asked to evaluate the legality of interrogation methods proposed for use with Zubaydah.")

[237] DoJ IG Report.

that he "expressed concern that the proposed CIA interrogation techniques comply with applicable U.S. law, including our international obligations.[238]

(U) The Committee has been denied the Second Bybee memo and does not know which specific interrogation practices, other than waterboarding, were analyzed in the memo. A heavily redacted version of the Second Bybee memo, released on July 24, 2008, provides no further details about the specific interrogation practices that were analyzed by the OLC.[239] The unredacted sections only make clear that the OLC applied its analysis in the First Bybee memo to a set of (redacted) facts at issue in the Second Bybee memo.[240] And while public sources have suggested that the OLC's analysis applied to Zubaydah, then-Deputy Assistant Attorney General John Yoo suggested in recent testimony that it "perhaps" applied to others "similarly situated."[241]

(U) According to Acting CIA General Counsel John Rizzo, the techniques that the OLC analyzed in the Second Bybee memo were provided by his office. In his testimony before the Senate Select Committee on Intelligence, Mr. Rizzo stated that his office was "the vehicle" for getting the interrogation practices analyzed in the Second Bybee memo to the Department of Justice."[242]

Lt Col Baumgartner, the JPRA Chief of Staff, recalled sending a copy of the same information that he had sent to the DoD General Counsel – including the list of SERE techniques and Dr. Ogrisseg's memo on the psychological effects of Air Force SERE training and on waterboarding – to attorney.[243] Mr. Haynes, the DoD General Counsel, recalled that in the context of reviewing the list of SERE techniques provided to his office, that he may have been "asked that information be given to the Justice Department for something they were working on."[244]

(U) With respect to the issues addressed in Dr. Ogrisseg's memo relating to the psychological effects of resistance training, Mr. Haynes said that he knew that there was a

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[238] John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[239] The remainder of the Second Bybee memo has not been released publicly.

[240] Deputy Assistant Attorney General for the OLC John Yoo, who participated in the drafting of the Second Bybee memo, added that in the context of the Zubaydah interrogation, application of the federal anti-torture statute to the facts "depend[ed] not just on the particular interrogation method, but on the subject's physical and mental condition." From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (June 26, 2008).

[241] From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (June 26, 2008).

[242] Nomination of John Rizzo to be CIA General Counsel, Senate Select Committee on Intelligence, 110th Cong. (June 19, 2007).

[243] Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

[244] Committee staff interview of William J. Haynes II (April 25, 2008) at 88.

government interest in that subject, but that he did not know if that information was used as support in any OLC legal analysis, and if he did know, he did not recall.[245]

(U) Then-NSC Legal Advisor John Bellinger said that some of the legal analysis of proposed interrogation techniques prepared by the Department of Justice referred to "the psychological effects of military resistance training."[246] In fact, Jay Bybee, the Assistant Attorney General who signed the two August 1, 2002 opinions, said that he saw an assessment of the psychological effects of military resistance training in July 2002 in meetings in his office with John Yoo and two other OLC attorneys. Judge Bybee said the assessment – which to the best of his recollection had been provided by the CIA – informed the August 1, 2002 OLC legal opinion that has not been released publicly.[247] In his June 26, 2008 testimony before the House Judiciary Committee, John Yoo refused to say whether or not he ever discussed or received information about SERE techniques as the August 1, 2002 memos were being drafted.[248]

(U) While Judge Bybee said that he did not recall "any written advice provided to any governmental agency prior to August 1, 2002, on the meaning of the standards of conduct required for interrogation under the federal anti-torture statute or on specific interrogation methods," the August 1, 2002 memos were not the only occasion on which DOJ provided legal advice on the CIA's interrogation program.[249] John Bellinger, the NSC Legal Advisor, said that he understood that in 2002 and 2003, the OLC provided "ongoing advice to CIA regarding CIA's interrogation program."[250] And then-National Security Advisor Condoleezza Rice said that she was present at "several" meetings in the White House at which Mr. Yoo provided legal advice.[251] Ms. Rice said that she asked Attorney General John Ashcroft "personally to review and confirm" DoJ's legal guidance.[252]

F. JPRA's Special Program In Support of [redacted] (U)

1. August 2002 Training Proposal (U)

[redacted] ([redacted]) On August 12, 2002, a week and a half after the OLC issued its two legal opinions, the [redacted] sent JPRA Chief of Staff Lt Col Baumgartner and JPRA OSO Chief Christopher Wirts a draft memorandum outlining the [redacted]

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[245] Ibid. at 104, 106; *see also* Redacted version of Memo from Assistant Attorney General Jay Bybee, *Interrogation of [redacted]* (August 1,2002) (In the unredacted sections of the Second Bybee memo, the memo states: "Your review of the literature uncovered no empirical data on the use of these procedures, with the exception [redacted].")

[246] John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[247] Jay Bybee answers to July 31, 2008 written questions from Senator Carl Levin (October 14, 2008).

[248] From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (June 26, 2008).

[249] Jay Bybee answers to July 31, 2008 written questions from Senator Carl Levin (October 14, 2008).

[250] John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[251] Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[252] Ibid.

request for additional JPRA training support.[253] [redacted]" [254] The draft requirement continued:

> [I]nformation that your organization has already provided, coupled with our officers' experience confirms our opinion that JPRA assets are more than capable of providing the necessary training that we need to start our initiatives. Basically, [redacted] consisting of academic training and practical exercises aimed at learning both interrogation and resistance to interrogation techniques.[255]

[redacted] draft described four areas of "training [sought] from JPRA:" (1) "Academic Training," including "legal perspectives," [redacted] (2) "Resistance Training," including academic lessons in interrogation and resistance to interrogation techniques, such as psychological or physiological pressures; (3) "Practice Interrogations/Resistance to [I]nterrogations/[F]eedback," including practice on "[p]hysical pressures techniques and training"; and (4) "Review and Training of Resistance Training Operating Instructions."[256]

[redacted]

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[253] [redacted] Memo from [redacted] to Chief of Staff, JPRA (Lt Col Daniel Baumgartner) and Chief, Mission Support (Christopher Wirts), *Request for Training Support* (August 12, 2002) (hereinafter [redacted] to JPRA, *Request for Training Support* (August 12, 2002)").

[254] Ibid. (emphasis added).

[255] Ibid.

[256] [redacted] to JPRA, *Request for Training Support* (August 12, 2002). Mr. Wirts said that JPRA did not have the expertise to teach "legal perspectives" and in his discussions with [redacted] about the training, [redacted] indicated that JPRA would not be expected to teach that topic. Committee staff interview of Christopher Wirts (January 4, 2008).

[257] [redacted] to JPRA, *Request for Training Support* (August 12, 2002).

[258] Ibid.

[259] Ibid.

[260] Ibid.

[261] Ibid.

[262] Ibid.

(U) The Operating Instruction used to implement DOD directive 1300.7 are those instructions that JPRA uses to implement its SERE-school training program.

2. *JPRA Creates Project 22B (U)*

(Also on August 12, 2002, a meeting was held at JPRA headquarters "to discuss future JPRA support to actions to obtain actionable intelligence from Detained Unlawful Combatants."[266] A memo from JPRA's Commander Col Randy Moulton describing that meeting reported that the JPRA training performed to date had been well-received and that "information and training that JPRA has provided coupled with feedback from the confirmed that JPRA assets are more than capable of providing the necessary training necessary to support their initiative."[267]

(Col Moulton directed his team to develop a Concept of Operations (CONOP) for continued support, stating that the JPRA CONOP would be staffed through the Joint Staff and Office of the Secretary of Defense "to ensure proper oversight and approval prior to execution of the plan."[269] A draft of that CONOP, circulated later in the year, described how JPRA planned to fulfill requirement for training, including how they would facilitate the practice interrogation sessions – i.e., with JPRA members "portray[ing] resisters of different skill levels" and interrogators "demonstrat[ing] the ability to use exploitation methods and concepts taught . . . as well as us[ing] authorized physical pressures."[270] Among the risks

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[263] Ibid.

[264] Ibid. (emphasis in original).

[265] Ibid.

[266] Memo from JPRA/CC (Col Randy Moulton) to JPRA J3/J7/PRA, *Support to / Project 22B* (August 13, 2002) at 1.

[267] Ibid.

[268] Ibid.

[269] Ibid.

[270] Memo from JPRA OSO, *Concept of Operations for JPRA support to anticipated requirements* (October 3, 2002).

described in that CONOP was "injury [to JPRA personnel] as a result of physical pressures administered by [redacted] during the training."[271]

(U) At the August 12, 2002 meeting, JPRA created a special program, which it called Project 22B, to "limit JPRA distribution of sensitive activities in support of [redacted]."[272]

[redacted] In his memo, Col Moulton wrote that protecting information associated with these activities was "of paramount concern" to [redacted] and noted that [redacted] anticipates a congressional investigation into this activity at some time in the future."[273]

III. Guantanamo Bay as a "Battle Lab" for New Interrogation Techniques (U)

[redacted] JPRA was also developing a plan to support Department of Defense interrogation operations at Guantanamo Bay (GTMO). In the summer of 2002, following a request from the Army's Special Operations Command (USASOC) to develop a training regimen for GTMO interrogation personnel, JPRA modified the training plan it had developed for [redacted] to produce a plan to train the GTMO personnel. In September, JPRA sent a team of instructors, including two instructors who had discussed and demonstrated SERE physical pressures to [redacted] officers in July, to Fort Bragg, North Carolina to provide instruction at a four day conference attended by the GTMO personnel.

(U) Just weeks after the JPRA training at Fort Bragg, two GTMO personnel who attended the Fort Bragg training drafted a memo proposing the use of physical and psychological pressures in interrogations at GTMO, including some pressures used at SERE schools to teach U.S. soldiers how to resist interrogation by enemies that do not follow the Geneva Conventions.

(U) On October 11, 2002, Major General Michael Dunlavey, Commander of GTMO's Joint Task Force 170 (JTF-170), submitted a modified version of that memo for approval by his Chain of Command. On December 2, 2002, Secretary of Defense Rumsfeld approved many of those techniques for use in interrogations at GTMO.

A. GTMO Stands Up a Behavioral Science Consultation Team (BSCT) (U)

(U) In June 2002, members of the Army's 85th Medical Detachment's Combat Stress Control Team deployed to Guantanamo Bay. Upon arrival, three members of the team – psychiatrist Major Paul Burney, psychologist [redacted] and a psychiatric technician – were informed that MG Michael Dunlavey, the Commander of JTF-170, had assigned them to support interrogation operations as part of a newly created Behavioral Science Consultation Team (BSCT) at the JTF. This assignment came as a surprise to MAJ Burney and [redacted] because, when they were deployed, the two understood that their mission would be to care for

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[271] Ibid.

[272] Memo from JPRA/CC (Col Randy Moulton) to JPRA J3/J7/PRA, [redacted] *Support to* [redacted] *Project 22B* (August 13, 2002) at 1.

[273] Ibid.

U.S. soldiers dealing with deployment-related stress.[274] In a written statement provided to the Committee, MAJ Burney described the assignment:

> Three of us; [redacted] [the enlisted psychiatric technician], and I, were hijacked and immediately in processed into Joint Task Force 170, the military intelligence command on the island. It turns out we were assigned to the interrogation element because Joint Task Force 170 had authorizations for a psychiatrist, a psychologist, and a psychiatric technician on its duty roster but nobody had been deployed to fill these positions. Nobody really knew what we were supposed to do for the unit, but at least the duty roster had its positions filled.[275]

(U) MG Dunlavey told the Committee that he was in the hospital for much of the month of June and did not know who initiated the creation of the JTF-170 BSCT.[276]

(U) Prior to their arrival at GTMO, neither MAJ Burney nor [redacted] had any training to support interrogations and there was no standard operating procedure in place for the team at GTMO.[277] MAJ Burney told the Committee that the team was "very aware of how little we knew about the whole spectrum of detention and interrogation, we decided we needed help.[278]

B. Behavioral Science Consultation Team (BSCT) Personnel Contact the Army Special Operations Command (USASOC) (U)

(U) Shortly after arriving at GTMO, the BSCT contacted the Chief of the Psychological Applications Directorate (PAD) at the U.S. Army's Special Operations Command (USASOC), LTC Louie "Morgan" Banks.[279] At the time, LTC Banks was also the senior Army SERE Psychologist. The BSCT psychologist, [redacted] had met LTC Banks prior to deploying to GTMO but told the Committee that he was unaware at the time of the connections LTC Banks had with the Army's SERE School.

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[274] Committee staff interview of MAJ Paul Burney (August 21, 2007); Committee staff interview of [redacted] (September 12, 2007).

[275] Written statement of MAJ Paul Burney (August 21, 2007).

[276] Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[277] [redacted] A standard operating procedure was drafted in November 2002, several months after the BSCT was established. It described BSCT tasks including: consulting on interrogation approach techniques, conducting detainee file reviews to construct personality profiles and provide recommendations for interrogation strategies; observing interrogations and providing feedback to interrogators on detainee behavior, flow of the interrogation process, translator and cultural issues and possible strategies for further interrogation; and providing consultation/training on specific behavioral science interviewing and observational techniques that promote productive interrogation. The November SOP also stated that the BSCT "does not conduct medical evaluation or treatment of detainees and does not participate in determining medical treatment protocols for detainees." While the Committee does not know whether the SOP was ever approved, it comports with what BSCT members told the Committee about their activities. JTF GTMO-BSCT Memorandum for Record, *BSCT Standard Operating Procedures* (November 11, 2002); Committee staff interview of [redacted] (September 12, 2007); Committee staff interview of Paul Burney (August 21, 2007).

[278] Written statement of MAJ Paul Burney (August 21, 2007).

[279] Committee staff interview of [redacted] (September 12, 2007).

[redacted] LTC Banks told the Committee that it was apparent to him that the BSCT lacked the proper training for the mission and that, when asked to help, he felt obliged to assist.[280] LTC Banks contacted the Joint Personnel Recovery Agency (JPRA) for assistance in organizing training for the BSCT.[281] After speaking to Col Moulton, the JPRA Commander, LTC Banks informed the BSCT that JPRA was willing to modify its prior [redacted] interrogation training sessions to suit the BSCT's needs.[282]

(U) BSCT members told the Committee that *they* sought the training to better understand the interrogation process.[283] They also told the Committee, however, that GTMO's Director for Intelligence (J-2), LTC Jerald Phifer, approved their trip with the expectation that the BSCT would learn about and bring back interrogation techniques that could be considered for use in interrogations at GTMO; a point that the LTC Phifer confirmed in his testimony to the Department of the Army Inspector General (Army IG).[284] The Staff Judge Advocate at GTMO, LTC Diane Beaver, confirmed LTC Phifer's account, but said that MG Dunlavey told staff he had been considering a request for authority to use additional interrogation techniques and that MG Dunlavey's purpose in sending the staff to the training was to "find out what could be used."[285]

(U) MAJ Burney said that he and [redacted] made LTC Banks "aware that there was interest within JTF-170 to see if we could use 'SERE tactics' to try to elicit information from detainees."[286] [redacted] told the Committee that he believed that the two discussed the GTMO command's interest in obtaining a list of resistance training techniques with LTC Banks.[287] The JPRA Operational Support Office Chief Christopher Wirts, told the Committee that he believed that he and LTC Banks also talked about the need to demonstrate physical pressures used in SERE schools at the Fort Bragg training.[288] LTC Banks, however, told the Committee that he did not recall a discussion of physical pressures at the training and that he was surprised when he later learned that the BSCT had expected to become familiar with resistance training techniques used in SERE school while at the training session.[289]

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[280] Committee staff interview of LTC Morgan Banks (July 2, 2007).

[281] Ibid.

[282] Email from LTC Morgan Banks to MAJ Paul Burney (July 15, 2002).

[283] Committee staff interview of [redacted] (September 12, 2007); Committee staff interview of MAJ Paul Burney (August 21, 2007).

[284] Army IG, Interview of LTC Jerald Phifer (March 16, 2006) at 8; Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 14.

[285] SASC Hearing (June 17, 2008).

[286] Written statement of MAJ Paul Burney (August 21, 2007) at 4.

[287] Committee staff interview of [redacted] (September 12, 2007); Committee staff interview of MAJ Paul Burney (August 21, 2007).

[288] Committee staff interview of Christopher Wirts (January 4, 2008).

[289] Committee staff interview of LTC Morgan Banks (July 2, 2007).

(U) At the time, there was a view by some at GTMO that interrogation operations had not yielded the anticipated intelligence.[290] MAJ Burney testified to the Army IG regarding interrogations:

> [T]his is my opinion, even though they were giving information and some of it was useful, while we were there a large part of the time we were focused on trying to establish a link between Al Qaeda and Iraq and we were not being successful in establishing a link between Al Qaeda and Iraq. The more frustrated people got in not being able to establish this link ... there was more and more pressure to resort to measures that might produce more immediate results.[291]

The GTMO Interrogation Control Element (ICE) Chief, David Becker, told the Committee that, at one point, interrogation personnel were required to question but that he was unaware of the source of that requirement.[292] Others involved in JTF-170 interrogation operations agreed that there was pressure on interrogation personnel to produce intelligence, but did not recall pressure to identify links between Iraq and al Qaeda.[293]

(Mr. Becker told the Committee that during the summer of 2002, the JTF-170 Commander, MG Dunlavey, and his Director for Intelligence (J-2), LTC Phifer, had urged him to be more aggressive in interrogations.[294] Mr. Becker also told the Committee that MG Dunlavey and LTC Phifer repeatedly asked him during this period why he was not using stress positions in interrogations, even though the August 2002 Standard Operating Procedure for JTF-170 expressly prohibited the use of the technique.[295] MG Dunlavey told the Committee that he did not recall asking his staff why they were not using stress positions or telling them that they should be more aggressive.[296]

Mr. Becker also told the Committee that, on several occasions, MG Dunlavey had advised him that the office of Deputy Secretary of Defense Wolfowitz had called to express concerns about the insufficient intelligence production at GTMO.[297] Mr. Becker recalled MG Dunlavey telling him after one of these calls, that the Deputy Secretary himself said that GTMO

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[290] Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 6; Committee staff interview of (September 12, 2007).

[291] Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 6.

[292] The ICE Chief told the Committee that interrogators identified only "a couple of nebulous links." Committee staff interview of David Becker (September 17, 2007).

[293] Committee staff interview of LTC Jerald Phifer (June 27, 2007); Committee staff interview of (September 12, 2007).

[294] Committee staff interview of David Becker (September 17, 2007).

[295] *JTF-170 J2 Interrogation Section Standard Operating Procedures* (August 20, 2002) (emphasis in original) (Detainees being interrogated will "remain seated and secured to the floor. DETAINEES WILL NOT BE PLACED IN STRESS POSITIONS"); *see also* Committee staff interview of David Becker (September 17, 2007).

[296] Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[297] Committee staff interview of David Becker (September 17, 2007).

should use more aggressive interrogation techniques.[298] MG Dunlavey told the Committee that he could not recall ever having a phone call with Deputy Secretary Wolfowitz or his staff.[299]

C. *U.S. Southern Command Seeks External Review of GTMO* (U)

Just as the JTF-170 BSCT was reaching out to LTC Banks for assistance, SOUTHCOM was looking for advice to improve GTMO operations. In June 2002, Major General Gary Speer, the Acting Commander of SOUTHCOM, requested that the Joint Staff conduct an external review of intelligence collection operations at Guantanamo Bay.[300] In response, the Joint Staff directed COL John P. Custer, then-assistant commandant of the U.S. Army Intelligence Center and School at Ft. Huachuca, Arizona, to lead a review team.

COL Custer's team visited GTMO in August and submitted its findings to the Joint Staff on September 10, 2002.[301] Like COL Herrington's assessment six months earlier, the Custer review identified a number of issues hampering GTMO's intelligence collection mission,

COL Custer also noted deficiencies in interrogation approaches used by JTF-170, stating that:

COL Custer recommended that SOUTHCOM, in coordination with JTF-170, provide written guidance "delineating what tools and measures are available and permissible to leverage control over the detainees while providing acceptable guidelines for questioning."[304] He also recommended combining the FBI's Behavioral Analysis Unit and the JTF-170 BSCT to use both military and law enforcement approaches to create an environment that would be "conducive to extracting information by exploiting the detainee's vulnerabilities."[305]

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[298] Ibid.

[299] Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[300] COL John Custer, *CJCS External Review of Guantanamo Bay Intelligence Operations (U)* (September 2002) (hereinafter "Custer Report"); *see also* Briefing Slides, *GTMO Review: Joint Staff External Review of Intelligence Operations at Guantanamo Bay, Cuba* (September 10, 2002).

[301] Custer's team included subject matter experts from Fort Huachuca, the Joint Staff, and Office of the Secretary of Defense.

[302] With respect to personnel, Custer cited a dearth of linguists, noted a lack of cultural training among interrogators, and called the entire mission "woefully undermanned." Custer Report at 2.

[303] Ibid. at 11.

[304] Ibid. at 12.

[305] Ibid. 11-12.

In his report, COL Custer referred to GTMO as "America's 'Battle Lab'" in the global war on terror, observing that "our nation faces an entirely new threat framework," which must be met by an investment of both human capital and infrastructure. [306]

(U) Several witnesses expressed concerns to the Committee about using the term "Battle Lab" to describe operations at GTMO.[307] In written answers to questionnaires from Senator Carl Levin, COL Britt Mallow, the Commander of the Criminal Investigative Task Force (CITF), stated:

> MG Dunlavey and later MG Miller referred to GTMO as a "Battle Lab" meaning that interrogations and other procedures there were to some degree experimental, and their lessons would benefit DOD in other places. While this was logical in terms of learning lessons, I personally objected to the implied philosophy that interrogators should experiment with untested methods, particularly those in which they were not trained. [308]

(U) CITF's Deputy Commander, Mark Fallon, echoed the CITF Commander's concern. Mr. Fallon stated that CITF did not concur with the Battle Lab concept because the task force "did not advocate the application of unproven techniques on individuals who were awaiting trials."[309] He emphasized that the CITF position was that "there were many risks associated with this concept . . . and the perception that detainees were used for some 'experimentation' of new unproven techniques had negative connotations."[310]

(U) MG Dunlavey told the Committee he did not think he would have used the term to describe GTMO.[311] MG Miller told the Committee that he did not recall using the term and that it would be inappropriate to apply it to an operational unit.[312]

D. GTMO Personnel Attend Training at Fort Bragg (U)

(U) On September 16, 2002, less than a week after COL Custer submitted his report to the Joint Chiefs of Staff, seven personnel from JTF-170 at GTMO, including three members of the BSCT and four interrogators, arrived at Fort Bragg for training organized by LTC Banks and JPRA. They were joined by a CIA psychologist and several Army personnel.[313] Joint Forces

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[306] Ibid. at 2.

[307] Committee staff interviews of MAJ Sam McCahon (June 15, 2007); COL Britt Mallow (May 7, 2007); Timothy James (May 18, 2007).

[308] Responses of COL Britt Mallow to questionnaire of Senator Carl Levin (September 15, 2006). Two other witnesses also told the Committee that the term "Battle Lab" was used by Major General Dunlavey to describe GTMO operations. Committee staff interview of LTC Jerald Phifer (June 27, 2007); Committee staff interview of Tim James (May 18, 2007).

[309] Responses of Mark Fallon to questionnaire of Senator Carl Levin (November 15, 2006).

[310] Ibid.

[311] Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[312] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[313] Memo from Joseph Witsch to Col Randy Moulton, Col John Atkins, Lt Col Baumgartner and Christopher Wirts, *USASOC Requirement to Provide Exploitation Instruction in Support of Operation Enduring Freedom*

Command (JFCOM) was formally notified on September 5, 2002 that JPRA intended to provide training support to Army psychologists, but did not mention Guantanamo Bay or interrogation.[314]

(U) JPRA sent senior SERE psychologist Gary Percival, who had recently assumed that position after Dr. Jessen's departure, and two instructors to conduct the training at Fort Bragg.

[redacted] Dr. Percival and one of the two trainers, Joseph Witsch, had been instructors at the exploitation training for [redacted] in July, where they had discussed and demonstrated physical pressures.[315] In testimony before the Committee, the other JPRA trainer, Terrence Russell, stated that the team had designed the training to provide attendees a "familiarization with the academic or the theoretical application of exploitation from a SERE perspective."[316] A contemporaneous email from JPRA Operational Support Office (OSO) Chief Christopher Wirts, who was involved in planning the training, explained that it was intended to be "similar in nature to what we did for OGA on the last iteration."[317] None of the three instructors sent by JPRA to Fort Bragg was a trained interrogator.[318]

[redacted] According to a JPRA plan of instruction dated August 28, 2002, the first day of training included instruction on the stages of [redacted] The next three days of training in the plan of instruction included a range of topics, including [redacted]"[319]

[redacted]) JPRA developed a number of presentations to support the training including one called [redacted] A slide from that presentation stated that "the exploitation process is fairly simple but needs to be adhered to [to] be successful if the goal is to increase the likelihood of obtaining useful intelligence information from enemy prisoners. . ."[320] The presentation listed a number of "Critical Operational Exploitation Principles," including [redacted]"[321] The "Principles" listed in the Fort Bragg training presentation

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(OEF) (September 24, 2002) (hereinafter "*USASOC Requirement to Provide Exploitation Instruction* (September 24, 2002)").

[314] JPRA to USCINCSOC, *Request JPRA Support*, DTG: 052135ZSEP02 (September 5, 2002).

[315] [redacted] Memo from Joseph Witsch to Col Randy Moulton and Christopher Wirts, *Exploitation Training for* [redacted] *Officers* (July 16, 2002); Committee staff interview of Dr. Gary Percival (July 25, 2007).

[316] Testimony of Terrence Russell (August 3, 2007) at 79.

[317] Email from Christopher Wirts to JPRA Staff (August 8, 2002).

[318] Testimony of Joseph Witsch (September 4, 2007) at 14; Testimony of Terrence Russell (August 3, 2007) at 25.

[319] Memorandum from Joseph Witsch to JPRA/CC, JPRA/CD, JPRA/COS, JPRA/OSO, *Plan of Instruction (POI) for USASOC Training Support (U)* (August 28, 2002).

[320] [redacted] Joint Personnel Recovery Agency, *Exploitation of Captive*, presentation to GTMO personnel at Fort Bragg (September 2002) (hereinafter "JPRA, *Exploitation of Captive*").

[321] Ibid. at 4.

were substantially the same as those described in the Exploitation Draft Plan, circulated by Dr. Jessen in April, which described a JPRA-directed exploitation process.[322]

[redacted] Though GTMO was a facility that dealt with detainees after they had been removed from the battlefield, the presentation also included information on "Tactical Questioning," stating that tactical interrogators should [redacted]"[323] Mr. Witsch, the JPRA instructor who acted as Team Chief for the training, testified to the Committee:

> Rough handling is you would pull the person up to their feet, you would move them rapidly in the direction that you were going to take them... basically, they have no control. They would feel like the person that has them is in total control of them. That's what we mean by rough handling.[324]

[redacted] Presentation slides used for the training also listed a number of other recommendations for handling detainees including [redacted]"[325] Mr. Witsch testified to the Committee that he did not know what was meant by those statements and he could not recall any discussion about what punishments might be culturally undesirable for Arab or Islamic detainees.[326]

[redacted] ([redacted] The presentation stated that "all daily activities should be on random schedules" and should, among other things "disrupt prisoner sleep cycles."[327] Mr. Witsch said that denying detainees the ability to predict and determine their schedules "keeps them somewhat off guard and guessing."[328]

[redacted] ([redacted] A second JPRA presentation delivered at Fort Bragg described methods to deal with detainees who were trained to resist interrogation.[329] The presentation, entitled "Counter Measures to Defeat al Qaeda Resistance Contingency Training Based on Recently Obtained AL-QA'IDA Documents" listed several countermeasures to deal with resistant detainees including "invasion of personal space by female."[330] Mr. Witsch explained that "[i]n a lot of cases, it's uncomfortable for a male to have a female in their space. It could also be looked at as uncomfortable having a female in front of an Arab... What this is is a form of pressure in

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[322] Compare JPRA, *Exploitation of Captive* with JPRA, *Exploitation Draft Plan.*

[323] JPRA, *Exploitation of Captive.*

[324] Hearing to Receive Information Relating To The Treatment of Detainees, Senate Committee on Armed Services, 110th Cong. (September 6, 2007) (Testimony of Joseph Witsch) at 12, 34 (hereinafter "Testimony of Joseph Witsch (September 6, 2007)").

[325] JPRA, *Exploitation of Captive.*

[326] Testimony of Joseph Witsch (September 6, 2007) at 16.

[327] JPRA, *Exploitation of Captive.*

[328] Testimony of Joseph Witsch (September 6, 2007) at 18.

[329] Ibid. at 25.

[330] JPRA, *Counter Measures to Defeat al-Qa'ida Resistance*, presentation to GTMO personnel at Fort Bragg (September 2002) (hereinafter "JPRA, *Counter Measures to Defeat al-Qa'ida Resistance*").

that situation."[331] He testified that JPRA might have become aware that the invasion of the personal space by a female might make an Arab detainee uncomfortable while conducting research in preparation for the training.[332]

[redacted] ([redacted] The presentation on countermeasures to defeat al Qaeda resistance also explained that "[i]f the prisoner believes that Americans are immoral barbarians and what he sees counters those beliefs then his core beliefs have been shaken and he is more likely to cooperate. . . . If his core beliefs are reinforced by his treatment he is more likely to stick to his resistance."[333] Mr. Witsch told the Committee that it was "hard to say" what the effect of [redacted] would have on a detainee's resistance – whether it would make the detainee more or less likely to cooperate.[334]

(U) In his testimony to the Army IG, MAJ Burney, the GTMO BSCT psychiatrist who attended the training, stated that JPRA personnel at Fort Bragg, "described some of the stuff that they would do in SERE school as far as keeping people in some sort of solitary confinement for a period of time" or "finding out what their fears were before they came so that they would try and use those against them, whether it was fear of spiders, of the dark or whatever. . ."[335] An interrogator from GTMO who attended the training also recalled a discussion about the use of phobias.[336]

[redacted] ([redacted] Members of the GTMO BSCT who attended the Fort Bragg training recalled discussions with the JPRA instructors about how they administered physical pressures.[337] MAJ Burney told the Committee that instructors talked about techniques the SERE schools used to teach resistance to interrogation, such as walling, and exposing students to cold until they shiver.[338] [redacted] told the Committee that hooding and hitting in a way that was not injurious were both mentioned at Fort Bragg.[339] An interrogator from JTF-170 who attended the training also recalled a discussion about the use of physical pressures.[340]

(U) That same interrogator said that the instructors spoke about using existing procedures at GTMO to enhance interrogations.[341] For example, the interrogator told the Committee that there was a discussion with JPRA personnel that military working dogs, already present at

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[331] Testimony of Joseph Witsch (September 6, 2007) at 26.

[332] Ibid. at 27.

[333] JPRA, *Counter Measures to Defeat al-Qa'ida Resistance*.

[334] Testimony of Joseph Witsch (September 6, 2007) at 30.

[335] Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 14.

[336] Committee staff interview of GTMO Interrogator (November 6, 2007).

[337] Testimony of Joseph Witsch (September 4, 2007) at 92.

[338] Committee staff interview of MAJ Paul Burney (August 21, 2007).

[339] Committee staff interview of [redacted] (September 12, 2007).

[340] Committee staff interview of GTMO Interrogator (November 6, 2007).

[341] Ibid.

GTMO for security, could enhance detainee exploitation. Similarly, the interrogator said that the instructors pointed out that hoods, goggles, and ear muffs were already in use with detainees at GTMO for security purposes, and that existing processes utilizing those techniques could also be used to enhance interrogations. The interrogator also recalled requesting additional JPRA training for GTMO personnel on the use of physical pressures.

(U) Neither LTC Banks nor any of the JPRA instructors from the Fort Bragg training could recall if there were discussions of physical pressures.[342] LTC Banks told the Committee that using physical pressures designed for students at SERE school in actual interrogations would almost always be unproductive.[343] For example, he told the Committee that slapping a person would harden their resistance.

(U) Despite the apparent instruction on physical pressures, MAJ Burney told the Army IG that instructors at Fort Bragg believed that the techniques used in SERE training should not be brought back for use at GTMO and that "interrogation tactics that rely on physical pressures or torture, while they do get you information, do not tend to get you accurate information or reliable information."[344] In a written statement provided to the Committee, MAJ Burney reiterated that point, stating that "[i]t was stressed time and time again that psychological investigations have proven that harsh interrogations do not work. At best it will get you information that a prisoner thinks you want to hear to make the interrogation stop, but that information is strongly likely to be false."[345]

[redacted] During the Fort Bragg training, the GTMO personnel also discussed conditions at GTMO that they felt were hampering intelligence collection efforts. In his after action report summarizing the training, JPRA instructor and training Team Chief Joseph Witsch described some of those conditions, stating for example that [redacted]"[346] Mr. Witsch also stated in his after action report that "[a] lot of interrogation techniques used in the past are no longer effective against the individual detainees because they have developed an awareness and countermeasures to deal with them."[347] Mr. Witsch added that some of the interrogators had become "frustrated over the controls placed on their ability to extract actionable information," such as restrictions on bringing detainees together in a room to confront inconsistencies or on interrogating detainees for "12-15-20 hours at a time."[348] While Mr. Witsch noted that rapport building had proved to be the most effective interrogation technique in eliciting information and that the positive treatment of detainees at GTMO was

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[342] LTC Banks added that he was not present for all of the training sessions. Committee staff interview of LTC Morgan Banks (June 15, 2007); Testimony of Terrence Russell (August 3, 2007) at 79; Testimony of Joseph Witsch (September 4, 2007) at 99.

[343] Committee staff interview of LTC Morgan Banks (June 15, 2007).

[344] Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 8.

[345] Written statement of MAJ Paul Burney (August 21, 2007).

[346] Memo from Joseph Witsch to Col Moulton, Col Atkins, Lt Col Baumgartner, Mr. Wirts, *U.S. Army Special Operations Command (USASOC), Requirement to Provide Exploitation Instruction* (September 24, 2002).

[347] Ibid.

[348] Ibid.

having some effect, he stated that the positive effect appeared limited to the "younger, inexperienced" detainees."[349]

[redacted] In his after action report, Mr. Witsch expressed concerns about JPRA involvement in GTMO operations, writing:

> I highly recommend we continue to remain in an advisory role and not get directly involved in the actual operations – GITMO in particular. We have no actual experience in real world prisoner handling. The concepts we are most familiar with relate to our past enemies and we have developed our Code of Conduct procedures based on those experiences. Without actual experience with current [Designated Unlawful Combatants] we are making the assumption that procedures we use to exploit our personnel will be effective against the current detainees.[350]

[redacted] A week later, Mr. Witsch prepared a follow up memo for Mr. Wirts, JPRA's OSO chief, expressing concern about JPRA's involvement with detainee exploitation, stating:

> What do we bring to the table? We are Code of Conduct instructors with a vast amount of experience training highly intelligent, disciplined, and motivated DoD personnel to resist captivity. . . We base our role-play laboratories on what we know our former enemies have done to our personnel in captivity. It is based on illegal exploitation (under the rules listed in the 1949 Geneva Convention Relative to the Treatment of Prisoners of War) of prisoners over the last 50 years...

[redacted] Mr. Witsch continued:

> I believe the techniques and tactics that we use in training have applicability. What I am wrestling with is the implications of using these tactics as it relates to current legal constraints, the totally different motivations of the detainees, and the lack of direction of senior leadership within the [U.S. Government] on how to uniformly treat detainees.
>
> I think we are well within our sphere of influence if we stick to providing methods to counter resistance trained [Designated Unlawful Combatants]. We are out of our sphere when we begin to profess the proper ways to exploit these detainees. We are now attempting to educate lower level personnel in DoD and OGAs with concepts and principles that are somewhat foreign to them and while it all sounds good they are not in a position nor do they have the depth of knowledge in these matters to effect change and do it in reasonable safety.
>
> The handling of [Designated Unlawful Combatants] is a screwed up mess and everyone is scrambling to unscrew the mess... If we want a more profound role in this effort we need to sell our capabilities to the top level people in the USG and

[349] Ibid.

[350] Ibid.

> not spend our time trying to motivate the operators at the lower levels to sway their bosses. This is running the train backwards and that is a slow method to get somewhere. There are a lot of people in the USG intelligence community that still believe in the old paradigm and wonder just what we're doing in their business.[351]

[redacted] The memo concluded with the warning, "[w]e don't have an established track record in this type of activity and we would present an easy target for someone to point at as the problem. The stakes are much higher for this than what you and I have done in any activity before."[352]

E. Delegation of Senior Government Lawyers Visits Guantanamo (U)

(U) On September 25, 2002, less than a week after GTMO personnel returned from the training at Fort Bragg, Counsel to the President Alberto Gonzales, Counsel to the Vice President David Addington, DoD General Counsel Jim Haynes, Acting CIA General Counsel John Rizzo, Assistant Attorney General of the Criminal Division Michael Chertoff, and other senior administration officials travelled to Guantanamo Bay and were briefed on future plans for detention facilities as well as on intelligence successes, failures, and problems at the JTF.[353]

[redacted] According to a trip report prepared by a Deputy Staff Judge Advocate at SOOUTHCOM, MG Dunlavey held private conversations with Mr. Haynes and a few others and briefed the entire group on a number of issues including "policy constraints" affecting interrogations at the JTF.[354] For example, MG Dunlavey told the group that JTF-170 would "like to take Koran away from some detainees – hold it as incentive" but that the issue was undergoing a policy determination by SOUTHCOM.[355] The trip report noted that Mr. Haynes "opined that JTF-170 should have the authority in place to make those calls, per POTUS order," adding that he "[t]hought JTF-170 would have more freedom to command."[356] MG Dunlavey told the Committee that he may have told the group during their visit that JTF-170 was working on a request for authority to use additional interrogation techniques.[357] Mr. Haynes said he did not recall discussing specific interrogation techniques or GTMO's work on a request for authority to use additional interrogation techniques.[358]

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[351] [redacted] Memo from Joseph Witsch to Christopher Wirts, *(U) Concerns with JPRA Involvement in Operation Enduring Freedom Exploitation of Detained Unlawful Combatants* (October 1, 2002).

[352] Ibid.

[353] JTF-GTMO Distinguished Visitors Roster (September 27, 2002). Col Terrence Farrell, *Trip Report – DoD General Counsel Visit to GTMO* (September 27, 2002). While the September 27, 2002 trip report states that the visit occurred on September 25th, Jack Goldsmith, another senior official on the trip, recounts that the visit took place on September 26, 2002. Goldsmith notes that Patrick Philbin, then-Chertoff Chief of Staff Alice Fisher, and "several Pentagon lawyers" also went on the trip. The Terror Presidency at 99-100.

[354] Col. Terrence Farrell, *Trip Report – DoD General Counsel Visit to GTMO* (September 27, 2002).

[355] Ibid.

[356] Ibid.

[357] Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[358] Committee staff interview of William J. Haynes II (April 25, 2008) at 139-42.

F. JTF-170 BSCT Produces Interrogation Policy Memo (U)

(U) According to the Staff Judge Advocate (SJA) at GTMO, LTC Diane Beaver, there was discussion among senior staff at GTMO as to whether or not the JTF required explicit authorization to use interrogation approaches that had not been taught to interrogators at the U.S. Army Intelligence Center at Fort Huachuca, Arizona. While some felt that JTF-170 already had the authority to use additional interrogation techniques, MG Dunlavey directed his staff to draft a request for new authorities to submit to SOUTHCOM for approval.[359]

(U) The JTF-170 Director for Intelligence, LTC Jerald Phifer, told the Committee that MG Dunlavey wanted to get new techniques on the table and that MG Dunlavey pressured him to draft a memo requesting additional techniques.[360] LTC Phifer asked the BSCT to draft an interrogation policy that could be formally submitted up the chain of command for review.[361] According to MAJ Burney, the BSCT psychiatrist, "by early October there was increasing pressure to get 'tougher' with detainee interrogations but nobody was quite willing to define what 'tougher' meant."[362] MAJ Burney added that there was "a lot of pressure to use more coercive techniques" and that if the interrogation policy memo that LTC Phifer had asked him to write did not contain coercive techniques, then it "wasn't going to go very far."[363]

(U) According to MAJ Burney, he and [redacted] wrote a memo of suggested detention and interrogation policies in the course of an evening.[364] MAJ Burney told the Committee that some of the interrogation approaches identified in the memo came from their JPRA training in Fort Bragg and other approaches were simply made up by the BSCT.[365] [redacted], the BSCT psychologist, also told the Committee that the BSCT used information from the JPRA training at Fort Bragg to draft the memo.[366]

[redacted] The BSCT memo, dated October 2, 2002, began:

[redacted]

[359] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[360] Committee staff interview of LTC Jerald Phifer (June 27, 2007).

[361] Written statement of MAJ Paul Burney (August 21, 2007).

[362] Ibid.

[363] Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 11.

[364] Ibid.

[365] Committee staff interview of MAJ Paul Burney (August 21, 2007). However, in testimony to the Army IG, MAJ Burney said he did not know whether the memo incorporated tactics from the Fort Bragg training. Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 11.

[366] Committee staff interview of [redacted] (September 12, 2007).

The memo identified a number of conditions at GTMO that the BSCT judged to be hindering intelligence collection and stated:

The October 2, 2002 memo proposed three categories of interrogation techniques "for use in the interrogation booth to develop rapport, promote cooperation, and counter resistance."[369] Category I techniques included incentives and "mildly adverse approaches" such as telling a detainee that he was going to be at GTMO forever unless he cooperated.[370] The memorandum stated that an interrogator should be able to ascertain whether a detainee is being cooperative by the end of the initial interrogation and said that if Category I approaches failed to induce cooperation, the interrogator could request approval for Category II approaches.[371]

Category II techniques were designed for "high priority" detainees, defined in the memo as "any detainee suspected of having significant information relative to the security of the United States."[372] Category II techniques included stress positions; the use of isolation for up to 30 days (with the possibility of additional 30 day periods, if authorized by the Chief Interrogator); depriving a detainee of food for up to 12 hours (or as long as the interrogator goes without food during an interrogation); the use of back-to-back 20 hour interrogations once per week; removal of all comfort items including religious items; forced grooming; handcuffing a detainee; and placing a hood on a detainee during questioning or movement.[373]

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[367] MAJ Paul Burney and Memorandum for Record, *Counter-resistance Strategies* (October 2, 2002) at 1 (hereinafter "BSCT, *Counter-resistance Strategies*").

[368] Ibid. at 2.

[369] Ibid.

[370] Ibid.

[371] Ibid.

[372] Ibid.

[373] Ibid. at 2-3. There is evidence that stress positions were used at GTMO prior to the BSCT memo. Lt. Col. Ronald Buikema, who served at Guantanamo from January 2001 until June 2001 as the JTF-170 J2 and Commanding Officer of the Joint Interagency Interrogation Facility (JIIF) indicated in his response to a Navy IG questionnaire that stress positions were used in some interrogations at GTMO. Email from Lt. Col. Ron Buikema to Victoria Gnibus (July 21, 2004).

The memo reserved Category III techniques "ONLY for detainees that have evidenced advanced resistance and are suspected of having significant information pertinent to national security."[374] Category III techniques included the daily use of 20 hour interrogations; the use of strict isolation without the right of visitation by treating medical professionals or the International Committee of the Red Cross (ICRC); the use of food restriction for 24 hours once a week; the use of scenarios designed to convince the detainee he might experience a painful or fatal outcome; non-injurious physical consequences; removal of clothing; and exposure to cold weather or water until such time as the detainee began to shiver.[375]

In addition to suggesting interrogation techniques, the BSCT memo made recommendations for the treatment of detainees in the cell blocks. Specifically, it proposed that resistant detainees might be limited to four hours of sleep a day; that they be deprived of comfort items such as sheets, blankets, mattresses, washcloths; and that interrogators control access to all detainees' Korans.[376] The BSCT memo described using fans and generators to create white noise as a form of psychological pressure and advocated that "all aspects of the [detention] environment should enhance capture shock, dislocate expectations, foster dependence, and support exploitation to the fullest extent possible."[377]

(MAJ Burney and told the Committee that they were not comfortable with the memo they were asked to produce, and therefore included a statement in the memo reflecting their concerns about the techniques, including concerns about the "long term physical and/or mental impact of the techniques."[378] They wrote:

> Experts in the field of interrogation indicate the most effective interrogation strategy is a rapport-building approach. Interrogation techniques that rely on physical or adverse consequences are likely to garner inaccurate information and create an increased level of resistance. . .There is no evidence that the level of fear or discomfort evoked by a given technique has any consistent correlation to the volume or quality of information obtained. . .The interrogation tools outlined could affect the short term and/or long term physical and/or mental health of the detainee. Physical and/or emotional harm from the above techniques may emerge months or even years after their use. It is impossible to determine if a particular strategy will cause irreversible harm if employed. . .Individuals employing Category II or Category III interrogation techniques must be thoroughly trained . . . carefully selected, to include a mental health screening (such screenings are SOP for SERE and other Special Operations personnel).[379]

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[374] BSCT, *Counter-resistance Strategies* at 3 (emphasis in original).

[375] Ibid.

[376] Ibid. at 4.

[377] Ibid. at 4-5.

[378] Committee staff interview of MAJ Paul Burney (August 21, 2007); Committee staff interview of (September 13, 2007).

[379] BSCT, *Counter-resistance Strategies* at 6.

(U) The BSCT provided a copy of their memo to LTC Banks at U.S. Army Special Operations Command (USASOC), who had helped organize their JPRA training. Upon reviewing the memo, LTC Banks praised the BSCT for their "great job" on the memo, but also raised concerns about the suggested use of physical pressures in interrogation, noting that physical pressures are used with students in SERE school to *increase* their resistance to interrogation, not break it down. [380]

(U) LTC Banks wrote:

> The use of physical pressures brings with it a large number of potential negative side effects. . . When individuals are gradually exposed to increasing levels of discomfort, it is more common for them to resist harder. That is one of the reasons we use it [in SERE school] – to increase the resistance posture of our soldiers. If individuals are put under enough discomfort, i.e. pain, they will eventually do whatever it takes to stop the pain. This will increase the amount of information they tell the interrogator, but it does not mean the information is accurate. In fact, it usually decreases the reliability of the information because the person will say whatever he believes will stop the pain. Now, there are certain exceptions, like with all generalizations, but they are not common. Bottom line: The likelihood that the use of physical pressures will increase the delivery of accurate information from a detainee is very low. The likelihood that the use of physical pressures will increase the level of resistance in a detainee is very high...
>
> It is important to remember that SERE instructors use these techniques [physical pressures] because they are effective at increasing resistance. . . Because of the danger involved, very few SERE instructors are allowed to actually use physical pressures. . .everything that is occurring [in SERE school] is very carefully monitored and paced. . . Even with all these safeguards, injuries and accidents do happen. The risk with real detainees is increased exponentially.
>
> (U) My strong recommendation is that you do not use physical pressures . . .[If GTMO does decide to use them] you are taking a substantial risk, with very limited potential benefit.[381]

G. CIA Lawyer Advises GTMO on Interrogations (U)

(U) On October 2, 2002, the GTMO Staff Judge Advocate LTC Diane Beaver convened a meeting to discuss the BSCT memo. Minutes from that meeting reflect the attendance of JTF-170 personnel and the then-chief counsel to the CIA's CounterTerrorist Center Jonathan Fredman.[382]

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[380] Email from LTC Morgan Banks to MAJ Paul Burney and (October 2, 2002).

[381] Ibid.

[382] *Counter Resistance Strategy Meeting Minutes* at 2. The meeting minutes stated that questions and comments from the meeting were paraphrased.

(U) Mr. Fredman's visit took place just a week after the acting CIA General Counsel John Rizzo and DoD General Counsel Jim Haynes's September 25, 2002 visit to GTMO. Mr. Haynes did not recall discussing with Mr. Rizzo during their visit the possibility of having a CIA lawyer travel to GTMO to talk to DoD personnel there.[383] Mr. Haynes said he later found out in a discussion with Mr. Rizzo that a CIA lawyer had gone to GTMO and discussed legal authorities applicable to interrogations, but said he could not recall when he first learned of that CIA lawyer's visit.

(U) While LTC Beaver could not recall what she or others said, the minutes of the October 2, 2002 meeting indicate that it began with a briefing by the BSCT on the JPRA training at Fort Bragg.[384] The BSCT briefer told the group that rapport building and the "friendly approach" were proven methods to overcome resistance, while "fear based approaches" were "unreliable" and "ineffective in almost all cases."[385] According to the meeting minutes, however, the BSCT did report that psychological stressors such as sleep deprivation, withholding food, isolation, and loss of time were "extremely effective."[386] The BSCT also identified "camp-wide, environmental strategies designed to disrupt cohesion and communication among detainees" as potentially helpful to improve the effectiveness of interrogations and explained that the detention "environment should foster dependence and compliance."[387]

(U) Despite the BSCT comment on the effectiveness of rapport building, the meeting minutes reflect little discussion of that approach. In fact, according to the meeting minutes, the GTMO Director for Intelligence LTC Jerald Phifer questioned the BSCT assessment, stating that "harsh techniques used on our service members have worked and will work on some, what about those?"[388] [redacted] responded that force was "risky, and may be ineffective."[389] Nevertheless, the remainder of the meeting appears to have revolved around a discussion of aggressive interrogation techniques and how to obtain the approval to use them.

(U) Interrogation Control Element (ICE) Chief David Becker noted at the meeting that there were many reports about sleep deprivation used at Bagram in Afghanistan.[390] According to the meeting minutes, LTC Beaver agreed but stated that "officially it is not happening."[391] Nevertheless, LTC Beaver suggested that sleep deprivation could be used on GTMO detainees "with approval."[392] The group also discussed ways to manage the detainees' sleep cycles, i.e., by

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[383] Committee staff interview of William J. Haynes II (April 25, 2008) at 145-47.

[384] SASC Hearing (June 17, 2008); *Counter Resistance Strategy Meeting Minutes* at 3.

[385] *Counter Resistance Strategy Meeting Minutes* at 3.

[386] Ibid.

[387] Ibid.

[388] Ibid.

[389] Ibid. at 2.

[390] Ibid.

[391] Ibid. at 3. It is unclear how and when JTF-170 personnel became aware of the use of sleep deprivation at Bagram, though LTC Beaver told the Committee that she had seen a version of a standard operating procedure for interrogations in use at Bagram on a classified DoD internet system.

[392] Ibid.

letting the detainee rest "just long enough to fall asleep and wake him up about every thirty minutes and tell him it's time to pray again."[393]

(U) According to the meeting minutes, LTC Beaver suggested that the JTF might "need to curb the harsher operations while [the International Committee of the Red Cross (ICRC)] is around," and that it would be "better not to expose them to any controversial techniques."[394] LTC Beaver explained that "[t]he ICRC is a serious concern. They will be in and out, scrutinizing our operations, unless they are displeased and decide to protest and leave. This would draw a lot of negative attention."[395] The minutes reflect that the CIA lawyer added his view:

> In the past when the ICRC has made a big deal about certain detainees, the DOD has 'moved' them away from the attention of the ICRC. Upon questioning from the ICRC about their whereabouts, the DOD's response has repeatedly been that the detainee merited no status under the Geneva Convention.[396]

(U) At the meeting, the minutes reflect that CIA lawyer Jonathan Fredman also discussed whether or not the techniques in the BSCT memo complied with applicable legal standards. Mr. Fredman explained:

> Under the Torture Convention, torture has been prohibited by international law, but the language of the statutes is written vaguely. Severe mental and physical pain is prohibited. The mental part is explained as poorly as the physical. Severe physical pain [is] described as anything causing permanent damage to major organs or body parts. Mental torture [is] described as anything leading to permanent, profound damage to the senses or personality. It is basically subject to perception. If the detainee dies you're doing it wrong. So far the techniques we have addressed have not proven to produce these types of results, which in a way challenges what the BSCT paper says about not being able to prove whether these techniques will lead to permanent damage. Everything in the BSCT [memo] is legal from a civilian standpoint.[397]

(U) According to the minutes, when the participants of the meeting discussed whether or not to videotape the "aggressive sessions or interrogations," Mr. Fredman said that videotaping of "even totally legal techniques will look 'ugly.'"[398] Mr. Becker, who agreed with the CIA lawyer's assessment, added that "videotapes are subject to too much scrutiny in court."[399]

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[393] Ibid. at 5.

[394] Ibid. at 3.

[395] Ibid.

[396] Ibid.

[397] According to the meeting minutes, the CIA lawyer added "The Torture Convention prohibits torture and cruel, inhumane and degrading treatment. The US did not sign up to the second part, because of the 8th amendment . . .That gives us more license to use more controversial techniques." Ibid.

[398] Ibid. at 5.

[399] Ibid. at 3.

(U) When an attendee at the meeting mentioned that law enforcement agents (presumably referring to CITF and FBI) had concerns about the use of aggressive tactics, the minutes reflect that Mr. Fredman responded that "[w]hen CIA has wanted to use more aggressive techniques in the past, the FBI has pulled their personnel from theatre. In those rare instances, aggressive techniques have proven very helpful."[400] LTC Beaver added that there was no legal reason why law enforcement personnel could not participate in those operations.[401]

(U) While LTC Beaver testified in 2008 that she was aware that SERE training was not designed for offensive use with detainees, the minutes of the October 2, 2002 meeting reflect that she nevertheless asked about use of the "wet towel" technique in SERE school.[402] The CIA lawyer replied:

> If a well-trained individual is used to perform this technique it can feel like you're drowning. The lymphatic system will react as if you're suffocating, but your body will not cease to function. It is very effective to identify phobias and use them (i.e., insects, snakes, claustrophobia). The level of resistance is directly related to person's experience.[403]

(U) According to the meeting minutes, ICE Chief David Becker asked whether GTMO could get blanket approval for the use of techniques or whether techniques would be approved on a case-by-case basis.[404] Mr. Fredman responded that the "CIA makes the call internally on most of the techniques found in the BSCT" memo and referenced in their meeting, but that "significantly harsh techniques are approved through the DOJ."[405] As to whether Geneva Conventions would apply, Mr. Fredman noted that the "CIA rallied for it not to."[406]

(U) The meeting minutes also reflect Mr. Fredman thoughts on other interrogation techniques, such as threats of death. Mr. Fredman noted that such threats "should be handled on a case by case basis. Mock executions don't work as well as friendly approaches, like letting someone write a letter home, or providing them with an extra book."[407]

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[400] Ibid.

[401] Ibid.

[402] SASC Hearing (June 17, 2008); BSCT, *Counter-resistance Strategies* at 4.

[403] *Counter Resistance Strategy Meeting Minutes* at 4. LTC Beaver said that she had learned about the wet towel technique from a Navy doctor who had been assigned to the Hospital at Guantanamo and who described to her its use at the Navy SERE school. It is unclear, however, to whom LTC Beaver is referring. The Committee interviewed a Navy Lieutenant Commander who was deployed to GTMO and who had previously worked at the Navy SERE school at the Naval Air Station in Brunswick, Maine. The Lieutenant Commander told the Committee that he discussed with JTF-GTMO staff physical pressures used to teach students at SERE school how to resist interrogations. However, the Lieutenant Commander was not deployed to GTMO until November 2002. Committee staff interview of LTC Diane Beaver (October 11, 2007); see Committee staff interview of (August 22, 2007); Travel voucher.

[404] *Counter Resistance Strategy Meeting Minutes* at 4.

[405] Ibid.

[406] Ibid.

[407] Ibid. at 3.

(U) Weeks later, CITF Deputy Commander Mark Fallon wrote an email to CITF's Chief Legal Counsel Major Sam McCahon regarding the meeting minutes:

> Quotes from LTC Beaver regarding things that are not being reported give the appearance of impropriety. Other comments like "It is basically subject to perception. If the detainee dies you're doing it wrong" and "Any of the techniques that lie on the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents." Seem to stretch beyond the bounds of legal propriety. Talk of "wet towel treatment" which results in the lymphatic gland reacting as if you are suffocating, would in my opinion; shock the conscience of any legal body looking at using the results of the interrogations or possibly even the interrogators. Someone needs to be considering how history will look back at this.[408]

The October 2, 2002 meeting minutes indicated that the group discussed Mohammed al Khatani, a high value detainee suspected of being connected to the September 11, 2001 attacks. A week before the meeting, JTF-170 had assumed the lead on Khatani's interrogation.[409] By the October 2, 2002 meeting, JTF-170 had already developed an aggressive interrogation plan for Khatani.

Two days after the meeting, BSCT psychiatrist MAJ Paul Burney sent an email to LTC Banks, stating that "persons here at this operation are still interested in pursuing the potential use of more aversive interrogation techniques . . . Were more aversive techniques approved for use in the future by appropriate people, the operation would like to have a few task force personnel specifically trained in various techniques."[410] MAJ Burney asked whether LTC Banks knew "where task force personnel could go to receive such training" and whether he knew of "any consultants who could assist if any of these measures are eventually approved."[411]

LTC Banks replied "I do not envy you. I suspect I know where this is coming from. The answer is no, I do not know of anyone who could provide that training... The training that SERE instructors receive is designed to simulate that of a foreign power, and to do so in a manner that encourages resistance among the students. I do not believe that training interrogators to use what SERE instructors use would be particularly productive."[412]

H. DoD Takes Lead on the Interrogation of Mohammed al Khatani (U)

According to the Department of Defense, Pakistani authorities captured Mohammed al Khatani along the Pakistani-Afghanistan border on December 15, 2001 and

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[408] Email from Mark Fallon to MAJ Sam McCahon et al. (October 28, 2002).

[409] LTG Joseph Inge, *DEPSECDEF Inquiry Regarding Location of Interrogation Plan for ISN 063* (August 24, 2006) at 5 (hereinafter "Inge Report").

[410] Email from MAJ Paul Burney to LTC Morgan Banks (October 4, 2002).

[411] Ibid.

[412] Email from LTC Morgan Banks to MAJ Paul Burney (October 4, 2002).

turned him over to U.S. forces on December 26, 2001.[413] He was transferred to Guantanamo Bay on February 13, 2002, where he was initially interrogated by JTF-170, CITF and FBI personnel at Camp X-Ray.

[redacted] In the summer of 2002, Khatani was identified as a possible "twentieth hijacker" of the September 11 attacks.[414] From July 27, 2002 until September 19, 2002, Khatani was questioned by the FBI.[415] During this period, Khatani was held at the recently built Camp Delta until August 8, 2002 when he was transferred to the Naval Brig at Guantanamo Bay.[416] While he was in FBI custody, JTF-170 began drafting an interrogation plan for Khatani.

(U) On September 23, 2002, the CITF Special Agent in Charge sent a memorandum to CITF's Deputy Commander raising concerns about JTF-170's proposed interrogation plan for Khatani. The memo stated:

> DoD Intelligence personnel contacted FBI [Supervisory Special Agent] in order to conduct an interview of a detainee assigned to the FBI. The DoD personnel indicated that they intend to employ the following interrogation techniques: drive the hooded detainee around the island to disorient him, disrobe him to his underwear, have an interrogator with an Egyptian accent (it is known among the detainees that Egyptians are aggressive interrogators and commonly use coercion, to include maiming) . . .
>
> As a law enforcement agency, CITF is clearly prohibited from participating in these techniques and we also do not want to turn a deaf ear when we learn of these issues. . .[417]

[redacted]

[413] Memo from COL John Hadis (JTF-GTMO Chief of Staff) to SOUTHCOM Chief of Staff (March 14, 2005), attached as Tab 1 to Inge Report (August 24, 2006).

[414] Khatani was identified as a possible twentieth highjacker after it was determined that he had tried to enter the U.S. in August 2001 but was detained at the Orlando, Florida airport and later deported. When Khatani arrived at the Orlando airport, Mohammed Atta was waiting. JTF-GTMO, *Analyst Support Summary* (March 18, 2003), attached as Tab 22 to Inge Report (August 24, 2006).

[415] Inge Report at 5.

[416] Memo from COL John Hadis (JTF-GTMO Chief of Staff) to SOUTHCOM Chief of Staff (March 14, 2005), attached as Tab 1 to Inge Report (August 24, 2006); Inge Report at 5.

[417] Memo from J.K. Sieber (CITF SAC) to CITF Deputy Commander, CITF Operations Officer, CITF SJA, *DOD Interrogation Techniques Issue* (September 23, 2002).

[418] Committee staff interview of David Becker (September 17, 2007).

(U) While MG Dunlavey's memo stated that the request had "been reviewed by my Staff Judge Advocate and determined to be legally sufficient," the SJA, LTC Diane Beaver, told the Committee that she had not been consulted on the interrogation plan and did not recall reviewing the memo or providing the Commander with guidance regarding the legal sufficiency of the request.[425] Major General Dunlavey said that he did not recall whether or not he personally consulted with LTC Beaver, that the letter would likely have been drafted by his Director for Intelligence, LTC Jerald Phifer, and that it was possible that the statement in the letter that LTC Beaver had been consulted was based on a representation by his staff.[426]

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[419] The memo was provided to the Committee as an appendix to the AR-15-6 Report completed by Lieutenant General Randall Schmidt and Brigadier General John T. Furlow into FBI allegations of abuse at Guantanamo Bay (hereinafter "Schmidt-Furlow Report"). The memo is unsigned but contains a handwritten notation "////signed on 1 Oct 02////." Committee staff requested the Department of Defense provide a signed copy or advise the Committee of any reason why the Committee should not rely on the document. The Department provided neither.

[420] Memo from MG Michael Dunlavey to JTF-160 Commander, *Interrogation Plan for ISN 063* (October 1, 2002), attached as exhibit 40 to Schmidt-Furlow Report.

