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THE TREATMENT OF DETAINEES IN U.S. CUSTODY

HEARINGS

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 17 AND SEPTEMBER 25, 2008

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THE ORIGINS OF AGGRESSIVE INTERROGATION TECHNIQUES: PART I OF THE COMMITTEE'S INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY (A.M. SESSION)

TUESDAY, JUNE 17, 2008

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m. in room SD–106, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Lieberman, Reed, Akaka, Bill Nelson, E. Benjamin Nelson, Pryor, Webb, McCaskill, Warner, Inhofe, Sessions, Collins, Chambliss, Graham, Dole, Cornyn, Thune, and Martinez.

Committee staff members present: Richard D. DeBobes, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Joseph M. Bryan, professional staff member; Ilona R. Cohen, counsel; Mark R. Jacobson, professional staff member; Gerald J. Leeling, counsel; Peter K. Levine, general counsel; William G.P. Monahan, counsel; and Michael J. Noblet, professional staff member.

Minority staff members present: Michael V. Kostiw, Republican staff director; William M. Caniano, professional staff member; David G. Collins, research assistant; David M. Morriss, minority counsel; and Dana W. White, professional staff member.

Staff assistants present: Kevin A. Cronin, Jessica L. Kingston, Ali Z. Pasha, Benjamin L. Rubin, Brian F. Sebold, and Breon N. Wells.

Committee members' assistants present: Jay Maroney, assistant to Senator Kennedy; James Tuite, assistant to Senator Byrd; Frederick M. Downey, assistant to Senator Lieberman; Elizabeth King, assistant to Senator Reed; Bonni Berge and Darcie Tokioka, assistants to Senator Akaka; Christopher Caple, assistant to Senator Bill Nelson; Andrew R. Vanlandingham, assistant to Senator Ben Nelson; Jon Davey, assistant to Senator Bayh; M. Bradford Foley, assistant to Senator Pryor; Gordon I. Peterson, assistant to Senator Webb; Peg Gustafson, assistant to Senator McCaskill; Sandra Luff, assistant to Senator Warner; Anthony J. Lazarski and Nathan Reese, assistants to Senator Inhofe; Mark J. Winter, assistant to Senator Collins; Clyde A. Taylor IV, assistant to Senator Chambliss; Jennifer Olson, assistant to Senator Graham; Lindsey

Neas, assistant to Senator Dole; David Hanke, assistant to Senator Cornyn; Jason Van Beek, assistant to Senator Thune; and Erskine W. Wells III, assistant to Senator Wicker.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning everybody.

Today's hearing will focus on the origins of aggressive interrogation techniques used against detainees in U.S. custody. We have three panels of witnesses today, and I want to thank them for their willingness to voluntarily appear before the committee.

Intelligence saves lives. Knowing where an insurgent has buried an improvised explosive device (IED) can keep a vehicle carrying marines in Iraq from being blown up. Knowing that an al Qaeda associate visited an Internet cafe in Kabul could be the key piece of information that unravels a terrorist plot targeting our embassy. But, how do we get people who know the information to share it with us? Does degrading them or treating them harshly increase the chances that they'll be willing to help?

Just a couple of weeks ago, I visited our troops in Afghanistan. While I was there, I spoke to a senior intelligence officer who told me that treating detainees harshly is actually an impediment, a roadblock, to use that officer's word, to getting intelligence from them. Here's why. He said that al Qaeda and Taliban terrorists are taught to expect Americans to abuse them; they're recruited based on false propaganda that says that the United States is out to destroy Islam. Treating detainees harshly only reinforces their distorted view and increases their resistance to cooperate. The abuse at Abu Ghraib was a potent recruiting tool for al Qaeda and handed al Qaeda a propaganda weapon that they could use to peddle their violent ideology.

So, how did it come about that American military personnel stripped detainees naked, put them in stress positions, used dogs to scare them, put leashes around their necks to humiliate them, hooded them, deprived them of sleep, and blasted music at them? Were these actions the result of a "few bad apples" acting on their own? It would be a lot easier to accept if it were, but that's not the case. The truth is that senior officials in the U.S. Government sought information on aggressive techniques, twisted the law to create the appearance of their legality, and authorized their use against detainees. In the process, they damaged our ability to collect intelligence that could save lives.

Today's hearing will explore how it came about that the techniques called survival, evasion, resistance, and escape (SERE) training, which are used to teach American soldiers to resist abusive interrogations by enemies that refuse to follow the Geneva Conventions, were turned on their head and sanctioned by Department of Defense (DOD) officials for use offensively against detainees. Those techniques included use of stress positions, keeping detainees naked, use of dogs, and hooding during interrogation.

Some brief background on SERE training. The United States military has five SERE schools to teach certain military personnel, whose missions create a high risk that they might be captured, the skills needed to survive in hostile enemy territory, evade capture, and escape, should they be captured. The resistance portion of

SERE training exposes students to physical and psychological pressures designed to simulate abusive conditions to which they might be subject if taken prisoner by enemies that may abuse them.

The Joint Personnel Recovery Agency (JPRA) is DOD's agency that oversees SERE training. JPRA's Instructor Guide states that a purpose of using physical pressures in training is "stress inoculation," building soldiers' immunities so that they, should they be captured and be subject to harsh treatment, are better able to resist.

The techniques used in SERE training can include things like 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 sailors who attended the Navy's SERE school, it included waterboarding, which is mock drowning.

The SERE schools obviously take extreme care to avoid injuring our own soldiers. Troops are medically screened to make sure that they're fit for the SERE course. Prior to the training, each student's physical limitations are carefully documented to reduce the chance that the SERE training and the use of SERE techniques will cause injury.

There are explicit limitations on the duration and intensity of physical pressures. For example, when waterboarding was permitted at the Navy SERE school, the instructor manual stated that a maximum of 2 pints of water could be used on a student who was being waterboarded, and, if a cloth was used to cover a student's face, it could stay in place a maximum of 20 seconds.

SERE training techniques are legitimate and important training tools. They prepare our forces, who might fall into the hands of an abusive enemy, to survive by getting them ready for what might confront them.

Strict controls are also in place during SERE training to reduce the risk of psychological harm to students. Psychologists are present throughout SERE training to intervene, should the need arise, and to talk to students during and after the training to help them cope with associated stress.

Those who play the part of interrogators in the SERE school drama are not real interrogators, nor are they qualified to be. As the Deputy Commander for the Joint Forces Command (JFCOM) put it, "The expertise of JPRA lies in training personnel how to respond and resist interrogations, not in how to conduct interrogations." Now, that is a fundamental, important distinction.

Some might say that if our personnel go through it in SERE school, what's wrong with doing it to detainees? Well, our personnel are students, and they can call off the training at any time. SERE techniques are based on abusive tactics used by our enemies. If we use those same techniques offensively against detainees, it says to the world that they have America's stamp of approval. That puts our troops at greater risk of being abused if they're captured. It also weakens our moral authority and harms our efforts to attract allies to our side in the fight against terrorism.

So, how did SERE techniques come to be considered by DOD for detainee interrogation? In July 2002, Richard Shiffrin, a Deputy General Counsel in DOD and a witness at today's hearing, called Lieutenant Colonel Daniel Baumgartner, also a witness today and then-Chief of Staff at JPRA, which is the agency that oversees the SERE training, and asked for information on SERE techniques. In response to Mr. Shiffrin's request, Lieutenant Colonel Baumgartner drafted a two-page memo and compiled several documents, including excerpts from SERE instructor lesson plans that he attached to his memo, saying that JPRA would "continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy detainees." The memo was hand-delivered to the General Counsel's Office on July 25, 2002 (Appendix A).

Again, it's critical to remember that these techniques are not used in SERE school to obtain intelligence, they are to prepare our soldiers to resist abusive interrogation.

The next day, Lieutenant Colonel Baumgartner drafted a second memo, which included three attachments (Appendix A). One of those attachments listed physical and psychological pressures used in SERE training, including sensory deprivation, sleep disruption, stress positions, waterboarding, and slapping. It also made reference to a section of the JPRA instructor manual that talks about coercive pressures, like keeping the lights on at all times and treating a person like an animal. Another attachment, written by Dr. Ogrisseg, also a witness today, assessed the long-term psychological effects of SERE training on students, and the effects of the waterboard. (Appendix A)

This morning, the committee will have a chance to ask Mr. Shiffrin, Lieutenant Colonel Baumgartner, and Dr. Ogrisseg about these matters.

On August 1, 2002, a week after Lieutenant Colonel Baumgartner sent his memo to the DOD General Counsel, the Department of Justice's (DOJ) Office of Legal Counsel (OLC) issued two legal opinions. One, commonly known as the first Bybee Memo, was addressed to the then-White House counsel, Alberto Gonzales, and provided OLC's opinion on standards of conduct in interrogation required under the federal torture statute. The memo concluded that, "For an act to constitute torture as defined in the 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."

The other OLC opinion, issued the same day and known as the second Bybee Memo, responded to a Central Intelligence Agency (CIA) request and addressed the legality of specific interrogation tactics. While the interrogation tactics reviewed by the OLC in the second Bybee Memo remain classified, General Hayden, in public testimony before the Senate Select Committee on Intelligence in February, said that the waterboard was one of the techniques that the CIA used with detainees. Stephen Bradbury, the current As-

sistant Attorney General for the OLC, testified before the House Judiciary Committee earlier this year that "CIA's use of waterboarding procedure was adapted from the SERE training program."

During the time the DOD General Counsel's Office was seeking information from JPRA, JPRA staff, responding to a request from Guantanamo Bay (GTMO), were finalizing plans to conduct training for interrogation staff from U.S. Southern Command's (SOUTHCOM) Joint Task Force 170 at GTMO. During the week of September 16, 2002, a group from GTMO, including interrogators and behavioral scientists, traveled to Fort Bragg, NC, and attended training conducted by instructors from the JPRA SERE school. None of the three JPRA personnel who provided the training was a trained interrogator.

On September 25, just days after the GTMO staff returned from that training, a delegation of senior administration lawyers, including Jim Haynes, General Counsel for DOD; John Rizzo, acting CIA General Counsel; David Addington, counsel to the Vice President; and Michael Chertoff, head of the Criminal Division of the DOJ, visited GTMO. An after-action report produced by military lawyers after the visit noted that one purpose of the trip was to receive briefings on intelligence techniques. (Appendix A)

On October 2, 2002, a week after John Rizzo, the acting CIA General Counsel, visited GTMO, a second senior CIA lawyer, Jonathan Fredman, who was chief counsel to the CIA's Counterterrorism Center, went to GTMO, attended a meeting of GTMO staff, and discussed a memo proposing the use of aggressive interrogation techniques. That memo had been drafted by a psychologist and psychiatrist from GTMO who, a couple of weeks earlier, had attended that training, given at Fort Bragg by instructors from the SERE school.

While the memo remains classified, minutes from the meeting where it was discussed are not. Those minutes clearly show that the focus of the discussion was aggressive techniques for use against detainees. (Appendix A)

When the GTMO chief of staff suggested at the meeting that GTMO "can't do sleep deprivation," Lieutenant Colonel Beaver, GTMO's senior lawyer, responded, "Yes, we can, with approval." Lieutenant Colonel Beaver added that GTMO, "may need to curb the harsher operations while the International Committee of the Red Cross (ICRC) is around."

Mr. Fredman, the senior CIA lawyer, suggested that it's "very effective to identify detainee phobias, and to use them," and described to the group the so-called wet-towel technique, which we know as waterboarding. Mr. Fredman said, "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." Mr. Fredman presented the following disturbing perspective on legal obligations under our anti-torture laws, saying, "It is basically subject to perception. If the detainee dies, you're doing it wrong." If the detainee dies, you're doing it wrong? How on Earth did we get to the point where a senior U.S. Government lawyer would say that whether or not an interrogation technique is torture is "subject to perception," and that if "the detainee dies, you're doing it wrong?"

The GTMO senior Judge Advocate General (JAG) Officer Lieutenant Colonel Beaver's response was, "We'll need documentation to protect us."

Nine days after that October 2, 2002, meeting, General Dunlavey, the Commander of Joint Task Force 170 at GTMO, sent a memo to SOUTHCOM requesting authority to use interrogation techniques, which the memo divided into three categories of progressively more aggressive techniques. Category 1 was the least aggressive; category 2 more so, and included the use of stress positions, exploitation of detainee fears, such as fear of dogs, removal of clothing, hooding, deprivation of light and sound; and category 3 techniques included techniques like the so-called "wet-towel treatment," or waterboard, that was the most aggressive. (Appendix A)

A legal analysis by GTMO's staff judge advocate, Lieutenant Colonel Diane Beaver, justifying the legality of the techniques, was sent with that request. (Appendix A)

On October 25, 2002, General James Hill, the SOUTHCOM Commander, forwarded General Dunlavey's request to the Chairman of the Joint Chiefs of Staff (JCS). Nine days later, the Joint Staff solicited the view of the military Services on the GTMO request. (Appendix A)

Now, that was October 25. The military Services reacted strongly against using many of the techniques in the GTMO request. In early November 2002, in a series of memos, the Services identified serious legal concerns with the techniques, and they called urgently for additional analysis.

The Air Force cited, "serious concerns regarding the legality of many of the proposed techniques," and stated that "the 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.

The chief legal advisor to the Criminal Investigative Task Force (CITF) at GTMO wrote that category 3 techniques and certain category 2 techniques may, "subject servicemembers to punitive articles of the Uniform Code of Military Justice (UCMJ)," and 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 now aware of how we conduct our business."

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," and "would likely be considered maltreatment under the UCMJ, and may violate the torture statute." The Army labeled the request legally insufficient and called for additional review.

The Navy response recommended a more detailed interagency legal and policy review of the request, in their words.

The Marine Corps expressed strong reservations, stating that "several of the category 2 and category 3 techniques arguably violate Federal law and would expose our servicemembers to possible

prosecution." The Marine Corps said the request was not "legally sufficient," and, like the other Services, called for "a more thorough legal and policy review."

Now, while it has been known for some time that military lawyers voiced strong objections to interrogation techniques in early 2003 during the DOD Detaining Working Group process, these November 2002 warnings from the military Services were expressed before the Secretary of Defense (SECDEF) authorized the use of aggressive techniques, and were not publicly known until now.

When the Joint Staff received the military Services' concerns, Rear Admiral Jane Dalton, then-legal advisor to the Chairman of the JCS, began her own legal review of the proposed interrogation techniques, but that review was never completed. Today, we'll have the opportunity to ask Rear Admiral Dalton about that.

Notwithstanding concerns raised by the military Services, DOD General Counsel Jim Haynes sent a memo to Secretary Donald Rumsfeld on November 27, 2002, recommending that he approve all but 3 of the 18 techniques in the GTMO request. (Appendix A) Techniques like 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.

Five days later, on December 2, 2002, Secretary Rumsfeld signed Mr. Haynes' recommendation, adding the handwritten note, "I stand for 8 to 10 hours a day, why is standing limited to 4 hours?" (Appendix A).

When Secretary Rumsfeld approved the use of abusive techniques against detainees, he unleashed a virus which ultimately infected interrogation operations conducted by the U.S. military in Afghanistan and Iraq.

Discussions about reverse-engineering SERE techniques for use in interrogations at GTMO had already prompted strong objections by the DOD's CITF at GTMO. CITF Deputy Commander Mark Fallon said that the 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."

In the week following the Secretary's December 2, 2002, authorization, senior staff at GTMO set to work drafting a standard operating procedure (SOP) specifically for the use of SERE techniques in interrogations. The first page of one draft of that SOP 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 described how to slap, strip, and place detainees in stress positions. It also described hooding, manhandling, and walling detainees. (Appendix A)

When they saw the draft SOP, the CITF and Federal Bureau of Investigation (FBI) personnel again raised a red flag. A draft of their comments on the SOP said that the use of aggressive techniques only, "ends up fueling hostility and strengthening a detain-

ee's will to resist," but those objections did not stop GTMO from taking the next step: training interrogators on how to use techniques offensively.

On December 30, 2002, two instructors from the Navy SERE school arrived at GTMO. The following day, in a session with approximately 24 interrogation personnel, the two demonstrated how to administer stress positions and various slaps, just like they do in SERE school.

Around this time, General Hill, the Commander of SOUTHCOM, spoke to General Miller and discussed the fact that a debate was occurring over the Secretary's approval of the techniques. In fact, CITF's concerns had made their way up to then-Navy General Counsel Alberto Mora, and a battle over interrogation techniques was being waged at senior levels in the Pentagon.

On January 3, 2003, 3 days after they conducted the training, the SERE instructors met with Major General Miller, and, according to some who attended, General Miller stated he did not want his interrogators using the techniques that the Navy SERE instructors had demonstrated. That conversation took place after the training had already occurred, and not all of the interrogators who attended the training got the message.

Now, 2 weeks earlier, on December 20, 2002, Alberto Mora, who is a witness here today, had met with DOD General Counsel Jim Haynes. In a memo describing that meeting, Mr. Mora said that he told Mr. Haynes that he thought that interrogation techniques that had been authorized by the SECDEF on December 2, 2002, "could rise to the level of torture," and he asked them, "What did deprivation of light and auditory stimuli mean? Could a detainee be locked in a completely dark cell? For how long? A month? Longer? What exactly did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in?" (Appendix A)

On January 9, Alberto Mora met with Jim Haynes again. This is 2003, now. According to his memo, Mora expressed frustration that the Secretary's authorization had not been revoked, and told Haynes that the policies could threaten Secretary Rumsfeld's tenure and even damage the presidency.

On January 15, 2003, having gotten no word that the Secretary's authority would be withdrawn, Mora delivered a draft memo to Haynes's office stating that, "The majority of the proposed category 2 and all of the category 3 techniques were violative of domestic and international legal norms, and that they constituted, at a minimum, cruel and unusual treatment, and, at worst, torture."

In a phone call, Mora told Haynes that he would be signing that memo later that day unless he heard definitively that the use of the techniques was being suspended. In a meeting that same day, Haynes returned the draft memo and told Mora that the Secretary would rescind the techniques, which the Secretary did that day, January 15, 2003.

At the same time that the Secretary did that, he directed the establishment of a working group to review interrogation techniques.

What happened next has already become well known. For the next few months, the judgments of senior military and civilian lawyers critical of legal arguments supporting aggressive interrogation

techniques were rejected in favor of a legal opinion from the OLC's John Yoo. The Yoo opinion, the final version of which was dated March 14, 2003, was requested by Jim Haynes and repeated much of what the first Bybee Memo had said 6 months earlier. Mr. Mora, who was one of the working group participants, said that soon after the working group was established it became evident that the group's report "would contain profound mistakes in its legal analysis, in large measure because of its reliance on the flawed OLC memo."

In a meeting with Yoo, Mora asked whether the law allowed the President to go so far as to order torture, and Yoo responded, "Yes."

The August 1, 2002, Bybee memo, again, had said that to violate the federal anti-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." John Yoo's March 14, 2003, memo stated that criminal laws, such as the federal anti-torture statute, would not even 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.

One CIA lawyer reporter called the Bybee memo of August 2002 a "golden shield." Combining it with the Yoo memo of March 2003, the Justice Department had attempted to create a shield to make it difficult or impossible to hold anyone accountable for their conduct.

Ultimately, the working group report, finalized in April 2003, included a number of aggressive techniques that were legal, according to John Yoo's analysis. The full story of where the working group got those techniques remains classified. However, the list itself reflects 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. Top military lawyers and Service general counsels had objected to these techniques as the report was being drafted. Those who had objected, like Navy General Counsel Alberto Mora, were simply excluded from the process, not even told that a final report had been issued.

On April 16, 2003, less than 2 weeks after the working group completed its report, the SECDEF 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 most of the techniques in the working group report. However, the Secretary's memo said that, "If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the JCS, a written request describing the proposed technique, recommending safeguards, and the rationale for applying it with an identified detainee." (Appendix A)

Now, how did SERE techniques make their way to Afghanistan and Iraq? Shortly after the Secretary approved Jim Haynes's recommendation, on December 2, 2002, the techniques and the fact that the Secretary had authorized them became known to interrogators in Afghanistan. A copy of the Secretary's memo was sent

from GTMO to Afghanistan. The officer in charge of the intelligence section at Baghram Air Field in Afghanistan has said that, in January 2003, she saw, in Afghanistan, a PowerPoint presentation listing the aggressive techniques authorized by the Secretary on December 2, 2002. Documents and interviews also indicate that the influence of the Secretary's approval of aggressive interrogation techniques survived their January 15, 2003, rescission.

On January 24, 2003, 9 days after Secretary Rumsfeld's rescission, the staff judge advocate for Combined Joint Task Force (CJTF)–180, Central Command's conventional forces in Afghanistan, produced an interrogation techniques memo. While that memo remains classified, the unclassified version of a report by Major General George Fay stated that the CJTF–180 memo, "recommended removal of clothing," a technique that had been in the Secretary's December 2, 2002, authorization, and discussed exploiting Arab fear of dogs, another technique approved by the Secretary on December 2, 2002.

From Afghanistan, the techniques made their way to Iraq. According to the DOD Inspector General (IG), at the beginning of the Iraq war, the special mission unit forces in Iraq "used a January 2003 SOP which had been developed for operations in Afghanistan." According to the DOD IG, the Afghanistan SOP had been "influenced by the counter-resistance memorandum that the SECDEF 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."

Special mission unit techniques eventually made their way into SOPs issued for all U.S. forces in Iraq. 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 for the conventional forces in Iraq, led at the time by Lieutenant General Ricardo Sanchez.

On September 14, 2003, General Sanchez issued the first CJTF–7 interrogation SOP. That policy authorized interrogators in Iraq to use stress positions, environmental manipulation, sleep management, and military working dogs to exploit detainees' fears in interrogations.

In the 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." Major General Fay said that removal of clothing, while not included in CJTF–7's procedures, was imported to Abu Ghraib, and 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."

Following a September 9, 2004, committee hearing on his report, I asked Major General Fay whether the policy approved by the SECDEF on December 2, 2002, contributed to the use of aggressive interrogation techniques at Abu Ghraib, and he responded, "Yes."

Not only did SERE training techniques make their way to Iraq, but instructors from JPRA's SERE school followed. The DOD IG re-

ported that, in September 2003, at the request of the commander of the Special Mission Unit Task Force, JPRA deployed a team to Iraq to provide assistance to interrogation operations. During that trip, SERE instructors were authorized to participate in the interrogation of detainees in U.S. military custody. Accounts of that trip will be explored at a later time, and I'll be sending a letter to DOD asking that those accounts and other documents relating to JPRA's interrogation-related activities be declassified.

Major General James Soligan, the Chief of Staff of the U.S. JFCOM, which is the JPRA's higher headquarters, issued a memorandum referencing JPRA's support to interrogation operations. Soligan wrote that, "Recent requests from the Office of the Secretary of Defense (OSD) and Combatant Commands have solicited JPRA support based on knowledge and information gained through the debriefing of former U.S. Prisoners of War (POWs) and detainees and their application to U.S. strategic debriefing and interrogation techniques. These requests, which can be characterized as offensive support," he said, "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." (Appendix A)

Lieutenant General Robert Wagner, the deputy commander of JFCOM, has likewise said that, "Relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations, not in how to conduct interrogations. Requests for JPRA interrogation support were both inconsistent with the unit's charter and might create conditions which task JPRA to engage in offensive operational activities outside of JPRA's defensive mission." (Appendix A)

The DOD IG's report, completed in August 2006, said that the techniques in Iraq and Afghanistan had derived, in part, from JPRA and SERE.

Many have questioned why we should care about the rights of detainees. On May 10, 2007, General David Petraeus answered that question in a letter to his troops. This is what General Petraeus wrote, "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."

He continued, "I fully appreciate the emotions that one experiences in Iraq. I also know firsthand the bonds between members of the brotherhood of the close fight. Seeing a fellow trooper killed by a barbaric enemy can spark frustration, anger, and a desire for immediate revenge. As hard as it might be, however, we must not let these emotions lead us, or our comrades in arms to commit hasty, illegal actions. In the event that we witness or hear of such actions, we must not let our bonds prevent us from speaking up. Some might argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they are also frequently neither useful nor necessary."

He concludes, "We are, indeed, warriors. We train to kill our enemies. We are engaged in combat. We must pursue the enemy relentlessly, and we must be violent at times. What sets us apart from our enemies in this fight, however, 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."

Senator Warner has asked Senator Graham to be the acting ranking member today.

STATEMENT OF SENATOR JOHN WARNER

Senator WARNER. That's correct, Mr. Chairman. Senator Graham is a full colonel in the JAG Corps of the United States Military Reserve. I collaborated with him and Senator McCain when we did the Detainee Treatment Act (DTA), and I've asked, and Senator McCain joined in this, that he represent our side as the ranking, here this morning and throughout the context of these hearings.

I would like to say, Mr. Chairman, that we have to look at this situation in the context of the aftermath of September 11, when this country was struggling to come to a full recognition about our vulnerability to attacks such as we experienced on that fateful day. I think men and women in uniform, as well as in the civilian community, did everything we could to try and preserve and protect our great Nation, a nation that is founded under the rule of law; and there should be no deviation from that.

I also, Mr. Chairman, draw your attention to the letter that you received, and the committee, from the counsel for one of the witnesses today, and in your reply you said, "On those rare occasions when a witness believed that he or she should not answer a question without divulging classified information, the witness has so informed the committee." Could the Chair advise the committee how we will avail ourselves of such classified information that the witnesses may possess, at the same time protecting them?

Chairman LEVIN. Of course, we would request, if it's appropriate, that information be declassified, but we cannot receive classified information at this hearing.

Senator WARNER. Absolutely. I see.

Let's also reflect on the fact that in April 2004 through 2006 this committee, recognizing there were problems in this area, conducted 17 hearings and briefings with regard to detainee abuse, military commissions, and the new Army Field Manual. That was largely out of the Abu Ghraib. You and I worked together on that, Mr. Chairman, and that led to the DTA. So, I think this committee has a long record, both under Republican control and Democratic control, to examine this matter.

Chairman LEVIN. It is an important tradition, and I'm glad that you made reference to it, that this committee conduct this kind of oversight hearing. It is our responsibility, and I am grateful for your reference to that effort on our part.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Thank you, to the witnesses, for testifying before us today.

Let me begin by saying I have made it clear a long time ago that I believed administration lawyers used bizarre legal theories to jus-

tify harsh interrogation techniques. I've also been troubled by the fact that they implemented these procedures over the strenuous objections of military lawyers and many others with expertise in these areas.

I think our military community, particularly our legal community, Mr. Chairman, has been saying, "What about the shoe on the other foot?" I don't doubt for one moment what al Qaeda will do to anyone they capture wearing our uniform. That's not the issue. We know what they do. As a matter of fact, I saw a video last night of a Taliban group, showing a 14-year-old about to slit the throat of one of their captives. Obviously, the video did not go to conclusion, but that is a bit about who we're fighting. The question is, how do we beat these people? Do we behave like them, or do we behave differently? Do we marginalize them, or do we empower them? I would argue that anytime that we can be associated with techniques that go down their road, we're empowering them and marginalizing ourselves. In this regard, what we're trying to do here today is important.

Now, the guidance that was provided during this period of time, I think, will go down in history as some of the most irresponsible and shortsighted legal analysis ever provided to our Nation's military and intelligence communities. I do not believe the members of the administration who played a major role in developing interrogation policy were motivated by anything other than a desire to protect our Nation. I know that to be true, that the men and women in question felt America was under attack—and we were—and they were motivated to protect the Nation. That, to me, is clear, and in that regard, their service is to be appreciated.

However, if the administration had adhered to the letter and spirit of the law, our treaty obligations, and adequately consulted with Congress, I do not believe we would be here today.

It is important that we all understand and agree that the high ground in this war against Islamic extremism is the moral high ground. The high ground is often a military term used where the advantage to those occupying the high ground is clear, and those below are in a very precarious situation. In this war, there is no capital to conquer, no air force to shoot down, no navy to sink. The high ground in this war against radical Islamic extremism is the moral high ground.

We're not going to conquer this enemy on a battlefield. There will be no surrender with a white flag. It is truly a battle of ideas and values. The issues we're going to discuss today represent a lost opportunity in this war.

I'd like to briefly outline where we were in the aftermath of the tragic events of September 11, and where we are today, in terms of the interrogation, detention, and trial of enemy combatants for war crimes.

Let's face the cold, hard facts. On September 10, 2001, America was unprepared. We were not ready to fight an enemy that claimed no country and wore no uniform. We weren't ready to capture, detain, and interrogate terror suspects who represent no nation-state and indiscriminately kill civilians and soldiers alike.

After we invaded Iraq, we underestimated the threat of an insurgency, and we were slow to adapt to the situation on the ground.

We were ill-equipped to manage Abu Ghraib, and perplexed by what to do with unlawful combatants in Afghanistan.

I don't offer our lack of preparation for this long war against radical Islam as an excuse, but, rather, as the context in which a series of extraordinarily poor decisions were made at the Pentagon, DOJ, and the White House with respect to detainees.

To the great regret of many of us, the administration pursued a go-it-alone strategy when it came to the treatment and detention of unlawful enemy combatants. Under the rubric of the Commander in Chief's inherent authority in a time of war and armed with the authorization to use military force, which Congress passed in the days after September 11, the administration implemented policies that were drafted, implemented, revised, rescinded, and reissued in an endless loop.

Interrogation techniques which were supposed to be limited to GTMO may have migrated to Iraq and Afghanistan. The chaos was created by administration lawyers' decision to ignore the advice of our senior military leaders and military lawyers, and depart from decades of adherence to the Army Field Manual, the UCMJ, and the Geneva Conventions. It's hard to fathom that our Nation and the world would have to hear the United States discuss documents like the Torture Memo.

Eventually, the departure from the time-honored standards of the Geneva Convention—and they are well known in respect to rules of restraint—were replaced with a new set of untested procedures which became dangerously and disastrously confused. The alleged detainee abuse was the unfortunate result.

Now, this, at Abu Ghraib, was not just a few bad apples. Clearly, they were people acting on their own inappropriately in a very perverse fashion regarding detainees. But, I think it is best to say that Abu Ghraib was a result of system failure.

Mr. Haynes, who will come before the committee today, wrote in an official document that waterboarding "may be legally available" to the military; never mind the fact that it is clearly prohibited under the UCMJ.

As a personal aside, Mr. Chairman, one of the great concerns I've had about this whole process is the legal exposure that you place men and women in uniform if they go down this road. The UCMJ could not be more clear when it comes to the guidelines and guidance provided to those in uniform regarding detainees.

We have a very clear policy of nonabuse. Why? General Petraeus said it better than I could. We're trying to be different than our enemy, and I regret the fact that some of our military members were giving advice that would expose them to prosecution if they had followed that advice.

The final report of the working group on interrogation, convened by Mr. Haynes, reiterated an OLC opinion that, "In order to respect the President's inherent constitutional authority to manage a military campaign, the prohibition against torture must be construed as inapplicable to interrogations undertaken pursuant to the Commander in Chief authority."

I would just add that these treaties that we're talking about, the Convention Against Torture (CAT), signed by Ronald Reagan, has served this country and the world well. Would we sit on the side-

lines if some executive in another country said, "I have the inherent authority, because my nation is at risk, to set this treaty aside"? Would we object if some airman were in the hands of a nation-state and the executive of that nation said, "Even though I signed up to the Geneva Convention, I believe I have the inherent authority to protect my people, to set it aside, in this case"? If we go down that road, the law means nothing.

Regarding detention and prosecution of detainees, we follow a similar pattern. I've fought for years with the administration to ensure the policies, implemented for determining who is an enemy combatant and who should be tried for violation of war crimes, follow the Law of War. Here again, the administration tried to play cute with the law on evidence obtained by coercive means and access to classified evidence, just to name two areas.

I remember very vividly the initial Military Commissions Act (MCA) would allow the military jury to receive classified information never shared with the accused. It could be shared with the defense attorney, but not provided to the accused, on the theory that it would compromise national security. My belief has always been, what would we do in a trial in some foreign land, with a CIA agent or a military member of our Special Forces or a downed airman, where the trial went forward and the jury, or the equivalent thereof, was provided information regarding the innocence or guilt of the American in question, and they were never allowed to see what they were charged with or to be able to confront the evidence—what would we do? I think we would object.

Congress was late in exercising its authority in these matters, but the key point is that we eventually did. The passage of the McCain Amendment ensured that this Nation would not engage in interrogation techniques that constituted cruel, inhumane, or degrading treatment. The Bush administration fought Senator McCain on the prohibition, but Congress passed it overwhelmingly. The McCain Amendment started putting us back on the road to upholding the best traditions of our Nation and restoring our standing in the world.

In the same bill, the DTA, the Army Field Manual became the standard for all DOD interrogations. With the passage of the MCA, we have ensured that all of our interrogators are fully compliant with the CAT, Common Article 3 of the Geneva Conventions, and the War Crimes Statute. The MCA put in place procedures that our Nation could be proud of when it comes to prosecuting detainees for war crimes.

I deeply regret that—the Supreme Court ruling providing a constitutional right of habeas corpus to noncitizen terror suspects. I think this is a very bad decision for America. I think the American people are going to be deeply disturbed to learn that the mastermind of September 11, Khalid Sheikh Mohammed, has the same constitutional rights as they do. As Chief Justice Roberts argued in his dissenting opinion, "So, who has won? Not the detainees. The Court's analysis leaves them with only the prospect of future litigation to determine the content of their new habeas right, followed by further litigation to resolve their particular cases, followed by further litigation before the DC Circuit, where they could have started, had they invoked the DTA procedure. Not Congress, whose

attempt to determine through democratic means how best to balance the security of the American people with the detainee's liberty interests has been unceremoniously brushed aside. Not the Great Writ, whose majesty is hardly enhanced by the extension to a jurisdictional quirky outpost with no tangible benefit to anyone. Not the rule of law, unless by that it is meant the rule of lawyers, who will now arguably have a greater role than military and intelligence officials in shaping policy for alien enemy combatants. Certainly not the American people, who today lose a bit more control over the conduct of this Nation's foreign policy to unelected, politically unaccountable judges."

Unfortunately, the administration did not want to give the detainees an inch. Congress eventually gave them a few hundred yards, and now the Supreme Court has given them miles. We have gone from one extreme to the other.

As long as these investigations go on, I'm confident that we will continue to find mistakes and uncover more poor policy decisions. But, the overriding question is, have we learned from our mistakes? Are we all moving forward on a solid basis? The answer, in my opinion, is yes. The fact that the legal and policy decisions made from 2002 to 2005 were based on inadequate legal analysis, used to justify harsh treatment of detainees, is not new news to me. I don't think it is new news to anyone on the committee or anyone who has followed or reviewed any of the 15 different DOD investigations that had been launched in the last 5 years or the numerous hearings held in the House and Senate. This committee alone has had 17 separate briefings and hearings on detainee abuses.

Senator Warner is to be commended to making the difficult decision to have the committee fully investigate the Abu Ghraib scandal so that the American people and the world would know that when this country makes mistakes, it doesn't hide from them or cover them up.

So, respectfully, Mr. Chairman, we're not breaking new ground here. The abuses, the inconsistencies, the pattern of poor judgment in these matters are well-documented. The fact is that we have come a long way in the past 5 years. Secretary Rumsfeld is gone. Wolfowitz, Cambone, and Feith are all gone. John Yoo and Jim Haynes are gone. I look forward to hearing from the witnesses today. I hope that we can continue to try to find a way to protect our Nation that recognizes, even though that we're at war, we must operate within the bounds of the laws and the treaties that make our Nation strong.

As do you, Mr. Chairman, I appreciate the willingness to cooperate. I think the country has been well-served by these hearings, and that we have learned from our mistakes and we have made adjustments accordingly. In that regard, Congress has fulfilled it obligations under the Constitution and made us a stronger nation.

Chairman LEVIN. Thank you very much, Senator Graham. Your experience as a military lawyer is an invaluable resource for this committee and for the country. We're very, very grateful for you and for it.

Our first panel today consists of Richard Shiffrin, who is the former Deputy General Counsel for Intelligence at DOD; retired

Lieutenant Colonel Dan Baumgartner, who is the former chief of staff of the JPRA; and Dr. Jerry Ogrisseg, former chief of psychology services at the U.S. Air Force Survival School.

I think, Mr. Shiffrin, that you are going to go first, followed by Mr. Baumgartner, and then Dr. Ogrisseg. If you have opening statements, we would welcome them at this time.

Mr. Shiffrin?

STATEMENT OF RICHARD L. SHIFFRIN, FORMER DEPUTY GENERAL COUNSEL FOR INTELLIGENCE, DEPARTMENT OF DEFENSE

Mr. SHIFFRIN. Mr. Chairman, members of the committee, I do not have an opening statement. I am here to answer questions of the committee and will do my best to recall events that occurred 5 or 6 years ago.

Chairman LEVIN. Thank you, Mr. Shiffrin.

Next, we would call upon retired Lieutenant Colonel Dan Baumgartner.

STATEMENT OF LT. COL. DANIEL J. BAUMGARTNER, JR., USAF (RET.), FORMER CHIEF OF STAFF, JOINT PERSONNEL RECOVERY AGENCY

Colonel BAUMGARTNER. Thank you, Mr. Chairman. I do have an opening statement.

Chairman Levin, Senator Graham, and distinguished members of the committee, thank you for providing me the opportunity at this hearing to answer the questions the committee may have relative to interrogation techniques for use with detainees in U.S. custody. I am currently the acting director and senior analyst, personnel recovery policy, in the Defense Prisoner of War Missing Personnel Office, Personnel Recovery Policy Directorate OSD.

I served on Active Duty as an officer in the United States Air Force from 1979 to 2003, and from 1990 I was assigned to the Air Force Survival School. From then until my retirement ceremony in March 2004, I've served in a variety of capacities involving the DOD Personnel Recovery Mission. My final assignment, from 1998 until May 2003, was as the Chief of Staff to the JPRA.

The JPRA is the United States JFCOM's office of primary responsibility for the DOD Personnel Recovery Mission.

Personnel Recovery Mission involves a sum of military, civil, and diplomatic efforts to prepare for and execute the recovery and reintegration of captured, detained, isolated, or missing United States personnel who become separated from their organization while participating in a U.S.-sponsored military activity or mission outside of the United States, and who are, or may be, in a situation where they may be isolated, beleaguered, detained, captured, or having to evade, resist, or escape.

In accordance with the committee's specific request, I've provided written testimony about my recollection of any assistance to interrogators provided by JPRA personnel. The JPRA commander at the time, and my boss, Colonel Randy Moulton, had prohibited JPRA personnel from becoming involved in actual interrogations of detainees, and, as far as I know, JPRA personnel did not participate in detainee interrogations at any time prior to my retirement.

In late 2001 or possibly early 2002, intelligence came to JPRA's attention that might apply to detainee questioning. We shared the information with the Defense Intelligence Agency (DIA), because their strategic debriefers would most likely be called upon for detainee questioning. DIA accepted our offer to provide briefings to a couple of their deploying groups. I, myself, did not provide any briefings to DIA personally, but I believe the DIA groups received briefings centered on resistance techniques, questioning techniques, and general information, how exploitation works.

I was also personally provided a 30-minute briefing to the CITF, located at Fort Belvoir, which worked under the Under Secretary of the Army. This briefing occurred in 2002. I provided information on resistance techniques, questioning techniques, and general information on how exploitation works, and also JPRA's mission and role in the Department. We also briefed one other agency.

In addition to this assistance in approximately mid-2002, Army Lieutenant Colonel Dr. Morgan Banks, the Director of Psychological Services at Fort Bragg, NC, requested that JPRA personnel travel to Fort Bragg, NC, to provide briefings to Army psychologists and other mental-health personnel. That briefing occurred in September 2002. I coordinated the support, in terms of scheduling and obligating the JPRA to respond to Dr. Banks' request.

The briefings were designed to assist the Army in training Army psychologists and other mental health personnel on what it would mean to be assigned to duty at GTMO. To my best recollection, the course had instruction in exploitation, oversight, and treatment of detainees and staff in a captivity environment, and what the professional ethical issues might be for clinical psychologists operating in a captivity environment.

I also provided written testimony of my recollections of my communications with the Office of the General Counsel of DOD. Although I have no personal recollection, I understand, from a review of the documents, that in December 2001 JPRA provided the Office of the General Counsel information involving the exploitation process and historical information on captivity and lessons learned. That request came from Mr. Richard Shiffrin.

I do recall that in July 2002, Mr. Shiffrin requested information from the JPRA about interrogation techniques used against a United States POW. In response to this request, I provided some papers on exploitation interrogation and lesson plans used to train our U.S. personnel on the psychological aspects of detention, exploitation threats and pressures, methods of interrogation, and resistance to interrogations.

After a follow-up request for the use of physical pressures, I provided that additional information, which consisted of the use of physical pressures in our personnel recovery training, with information compiled from JPRA experts, and one paper from the Air Force SERE school psychologist, Captain and Dr. Jerry Ogrisseg, on the effects of resistance training.

I followed up with one or two more phone calls to make sure I had provided the information requested to the Office of the General Counsel. I do not recall any further communications with the Office of General Counsel about these issues after the summer of 2002.

I thank the committee for allowing me to provide an opening statement, and look forward to your questions.

[The prepared statement of Colonel Baumgartner follows:]

PREPARED STATEMENT BY LT. COL. DANIEL J. BAUMGARTNER, JR., USAF (RET.)

Chairman Levin, Senator McCain, and distinguished members of the committee. On 27 May 2008, I was requested to voluntarily testify at today's hearing to discuss issues relating to the committee's inquiry into the treatment of detainees in U.S. custody. I was informed the hearing would explore the development, consideration, and approval of interrogation techniques for use with detainees in U.S. custody. My testimony today is in response to that request.

In August and September 2007, I was questioned by committee staff members with respect to my knowledge, while at my final military assignment as the Chief of Staff, Joint Personnel Recovery Agency (JPRA), of the matters addressed in the committee's May 27, 2008 letter. In accordance with the committee's specific request, my written testimony today addresses my recollection of: (a) my communications with the Office of the General Counsel (OGC) of the Department of Defense (DOD) relative to [interrogation] techniques for use with detainees in U.S. custody; (b) my communication with JPRA personnel and the then-Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command that resulted from requests made by the OGC [relative to interrogation techniques for use with detainees in U.S. custody]; (c) and my knowledge of any assistance to interrogators provided by JPRA personnel, [relative to interrogation techniques for use with detainees in U.S. custody].

Before I address these specific questions, it is helpful to provide some background information about my military career from 1979 until my retirement in May 2003 (my final day of duty was March 19, 2003).

I graduated from the United States Air Force (USAF) Academy in 1979 and spent my first 11 years in the Air Force flying T–37, C–130, and T–38 aircraft. In 1990 I was assigned to the USAF Survival School. From then until my retirement ceremony in March 2003, I served in a variety of capacities involving the personnel recovery mission. My final assignment was as Chief of Staff to the JPRA at their headquarters at Fort Belvoir, VA, from the fall 1998 until my last day of Active Duty on March 19, 2003. As the Chief of Staff, I was the manager of internal processes, overseer of internal staff work as the chief "staff officer," and staff director. While I was aware of many things involving the JPRA, I was not privy to everything. JPRA directors had the authority and ability to go directly to the commander and deputy commander.

The JPRA is the U.S. Joint Forces Command's Office of Primary Responsibility for the DOD personnel recovery mission and executes the Commander, United States Joint Forces Command (USJFCOM), Executive Agent duties with respect to the personnel recovery mission. The JPRA shapes the planning, preparation, and execution of personnel recovery for the DOD to enable commanders, individuals, recovery forces, and supporting organizations to effectively execute their personnel recovery responsibilities.

"Personnel recovery" is the sum of military, civil, and diplomatic efforts to prepare for and execute the recovery and reintegration of captured, detained, isolated, or missing personnel from uncertain or hostile environments and denied areas. "Personnel" for purposes of the personal recovery mission include United States military members, DOD civilian employees, or contractor service employees who are separated from their organization while participating in a U.S. sponsored military activity or mission outside the U.S., and are, or may be, in a situation where they may be isolated, beleaguered, detained, captured or having to evade, resist, or escape.

a. My communications with the OGC of the DOD relative to [interrogation] techniques:

My recollection of my first communication with OGC relative to techniques was with Richard Shiffrin in July 2002. However, during my two interviews with committee staff members last year I was shown documents that indicated I had some communication with Mr. Shiffrin related to this matter in approximately December 2001. Although I do not specifically recall Mr. Shiffrin's request to the JPRA for information in late 2001, my previous interviews with committee staff members and review of documents connected with Mr. Shiffrin's December 2001 request have confirmed to me the JPRA, at that time, provided Mr. Shiffrin information related to this committee's inquiry. From what I reviewed last year with committee staff members, the information involved the exploitation process and historical information on captivity and lessons learned. But, until today, I have never met Mr. Shiffrin.

With respect to Mr. Shiffrin's July 2002 request, he contacted the JPRA and asked for information on interrogation resistance techniques used against U.S. prisoners of war. I asked my Commander, Colonel Moulton, for approval to support the request, which he granted. I then passed the request for support to our higher headquarters through USJFCOM J3 for approval. After USJFCOM approved supporting the request, I asked our resident JPRA experts for assistance in obtaining the information Mr. Shiffrin requested. My response memorandum to Mr. Shiffrin included a couple of papers on exploitation, and interrogation and lesson plans used to train our U.S. personnel (i.e., potential isolated personnel) in the psychological aspects of detention, exploitation-threats and pressures, methods of interrogation, and resistance to interrogations. After having the package delivered I believe there were some phone calls between Mr. Shiffrin and me to clarify parts of the package (I don't recall what the specific questions were, but essentially they involved follow-up questions about the material I sent).

A few days later I received another phone call from Mr. Shiffrin requesting information on the use of physical pressures, which, after notifying Colonel Moulton, I provided. The information on the use of physical pressures in our personal recovery training consisted of a memorandum with information compiled from JPRA experts and one paper from an Air Force Survival, Evasion, Resistance, and Escape school psychologist, Captain (Dr.) Jerry Ogrisseg, on the effects of resistance training. I followed-up with one or two phone calls to make sure I had provided the information Mr. Shiffrin requested. I do not recall any further communications with Mr. Shiffrin or other DOD, OGC personnel about these issues after the July 2002 requests for information.

b. My communication with JPRA personnel and the then-Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command that resulted from requests made by the OGC

As noted, in response to Mr. Shiffrin's requests for information I spoke with the then-Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command, Dr. Jerry Ogrisseg, about information his office had on the psychological effects on trainees of resistance training. That communication resulted in our compiling and sending to Mr. Shriffrin the second memorandum noted above with some attachments.

c. My knowledge of any assistance to interrogators provided by JPRA personnel

The JPRA commander prohibited JPRA personnel from becoming involved in actual interrogations of detainees. As far as I know, JPRA personnel did not participate in detainee interviews at any time prior to my retirement.

In late 2001 (or possibly early 2002), intelligence came to the JPRA's attention that might apply to detainee questioning. We shared that information with the Defense Intelligence Agency (DIA) because their strategic debriefers would most likely be called upon for detainee questioning. DIA accepted our help to provide briefings to a couple of their deploying groups. I myself did not provide any briefings to DIA, but I believe the DIA groups received less than a day's worth of briefings, centered on resistance techniques, questioning techniques, and general information on how exploitation works.

I also provided a more limited briefing (about 30 minutes) to the Criminal Investigation Task Force located at Fort Belvoir, which worked under the Army. JPRA also briefed one other agency. These organizations were also briefed on resistance techniques, questioning techniques, and general information on how exploitation works.

Army Lieutenant Colonel (Dr.) Morgan Banks, the Director of Psychological Services, at Fort Bragg, NC, also asked the JPRA for support. I recall the request was to travel to Fort Bragg to provide briefings to Army psychologists and other mental health personnel, which occurred in September 2002. I coordinated the support in terms of scheduling and obligating the organization to respond to Dr. Banks' request. The briefings were designed to assist the Army in training Army Psychologists and other mental health personnel on what it would mean to be assigned to duty at Guantanamo Bay. To my best recollection, the course had instruction in exploitation, oversight and treatment of detainees and staff in a captivity environment, and what the professional ethical issues might be for clinical psychologists operating in a captivity environment.

I thank the committee for allowing me to provide this written testimony in response to the committee's request and look forward to answering your questions.

Chairman LEVIN. Thank you.

Mr. Ogrisseg? Or, Dr. Ogrisseg, excuse me.

STATEMENT OF JERALD F. OGRISSEG, FORMER CHIEF, PSYCHOLOGY SERVICES, 336TH TRAINING GROUP, UNITED STATES AIR FORCE SURVIVAL SCHOOL

Dr. OGRISSEG. Thank you, sir.

Mr. Chairman and members of the committee, thank you for allowing me to appear before you today. Before testifying, I want to provide some background information about me.

I received my bachelor's of science degree from The Ohio State University, and my master's and Ph.D. degrees in clinical psychology from Bowling Green State University in Ohio. I joined the Air Force in 1995, and I went through residency training in psychology at Wilford Hall Medical Center in San Antonio, TX. I then served as a clinical psychologist in Air Force behavioral health clinics at Lackland Air Force Base and Onizuka Air Station in California. In those positions, I provided a wide range of basic psychological services.

I then served as the SERE psychologist for the United States Air Force Survival School at Fairchild Air Force Base in Washington from February 4, 1999, to July 28, 2002. There, I was the commander's representative for all psychological aspects of training. My primary purpose was to safeguard the integrity of the training by providing risk management oversight of training activities and to conduct research to address questions of training effectiveness and training risk.

I separated from Active Duty service at the grade of major in 2002 to accept a civilian position with the JPRA. I serve, currently, as the SERE research psychologist for the JPRA, where I've been assigned since July 29, 2002. In that capacity, my job is to conduct research, conduct operational release handling of recovered, returned, and repatriated U.S. personnel, and to recommend policies in these areas. I also provide expert knowledge in human decision-making, behavioral adaptation, learning in stressful environments, learned helplessness, and learning to enhance human resiliency. I chair an international research panel on survival psychology through the Human Resources and Performances Group of the Technical Cooperation Program, which includes fellow survival psychologists from Australia, Canada, New Zealand, the United Kingdom, and the United States.

Thank you for the opportunity to speak with you today, and I look forward to answering any questions you have.

[The prepared statement of Dr. Ogrisseg follows:]

PREPARED STATEMENT BY DR. JERALD OGRISSEG

Mr. Chairman and members of the committee, thank you for allowing me to appear before you today. My testimony will address my July 2002 communications with the Chief of Staff of the Joint Personnel Recovery Agency (JPRA) relating to interrogations and resistance training techniques, my July 24, 2002 memorandum "Psychological Effects of Resistance Training," and the role of Survival, Evasion, Resistance, and Escape (SERE) psychologists, and the use of physical and psychological pressures in resistance training for U.S. soldiers.

First, I want to provide some personal background information. I received my Bachelor's of Science degree from The Ohio State University and my Masters and Ph.D. degrees in clinical psychology from Bowling Green State University in Ohio. I joined the Air Force in 1995. I went through residency training in psychology at Wilford Hall Medical Center in San Antonio, TX. I then served as a clinical psychologist in Air Force Behavioral Health clinics at Lackland Air Force Base and at

Onizuka Air Station. In those positions, I provided a wide range of basic psychological services. I then served as the SERE Psychologist for the United States Air Force Survival School at Fairchild Air Force Base, WA, from 4 February 1999 to 28 July 2002. There I was the Commander's representative for all psychological aspects of training. My primary purpose was to safeguard the integrity of training by providing risk management oversight of training activities, and to conduct research to address questions of training effectiveness and training risk. I separated from active duty service at the grade of major in 2002 to accept a civilian position with the JPRA. I serve currently as the SERE Research Psychologist for the JPRA where I have been assigned since 29 July 2002. In that capacity, my job is to conduct research, operational release handling of recovered, returned, and repatriated U.S. personnel, recommend policies in these areas, and provide expert knowledge in human decisionmaking, behavioral adaptation, learning in stressful environments, learned helplessness, and learning to enhance human resiliency. I also Chair an international research panel on Survival Psychology through the Human Resources and Performance Group of the Technical Cooperation Program which includes fellow survival psychologists from Australia, Canada, New Zealand, the United Kingdom, and the United States. This panel was recognized by each of those countries with a team achievement award for creating and demonstrating the effectiveness of a selection program for Resistance Training instructors which served to select appropriate people to become instructors and thereby mitigate training risks.

Mr. Chairman, with regards to my July 2002 communications with then Lt. Col. Dan Baumgartner, the then Chief of Staff of JPRA, my recollection is that Lieutenant Colonel Baumgartner called me directly, probably on the same day that I generated my 24 July 2002 memorandum that I referenced earlier. He indicated that he was getting asked "from above" about the psychological effects of resistance training. I had no idea who was asking Lieutenant Colonel Baumgartner "from above" and did not ask him to clarify who was asking. I recall reminding Lieutenant Colonel Baumgartner in general terms about program evaluation data I'd presented in May of 2002 at the SERE Psychology Conference. These data, which were collected on Air Force survival students at different points of time during training, indicated that training significantly improves students confidence in their ability to adhere to the Code of Conduct.

Then, I recall Lieutenant Colonel Baumgartner asking me if I thought training was harmful to students. This question and my responses to it formed the basis of my 24 July 2002 memorandum to Lieutenant Colonel Baumgartner, which is the best record of the conversation that we had. In general terms, I indicated that a very small percentage of students (4.3 percent) had adverse psychological reactions to our training, but we (the survival psychology staff) were able to remotivate almost all of those having adverse reactions (96.8 percent) to complete training. Thus, less than .2 percent of the roughly 14,000 students were unable to complete training due to psychological problems which arose during training. The exact numbers I cited in the memorandum were retrieved from the annual risk reports we kept. In order to ensure that our program was safe and effective, I also told Lieutenant Colonel Baumgartner that students received three debriefings during training, two of which were conducted by the Psychology Services staff, and that the other was a detailed, thorough operational debriefing. These debriefings normalized the students' performance and reactions during training, and reinforced the training objectives to increase their skill and confidence. As an additional point on this question, I indicated that very few complaints were made following training. These indicators combined led me to conclude that long-term negative effects of training are likely minimal. I did caveat, however, that we did not routinely survey students in the years following training to confirm this conclusion.