[421] Ibid.

[422] Ibid.

[423] Ibid.

[424] Ibid.

[425] Ibid.; Committee staff interview of LTC Diane Beaver (October 11, 2007); *see also* Memo from J.K. Sieber (CITF SAC) to CITF Deputy Commander, CITF Operations Officer, CITF SJA, *DOD Interrogation Techniques Issue* (September 23, 2002) ("the JTF 170 SJA had not been briefed on the plan prior to her contact with the FBI SSA. When she learned of the plan, she sought guidance from up her chain of command and also sought guidance from DOD legal and other intelligence agencies. She wants to ensure that even if these techniques are not legally objectionable, her chain of command is aware that these types of techniques are being utilized and that the personnel on the ground are properly trained to conduct these techniques.")

[426] Committee staff interview of MG Michael Dunlavey (November 30, 2007).

From October 2 until October 10, 2002, JTF-170 personnel interrogated Khatani. According to multiple witness accounts, on or about October 5, 2002, military working dogs were brought into the room where Khatani was being interrogated.[427] A summarized statement of testimony provided by one of the FBI agents present at the time indicated that the FBI objected to the use of dogs and raised those objections to Mr. Becker, the JTF-170 ICE Chief.[428] In testimony to the Army IG, Mr. Becker acknowledged that he permitted the military working dog to enter the interrogation in order to raise the detainee's stress level.[429]

Mr. Becker told the Committee that he had authorized dogs entering the interrogation room on two occasions and that the dog barked but was not permitted to place its paws on Khatani.[430] Mr. Becker also told the Committee that LTC Phifer provided verbal authority for the dogs to be used in this manner. LTC Phifer recalled discussing dogs with Mr. Becker as a technique because Arabs "saw dogs as a dirty animal and they didn't like them," not because they should be "used as a fear factor."[431] LTC Phifer told the Army IG, however, that Mr. Becker never told him that he had approved the use of a dog during the Khatani interrogation. However, in written answers to questions posed by Vice Admiral Church, LTC Phifer stated that dogs were used in the Khatani interrogation and that "[w]e would bring the dog around to within 10 feet [of Khatani] and he would be somewhat unnerved by it. We did it to keep him off balance as well as to enhance security."[432] Major General Dunlavey said that he did not recall being aware that a dog was used in the interrogation of Khatani.[433]

In an October 8, 2002 email to his colleague, an FBI agent described JTF-170's interrogation of Khatani, stating that DoD had tried "sleep deprivation," "loud music, bright lights, and 'body placement discomfort,' all with negative results" and that DoD interrogators planned to stop the interrogation.[434] Mr. Becker told the Committee that the interrogation plan did not work and that JTF-170 ceased the interrogation after approximately a week and moved Khatani back to the Navy brig.[435]

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[427] Summarized witness statement of David Becker (March 3, 2005), exhibit 21 to Schmidt-Furlow Report; summarized witness statement of ENS Mary Travers (February 23, 2005), exhibit 33 to Schmidt-Furlow Report; summarized witness statement of Agent Robert Morton (January 20, 2005), exhibit 36 to Schmidt-Furlow Report; summarized witness statement of Agent Charles Dorsey (January 20, 2005), exhibit 41 to Schmidt-Furlow Report.

[428] Summarized witness statement of Agent Charles Dorsey (January 20, 2005), exhibit 41 to Schmidt-Furlow Report.

[429] Army IG, Interview of David Becker (September 20, 2005) at 30.

[430] Committee staff interview of David Becker (September 17, 2007).

[431] Army IG, Interview of LTC Jerald Phifer (March 16, 2006) at 13.

[432] Responses of LTC Jerald Phifer to questionnaire of VADM Church (July 16, 2004). It is not clear from those written answers whether LTC Phifer was referring to the use of dogs in JTF-170's October 2002 interrogation of Khatani or in the subsequent interrogation of Khatani that began in late November.

[433] Committee staff interview of Major General Michael Dunlavey (November 30, 2007).

[434] Email from FBI Special Agent to FBI Special Agent (October 8, 2002).

[435] Committee staff interview of David Becker (September 17, 2007).

(U) Another FBI agent reflected upon the failed interrogation in his own email of October 8, 2002, observing that "I think we should consider leaving him alone, let him get healthy again and do something 'different.'"[436]

IV. GTMO Seeks Authority to Use Aggressive Interrogation Techniques (U)

A. GTMO Requests Counter-Resistance Techniques Influenced by SERE (U)

(U) On October 11, 2002, just days after the JTF-170 moved Khatani back to the Navy Brig and shortly after meeting with the Chief Counsel of the CIA's CounterTerrorist Center Jonathan Fredman, LTC Phifer submitted a memorandum to JTF-170 Commander MG Dunlavey requesting approval to use "counter-resistance" interrogation techniques.[437] LTC Phifer's memo was largely drawn from the October 2, 2002 memorandum that the GTMO Behavioral Science Consultation Team (BSCT) had written upon their return from the JPRA training at Fort Bragg.[438] The memo requested approval for three categories of progressively more aggressive interrogation techniques, many of which were similar to techniques used at SERE schools to increase U.S. soldiers' resistance to illegal enemy interrogation.[439]

(U) Of the three categories of proposed techniques, those in Category I were the least aggressive. Category I proposed yelling at the detainee and using certain "techniques of deception," such as using multiple interrogators or having an interrogator "identify himself as a citizen of a foreign nation or as an interrogator from a country with a reputation for harsh treatment of detainees."[440]

(U) The proposed Category II techniques were more aggressive and included several techniques similar to those used in SERE schools, such as stress positions, isolation, deprivation of light and auditory stimuli, using a hood during transport and questioning, removal of clothing, and using detainees' individual phobias to induce stress.[441]

An August 19, 2002 email from LTC Beaver reflected discussions among JTF-170 staff about stress positions, which she said resulted in an agreed upon policy of "no stress

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[436] Email from FBI Special Agent to FBI Special Agent (October 8, 2002).

[437] Memo from LTC Jerald Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies* (October 11, 2002) (hereinafter LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*").

[438] MAJ Burney told the Army IG that the October 11, 2002 memo "wasn't the exact same document that we had written but the general structure and overall organization—a lot of the things did remain intact from our original brainstorm to what was eventually requested." Army IG, Interview of MAJ Paul Burney (August 21, 2007) at 11.

[439] The October 11 memo also stated that "current guidelines for interrogation procedures at GTMO limit the ability of interrogators to counter advanced resistance." LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*".

[440] Ibid.

[441] Additional Category II techniques included use of falsified documents or reports, interrogating the detainee in an environment other than the standard interrogation booth, use of 20 hour interrogations, removal of all comfort items (including religious items), switching the detainee from hot rations to MREs, and forced grooming. Ibid.

positions" at GTMO.[442] When asked how stress positions came to be included in LTC Phifer's memo, given the agreement referenced in her earlier email, LTC Beaver said that she did not know, but added that LTC Phifer later advocated for their use.[443] LTC Beaver said that she relied on Mr. Becker and LTC Phifer to decide which techniques to put in the memo and that she never commented or changed their drafts.[444]

(U) The proposed Category III techniques in the October 11, 2002 request were the most aggressive and included the use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him and/or his family; exposure to cold weather or water; the use of a wet towel and dripping water to induce the misperception of suffocation; and the use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.[445] According to the October 11, 2002 memo, Category III techniques "and other aversive techniques, such as those used in U.S. military resistance training or by other U.S. government agencies" would be utilized to interrogate "exceptionally resistant detainees," which LTC Phifer estimated as "less than 3%" of the detainees held at GTMO.[446]

(U) Two of the Category III techniques in LTC Phifer's memo – the use of phobias and the use of the wet towel and dripping water to induce the misperception of suffocation – were not derived from the October 2, 2002 BSCT memo.[447] CIA lawyer Jonathan Fredman, however, had reportedly discussed both of these techniques during his October 2, 2002 meeting with GTMO personnel, noting that the use of phobias was "very effective" and that the use of the "wet towel technique" makes a body react as is if it's suffocating.[448] Mr. Becker told the Committee that he (the ICE Chief) may have recommended adding those two techniques to the request for authority.[449]

(U) LTC Phifer said that he drafted his memo with Mr. Becker.[450] Mr. Becker, however, told the Committee that he was provided a draft only after it was nearly complete. He said that

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[442] Vice Admiral Albert T. Church, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques* (March 7, 2005) (hereinafter "*Church Report*") at 109 (citing email from LTC Beaver (August 19, 2002)).

[443] LTC Beaver told the Committee that LTC Phifer advocated the use of stress positions in the interrogation of Mohammed al Khatani (discussed below). Committee staff interview of LTC Diane Beaver (November 9, 2007).

[444] Ibid.

[445] LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies.*

[446] Ibid.

[447] The use of a wet towel and dripping water to induce the misperception of drowning appears to describe waterboarding. The Navy is the only service that used waterboarding in SERE training, which it ceased in November 2007.

[448] *Counter Resistance Strategy Meeting Minutes* at 5 (The CTC Chief Counsel explained that if a "well-trained individual is used to perform" the "wet-towel technique," it can "feel like you're drowning. The lymphatic system will react as if you're suffocating but your body will not cease to function.")

[449] Committee staff interview of David Becker (September 17, 2007).

[450] Committee staff interview of LTC Jerald Phifer (June 27, 2007).

he thought the techniques memo was "stupid," though he did not share his view with LTC Phifer at the time.[451] LTC Phifer told the Committee that he was uncomfortable with the idea of using some of the techniques in his memo but that MG Dunlavey pressured him to finish the request.[452]

B. GTMO Staff Judge Advocate Conducts "Legal Review of Aggressive Interrogation Techniques" (U)

(U) The October 11, 2002 techniques memo was accompanied by a cover memo and legal brief written by GTMO's Staff Judge Advocate (SJA) LTC Diane Beaver. The cover memo stated simply that "the proposed strategies do not violate applicable federal law."[453]

(U) LTC Beaver told the Committee that she drafted the legal brief with her staff over the course of the 2002 Columbus Day weekend.[454] She told the Committee that she had not seen either of the legal memoranda produced by the Department of Justice Office of Legal Counsel on August 1, 2002 and that she did not receive input on the legal brief from anyone outside of GTMO. The minutes of the October 2, 2002 meeting with CIA lawyer Jonathan Fredman, however, reflect that LTC Beaver was present when he discussed the Torture Convention (and the federal law implementing the treaty). In that discussion, Mr. Fredman described "severe physical pain" as "anything causing permanent damage to major organs or body parts."[455] The idea that "severe physical pain" constituting torture had to rise to the level of "organ failure, impairment of bodily functions or even death" had been discussed in the OLC legal memo of August 1 2002, known as the First Bybee memo.[456]

(U) LTC Beaver began her analysis of the "aggressive" techniques by stating that the "detainees currently held at Guantanamo Bay . . . are not protected by the Geneva Conventions."[457] LTC Beaver stated that the Office of the Secretary of Defense "had not adopted specific guidelines regarding interrogation techniques for detainee operations at GTMO" and she dismissed the longstanding guidance on interrogation of detainees contained in the Army Field Manual (FM) 34-52 as not binding.[458]

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[451] Committee staff interview of David Becker (September 17, 2007).

[452] Committee staff interview of LTC Jerald Phifer (June 27, 2007).

[453] Memo from LTC Diane Beaver for Commander, Joint Task Force 170, *Legal Review of Aggressive Interrogation Techniques* (October 11, 2002).

[454] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[455] *Counter Resistance Strategy Meeting Minutes* at 3.

[456] Memo from Assistant Attorney General Jay Bybee to White House Counsel Alberto Gonzales, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (August 1, 2002).

[457] Memo from LTC Diane Beaver for Commander, Joint Task Force 170, *Legal Brief on Proposed Counter-Resistance Strategies* (October 11, 2002) (hereinafter " LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies*").

[458] The SJA concluded that because the techniques in the Army FM 34-52 are "constrained by, and conform to the Geneva Conventions and applicable international law," and that the Geneva Conventions do not apply as a matter of law, the Field Manual was "not binding." See LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 1.

(U) In her memo, LTC Beaver stated that U.S. obligations under the Convention Against Torture restricted only those cruel, inhuman, or degrading acts that were also prohibited by the "current standard articulated in the Eighth Amendment" against "cruel and unusual punishment."[459] The memo concluded that the proposed interrogation techniques would be consistent with the Eighth Amendment standard so long as any force used could "plausibly have been thought necessary . . . to achieve a legitimate governmental objective and it was applied in a good faith effort and not maliciously or sadistically for the very purpose of causing harm."[460]

(U) LTC Beaver also concluded that the proposed interrogation techniques would not violate the federal anti-torture statute so long as they were not specifically intended to cause severe physical pain or suffering or prolonged mental harm. LTC Beaver conducted her analysis with the "assum[ption] that severe physical pain [would not be] inflicted" and "absent any evidence that any of these strategies [would] in fact cause prolonged and long lasting mental harm."[461] LTC Beaver told the Committee that she did not conduct any research to determine whether the use of the techniques described in the accompanying request for authority would, in fact, result in long-term mental harm.[462]

The October 2, 2002 BSCT memo, however, had specifically cautioned that the techniques "could affect the short term and/or long term physical and/or mental health of the detainee . . . [and that] physical and/or emotional harm from the . . . techniques may emerge months or even years after their use."[463]

(U) LTC Beaver also found that some of the proposed tactics would constitute a "*per se* violation" of the Uniform Code of Military Justice (UCMJ) Article that prohibits military personnel from committing assault, and could violate the Article that prohibits military personnel from communicating a threat.[464] As a result, LTC Beaver said it would be "advisable to have permission or immunity in advance from the convening authority for military members utilizing these methods."[465] In a November 4, 2002 letter to the Joint Staff J-5, the Marine Corps commented on the SJA's recommendation to convey "permission or immunity in advance," noting that "[w]e are unaware of any authority that would allow a convening authority to give 'permission or immunity' in advance to commit a criminal violation."[466] Likewise, military lawyers from the Judge Advocate General's Legal Center and School later said that LTC Beaver's "proposal to immunize interrogators, given that a number of the proposed techniques in

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[459] LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 2.

[460] Ibid. at 5.

[461] Ibid.

[462] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[463] BSCT, *Counter-Resistance Strategies* (October 2, 2002).

[464] LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 5.

[465] Ibid.

[466] Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002) *see also* Section IV D, *infra*.

issue constituted violations of the UCMJ, was not only unprecedented, but lacked any basis in law."[467]

(U) Based on her legal review, LTC Beaver recommended that the "proposed methods of interrogation be approved," but that interrogators be trained to use the methods and that "interrogations involving category II and III methods" undergo a legal, medical, behavioral science, and intelligence review prior to commencement.[468]

(U) LTC Beaver told the Committee that she called the SOUTHCOM Staff Judge Advocate COL Manny Supervielle, likely on Sunday, October 10, 2002 and sent SOUTHCOM a draft of the legal memo that same day.[469] She said that she told COL Supervielle that she "really needed some help" but that she received no comments from SOUTHCOM prior to submitting the final memo the next day.[470] LTC Beaver said that she also talked to the Legal Counsel to the Chairman of the Joint Chiefs of Staff CAPT Jane Dalton and asked for her help, but was told that she should talk to COL Supervielle.[471] CAPT Dalton said that she did not recall that conversation with LTC Beaver.[472] LTC Beaver also told the Committee that MG Dunlavey did not comment on drafts of the memo and that she did not discuss it with him after it was completed.[473]

C. Chain of Command Considers the Request for Interrogation Techniques as CITF and FBI Raise Objections (U)

(U) On October 11, 2002, MG Dunlavey submitted LTC Phifer's memo and LTC Beaver's legal analysis to General James Hill, the Commander of the United States Southern Command (SOUTHCOM). He also sent his own memo requesting approval to use the interrogation techniques.[474] MG Dunlavey wrote:

> I am fully aware of the techniques currently employed to gain valuable intelligence in support of the Global War on Terrorism. Although these techniques have resulted in significant exploitable intelligence, the same methods have become less effective over time. I believe the methods and techniques delineated in the accompanying J-2 memorandum will enhance our efforts to extract additional information. Based on the analysis provided by the JTF-170

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[467] Lt Col Kantwill et al., *Improving the Fighting Position, A Practitioner's Guide to Operational Law Support to the Interrogation Process*, 2005 Army Lawyer (July 2005) at 12, 14.

[468] LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 7.

[469] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[470] SASC Hearing (June 17, 2008); Committee staff interview of LTC Diane Beaver (November 9, 2007).

[471] SASC Hearing (June 17, 2008).

[472] Ibid.

[473] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[474] Memo from MG Michael Dunlavey to USSOUTHCOM Commander GEN James Hill, *Counter-Resistance Strategies* (October 11, 2002) (hereinafter "MG Dunlavey to GEN Hill, *Counter-Resistance Strategies.*")

SJA, I have concluded that these techniques do not violate U.S. or international laws.[475]

(U) On October 25, 2002, GEN Hill forwarded the JTF-170 request to Chairman of the Joint Chiefs of Staff, Gen Richard Myers, with a memorandum stating that "despite our best efforts, some detainees have tenaciously resisted our current interrogation methods."[476] He continued: "[o]ur respective staffs, the Office of the Secretary of Defense, and Joint Task Force 170 have been trying to identify counter-resistant techniques that we can lawfully employ."[477] When later asked, GEN Hill could not recall whether SOUTHCOM produced a written opinion analyzing the GTMO request separate from LTC Beaver's opinion.[478]

(U) As to techniques in the GTMO request for interrogation techniques, GEN Hill said that he "did discuss the topic of SERE training in a general manner with MG Dunlavey."[479] Years later, in a June 3, 2004 press briefing, GEN Hill noted the influence of the Fort Bragg trip and SERE school techniques on the request, stating:

> The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK. I sent that list of techniques up to the Secretary and said, in order for us to get at some of these very high-profile, high-value targets who are resistant to techniques, I may need greater flexibility. But I want a legal review of it and you to tell me that, policy-wise, it's the right way to do business.[480]

(U) In his October 25, 2002 memo, GEN Hill stated that, although he believed Categories I and II techniques were "legal and humane," he was uncertain about techniques in Category III and was "particularly troubled by the use of implied or expressed threats of death of the detainee or his family."[481] Nevertheless, GEN Hill said that he "desire[d] to have as many options as possible at [his] disposal" and asked that Departments of Defense and Justice attorneys review the Category III techniques.[482]

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[475] MG Dunlavey to GEN Hill, *Counter-Resistance Strategies.*

[476] Memo from GEN James Hill to Chairman of the Joint Chiefs of Staff GEN Richard Myers, *Counter-Resistance Techniques,* (October 25, 2002) (hereinafter "GEN Hill to CJCS, *Counter-Resistance Techniques.")*

[477] GEN Hill to CJCS, *Counter-Resistance Techniques.*

[478] GEN James T. Hill answers to July 31, 2008 written questions from Senator Carl Levin (August 20, 2008).

[479] Ibid.

[480] June 3, 2004 Media Availability with Commander U.S. Southern Command.

[481] GEN Hill to CJCS, *Counter-Resistance Techniques.*

[482] GEN Hill to CJCS, *Counter-Resistance Techniques*; In testimony to the Army IG, the SOUTHCOM Commander said that he thought the request "was important enough to where there ought to be a high level look at it... There ought to be a major policy discussion of this and everybody ought to be involved." Army IG, Interview of GEN James T. Hill (October 7, 2005), at 7.

(U) One SOUTHCOM Assistant Staff Judge Advocate LTC Mark Gingras testified to the Army IG that lawyers for SOUTHCOM had concerns about Category II *and* Category III techniques.[483] Regarding the GTMO request for techniques, LTC Gingras told the Army IG:

> As lawyers we're talking about adherence to the rule of law being important, and that's what we're trying to tell everybody as we travel around the world to these other countries. That's paramount to democracy. And so suddenly we look like we're brushing this aside or we're twisting the law. The feeling was that decision makers within the Pentagon didn't much care about that. They cared about winning the War on Terrorism. And if that meant you had to pull out fingernails you'd pull out fingernails, figuratively speaking.[484]

D. Military Services React to GTMO Request for Interrogation Techniques (U)

(U) On October 30, 2002, after receiving Gen Hill's memo and the GTMO request, the Joint Staff J-5 requested that the military services comment on the request.[485]

(U) On November 1, 2002, the Air Force responded, expressing "serious concerns regarding the legality of many of the proposed techniques" and stating that "some of these techniques could be construed as 'torture,' as that crime is defined by 18 U.S.C. 2340."[486] The Air Force memorandum added that, with respect to potential prosecutions, the use of Category III techniques would "almost certainly" result in any statements obtained being inadmissible.[487] The memorandum stated that admissibility of evidence obtained using Categories I and II techniques, the latter of which included stress positions, the use of dogs, removal of clothing, and deprivation of light and auditory stimuli, among other techniques, would be "fact specific, but the same concerns remain."[488] The Air Force memo continued: "Additionally, the techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely... Implementation of the proposed techniques would require a change in Presidential policy."[489] The memo stated that the Air Force "concurs in the need to conduct an in-depth legal and policy assessment, as recommended by [the SOUTHCOM Commander], prior to implementation of the proposed counter-resistance interrogation techniques."[490]

(U) On November 4, 2002, the Navy responded to the Joint Staff's request for comment, stating that it "concur[red] with developing a range of advanced counter-resistance techniques,"

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[483] Army IG, Interview of LTC Mark Gingras (October 11, 2005) at 20.

[484] Ibid.

[485] Joint Staff Action Processing Form (SJS 02-06697), *Counter-Resistance Techniques* (October 30, 2002).

[486] Department of the Air Force Memo for UN and Multilateral Affair Division (J-5), Joint Staff, *Counter-Resistance Techniques* (November 1, 2002).

[487] Ibid. at 1.

[488] Ibid.

[489] Ibid. at 2.

[490] Ibid. at 1.

but recommending "a more detailed interagency legal and policy review be conducted on the... proposed techniques."[491]

(U) That same day, the Marine Corps submitted its written comments, which concluded that "several of the Category II and III techniques arguably violate federal law, and would expose our service members to possible prosecution."[492] The Marine Corps memo stated that the use of the techniques would also create "exposure to criminal prosecution under the UCMJ."[493] Again, Category III techniques included the use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him or his family, exposure to cold weather or water, use of a wet towel and dripping water to induce the misperception of suffocation, and non-injurious physical contact such as grabbing, poking and light pushing.[494] Category II included such techniques as stress positions, deprivation of light and auditory stimuli, the use of a hood during questioning, 20 hour interrogations, removal of clothing, and the use of detainee phobias, such as dogs, to induce stress. The memo also stated the Marine Corps "disagree[d] with the position that the proposed plan is legally sufficient."[495]

(U) A few days later, the Army submitted comments from both the Office of the Judge Advocate General (OTJAG) and the CITF.[496] The Army's cover memo stated that "Army interposes significant legal, policy and practical concerns regarding most of the Category II and all of the Category III techniques proposed" and that the Army "concurs in the recommendation for a comprehensive legal review of this proposal in its entirety by the Department of Defense and the Department of Justice."[497] The OTJAG's memorandum, which was attached, stated that Category III techniques "violate the President's order [on humane treatment] and various UCMJ articles" and that the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family and the use of a wet towel and dripping water to induce the misperception of suffocation "appear to be clear violations of the federal torture statute."[498] The OTJAG memorandum also stated that Category II techniques of stress positions, deprivation of light and auditory stimuli, and using individual phobias to induce stress "crosses the line of 'humane' treatment, would likely be considered maltreatment under

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[491] Department of the Navy Memo for the Director for Strategic Plans and Policy Directorate (J-5) Joint Staff, *Navy Planner's Memo WRT Counter-Resistance Techniques (SJS 02-06697)* (November 4, 2002).

[492] Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002).

[493] Ibid.

[494] LTC Phifer to MG Dunlavey, *Request for Approval of Counter-Resistance Strategies.*

[495] Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002).

[496] Memo from the Army Deputy to the Assistant Deputy Chief of Staff for Operations and Plans (Joint Affairs) to the Joint Staff, J-5/UNMA [UN and Multilateral Affairs Division], *SJS 02-06697* (November 7, 2002); Memo from Department of the Army, Office of the Judge Advocate (International and Operational Law) to The Office of the Army General Counsel, *Review—Proposed Counter-Resistance Techniques* (undated) (hereinafter "DAJA(IO) Memo for Army General Counsel, *Proposed Counter-Resistance Techniques.*")

[497] DAJA(IO) Memo for Army General Counsel, *Proposed Counter-Resistance Techniques.*

[498] Ibid.

Article 93 of the [Uniform Code of Military Justice], and may violate the Federal torture statute."[499] The memo continued that that removal of clothing and forced grooming "may be considered inhumane" if done only for interrogation purposes and stated "if we mistreat detainees, we will quickly lose the moral high ground."[500] The Army concurred with GEN Hill's request for a legal review before techniques were adopted.[501]

(U) Military lawyers were not the only personnel to object to GTMO's request for aggressive techniques. CITF Deputy Commander Mark Fallon told the Committee that it was CITF's view that the techniques proposed by JTF-170 would actually strengthen, rather than weaken, detainee resistance. He explained:

> Our view was that employing techniques that validated [the detainees] prior training and adverse views would serve to harden resistance and reinforce what they had been told to expect... We pointed out that SERE school tactics were developed to better prepare U.S. military personnel to resist interrogations and not as a means of obtaining reliable information. CITF was troubled with the rationale that techniques used to harden resistance to interrogations would be the basis for the utilization of techniques to obtain information.[502]

(U) CITF's legal view was reflected in a November 4, 2002 memo from CITF Chief Legal Advisor MAJ Sam McCahon, which was also attached to the Army's response to the Joint Staff. MAJ McCahon wrote:

> [Category] III and certain [Category] II techniques may subject service members to punitive articles of the UCMJ... CITF personnel who are aware of the use or abuse of certain techniques may be exposed to liability under the UCMJ for failing to intercede or report incidents, if an inquiry later determines the conduct to be in violation of either the Eighth Amendment to the U.S. Constitution, the Uniform Code of Military Justice or 18 U.S.C. §2340.[503]

(U) MAJ McCahon also raised concerns about the impact of the techniques on evidentiary proceedings:

> One detainee subjected to these techniques could taint the voluntary nature of all other confessions and information derived from detainees not subjected to the aggressive techniques.[504]

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[499] Ibid.

[500] Ibid.

[501] Ibid.

[502] Responses of Mr. Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006) at 7.

[503] Memo from CITF Chief Legal Advisor MAJ Sam McCahon to CITF Commander, *Assessment of JTF-170 Counter-Resistance Strategies and the Potential Impact on CITF Mission and Personnel* (November 4, 2002) (hereinafter "McCahon to CDR CITF, *Assessment of JTF-170 Counter-Resistance Strategies.*")

[504] McCahon to CDR CITF, *Assessment of JTF-170 Counter-Resistance Strategies.*

(U) MAJ McCahon added that "[b]oth the utility and legality of applying certain techniques" in the October 11, 2002 memo are "questionable," and recommended that CITF personnel not participate in or even observe the use of aggressive techniques.[505] MAJ McCahon concluded:

> I cannot advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business.[506]

(U) MAJ McCahon told the Committee that his memorandum prompted a subsequent meeting at the Pentagon.[507]

(U) When the October 11, 2002 GTMO request arrived in the DoD General Counsel's office, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson said that she was asked to provide her thoughts on the request. Ms. Davidson said that she had a brief conversation with Mr. Haynes where she told him that the GTMO request needed further assessment.[508] Mr. Haynes stated that he did not "recall that specifically."[509]

E. Department of Defense General Counsel Quashes Joint Staff Legal Review (U)

(U) When the October 11, 2002 GTMO request arrived at the Joint Staff, CAPT Jane Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, said it was "obvious to [her] that there were some legal issues" with the request.[510] She said that techniques in Category II of the request "needed to be looked at closely" and that Category III techniques "had significant, significant concerns."[511] CAPT Dalton found LTC Beaver's legal analysis "woefully inadequate" and said it relied on a methodology and conclusions that were "very strained."[512] Rather than simply deny the request, however, CAPT Dalton said that "she owed it to the combatant commander to do a full and complete review."[513] She subsequently directed her staff to set up a secure video teleconference with representatives from the Defense Intelligence Agency (DIA), the Army's intelligence school at Fort Huachuca, U.S. Southern Command (SOUTHCOM), and GTMO to find out more information about the techniques in the request and to "begin discussing the legal issues to see if we could do ... our own independent legal analysis."[514]

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[505] Ibid.

[506] Ibid.

[507] Committee staff interview of MAJ Sam McCahon (June 15, 2007).

[508] Committee staff interview of Eliana Davidson (May 23, 2008).

[509] SASC Hearing (June 17, 2008).

[510] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 33.

[511] Ibid. at 45.

[512] Ibid. at 41.

[513] Ibid. at 33.

[514] Ibid. at 34.

(U) CAPT Dalton recalled making Chairman of the Joint Chiefs of Staff General Richard Myers aware of the concerns expressed by the military services.[515] The Chairman said, however, that he did "not specifically recall the objections of the Services being raised" to his attention at that time.[516]

(U) CAPT Dalton also recalled that her staff briefed the DoD General Counsel's office about the concerns submitted by the military services and that the General Counsel himself "was aware of the concerns."[517] In a February 2008 interview, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson recalled that the service comments were made available to the General Counsel's office.[518] DoD General Counsel Jim Haynes stated, however, that he "did not recall seeing" the memos at that time and "didn't know they existed."[519] He stated that he did not recall being informed by anyone that the military services had concerns about the legality of Category II techniques in the request and that he did not have a "specific recollection" of CAPT Dalton making him aware that there were concerns about the legality of techniques in the GTMO request.[520]

(U) According to CAPT Dalton, after she and her staff initiated their analysis, CJCS GEN Myers directed her to stop that review. CAPT Dalton said that GEN Myers returned from a meeting and "advised me that [DoD General Counsel] Mr. Haynes wanted me . . . to cancel the video teleconference and to stop" conducting the review because of concerns that "people were going to see" the GTMO request and the military services' analysis of it.[521] According to CAPT Dalton, Mr. Haynes "wanted to keep it much more close hold."[522] When CAPT Dalton "learned that [the DoD General Counsel] did not want that broad based legal and policy review to take place," she and her staff stopped their review.[523] This was the only time that CAPT Dalton had ever been asked to stop analyzing a request that came to her for her review.[524]

CAPT Dalton recalled that prior to being directed to stop the review, her staff had begun writing draft comments on the GTMO request.[525] An undated draft of a memorandum from GEN Myers to SOUTHCOM Commander GEN Hill, analyzing the October 11, 2002

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[515] SASC Hearing (June 17, 2008).

[516] Responses of General Richard Myers to written questions from Senator Carl Levin (April 30, 2008).

[517] SASC Hearing (June 17, 2008).

[518] Committee staff interview of Eliana Davidson (February 21, 2008). Ms. Davidson said in a subsequent interview that she was not aware of the military services' comments before discussing the October 11, 2002 GTMO request with the DoD General Counsel. Committee staff interview of Eliana Davidson (May 23, 2008).

[519] SASC Hearing (June 17, 2008).

[520] Committee staff interview of William J. Haynes II (April 25, 2008) at 163-65.

[521] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 34.

[522] Ibid. at 35.

[523] SASC Hearing (June 17, 2008).

[524] Ibid.

[525] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 37.

GTMO request, stated "We do not believe the proposed plan is legally sufficient."[526] The draft memo stated that "several of the Category III techniques arguably violate federal law, and could expose interrogators to possible prosecution" under the federal anti-torture laws.[527] The draft stated that techniques in the request "may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely" and recommended an "in-depth technical, policy, and legal assessment" of the techniques prior to their implementation.[528]

(U) GEN Myers said that he had "no specific recollection" of discussing with CAPT Dalton her efforts to conduct an analysis of the October 11, 2002 GTMO request.[529] He said that while he "did not dispute" asking her to stop working on her analysis and acknowledged that Joint Staff records indicated that she did stop work on her analysis, he had "no recollection or doing so" and did "not recall anyone suggesting" to him that she stop her review.[530] DoD General Counsel Jim Haynes said that while it was "possible" that the issue could have come up in a conversation with the Chairman of the Joint Chiefs of Staff, he did not "recall that specific conversation" or expressing any opinion of any kind with respect to CAPT Dalton's review.[531]

F. GTMO and JPRA Plan for Additional Interrogation Training (U)

While GTMO's request for approval to use aggressive interrogation techniques was pending, JPRA staff was developing an agenda for possible follow-up training for interrogation personnel at GTMO.

In mid-October 2002, JPRA developed a plan of instruction to provide training on the techniques to GTMO interrogators.[532] The training plan was virtually identical to a draft agenda developed for the Fort Bragg training of GTMO personnel that took place in September, which included instruction of the "use of physiological pressures."[533]

(FOUO) David Becker, the GTMO ICE Chief, told the Committee that once they received authority to use the techniques in the October 11, 2002 memo, GTMO interrogators would need training on the techniques.[534] A draft message order circulated between GTMO and JPRA staff in late October requested "mission critical training support" for "approximately

[526] Draft memo from CJCS Richard Myers to Commander, United States Southern Command, *Counter-Resistance Techniques* (undated).

[527] Ibid.

[528] Ibid.

[529] Responses of GEN (Ret.) Richard Myers to April 16, 2008 written questions from Senator Carl Levin (April 30, 2008).

[530] Ibid.

[531] Committee staff interview of William J. Haynes II (April 25, 2008) at 168.

[532] Memorandum From Joseph Witsch to JPRA/CC, JPRA/CD, JPRA/COS, JPRA/OSO, *Plan of Instruction (POI) for TF-170 Training Support* (October 16, 2002).

[533] *See* Section III D, *supra*; *Plan of Instruction (POI) for TF-170 Training Support* (October 16, 2002).

[534] Committee staff interview of David Becker (September 17, 2007).

personnel" at GTMO.[535] The draft message order stated that the training would "provide the necessary tools JTF-GTMO interrogators require to accomplish their mission critical tasks.[536]

[redacted] A November 15, 2002 staff memo to the Joint Staff J-2 stated that JTF-GTMO had requested training on the SERE school techniques and that the trainers were expected to arrive in the first week of December.[537] The JPRA Operational Support Office (OSO) Chief Christopher Wirts told the Committee that the requirement for JPRA to provide the training was never approved and that his agency never conducted the training.[538] However, in January 2003, two instructors from the Navy SERE school, John Rankin and Christopher Ross, travelled to GTMO to train interrogators on the use of physical pressures, including slapping, walling, and stress positions.[539]

V. Command Change at Guantanamo as Dispute over Aggressive Techniques Continues (U)

A. *Major General Geoffrey Miller Takes Command of JTF-GTMO* (U)

(U) In November 2002 a new Commander, MG Geoffrey Miller, took command of JTF-GTMO. At the time, MG Miller had no first-hand experience with detainees or interrogations.[540]

(U) MG Miller told the Committee that prior to taking command, he met with SOUTHCOM Commander GEN Hill and his staff.[541] During those meetings, MG Miller got the impression that MG Dunlavey, the previous Commander, had bypassed the chain of command by raising issues directly with the Joint Chiefs of Staff and Department of Defense staff. MG Miller told the Committee that GEN Hill authorized him to speak directly with the Joint Staff and the Office of the Secretary of Defense, but that he told SOUTHCOM he would keep SOUTHCOM informed of those communications.[542]

(U) MG Miller said that, while he was in Command at GTMO, he had direct discussions with the DoD General Counsel's office and the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD SO/LIC).[543] MG Miller also testified to the Army IG that he and Deputy Secretary of Defense Paul Wolfowitz "talked once a week when I

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[535] Email from Chris Wirts to [redacted], Richard Driggers, Joseph Witsch, [redacted] and Gary Percival (October 29, 2002) (hereinafter "Email from Chris Wirts (October 29, 2002).")

[536] Email from Chris Wirts (October 29, 2002).

[537] JTF-170 and JTF-160 were combined to form JTF-GTMO in October 2002; Memo from [redacted] to [Joint Staff], *GTMO Detainee* [redacted] (November 15, 2002).

[538] Committee staff interview of Chris Wirts (January 4, 2008).

[539] *See* Section VII C, *infra*.

[540] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 5.

[541] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[542] Ibid.

[543] Ibid.

was in Guantanamo."[544] Lt Col Ted Moss, the JTF-GTMO ICE Chief who began his tour of duty at GTMO in December 2002, said that Deputy Secretary Wolfowitz was in phone contact with MG Miller "a lot."[545] However, MG Miller told the Committee that he misspoke when he testified to the Army IG and that, to the best of his knowledge, he did not speak to Deputy Secretary Wolfowitz on the phone while he was at GTMO, but only briefed him quarterly, in person, on GTMO operations.[546]

(U) Shortly after MG Miller arrived at GTMO, the Director for Intelligence (J-2) LTC Phifer informed him of the October 11, 2002 request.[547] Although he later approved an interrogation plan that included reference to Category III techniques, MG Miller told the Army IG that he believed that the techniques in Category III and some techniques in Category II were "overly aggressive" and that he had not intended to use them.[548] MG Miller said he had concerns with stress positions, removal of clothing, and use of dogs, among other techniques. Nevertheless, there is evidence that those techniques were used at GTMO while he was in command. MG Miller told the Committee that he thought he discussed his concerns about the techniques with LTC Beaver in early November before the Secretary approved their use, but that he did not raise it with SOUTHCOM because he wanted to see which techniques would be approved.[549]

(U) MG Miller told the Army IG that when he arrived at GTMO, there was significant tension between JTF-GTMO, CITF, and FBI and that he sought to get all three organizations to work in concert.[550] Despite MG Miller's stated intent, his decision to approve an interrogation plan for Mohammed al Khatani that was opposed by the CITF and FBI, drove a deeper wedge between his organization and both CITF and FBI.

B. Khatani Interrogation Plan Fuels Dispute Over Aggressive Techniques (U)

(U) After their unsuccessful interrogation of Khatani in October 2002, JTF-GTMO staff spent several weeks drafting an extensive new interrogation plan. The plan was the first "Special Interrogation Plan" at GTMO and it would encounter strong resistance from both CITF and the FBI. One FBI Special Agent told the Committee that he thought Khatani's interrogation would define the conduct of future interrogations at GTMO and therefore they "had to get it right."[551]

[redacted] Several drafts of JTF-GTMO's interrogation plan for Khatani were circulated at GTMO in November 2002. The discussion below focuses primarily on two of those drafts, one circulated on November 12, 2002 and another which was drafted about a week later and appears

[544] Army IG, Interview of MG Geoffrey Miller (June 28, 2005).

[545] Committee staff interview of Lt. Col. Ted Moss (October 17, 2007).

[546] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[547] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 11.

[548] Ibid.

[549] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[550] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 7.

[551] Committee staff interview of FBI Special Agent (November 8, 2007).

to have been finalized on November 22, 2002. Both drafts are discussed here because each provides insight on the range of interrogation techniques considered by senior officials at GTMO. In addition, there is evidence that both draft plans were approved by MG Miller. Finally, there is evidence that techniques which were included in the "draft" circulated on November 12, 2002 but removed from the purported "final" plan, were nevertheless used during Khatani's interrogation.

1. *JTF-GTMO Staff Circulate Khatani Interrogation Plan* (U)

[redacted] According to the report completed by Vice Admiral (VADM) Church, "after discussing the matter in early November 2002 with the Secretary of Defense, SOUTHCOM Commander GEN Hill gave verbal approval on November 12, 2002 for use of all Category I and II counter resistance techniques against Khatani."[552] GEN Hill told the Committee that he had no recollection of that.[553] That same day, November 12, 2002, LTC Phifer sent an email and a four page interrogation plan to MG Miller stating "[h]ere is the Interrogation Plan for [Khatani] as approved by you."[554]

[redacted] The next day, GTMO ICE Chief David Becker emailed the plan, which he referred to as the "[l]atest approved by MG Miller," to a GTMO interrogator.[555] According to the plan, the interrogation was scheduled to begin on November 15, 2002.[556] Mr. Becker told the Committee that the plan was developed by his interrogators with input from him and LTC Phifer.[557] In 2005, MG Miller testified to the Army IG that he thought the plan circulated on November 12, 2002 was part of the final version of the plan that he approved.[558] However, in a subsequent investigation, MG Miller identified a later version as the final plan.[559] He told the Committee that he never approved the version of the plan circulated on November 12, 2002.[560] However, contemporaneous documents indicate that others believed the plan circulated on November 12, 2002 had been approved by both MG Miller and SOUTHCOM and expected it to be implemented on November 15, 2002:

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[552] *Church Report* at 115.

[553] General James Hill answers to July 28, 2008 written questions from Senator Carl Levin (August 20, 2008).

[554] Email from LTC Jerald Phifer to MG Geoffrey Miller (November 12, 2002).

[555] Email from David Becker to [Interrogation Control Element Staff Sergeant] (November 13, 2002). Both the plan attached to those emails and the subsequent plan identified by the JTF-GTMO Commander as the "final" plan contained the JTF-GTMO Commander's [Miller] signature block. However, the Committee has not seen any version of the plan that contained the JTF-GTMO Commander's signature.

[556] Interrogation Plan for ISN: [redacted] [Khatani] (November 12, 2002).

[557] Committee staff interview of David Becker (September 17, 2007). One FBI agent who was a member of the FBI's Behavioral Analysis Unit told the Committee that multiple versions of the plan were actually circulated at GTMO during this period. Committee Staff interview of FBI Special Agent (November 8, 2007).

[558] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 7.

[559] Inge Report.

[560] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

- The November 12, 2002 email from the Director for Intelligence LTC Phifer to MG Miller stated, "[h]ere is the Interrogation Plan for ISN: 063 *as approved by you.* Request you fwd to Gen Hill, info J2/J3/COS. *We will begin at 0001 15 Nov per your guidance.*[561]

- The November 13, 2002 email from the GTMO ICE Chief David Becker referred to the November 12, 2002 plan, which was attached to his email, as the "[l]atest approved by MG Miller."[562]

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- A November 14, 2002 email from the GTMO Staff Judge Advocate LTC Diane Beaver to CITF lawyer stated, "[c]oncerning 63 [Khatani] my understanding is that NSC has weighed in and stated that intel on this guy is utmost matter of national security...*We are driving forward with support of SOUTHCOM.* Not sure anything else needs to be said."[564]

- A November 15, 2002 staff memorandum for the J-2 of the Joint Staff stated that "*interrogators were preparing to interrogate [Khatani] beginning at 15 0001 November 2002...*"[565]

According to the November 12, 2002 plan, the purpose of the interrogation was to "break the detainee and establish his role in the attacks of Sept[ember] 11, 2001."[566] The interrogation would be conducted for "20-hour sessions" and at the completion of each session, Khatani would be permitted four hours of rest, and then "another 20 hour interrogation session [would] begin."[567]

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[561] Email from LTC Jerald Phifer to MG Geoffrey Miller (November 12, 2002) (emphasis added), attached as exhibit 7 to the Inge Report.

[562] Email from David Becker to [Interrogation Control Element Staff Sergeant] (November 13, 2002).

[563] Notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainee #063,* entry at "11/12/2002" (emphasis added).

[564] Email from LTC Diane Beaver to (November 14, 2002) (emphasis added). Then-National Security Advisor Condoleezza Rice said that she was neither briefed on, nor did she review, the Khatani interrogation plan. Similarly, then-NSC Legal Advisor John Bellinger said that, to the best of his recollection, he too was neither briefed on, nor did he review the plan. Secretary of State Condoleezza Rice and John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[565] Memo from to [Joint Staff], *GTMO Detainee* (November 15, 2002) (emphasis added).

[566] Interrogation Plan for ISN: [Khatani] (November 12, 2002).

[567] Ibid.

[redacted]

> Prior to the first interrogation, we would like to have the detainee's head and beard shaved. This is to be done for both psychological and hygiene purposes. [redacted] During the interrogations the detainee will at times be placed in stress positions and blindfolded. If necessary the detainee may have his mouth taped shut in order to keep him from talking. Written approval for the tape and for the presence of dogs will be submitted and obtained prior to implementation.[569]

[redacted] The November 12, 2002 plan went on to describe four phases for the interrogation.[570] During Phase I, interrogators would increase the pressure on Khatani while not permitting him to speak, with the expectation that Khatani, when later presented with the opportunity to speak to an interrogator, would "provide his whole story."[571]

[redacted] Phase II of the plan was to place a cooperative detainee or a native linguist at Camp X-Ray in full view of Khatani.[572] [redacted]

[redacted] Phase III of the plan, which was entitled "Level III techniques," was to utilize techniques based on those used at SERE school. The plan stated:

> The third phase of the plan to exploit 063 requires OSD approval for the SERE interrogation technique training and approval of the level three counter interrogation resistance training submitted by JTF-GTMO. Once the approvals are in place, those interrogation techniques will be implemented to encourage 063 to cooperate. [redacted]

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[568] Ibid.

[569] Ibid. A third draft of the plan which appears to have been produced after November 12 stated that "written approval for use of gauze and for the presence of dogs have been approved by [MG Miller]" and was sent from an attorney in the DoD General Counsel's office to an attorney at the Department of Justice's Office of Legal Counsel in May 2003. January 31, 2008 SASC staff notes on Vaughn declaration documents.

[570] Interrogation Plan for ISN [redacted] [Khatani] (November 12, 2002).

[571] Ibid.

[572] Ibid.

[573] Ibid.

[redacted] The plan's final phase, Phase IV, was entitled "Coalition Exploitation" and stated that:

> The fourth phase of the plan to exploit 063 requires that he be sent off island either temporarily or permanently to either [two specified third countries], or another country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information.[574]

2. *CITF and FBI Object to Proposed Interrogation Techniques* (U)

(U) On November 14, 2002, CITF Commander COL Britt Mallow sent an email to MG Miller raising concerns about both the Khatani interrogation and the October 11, 2002 request for authority to use aggressive interrogation techniques.[575] He stated:

> I strongly disagree with the use of many of the proposed [Category] 3 and some [Category] 2 techniques. I feel they will be largely ineffective, and that they will have serious negative material and legal effects on our investigations. I also am extremely concerned that the use of many of these techniques will open any military members up for potential criminal charges, and that my agents, as well as other [military personnel] will face both legal and ethical problems if they become aware of their use.[576]

(U) COL Mallow told the Committee that in addition to his email, he raised concerns about the Khatani interrogation in conversations with MG Miller and in "several meetings with the DoD [General Counsel]."[577] COL Mallow said that MG Miller told him in a meeting that "if [CITF] did not want to participate in interrogations with the intelligence community because of our objections to methods, that [CITF] would not have the benefit of information resulting from any of those interrogations."[578]

(U) MG Miller told the Committee that, while he did not recall the CITF Commander's November 14, 2002 email specifically, he did recall communications from COL Mallow to that effect.[579] DoD General Counsel Jim Haynes stated that he did not recall seeing a copy of the Khatani interrogation plan at that time and did not "specifically" recall his staff advising him that CITF and FBI had concerns with interrogation techniques in the Khatani interrogation plan.[580]

[redacted] A CITF Legal Advisor, [redacted], also raised objections to JTF-GTMO's interrogation plan for Khatani. In a November 15, 2002 memo for MG Miller, [redacted]

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[574] Ibid.

[575] Email from COL Britt Mallow to MG Geoffrey Miller (November 14, 2002).

[576] Ibid.

[577] Responses of COL (Ret.) Britt Mallow to questionnaire of Senator Carl Levin (September 15, 2006).

[578] Ibid.

[579] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[580] Committee staff interview of William J. Haynes II (April 25, 2008) at 221, 228.

[redacted] said that "the reliability of any information gained from aggressive techniques will be highly questionable" and objected to all "physical stresses intended for use" in Phase III of the interrogation plan.[581] [redacted] also objected to Phase IV of the plan, stating that it implied "that third country nationals with harsher interrogation standards could be used to convey threats to persons of family or inflict harm contrary to the Convention Against Torture."[582]

[redacted] The Khatani interrogation did not proceed on November 15, 2002 as planned. A November 15, 2002 staff memo to the Joint Staff J-2 indicated that the interrogation was delayed while MG Miller "consider[ed] COL Mallow's objections."[583] MG Miller denied that the Khatani interrogation was delayed because of COL Mallow's concerns, instead telling the Committee that the interrogation was delayed because he had not received SOUTHCOM's approval.[584] However, as noted above, GTMO Staff Judge Advocate LTC Diane Beaver indicated in a November 14, 2002 email that JTF-GTMO planned to move forward "with support of SOUTHCOM."[585]

(U) In his November 14, 2002 email to MG Miller, COL Mallow proposed that JTF-GTMO and CITF develop a mutually acceptable interrogation plan for Khatani.[586] On November 20, 2002, FBI personnel, who were working closely with CITF, met with JTF-GTMO staff to discuss developing such a plan.[587]

[redacted]

3. *JTF-GTMO Briefs DoD General Counsel's Office on Interrogation Plan* (U)

[581] Memo from [redacted] for Major General Geoffrey Miller, *Objection to Aggressive Interrogation Techniques* (November 15, 2002).

[582] Ibid.

[583] Memo from [redacted] to J-2, Joint Staff, *GTMO Detainee* [redacted] *063* [redacted] (November 15, 2002).

[584] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[585] Email from LTC Diane Beaver to [redacted] (November 14, 2002) (emphasis added).

[586] Email from COL Britt Mallow to MG Geoffrey Miller (November 14, 2002).

[587] FBI memo to Major General Miller, *VTC 21 November 2002* (undated).

[588] Committee staff interview of FBI Special agent (November 8, 2007).

[589] Internal FBI Email, *Interview Plans* (November 21, 2002).

[590] Ibid.

On November 21, 2002, MG Miller, LTC Phifer, and representatives from the FBI, CITF, SOUTHCOM, and the DoD General Counsel's office all participated in a video teleconference (VTC) to discuss the Khatani interrogation.[591]

LTC Phifer told the Committee that he and MG Miller briefed the group on the Khatani plan and that during the VTC, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson stated that the Department was comfortable with what JTF-GTMO had planned.[592] MG Miller told the Committee that he did not recall the VTC.[593] Ms. Davidson said that she recalled participating in VTCs where the Khatani interrogation was discussed, but she did not recall if she had a copy of the interrogation plan itself and did not recall saying that the Department of Defense was comfortable with what JTF-GTMO proposed for the interrogation.[594] , the psychiatrist with the GTMO Behavioral Science Consultation Team, said that in the context of the Khatani interrogation, "we were routinely told that the interrogation strategy was approved up to [the Secretary of Defense] level."[595]

(U) Subsequent to the VTC, the FBI sent a memo to MG Miller alerting him to FBI "misgivings about the overall coercive nature and possible illegality" of the Khatani interrogation plan and informing him that the FBI had presented JTF-GTMO staff with "an alternative interrogation approach based on long-term rapport building."[596] A draft of that alternative approach, which was the product of both the FBI and CITF, stated that Khatani's negative interactions with interrogators "only reinforces Al-Qaeda stereotypes about evil Americans and validates their expectation of harsh treatment and potential torture."[597]

(U) On November 22, 2002, Naval Criminal Investigative Service (NCIS) Chief Psychologist Michael Gelles drafted a formal review of a JTF-GTMO draft plan.[598] Dr. Gelles concluded that the interrogation plan "lack[ed] substantive and thoughtful consideration."[599] Among other concerns, Dr. Gelles stated:

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[591] Notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainee #063,* entry at "11/21/2002."

[592] Committee staff interview of LTC Jerry Phifer (June 27, 2007). Notes taken by an FBI Special Agent who participated in the VTC indicate that, in briefing the Defense HUMINT Service (DHS) plan, LTC Phifer "portray[ed] the DHS Interrogation Plan to SOUTHCOM and the General Counsel at the Pentagon as a unified FBI/DHS Interrogation Plan." The FBI Special Agent's notes state that the LTC Phifer characterization was "in direct contradiction" to what the Special Agent had told Phifer the previous day. See notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainee #063,* entry at "11/21/2002."

[593] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[594] Committee staff interview of Eliana Davidson (February 21, 2008).

[595] Written statement of (August 21, 2007) at 8.

[596] FBI memo to Major General Miller, *VTC 21 November 2002* (undated).

[597] FBI and CITF Draft Interrogation Plan (November 22, 2002).

[598] Memo from Michael G. Gelles, Psy.D. to Mark Fallon, *Review of JTF-GTMO Interrogation Plan Detainee 063,* (November 22, 2002) (hereinafter "*Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002)").

[599] *Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002).

> Strategies articulated in the later phases reflect techniques used to train US forces in resisting interrogation by foreign enemies... [These techniques] would prove not only to be ineffective but also border on techniques and strategies deemed unacceptable by law enforcement professionals...[600]

(U) Dr. Gelles noted that "the choice to use force with this adversary in an interrogation may only reinforce his resistance" and stated that if the plan were implemented he would "have trouble not finding myself from a professional perspective, being forced into an adversary position through cross examination in a military tribunal as an expert in interrogation."[601]

(U) Notwithstanding the CITF and FBI concerns, MG Miller authorized interrogators to proceed with the Khatani interrogation beginning November 23, 2002.

4. *"Final" Khatani Interrogation Plan* (U)

[redacted] ([redacted] MG Miller identified a version of the Khatani plan that had been written on November 22, 2002 as the "final" plan that he authorized to be implemented on November 23, 2002.[602] While similar to the plan circulated on November 12, 2002, the November 22, 2002 plan contained notable differences from the earlier version that contemporaneous documents indicated had also been approved.

[redacted] ([redacted] Although there is evidence that both stress positions and dogs were used in the Khatani interrogation, the November 22, 2002 plan does not mention either of these two techniques.[603] MG Miller said the stress positions and use of dogs were removed from the plan at his direction.[604]

[redacted] With respect to dogs, MG Miller said that neither LTC Phifer, nor LTC Beaver objected to the use of dogs and that his ICE Chief, Mr. Becker, actually favored the use of dogs in interrogations.[605] MG Miller said, however, that he only approved the use of dogs for security around the perimeter of Camp X-Ray, where the interrogation was to take place, and that he made that view absolutely clear to Mr. Becker. CAPT Jane Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff said, however, that she met with MG Miller in early November and discussed the use of dogs for interrogation purposes.[606] She said that the "theory was that certain individuals are afraid of dogs" and that, while MG Miller talked about dogs

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[600] Ibid.

[601] Ibid.

[602] Inge Report at 9.

[603] Interrogation Plan for ISN: [redacted] [Khatani] (November 22, 2002) (hereinafter "Khatani interrogation plan (November 22, 2002).").

[604] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[605] Ibid.

[606] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 84.

being outside the interrogation room, they discussed the purpose of the dogs' presence during interrogations was that it "exploits [the detainee's] fear."[607]

Mr. Becker told the Committee that MG Miller told him to remove dogs from the plan.[608] Nevertheless, a document describing interrogation techniques used in the Khatani interrogation and a witness account (both discussed below) suggest that dogs were used during the interrogation to shock and agitate Khatani.[609]

With respect to stress positions, Mr. Becker told the Committee that, notwithstanding the fact that they were included in the earlier plan, there was never an intent to use stress positions with Khatani.[610] A document that appears to have been produced during the Khatani interrogation, however, stated that stress positions would "be employed."[611] In addition, a 2005 memo from the JTF-GTMO Chief of Staff referencing the 2002 interrogation stated that Khatani had "slight abrasions caused by stress positions and shackle restraints."[612]

The November 22, 2002 plan identified by MG Miller as the final plan described five phases to the interrogation.[613] Phase I, which was added after November 12, called for the interrogators to "Induce and exploit Stockholm Syndrome" by establishing "an isolated, austere environment where the detainee becomes completely dependent on the interrogators and the interrogator presents himself as a 'caretaker' of the detainee."[614] Dr. Gelles said that the idea of inducing the Stockholm syndrome implied that "the subject feels that he is to be killed and the information provided may in fact be distorted."[615]

Phase II of the November 22, 2002 plan (which is largely the same as Phase I of the earlier plan) stated that prior to the start of the first Phase II interrogation session, Khatani's head and beard would be shaved for "safety, hygiene and psychological purposes."[616] In addition, the plan stated that MG Miller had approved the use of hospital gauze to restrain the detainee's mouth to prevent him from becoming argumentative and verbally abusive.

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[607] Ibid.

[608] Committee staff interview of David Becker (September 17, 2007).

[609] Memorandum, *Methods Employed X-Ray Interrogation ISN 63(S)* (January 17, 2003). Army IG, Interview of (April 28, 2006).

[610] Committee staff interview of David Becker (September 17, 2007).

[611] Memo, *063 Plan of Attack: Phase I Bravo* (undated).

[612] Memo from COL John A. Hadiis to Chief of Staff, USSOUTHCOM, *Executive Summary on Information Concerning Detainee ISN: (U)* (March 14, 2005).

[613] Khatani interrogation plan (November 22, 2002).

[614] Khatani interrogation plan (November 22, 2002). The Stockholm Syndrome refers to a psychological event where hostages begin to identify with and grow sympathetic to their captors. The syndrome draws its name from a bank robbery and hostage situation in Stockholm, Sweden in 1973.

[615] *Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002).

[616] Khatani interrogation plan (November 22, 2002).

Phase III of the November 22, 2002 plan was largely the same as Phase II of the earlier plan and proposed having a native linguist translator play the role of a detainee to elicit information from Khatani.[617]

Phase IV of the November 22, 2002 plan – which described the use of interrogation techniques based on those used in SERE school to increase U.S. personnel's resistance to illegal enemy interrogations – was virtually identical to the earlier plan and stated:

> The fourth phase of the plan to exploit 063 [Khatani] requires [Office of the Secretary of Defense] approval for the SERE interrogation technique training and approval of the level three counter interrogation resistance training submitted by JTF-GTMO. Once the approvals are in place, those interrogation techniques will be implemented to encourage 063 to cooperate. The intent of raising the stakes to this level is to convince 063 that it is futile to resist. Success of Phase III is when his sense of futility is raised to a high enough level that source gives in and provides the necessary information. Phase III ends with success or a standstill, after the exhaustion of all tools JTF GTMO has to offer.[618]

Despite having approved the plan, MG Miller testified to the Army IG that he knew "little about SERE" and "wasn't comfortable" with SERE techniques.[619] However, MG Miller acknowledged to the Committee that these techniques were included in the approved plan and that, if the first three phases of the Khatani plan were unsuccessful, that he was willing to consider the use of SERE techniques.[620]

The plan's final phase, Phase V, maintained the same title "Coalition Exploitation" as Phase IV of the earlier plan but did not explicitly state an intention to render Khatani to a third country, as did the earlier plan.[621] Instead, under "Coalition Exploitation" the November 22, 2002 plan stated that:

> The fifth phase of the plan to exploit 063 will be determined at the national, interagency level where the future disposition of 063 will be determined.[622]

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[617] Interrogation Plan for ISN: [Khatani] (November 15, 2002) (hereinafter "Khatani interrogation plan (November 15, 2002)"); Khatani interrogation plan (November 22, 2002).

[618] Khatani interrogation plan (November 22, 2002).

[619] Army IG, Interview of MG Geoffrey Miller (March 26, 2006).

[620] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[621] Khatani interrogation plan (November 22, 2002).

[622] Ibid.

[623] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[redacted]

[redacted][624] Nevertheless, the idea of transferring Khatani to a third country was discussed.[625]

[redacted]

5. *FBI and CITF Continue to Object to Khatani Interrogation Plan* (U)

(U) On November 22, 2002 the FBI sent MG Miller a memo that outlined FBI's continuing concerns about JTF-GTMO interrogation techniques. The FBI also requested a meeting with the Commander.[628] The memo stated:

> Many of [JTF-GTMO's] methods are considered coercive by Federal Law Enforcement and UCMJ standards. Not only this, but reports from those knowledgeable about the use of these coercive techniques are highly skeptical as to their effectiveness and reliability.[629]

(U) The memo stated further that the "FBI/CITF strongly believes that the continued use of diametrically opposed interrogation strategies in GTMO will only weaken our efforts to obtain valuable information."[630]

(U) In late November, FBI agents at GTMO asked that their concerns about JTF-GTMO interrogation techniques be relayed to Marion "Spike" Bowman, a senior attorney in the FBI's Office of General Counsel.[631] Mr. Bowman said that "[a]s soon as I heard from the [the FBI agents] I talked with (now retired) Executive Assistant Director Pat D'Amuro who immediately said we (the FBI) would not be a party to actions of any kind that were contrary to FBI policy and that individuals should distance themselves from any such actions."[632] Mr. Bowman also recommended to FBI General Counsel Kenneth Wainstein that FBI relay the concerns to the DoD General Counsel's office. Mr. Bowman subsequently called the acting DoD Deputy General Counsel for Intelligence and believes he also spoke with the DoD Principal Deputy

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[624] Ibid.

[625] *See* Section V B 5, *infra*.

[626] Khatani interrogation plan (November 22, 2002).

[627] Ibid.; Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[628] FBI Memorandum to JTF-170 Commander MG Geoffrey Miller (November 22, 2002). Despite the heading on the memorandum, JTF-GTMO had replaced JTF-170 by the time this memo was written.

[629] Ibid.

[630] Ibid.

[631] Committee staff interview of FBI Special Agent (November 8, 2007).

[632] Responses of Marion Bowman to questionnaire of Senator Carl Levin (August 7, 2006).

[redacted]

General Counsel. DoD General Counsel Jim Haynes said that he did not recall being aware that the FBI had contacted his office with concerns.[633]

(U) On December 2, 2002, an FBI Special Agent, who was also an attorney, sent his own legal analysis of the October 11, 2002 GTMO request to another Special Agent for forwarding to Mr. Bowman.[634] The FBI Special Agent referred to several techniques – such as all the Category III techniques and several Category II techniques, including stress positions, hooding, removal of clothing, 20 hour interrogations, and use of individual phobias (such as fear of dogs) to induce stress – as "coercive interrogation techniques which are not permitted by the U.S. Constitution."[635] The Special Agent's analysis also identified several techniques – including all Category III techniques and two Category II techniques, i.e. hooding and use of phobias – as "examples of coercive interrogation techniques which may violate 18 U.S.C. § 2340, (Torture Statute)" and warned that "it is possible that those who employ these techniques may be indicted, prosecuted, and possibly convicted if the trier of fact determines that the user had the requisite intent."[636]

(U) The following day, Mr. Bowman sent an email to another FBI Special Agent, stating "[i]t is irrelevant whether these detainees are considered prisoners of war, they are still entitled to minimal conditions of treatment – many of the techniques addressed appear to move well beyond the minimal requirements . . . I concur that we can't control what the military is doing, but we need to stand well clear of it and get as much information as possible to D'Amuro, Gebhart, and Mueller as soon as possible."[637] Director Mueller said that he was not aware of the FBI's concerns with DoD interrogation techniques at GTMO until May 2004.[638]

[redacted]

[633] Committee staff interview of William J. Haynes II (April 25, 2008) at 236.

[634] Email from FBI Special Agent (December 2, 2002).

[635] FBI Memo, *Legal Issues Re Interrogation Techniques,* attached to Email from FBI Special Agent (December 2, 2002).

[636] Ibid.

[637] Email from Marion Bowman (December 3, 2002).

[638] Current and Projected National Security Threats to the United States, Senate Select Committee on Intelligence, 109th Cong. (February 16, 2005).

[639] Committee staff interview of FBI Special Agent (November 8, 2007).

[640] Email from FBI Special Agent (May 10, 2004).

[641] The DoD Associate Deputy General Counsel for International Affairs, Eliana Davidson, said that the FBI's Unit Chief believed that efforts at GTMO were not being productive and that he advocated for Khatani's transfer during the VTC.[642] [643]

DoD General Counsel Jim Haynes said he did not remember discussing the possible rendition of Khatani, but that "it may have been considered."[648]

(U) CITF Deputy Commander Mark Fallon said that FBI proposed to CITF the idea of rendering Khatani to a third country but that CITF "considered it possibly unlawful" and opposed the proposal.[649] He said CITF staff made Mr. Cobb aware of their concerns and that Mr. Cobb supported the CITF position.

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[641] Committee staff interview of FBI Special Agent (November 8, 2007).

[642] Committee staff interview of Eliana Davidson (May 23, 2008).

[643] Committee staff interview of FBI Unit Chief (May 17, 2008).

[644] Ibid.

[645] Ibid.

[646] Ibid.

[647] Committee staff interview of FBI Special Agent (November 8, 2007).

[648] Committee staff interview of William J. Haynes II (April 25, 2008) at 232.

[649] Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006).

(U) The same day the VTC took place, FBI's on-site supervisor and two Special Agents met with MG Miller where they again raised their concerns about JTF-GTMO interrogation techniques.[650] One FBI Special Agent told the Committee that MG Miller thanked the FBI personnel for their views, but told them that JTF-GTMO staff knew what they were doing.[651]

(U) On December 9, 2002, another FBI Special Agent who attended the meeting sent an email stating, "when I return to D.C., I will bring a copy of the military's interview plan [for Khatani]... You won't believe it!"[652] Several months later he characterized the December 5, 2002 meeting with MG Miller:

> Although [MG] Miller acknowledged positive aspects of [the FBI's approach to interrogations] it was apparent that he favored [JTF-GTMO's] interrogation methods, despite FBI assertions that such methods could easily result in the elicitation of unreliable and legally inadmissible information.[653]

JTF-GTMO ICE Chief David Becker told the Committee that MG Miller asked him at one point why the JTF was not using the FBI's approach, to which Mr. Becker replied that the JTF had already tried the FBI approach, that it did not work, and that he wanted to be more aggressive.[654]

6. *Khatani Interrogation Begins, CITF Directed To "Stand Clear"* (U)

(U) On November 23, 2002, JTF-GTMO personnel took Khatani to Camp X-Ray to begin Phase I of the interrogation.[655] Two days later, CITF attorney sent the GTMO Staff Judge Advocate, LTC Diane Beaver, an email indicating that "CITF is not on board with aggressive techniques including 20 hour [plus] interrogations. Therefore, according to our policy, we will 'stand clear' and not offer participation, advisements, support or recommendations as to its implementation."[656] CITF later drafted formal guidance for its agents stating that "Detainees will be treated humanely. Physical torture, corporal punishment and mental torture are not acceptable interrogation tactics and are not allowed under any circumstances... CITF personnel will not participate in any interrogation that employs tactics inconsistent with or in direct violation of this policy."[657]

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[650] Committee staff interview of FBI Special Agents (November 8, 2007).

[651] Committee staff interview of FBI Special Agent (November 8, 2007).

[652] Email from FBI Special Agent (December 9, 2002).

[653] Electronic Communication from FBI Behavioral Analysis Unit (BAU) (May 30, 2003).

[654] Committee staff interview of David Becker (September 17, 2007).

[655] Army Regulation 15-6: Final Report: Investigation Into FBI Allegations of Detainee Abuse At Guantanamo Bay, Cuba Detention Facility, prepared by Lt. Gen. Randall Schmidt and Brig. Gen. John Furlow (hereinafter "Schmidt-Furlow Report").

[656] Email from to LTC Diane Beaver (November 25, 2002).

[657] DoD CITF Memo for All Personnel Assigned to the DoD Criminal Investigation Task Force, *ALCITF Memorandum 004-02, Interrogation Procedures* (December 16, 2002).

7. *Techniques Used During Khatani Interrogation* (U)

(U) According to [redacted] the GTMO BSCT psychiatrist who participated in the interrogation, just before the Khatani interrogation began, Khatani was "made [to] believe he was sent to a hostile country which advocated torture."[658] [redacted] stated that Khatani was also "led to believe he himself might be killed if he did not cooperate with questioning."[659] The actual interrogation took place at GTMO's Camp X-Ray. LTC Phifer told the Committee that Khatani was taken to X-Ray [redacted][660]

[redacted] However, an interrogator who participated in the interrogation told the Committee that part of the reason Khatani was taken to X-Ray was to scare him.[661]

(U) Khatani was interrogated from November 23, 2002 through January 16, 2003.[662] In June 2004, SOUTHCOM Commander GEN Hill, described the origin of some of the interrogation techniques used in the interrogation:

> The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK. I sent that list of techniques up to the Secretary and said, in order for us to get at some of these very high-profile, high-value targets who are resistant to techniques, I may need greater flexibility. But I want a legal review of it and you to tell me that, policywise, it's the right way to do business. He did that. And he approved additional techniques, which I would not describe as harsh, but additional techniques and gave them to me the first part of December. *And we began to use a few of those techniques, a few of those techniques on this individual...*[663]

[redacted] A memo dated January 17, 2003 also described techniques "used" against Khatani between November 23, 2002 and January 16, 2003, including stripping, forced grooming, invasion of space by a female interrogator, treating Khatani like an animal, using a military working dog, and forcing him to pray to an idol shrine.[664]

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[658] Written statement of [redacted] (August 21, 2007).

[659] Ibid.

[660] Committee staff interview of LTC Jerald Phifer (June 27, 2007).

[661] Committee staff interview of JTF-GTMO Interrogator (January 9, 2008).

[662] Schmidt-Furlow Report at 17.

[663] Transcript of Media Availability with Commander U.S Southern Command General James Hill (June 3, 2004) (emphasis added). Despite General Hill's acknowledgement in 2004, in comments submitted to the DoD IG's August 25, 2006 report, the DoD General Counsel's office stated that "there is no evidence that SERE techniques were ever adopted at Guantanamo or anywhere else." *See* DoD Office of General Counsel, *Legal Review of DRAFT SECRET/NOFORN DoD IG Report, "Review of DoD-Directed Investigations of Detainee Abuse (Project No. D2004-DINT01-0174) (U)"* (June 8, 2006) at 8.

[664] Memo, *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003). The author of the memo is unknown but a copy of the memo was sent by the JTF-GTMO BSCT psychiatrist, [redacted] to LTC Morgan Banks,

These techniques are similar to techniques used in SERE school. In fact, JPRA training slides, identified by a JPRA instructor as those presented to interrogation personnel deploying for GTMO, identified "religious disgrace" and "invasion of personal space by a female" as methods to defeat resistance.[665] Likewise, JPRA materials identified "degradation" as a method to defeat resistance, which was understood to include such methods as stripping the individual, having the guards address the individual as if that person were an "animal" or of "very low status," and controlling use of the latrine.[666]

The January 17, 2003 memo stated that "[s]earch/strip search" was used on Khatani "for security and to assert control."[667] A second document that appears to have been produced while the Khatani interrogation was ongoing stated that "removal of clothing" would "be employed" as part of Khatani's interrogation.[668] Despite the contemporaneous documents suggesting that removal of clothing was used during the interrogation, several senior JTF-GTMO personnel have said they were unaware of its use as an interrogation technique.

- MG Miller told the Committee that he informed his Director for Intelligence, LTC Phifer, that he opposed the forced removal of clothing as an interrogation technique and in a 2004 sworn statement stated that "to the best of my knowledge JTF-GTMO never used [removal of clothing]" during the six week period in late 2002 early 2003 when it was authorized.[669]

- LTC Phifer and his replacement, COL Richard Sanders (who was given the title of Joint Intelligence Group (JIG) Commander) told the Committee that they were not aware that Khatani was strip searched.[670]

- Both Mr. Becker, the ICE Chief present for the development of the Khatani plan, and his successor Lt Col Ted Moss, who assumed the position when the interrogation was already underway, told the Committee that they were unaware of Khatani being stripped at the direction or suggestion of interrogation personnel.[671]

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the Chief of the Psychological Applications Directorate (PAD) at the U.S. Army's Special Operations Command (USASOC).

[665] *See* Section I D, *supra*.

[666] Testimony of Joseph Witsch (September 4, 2007) at 22; Level C Peacetime Governmental Detention Survival JPRA Instructor Guide, *Exploitation: Threats and Pressures*, Module 6.0, Lesson 6.1, para 5.3.3 (Version G01.1).

[667] *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

[668] Memo, *063 Plan of Attack: Phase I Bravo* (undated).

[669] Committee staff interview of MG Geoffrey Miller (December 6, 2007); Sworn Statement of MG Geoffrey Miller (June 19, 2004).

[670] Committee staff interview of LTC Jerald Phifer (June 27, 2007); Committee staff interview of COL Richard Sanders (August 10, 2007).

[671] Committee staff interview of Lt Col Ted Moss (October 17, 2007); Committee staff interview of David Becker (September 17, 2007).

[redacted] ([redacted] The January 17, 2003 memo stated that Khatani's head and beard were shaved "for hygienic purposes and to assert control over the detainee," that Khatani's hands were shackled to a chair to prevent him from praying, and that prayer was denied in circumstances where prayer was "used as a resistance technique."[672] The memo stated that up to eight ounces of water was poured over Khatani's head as a "method of asserting control" when Khatani exhibited "undesired behavior."[673] And it said Khatani was forced to "sit, stand, lay down, walk or other non-stress position activities by guards to enforce the control of the interrogator."[674] MAJ Burney said that Khatani was "made to stand for several hours at a time or sit on a hard chair for several hours at a time.[675] The January 17, 2003 memo also stated that Khatani was ridiculed and berated "to elicit an adversarial response."[676]

[redacted] The memorandum listed several techniques used to increase Khatani's stress level including using of a female interrogator who "touch[ed] [Khatani] in close proximity," instructing Khatani "to pray to idol shrine to test religious temperance and incur," [redacted] [677]

[redacted] The memo stated that "K-9 units [were] present during interrogation but outside of booth to provide barking in order to agitate the detainee and provide shock value."[678]

[redacted] One interrogator who participated in the Khatani interrogation told the Committee that he understood that dogs could be used in a manner consistent with the description in the January 17, 2003 memo, i.e. they could be present during interrogation but outside the booth in order to agitate Khatani and provide shock value.[679] The interrogator told the Committee that during one of his shifts interrogating Khatani, an MP brought a dog to the outside of the room in which the interrogation was taking place and that the MP got the dog to bark.[680] The interrogator said that he did not ask the MP to do so and told the MP not to do it again.

(U) MAJ Burney, who was present for portions of the interrogation, testified to the Army IG that a dog was brought into the Khatani interrogation during late November or early December an estimated "half dozen times."[681] MAJ Burney testified:

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[672] *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

[673] Ibid.

[674] Ibid.

[675] Written statement from MAJ Paul Burney (August 21, 2007).

[676] *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

[677] Ibid.

[678] Ibid.

[679] Committee staff interview of JTF-GTMO Interrogator (January 9, 2008); *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

[680] Committee staff interview of JTF-GTMO Interrogator (January 9, 2008).

[681] Army IG, Interview of MAJ Paul Burney (April 28, 2006).

> [The] dog was never allowed to bite the detainee but would be ordered to bark loudly close to the detainee, to sort of sniff or muzzle the detainee, to put paws up on the detainee.[682]

(U) MAJ Burney said that interrogators stopped using the dog "not because anybody had necessarily objected to [the use of the dog]," but because "the initial shock value had worn off" and "it just wasn't felt to be effective anymore."[683] None of the other witnesses interviewed by the Committee stated that they were aware of a dog being brought into the interrogation booth.

[redacted] who was present for portions of the interrogation, stated that at one point during an interrogation, either a guard or an interrogator suggested that a dog be used to scare Khatani.[684] [redacted] said that he informed Mr. Becker, who intervened before the dogs were used.[685]

(U) As discussed above, MG Miller told the Committee that dogs were present at Camp X-Ray solely for securing the perimeter and that he was absolutely clear with ICE Chief David Becker that dogs were not to be used in interrogations.[686] He testified to the Army IG that he "rejected [using dogs in interrogations] as an acceptable technique" and that dogs "were not to be used during active interrogation."[687] In written answers to questions posed by Vice Admiral Church, however, the Director for Intelligence, LTC Phifer stated that dogs were used in the Khatani interrogation and that "We would bring the dog around to within 10 feet [of Khatani] and he would be somewhat unnerved by it. We did it to keep him off balance as well as to enhance security."[688] Despite the testimony of the BSCT psychiatrist and LTC Phifer, Mr. Becker stated that the Commander "refused to allow dogs" in interrogations while he was in command of JTF-GTMO and told the Committee that dogs were not at the Khatani interrogation.[689]

VI. JPRA's Assistance to Another Government Agency (U)

[redacted] As the disagreement continued at GTMO about interrogation techniques being used by military interrogators in the Khatani interrogation, JPRA was developing another training session on the use of physical pressures and other interrogation techniques for [redacted] interrogators.[690]

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[682] Ibid.

[683] Ibid.

[684] Committee staff interview of [redacted] (August 13, 2007).

[685] Ibid.

[686] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[687] Army IG, Interview of MG Geoffrey Miller (May 2, 2006).

[688] LTC Jerry Phifer written answers to Church Report Questionnaire (July 16, 2004). It is not clear from those written answers whether the Director for Intelligence [Phifer] was referring to the use of dogs in the interrogation of Khatani that began in November or the interrogation that took place in October 2003. See section B supra.

[689] Army IG, Interview of David Becker (September 20, 2005) at 31.

[690] Email from Christopher Wirts to Joe Witsch, Gary Percival, and Terry Russell (November 12, 2002).

A Joint Staff Action Processing Form shows that request was endorsed by JPRA, JFCOM, Joint Staff, and the Undersecretary of Defense for Policy's office and approved on November 12, 2002.[693] The Chief of JPRA's Operational Support Office (OSO) Christopher Wirts "received the approved requirement [for training] from JFCOM DSSO [Defense Sensitive Support Office] and [Joint Staff] DSSO" and subsequently informed three JPRA personnel that the requirement for training included a lesson in "physical pressures, techniques used in DoD [SERE] training" and "practical exercise[s] in interrogation and physical pressures."[694]

The training took place at the facility in mid-to-late November 2002.[695] Three JPRA personnel conducted the multi-day training session and Mr. Wirts attended part of a one day session.[696] According to Joseph Witsch, the JPRA instructor who led the training, the instructors followed the JFCOM and Joint Staff-approved requirement and instructed interrogators on physical pressures used on students at SERE school.[697]

The training session also included a demonstration of physical pressures.[698] This was in accordance with the requirement, approved by JFCOM and Joint Staff, for "practical exercise[s] in interrogation and physical pressures."[699] Mr. Witsch recalled that he "participated in a couple of those demonstrations," which included role play sessions, where JPRA personnel demonstrated the SERE physical pressures in "mock interrogation[s]."[700] Another JPRA instructor, Terrence Russell, recalled that , rather than JPRA, led the demonstration of physical pressures.[701]

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692 Ibid.

693 Joint Staff Action Processing Form (November 12, 2002).

694 Email from Christopher Wirts to Joe Witsch, Gary Percival, and Terry Russell (November 12, 2002).

695 Committee staff interview of Christopher Wirts (January 4, 2008).

696 Ibid.

697 Testimony of Joseph Witsch (September 6, 2007) at 37.

698 Testimony of Terrence Russell (August 3, 2007) at 85.

699 Ibid.

700 Testimony of Joseph Witsch (September 6, 2007) at 38.

701 Testimony of Terrence Russell (August 3, 2007) at 85.

[redacted] According to Mr. Russell, in the demonstration of one of those physical pressures, a [redacted] suggested that to "enhance... the pain threshold" of a detainee being placed in a [redacted],[702] According to Mr. Russell: "I thought that would be improper" because "[i]t would cause physical damage, permanent physical damage to an individual. And I think that that would be totally inappropriate to do to anybody, whether it's an American or a foreign detainee. We would not do something that would cause permanent physical damage."[703] The JPRA training team said they raised that concern with their superiors when they returned from the trip.[704] The senior SERE psychologist, Dr. Gary Percival, who also participated in the training session later described it as a "fiasco" and said that the [redacted] and interrogators did not understand the concepts being taught.[705]

[redacted] JPRA personnel also instructed [redacted] interrogators on how to perform waterboarding.[706] In his testimony to the Committee, Mr. Witsch said that the JPRA instructors "mentioned [waterboarding to [redacted] and how it's done, [and described] basic steps in order to do it."[707]

[redacted] None of the JPRA personnel at [redacted] training had performed waterboarding or were qualified to teach others how to perform the technique.[708] In fact, Mr. Witsch, who described the technique to [redacted] at the training, testified that he did not recall all of the safety limitations associated with waterboarding.[709] For example, he testified that he was not aware that students at the U.S. Navy's SERE school could not be subjected to waterboarding for more than twenty seconds, if a cloth is placed over the student's face.[710] The twenty second time limit

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[702] Ibid. at 128, 86.

[703] Ibid. at 129.

[704] Testimony of Joseph Witsch (September 6, 2007) at 41.

[705] Committee staff interview of Dr. Gary Percival (July 25, 2007).

[706] Testimony of Joseph Witsch (September 6, 2007) at 107.

[707] Ibid. at 109.

[708] Committee staff interview of Christopher Wirts (January 4, 2008); Testimony of Joseph Witsch (September 6, 2007) at 113-14

[709] Testimony of Joseph Witsch (September 4, 2007) at 112-113.

[710] ([redacted] FASO Detachment Brunswick Instruction 3305.C, p. E-5 (January 1, 1998) (emphasis in original) ("Water Board. ***** The student is subjected to interrogation while strapped to a specially rigged, flat, wooded surface about four by seven feet with quick release bindings which will neither chafe nor cut when the student is strapped to the board. Two canteen cups (one pint each) of water may be slowly poured directly onto the student's face from a height of about twelve inches throughout the interrogation. No attempt will be made to direct the stream of water into the student's nostrils or mouth. **NO CHEST OR STOMACH** pressure may be used to compel the student to breath in any water. If a cloth is placed over **the student's face, it will remain in place for a maximum time of TWENTY seconds, with a hospital corpsman instructor holding the face cloth in place.** The cloth may be applied only twice in this manner to any given student. A student may be threatened at a later time with the water board and may even be strapped to the board again but under no circumstances may water actually be applied. The Watch Officer and a designated 9505 hospital corpsman shall be present whenever the water board is being used. The water board demonstrates omnipotence of the captor. Once the tactic is used on a student, it may be used as a credible threat.")

was emphasized in bold and in all capital letters in the Navy SERE school's instruction manual.[711]

[redacted] ([redacted] After Mr. Witsch described how to waterboard, [redacted] interrogators proceeded to perform the technique on each other.[712] Another JPRA trainer, Terrence Russell, said that it was a requirement that [redacted] interrogators experience the sensation of waterboarding and that [redacted] staff ran "everybody through a small experience with the waterboard, in that they were [redacted]"[713] According to Mr. Russell, nobody endured the waterboard for "very long."[714] The experience was "purely voluntary," and [redacted] interrogators "stayed there five seconds, ten seconds, thirty seconds," but not longer than that.[715] Mr. Russell said that if the interrogators "wanted to get off, they hopped off. But they had to experience the sensation. That was [redacted] requirement."[716]

VII. Secretary Rumsfeld Approves Interrogation Authorities, GTMO Plans to Implement SERE Techniques (U)

A. Secretary of Defense Authorizes Aggressive Techniques for use at GTMO

(U) On November 27, 2002, Mr. Haynes sent a memo to Secretary of Defense Donald Rumsfeld recommending that the Secretary authorize the Commander of SOUTHCOM to employ, at his discretion, all Category I and II techniques and one Category III technique ("use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing") in the JTF-GTMO October 11, 2002 request.[717]

(U) Mr. Haynes's memo stated that he had discussed the issue with Deputy Secretary of Defense Paul Wolfowitz, Undersecretary of Defense for Policy Doug Feith, and Chairman of the Joint Chiefs of Staff (CJCS) General Richard Myers and that they concurred with his recommendation.[718] According to Mr. Haynes, his recommendation came after the Secretary of Defense expressed "some exasperation that he didn't have a recommendation" on the October 11, 2002 GTMO request and told his senior advisors "I need a recommendation."[719]

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[711] Ibid.

[712] Testimony of Terrence Russell (August 3, 2007) at 87-88.

[713] Ibid.

[714] Ibid.

[715] Ibid.

[716] Ibid.

[717] Action Memorandum from William J. Haynes II to Secretary of Defense, *Counter-Resistance Techniques*, (November 27, 2002), approved by the Secretary of Defense on December 2, 2002 (hereinafter "Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002)").

[718] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[719] Committee interview of William J. Haynes II (April 25, 2008) at 193; SASC Hearing (June 17, 2008).

(U) Mr. Haynes's memo concluded that while "all Category III techniques may be legally available, we believe that a blanket approval of Category III techniques is not warranted at this time."[720] While the CJCS, General Myers, said that he "did not recall seeing the November 27, 2002 memo before it was presented to the Secretary," his Legal Counsel, CAPT Dalton, said that she and the Chairman were "satisfied with" the techniques that were recommended to the Secretary for approval.[721] CAPT Dalton also said, however, that she did not think the statement in the DoD General Counsel's memo that "all Category III techniques may be legally available" "was an appropriate legal analysis."[722] She did not raise that concern with the Chairman.[723]

(U) Mr. Haynes stated that he "probably" read LTC Beaver's legal analysis of the request prior to making his recommendation but that he could not recall his opinion of it.[724] He could not recall whether he asked anyone on his staff to review or comment on the analysis or whether his office conducted its own legal review.[725]

(U) As discussed above, General Hill, the SOUTHCOM Commander, had requested in his October 25, 2002 memorandum that Department of Justice and Department of Defense lawyers review Category III techniques included in the October 11, 2002 GTMO request.[726] While the Department of Justice's Office of Legal Counsel (OLC) had issued an opinion on August 1, 2002 evaluating standards of conduct for interrogations required under the anti-torture statute, Mr. Haynes testified in July 2006 that he "did not have a copy" of that opinion and that the OLC "had not expressed a view [to him] at that time.[727] In April 2008, however, Mr. Haynes stated that it was "very, very likely" that he had read the OLC opinion prior to making his recommendation to the Secretary and recalled it being "very permissive."[728] Two months later, in June 2008, Mr. Haynes testified that he did not "remember when he first read" the OLC memo.[729] The General Counsel said that he did not know whether anyone in his office consulted the Department of Justice about the October 11, 2002 GTMO request and he did not believe DOJ reviewed the techniques "in the context of [the GTMO] request."[730]

(U) Other than his November 27, 2002 memo to Secretary Rumsfeld recommending that the techniques be approved, Mr. Haynes said that he "did not write anything down" to support

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[720] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[721] Responses of General Richard Myers to April 16, 2008 written questions from Senator Carl Levin (April 30, 2008); SASC Hearing (June 17, 2008).

[722] SASC Hearing (June 17, 2008).

[723] Ibid.

[724] Committee staff interview of William J. Haynes II (April 25, 2008) at 172.

[725] Ibid.

[726] GEN Hill to CJCS, *Counter-Resistance Techniques.*

[727] Confirmation Hearing of William James Haynes II to be Circuit Judge for the Fourth Circuit, Senate Committee on Judiciary, 109th Cong. (July 11, 2006).

[728] Committee staff interview of William J. Haynes II (April 25, 2008) at 175-177, 190.

[729] Ibid. at 193; SASC Hearing (June 17, 2008).

[730] Committee staff interview of William J. Haynes II (April 25, 2008) at 175-177, 186.

his legal analysis.[731] GTMO Staff Judge Advocate Diane Beaver stated that she "fully expected" that her legal review would be 'carefully reviewed by legal and policy experts at the highest levels before a decision was reached" and was "shocked" that her opinion became the opinion upon which the Department of Defense relied.[732] LTC Beaver stated that she did not expect that her opinion "would become the final word on interrogation policies and practices within the Department of Defense" and that for her "such a result was simply not foreseeable."[733] She stated that she "did not expect to be the only lawyer issuing a written opinion on this monumentally important issue" and that in hindsight, could not "help but conclude that others chose not to write on this issue to avoid being linked to it."[734]

(U) Despite the fact that his memo recommended the Secretary of Defense authorize the use of aggressive interrogation techniques including stress positions, deprivation of light and auditory stimuli, hooding, removal of clothing, the use of dogs to induce stress, and pushing and poking detainees, Mr. Haynes stated that he was not recommending blanket approval of other aggressive techniques in the GTMO request (like the use of a wet towel and dripping water to induce the misperception of drowning) because "Our Armed Forces are trained to a standard of interrogation that reflects a tradition of restraint."[735]

(U) While several techniques included in the request were similar to techniques used in SERE training and provided by JPRA to the General Counsel's office in the July 26, 2002 memo, Mr. Haynes said that he did not "specifically recall" making a connection between the request and SERE.[736] In comments submitted to the DoD IG's August 25, 2006 report, the DoD General Counsel's office even stated that "There is no evidence that SERE techniques were ever adopted at Guantanamo or anywhere else."[737] Those comments were submitted two years after the SOUTHCOM Commander, General Hill, had said that "the staff at Guantanamo" had traveled to "SERE school," where they "developed a list of techniques . . ." and despite the fact that some of the techniques in the October 11, 2002 GTMO request were specifically identified as "those used in U.S. military interrogation resistance training."[738]

(U) Mr. Haynes said that he raised legal concerns about the October 11, 2002 GTMO request with the Secretary prior to making his recommendation.[739] On December 2, 2002, however, Secretary Rumsfeld approved Mr. Haynes's recommendation that SOUTHCOM be

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[731] Ibid. at 177.

[732] SASC Hearing (June 17, 2008).

[733] Ibid.

[734] Ibid.

[735] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[736] Committee staff interview of William J. Haynes II (April 25, 2008) at 188.

[737] Comment matrix, *Legal Review of Draft SECRET//NOFORN DoD IG Report, 'Review of DoD-Directed Investigations of Detainee Abuse (Project No. D2004-DINT01-0174) (U)'* (June 8, 2006) at 8.

[738] Media Availability with GEN Hill (June 3, 2004); MG Dunlavey to GEN Hill, *Counter-Resistance Strategies* (October 11, 2002).

[739] Committee staff interview of William J. Haynes II (April 25, 2008) at 170.

given authority to use all Categories I and II techniques and one Category III technique in interrogations at GTMO.[740] In approving the techniques, the Secretary added a handwritten note at the bottom of the memo that questioned one of the limitations in the JTF-GTMO request.[741] In reference to "the use of stress positions (like standing) for a maximum of four hours," the Secretary wrote: "However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?"[742]

Despite having previously approved the Khatani plan, which included a phase to employ Category III techniques, MG Geoffrey Miller told the Committee that shortly after the authorization was issued, he told the SOUTHCOM Commander that he did not intend to use the Category III techniques at GTMO.[743]

(U) However, following the Secretary of Defense's December 2, 2002 authorization, JTF-GTMO senior staff began developing standard operating procedures to implement stress positions, stripping detainees, and non-injurious physical contact, such as pushing and poking detainees, all of which were authorized by the Secretary of Defense. The CITF Special Agent in Charge at GTMO, Timothy James, said that when he saw the Secretary's authorization, he was "in shock" and that it "told us we had lost the battle."[744]

B. JTF-GTMO Develops Standard Operating Procedure (SOP) for the Use of SERE Techniques in Interrogations (U)

(On December 14, 2002, just prior to a staff meeting, GTMO's Director for Intelligence, LTC Phifer, gave Mr. James, the CITF Special Agent in Charge, a document entitled "JTF-GTMO 'SERE' Interrogation Standard Operating Procedure" and asked for his comments on the document.[745] The techniques described in the draft SOP, such as stress positions, non-injurious physical contact, removal of clothing, and hooding, had all been authorized by the Secretary of Defense on December 2, 2002.[746]

(The Department of Defense provided the Committee with two versions of the draft SERE SOP, one dated December 18, 2002 and another earlier undated draft. The draft SOPs were based on the Navy SERE school manual.[747]

(U) Under "purpose" both drafts of the SOP stated:

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[740] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[741] Ibid.

[742] Ibid.

[743] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[744] Committee staff interview of Timothy James (May 18, 2007).

[745] Email from Timothy James to Mark Fallon et al. (December 17, 2002).

[746] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[747] *JTF-GTMO "SERE" Interrogation Standard Operating Procedure* (undated) (hereinafter "*JTF-GTMO SERE SOP* (undated)"); *JTF-GTMO "SERE" Interrogation Standard Operating Procedure* (December 18, 2002); (hereinafter "*JTF-GTMO SERE SOP* (December 18, 2002)").

> This SOP document promulgates procedures to be followed by JTF-GTMO personnel engaged in interrogation operations on detained persons. The premise behind this is that the interrogation tactics used at U.S. military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to 'break' detainees. The same tactics and techniques can be used to break real detainees during interrogation operations.
>
> ... Note that all tactics are strictly intended to be non-lethal.[748]

(U) The December 18, 2002 draft stated that "interrogators will undergo training by certified SERE instructors prior to being approved for use of any of the techniques described in this document" and stated that the draft SOP was "applicable to military and civilian interrogators assigned to Joint Task Force Guantanamo Bay, Cuba."[749]

(U) In addition, the December 18, 2002 draft included a section describing "interrogation control and safety" that listed safeguards to "avoid injuries to the detainee, especially his head and/or neck" and stated that a "corpsman or medic should be onsite, and a doctor on-call should medical care be necessary."[750] The December 18, 2002 draft was unsigned but contained signature blocks for the JTF-GTMO's new ICE Chief, Lt Col Moss, the new JIG Commander, COL Sanders, and the JTF-GTMO Commander, MG Miller.

[redacted] Under "Degradation Tactics" the draft SOPs described the "shoulder slap," the "insult slap," the "stomach slap," and "stripping," all of which were included in the Secretary of Defense's December 2, 2002 authorization.[751]

[redacted] Regarding the shoulder slap, John Rankin, a Navy SERE Training Specialist who reviewed the draft SOPs at the time, noted that the SOPs' description of the shoulder slap differed from the technique as applied at the Navy SERE school.[752] The Navy instruction manual described the shoulder slap [redacted]."[753] However, the draft GTMO SOPs described the shoulder slap as [redacted].[754]

[redacted] The draft SOPs described how to administer "insult slap[s]" and "stomach slap[s]" to "shock and intimidate the detainee."[755] The draft SOPs explained that the use of "stripping" involved the "forceful removal of detainees' clothing."[756] The drafts also stated that

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[748] *JTF-GTMO SERE SOP* (undated); *JTF-GTMO SERE SOP* (December 18, 2002).

[749] *JTF-GTMO SERE SOP* (December 18, 2002).

[750] *JTF-GTMO SERE SOP* (December 18, 2002).

[751] Ibid. *JTF-GTMO SERE SOP* (undated).

[752] Committee staff interview of John Rankin (September 25, 2007).

[753] FASO Detachment Brunswick Instruction 3305.C (January 1, 1998) (emphasis added).

[754] *JTF-GTMO SERE SOP* (undated); *JTF-GTMO SERE SOP* (December 18, 2002).

[755] *JTF-GTMO SERE SOP* (undated); *JTF-GTMO SERE SOP* (December 18, 2002).

[756] Ibid.

"[i]n addition to degradation of the detainee, stripping can be used to demonstrate the omnipotence of the captor or to debilitate the detainee."[757]

[redacted] ([redacted] Under "Physical Debilitation Tactics" the draft SOPs described various stress positions and said the purpose of using them was to "punish detainees."[758] Among the stress positions listed was the "kneeling position," [redacted],[759] Another stress position, the "standing position," [redacted],[760] The draft SOPs also listed "Worship-the-Gods" where a detainee would [redacted],[761]

[redacted] ([redacted] The draft SERE SOPs described a number of other techniques including hooding; "manhandling," described as "pulling or pushing a detainee," and "walling," described as "placing a detainee forcibly against a specially constructed wall."[762] According to the draft SOPs, the purpose of walling was to "physically intimidate a detainee."[763]

(U) In an email sent shortly after the December 14, 2002 staff meeting where LTC Phifer provided him the draft SOP, CITF Special Agent in Charge Timothy James said that LTC Phifer briefed MG Miller and his staff on the draft SOP at the meeting.[764]

[redacted] Several senior GTMO staff reviewed drafts of the GTMO SERE SOP. On December 14, LTC Beaver sent an email to LTC Phifer, Lt Col Moss (the newly arrived ICE Chief) and members of the GTMO Behavioral Science Consultation Team (BSCT) proposing changes to the draft SERE SOP.[765] LTC Beaver recommended:

> [S]trictly prohibiting use of force to the head such as when detainee looks away. Pressure to head and neck must be avoided. Guiding chin up with two fingers for example or using other techniques to make detainee comply. This would avoid inadvertent injury... We can gain some control with use of pressure to shoulder and arms or upper body and less charge of injury to face, neck or head.[766]

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[757] Ibid.

[758] Ibid.

[759] Ibid.

[760] Ibid.

[761] Ibid.

[762] Ibid.

[763] Ibid.

[764] Email from Timothy James to Mark Fallon et al (December 17, 2002).

[765] Email from LTC Diane Beaver to Lt Col Ted Moss and LTC Jerald Phifer (December 14, 2002).

[766] Ibid.

(U) LTC Beaver later testified to the Committee that she might have recalled seeing a SERE SOP at the time but that she "had nothing to do" with drafting the December 18, 2002 version of the SOP and did not participate at all in drafting it.[767]

On December 16, 2002, BSCT psychiatrist MAJ Paul Burney responded to LTC Beaver's email, stating that "if these techniques are employed at GTMO, our training/preparation must match that of the instructors who are allowed to use these same techniques at SERE school."[768] MAJ Burney described some of the requirements for SERE instructors, such as having them "go through SERE school themselves," "undergo strict psychiatric screening," and be strictly supervised while doing their jobs at the SERE school.[769] MAJ Burney said that "there are still times when instructors go a bit too far and have to be redirected by other instructors. The SERE school takes this training VERY seriously. It clearly is not a see one, do one, teach one kind of situation."[770] The psychiatrist warned:

> The environment down here is much different than at SERE school. There is not a cadre of experienced SERE instructors. The interrogators have not gone through SERE school or been subjected to this treatment themselves. There is not a psychiatric screening process in place. The interrogators are away from home, family, friends and are under a lot more stress than SERE instructors at the SERE school. The detainees being questioned are the enemy and are not U.S. personnel posing as the enemy... All these factors make using this kind of pressure much more dangerous in this environment compared to at the SERE school.[771]

As to the utility of the SERE resistance techniques, MAJ Burney also stated that "[i]t is quite possible that employing these techniques exactly as employed in SERE school may actually strengthen a detainee's ability to resist interrogation rather than overcome it."[772] MAJ Burney stated that he was "not suggesting that the use of physical pressures should be totally abandoned," but recommended that they should bring an experienced senior SERE trainer to GTMO to discuss the issue stating "the interrogation element feels these tools will greatly assist the interrogations process. It would be very interesting to me to know if senior SERE trainers... agree with this assessment or not."[773] MAJ Burney also recommended that, if JTF-GTMO determined the techniques might be effective, then they should institute the same screening processes that SERE schools use and that SERE school instructors be "sent to GTMO to help with the interrogation process."[774]

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[767] SASC Hearing (June 17, 2008).

[768] Email from MAJ Paul Burney to LTC Diane Beaver (December 16, 2002).

[769] Ibid.

[770] Ibid.

[771] Ibid.

[772] Ibid.

[773] Ibid.

[774] Ibid.

(U) Mr. Becker, the ICE Chief who left GTMO in December 2002, told the Committee that prior to his departure he had begun drafting the SOP and had discussed it with LTC Phifer.[775]

(U) As discussed above, contemporaneous documents suggest that LTC Phifer gave a copy of the draft SERE SOP to Timothy James, the CITF Special Agent in Charge, and briefed the draft to a JTF-GTMO staff meeting.[776] LTC Phifer was also a recipient of the December 14, 2002 email from LTC Beaver that proposed changes to the draft SERE SOP.[777] However, LTC Phifer testified to the Army IG that he had "never heard of [the SOP] or saw [the SOP]."[778] He later told the Committee that he did not recall the SOP or the December 14, 2002 staff meeting and said that he would not have been comfortable briefing the SOP.[779]

(U) LTC Phifer was replaced on or about December 17, 2002 by COL Richard Sanders, who was given the title of Joint Intelligence Group (JIG) Commander.[780] COL Sanders, whose signature block was included on the December 18, 2002 draft SERE SOP, did not recall seeing the SOP, but said he vaguely recalled discussions about it.[781] Lt Col Moss, the new ICE Chief whose signature block was also on the draft SERE SOP, told the Committee that he recalled the draft SOP but that he never signed it.[782]

(U) LTC Beaver told the Committee that she did not know who directed the development of the SOP and could not recall whether she discussed it with MG Miller.[783] MAJ Burney told the Committee that he recalled being provided a copy of the Navy SERE school's SOP but did not recall seeing a document drafted by GTMO personnel.[784]

Despite having approved an interrogation plan that included SERE techniques and telling the Committee that, in the context of the Khatani interrogation, he was "willing to consider" SERE tactics, MG Miller testified to the Army IG that the techniques in the SOP "were too aggressive and not appropriate for use [at GTMO]."[785]

(U) While a contemporaneous document suggests that LTC Phifer briefed MG Miller on the SOP, MG Miller told the Army IG that the SOP was never brought to his attention and that

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[775] Committee staff interview of David Becker (October 17, 2007).

[776] Email from Timothy James to Mark Fallon et al. (December 17, 2002).

[777] Email from LTC Diane Beaver to Lt Col Ted Moss and LTC Jerald Phifer (December 14, 2002).

[778] Army IG, Interview of LTC Jerald Phifer (March 16, 2006) at 9.

[779] Committee staff interview of LTC Jerald Phifer (June 27, 2007).

[780] Ibid.

[781] Committee staff interview of COL Richard Sanders (August 10, 2007).

[782] Committee staff interview of LTC Ted Moss (October 17, 2007).

[783] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[784] Committee staff interview of MAJ Paul Burney (August 21, 2007).

[785] Army IG, Interview of MG Geoffrey Miller (March 28, 2006); Committee staff interview of MG Geoffrey Miller (December 5, 2007).

he had no knowledge of it.[786] MG Miller later told the Committee that he did not recall being briefed on the draft SOP.[787] As noted above, he also told the Committee that he opposed stress positions, removal of clothing, and the use of non-injurious physical contact – all techniques described in the draft SERE SOP – and that he had made his opposition clear to his staff prior to the time that the SOPs were drafted.[788]

(U) In response to LTC Phifer's request for comments on the draft SERE SOP, CITF raised concerns about the SOP verbally to LTC Phifer and drafted written comments about the SOP.[789] A draft of CITF's written comments (which they coordinated with FBI) was addressed to LTC Phifer and stated:

> [There is a] fundamental difference between the military and [CITF and FBI] regarding which style of interrogation should be used... the military model is based on SERE tactics...This school teaches coercion and aggressive interrogation techniques as a way to "break" soldiers who are being trained in methods to resist interrogation by a foreign power... [CITF and FBI] believe these techniques discourage, rather than encourage, detainee cooperation.[790]

(U) CITF and FBI also argued that the use of the methods "only serves to reinforce" the negative perception of the detainees toward Americans and would create "real potential for mistreatment" of detainees.[791] CITF and FBI called the SERE techniques "unsuitable" and "ineffective" and said there were "serious concerns about the legal implications of the techniques."[792]

(U) On December 18, 2002, CITF Special Agent in Charge Timothy James sent an email to Mr. Fallon stating "at this moment the JTF-GTMO staff is working the SOP issue, and [MG Miller] will most likely make a decision in the next day or so."[793]

(U) Individuals interviewed by the Committee stated that the SOP was never signed or implemented at GTMO.[794] Less than two weeks after the December 18, 2002 draft SERE SOP

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[786] Email from CITF Special Agent in Charge (December 18, 2002); Army IG, Interview of MG Geoffrey Miller (March 28, 2006).

[787] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[788] Ibid.

[789] Committee staff interview of Timothy James (May 18, 2007).

[790] Draft Memo from Timothy James to JTF-GTMO/J2, *JTF-GTMO "SERE" Interrogation SOP DTD 10 Dec 02* (December 17, 2002). CITF Special Agent in Charge Timothy James told the Committee that he was sure he shared CITF's concerns with LTC Phifer verbally and thought he gave LTC Phifer a memo documenting those concerns. Committee staff interview of Timothy James (May 18, 2007).

[791] Draft Memo from Timothy James to JTF-GTMO/J2, *JTF-GTMO "SERE" Interrogation SOP DTD 10 Dec 02* (December 17, 2002).

[792] Ibid.

[793] Email from Timothy James to Mark Fallon et al. (December 18, 2002).

[794] Committee staff interview of Lt Col Ted Moss (October 17, 2007); Committee staff interview of MG Geoffrey Miller (December 6, 2007).

was written, however, two instructors from the Navy SERE school traveled to GTMO to train interrogators on how to perform some of the physical pressures authorized by the Secretary of Defense and contained in the draft SERE SOPs.

C. *SERE School Trainers Provide Instruction for GTMO Interrogators* (U)

(U) On December 30, 2002, a SERE Training Specialist, John Rankin, and a SERE Coordinator, Christopher Ross from the Navy SERE school in Brunswick, Maine arrived at GTMO to "provide [JTF-GTMO Interrogation Control Element] personnel with the theory and application of the physical pressures utilized during [Navy SERE school] training evolutions."[795] Lt Col Moss told the Committee that his predecessor, Mr. Becker, had invited the SERE school trainers to GTMO.[796] MG Miller told the Committee that he was aware of the visit.[797]

(U) The trainers arrived on December 30, 2002 and met with Lt Col Moss and the ICE Operations Officer.[798] Lt Col Moss told them that "a high level directive had initiated [their] subsequent trip for the purpose of providing 'physical pressures' training." According to the SERE Training Specialist, John Rankin, that directive was a letter from the Secretary of Defense which was shown to him by Lt Col Moss.[799] Lt Col Moss also gave the two Navy SERE school personnel a copy of the December 18, 2002 draft SERE SOP.[800]

(U) The next day, the two Navy SERE school instructors led training for GTMO interrogators and other ICE personnel at Camp Delta.[801] The training included instruction on "Biderman's Principles," including lessons from a chart that was originally included in a 1957 article about how communists elicited false confessions.[802]

(U) The training also consisted of both lectures and instruction on the application of physical pressures.[803] The SERE Training Specialist John Rankin told the Committee that the instructors showed interrogators how to administer the insult slap, the shoulder slap, the stomach slap and demonstrated at least one stress position.[804] Mr. Rankin also said that they discussed the

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[795] Memorandum from John Rankin and Christopher Ross to Officer in Charge, *FASOTRAGRULANT Det Brunswick, After Action Report Joint Task Force Guantanamo Bay (JTF-GTMO) Training Evolution* (January 15, 2003) (hereinafter "*AAR JTF-GTMO Training Evolution* (January 15, 2003)").

[796] Committee staff interview of David Becker (October 17, 2007).

[797] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[798] *AAR JTF-GTMO Training Evolution* (January 15, 2003).

[799] Committee staff interview of John Rankin (September 24, 2007).

[800] Ibid.

[801] *AAR JTF-GTMO Training Evolution* (January 15, 2003).

[802] Ibid; Intelligence Science Board, Phase I Report: *Educing Information: Interrogation: Science and Art* (December 2006) at 316.

[803] The Navy SERE instructors first provided a lecture on "Biderman's Chart of Coercion," which described the effects of various physical and psychological pressures on individuals in captivity. See *AAR JTF-GTMO Training Evolution* (January 15, 2003); Committee staff interviews of JTF-GTMO interrogators (July 12, 2007), (November 6, 2007), and (January 9, 2008).

[804] Committee staff interview of John Rankin (September 24, 2007).

walling technique but did not demonstrate it because the facility lacked the specially constructed wall used at SERE school.[805] Two JTF-GTMO interrogators who attended the training stated that, following the demonstration, the interrogators broke off into pairs and practiced slapping each other.[806]

(U) Two interrogators who attended the training said that they understood that the techniques were available for interrogators to put in their "toolbox."[807] One of those interrogators recalled being told that if interrogators wanted to use the techniques, they would need to notify their interrogation team chief.[808] A third interrogator who attended the training told the Committee that he believed Lt Col Moss said the techniques could not be used while they were pending approval.[809]

(U) The JIG Commander, COL Sanders, testified to the Army IG that he attended the initial portion of the training and "made it quite clear, at least I believe I made it quite clear [to the interrogators]... the use of physical measures was not one of the things that we should consider was appropriate and would not be permitted."[810] COL Sanders also testified that he expressed the same concerns to MG Miller.[811] Those statements are inconsistent with the recollections of others.

(U) Of the three interrogators interviewed by the Committee who attended the training, none recalled COL Sanders making such a statement.[812] Lt Col Moss, the ICE Chief at the time, did not recall COL Sanders being present at the training.[813] MG Miller told the Committee that no one on his staff expressed concern to him about the training.[814]

(U) On the morning of January 2, 2003 the Navy SERE school personnel presented additional instruction on interrogation fundamentals and resistance to interrogation.[815] Later that day the instructors "presented an abbreviated theoretical physical pressures and peacetime guidance (government and hostage) to Marine JTF-GTMO personnel and two JTF-GTMO Staff

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[805] Ibid.

[806] Committee staff interviews of JTF-GTMO interrogators (July 12, 2007) and (January 9, 2008).

[807] Ibid.

[808] Committee staff interview of JTF-GTMO interrogator (July 12, 2007).

[809] Committee staff interview of JTF-GTMO interrogator (January 9, 2008).

[810] Army IG, Interview of COL Richard Sanders (March 14, 2006).

[811] Ibid. at 6.

[812] Committee staff interviews of JTF-GTMO interrogators (July 12, 2007), (November 6, 2007), and (January 9, 2008).

[813] Committee staff interview of Lt Col Ted Moss (October 17, 2007).

[814] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[815] *AAR JTF-GTMO Training Evolution* (January 15, 2003).

Judge Advocate (SJA) officials."[816] LTC Beaver told the Committee that she was not aware the SERE instructors were coming to GTMO and did not attend any of the sessions.[817]

(U) In the weeks following the Secretary of Defense's December 2, 2002 authorization of the interrogation techniques, word had spread that serious concerns were emerging about the techniques. In mid-to-late December, prior to the SERE trainers' arrival at GTMO, General Hill, the SOUTHCOM Commander, alerted MG Miller that a debate had ensued regarding the Secretary's decision to authorize the techniques.[818]

(U) Prior to their departure on January 3, 2003, the two Navy SERE instructors met with MG Miller.[819] The GTMO Commander told the Committee that he informed the SERE instructors, in the presence of his staff, that he did not want the techniques they had demonstrated used in interrogations at GTMO.[820] Others who attended the meeting confirmed the Commander's account.[821] Mr. Rankin told the Committee that MG Miller said that he did not want interrogators using techniques that might "bite them" later on.[822]

Before leaving, Mr. Rankin provided a memo for the ICE Operations Chief on the use of physical and psychological pressures during interrogations. The memo stated:

> [The] use of physical and psychological pressures during interrogations, if deemed appropriate, are tools that can be applied in order to establish and reinforce [Biderman's] principles... these principles and associated pressures allow the interrogation system to establish and maintain control of the exploitation process... The application of physical pressures is only part of the overall captive management process. They are initially used to shock and intimidate by setting the stage and establishing control. There must be a statement made by demonstrating there are rewards and punishments for compliant and combative or resistive behavior.[823]

D. *Navy General Counsel Raises Concerns About Interrogation Techniques, Secretary Rumsfeld Rescinds Authority* (U)

(U) CITF had been established as a joint military organization composed of personnel from the Army Criminal Investigative Division (CID), the Naval Criminal Investigative Service

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[816] Ibid.

[817] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[818] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[819] *AAR JTF-GTMO Training Evolution* (January 15, 2003).

[820] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[821] Committee staff interview of Lt Col Ted Moss (October 17, 2007); Committee staff interview of John Rankin (September 24, 2007); Committee staff interview of Christopher Ross (September 24, 2007).

[822] Committee staff interview of John Rankin (September 24, 2007).

[823] Memorandum from John Rankin to Captain Weis, *Physical and Psychological Pressures During Interrogations* (January 3, 2003).

(NCIS), and Air Force Office of Special Investigations. While CITF's Commander COL Britt Mallow was an Army Colonel assigned to CITF from CID, Deputy Commander Mark Fallon was an NCIS civilian employee on detail to the CITF. While COL Mallow reported concerns about JTF-GTMO interrogation techniques through his Army chain of command, Mr. Fallon also brought the concerns to NCIS leadership.[824]

(U) On December 17, 2002, two weeks after the Secretary authorized the interrogation techniques for use at GTMO and with the Khatani interrogation underway, David Brant, the NCIS Director informed Navy General Counsel Alberto Mora about recent objections raised by CITF.[825] The next day, Mr. Mora met with NCIS Chief Psychologist Dr. Michael Gelles, who had been to GTMO and was familiar with the interrogation techniques in use there. Dr. Gelles provided Mr. Mora excerpts of interrogation logs reflecting detainee mistreatment. Dismayed by what he read and heard, Mr. Mora met with Steven Morello, the Army General Counsel, and for the first time had the opportunity to review the October 11, 2002 GTMO request, LTC Beaver's legal analysis, and the Secretary of Defense's December 2, 2002 authorization of interrogation techniques for use in GTMO interrogations, which included stress positions, removal of clothing, dogs, deprivation of light and auditory stimuli, 20 hour interrogations, forced grooming, and grabbing, pushing and poking detainees.[826] Mr. Mora testified to the Committee: "[W]hen I saw the December 2nd Rumsfeld memo, and then reviewed Lieutenant Colonel Beaver's legal memorandum, when I saw that the memorandum was completely unbounded concerning the limit of abuse that could be applied to the detainees, I knew instantaneously . . . that this was a flawed policy based upon inadequate legal analysis."[827]

(U) The following day, Mr. Mora briefed Navy Secretary Gordon England on the NCIS report of detainee mistreatment and received authorization to meet with DoD General Counsel Jim Haynes.[828] That afternoon, Mr. Mora met with Mr. Haynes and advised him that in his view "some of the authorized techniques could rise to the level of torture."[829] He recalled urging the DoD General Counsel to "think about the techniques more closely" questioning him "What did 'deprivation of light and auditory stimuli' mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What precisely did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in?"[830]

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[824] Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2007).

[825] Memo from Alberto J. Mora to the Inspector General, Department of the Navy, *Statement for the Record: Office of General Counsel Involvement in Interrogation Issues* (July 7, 2004) at 2-3 (hereinafter "Mora, *Statement for the Record*").

[826] The Army General Counsel also "demonstrated great concern with [the Secretary's] decision to authorize the interrogation techniques." Army lawyers explained to the Navy General Counsel that they had "tried to stop" the authorization "without success, and had been advised not to question the settled decision further." Mora, *Statement for the Record* at 5-6.

[827] SASC Hearing (June 17, 2008).

[828] Mora, *Statement for the Record* at 7.

[829] Ibid.

[830] Ibid. at 7.

(U) Mr. Mora also urged Mr. Haynes not to rely on LTC Beaver's legal analysis, characterizing it as "an incompetent product of legal analysis."[831] Mr. Mora left the meeting feeling confident that the Secretary's authorization for interrogation techniques would be suspended.[832]

(U) More than two weeks later, on January 6, 2003, the NCIS Director informed Mr. Mora that the Secretary's December 2, 2002 memo had not been suspended and that detainee mistreatment was continuing at GTMO.[833] Two days later, Mr. Mora met with a Special Assistant to both the Secretary of Defense and the Deputy Secretary of Defense and informed him of the concerns. On January 9, 2003, Mr. Mora met again with DoD General Counsel Jim Haynes, warning him that the "interrogation policies could threaten Secretary Rumsfeld's tenure and could even damage the presidency."[834] The Navy General Counsel also left Mr. Haynes with a draft copy of a memo written by a Navy JAG Corps Commander, Stephen Gallotta.[835]

In that memo, CDR Gallotta summarized and attached comments that the military Services had submitted in November 2002 in response to the Joint Staff request.[836] CDR Gallotta's memo also assessed the legality of the techniques, concluding that several of the techniques "may violate the President's policy for the treatment of detainees," may violate international legal standards, and may violate the federal anti-torture statute (18 U.S.C. § 2340) and various articles of the Uniform Code of Military Justice (UCMJ).[837]

In his January 9, 2003 memo, CDR Gallotta concluded:

> Category III techniques that threaten death to the detainee or his family (#1) or which create the misapprehension of suffocation (#3) would likely be judged to constitute torture under the statute and customary international law. They reflect conduct specifically defined as torture in [18 U.S.C.] § 2340 and recognized as torture in international law. Category III, technique #4, mild, non-injurious grabbing and poking, is an assault under the UCMJ. Absent lawful purpose, these techniques may be *per se* unlawful.
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> Category II techniques could also, depending in their implementation, i.e., frequency of use, degree of pain inflicted, or combinations of techniques, rise to a

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[831] Ibid.

[832] Ibid. at 8.

[833] Ibid. at 9.

[834] A series of meetings followed between Mr. Mora and senior officials, where Mr. Mora reiterated his concerns. Mr. Mora met with the Legal Counsel to the Chairman of the Joint Chiefs of Staff CAPT Jane Dalton, the Service General Counsels and senior Judge Advocates General, Army General Counsel Steven Morello, Air Force General Counsel Mary Walker, and the DoD Principal Deputy General Counsel Daniel Dell'Orto. Ibid. at 13- 14.

[835] Ibid. at 10.

[836] Memo by CDR Stephen Gallotta, *Counter-Resistance Techniques* (January 9, 2003). The Services raised legal concerns about many of the Categories II and III techniques and called for further legal review of the proposal. *See* Section IV D, *supra*.

[837] Gallotta, *Counter-Resistance Techniques* (January 9, 2003).

level where they could be determined to be torture. Thus, additional analysis with specific guidance for implementation is recommended.[838]

(U) On January 15, 2003, "uncertain whether there would be any change to the interrogation policy," Mr. Mora delivered a draft memorandum to Mr. Haynes stating that "the majority of the proposed category II and all of the proposed category III techniques were violative of domestic and international legal norms in that they constituted, at a minimum, cruel and unusual treatment and, at worst, torture."[839] In a phone call that same day, Mr. Mora told the DoD General Counsel that he intended to sign the memo that afternoon if he had not heard that the Secretary's December 2, 2002 memo for interrogation techniques had been or was being suspended.[840] According to Mr. Mora, Mr. Haynes indicated during their conversations that "Secretary Rumsfeld was 'considering' rescinding the interrogation techniques he had previously authorized for use in Guantanamo."[841] In light of Mr. Mora's draft memo, Mr. Haynes also indicated that he would inquire further about the "Secretary's promise to 'consider' the withdrawal of the interrogation techniques."[842] Mr. Haynes called Mr. Mora later that day to tell him the Secretary had suspended his authorization for interrogation techniques.[843]

(U) On January 15, 2003, the Secretary of Defense issued a memorandum for GEN Hill, the SOUTHCOM Commander, rescinding blanket authority for one Category III and all Category II techniques at GTMO.[844] GEN Hill said that Secretary Rumsfeld had called him days before formally rescinding authority for the techniques on January 15, 2003 and asked whether the interrogation should continue. GEN Hill said that he told the Secretary that he "would discuss the question with MG Miller, did so that day and reported back to [Secretary Rumsfeld] recommending we continue the interrogation."[845] According to GEN Hill, Secretary Rumsfeld agreed at that time that the interrogation should continue but subsequently called him back and directed that it be stopped.[846]

(U) Just days after the Secretary of Defense rescinded authority for JTF-GTMO to use the interrogation techniques he had authorized in December, CITF's Deputy Commander Mark Fallon and NCIS Chief Psychologist Michael Gelles met with MG Miller to discuss their concerns about interrogation approaches. Mr. Fallon said MG Miller was "dismissive" of their

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[838] Ibid.

[839] Mora, *Statement for the Record* at 14.

[840] Ibid. at 15.

[841] Mora responses to questions for the record from SASC Hearing (June 17, 2008).

[842] Ibid.

[843] Mora, *Statement for the Record* at 15; *see also* Mora responses to questions for the record from SASC Hearing (June 17, 2008) ("At no time did Mr. Haynes give me any indication that the techniques had been previous rescinded. Had his been the case, Mr. Haynes could have simply informed me of the fact upon our first conversation that day.").

[844] Memo from the Secretary of Defense to Commander USSOUTHCOM, *Counter-Resistance Techniques* (January 15, 2003) (hereinafter "SECDEF memo to CDR SOUTHCOM (January 15, 2003)").

[845] GEN James Hill answers to July 31, 2008 written questions (August 20, 2008).

[846] Ibid.

concerns and reported that the GTMO Commander said "'you have got to put on the same jersey if you want to be on the team.'"[847]

[redacted] Following the Secretary's rescission, Khatani was moved out of Camp X-Ray.[848] Beginning on January 15, 2003 only Category I techniques were used in his interrogation. Category I techniques included yelling and techniques of deception. An April 19, 2003 memo from MG Miller, the GTMO Commander, said that on April 9, 2003, [redacted]" interrogators and analysts attributed his cooperation to his failing a polygraph test, his being told that his information was becoming less important because other members of al Qaeda were cooperating, and interrogators informing Khatani that release or repatriation to Saudi Arabia depended on his truthfulness.[850]

E. National Security Council (NSC) Principals Discuss DoD Interrogations

(U) In a June 9, 2008 letter to the DoJ Inspector General, John Bellinger the former NSC Legal Advisor, stated that he "repeatedly asked the Defense Department about conditions and detention policies at Guantanamo Bay" and that he "specifically raised concerns about interrogations practices used at Guantanamo, including concerns raised by the Department of Justice."[851]

(U) Mr. Bellinger told the Committee that Deputy Assistant Attorney General Bruce Swartz raised concerns with him "about allegations of abuse of detainees at Guantanamo."[852] Mr. Bellinger said that Mr. Swartz called him on "several occasions" to express his concerns and that, in response, he "raised these concerns on several occasions with DoD officials and was told that the allegations were being investigated by the Naval Criminal Investigative Service."[853] He said that then-National Security Advisor Condoleezza Rice "convened a series of meeting of NSC Principals in order to ensure that concerns about conditions and other issues relating to Guantanamo were fully discussed with the Department of Defense and other agencies."[854]

(U) Secretary Rice confirmed Mr. Bellinger's account, stating that he advised her "on a regular basis" regarding concerns and issues relating to Department of Defense detention policies and practices at Guantanamo.[855] She said that, as a result she "convened a series of meetings of

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[847] Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006) at 16.

[848] Memo from Major General Geoffrey Miller to Commander, U.S. Southern Command, *Techniques Used on ISN 63 Since 15 January 2003 (S)* (April 19, 2003).

[849] Ibid.

[850] Ibid.

[851] Letter from John Bellinger, III to Glenn Fine (June 9, 2008).

[852] John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[853] Ibid.

[854] Ibid.