Finally, as indicated in my 24 July 2002 memorandum, Lieutenant Colonel Baumgartner asked me if I'd ever seen the waterboard used, and what I thought of it. I told him that I had seen it used while observing Navy training the previous year, and that I would never recommend using it in training. He asked me why and if I thought it was physically dangerous. I responded that I didn't see anyone getting physically injured when I observed it, and as stated in my memorandum, the Navy was applying it to medically screened trainees with medical personnel immediately available to monitor and intervene if necessary. However, that wasn't the point, as psychologically the waterboard produced capitulation and compliance with instructor demands 100 percent of the time. During debriefings following training, students who had experienced the waterboard expressed extreme avoidance attitudes such as a likelihood to further comply with any demands made of them if brought near the waterboard again. I told Lieutenant Colonel Baumgartner that waterboarding was completely inconsistent with the stress inoculation paradigm of training that we used, and was more indicative of a practice that produces learned

helplessness—a training result we tried strenuously to avoid. The final area I recall Lieutenant Colonel Baumgartner asking me about were my thoughts on using the waterboard against the enemy. I asked responded by asking, "wouldn't that be illegal?" He replied that some people were asking from above about the utility of using this technique against the enemy for the same reasons I wouldn't use it in training. I replied that I wouldn't go down that path because, aside from being illegal, it was a completely different arena that we in the Survival School didn't know anything about. When we concluded the talk, Lieutenant Colonel Baumgartner asked if I would write him a memo reflecting what we'd just discussed regarding the psychological effects of training so he could include it with other materials he was sending up. He also asked if I would comment on both the physical and psychological effects of the waterboard. I replied that I would, and drafted the memo.

Mr. Chairman, with regards to the role of SERE psychologists, as I mentioned earlier, the intent is to provide expert knowledge and research to advise the commander in order to prevent in-role behavioral drift or role creep within the training, prevent moral disengagement of staff while providing training, and maintain the effectiveness of training within a stress inoculation-based approach. These aims are accomplished through: psychologically screening instructors; training instructors and out-of-role supervisors on indicators of behavioral drift and moral disengagement, and associated preventative actions; immediately conducting incident reviews following any adverse training events; and advising on administrative or retraining actions when indicated.

Mr. Chairman, physical and psychological pressures are used in resistance training for several reasons. Historically, coercive pressures have been used against U.S. soldiers in numerous captivity situations. Including simulated physical and psychological stresses to our training adds more realism and effectiveness to the training. Additionally, in the realm of the training science world, simulated physical and psychological stresses would be recognized during the task analysis as some of the conditions under which the resistance skills must be applied. The overall goal is to instill good habits in trainees and the ability to think clearly and solve problems during repeated exposure to stressful situations to ensure that performance does not degrade under stress.

In SERE resistance training, physical and psychological pressures consist of contact with a student, as well as use of threats and ploys that are designed to test the students' resistance. The pressures are designed to cause some physical and emotional discomfort. These pressures are definitely not designed to cause injury or anything other than minor, temporary irritation. All pressures are reviewed by medical and psychological staff before they are used to ensure that a good margin of physical and psychological safety exists when they are used, and to limit their use on personnel with pre-existing medical and psychological concerns. Additionally, when physical pressures are used, the use is continuously monitored by multiple levels of out of role school personnel to ensure that the pressures are used within established limits. The psychological purpose of physical and psychological pressures at the Air Force Survival School was always to enhance student decisionmaking, resistance, confidence, resiliency, and stress inoculation, and not to break the will of the students or to teach them helplessness.

In conclusion Mr. Chairman, let me emphasize again that the purpose of our training of U.S. military personnel is to increase their level of confidence that they can survive captivity and interrogation situations, comply with the Code of Conduct, and return with the least amount of physical and psychological damage. Our basic concept for this training is that if a servicemember has met the types of interrogation conditions even once before, they will begin to be familiar with them and thus more able to cope with an otherwise extremely stressful and confusing situation. Although there are many sacrifices and harrowing circumstances that our soldiers, marines, sailors, and airmen are called to task to face, I can think of none more amazing and confusing than being held captive by your enemy. I believe we have a moral obligation to provide our personnel this training. Through our training, we prepare our Nation's best for the worst, so that if they fall into the hands of the enemy, they can see that situation through the lens of an experience that they've already dealt with successfully—providing them with hope and courage to survive and return with honor.

Thank you for the opportunity to speak with you today. I look forward to answering any questions you may have.

Chairman LEVIN. Let's start with an 8-minute round.

Let me start with you first, Mr. Shiffrin. When you were the Deputy General Counsel for Intelligence for the DOD, I understand

you had some discussions with the DOD General Counsel, Jim Haynes, about interrogations in the spring or summer of 2002. Is that correct?

Mr. SHIFFRIN. That's correct, Mr. Chairman.

Chairman LEVIN. Did you talk about SERE during those discussions?

Mr. SHIFFRIN. My recollection, Mr. Chairman, is that, at some point in the spring—late spring, early summer—I had some discussions with Jim Haynes about where expertise might lie, within the DOD, on interrogation. The sense that I and others had was that DOD had been out of this business for a long, long time, at least since the Vietnam war, and that there wasn't a skilled cadre of investigators/interrogators outside of the law enforcement context, the Air Force Office of Special Investigations and Naval Criminal Investigative Service or Army Criminal Investigation Division (CID). I think those folks, at least Army CID, were already being used for their expertise in trying to develop effective interrogation methods.

I don't know whether Mr. Haynes suggested trying to contact the SERE JPRA folks or whether I—and I was aware of JPRA through some of my other work—said, "Well, maybe the folks at JPRA have some information. There has to be some scholarly professional literature on the subject, and perhaps they have some."

Chairman LEVIN. Is that what he said?

Mr. SHIFFRIN. No, I think I said——

Chairman LEVIN. All right.

Mr. SHIFFRIN.—at least that part, about finding historical scholarly, professional journals, medical journals, psychological journals that may be in existence. I assumed that this stuff was still actively being investigated, analyzed, pursued by professionals.

Chairman LEVIN. Was it after those discussions with Mr. Haynes that you talked to Colonel Baumgartner?

Mr. SHIFFRIN. I don't remember who I contacted at Fort Belvoir.

Chairman LEVIN. Did you talk with Colonel Baumgartner after you had discussions with Haynes?

Mr. SHIFFRIN. I talked to someone at Fort Belvoir in JPRA, yes.

Chairman LEVIN. You don't know that it was Colonel Baumgartner.

Mr. SHIFFRIN. The name—it could have been.

Chairman LEVIN. All right.

Mr. SHIFFRIN. I'm not suggesting it wasn't.

Chairman LEVIN. Do you—

Mr. SHIFFRIN. I think I talked to two people.

Chairman LEVIN. You're saying that you can't remember whether or not those requests that you had, or the conversations with folks at JPRA, were based on Jim Haynes's request to you. You don't remember that.

Mr. SHIFFRIN. Oh, no, I think they were initiated by that.

Chairman LEVIN. Oh.

Mr. SHIFFRIN. As to whether specifically he said, "Contact JPRA," I don't know. He may have said, "Can you think of anyone who might have information on this subject?"

Chairman LEVIN. Gotcha. Was this effort because there was some frustration with the lack of intelligence that was coming up?

Mr. SHIFFRIN. That's the sense I got, not just from that discussion, but in previous meetings I was at, that I attended, generally, of our office, where there was discussion about progress or lack of progress in exploitation of detainees.

Chairman LEVIN. Now, Colonel Baumgartner, in your written testimony you say that Mr. Shiffrin called and asked you, in July 2002, for information on the use of physical pressures in SERE training. Is that correct? Your written testimony says that.

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. In response, you sent to Mr. Shiffrin a list of physical pressures, including stress positions, walling, degradation, sensory deprivation, and waterboarding. You also sent him a memo from Dr. Ogrisseg about the psychological effects of that training. Is that correct?

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Now, if you look at tab 2, was that your memo that you sent to the General Counsel's office? (Appendix A)

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Was, attached to that memo, some attachments, the ones that appear at tabs 3 and 4? [Pause.]

Colonel BAUMGARTNER. Well, there are actually three tabs, but these two were——

Chairman LEVIN. Those two were two of the attachments——

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Is that correct? The first attachment, in number 4 was the Ogrisseg memo that you had obtained from Dr. Ogrisseg. Is that correct?

Colonel BAUMGARTNER. Yes, sir. Number 4 was from Dr. Ogrisseg.

Chairman LEVIN. All right. Now, tab 3 is a memo entitled "Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees," is that correct? That's tab 3? (Appendix A)

Colonel BAUMGARTNER. Yes, it's a talking paper.

Chairman LEVIN. But, is that the title of it?

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. All right, let me just turn to Dr. Ogrisseg, here.

In your prepared testimony, Dr. Ogrisseg, this is what you've said, that—with regards to that July 2002 communication with Colonel Baumgartner, who was then chief of staff for JPRA, it was your recollection that Colonel Baumgartner called you directly, probably on the same day that you generated that July 24, 2002, memorandum; he indicated he was getting asked, "from above," about the psychological effects of resistance training. You didn't know who was asking Lieutenant Colonel Baumgartner from above, and did not ask him to clarify who was asking. You recalled reminding Colonel Baumgartner, in general terms, about the program evaluation data that you had presented at the SERE Psychology Conference, and you also indicated, on page 4 of your written testimony, that you told Colonel Baumgartner that "waterboarding was completely inconsistent with the stress inoculation paradigm of training that we use; it was more indicative of a practice that produces learned helplessness, a training result that we tried strenuously to avoid. The final area I recall Colonel

Baumgartner asking about were my thoughts on the use of the waterboard against the enemy." You responded by saying, "Wouldn't that be illegal?" He replied that "Some people were asking, from above, about the utility of using this technique against the enemy, for the same reasons I wouldn't use it in training." "I replied, 'I wouldn't go down that path, because, aside from being illegal, it was completely different arena that we in survival school didn't know anything about.'" Is that your written testimony?

Dr. OGRISSEG. Yes, that is.

Chairman LEVIN. Is that accurate?

Dr. OGRISSEG. Yes, sir.

Chairman LEVIN. Colonel Baumgartner, do you remember that?

Colonel BAUMGARTNER. Yes, sir, I do.

Chairman LEVIN. Now, if you look at tab 4, Dr. Ogrisseg, you agree that is your memo? (Appendix A)

Dr. OGRISSEG. Yes, Mr. Chairman, that is my memo.

Chairman LEVIN. All right. Now, as I understand it, the purpose of SERE training is stress inoculation, or to build up immunities of American military personnel so that, if they should be captured and subject to illegal and abusive treatment, they'd be better prepared to resist. During that training, that SERE training, there are numerous safety measures in place to reduce the likelihood that our people will be injured. Is that correct?

Dr. OGRISSEG. Yes, sir.

Chairman LEVIN. Are the physical and psychological pressures, which are designed for use in SERE school for training students, intended to be used against detainees to obtain intelligence?

Dr. OGRISSEG. No, Mr. Chairman.

Chairman LEVIN. Why not?

Dr. OGRISSEG. Those techniques are derived from what has historically happened to our personnel who have been detained by the enemy. From those, we derived some learning objectives and some situations to put students through so that we can test their decisionmaking-building, and also use some of those strategies to increase their resistance and the confidence that they would be able to survive if they are subjected to them. It's not the same at all as something that would be applied in an interrogation setting.

Chairman LEVIN. Now, during the resistance phase of training, where SERE school instructors play the role of interrogators, is there a way—a phrase that you give to students which they could use to make the training stop?

Dr. OGRISSEG. Yes, sir.

Chairman LEVIN. Are SERE instructors trained interrogators?

Dr. OGRISSEG. No, they are not, Mr. Chairman.

Chairman LEVIN. Do you know why you were being asked for the information by Colonel Baumgartner?

Dr. OGRISSEG. I assumed it was related to questioning, just as the title says, the psychological effects of resistance training.

Chairman LEVIN. But, do you know why he was asking you? Did he say anything about higher-ups?

Dr. OGRISSEG. He did. As I said in my written statement, he said that he was being asked from above about that matter. But, I did not question him further as to who was asking him, or why.

Chairman LEVIN. Do you remember saying that, Colonel Baumgartner?

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Who was "above"?

Colonel BAUMGARTNER. The Office of General Counsel.

Chairman LEVIN. All right. Did you know, Dr. Ogrisseg, that they were considering using these techniques against detainees when you sent this information?

Dr. OGRISSEG. The only hint of that, that I got, was the question from Lieutenant Colonel Baumgartner, that someone was asking about it. I certainly never would have assumed, based on my memo, which clearly pertains to medically screened, medically monitored trainees, that there would be inferences about this that would be used to try to promote these types of procedures in real-world detainee handling.

Chairman LEVIN. So, you did not believe, when you sent this memo, that—what you said about the lack of psychological harm, given the controls there, that these techniques would be used against detainees?

Dr. OGRISSEG. That's correct.

Chairman LEVIN. Okay, thank you.

Senator Graham.

Senator GRAHAM. Mr. Shiffrin—is that right? Am I saying your name right?

Mr. SHIFFRIN. Yes, Senator.

Senator GRAHAM. Thank you. It was my understanding that Mr. Haynes was expressing some concern that we were not getting good intelligence based on rapport-building techniques, and that we had to do something new and different. Is that correct?

Mr. SHIFFRIN. I'm not sure, specifically, Senator. My recollection is, over a period of time, weeks or months, I was privy to—or attended meetings where the discussion was progress, or lack of progress, in the exploitation of detainees. I remember attending at least two or three meetings with Major General Dunlavey, for example, when he would come up. He came up once every month or two, briefed the Secretary, briefed the Deputy Secretary, and briefed the General Counsel, in separate meetings. I, along with five or six other members of our office, attended those meetings. During those meetings, there was often discussion about what was working, what wasn't working, at GTMO. There was a general sense that we ought to be more effective, but, for some reason, were not.

Senator GRAHAM. So basically, this was driven by a desire to get better information from the detainees at GTMO, and the feeling was that, "We're not getting enough, something else needs to be tried." Is that the general proposition here?

Mr. SHIFFRIN. Something else needed to be tried. My sense was that maybe we're not smart about this, and that's why my first request to JPRA was for all historical materials they had that—of what worked and what didn't work. In fact, I have a specific recollection of being told, by the person I spoke to on the phone, that we have this information, we have a library, but—it's at Fairchild Air Force Base, near Spokane—and it was going to take some time to get it. I, of course—the way our office ran, it—Jim Haynes asked

me to look in to this, and, a few hours later or the next day, said, "Well, what have you got?" and I said, "I've found where some material lies, but it's 3,000 miles away and it's going to take more than a day to get here," and he said, "that's not good enough." I probably called back to Fort Belvoir and said, "Gee, I'm under pressure to get this material here as quickly as possible." I think, within 4 or 5 days, two members, is my recollection, drove up from Fort Belvoir with several boxes of materials. I think they occupied 2 or 3 board feet on my shelf in my small office. I went through them. Ninety-eight percent of it was from the 1950s, post-Korean-War studies, professional journals, articles, analysis of the experience of our servicemen in Korea.

Senator GRAHAM. Okay.

Colonel Baumgartner?

Colonel BAUMGARTNER. Yes, Senator.

Senator GRAHAM. Do the techniques we're talking about work?

Colonel BAUMGARTNER. In what frame of reference, sir?

Senator GRAHAM. Getting intelligence?

Colonel BAUMGARTNER. I'm not an intelligence officer, sir, I don't know. But, they work in our training process, to demonstrate to students how to resist somebody getting intelligence from you. That's what they're for.

Senator GRAHAM. So, you don't have an opinion as to whether or not they yield good information.

Colonel BAUMGARTNER. I don't, sir. I wasn't there.

Senator GRAHAM. Doctor, do you have an opinion about——

Dr. OGRISSEG. Senator, my expertise comes in the realm of training, and I certainly know that these techniques are effective in getting our trainees to learn the skills and develop the confidence that we need to in order to survive and return with honor from captivity.

Senator GRAHAM. Based on your studies of this subject matter, is it fair to say that you can get almost anybody to say anything if you're hard enough on them over time?

Dr. OGRISSEG. I would say that that's true, but that's also the problem. You could get them to say anything.

Senator GRAHAM. Thank you.

Chairman LEVIN. Thanks.

Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman.

Let me first thank you and the staff of the committee for an extraordinary exercise in governmental oversight, congressional oversight, of a very important topic with an exhaustive and, I think, important investigation that you've done. I want to thank you and Senator Graham for your outstanding opening statements.

This is one of those cases where hindsight is always the clearest kind of sight, but, nonetheless, it's important to look back so that we can learn from what's happened in the past.

I would start by echoing what Senator Levin said at the beginning of his remarks, which is that the members of this committee know that intelligence gathered from detainees is critical to our success, our safety, and the safety of our troops and our allies in the war against—with Islamic terrorists. We've had more than one commander, particularly from Iraq or Afghanistan, tell us that in-

formation gained from detainees is the most significant form of intelligence, still, that we obtain in order to confront the enemy that we're facing in Iraq and Afghanistan and throughout the world. So, this is an important matter.

But, obviously, we're a nation, as my colleagues have said, and I need belabor it, that is a nation of law; and therefore, to me, the standard that we have to hold up in our attempts to obtain information from detainees is, is it legal, and is it effective? In other words, does it produce information that is helpful, or does it have other effects, and might it produce, as Dr. Ogrisseg said in response to Senator Graham, information that's not truthful, or, in the larger context, as we've seen after Abu Ghraib, might it affect our standing, generally, in our effectiveness of the war on terrorism?

I remember, once, being with Senator McCain and Senator Graham, meeting at Camp Bucca in Iraq—which is a large detention center—meeting a former member of al Qaeda in Iraq who said that one of the reasons he was motivated to join al Qaeda in Iraq was what he heard had happened at Abu Ghraib. So, this is important stuff.

What I find in this story, that the investigation of the committee has revealed in hindsight, is, looking back, some people who acted in ways, I assume well-motivated, that look now like they were wrong, and some people who said some things which, in hindsight, are jarring and unacceptable. The comment, "If the detainees die, you're doing it wrong," with regard to waterboarding is not, obviously, what any of us want to hear from anybody working for the United States Government. Even Secretary Rumsfeld's statement, which—it's hard to read with certain clarity, but it certainly has an edge to it that seems to be unacceptable, about how long the detainees could be forced to stand, him saying, "I stand, what, 8 to 10 hours a day. Why are they only forced to stand 4 hours a day?" That's not really what this is about.

But, there are heroes that emerged from this. Chairman Levin's statement of the record of the investigation shows that. The lawyers for the military Services spoke up quite clearly—I think—I presume both from a context of law and of effectiveness of the interrogation of detainees. Mr. Mora is obviously, in hindsight, a hero, here, who acted in the best traditions of American law and military.

I want to go to my questions now, and begin—because there's a lot to learn with—in hindsight.

Mr. Shiffrin, at the beginning, in your brief answer to Chairman Levin's first question, you began to answer a question that I had, which was, why in the world would we have gone to the people training—the SERE group training—preparing our military for the kind of harsh interrogation techniques that the enemy might impose on them, to find out what we might do? My own question to myself was, why weren't we prepared, ourselves? I want to ask you to deal with that again. In other words, the Pentagon is a vast operation—we have a lot of military lawyers, we have a lot of people with previous or present prosecutorial experience, interrogation experience, we have a lot of psychologists—I take it from what you're saying that we really weren't ready to deal with these detainees.

I wanted to ask you to comment on that, as to why you went to the folks at SERE to ask for their help.

Mr. SHIFFRIN. As I stated, Senator, my recollection is, the primary motivation for my initial inquiry was to find the font of wisdom on the subject, that there had to be some place where we had all the learning on this, because we hadn't been able to find people within the Pentagon and within the Services who were experienced in conducting interrogations outside of the criminal justice area.

The second—I can't deny that there was probably some discussion, at some point, about reverse-engineering SERE techniques. I don't know where it came from, but it seemed to me that that was another part of this. When I answered the earlier question, I guess from Senator Graham, I said that, "Well, the first tranche was this historical stuff from the 1950s." I think Mr. Haynes came back to me and said, "No, no, this isn't what I'm looking for." In fact, I think at the end that stuff sat on my shelf for several months, and I don't know if anyone else looked at it besides me—but, I remember, at the time of my leaving the General Counsel's Office, I called down to Fort Belvoir and said, "You guys better come and get this back, because a lot of it is original material."

Senator LIEBERMAN. Let me ask you this question. Did you ever call, or, as far as you know, did anybody in the General Counsel's Office at the Pentagon ever call, for instance, the interrogation experts at the DIA or the Army's interrogation school?

Mr. SHIFFRIN. Not to my knowledge.

Senator LIEBERMAN. How about any of the folks—I know, later on, people in criminal investigations within the Pentagon got involved in the discussion, particularly through the military Services, but did anybody in the General Counsel's Office ever think to call people in criminal intelligence about interrogation tactics that worked?

Mr. SHIFFRIN. I do recall Army CID being involved. I can't give you a precise timeframe, but I recall, fairly early on, some participation by Army CID.

Senator LIEBERMAN. How about reaching out to prosecutors in the civilian sector who do a lot of interrogating, or police officers who have developed techniques? Now, obviously, criminal defendants in U.S. courts have more constitutional protections than detainees, at least prior to the decision of the Supreme Court last week, but did anyone at General Counsel's Office at the Pentagon ever reach out to law enforcement in the United States?

Mr. SHIFFRIN. Not to my knowledge. I think that would have been inconsistent with the way the Pentagon acted under Secretary Rumsfeld.

Senator LIEBERMAN. Dr. Ogrisseg, one last question, because my time really is running. At any point, did anyone ask you, or did you understand that the questions you were being asked from Lieutenant Colonel Baumgartner, who was, in turn, responding to the General Counsel's Office, about your judgment as a mental health professional about the effectiveness of the techniques that you were listing—not to train our people, but to elicit evidence from detainees?

Dr. OGRISSEG. Mr. Senator, the only questions that I was really asked about this pertained to the memo that I had written in 2002 which is part of the record here, and at some point——

Senator LIEBERMAN. So, in that memo you did not feel that you had to make a judgment or offer your professional judgment about how effective these techniques might be in eliciting testimony from—or information from the detainees.

Dr. OGRISSEG. No, I felt like, in the discussion with Lieutenant Colonel Baumgartner, that I indicated, one of my ethical issues as a psychologist, since I'm not a legal practitioner, not a judge, not a lawyer, but with regards to ethics within my field—that one of the main things is, you don't practice outside of your bounds of competence. That would have been outside of the bounds of my competence to have gone there, because I was someone who is in the training business and understood the training population. So, when I said this is something that we at the Air Force Survival School don't know about, I was giving my opinion there, and also giving my opinion about the waterboard with respect to training. I don't believe that it should be used anywhere, that was my stance that I was taking at that time.

Senator LIEBERMAN. Understood. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Lieberman.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Shiffrin, my questions follow up on the questions that Senator Lieberman just asked you. I'm trying to get a better understanding of why DOD did not seek assistance from the FBI, for example, which has probably the most extensive experience in interrogating hostile detainees of perhaps anyone in the Federal Government. Obviously, we know, later, that there was disagreement between DOD and the FBI on the proper approach to use with detainees.

You talked about the great frustration within the Department about the lack of information that was being secured or obtained from the detainees, and you also said, in response to questions from Senator Levin, that the Department had been out of the business of interrogation for some time. It seems to me that it was more logical for the Department to go to the FBI for assistance than to try to figure out how the SERE techniques could be re-engineered to be used for interrogation, since that's not at all what the purpose of the SERE techniques were. Could you give us more understanding of your perception of why the Department, under Secretary Rumsfeld, would be reluctant to turn to the FBI for assistance?

Mr. SHIFFRIN. Assuming the correctness of your premise—and that is, they did not go to the FBI; I have no personal knowledge as to whether they did or didn't, but it seems like they didn't—my answer is somewhat my personal observation in my limited dealings with the Secretary, and that was, the Secretary was very jealous of other agencies, and specifically with respect to DOD's inherent capabilities. I can remember one incident that came up two or three times, somewhat unrelated, and that was the CIA's ability to get things done in Afghanistan, and the Secretary was quite upset

that the CIA was more effective in Afghanistan than we were, in some cases, especially at the onset of hostilities or before hostilities. Of course, it was understandable; the CIA had been there for 25 years, and the military hadn't set foot in Afghanistan for 25 years. But, that was never a satisfactory answer to him. In fact, he ended up building a capability that mirrored the CIA.

I think it would have been unthinkable to say to the Secretary that, "the people who were really good at this are law enforcement; we should talk to the FBI, talk to the Drug Enforcement Agency, talk to other law enforcement agencies that have been conducting interrogations for their entire careers." Now, I just don't think he would have accepted that answer.

Senator COLLINS. I suspect that you're correct, based on the discussions that we had with the Secretary's office when we were trying to do intelligence reform, which the Secretary was very resistant to and wanted, instead, to build up a duplicative capability within DOD.

But, how about the Army Field Manual, which had been the guidance for the Army, at least, in conducting interrogations? Was there discussion within DOD of why that was inadequate in dealing with these detainees?

Mr. SHIFFRIN. I was not privy to that.

Senator COLLINS. Colonel, are you aware of any discussions about why the Army Field Manual's guidance on interrogation was not adequate?

Colonel BAUMGARTNER. No, Senator, I'm not.

Senator COLLINS. Let me ask you another question based on the SERE training. Prior to 2002, are you aware of any time in which the interrogation techniques based on SERE training were ever employed successfully by military interrogators or by members of other U.S. Government agencies?

Colonel BAUMGARTNER. Let me answer the question this way. What the committee is calling "SERE techniques" with regards to interrogation, they're not just SERE techniques; they're used by police, they're used by priests, they're used by your mom and dad. I mean, good-cop/bad-cop. We didn't invent that, but we use it in training. So, a lot of these interrogation techniques are nothing more than interview techniques. In some of them, it's a friendly interviewer; and some of them, the interviewer is not so friendly.

We've taken what we have found, as Dr. Ogrisseg said, and internalized those to our training, because we know they work against us, and they have in the past; that's why we do lessons-learned on every detention, POW, peacetime governmental situation that we come across, so we can train our folks more effectively. When you start looking at what other folks were doing, we really didn't investigate how we do enemy POW or detention operations, because they're just not applicable to our training.

Senator COLLINS. But the SERE training was never intended to teach interrogation techniques, correct?

Colonel BAUMGARTNER. No, we don't teach interrogation techniques to our students.

Senator COLLINS. It's resistance and survival correct?

Colonel BAUMGARTNER. Yes, we teach our instructors interviewing techniques, we teach them how to use physical pressures

so that we can teach students how to resist a determined adversary. They learn those, not to employ them as offensive capabilities, but to teach students how to employ the techniques we're trying to teach them on how to resist enemy captivity.

Senator COLLINS. But, the irony here is that the SERE training is intended to help our troops resist inappropriate interrogation methods——

Colonel BAUMGARTNER. Yes, ma'am.

Senator COLLINS.—inhumane methods.

Colonel BAUMGARTNER. Yes, ma'am.

Senator COLLINS. So, by the very nature of the SERE training, we're trying to help our troops resist and survive interrogation techniques that are not sanctioned, that are inhumane or outside the pale. That's why I think it's so troubling to many of us that those techniques were investigated for use by our interrogators, when, in fact, the whole purpose of SERE training is to teach our troops how to survive when they're being questioned by people who do not obey the international standards of humane treatment. Is that an accurate statement?

Colonel BAUMGARTNER. Yes, Senator, I believe it is.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Collins.