[855] Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

NSC Principals in 2002 and 2003 to discuss various issues and concerns relating to detainees in the custody of the Department of Defense."[856]

VIII. New Interrogation Policy Developed for GTMO (U)

(U) When he rescinded authority for GTMO to use aggressive interrogation techniques, Secretary Rumsfeld directed the DoD General Counsel to set up a "Detainee Interrogation Working Group" within the Department "to assess the legal, policy, and operational issues relating to the interrogations of detainees held by the United States Armed Forces in the war on terrorism."[857]

(U) Two days later, on January 17, 2003, Mr. Haynes directed Air Force General Counsel Mary Walker to convene the Working Group.[858] Per the Secretary's guidance, the Working Group was comprised of representatives from the Office of the Undersecretary of Defense (Policy), the Defense Intelligence Agency, the General Counsels of the Air Force, Army, and Navy, and Counsel to the Commandant of the Marine Corps, the Judge Advocates General of the Air Force, Army, and Navy, the Staff Judge Advocate for the Marine Corps, and the Joint Staff Legal Counsel and the Joint Staff Directorate for Strategic Plans and Policy (J5).[859]

A. The Working Group Solicits Information on Interrogation Techniques

(U) As Working Group participants began considering issues relating to interrogations of detainees, they sought information on interrogation techniques to evaluate. Within the first two weeks, Working Group participants solicited information about interrogation techniques from the Defense Intelligence Agency (DIA) and the Combatant Commands.[860]

1. The Defense Intelligence Agency Provides Information on Specific Interrogation Techniques (U)

(U) The Working Group's principals and their action officers met for the first time on January 23, 2003.[861] At that meeting, the Working Group received a briefing from the DIA

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[856] Ibid.

[857] Memorandum from the Secretary of Defense for the General Counsel of the Department of Defense, *Detainee Interrogations* (January 15, 2003). In this memo, the Secretary also directed the Working Group to address the "[l]egal considerations raised by interrogation of detainees held by U.S. Armed Forces;" "[p]olicy considerations with respect to the choice of interrogation techniques, including contribution to intelligence collection, effect on treatment of captured U.S. military personnel, effect on detainee prosecutions, [and] historical role of U.S. armed forces in conducting interrogations;" and "[r]ecommendations for employment of particular interrogation techniques by DoD interrogators."

[858] Memorandum from Department of Defense General Counsel William J. Haynes to Air Force General Counsel Mary Walker, *Working Group to Assess Legal, Policy, and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (January 17, 2003).

[859] Department of Defense, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations* (April 4, 2003); Memorandum from the Secretary of Defense for the General Counsel of the Department of Defense, *Detainee Interrogations* (January 15, 2003).

[860] *Proposed Agenda, Working Group Meeting* (January 23, 2003).

[861] *Church Report* at 124.

about specific interrogation techniques.[862] A proposed agenda for the first Working Group meeting tasked David Becker with providing an overview of interrogation techniques to the Group.[863]

[redacted] Mr. Becker, the former JTF-GTMO Interrogation Control Element (ICE) Chief, had recently returned from GTMO to a civilian job at DIA. Mr. Becker told the Committee that he discussed interrogation operations as well as particular interrogation techniques with the Working Group's senior JAG officers and their civilian counterparts.[864] He told the Committee that he was asked about aggressive techniques and was encouraged to talk about techniques that inflict pain.[865] He also said that he advised the Working Group to consider SERE resistance training techniques.[866]

[redacted] The Working Group tasked DIA with providing a list of interrogation techniques and their effectiveness so that the Group could assess their legality.[867] DIA relied on Mr. Becker to produce that list.[868]

[redacted] Mr. Becker compiled a list of 36 techniques for the Working Group.[869] The list included techniques from Army Field Manual 34-52; techniques from Category II of the October 11, 2002 GTMO request, including stress positions, isolation, deprivation of light and auditory stimuli, hooding, 20 hour interrogations, forced grooming, and use of phobias, such as dogs; and

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[862] Ibid.; *Proposed Agenda, Working Group Meeting* (January 23, 2003).

[863] *Proposed Agenda, Working Group Meeting* (January 23, 2003).

[864] Committee staff interview of David Becker (September 17, 2007).

[865] Ibid.

[866] Ibid. The proposed agenda for the Working Group meeting (dated January 23, 2003) includes handwritten comments that reflect a discussion about "All [service] SEER [sic] guidelines" and "techniques." Since this document was produced to the Committee as a part of the source materials collected by VADM Church for his report, the Committee cannot determine whether these handwritten comments are those of a Working Group participant or VADM Church's team. *Proposed Agenda, Working Group Meeting* (January 23, 2003).

[867] [redacted] *Proposed Agenda, Working Group Meeting* (January 23, 2003); (U) *Proposed Detainee Interrogation Working Group Responsibilities (Initial)* (Undated) [redacted] DIA's role was described in the memo as, "List, describe and assess the effectiveness of all interrogation techniques that may be effective in obtaining useful information from detainees in the war on terrorism. Suggest relevant policy considerations affecting each."

[868] Committee staff interview of David Becker (September 17, 2007).

[869] [redacted] Committee staff interview of David Becker (September 17, 2007). The 36 techniques included Direct, Incentive, Emotional Love, Emotional Hate, Fear Up Harsh, Fear Up Mild, Decreased Fear, Pride and Ego Up, Pride and Ego Down, Futility, We Know All, Establish Your Identity; Repetition Approach, File and Dossier, Mutt and Jeff, Rapid Fire, Silence, Change of Scenery, Use of Stress Positions, Use of Falsified Documents and Reports, Use of Isolation Facility, Interrogating Detainees in an Environment other than the Standard Interrogation Booth, Deprivation of Light and Auditory Stimuli, Hooding, Use of 20-Hour Interrogations, Switching the Detainee from Hot Rations to MREs, Removal of All Comfort Items, Forced Grooming, Use of Detainee Phobias, Use of Scenarios Designed to Convince the Detainees that Death or Severely Painful Consequences are Imminent, Exposure to Cold Weather or Water, Use of a Wet Towel and Dripping Water, Use of Mild, Non-Injurious Physical Contact, Use of Drugs, Use of Female Interrogators, and Sleep Deprivation. Defense Intelligence Agency memo, *List, describe and assess the effectiveness of all interrogation techniques that may be effective in obtaining useful information from detainees in the war on terrorism. Suggest relevant policy considerations affecting each* (undated) (hereinafter "List of interrogation techniques compiled by DIA.")

all four techniques from Category III of the GTMO request, i.e., use of scenarios to convince the detainee that death or severely painful consequences are imminent, exposure to cold weather or water, use of a wet towel and dripping water, and the use of mild, non-injurious physical contact.[870] Mr. Becker also listed three "less common techniques" for the Working Group's consideration, i.e., use of drugs, use of female interrogators, and sleep deprivation."[871] Mr. Becker's memo identified each technique, assessed its effectiveness, and in some instances, also assessed legal and policy considerations.[872]

[redacted] ([redacted] Mr. Becker's memo stated that the Category III techniques from the October 11, 2002 GTMO request were "the most aggressive and controversial" techniques.[873] Mr. Becker stated that the techniques were "currently used against U.S. soldiers in SERE schools, with their consent," but that they would "not comport with the Geneva Conventions" if applied to Prisoners of War (POWs).[874] His memo recommended that the Working Group conduct a policy review on the "reciprocity of treatment of captured U.S. personnel" before implementing any of the Category III techniques.[875] Mr. Becker said that attorneys who consulted with him on the memo added this recommendation.[876]

[redacted] ([redacted] Mr. Becker's memo stated [redacted] may have already been using the Category III techniques and stated that [redacted] had apparently obtained assistance from JPRA.[877] He wrote:

> These [Category III] techniques may be employed by [redacted] against the detainees they have in custody overseas. We understand [redacted] office of the General Counsel did a legal review and established a finding similar to the legal review of the [GTMO SJA]. [redacted] The U.S. military uses standardized SOPs and training in their SERE schools. The SOPs establish the necessary checks and oversight that make SERE training both safe and effective. If adopted, those same standards should be applied when

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[870] [redacted] List of interrogation techniques compiled by DIA. In describing one technique – use of mild, non injurious physical contact – the ICE Chief explained that "[i]ssues such as grabbing and poking have very minimal policy issues and play a part in the interrogator's efforts to be sincere. Other non-injurious contact such as a face slap or stomach slap are effective in gaining compliance and are used at SERE school. UCMJ policy issues should be resolved."

[871] List of interrogation techniques compiled by DIA.

[872] Ibid.

[873] Ibid. at 3.

[874] Ibid.

[875] Ibid.

[876] Committee staff interview of David Becker (September 17, 2007).

[877] List of interrogation techniques compiled by DIA at 3.

interrogating detainees in the GWOT. The SERE SOPs should resolve most of the policy issues regarding the use of the Category [III] counter-resistance techniques.[878]

[redacted] In describing one Category III technique – "use of a wet towel and dripping water" – Mr. Becker's memo stated that the technique is "very effective," but that there are "wide ranging policy issues."[879] According to the memo, "[t]his particular method is no longer in use at SERE schools, but a similar method, called the waterboard, is very effective and it is understood that the waterboard is one of the techniques used with effect by [redacted] interrogators."[880]

[redacted] As to the three "less common techniques" in his memo – use of drugs, use of female interrogators, and sleep deprivation – Mr. Becker stated that "interrogation approaches are limited only by the imagination of interrogators" and that it would be "impossible to list every possible interrogation approach."[881] His memo stated that "drugs such as sodium pentothal and demerol may be used with some effectiveness," that female interrogators could be used to make the detainee feel "unclean," and that "sleep deprivation" can be effective.[882] Mr. Becker told the Committee that he based his statement about the effectiveness of the use of drugs on a rumor that [redacted] had used drugs in their interrogation program.[883]

2. *The Working Group Solicits Information About Interrogation Techniques From CENTCOM and SOUTHCOM* (U)

[redacted] In addition to asking DIA for a list of interrogation techniques, the Working Group also requested that the Joint Staff provide a list of techniques "currently in effect or previously employed in CENTCOM and SOUTHCOM, techniques the combatant commanders have found to be effective, and techniques the combatant commanders desire to implement with accompanying rationale."[884]

[redacted] SOUTHCOM relied on the JTF-GTMO Commander to respond to the Joint Staff tasking. MG Miller sent SOUTHCOM Commander General Hill a memo on January

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[878] Ibid.

[879] Ibid.

[880] Ibid.

[881] Ibid. at 4.

[882] [redacted] ([redacted] "[1] Use of Drugs: Drugs such as sodium pentothal and demerol may be used with some effectiveness. Significant policy issues must be resolved. [2] Use of Female Interrogators: One al-Qaida resistance method is to pray during interrogations. Prayer is only allowed if the detainee is 'clean.' Having a woman rub scented oil on the detainee's arms and face makes the detainee perceive that he is unclean and he cannot pray until he cleans himself, which he is unable to do until he returns to his cell. The use of female interrogators to put oil on a detainee does not exceed limits already established by DoD policy or the Geneva Conventions. [3] Sleep Deprivation: This can be effective; however there are obvious policy considerations. Guidelines as to the use of sleep deprivation would have to be established." List of interrogation techniques compiled by DIA at 4.

[883] Committee staff interview of David Becker (September 17, 2007).

[884] *Proposed Detainee Interrogation Working Group Responsibilities (Initial)* (undated) at 1; *Proposed Agenda, Working Group Meeting* (January 23, 2003).

21, 2003 on the effectiveness of techniques that had been rescinded by the Secretary of Defense earlier that month.[885] In his memo, MG Miller stated that "[t]he command must have the ability to conduct interrogations using a wide variety of techniques" and listed nine techniques as "essential to mission success." Those nine included use of an isolation facility; interrogating the detainee in an environment other than the standard interrogation room at Camp Delta such as Camp X-Ray; varying levels of deprivation of light and auditory stimuli to include the use of a white room for up to three days; the use of up to 20-hour interrogations; the use of a hood during transportation and movement; removal of all comfort items (including religious items); serving of meals ready to eat (MREs) instead of hot rations; forced grooming, to include shaving of facial hair and head; and the use of false documents and reports.[886]

MG Miller's January 21, 2003 memo stated that he believed that those nine techniques were lawful and stated:

> These techniques are not intended to cause gratuitous, severe, physical pain or suffering or prolonged mental harm, but are instead intended to induce cooperation over a period of time by weakening the detainee's mental and physical ability to resist.[887]

MG Miller attached another memo to his January 21, 2003 memo for General Hill. That attached memo, also dated January 21, 2003 and entitled "Methods Employed X-Ray Interrogation of ISN 63," bore the same title as a memo dated January 17, 2003. (The earlier memo is described in detail above). Despite describing the same events and being written just days apart, the January 21, 2003 and the January 17, 2003 memos contain substantive differences.

Several interrogation techniques that the January 17, 2003 memo identified as techniques used in the Khatani interrogation were omitted from the January 21, 2003 version. Among the techniques left out of the latter memo were "physical posturing," "search/strip search," and the presence of "K-9 military police" dogs.[888] In addition, the description of certain techniques differed in the two versions of the memo. For example, in the latter version, "denial of prayer" was removed and replaced with "postponement of prayer" and

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[885] Memo from MG Geoffrey Miller for Commander, U.S. Southern Command, *Effectiveness of the Use of Certain Category II Counter-Resistance Strategies* (January 21, 2003) (hereinafter "MG Miller memo, *Effectiveness of Certain Category II Strategies* (January 21, 2003)").

[886] MG Miller, *Effectiveness of Certain Category II Strategies* (January 21, 2003). Although MG Miller identified only nine "essential" techniques on January 21, 2003, a subsequent memo sent by the SOUTHCOM Commander GEN Hill called all the Category II and the one Category III technique (non-injurious physical contact such as poking and pushing) that the Secretary had authorized in December "critical to maximizing our ability to accomplish the mission, now and in the future." See *Church Report* at 135 and Section VIII D, *infra*.

[887] MG Miller, *Effectiveness of Certain Category II Strategies* (January 21, 2003).

[888] *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003); *Methods Employed X-Ray Interrogation ISN 63 (S)* (January 23, 2003), attached to MG Miller memo, *Effectiveness of Certain Category II Strategies* (January 21, 2003).

reference to the [redacted] to deny him the ability to pray was omitted.[889]

[redacted] CENTCOM sent the Working Group's request for a list of techniques to CJTF-180, in Afghanistan. In response, LTC Robert Cotell, the CJTF-180 Deputy Staff Judge Advocate (SJA) produced a memo on January 24, 2003 describing "current and past" interrogation techniques used by CJTF-180 interrogators.[890] LTC Cotell's memo was sent to the Working Group and to the Office of the Secretary of Defense.[891]

[redacted] ([redacted] LTC Cotell's January 24, 2003 memo stated that "[p]rior to their rescission, CJTF-180 used selected techniques contained in SOUTHCOM's [Category] II and III techniques."[892] He identified interrogation techniques used by CJTF-180, including up to 96 hours of isolation; the use of female interrogators to create "discomfort" and gain more information; sleep adjustment, defined as "four hours of sleep every 24 hours, not necessarily consecutive;" use of individual fears; removal of comfort items; use of safety positions; isolation; deprivation of light and sound in living areas; the use of a hood during interrogation; and mild physical contact.[893] Several of these techniques were similar to those approved by the Secretary of Defense for use at GTMO in December 2002. CJTF-180 had obtained a list of those GTMO techniques prior to the time that LTC Cotell had drafted his January 24, 2003 memo.[894]

[redacted] ([redacted] The January 24, 2003 memo also recommended use of five additional techniques, including "deprivation of clothing" to put detainees in a "shameful, uncomfortable situation;" "food deprivation;" "sensory overload – loud music or temperature regulation;" "controlled fear through the use of muzzled, trained, military working dogs;" and "use of light and noise deprivation"[895]

(U) LTG John Abizaid, the Deputy Commander (Forward) U.S. Central Command, stated that the January 24, 2003 memorandum "was thoroughly reviewed" by the Working Group.[896]

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[889] Ibid.

[890] *Church Report* at 197; Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1.

[891] US Central Command Action Processing Form, *Approval for the Use of Certain Interrogation Techniques in CJTF-180's AOR* (April 4, 2003); Memorandum from GEN John P. Abizaid to VADM Church, *Responses to Request for Information from VADM Church* (August 6, 2004).

[892] Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1.

[893] Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 8. The Church Report called the distinction between stress positions and safety positions at the Bagram Collection Point "largely academic." *Church Report* at 200.

[894] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002); Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1.

[895] Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1, 4-5, and 9.

[896] Memorandum from GEN John Abizaid to VADM Church, *Responses to Request for Information from VADM Church* (August 6, 2004).

3. *The Working Group Requests Information from JPRA* (U)

(U) The Working Group also sought information on interrogation techniques from the SERE community. On January 30, 2003, MAJ Nick Lovelace, an action officer at the Joint Staff Directorate for Intelligence (J2), contacted JPRA on behalf of the Working Group.[897]

[redacted] MAJ Lovelace called Mr. Joseph Witsch, the JPRA instructor who had previously conducted training for [redacted] and had served as Team Chief at the September 2002 training for GTMO interrogators and behavioral science personnel at Fort Bragg.[898]

[redacted] MAJ Lovelace requested material from JPRA "identifying interrogation techniques and methodologies used by the SERE community."[899] According to Mr. Witsch, MAJ Lovelace had already received information from the Army SERE school, but he described the information provided as "insufficient for his tasking."[900]

[redacted] Mr. Witsch advised MAJ Lovelace that information on interrogation techniques had already been provided to the Department of Defense General Counsel and to the DIA and he suggested that the Joint Staff action officer coordinate with them.[901] MAJ Lovelace indicated, however, that he was familiar with those materials but that he was looking for "more detail on exact procedures, techniques, and constraints" than had already been provided.[902]

[redacted] MAJ Lovelace's request on behalf of the Working Group prompted a discussion at JPRA about the advisability of providing "SERE school methodology in support of the GWOT" to the Working Group and other organizations.[903] In an email to JPRA Chief of Staff Daniel Baumgartner, Mr. Witsch expressed four "serious concerns" about sharing the requested information.[904]

[redacted] ([redacted] First among his concerns was the potential effect that sharing SERE school techniques could have on the training of American personnel. Mr. Witsch wrote:

> Open source intel and media is flooded with what the USG/OGAs and DOD are currently doing with [Designated Unlawful Combatants (DUCs)]. How long will it take before we see some discussion on SERE school methods and techniques being used to interrogate DUCs. I'll take bets that it will occur in days and weeks

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[897] Email from Joseph Witsch to Lt Col Dan Baumgartner (January 30, 2003).

[898] Ibid.

[899] The Joint Staff action officer stated that they needed the information immediately, since the " blue ribbon panel' organized by the AF General Counsel" intended to "work through the weekend to meet this immediate requirement." Email from Joseph Witsch to Dan Baumgartner (January 30, 2003).

[900] Ibid.

[901] Ibid.

[902] Ibid.

[903] Ibid.

[904] Email from Joseph Witsch to Lt Col Daniel Baumgartner (January 31, 2003).

versus months! It ain't healthy for our operators to expose how we prepare them to deal with interrogation and captivity in open source media.[905]

[redacted] Second, Mr. Witsch stated that the SERE techniques violated national and international laws. He wrote:

> Our training is based on simulating our captors' passed [sic] performance while tapering the physical/psychological severity and harm to our students. The physical and psychological pressures we apply in training violate national and international laws. We are only allowed to do these things based on permission from DOD management and intense oversight by numerous organizations within DOD. I hope someone is explaining this to all these folks asking for our techniques and methodology![906]

[redacted] His third concern was that a lack of proper oversight could give rise to significant drift, which, in turn, could pose a risk of investigation and exposure of the organization. Mr. Witsch asked:

> What do you think is more than likely to happen when one of these organizations gets exposed and because of significant 'drift' and a lack of oversight they go beyond what we do in the SERE schools? The first question will be 'Where did you get your guidance?' Then we get investigated and exposed [].[907]

[redacted] Mr. Witsch's fourth concern was that JPRA would have no control over how the information would be used. He asked:

> What's been handed out in hard copy and electronically from [] us and the SERE community to meet numerous requests from everybody? We use [sic] to have some general idea when we were dealing with primarily the SERE community. Now it's anybody's guess where the JTTP has gone and how it's being incorporated and used.[908]

[redacted] Mr. Witsch added:

> I know this is cool stuff and may provide some utility when dealing with DUCs. I'm not saying that we should totally remove ourselves from this endeavor. We must get a handle on all these people seeking information on our stuff within the USG and DOD and control the amount [of] exposure our SERE community/programs are getting. This is getting out of control!![909]

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[905] Ibid.

[906] Ibid.

[907] Ibid.

[908] Ibid.

[909] Ibid.

[redacted] Lt Col Baumgartner recalled that he managed to delay providing information to the Working Group, but that JPRA later briefed The Judge Advocate General of the Air Force, who was a member of the Working Group, on SERE techniques, including physical pressures.[910]

B. Department of Justice Office of Legal Counsel's Analysis Is Presented As Controlling Authority (U)

(U) At the initial meeting of the Working Group, in addition to a briefing from the DIA, participants also received a briefing from the Department of Justice's Office of Legal Counsel (OLC).[911] Despite the Secretary's guidance that the Working Group assess the legal issues relating to the interrogations of detainees, DoD General Counsel Jim Haynes, who knew that the OLC "had already done some work" on the issues, requested that the OLC produce a legal opinion to guide the Working Group's deliberations.[912]

(U) In the early stages of the Working Group's deliberations, Working Group members had set out to develop their own legal analysis and utilize that analysis in the evaluation of interrogation techniques.[913] A draft of that analysis, dated January 25, 2003, was shared with the DoD General Counsel's office and the OLC.[914]

[redacted] The draft reviewed U.S. obligations under international law and concluded that "obligations under the Torture Convention... apply to the interrogation of Operation Enduring Freedom detainees . . ."[915] The draft analysis also included a review of articles of the UCMJ and other U.S. legal standards that were potentially applicable to U.S. interrogators. For example, the analysis found that unlawful force used against a detainee could constitute an offense under Article 128 (assault) of the UCMJ, and stated that assault:

> May be interpreted to include unreasonably offensive poking, slapping, hitting, prodding, or pushing. Hooding not likely included if used for security reasons. Offensive touching would also include more severe techniques (e.g., wet towels, hand cuffing) if not inherent and necessary to custodial conduct.[916]

[redacted] The draft analysis also assessed the legality of the techniques that had been requested for approval by GTMO in October 2002, including some of those that the Secretary of Defense had approved for use at GTMO in December 2002. In its draft, the Working Group

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[910] Committee staff interview of Lt Col Dan Baumgartner (August 8, 2007); *See* Section VIII F, *infra*.

[911] *Church Report* at 124; *Proposed Agenda, Working Group Meeting* (January 23, 2003).

[912] Memorandum from the Secretary of Defense for the General Counsel of the Department of Defense, *Detainee Interrogations* (January 15, 2003); Committee staff interview of William J. Haynes II (April 25, 2008) at 250; Hearing on the Nomination of William James Haynes II to be U.S. Circuit Judge for the Fourth Circuit, U.S. Senate Committee on the Judiciary, 109th Cong. (July 11, 2006) at 14.

[913] *Church Report* at 124.

[914] [redacted] Committee staff interview of Eliana Davidson (February 21, 2008); *Detainee Interrogations: Survey of Legal and Policy Considerations* (draft) (undated). The Department of Defense allowed the Committee to review this document, but would not permit the Committee to keep a copy of the document.

[915] [redacted] *Detainee Interrogations: Survey of Legal and Policy Considerations* at 1-8.

[916] Ibid. at 10.

adopted the conclusion that Navy JAG Corps CDR Stephen Gallotta had reached in his January 9, 2003 memo, writing that:

> Category III techniques that threaten death to the detainee or his family (#1) or which create the misapprehension of suffocation (#3) would likely be judged to constitute torture under the statute and customary international law. They reflect conduct specifically defined as torture in [18 U.S.C.] §2340 and recognized as torture in international law. Category III, technique #4, mild, non-injurious grabbing and poking, is an assault under the UCMJ. Absent lawful purpose, these techniques may be *per se* unlawful.
>
> Category II techniques [] could also, depending in their implementation, i.e., frequency of use, degree of pain inflicted, or combinations of techniques, rise to a level where they could be determined to be torture. Thus, additional analysis with specific guidance for implementation is recommended. [917]

The draft Working Group analysis recommended "[a]dditional factual information and legal analysis" to "establish both the legality of the proposed techniques and any limits to be applied to their use."[918] The draft also expressed "significant concerns with some of the substantive measures in the [October 11, 2002 GTMO] proposal as submitted, particularly in Category II and almost all of Category III."[919] The Working Group's legal analysis was, however, soon superseded by that of the OLC.[920]

(U) Within the first two weeks of the Working Group's deliberations, the OLC delivered a draft legal memo to Air Force General Counsel Mary Walker.[921] The OLC's memo, which would be finalized on March 14, 2003, was presented to the Working Group as the "controlling authority for all questions of domestic and international law."[922] Among the Working Group members there was a "great deal of disagreement" with the OLC analysis and "serious concerns and objections over some of the legal conclusions reached by OLC."[923]

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[917] Ibid. at 20.

[918] Ibid.

[919] Ibid.

[920] In comments to the Air Force General Counsel Mary Walker about a March 6, 2003 draft of the Working Group report, the Navy TJAG RADM Michael Lohr encouraged the Working Group to incorporate a reference to the OLC opinion into its report, noting that the draft report "contain[ed] large segments of DoJ work product, rather than being 'informed' by DOJ." Memo from RADM Michael Lohr to Mary Walker, *Comments on the 6 March 2003 Detainee Interrogation Working Group Report* (March 13, 2002) at 1.

[921] Mora, *Statement for the Record* at 16; Hearing on the Nomination of William Haynes II to be U.S. Circuit Judge for the Fourth Circuit, U.S. Senate Committee on the Judiciary (July 11, 2006) at 14.

[922] *Church Report* at 124.

[923] Ibid.

[redacted]

[redacted] Nevertheless, at Mr. Haynes's direction, Ms. Walker instructed the Working Group to consider the "OLC memorandum as authoritative" and directed that it "supplant the legal analysis being prepared by the Working Group action officers."[924]

(U) CAPT Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, said she was "very angry" when told that the Working Group would be governed by the OLC's legal analysis.[925] She told the Committee: "There was a point [during the Working Group process] where we were told that we could not argue against the OLC opinion . . . that any other legal ideas that we had would not be accepted, particularly when we commented on the draft report."[926] Likewise, Alberto Mora, the Navy General Counsel and a participant in the Working Group, said that "[s]oon upon receipt of the OLC memo, the Working Group leadership began to apply its guidance to shape the content of its report."[927] Mr. Mora stated that "contributions from the members of the Working Group, including [contributions from his office], began to be rejected if they did not conform to the OLC guidance."[928]

(U) The final OLC memo, signed by John Yoo on March 14, 2003 (and known commonly as the "Yoo memo"), adopted many of the same conclusions as those of the First Bybee memo (dated August 1, 2002), in which the OLC had significantly narrowed the scope of what constituted torture under federal law. For example, Mr. Yoo's memo repeated OLC's previous analysis of the federal anti-torture statute, 18 U.S.C. § 2340, finding that the statute prohibited "only extreme acts" and that in order to constitute torture, physical pain would have to be equivalent in intensity to that accompanying "serious physical injury, such as organ failure, impairment of bodily functions or even death."[929]

(U) The final March 14, 2003 OLC memo, however, added that general criminal statutes, such as the federal anti-torture statute, were inapplicable to the military during the conduct of a war.[930] The OLC concluded that the assault, maiming, interstate stalking, and anti-torture statutes do not apply to the "properly-authorized interrogation of enemy combatants by the United States Armed Forces during an armed conflict."[931]

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[924] *Church Report* at 126 (citing February 2, 2003 Working Group draft)

[925] Committee staff interview of Jane Dalton (April 10, 2008) at 167.

[926] Ibid. at 165.

[927] Mora, *Statement for the Record* at 17. Other participants of the Working Group confirmed that "in drafting the subject report and recommendations, the legal opinions of the [OLC] were relied on almost exclusively." Memo from Air Force Deputy JAG Jack Rives to Air Force General Counsel, *Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (February 5, 2003).

[928] Mora, *Statement for the Record* at 17.

[929] Memorandum from John Yoo to William J. Haynes II, *Re: Military Interrogations of Alien Unlawful Combatants Held Outside the United States* (March 14, 2003) at 34-47 (hereinafter "Yoo Memo (March 14, 2003)").

[930] Those canons included "the avoidance of constitutional difficulties, inapplicability of general criminal statutes to the conduct of the military during war, inapplicability of general statutes to the sovereign, and the specific governs the general." Yoo Memo (March 14, 2003) at 11-19.

[931] Yoo Memo (March 14, 2003) at 11-19. Despite concluding that such statutes are inapplicable to the military during the conduct of a war, the OLC memo nonetheless considered whether use of certain specific techniques by an

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(U) The OLC's conclusion was based, in part, on its analysis of the President's Commander in Chief authority. In the First Bybee memo, the OLC had asserted that "any effort by Congress to regulate the interrogation of battlefield detainees would violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."[932] In keeping with that finding, the March 14, 2003 final OLC memo held that the power to detain and interrogate enemy combatants arose out of the President's constitutional authority as Commander in Chief.[933] "In wartime," according to the memo, "it is for the president alone to decide what methods to use to best prevail against the enemy."[934]

(U) In the March 14, 2003 final opinion, the OLC used its broad reading of the Commander-in-Chief authority to conclude that "even if" federal criminal statutes "were misconstrued to apply" to interrogations, the "Department of Justice could not enforce this law or any of the other [applicable] criminal statutes."[935] According to the OLC, "[e]ven if an interrogation method arguably were to violate a criminal statute, the Justice Department could not bring a prosecution because the statute would be unconstitutional as applied in this context."[936]

(U) The First Bybee memo and the March 14, 2003 final OLC memo were withdrawn in June 2004 and December 2003, respectively.[937] According to Assistant Attorney General for OLC Jack Goldsmith, the memos were "legally flawed, tendentious in substance and tone, and overbroad . . ."[938]

(U) The Navy General Counsel Alberto Mora called the OLC memo relied on by the Working Group in 2003 "profoundly in error" and a "travesty of the applicable law."[939]

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interrogator would constitute an offense under those laws. For example, the OLC memo considered whether slapping (or attempting to slap) a detainee would constitute assault or run afoul of U.S. constitutional standards. *See* Yoo Memo (March 14, 2003) at 25, 28, 62, 68.

[932] According to Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, who withdrew both the First Bybee memo and the March 14, 2003 final OLC memo, "this extreme conclusion has no foundation in prior OLC opinions, or in judicial decisions, or in any other source of law." Goldsmith continued: "And the conclusion's significance sweeps far beyond the interrogation opinion or the torture statute. It implies that many other federal laws that limit interrogation—anti-assault laws, the 1996 War Crimes Act, and the Uniform Code of Military Justice—are also unconstitutional, a conclusion that would have surprised the many prior presidents who signed or ratified those laws, or complied with them during wartime." The conclusion was even more "inappropriate," according to Goldsmith because "it rested on cursory and one-sided legal arguments that failed to consider Congress's competing wartime constitutional authorities, or the many Supreme Court decisions potentially in tension with the conclusion." Goldsmith, The Terror Presidency at 148-149.

[933] Yoo Memo (March 14, 2003) at 2-6.

[934] Ibid. at 5.

[935] Ibid. at 18.

[936] Ibid.

[937] Goldsmith, The Terror Presidency at 159; In December 2003, Assistant Attorney General Jack Goldsmith advised the Department of Defense General Counsel William J. Haynes not to rely on the March 14, 2003 final OLC memo. Committee staff interview of Jack Goldsmith (February 4, 2008).

[938] Goldsmith, The Terror Presidency at 151.

[939] Mora, *Statement for the Record* at 17; SASC Hearing (June 17, 2008).

According to Mr. Mora, the "OLC memo proved a vastly more sophisticated version of the Beaver Legal Brief, but it was a much more dangerous document because of the statutory requirement that OLC opinions are binding provided much more weight to its virtually equivalent conclusions."[940] He stated that it became evident to those on the Working Group that the "report being assembled would contain profound mistakes in its legal analysis, in large measure because of its reliance on the flawed OLC Memo."[941] CAPT Dalton likewise said that "to the extent that [the Working Group report] relied on the OLC memo, it did not include what I considered to be a fair and complete legal analysis of the issues involved."[942] She added that being told what their legal opinion had to be "severely constrained [the Working Group's] ability to do an adequate job."[943] The report, she said, had been "geared toward a particular conclusion[]" and the legal analysis was written to support that conclusion.[944]

C. *Working Group Drafts Report Recommending Interrogation Techniques* (U)

(U) When the Secretary of Defense directed the DoD General Counsel to set up the Working Group, the Secretary instructed him to complete the work within 15 days.[945] Although that goal was not met, the Working Group produced several drafts during that time frame and circulated a draft "Final Report" on February 4, 2003.[946]

According to VADM Church's report, the General Counsel of the Department of Defense, Jim Haynes, "participated in several meetings" from the "initiation of the Working Group until the report was finalized" at which "the Working Group progress and recommendations were discussed."[947]

Drafts of their report from this time period reflect the influence that SERE had on the Working Group's consideration of interrogation techniques. In a draft of the Working Group report, dated January 27, 2003, the report identified two categories of "interrogation techniques proven to be effective" – (1) those techniques that were "currently used by trained interrogators in accordance with U.S. Military Doctrine and policy" and (2) "additional techniques" deemed "acceptable for use in accordance with ancillary military training processes such as SERE schools."[948]

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[940] Mora, *Statement for the Record* at 17. Legal Counsel to the Joint Chiefs then-CAPT Jane Dalton also noted that the March 14, 2003 final OLC opinion was "similar to the Beaver analysis" in "approaches and methodology." Committee staff interview of RADM Jane Dalton (April 10, 2008) at 171.

[941] Mora, *Statement for the Record* at 17.

[942] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 173.

[943] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 167.

[944] Ibid. at 171.

[945] Memorandum from Secretary of Defense Donald Rumsfeld to Department of Defense General Counsel William J. Haynes II, *Detainee Interrogations* (January 15, 2003).

[946] *Church Report* at 130.

[947] Ibid.

[948] DoD Working Group draft report (January 27, 2003) at 25-28.

The first category of techniques, which the January 27, 2003 draft report identified as those already in use and "proven to be effective," included techniques not listed in Army Field Manual 34-52, such as isolation, hooding, use of prolonged interrogations, mild physical contact, removal of clothing, forced grooming, dietary manipulation, use of phobias to increase levels of stress, deprivation of light and auditory stimuli, environmental manipulation, sleep adjustment, prolonged standing, and deception.[949] In describing one of these techniques – deprivation of light and auditory stimuli – the draft report noted (in an apparent reference to SERE resistance training) that it was an "effective technique used in military training."[950]

The second category of techniques in the January 27, 2003 draft Working Group report identified as "proven to be effective" were those in use "with ancillary military training processes such as SERE schools."[951] The draft report noted that this second category of techniques "should only be applied for detainees who are extremely resistant" to the first category of techniques and "who the interrogators strongly believe have vital information."[952] The techniques include use of stress positions, sleep deprivation, enforced physical training, face slap/stomach slap, water immersion, walling, use of wet towel on face or the "waterboard," use of smoke pipe, and use of drugs.[953] In describing these techniques, the Working Group draft made repeated reference to use of the techniques at SERE schools – e.g., "selected stress positions are used in U.S. Military Survival Evasion Resistance and Escape (SERE) schools," the "face slap/stomach slap . . . is used in SERE training," "water immersion . . . . is effectively used in SERE courses," "use of a wet towel on face or the 'waterboard' . . . is the most severe technique used at U.S. Military SERE schools," "use of smoke pipe . . . is also used at the SERE School."[954]

According to JPRA's operating instructions, the purpose of subjecting students to physical pressures in SERE school is not to obtain information, but "to project the student's focus into the *resistance* scenario and realistically simulate conditions associated with captivity and resistance efforts."[955] The JPRA operating instructions state that "the application of physical pressure is necessary to produce the correct emotional and physiological projection a student requires for *stress inoculation* . . . "[956]

While the draft report described the two lists of techniques as "proven to be effective," it did not discuss the purpose for which the techniques were proven effective.

As Working Group participants made revisions to the draft report, the list of interrogation techniques in the report remained largely unchanged. A February 2, 2003 draft

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[949] Ibid. at 26-28.

[950] Ibid. at 27.

[951] Ibid. at 28.

[952] Ibid.

[953] Ibid.

[954] Ibid.

[955] JPRA, *OL-FA JSSA Instructor Guide*, Section 5.1 (September 21, 1994) (emphasis added)

[956] Ibid.

report shows virtually the same list of interrogation techniques as the earlier draft.[957] However, unlike the earlier draft, the February 2, 2003 draft excluded almost all references to "SERE schools" or to techniques used in "military training."[958] For example, the entire category of techniques previously identified as techniques in use "with ancillary military training processes such as SERE schools" were instead described in the February 2, 2003 draft as techniques "considered effective by interrogators and for which USSOUTHCOM and USCENTCOM have requested approval."[959]

[redacted] By the time the Working Group issued its draft "Final Report" on February 4, 2003, the report made no reference to SERE schools or techniques used in "military training,"[960] despite the fact that most of the SERE techniques remained in the report.[961]

[redacted] The February 4, 2003 draft "Final Report" recommended approval of 36 interrogation techniques for use with unlawful combatants outside the United States.[962]

(U) The report also listed, but did not recommend approval of, three additional techniques that the Working Group said it lacked sufficient information to evaluate fully – use of stress positions, deprivation of light and auditory stimuli, and water immersion/wetting down.[963] Two of the three techniques that the Working Group lacked enough information to make a judgment on, i.e., stress positions and deprivation of light and auditory stimuli, were among those recommended for approval by Mr. Haynes and approved by the Secretary of Defense two months earlier, on December 2, 2002.

[redacted] Of the 36 recommended interrogation techniques in the February 4, 2003 draft, 26 techniques were recommended for general use and 10 techniques were recommended for use with certain limitations.[964] The 26 techniques recommended in the February 4, 2003 report for general use included 19 techniques from Army Field Manual 34-52 or its predecessor, and seven techniques that did not comport with the Field Manual, i.e., hooding, mild physical contact, dietary manipulation, environmental manipulation, sleep adjustment, false flag, and threat of transfer.[965] The report also recommended approval of 10 additional "exceptional" techniques for

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[957] The one exception was that the "deception" technique in the January 27, 2003 draft was replaced with the "false flag" technique in the February 2, 2003 draft. False flag is a type of deception technique used to try and "convince the detainee that individuals from a country other than the United Sates are interrogating him." DoD Working Group draft report (February 2, 2003).

[958] Ibid.

[959] In the February 2, 2003 draft, the technique known as "deprivation of light and auditory stimuli," which was identified in the earlier draft as an "effective technique used in military training" was moved into this category. DoD Working Group draft report (January 27, 2003) at 28; DoD Working Group draft report (February 2, 2003).

[960] DoD Working Group draft report (February 4, 2003) at 60-64.

[961] Ibid. at 60-64.

[962] Ibid. at 70; *Church Report* at 130.

[963] *Church Report* at 136.

[964] *Church Report* at 130; Working Group draft report (February 4, 2003).

[965] [redacted] According to the Church Report, "The first 19 of the techniques were identical to the 17 specifically enumerated in FM 34-52, except that the draft added one technique ('Mutt and Jeff,' which the draft described as 'a

use with certain limitations.[966] The 10 "exceptional" techniques included isolation, prolonged interrogations, forced grooming, prolonged standing, sleep deprivation, physical training, face slap/stomach slap, removal of clothing, increasing anxiety by use of aversions, and the waterboard.[967]

(U) Many of the 10 "exceptional" techniques in the report, were similar to techniques identified in earlier versions of the report as either having originated in SERE school or among those previously approved for use at GTMO and identified by Mr. Becker, the former GTMO ICE Chief, in his list for the Working Group.

(U) Each of the 36 recommended techniques was included in a color-coded matrix or a "stoplight" chart and designated as either "green," "yellow," or "red" to signify the Working Group's assessment of legal and policy considerations.[968]

Waterboarding was the only technique evaluated as "red" in any area of consideration in the February 4, 2003 report, but the Working Group report continued to recommend at that time that it be approved for use.[969] That "red" designation meant that the Working Group determined that there was a major issue in law or policy with respect to waterboarding "that cannot be eliminated."[970] The Working Group rated the waterboard as red under U.S. domestic law and the prohibition against cruel, inhuman and degrading treatment in the Torture Convention.[971] The Working Group also indicated that the waterboard was not consistent with historical U.S. forces' interrogation role; prior U.S. public statements; or major

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team consisting of a friendly and harsh interrogator') that was in the 1987 version of FM 34-52 but was not found in the [then] current version, and the draft also listed Change of Scenery Up and Change of Scenery Down as separate techniques, rather than using the more general Change of Scene technique listed in FM 34-52." *Church Report* at 127.

[966] The report stated that use of techniques listed in the report would be subject to conditions, i.e., "Limited to specified interrogation centers; There is a good basis to believe that the detainee possesses critical intelligence; The detainee is medically and operationally evaluated as suitable (considering all techniques in combination); Interrogators are specifically trained for the technique(s); Subject to a special interrogation plan (including reasonable safeguards, limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel); Appropriate supervision; and Appropriate specified senior level approval for use with any specific detainee (after considering the foregoing and receiving legal advice)." Working Group draft report (February 4, 2003) at 60-64, 70.

[967] *Church Report* at 130; Working Group Report at 60-64, 70 (February 4, 2003) "Increasing anxiety by use of aversions" replaced a technique referred to as "use of phobias to increase levels of stress" in previous versions of the report. Despite their differing names, the techniques were described similarly and included use of dogs as examples of the technique.

[968] Green indicated "no significant constraint on use raised by the respective" law or policy under consideration, assuming adequate procedural safeguards; Yellow indicated that the law or policy under consideration did "not preclude use," but that there were "problematic aspects that cannot be eliminated by procedural safeguards; and "Red" indicated a "major issue" in the law or policy under consideration "that cannot be eliminated." Working Group draft report (February 4, 2003).

[969] Ibid.

[970] *Church Report* at 130; Working Group draft report (February 4, 2003).

[971] The Working Group also rated the waterboard as yellow under the prohibition against torture in the Torture Convention. Working Group draft report (February 4, 2003).

partner nation reviews. In addition, the report indicated that the technique could have an effect on the treatment of captured U.S. forces, could potentially affect detainee prosecutions; was "inconsistent with modern U.S. military perceptions in decency in dealing with prisoners" and was "a significant departure from contemporary American military approach to the laws of war."[972] The February 4, 2003 Working Group Report gave the waterboard its only overall red rating and recommended that the approval authority for the technique be "no lower than the [Secretary of Defense]."[973]

(U) The Working Group's assessment of the techniques on the stoplight chart was governed by the Office of Legal Counsel (OLC) memo. The result, according to then-CAPT (now RADM) Dalton, was that drafts of the stoplight chart were "absolutely wrong legally."[974] According to RADM Dalton:

> [T]here was a column originally . . . in the stoplight chart, that was labeled "Customary International Law." So one of the things we were supposed to assess was whether or not the techniques were consistent with customary international law. The stoplight chart had all 36 techniques green under customary international law because the OLC opinion and thus the Working Group report maintained that customary international law did not impose any constraints on the actions . . . That green column was absolutely wrong legally . . . it was embarrassing to have it in there, and one of my comments to the report was . . . You need to delete that column entirely because it's embarrassing to have it in there and it's not reflective of the law.[975]

(U) In addition to concerns raised by then-CAPT Dalton, almost immediately, the February 4, 2003 draft final report and its recommended techniques generated objections from top military lawyers. Within days of receiving the report and continuing over the next month, the Deputy Judge Advocate General (JAG) of the Air Force Jack Rives, the Navy JAG Michael Lohr, the Army JAG Thomas Romig, and the Staff Judge Advocate to the Commandant of the Marine Corps Kevin Sandkuhler submitted memoranda expressing serious concerns about the report and the techniques it recommended.

(U) The senior military lawyers raised the following concerns:

- (U) The OLC opinion, which was relied on almost exclusively by the Working Group, was "notably silent" on the Uniform Code of Military Justice (UCMJ), the military justice system applicable to U.S. personnel conducting interrogations.[976]

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[972] Working Group draft report (February 4, 2003).

[973] Ibid.; *Church Report* at 130.

[974] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 175.

[975] Ibid. at 175-176.

[976] Memo from Maj Gen Jack Rives to Mary Walker, *Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (February 5, 2003) (hereinafter "Rives to Walker (February 5, 2003)"); Memo from Brig Gen Kevin Sandkuhler to Mary Walker, *Working Group Recommendations on Detainee Interrogations* (February 27, 2003) (hereinafter Sandkuhler to Walker (February 27, 2003)"); Memo from U.S. Navy Judge

Several of the recommended "exceptional" techniques, on their face, amounted to violations of the UCMJ (e.g., assault) and domestic criminal law.[977] As a result, "applying the more [exceptional] techniques during interrogation of detainees places the interrogators and the chain of command at risk of criminal accusations domestically" and could result in criminal prosecution in domestic court.[978]

- (U) U.S. servicemembers may be at risk for criminal prosecution or civil liability in foreign domestic courts and international fora.[979]
- (U) Employment of exceptional techniques may have a negative effect on the treatment of U.S. POWs by their captors and raises questions about the ability of the U.S. to call others to account for mistreatment of U.S. servicemembers.[980]
- (U) Authorization of the exceptional interrogation techniques "may be seen as giving official approval and legal sanction to the application of interrogation techniques that U.S. Armed Forces have heretofore been trained are unlawful" and use of the techniques will adversely impact "pride, discipline, and self-respect within the U.S. Armed Forces."[981]
- (U) Authorization of the exceptional techniques will negatively impact U.S. and international public support and respect of the U.S. Armed Forces and could have a negative impact on the public perception of the U.S. military.[982]
- (U) Authorization of the techniques will adversely impact "human intelligence exploitation and surrender of foreign enemy forces and cooperation and support of friendly nations."[983]

Advocate General RADM Michael Lohr to Air Force General Counsel Mary Walker, *Working Group Recommendations Relating to Interrogation of Detainees* (February 6, 2003) (hereinafter "Lohr to Walker (February 6, 2003)").

[977] Rives to Walker (February 5, 2003); Memo from Air Force Deputy Judge Advocate General MG Jack Rives to Air Force General Counsel Mary Walker, *Comments on Draft Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (February 6, 2003) (hereinafter "Rives to Walker (February 6, 2003)").

[978] Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003); Memo from MG Thomas Romig to Mary Walker, *Draft Report and Recommendations of the Working Group to Access [sic] the Legal, Policy and Operational Issues Related to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (March 3, 2003) (hereinafter "Romig to Walker (March 3, 2003)").

[979] Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (Feb 27, 2003); Romig to Walker (March 3, 2003).

[980] Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Lohr to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

[981] Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

[982] Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

[983] Sandkuhler to Walker (February 27, 2003).

(U) According to DoD General Counsel Jim Haynes, the Secretary of Defense met with participants of the Working Group and was aware of concerns reflected in the comments made by the senior military lawyers.[984]

(U) On March 6, 2003, the Working Group circulated another version of its report entitled "Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations."

According to the Church Report, when circulated, the March 6, 2003 version was considered final, but at some point, it was later re-characterized as a draft.[985] Over the objections of the military lawyers, all 36 techniques from the February 4, 2003 draft report remained a part of the Working Group's recommendations and were included in the March 6, 2003 report.[986] The three techniques that the Working Group could not evaluate fully also remained in the March 6, 2003 report, but were not recommended for approval.[987] By March 6, 2003, the Working Group still "had not received adequate information" regarding these three techniques, including two that had been approved by the Secretary in December 2002, to conduct a "legal or policy analysis."[988]

(U) Upon receiving the March 6, 2003 version, senior military lawyers continued to raise concerns that the recommendations were based on a flawed OLC legal analysis. One JAG noted that the draft report's introduction, which said it was "'informed' by [the] OLC opinion . . . create[d] an incorrect impression" since "[m]ost (if not all) working group members and TJAGs disagree[d] with significant portions of [the] OLC opinion, but were forced to accept it."[989] The military lawyers also continued to express the view that the recommended techniques would expose American soldiers to potential prosecution; would invite reciprocal treatment of captured U.S. personnel; could affect the admissibility of detainee statements in criminal prosecutions, including military commissions; and were not proven to result in obtaining reliable information from those being interrogated.[990]

D. SOUTHCOM Presses for Additional Techniques (U)

As the various Working Group drafts were being discussed, JTF-GTMO and SOUTHCOM pressed for authority to use additional interrogation techniques at GTMO. On February 12, 2003, in advance of a planned briefing by MG Miller to Deputy Secretary of Defense Wolfowitz, LTC Beaver sent an email to the Department of Defense's Associate Deputy

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[984] Committee staff interview of William J. Haynes II (April 25, 2008) at 263.

[985] *Church Report* at 5.

[986] "An additional caution was incorporated into the March 6, 2003 recommendations regarding technique 36, the waterboard: 'As a matter of policy, technique 36 should be used only in instances of extreme necessity. Some members of the working group believed that it should not be used by U.S. Armed Forces personnel.'" *Church Report* at 34; Working Group draft report (March 6, 2003) at 68-69.

[987] Working Group draft report (March 6, 2003) at 68-69.

[988] Ibid.

[989] Email from Col James Walker to Daniel Ramos (March 10, 2003).

[990] *Church Report* at 134-135.

General Counsel for International Affairs Eliana Davidson stating that "we must have interrogation technique approval immediately and will speak to Mr. Wolfowitz about this. The hallmark is isolation and up to 20 hour interrogation. Without that we can't be successful in the community environment. We need commitment from the senior leadership to let us do this mission."[991]

Three days later, LTC Beaver followed up with the General Counsel's office, stating that MG Miller "was informed by DEPSECDEF that we would have interrogation techniques (isolation and up to 20 hours) approved by Wednesday [February 19, 2003]. We hope this happens."[992]

A month later, on March 12, 2003, a Deputy Staff Judge Advocate at SOUTHCOM sent LTC Beaver an email informing her about a March 11, 2003 meeting that was attended by Secretary of Defense Donald Rumsfeld, SOUTHCOM Commander GEN James Hill, and Chairman of the Joint Chiefs of Staff (CJCS) Gen Richard Myers, where interrogation techniques were discussed.[993] According to the Deputy SJA at SOUTHCOM, during the meeting, Gen Myers, raised a concern that some of the techniques discussed for GTMO "could be illegal depending on how far they were used."[994] The Deputy SJA informed LTC Beaver that GEN Hill "promised the Chairman a paper discussing the techniques we want" and that SOUTHCOM wanted to get a draft memo to GEN Hill by close of business March 20, 2003.[995] LTC Beaver forwarded the email to DoD Associate Deputy General Counsel Eliana Davidson and told her "This email is not good news. It appears something went wrong."[996] Ms. Davidson replied that Mr. Haynes had been at the meeting where interrogation techniques were discussed and that she was trying to get some clarification on the meeting.[997]

On March 21, 2003, GEN Hill sent a memorandum to Gen Myers regarding the interrogation techniques that had been rescinded in January. While MG Miller's January 21, 2003 letter to General Hill had listed only nine Category II techniques as "essential," General Hill's March 21, 2003 memo stated that both he and MG Miller felt that approval of *all* of the previously authorized techniques (in Categories I, II and III) was "essential."[998] General Hill stated that "both Geoff Miller and I believe that we need as many appropriate tools as possible" and called Category II and the one previously authorized Category III technique "critical to maximizing our ability to accomplish the mission, now and in the future."[999] The "critical" techniques referred to by General Hill included stress positions, deprivation of light and auditory

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[991] Email from LTC Diane Beaver to Eliana Davidson (February 12, 2003).

[992] Ibid.

[993] Email from COL Terrence Farrell to LTC Diane Beaver (March 12, 2003).

[994] Ibid.

[995] Ibid.

[996] Email from LTC Diane Beaver to Eliana Davidson (March 13, 2003).

[997] Email from Eliana Davidson to LTC Diane Beaver (March 13, 2003).

[998] Memo from GEN Hill to Chairman of the Joint Chiefs of Staff, *Information on Interrogation Techniques* (March 21, 2003).

[999] Ibid.

stimuli, removal of clothing, use of detainee phobias such as dogs, and the one Category III technique the Secretary had authorized, which included grabbing, poking, and light pushing.

E. JPRA Briefs Members of the Working Group on SERE Techniques (U)

Prior to issuing a final report on April 4, 2003, members of the Working Group again sought information from JPRA on SERE techniques. The JAG of the Air Force, Maj Gen Thomas Fiscus, and two other military officers, visited JPRA and were briefed on SERE physical pressures.[1000] At the briefing, JPRA described its previous support to "high value target" interrogations, discussed the processes and procedures used in SERE training, and reviewed the "application of physical pressures in an operational environment."[1001] JPRA Chief of Staff Daniel Baumgartner told Maj Gen Fiscus that JPRA had previously provided information on techniques used in SERE schools to DoD Deputy General Counsel Richard Shiffrin.[1002]

F. The Working Group Finalizes Its Report and the Secretary of Defense Issues a New Interrogation Policy For GTMO (U)

On March 28, 2003, the Secretary of Defense met with a number of senior advisors including Deputy Secretary Paul Wolfowitz, DoD General Counsel Jim Haynes, and Chairman of the Joint Chiefs of Staff Gen Richard Myers, to discuss the interrogation techniques being considered by the Working Group.[1003] After that meeting, the Secretary decided to expressly authorize 24 interrogation techniques, including five that were not listed in the Army Field Manual (one of these five was classified as an "exceptional" technique).[1004]

The Joint Chiefs of Staff met on March 31, 2003, and were briefed about Secretary Rumsfeld's decision. According to CAPT Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, the "Chiefs recognized that the approved strategies would not hamper the combatant commander in the accomplishment of his mission, because the door was open to request additional strategies on a case-by-case basis if needed in compelling cases."[1005]

The last and final version of the Working Group report was issued on April 4, 2003. The report was similar to the March 6, 2003 version, except that it did not recommend waterboarding or list the three other exceptional techniques that the Working Group could not evaluate fully – stress positions, deprivation of light and auditory stimuli, and water

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[1000] Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

[1001] JPRA Power Point presentation, *Project 22B* (June 2003).

[1002] Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

[1003] "According to the Secretary's daily schedule, the advisors at the meeting included Mr. Haynes, Gen Myers, the Deputy Secretary of Defense, Paul Wolfowitz, the Undersecretary of Defense for Intelligence, Stephen Cambone, the Under Secretary of Defense for Policy, Douglas Feith, the Principal Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, Marshall Billingslea, and CAPT Dalton." *Church Report* at 136. By the time the Secretary met with his advisors, the Working Group had removed waterboarding from consideration. Ibid. at 135-6.

[1004] Ibid. at 136.

[1005] Memo from RADM Jane Dalton to VADM Church, *Request for Information* (August 10, 2004) at 5.

immersion/wetting down.[1006] At the direction of the DoD Principal Deputy General Counsel Daniel Dell'Orto, the April 4, 2003 report was not circulated to the participants of the Working Group.[1007]

(U) In fact, when it came to finalizing the report, some participants of the Working Group who had raised objections to the report were excluded from the process and did not even know that the report had been completed.[1008] According to Alberto Mora, the Navy General Counsel, "Neither I, [the Navy Office of the General Counsel], nor – to my knowledge – anyone else in the [Department of Navy] ever received a completed version of the Working Group report. It was never circulated for clearance. Over time, I would come to assume that the report had never been finalized."[1009] Mr. Mora said that he only learned of the final report nearly a year later while watching a "televised congressional hearing on the Abu Ghraib scandal."[1010]

[redacted] On April 5, 2003, Gen Myers forwarded a memo proposing that the Secretary of Defense authorize 24 of the interrogation techniques reviewed during the Working Group process.[1011] In response, Marshall Billingslea, the Principal Deputy Assistant Secretary of Defense for Special Operations/ Low-Intensity Conflict sent a memo to the Secretary of Defense raising concerns about the omission of certain techniques and recommending that the Secretary approve all 35 techniques "endorsed by the Working Group."[1012] Mr. Billingslea's memo stated:

> The current memo omits some interrogation techniques that are not controversial from either a legal, or policy standpoint. For instance, blindfolding ('hooding'), lightly touching a detainee, and threatening transfer to a 3rd country all seem reasonable techniques to approve.
>
> The draft memo also omits some techniques which the Working Group found to be legally-permissible, but which should be done only with appropriate oversight. While the Working Group felt that the Combatant Commander could approve these measures, we recommend requiring that you be notified prior to their use.
>
> The measures in question include using prolonged interrogations, prolonged standing in non-stress positions, forced grooming, requiring physical exercise, face/stomach slaps to cause surprise but not pain or injury, etc.

[1006] Department of Defense, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations* (April 4, 2003).

[1007] *Church Report* at 136.

[1008] SASC Hearing (June 17, 2008) (Testimony of Alberto Mora); Military Justice and Detention Policy in the Global War on Terrorism, Senate Committee on Armed Services, Subcommittee on Personnel, 109th Cong. (July 14, 2005) (Testimony of MG Thomas Romig).

[1009] Mora, *Statement for the Record* at 20.

[1010] Ibid.

[1011] *Church Report* at 137.

[1012] Memo from Marshall Billingslea to Secretary Rumsfeld, *Interrogation Methods for GTMO* (April 10, 2003).

Finally, we recommend delegating certain techniques to General Miller at GTMO.[1013]

(U) On April 16, 2003, the Secretary of Defense authorized the Commander of SOUTHCOM to use 24 interrogation techniques.[1014] Of the 24 techniques, four – Mutt and Jeff, incentive/removal of incentive, pride and ego down, and isolation – required that the SOUTHCOM Commander make a determination of "military necessity" and notify the Secretary in advance of using them.[1015] The Secretary authorized the use of the other 20 techniques with all detainees at GTMO so long as GTMO personnel adhered to certain safeguards. Those authorized techniques included dietary manipulation, environmental manipulation, sleep adjustment, and false flag, none of which were listed in the Army Field Manual.

(U) In addition to expressly authorizing the 24 techniques listed in his April 16, 2003 memorandum, Secretary Rumsfeld wrote in his memo: "If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee."[1016]

(U) CAPT Dalton told the Committee that all of the techniques recommended by the Working Group were available for request.[1017] That understanding was shared by the Joint Chiefs, who she said believed that the door was open to request additional strategies on a case-by-case basis if needed in compelling cases."[1018] The GTMO Commander would soon seek and receive authority to use additional techniques that went beyond the 24 expressly approved in the Secretary's April 16, 2003 memo.

IX. Aggressive Interrogations at GTMO (U)

A. *Allegations of Detainee Mistreatment* (U)

As the final Working Group report was being generated, and on the heels of SOUTHCOM and GTMO's press for additional interrogation authorities, a Commander's inquiry was initiated at GTMO following allegations that, between March and April 2003, interrogation personnel and military police had forced detainees to engage in physical training.[1019]

[1013] Ibid.

[1014] Memorandum from Secretary of Defense Donald Rumsfeld to GEN James T. Hill, *Counter-Resistance Techniques in the War on Terrorism* (April 16, 2003) (hereinafter "Secretary Rumsfeld to GEN Hill (April 16, 2003)").

[1015] Secretary Rumsfeld to GEN Hill (April 16, 2003).

[1016] Ibid.

[1017] Committee staff interview of RADM Jane Dalton (April 10, 2008) at 225.

[1018] Memo from RADM Jane Dalton to VADM Church, *Request for Information* (August 10, 2004) at 5.

[1019] Memo for Record from ACS Contractor, *Possible Inappropriate Activities* (undated).

The resulting inquiry looked into only one of the alleged incidents of mistreatment – an interrogation on [redacted][1022] An interrogator, two analysts, and a member of the GTMO Behavioral Science Consultation Team (BSCT) who were interviewed for the inquiry "believed that the technique was appropriate, approved, applied properly, and was common practice . . ."[1023] Notwithstanding the statement that the technique was "common practice," the GTMO Interrogation Control Element (ICE) Chief Lt Col Ted Moss, his deputy, and the ICE operations officer said they were not aware compulsive exercise was being used.[1024]

On May 2, 2003, MG Miller directed the Director of the Joint Intelligence Group (JIG), John Antonitis, to "cease of the use of the 'Fear-Up Harsh' interrogation technique," and said the inquiry had identified a need for re-training and corrective action to "ensure [interrogators] understand the approved interrogation techniques and practices and their limitations."[1025]

(U) A subsequent memorandum called "Historic Look at Inappropriate Interrogation Techniques Used at GTMO" criticized the Commander's inquiry.[1026]

The memo said the inquiry was too limited and found that the disciplinary action "did not address the command failures that allowed such activity to take place, despite apparent command sanctioning of the incidents."[1027] In fact, the Commander's inquiry failed to [redacted].[1028] Nor did the inquiry review an allegation that, on April 17, 2003, a female GTMO interrogator sat on a detainee's lap

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[1020] Memo from Diane Beaver to MG Geoffrey Miller, *(U) Results of Commander's Inquiry, re: Allegation of Inhumane Treatment of* [redacted] (April 30, 2003).

[1021] Ibid.

[1022] Ibid.

[1023] Ibid.

[1024] Ibid. at 2.

[1025] Memo from MG Geoffrey Miller for Commander, USSOUTHCOM, *Commander's Inquiry, Allegation of Inhumane Treatment of* [redacted] (May 3, 2003).

[1026] Memo, *Historic Look at Inappropriate Interrogation Techniques Used at GTMO* (undated) (hereinafter "*Historic Look at Inappropriate Interrogation Techniques*").

[1027] Ibid.

[1028] An April 2003 Memorandum for Record drafted by a contractor at GTMO alleged the technique was used on several occasions, including in late March 2003 as well as on April 7, 2003, and April 17, 2003. Memo for Record from ACS Contractor, *Possible Inappropriate Activities* (undated).

"making sexual affiliated movements with her chest and pelvis while again speaking sexually oriented sentences."[1029]

(U) The second incident involved a female military interrogator who wiped what she told the detainee was menstrual blood on a detainee's face and forehead.[1033]

The "Historic Look at Inappropriate Interrogation Techniques Used at GTMO" memo found that there was "no clear information indicating disciplinary action for the 'lap dance' and simulated blood incidents."[1034]

The same memo concluded that "the incidents occurring during the Spring of 2003 signif[ied] a consistent problem at GTMO."[1035] It stated that it was "clear" that interrogators "may use several if not all of the techniques that require SECDEF notification."[1036] The memo also concluded that "interpretation of the SECDEF approved techniques has resulted in variations on how techniques are applied (i.e., is yelling, loud music and strobe lights environmental manipulation?)" and "[d]espite these revelations by interrogators, the supervisory chain of command reports that these techniques are not used."[1037] An FBI Special Agent serving at GTMO stated that "there was a time period where the interrogations were obtrusive enough that the interview rooms for an entire trailer were not available if one of these techniques were being utilized."[1038]

Other contemporaneous documents indicate that in addition to the use of strobe lights and loud music, techniques such as forced shaving, sensory deprivation and even implied threats

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[1029] Ibid.

[1030] *Historic Look at Inappropriate Interrogation Techniques* at 2.

[1031] Ibid.

[1032] Ibid.

[1033] Ibid.

[1034] Ibid.

[1035] Ibid.

[1036] Ibid.

[1037] Ibid. at 3.

[1038] Email from FBI Special Agent (July 14, 2004).

of death were either used or planned for use in specific JTF-GTMO interrogations even after MG Miller's May 2, 2003 order to cease use of the "Fear-Up Harsh" interrogation technique. [redacted]

B. Special Interrogation Plans Modeled on Khatani Interrogation (U)

(U) Despite their repeated objections, law enforcement had been unable to stop JTF-GTMO from proceeding with its aggressive interrogation of Mohammed al Khatani in November 2002. An FBI Special Agent told the Committee that law enforcement believed at the time that the Khatani interrogation would define the conduct of future interrogations at GTMO.[1039] Documents relating to JTF-GTMO's plans for interrogating other high value GTMO detainees substantiated the belief of the FBI Special Agent.

1. JTF-GTMO Plans for Interrogation of Slahi (U)

[redacted] A memo dated on January 16, 2003 – the day after the Secretary of Defense rescinded interrogation techniques he had previously authorized for GTMO – described a plan for the interrogation of Mohamadou Walid Slahi. While Slahi's interrogation does not appear to have begun until July 2003, the January 16, 2003 memo described specific techniques JTF-GTMO intended to use in his interrogation, many of which mirrored those used in the Khatani interrogation. For example, the memo stated that interrogations would be conducted for up to 20 hours per day on Slahi, just as they had been for Khatani.[1040] The memo said that interrogators could pour water on Slahi's head to "enforce control" and "keep [him] awake."[1041] Interrogators had also poured water over Khatani's head as a "method of asserting control."[1042]

[redacted] The January 16, 2003 memo stated that "K-9 dogs can be present and made to bark to agitate [Slahi]."[1043] Similarly, military working dogs had been used in Khatani's interrogation "to agitate the detainee and provide shock value."[1044] The presence of dogs in the Slahi memo is notable as MG Miller said that, months earlier, he had "rejected [using dogs in interrogations] as an acceptable technique" and that dogs "were not to be used during active interrogation."[1045]

[redacted] The January 16, 2003 memo also described techniques directed at breaking down Slahi's ego, including ridiculing him, making him wear a mask and signs labeling him a "liar," a "coward," or a "dog."[1046] The memo stated that interrogators would also instruct Slahi

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[1039] Committee staff interview of FBI Special Agent (November 8, 2007).

[1040] Memo, *Methods and Approaches to Employ (U): Special Interrogation Operation of ISN 760* [redacted] (January 16, 2003) (hereinafter "*Interrogation of ISN 760* (January 16, 2003)").

[1041] *Interrogation of ISN 760* (January 16, 2003).

[1042] Memo, *Methods Employed X-Ray Interrogation ISN 63* [redacted] (January 17, 2003).

[1043] *Interrogation of ISN 760* (January 16, 2003).

[1044] Ibid.

[1045] Army IG, Interview of MG Geoffrey Miller (May 2, 2006).

[1046] *Interrogation of ISN 760* (January 16, 2003).

to bark and perform dog tricks "to reduce the detainee's ego and establish control."[1047] Khatani had also been forced to wear a dog collar and perform dog tricks, and interrogators had placed signs on him such as "liar," "coward," and "dog."[1048]

[redacted] The January 16, 2003 memo described shaving Slahi's head and beard, making him wear a burka, and subjecting him to strip search "to reduce [his] ego by assaulting his modesty."[1049] Likewise, JTF-GTMO interrogators had shaved Khatani's head and beard and he had also been strip searched.[1050]

[redacted] The memo stated that Slahi would be denied the opportunity to pray and described techniques to exploit "religious taboos," such as using a female interrogator in "close physical contact."[1051] The memo also stated that interrogators would play music to "stress [Slahi] because he believes music is forbidden" and that light in Slahi's interrogation booth would be filtered "with red plastic to produce a stressful environment."[1052] Khatani had also been denied prayer and a female interrogator touched him during his interrogation to increase his stress level."[1053] Khatani too had been isolated, a red filter was placed over the light in his interrogation booth, and music was used in his interrogation to create stress.[1054]

[redacted] The January 16, 2003 memo indicated that JTF-GTMO interrogators planned to make use of a completely white room during Slahi's interrogation "to reduce outside stimuli and present an austere environment," that interrogators would use a strobe light in his interrogation booth to "disorient [Slahi] and add to [his] stress level," and that a hood would be placed on Slahi in the booth" "to isolate him and increase feelings of futility."[1055]

2. *JTF-GTMO Formally Submits Special Interrogation Plan for Slahi (ISN 760)* (U)

[redacted] In July 2003, six months after the above-described memo was produced and three months after the Secretary issued new interrogation authorities for GTMO, MG Miller submitted to SOUTHCOM a formal request for approval of a special interrogation plan for Slahi.[1056] In seeming contradiction to his May 2, 2003 order that the fear up harsh approach not be used in interrogations, the plan included many of the techniques described in the January 16,

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[1047] *Interrogation of ISN 760* (January 16, 2003).

[1048] *Methods Employed X-Ray Interrogation ISN 63* [redacted] (January 17, 2003); *Interrogation of ISN 760* (January 16, 2003).

[1049] *Interrogation of ISN 760* (January 16, 2003).

[1050] *Methods Employed X-Ray Interrogation ISN 63* [redacted] (January 17, 2003)

[1051] *Interrogation of ISN 760* (January 16, 2003).

[1052] *Interrogation of ISN 760* (January 16, 2003).

[1053] *Methods Employed X-Ray Interrogation ISN 63* [redacted] (January 17, 2003).

[1054] Ibid.

[1055] *Interrogation of ISN 760* (January 16, 2003).

[1056] Joint Task Force Guantanamo Bay, Joint Interrogation Group, *ISN 760 Interrogation Plan* (July 1, 2003) (hereinafter "*ISN 760 Interrogation Plan* (July 1, 2003)").

2003 memo and stated that "the single most important aspect of these techniques is the initial shock of the treatment... [the] detainee will have the perception that his situation has changed drastically and that life can still become worse than what he is experiencing."[1057]

The first three to five days of interrogation were planned for Camp Delta.[1058] If Slahi was not cooperative, the plan proposed that military police in full riot gear take him from his cell, place him on a watercraft, and drive him around to make him think he had been taken off of the island. In reality, Slahi would be taken to Camp Echo where the interrogation was to continue. A memo describing that part of the plan said that military police working dogs would be used during his movement to "assist developing the atmosphere that something major is happening and add to the tension level of the detainee."[1059]

Interrogating Slahi at Camp Echo was intended to emotionally and psychologically weaken him through "drastic changes in his environment."[1060] Mirroring the Khatani interrogation plan, the Slahi plan included efforts to "replicate and exploit the 'Stockholm Syndrome' between detainee and his interrogators."[1061] In his evaluation of the Khatani plan more than seven months earlier, the NCIS psychologist assigned to the CITF, Dr. Michael Gelles, had said that the idea of inducing the Stockholm syndrome implied that "the subject feels that he is to be killed and the information provided may in fact be distorted."[1062]

The GTMO plan stated that, while in the interrogation room at Camp Echo, Slahi would sit in a basic chair and "be shackled to the floor and left in the room for up to four hours while sound is playing continually."[1063] His time in the room was intended to "disorient him and establish fear of the unknown" and emphasize to Slahi that "'the rules have changed' and nobody knows he is there."[1064] The practice of shackling him to the floor and subjecting him to loud music was to be repeated over several days, interrupted by actual interrogations. Slahi was to be permitted four hours of sleep every sixteen hours.[1065]

The plan stated that an interrogation room would be "modified in such a way as to reduce as much outside stimuli as possible. The doors will be sealed to a point that allows no light to enter the room. The walls may be covered with white paint or paper to further

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[1057] *ISN 760 Interrogation Plan* (July 1, 2003).

[1058] Ibid.

[1059] Memo from LT Richard Zuley, *Objective: Transport ISN 760 from Camp Delta to Camp Echo* (undated).

[1060] *ISN 760 Interrogation Plan* (July 1, 2003).

[1061] Ibid.

[1062] Memo from Michael Gelles, Psy.D., *Review of JTF-GTMO Interrogation Plan Detainee 063 dtd November 21, 2002* (November 22, 2002).

[1063] *ISN 760 Interrogation Plan* (July 1, 2003) at 7.

[1064] Ibid.

[1065] On April 12, 2003 MG Miller sent GEN Hill an email requesting that SOUTHCOM provide a definition of sleep deprivation. On June 2, 2003, GEN Hill sent MG Miller a letter defining sleep deprivation as "keeping a detainee awake for more than 16 hours or allowing a detainee to rest briefly and then repeatedly awakening him, not to exceed four days in succession." MG Geoffrey Miller email to GEN James Hill (April 12, 2003).

eliminate objects the detainee may concentrate on. The room will contain an eyebolt in the floor and speakers for sound."[1066] The plan said that the "interrogation team will make detainee feel psychologically uncomfortable, emotionally uncomfortable, assert superiority over detainee, escalate stress, play loud music, and continue to condition detainee to menial tasks."[1067]

[redacted] On July 18, 2003, SOUTHCOM Commander GEN James Hill forwarded a copy of GTMO's interrogation plan for Slahi to the Secretary of Defense. GEN Hill's cover memorandum stated that the interrogation plan "employs techniques not previously approved in your [April 16, 2003] memorandum" and requested the Secretary's approval "to use sound modulation (at decibel levels not harmful to hearing) and sleep deprivation."[1068] The memorandum also notified the Secretary that GTMO intended to isolate Slahi and use "pride and ego down" with him.[1069]

[redacted] On July 24, 2003, Marshall Billingslea, the Principal Deputy Assistant Secretary of Defense for Special Operations / Low-Intensity Conflict (SOLIC), forwarded a memo notifying the Secretary of Defense that JTF-GTMO intended to isolate Slahi and recommending that he approve the use of "sleep deprivation" and "sound modulation at decibel levels not harmful to hearing."[1070] A handwritten note on the memo stated that "OGC concurs that this is legal. We don't see any policy issues with these interrogation techniques. Recommend you authorize."[1071] Deputy Secretary of Defense Paul Wolfowitz approved the memo on July 28, 2003 and forwarded it to Secretary Rumsfeld, who added his approval on August 13, 2003.[1072]

[redacted] The Slahi plan stated that it would "not be implemented until approved by higher authority."[1073] Despite that statement, memoranda for the record suggest techniques for which JTF-GTMO sought authority were used at least a month before the Secretary's written approval.

3. *Interrogation Begins Before Special Interrogation Plan Is Approved* (U)

[redacted] Several memoranda for the record documenting Slahi's interrogation were written by JTF-GTMO personnel in July and August 2003. These memoranda indicate that at least one technique for which JTF-GTMO sought authority to use with Slahi, i.e., sound modulation, was used before written authority was actually granted by the Secretary of Defense.[1074] The

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[1066] *ISN 760 Interrogation Plan* (July 1, 2003) at 8.

[1067] *ISN 760 Interrogation Plan* (July 1, 2003).

[1068] Memo from GEN James Hill to Secretary of Defense Donald Rumsfeld, *Interrogation Plan (IP) for Detainee Mohamadou Walid Slahi, ISN* [redacted] (July 18, 2003).

[1069] Ibid.

[1070] Memo from Marshall Billingslea to Secretary of Defense, *Mohamadou Walid Slahi,* [redacted] (July 24, 2003).

[1071] Ibid.

[1072] Ibid.

[1073] *ISN 760 Interrogation Plan* (July 1, 2003) at 3.

[1074] Memo for Record, [redacted] *MOUHAMADOO OULD SLAHI//* (July 17, 2003).

memoranda also suggest the use of some techniques, such as forcing Slahi to stand for prolonged periods, for which no request for authority from SOUTHCOM or OSD appears to have been made by JTF-GTMO.[1075] In addition, while MG Miller had, more than two months earlier, said that interrogators were not to use the fear up harsh approach, the memoranda indicate that increasing Slahi's level of fear was an integral part of his interrogation and that one interrogator even implied to Slahi that he could be tortured or killed.

[redacted] The memoranda indicate that, on several occasions from July 8 through July 17, Slahi was interrogated by a masked interrogator called "Mr. X." On July 8, 2003 Slahi was interrogated by Mr. X and was "exposed to variable lighting patterns and rock music, to the tune of *Drowning Pool's* 'Let the Bodies Hit [the] Floor'."[1076] On July 10, 2003 Slahi was placed in an interrogation room handcuffed and standing while the air conditioning was turned off until the room became "quite warm."[1077] The next day, Slahi was brought into the interrogation booth and again remained standing and handcuffed while the air conditioning was again turned off.[1078] After allowing Slahi to sit, the interrogator later "took [Slahi's] chair and left him standing for several hours."[1079] According to the memo, Slahi was "visibly uncomfortable and showed signs of fatigue. This was 4th day of long duration interrogations."[1080]

(U) On July 17, 2003, the masked interrogator told Slahi about a dream he had had where he saw "four detainees that were chained together at the feet. They dug a hole that was six feet long, six feet deep, and four feet wide. Then he observed the detainees throw a plain, unpainted, pine casket with the number 760 [Slahi's internment serial number (ISN)] painted on it in orange on the ground."[1081]

[redacted] On August 2, 2003 an interrogator told Slahi "to use his imagination and think up the worst possible thing that could happen to him" and asked him "what scares him more than anything else."[1082]

(U) That same day, the interrogator told Slahi that to "use his imagination to think up the worst possible scenario he could end up in."[1083] The interrogator told Slahi that "beatings and physical pain are not the worst thing in the world. After all being beaten for a while, humans tend to disconnect the mind from the body and make it through. However, there are worse things than physical pain."[1084] The interrogator told Slahi that he would "very soon disappear down a

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[1075] Memo for Record, *GTMO-0598/*[redacted]*/MOUHAMADOO OULD SLAHI//* (July 10, 2003).

[1076] Memo for Record, *GTMO-0598/*[redacted]*/MOUHAMADOO OULD SLAHI//* (July 17, 2003).

[1077] Memo for Record, *GTMO-0598/*[redacted]*/MOUHAMADOO OULD SLAHI//* (July 10, 2003).

[1078] Memo for Record, *GTMO-0598/*[redacted]*/MOUHAMADOO OULD SLAHI//* (July 11, 2003).

[1079] Memo for Record, *GTMO-0598/*[redacted]*/MOUHAMADOO OULD SLAHI//* (July 11, 2003).

[1080] Ibid.

[1081] Schmidt-Furlow Report at 24.

[1082] Memo for Record, *GTMO-0598/*[redacted]*/MOUHAMADOO OULD SLAHI//* (August 2, 2003).

[1083] DoJ IG report at 123

[1084] Schmidt-Furlow Report at 25.

very dark hole. His very existence will become erased . . . no one will know what happened to him and, eventually, no one will care."[1085]

(U) At one point in his interrogation, Slahi was also shown a fictitious letter that had been drafted by the Interrogation Team Chief stating that his mother had been detained, would be interrogated, and if she were uncooperative she might be transferred to GTMO.[1086] The letter pointed out that she would be the only female detained at "this previously all-male prison environment."[1087]

[redacted] On August 7, 2003, Slahi informed an interrogator that he had made a decision to cooperate.[1088] After questioning Slahi, his interrogator "congratulated [him] on his decision to tell the whole truth."[1089]

4. *Special Interrogation Plan Approved and Implemented Despite Apparent Cooperation* (U)

[redacted] Five days after interrogators congratulated Slahi for his decision to "tell the whole truth," the Secretary of Defense approved JTF-GTMO's Special Interrogation Plan. Notwithstanding Slahi's apparent decision on August 7, 2003 to cooperate with interrogators, an August 21, 2003 email described preparations made to implement the Special Interrogation Plan.[1090] The email described sealing Slahi's cell at Camp Echo to "prevent light from shining" in and covering the entire exterior of his cell with tarp to "prevent him from making visual contact with guards."[1091]

[redacted] Weekly Reports from the JTF-GTMO Commander in September and October 2003 indicated that Slahi "continue[d] to be cooperative."[1092] Despite that apparent cooperation, those same weekly reports stated that that the interrogations were continuing in accordance with the approved interrogation plan. A contemporaneous document suggested that the interrogation may have begun affecting Slahi's mental state.[1093]

[redacted] An October 17, 2003 email from a JTF-GTMO interrogator to LTC Diane Zierhoffer, a JTF-GTMO Behavioral Science Consultation Team (BSCT) Psychologist, stated that "Slahi told me he is 'hearing voices' now... He is worried as he knows this is not normal.... By the way ... is this something that happens to people who have little external stimulus such as daylight,

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[1085] Ibid.

[1086] DoJ IG report.

[1087] Ibid.

[1088] Memo for Record, *GTMO-0598* [redacted] *MOUHAMADOO OULD SLAHI//* (September 8, 2003).

[1089] Ibid.

[1090] Email from JTF-GTMO IS2 to LT Richard Zuley and Capt Sean Wilson (August 21, 2003).

[1091] Ibid.

[1092] *JTF-GTMO Weekly Thematic Focus: September 29-October 5, 2003 and October 6-12 2003.*

[1093] *JTF-GTMO Weekly Thematic Focus: September 29-October 5, 2003; October 6-12 2003; October 20-26, 2003; and November 3-9, 2003.*

human interaction etc???? Seems a little creepy."[1094] LTC Zierhoffer responded "sensory deprivation can cause hallucinations, usually visual rather than auditory, but you never know... In the dark you create things out of what little you have..."[1095]

5. *FBI Concerns with Special Interrogation* (U)

[redacted]

[redacted] The view that the use of the aggressive techniques could affect Slahi's potential prosecution turned out to be accurate. LtCol Stuart Couch, a military prosecutor assigned to the Slahi case wrote in March 2004 that "prosecutors in our office are very concerned about the allegations of detainee abuse at GTMO and Afghanistan, and we have individually taken steps to address this issue. The techniques employed by the intelligence community in obtaining information is a policy decision that obviously affects our prosecution efforts, yet we are powerless to influence such activities."[1100] After becoming aware of interrogations techniques to which Slahi had been subject, LtCol Couch refused to participate in the prosecution.[1101]

6. *Special Project at GTMO Uses Aggressive Interrogation Techniques* (U)

(U) JTF-GTMO produced written weekly updates on significant activities including certain detainee interrogations. The updates were sent to the SOUTHCOM Commander and, according to MG Miller, were forwarded to the Joint Staff and Deputy Secretary of Defense Paul

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[1094] Email from JTF-GTMO Interrogator to LTC Diane Zierhoffer (October 17, 2003).

[1095] Ibid.

[1096] Email from FBI Special Agent (December 5, 2003).

[1097] Ibid.

[1098] Ibid.

[1099] FBI Electronic Communication from Counterterrorism MLDU to Counterterrorism (May 18, 2004).

[1100] Memo from LtCol Stuart Couch to Brigadier General Scott Black, *Office of Military Commissions Prosecution Operational Assessment* (March 18, 2004).

[1101] Committee staff interview of LtCol Stuart Couch (June 21, 2007).

Wolfowitz.[1102] MG Miller said that Deputy Secretary Wolfowitz was interested in the reports and his office would occasionally call GTMO to inquire about particular detainees.

On July 13, 2003, the GTMO Commander sent an email, accompanied by his Weekly Update report, stating that GTMO had "finalized plans."[1103] According to the email, the objective was to "fracture detainee resistance to cooperation and to induce detainees to be forthcoming during interrogations."[1104] The email stated that the U.S. Army Special Operations Command (USASOC) Psychological Applications Directorate Chief LTC Morgan Banks, who had hosted the JPRA training for GTMO interrogation personnel at Fort Bragg in September 2002, "conducted a assessment visit" and had provided "very valuable insights."[1105] The email stated that LTC Banks planned to return for a "follow-up visit in 60 days."[1106]

In November 2003, several months after MG Miller submitted two requests for authority to use sound modulation in interrogations suggesting that MG Miller felt he needed authorization to use that technique in interrogations.[1108] The Committee is not aware, however, of a similar request for authority to use strobe lights, loud music, and 15 hour interrogations in connection with According to the Church report, some interrogators considered strobe lights and loud music a form of environmental manipulation which had been authorized by the Secretary of Defense in April.[1109] MG Miller's written requests for authority to use sound modulation in the interrogations are at odds with that understanding.

[1102] Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[1103] Email from MG Geoffrey Miller to GEN James Hill (July 13, 2003).

[1104] Ibid.

[1105] Ibid.

[1106] Ibid.

[1107] *Church Report* at 172.

[1108] Memo from MG Geoffrey Miller to Commander, U.S. Southern Command, *Request for Approval of Interrogation Plan (IP) for* (November 13, 2003) at 2-3 (hereinafter "MG Miller, *Request for Approval of IP for* "); Memo from MG Geoffrey Miller to Commander, U.S. Southern Command, *Request for Approval of Interrogation Plan (IP) for ISN* (November 13, 2003) at 2-3 (hereinafter "MG Miller, *Request for Approval of IP for*

[1109] *Church Report* at 172.

7. *CITF Reissues Order for Agents to "Stand Clear" of Aggressive Interrogations* (U)

(U) In October 2003, with the Slahi Special Interrogation Plan underway, the Criminal Investigative Task Force again issued guidance to its agents to stand clear of interrogations using aggressive techniques. The guidance mirrored that issued by CITF in December 2002, stating that "detainees will be treated humanely" and that "physical torture, corporal punishment and mental torture are not acceptable interrogation tactics and are not allowed under any circumstances."[1110] The October 2003 guidance stated:

> [CITF personnel will] not participate in any interrogation that violates this policy. When CITF personnel are conducting a joint interrogation with another U.S. government organization, and a member of that other organization employs tactics that are, or appear to the investigator to be, inhumane or cruel and unusual, the CITF personnel will immediately disengage from the interrogation, report the incident to their CITF chain of command, and document the incident in a memorandum for record.[1111]

8. *GTMO Seeks Approval for Two Additional Special Interrogation Plans* (U)

[redacted] On November 13, 2003, MG Miller sent two memoranda to GEN Hill at SOUTHCOM requesting approval of special interrogation plans for detainees [redacted] [1112] Consistent with the Secretary of Defense's April authorization, MG Miller notified GEN Hill of JTF-GTMO's intent to isolate the detainees. In addition, MG Miller requested approval to conduct interrogations up to 16 hours and use various types of sound. The plans also implied the use of other techniques, such as sensory deprivation, that were not authorized by the Secretary in April. Both memos indicated that the techniques in the plans had been previously used in the Slahi interrogation. In many ways, the techniques proposed in the two new special interrogation plans mirrored techniques used in both the Slahi and Khatani interrogations.

a. *Special Interrogation Plan #3* (U)

[redacted]

[1110] DoD CITF, Memo for All Personnel Assigned to the DoD Criminal Investigative Task Force, *Interrogation Procedures Guidance (U)* (October 3, 2003).

[1111] Ibid.

[1112] MG Miller, *Request for Approval of IP for* [redacted]; MG Miller, *Request for Approval of IP for ISN* [redacted]

[1113] MG Miller, *Request for Approval of IP for* [redacted] at 2.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

b. Special Interrogation Plan #4 (U)

[redacted]

[1114] Ibid. at 4.

[1115] Ibid.

[1116] Ibid at 2.

[1117] Ibid. at 5.

[1118] Ibid. at 6.

[1119] Ibid. at 7.

[1120] Ibid. at 11.

[1121] MG Miller, *Request for Approval of IP for ISN* [redacted] at 2.

c. *SOUTHCOM and OSD Recommend Approval of Special Interrogation Plans #3 & #4* (U)

On November 19, 2003, General Hill sent the interrogation plans to the Secretary of Defense.[1130] In memoranda accompanying the plans,

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[1122] Ibid. at 8.

[1123] Ibid. at 1.

[1124] Ibid. at 7.

[1125] Ibid.

[1126] Ibid. at 9.

[1127] Ibid. at 10.

[1128] Ibid. at 9.

[1129] Ibid. at 10.

[1130] Memorandum from General James Hill to Secretary of Defense Donald Rumsfeld, *Interrogation Plan (IP) for Detainee* (November 19, 2003).

General Hill requested approval

Tom O'Connell, the Assistant Secretary of Defense for Special Operations / Low Intensity Conflict (SOLIC), attached a cover memo to the SOUTHCOM Commander's request, recommending to the Secretary of Defense that he approve the plans.[1132] A coordination sheet attached to that memo indicated that Daniel Dell'Orto, the Principal Deputy DoD General Counsel, had approved the plan on December 31, 2003 and Chairman of the Joint Chiefs of Staff Gen Myers had approved the plan on January 2, 2004. The date of the Chairman's approval (and possibly that of the Deputy DoD General Counsel) occurred after the Office of Legal Counsel (OLC) at the Department of Justice withdrew its March 14, 2003 legal memo upon which DoD had been relying for interrogation techniques.[1133] The OLC's notification to DoD General Counsel Jim Haynes of that withdrawal occurred between December 25 and December 31, 2003.[1134] Mr. Haynes told the Committee that "the fact that the Department didn't have that opinion to rely on... didn't mean that Mr. Dell'Orto or somebody ... could not [have] concluded that something was legal in the absence of that memo."[1135]

X. DOJ Office of Legal Counsel Withdraws March 14, 2003 Legal Opinion Governing DoD Interrogations (U)

(U) In the final week of 2003, the OLC notified the Department of Defense that the March 14, 2003 OLC legal opinion, upon which DoD had been relying for interrogations, was being withdrawn.[1136] According to the then-Assistant Attorney General for the OLC Jack Goldsmith, the March 2003 memo was one of a "short stack" of OLC opinions that his OLC colleague Patrick Philbin had identified, shortly after Mr. Goldsmith arrived at DoJ, as problematic and possibly containing "serious errors."[1137] Also included in that "short stack" were the two August 1, 2002 "Bybee" memos – the "First Bybee" memo, which presented OLC's narrow interpretation of what constituted torture under U.S. law and the "Second Bybee" memo, which included OLC's "advice to the CIA regarding potential interrogation methods."[1138]

[1131] Ibid.

[1132] Action Memo from Thomas O'Connell for Secretary of Defense, *Interrogation Plans for* (2003).

[1133] *Coordination*, attached as Tab D to Action Memo from Thomas O'Connell for Secretary of Defense, *Interrogation Plans for* (2003).

[1134] Assistant Attorney General Goldsmith stated that he called the DoD General Counsel between Christmas and New Year 2003. Goldsmith, The Terror Presidency at 153.

[1135] Committee staff interview of William J. Haynes II (April 25, 2008) at 295.

[1136] Goldsmith, The Terror Presidency at 153-54.

[1137] Ibid. at 142; Committee staff interview of Jack Goldsmith (February 4, 2008).

[1138] Committee staff interview of Jack Goldsmith (February 4, 2008); Sixth Decl. of Marilyn A. Dorn, ¶ 56, *American Civil Liberties Union, et al. v. Department of Defense, et al.*, No. 04-Civ. 4151 (January 5, 2007).

(U) After reviewing the opinions, Mr. Goldsmith identified two that he ultimately rescinded, the March 14, 2003 "Yoo Memo" (withdrawn in December 2003) and the August 1, 2002 "First Bybee" memo (withdrawn in June 2004).[1139]

(U) Mr. Goldsmith told the Committee that he called Jim Haynes in December 2003 and told him the March 14, 2003 OLC opinion was under review and could not be relied on by the Department.[1140] That opinion had been presented to the Working Group as the controlling authority for all questions of domestic and international law and was the legal foundation for the Secretary's April 2003 authorization of techniques for GTMO. Mr. Goldsmith told the Committee that he informed Mr. Haynes in December 2003 that he had determined that only 20 of the 24 techniques authorized by Secretary Rumsfeld were lawful, and that the remaining four techniques were under review.[1141] Mr. Goldsmith also advised Mr. Haynes in December that the Department should come back to OLC for additional legal guidance before approving any technique not among those 24 specifically identified in the Secretary's April 2003 memo.[1142] Mr. Goldsmith told the Committee that Mr. Haynes did not inquire about the use of additional techniques during his tenure at OLC, which ended in June 2004.[1143]

Notwithstanding the late December direction from the head of the OLC that DoD could not rely on the March 14, 2003 OLC memo, a March 26, 2004 memorandum for the record suggested that [redacted].[1144] The frequent flyer program involved moving a detainee every few hours from one cell to another to disrupt their sleep. [redacted]

[1139] Assistant Attorney General Goldsmith said that his personal standard for rescinding prior OLC memos was to rescind opinions only after he determined they were legally flawed *and* he could affirmatively provide guidance on "precisely what interrogation practices were legally available under a proper analysis." Goldsmith reiterated the second part of this standard when asked if he considered withdrawing the third "problematic" opinion, known as the "Second Bybee" memo. He told the Committee that he had not completed his analysis of the Second Bybee memo by the time he submitted his resignation and left the Department. Committee staff interview of Jack Goldsmith (February 4, 2008); Goldsmith, The Terror Presidency at 152.

[1140] In his book, Goldsmith stated that he placed the call between Christmas and New Years 2003. Goldsmith, The Terror Presidency at 153.

[1141] In his interview with Committee staff, Mr. Goldsmith said he eventually determined that all 24 were lawful. That account differs slightly from Goldsmith's account in his book, in which he said that he told Mr. Haynes in December that all 24 techniques were lawful. Ibid. at 154; Committee staff interview of Jack Goldsmith (February 4, 2008).

[1142] Committee staff interview of Jack Goldsmith (February 4, 2008).

[1143] Ibid.

[1144] Schmidt-Furlow Report at 10.

[1145] Memo for Record, *Continuous Cell Transfer (Frequent Flyer Program)* (March 26, 2004).

[redacted] Continuous cell transfer was discussed at least as early as August 2003. An August 3, 2003 email from GTMO's ICE Operations Officer described interrogating a detainee for 15 hours, allowing him 5 hours of uninterrupted rest in his cell and then moving the detainee to a new cell every half hour until the 24 hour period expired whereby, according to the Operations Officer the cycle would restart and "the fun begins again."[1146]

(U) According to an FBI agent who was on assignment to GTMO in fall 2003, the agent received a briefing "that non cooperative detainees could be placed on a list for a specific interrogation technique involving interruption of sleep pattern, called the 'frequent flyer program.'"[1147] The agent stated that detainees were moved with all of their personal belongings and that the duration of the program for detainees "seemed to depend on the cooperativeness of the detainee."[1148] In fact, an investigation by the Department of Justice Inspector General found that "many FBI agents described a program of sleep disruption employed by the military as designed to disorient detainees and thereby obtain their cooperation, which was known as the 'frequent flyer program."[1149]

(U) Keeping detainees awake except for a period of four-hours of uninterrupted sleep using "Continuous cell transfer" or other means was not on the list of 24 techniques OLC advised the DoD General Counsel were permitted. The Committee is unaware of a request from DoD to OLC for legal guidance on whether that technique comported with techniques on that list of 24 approved by the Secretary.

XI. Development of Interrogation Policy in Afghanistan (U)

[redacted] After the start of Operation Enduring Freedom in October 2001, [redacted] deployed a Special Mission Unit (SMU) Task Force (TF) to Afghanistan with a mission [redacted][1150] While SMU TF operators conducted a limited amount of direct questioning, or, "screening" of detainees while on the battlefield, it appears that they did not conduct interrogations until at least October 2002.

(U) Prior to that point, SMU personnel had observed interrogations conducted by Combined Joint Task Force 180 (CJTF-180), which had assumed control of U.S. and coalition

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[1146] Email from Maj. James Rogers to COL Jack Farr (August 3, 2003).

[1147] FBI Electronic Communication from Administrative Services (SAAPU) to Inspection Division (July 15, 2004).

[1148] Ibid.

[1149] DoJ IG Report at 183.

[1150] [redacted] Department of Defense, *Interrogation Special Focus Team Report on Special Mission Unit Interrogation Practices in Operation Enduring Freedom and Operation Iraqi Freedom* (October 28, 2004) at 3 (hereinafter "*Church Special Focus Team Report*"). As part of his investigation of detention operations and detainee interrogation techniques, Vice Admiral Albert Church examined interrogation techniques used by SMU in the USCENTCOM area of responsibility. VADM Church's main report, released in March 2005, did not discuss the SMUs. Rather an Interrogation Special Focus Team, under the auspices of VADM Church's review, issued a separate, classified annex that discussed SMU interrogation practices in both Afghanistan and Iraq. Though completed in October, 2004, the SMU annex was not provided to the Senate Armed Services Committee until July 26, 2006.

forces in Afghanistan at the end of May 2002.[1151] In addition to tactical questioning and screening on the battlefield, CJTF-180 personnel conducted more thorough interrogations at detention facilities at Kandahar and Bagram. Between October 2001 and January 2003, the only written guidance for interrogators operating in Afghanistan appears to have been Army Field Manual 34-52. There were no Standard Operating Procedures (SOPs), however, to guide the implementation of the doctrine outlined in the Field Manual.

[redacted] In fall 2002, the SMU conducted assessments of interrogation operations at GTMO and [redacted] at Bagram Airfield. Those assessments generated discussion about whether the SMU TF should conduct its own interrogations, separate and apart from CJTF-180, and which interrogation techniques should be permitted.

A. *Assessment Team Visit to Guantanamo Bay* (U)

[redacted] ([redacted] From October 8 through October 10, 2002, an SMU TF assessment team from Afghanistan visited JTF-170 at Guantanamo Bay.[1152] The visit occurred just as JTF-170 personnel at GTMO were finalizing a request, submitted to SOUTHCOM on October 11, 2002, to use interrogation techniques including stress positions, removal of clothing, deprivation of light and auditory stimuli, hooding, use of detainee phobias such as dogs, exposure to cold weather or water, and non-injurious physical contact such as grabbing, poking and pushing.[1153]

[redacted] A trip report prepared by the SMU TF assessment team, dated October 11, 2002, summarized the visit to GTMO. The report stated that the SMU TF team met with members of the JTF-170 Behavioral Science Consultation Team (BSCT).[1154] Members of the BSCT had recently attended training conducted by SERE instructors from JPRA and in the week prior to the SMU TF team's visit, two of them had written the first draft of GTMO's request for new interrogation authorities.[1155]

[redacted] ([redacted] According to the SMU TF assessment team's trip report, GTMO "interrogation team psychologists" discussed interrogation approaches, including use of "religious oriented superstitions, varied schedules, shame, various disruptions of daily routines, and using ethnic interrogators."[1156] The SMU team's trip report also suggested that the team discussed with the JTF-170 Interrogation Control Element (ICE) Chief David Becker, the need

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[1151] [redacted] *Church Special Focus Team Report* at 6-7. [redacted]

[1152] Memo for the Record, *GITMO Assessment Visit* (October 11, 2002)

[1153] Ibid. at 3; LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies.*

[1154] Memo for the Record, *GITMO Assessment Visit* (October 11, 2002).

[1155] *USASOC Requirement to Provide Exploitation Instruction* (September 24, 2002); BSCT, *Counter-resistance Strategies.*

[1156] Memo for the Record, *GITMO Assessment Visit* (October 11, 2002)

for interrogators to have "SERE instructors' training for legal aspects of prisoner handling" and stated that a "JPRA [Mobile Training Team] appears to be the best option" for the training.[1157]

[redacted] ([redacted] On October 26, 2002, after the SMU TF assessment team returned to Afghanistan, a proposal was briefed to the SMU Commander.[1158] [redacted][1159] The briefing stated that [redacted] with detainees, that "current interrogation methods are not producing actionable intelligence," and that "mainstream interrogation [tactics, techniques, and procedures] have limited success against [al Qa'ida] resistance techniques."[1160] The briefing proposed new interrogation techniques such as the use of strip searches for "degradation;" hoods for "sensory deprivation;" "sensory overload" through lights, darkness, noises, and dogs; and manipulation of the detainees' environment through "cold, heat, wet, discomfort, etc..."[1161] Stripping detainees, the use of hoods, the use of dogs, and environmental manipulation were among the interrogation techniques requested by GTMO.[1162]

[redacted] A memo entitled "Detainee Operations," dated October 27, 2002 (the day after the SMU TF proposal was briefed), described the SMU team's visit to GTMO as well as the team's assessment of interrogation operations at Bagram.[1163] With respect to operations at GTMO, the memo stated that "Due to a lack of effective national-level guidance, the GTMO staff is analogous to a weak set of parents unsure of their role and parental skills who get manipulated by clever and strong-willed children."[1164] The memo stated that the SMU TF team "assisted the [GTMO] staff in seeking advice and training from the JPRA staff regarding effective interrogation techniques."[1165]

[redacted] The October 27, 2002 memo described some interrogators at Bagram as "out-matched" and stated that the SMU TF team's observations of both GTMO and Bagram led to the conclusion that [redacted].[1166]

[1157] Ibid. LTC Beaver, the GTMO SJA, specifically recommended in her review of the October 11, 2002 techniques memo submitted by JTF-170 (GTMO) to SOUTHCOM, that "the interrogators be properly trained in the use of the approved methods of interrogation," which included techniques similar to those used in SERE programs. LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 5.

[1158] *Church Special Focus Team Report* at 6.

[1159] [redacted] Battlefield Exploitation Proposal (undated) at 2.

[1160] Ibid. at 4.

[1161] Ibid. at 5.

[1162] LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies.*

[1163] Memo, *Detainee Operations* (October 27, 2002) at 1.

[1164] Ibid.

[1165] Ibid. at 1-2.

[1166] Ibid. at 2.

[redacted] The October 27, 2002 memo also outlined a rationale for the SMU to conduct its own interrogations. [redacted][1167] The memo recommended the "imaginative but legal use of non-lethal psychological techniques (i.e., battlefield noises/chaos, barking dogs, etc.)" as well as stress techniques such as "sensory deprivation (hoods, silence, flex cuffs), sensory overload (shouting, gun shots, white noise, machinery noise) and manipulation of the environment (hot, cold, wet, windy, hard surfaces)."[1168]

[redacted] A slide presentation dated the following week, described a concept of operations (CONOP) for SMU TF detainee exploitation.[1169] [redacted]"[1170] The presentation argued that actionable intelligence might be produced "via psychological/physical stress" and listed "sensory deprivation," "sensory overload – lights darkness, noises, and dogs," "environment – cold, heat, wet and discomfort" and "psychological deception leading to learned helplessness and increase compliance."[1171]

[redacted] The SMU TF also developed a "Decision Briefing" with the goal of gaining the CJTF-180 Commanding General LTG Dan McNeil's approval for the SMU TF to construct and operate its own interrogation facility for high value detainees co-located at the Bagram Collection Point.[1172] The briefing stated that CJTF-180 was focused on the detention mission rather than the interrogation mission, that "no advanced interrogation techniques" including "sensory deprivation/overload, sleep deprivation, psychological manipulation" were employed by CJTF-180, and that current procedures were having only "limited success[es].[1173]

[redacted] While the SMU briefing noted that "advanced interrogation techniques" were not in use at Bagram prior to November 2002, Army investigations into the deaths of two detainees at Bagram in early December revealed that, by early December 2002, at least one of the techniques, sleep deprivation, was apparently in wide use there.

B. *The Deaths of Dilawar and Habibullah* (U)

(U/[redacted] In December 2002, two detainees were killed while detained by CJTF-180 at Bagram. Though the techniques do not appear to have been included in any written interrogation

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[1167] Ibid. at 3.

[1168] Memo, *Detainee Operations* (October 27, 2002) at 3.

[1169] [redacted] Battlefield Detainee Exploitation CONOP (November 3, 2002).

[1170] Ibid. at 5. It is not clear from the slides whether any of the interrogation training was formal or informal training. There is no indication that any of the SMU personnel available for the mission had any formal DoD interrogation or debriefing training.

[1171] [redacted] Battlefield Detainee Exploitation CONOP (November 3, 2002) at 7-8.

[1172] [redacted] Interrogations Operations Decision Briefing (undated).

[1173] Ibid.

policy at Bagram, Army investigators concluded that the use of stress positions and sleep deprivation combined with other mistreatment at the hands of Bagram personnel, caused or were direct contributing factors in the two homicides.[1174] In the wake of the deaths of Habibullah and Dilawar, CJTF-180 and the SMU TF began developing written standard operating procedures (SOPs) for interrogations.

C. *Questions Raised About Task Force Participation in OGA Interrogations* (U)

[redacted] On November 1, 2002, a month before the two detainee deaths at Bagram, the SMU TF Staff Judge Advocate (SJA) analyzed legal authorities and constraints relevant to SMU TF personnel's participation in interrogations [redacted][1175] The SJA's analysis is reflected in a memo which was provided to the Committee in redacted form. Although the particular interrogation techniques in use [redacted] were redacted from the version of the memo shared with the Committee, unredacted portions of that memo discuss the SMU TF's concerns about those techniques.[1176]

[redacted] Although the memo stated that while, in the author's opinion, "none of the interrogation techniques used or observed by [redacted] personnel constitutes 'torture,'" it also stated that "another observer might disagree."[1177] In addition, the memo stated that one of the [redacted] [redacted] techniques "could rise to the level of torture if applied in such a way and for such a period of time that it rises to the level of severe physical pain or suffering."[1178] It also said that "although the interrogation techniques may not constitute 'torture' they may rise to the level of cruel, inhuman or degrading treatment proscribed by international law."[1179]

[redacted] The November 1, 2002 memo assessed the risks that SMU personnel might face by participating in interrogations [redacted] particularly if there is media scrutiny."[1180] The memo referenced applicable DoD policies and Department of the Army (DA) regulations requiring the humane treatment of detainees and noted that although they might not apply to [redacted] operating in a non-DoD facility, "U.S. military personnel remain subject to those authorities if [military personnel] participate in or run the interrogations."[1181] According

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[1174] U.S. Army Criminal Investigation Command Bagram Branch Office Memo, *CID Report of Investigation – FINAL -0134-02-CID36923533* (October 8, 2004).

[1175] Memorandum for [Redacted], *Legal Analysis of [Redacted] Personnel Participating in Interrogation* [redacted] *Detention Facility [Redacted]* (November 1, 2002) at 1 (hereinafter "*Personnel Participating in Interrogation at* [redacted] *Detention Facility*").

[1176] *Personnel Participating in Interrogation at* [redacted] *Detention Facility.*

[1177] Ibid. at 4.

[1178] Ibid. at 5.

[1179] Ibid. at 2.

[1180] Ibid. at 1.

[1181] Ibid. at 4.

to the memo, "these requirements arguably extend to military personnel even if 'detailed' to [redacted]."[1182]

[redacted] The memo warned that "we are at risk as we get more 'creative' and stray from standard interrogation techniques and procedures taught at DoD and DA schools and detailed in official interrogation manuals."[1183]

[redacted] In a June 18, 2004 memorandum to the Naval Inspector General, [redacted] said that after the SMU TF SJA wrote his opinion, the Commander of the SMU TF "restricted personnel from further involvement [redacted] except for information sharing."[1184]

D. *January 2003 Task Force Interrogation SOP (Afghanistan)* (U)

[redacted] On January 10, 2003 the SMU Task Force Commander in Afghanistan approved the first interrogation standard operating procedure (SOP) for the SMU Task Force.[1185] In addition to identifying approaches from the Army Field Manual 34-52, the SOP approved four additional interrogation "techniques" for use by SMU interrogators: isolation, multiple interrogators, stress positions, and sleep deprivation.[1186] Three of the four techniques approved by the SMU TF – isolation, stress positions, and multiple interrogators – were among those authorized by the Secretary of Defense for use at GTMO on December 2, 2002.[1187] The fourth technique – sleep deprivation (defined by the SMU TF as "no less than 4 hours sleep in a 24-hour period") – was, in effect, authorized by the Secretary on December 2, 2002, when he authorized the use of 20 hour interrogations.[1188]

[redacted] According to a summary of his statement to Church Report investigators, the SMU interrogator who drafted the SMU SOP reviewed GTMO's list of requested counter-resistance techniques prior to drafting the SOP and discussed incorporating some of those techniques into the SMU's policy.[1189] While the interrogator told Church Report investigators that the interrogation techniques in use at GTMO "did not influence" the technique selection for

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[1182] Ibid.

[1183] Ibid. at 6.

[1184] Memo from USSOCOM Staff Judge Advocate for the Naval Inspector General, *Response to Questions for the Record (U)* (June 18, 2004).

[1185] Department of Defense, [redacted] *Battlefield Interrogation Team Standing Operating Procedures* (10 January 2003); *Church Special Focus Team Report* at 7.

[1186] Two of those techniques – stress positions and sleep deprivation – were already in use by CJTF-180 interrogators prior to the approval of the SMU TF SOP. *Church Special Focus Team Report* and Committee staff interview of CPT Carolyn Wood (February 8, 2008).

[1187] *Church Special Focus Team Report* at 8.

[1188] *Church Special Focus Team Report*; Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[1189] Summary of Statement of SMU Member with Church Special Focus Team Report Investigator (September 15, 2004).

the SMU SOP, an investigation completed by the Department of Defense Inspector General in 2006 concluded that the SMU SOP "was influenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002."[1190]

[redacted] In addition, the SMU TF Legal Advisor who served in Afghanistan from late November 2002 until early January 2003 (just before the SMU TF SOP was issued) said that the Secretary of Defense's December 2, 2002 authorization generated discussion at the SMU TF and influenced his thinking about interrogation techniques.[1191] A legal review of the SMU TF's January 10, 2003 interrogation SOP, conducted by the SMU Legal Advisor who took over that job in early January, supports the DoD Inspector General's conclusion that the SOP was influenced by the Secretary's December 2, 2002 authorization.[1192] In his legal review, the SMU TF Legal Advisor referred to the techniques authorized by the Secretary of Defense for GTMO, including stress positions, isolation, deprivation of light and auditory stimuli, hooding, 20 hour interrogations, removal of clothing, and the use of dogs to induce stress, and stated:

> SECDEF's approval of these techniques provides us the most persuasive argument for use of 'advanced techniques' as we capture possible [high value targets] or those that are enablers and have intelligence value of [high value targets] . . . the fact SECDEF approved use of the [CAT I/II/III] techniques at GTMO, subject to the same laws, provides an analogy and basis for use of these techniques [in accordance with] international and U.S. law.[1193]

[redacted] The SMU TF Legal Advisor concluded that the interrogation SOP proposed for use by the SMU was in accordance with their "guidance and constraints," and therefore, "legally sufficient."[1194] In addition, the Legal Advisor recommended that the SMU "continue to approach CENTCOM for clarifying guidance on whether the techniques apparently approved for use at GITMO by SECDEF... are applicable or can become applicable for use in the CENTCOM AOR [area of responsibility]. If so incorporate those Category II techniques that are deemed necessary for [the SMU's] success."[1195]

E. *CJTF-180 Produces Memorandum on Interrogation Techniques* (U)

[redacted] Following his January 15, 2003 rescission of authority for GTMO to use the interrogation techniques he had previously authorized in December 2002, Secretary Rumsfeld

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[1190] Ibid.; DoD IG Report at 15-16.

[1191] Committee staff interview of SMU TF Legal Advisor 1 (May 29, 2008).

[1192] Memo from [redacted] Legal Advisor for COMJTF-5, *Legal Review of* [redacted] *Battlefield Interrogation Team & BIT SOP* (January 11, 2003) at 11 (hereinafter "*Legal Review of* [redacted] *Battlefield Interrogation Team & BIT SOP* (January 11, 2003)").

[1193] *Legal Review of* [redacted] *Battlefield Interrogation Team & BIT SOP* (January 11, 2003) at 11.

[1194] Ibid.

[1195] Ibid. at 16. The SMU TF Legal Advisor also stated presciently that, "we are at risk as we get more 'creative' and stray from standard interrogation techniques and procedures taught at DoD and Service schools and detailed in official interrogation manuals."

directed the establishment of the DoD Working Group on Interrogations.[1196] As discussed above, the Working Group requested that the Joint Staff provide a list of interrogation techniques "currently in effect or previously employed in CENTCOM and SOUTHCOM, techniques the combatant commanders have found to be effective, and techniques the combatant commanders desire to implement with accompanying rationale."[1197] CENTCOM sent the Working Group's request to CJTF-180 and, in response, the CJTF-180 Deputy Staff Judge Advocate (SJA) LTC Robert Cotell produced a January 24, 2003 memo describing "current and past" interrogation techniques used by CJTF-180 interrogators.[1198] LTC Cotell's memo was sent to the Working Group and to the Office of the Secretary of Defense.[1199]

[redacted] In his January 24, 2003 memo, LTC Cotell identified interrogation techniques used by CJTF-180, including up to 96 hours of isolation; the use of female interrogators to create "discomfort" and gain more information; sleep adjustment, defined as "four hours of sleep every 24 hours, not necessarily consecutive;" use of individual fears; removal of comfort items; use of safety positions; isolation; deprivation of light and sound in living areas; the use of a hood during interrogation; and mild physical contact.[1200]

[redacted] LTC Cotell's January 24, 2003 memo also recommended use of five additional techniques, including "deprivation of clothing" to put detainees in a "shameful, uncomfortable situation;" "food deprivation;" "sensory overload – loud music or temperature regulation;" "controlled fear through the use of muzzled, trained, military working dogs;" and "use of light and noise deprivation"[1201]

(U) LTC Cotell's memo included techniques that were among those Secretary Rumsfeld had authorized for use at GTMO in December 2002. CJTF-180 had obtained a list of those techniques prior to LTC Cotell drafting his January 24, 2003 memo.[1202]

(U) JTF-GTMO's Interrogation Control Element (ICE) Chief Lt Col Ted Moss stated that sometime in January 2003, CPT Carolyn Wood, the Officer in Charge (OIC) of the Intelligence Section at the Bagram Collection Point asked JTF-GTMO about their "parameters" for interrogation.[1203] According to Lt Col Moss, the GTMO Operations Officer faxed the Secretary of Defense's December 2, 2002 memo authorizing interrogation techniques to CJTF-180. CPT

[1196] See section VIII.

[1197] [redacted] Memo, *Proposed Detainee Interrogation Working Group Responsibilities (Initial)* (undated) at 1.

[1198] *Church Report* at 197; Memorandum from CJTF-180-OPS LAW for CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1 (hereinafter "*CJTF 180 Interrogation Techniques* (January 24, 2003)").

[1199] US Central Command Action Processing Form, *Approval for the Use of Certain Interrogation Techniques in CJTF-180's AOR* (April 4, 2003). Memo from Deputy Commander (Forward) U.S. Central Command, *Responses to Request for Information from VADM Church* (August 6, 2004).

[1200] *CJTF 180 Interrogation Techniques* (January 24, 2003) at 8. The Church Report called the distinction between stress positions and safety positions at the Bagram Collection Point "largely academic." *Church Report* at 200.

[1201] *CJTF 180 Interrogation Techniques* (January 24, 2003) at 4-5, 9.

[1202] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002); *CJTF 180 Interrogation Techniques* (January 24, 2003).

[1203] Committee staff interview of Lt Col Ted Moss (October 17, 2007).

Wood said that, in early January, she saw a "secret power point presentation" containing the techniques authorized for use at GTMO but did not recall where she had obtained the power point presentation.[1204] Lt Col Moss did not know if JTF-GTMO had also sent CJTF-180 the Secretary's letter that rescinded the use of those techniques.[1205]

[redacted] In his January 24, 2003 memorandum, LTC Cotell, the CJTF-180 Deputy Staff Judge Advocate acknowledged that the Secretary of Defense had rescinded authority to use similar interrogation techniques at GTMO, stating that "[p]rior to their rescission, CJTF-180 used selected techniques contained in SOUTHCOM's Cat II & III techniques . . ."[1206] Notwithstanding that knowledge, however, the Church Report concluded that "in the absence of any contrary guidance from CENTCOM, JCS, or OSD," CJTF-180 "considered the techniques in their [January 24, 2003] memo as available for use."[1207] A summary of an interview with the Deputy SJA at CENTCOM stated that "the methodologies approved for GTMO... would appear to me to be legal interrogation processes. [The Secretary of Defense] had approved them. The General Counsel had approved them... I believe it is fair to say the procedures approved for Guantanamo were legal for Afghanistan."[1208]

(U) In 2004, the Deputy Commander (Forward) U.S. Central Command LTG (later GEN) John Abizaid stated that the January 24, 2003 memorandum had been "thoroughly reviewed" by the Working Group.[1209]

[redacted] Within three weeks of the January 24, 2003 memo, the SMU TF in Afghanistan added the use of dogs to its interrogation policy.[1210] Just over two months after the Secretary had authorized dogs for use in interrogations at JTF-GTMO, the technique had become part of interrogation SOPs for both the conventional forces and the SMU TF in Afghanistan.

F. CENTCOM Raises Concerns About Interrogation Techniques (U)

[redacted] A week after the DoD Working Group on interrogations completed its report and just five days before the Secretary issued his April 16, 2003 guidance for SOUTHCOM, Deputy Commander of U.S. Central Command Lt Gen Michael DeLong sent a memorandum to the Vice Chairman of the Joint Chiefs of Staff, General Peter Pace, requesting assistance in obtaining the Secretary of Defense's approval of interrogation techniques requested by CJTF-180 in their January 24, 2003 memo.[1211]

[1204] Army IG, Interview of CPT Carolyn Wood (August 15, 2006) at 15; Committee staff interview of CPT Carolyn Wood (February 11, 2008).

[1205] Committee staff interview of Lt Col Ted Moss (October 17, 2007).

[1206] *CJTF 180 Interrogation Techniques* (January 24, 2003) at 10.

[1207] *Church Special Focus Team Report; see also Church Report* at 6 for an unclassified accounting of the January 24, 2003 CJTF-180 memorandum for CENTCOM and the Joint Staff.

[1208] Summary of Church Report interview of CENTCOM Deputy Staff Judge Advocate (July 15, 2004).

[1209] Memorandum from Deputy Commander (Forward) U.S. Central Command, *Responses to Request for Information from VADM Church* (August 6, 2004).

[1210] *Church Special Focus Team Report* at 11.

[1211] Memo for the Vice Chairman Joint Chief of Staff (April 11, 2003).

[redacted] The request came shortly after CAPT Jane Dalton, Legal Counsel for the Chairman of the Joint Chiefs of Staff had informed Barry Hammill, CENTCOM's Deputy Staff Judge Advocate (SJA), that the Secretary of Defense's guidance on interrogation techniques would likely apply only to GTMO.[1212] CAPT Dalton had been informed by DoD General Counsel Jim Haynes that he would only concur in providing the techniques to SOUTHCOM, not to CENTCOM.[1213] CAPT Dalton recalled that CENTCOM had requested techniques in their January 24, 2003 memo and told CENTCOM's lawyers that she could ask the Chairman to engage with the Secretary of Defense on their behalf, if they were interested in using the techniques authorized for GTMO.[1214]

[redacted] In his memorandum to Gen Pace, dated April 11, 2003, LTG DeLong said that CENTCOM understood that "OSD may be close to making a decision that would be unfavorable to the use of the requested interrogation techniques at the [Bagram Collection Point]" and was concerned that disapproval of the techniques requested by CJTF-180 would "lead to mission degradation."[1215] The memo noted that the Commander of JTF-180, LTG McNeill, had "specifically endorsed" the CJTF-180 request to use aggressive techniques, including individual fears, black out goggles, deprivation of light and sound, sleep adjustment, threat of transfer to another agency or country, and safety positions.[1216] Lt Gen DeLong requested the assistance of VCJCS Gen Pace "in ensuring OSD approval" for the requested techniques.[1217]

XII. Development of Interrogation Policy in Iraq (U)

[redacted] On March 20, 2003, a month before Lt Gen DeLong's request, the United States and its coalition partners had launched Operation Iraqi Freedom (OIF). During the initial stages of OIF, conventional ground forces were directed by the Coalition Forces Land Component Command (CFLCC). Combined Joint Task Force 7 (CJTF-7) replaced CFLCC in the summer of 2003. As had been the case in Afghanistan, [redacted] deployed a Special Mission Unit (SMU) Task Force (TF) to Iraq to [redacted][1218]

(U) As previously described, for more than a year after the onset of the war in Afghanistan, the only written guidance for interrogators appears to have been Army Field Manual 34-52 (FM 34-52). When written policies were finally established for interrogators in Afghanistan in January 2003, those policies included some interrogation techniques that were not listed in the Field Manual but had been previously authorized for use at Guantanamo Bay.

[1212] Email from CAPT Jane Dalton to William Hammill, CAPT Shelley Young, William Gade (April 2, 2003).

[1213] Memo from CAPT Jane Dalton to VADM Church, *Request for Information* (August 10, 2004) at 5.

[1214] Email from CAPT Jane Dalton to William Hammill, CAPT Shelley Young, William Gade (April 2, 2003).

[1215] Ibid.

[1216] Ibid.

[1217] Ibid.

[1218] [redacted] Memorandum for All [redacted] Personnel, *Policy No. 1 – Battlefield Interrogation Team and Facility (BIT/F) Policy* (July 15, 2003) (hereinafter "*BIT/F Policy* (July 15, 2003)").

(U) By comparison, the Special Mission Unit (SMU) Task Force (TF) in Iraq had an interrogation policy in place before the beginning of OIF. This policy was identical to the February 2002 policy in use at the SMU Task Force in Afghanistan and reflected the influence of techniques authorized for use at GTMO.[1219] The first policy to guide interrogations conducted by conventional forces in Iraq, however, was not established until September 2003, more than five months after that war began. That September 2003 policy was also influenced by techniques authorized for use at GTMO.

A. Special Mission Unit Task Force Interrogation Policies (U)

1. SMU Task Force Uses Afghanistan Interrogation Policy (U)

The SMU TF in Iraq conducted screening and battlefield interrogations [1220] SMU TF interrogators questioned detainees for intelligence

(U) According to a review completed by the DoD Inspector General in August 2006, the SMU TF based its first interrogation policy on the SOP used by the SMU TF in Afghanistan. The DoD Inspector General stated:

> At the commencement of Operation Iraqi Freedom, the special mission unit forces used a January 2003 Standard Operating Procedure (SOP) which had been developed for operations in Afghanistan. The Afghanistan SOP was influenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002. . . and incorporated techniques designed for detainees who were identified as 'unlawful combatants.'[1223]

Specifically, in February 2003, prior to the invasion of Iraq in March, the SMU Task Force designated for operations in Iraq obtained a copy of the interrogation SOP in use by the SMU personnel in Afghanistan, changed the letterhead, and adopted the SOP verbatim.[1224] This SOP, which included stress positions, sleep deprivation, and the use of dogs, governed

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[1219] Notwithstanding differences between the legal status of detainees held in Iraq and those in Afghanistan, the SMU TF used the same interrogation approaches in both theaters. In addition, the CJTF-7 interrogation policies included techniques that had been authorized for use at GTMO. By September 2003, interrogation approaches initially authorized for a war in which the President had determined that the protections of the Geneva Conventions did not apply, would be authorized for all U.S. forces in Iraq.

[1220] *Church Special Focus Team Report* at 3.

[1221] *BIT/F Policy* (July 15, 2003).

[1222] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 21; Flag and General Officer Questionnaire for (June 29, 2004) at 2 (hereinafter Questionnaire (June 29, 2004)").

[1223] DoD IG Report at 16.

[1224] Church Special Focus Team Report at 12.