Senator Akaka, I believe, is next in line.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Shiffrin, I'm very interested in the circumstances surrounding your initial request to the Colonel. Prior to your July 2002 request, how familiar were you with the training conducted at the JPRA? More specifically, to what extent were you aware of the specifics of the resistance phase of SERE training and that these techniques were designed to simulate the conditions employed by enemies who did not abide by the Geneva Convention?

Mr. SHIFFRIN. Not familiar at all, Senator. I only knew of JPRA through another program. I had no detailed knowledge of SERE. I knew about SERE, but no more than you could get from reading a paragraph on it.

Senator AKAKA. Colonel, it is my understanding from your advance testimony, that you were assigned to the USAF Survival School in a variety of capacities from 1990 until your retirement in 2003, and that in your last assignment, as chief of staff, you had broad oversight and knowledge of internal processes. My question is, prior to the July request regarding interrogation resistance techniques used against U.S. POWs, to your knowledge had the JPRA ever been contacted by the DOD's Office of General Counsel regarding this type of information? In other words, to what extent did this seem to you to be an unusual request at that time?

Colonel BAUMGARTNER. Sir, there was contact between JPRA and the Office of General Counsel prior to July 2002. As I said in my opening statement, in interviews with the committee staffers, I came to realize that they had actually requested the historical material back in December 2001. So, that was the first contact.

The next contact was in early July, when they asked us for information on exploitation interrogation, and I cleared that with the U.S. JFCOM Headquarters and my commander, to provide the information.

Senator AKAKA. At that time, what was your understanding of the purpose of the request?

Colonel BAUMGARTNER. I don't want to speculate or put any thoughts in anybody's minds on that, but we used it for training. The only other purpose you could use it for is if you were to use it in a different environment. We weren't part of that decision process. We were tasked by higher headquarters for information, and we provided the information.

Senator AKAKA. Colonel, you assert that the September 2002 Fort Bragg briefings were to assist the Army in training Army psychologists and other mental health personnel on what it meant to be assigned to duty at GTMO, including instruction in exploitation oversight and treatment of detainees and staff in a captivity environment. To your knowledge, were aggressive interrogation techniques demonstrated at this briefing? Also, to what extent were you aware of the potential for the information of the JPRA briefing to be used as a model for the types of interrogation techniques recommended in the JTF GTMO SERE interrogation SOP? (Appendix A)

Colonel BAUMGARTNER. Senator, I know that the interrogation techniques were brief. They talked about exploitation. I'm pretty sure—I don't know for a fact, but I know that they talked about how you oversee—when you have folks in detention, whether you're training or in another venue, we have to be very careful how we handle our students, how they're moved, how they're detained, how they're restrained, if restraint is deemed necessary as part of the training. Some of these things that you find in the training environment are certainly issues that would have to be dealt with in an offensive detention environment.

As far as actual techniques being demonstrated, I have no knowledge of that. I know they were going to get briefed, and I hope that answers your question.

Senator AKAKA. Dr. Ogrisseg, one of my deepest concerns in reviewing the material available prior to this hearing was what appears to me to be the deliberate decision by this administration to use the techniques developed to assist our Armed Forces members to survive forms of mistreatment and torture perpetuated by enemy combatants who do not adhere to the Geneva Convention to develop our Nation's own SOPs with regards to treatment of detainees, yet it is not even clear whether use of aggressive interrogation techniques is the most effective method of gathering information. My question, Doctor, is, how effective is the resistance training given our own military members? Isn't it likely that enemy combatants have been given similar resistance training, making these methods less viable than other options, such as rapport-building?

Dr. OGRISSEG. Senator, I can certainly answer that question with regards to how effective our training is, because we've studied it. One of the purposes of my job is to do program evaluations of this type of training, to ensure that our students come through feeling confident that they're able to handle these situations, and therefore, we use some of the techniques that we do to actually enhance their confidence. Much like a lot of other fields that want people to make decisions, in very difficult spots, we put them into cir-

cumstances that model what people have experienced in the past. Firefighters use physical pressures. They teach people skills, and then they put them in burning buildings so that during training they develop those learned skills and make them less vulnerable to being degraded by stress. In our training, we both approximate some of the things that have been done to people in the past, but we also ensure that they're structured in a way, so that the students can succeed. We have surveyed how confident they are when they go through these experiences untrained, versus how confident they are afterwards, and they're significantly greater. We know that they definitely take in the skill sets, because we have ways of assessing which skill sets that they're applying. So, I'm very confident that we know our students are getting what they need from training.

Senator AKAKA. Colonel, in your advance testimony, you note that while you were aware of many things involving the JPRA, you were not privy to everything. You also note that JPRA directors had the authority and ability to go directly to the commander and deputy commander as well. My question to you, Colonel, is, why would decisions have been made without the input of the chief of staff's input or knowledge?

Colonel BAUMGARTNER. Senator, the chief of staff at a military organization is not like a chief of staff for, say, a political organization. You're not the gatekeeper for everything. "Staff director" is probably known as managing the formats, managing staff packages, being the chief staff officer for the commander, making sure things are done correctly, and making sure the directors play well with each other in the day-to-day conduct of your business. So each director has the ability to go to the commander without going through the chief of staff, if they so choose. The commander will sometimes reach out for especially sensitive issues, like personnel issues or things of that nature, and go directly to the director, and not use the chief of staff, because of the sensitivity of the issue. So usually everything goes right through the office, not always. But there is a tremendous volume of things that went through the office.

Senator AKAKA. Thank you very much, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Akaka.

Senator Bill Nelson.

Senator BILL NELSON. Thank you, Mr. Chairman.

Mr. Ogrisseg, I want to follow up. In your training, you spoke about waterboarding. Do you also use sleep deprivation in your training?

Dr. OGRISSEG. Senator, in Air Force training we've never used waterboarding. Never. In my statement, I was talking about the training that was done at the Navy school in San Diego. So we've never done it, and would never do it for the reasons that I outlined there, that it's detrimental to a stress-inoculation approach to this training. We want them to come through more resistant to stress.

We do, however, use some sleep deprivation within the training. Our students get tired and fatigued, because in real situations in the past, historically, they've been interrogated while they are tired and fatigued.

Senator BILL NELSON. I want to get to your testimony, with regard to waterboarding and training. In your testimony, and I quote you, "I told him"—Lieutenant Colonel Baumgartner—"that I had seen waterboarding used while observing Navy training during the previous year"——

Dr. OGRISSEG. Yes, sir.

Senator BILL NELSON.—"and I would never recommend it being used in training"——

Dr. OGRISSEG. Yes, sir.

Senator BILL NELSON. So, you've seen it. You further say, "The waterboard produced capitulation and compliance with instructor demands 100 percent of the time," and you finish up by saying that the waterboard expressed extreme avoidance attitudes, such as a likelihood to further comply with any demands made of them if brought near the waterboard again. So why don't you give us some further observations about that.

Dr. OGRISSEG. Senator, when I observed the Navy training, I not only watched when folks were being put on the waterboard, but also went to observe when they were being debriefed, following training. I'm not exactly sure how many, but with three or four of these students that I saw that experienced the waterboard, I heard their comments about that pressure. The gist of the comments is, as I stated there, "If they had brought me near that thing again, I would have complied with anything that they told me to do, and done anything to avoid it."

Senator BILL NELSON. It's to prepare our troops for captivity. Now, the Chairman, in his opening comments, said that this technique is limited to 20 seconds. Our Navy students, primarily SEALs, they would know that they were not going to be killed in this operation, that it was a training exercise. So, it's to prepare them for it. So, your observations of that are that, at the end of the day, whatever the captor wants the captee to do as a result of waterboarding, the captee is going to do? Is that your observation?

Dr. OGRISSEG. What my observation was, was that certainly they would comply with what was wanted. As far as the information that they gave, I have no way of knowing whether or not that was true or not.

Senator BILL NELSON. You said earlier, to someone's question, that there was a way for the trainee to stop the interrogation technique. Tell us about that.

Dr. OGRISSEG. In all of the school programs that I have seen, there is a term that can be used for them to say, "Hey, I need to talk to someone," get them out of role and an opportunity to bring them back online. With the waterboard, when I saw it in 2001, there was essentially not a similar mechanism for that, that would allow them before being placed in that pressure, to avert it. Even with the specialists that you're talking about the SEALs going through, it doesn't take very long, with that device, to instill a very real fear of drowning and death for anyone who's going through it, even if they know what the rules of engagement are for using it during training.

Senator BILL NELSON. All right.

Now, let's talk about lack of sleep. In chapter 5 of the "Code of Conduct and the Psychology of Captivity," it says, "Lack of sleep

for prolonged periods may result in anxiety, irritability, memory problems, confusions, hallucinations, paranoia, disorientation, and, ultimately, death." What's your observation of that, as you saw it in this SERE training?

Dr. OGRISSEG. Certainly people were not pushed to the point of anything approximating death within our training, but most of the other reactions that you're talking about are typical reactions to being put into an experience like this. Obviously our goal is to have them experience that first with the good guys, and have a chance to apply the strategies that they've been taught to counteract those.

Senator BILL NELSON. On the basis of what you saw in the SERE training, do you have a feeling about how accurate the information received using the technique of sleep deprivation is?

Dr. OGRISSEG. Senator, are you talking about how good they learn the material?

Senator BILL NELSON. No.

Dr. OGRISSEG. I'm not sure I understand the question, sir.

Senator BILL NELSON. Information that would be gathered from a detainee as a result of taking them through sleep deprivation, is that reliable information?

Dr. OGRISSEG. Senator, you're talking about interrogation, and I'm talking about training, which is where my specialty area lies. I'm not sure that I'm qualified——

Senator BILL NELSON. You don't have any observation, having seen the people deprived of sleep during training, as to whether or not the information they would give is good or not?

Dr. OGRISSEG. I'm not sure that I'm qualified to assess that for real-world detainee-handling circumstance, because, in training, the skill sets that we want them to apply are to resist the attempts that the captor is making in exploiting them. So, they're actively applying skill sets that hopefully will degrade the quality of information that the captor gets.

Senator BILL NELSON. Mr. Chairman, maybe I need to ask this of some of the further witnesses, but let me ask one more question.

Under the Army Field Manual, the standard by which we are trying to put into law, the standard by which you can interrogate detainees, it says this, "Use of separation must not preclude the detainee getting 4 hours of continuous sleep every 24 hours." That's the standard in the Army Field Manual, for detainees.

Now, we know, and it has been reported publicly, that al Qahtani was interrogated sometime in late 2002 at GTMO, where he was deprived of sleep by interrogating him for 18 to 20 hours a day for 48 of 54 days. So, what would be your opinion of his mental capacity when interrogated for that long?

Dr. OGRISSEG. Senator, I have no familiarity with the subject that you're talking about. I was not there, and I don't feel qualified to offer an opinion on that.

Senator BILL NELSON. When you were doing the training for the Air Force, did you go through sleep deprivation, yourself?

Dr. OGRISSEG. I certainly did.

Senator BILL NELSON. Okay. Then, on the basis of your sleep deprivation, what is your answer to my question?

Dr. OGRISSEG. I did not go through anything as prolonged as what you have described there.

Senator BILL NELSON. How much time?

Dr. OGRISSEG. It certainly varies within the courses, but certainly in the range of 4 to 12 hours.

Senator BILL NELSON. Of sleep deprivation within a 24-hour period?

Dr. OGRISSEG. Yes, sir.

Senator BILL NELSON. You don't have any opinion as to my question?

Dr. OGRISSEG. You're asking me to try to——

Senator BILL NELSON. I'm asking your opinion.

Dr. OGRISSEG. Yes, sir. You are, but you're also asking me to generalize, from my own experience, to that——

Senator BILL NELSON. That's what I'm asking.

Dr. OGRISSEG.—to that of—an al Qaeda member, and I don't know what the circumstances were prior to that experience that you described. I don't know specifically what was done to him. So as an ethical obligation as a psychologist, I don't feel that I can answer that question.

Senator BILL NELSON. I disagree with you. I think you have an opinion, but so be it.

Mr. Chairman, thank you.

Chairman LEVIN. Thank you.

That reminds me, your reference to Qahtani, that there were portions of my statement that I left out because it was obviously a long statement; and so, my entire statement will be made part of the record, including the paragraphs relating to Mr. Qahtani.

[The prepared statement of Chairman Levin follows:]

PREPARED STATEMENT BY SENATOR CARL LEVIN

Today's hearing will focus on the origins of aggressive interrogation techniques used against detainees in U.S. custody. We have three panels of witnesses today and I want to thank them for their willingness to voluntarily appear before the committee.

Intelligence saves lives. Knowing where an insurgent has buried an improvised explosive device can keep a vehicle carrying marines in Iraq from being blown up. Knowing that an al Qaeda associate visited an internet café in Kabul could be the key piece of information that unravels a terrorist plot targeting our embassy. Intelligence saves lives.

But how do we get the people who know the information to share it with us? Does degrading them or treating them harshly increase the chances that they'll be willing to help? Just a couple of weeks ago I visited our troops in Afghanistan. While I was there I spoke to a senior intelligence officer who told me that treating detainees harshly is actually an impediment—a "roadblock" to use that officer's word—to getting intelligence from them.

Here's why, he said—al Qaeda and Taliban terrorists are taught to expect Americans to abuse them. They're recruited based on false propaganda that says the United States is out to destroy Islam. Treating detainees harshly only reinforces their distorted view and increases their resistance to cooperate. The abuse at Abu Ghraib was a potent recruiting tool for al Qaeda and handed al Qaeda a propaganda weapon they could use to peddle their violent ideology.

So, how did it come about that American military personnel stripped detainees naked, put them in stress positions, used dogs to scare them, put leashes around their necks to humiliate them, hooded them, deprived them of sleep, and blasted music at them. Were these actions the result of "a few bad apples" acting on their own? It would be a lot easier to accept if it were. But that's not the case. The truth is that senior officials in the United States Government sought information on aggressive techniques, twisted the law to create the appearance of their legality, and authorized their use against detainees. In the process, they damaged our ability to collect intelligence that could save lives.

Today's hearing will explore part of the story: how it came about that techniques, called Survival, Evasion, Resistance, and Escape (SERE) training, which are used to teach American soldiers to resist abusive interrogations by enemies that refuse to follow the Geneva Conventions, were turned on their head and sanctioned by Department of Defense (DOD) officials for use offensively against detainees. Those techniques included use of stress positions, keeping detainees naked, use of dogs, and hooding during interrogations.

Some brief background on SERE training. The U.S. military has five SERE schools to teach certain military personnel—whose missions create a high risk that they might be captured—the skills needed to survive in hostile enemy territory, evade capture, and escape should they be captured. The resistance portion of SERE training exposes students to physical and psychological pressures designed to simulate abusive conditions to which they might be subject if taken prisoner by enemies that may abuse them. The Joint Personnel Recovery Agency (JPRA) is the DOD agency that oversees SERE training. JPRA's instructor guide states that a purpose of using physical pressures in the training is "stress inoculation," building soldiers' immunities so that should they be captured and subject to harsh treatment, they will be better prepared to resist. The techniques used in SERE resistance training can include things like 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 sailors who attended the Navy's SERE school, it included waterboarding—mock drowning.

The SERE schools obviously take extreme care to avoid injuring our own soldiers. Troops are medically screened to make sure they're fit for the SERE course. Prior to the training, each student's physical limitations are carefully documented to reduce the chance that the SERE training and the use of SERE techniques will cause injury. There are explicit limitations on the duration and intensity of physical pressures. For example, when waterboarding was permitted at the Navy SERE school, the instructor manual stated that a maximum of 2 pints of water could be used on a student who was being waterboarded and, if a cloth was used to cover a student's face, it could stay in place a maximum of 20 seconds.

SERE resistance training techniques are legitimate and important training tools. They prepare our forces who might fall into the hands of an abusive enemy to survive by getting them ready for what might confront them.

Strict controls are also in place during SERE resistance training to reduce the risk of psychological harm to students. Psychologists are present throughout SERE training to intervene should the need arise and to talk to students during and after the training to help them cope with associated stress.

Those who play the part of interrogators in the SERE school drama are not real interrogators—nor are they qualified to be. As the Deputy Commander for the Joint Forces Command (JFCOM) put it "the expertise of JPRA lies in training personnel how to respond and resist interrogations—not in how to conduct interrogations." That distinction is a fundamental one.

Some might say that if our personnel go through it in SERE school, what's wrong with doing it to detainees. Well, our personnel are students and can call off the training at any time. SERE techniques are based on abusive tactics used by our enemies. If we use those same techniques offensively against detainees, it says to the world that they have America's stamp of approval. That puts our troops at greater risk of being abused if they're captured. It also weakens our moral authority and harms our efforts to attract allies to our side in the fight against terrorism.

So, how did SERE techniques come to be considered by DOD for detainee interrogations. In July 2002, Richard Shiffrin, a Deputy General Counsel in the DOD and a witness at today's hearing, called Lieutenant Colonel Daniel Baumgartner, also a witness today and then the Chief of Staff at JPRA—the agency that oversees the SERE training—and asked for information on SERE techniques.

In response to Mr. Shiffrin's request, Lieutenant Colonel Baumgartner drafted a two-page memo, and compiled several documents, including excerpts from SERE instructor lesson plans, that he attached to his memo saying JPRA would "continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy detainees." The memo was hand delivered to the General Counsel's office on July 25, 2002. Again, it is critical to remember here; these techniques are not used in SERE school to obtain intelligence, they are to prepare our soldiers to resist abusive interrogations.

The next day, Lieutenant Colonel Baumgartner drafted a second memo, which included three attachments. One of those attachments listed physical and psychological pressures used in SERE resistance training including sensory deprivation,

sleep disruption, stress positions, waterboarding, and slapping. It also made reference to a section of the JPRA instructor manual that talks about "coercive pressures" like keeping the lights at all times, and treating a person like an animal. Another attachment, written by Dr. Ogrisseg, also a witness today, assessed the long-term psychological effects of SERE resistance training on students and the effects of the waterboard.

This morning, the committee will have the chance to ask Mr. Shiffrin, Lieutenant Colonel Baumgartner, and Dr. Ogrisseg about these matters.

On August 1, 2002, a week after Lieutenant Colonel Baumgartner sent his memos to the DOD General Counsel, the Department of Justice's (DOJ) Office of Legal Counsel (OLC) issued two legal opinions. One, commonly known as the first Bybee memo, was addressed to then-White House Counsel Alberto Gonzales and provided OLC's opinion on standards of conduct in interrogation required under the Federal torture statute. That memo concluded:

> For 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.

The other OLC opinion, issued the same day and known commonly as the second Bybee memo, responded to a Central Intelligence Agency (CIA) request, and addressed the legality of specific interrogation tactics.

While the interrogation tactics reviewed by the OLC in the second Bybee memo remain classified, General Hayden, in public testimony before the Senate Select Committee on Intelligence in February of this year, said that the waterboard was one of the techniques that the CIA used with detainees. Steven Bradbury, the current Assistant Attorney General of the OLC, testified before the House Judiciary Committee earlier this year that the "CIA's use of the waterboarding procedure was adapted from the SERE training program."

During the time the DOD General Counsel's office was seeking information from JPRA, JPRA staff, responding to a request from Guantanamo (GTMO), was finalizing plans to conduct training for interrogation staff from U.S. Southern Command's (SOUTCHOM) Joint Task Force 170 at GTMO. During the week of September 16, 2002, a group from GTMO, including interrogators and behavioral scientists, travelled to Fort Bragg, NC, and attended training conducted by instructors from the JPRA SERE school. None of the three JPRA personnel who provided the training was a trained interrogator.

On September 25, 2002, just days after GTMO staff returned from that training, a delegation of senior administration lawyers, including Jim Haynes, General Counsel to the DOD, John Rizzo, acting CIA General Counsel, David Addington, Counsel to the Vice President, and Michael Chertoff head of the Criminal Division at the DOJ, visited GTMO. An after action report produced by a military lawyer after the visit noted, that one purpose of the trip was to receive briefings on "intel techniques."

On October 2, 2002, a week after John Rizzo, the acting CIA General Counsel visited GTMO, a second senior CIA lawyer, Jonathan Fredman, who was chief counsel to the CIA's Counterterrorism Center, went to GTMO, attended a meeting of GTMO staff and discussed a memo proposing the use of aggressive interrogation techniques. That memo had been drafted by a psychologist and psychiatrist from GTMO who, a couple of weeks earlier, had attended the training given at Fort Bragg by instructors from the JPRA SERE school.

While the memo remains classified, minutes from the meeting where it was discussed are not. Those minutes clearly show that the focus of the discussion was aggressive techniques for use against detainees.

When the GTMO Chief of Staff suggested at the meeting that GTMO "can't do sleep deprivation," Lieutenant Colonel Beaver, GTMO's senior lawyer, responded "Yes we can—with approval." Lieutenant Colonel Beaver added that GTMO "may need to curb the harsher operations while International Committee of the Red Cross is around."

Mr. Fredman, the senior CIA lawyer, suggested it's "very effective to identify detainee phobias and use them" and described for the group the so-called "wet towel" technique, which we know as waterboarding. Mr. Fredman said "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."

Mr. Fredman presented the following disturbing perspective of our legal obligations under anti-torture laws, saying "It is basically subject to perception. If the detainee dies you're doing it wrong."

If the detainee dies, you're doing it wrong? How on Earth did we get to the point where a senior United States Government lawyer would say that whether or not an interrogation technique is torture is "subject to perception" and that "if the detainee dies you're doing it wrong." What was GTMO's senior JAG officer, Lieutenant Colonel Beaver's response? "We will need documentation to protect us."

Nine days after that October 2, 2002, meeting, General Dunlavey, the Commander of Joint Task Force 170 at GTMO, sent a memo to U.S. SOUTHCOM requesting authority to use interrogation techniques which the memo divided into three categories of progressively more aggressive techniques. Category I was the least aggressive. Category II was more so and included the use of stress positions, exploitation of detainee fears (such as fear of dogs), removal of clothing, hooding, deprivation of light and sound. Category III techniques included techniques like the so-called wet towel treatment, or "waterboard," that were the most aggressive. A legal analysis by GTMO's Staff Judge Advocate, Lieutenant Colonel Diane Beaver justifying the legality of the techniques, was sent with the request.

On October 25, 2002, General James Hill, the U.S. SOUTHCOM Commander forwarded General Dunlavey's request to the Chairman of the Joint Chiefs of Staff. Days later, the Joint Staff solicited the views of the military Services on the GTMO request.

The military Services reacted strongly against using many of the techniques in the GTMO request. In early November 2002, in a series of memos, the Services identified serious legal concerns with the techniques and they called urgently for additional analysis.

- The Air Force cited "serious concerns regarding the legality of many of the proposed techniques" and stated that "the 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.
- The Chief Legal Advisor to the Criminal Investigative Task Force (CITF) at GTMO wrote that Category III techniques and certain Category II techniques "may subject servicemembers to punitive articles of the Uniform Code of Military Justice (UCMJ)," 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."
- 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 the request "legally insufficient" and called for additional review.
- The Navy response recommended a "more detailed interagency legal and policy review" of the request.
- The Marine Corps expressed strong reservations, stating that "several of the Category II and III techniques arguably violate Federal law, and would expose our servicemembers to possible prosecution." The Marine Corps said the request was not "legally sufficient," and like the other Services, called for "a more thorough legal and policy review."

While it has been known for some time that military lawyers voiced strong objections to interrogation techniques in early 2003 during the DOD Detainee Working Group process, these November 2002 warnings from the military Services—expressed before the Secretary of Defense (SECDEF) authorized the use of aggressive techniques—were not publicly known before now.

When the Joint Staff received the military Services' concerns, Rear Admiral Jane Dalton, then-Legal Advisor to the Chairman of the Joint Chiefs of Staff, began her own legal review of the proposed interrogation techniques, but that review was never completed. Today we'll have the opportunity to ask RADM Dalton about that.

Notwithstanding concerns raised by the military Services, DOD General Counsel Jim Haynes sent a memo to SECDEF Donald Rumsfeld on November 27, 2002, recommending that he approve all but 3 of the 18 techniques in the GTMO request. Techniques like 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.

Five days later, on December 2, 2002, Secretary Rumsfeld signed Mr. Haynes's recommendation, adding the handwritten note "I stand for 8–10 hours a day. Why is standing limited to 4 hours?" When Secretary Rumsfeld approved the use of the use of abusive techniques against detainees, he unleashed a virus which ultimately infected interrogation operations conducted by the U.S. military in Afghanistan and Iraq.

Discussions about "reverse engineering" SERE techniques for use in interrogations at GTMO had already prompted strong objections by the DOD's CITF at GTMO. CITF Deputy Commander Mark Fallon said 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."

The dispute over the use of aggressive techniques came to a head with the military's plan for interrogating Mohammed al-Khatani. Both CITF and FBI strongly opposed the military's plan and CITF took their concerns up the Army Chain of Command and even to the DOD General Counsel's office; but over CITF's objections, the military's plan was approved. The Khatani interrogation began on November 23, 2002, just over a week before the Secretary signed the Haynes memo.

SOUTHCOM Commander General James Hill described the Khatani interrogation in a June 3, 2004, press briefing. He said: "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 . . ."

Key documents relating to Khatani's interrogation remain classified. Published accounts, however, indicate that Khatani was deprived of adequate sleep for weeks on end, stripped naked, subjected to loud music, a dog was used to scare him, and a leash was placed around his neck as he was forced to perform dog tricks.

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

In the week following the Secretary's December 2, 2002, authorization, senior staff at GTMO set to work drafting a Standard Operating Procedure (SOP) specifically for the use of SERE techniques in interrogations. The first page of one draft of that SOP 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 described how to slap, strip, and place detainees in stress positions. It also described "hooding," "manhandling," and "walling" detainees.

When they saw the draft SOP, CITF and FBI personnel again raised a red flag. A draft of their comments on the SOP said the use of aggressive techniques only "ends up fueling hostility and strengthening a detainee's will to resist." But those objections did not stop GTMO from taking the next step—training interrogators on how to use the techniques offensively.

On December 30, 2002, two instructors from the Navy SERE school arrived at GTMO. The following day, in a session with approximately 24 interrogation personnel, the two demonstrated how to administer stress positions, and various slaps—just like they do it in SERE school.

Around this time, General Hill, the Commander of the U.S. SOUTHCOM spoke to General Miller and discussed the fact that a debate was occurring over the Secretary's approval of the techniques. In fact, CITF's concerns had made their way up to then-Navy General Counsel Alberto Mora and a battle over interrogation techniques was being waged at senior levels in the Pentagon.

On January 3, 2003, 3 days after they conducted the training, the SERE instructors met with Major General Miller. According to some who attended, General Miller stated that he did not want his interrogators using the techniques that the Navy SERE instructors had demonstrated. That conversation took place after the training had already occurred and not all the interrogators who attended the training got the message.

Two weeks earlier, on December 20, 2002, Alberto Mora had met with DOD General Counsel Jim Haynes. In a memo describing the meeting, Mr. Mora says he told Mr. Haynes that he thought interrogation techniques that had been authorized by the SECDEF on December 2, 2002, "could rise to the level of torture" and asked him, "What did 'deprivation of light and auditory stimuli' mean? Could a detainee be locked in a completely dark cell? For how long? A month? Longer? What exactly

did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in?"