SMU interrogations in Iraq from the start of Operation Iraqi Freedom in March 2003 until it was replaced later that year.[1225]

2. *OGA Comments on SMU TF Interrogation Techniques* (U)

[redacted] In May 2003, CAPT Dalton, Legal Counsel to the Chairman of the Joint Chiefs of Staff, sent an email to CENTCOM lawyers stating that CIA General Counsel Scott Muller had called Jim Haynes and told him that the techniques used by military interrogators at the SMU TF facility in Iraq were "more aggressive" than techniques used by CIA to interrogate the same detainees.[1226]

[redacted] The email requested that CENTCOM provide a list of interrogation techniques in use at Bagram in Afghanistan and at the SMU Task Force facility in Iraq. On June 8, 2003, the [redacted] Legal Advisor provided CENTCOM with a list of interrogation techniques in use by the SMU TF in Iraq and Afghanistan.[1227] That list included the presence of military working dogs, stress positions (called comfort positions in the memo), sleep management, loud music and light control, and 20 hour interrogations.[1228] [redacted] Legal Advisor did not recall receiving any feedback about the list of interrogation techniques submitted to CENTCOM.[1229] Despite the presence of aggressive techniques in the JSOC Legal Advisor's June 8 memo, on June 10, 2003 CENTCOM Deputy Commander, LTG Delong, sent a message to the Director of the Joint Staff LTG George Casey stating that "I have confirmed that the military interrogations at both [the SMU TF facility in Iraq] and Bagram are conducted using doctrinally appropriate techniques in accordance with [Army Field Manual] 34-52 and SECDEF direction."[1230]

3. *July 2003 Interrogation SOP Drafted for Iraq SMU TF* (U)

[redacted] A July 15, 2003 SMU interrogation SOP appears to have been the first interrogation policy drafted specifically by the SMU TF in Iraq.[1231] The list of interrogation techniques in that SOP included "vary comfort positions" (sitting, standing, kneeling, prone);

[1225] [redacted] Although the Church Special Focus Team Report concluded that the SOP the SMU TF had acquired from its sister unit in Afghanistan before the invasion of Iraq remained in effect for the SMU TF in Iraq until it was replaced on October 25, 2003, the Committee was advised that an unsigned July 15, 2003 SOP was in effect for the SMU TF in Iraq. *Church Special Focus Team Report* at 12. Committee staff interview of SMU Legal Advisor 1 (May 29, 2008).

[1226] Email from CAPT Jane Dalton to CAPT Shelley Young and Mr. William Hammill (April 2, 2003).

[1227] [redacted] Memo from the [redacted] Legal Advisor to Staff Judge Advocate, USCENTCOM, *Joint Task Forces* [redacted] *Battlefield Interrogation Techniques* (June 8, 2003); *Church Special Focus Team Report* at 12.

[1228] [redacted] Memo from the [redacted] Legal Advisor to Staff Judge Advocate, USCENTCOM, *Joint Task Forces* [redacted] *Battlefield Interrogation Techniques* (June 8, 2003).

[1229] Ibid.; Church Special Focus Team Report at 12.

[1230] Message from CENTCOM Deputy Commander (June 10, 2003).

[1231] *BIT/F Policy* (July 15, 2003) at 1.

presence of military working dogs; 20-hour interrogations; isolation; and yelling, loud music, and light control.[1232]

(U) While the SOP described some techniques as having a "foundation" in Army Field Manual 34-52, Lieutenant General Anthony Jones and Major General George Fay, who conducted an investigation into the 205th MI Brigade at Abu Ghraib, described techniques in the July 15, 2003 SMU SOP as "inconsistent with Army doctrine on detainee treatment or interrogation tactics."[1233]

[redacted] The July 15, 2003 policy contained the signature block of the SMU TF Commander [redacted] but was unsigned.[1234] [redacted] told the Committee that he did not think he ever approved or even saw an interrogation policy.[1235] He stated, however, that he was aware that the SMU TF used sleep deprivation, loud music, light control, isolation, "comfort positions," and military working dogs.[1236] The SMU Task Force Legal Advisor who served at the facility in July and August 2003 stated that he was sure [redacted] saw the policy, that he asked him to sign it, and that a copy of the policy sat in the Commander's inbox during the Legal Advisor's deployment to the Task Force.[1237]

[redacted] ([redacted] The SMU Task Force's Legal Advisor who arrived at the TF facility in late August 2003 likewise said that his predecessor had tried, without success, to get [redacted] to sign the policy.[1238] That same Legal Advisor stated that he too tried numerous times, also unsuccessfully, to get the Commander to sign the policy. The Legal Advisor added that it got to the point where he would print out a fresh copy of the policy every night and give it to [redacted] aide. The Legal Advisor said that he knew the Commander had received copies of the policy from his aide, but that he had a habit of repeatedly "losing" the draft policy.[1239] He said that the exercise became "laughable" and eventually, he was forced to raise the issue with the [redacted] legal advisor.[1240] In the absence of [redacted] guidance, the Legal Advisor told the Committee that his direction to SMU personnel was that the unsigned SOP applied to SMU TF interrogations.

[redacted] The SMU Counterintelligence and Human Intelligence officer (J2X) who served at the SMU facility told the Committee that a list of authorized interrogations approaches

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[1232] Ibid. at 5.

[1233] *BIT/F Policy* (July 15, 2003) at 5; Review of Department of Defense Detention and Interrogation Operations, Senate Committee on Armed Services, 108th Cong., S. Hrg. 108-868 (May 7, 11, 19; July 22; September 9, 2004) at 1294.

[1234] *BIT/F Policy* (July 15, 2003) at 3.

[1235] Committee staff interview of [redacted] (October 11, 2007).

[1236] Ibid.

[1237] Committee staff interview of SMU Legal Advisor 1 (May 29, 2008).

[1238] The SMU TF Legal Advisor added that he would be surprised if the Committee found anything with [redacted] signature on it. Committee staff interview of SMU TF Legal Advisor 2 (March 12, 2008).

[1239] Ibid.

[1240] Ibid.

was posted on a wall at the SMU TF facility.[1241] He specifically recalled stress positions, loud music, light control, isolation, allowing a minimum amount of time for sleep, and military working dogs as techniques authorized for use in interrogations. He stated that, although military working dogs were not typically present at the SMU TF facility, he recalled making a phone call to arrange for a military working dog to be present for an interrogation.

[redacted] While neither the January 10, 2003 nor the July 15, 2003 SMU policies included "removal of clothing," there is evidence that it was used as an interrogation technique at the SMU TF. [redacted] who took command at the SMU TF in October 2003, stated that when he arrived on site he "discovered that some of the detainees were not allowed clothes" as an interrogation technique "to gain control over the detainee."[1242] [redacted] stated that he did not know where the technique came from and that he was uncomfortable with stripping detainees even though "arguably, it was an effective technique."[1243] [redacted] said he terminated the practice in December 2003 or January 2004.[1244]

[redacted] However, the SMU TF Legal Advisor who served at the SMU TF facility from December 2003 until February 2004 stated that he attended a meeting called by [redacted] in December 2003 or January 2004 to discuss the use of stripping prisoners as part of interrogations.[1245] The Legal Advisor stated that stripping detainees gave him pause but said that the technique was 'widespread" at that time.[1246] He said that he advised the Commander that, if stripping were to be authorized, it should be limited to males only and that naked detainees should not be paraded through the Task Force facility. The Legal Advisor stated that two SMU TF behavioral scientists who also attended the meeting advised [redacted] not to permit interrogators to strip detainees because of the implications of nudity in Arab culture. The Legal Advisor stated that the Commander nevertheless decided at the meeting that the SMU TF would continue to use nudity as an interrogation technique though the Legal Advisor stated that he thought [redacted] may have said that he [redacted] would have to approve its use.

[redacted] Both LTG Ricardo Sanchez, the Commander of Combined Joint Task Force 7 (CJTF-7), and COL Thomas Pappas, the Commander of the 205th Military Intelligence Brigade (205th MI BDE) in Iraq told the Committee that they were unaware of what interrogation techniques were authorized for use at the SMU TF facility.[1247] Interrogators from the 205th MI BDE, however, served at the SMU TF in support of interrogation operations there. In mid-June 2003, at the request of the SMU TF, CJTF-7 assigned two Arabic-speaking interrogators to the

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[1241] Committee staff interview of SMU TF J2X (February 5, 2008).

[1242] [redacted] Questionnaire (June 29, 2004) at 3.

[1243] Ibid.

[1244] Ibid.

[1245] Committee staff interview of SMU TF Legal Advisor 1 (May 29, 2008).

[1246] Ibid.

[1247] Committee staff interview of COL Thomas Pappas (October 12, 2007); Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

SMU.[1248] COL Pappas recalled sending a second set of approximately two to four interrogators from the 205th MI BDE to the SMU TF around November 2003 to replace the 205th MI BDE personnel already serving at the SMU.[1249]

(U) According to LTG Sanchez, CJTF-7 would have retained UCMJ authority over the interrogators and the interrogators would have been required to conduct interrogations under the CJTF-7 authorities rather than those at the SMU TF.[1250] COL Pappas, however, believed that once his interrogators were sent to the SMU TF, they were that they were bound by the rules of the SMU TF and not CJTF-7 interrogation guidance.[1251]

4. *Iraq Survey Group Concerns with SMU TF Detainee Treatment* (U)

(U) The Iraq Survey Group was established in June 2003. According to its first Commander MG Keith Dayton, the ISG's mission was to find weapons of mass destruction (WMD) or evidence of WMD and to provide support to the CIA special advisor on WMD.[1252] MG Dayton reported directly to the CENTCOM Commander, GEN John Abizaid. As part of its effort to gather intelligence on WMD, the ISG debriefed and interrogated high value detainees, such as former members of Saddam Hussein's regime. Some of those detainees had been captured and interrogated by the SMU TF and other operational units before being handed over to the ISG. From the onset, ISG personnel had concerns about the SMU TF's treatment of detainees.

(U) MG Dayton told the DoD Inspector General that "as our interrogators started getting into the swing of things at Camp Cropper... some of the prisoners were alleging that they had been roughed up" by the SMU TF.[1253] MG Dayton stated that his Joint Interrogation and Debriefing Center (JIDC) Chief [redacted] had described the situation as "a disaster waiting to happen" and believed that ISG needed to "slam some rules on this place right away to basically keep ourselves from getting in trouble and make sure these people are treated properly."[1254]

(U) [redacted] said that he first became aware of allegations of detainee mistreatment while at the ISG facilities in the first week in June 2003.[1255] At that time, a Chief Warrant Officer

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[1248] USCENTCOM to CDR CJTF7, *CFC FRAGO 09-278 Arabic Linguist Interrogator Support* [redacted] DTG 141543Z JUN 03 (June 14, 2003).

[1249] Committee staff interview of COL Thomas Pappas (October 12, 2007). An interrogator with the Iraq Survey Group (ISG) who visited the Task Force facilities regularly recalled that at some point after June 2003 he saw interrogators from the 323rd MI BN (which was also providing interrogators to Abu Ghraib) whom he knew as he had trained some of them in Kuwait prior to the war. Committee staff interview of CWO Brian Searcy (June 4, 2007).

[1250] Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[1251] Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1252] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 10, 12, 19, 30, 52.

[1253] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 18.

[1254] Ibid. at 19.

[1255] Statement of [redacted] (August 9, 2004).

told him that a detainee she was interrogating had alleged physical abuse during his capture and subsequent interrogation by SMU TF personnel. [redacted] stated that "by mid-June 2003, a pattern of reports of abuse of prisoners (abuse primarily attributed to [the SMU TF] during their capture and interrogation of [high value targets] and other detainees, was coming to me..."[1256]

[redacted] MG Dayton described what he called a "notorious case" of alleged detainee abuse, in which a badly burned detainee was brought to the ISG facility.[1257] MG Dayton stated that according to the "special forces guys," the detainee had been captured on a very hot day, was thrown down on the metal floor on the Humvee, and during the long drive back from the operation, the detainee had "burned himself lying on the floor of the Humvee."[1258]

(U) Throughout the summer and autumn of 2003, ISG personnel continued to be concerned about the treatment of detainees by SMU TF personnel. [redacted] stated that, during the last week in June 2003, a British interrogator reported to him that a detainee who had been captured and interrogated by the SMU TF "was beaten so severely, that he had the MPs at Camp Cropper note the [detainee's] condition."[1259] [redacted] said he was told that the detainee's "back was almost broken, his nose was probably broken, and he had two black eyes, plus multiple contusions on his face."[1260]

[redacted] According to the SMU TF Legal Advisor who served at the facility in July and August 2003, during one of the nightly briefings held at the SMU TF Joint Operations Center, [redacted] the SMU TF Commander, said "continue to work him over" and "work him hard" in reference to a particular detainee being interrogated at the SMU TF.[1261] The Legal Advisor said that about 50 people were present when [redacted] made that statement, that he (the Legal Advisor) was concerned about the message it conveyed, and that he subsequently spoke to the Commander about it. The Legal Advisor said that [redacted] made a similar statement on a video teleconference.

[redacted] MG Dayton recalled that [redacted] sought to address reports of SMU TF detainee mistreatment with him. According to MG Dayton, [redacted] heard that "rumors" of detainee mistreatment were circulating and "he wanted to set [MG Dayton's] mind at rest."[1262] MG Dayton recalled that he spoke to [redacted] a few times and that [redacted] told him "You're going to hear rumors, but it's all – it's all untrue."[1263]

(U) In addition to allegations of mistreatment by the SMU TF, [redacted] the JIDC Chief said that he was informed in early June that the ICRC had visited a facility run by the 323

[1256] Ibid. at 9.

[1257] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 20.

[1258] Ibid. at 21.

[1259] Statement of [redacted] (August 9, 2004) at 9.

[1260] Ibid.

[1261] Committee staff interview of SMU TF Legal Advisor 1 (May 29, 2008).

[1262] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 50.

[1263] Ibid. at 29.

MI Battalion where high value detainees were undergoing interrogations.[1264] [redacted] said that the ICRC had subsequently prepared an inspection report [redacted] (He said that he understood the abuse had allegedly taken place while the detainees were under the control of the 115th MP Battalion.) [redacted] said he was told [redacted]

B. *Interrogation Policies for Conventional Forces in Iraq* (U)

1. *CJTF-7 Stands Up (Summer 2003)* (U)

(U) In May 2003, Combined Joint Task Force 7 (CJTF-7) began preparations to take over from CFLCC as the operational headquarters for all conventional ground units in the Iraqi theater. The CJTF-7 Commander, LTG Sanchez, stated that during summer 2003, the general belief was that the number of forces in Iraq had to shrink as quickly as possible and that, accordingly, CENTCOM and CFLCC reduced troop levels "very, very rapidly."[1266] LTG Sanchez said that the drawdown left insufficient personnel behind for CJTF-7 to fulfill its mission as well as inadequate command structures, planning capacities, and intelligence capabilities. He said that during the handover "there were no intelligence structures that were transferred to [CJTF-7] from CFLCC" and, as a result, the remaining intelligence structure did not enable CJTF-7 to address the requirements of a Combined Joint Task Force operating at a "strategic, operational, and tactical level."[1267]

(U) LTG Sanchez stated that by July 2003, it was evident "that CJTF-7 was engaged in a counterinsurgency operation that would be difficult if not impossible to win without significant

[1264] Email from [redacted] to ISG Personnel (June 17, 2003).

[1265] Email from [redacted] to ISG Personnel (June 17, 2003).

[1266] Army IG, Interview of LTG Ricardo Sanchez (October 26, 2004) at 2-3.

[1267] Ibid. at 10.

improvements in the intelligence capabilities of [CJTF-7]."[1268] LTG Sanchez said that he was particularly concerned about his HUMINT capabilities, including the level of interrogation expertise within CJTF-7, and that he "seriously questioned the training and experience of our interrogators.[1269]

(U) LTG Sanchez said he posed a challenge to his staff: "How do we ensure that we have the right mechanisms in place that allow our interrogators to push the limit of our authorities yet prevent a violation of the Geneva Convention and our duty to treat detainees humanely?"[1270] He said that "references to the [Field Manuals] and doctrine were common responses but the issues being faced were beyond the scope of the Army's limited doctrine."[1271] LTG Sanchez added that there was frustration about the ability to get a handle on the insurgency and that he put a tremendous amount of pressure on his intelligence officers.[1272]

(U) The Commander of the 205th Military Intelligence Brigade, COL Pappas, said that soon after arriving in theater in July 2003, CJTF-7's Chief of Staff BG Daniel Hahn directed him to attend a meeting to brief LTG Sanchez on interrogation operations.[1273] COL Pappas told the Committee that he learned at that meeting that LTG Sanchez was concerned that interrogations had not generated the expected intelligence information.[1274] COL Pappas said that LTG Sanchez "believed that if the brigade improved its interrogation tactics, techniques, and procedures, that we would get the information necessary to stop the insurgency."[1275] COL Pappas agreed and told LTG Sanchez that his interrogators would need the authority to use additional interrogation techniques to accomplish that goal.[1276]

2. *Interrogation Operations Begin at Abu Ghraib* (U)

(U) In mid-Summer 2003, the 205th MI BDE began preparing for Operation Victory Bounty, an undertaking designed to track down remaining elements of the Fedayeen Saddam, a paramilitary organization loyal to Saddam Hussein.[1277] In late July 2003, ten to twelve members of the 519th MI Battalion went to Abu Ghraib to establish interrogation operations in anticipation of receiving individuals captured during Victory Bounty.[1278] On August 4, 2003, CPT Carolyn Wood, the 519th MI Battalion Assistant Operations Officer, assumed duties as the Interrogation

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[1268] Ibid. at 5.

[1269] Ibid. at 6.

[1270] Ibid. at 7.

[1271] Ibid.

[1272] Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[1273] The CJTF-7 Commander, his senior staff, and division Commanders attended the meeting. Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1274] Ibid.

[1275] Army IG, Interview of COL Thomas Pappas (August 24, 2006) at 6.

[1276] Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1277] DoD News Briefing (August 7, 2003).

[1278] Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 4.

Officer in Charge (OIC) at the facility.[1279] In late 2002, she had served as the Interrogation Operations Officer at the Bagram detention facility in Afghanistan.

(U) According to CPT Wood, no SOP was in place for interrogations when she took command, but interrogations were conducted "within the approved approaches within the Field Manual 34-52 only, with the possible addition of stress positions."[1280] CPT Wood stated that interrogators had used sleep deprivation and stress positions in Afghanistan and that she "perceived the Iraq experience to be evolving into the same operational environment as Afghanistan."[1281] She said that she used her "best judgment and concluded [the techniques] would be effective tools for interrogations at [Abu Ghraib]."[1282] She also said that she later put together a request for additional interrogation options because "the winds of war were changing" and there was "mounting pressure from higher for 'actionable intelligence' from interrogation operations."[1283] CPT Wood said that she did not want to repeat her experience in Afghanistan, where interrogators lacked written guidance.[1284]

3. *519th MI Battalion at Abu Ghraib Seeks Additional Guidance* (U)

(U) CPT Wood said that guidance for interrogators about the rules for interrogations was important because the interrogators in the 519th Battalion had come to Abu Ghraib with a range of different experiences:

> A lot of the interrogators and analysts also served in Guantanamo Bay and Afghanistan where some other techniques were approved for use... I understood the Afghanistan rules were a little different because the detainees were not classified as EPWs. It was, "use techniques in the spirit of the Geneva convention," not, "you will apply the Geneva Convention." In order to use those similar techniques from GTMO and Afghanistan in Iraq, we sought approval from the higher command.[1285]

(U) COL Pappas, CPT Wood's superior officer, said he knew that CPT Wood believed she needed additional techniques and told her to submit a request.[1286]

4. *519th MI BN Proposes Interrogation Policy* (U)

[1279] Ibid. at 3.

[1280] Sworn Statement of CPT Carolyn Wood (December 17, 2004); Committee staff interview of CPT Carolyn Wood (February 11, 2008).

[1281] Sworn Statement of CPT Carolyn Wood (May 21, 2004).

[1282] Ibid.

[1283] Ibid.

[1284] Committee staff interview of CPT Carolyn Wood (February 11, 2008).

[1285] Sworn Statement of CPT Carolyn Wood (December 17, 2004) at 3. Additionally, CJTF-7 Commander LTG Sanchez said a key purpose of his eventually issuing an interrogation policy was to regulate approach techniques believed derived, in part, from techniques used in Guantanamo Bay and Afghanistan. Statement by LTG Ricardo Sanchez to the Department of the Army Inspector General (October 2004) at 7.

[1286] Committee staff interview of COL Thomas Pappas (October 12, 2007).

(U) On July 26, 2003, CPT Wood submitted a proposed interrogation policy to her chain of command. The proposed policy was based on the interrogation policy in use at the SMU TF facility in Iraq.[1287] CPT Wood said that she and her staff simply "cleaned up some of the grammar, changed the heading and signature block, and sent it up" to CJTF-7 as a proposed policy for the 519th MI BDE.[1288]

Mirroring the SMU TF policies, CPT Wood's proposed policy included sleep management, "vary comfort positions" (sitting, standing, kneeling, prone), presence of military working dogs, 20-hour interrogations, isolation, and yelling, loud music, and light control.[1289] The proposed policy stated that "EPWs that refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."[1290] The prohibition against threats, insults and exposure to unpleasant or disadvantageous treatment, however, was limited to EPWs and CPT Wood stated that, to her knowledge, there were no EPWs held at Abu Ghraib.[1291]

(U) CPT Wood stated that submitting the proposed interrogation policy seemed a "natural progression" to her as she understood the techniques were already approved for use at the SMU TF in Iraq, and the policy was "similar to that of a document that was drafted in Afghanistan for the [Bagram Collection Point] as well as . . . GTMO."[1292] CPT Wood did not hear back from CJTF-7 at that time.[1293] Just a few weeks later CJTF-7 itself solicited a "wish list" of interrogation techniques.

5. *CJTF-7 Solicits "Wish List" of Interrogation Techniques* (U)

(U) On August 14, 2003, CPT William Ponce, the Battle Captain in the CJTF-7 HUMINT and Counterintelligence office (CJ2X), sent out an email to subordinate intelligence elements (including the 205th MI BDE and the 519th MI BN) requesting that they submit their "interrogation techniques wish list[s]."[1294] CPT Ponce wrote:

> Immediately seek input from interrogation elements (Division / Corps) concerning what their special interrogation knowledge base is and more

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[1287] Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 10. The Interrogation OIC had received the policy from one of her Chief Warrant Officers who had, in turn, received the policy from the LTC Robert Whelan, Commander of the 519th MI BN.

[1288] Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 4; Committee staff interview of CPT Carolyn Wood (February 11, 2008). CPT Wood explained that even though the memorandum was dated July 26, 2003, which was before she took over the position at Abu Ghraib, she thought that one of her Chief Warrant Officers might have sent it up the chain knowing that she would be on board shortly.

[1289] Memo from CPT Carolyn Wood to C2X, CJTF-7 (IRAQ) *ABU GHURAYB, Saddam Fedayeen Interrogation Facility (SFIF) Detainee Interrogation Policy* (July 26, 2003) (hereinafter "*SFIF Interrogation Policy* (July 26, 2003)"); *see also BIT/F Policy* (July 15, 2003) at 3.

[1290] *SFIF Interrogation Policy* (July 26, 2003) at 2.

[1291] Sworn Statement of CPT Carolyn Wood (December 17, 2004) at 4.

[1292] Army IG, Interview of CPT Carolyn Wood (August 15, 2006).

[1293] Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 10.

[1294] Email from CPT (P) William Ponce Jr. to CS165MI, HECC (August 14, 2003).

> importantly, what techniques would they feel would be effective techniques that SJA could review (basically provide a list).[1295]

CPT Ponce added:

> ...The gloves are coming off gentleman regarding these detainees. Col. Boltz has made it clear that we want these individuals broken. Casualties are mounting and we need to start gathering info to help protect our fellow soldiers from any further attacks.[1296]

(U) The Commander of the 205th MI BDE, COL Pappas, said he thought that CPT Ponce's email soliciting "interrogation techniques wish lists" was the result of the meeting he attended with LTG Sanchez shortly after arriving in theater.[1297] He called the Battle Captain's use of the phrase "the gloves are coming off" a "dumb" thing to say and a "poor choice of words."[1298] LTG Sanchez told the Committee that he expected his intelligence staff to send out the request for interrogation techniques, but stated that the use of the phrase "the gloves are coming off" was "not good."[1299] LTG Sanchez believed that the email reflected frustration on the part of intelligence personnel at not being able to meet his intelligence requirements.

(U) Chief Warrant Officer (CWO) Lewis Welshofer, who was with the 3rd Armored Cavalry Regiment responded to CPT Ponce's email with his own assessment of the interrogation situation:

> Today's enemy, particularly those in [Southwest Asia], understand force, not psychological mind games or incentives. I would propose a baseline interrogation technique that at a minimum allows for physical contact resembling that used by SERE schools (This allows open handed facial slaps from a distance of no more than about two feet and back handed blows to the midsection from a distance of about 18 inches. Again, this is open handed.) . . .Other techniques would include close confinement quarters, sleep deprivation, white noise, and a litany of harsher fear-up approaches. . . fear of dogs and snakes appear to work nicely. I firmly agree that the gloves need to come off.[1300]

(U) Maj. Nathan Hoepner, the Operations Officer (S-3) of the 501st MI Battalion took issue with the language in CPT Ponce email, stating in an email of his own:

[1295] Ibid.

[1296] Ibid.

[1297] Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1298] Ibid.; Sworn Statement of COL Thomas Pappas (January 25, 2006) at 15.

[1299] Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[1300] Email from CPT (P) William Ponce Jr. to CS165MI, HECC (August 14, 2003). CWO Lewis Welshofer was later tried and convicted of negligent homicide and negligent dereliction of duty in connection with the November 26, 2003 killing of an Iraq detainee.

As for "the gloves need to come off..." we need to take a deep breath and remember who we are. Those gloves are most definitely NOT based on Cold War or WWII enemies—they are based on clearly established standards of international law to which we are signatories and in part the originators. Those in turn derive from practices commonly accepted as morally correct, the so-called "usages of war." It comes down to standards of right and wrong –something we cannot just put aside when we find it inconvenient, any more than we can declare that we will "take no prisoners" and therefore shoot those who surrender to us simply because we find prisoners inconvenient.

"The casualties are mounting..." we have taken casualties in every war we have ever fought—that is part of the very nature of war. We also inflict casualties, generally more than we take. **That in no way justifies letting go of our standards.** We have NEVER considered our enemies justified in doing such things to us. Casualties are part of war—if you cannot take casualties then you cannot engage in war. Period. BOTTOM LINE: We are American soldiers, heirs of a long tradition of staying on the high ground. We need to stay there.[1301]

6. *Interrogation OIC at Abu Ghraib Resubmits the Proposed Interrogation Policy for 519th MI BN* (U)

(U) On August 27, 2003, CPT Wood re-submitted the proposed interrogation policy that she had previously sent in July. She said she thought the issue came up because CJTF-7 headquarters "want[ed] these guys broken" and said her August submission may have been a response to CPT Ponce's email.[1302]

[redacted] Though largely the same as the proposed policy submitted on July 26, 2003, the August 27, 2003 proposed policy included one additional interrogation technique – "sensory deprivation," which the proposed policy described as a "combination use of isolation and sleep management [redacted]"[1303] The proposed interrogation policy also inserted the term "stress positions" in place of "vary comfort positions" and limited use of sleep deprivation to 72 hours.[1304]

(U) CPT Wood said that two days after she submitted the proposed policy, two lawyers from CJTF-7 visited Abu Ghraib with a copy of her memo.[1305] According to CPT Wood, the

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[1301] Email from 4ID 104 MI ICE to various recipients (August 14, 2003) (emphasis in original).

[1302] Sworn Statement of CPT Carolyn Wood (December 17, 2004) at 2.

[1303] Memo from CPT Carolyn Wood to C2X, CJTF-7 (IRAQ), *ABU GHURAYB, Saddam Fedayeen Interrogation Facility (SFIF) Detainee Interrogation Policy* (August 27, 2003) at 4.

[1304] Ibid.

[1305] Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 4; Committee staff interview of CPT Carolyn Wood (February 11, 2007).

two attorneys said that "they did not see anything wrong with it and that they would add their approval and forward it higher to CJTF-7 for consideration and review."[1306]

(U) Techniques in CPT Wood's proposed policy can be traced back though the SMU TF in Iraq to Afghanistan and, ultimately, to techniques authorized for use at GTMO by Secretary Rumsfeld in December 2002. The GTMO techniques were, in turn, influenced by techniques used by the Joint Personnel Recovery Agency and the military service SERE schools to train U.S. personnel to resist illegal enemy interrogations. In the summer of 2003, as CPT Wood was seeking approval for her proposed policy, the SMU TF in Iraq was soliciting JPRA's advice on interrogations.

C. *JPRA Provides "Offensive" SERE Training in Iraq* (U)

1. *Special Mission Unit Task Force in Iraq Seeks Assistance from JPRA* (U)

[redacted] In the summer of 2003, the Commander of the Special Mission Unit (SMU) Task Force (TF) in Iraq, [redacted] called the Commander of JPRA, Col Randy Moulton, to request assistance with Task Force interrogations.[1307]

[redacted] On August 25, 2003, the SMU Task Force in Iraq formally requested a JPRA "interrogation team."[1308] The request asked that JPRA send two or more individuals to the TF for three weeks to "provide assistance to current interrogation efforts of key [high value targets]."[1309] On August 27, 2003, [redacted] request for support, forwarded it to JFCOM, and asked that JFCOM task JPRA to support the request.[1310] That same day, the JFCOM Operations Directorate (J-3) authorized JPRA to provide the requested support to the SMU TF.

[redacted] Christopher Wirts, the Chief of JPRA's Operations Support Office (OSO) subsequently selected three JPRA personnel for the mission. As Team Chief, Mr. Wirts chose Lt Col Steven Kleinman, a reserve officer who happened to be a trained interrogator. Mr. Wirts also chose Terrence Russell, JPRA's manager for research and development who was also a SERE specialist. Though Mr. Russell had no formal interrogation training or experience, he had previously conducted interrogation-related training for [redacted] JTF-GTMO personnel. To

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[1306] Ibid.

[1307] Memo from Lt Col Arlene McCue for the Force Judge Advocate, *Results of Telephonic Interview With Colonel Randy Moulton, (USA Ret), former Commanding Officer, JPRA* (September 23, 2005) at 1 (hereinafter "*McCue, Results of Interview with Colonel Moulton*"); Committee staff interview of [redacted] (October 10, 2007). [redacted] The Chief of the Operational Support Office (OSO) at JPRA told the Committee that in the process of providing defensive SERE training to Special Mission Units, JPRA personnel who had conducted offensive training [redacted] also consulted with the Special Mission Units to determine how they could be helpful in training. Committee staff interview of Chris Wirts (January 4, 2007).

[1308] [redacted] Priority Message, *Request JPRA Assistance in Interrogation Support*, Date Time Group (DTG) 252059Z AUG 03 (August 25, 2003).

[1309] Ibid.

[1310] [redacted] to HQ JPRA, *Interrogator Support*, DTG 272054Z AUG 03 (August 27, 2003); HQ [redacted] to CDR USJFCOM, *Request for Interrogator Support*, DTG 271004Z AUG 03 (August 27, 2003).

complete the team, Mr. Wirts chose Lenny Miller, a contract SERE instructor who also lacked interrogation experience but who the SMU TF had specifically requested. The team's deployment date was set for September 1, 2003.[1311]

(U) Lt Col Kleinman said that, before being deployed, he thought he was being sent to Iraq to identify problems in the TF interrogation program.[1312] More than a year earlier, Lt Col Kleinman had drafted a paper identifying challenges faced by interrogators at GTMO.[1313] In the draft paper, Lt Col Kleinman identified "fundamental systemic problems" at GTMO that undermined operational effectiveness.[1314]

[redacted] Chief among the problems identified in the draft paper was the lack of trained personnel with experience in strategic interrogations.[1315] Lt Col Kleinman recommended a number of options in his draft paper to enhance DoD's ability to conduct strategic interrogation, including additional training.[1316] He recommended having experienced "survival, intelligence, and human factors specialists" conduct an "in-depth assessment" of operations at GTMO and provide a "comprehensive report that would set forth concrete steps to improve operational effectiveness and security."[1317] Lt Col Kleinman's paper did not recommend teaching interrogators at GTMO how to use SERE techniques in interrogations and he said that he did not believe that was the purpose of the Iraq trip.[1318]

2. *Awareness of the JPRA Trip to Iraq at Headquarters, Joint Forces Command (JFCOM)* (U)

[redacted] JPRA received written approval from JFCOM to support the SMU TF request.[1319] JPRA Commander Col Randy Moulton told the Committee that he was pretty sure he also conducted a briefing for the JFCOM Director for Operations (J-3) about JPRA's support to interrogation efforts at the SMU TF, although he could not recall when that briefing occurred.[1320] The JFCOM J-3, BG Thomas Moore, who was involved in coordinating at least one of JPRA's

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[1311] Details of the three-week JPRA trip to Iraq are reflected in trip reports that Lt Col Kleinman and Mr. Russell submitted "upon their return from Iraq in late September 2003." Lt Col Kleinman's trip report is annotated with the comments of Mr. Russell. *See* DoD IG Memorandum for the Record, *4 January 2005 Meeting with Mr. Lt Col Steve Kleinman* (January 11, 2005) at 4; Memorandum from Mr. Terry Russell for Lt. Col. Reichert, Mr. Wirts, *JPRA Support to* [redacted] (undated) (hereinafter "Russell Trip Report"); Memorandum from Lt Col Steven Kleinman, *Trip Report – TDY to CENTCOM AOR, 1-24 Sep 03* (undated) (hereinafter "Kleinman Trip Report").

[1312] Jane Mayer, The Dark Side (New York: Doubleday) at 246.

[1313] Maj Steven Kleinman, *Support to DoD Interrogation Operations* (May 17, 2002).

[1314] Ibid.

[1315] Ibid. at 1-2.

[1316] Ibid. at 4-6.

[1317] Ibid. at 5.

[1318] Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

[1319] (S/FP) CDR USJFCOM to HQ JPRA, *Interrogator Support*, DTG 272054Z AUG 03 (August 27, 2003).

[1320] Committee staff interview of Col Randy Moulton (November 26, 2007).

previous "offensive" training sessions completed his assignment as the J-3 at JFCOM in early to mid-August and was replaced by RADM John Bird.[1321]

(U) On September 4, 2003, just as the JPRA team was arriving in Iraq, Col Moulton emailed a JPRA "Weekly Report" to the JFCOM Command Group and others stating:

> We deployed a Personnel Recovery Support Team to Baghdad in support of CENTCOM and [redacted] interrogation requirements. This is an issue that may merit Lessons Learned visibility, as there is currently no focal point within DoD for strategic debriefing / interrogation [tactics, techniques, and procedures] development (offensive). Currently, subject matter expertise on captivity environments, psychology, and maintenance resides almost solely within JPRA (defensive).[1322]

(U) In response, the JFCOM Deputy Commander LTG Robert Wagner, questioned whether JPRA was operating within its charter. He wrote: "I'm not sure I see the connection between your assigned responsibilities and this task . . . [W]hat charter places JPRA in the business of intelligence collection?"[1323] Col Moulton responded "There is nothing in our charter or elsewhere that points us towards the offensive side of captivity conduct nor are we requesting to take this on as a new responsibility."[1324] He added, however, that JPRA had a role to play in helping to educate and assist offensive operations, stating;

> [Those conducting interrogations] have already demonstrated the need for our understanding and knowledge of captivity environment and psychology. We are also well aware of the problems associated with crossing the Rubicon into intel collection (or anything close). There may be a compromise position (my gut choice) whereby we could provide/assist in oversight, training, analysis, research, and [tactics, techniques, and procedures] development, while leaving the actual debriefing/interrogation to those already assigned the responsibility.[1325]

(U) In a subsequent email to RADM Bird, Col Moulton stated that while he was concerned about "mission creep" and departing too far from JPRA's traditional role, it was his view that "no DoD entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation."[1326] Col Moulton wrote:

[1321] Committee staff interview of RADM John Bird (March 17, 2008)

[1322] Email from JPRA J2 to weekly report distribution list, *JPRA Weekly Report* (September 4, 2003). The JPRA Commander also updated JFCOM in JPRA's subsequent weekly reports. *See* September 11, 2003 Weekly Report (the JPRA team "deployed to Baghdad continues to support [redacted] with strategic debriefing.") September 25, 2003 Weekly Report (the JPRA team "deployed to Baghdad to support [redacted] with strategic debriefing" returned on September 24, 2003.)

[1323] Email from LTG Wagner to Col Moulton (September 6, 2003).

[1324] Email from Col Moulton to LTG Wagner (September 8, 2003).

[1325] Ibid.

[1326] Email from Col Moulton to RADM Bird (September 9, 2003).

> Our subject matter experts (and certain Service SERE psychologist[s]) currently have the most knowledge and depth within DoD on the captivity environment and exploitation. I think that JPRA/JFCOM needs to keep involved for reasons of TTP development and information sharing. We are NOT looking to expand our involvement to active participation. The current support was intended to be limited to advice, assistance, and observation. Our potential participation is predicated solely on the request of the Combatant Commander.[1327]

(U) Col Moulton testified to the Committee that before he sent the JPRA team to Iraq he talked to the SMU Task Force commander and was told that SMU TF detainees "were detained unlawful combatants and not covered under the Geneva Conventions."[1328] Col Moulton later said, referring to a subsequent call with the SMU TF Commander, that he did not know if the SMU TF Commander had "specifically" told him that.[1329]

3. *JPRA Provides Interrogation Support to the Special Mission Unit Task Force in Iraq* (U)[1330]

[redacted] On September 5, 2003, after their arrival in Iraq, the three-member JPRA team met with SMU TF personnel at the TF facility.[1331] According to Lt Col Kleinman, the JPRA Team Chief, the team was told that interrogators were having trouble gaining actionable intelligence information from detainees in TF custody.[1332] Lt Col Kleinman felt that the SMU TF's lack of success was a result of a poor screening process, which resulted in the TF holding some detainees with no information.[1333]

[redacted] According to Terrence Russell, the team also met that day with the SMU TF Commander [redacted] and discussed [redacted] expectations for the JPRA team.[1334] Mr. Russell said that [redacted] "expected [the JPRA team] to become fully engaged in interrogation operations" and "encouraged [the team] to receive modified" rules of engagement (ROEs) from JPRA, since their ROEs at that time permitted the team to "advise and assist" but not to "engage in direct interrogations."[1335]

[1327] Ibid. (emphasis in original).

[1328] SASC Hearing (September 25, 2008).

[1329] Ibid.

[1330] To the extent possible, the Committee relied on contemporaneous documents, including Lt Col Kleinman's and Mr. Russell's written trip reports, to establish the timeline of events during the JPRA team's visit to the SMU Task Force.

[1331] Russell Trip Report.

[1332] Committee staff interview of Lt Col Steven Kleinman (February 14, 2007).

[1333] Ibid. During his interview with Committee staff, Lt Col Kleinman described the interrogation of an Iraqi man who had been detained by U.S. forces because interrogators believed he had useful intelligence because he knew about "bridges." Lt Col Kleinman said that it later became clear that the man was a dental technician.

[1334] Russell Trip Report at 2.

[1335] Ibid. at 1.

[redacted] Over the next week, Lt Col Kleinman spoke by phone with Col Moulton at least twice. While accounts by the three JPRA team members of those calls differed in some respects, all agree that the calls resulted in Col Moulton (1) authorizing the team to participate in SMU Task Force interrogations and (2) authorizing the team to use the full range of SERE school physical pressures in those interrogations. Col Moulton confirmed that the team's understanding of his guidance was correct.[1336]

4. *JPRA Team Authorized to Participate in Interrogations* (U)

[redacted] According to Mr. Russell, Lt Col Kleinman called Col Moulton on September 5, 2003 to discuss the team's ROEs and, the following day, Col Moulton gave the team permission to "become fully engaged in all BIF operations."[1337] That account is consistent with Col Moulton's recollection, which was that Lt Col Kleinman called him after arriving in Iraq to discuss a request from the SMU TF that team members actually participate in interrogations.[1338]

[redacted] Col Moulton said that, after getting the call from Lt Col Kleinman, he called [redacted] "to confirm and inquire about the new request."[1339] In subsequent interviews and communications, Col Moulton has consistently stated that he relayed [redacted] request to JFCOM and got JFCOM's authorization to permit the JPRA team to participate in interrogations. Col Moulton's recollection of who at JFCOM provided that authority, however, has varied.

(U) According to a memorandum of a September 2005 interview with the JPRA Commander, Col Moulton "relayed the request to the [JFCOM] J3 and got the verbal OK to allow active participation, but only for one or two demonstrations and then the team was to go back to its role as observers."[1340]

(U) In a 2006 email to the DoD IG, however, Col Moulton could not recall exactly whom at JFCOM he had spoken with, stating:

> During the deployment I received a call from the Task Force commander requesting that our personnel participate in the debriefing. I notified JFCOM leadership of the request (either BG Moore or LTG Wagner I can't remember, but think it was [LTG] Wagner since this was late on a weekend night) and was told that they could support, but that any activities had to be approved through the task forces legal rep (we were chopped to them).[1341]

[1336] SASC Hearing (September 25, 2008).

[1337] Russell trip report at 2.

[1338] Committee staff interview of Randy Moulton (June 19, 2007); Committee staff interview of Randy Moulton (November 26, 2007)

[1339] McCue, *Results of Interview with Colonel Moulton* at 1.

[1340] McCue, *Results of Interview with Colonel Moulton* at 1. According to the DoD IG report, the JPRA Commander confirmed that the U.S. Joint Forces Command J-3 and the SMU TF Commander "gave a verbal approval for the SERE team to actively participate in 'one or two demonstration' interrogations." DoD IG Report at 28.

[1341] Email from Randy Moulton to DoD IG (June 30, 2006) at 3.

In interviews with Committee staff in 2007, Col Moulton said that he had tried but had been unable to reach BGen Moore, so instead he called LTG Wagner whom he reached at home.[1342] According to that account, LTG Wagner told Col Moulton that he needed approval from his boss, JFCOM Commander ADM Giambastiani, to approve the JPRA request.[1343] According to Col Moulton, LTG Wagner called him back and gave his approval.[1344]

BGen Moore, whom Col Moulton referenced in his September 2005 interview, was no longer assigned to JFCOM in September 2003.[1345] RADM Bird, who replaced BGen Moore, stated that he did not recall receiving a call from the JPRA Commander. RADM Bird said that he thought it unlikely he would have received the call on the weekend as it would have had to have occurred over a secure line and he did not have that capability at home. LTG Wagner told the Committee that he could not recall if he received a call from Col Moulton.[1346]

According to Terrence Russell, one of the JPRA team in Iraq, the JPRA team received permission from Col Moulton "to become fully engaged in all BIF operations."[1347] The next day, team members met with the SMU TF staff and "outlined the exploitation cycle and how [the staff] could incorporate [SERE Training, Tactics, and Procedures] to support their current interrogation operations."[1348]

While it is not known when it occurred, the Chief of Human Intelligence and Counterintelligence (J-2X) for the SMU stated that members of the JPRA team demonstrated interrogation techniques, including the "attention slap," which he said was described as an open-handed slap to focus the detainee on the interrogation, and walling, which was described as a push up against the wall.[1349] The J-2X could not recall if all members of the JPRA team were present during that lesson.[1350] Lt Col Kleinman said that he was not aware of such a lesson.[1351]

[1342] Committee staff interview of Col Randy Moulton (June 19, 2007); Committee staff interview of Col Randy Moulton (November 26, 2007). LTG Wagner, however, to which the JPRA Commander referred had already left JFCOM in August 2003, well before the JPRA team deployed to Iraq. In testimony to the Senate Armed Services Committee, Col Moulton said that he was unable to reach RADM Bird or Maj Gen Soligan so he "went up the chain and spoke with General Wagner." SASC hearing (September 25, 2008).

[1343] Committee staff interview of Col Randy Moulton (June 19, 2007).

[1344] Ibid.

[1345] Committee staff interview of RADM John Bird (March 17, 2008).

[1346] Committee staff interview of Robert Wagner (June 28, 2007).

[1347] Russell Trip Report.

[1348] Russell Trip Report.

[1349] With the walling technique, the J-2X stated that instructions were given to use a wood wall and to pick a spot on the wall in between any metal braces. Committee staff interview of SMU TF J2X (February 5, 2008).

[1350] Committee staff interview of SMU TF J2X (February 5, 2008).

[1351] Committee staff interview of Steven Kleinman (March 14, 2008).

[redacted] The J-2X stated that he was unsure if techniques taught to the staff were permitted under SMU TF policy and that, after the JPRA demonstration, he raised this matter with the SMU TF J2, which at the time was [redacted].[1352]

5. *JPRA Present as Interrogator Uses Stress Positions and Slaps* (U)

[redacted] On September 6, 2003, JPRA team members were present in the interrogation booth when a SMU TF interrogator used "selected physical pressures" on a detainee.[1353] According to Terrence Russell, the SMU TF interrogator "put the detainee on his knees and later began to use insult slaps every 3-4 seconds for an extended period of time."[1354]

(U) Lt Col (now Colonel) Kleinman described that same interrogation in testimony before the Senate Armed Services Committee. Lt Col Kleinman said:

> I walked into the interrogation room, all painted in black with [a] spotlight on the detainee. Behind the detainee was a military guard... with a[n] iron bar... slapping it in his hand. The interrogator was sitting in a chair. The interpreter was – was to his left... and the detainee was on his knees... A question was asked by the interrogator, interpreted, the response came back and, upon interpretation, the detainee would be slapped across the face... And that continued with every question and every response. I asked my colleagues how long this had been going on, specifically the slapping, they said approximately 30 minutes.[1355]

(U) Lt Col Kleinman said that his two JPRA colleagues, who were present during the interrogation, "didn't seem to think there [was] a problem, because in SERE training... there's a facial slap, but it's conducted in very specific ways... This was not conducted in that fashion."[1356] In fact, Lt Col Kleinman described the environment at the Task Force facility as "uncontrolled."[1357]

[redacted] Members of the JPRA team had differing views on the appropriate response to the interrogator's use of those techniques. Mr. Russell stated that he and Mr. Miller "saw nothing wrong with" the interrogator forcing the detainee to kneel or his slapping the detainee during the interrogation.[1358] Lt Col Kleinman had a different reaction.

[redacted] Lt Col Kleinman considered forcing the detainee to kneel and repeatedly slapping him to be "direct violations of the Geneva Conventions and [actions that] could constitute a war crime."[1359] Upon witnessing the abusive conduct, Lt Col Kleinman sought out the SMU TF J-

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[1352] Committee staff interview of SMU TF J2X (February 5, 2008).

[1353] Testimony of Terrence Russell (August 3, 2007) at 102-103, 106.

[1354] Russell Trip Report.

[1355] SASC Hearing (September 25, 2008).

[1356] Ibid.

[1357] Ibid.

[1358] Russell Trip Report.

[1359] Ibid. at 5; Kleinman Trip Report at 2-3.

2X.[1360] Lt Col Kleinman told the J-2X what he had witnessed and recommended "that the session be halted immediately."[1361] Lt Col Kleinman said the J-2X told him "[y]our judgment is my judgment. Do what you think is right."[1362]

Following his conversation with the J-2X, Lt Col Kleinman asked the two members of his team to step out of the interrogation booth. According to Mr. Russell:

> In the hallway [Lt Col] Kleinman asked us our impression of the use of the kneeling and slaps. We both indicated that we saw nothing wrong with what was going on. He asked us our opinion of the slapping and we said they were only insult slaps and were not inflicting any pain to the detainee. [Lt Col] Kleinman indicated his disagreement and that both the slaps and kneeling were direct violations of the Geneva Conventions and could constitute a war crime. He further indicated that he wanted to intervene and stop the interrogation at that point.[1363]

Over the objections of the other two members of JPRA team, Lt Col Kleinman then asked the SMU TF interrogator to step out of the booth. He explained to the interrogator "how and why [the interrogator's] methods were a violation of the Geneva Convention and TF [policy]."[1364] According to Lt Col Kleinman, "[the interrogator] accepted my direction without reservation."[1365]

With respect to Lt Col Kleinman's actions, Mr. Russell stated:

> I think the clear violation of the TF policy was of a minor nature – that being a 10-minute extension of the kneeling policy. The use of insult slaps was, in the opinion of [Lt Col] Kleinman, serious enough to stop the interrogation – an action I did not then or now feel warranted his direct intervention.[1366]

In subsequent testimony to the Committee, Mr. Russell claimed that the use of the "insult slap" was consistent with the facility's operating instructions:

> Under their operating instructions at that BIF, at that time and place, we did not see anything wrong with [the use of physical pressures]. It may not have been

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[1360] Kleinman Trip Report at 2-3.

[1361] Ibid.

[1362] Ibid.

[1363] Russell Trip Report at 5. Mr. Russell also felt that Lt Col Kleinman should have used the interrogator's chain of command at the Task Force to stop the interrogation. Testimony of Terrence Russell (August 3, 2007) at 105.

[1364] Kleinman Trip Report at 3.

[1365] Ibid.

[1366] Kleinman Trip Report at 3. In his own trip report, Mr. Russell also noted that the use of kneeling was an authorized SMU TF technique. *See* Russell Trip Report at 3-4.

applied the way we would have done it, but we didn't see anything wrong with it. We advised [Lt Col] Kleinman of the same. He disagreed with us.[1367]

SMU TF SOPs reviewed by the Committee do not include slapping as an authorized technique and the SMU TF J-2X told the Committee that he was unaware of any operating instructions that would have permitted an interrogator to repeatedly slap a detainee.[1368]

Despite Mr. Russell's previous statement that he "saw nothing wrong with what was going on," he testified to the Committee that he found the SMU TF interrogator's repeated use of the insult slap to be "odd" and "in excess" of what would be used in resistance training at JPRA.[1369] Mr. Russell also testified that the technique, as applied by the TF interrogator, was ineffective:

> [The] insult slap is just that, it's an insult. After you do it two or three times it loses its effectiveness because the [sic], in our world, the student is anticipating the slap. It loses its effectiveness if you do it more than two or three or four times.[1370]

While he did not raise any objection to their use in the interrogation, Mr. Russell stated that the techniques used at the SERE school, such as the insult slap, were not designed to elicit information from individuals but rather to "guide the student" to an appropriate resistance posture.[1371] According to his testimony, "history has shown us that physical pressures are not effective for compelling an individual to give information or to do something" and are not useful in gaining accurate, actionable intelligence.[1372] There is no indication in Mr. Russell's trip report, however, that he told anyone on the J-2X staff that the SMU TF's use of repeated slaps would be ineffective or that use of other SERE physical pressures, such as "walling", which were reportedly described for the J-2X staff, would be ineffective.

Mr. Russell stated that when physical pressures are applied in the resistance phase of SERE training, medical and psychological personnel are present to observe interrogations and protect SERE school students.[1373] Mr. Russell testified that there were no medical or psychological personnel present during the interrogations he witnessed while at the SMU TF facility.[1374]

[1367] Testimony of Terrence Russell (August 3, 2007) at 104-105.

[1368] Committee staff interview of SMU TF J2X (February 5, 2008).

[1369] Testimony of Terrence Russell (August 3, 2007) at 103.

[1370] Ibid. at 104.

[1371] Ibid. at 111-12.

[1372] Ibid. at 126-27.

[1373] Ibid. at 123.

[1374] Ibid.

6. *JPRA Team Authorized to Use SERE Techniques* (U)

(U) At some point shortly after he intervened to stop the interrogation where the detainee was placed on his knees and slapped, Lt Col Kleinman called Col Moulton.[1375] Lt Col Kleinman testified before the Committee that he told Col Moulton that the JPRA team was "being asked to use the full range of SERE methods in the interrogation of detainees."[1376] Lt Col Kleinman testified that he also told Col Moulton that he had intervened to stop interrogations at the Task Force and that the use of SERE techniques "were violations of the Geneva Convention, they weren't authorized, and we should not do them."[1377]

(U) Lt Col Kleinman said that he also told the SMU TF Commander that the use of SERE techniques in interrogations was "unlawful" and "a violation of the Geneva Convention."[1378] He said that the SMU TF Commander agreed with him but there were "no orders ever issued" by the Commander not to use the techniques.[1379]

[redacted] ([redacted] According to Lt Col Kleinman's trip report, after he spoke with Col Moulton, Col Moulton subsequently spoke to the SMU TF Commander, [redacted] and then called him back to tell him that the JPRA team was "cleared hot" to use "the full range of JPRA methods" on detainees, specifically including "walling, sleep deprivation, isolation, physical pressures (to include various stress positions, facial and stomach slaps, and finger pokes to the chest), space/time disorientation, [and] white noise."[1380]

(U) Lt Col Kleinman also testified to the Committee that Col Moulton told him that the JPRA team was "cleared hot to use SERE methods" in interrogations.[1381] Lt Col Kleinman testified that he told Col Moulton that he considered this instruction to be an illegal order and that he would not carry it out. Col Moulton said that Lt Col Kleinman "was adamant about that he thought it was against the Geneva Convention."[1382]

7. *JPRA Team Chief Seeks Legal Guidance* (U)

[redacted] Following his conversation with the JPRA Commander, Lt Col Kleinman consulted with the SMU TF lawyer who advised him that the SERE tactics "fell outside the parameters of acceptability under the [Geneva Conventions] and [Task Force] policy."[1383] Lt Col Kleinman then met with the other two members of the JPRA team to inform them of the

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[1375] The record is unclear as to exactly what date the call occurred.

[1376] SASC Hearing (September 25, 2008).

[1377] Ibid.

[1378] Ibid.

[1379] Ibid.

[1380] [redacted] Kleinman Trip Report at 3; Russell Trip Report at 2 ("The JPRA Commander had cleared Lenny Miller and me to use our normal and usual range of physical pressures while interrogating detainees"); Committee staff interview of Steven Kleinman (February 14, 2007); Testimony of Terrence Russell (August 3, 2007) at 99.

[1381] SASC Hearing (September 25, 2008).

[1382] Ibid.

[1383] Kleinman Trip Report at 4; Russell Trip Report at 6.

JPRA Commander's order that they could use "the normal and usual range of physical pressures" during interrogations and to alert them of his concerns about the legality of that order.[1384] Mr. Russell wrote in his trip report:

> [Lt Col] Kleinman indicated that he felt [it was] '. . . an illegal order' and we were exposing ourselves to possible future difficulties if we used any pressure inconsistent with the Geneva Conventions.[1385]

(U) Lt Col Kleinman also testified to the Committee that he relayed his conversation with Col Moulton to his two JPRA colleagues, informing them that he told Col Moulton that the authority to use SERE techniques "was an unlawful order" and that he "wasn't going to have any involvement with it, and [he] didn't think that they should either."[1386]

Both Mr. Russell and Mr. Miller, the JPRA contractor, disagreed with Lt Col Kleinman's assessment.[1387] According to Mr. Russell, the two "indicated that the use of these moderate physical pressures, when used appropriately, were consistent with proper handling and interrogation."[1388] In testimony to the Committee, Mr. Russell added that he understood that the individuals held by the Task Force were considered "detained unlawful combatants" and "not automatically provided the protections of the Geneva Conventions," though he could not recall who told him this.[1389]

Shortly after Col Moulton told Lt Col Kleinman that the team was "cleared hot" to employ the full range of JPRA methods, Lt Col Kleinman recommended that the TF Legal Advisor arrange a formal briefing with the SMU TF interrogation staff and the JPRA team.[1390] In that meeting, Lt Col Kleinman reported that the TF Legal Advisor "set forth legal limitations that essentially excluded most of the [JPRA methods] (with the use of certain stress positions, such as kneeling on a hard floor for up to 30 minutes, cited as an acceptable method)."[1391]

(U) Lt Col Kleinman testified to the Committee that although the SMU TF lawyer agreed with him that it was unlawful to use SERE techniques in interrogations, when the lawyer later briefed interrogators on the techniques, there was no longer "any clarity" about whether or not they were illegal.[1392]

Mr. Russell also described the TF Legal Advisor's briefing in his trip report:

[1384] Russell Trip Report at 2.

[1385] Ibid.

[1386] SASC Hearing (September 25, 2008)

[1387] Russell Trip report at 6..

[1388] Ibid.

[1389] Testimony of Terrence Russell (August 3, 2007) at 106-07.

[1390] Russell Trip Report at 3; Kleinman Trip Report at 4.

[1391] Kleinman Trip Report at 4.

[1392] SASC Hearing (September 25, 2008).

> The [TF Legal Advisor] discussed the [TF Commander's] expectations versus the methods of exploitation and physical pressures he had heard were being used in the BIF – including those prior to his recent arrival (2-3 weeks on site). He also discussed the status of the detainees and the fact that the BIF's detainees were not identified to the ICRC. He discussed the assumption of risk being taken by the [SMU] command if BIF personnel engaged in 'beat down' tactics or while 'engaging in torture.'[1393]

[redacted] The TF Legal Advisor told the Committee that the SMU TF did not make status determinations for detainees, but that he advised in his briefing that the protections of Common Article 3 of the Geneva Conventions applied to those detainees under the control of the SMU TF.[1394]

8. *JPRA Training Manager and Contractor Participate in an Interrogation* (U)

(U) Lt Col Kleinman testified to the Committee that after he told his two JPRA colleagues that Col Moulton had "cleared hot" their use of SERE techniques in interrogations, his colleagues decided to "demonstrate the way you handle an interrogation."[1395]

[redacted] ([redacted] Around the time that Lt Col Kleinman met with the SMU TF Legal Advisor, Mr. Russell and Mr. Miller met separately with the SMU TF Director of Intelligence (J-2), COL Brian Keller, and his J-2X and participated in interrogations with J-2X staff.[1396] In one instance, Mr. Russell and Mr. Miller took the lead in the interrogation of a detainee.[1397] The interrogation began with the simulated release of the detainee – the detainee was permitted to clean up, leave the facility, and was escorted to a bus stop, when he was "captured" again.[1398] When the detainee was brought back to the SMU TF facility, Mr. Russell and Mr. Miller took physical control of the detainee and led him into a holding cell.[1399] Once in the holding cell, one or both of the men forcibly stripped the detainee naked.[1400] [redacted]"[1401] He told the Committee: "we [had] done this 100 times, 1000 times with our [SERE school] students."[1402]

[1393] Russell Trip Report at 3.

[1394] Committee staff interview of SMU TF Legal Advisor 2 (March 12, 2008).

[1395] SASC Hearing (September 25, 2008).

[1396] Russell Trip Report at 2-3.

[1397] Kleinman Trip Report at 3.

[1398] Testimony of Terrence Russell (August 3, 2007) at 114-15.

[1399] Ibid. at 115.

[1400] SASC Hearing (September 25, 2008). Mr. Russell testified that both he and Mr. Miller removed the detainee's clothing, but Mr. Miller told the Committee that only Mr. Russell removed the detainee's clothing. Testimony of Terrence Russell (August 3, 2007) at 116; Committee staff interview of Lenny Miller (July 24, 2007).

[1401] Testimony of Terrence Russell (August 3, 2007) at 117.

[1402] Ibid.

(U) Lt Col Kleinman also described that interrogation in testimony to the Senate Armed Services Committee. He said the detainee was driven away from the Task Force's interrogation facility to make him think he was being released and then brought back to a "bunker that was about a story ... into the ground – cement, cold, dark."[1403] He said:

> [The detainee] was literally carried by two of the guards into the bunker struggling against them. He was taken down there. My two JPRA colleagues took over from that point... [T]hey ripped his Abaya off – not cut – they ripped it off... ripped off his underwear, took his shoes, they'd hooded him already, then they – they had shackled him by the wrist and ankles – being screamed at the entire time in his ear in English about essentially... what a poor specimen of human that he was... And then the orders were given that he was to stand in that position for 12 hours no matter how much he asked for help, no matter how much he pleaded, unless he passed out, the guards were not to respond to any requests for help.[1404]

(U) Lt Col Kleinman said that he told his colleagues that what they did was "unlawful" and he stopped the interrogation.[1405]

Mr. Russell testified to the Committee that the detainee was naked only for "however long it took to have his clothes taken off and put the new dish-dash on again."[1406]

In his trip report, Lt Col Kleinman reported that he told the two other JPRA team members that he disagreed with their approach.[1407] Mr. Russell stated that the exploitation scenario was conducted after coordination with the J-2X staff and that the techniques, including isolation and sleep deprivation, were "employed in accordance with existing TF guidance and policy."[1408] While Col Kleinman testified that he intervened to stop the interrogation, Mr. Russell said that Lt Col Kleinman never raised an objection to the interrogation.[1409]

9. JPRA Team Chief Objects to SMU TF Interrogation (U)

(U) Lt Col Kleinman testified to the Committee that he intervened to stop another interrogation being conducted by SMU TF personnel.[1410] Lt Col Kleinman said that "a plan was laid out on butcher paper for another detainee that involved extensive stress positions, followed by interrogation, followed by short periods of sleep."[1411] Lt Col Kleinman photographed the

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[1403] SASC Hearing (September 25, 2008).

[1404] Ibid.

[1405] Ibid.

[1406] Testimony of Terrence Russell (August 3, 2007) at 116-19.

[1407] Kleinman Trip Report at 3.

[1408] Ibid. at 3-4.

[1409] SASC hearing (September 25, 2008); Testimony of Terrence Russell (August 3, 2007) at 119.

[1410] SASC hearing (September 25, 2008).

[1411] Ibid.

plan which had been posted in plain view and described a schedule for keeping the detainee awake and placing him in stress positions.[1412] The plan listed the following schedule:

*1830 -2130	Awake
*2130-2230	Sleep
*2230-2300	On Knees
*2300-2330	Sitting Down
*2330-0030	Sit Up
*0030-0100	Sit Down
*0100-0130/0200	On Knees
*0200 – 0300	Sleep[1413]

(U) Another photograph showed the same detainee in his cell and hooded. His hands appear handcuffed behind his back.[1414] Lt Col Kleinman said that his photograph did not reflect the fact that the detainee also had his ankles shackled.[1415]

[redacted] ([redacted] Mr. Russell's trip report appears to confirm Lt Col Kleinman's account. It stated that Lt Col Kleinman intervened in an SMU TF "interrogator's plan for imposing a regime of sleep deprivation and physical pressures."[1416] According to Mr. Russell, the proposed interrogation regimen "included an 18-hour plan to impose sleep deprivation and physical activities [redacted]" as well as "the use of two separate 30-minute kneeling sessions separated by 3 hours of standing or resting."[1417] According to Mr. Russell, Lt Col Kleinman reportedly objected to the use of "kneeling."[1418] Mr. Russell said that he and Mr. Miller felt that "the regime proposal was appropriate and well within [the SMU TF] current [Rules of Engagement] for detainee handling."[1419]

[1412] Committee staff interview of Lt Col Steven Kleinman (February 14, 2007); Committee staff interview of Lt Col Steven Kleinman (March 14, 2008). Lt Col Kleinman told the Committee that the TF Commander gave him permission to take photographs.

[1413] Untitled Photograph taken by Lt Col Steven Kleinman, (September 2003).

[1414] Ibid.

[1415] Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

[1416] In his trip report, Terrence Russell wrote that he had learned about Lt Col Kleinman's intervention from the J2-X. Russell Trip Report at 3.

[1417] Ibid.

[1418] Ibid. at 4.

[1419] Ibid.

10. JPRA Develops a Concept of Operations (CONOP) (U)

[redacted] While the team was in Iraq, [redacted] requested that JPRA develop a formal Concept of Operations (CONOP) for detainee exploitation.[1420] Col Moulton tasked members of the team with developing the CONOP.[1421] Mr. Russell's trip report stated that he drafted the CONOP in Iraq and that Mr. Miller and Lt Col Kleinman reviewed it and offered suggestions.[1422] He later testified to the Committee that he drafted a "skeleton of a CONOP" with Mr. Miller and that Lt Col Kleinman was aware that they were working on it.[1423] Lt Col Kleinman said that he knew that his team members were working on a CONOP, but that he did not see sections of it.[1424]

(U) Lt Col Kleinman testified that he told Mr. Russell that he would not participate in drafting the CONOP because he "absolutely disagreed with that type of expansion of the use of SERE methods," and that his "contribution would be nothing but contrary."[1425]

[redacted] While the JPRA team was still in Iraq, the draft was shared with and edited by JPRA personnel in the U.S., including Christopher Wirts, JPRA's Operations Support Office Chief.[1426] The CONOP, called "Concept of Operations for HVT exploitation," provided JPRA's "recommendations and guidance to USG forces conducting exploitation operations.[1427]

[redacted] The September 2003 CONOP was similar to the April 2002 "Exploitation Draft Plan" that Dr. Bruce Jessen, JPRA's former senior SERE psychologist, had drafted shortly before JPRA's support to [redacted] the DoD General Counsel.[1428] As had the April 2002 exploitation draft plan, the CONOP described a JPRA-directed exploitation process and included recommendations for exploitation and captivity operations, such as "tailoring detainee punishment consequences to maximize cultural undesirability."[1429]

[redacted] The September 2003 CONOP also identified "critical operational exploitation principles," including:

[redacted]

[1420] [redacted] JPRA, *Executive Summary of JPRA Support* [redacted] (undated)

[1421] [redacted] Ibid.; Russell Trip Report at 4.

[1422] Russell Trip Report at 4.

[1423] Testimony of Terrence Russell (August 3, 2007) at 120-121.

[1424] Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

[1425] SASC Hearing (September 25, 2008).

[1426] Russell Trip Report at 4.

[1427] *Concept of Operations For HVT Exploitation* (Undated), attachment to JPRA, *Executive Summary of JPRA Support* [redacted] (undated) (hereinafter "*Concept of Operations for HVT Exploitation* – Version 1").

[1428] [redacted] *Exploitation Draft Plan* (Undated); *Concept of Operations For HVT Exploitation* – Version 1

[1429] Similar recommendations had also been listed in the February 28, 2003 JPRA memorandum on "prisoner handling recommendations" that JPRA had provided to SOUTHCOM in February 2002.

[10] Controlling authority sets [Rules of Engagement] prior to initiating process within the Torture Convention [11] Established the latitude and process for the HVT team to offer concessions for validated information or cooperation of the HVT.

Those exploitation principles were similar to those that had been included in the exploitation draft plan nearly a year and a half earlier. In addition, the September 2003 JPRA CONOP listed specific interrogation techniques and incorporated portions of the March 6, 2003 DoD Interrogation Working Group draft report. JPRA personnel considered the Working Group report authoritative guidance on U.S. policy and law.[1431]

[1433] Mr. Wirts said that the DoD Working Group draft reflected material that the Working Group had gleaned from JPRA on SERE training and that it was, in turn, used to formulate the HVT exploitation CONOP.[1434] A copy of a CONOP that incorporated interrogation techniques from the Working Group draft was circulated while the team was still in Iraq, and was sent to CAPT Daniel Donovan, the JFCOM Staff Judge Advocate (SJA), on September 23, 2003.[1435]

[1430] *Concept of Operations For HVT Exploitation* – Version 1.

[1431] Ibid. (noting that "HVT exploitation operations will be conducted within the intent of U.S. policy and law, [in accordance with] U.S. interpretation as identified" in the March 6, 2003 Working Group report.)

[1432] *Concept of Operations For HVT Exploitation* – Version 1.

[1433] Ibid.

[1434] Committee staff interview of Christopher Wirts (January 4, 2008).

[1435] Following their trip, JPRA personnel also completed an "Executive Summary" of their support to the SMU TF that described the visit and summarized observations and recommendations provided to the SMU TF Commander. Executive Summary of JPRA Support (undated).

11. JPRA Team Leaves Iraq (U)

(U) According to the DoD Inspector General's August 2006 report, when it "became apparent that friction was developing" between the SMU TF and the JPRA team, "the decision was made to pull the team out [of Iraq] before more damage was done to the relationship between the two organizations."[1436] Lt Col Kleinman referred to the DoD IG report's statement that "friction was developing" as an understatement and said that he felt his life was being threatened at the SMU TF.[1437] He recalled one instance (after he stopped what he believed to be in violation of the Geneva Conventions) in which an SMU TF member told him, while sharpening a knife, to "sleep lightly," noting that they did not "coddl[e] terrorists" at the SMU TF.[1438]

[redacted] The SMU TF Legal Advisor told the Committee that JPRA had no business at the SMU TF facility either assisting in or conducing interrogations and that he sought to have the team removed.[1439] The Legal Advisor said that he met with [redacted], the SMU TF Commander, and told him that SERE training was not meant for detainees and that JPRA's presence had the potential to lead to abuse. He also recalled telling the Commander that JPRA was not qualified or trained to perform interrogations. The Legal Advisor said that [redacted] did not act on his concerns.

[redacted] Mr. Russell wrote in his trip report that the SMU TF Operations Officer (J-3) also recommended to [redacted] that the JPRA team should leave the facility, noting that the J-3 "was particularly concerned over the [JPRA] CONOP having been sent [to JPRA headquarters] without his staff's security review."[1440] On September 22, 2003, the JPRA Commander directed Lt Col Kleinman and Mr. Miller to return to the U.S., but told Mr. Russell to remain in place for "the possible arrival of a follow-up team."[1441] On September 23, 2003, the team's original

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[1436] DoD IG Report at 28.

[1437] Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

[1438] Ibid.

[1439] Committee staff interview of SMU TF Legal Advisor 2 (March 12, 2008).

[1440] Russell Trip Report at 4.

[1441] Ibid. [redacted] The initial decision to keep Mr. Russell in theater may be relevant to discussions Col Moulton was having with CENTCOM about the possibility of sending another three-man team to Iraq. Shortly after the original team left for Iraq, Col Moulton began discussions about sending a JPRA team to assist CENTCOM. On September 3, 2003, Col Moulton contacted the JPRA representative at CENTCOM and explained the genesis of their SMU TF mission and how he thought such support might be expanded to other missions and organizations throughout the CENTCOM AOR. Col Moulton wrote:

> I've been in contact with [redacted] in Baghdad. He was the one who requested the [JPRA team] to assist in interrogation training. He also mentioned that there are several entities doing interrogations, and there is no standardization/methodology on how to conduct / coordinate the process. He asked me to bring a team over to observe what they are doing and what others are doing. I think it would be a good idea to bring a team over to observe what they are doing and what others are doing. I think it would be a good idea to bring a team forward (3 person – myself, Chris Wirts, Terry Russell) to visit the various interrogation facilities and report back to JCS (through CENTCOM and the JFCOM/LL folks) with observations and potential recommendations.

scheduled departure date, JPRA informed the team that all three team members should leave Iraq.[1442]

12. *U.S. Joint Forces Command (JFCOM) Reviews JPRA Concept Of Operations (CONOP)* (U)

(U) The same day the JPRA team returned home from Iraq, a copy of the JPRA HVT exploitation CONOP was sent to CAPT Donovan, the JFCOM SJA.[1443] CAPT Donovan commented on the CONOP in a September 26, 2003 email to Col Moulton, JPRA Deputy Commander John Atkins, OSO Chief Christopher Wirts and others, and circulated a version of the CONOP with his edits and comments.

(U) In his email, CAPT Donovan stated that JPRA should not rely on the March 6, 2003 Working Group report as "authoritative DoD guidance." He wrote that, although the Secretary had approved certain counter-resistance techniques during interrogations of unlawful combatants at GTMO, not all of the techniques listed in the Working Group report had been approved for use.[1444] CAPT Donovan also raised serious concerns about the legality of the interrogation techniques in the CONOP emphasizing that, unlike in Afghanistan and at GTMO, the Geneva Conventions applied in Iraq. He wrote:

> Unlike OEF-Afghanistan, in which the Taliban and Al-Qaida enemy 'forces' were all deemed to be UNLAWFUL combatants NOT legally entitled to the full protections of the Geneva conventions, Operation Iraqi Freedom (OIF) was executed as a CONVENTIONAL armed conflict in which the vast majority of enemy forces were LAWFUL combatants. Therefore, almost all captured personnel within Iraq are legally entitled to either prisoner of war (POW) or civilian internee (CI) status which means they get the full protections of the Geneva Conventions. Many of the counter-resistance techniques approved by SECDEF for use on UNLAWFUL combatants detained at GTMO would not/not be legal under the Geneva Conventions if applied to POWs or CIs in Iraq.[1445]

[redacted] In editing the CONOP, CAPT Donovan not only struck references to several interrogation techniques that had been included in the March 6, 2003 draft Working Group

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[redacted] Col Moulton also stated that he had pitched the idea to JFCOM:

> Having said that, I think the request needs to come from CENTCOM, not just [redacted] I can support, and have already presented the concept to JFCOM. We just need the invite. Long-term is to identify the need for an OSD OPR [Office of Primary Responsibility] for strategic debriefing/interrogation. To put it into football terms, we (JPRA) are the quarterback for defensive resistance operations – there is no quarterback for offensive resistance operations. Where that responsibility would ultimately fall (JPRA [redacted] is not the issue, but rather that someone has to take the lead.

Email from Col Moulton to JPRA CENTCOM LNO (September 3, 2003).

[1442] Russell Trip Report at 6; *see also* email from Mike Lampe to David Ayres (August 28, 2003).

[1443] Email from CAPT Donovan to Col Moulton, Col Atkins, Mr. Wirts, and Mr. Jagielski (September 26, 2003).

[1444] Ibid.

[1445] Ibid.

report, but also noted that even those techniques approved by the Secretary of Defense for use at GTMO might not be lawful for use on detainees in Iraq.[1446]

[redacted] CAPT Donovan also substantially revised JPRA's "critical operational exploitation principles" by, for example, adding that detainee treatment must be "in accordance with the approved [Rules of Engagement]" and clarifying that Rules of Engagement must be within U.S. law and policy including – but not simply limited to – the Torture Convention.[1447] CAPT Donovan struck JPRA's reference to "constant sensory deprivation" completely, noting that the technique was neither approved by the March 6, 2003 Working Group report nor by the Secretary of Defense in his April 16, 2003 guidance for SOUTHCOM.[1448]

[redacted] Days later, CAPT Donovan raised his concerns about the CONOP to LTG Wagner, JFCOM's Deputy Commander, and Maj Gen James Soligan, JFCOM's Chief of Staff, in anticipation of a scheduled visit by the two to JPRA.[1449] CAPT Donovan stated that while it made "a certain amount of sense to seek JPRA's advice regarding interrogation techniques that [had] been successfully used against us by our enemies," he was concerned that the SMU TF "may have gone a bit further by asking JPRA to develop a CONOP for "more effective" interrogations [by the SMU] of HVTs captured in Iraq."[1450] He expressed particular concerns with the "interrogation techniques" included in the CONOP:

> A number of the 'interrogation techniques' suggested by JPRA in their draft CONOP are highly aggressive (such as the 'water board') and it probably goes without saying that if JPRA is to include such techniques in a CONOP they prepare for an operational unit in another [Area of Responsibility], they need to be damn sure they're appropriate in both a legal and a policy sense.[1451]

13. JFCOM Verifies Team Chief's Account of Events in Iraq (U)

(U) In May 2004, the Department of Defense (DoD) Inspector General (IG) initiated a review of DoD directed reports of detainee abuse.[1452] As part of that review, the DoD IG looked into JPRA's "offensive" interrogation support. In response to questions from the DoD IG, CAPT Alan Kaufman, the JFCOM SJA, initiated an inquiry into JPRA's September 2003 support to the SMU TF in Iraq. According to CAPT Kaufman, the scope of the JFCOM inquiry was narrow, focusing only on whether or not the incidents described in Lt Col Kleinman's trip report had

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[1446] The techniques that CAPT Donovan struck included [redacted] *Concept of Operations For HVT Exploitation* at 6 (hereinafter "*Concept of Operations For HVT Exploitation* –Version 2").

[1447] *Concept of Operations For HVT Exploitation* –Version 2 at 2.

[1448] Ibid.

[1449] Email from CAPT Dan Donovan to LTG Wagner, Maj Gen Soligan (September 29, 2003).

[1450] Ibid.

[1451] Ibid.

[1452] DoD IG Report.

been reported up the chain of command to JFCOM.[1453] On September 23, 2005, after JFCOM concluded its inquiry, JFCOM's Deputy Commander LTG Wagner sent a memo to the DoD IG stating:

> This command looked into the information flow between the requesting unit, Joint Personnel Recovery Agency, (JPRA) and the chain of command at USJFCOM with regard to JPRA's participation in the two subject missions to assist in the global war on terror. While most requests and decisions were verbal, I concluded that information did flow up the chain of command to the appropriate authority.
>
> Action was taken based on JPRA Commanding Officer's (CO) judgment and input from the chain of command . . . [1454]

(U) The memo continued:

> The actions Lt Col Kleinman witnessed did occur. However, all others involved, including the JPRA [Commanding Officer] and the [Commanding Officer] of the task force believed them to be authorized actions under the existing decisions by DoD General Counsel. The [Commanding Officer] conveyed this to Lt Col Kleinman both during and after the deployment. Lt Col Kleinman did not seek any other response or relief, nor take any issue up his chain of command.[1455]

D. Major General Geoffrey Miller Leads GTMO Assessment Team to Iraq (U)

1. CJTF-7 Commander Identifies Deficiencies (U)

(U) During the summer of 2003 Combined Joint Task Force 7 (CJTF-7) assumed control of coalition forces in Iraq from its predecessor, the Combined Forces Land Component Command (CFLCC). The Commander of CJTF-7, LTG Sanchez, said that when he took over from CFLCC he identified deficiencies with existing intelligence operations.[1456] LTG Sanchez said that he participated in regular video teleconferences and phone calls with CENTCOM and the Office of the Secretary of Defense (OSD) during which he shared his concerns about his command's intelligence capabilities and asked for assistance. LTG Sanchez stated:

> I was very concerned about our ability to really push the envelope to the limits of our authority in interrogations. I went back to Washington and said "You've got to send us some help because this is a problem that is way beyond anything we could imagine and it's a problem that hasn't been faced by our Army."[1457]

[1453] Committee staff interview of CAPT Alan Kaufman (September 17, 2007).

[1454] The "two" missions refer to the September 2003 trip to Iraq and the September 2002 JPRA training at Fort Bragg. Memo from LTG Robert Wagner, *Follow up response to June 2003 USJFCOM IG Meeting on DoD IG Inquiry to USJFCOM of 27 May 2005* (September 23, 2005)

[1455] Ibid.

[1456] Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[1457] Army IG, Interview of LTG Ricardo Sanchez (November 23, 2004) at 3.

(U) Even before the CJTF-7 Commander sought assistance, however, discussions had apparently taken place about whether to send MG Geoffrey Miller, the GTMO Commander, to Iraq to assess operations there. In May 2003, before CJTF-7 took command in Iraq from CFLCC, LTG Ronald Burgess, the Director for Intelligence (J-2) at the Joint Staff told MG Miller that a request would be forthcoming for him to lead an assessment trip to Iraq.[1458] According to an investigation conducted by MG George Fay and LTG Anthony Jones, the Joint Staff later requested that SOUTHCOM send a team to assist CENTCOM and the Iraq Survey Group "with advice on facilities and operations specific to screening, interrogations, HUMINT collection, and interagency integration in the short and long term."[1459]

(U) The Under Secretary of Defense for Intelligence (USDI) Stephen Cambone said that MG Miller was asked to go to Iraq "at my encouragement, to take a look at the situation as it existed there."[1460] LTG William Boykin, the Deputy Under Secretary of Defense for Intelligence and Warfighter Support said that the decision to send MG Miller to Iraq was made in a meeting that included USDI Cambone and the Secretary of Defense.[1461]

2. *GTMO Assessment Team Travels to Iraq* (U)

From August 31 to September 10, 2003, MG Miller led a team to assess intelligence operations in Iraq.[1462] The JTF-GTMO Commander was accompanied by several JTF-GTMO and former JTF-GTMO staff, including LTC Diane Beaver, the former SJA, and David Becker, the former Interrogation Control Element (ICE) Chief. Additionally, MG Miller brought representatives from the CIA and the DoD Criminal Investigative Task Force (CITF). MG Miller said that the purpose of his trip was to "make an assessment for the chain of command," about the ability of U.S. forces in Iraq to conduct "strategic interrogation and intelligence development and detention operations in theater."[1463]

(U) The day after arriving in Iraq, MG Miller met with LTG Sanchez and described the purpose of the assistance visit.[1464] MG Miller said that his team was aware that the Geneva Conventions applied in Iraq and told LTG Sanchez that he would have to decide what recommendations were applicable to his command. MG Miller also met with MG Barbara Fast, the CJTF-7 Director of Intelligence, and gave her the same briefing.

[1458] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 65; AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade (August 24, 2004) at 57 (hereinafter "*Fay Report*").

[1459] *Fay Report* at 57.

[1460] Allegations of Mistreatment of Iraqi Prisoners, Senate Committee on Armed Services, 108th Congress, S. Hrg. 108-868 (May 7, 2004, May 11, 2004) at 41, 98.

[1461] Army IG, Interview of LTG William Boykin (November 17, 2005) at 3.

[1462] MG Geoffrey Miller, *Assessment of DoD Counterterrorism Interrogation and Detention Operations in Iraq (U)* (undated) at 2 (hereinafter "Miller Report.")

[1463] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 65.

[1464] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

3. *GTMO Team Visits Iraq Survey Group (ISG)* (U)

(U) Following an initial visit to the Corps Holding Area at Camp Cropper, MG Miller's assessment team visited the Iraq Survey Group (ISG) facilities.[1465] The ISG was established in June 2003 with the mission to find weapons of mass destruction (WMD) or evidence of weapons of mass destruction and to provide support to the CIA special advisor.[1466] As part of its effort to gather intelligence on WMD, the ISG interrogated and debriefed high value detainees, such as former members of Saddam Hussein's regime.[1467] When MG Miller's team arrived at the facility, they received a briefing from ISG personnel, toured the facilities, and observed ongoing operations.[1468]

(U) Chief Warrant Officer Brian Searcy, who was Chief of Interrogation at the ISG accompanied MG Miller and his team on the tour. CWO Searcy told the Committee that during the tour, MG Miller remarked that the ISG was "running a country club" and suggested that they were too lenient with detainees.[1469] He said that MG Miller recommended the ISG shackle detainees and make them walk on gravel rather than on concrete pathways to show the detainees who was in control. CWO Searcy also recalled that the JTF-GTMO Commander suggested that the ISG "GTMO-ize" their facility.[1470]

[1465] Several members of the assessment team recalled the conditions at the Corps Holding Area. LTC Beaver described the facility as "grotesque" and recalled telling lawyers at CJTF-7 about "stagnant water, maggots, feces approximately 6 inches tall on the toilets and running down the sides of the toilets." She told the Committee that she saw senior non-commissioned officers who were oblivious to their surroundings and that she recalled one guard tell the visiting team "I don't give an [expletive] if [the Iraqi prisoners] die."

MG Miller said he was "dismayed and shocked at the operations" at Camp Cropper, referring to them as "inappropriate, unprofessional, and not humane." MG Miller also called it "shocking" that "the guards didn't even know the rules of engagement for use of deadly force." MG Miller said that he told LTG Sanchez: "you have a major problem at Camp Cropper and you need to take action now." According to MG Miller, LTG Sanchez asked him to share his assessment with the 800th MP BDE Commander BG Janis Karpinski and direct that "corrections be made in the next 48 hours." MG Miller said that, in a subsequent meeting with BG Karpinski, he met with "significant pushback." He recalled his reaction in that meeting. "[I] kind of cleared the room and told General Karpinski, I said these are the findings, if you don't agree with them, let's you and I go see General Sanchez because he has directed that you take action to have corrective action be taken and in place within 48-hours. And so she called the staff back in and started to go forward with it."

MG Miller told the Committee that BG Karpinski accepted the guidance, but not willingly. According to LTC Beaver, the Corps Holding Area at Camp Cropper was closed shortly after the team left Iraq. Sworn Statement of LTC Diane Beaver (December 10, 2004) at 1; Committee staff interview of LTC Diane Beaver (November 9, 2007); Army IG, Interview of MG Geoffrey Miller (June 28, 2005) at 68.

[1466] DoD IG, Interview of LTG Keith Dayton (May 25, 2005) at 10.

[1467] Ibid. at 52.

[1468] Committee staff interview of Brian Searcy (June 4, 2007).

[1469] Ibid.

[1470] Ibid.

(U) MG Miller did not recall referring to the ISG as a "country club" and said that, as far as he knew, he "never used the word GTMO-ize."[1471] However, he did recall telling ISG personnel that he was troubled that the ISG were treating detainees with too much respect, which was not, in his opinion, how prisoners ought to be treated.[1472]

(U) Mike Kamin, the ISG's Collection Manager said that LtCol Ken Rapuano, the ISG's Joint Interrogation and Debriefing Center (JIDC) Chief, was "energized" after meeting with MG Miller and said that the GTMO Commander had told him about techniques like temperature manipulation and sleep deprivation.[1473] According to Mr. Kamin, ISG JIDC personnel balked at the idea of implementing such techniques. [redacted], an ISG strategic debriefer said that he wrote a letter to his chain of command stating that he would resign if the techniques were implemented.[1474]

(U) LtCol Rapuano said that he met with MG Miller and members of his team in a meeting with MG Keith Dayton, the ISG Commander, and other members of ISG's leadership. LtCol Rapuano said that he did not recall a discussion of specific interrogation techniques but did recall "some discussion of procedures for air conditioning cells."[1475] LtCol Rapuano said did not recall any discussions of sleep deprivation as an interrogation technique.

(U) At the end of the visit, MG Miller met with MG Dayton and members of his staff. MG Dayton said that MG Miller told him that the ISG was "not getting much out of these people" and was "not getting the maximum."[1476] MG Dayton said he asked what was meant by that and was told "you haven't broken [the detainees]" psychologically.[1477] MG Dayton said that MG Miller told him that he would "get back to you with some ideas of how you can perhaps deal with these people where you can actually break them, some techniques you can use."[1478] The ISG Commander stated:

> I remember very clearly saying, "Geoff, slow down. We're not changing anything right now. You know, we think we're within the rules. If you want me to change something,

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[1471] Committee staff interview of MG Geoffrey Miller (December 6, 2007); Interview of MG Geoffrey Miller for Javal Davis trial (August 21, 2004). The former JTF-GTMO ICE Chief David Becker, who was present during the ISG visit did not recall the MG Miller using the term "GTMO-ize." Committee staff interview of David Becker (September 17, 2007).

[1472] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[1473] Committee staff interview of Mike Kamin (May 30, 2007).

[1474] Committee staff interview of [redacted] (May 23, 2007).

[1475] LtCol Rapuano said that "the issue discussed, without decision, was if it was appropriate that detainees were being provided cooler living conditions than most Coalition personnel had in their living quarters and work areas, and whether only the cooperative detainees should be rewarded with cooler cells." Kenneth Rapuano answers to September 3, 2008 written questions from Senator Carl Levin (September 16, 2008).

[1476] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 33.

[1477] Ibid.

[1478] Ibid.

you give me something in writing that you think needs to be changed. I'll have my lawyers look at it.[1479]

(U) Although MG Miller recalled saying that he was troubled that detainees at the ISG were being treated with too much respect, he did not recall using the term "break."[1480] As to techniques to get more information from detainees, MG Miller said he only recalled discussing the possibility of ISG interrogating detainees more frequently. According to MG Dayton, MG Miller never followed up with him after the trip.[1481]

4. *GTMO Team Visits Special Mission Unit Task Force* (U)

[redacted] Following the visit to the ISG, MG Miller, John Antonitis, the former Director of the Joint Interrogation Group at JTF-GTMO, and the Superintendent of Camp Delta at JTF-GTMO, visited the Special Mission Unit (SMU) Task Force (TF) facility. [redacted] the SMU TF Commander, said he had contacted MG Miller at JTF-GTMO to request assistance with his detention and interrogation operations.[1482] MG Miller, however, said that [redacted] did not request the visit and that visiting the SMU TF was not even on his initial itinerary.[1483] In fact, MG Miller described [redacted] as not "open" to a visit and said that when his staff called the SMU TF to schedule the visit, they initially said "no" to the visit.

[redacted] MG Miller said that he and two other members of his team met with [redacted] and a few of his operators for about 45 minutes to an hour at the SMU TF facility.[1484] The JTF-GTMO Commander did not see an SOP for SMU TF interrogations and recalled that the SMU TF Commander told him the SMU TF was using operators as interrogators. MG Miller said that he told [redacted] that he needed to establish interrogation authorities and obtain qualified interrogators. For several months prior to his meeting with MG Miller, SMU TF Legal Advisors had tried, without success, to get [redacted] to sign an interrogation policy for the facility under his command.[1485]

[redacted] While she did not accompany the JTF-GTMO Commander on his visit to the SMU TF, LTC Beaver, the former JTF-GTMO SJA, said that a Legal Advisor for the SMU TF contacted her and arranged to meet with her at Camp Victory.[1486] According to LTC Beaver, the SMU TF Legal Advisor raised concerns with her about physical violence being used by SMU TF personnel during interrogations, including punching, choking, and beating detainees.[1487] He told

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[1479] Ibid. at 34.

[1480] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[1481] DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 34; Committee staff interview of LTG Keith Dayton (June 1, 2007).

[1482] Committee staff interview of [redacted] (October 10, 2007).

[1483] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[1484] Ibid.

[1485] See Section XII A, *supra*.

[1486] Sworn Statement of LTC Diane Beaver (December 10, 2004) at 1.

[1487] Committee staff interview of LTC Diane Beaver (November 9, 2007).

her that he was "risking his life" by talking to her about these issues.[1488] LTC Beaver told the Committee that the SMU Legal Advisor said he had also raised these issues with the Commander of the SMU TF, but that was not receptive to his concerns.

LTC Beaver told the Committee that she informed both COL Marc Warren (the CJTF-7 SJA) and MG Miller about her conversation with the SMU TF Legal Advisor.[1489] When he met with the Committee, MG Miller did not recall LTC Beaver bringing those concerns to his attention.[1490] A slide presentation summarizing the GTMO assessment team's visit to Iraq, however, stated that there were "concerns about [SMU TF] interrogation practices such as physical contact and choking."[1491] The same presentation noted that other governmental agencies "won't interrogate at [the SMU TF] facility because of current treatment concerns."[1492]

5. *GTMO Team Discusses Interrogations with CJTF-7* (U)

(U) During their assessment visit, the JTF-GTMO Commander's team held several meetings with CJTF-7 interrogation personnel at Abu Ghraib and Camp Victory. According to COL Thomas Pappas, the 205th MI BDE Commander, conversations with MG Miller focused on the range of intelligence capabilities that would enable effective interrogations.[1493] COL Pappas stated that the "tenor of the discussions was that we had to get tougher with the detainees."[1494]

(U) CPT Wood, the Interrogation Officer in Charge (OIC) at Abu Ghraib said her conversations with the JTF-GTMO Commander "centered on renovations and improvements of facilities, challenges of interrogation operations, and the need for increased [Military Police/Military Intelligence] cooperation."[1495] CPT Wood believed that MG Miller and his team wanted to build a "miniature Guantanamo Bay."[1496] In her view, however, the GTMO concept was not applicable to Abu Ghraib. She stated:

> ... Abu Ghraib wasn't GTMO. The prison was an austere environment; it was not conducive to interrogation operations like GMTO. That was actually built and designed to facilitate interrogation operations. We didn't have the MP force that was necessary for such a high population and we were frequent targets of small arms and mortar attacks. We worked in a hundred and thirty degree weather

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[1488] Ibid.

[1489] Ibid.

[1490] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[1491] Slide presentation, *The GTMO Commander – Team Visit to Iraq* (undated).

[1492] Ibid.

[1493] COL Pappas stated that the discussions were broad but focused on the understanding that "interrogation is what drives the train," as well as developing a "singular unified purpose that was to extract information" from detainees. Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 10, 12, 15.

[1494] Ibid. at 10.

[1495] Sworn Statement of CPT Carolyn Wood (May 21, 2004) at 2.

[1496] Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 12.

> without air conditioning and we went through the winter without heat. Most of the detainees were not of intelligence value.[1497]

(U) MG Miller said that he spent parts of three days at Abu Ghraib with COL Pappas and CPT Wood discussing how to improve operations.[1498] LTG Sanchez recalled that the team "recommended the creation of a command policy" on interrogations and the team provided CJTF-7 with electronic copies of SOPs and a copy of a Joint Staff policy memorandum entitled "Interrogation Techniques in the War on Terrorism."[1499] According to MG Miller, members of his assessment team also discussed interrogation authorities and techniques during their meetings with CJTF-7 personnel.[1500]

(U) CPT Wood said that members of the GTMO assessment team had, in their possession, copies of the proposed interrogation policy she had copied from the SMU Task Force's interrogation policy and submitted to her chain of command prior to the assessment team's visit.[1501] That proposed policy included presence of military working dogs, stress positions, sleep management, 20-hour interrogations, isolation, and yelling, loud music, and light control.[1502] CPT Wood said that a member of the GTMO assessment team referred to her proposal as a "good start," but told her that CJTF-7 "should consider something along the lines of what's approved for use in [GTMO]."[1503] LTC Beaver recalled reviewing CPT Wood's proposed SOP. LTC Beaver said that she was concerned about the SOP because she knew that, "in a Geneva setting, it was potentially a problem," that she brought it to the attention of COL Marc Warren, the CJTF-7 SJA and recommended that he review it.[1504]

(U) David Becker, the former JTF-GTMO ICE Chief, recalled discussing stress positions, dogs, and nudity with COL Pappas during the visit. Mr. Becker said:

> [W]hat I told Pappas was, look I understand they're doing all kinds of different approaches out there. And I talked about the memo that was approved for Guantanamo at one point. I said look, when you use stress positions; when you use dogs; when you use – I mean when you use stress positions, dogs, nakedness . . . the concept of the conversation was as you develop these techniques, talk to the interrogators. Figure out what they want to use and put it in writing. And you have to establish left and right lanes in the road for the conduct of interrogations. And you've got to do it in writing. And then you've got to build the interrogation

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[1497] Army IG, Interview of CPT Carolyn Wood (August 15, 2006) at 45.

[1498] Army IG, Statement of MG Geoffrey Miller (June 19, 2004) at 2.

[1499] Statement of LTG Ricardo Sanchez (October 2004) at 7.

[1500] Army IG, Statement of MG Geoffrey Miller (June 19, 2004) at 2.

[1501] Sworn Statement of CPT Carolyn Wood (May 21, 2004) at 6; *see* Section XII B, *supra*.

[1502] Alpha Company, 519th MI BN SFIF Interrogation TTPS (August 27, 2003).

[1503] Sworn Statement of CPT Carolyn Wood (May 21, 2004) at 6.

[1504] SASC Hearing (June 17, 2008); Committee staff interview of LTC Beaver (October 11, 2007).

> plan and you've got the interrogators to stick to it. And that's what I said. And the "use of dogs" came up in that conversation.[1505]

(U) COL Pappas recalled discussions with the GTMO assessment team about dogs being "effective in doing interrogations with Arabs" and talk of "Arabs being fearful of dogs."[1506] COL Pappas said that while no one from MG Miller's team said "okay, use the dogs while you're doing an interrogation" there was discussion "about 'setting conditions for interrogations.'"[1507] COL Pappas later authorized the use of dogs in interrogations at Abu Ghraib.[1508]

(U) COL Pappas also recalled discussing dogs with MG Miller during the visit. In a February 2004 interview, COL Pappas said that the use of dogs had been "a technique that [he] had discussed with Miller" during the JTF-GTMO assistance visit to Iraq.[1509] COL Pappas stated that MG Miller "said that they used military working dogs, and that they were effective in setting the atmosphere for which . . . you could get information."[1510] In a later interview, COL Pappas again described his discussions with MG Miller:

> There was never any discussion [with the JTF-GTMO Commander] of the execution of how the dogs would be used. Now he did say that dogs were an effective technique to use with the detainees. He did say we want to make sure we control the detainee at all times. The I-bolts in the floor came from MG Miller's team ... He did meet with some of the interrogators and told them to be more aggressive, but he never told them how. His overtone was to be more aggressive, but I never heard him say take dogs into the booths or anything like that.[1511]

(U) MAJ David DiNenna, the Operations Officer (S-3) of the 320th MP BN also recalled a discussion with MG Miller about dogs. According to MAJ DiNenna, during a meeting at Abu Ghraib, MG Miller asked him whether or not they had military working dogs.[1512] MAJ DiNenna

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[1505] Army IG, Interview of David Becker (September 22, 2005) at 25.

[1506] Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 10. In a 2007 interview with Committee staff, COL Pappas recalled having discussions with former JTF-GTMO ICE Chief David Becker, but did not recall if the use of dogs came up in those discussions. Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1507] Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 10.

[1508] Memorandum from COL Thomas Pappas to LTG Ricardo Sanchez, *Exception to CJTF-7 Interrogation and Counter Resistance Policy* (December 14, 2003).

[1509] Army 15-6 Investigation, Interview of COL Thomas Pappas (February 12, 2004) at 28.

[1510] Ibid. at 29.

[1511] Sworn Statement of COL Thomas Pappas (January 25, 2006) at 14.

[1512] MAJ David DiNenna, answers to February 13, 2006 written questions (undated). MAJ DiNenna wrote that he had "requested dogs in June 2003 when I first arrived at Abu Ghraib. We had 2 MWD [Military Working Dog] teams at Camp Bucca prior to that and they proved to be a tremendous force multiplier. I requested MWD from that point until they arrived in November 2003."

told MG Miller that they did not, but that he had "requested them when [he] first arrived at Abu [Ghraib], and since that time, had made numerous requests."[1513] MAJ DiNenna said:

> MG Miller then looked at COL Pappas and stated that dogs have been extremely useful at GITMO. He stated, "These people are scared to death of dogs, and the dogs have a tremendous affect."[1514]

(U) MAJ DiNenna said that he was "concerned that [MG Miller] was implying MI would receive the dogs at Abu [Ghraib], yet I desperately needed them as a force multiplier for the facilities."[1515]

(U) MG Miller maintained that he and COL Pappas "never discussed using dogs in interrogations."[1516] He stated that his discussions about dogs with COL Pappas were "in the context of security operations and force protection."[1517] MG Miller said, however, that he did not discuss the use of dogs at all with BG Janis Karpinski, the Commander of the 800th MP BDE or anyone else in her unit, which was responsible for security operations and force protection at the prison.[1518]

6. *GTMO Commander Recommends CJTF-7 Develop an Interrogation Policy* (U)

(U) During his assessment visit, the JTF-GTMO Commander provided an "interim update" to LTG Sanchez and recommended that CJTF-7 "establish interrogation authorities so the interrogators understand what their limits are."[1519] MG Miller stated that he also directed LTC Beaver to "let [CJTF-7] see what we use at Guantanamo as a template," referring to the Secretary of Defense's April 16, 2003 guidance for SOUTHCOM.[1520] MG Miller stated that, with respect to GTMO's guidance from the Secretary, he told LTG Sanchez:

> [T]he first caveat was that the Geneva Convention applied here. You must use only Geneva Convention authorities. You may not use anything other unless you get approval from SecDef to go about doing that. And so if you're going to ask for any of those, you got to go through the CENTCOM Commander and up to JCS and OSD to get approval from there.[1521]

[1513] Ibid.

[1514] Ibid.

[1515] Ibid. at 21.

[1516] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 71.

[1517] Ibid.

[1518] Ibid. at 73.

[1519] Ibid. at 69.

[1520] Ibid.

[1521] Ibid.

(U) LTG Sanchez said that he instructed his SJA to develop an interrogation policy, the "key purpose" of which was to "unequivocally establish as policy adherence to the Geneva Convention and to regulate approach techniques that we believed were derived from multiple sources" including the Army Field Manual, and techniques used in Guantanamo Bay and Afghanistan.[1522]

(U) LTC Beaver said that she left the April 16, 2003 memo from Secretary Rumsfeld with the CJTF-7 legal staff. She also said that she told COL Marc Warren, the CJTF-7 SJA, and other lawyers on the CJTF-7 staff that while the policy had worked at Guantanamo, that CJTF-7 "would need to evaluate what was permissible in Iraq and what the command thought would work in this environment."[1523]

(U) According to COL Pappas, CJTF-7 began drafting an interrogation policy while MG Miller and his assessment team were still in Iraq.[1524] He said that LTC Beaver, and several CJTF-7 lawyers worked on a memo at Camp Victory. MG Miller said that, while he did not know who actually drafted the memo, LTC Beaver told him that she worked on the issue with COL Warren and his staff.[1525] LTC Beaver did not recall working on an interrogation policy during the assessment visit.[1526]

7. *JTF-GTMO Assessment Team Produces Trip Report* (U)

At the conclusion of the assessment trip, MG Miller produced a trip report that described the team's findings.[1527] The trip report echoed what the JTF-GTMO Commander had told LTG Sanchez and MG Fast with regard to interrogation guidelines. The report stated "the team observed that the Task Force [CJTF-7] did not have authorities and procedures in place to affect a unified strategy to detain, interrogate, and report information from detainees/internees in Iraq."[1528] While the report did not discuss specific interrogation approaches or techniques, it did recommend ways in which the CJTF could improve the interrogation process:

> Interrogations are [being] conducted without a clear strategy for implementing a long-term approach strategy and clearly defined interrogation policies and authorities. To achieve rapid exploitation of internees it is necessary to integrate detention operations, interrogation operations, and collection management under one command authority.[1529]

[1522] Statement of LTG Ricardo Sanchez (October 2004) at 7.

[1523] Sworn Statement of LTC Diane Beaver (December 10, 2004) at 5.

[1524] Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1525] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[1526] Committee staff interview of LTC Diane Beaver (November 9, 2007).

[1527] Miller Report

[1528] Ibid. at 2.

[1529] Ibid. at 4.

(U) Subsequent to the assessment trip, six GTMO personnel – three interrogators and three analysts – were sent to Abu Ghraib to assist in implementing the GTMO recommendations and in establishing a Joint Intelligence and Debriefing Center.[1530]

8. *MG Miller Briefs Senior DoD Officials on Assessment Visit* (U)

(U) MG Miller presented his trip report to SOUTHCOM and was subsequently told that it was forwarded to the Joint Staff and OSD.[1531] He was subsequently directed to brief senior Department of Defense officials on his assessment visit and the report. MG Miller told the Army Inspector General (IG) that the briefing took place in October and was attended by Deputy Secretary of Defense Paul Wolfowitz, Under Secretary of Defense for Intelligence Steven Cambone, as well as senior military officers including LTG Ronald Burgess, the Director for Intelligence at the Joint Staff. According to MG Miller, his briefing covered "the ability of the CJTF-7 to be able to execute the strategic interrogation mission to develop intelligence, actual intelligence and an assessment of CJTF-7's ability to detain civilian detainees in accordance with the Geneva Convention and AR190-8."[1532] Following the briefing, the GTMO Commander met privately with Deputy Secretary Wolfowitz and Under Secretary Cambone.[1533]

(U) While MG Miller said that Under Secretary Cambone attended the briefing, Under Secretary Cambone testified on May 11, 2004 before the Senate Armed Services Committee that he was, in fact "not briefed" by the GTMO Commander on the trip report.[1534] In his written answer to a question for the record following his testimony, Under Secretary Cambone stated that, in fact, he "was never officially briefed on MG Miller's report."[1535] Just over a week after Under Secretary Cambone's testimony, MG Miller testified before the Committee that he had "no direct discussions" with Under Secretary Cambone following his visit to Iraq.[1536]

(U) In August 2004, however, MG Miller told Army Investigators that, following his return from Iraq he "gave an outbrief to both Dr. Wolfowitz and Secretary Cambone."[1537] The GTMO Commander went on to state "the meeting that I had with Secretary Cambone had occurred after I returned... The discussion generally was about how we could improve the flow of intelligence from Iraq through and in interrogations."[1538]

[1530] *Fay Report* at 59.

[1531] Army IG, Interview of MG Geoffrey Miller (June 28, 2005) at 5, 8.

[1532] Ibid. at 4.

[1533] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 82.

[1534] Allegations of Mistreatment of Iraqi Prisoners, Senate Committee on Armed Services, 108th Congress, S. Hrg. 108-868 (May 11, 2004) at 339.

[1535] Ibid. at 371.

[1536] Allegations of Mistreatment of Iraqi Prisoners, Senate Committee on Armed Services, 108th Congress, S. Hrg. 108-868 (May 19, 2004) at 594.

[1537] Interview of MG Geoffrey Miller for Javal Davis trial (August 21, 2004) at 3.

[1538] Ibid.

(U) More than a year later, in October 2005, the Army IG asked MG Miller about his testimony to the Committee that he had not had "direct discussions" with Under Secretary Cambone. Despite previously describing a "discussion" with Under Secretary Cambone, MG Miller told the IG that when asked at [the Senate Armed Services Committee] about discussions with Under Secretary Cambone after his trip, "I said no because I didn't have discussions with Cambone."[1539] MG Miller also told the Army IG that he didn't even know that the person attending the meeting was Dr. Cambone until Deputy Secretary Wolfowitz used his name."[1540] The Army IG also asked MG Miller about the smaller meeting that he attended with Deputy Secretary Wolfowitz and Under Secretary Cambone immediately following his briefing. MG Miller said that the reason for the smaller meeting was so that he could give the "unvarnished truth" about his visit and said that he told Deputy Secretary Wolfowitz and Under Secretary Cambone during that smaller meeting that CJTF-7 was at risk for "mission failure."[1541]

(U) Under Secretary Cambone stated in December 2006 that his records indicated that he "did attend MG Miller's briefing to Deputy Secretary Wolfowitz," but that he did "not remember participating in any substantive discussions." Under Secretary Cambone said that he had "no personal recollection" of the smaller meeting that took place subsequent to MG Miller's briefing.[1542]

(U) During his December 20, 2007 interview with Committee staff, MG Miller said that he did not learn that Under Secretary Cambone was in attendance at the briefing until someone referred to him by name either during or after his briefing.[1543] He stated that, when he was asked at the May 2004 Committee hearing about discussions with Under Secretary Cambone, he had forgotten that Under Secretary Cambone had actually attended the briefing. MG Miller said his use of the word "discussion" in his August 2004 testimony to describe his interaction with Undersecretary Cambone was an imprecise use of words. MG Miller stated that, in the smaller meeting he attended following his briefing with Deputy Secretary Wolfowitz and Undersecretary Cambone, that Deputy Secretary Wolfowitz simply thanked him for his work.

E. Interrogation and Counter-Resistance Policy Established (U)

1. CJTF-7 Commander Issues Policy Including Aggressive Interrogation Techniques (U)

(U) On September 14, 2003, less than a week after MG Miller's team left Iraq, LTG Sanchez issued the first CJTF-7 "Interrogation and Counter-Resistance Policy." The September 14, 2003 policy stated that the Geneva Conventions were applicable in Iraq and that Coalition Forces "will continue to treat all persons under their control humanely."[1544] LTG Sanchez stated

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[1539] Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 79.

[1540] Ibid.

[1541] Ibid. at 82.

[1542] Letter from Under Secretary Stephen Cambone to Senator John Warner (December 19, 2006).

[1543] Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[1544] CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003).

that he issued the policy because FM 34-52 left the "universe of approaches to the imagination of the interrogator" and demanded additional structure.[1545]

(U) According to LTG Sanchez, the September 14, 2003 policy "drew heavily" on the Secretary of Defense's April 16, 2003 guidance for GTMO.[1546] Indeed, the September 14, 2003 policy included all 24 interrogation techniques that were in that guidance, as well as techniques that CPT Wood had copied from the SMU TF in Iraq's interrogation policy and submitted for approval. The latter included the presence of military working dogs, stress positions, sleep management, loud music, and light control.[1547] The techniques CPT Wood had copied from the SMU TF policy had, in turn, been based on techniques included in the interrogation policy used by the SMU TF in Afghanistan. That policy was influenced, in turn, by the Secretary of Defense's December 2, 2002 approval of aggressive interrogation techniques for use at GTMO.[1548]

(U) Although some of the techniques authorized by the September 14, 2003 CJTF-7 policy required the CJTF-7 Commander's approval before they could be used on Enemy Prisoners of War (EPWs), LTG Sanchez stated that "with few exceptions, persons captured after May 1, 2003 were not entitled to EPW status as a matter of law."[1549] CPT Wood said that, to her knowledge, there were no EPWs held at Abu Ghraib.[1550]

(U) LTG Sanchez stated that CJTF-7 forwarded the September 14, 2003 policy to CENTCOM with a cover memorandum stating that the policy was based on that used at Guantanamo Bay, but "modified for applicability to a theater of war in which the Geneva Conventions apply."[1551] LTG Sanchez stated that his intent, unless otherwise directed, was to "immediately implement the policy outlined in the memo."[1552]

2. *Interrogation and Counter Resistance Policy Implemented at Abu Ghraib* (U)

(U) The September 14, 2003 policy went into effect for interrogators at Abu Ghraib as soon as it was issued. CPT Wood stated that she briefed the new policy for all of the [number

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[1545] Statement of LTG Ricardo Sanchez (October 2004) at 9, 12.

[1546] Ibid. at 8.

[1547] The September 14, 2003 CJTF-7 Interrogation and Counter-Resistance Policy did not include sensory deprivation, which was also included in CPT Wood's August 27, 2003 policy proposal. CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003); Alpha Company, 519th MI BN SFIF Interrogation TTPS (August 27, 2003).

[1548] The September 14, 2003 policy also included "Mutt and Jeff," which was part of the 1987 version of Army FM 34-52, but not the 1992 version of the Army Field Manual 34-52. CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003).

[1549] CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003); Statement of LTG Ricardo Sanchez (October 2004) at 8.

[1550] Statement of CPT Carolyn Wood (December 17, 2004) at 4.

[1551] Statement of LTG Ricardo Sanchez (October 2004) at 8, 12.

[1552] Ibid.

of] interrogators and analysts working for her. She stated that during the briefing, "the interrogators took turns reading [the September 14 policy] line by line aloud."[1553] She stated that each interrogator present signed a document noting that he or she had received training on the policy. CPT Wood said that personnel who arrived at Abu Ghraib after CJTF-7 issued the policy were briefed on it during in-processing.

(U) CPT Wood also developed a Memorandum for Record on CJTF-7 Interrogation Rules of Engagement (IROE) to be signed by all personnel at Abu Ghraib in contact with detainees.[1554] The IROE stated that the interrogation approaches specified in Army FM 34-52, as well as yelling, light control, loud music, deception, and false flag were "approved for all detainees, regardless of status (security detainees, civilian internees, or EPWs)."[1555] Use of other approaches authorized by the September 14, 2003 CJTF-7 memorandum, including stress positions, presence of dogs, dietary manipulation, environmental manipulation, sleep adjustment, and sleep management, were to be approved by the interrogation officer in charge or the non-commissioned officer in charge.

(U) At least one version of the IROE used a September 10, 2003 CJTF-7 *draft* policy as its basis, rather than the September 14 approved policy.[1556] That IROE also listed sensory deprivation as "approved in accordance with the CJTF-7 policy."[1557] While CPT Wood had requested sensory deprivation and the technique had been included in a September 10, 2003 draft policy, it was not among those listed in the September 14, 2003 policy approved by CJTF-7. CPT Wood acknowledged that she may have used the wrong policy as a basis for her IROE.[1558]

3. *CENTCOM Raises Concerns About CJTF-7 Policy* (U)

(U) LTG Sanchez said that when he issued the September 14, 2003 policy, there was agreement in the CJTF-7 legal community that the techniques in the policy were lawful. He said that that consensus was developed in the absence of guidance from CENTCOM, who he said believed the issue was too contentious and would not give CJTF-7 legal guidance.[1559] LTG Sanchez said that "time was of the essence" so he "decided to publish the September memorandum knowing that discussions were ongoing as to the legality of some of the approaches included in the memorandum."[1560]

[1553] Statement of CPT Carolyn Wood (December 17, 2004) at 4.

[1554] Memorandum for Record, *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003) (hereinafter "*CJTF-7 Interrogation Rules of Engagement* (October 9, 2003)").

[1555] Ibid.

[1556] CJTF-7 Interrogation and Counter-Resistance Policy (September 10, 2003).

[1557] *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003).

[1558] Committee staff interview of CPT Carolyn Wood (February 11, 2008); CJTF-7 Interrogation and Counter-Resistance Policy (September 10, 2003).

[1559] Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[1560] Ibid.; Statement of LTG Ricardo Sanchez (October 2004) at 8, 12.

LTG Sanchez stated that when the September 14, 2003 policy reached CENTCOM, it "energized the legal community there and that COL Fred Pribble [the CENTCOM SJA] had concerns."[1561] LTG Sanchez said that CENTCOM lawyers thought some techniques in the September 14 policy came too close to the boundary.[1562] COL Marc Warren, the CJTF-7 SJA, stated that the CENTCOM SJA "raised concerns to us that the policy was objectionable in that aspects of the approved approaches were impermissibly coercive."[1563]

On September 15, 2003, the day after the policy was issued, COL Warren sent a copy to COL Pribble and William "Barry" Hammill, CENTCOM's Deputy SJA, stating "this is pretty tame stuff, largely a direct lift from the Army Interrogation FM. The genesis of this product was the visit by MG Miller's GITMO team."[1564] The next day, Mr. Hammill asked Major Carrie Ricci, the Chief of International Law at CENTCOM to review the policy.[1565] That same day, MAJ Ricci responded in an email stating that "Many of the techniques appear to violate [Geneva Convention] III and IV and should not be used on [enemy prisoners of war] or [civilian internees]. The [Geneva Conventions] prohibits all coercive interrogation techniques."[1566]

On September 17, 2003, COL Pribble sent a copy of MAJ Ricci's email to COL Warren who responded that "almost all of these techniques are right out of the Field Manual and are in use now."[1567] That same day, MAJ Ricci responded:

> Gentlemen, it's the techniques that are not in the field manual that concern me. Techniques such as dietary manipulation, environmental manipulation, sleep adjustment, sleep management, yelling, loud music, light control, stress positions, etc. many of these techniques appear to violate [Geneva Convention] III, Article 17: "No physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."
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> ... My recommendation is that the interrogation policy be kept in conformity with the [Field Manual] ... I would hesitate to put in writing how we are directing interrogations beyond what is in the [Field Manual]. If CJTF-7 wants to take advantage of the additional measures used at Guantanamo, this should be limited to detainees who are not entitled to [Geneva Convention] protections or else I

[1561] Statement of LTG Ricardo Sanchez (November 23, 2004) at 4.

[1562] Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[1563] COL Mark Warren, Judge Advocate Interview Questions (June 25, 2004).

[1564] Email from COL Marc Warren to COL Fred Pribble and William Hammill (September 15, 2003).

[1565] Email from William Hammill to MAJ Carrie Ricci (September 16, 2003).

[1566] Email from MAJ Carrie Ricci to William Hammill (September 16, 2003).

[1567] Email from COL Marc Warren to COL Fred Pribble, MAJ Carrie Ricci, and William Hammill (September 17, 2003).

believe we should still seek SECDEF approval – and I am doubtful some of these techniques will be approved. The policy as written is troublesome.[1568]

Later that day, MAJ Ricci spoke with COL Warren by phone.[1569] In a subsequent email to Mr. Hammill she said that COL Warren was "going to try and re-work the policy. He is understandably unhappy that the policy was already signed by the [Commanding General] and now the SJA has the regrettable task of telling the [Commanding General] the policy has problems – but that's what we get paid for."[1570]

In a September 22, 2003 email to MAJ Ricci, CENTCOM SJA COL Fred Pribble said "During my sitdown with COL Warren in Baghdad, he was pretty quick to admit that we (read you) had made the right call and that they would scrub the policy."[1571]

LTG Sanchez said that after CJTF-7 and CENTCOM lawyers began to debate the policy that he and COL Warren again reviewed the memo. LTG Sanchez stated that COL Warren told him:

> "Yes, they are legal. There is some dissent and different opinions within the legal community. Some of these may be harsher than others, and in order for us to eliminate debate and get consensus, we probably ought to put some of these aside, and oh, by the way, they probably wouldn't get us too much anyway if we implemented them." I said "Okay, fine let's get consensus. Go ahead and constrain it (the September policy)."[1572]

4. *CJTF-7 Issues New Interrogation Policy* (U)

(U) On October 12, 2003, nearly a month after MAJ Ricci's concerns were brought to COL Warren's attention, LTG Sanchez issued a revised interrogation policy, eliminating all techniques not listed in either the 1987 or 1992 versions of the Army Field manual. Techniques removed from the list of authorized techniques included dietary manipulation, environmental manipulation, sleep adjustment, false flag, presence of military working dogs, sleep management, stress positions, and yelling, loud music, and light control.[1573] CJTF-7 also removed isolation and added "segregation" to the new policy. The October 12, 2003 policy

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[1568] Email from MAJ Carrie Ricci to COL Marc Warren, COL Fred Pribble, and William Hammill (September 16, 2003).

[1569] Email from MAJ Carrie Ricci to William Hammill (September 17, 2003).

[1570] Ibid.

[1571] Email from COL Fred Pribble to MAJ Carrie Ricci and William Hammill (September 22, 2003).

[1572] Statement of LTG Ricardo Sanchez (November 23, 2004) at 4.

[1573] The October 12, 2003 policy also eliminated two Army FM techniques – change of scenery up and change of scenery down. CJTF-7 Memorandum for C2, Combined Joint Task Force Seven, C3, Combined Joint Task Force Seven, Commander, 205th Military Intelligence Brigade, *CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003) (hereinafter "*CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003)").

stated that the CJTF-7 Commanding General had to approve segregation in all cases exceeding "30 days in duration, whether consecutive or nonconsecutive."[1574]

(U) CJTF-7 removed "the presence of military dogs" from the list of interrogation techniques in the October 12, 2003 policy, but added a line in the "General Safeguards" section of the policy stating that "Should working dogs be present during interrogations, they will be muzzled and under the control of a handler at all times to ensure safety."[1575] Despite references to dogs in both the September 14, 2003 interrogation policy and the October 12, 2003 interrogation policy, LTG Sanchez said that the "intent for the use of dogs was always focused on the security contributions they make in a detention facility" and that there was "no explicit direction, guidance, or condoning of the use of *unmuzzled* dogs in the conduct of interrogations."[1576] LTG Sanchez acknowledged that placement of "presence of military working dogs" in the interrogation techniques section of the September 14 policy was "confusing."[1577] He said that he removed the "presence of military working dogs" from the list of interrogation techniques in the October policy and put it in the general safeguards section to make it "clear that using dogs for the deliberate purpose of frightening a detainee was not permitted."[1578]

(U) LTG Sanchez stated that "It is certainly clear under the October 2003 policy that the use of military working dogs in interrogations would require an exception to policy granted by me."[1579] COL Pappas stated, however, that he believed that the October 12, 2003 interrogation policy "delegated to me the authority to approve the use of muzzled dogs."[1580]

(U) The October 12, 2003 policy also stated that requests to use interrogation approaches not listed in the policy "will be submitted to [the CJTF-7 Commander] through CJTF-7 [Director for Intelligence] and will include a description of the proposed approach and recommended safeguards."[1581]

(U) CPT Wood at Abu Ghraib said that when the October 12, 2003 policy was issued, her interrogators signed a new Interrogation Rules of Engagement Memorandum (IROE).[1582] The new IROE listed all of the techniques identified in the October 12, 2003 policy and stated that they were "approved for all detainees, regardless of status."[1583] The IROE also listed approaches

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[1574] *CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003).

[1575] Ibid.

[1576] Statement of LTG Ricardo Sanchez (October 2004) at 21; Statement of LTG Ricardo Sanchez (November 23, 2004) at 3 (emphasis added).

[1577] Statement of LTG Ricardo Sanchez (November 23, 2004) at 4, 5.

[1578] Ibid.

[1579] Statement of LTG Ricardo Sanchez (October 2004) at 21.

[1580] Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 27.

[1581] *CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003).

[1582] Statement of CPT Carolyn Wood (December 17, 2004) at 4.

[1583] Memorandum for Record *CJTF-7 Interrogation Rules of Engagement* (October 16, 2003).

not explicitly approved in the October 12, 2003 policy, but which had to be requested through the Interrogation Officer in Charge to the CJTF-7 Commanding General. The IROE listed nine examples of such techniques, presence of military working dogs, stress positions, sensory deprivation, dietary manipulation, environmental manipulation, sleep adjustment, isolation, sleep management, and change of scenery down.[1584]

F. SMU Task Force Issues a New Interrogation SOP (U)

[redacted] On October 16, 2003, a new Commander, [redacted] took command of the SMU TF. [redacted] stated that he "used his subject matter experts to build the [interrogation] SOP consistent with existing rules and regulations."[1585] This SOP went into effect on October 25, 2003. The Department of Defense has not provided the Committee with a copy of the October 25, 2003 SMU TF SOP.[1586]

[redacted] According to the Church Special Focus Team Report, however, the October 25, 2003 SMU TF policy included ten interrogation techniques not listed in the Army Field Manual.[1587] Those techniques included controlled fear (muzzled dogs), stress positions, sleep deprivation/adjustment, environmental manipulation, yelling, loud music, and light control, removal of comfort items, isolation, false documents/report, multiple interrogator, and repeat and control.[1588] Less than two weeks before the policy was finalized, several of these techniques, including environmental manipulation, stress positions, muzzled dogs, and sleep adjustment – had been removed from CJTF-7's interrogation SOP after CENTCOM raised legal concerns about them.[1589]

[1584] Ibid.

[1585] [redacted] Questionnaire (June 29, 2004) at 2.

[1586] [redacted] The Department of Defense produced two documents to the Committee in response to the request for the October SOP. Neither of those two documents is dated and one appears to be a draft written sometime after December 18, 2003. *See* Department of Defense Headquarters, Joint Task Force [redacted] Baghdad Airbase, Iraq, [redacted] Battlefield Interrogation Facility/Team Standing Operating Procedures; Department of Defense Headquarters, Joint Task Force [redacted] Baghdad Airbase, Iraq, [redacted] Battlefield Interrogation Team and temporary Facility Standing Operating Procedures. The Department stated in a March 10, 2008 letter that the documents provided in response to the Committee's request for the October 25, 2003 SOP were "reasonably close to the time frame and location requested." Letter from ASD Robert Wilkie to Chairman Carl Levin (March 10, 2008). The Department has also informed the Committee that after "multiple searches we were unable to locate an SOP with the exact October 25, 2003 date." Email from Thomas Alexander to Committee staff (April 9, 2008).

[1587] *Church Special Focus Team Report* at 12-13.

[1588] [redacted] Although the Church Special Focus Team Report identified "repeat and control" as a technique that went beyond the Army FM, it could also arguably be classified as a Field Manual technique.

[1589] CJTF-7's September 14, 2003 SOP included "sleep management" and "sleep adjustment." *See* Section XII E, *supra*.

[redacted] Despite having been included in the October 25, 2003 SMU TF policy, which he approved, [redacted] indicated to DoD investigators in June 2004 that he had not approved "environmental manipulation" or "presence of military working dogs."[1590]

[redacted] There is evidence that at least one technique that was not in the SOP – removal of clothing – was in use at the SMU TF in late 2003. [redacted] stated that when he took command in October 2003, he "discovered that some of the detainees were not allowed clothes" as an interrogation technique [redacted]"[1591] He said that he did not know where the technique came from.[1592] Weeks prior to his October 2003 arrival, however, JPRA instructors had stripped a detainee during their assistance visit to the SMU TF facility as part of an interrogation.[1593] Terrence Russell, the JPRA training manager who was part of the JPRA team of instructors at the SMU TF, said that the detainee was stripped [redacted]"[1594] Mr. Russell stated that "we've done this 100 times, 1000 times with our [SERE school] students."[1595]

[redacted] stated that he was "uncomfortable" with stripping detainees and that "stripping a detainee just didn't seem right to [him] even though arguably, it was an effective technique."[1596] He said he terminated the practice in December 2003 or January 2004.