On January 9, 2003, Alberto Mora met with Jim Haynes again. According to his memo, Mora expressed frustration that the Secretary's authorization had not been revoked and told Haynes that the policies could threaten Secretary Rumsfeld's tenure and even damage the presidency.

On January 15, 2003, having gotten no word that the Secretary's authority would be withdrawn, Mora delivered a draft memo to Haynes's office stating that "the majority of the proposed category II and all of the category III techniques were violative of domestic and international legal norms in that they constituted, at the minimum, cruel and unusual treatment and, at worst, torture." In a phone call, Mora told Haynes he would be signing his memo later that day unless he heard definitively that the use of the techniques was being suspended. In a meeting that same day, Haynes returned the draft memo and told Mora that the Secretary would rescind the techniques.

On January 15, 2003, the Secretary rescinded his December 2, 2002, authorization. At the same time, he directed the establishment of a "Working Group" to review interrogation techniques. What happened next has already become well known. For the next few months the judgments of senior military and civilian lawyers critical of legal arguments supporting aggressive interrogation techniques were rejected in favor of a legal opinion from OLC's John Yoo. The Yoo opinion, the final version of which was dated March 14, 2003, was requested by Jim Haynes, and repeated much of what the first Bybee memo had said 6 months earlier.

Mr. Mora, who was one of the Working Group participants, said that soon after the Working Group was established, it became evident the group's report "would contain profound mistakes in its legal analysis, in large measure because of its reliance on the flawed OLC memo." In a meeting with Yoo, Mora asked whether the law allowed the President to go so far as to order torture. Yoo responded "Yes."

The August 1, 2002, Bybee memo, again, had said that to violate the Federal anti-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." John Yoo's March 14, 2003 memo stated that criminal laws, such as the Federal anti-torture statute, would not even 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. One CIA lawyer reportedly called the Bybee memo of August 2002 a "golden shield." Combining it with the Yoo memo of March 2003, the Justice Department had attempted to create a shield to make it difficult or impossible to hold anyone accountable for their conduct.

Ultimately the Working Group report, finalized in April 2003, included a number of aggressive techniques that were legal according to John Yoo's analysis. The full story of where the Working Group got those techniques remains classified. However, the list itself reflects 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. Top military lawyers and service General Counsels had objected to these techniques as the report was being drafted. Those who had objected, like Navy General Counsel Alberto Mora, were simply excluded from the process and not even told that a final report had been issued.

On April 16, 2003, less than 2 weeks after the Working Group completed its report, the SECDEF 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 most of the techniques in the Working Group report.

However, the Secretary's memo said 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."

Just a few months later, one such request arrived at the Pentagon. The detainee was Mohamedou Ould Slahi. While several documents relating to the Slahi interrogation plan remain classified, the recent report from the DOJ Inspector General (IG) includes newly declassified information suggesting the plan included hooding Slahi and subjecting him to sensory deprivation and "sleep adjustment." The IG'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.

How did SERE techniques make their way to Afghanistan and Iraq? Shortly after the Secretary approved Jim Haynes's recommendation on December 2, 2002, 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. The Officer in Charge of the Intelligence Section at Bagram Airfield, in Afghanistan has said that in January 2003 she saw—in Afghanistan—a power point presentation listing the aggressive techniques authorized by the Secretary on December 2, 2002.

Documents and interviews also indicate that the influence of the Secretary's approval of aggressive interrogation techniques survived their January 15, 2003 rescission.

On January 24, 2003—9 days after Rumsfeld's rescission—the Staff Judge Advocate for CJTF–180, CENTCOM's conventional forces in Afghanistan, produced an "Interrogation techniques" memo. While that memo remains classified, the unclassified version of a report by Major General George Fay stated that the CJTF–180 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.

From Afghanistan, the techniques made their way to Iraq. According to the DOD IG, at the beginning of the Iraq war, the 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:

> "influenced by the counterresistance 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) . . ."

Special mission unit techniques eventually made their way into SOPs issued for all U.S. forces in Iraq. 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 for the conventional forces in Iraq, led at the time by Lieutenant General Ricardo Sanchez.

On September 14, 2003, Lieutenant General Sanchez issued the first Combined Joint Task Force 7 interrogation SOP. That SOP authorized interrogators in Iraq to use stress positions, environmental manipulation, sleep management, and military working dogs to exploit detainees' fears in interrogations.

In the 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. 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." Following a September 9, 2004, Committee hearing on his report, I asked Major General Fay whether the policy approved by the SECDEF on December 2, 2002, contributed to the use of aggressive interrogation techniques at Abu Ghraib, and he responded "Yes."

Not only did SERE resistance training techniques make their way to 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 provide assistance to interrogation operations. During that trip, SERE instructors were authorized to participate in the interrogation of detainees in U.S. military custody. Accounts of that trip will be explored at a later time.

I will be sending a letter to DOD asking that those accounts and other documents relating to JPRA's interrogation-related activities be declassified.

Major General James Soligan, the Chief of Staff of the U.S. JFCOM, which is the JPRA's higher headquarters, issued a memorandum referencing JPRA's support to interrogation operations. Soligan wrote that:

> "Recent requests from OSD 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 respon-

sibilities of JPRA. The use of resistance to interrogation knowledge for 'offensive' purposes lies outside the roles and responsibilities of JPRA."

Lieutenant General Robert Wagner, the Deputy Commander of JFCOM, has likewise said that "Relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations—not in how to conduct interrogations. Requests for JPRA 'interrogation support' were both inconsistent with the unit's charter and might create conditions which tasked JPRA to engage in offensive operational activities outside of JPRA's defensive mission."

The DOD IG report completed in August 2006 said techniques in Iraq and Afghanistan had derived, in part from JPRA and SERE.

Many have questioned why we should care about the rights of detainees. On May 10, 2007, General David Petraeus answered that question in a letter to his troops. General Petraeus wrote:

> "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.
>
> I fully appreciate the emotions that one experiences in Iraq. I also know firsthand the bonds between members of the 'brotherhood of the close fight.' Seeing a fellow trooper killed by a barbaric enemy can spark frustration, anger, and a desire for immediate revenge. As hard as it might be, however, we must not let these emotions lead us—or our comrades in arms—to commit hasty, illegal actions. In the event that we witness or hear of such actions, we must not let our bonds prevent us from speaking up. Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary.
>
> We are, indeed, warriors. We train to kill our enemies. We are engaged in combat, we must pursue the enemy relentlessly, and we must be violent at times. What sets us apart from our enemies in this fight, however, 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."

Chairman LEVIN. Senator Ben Nelson.

Senator BEN NELSON. Thank you, Mr. Chairman. Again, let me add my appreciation to you for calling this important hearing.

Dr. Ogrisseg, the purpose of the training for our troops is to help them be able to survive, under the most extraordinary of circumstances, these techniques. Is it designed to keep them from telling secrets or giving up information that would be harmful, as well?

Dr. OGRISSEG. Yes, Senator, it is.

Senator BEN NELSON. That may work, under certain circumstances, but, at least based on the four or five U.S. Navy troops who were subjected to waterboarding, it probably wouldn't keep them from telling anything that the captor wanted them to tell. Is that accurate, based on what they said, "Bring the board next to me again, I'll tell them whatever they want to know"?

Dr. OGRISSEG. Based on what they said, I can determine, certainly that they were going to talk. I don't necessarily know what they would say once they started talking. But, certainly this would get them talking. What they were indicating was they would do whatever they could to stay off of that situation.

Senator BEN NELSON. As somebody involved in the training, you probably have an opinion as to whether or not they would give up anything, once they started talking, to keep from having the board used against them?

Dr. OGRISSEG. Sir, I would like to believe that the folks going through the training would be equipped enough to sustain that; but based on the limited amount of time that we have with them, I think this is more like the resistance training metaphor. The resistance training metaphor is much like resistance training with weights.

Senator BEN NELSON. It's not foolproof.

Dr. OGRISSEG. It's not foolproof. This is like putting a 400-pound bar on them when they are only prepared to lift one that's maybe a couple hundred pounds.

Senator BEN NELSON. But, it's also safe to say that—if they'll say anything to avoid having the board brought to them again, that they could give misinformation just as easily. They'd answer any question, potentially, that is presented to them, whether it's accurate information or not. Is that accurate?

Dr. OGRISSEG. Yes, Senator, that's true.

Senator BEN NELSON. But, the purpose is really not so much to keep them from giving up secrets, it's for their survival. Is that fair?

Dr. OGRISSEG. It's both. Information is one way that our forces could be exploited, but obviously we want them to survive and return with honor. So, it's both survival and resistance.

Senator BEN NELSON. Lieutenant Colonel Baumgartner, did you have any concerns with providing the SERE techniques to the interrogators?

Colonel BAUMGARTNER. No, sir, I did not.

Senator BEN NELSON. Did you know what they were going to use them for, the purpose?

Colonel BAUMGARTNER. I knew, when we provided information on resistance or interrogation techniques, that somebody way above my paygrade was going to make a decision what was appropriate and what was inappropriate. We were never part of those discussions.

Senator BEN NELSON. Mr. Shiffrin, did you have any legal opinion at the time that this request was made for the kind of information by Mr. Haynes that went beyond the studies and the research information on techniques?

Mr. SHIFFRIN. I didn't, Senator. My sole effort, as I recall, was to merely find out what information was out there.

Senator BEN NELSON. Nobody asked you what your opinion was under the UCMJ or Geneva Conventions or any other base for providing against torture?

Mr. SHIFFRIN. Correct. I don't remember ever being part of any discussion of specific techniques.

Senator BEN NELSON. But did you wonder, in your own mind, whether this information being passed on might not be in compliance with such laws?

Mr. SHIFFRIN. Honestly, Senator, I don't recall having that concern at the time, but, again, some of the techniques—and I think it was mentioned here—are relatively benign techniques. They're effective interrogation techniques. Some don't work, and maybe people were going to look at them and say, "Let's not use these." But, the colonel mentioned "good-cop/bad-cop," and that's been around for centuries.

Senator BEN NELSON. But, the waterboarding is not in that category. Is that accurate to say?

Mr. SHIFFRIN. Yes. I never heard of waterboarding until I think I had retired from DOD and found out it had been used. I did not, at any time, participate in any discussion of specific harsh techniques.

Senator BEN NELSON. I think that's everything that I have, Mr. Chairman. Thank you.

Chairman LEVIN. I believe Senator Pryor is next.

Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

I have just a few questions for Lieutenant Colonel Baumgartner, and that is, just for clarification—I know you've been asked about this in different contexts, but just for clarification in my mind, did JPRA ever advocate using the SERE techniques in an offensive manner against detainees?

Colonel BAUMGARTNER. No, Senator, we did not. What we did was, we provided the information, asked by higher headquarters, on exploitation, which, because of the nature of our training, we have experts in exploitation, we have folks that have studied interrogation and interview techniques. We offered up what information we had.

Senator PRYOR. Would you, today, recommend these techniques with detainees?

Colonel BAUMGARTNER. I'm really not qualified to answer that, Senator. What we do as an administration in questioning detainees is something that has to be discussed by legal counsel and administration officials far above my paygrade.

Senator PRYOR. Where did the techniques that you all do in your SERE training—where did those techniques originate?

Colonel BAUMGARTNER. Sir, those originated through studying lessons-learned of past conflicts and how our folks have been held by an adversary.

Senator PRYOR. So, for example, World War II, Vietnam, Korea.

Colonel BAUMGARTNER. World War II, Korea, Vietnam, the Cold War, the Iranian hostage crisis, for example. We even study other detention situations, civilian detention situations that have lessons that might be useful for our training.

Senator PRYOR. So, in your mind, since other nations or entities are using those against U.S. forces, does that justify our use of these techniques?

Colonel BAUMGARTNER. Sir, I—once again, I'm not qualified to render an opinion on that. I'm not a legal expert.

Senator PRYOR. But, do you have a personal opinion on it?

Colonel BAUMGARTNER. I have a personal opinion that a country needs to sit down and decide that ahead of time, before you launch.

Senator PRYOR. I know you mentioned the legal opinion, but isn't there also a moral dimension to this, as well?

Colonel BAUMGARTNER. We certainly go to great lengths in our training to look at the moral/ethical considerations behind how we treat our students and how the training is structured so they get the best learning out of it. Now, in a detention situation, that's not my realm of expertise.

Senator PRYOR. Is it your understanding that some of the techniques that you use in the SERE training do violate the Army Field Manual, U.S. law, and the Geneva Conventions?

Colonel BAUMGARTNER. One, sir, I don't think we conduct training that's going to violate U.S. law.

Senator PRYOR. But——

Colonel BAUMGARTNER.—I'm not going to torture students.

Senator PRYOR. No, I understand that. But you're simulating techniques that may be used against them.

Colonel BAUMGARTNER. We are trying to create, in that student's mind, a hostile environment, where they have to practice, like Dr. Ogrisseg said, the strategies that they're offered in training before they get the opportunity to practice it for real both in training and then downstream, if they happen to be taken captive.

Senator PRYOR. But, some of the activities you're trying to simulate would violate the Army Field Manual——

Colonel BAUMGARTNER. We are simulating an enemy that is not complying with the Geneva Conventions——

Senator PRYOR. Right.

Colonel BAUMGARTNER.—that's true.

Senator PRYOR. When did you find out that someone somewhere was trying to take what you all are doing in the SERE program and actually use it offensively with detainees? When did you discover that?

Colonel BAUMGARTNER. Sir, the request for the information, like Dr. Ogrisseg said, it wasn't for training, therefore it had to be for our decisionmakers to make a decision on what DOD, or what the Government, was going to use, in terms of techniques.

Senator PRYOR. Yes. What I'm asking is, did you know about it? Did you know, at the time, when you were providing information, that someone somewhere was working on a new policy on how we were going to treat detainees?

Colonel BAUMGARTNER. I didn't know that for a fact, Senator, but, like I said, I had an idea that they were probably going to look at, as a matter of policy, what was appropriate for the United States to use.

Senator PRYOR. Did you ever offer any opinion about what you felt would or would not be appropriate?

Colonel BAUMGARTNER. No, Senator, we were not part of that decisionmaking process at all.

Senator PRYOR. So, in other words, your testimony is, you just provided the information?

Colonel BAUMGARTNER. We provided the information, and then, after that, we were not in that loop anymore.

Senator PRYOR. Mr. Chairman, that's all I have.

Chairman LEVIN. Thank you, Senator Pryor.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Colonel Baumgartner, did anyone outside of the DOD ever ask you for the information that you sent to the General Counsel's Office, which is a list of physical pressures in the memo from Dr. Ogrisseg?

Colonel BAUMGARTNER. We had support requests from, like I said, the DIA. We also had a support request from another agency that——

Senator REED. What's the other agency?

Colonel BAUMGARTNER. I think that discussion might go into classified, sir.

Senator REED. Did you send them the information?

Colonel BAUMGARTNER. Yes, sir, we did.

Senator REED. Thank you.

I just want to follow up in the line of questioning, very briefly, that Senator Pryor, in your response, confirmed my experience, after 12 years in the Army, which is—the basic premise of SERE training is that our enemies will not follow the Geneva Convention—some of them—that they will not follow any rules of international conduct. I'll just ask you—and I'll start with you, Colonel—if that's the premise, that all of these techniques are, per se, violative of the Geneva Convention, or certainly if they're—without some modifications or some sort of changes, what was the logic of trying to incorporate them in our interrogation practices?

Colonel, do you have any thoughts?

Colonel BAUMGARTNER. I'm really not qualified to answer that, sir. We received a request for information from the Office of General Counsel. We had that information, based on our training, based on the research of conducting this training for 53 years. So we provided the information.

After that point, it's not up to Dan Baumgartner what they do with it.

Senator REED. No, but, sir, first of all, I think you've said before, that the premise is that our adversaries would likely not follow the Geneva Conventions, the rules of war. Is that correct?

Colonel BAUMGARTNER. I think it depends on the adversary.

I think with our current adversaries, that's probably true.

Senator REED. But you were training, not against adversaries that you were training against the real possibility that our adversaries would not follow——

Colonel BAUMGARTNER. Absolutely, sir.

Senator REED. That's correct.

Colonel BAUMGARTNER. Absolutely.

Senator REED. The thrust of the training was to prepare these individuals for the worst case, not for the best case.

Colonel BAUMGARTNER. Right, sir.

Senator REED. Which leads, again, to the conclusion that these techniques are probably, per se, violative of the Geneva Convention. Now, did it ever cross your mind, when you were sending this information over to the General Counsel's Office, why they needed it? Did you ever officially raise the question, why do they need this?

Colonel BAUMGARTNER. When you're tasked by the OSD at a level that we are, if they needed the information—and, quite frankly, I had no idea what they were going to do with it, what they were going to use, what they would decide not to use, and what the country would use that information, or the administration would use that information, for, in terms of making a decision. So, when I'm tasked by higher headquarters to provide information they can

legitimately have, I can't really turn around and tell the flag officer and the senior executive service guys no.

Senator REED. No one is suggesting that you were not complying with a legitimate request, but did it—again, the question is not so much what you did—but, did anyone in your organization ask the question, even around the water cooler, what the heck's going on?

Colonel BAUMGARTNER. We discussed detention operations—of course we did—because we have experts in exploitation, we have experts in interrogation methods and questioning, and everything that surrounds SERE training. So, of course it was of professional interest to us what—how the United States was going to deal with this particular question.

Senator REED. Do you think, on your expertise, that it would be a challenge to incorporate these techniques and comply with the Geneva Conventions?

Colonel BAUMGARTNER. I really never came to any conclusions. There was a lot of discussion, but not a lot of conclusions.

Senator REED. Right.

Colonel BAUMGARTNER. This is just a very difficult question.

Senator REED. Right.

Colonel BAUMGARTNER. Because when you go to war, you have to figure out how you're going to conduct detainee treatment.

Senator REED. Right.

Colonel BAUMGARTNER. Usually it's really best if you do that ahead of time, before you get in the middle of things.

Senator REED. Let me, Mr. Shiffrin, ask you the same question with respect to—the premise of this type of training was that our adversaries—not all of them, but at least some of them—would not follow Geneva Convention, would not follow the CAT, would not follow any rules of civilized conduct. Is that a fair judgment?

Mr. SHIFFRIN. My personal view, yes. I don't think it was something I thought about at the time.

Senator REED. Okay.

Mr. SHIFFRIN. But, I understand that's what's—but, the—as I understand the training, it's pretty wide-ranging.

If I may just offer one point, a lot of the discussion that I was privy to was not the idea of harsh treatment, but being able to offer carrots. There's a lot of people who felt that if we offer some inducement to detainees—cable TV, an extra pillow——

Senator REED. Yes, but those inducements didn't seem to appear in the category 1, 2, and 3 recommendations.

Mr. SHIFFRIN. No, I'm just saying that, from an abstract point of view, a discussion about what might be effective or not, when you say, "Let's find out everything there is out there on the subject," I assume that some of it would be, "Well, you could offer inducements."

Senator REED. That assumption might be debatable. But, given what we've seen, in terms of the recommendations, there weren't many inducements. But, gentlemen, thank you for your testimony this morning.

Chairman LEVIN. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you.

Mr. Shiffrin, would you tell us again what your position was at this time, and who you reported to?

Mr. SHIFFRIN. I took the position of Deputy General Counsel for Intelligence in DOD in December 1997. I left the DOJ, where I was at OLC. I had that position until I was demoted, or transferred, at the end of the 2002. I then became the Acting General Counsel at DIA for my last 6 months at the DOD, and I retired, July of—

Senator SESSIONS. Let me just ask you a couple of things. Were you aware that these techniques that were eventually approved and then modified for GTMO interrogations—that was based on a request from the commanding general or the commanders, somebody at GTMO, right? Were you there then, when that came up?

Mr. SHIFFRIN. I had no knowledge of that. I had no knowledge of any of the techniques or what was being used, methodology, at GTMO.

Senator SESSIONS. Okay.

What I'd like to say is, on behalf of the military and the men and women who try to serve our country, this is what I understood happened. There were three incidences of this so-called waterboarding, according to the Director of the CIA. None of them were done at GTMO, and none of them were done by the FBI. What I understand is that the military was working to deal with a small, but valuable, group of individuals who had, they believed, critical information. One was the so-called 20th hijacker that had met Mohamed Atta in the United States and was eventually captured. He did not go on the flight to attack the Capitol or the White House, he was captured in Iraq—or Afghanistan—and brought back over here. During that time, the interrogators asked for authority to interrogate aggressively.

Are any of you familiar with this, personally? They asked for it, and it went up to the chief counsel, and they went through all the lawyers and reviewed it, and they approved not all that they requested. Mr. Haynes approved some of those techniques, and he denied some of those techniques. Then, after that, other JAG officers objected, and they expressed concern that those that were approved went too far, and a working group was formed. The SECDEF listened to that group, and discussed it all openly among JAG officers at the Navy, Air Force, and Army, and they cut back on those.

But, I would point out to my colleagues that this was all before—isn't it, Mr. Shiffrin?—the Hamdan case, that ruled on Common Article 3. That was 2 years later, was it not?

Mr. SHIFFRIN. Senator, I confess, I don't remember the date of the Hamdan case.

Senator SESSIONS. It was several years later, probably 2 or 3 years later that this case came out. So, they were operating under a piece of legislation passed by the United States Congress and supported by our Judiciary Committee members, Senators Leahy, Biden, and Kennedy, and Senator Levin and others who were present in Congress at that time. It defined "torture," and it prohibited torture, but it didn't just prohibit isolation, or it didn't prohibit stress techniques; it said that you could not subject someone to "severe physical or mental pain or suffering." So, that was an operable statute, was it not, all along? Do any of you know that? [No response.]

So, that's essentially what they are wrestling with.

Now, Mr. Goldsmith was OLC, was he not, Mr. Shiffrin? Is that what his title was in the DOJ?

Mr. SHIFFRIN. He was the assistant attorney general——

Senator SESSIONS. Of Legal Counsel.

Mr. SHIFFRIN.—OLC, yes.

Senator SESSIONS. Right, Legal Counsel. So, he was not happy with some of these techniques that were used, and he wrote a book about it, "The Terror Presidency," and this is what he said in his book. He's been widely renowned here as a critic of the Bush administration, but he said this, as to the lawyers and trying to do the right thing: "Many people believe the Bush administration had been indifferent to these legal constraints in the fight against terrorism. In my experience, the opposite is true; the administration has paid scrupulous attention to the law." He goes on to add: "Many people think the Bush administration has been indifferent to wartime legal constraints, but the opposite is true; the administration has been strangled by law, and, since September 11, 2001, this war has been lawyered to death."

So, all I would say to my distinguished chairman, who's conducted an extensive investigation into all of these matters, I would just say, truthfully, whether these legal opinions were correct, whether the Supreme Court later changed the law—and they did change the law in several important aspects, and it's unfair to hold the military accountable if the current law—if you're complying with the current law and it's later changed. So, we have a situation in which the people on the ground felt they were dealing with some high-value targets, and DOD approved certain techniques that they felt did not violate the terrorism statute that prohibits severe pain being inflicted. It didn't say you couldn't stress an individual or other things like that.

So if we went too far on some of those areas—I hope we didn't, but if we did, then I think, in the process of the Supreme Court and all these hearings and all—for goodness sakes, we certainly are doing much better in that regard. But, it is not the kind of rogue activity that has been suggested. There was no doubt about it, our military felt that this country was threatened after September 11, and they were able to apprehend some of the key players in that, and they desperately wanted intelligence, to make sure that if there was another cell group out there planning a similar attack, they could be stopped. I believe they consulted the legal system, all the way up to the DOJ. Hopefully, in the future, we can create a policy that we can all agree on, but I just don't think we ought to disrespect our men and women in uniform who have done their best to serve their country at a time when this Nation saw itself under real threat.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Senator McCaskill.

Senator MCCASKILL. Mr. Chairman, with the utmost respect for my friend from Alabama, I think that we disrespect the men and women in uniform if we don't have this hearing. I think that this hearing is incredibly important for those men and women, and for

the rule of law that they stand for, and for the kind of democracy that we want to be, and that we want the rest of the world to be.

Mr. Shiffrin, I know that you are a lawyer, and I would like to ask you, did you review the legal memorandum, that was written by Lieutenant Colonel Beaver, that issued the opinion that these aggressive techniques of interrogation were, in fact, legal under Federal law?

Mr. SHIFFRIN. No.

Senator MCCASKILL. So, have you ever read it?

Mr. SHIFFRIN. No. Not to my recollection.

Senator MCCASKILL. If you were reading a legal document, as a trained lawyer, and you came across the phrase "immunity in advance," would it cause you to pause?

Mr. SHIFFRIN. Yes, Senator. In my former life, I was a prosecutor, and——

Senator MCCASKILL. Me, too.

Mr. SHIFFRIN.—and that is something to be scrupulously avoided, at least my training was——

Senator MCCASKILL. "Immunity in advance"—I want to make sure that we get on the record what "immunity in advance" actually contemplates. If I were a police officer, or I were an officer of the court, and I said to someone, "Now, if you go drive the getaway car for the armed robbery, and, afterwards, if you tell us all about it, we'll make sure that you're not prosecuted for the armed robbery," that would, in fact, be "immunity in advance," wouldn't it?

Mr. SHIFFRIN. That would be one example, yes.

Senator MCCASKILL. What you'd really be doing, as an officer of the court, or as an officer sworn to uphold the UCMJ, is, you would be saying, ahead of time, "It's okay if you break the law."

Mr. SHIFFRIN. You're saying that. Whether it's legally effective or not is another question.

Senator MCCASKILL. That's another whole line of questioning. I'm talking about that phrase and whether or not any lawyer who would read that phrase would go, "What planet are we on? There is no such thing as 'immunity in advance.' That would be a crime."

Mr. SHIFFRIN. I can say, from my personal experience, I never used—or made sure that it was never used, giving someone immunity in advance.

Senator MCCASKILL. In fact, as I just said, if someone actually visits with someone about committing a crime, and says, "Don't worry about it. You can commit a crime, and I'm going to give you immunity," wouldn't they, under our principles of law in this country, be guilty of a crime?

Mr. SHIFFRIN. They could be, Senator.

Senator MCCASKILL. That's what I am trying to figure out here. This legal memorandum, that was the basis for our SECDEF saying, "It's okay to hood someone when they're naked and sic dogs on them," contained a legal theory called "immunity in advance," and no one—I assume that you never had a discussion with your boss, who got this memo, about this.

Mr. SHIFFRIN. That's correct.

Senator MCCASKILL. He is a trained lawyer.

Mr. SHIFFRIN. That's correct.

Senator MCCASKILL. Has he had experience as a prosecutor? Has he had any experience in a criminal courtroom?

Mr. SHIFFRIN. I don't recall.

Senator MCCASKILL. It's just mind-boggling to me that that phrase would be written, and that no one would hear the raging sirens and flashing red lights that that phrase would, in fact, embrace under the rule of law in the United States of America. It's hard for me to understand.

Let me ask you, what are the names of the people that gave you the impression that we needed to have different, or more aggressive, interrogation techniques? Who told you that?

Mr. SHIFFRIN. I don't think that's what I said. My recollection is that, in discussion or meetings with a number of people, people in the General Counsel's Office—I mentioned meetings when General Dunlavey would report—there was the discussion about the progress, or sometimes the lack of progress, in obtaining useful, actionable intelligence out of detainees. The meetings were usually chaired by Jim Haynes. There could have been any—three, four, five, six other lawyers there.