XIII. Interrogation Techniques and Detainee Mistreatment at Abu Ghraib (U)

(U) Between September and December 2003, military personnel at Abu Ghraib engaged in what Major General Antonio Taguba would later call "numerous incidents of sadistic, blatant, and wanton criminal abuses" of detainees.[1597] Several instances of abuse were captured in photographs taken by the soldiers themselves and, in April 2004, some of those photographs appeared in the media.

(U) Two Army investigations, one conducted by MG Taguba and the other conducted by Major General George Fay would later find that abuses at Abu Ghraib were perpetrated directly by both military police (MP) and military intelligence (MI) personnel.[1598] In addition to the direct participation of MI personnel in incidents of detainee abuse, MG Fay's investigation also identified situations where MI personnel solicited MPs to engage in detainee abuse, using such

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[1590] [redacted] Questionnaire (June 29, 2004) at 4.

[1591] *Church Special Focus Team Report* at13; [redacted] Questionnaire (June 29, 2004) at 3.

[1592] [redacted] Questionnaire (June 29, 2004) at 3.

[1593] Testimony of Terrence Russell (August 3, 2007) at 117.

[1594] .Ibid.

[1595] Ibid.

[1596] [redacted] Questionnaire (June 29, 2004) at 3.

[1597] MG Antonio Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade* (hereinafter "*Taguba Report*") at 16.

[1598] *Taguba Report* at 16-17; *Fay Report* at 7.

methods as "isolation with sensory deprivation, removal of clothing and humiliation, [and] the use of dogs as an interrogation tool to induce fear, and physical abuse."[1599]

(U) MG Fay cited the inadequacy of interrogation doctrine as a "contributing factor" to Abu Ghraib and stated that interrogation techniques developed and approved for use at GTMO and in Afghanistan became "confused" at Abu Ghraib and "were implemented without proper authorities or safeguards."[1600] As discussed above, some of the techniques MG Fay found to be abusive were also authorized for use by military interrogators conducting interrogations at the SMU TF facility in Iraq.

(U) Interviews conducted by investigators for both MG Fay and MG Taguba contain evidence that the use of aggressive interrogation techniques like use of military working dogs, stress positions, and removal of clothing, was not limited to the specific incidents described in those reports. In fact, those interviews appear to indicate that the use of some of these techniques was widespread at Abu Ghraib.

A. Use of Military Working Dogs (U)

(U) The use of military working dogs to exploit detainee fears was authorized on December 2, 2002 by the Secretary of Defense for use at Guantanamo Bay.[1601] Weeks later, the technique appeared in a January 24, 2003 memorandum from CJTF-180's Deputy Staff Judge Advocate (SJA) and was subsequently considered available for use in Afghanistan.[1602] The use of dogs was also among those techniques authorized for use at the SMU TF in Iraq.[1603]

[redacted] Following MG Miller's assistance visit to Iraq in August and September 2003, CJTF-7 had submitted a request for three military police dog teams "to provide an increased security posture" to support detention and interrogation operations at Abu Ghraib.[1604]

(U) The dog teams arrived at Abu Ghraib on November 20, 2003.[1605] According to MG Fay's report, "abusing detainees with dogs started almost immediately after the dogs arrived" with the first incident occurring on November 24, 2003.[1606] Major General Fay's report documented seven other times over the next six weeks when dogs were used, including three occasions in which they were used in interrogations, one occasion the report referred to as "an

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[1599] *Fay Report* at 7.

[1600] Ibid. at 8.

[1601] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[1602] *Fay Report* at 83; *Church Report* at 7.

[1603] DoD IG Report at 16.

[1604] See Deployment Order 231, referencing U.S. CENTCOM October 9, 2003 request for forces.

[1605] *Fay Report* at 83.

[1606] Ibid.

apparent [Military Intelligence] directed use of dogs in detainee abuse," and one incident described as dogs being used likely as a "'softening up' technique for future interrogations."[1607]

COL Pappas, the Commander of the 205th MI BDE, said that on December 12, 2003 he "specifically approved the dogs to be used."[1608] A December 14, 2003 memo for LTG Sanchez, the CJTF-7 Commander, signed by COL Pappas indicated that COL Pappas approved the "presence of military working dogs" for three detainees captured in conjunction with Saddam Hussein.[1609] COL Pappas stated that he "couldn't say for sure" whether he actually sent the memo to LTG Sanchez, but that he "signed it with the intent of it going to him."[1610] LTG Sanchez said that no request for the use of dogs in interrogations "was ever received or approved by me."[1611]

(U) One intelligence analyst stated that it was "common knowledge" that one soldier used "dogs while he was on his special projects" working directly for COL Pappas after the capture of Saddam Hussein."[1612] And an MP said that dogs could be used in interrogations "with the proper authorization," and that "dogs were used to scare the detainee into confessing or producing intelligence."[1613]

(U) An Army dog handler said that "MI would ask me to use my dog as a psychological and physical deterrent. It would consist of a dog walking up to a prisoner and the dog barking at a prisoner."[1614] The same dog handler said that "Someone from MI gave me a list of cells, for me to go see, and pretty much have my dog bark at them... Having the dogs bark at detainees was psychologically breaking them down for interrogation purposes."[1615]

(U) On February 19, 2004, after MG Taguba had begun his investigation into the abuses at Abu Ghraib, the Commander of the 504th MI Brigade issued a memorandum stating that "military working dogs will not be present during the interrogation or debriefing of any detainees at the Abu Ghraib facility."[1616]

[1607] Ibid. at 85-87.

[1608] Sworn statement of COL Thomas Pappas (January 25, 2006) at 7.

[1609] Memorandum from COL Thomas Pappas for LTG Ricardo Sanchez, *Exception to CJTF-7 Interrogation and Counter Resistance Policy* (December 14, 2003).

[1610] Sworn statement of COL Thomas Pappas (January 25, 2006) at 9.

[1611] Statement of LTG Ricardo Sanchez (October 2004) at 21.

[1612] Statement of Intelligence Analyst (May 25, 2004).

[1613] Statement of 504th MI BN soldier (June 4, 2004).

[1614] Statement of Army dog handler (undated).

[1615] Interview of Army dog handler (February 13, 2004).

[1616] Memo from COL Foster P Payne II for Joint Interrogation and Debriefing Center, *Suspension of Use of Military Working Dogs* (February 19, 2004).

B. *Stress Positions and Physical Training* (U)

(U) Stress positions were authorized for use in interrogations at GTMO by the Secretary of Defense on December 2, 2002.[1617] The technique was used in interrogations in Afghanistan in 2002 and 2003.[1618] Stress positions were also authorized for use at the SMU TF in Iraq.[1619]

(U) CPT Wood at Abu Ghraib said that stress positions and forced exercise regimens (also called compulsory physical training) were used in interrogations and the September 14, 2003 CJTF-7 policy explicitly authorized the use of stress positions.[1620] CPT Wood's October 9, 2003 Interrogation Rules of Engagement (IROE) for interrogators listed stress positions as an approved technique.[1621] While the October 12, 2003 CJTF-7 policy removed stress positions from the list of authorized interrogation techniques, a subsequent IROE for interrogators continued to list the technique, with the caveat that its use "must be approved by the [Commanding General], CJTF-7 prior to employment."[1622]

(U) MG Fay's report stated that "What started as nakedness and humiliation, stress and physical training (exercise) carried over into sexual and physical assaults..."[1623] The report described one incident where a detainee was "forced to stand while handcuffed in such a way to dislocate his shoulder" and described a photograph of an interrogation being conducted while another detainee was squatting on a chair which MG Fay called "an unauthorized stress position."[1624]

(U) One MP said he "saw MI use stress positions" at Abu Ghraib.[1625] Similarly, the warden of the Hard Site at Abu Ghraib stated that military intelligence made detainees engage in physical training and he saw "detainees holding buckets, arms out, and other drills."[1626] An MP Platoon leader stated that he also "observed [military intelligence personnel] making detainees do physical training."[1627]

[1617] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[1618] U.S. Army Criminal Investigation Command Bagram Branch Office Memo, *CID Report of Investigation – FINAL -0134-02-CID36923533* (October 8, 2004).

[1619] DoD IG Report at 16.

[1620] CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003); Army IG, Interview of CPT Carolyn Wood (August 15, 2006) at 30.

[1621] *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003).

[1622] CJTF-7 Interrogation and Counter-Resistance Policy (October 12, 2003); *CJTF-7 Interrogation Rules of Engagement* (October 16, 2003).

[1623] *Fay Report* at 10.

[1624] Ibid. at 68, 82.

[1625] Statement of MP soldier (June 6, 2004).

[1626] Interview of MP Company Commander (February 21, 2004).

[1627] Interview of MP Platoon leader (June 6, 2004).

(U) When asked whether he had ever been directed by MI or another government agency (OGA) to "soften up" a prisoner, one MP said "Yes, I would have them do physical training to tire them out."[1628] Another MP stated that military intelligence personnel insinuated that MP soldiers should abuse detainees telling them to "'Loosen this guy up for us.' 'Make sure he has a bad night.' 'Make sure he gets the treatment.'"[1629]

(U) One interrogator confirmed the practice of having MPs "soften up" detainees, stating that the "MPs did prepare prisoners prior to interrogations by having them do physical exercises and yelling at them. The interrogators would verbally discuss, with an MP, a detainee and his cooperativeness and various methods to deal with a detainee such as physical exercise at random hours of the night and yelling."[1630] Other MI soldiers confirmed the use of stress positions by interrogators at Abu Ghraib. One interrogation analyst stated that he witnessed the use of a stress position where a detainee was "handcuffed to the floor."[1631] The same soldier referred to that use of the stress position as "in following with the interrogation plan."[1632] An interrogator likewise stated that she "did use a stress position" in interrogations.[1633] Another interrogator who was deployed from GTMO to Abu Ghraib following the MG Miller assistance visit said that "stress positions were authorized" when he first got to Abu Ghraib in October 2003 and that he witnessed use of the technique.[1634]

C. Removal of Clothing (U)

(U) Removal of clothing was authorized by the Secretary of Defense for use at GTMO on December 2, 2002.[1635] The technique was also recommended as an effective technique in a January 24, 2003 memo written by the CJTF-180 Deputy SJA and was subsequently considered approved policy in Afghanistan.[1636]

The Special Mission Unit (SMU) Task Force (TF) in Iraq also used "removal of clothing" as an interrogation technique in the fall of 2003, just as the Abu Ghraib abuses were taking place. While not included in the SMU TF interrogation SOP, the SMU TF Commander stated that when he took command in October 2003 he "discovered that some of the detainees were not allowed clothes" as an interrogation technique

[1628] Statement of MP soldier (January 17, 2004).

[1629] Statement of MP soldier (January 14, 2004).

[1630] Statement of MI soldier (January 21, 2004).

[1631] Statement of 302nd MI BN soldier (May 11, 2004).

[1632] Ibid.

[1633] Statement of MI soldier (June 4, 2004).

[1634] Statement of interrogator (June 4, 2004).

[1635] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[1636] *Fay Report* at 88; *Church Report* at 7

said he terminated the practice in December 2003 or January 2004.[1638]

(U) Though it never appeared in CJTF-7's interrogation policy, MG Fay stated in his report that removal of clothing was "imported" to Abu Ghraib and could be "traced through Afghanistan and GTMO."[1639] MG Fay's report stated that removal of clothing was "used to humiliate detainees" and said the practice "contributed to an environment that would appear to condone depravity and degradation rather than the humane treatment of detainees."[1640] His report identified several specific incidents of detainees being stripped or partially stripped at the direction of interrogation personnel at Abu Ghraib.

(U) Statements by military police and military intelligence personnel who served at Abu Ghraib indicated that removal of clothing was widely used for interrogations. COL Jerry Philabaum, the Commander of the 320th MP BN at the facility, recalled seeing "between 12-15 detainees naked in their own individual cells."[1641] He said that when he raised the issue with the JIDC Commander, LTC Steven Jordan, he was told it "was normal practice for detainees to be naked in their cells, but that usually they didn't have that many naked and that it was a technique [military intelligence] used."[1642] CPT Donald Reese, the Commander of the 372nd MP Company, stated that LTC Jordan also told him that stripping detainees was "an interrogation method that we use."[1643] CPT Reese said the fact that detainees were naked as an interrogation method was "known by everybody" and stated that it was "common practice to walk the tier and see detainees without clothing and bedding."[1644]

(U) Similarly, an intelligence analyst at Abu Ghraib stated that it was "common that the detainees on [military intelligence] hold in the hard site were initially kept naked and given clothing as an incentive to cooperate with us."[1645] One interrogator stated that "it was practice, especially for [military intelligence] holds to take their clothes in a possible attempt to renew the 'capture shock' of detainees who had been in custody for an extended period of time or were transferred from other facilities."[1646] Another interrogator said that "it was common to see

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[1637] Questionnaire (June 29 2004) at 3.

[1638] Ibid.

[1639] *Fay Report* at 87.

[1640] Ibid. at 70.

[1641] Statement of Commander 320th MP BN (May 26, 2004).

[1642] Ibid.

[1643] Statement of 372nd MP Company Commander (May 3, 2004); Interview of 372nd MP Company Commander (February 10, 2004) at 48.

[1644] Interview of 372nd MP Company Commander (February 10, 2004) at 48-49; Statement of 372nd MP Company Commander (February 21, 2004); Statement of 372nd MP Company Commander (January 18, 2004) at 1-2.

[1645] Statement of Intelligence Analyst (May 25, 2004).

[1646] Statement of MI soldier (June 15, 2004).

detainees in cells without clothes or naked" and said that it was "one of our approaches."[1647] The interrogator said that "any officer who would walk the area at night should have seen the detainees naked."[1648]

(U) One military police (MP) soldier stated that MI "would tell us to take away [the detainees'] mattresses, sheets, and clothes" and that "the detainees would sleep in their cells naked."[1649] Another MP stated that MI used "clothing removal as an interrogation technique in Tier 1A."[1650] Major Michael Sheridan, who was Executive Officer of the 320th MP Battalion at Abu Ghraib, said that he stopped permitting MPs to escort detainees to interrogations after an incident where a male detainee "was being interrogated naked and then my MPs had to escort him back to his cell in 45 degree temps with nothing but a bag over his head, and one of the MPs was female."[1651]

(U) One Abu Ghraib interrogator stated that another interrogator who was deployed from GTMO to Abu Ghraib, told him that he "was permitted as the interrogator to strip a detainee completely naked in the interrogation booth."[1652] Another GTMO interrogator deployed to Abu Ghraib said that he oversaw the interrogation of a detainee who had been stripped.[1653] The interrogator said that the technique was approved by a superior officer.[1654] A third interrogator who had previously served at GTMO recalled asking an MP at Abu Ghraib "to strip [a detainee] naked for us for the interrogation."[1655]

D. Sleep Adjustment/ Sleep Management (U)

(U) On December 2, 2002, the Secretary of Defense authorized the use of 20 hour interrogations at GTMO.[1656]

[redacted] A January 24, 2003 memo from the CJTF-180 Deputy SJA stated that "sleep adjustment," which the memo described as "generally 4 hours of sleep per every 24 hours," was used as an interrogation technique in Afghanistan.[1657] The SMU TF interrogation policy for Iraq listed "sleep management" as an authorized technique and described the technique as "four hours

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[1647] Unsigned interrogator statement (May 13, 2004). The statement was contained in a memorandum for the record which the interrogator declined to sign based on advice from counsel.

[1648] Ibid.

[1649] *Taguba Report* at 19; Article 32 Transcript U.S. v Davis (April 7, 2004) at 11.

[1650] Statement of MP soldier (June 6, 2004)

[1651] Interview of Major Michael Sheridan (February 14, 2004) at 8.

[1652] Statement of MI soldier (May 25, 2004).

[1653] Statement of MI soldier (June 4, 2004).

[1654] Ibid.

[1655] Statement of MI soldier (July 20, 2004).

[1656] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[1657] Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 4, 9.

of sleep during [a] 24 hour period" – the same way that CJTF-180 had described "sleep adjustment" in Afghanistan.[1658]

(U) The September 14, 2003 CJTF-7 policy authorized both sleep management and sleep adjustment for interrogations, defining the former as "adjusting the sleep times of a detainee" and the latter as "4 hours of sleep per 24 hour period."[1659] CPT Wood's October 9, 2003 IROE also listed both "sleep adjustment" and "sleep management" as approved techniques.[1660] CJTF-7's October 12, 2003 policy did not include either sleep adjustment or sleep management as authorized interrogation techniques.[1661] However, an October 16, 2003 IROE written by CPT Wood continued to list both techniques, saying that their use "must be approved by the [Commanding General], CJTF-7 prior to employment."[1662]

(U) MG Fay's report stated that the "'sleep adjustment' technique was used by [military intelligence] as soon as the Tier 1A block opened" at Abu Ghraib.[1663] Interviews of MI and MP soldiers, however, indicated a lack of clarity among MI and MP as to what "sleep adjustment," "sleep management," and "sleep deprivation" actually meant. In any case, MPs were integral to carrying out each of those techniques for MI personnel.

(U) One contract interrogator stated that "During a typical SMMP [sleep and meal management program], the MPs are responsible for administering the written program provided by the interrogator... In addition, the MPs are advised that during the awake time period of an approved SMMS program, the MPs are allowed to do what is necessary to keep the detainee awake in the allotted period of time as long as it adheres to approved rules of engagement and proper treatment of detainee."[1664] An MI non-commissioned officer stated that he provided sleep adjustment schedules included in interrogation plans written by interrogators he was supervising to the MP Sergeant of the Guard.[1665] Similarly, an intelligence analyst said that the process for using sleep management was "for the interrogator to request it in writing and submit the request with the interrogation plan... Once it was approved, a memo was given to the MPs showing the schedule."[1666]

(U) COL Jerry Philabaum, the Commander of the 320th MP BN, said that "When [military intelligence] wanted a detainee on sleep deprivation, they would tell the MP guard that prisoner 'X' was on sleep deprivation. They would give instructions that the detainee was to

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[1658] [redacted] Memorandum for all [redacted] Personnel, SUBJECT: Policy No. 1 – Battlefield Interrogation Team and facility (BIT/F) Policy (July 15, 2003).

[1659] CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003).

[1660] *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003).

[1661] CJTF-7 Interrogation and Counter-Resistance Policy (October 12, 2003).

[1662] *CJTF-7 Interrogation Rules of Engagement* (October 16, 2003).

[1663] *Fay Report* at 70.

[1664] Interview of contract interrogator (June 22, 2004).

[1665] Statement of non-commissioned officer (June 4, 2004).

[1666] Statement of Intelligence Analyst (May 25, 2004).

sleep four hours within a 24 hour period... I don't believe MPs were given specific instructions on how to keep the detainees awake. It was left to the MPs."[1667] Another MP Officer stated that:

> When MI needed our assistance with detainees, they did their request through memorandums. The memorandums would dictate what MI wanted. The memorandums were signed by COL Pappas and given to the NCOIC [Non-Commissioned Officer in Charge] of the wing. The memorandums would give instructions on diet patterns, sleep patterns, music playing, and various other techniques that MI requested the MPs to carry out.[1668]

An MP non-commissioned officer stated that "there was no SOP for sleep management."[1669] MG Fay stated that techniques used by MPs to keep detainees awake included stripping them and giving them cold showers."[1670]

(U) CPT Wood said that "sleep management was approved by the [Commanding General] about a dozen times" during her time at Abu Ghraib.[1671] She stated that she "personally remember[ed] seeing LTG Sanchez's signature on some approvals for sleep management."[1672] COL Pappas said that he believed the October 12, 2003 CJTF-7 policy gave him the authority to authorize sleep management.[1673]

[redacted] A December 14, 2003 memo for LTG Sanchez signed by COL Pappas approved "sleep management" for three detainees captured in conjunction with Saddam Hussein.[1674] COL Pappas stated that he "couldn't say for sure" whether he actually sent the memo to LTG Sanchez but that he "signed it with the intent of it going to him."[1675] LTG Sanchez said that, other than requests to approve segregation in excess of 30 days, he did "not recall signing any other memos" approving other interrogation techniques.[1676]

E. Sensory Deprivation and Isolation (U)

(U) "Deprivation of light and auditory stimuli" was authorized by the Secretary of Defense for use at GTMO on December 2, 2002.[1677]

[1667] Statement of COL Jerry Philabaum (May 26, 2004).

[1668] Interview of MP officer (February 10, 2004).

[1669] Article 32 Transcript U.S. v Davis (April 7, 2004) at 14.

[1670] *Fay Report* at 70.

[1671] Statement of CPT Carolyn Wood (December 17, 2004) at 6.

[1672] Ibid.

[1673] Committee staff interview of COL Thomas Pappas (October 12, 2007).

[1674] Memorandum from COL Thomas Pappas for LTG Ricardo Sanchez, *Exception to CJTF-7 Interrogation and Counter Resistance Policy* (December 14, 2003).

[1675] Statement of COL Thomas Pappas (January 25, 2006) at 9.

[1676] Statement of LTG Ricardo Sanchez (November 23, 2004) at 6.

[1677] Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[redacted] A January 24, 2003 memo from the CJTF-180 Deputy SJA stated that "deprivation of light and sound in the living areas" had been utilized and recommended that "use of light and noise deprivation" (not limited to living areas) be approved for implementation.[1678] The technique was subsequently considered available for use in Afghanistan.[1679]

(U) Sensory deprivation was never listed in CJTF-7 policy as an approved technique. It was listed, however, as an approved technique in an October 9, 2003 interrogation rules of engagement (IROE) document for interrogators at Abu Ghraib.[1680] A subsequent IROE also listed the technique but said its use "must be approved by the [Commanding General], CJTF-7 prior to employment."[1681]

(U) Major General Fay's report identified several specific instances where detainees at Abu Ghraib were placed in a small room in Tier 1A of Abu Ghraib that was referred to as "the hole" and where they were subject to total isolation and light deprivation.[1682] The report said that conditions for isolating detainees "sometimes included being kept naked in very hot or very cold, small rooms, and/or completely darkened rooms, clearly in violation of the Geneva Conventions."[1683]

(U) MG Fay stated that the "environment created at Abu Ghraib contributed to the occurrence" of detainee abuse there.[1684] But MG Fay was not the first to note the environment at Abu Ghraib as problematic. An assessment of Abu Ghraib by a retired Army Colonel Stuart Herrington in late 2003 had referred to Abu Ghraib as a "pressure cooker" and cited an urgent need to improve conditions at the facility.[1685]

F. "Lost Opportunity" to Fix Problems at Abu Ghraib

1. Retired Army Intelligence Officer Leads Assessment Team (U)

(U/[redacted] In November 2003, Terry Ford, the Army Assistant Chief of Staff for Intelligence (G-2) and BG Barbara Fast, the CJTF-7 Director for Intelligence, commissioned

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[1678] Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 4, 9.

[1679] *Church Report* at 7.

[1680] *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003).

[1681] *CJTF-7 Interrogation Rules of Engagement* (October 16, 2003).

[1682] *Fay Report* at 94.

[1683] Ibid. at 28.

[1684] Ibid. at 9.

[1685] Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 2.

retired Army Colonel Stuart Herrington to assess U.S. intelligence operations in Iraq.[1686] COL Herrington had also assessed intelligence operations at Guantanamo Bay in March 2002.[1687]

(U) Shortly before leaving for Iraq, COL Herrington received a call from [redacted] the former Chief of the Iraq Survey Group's Joint Interrogation and Debriefing Center (JIDC). [redacted] told COL Herrington of his concern that detainees had been "tortured and beaten" by "agency guys" and SMU TF personnel in Iraq.[1688] COL Herrington decided to look into [redacted] claims during his assessment visit.

2. *Assessment Team Visits Abu Ghraib and CJTF-7 Headquarters* (U)

(U) After arriving in Iraq, COL Herrington and his team visited the interrogation facility at Abu Ghraib. While the team did not see evidence that detainees were being "illegally or improperly treated" at the facility, they did note several serious deficiencies.[1689]

(U) In his written report of the visit, COL Herrington cited an urgent need to improve conditions at Abu Ghraib.[1690] He cited overpopulation of the facility as a problem that could lead to further rioting and danger to U.S. personnel. He commented that the leadership at Abu Ghraib felt the facility was a "pressure cooker" and that it was "only a matter of time before prisoners staged an uprising" and that "bad things" such as "death, injury, or hostage situations" were likely to occur.[1691] COL Herrington also assessed that shortages of interrogators and equipment had resulted in a failure to interrogate detainees of intelligence value.[1692] He concluded that Abu Ghraib was simply "unsuitable for the exploitation of high value detainees."[1693]

(U) COL Herrington also expressed concern with the practice of not assigning Internment Serial Numbers (ISNs) to certain detainees. He wrote in his assessment report that the creation of "ghost" detainees who were not in the accounting system carried certain risks "not the least of which is that it may be technically illegal."[1694]

(U) On December 9, 2003, COL Herrington met with MG Barbara Fast, CJTF-7's Director for Intelligence (CJ-2).[1695] He later described her as "astonished" by his observations of

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[1686] Department of Defense Office of Inspector General, Detainee Abuse Evaluation Memorandum for the Record, *October 20, 2004 meeting with Col (Ret) Stuart A. Herrington* (undated) at 1 (hereinafter DoD IG, Herrington Interview).

[1687] *See* Section I F, *supra*.

[1688] DoD IG, Herrington Interview at 1.

[1689] Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 3.

[1690] Ibid.

[1691] Ibid.

[1692] Ibid. at 8.

[1693] Ibid. at 2-3.

[1694] Ibid. at 4.

[1695] Army IG, Interview of COL (Ret) Stuart Herrington (November 3, 2004) at 17; DoD IG, Herrington Interview.

Abu Ghraib.[1696] He said that "in a couple of cases she said, 'I was unaware of that. I didn't know that' or 'I thought we fixed that.'"[1697] COL Herrington added that, "It was very evident to me that she was not being well informed" by her staff.[1698]

3. *Team Hears Reports of Detainee Mistreatment* (U)

(U) While visiting the Iraq Survey Group facility, COL Herrington learned from ISG medical personnel that prisoners arriving at the ISG who had been captured by the SMU TF showed signs of "having been beaten" by their captors.[1699] The report was consistent with what the retired Army Colonel had been told by the former ISG JIDC Chief, prior to his visit. When, during his visit, COL Herrington asked the Officer-in-Charge (OIC) of the JIDC whether these problems had been reported to higher authority, the OIC advised him that "everyone knows about it."[1700]

(U) COL Herrington wrote in his report that an OGA representative told him that OGA personnel had been instructed not to have any involvement with interrogation operations at the SMU TF as the "practices there were in contravention to his Agency's guidance on what was and what was not permissible in interrogating detainees."[1701] He added that he had been told by his CJTF-7 escort that it would be "difficult, if not impossible" to visit the SMU TF facilities. His written report stated that:

> Based on 1) What my source told me before I deployed about what he observed concerning mistreatment; 2) The statement of the ISG-JIDC OIC on the same subject; and 3) the OGA representative's statement, it seems clear that [the SMU TF] needs to be reined in with respect to its treatment of detainees.[1702]

4. *COL Herrington Reports Findings* (U)

(U) When COL Herrington returned to the U.S. and briefed LTG Keith Alexander, the Army G2, and his deputy Terry Ford, he reiterated the concerns about what he had seen in Iraq and stated, "when it becomes known, everybody who touched it will be in trouble."[1703] COL Herrington later told the DoD IG that the two were "very supportive and expressed confidence in his assessment, but no official follow-ups were discussed or scheduled at that time."[1704]

[1696] Army IG, Interview of COL (Ret) Stuart Herrington (November 3, 2004) at 17.

[1697] Ibid.

[1698] Ibid. at 16.

[1699] Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 7.

[1700] Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 7.

[1701] Ibid.

[1702] Ibid.

[1703] DoD IG, Herrington Interview at 3.

[1704] Ibid. at 4.

(U) COL Herrington told the DoD IG that he expected that CJTF-7 and the Army G2 would investigate the issues he raised.[1705] However, he said they never contacted him and he was notified by CJTF-7 in April of 2004 that there had been "insufficient evidence to substantiate" what he had heard from the former ISG JIDC Chief about detainee mistreatment in Iraq.[1706] The Office of the Staff Judge Advocate at CJTF-7 stated in an April 7, 2004 letter to COL Herrington that the investigating officer had not been able to "recreate those conversations upon which [COL Herrington's] report was based" and that it had been difficult to "pin down timelines and events in time."[1707]

(U) The allegations raised by COL Herrington were the subject of an investigation conducted by CJTF-7 in early 2004. In what VADM Church described as an "extremely brief, three-page report," the CJTF-7 investigating officer found no proof to substantiate the allegations against the SMU TF.[1708] VADM Church criticized the CJTF-7 report as "extremely brief and cursory" with "obvious gaps in the investigation methodology."[1709] VADM Church called the failure to more thoroughly investigate the allegations a "lost opportunity to address potential detainee abuse in Iraq early on."[1710]

XIV. Interrogation Policies Following Abu Ghraib (U)

While CENTCOM legal concerns had led to CJTF-7's removal of most of the aggressive interrogation techniques from its interrogation policy in October 2003, interrogation policies issued by Task Forces under CENTCOM Command, including the Combined Joint Special Operations Task Force Arabian Peninsula (CJSOTF-AP), CJTF-180 (the conventional forces in Afghanistan), and the Special Mission Units in Iraq and Afghanistan continued to include aggressive interrogation techniques well into 2004.

A. February 2004 CJSOTF Interrogation SOP (U)

The Combined Joint Special Operations Task Force Arabian Peninsula (CJSOTF-AP) operated under the tactical command of CJTF-7. CJSOTF-AP contained units from the 5th Special Forces Group,

[1705] Ibid.

[1706] Ibid.

[1707] Letter from Office of the Staff Judge Advocate to COL Stuart Herrington (April 7, 2004).

[1708] *Church Report* at 61.

[1709] Ibid.

[1710] Ibid.

[1711] AR-15-6 Investigation of CJSOTF-AP and 5th SF Group Detention Operations (November 8, 2004) at 13, 15, 71 (hereinafter "*Formica Report*").

[redacted] That policy had been superseded by an October 12, 2003 policy that was issued after CENTCOM raised legal concerns with techniques in the earlier policy.[1714]

[redacted] On February 27, 2004, [redacted] Commander, [redacted] issued an interrogation policy for [redacted] using the September 14, 2003 CJTF-7 policy as its basis and authorizing the use of aggressive interrogation techniques, including the presence of military working dogs, stress positions, sleep management, loud music, and light control, and environmental manipulation.[1715] The policy stated that certain techniques, such as presence of military working dogs, stress positions, and loud music and light control, required approval by the CJTF-7 Commander if they were to be used against enemy prisoners of war. The use of those techniques against all other detainees, however, was permitted with the written approval of a [redacted] Deputy Commander or Commander.

[redacted] [1717] A report completed by Brigadier General Richard Formica stated that [redacted] "some detainees were wet down and placed in air conditioned room or outside in cold weather."[1718] [redacted].[1719]

[redacted] The March 23, 2004 policy stated that "you should consider the fact that some interrogation techniques are viewed as inhumane or otherwise inconsistent with international law

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[1712] Statement of COL Hector Pagan (August 2, 2004).

[1713] Statement of LTC Michael Black (November 3, 2004).

[1714] *See* Section XII E, *supra*.

[1715] [redacted] Interrogation and Counter-Resistance Policy (February 27, 2004) at 2-3.

[1716] [redacted] Interrogation and Counter-Resistance Policy (March 23, 2004) at 3.

[1717] Ibid.

[1718] *Formica Report* at 71.

[1719] [redacted] Interrogation and Counter-Resistance Policy (March 23, 2004) at 4.

before applying each technique. These techniques are labeled with a [CAUTION]."[1720] Environmental manipulation, the use of power tools, stress positions, and the presence of working dogs were all marked with the word "CAUTION."[1721]

[redacted] BG Formica also found that some detainees held by a tactical unit were "kept naked for the initial interrogation" and fed only bread or crackers and water "if they did not cooperate with ... interrogators."[1723] He said that a detainee held by another tactical unit under CJSOTF-AP command "may have been fed just bread and water for 17 days."[1724]

B. *Interrogation Plan in Iraq Derived from SERE* (U)

[redacted] ([redacted] The Department of Defense provided the Committee an undated document drafted by a Chief Warrant Officer from the 2nd Brigade, 25th Infantry Division. The 25th Infantry Division was deployed to Iraq and stationed outside Kirkuk from January 2004 through February 2005. The document, called "Camp Honesty Interrogation Plan" stated that it was "based off of U.S. SERE Training Doctrine."[1725] It described subjecting detainees to "sensory over-stimulation" where they would be placed, handcuffed behind their backs in so-called "black room[s]."[1726] The plan stated that two soldiers with night vision goggles would be present in the room and would "touch [the] detainee on [the] head, hands and feet with string simulating sensors."[1727] In addition, sound would be used to "activate and confuse auditory sensors" resulting in "heart-rate increase and increased stress levels."[1728]

C. *March 2004 Interrogation SOP for Conventional Forces in Afghanistan* (U)

[redacted] The interrogation policy in place for CJTF-180, the conventional forces in Afghanistan, also continued to include aggressive interrogation techniques well into 2004. A March 27, 2004 CJTF-180 Standard Operating Procedure, signed by LTC Charles Pede, the Staff Judge Advocate, LTC Scott Berrier, the Director of Intelligence, and LTC Clayton Cobb, the MP Commander for CJTF-180 included a list of "standard [tactics, techniques, and procedures for

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[1720] Ibid. at 6.

[1721] Ibid. at 4.

[1722] *Formica Report* at 8.

[1723] Ibid. at 74.

[1724] Ibid. at 8.

[1725] THT 160 ([redacted]), *Camp Honesty Interrogation Plan* (undated).

[1726] Ibid.

[1727] Ibid.

[1728] Ibid.

use" at Bagram.[1729] That list included the use of "safety positions," "sleep adjustment," "sensory overload," invading a detainee's personal space to "increase psychological discomfort," "dietary manipulation," adjusting temperature or introducing an unpleasant smell to "create moderate discomfort," and using blacked out goggles as an interrogation technique.[1730]

D. *Special Mission Unit Task Force Interrogation Polices* (U)

[redacted]

Prior to March 2004, however, each operated under a distinct interrogation SOP. On March 26, 2004 the SMU TF implemented a single interrogation policy that covered SMU TF operations in both Iraq and Afghanistan.[1731]

[redacted] The March 26, 2004 SMU SOP authorized 14 "interrogation techniques" not explicitly listed in FM 34-52, including use of muzzled dogs, "safety positions (during interrogations)," sleep adjustment/management, mild physical contact, isolation, sensory overload, sensory deprivation, and dietary manipulation.[1732]

[redacted] According to the Church Special Focus Team Report, the March 26, 2004 SMU TF SOP included a larger number of interrogation techniques outside of FM 34-52 than the SOPs of any other military organization at the time.[1733] In fact, many of the techniques in that SOP had been abandoned by conventional forces in Afghanistan months earlier, after CENTCOM identified legal concerns with the techniques.[1734] Although the authority in the March SOP to use "muzzled dogs" was rescinded on April 22, 2004, the remainder of the techniques remained authorized until May 6, 2004, when GEN John Abizaid, the CENTCOM Commander, suspended use of all non-FM 34-52 techniques.[1735] The Church Special Focus Team report said the techniques were suspended as a result of detainee abuse at Abu Ghraib.[1736] GEN Abizaid stated

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[1729] CJTF-180 SJA Memorandum for Record, *CJTF-180 Detainee Operations Standard Operating Procedures* (March 27, 2004).

[1730] Ibid.

[1731] *Church Special Focus Team Report* at 15.

[1732] [redacted] The 14 techniques were the use of military working dogs, safety positions (during interrogations), use of blackened goggles/ear muffs during interrogation, sleep adjustment/sleep management, use of female interrogators, sensory deprivation, sensory overload, change of environment/ environmental manipulation, diet manipulation, use of falsified documents or reports and deception, use of individual fears, use of isolation, fear of long-term incarceration, and mild physical contact. Battlefield Interrogation Team and Temporary Screening Facility Standing Operating Procedures (SOP), Change 2 Dated May 18, 2004.

[1733] *Church Special Focus Team Report* at 15.

[1734] Ibid.

[1735] Ibid. at 16; Memorandum from SMU TF Commanding General to USCENTCOM, [redacted] *Request for Use of Interrogation Techniques* (May 27, 2004); CENTCOM/SOCOM Briefing to Committee Staff (December 21, 2007).

[1736] *Church Special Focus Team Report* at 16.

that neither he nor his staff "reviewed or approved" the March 2004 SMU TF SOP "prior to its issuance."[1737]

[redacted] Several interrogation techniques authorized for use by the SMU Task Force prior to GEN Abizaid's suspension, including stress positions, sleep adjustment/management, sensory overload, and sensory deprivation were similar to techniques used in the resistance phase of SERE training. In fact, undated SMU TF SOPs from this period suggest a connection between SMU TF interrogation techniques and SERE. The SOPs state, under interrogation "Standards," that "[i]nterrogations will be done [in accordance with] all applicable rules and regulations to include... Survival/Evasion/Resistance/and Escape regulations."[1738]

[redacted]) On May 23, 2004 [redacted] the SMU TF Commander, sent a message to [redacted] stating that the May 6, 2004 [redacted] wrote that detainees held by his TF were "hardened" and "trained to resist interrogation" and added:

> FOR THIS LIMITED GROUP OF DETAINEES, [redacted] SLEEP MANAGEMENT, ENVIRONMENTAL MANIPULATION (LIGHT AND NOISE), EXTENDED INTERROGATIONS, VARYING COMFORT POSITIONS AND THE USE OF HOODS TO INDUCE A PSYCHOLOGICAL SENSE OF ISOLATION AND DEPENDENCE ON THE INTERROGATORS ARE PARTICULARLY USEFUL.[1740]

[redacted] told [redacted] that he planned to request "authority to employ" additional techniques.[1741]

[redacted] ([redacted] On May 27, 2004, [redacted] formally requested that CENTCOM grant authority to the SMU TF to use five interrogation techniques: sleep management, control positions, environmental manipulation, separation, and change of scenery.[1742] The request

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[1737] Memorandum from General John Abizaid, Responses to Request for Information from VADM Church (August 6, 2004).

[1738] [redacted] See Department of Defense Headquarters, Joint Task Force 121 (JTF-121), Baghdad Air Base, Iraq CJTF-121 Battlefield Interrogation facility/Team Standard Operating Procedures.

[1739] Message from Commander [redacted] to Commander [redacted], DTG 231006Z MAY 04 (May 23, 2004) at 1.

[1740] Ibid. (emphasis in original).

[1741] Ibid. at 1.

[1742] [redacted]

stated that control positions – defined as "requiring the detainee to stand, sit, kneel, squat, maintain sitting position with back against the wall, bend over chair, lean with head against wall, lie prone across chairs, stand with arms above head or raised to shoulders, or other normal physical training positions" – could also "be used in order to implement sleep management" and that "in the most exceptional circumstances, and on approval from [the SMU TF Commander]," interrogators could "use handcuffs to enforce the detainee's position."[1743] An interrogator could require a detainee to remain in a control position for "no more than 45 minutes in one hour and for no more than six hours in a 24 hour period."[1744]

(U) Notwithstanding the May 6, 2004 suspension of all non-FM 34-52 techniques, on June 4, 2004, GEN Abizaid approved the use of sleep management, environmental manipulation, separation, and change of scenery for the SMU TF.[1745] He delegated the approval authority for the use of those techniques to the "first general officer in the chain of command," and specified that none of the techniques could be used beyond a 72 hour period "without a review by [the SMU TF Commander] or the first general officer in the chain of command."[1746]

XV. CENTCOM Seeks JPRA Interrogation Assistance in Afghanistan (U)

A. May 2004 CENTCOM Request (U)

(U) In the wake of the detainee abuse at Abu Ghraib, Joint Personnel Recovery Agency (JPRA) personnel traveled to CENTCOM headquarters to coordinate a plan to send a training team to assist CENTCOM with interrogations in Afghanistan.

[redacted] According to Christopher Wirts, the Chief of JPRA's Operational Support Office (OSO) the meeting at CENTCOM took place after the mission to Afghanistan had been "tentatively approved."[1747] On May 12, 2004 CENTCOM made a formal request through the Joint Staff for JPRA "interrogation/ exploitation" assistance.

[redacted] In the May 12, 2004 request, CENTCOM asked that JFCOM provide a Joint Personnel Recovery Agency (JPRA) team to "conduct an on-site assessment of [Bagram Collection Point] operations in Bagram and Kandahar to assist in the development and

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Request for Use of Interrogation Techniques (May 27, 2004).

[1743] Ibid.

[1744] Ibid.

[1745] [redacted] *Church Special Focus Team Report* at 16. Although the request defined "separation" to include the use of goggles, earmuffs, and hooding, the CENTCOM Commander approved "separation," but not the "use of hooding." Memorandum from General John Abizaid to Commander, [redacted] *Request for Use of Interrogation Techniques, Dated 27 May 2004* (June 4, 2004).

[1746] Ibid.

[1747] [redacted] Email from Christopher Wirts to Thomas Markland, John Huffstutter, David Ellis (January 19, 2005). Mr. Wirts's email stated "Initially when the mission was tentatively approved we went to HQ CENTCOM and reviewed/briefed the J2X on how we intended to support. They were satisfied with our methods and intent. After the CENTCOM visit, we were called to JFCOM and met with ADM [Giambastiani], Gen Soligan, Gen Wagner, JFCOM Legal and a host of other personnel. In the days following the meeting, the mission was turned off."

implementation of an indoctrination program and other interrogation / exploitation options."[1748] The CENTCOM request stated that the JPRA team would ". . . observe exploitation procedures at the site to assist in identifying improvements or development of alternate approaches to meet exploitation objectives."[1749]

[redacted] That same day, JPRA personnel briefed JFCOM Deputy Commander LTG Wagner, JFCOM Chief of Staff Maj Gen James Soligan, and JFCOM Commander ADM Giambastiani, about the planned support.[1750]

(U) Materials prepared for those briefings stated that after September 11, 2001, JPRA was "requested to support [redacted] [Defense Intelligence Agency], [redacted] GTMO, Fort Huachuca, and [redacted]"[1751]

[redacted] ([redacted] The briefing materials specifically highlighted JPRA's September 2003 trip to Iraq in support of the Special Mission Unit Task Force there and described JPRA's intended support for CENTCOM in Afghanistan.[1752] Among JPRA's "key tasks" for the planned Afghanistan trip was to observe "exploitation procedures" used by CENTCOM personnel and to "identify areas for improvement" and "assist and advise on alternate approaches."[1753] The briefing materials stated that JPRA intended to provide "on the spot recommendations to the [CENTCOM] staff if appropriate" on these alternate approaches.[1754]

[redacted] ([redacted] The briefing materials also included a proposed Concept of Operations (CONOP) for the Afghanistan trip.[1755] The proposed CONOP was similar in scope and structure to the CONOP JPRA had circulated in September 2003, near the end of the Iraq trip. Unlike the Iraq CONOP, however, the Afghanistan CONOP included many of the edits that had been suggested by CAPT Daniel Donovan, the JFCOM SJA (e.g., clarifying that Rules of Engagement must be within U.S. law and policy including – but not simply limited to – the Torture Convention, removing reference to "constant sensory deprivation," etc.). The Afghanistan CONOP did not, however, reflect all of the SJA's edits. For example, [redacted]

[1748] Message from CENTCOM, Request for USJFCOM Support, DTG: 121729Z May 04 (May 12, 2004).

[1749] Ibid.

[1750] Email from Randy Moulton to Steven Johns and Fred Milburn (May 10, 2004); Committee staff interview of Christopher Wirts (January 4, 2007)

[1751] Email from Randy Moulton to [redacted], James Soligan, Robert Wagner, Fred Milburn, et al., attaching *Briefing Slides and Executive Summary with Iraq CONOP*; Committee staff interview of Christopher Wirts (January 4, 2007).

[1752] As part of the briefing materials, an executive summary of the September 2003 trip identified the JPRA-identified deficiencies as the SMU TF's "lack of clear legal guidance on status of captured personnel," "lack of established [Rules of Engagement or Standard Operating Procedure]," "lack of training and preparation," and "lack of information sharing." [redacted] *See* Executive Summary; *see also* Briefing Slides at 5-8.

[1753] Briefing slides at 6-8.

[1754] Ibid.

[1755] Several drafts of a Concept of Operations (CONOP) for the planned trip by JPRA personnel to Afghanistan were provided to the Committee. While those drafts are not dated, communications between and/or among JPRA and JFCOM personnel discussing revisions to the drafts suggest when those drafts were produced and how the CONOP evolved.

CAPT Donovan had recommended removing these techniques from the Iraq CONOP.[1757]

The reference to JPRA's prior interrogation support in the briefing materials prompted a discussion among ADM Giambastiani, LTG Wagner, Maj Gen Soligan and CAPT Donovan about the September 2003 trip to Iraq and the CONOP that was created during that trip.

Col Moulton, the JPRA Commander, had earlier defended the inclusion of the full range of SERE techniques in the Iraq CONOP by saying that "all the techniques discussed [in the CONOP] are ones that [JPRA] (or other services) employ in our training (with considerable oversight – only the Navy uses the waterboard)." He continued: "In discussions with [the Office of Secretary of Defense General Counsel] last year, they specifically requested what type of techniques we found most effective against our personnel. Our intent is to provide a prioritized list of what works on our folks, and let the lawyers and Combatant Commanders decide to what degree and which target audience they apply these, if any, techniques."[1758]

(During consideration of the Afghanistan trip, CAPT Donovan forwarded Col Moulton's email to ADM Giambastiani, LTG Wagner, and Maj Gen Soligan and wrote:

> When [Col Moulton] says that the Navy uses [waterboarding], he means that they use it against our own people during survival, evasion, resistance and escape (SERE) training. In other words, qualified Navy SERE instructors use this to demonstrate to our own people what the ENEMY is likely to do to them in the even they are captured, and (hopefully) to train our people how to resist or cope with such techniques.
>
> JPRA and SERE folks will swear that the "water board" does not actually physically harm subjects if it is administered by properly trained SERE instructors, under close supervision, etc. For that reason, some argue that the

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[1756] Ibid.

[1757] Shortly after the briefing, a JFCOM action officer sent JPRA leadership a list of action items for LTG Wagner and MG Soligan. Among those were JPRA (1) locating the after action report from JPRA's support to and (2) preparing a message to the Chairman of the Joint Chiefs of Staff "to provide policy/guidance on possibility of extending JPRA roles/responsibilities to the offensive vice defensive preparations/practices." In response, Col. Moulton told the JFCOM action officer that "[t]here was no [after action report] for the support" and instead directed him to the "executive summary" of the trip provided in the briefing materials. Col. Moulton also stated that it was JPRA's understanding that "[Admiral Giambastiani] would approve our participation [in the Afghanistan trip] with a [Voice Command] from the Joint Staff regardless of the status of the policy guidance (he has previously approved and we are currently supporting other 'offensive' efforts)." Email from Randy Moulton to Steven Johns, Fred Milburn, Christopher Wirts, and Dan Donovan (May 13, 2004).

[1758] Email from Col. Randy Moulton to Maj Gen James Soligan, CAPT Dan Donovan, RADM John Bird, LTG Robert Wagner et al. (September 30, 2003).

"water board" does not technically constitute torture under domestic or international law. I can only say that in my opinion, that argument does not pass the "Washington Post test." I fail to see how anyone can reasonably say that employing such techniques against those in our custody is worthy of the United States, no matter how much we may need the information. In my view, for the U.S. to do this "lowers the bar" and ensures, if there is any doubt, that similar techniques will be employed against any US personnel captured by our enemies. For this reason, there is risk involved in having JPRA "advise" interrogators in CENTCOM – JPRA's expertise concerns the effective techniques used by the BAD GUYS against us, and I frankly don't believe that's the kind of advice we should be giving to the U.S. side. I see great potential for theater personnel to do it wrong, and to then say, "well JPRA said this was what we should do."[1759]

On May 13, 2004, the day after Col Moulton briefed the JFCOM leadership, he circulated a revised CONOP for the Afghanistan trip. The revised CONOP stated that JPRA would "not recommend or train physical pressures," however, it also stated that a "key task" of the mission was to observe "exploitation procedures at the site to assist in identifying improvements" and develop "alternate approaches to meet exploitation objectives."[1760] CAPT Donovan immediately expressed his concern with that "key task" in an email to ADM Giambastiani and LTG Wagner, stating:

> I [am] concerned about JPRA "identifying alternate approaches to meet exploitation objectives" (read: more effective interrogation methods). Since JPRA's expertise is all the unlawful interrogation techniques the enemy uses against captured US forces, I recommend you consider NOT having JPRA get involved in this aspect of CENTCOM's request.[1761]

CAPT Donovan also expressed his concerns about the intended mission to Col Moulton, writing in a May 13, 2004 email:

> [I]t is not advisable to have JPRA assist in "improving exploitation" (i.e., suggesting more effective interrogation techniques). JPRA's core expertise is in training DoD personnel to resist/cope with techniques – many of them illegal – that may be employed by our enemies if DoD personnel are captured. It just doesn't make sense to me to have experts in what the "bad guys" do to us advising our U.S. interrogators – there is a real risk, if theater interrogators then 'do it wrong," for them to claim "JPRA's experts recommended this."

[1759] Email from CAPT Dan Donovan to ADM Edmund Giambastiani, LTG Robert Wagner and Maj Gen James Soligan (May 13, 2004) (emphasis in original).

[1760] Draft Concept of Operations in Support of Pending CENTCOM Joint Interrogation Facility Observation and Assessment Requirement.

[1761] Email from CAPT Dan Donovan to ADM Edmund Giambastiani, LTG Robert Wagner, Maj Gen James Soligan, (May 13, 2004) (emphasis in original).

Accordingly, my recommendation is that JPRA not get involved in this aspect of the requested support.[1762]

The next day, CAPT Donovan sent another email to ADM Giambastiani, LTG Wagner, and Maj Gen Soligan pointing out the "potential risk to the entire JPRA mission if they are in any way implicated in the current mess in Iraq."[1763] JPRA's planned May 2004 mission to Afghanistan was subsequently called off.[1764]

B. CENTCOM Makes Another Request for JPRA Interrogation Assistance in Afghanistan (U)

On June 20, 2004, about a month after their initial request, CENTCOM made another request to the Joint Staff for JPRA assistance at interrogation facilities in Bagram and Kandahar in Afghanistan.[1765] The request sought a team from JPRA to "conduct on-site assessments" in July and to "assist the commands in . . . developing and implementing an indoctrination program and other interrogation / exploitation options, required as a result of the assessments."[1766] Specifically, CENTCOM requested that the JPRA team "observe exploitation procedures at the site and identify improvements or develop alternate approaches to meet exploitation objectives."[1767]

When the request arrived at JFCOM, CAPT Donovan again raised concerns with Maj Gen Soligan about the scope of the request. In a June 21, 2004 email, he asked "whether JPRA is really the appropriate choice" for the mission described in the CENTCOM request, i.e., to "observe exploitation procedures at the site and identify improvements or develop alternate approaches to meet exploitation objectives."[1768] Maj Gen Soligan subsequently raised the issue with Maj Gen John Sattler, the CENTCOM Director of Operations (J3), who Maj Gen Soligan said told him that CENTCOM had made a "conscious decision on what capability they want."[1769]

CAPT Donovan also raised his concerns directly with lawyers at CENTCOM and the Joint Staff. In an email to the lawyers, he wrote:

[1762] Email from CAPT Dan Donovan to Col. Randy Moulton and Col Fred Milburn (May 13, 2004).

[1763] Email from CAPT Dan Donovan to Maj Gen James Soligan, copying ADM Edmund Giambastiani and LTG Robert Wagner (May 14, 2004).

[1764] According to Mr. Wirts, JPRA's OSO Chief, "[W]e went to HQ CENTCOM and reviewed/briefed the J2X on how we intended to support. They were satisfied with our methods and intent. After the CENTCOM visit, we were called to JFCOM and met with [Admiral Giambastiani, Maj Gen Soligan, LTG Wagner], JFCOM Legal and a host of other personnel. In the days following the meeting, the mission was turned off." Email from Christopher Wirts to Lt Col Thomas Markland, copying Lt Col John Huffstutter, Col David Ellis (January 19, 2005).

[1765] CENTCOM Request for USJFCOM Operational Support, DTG: 200800Z JUN 04 (June 20, 2004).

[1766] Ibid.

[1767] Ibid.

[1768] Email from CAPT Dan Donovan to Maj Gen James Soligan and LTG Robert Wagner (June 21, 2004).

[1769] Email from Maj Gen James Soligan to CAPT Dan Donovan (June 21, 2004).

> I'm concerned that the folks from our Joint Personnel Recovery Agency (JPRA) – who oversee training US military personnel how to resist interrogations by our enemies (e.g., SERE training) – are the wrong guys to be advising US interrogators how to more effectively exploit PUCs. JPRA considers themselves to be the exploitation experts, but in many ways my view is that their expertise is in training US personnel how to best resist ILLEGAL techniques. This kind of advice may be the last thing you all want/need in Afghanistan right now.[1770]

[redacted] Over the next month, JFCOM senior leadership discussed the proposed trip with JPRA and the Joint Staff. At JFCOM's request, JPRA developed and provided JFCOM with a training plan for the mission.[1771] On June 30, 2004, Maj Gen Soligan told JPRA in an email to prepare for the trip, but directed them not to deploy until the trip was approved by JFCOM's Commander ADM Edmund Giambastiani.[1772] JFCOM also discussed working with Joint Staff to find a capability outside JPRA to send to CENTCOM to assist with their detainee operations, but expected a "nonconcur" with any "recommendation to use other resources."[1773]

[redacted] As discussions about the CENTCOM request continued within JFCOM, Col Kenneth Rollins, a SERE psychologist added his perspective on the advisability of sending JPRA personnel to assist with interrogations. The psychologist said:

> [W]e need to really stress the difference between what instructors do at SERE school (done to INCREASE RESISTANCE capability in students) versus what is taught at interrogator[] school (done to gather information). What is done by SERE instructors is by definition ineffective interrogator conduct, and interrogator school, not SERE school is the appropriate focus and model for investigating interrogators. Simply stated, SERE school does not train you on how to interrogate, and things you "learn" there by osmosis about interrogation are probably wrong if copied by interrogators.[1774]

[redacted] As Col Rollins's comments were circulated at JFCOM, LtCol Richard Posey, one of the JFCOM JAGs added that "[i]t would be difficult to come up with a stronger argument against concurring in this request."[1775] LtCol Posey added: "CENTCOM needs interrogation experts. JPRA is telling us . . . that their instructors are ineffective interrogators and probably do it wrong because their focus is on increasing resistance not decreasing it. For the same reasons, this does

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[1770] Email from Dan Donovan to Joint Staff and CENTCOM lawyers (June 21, 2004) (emphasis in original).

[1771] [redacted] The training plan was intended to provide the JFCOM Commander an idea of how JPRA would satisfy the request to "conduct on-site assessments" at Bagram and Kandahar and "assist the commands in . . . developing and implementing an indoctrination program and other interrogation / exploitation options . . ." Email from Maj Gen James Soligan to Col Randy Moulton, RADM John Bird, LTG Robert Wagner (June 23, 2004).

[1772] Email from Maj Gen James Soligan to RADM John Bird, Col. Randy Moulton, et al. (June 30, 2004).

[1773] Email from LtCol Richard Posey to CAPT Alan Kaufman, copying LTC John Jones, CAPT Daniel Donovan (June 30, 2004); Email from LtCol Richard Posey to Maj Paul Voss, copying Col Fred Milburn, Lt Col Steven Johns, CAPT Alan Kaufman, LTC John Jones (July 12, 2004).

[1774] Email from LtCol Richard Posey to Maj Paul Voss, copying Col Fred Milburn, Lt Col Steven Johns, CAPT Alan Kaufman, LTC John Jones (July 12, 2004) (emphasis in original).

[1775] Ibid.

not pass the Washington Post test. DoD already has enough egg on its face concerning detainee operations."[1776]

(U) The trip to Afghanistan was subsequently cancelled. Christopher Wirts, JPRA Operations Support Office (OSO) Chief, told the Committee that although he did not know why JFCOM cancelled the trip, he recalled discussing the negative media attention from Abu Ghraib with LTG Wagner and Maj Gen Soligan.[1777]

C. U.S. Joint Forces Command Issues Policy Guidance For JPRA "Offensive" Support (U)

[redacted] In July 2004, following JFCOM's cancellation of the proposed trip by JPRA personnel to Afghanistan, ADM Giambastiani issued guidance to JPRA about "offensive" interrogation support. In a July 21, 2004 email to Col Moulton and RADM John Bird, the JFCOM J-3, Maj Gen Soligan wrote:

> ADM Giambastiani has given specific guidance that JPRA will not conduct any activities on or make any recommendations on offensive interrogation techniques or activities without specific approval from the JFCOM Commander, [Deputy Commander, or Chief of Staff.] All JPRA actions and recommendations related to interrogations of enemy detainees will be conducted in accordance with JPRA's current mission statement and limited to defensive actions and recommendations.[1778]

[redacted] A few days after that email, a draft memo containing the guidance was sent to Col Moulton. In a July 26, 2004 email to Maj Gen Soligan and RADM Bird, Col Moulton questioned why the policy was necessary and offered his view on JPRA's prior support to interrogation operations:

> Immediately following 9/11 JPRA was approached by various organizations, starting with OSD General Council [sic] (and later [redacted] USA strategic debriefing school in Ft Huachuca, and JTF 170) regarding U.S. training on resistance to interrogation techniques. All requests for information or support were coordinated through JFCOM, and all interested agencies were directed to make formal requests through JFCOM. All external requests for support have been unsolicited. From the very beginning I expressed concern that supporting these requests would go outside the JPRA charter and provided an honest assessment of the potential risk associated with the support. All CONOPS and actions have been fully vetted through JFCOM. If the message is to relay that we won't play in "offensive" ops – that has been received loud and

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[1776] Ibid.

[1777] Committee staff interview Christopher Wirts (January 4, 2008).

[1778] Email from Maj Gen James Soligan to Col Randy Moulton, RADM John Bird, Maj Gen Jack Holbein, Col Fred Milburn (July 21, 2004).

clear. If the purpose is to prevent OSD/GC, [redacted] and other DoD Interrogation organizations from making requests I'm not sure this memo is going to help.[1779]

(U) A formal JFCOM policy memo relating to JPRA's "offensive" support to interrogation operations was not finalized until September 29, 2004, after the Inspector General of the Department of Defense began looking into the issue. In the September 2004 memo, Maj Gen Soligan wrote:

> Recent requests from OSD and the Combatant Commands have solicited JPRA support based on knowledge and their application to U.S. strategic debriefing and interrogation techniques. These requests, which can be characterized as "offensive" techniques include, but are not limited to, activities designed not to increase one's resistance capabilities to interrogation techniques but rather intended to instruct personnel, for the purpose of gathering of information, on how to break down another's ability to withstand interrogation . . . The use of resistance to interrogation knowledge for "offensive" purposes lies outside the roles and responsibilities of JPRA.[1780]

(U) The policy did not, however, explicitly prohibit JPRA from conducting such activities in all instances. Instead, it stated that all requests for "offensive" support should "continue to" be directed through JFCOM but instructed that:

> [A]ny deviation in roles and responsibilities must be carefully scrutinized and vetted through proper legal and policy channels. JPRA personnel will not conduct any activities without specific approval from the USJFCOM Commander, Deputy Commander, or the Chief of Staff. Deviations from the JPRA chartered mission of this nature are policy decisions that will be forwarded to the Office of the Secretary of Defense (OSD) for action. JPRA will continue to direct all requests for external support through USJFCOM and refrain from providing any support or information unless specifically directed by USJFCOM as outlined above.[1781]

(U) As the Department of Defense Inspector General continued its inquiry into JPRA's prior "offensive" interrogation support, the DoD Inspector General asked JFCOM about the September 2004 policy memo.[1782] In a February 2005 memo to the DoD Inspector General, LTG Wagner stated that the purpose of the September 2004 policy was to provide "clear guidance" and to "prevent use of JPRA outside the command's mission scope."[1783] Knowing that CENTCOM and Joint Staff had expressed interest in JPRA to assist or support "in-theater

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[1779] Email from Col Randy Moulton to Maj Gen James Soligan, RADM John Bird, Maj Gen Jack Holbein (July 26, 2004).

[1780] Memo from Maj Gen James Soligan to Col Randy Moulton, *Joint Personnel Recovery Agency Mission Guidance* (September 29, 2004).

[1781] Ibid.

[1782] Memorandum for the Department of Defense Inspector General, signed by LTG Robert Wagner (February 10, 2005).

[1783] Ibid.

interrogations," LTG Wagner said that JFCOM sought to clarify that "JPRA is primarily a school house, not an intelligence gathering activity."[1784] He added that "JPRA does not have not have personnel assigned to be interrogators," and that "the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations."[1785]

(U) According to LTG Wagner, JFCOM issued the September 2004 policy statement "to ensure that JPRA activities remained within the scope of that Agency's mission charter."[1786] He stated that JFCOM considered requests for JPRA "interrogator support" to be "inconsistent" with JPRA's charter.[1787] He stated, however, that the memorandum was not "issued in response to suspected or known inappropriate JPRA activities, as no such activities were known by this headquarters to have been conducted."[1788] Notwithstanding that statement, however, by September 2004, when JFCOM issued the policy, JFCOM had already approved a trip by JPRA personnel to Iraq as well as other "offensive" interrogation support – activities that fell outside JPRA's roles and responsibilities.

[1784] Ibid.

[1785] Ibid.

[1786] Ibid.

[1787] Ibid.

[1788] Ibid.