Senator MCCASKILL. Could you give me the names of the other lawyers that were there, where you would have gotten this impression that we needed to do something different than we were doing, in terms of our interrogation techniques? Besides Jim Haynes, who was in the room?

Mr. SHIFFRIN. Again, the way I characterized it was that there was some frustration with the quantity and quality of information being obtained. I didn't say that we needed to change techniques.

Senator MCCASKILL. Okay.

Mr. SHIFFRIN. Lawyers who were participating, there was Deputy General Counsel for Legal Counsel, Witt Cobb; I believe that the Deputy General Counsel for International Affairs, Charles Allen, was probably in some of these meetings; there was a marine major or lieutenant colonel who worked in the Legal Counsel Office, Bill Leitzau. Again, I can't attribute any particular statement to any of them, but those were the—there was a lawyer who's now my successor, in intelligence, Eliana Davidson, who was responsible for the detainee operations matters. I think those were the lawyers who at least would have been present at the time these discussions took place.

Senator MCCASKILL. Were you ever present in a meeting with Mr. Haynes at, near, or after the time he recommended to Secretary Rumsfeld that he approve most of these interrogation techniques? Some of them that he didn't approve, in category III, but he certainly approved hooding naked people and siccing dogs on them.

Mr. SHIFFRIN. If you gave me the date—I, of course, met with Mr. Haynes every day.

Senator MCCASKILL. I can give you the date. The date would have been—he recommended the approval of these interrogation techniques that had been deemed legal in the same memorandum that talked about "immunity in advance," on November 27, 2002. The recommendations were approved on December 2, 2002.

Mr. SHIFFRIN. I don't remember having—or being part of a discussion on them. I have a vague recollection of hearing that the memorandum had been approved.

Senator MCCASKILL. So you were aware the memorandum existed.

Mr. SHIFFRIN. I—yes, but it could have—I could have been aware in the beginning of January, or later. In other words, I don't have a recollection or contemporaneous knowledge of it.

Senator MCCASKILL. I think you're probably a really good lawyer, and I think you probably care deeply about your country. I'm trying not to be—well, we're trying to figure out here who decided that we were going to go down this road, and when did it get decided?

Mr. SHIFFRIN. It wasn't me, Senator.

Senator MCCASKILL. I understand that. But, you were much closer to it than any of us were, and we're trying to figure out, did this come from Dick Cheney to Donald Rumsfeld? Mr. Addington is still at the White House. Did this come from Gonzales's shop? Did this—Michael Chertoff was down at the meeting in GTMO talking about this. There are still people involved in the periphery of this that are in positions of responsibility today in our Government, so our frustration is, we would like to hold someone responsible. It's like trying to catch shadows here, because no one is willing to say where this came from, this move towards imploding the traditions of our country, in terms of the example we set for the world.

Mr. SHIFFRIN. The only other explanation I can offer, Senator, is that the General Counsel's Office often operated in a sort of compartmentalized fashion, that it was not unusual for me to get a request from Jim Haynes to, for example, see what information I could find out about interrogation and JPRA and SERE, and I'd find out, just accidentally, 2 weeks later, that someone else was doing the same thing; or that it was going to be used at GTMO, I might find out 6 months later, and never have any knowledge—never be part of any discussion that, "Oh, this is what we want to do with it." The question was, "Can you find out if there's any material that is available on effective interrogation?" "Yes, sir, I can."

Senator MCCASKILL. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator.

Senator Martinez is next.

Senator MARTINEZ. Mr. Chairman, thank you very much.

I believe that context is terribly important in this very difficult subject which we're treating. I know that many well-intended people were dealing under incredibly stressful circumstances, and the need to obtain actionable intelligence so that our country could be protected was, I know, uppermost in their mind. Obviously, mistakes that have harmed our Nation were probably made in excesses that were, as I think one of our next witnesses will discuss, were simply cruel, are not a part of what America is about.

So, with that, I don't have any questions of the current panel, Mr. Chairman. Thank you very much.

Chairman LEVIN. Thank you.

We'll just have a brief second round.

Mr. Shiffrin, Colonel Baumgartner testified that you asked for a list of physical pressures relative to interrogation. That's his testimony today.

Mr. SHIFFRIN. I don't recall that, Senator.

Chairman LEVIN. You deny it?

Mr. SHIFFRIN. I don't recall it. I note that the memo that you referred to in the book is not directed to me, it's directed to the General Counsel.

Chairman LEVIN. I understand, but I'm asking you whether the testimony was that you had requested from him that list.

Mr. SHIFFRIN. I don't believe I ever used the term "physical pressures." I believe the only thing I ever asked for, after the initial tranche, was how-to briefings, manuals, anything like that. I would never say—I don't think I ever said "I need something on physical pressure," because I had no——

Chairman LEVIN. Colonel, do you stick to your testimony?

Colonel BAUMGARTNER. Yes, sir.

Mr. SHIFFRIN. Senator, may I add one thing?

Chairman LEVIN. Sure.

Mr. SHIFFRIN. The memo refers to a follow-on question resulting from a meeting with JPRA and the General Counsel, OSD General Counsel. That would be Mr. Haynes. I've never met, in person, Colonel Baumgartner before. I did not attend the meeting with Colonel Baumgartner. So, to the extent these memos are responsive to requests at a meeting, I didn't attend that meeting.

Chairman LEVIN. All right. I think Colonel Baumgartner was referring to a phone conversation.

Mr. SHIFFRIN. He did. But the memo itself says, "This is follow-on questions from a meeting."

Chairman LEVIN. I think, though, his testimony relates to a phone conversation.

Mr. SHIFFRIN. I understand.

Chairman LEVIN. You deny that you used the term "physical pressures," and he sticks with his testimony, so there's clearly a difference there.

Did he ask you for a list of "carrots"? You talked about "carrots." You were never asked for a list of "carrots," were you?

Mr. SHIFFRIN. No. By Mr. Haynes or—

Chairman LEVIN. Yes, by anybody.

Mr. SHIFFRIN. The only discussion I specifically recall having was with Major General Dunlavey.

Chairman LEVIN. All right.

Now, when you—Colonel, you've testified here in a very forthcoming way, that the use of these tactics in an offensive way was not what this program was designed to do. It was not designed to use the tactics in the SERE program against detainees. Is that correct? Offensively?

Colonel BAUMGARTNER. Mr. Chairman, I believe I said that we developed these tactics for use in training. That's their purpose and to export them is the decision of folks above my paygrade.

Chairman LEVIN. All right. But, you're aware of the fact that the export of those is not the way the program is designed. Is that correct?

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Do you know who Major General James Soligan is? He's the Chief of Staff of the JFCOM.

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Okay. He was—that is the JPRA's higher headquarters, is that correct?

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. The memorandum that I referred to in my opening statement, where he says, "The use of resistance to interrogation knowledge for offensive purposes lies outside of the roles and responsibilities of JPRA," did you hear me quote from his memo on that? (Appendix A)

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Do you agree with that?

Colonel BAUMGARTNER. Sir, I wasn't privy——

Chairman LEVIN. No, but do you agree that it's outside the responsibility of the JPRA?

Colonel BAUMGARTNER. So, used to——

Chairman LEVIN. "The use of resistance to interrogation knowledge for offensive purposes lies outside the roles and responsibilities of JPRA."

Colonel BAUMGARTNER. I would say that, like my commander's philosophy was when I was still Active Duty, use of our guys in an offensive manner was not what we were all about; we were about training.

Chairman LEVIN. Right. Now, when that was misused in that way, which it obviously has been, from everyone's testimony here and from the material that I presented, has anyone, to your knowledge, been held accountable for the misuse of that program? It's not intended to be used offensively. It was. Do you know of anybody that's been held accountable for the misuse of that program? That's my question.

Colonel BAUMGARTNER. Sir, I have no recollection of any of that, no.

Chairman LEVIN. Are you aware of the fact that the SERE training techniques made their way to Iraq in the way I describe it; also, instructors from the JPRA SERE school went to Iraq; that the IG reported that, in September 2003, at the request of the Commander of the Special Mission Unit Task Force, the JPRA deployed a team to Iraq to provide assistance to interrogation operations?

Colonel BAUMGARTNER. Sir, I was retired by then.

Chairman LEVIN. All right. I understand. But, assistance to interrogation operations is not the purpose of——

Colonel BAUMGARTNER. Sir, I have no knowledge of that.

Chairman LEVIN. I know, but you would—you do have an opinion as to whether that is the purpose of the program.

Colonel BAUMGARTNER. Sir, I was not part of that decisionmaking process, and I don't have a comment on that.

Chairman LEVIN. You don't know whether or not assistance to interrogation operations, being present at interrogations, is part of the program?

Colonel BAUMGARTNER. Sir, I was not part of the decisionmaking process that led to the decision to send those folks, whether they went or not, so I——

Chairman LEVIN. I'm aware of that fact. Do you disagree with General Soligan on the question of whether or not "the use of resistance to interrogation knowledge for offensive purposes lies out-

side the roles and responsibilities of JPRA"? Do you disagree with him?

Colonel BAUMGARTNER. No, sir, I didn't say that. If that's what General Soligan says, then I don't have a problem with that, because they were under his control, certainly not mine.

Chairman LEVIN. All right. The Deputy Commander of JFCOM, Lieutenant General Wagner, when he said, "relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations, not in how to conduct interrogations," do you agree with that? (Appendix A)

Colonel BAUMGARTNER. Yes, sir.

Chairman LEVIN. Do you agree that what he said, following the request for JPRA "interrogation support were both inconsistent with the unit's charter and might create conditions which tasked JPRA to engage in offensive operational activities outside of JPRA's defensive mission"? Do you agree with that? (Appendix A)

Colonel BAUMGARTNER. Sir, that's consistent with what we had in place for policy when I was still Active Duty.

Chairman LEVIN. All right. Again, I want to ask you—I know you weren't there, but, do you know of anybody that has been held accountable when the charter of JPRA and its purpose was violated and it was misused? I'm just asking you, do you know of anybody?

Colonel BAUMGARTNER. I have no knowledge, sir.

Chairman LEVIN. One of the problems here is that the SECDEF just said the other day when he fired two top officials in the Air Force, Secretary Gates said that during his tenure, "I've emphasized to all Services that accountability must reach all the way up the chain of command, and that the military as a whole must be willing to admit mistakes when they've made them. That's the only way to fix it, and it's the only way to ensure that they don't reoccur in the future. When systemic problems are found, I believe that accountability must reach beyond noncommissioned officers and even colonels." It sure as heck hasn't in this situation yet, at least that anybody knows of, unless any of the other witnesses know of anybody here that's been held accountable for the violation of JPRA's mandate, purpose, and mission. We don't know of any. That goes to the heart of the problem here.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

Earlier in the testimony today, a question was asked about, whether information that you gathered from the JPRA and SERE interrogation methods were shared with any other U.S. Government department or agency? Your response was "the DIA," which was clear, and another recipient, of which—it's a classified nature. But, the question I wish to push further on that. The information you gathered, in what form did you convey that information to those two entities? Was it a written memorandum?

Colonel BAUMGARTNER. Sir, there was some written information, and they requested briefings.

Senator WARNER. All right. So, there is in existence a document that's in writing as to what went to these two recipients, is that correct?

Colonel BAUMGARTNER. Yes, sir, I believe there is.

Senator WARNER. Mr. Chairman, do we have that among our files? [Pause.]

Chairman LEVIN. Senator, I believe that there is no documentation in our possession of that; however, there is testimony in our possession, I believe, that is classified.

Senator WARNER. Is it the desire of the committee, then, to have those documents?

Chairman LEVIN. If there are such documents—of course, we've asked for documents. By the way—how many of them came over last week?

Senator WARNER. It seems to me that the record——

Chairman LEVIN. 38,000 documents were presented to us this week by DOD.

We're not sure what's in those documents, but they sure are about a year late. But, putting that aside, I really—we can't answer what is in those documents. We have not identified a document yet which contains that information, but I, again, would reiterate that we do have testimony——

Senator WARNER. Testimony——

Chairman LEVIN.—our staff has obtained that is classified.

Senator WARNER. I'm aware of that. Then going beyond documents, did the SERE organization of JPRA provide individuals to go and perform training?

Colonel BAUMGARTNER. Senator, I believe they sent a team to do briefings, instruction. I don't know that they conducted training.

Senator WARNER. "Instruction" is pretty close to "training." I think they're interchangeable words.

Colonel BAUMGARTNER.—a really good expression. I really want to use it, but I won't.

Instruction and training are really different. Instruction really implies imparting academic knowledge. Whereas training, in our context, implies skill sets.

Senator WARNER. Okay. Then what was done? Just instruction and not skill sets?

Colonel BAUMGARTNER. I didn't attend the training, but the one—some of the e-mail stuff that I've seen, which is all on a classified net, was basically instruction in exploitation interrogations, very similar to what we provided DIA and CITF.

Senator WARNER. Was that sharing an issue that your organization sought higher authority to approve? For instance, did it go up to the SECDEF?

Colonel BAUMGARTNER. It didn't go to the SECDEF, sir, but it did go up to the flag level and JFCOM.

Senator WARNER. Wait a minute. I spent 5 years in the building. I never knew what a flag level was. There are flags all over. It went from where to where?

Colonel BAUMGARTNER. It went from JPRA headquarters to the JFCOM, J–3, and, I think, into the chief of staff's office.

Senator WARNER. Chief of staff of?

Colonel BAUMGARTNER. JFCOM.

Senator WARNER. Now, I'm referring to a document, 26 July 2002, DOD memorandum for the OSD General Counsel, and it says, paragraph 1, unclassified, "The purpose of this memorandum is to answer follow-on questions resulting from the meeting be-

tween JPRA and OSDGC on 25 July 2002." Are you familiar with that meeting? (Appendix A)

Colonel BAUMGARTNER. Sir, I believe I'm talking about telephone conversations. As Mr. Shiffrin said, I have never met Mr. Shiffrin before today, but we did have a few conversations to try to figure out what information they wanted so that we could support their request.

Senator WARNER. So, the meeting consisted of a telephone conversation?

Colonel BAUMGARTNER. Two or three, sir.

Senator WARNER. Two or three telephone conversations.

Colonel BAUMGARTNER. Yes, sir.

Senator WARNER. But, there was no gathering in a room or exchange of documents.

Colonel BAUMGARTNER. No, sir, not that I recall.

Senator WARNER. Thank you, Mr. Chairman. I know you're anxious to get the next panel.

Chairman LEVIN. Thank you, Senator.

Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman. I'll be real brief.

Dr. Ogrisseg, I wanted to ask you whether the training we're giving our military personnel to resist interrogation techniques alters, or has altered over time, in other words, are we training people differently today, because we're facing Islamic terrorists, than we were, for instance, when we were facing the Soviet Union or the Vietcong?

Dr. OGRISSEG. Yes, Senator, the training has changed. We obviously want the training to be relevant. So, in order to do that, we've had to make sure that we are covering the spectrum of different types of ways that someone could be detained, either by terrorist elements factions that we're at war with, or even with other governments that we're not at war with.

Senator LIEBERMAN. Does the goal that we assume our enemy interrogators will have alter the methods and the means of responding? In other words, it seems to me that, in a lot of cases in previous conflicts, the aim—unfortunately, we know about Senator McCain's experience, the primary aim of the torture he endured was to compel him to sign a confession of some kind for propaganda purposes, not for the purpose of eliciting information, as was the case that the Pentagon was seeking here. Unfortunately, there's some reason to believe that—the current enemy's likely course is to put a captive on television and kill them. So, does the goal alter the training—the goal of the interrogators?

Dr. OGRISSEG. It does. The way that people have been processed and detained before, in some instances, was focused on information, but that's just one way that someone can be exploited by an enemy. The situation that you described with a terrorist network, their goal may be to make a statement, in that instance, for whatever purpose they think they're going to serve. So you have to address that. You cannot, within the training, necessarily determine which goals, which actions that the students are going to take, because they have to make those decisions themselves.

Senator LIEBERMAN. The enemy we're facing now, the Islamist extremists, obviously have a unique—both a cultural background,

but also a theological extremism about them. As Colonel Baumgartner said, when you were asked for this information about SERE techniques by the General Counsel's Office in the Pentagon, since you knew they were not involved in training, it was natural to assume that they may have been asking for it to employ against detainees that we had in the war on terrorism. Was there any information that you conveyed that was based on the unique cultural background of the Islamist terrorists?

Dr. OGRISSEG. Senator, are you asking me that question, or are you asking——

Senator LIEBERMAN. Either one of you who cares to answer.

Colonel BAUMGARTNER. No, sir, not that I'm aware of.

Senator LIEBERMAN. So, let me ask you this question. One form of harsh interrogation that you haven't been asked about is the use of dogs. In some of the material I've read from somewhere comes the suggestion that Muslims or Arabs have some special phobia or fear of dogs. I don't know whether there's any premise for that. Did you, at any point, deal with that in the submission you made to the General Counsel's Office?

Colonel BAUMGARTNER. No, Senator, we had nothing to do with that.

Senator LIEBERMAN. Okay.

Mr. Shiffrin, let me ask this question. In trying to find additional information to assist in improving the interrogation of the detainees in the war on terrorism, did you ever reach out for tactics or information that were based on unique cultural characteristics or phobias or fears of the kinds of people we were likely to be detaining in the war on Islamist terrorism?

Mr. SHIFFRIN. No, Senator. My request was just, "Send me everything you have. Whatever you have in existence in your library, please send to me."

Senator LIEBERMAN. Right.

Mr. SHIFFRIN. I was never specific on techniques, on the nature of the interrogator, or anything else.

Senator LIEBERMAN. Do you remember, in any of the material that came by you, whether any of it dealt with what somebody might have thought were unique phobias or vulnerabilities of people we'd be detaining in the war on terrorism?

Mr. SHIFFRIN. No. No.

Senator LIEBERMAN. Thank you.

Mr. SHIFFRIN. Everything I got was historical, from the 1950s.

Senator LIEBERMAN. Obviously that was a totally different enemy.

Mr. SHIFFRIN. Correct.

Senator LIEBERMAN. Thanks, Mr. Chairman.

Chairman LEVIN. Thank you.

Just on that question, I think—Mr. Shiffrin, earlier today in a response to a question from Senator Lieberman, you said that one of the purposes of seeking information from JPRA was likely to "reverse-engineer," SERE techniques.

Did you just say that?

Mr. SHIFFRIN. I did.

Chairman LEVIN. Today. Then you said, 2 minutes ago, that you didn't ask about techniques.

Mr. SHIFFRIN. Any specific techniques. I never inquired of any specific techniques—the efficacy, the wisdom, or anything else.

Chairman LEVIN. But, just 10 seconds ago, I just asked you this question. In response to Senator Lieberman, you said that one of the purposes of seeking information from JPRA was likely to "reverse-engineer SERE techniques."

Mr. SHIFFRIN. That——

Chairman LEVIN. You said yes, you did say that.

Mr. SHIFFRIN. I said that——

Chairman LEVIN. That was an hour ago, not——

Mr. SHIFFRIN. I said it to Senator Lieberman.

Chairman LEVIN. Right.

Mr. SHIFFRIN. My primary purpose, as I understood it, was to find all the information we had, and——

Chairman LEVIN. I understand.

Mr. SHIFFRIN.—I also intuited that there might be some possibility of reverse-engineering an effective SERE technique. Just logical.

Chairman LEVIN. I see. You believe that might have been one of the purposes.

Mr. SHIFFRIN. Yes.

Chairman LEVIN. Okay.

Just, Dr. Ogrisseg, one other question for you. In an article, or a book, that you wrote, the book called, "Code of Conduct and the Psychology of Captivity: Training, Coping, and Reintegration of Military Life," you said that, "The use of physical torture has historically yielded poor information and, paradoxically, serves to enhance resistance."

Dr. OGRISSEG. Yes, sir.

Chairman LEVIN. "Furthermore, the practices serves to decrease the legitimacy of the offending organization or country. Physical torture, in most instances, has produced false confessions or inaccurate or reliable information." Is that true? Did you write that?

Dr. OGRISSEG. Yes, I did, Mr. Chairman.

Chairman LEVIN. Is that your belief?

Dr. OGRISSEG. Yes, it is, Mr. Chairman.

Chairman LEVIN. On the page that came immediately thereafter, on page 99, this is what you said about sleep deprivation: "Sleep deprivation has often been used by captors to enhance dependency and malleability of behavior. Lack of sleep for prolonged periods may result in anxiety, irritability, blurred vision, memory problems, confusion, slurred speech, hallucinations, paranoia, disorientation, and, ultimately, death. However, sleep deprivation, even for one night, has recently been revealed in brain scans to affect the areas of the brain used for language, attention, working memory function, suggesting that even minor disruptions in sleep can degrade the captive's ability to cope effectively with challenges faced in captivity." Is that still your opinion?

Dr. OGRISSEG. Mr. Chairman, I don't believe that I wrote that section.

Chairman LEVIN. I see.

Dr. OGRISSEG. There were multiple authors on that chapter. If I may comment back to the question I was being asked to answer earlier, when you were trying to define what 18 hours or 17 hours

of sleep deprivation is, well, if you're talking about—without knowing anything more, getting up at 5 a.m. and going to bed at 10 or 11 o'clock at night, I think most people do that every day, so that's why I was saying I need more context.

Chairman LEVIN. Sure. No, that's okay. But, you said "lack of sleep for prolonged periods may result."

Dr. OGRISSEG. Yes, sir.

Chairman LEVIN. So, you stay with that statement, if it's "prolonged periods of sleep deprivation."

Dr. OGRISSEG. I don't believe that I wrote that section in that chapter, but I would agree with that.

Chairman LEVIN. All right. When you went through SERE training, or witnessed SERE training the sleep deprivation you talked about there, that our people were trained to be inoculated against were shorter periods than that. You said 4 hours, perhaps?

Dr. OGRISSEG. Mr. Chairman, I don't know that we actually inoculate them to that during our——

Chairman LEVIN. To sleep deprivation.

Dr. OGRISSEG. We don't have enough time to, and I'm not sure that you could inoculate them——

Chairman LEVIN. To sleep deprivation.

Dr. OGRISSEG.—to sleep deprivation, that's right. However, we certainly recognize that that's a condition that they face, and we try to simulate that during the training.

Chairman LEVIN. How do you simulate it?

Dr. OGRISSEG. We simulate that by keeping them up. Certainly they are doing some of the things that——

Chairman LEVIN. Keeping them up for how long?

Dr. OGRISSEG. Sometimes overnight. We don't have an infinite amount of time.

Chairman LEVIN. How many hours, though, about?

Dr. OGRISSEG. It varies by training program, but in the range of about 4 to 10 hours or so.

Chairman LEVIN. Okay, thank you.

Any other questions? Any other questions? [No response.]

Thank you. We thank this panel very much, and you're excused. [Pause.]

Our next panel is made up of Alberto Mora, former general counsel of the Department of the Navy; retired Rear Admiral Jane Dalton, former legal advisor to the Chairman of the JCS; and retired Lieutenant Colonel Diane Beaver, former Staff Judge Advocate at the JTF GTMO.

We thank our witnesses for their presence. I believe we have an opening statement for the record from each of you, and then, what we'll do is, we'll start, I think, with Lieutenant Colonel Beaver, followed by Rear Admiral Dalton, and then Mr. Mora.

So, if you would proceed, Colonel Beaver.

Colonel BEAVER. Yes, sir.

Chairman LEVIN. Thank you.

STATEMENT OF LTC DIANE E. BEAVER, USA (RET.), FORMER STAFF JUDGE ADVOCATE, JOINT TASK FORCE 170/JTF GUANTANAMO BAY

Colonel BEAVER. Mr. Chairman and committee members, I appear today voluntarily, in my private capacity. Although I am currently an employee of DOD, I do not speak today on its behalf. I am here to testify truthfully and completely regarding my knowledge of the development and implementation of interrogation policies and practices at GTMO from June 2002 to June 2003.

As the staff judge advocate for the detention facility at GTMO, I wrote a legal opinion in October 2002. In it I concluded that certain aggressive interrogation techniques, if appropriately reviewed, controlled, and monitored, were lawful.

Since DOD publicly released my opinion in June 2004, it has received considerable attention and scrutiny. I have been vilified by some because of it, and discounted and forgotten by many others. Regardless, I accept full responsibility for my legal opinion. It was based on my own independent research and analysis, it represents the best work I could do under the constraints and circumstances I faced at the time.

No one improperly influenced me to write this opinion, or, to my knowledge, even attempted to do so. I tried to consult experts and superiors on the content of the opinion prior to issuing it, but received no feedback. I do not say that to shift blame. As I said, the blame for any error in that opinion is mine, and mine alone.

I cannot, however, accept responsibility for what happened to my legal opinion after I properly submitted it to my chain of command. I fully expected that it would be carefully reviewed by legal and policy experts at the highest levels before a decision was reached. I did not expect that my opinion, as a lieutenant colonel in the Army Advocate General's Corps, would become the final word on interrogation policies and practices within DOD. For me, such a result was simply not foreseeable. Perhaps I was somewhat naive, but I did not expect to be the only lawyer issuing a written opinion on this monumentally important issue.

In hindsight, I cannot help but conclude that others chose not to write on this issue to avoid being linked to it. That was not an option for me. My commander was responsible for detention and interrogation operations for the most dangerous group of terrorists the world has ever seen. The specter of another catastrophic attack on the American people loomed large in our thoughts and haunted our dreams. We knew that accurate, actionable intelligence was necessary to prevent another such attack. We did our jobs, knowing that if we failed, the American people would pay a price.

I have repeatedly been asked whether I was pressured to write my October 2002 legal opinion. I felt a great deal of pressure, as did all of us at the facility. I felt the pressure of knowing that thousands of innocent lives might be lost if we got it wrong. I knew that many honest, decent Americans would condemn our actions if we did not balance our efforts to protect them with due respect to the rule of law.

I believed, at the time, and still do, that such a balance could be reached if the interrogations were strictly reviewed, controlled, and monitored. My legal opinion was not a blank check authorizing un-

limited interrogations. Throughout the opinion, I emphasized the need for medical, psychiatric, and legal reviews to be conducted prior to the approval of these interrogation plans. My judge advocates and I were intent on monitoring the interrogations and would stop any excessive or abusive behavior if we saw it.

What I accomplished in my legal opinion has largely gone unnoticed. My command did not conduct interrogations independently without the notice or approval of higher authorities. Individual interrogators were not given the opportunity to improvise techniques without command approval or control. In short, the interrogation techniques discussed in my legal opinion would not have been conducted in an abusive or unlawful manner if the approval and control procedures I had outlined were followed. In this way, what happened at GTMO stands in stark contrast to the anarchy that occurred at Abu Ghraib.

I close this statement as I began it, by accepting responsibility. I reached my legal conclusions after careful analysis and, at all times, acted in good faith. I discussed my ideas openly with my colleagues and encouraged full debate. Some of my critics chose not to participate in these discussions. Had they, their concerns and reservations would have received fair consideration.

That my colleagues and I openly discussed these issues should not be surprising. The American people, including many legal experts, were having similar conversations at homes, schools, and workplaces across the Nation.

If my legal opinion was wrong, then I regret the error very much. I am a proud professional. I feel very keenly any failure on my part to be precise and accurate in the advice I render. I freely accept sincere dissent and criticism. But, there is something very important that I will never have to regret; at a time of great stress and danger, I tried to do everything in my lawful power to protect the American people.

Thank you.

[The prepared statement of Colonel Beaver follows:]

PREPARED STATEMENT BY LTC DIANE E. BEAVER, USA (RET.)

Mr. Chairmen and committee members, I appear today voluntarily and in my private capacity. Although I am currently an employee of the Department of Defense, I do not speak today on its behalf. I am here to testify truthfully and completely regarding my knowledge of the development and implementation of interrogation policies and practices at Guantanamo Bay, Cuba, from June 2002 to June 2003.

As the Staff Judge Advocate for the detention facility at Guantanamo Bay, I wrote a legal opinion in October 2002. In it, I concluded that certain aggressive interrogation techniques, if appropriately reviewed, controlled, and monitored, were lawful. Since the Department of Defense publicly released my opinion in 2004, it has received considerable attention and scrutiny. I have been vilified by some because of it, and discounted and forgotten by many others. Regardless, I accept full responsibility for my legal opinion. It was based on my own independent research and analysis. It represents the best work I could do under the constraints and circumstances I faced at the time. No one improperly influenced me to write this opinion or—to my knowledge—even attempted to do so. I tried to consult experts and superiors on the content of the opinion prior to issuing it, but received no feedback. I do not say that to shift blame. As I said, the blame for any error in that opinion is mine and mine alone.

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tion policies and practices within the Department of Defense. For me, such a result was simply not foreseeable. Perhaps I was somewhat naíve, but I did not expect to be the only lawyer issuing a written opinion on this monumentally important issue. In hindsight, I cannot help but conclude that others chose not to write on this issue to avoid being linked to it. That was not an option for me. My commander was responsible for detention and interrogation operations for the most dangerous group of terrorists the world has ever seen. The specter of another catastrophic attack on the American people loomed large in our thoughts, and haunted our dreams. We knew that accurate, actionable intelligence was necessary to prevent another such attack. We did our jobs knowing that if we failed, the American people would pay a terrible price.

I have repeatedly been asked whether I was pressured to write my October 2002 legal opinion. I felt a great deal of pressure, as did all of us at the detention facility. I felt the pressure of knowing that thousands of innocent lives might be lost if we got it wrong. I knew that many honest, decent Americans would condemn our actions if we did not balance our efforts to protect them with due respect for the rule of law. I believed at the time, and still do, that such a balance could be reached—if the interrogations were strictly reviewed, controlled, and monitored. My legal opinion was not a "blank check" authorizing unlimited interrogations. Throughout the opinion, I emphasized the need for medical, psychiatric, and legal reviews to be conducted prior to the approval of each and every interrogation plan. My judge advocates and I were intent on monitoring each interrogation, and would stop any excessive or abusive behavior if we saw it. What I accomplished in my legal opinion has largely gone unnoticed. My command did not conduct interrogations independently, without the notice or approval of higher authorities. Individual interrogators were not given the opportunity to improvise techniques without command approval or control. In short, the interrogation techniques discussed in my legal opinion would not have been conducted in an abusive or unlawful manner, if the approval and control procedures I outlined were followed. In this way, what happened at Guantanamo Bay stands in stark contrast to the anarchy that occurred at Abu Ghareb.

I close this statement as I began it, by accepting responsibility. I reached my legal conclusions after careful analysis and at all times acted in good faith. I discussed my ideas openly with my colleagues and encouraged full debate. Some of my critics chose not to participate in these discussions. Had they, their concerns and reservations would have received fair consideration. That my colleagues and I openly discussed these issues should not be surprising. The American people, including many legal experts, were having similar conversations at homes, schools, and work places across the Nation.

If my legal opinion was wrong, then I regret the error very much. I am a proud professional. I feel very keenly any failure on my part to be precise and accurate in the advice I render. I freely accept sincere dissent and criticism. But there is something very important I will never have to regret. At a time of great stress and danger, I tried to do everything in my lawful power to protect the American people.

Thank you.

Chairman LEVIN. Thank you, Colonel Beaver.

Admiral Dalton?

STATEMENT OF RADM JANE G. DALTON, USN (RET.), FORMER LEGAL ADVISOR TO THE CHAIRMAN, JOINT CHIEFS OF STAFF

Admiral DALTON. Thank you, Mr. Chairman and distinguished members of the committee. Thank you for the opportunity to appear before the committee today to discuss the matter of detainee interrogation policy.

From June 2000 until June 2003, it was my privilege to serve as Legal Counsel to the Chairman of the JCS. During that time, I drew upon my years of service as a career military lawyer, studying and applying the laws of war to advise the Chairman and other senior DOD officials on legal issues posed by the extraordinary security challenges confronting our Nation following the terrorist attacks of September 11, 2001.

Those challenges called on lawyers at DOD, as never before, to provide legal advice to enable our Nation's leaders to aggressively

meet the unprecedented threat to our national security without compromising our adherence to the rule of law and the United States international treaty obligations.

That we undertook this task at a time of war and amidst a continuous stream of credible intelligence pointing to a substantial and resilient terrorist threat made our work as lawyers all the more difficult.

Through it all, I did my best to provide clear, unvarnished legal advice without fear or favor of how my advice would be received. Working within the structure of the military chain of command and the statutory organization of DOD, I also took those actions I deemed appropriate to follow up on issues that arose concerning the treatment of detainees.

I understand the importance of congressional oversight of the executive branch and our constitutional system, and I appreciate the sensitivity of the matters under review. I have faith that the committee will fulfill its oversight role with wisdom, perspective, and fairness.

Thank you, again, for the opportunity to contribute to today's hearing, and I look forward to answering your questions.

[The prepared statement of Admiral Dalton follows:]

PREPARED STATEMENT BY RADM JANE G. DALTON, USN (RET.)

Mr. Chairman and distinguished members of the committee, thank you for the opportunity to appear before the committee today to discuss the matter of detainee interrogation policy.

From June 2000 until June 2003, it was my privilege to serve as Legal Counsel to the Chairman of the Joint Chiefs of Staff. During that time, I drew upon on my years of service as a career military lawyer studying and applying the laws of war to advise the Chairman and other senior Department of Defense officials on legal issues posed by the extraordinary security challenges confronting our Nation following the terrorist attacks of September 11, 2001.

Those challenges called on lawyers at the Department, as never before, to provide legal advice to enable our Nation's leaders to aggressively meet the unprecedented threat to homeland security without compromising our adherence lo the rule of law and the United States' international treaty obligations. That we undertook this task at a time of war, and amidst a continuous stream of credible intelligence pointing to a substantial and resilient terrorist threat, made our work as lawyers all the more difficult.

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I understand the importance of congressional oversight of the executive branch in our constitutional system, and I appreciate the sensitivity of the matters under review. I hope that the committee will fulfill its oversight role with wisdom, perspective, and fairness.

Thank you again for the opportunity to contribute to today's hearing, and I look forward to answering your questions.

Chairman LEVIN. Thank you, Admiral.

Mr. Mora?

STATEMENT OF ALBERTO J. MORA, FORMER GENERAL COUNSEL, UNITED STATES NAVY

Mr. MORA. Chairman Levin and members of the committee, it is a privilege to appear before you today.

These hearings are critical to better understanding both of our Nation's interrogation practices and, of even greater importance, of

the consequences to our Nation if we were to continue to employ cruelty in the interrogation of detainees.

Permit me first, however, to thank the members and staff for their many courtesies to me during my tenure as general counsel of the Department of the Navy. Throughout my time in public service, I witnessed the committee unfailingly live up to its reputation for civility, diligence, professionalism, and nonpartisanship as it attended to the legislative affairs of our Nation's defense.

Mr. Chairman, our Nation's policy decision to use so-called "harsh interrogation techniques" during the war on terror was a mistake of massive proportions. It damaged, and continues to damage, our Nation. This policy, which may aptly be labeled a policy of cruelty, violated our founding values, our constitutional system, the fabric of our laws, our overarching foreign policy interests, and our national security. The net effect of this policy of cruelty has been to weaken our defenses, not to strengthen them.

Before examining the damage, it may be useful to draw some basic legal distinctions.

The choice of the adjectives harsh or enhanced to describe these interrogation techniques is euphemistic and misleading. The legally correct adjective is cruel. Many of the counterresistance techniques authorized for use at GTMO in December 2002, constitute cruel, inhuman, or degrading treatment that could, depending on their application, easily rise to the level of torture.

Many Americans are unaware that there is a distinction between cruelty and torture, cruelty being the less severe level of abuse. This has tended to obscure important elements of the interrogation debate. For example, the public may be largely unaware that the government could evasively, if truthfully, claim, and did claim, that it was not torturing, even as it was simultaneously applying cruelty. Yet, Americans should know that there is little or no moral distinction between cruelty and torture, for cruelty can be as effective as torture in savaging human flesh and spirit and in violating human dignity. Our efforts should be focused not merely on banning torture, but on banning cruelty.

Except in egregious cases, it is difficult for outsiders to gauge the precise legal category of abuse inflicted on any detainee, because it hinges on the specific facts, including the techniques used and the medical and psychological impact. In general, however, it is beyond dispute that interrogation constituting cruel treatment was conducted, and certainly the admission that waterboarding, a classic and reviled method of torture, was applied to some detainees, creates the presumption that those detainees were tortured.

The United States was founded on a principle that every person, not just a citizen, possesses inalienable rights that no government may violate, including our own. Among these rights is, unquestionably, the right to be free from cruel punishment or treatment, as is evidenced by the clear language of the 8th amendment and the constitutional jurisprudence of the 5th and 14th amendments. If we can apply the policy of cruelty to detainees, it is only because our founders were wrong about the scope of our inalienable rights. For this reason, cruel interrogations necessarily corrupt our founding values and corrode our constitutional structure and the fabric of our legal system.

Because the international legal system, the legal system of many countries, and the international human rights system are all largely designed to protect human dignity, the decision of the United States to adopt cruelty has had a devastating foreign policy consequence. The cruel treatment of detainees is a criminal act for most, and perhaps all, of our traditional allies. As these nations came to recognize the true dimensions of our policy, political fissures between us and them began to emerge, because none of them would follow our lead into the swamp of legalized abuse. These fissures deepened into chasms as awareness grew about the effect of our policies on fundamental human rights, on the Geneva Conventions, on the Nuremberg precedents and on the incidence of prisoner abuse worldwide. Respect in political support abroad for the United States decreased sharply and rapidly.

These adverse foreign policy consequences inevitably came to damage our national security strategy and our operational effectiveness in the war on terror. Our ability to build and sustain the broad alliance required to fight the war was compromised. International cooperation, including in the military intelligence and law enforcement arenas, diminished as foreign officials became concerned that assisting the United States in detainee matters could constitute aiding and abetting criminal conduct in their own countries. As the difficulties of Prime Ministers Blair, Howard, and Aznar demonstrated, seemingly every foreign politician who sought to ally his country with the U.S. effort on the war incurred a political penalty.

All of these factors contributed to the difficulties our Nation has experienced in forging the strongest possible coalition to fight the war, but the damage to our national security also occurred down at the tactical or operational level. I'll cite four examples I heard about during my tenure.

First, some U.S. flag-rank officers maintained 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 GTMO. There are others who are convinced that the proximate cause of Abu Ghraib was the legal advice authorizing abusive treatment of detainees that issued from the DOJ's OLC in 2002.

Second, some allied nations reportedly hesitated to participate in combat operations if there was the possibility that captured individuals could be abused by U.S. forces.

Third, some allied nations have refused to train with us in joint detainee capture and handling operations because of concerns about U.S. detainee policies.

Fourth, senior North Atlantic Treaty Organization officers in Afghanistan are reported to have left the room when issues of detainee treatment were raised by U.S. officials, out of fear that they could become complicit in any abuse.

Mr. Chairman, Albert Camus cautioned nations fighting for their values against selecting those weapons whose very use would destroy those values. In this war on terror, the United States is fighting for our values, and cruelty is such a weapon.

Thank you.

[The prepared statement of Mr. Mora follows:]

PREPARED STATEMENT BY ALBERTO J. MORA

Chairman Levin, Senator McCain, and members of the committee, it is a pleasure and an honor to appear before you today and to have been asked to testify on the treatment of detainees in U.S. custody. I regard these hearings as critical both to a better understanding of the interrogation policies and practices adopted by our Government since September 11 and—perhaps of even greater importance—to a better understanding of the costs and consequences to our Nation if we were to continue to employ cruelty in the interrogation of detainees.

Two prefatory comments are in order.

First, I wish to thank the members and the committee staff for their many courtesies to me during my tenure as General Counsel of the Department of the Navy. Both during my confirmation process and while serving as Navy General Counsel, I witnessed the committee unfailingly live up to its well-earned reputation for civility, diligence, professionalism, and non-partisanship as it attended to the legislative affairs of our Nation's defense.

Second, in my brief testimony today I intend not to recount my record on interrogation while serving as Navy General Counsel, but to summarize briefly my views on the policy consequences of the use of cruelty as a weapon of war. My official conduct on this issue is already a matter of record inasmuch as I prepared and submitted a comprehensive account of these matters to the Navy Inspector General in 2004, following the Abu Ghraib scandal. This memorandum is in the public domain and may be accessed on the Web.[1] Similarly, I wish to note that I have spoken at greater length in various venues on the issues I will touch on today, and I draw the committee's attention to my speech to the American Bar Association in February of this year.[2] I ask that both of these documents be included as part of the record of these proceedings.

Mr. Chairman, our Nation's policy decision to use so-called "harsh" interrogation techniques during the war on terror was a mistake of massive proportions. It damaged and continues to damage our Nation in ways that appear never to have been considered or imagined by its architects and supporters, whose policy focus seems to have been narrowly confined to the four corners of the interrogation room. This interrogation policy—which may aptly be labeled a "policy of cruelty"—violated our founding values, our constitutional system and the fabric of our laws, our over-arching foreign policy interests, and our national security. The net effect of this policy of cruelty has been to weaken our defenses, not to strengthen them, and has been greatly contrary to our national interest.

Before turning to this damage, it may be useful to draw some of the basic legal distinctions pertinent to interrogation. The choice of the adjectives "harsh" or "enhanced" to describe these interrogation techniques is euphemistic and misleading. The more precise legal term is "cruel." Many of the "counter-resistance techniques" authorized for use at Guantanamo in December 2002 constitute "cruel, inhuman, or degrading" treatment that could, depending on their application, easily cross the threshold of torture.

Many Americans are unaware that there is a legal distinction between cruelty and torture, cruelty being the less severe level of abuse. This has tended to obscure important elements of the interrogation debate from the public's attention. For example, the public may be largely unaware that the government could evasively if truthfully claim (and did claim) that it was not "torturing" even as it was simultaneously interrogating detainees cruelly. Yet there is little or no moral distinction between cruelty and torture, for cruelty can be as effective as torture in savaging human flesh and spirit and in violating human dignity. Our efforts should be focused not merely on banning torture, but on banning cruelty.

Except in egregious cases, gauging the precise legal category of abuse inflicted on a detainee is difficult because it depends on specific facts, including the techniques used and the medical and psychological impact. In general, however, it is beyond dispute that techniques constituting cruel treatment were authorized and applied. Tragically, credible reporting also makes it appear probable that some detainees were tortured. Certainly, the admission that waterboarding—a classic and reviled method of torture—was applied to some detainees creates the presumption that those detainees so interrogated were tortured.

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[1] "Statement for the Record: Office Of General Counsel Involvement in Interrogation Issues," (July 7, 2004)(May be accessed at www.newyorker.com/images/pdfs/moramemo.pdf).

[2] The speech was given at the ABA's Center for Human Rights Fourth Annual House of Delegates Luncheon. The text is located at www.abavideonews.org/ABA496/media/pdf/navycounsel—OMKall.pdf.

The United States was founded on the principle that every person—not just each citizen—possesses certain inalienable rights that no government, including our own, may violate. Among these rights is unquestionably the right to be free from cruel punishment or treatment, as is evidenced in part by the clear language of the eighth amendment and the constitutional jurisprudence of the 5th and 14th amendments. If we can apply the policy of cruelty to detainees, it is only because our Founders were wrong about the scope of inalienable rights. With the adoption of this policy our founding values necessarily begin to be redefined and our constitutional structure and the fabric of our legal system start to erode.

Because the international legal system, the legal system of many countries, and the international human rights system are all largely designed to protect human dignity, the decision of the United States to adopt cruelty has had devastating foreign policy consequences. For most, perhaps all, of our traditional allies, the cruel treatment of detainees is a criminal act. As these nations came to recognize the dimensions of our policy of cruelty, political fissures between us and them began to emerge because none of them would follow our lead into the swamp of legalized abuse, as we should not have wished them to. These fissures only deepened as awareness grew about the effect of our policies on fundamental human rights principles, on the Geneva Conventions, on the Nuremberg precedents, and on the incidence of prisoner abuse worldwide. Respect and political support for the United States and its polices decreased sharply abroad.

These adverse foreign policy consequences would inevitably damage our national security strategy and our operational effectiveness in the war on terror. Our ability to build and sustain the broad alliance required to fight the war was compromised. International cooperation, including in the military, intelligence, and law enforcements arenas, diminished as foreign officials became concerned that assisting the U.S. in detainee matters could constitute aiding and abetting criminal conduct in their own countries. As the difficulties of Prime Ministers Tony Blair and Jose Maria Aznar demonstrated, seemingly every European politician who sought to ally his country with the U.S. effort on the war on terror incurred a political penalty.

All of these factors contributed to the difficulties our Nation has experienced in forging the strongest possible coalition in the war on terror. But the damage to our national security also occurred down at the tactical or operational level. I'll cite four examples:

First, 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. There are other senior officers who are convinced that the proximate cause of Abu Ghraib was the legal advice authorizing abusive treatment of detainees that issued from the Department of Justice's Office of Legal Counsel in 2002.

Second, allied nations reportedly hesitated on occasion to participate in combat operations if there was the possibility that, as a result, individuals captured during the operation could be abused by U.S. or other forces.

Third, allied nations have refused on occasion to train with us in joint detainee capture and handling operations because of concerns about U.S. detainee policies.

Fourth, senior North Atlantic Treaty Organization officers in Afghanistan have been reported to have left the room when issues of detainee treatment have been raised by U.S. officials out of fear that they may become complicit in detainee abuse.

Mr. Chairman, Albert Camus cautioned nations fighting for their values against selecting those weapons whose very use would destroy those values. In this war on terror, the United States is fighting for our values, and cruelty is such a weapon.

I thank you and the committee for your laudatory focus on this issue and for the invitation to appear today.

Chairman LEVIN. Thank you very much, Mr. Mora.

Colonel Beaver, let me start with you. In September 2002, behavioral scientists and interrogators from GTMO attended training at Fort Bragg, NC, and on September 25, 2002, less than a week after they got back from training, Jim Haynes, David Addington, John Rizzo, and Michael Chertoff traveled to GTMO, where you were the senior JAG officer. A week later, on October 2, Jonathan Fredman, the Chief Counsel of the CIA's Counterterrorism Center, came down to GTMO and attended a meeting with you, where SERE techniques were discussed. That's October 2.

Now, tab 7 in your book are the minutes from that meeting. On page 3 of the minutes, Mr. Fredman is quoted as saying that the anti-torture statutes are vaguely written and that, "It is basically subject to perception. If the detainee dies, you're doing it wrong." According to the minutes, you said, "We'll need documentation to protect us." If the aggressive techniques were legal, why would you need protection? (Appendix A)

Colonel BEAVER. This e-mail was not written by me, so I can't account for its accuracy, except that of—somebody from the CITF wrote it. But, separate from that, regarding Jonathan Fredman participating in a meeting that I held, I had held a number of meetings to discuss interrogation techniques once the military intelligence personnel wanted to do more aggressive techniques. So, I thought it was in the best interests of all concerned that everyone participate in meetings, including the law enforcement community, to understand where everybody was coming from. CITF was invited, and did participate.

I don't remember what Mr. Fredman said, nor do I remember what I said, specifically. But, certainly when—in terms of requesting additional techniques, I can only think that what I was referring to was—these techniques were not contained in the Army Field Manual, and they were not contained in an approved manual of some sort that was recognized by the Services. So, in terms of obtaining command approval, I believe I was referring to just that, that these techniques, whatever was going to be recommended by the Military Intelligence Community, would need to be approved by the appropriate authority, because they are—weren't already techniques that were trained and taught at Fort Huachuca, and contained in the Army Field Manual.

Chairman LEVIN. What was the reference to protection? You said, "If the"—why would you need—first of all, did you say, "We'll need documentation to protect us"? What were you referring to? Legal opinion?

Colonel BEAVER. Again, this is not my e-mail so I can't say with certainty I said that.

Chairman LEVIN. All right. What about Mr. Fredman's statement? Do you remember him saying, "If the detainee dies, you're doing it wrong"?

Colonel BEAVER. I do not recall anything he—it's 6 years ago, so I just honestly cannot recall what was specifically said. What I thought was valuable, in terms of his contribution, was bringing in other views so that others, besides myself, in terms of my colleagues in that room, could listen to another person essentially discuss the Torture Convention and so forth, and that you could have an open discussion about this. So, I recall that we did have a good discussion, and that it was collegial, and that everyone participated. That's basically what I recall from that meeting.

Chairman LEVIN. Now, on page 4 of those minutes, you are quoted as asking, "Does SERE employ the wet-towel technique?" Do you remember discussing the SERE techniques? (Appendix A)

Colonel BEAVER. I remember the J–2 at the time, Lieutenant Colonel Jerry Phifer, had brought up the wet-towel technique. I had never seen waterboarding. I still haven't, as of today. I've never seen any kind of wet-towel technique. So, that was one of the

things that the DIA personnel and military intelligence personnel wanted to request. I believe I was asking about that because I had not ever seen that, myself.

Chairman LEVIN. Your reference to, "Does SERE employ the wet-towel"——

Colonel BEAVER. Right.

Chairman LEVIN.—"technique?"—is that an accurate reference?

Colonel BEAVER. I can say I probably did. I don't remember, specifically. But, I know that that was one of the techniques that the interrogators had raised as something that they might wish to employ.

Chairman LEVIN. Do you remember discussion about SERE techniques being used?

Colonel BEAVER. What I remember about SERE being discussed was the fact that if something was going to be approved by a higher command, which I thought, in this case, would be General Hill—I had, really, no idea it would go higher than General Hill—that you would then have to have an SOP, you would have to have people trained, you would have to do all the kinds of things to ensure that techniques were used properly and they would not go beyond what was lawful. So because SERE already had SOPs on many of these types of techniques, I know I certainly thought if something got approved—again, a technique that SERE used—that that could be a good starting point for an SOP. So it made sense, if somebody were already doing it, is all I'm saying. So, we could not employ these techniques without the proper training and controls.

Chairman LEVIN. Were you aware of the fact that the SERE program was to be used defensively and not offensively against detainees? Were you aware of that?

Colonel BEAVER. Yes, sir.

Chairman LEVIN. So, why would you be talking about SERE techniques in terms of interrogations, since its purpose was not the interrogation purpose?

Colonel BEAVER. Right. From my intelligence colleagues who were looking to do, basically—or who said, including General Dunlavey, who was insistent that the detainees were showing signs of being counter-resistance trained, they were looking for additional techniques. Because the President had determined that the Geneva Conventions did not apply, that they were not to be treated as POWs, then, in the world of, I guess, what—I'm just—this is my own words, or makes sense to me—if you know there might be something out there that's within the military community that might be found to be legal—it wasn't determined yet, but might be found to be legal—then they would look to that, because they already understood that things that were illegal, of course, like torture, was illegal. Of course they weren't going to ask for something like that. So you look to something that's already being done, that you can either "cut-and-paste" from and learn something from, as opposed to creating something new that's never been done.

So, I have to assume, because most people know of SERE or have—some, even at GTMO, had been trained—that that was a natural sort of jump to—maybe some of the SERE techniques, not all of them, would be permissible and would be effective. So they reached out to SERE, and the only people who had psychologists

were the SERE people. So our psychologists, who weren't trained in that, except in human behavior—also, I think, it was a natural leap for them to think, "Perhaps my colleagues at the SERE school, in behavioral psychology, might be helpful to me."

Chairman LEVIN. You call a "natural leap," though—but, you were aware that, as a matter of fact, it was exactly the reverse purpose.

Colonel BEAVER. No, I understand what you're saying, Senator Levin. I'm just——

Chairman LEVIN. But, were you aware of it at the time, when you talked about SERE techniques——

Colonel BEAVER. Well——

Chairman LEVIN. Well, wait a minute.

Colonel BEAVER. Yes, sir.

Chairman LEVIN.—that the purpose of those techniques being used was to inoculate our troops, and that these were students that were being trained to be prepared for the application of those Geneva-violative techniques against them? Were you aware of all that? Yet, you call that a "natural leap," when——

Colonel BEAVER. Well, I——

Chairman LEVIN.—the purpose was exactly the opposite purpose of what that program is intended to provide?

Colonel BEAVER. Sir, later I became aware of much of this. At the time, General Dunlavey did not include me in these conversations. The people he sent to the SERE school at North Carolina—was not in any conversation I was involved in. So, I'm just posturing what I think my colleagues thought about when they're thinking, "If—again, an interrogation technique that might be useful, that SERE employs, go to the SERE school and check it out for ourselves." I'm just, again, saying that on behalf of my colleagues.

Chairman LEVIN. Were you surprised that neither the DOD General Counsel nor any of the staff there produced a written legal analysis for General Dunlavey's request?

Colonel BEAVER. I can only speak from the military chain of command, up to Jane Dalton—Rear Admiral, sorry, retired, Jane Dalton. I tried to get help from Colonel Manny Superville, the staff judge advocate at SOUTHCOM, and he was silent on my request. In fact, I reached him at the golf course on Columbus Day weekend, which was a 4-day holiday for SOUTHCOM, and spoke to him, and said, "I'm sending up this draft. I really need your help." There was no response.

At some point—and I can't say what date—I talked to Captain Dalton and asked for her help, and she told me that I needed to speak to Colonel Superville, which, of course, I said I did and he wouldn't help. So, I basically understood I was on my own, as it were, regarding the military.

I really had no idea, until 2004, when Mr. Haynes released my legal opinion at a June 22, 2004, press conference, of many of the other things that had occurred since I had retired from Active Duty. So, I reached out within my military community and no help—and also, once I submitted my opinion, with the request from General Dunlavey, to SOUTHCOM, I never received a phone call, I never received an e-mail, I never received anything from Colonel Superville or his staff asking me anything, like, "are you a lunatic?

what were you thinking?" or, "great opinion," or—I received nothing from him; and, until it came back down from the SECDEF, I had no idea what was going on. I fully expected General Hill to make that policy decision.

Chairman LEVIN. Did you expect there would be different additional legal analysis and that your——

Colonel BEAVER. Yes, sir.

Chairman LEVIN.—opinion——

Colonel BEAVER. I certainly——

Chairman LEVIN.—wait a minute—that your opinion would not be the one that would be relied upon?

Colonel BEAVER. No, sir. In fact, one of the reasons——

Chairman LEVIN. "No, sir," you——

Colonel BEAVER. Oh, sorry.

Chairman LEVIN. My question was——

Colonel BEAVER. I'm sorry.

Chairman LEVIN.—were you surprised that your opinion became the opinion that was relied upon? Did——

Colonel BEAVER. Shocked.

Chairman LEVIN.—you expect—shocked, okay. Why were you shocked?

Colonel BEAVER. Because one of the reasons I had explained to Colonel Superville that I needed his input was because—and people that are in the moment, or the people that are participating on the island in the interrogations, don't always have the best perspective, and so, to get it off the island was my goal, to get it to General Hill, where people had all the resources at their command; they could call military justice experts, whatever—anyone they needed to. To make, if you want to say, a calm, rational, objective decision, I thought, was the best thing possible. So, I fully expected General Hill's staff to write up something and then also perhaps approve a very narrow set of interrogation practices; and, again, was very surprised when that did not happen.

Chairman LEVIN. General Hill was the SOUTHCOM Commander.

Colonel BEAVER. Yes, he was.

Chairman LEVIN. Okay, thank you.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Admiral Dalton, did you ever see Lieutenant Colonel Beaver's memo?

Admiral DALTON. Yes, Senator, I did.

Senator GRAHAM. Did you ever get a request from her to give her your opinion?

Admiral DALTON. Senator, I don't recall the telephone conversation that Colonel Beaver related.

Senator GRAHAM. So, when you saw it, what did you think?

Admiral DALTON. When I saw the memo, I believed that there were some serious deficiencies in it.

Senator GRAHAM. Who did you tell?

Admiral DALTON. The first thing as I recall, I discussed the memo with my staff. I don't recall that, at that time, I discussed the memo with anyone else.

Senator GRAHAM. Mr. Mora, did you ever—do you recall seeing Lieutenant Colonel Beaver's memo?

Mr. MORA. Yes, Senator.

Senator GRAHAM. What did you think?

Mr. MORA. Sir, I thought it was an inadequate treatment of very sensitive and very difficult issues.

Senator GRAHAM. What did you do?

Mr. MORA. I immediately took it to Mr. Haynes and pointed out that fact to him.

Senator GRAHAM. Lieutenant Colonel Beaver, I understand—I think I understand, better than I've ever understood, the role you played in this. Bottom line, no one made you write this memo. That was your own work product, correct?

Colonel BEAVER. Yes. Based on Lieutenant Colonel Dunlavey's request to send up interrogation techniques to General Hill, it would not have been appropriate for me to simply say "no legal objection" or "no comment."

Senator GRAHAM. But, there was no pressure for you to reach the conclusion——

Colonel BEAVER. No. There was no pressure. It was generated by me and my staff at the request of the Military Intelligence Task Force.

Senator GRAHAM. You felt you were hung out a bit?

Colonel BEAVER. I have no animosity, but I understood, at the time, I was hung out by the SOUTHCOM Staff Judge Advocate——

Senator GRAHAM. Okay.

Colonel BEAVER.—certainly.

Senator GRAHAM. Fair enough. During this debate about what kind of techniques may be employed in the future, it was all to try to get better information. That's correct?

Colonel BEAVER. Yes, sir.

Senator GRAHAM. All right. Was waterboarding mentioned?

Colonel BEAVER. The discussion—maybe in two parts I can answer this. One, there was a Navy doctor who just happened to be assigned on the hospital staff, who was deployed there for 6 months, and he had been at the Navy SERE school for—I could be wrong—2-years assignment. He relayed to myself, as well as members of the intelligence community at GTMO, that he had observed—and, again, I could be wrong, if it was 2,000 or 3,000 sailor servicemembers who had been through that school and had endured waterboarding. He described it to me and said that, out of that number, only two failed—and I'm using his words—failed to give it up, and that was that—there were two SEALs who were used to controlled drowning. He said everyone else gave it up. So, I became aware of that for the first time, as well as members of the intelligence—and I say "community," because there were many different people there from different commands, as well as DIA. So what Jerry Phifer and a few of the others discussed was not the—literally the board, but putting a wet towel on your face to make you——

Senator GRAHAM. So, bottom line, it's fair to say that someone was contemplating potentially using this technique.

Colonel BEAVER. If it could be done legally, and in terms of the medical review of the detainee and those kinds of things, in a very controlled, supervised setting, yes.

Senator GRAHAM. Sure. Okay.

Colonel BEAVER. But only—and part of this is that you don't jump to one thing first. Much of it that I learned from the professionals, is that you build, you use what works.

Senator GRAHAM. Sure.

Colonel BEAVER. That could be just interviewing, and so, it's not just a matter of, I think, an impression of "everyone gets the waterboard."

Senator GRAHAM. If I asked you the question, "Does the UCMJ prohibit waterboarding?" What would you say?

Colonel BEAVER. I think that's a difficult answer, and that's what I struggled with in my opinion. I'm not a military justice expert, and I tried to raise——

Senator GRAHAM. What is your legal background?

Colonel BEAVER. I'm a jack-of-all-trades, basically. I've done a little bit of everything—administrative law, criminal law, I've been a prosecutor, intel law. I've deployed with Special Operations Command in Operations Desert Shield/Desert Storm psychological operations. So, just really, a number of—I've been a——

Senator GRAHAM. So, when you called Admiral Dalton, what were you trying to get from her?

Colonel BEAVER. Because Manny wouldn't help me, I was trying to get help from her staff in dealing with some of these difficult issues.

Senator GRAHAM. Admiral Dalton, why didn't you come in and help?

Admiral DALTON. As I indicated, sir, I don't recall that specific conversation.

Senator GRAHAM. Once you saw the memo and you had concerns about it, why didn't you do what Mr. Mora did?

Admiral DALTON. What I did, Senator, when I received the memo, was—I recognized that there were policy and legal issues involved, and I decided that what I needed to do at my level was to conduct a further legal and policy review, as General Hill's memo had requested.

Senator GRAHAM. Yes.

Admiral DALTON. So I asked my staff to begin doing legal research, and we began setting up a legal and policy review.

Senator GRAHAM. What were your conclusions?

Admiral DALTON. Of the legal and policy review, that—I did not actually conclude that process at that time.

Chairman LEVIN. Mr. Mora, how long did it take you to understand this was the wrong road to go down?

Mr. MORA. Sir, as soon as I heard the rumor that abuse was going on in GTMO, I acted, every single day, until the rescission of those interrogation authorizations were made by Secretary Rumsfeld, approximately 3 weeks later. But, when 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, sir, that this was a flawed policy decision based upon inadequate legal analysis.

Senator GRAHAM. Is it fair to say, some of the senior judge advocates shared that view?

Mr. MORA. Sir, every judge advocate I've ever spoken to on this issue shares that view.

Senator GRAHAM. Given what you know about the way we're doing business now, do you think we're in the right place?

Mr. MORA. Senator, I'm not current on what the actual policies and practices are today. My impression is that the military is in the right place. I have doubts about the intelligence community, however.

Senator GRAHAM. Thank you. All right.

Nothing further.

Chairman LEVIN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Lieutenant Colonel Beaver, let me start with you, if I may. Just for clarification, you did not attend that September 2002 conference up at Fort Bragg.

Colonel BEAVER. No, I did not.

Senator PRYOR. You really don't know, really, the purpose of that conference? For example, you don't know if it was recommended there that we use these SERE techniques in an offensive manner. You don't know anything about that, right?

Colonel BEAVER. I think what I knew at the time was that the psychological—or, we called them the "Biscuits," the Behavioral Science Team (BSCT), which was a psychiatrist and, I believe, a psychologist, would gain benefit by talking to their counterparts at the SERE school, and that also the—I think the military intelligence contingent that went was there on a so-called factfinding mission.

Senator PRYOR. Is it your view that the purpose of that factfinding mission was to try to take some of the techniques, et cetera, from SERE and begin to use them offensively against detainees?

Colonel BEAVER. To see if any of the techniques were—should be considered to be used, yes.

Senator PRYOR. Yes, that's an important question. In other words, your understanding at the time was, part of the purpose, at least, of that conference was to see if you could apply the SERE techniques to the detainees at GTMO.

Colonel BEAVER. I believe, based on what General Dunlavey told us at a staff meeting after the fact, I mean after the participants had gone there, that his purpose was to find out what could be used, because he was looking at sending up a request for additional techniques. So, yes.

Senator PRYOR. Okay. That's interesting. Let me ask this. In your opening statement, you said, "In short, the interrogation techniques discussed in my legal opinion would not have been conducted in an abusive or unlawful manner if the approval and control procedures I outlined were followed." So, are you saying that waterboarding should—is justified, as long as there's the proper controls there?

Colonel BEAVER. No, what I meant was—I didn't approve anything; I wrote a legal opinion. So, whatever the commander—well,

as it turned out, the SECDEF approved, it would be applied in a manner to prevent it from being used abusively. So, the SECDEF never approved waterboarding, so it was never anything that was considered. But, I did not—I was not the approval authority. So, I think what I was trying to refer to was that an aggressive interrogation had to have a legal review; there had to be a full—the medical team, everyone had to be involved before you could apply a plan, because it has to have a purpose. It can't be sadistic; it has to be for a governmental purpose. This isn't about just doing something because you can; it's about eliciting intelligence.

Senator PRYOR. Okay.

Colonel BEAVER. So, if we had a plan in place that had been reviewed and approved by the commander, and—again, assuming whatever had been approved by, in this case, the SECDEF—then you would have a lawful interrogation plan, conducted lawfully, not abusively.

Senator PRYOR. Okay. Let me ask—you've referred to this legal opinion. Are you referring to the October 11, 2002, opinion signed off on by General Phifer? (Appendix A)

Colonel BEAVER. Jerry Phifer is a Lieutenant Colonel.

Senator PRYOR. I'm sorry.

Colonel BEAVER. J–2.

Senator PRYOR. Colonel Phifer, yes. Is that the memo——

Colonel BEAVER. That's my legal opinion, yes, sir.

Senator PRYOR. Okay. So, in other words, you drafted that.

Colonel BEAVER. Yes. Ultimately, I had some subordinates that helped me, but I signed off on the final.

Senator PRYOR. All right. Let me ask, if I can—at tab 7, there's a memo that we've referred to already. It's tab 7, it's a 5-page memo, and I'm going to go right to page 2 of 5. At the beginning of the memo, it says, "The following notes were taken during the aforementioned meeting at 13:40 on October 2, 2002. All questions and comments have been paraphrased." (Appendix A)

Colonel BEAVER. Yes, sir, that was done by the CITF personnel.

Senator PRYOR. You referred to this with Senator Levin, and that it is a paraphrase, and you don't know how accurate it is. Some of this, you don't recall. Is that right?

Colonel BEAVER. Not from 6 years ago, no, sir.

Senator PRYOR. When did you first see this memo?

Colonel BEAVER. I think, March, before I spoke to the Senate staff.

Senator PRYOR. Okay, so in the last year, sometime this year?

Colonel BEAVER. This past March.

Senator PRYOR. Okay. You've reviewed this memo, right?

Colonel BEAVER. I've seen it, yes, sir.

Senator PRYOR. Do you have any questions about the accuracy of your statements in there?

Colonel BEAVER. There's no way for me to know if my statements are accurate, because it's 6 years ago, and there's no way for me to recollect what I exactly said or how the CITF personnel chose to phrase a particular issue or the importance they put on it. So, I don't ascribe any malintent towards them, but I'm just saying there's no way for me to say what they are saying is accurate.

Senator PRYOR. Let me ask about an impression I have, and that is on page 3, for example. You come across in this as being eager to have these techniques used. Colonel Cummings says, "We can't do sleep deprivation." You say, "Yes, we can, with approval." Then, I think this next statement is attributed to you, although it's not clear. It says, "Disrupting the normal camp operation is vital. We need to create an environment of controlled chaos." We could go down through some of the statements in here. But, at that time, do you remember, were you trying to get to the answer that we could use these SERE techniques against the detainees?

Colonel BEAVER. I can say that my counterparts in the CITF were very unhappy with this line of discussion. I offered them, always, to participate. I offered them to write their own legal opinion, which they never did. They wrote a policy piece, which—I understood the policy concerns already, but I never received any legal objections based in the law. So, I know that they were all very unhappy with me at that point.

Senator PRYOR. Unhappy with your conclusions?

Colonel BEAVER. With me having discussions at all about aggressive interrogation techniques.

Senator PRYOR. In other words, they did not like this policy direction?

Colonel BEAVER. No, they wanted the law enforcement techniques only, and so you had the clash of law enforcement and intelligence interrogators, which—they saw their role as being the one that should be taken.

Senator PRYOR. Let me ask this. There's a conversation in here about sleep deprivation, and you're quoted as saying—again, I know this is——

Colonel BEAVER. Right, I understand.

Senator PRYOR.—paraphrased—you're paraphrased as saying——

Colonel BEAVER. Yes.

Senator PRYOR.—"True, but officially it is not happening. It is not being reported officially. The ICRC is a serious concern," which is the Red Cross.

Colonel BEAVER. Yes.

Senator PRYOR. So, it sounds to me like, in addition to advocating this, you maybe were trying to cover this up, as well.

Colonel BEAVER. No, sir. I was the liaison to the ICRC, and I worked very well with them. I believe—and, again, it's hard to reconstruct something 6 years later—if you have someone in active interrogation, and then the ICRC visits and wants to see that person, you can't stop your interrogation to take them out, and disrupt what you're trying to do. So at different times, the ICRC would be down there; and so, they would be there for 6 weeks and leave. So, I can only, the hazard that what I was referring to is, if you're going to do a more intense interrogation that would last a longer period of time, you had to make sure that you had the time to do it, and that you weren't disrupted.

Senator PRYOR. Did—and when you say "disrupted"—in other words, you would rather not have the ICRC——

Colonel BEAVER. No, they had access to the—they talked to all the detainees. But, if you're in the middle of an interrogation and

they want access to a particular detainee, you can't disrupt your interrogation to have them be interviewed by the ICRC.

Senator PRYOR. Let me ask this, because I'm just about out of time. In response to one of Senator Graham's questions, you said that you were not that familiar with UCMJ?

Colonel BEAVER. No, I said I wasn't a military law expert. We have experts in the Army who do this for a living, and my hope was that, when my opinion went up to General Hill, that my concerns about military personnel being involved with these aggressive techniques would be appropriately addressed by people who do this full time. We call it Trial Counsel Assistance Program. But, anyway, the people that look at these issues and would have the time and the resources to address those issues. But, I was very concerned about the military.

Senator PRYOR. This will be my last question, Mr. Chairman; thank you for your patience—but, in your legal analysis at the time, did you look at the UCMJ?

Colonel BEAVER. Yes.

Senator PRYOR. Did you look at U.S. Law?

Colonel BEAVER. Yes, sir.

Senator PRYOR. Did you look at the U.S. Constitution?

Colonel BEAVER. Yes, sir.

Senator PRYOR. Did you look at the Geneva Conventions? Did you look at the Army Field Manual?

Colonel BEAVER. Yes, sir.

Senator PRYOR. Do you have memos or documents with your legal analysis based on your review of all those materials? Have you provided those to the committee?

Colonel BEAVER. Whatever was retrieved from GTMO, the committee would have. I was not—6 years later—I didn't take things with me. It was classified. So, whatever I used came from human rights courts opinions, all sorts of things. But, that would have been what the—if DOD had it, DOD would have provided it. But, the legal opinion was what my analysis provided on those issues.

Senator PRYOR. In other words, at GTMO, did you keep a file with all your legal research in it?

Colonel BEAVER. I don't know if someone would have kept it, 6 years later.

Senator PRYOR. But, did you have one?

Colonel BEAVER. At the time, yes, it was on a shared Secret Internet Protocol Router Network, a secured network.

Senator PRYOR. You don't know if that's been provided to the committee?

Colonel BEAVER. I would have no idea. I left GTMO in 2003.

Senator PRYOR. Thank you.

Colonel BEAVER. But, I provided the basis for it in the opinion, so you would have seen citations to the various things that I looked at.

Senator PRYOR. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Pryor.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

I thank this panel for their contribution to this very serious issue.

I'd like to address my questions to Admiral Dalton. First, may I congratulate you on a very distinguished career in the United States Navy, and to have, as a consequence of your professional abilities, recognized and were given the first flag rank in the long history of the Navy JAG Corps. Am I not correct?

Admiral DALTON. Yes, sir. For a woman, yes, sir.

Senator WARNER. That's a great commendation to you.

Admiral DALTON. Thank you.

Senator WARNER. I listened very carefully to your testimony today, and I'd like to start off by referring to the Vanity Fair article, which I presume you've read more than once. On page 13 of the 17 pages it says, "At the level of the Joint Chiefs, the memo should have been subject to a detailed review, including close legal scrutiny by Myers's own counsel, Captain Jane Dalton. But, that never happened. It seems that Jim Haynes short-circuited the approval process. Albert Mora, the General Counsel of the Navy, says he remembered Dalton telling him, 'Jim pulled us away. We never had a chance to complete the assessment.'"

Now, having spent some wonderful years myself in that building at the Department of the Navy, I have always found, historically, going back to the times of George Washington, we have civilian control of the military. That's the way it should be. It has functioned, and functioned well, throughout the history of our country. But, within that structure, there's a certain amount of independence that's accorded the chiefs of the various military branches—Chief of Naval Operations, so forth. Then, when we structured the JCS organization and the Chairman was designated, he was the focal point of the chiefs, and his responsibility is the chief military advisor to the SECDEF and the President.

What interests me is the degree to which the chiefs at that time exercised their independence. This committee—and I was privileged to be a part of the committee and very active in writing Goldwater-Nichols, and that was the law at the time this situation occurred, and that gave an avenue by which members of the JCS—indeed, the Chairman—if they had disagreements with certain policy matters, could address them directly to SECDEF and, if necessary, to the President. You're familiar with that procedure. Have I stated it correctly?

Admiral DALTON. Yes, sir.

Senator WARNER. Was any consideration given at that time by the senior military, either the Chairman or members of the tank, to exercise the rights under Goldwater-Nichols to bring to the attention of higher authority their concerns about this policy change?

Admiral DALTON. Senator, I'm not sure what policy change——

Senator WARNER. The use of more aggressive techniques for the detainees at GTMO, the memorandum that we've been discussing here in some detail.

Admiral DALTON. Yes, sir. At the—well——

Senator WARNER. In other words, this article—and I think you've confirmed it's correct—you stopped your analysis, which you were doing for the Chairman—at that time, Richard Myers, am I correct?

Admiral DALTON. Yes, Senator.

Senator WARNER. All right. Now, to me, that was a variance in normal procedures, and the Chairman was entitled to the benefit of your professional expertise and knowledge in your own independent legal analysis. He had, I think, a duty as chief, to go into the tank and discuss it. Was it ever discussed in the tank?

Admiral DALTON. Senator, let me just clarify. When the memo came in from General Hill asking for the enhanced techniques on—the memo was distributed to the Services, and the Services, as has already been mentioned, provided their inputs.

Senator WARNER. Correct.

Admiral DALTON. They asked for—they—the Services——

Senator WARNER. Now, the "they" being the Services "asked for"? I want to define who "they" is.

Admiral DALTON. I'm sorry. Yes, sir. The Services sent in responses to the Joint Staff tasker asking for inputs on the General Hill memo. All of the Services expressed concerns about the techniques that were listed in the memo. They also expressed their understanding and appreciation for the need for intelligence, and good intelligence.

Senator WARNER. Correct.

Admiral DALTON. Then my recollection is that all four of them suggested that there needed to be further legal and policy review, as General Hill had suggested in his memo.

Senator WARNER. Correct.

Admiral DALTON. So, the next step, then, was to proceed with a larger general and policy review, which is what I intended to do.

Senator WARNER. Correct. Not only intended, but you initiated.

Admiral DALTON. I initiated—yes, that's right, Senator. When I learned that Mr. Haynes did not want that broadbased legal and policy review to take place, then I stood down from the plans.

Senator WARNER. Let's now clarify exactly how you were told to stand down. Was it in writing, or was it verbal?

Admiral DALTON. It was not in writing, Senator, and the best of my recollection as to how this occurred is that the Chairman called me aside and indicated to me that Mr. Haynes did not want this broadbased review to take place, and that I should not continue to interact with—the Chairman's words were not this detailed; it was a very brief meeting, where he called me aside and said, "Mr. Haynes does not want this process to proceed."

However, that did not mean that I then stopped doing all legal analysis or all legal review. I continued to engage with Mr. Haynes's office. This is the piece that I think has not necessarily been clear, is that when I stopped the analysis that would have included the Services and the DIA and Fort Huachuca and all of those various agencies, nevertheless, I continued to work with Mr. Haynes's office and with the Chairman, in terms of reviewing and analyzing General Hill's request.

So, at that time, there was no perceived need to go to the chiefs and complain about anything, or to the President and complain, or the Secretary, because the process was still proceeding, in that I understood that this was a very sensitive issue, that Mr. Haynes wanted this to be held very close-hold, and I believed that his prerogative as the chief legal officer of the Department was to have

his office take the lead; I would provide support to the Chairman and work with Mr. Haynes's office.

Senator WARNER. When he created the final product, what was your professional analysis, at that time, and advice to the Chairman?

Admiral DALTON. Sir, based on the discussions and the interaction that I had had with Mr. Haynes's office, with GTMO, with SOUTHCOM, I believed that the techniques that the Secretary approved, in the context in which they were discussed and in which he approved them, could, in fact, be conducted humanely, in accordance with the President's——

Senator WARNER. Humanely? Is that the word you used?

Admiral DALTON.—yes, Senator, humanely—in accordance with the President's direction that the detainees were to be treated humanely.

Senator WARNER. Did you feel they were consistent with international and domestic law and other laws of the United States?

Admiral DALTON. If they were conducted consistent with the discussions that we had had, in terms of the oversight, the supervision by the commander, with, in fact, supervision by the staff judge advocate, and, again, in the context in which they were discussed.

Let me explain, if I may, that the removal of clothing was not nudity. There was never a discussion that that would involve nudity. The use of military working dogs was not to have working dogs in an interrogation booth, unmuzzled and snarling at detainees. That's not what the Secretary approved. The use of stress techniques was limited to standing for 4 hours. So, when you put all of these factors together with the oversight, with the fact that the President had mandated that the detainees be treated humanely, then I believe that, in fact, they could be conducted—those techniques could be conducted consistent with both international and domestic law.

Senator WARNER. It's noted in this article that General Myers made a point that, "My initials are not on the document." Does that indicate that he had some reservations about this? Did he express some of those reservations with you? It says, "Normally, he would have initialed a memo to indicate approval, but there was no confirmation that Myers had seen the memo or formally signed off on it."

I can't digest this that quickly. Can you clarify that at all?

Admiral DALTON. Just one second, sir, please. [Pause.]

Senator WARNER. What's this? Who handed me this? What am I supposed to do? What does it say?

Would you finish? I'm sorry.

Admiral DALTON. Excuse me, Senator.

Senator, in the days leading up to Mr. Haynes's memo of November 27, which was then approved by the Secretary on December 2, there were meetings at the SECDEF level, involving General Myers, involving Mr. Haynes, and myself. In those meetings, we discussed the various techniques, the safeguards that would be applied. My understanding and my recollection is that General Myers was satisfied with the techniques that the Secretary approved.

Senator WARNER. All right, thank you. My time is up.

Chairman LEVIN. Thank you, Senator Warner.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Admiral Dalton, as you've indicated in your testimony, when you received the request—when General Myers received the request, the Joint Staff solicited the opinion of Service JAGs. You say they raised concerns, but these are very significant concerns. The Army JAG said that the stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress crosses the line of humane treatment.

The Chief Legal Advisor of the CITF at GTMO said that certain techniques may subject servicemembers to punitive articles of the UCMJ.

The Air Force said that the techniques may fail to meet requirements "to treat detainees humanely."

The Marine Corps said several techniques arguably violate Federal law and would expose our servicemembers to possible prosecution.

Admiral DALTON. Yes, sir.

Senator REED. That was an accurate summary?

Admiral DALTON. Yes, Senator.

Senator REED. Did you make General Myers aware of all those concerns?

Admiral DALTON. Senator, my recollection is that the decision-makers were aware that there had been concerns——

Senator REED. No, I'm asking you specifically, as the counsel to the Chairman of the JCS, did you make him fully aware of the various serious concerns that were raised by uniformed officers of the United States military?

Admiral DALTON. Senator, I don't recall the specific conversations that I had with the Chairman, but, it is my recollection that he was aware of these concerns and that I made him aware of those concerns, yes, sir.

Senator REED. Did he make Mr. Haynes aware of those concerns?

Admiral DALTON. I don't know, sir. Senator, in the conversations that we had and the meetings that we had, my recollection is that those concerns were taken into account and addressed as a part of the overall context of the conversations. I don't recall that anyone specifically pulled out memos and showed the memos, but that we were aware that there were concerns, and those concerns were addressed in our discussion of the safeguards and the way that the techniques would be implemented.

Senator REED. You just said that you continued discussions with Mr. Haynes, although you were told—and I think you made it very clear, you were essentially told, through General Myers, to stop any formal legal analysis to reach a formal conclusion. Is that correct?

Admiral DALTON. I was told to stop the broadbased legal review and policy review that would have involved the Services and the other agencies, like Fort Huachuca and DIA. I was told to stop the broadbased analysis.

Senator REED. But, you were told—or, not dissuaded by General Myers, to continue to evaluate all of these options in conjunction with Mr. Haynes.

Admiral DALTON. I'm sorry, sir, I didn't understand—General Myers did not prevent me from continuing the discussions with Mr. Haynes, sir.

Senator REED. So, were you privy to all discussions with Mr. Haynes on these topics?

Admiral DALTON. I'm sure I was not, sir.

Senator REED. So, selectively, you participated. You participated not in every discussion, but in "several discussions" is fair.

Admiral DALTON. Yes, Senator, I—yes, sir.

Senator REED. Did you raise these concerns? Not in citing formal memoranda, but raise specific concerns, the violation of UCMJ?

Admiral DALTON. Senator, I don't—again, I have a hard time recalling the specifics of any particular conversation in a particular meeting. I believe these concerns were known and addressed, and as I said before, in the context of the meetings and the conversations that we had, we recognized that there were issues related to UCMJ concerns, there were issues related to Federal- and domestic-law concerns, as well as international law.

Senator REED. You were satisfied these concerns were fully addressed by Mr. Haynes, or by someone.

Admiral DALTON. I was satisfied—yes, Senator, I was satisfied that in the context of the discussions we had, those concerns were addressed.

Senator REED. You mentioned the fact that—and, I think, in response to Senator Warner—that General Myers signed off on the techniques.

Admiral DALTON. Yes, sir, he's—I'm sorry, he—as stated in——

Senator REED. He failed to object.

Admiral DALTON.—as stated in Mr. Haynes's memo, he agreed that the approval of those techniques could be conducted consistent——

Senator REED. Right.

Admiral DALTON.—with——

Senator REED. You read Mr. Haynes's memo?

Admiral DALTON. Yes, Senator.

Senator REED. At the time it was released? Contemporaneous with the release?

Admiral DALTON. Shortly after the release.

Senator REED. Did you have any questions about the legal sufficiency of this memorandum?

Admiral DALTON. I specifically did—I was not asked to opine, and I don't recall that I opined on the details, but I—there was one phrase in the memorandum which said that, arguably, all of the techniques would be legal or authorized, including the three that were not authorized. I was not asked to opine on the memo, but I did not necessarily believe that that was correct.

Senator REED. Did you feel you had an obligation to General Myers, since he was referenced in this memo, as concurring or at least giving some non-objection to advise him that there were elements here that you thought had serious legal problems?

Admiral DALTON. Sir, I wasn't aware of the memo until after Mr. Haynes had initiated it and the Secretary had signed it. It was shortly——

Senator REED. If the memorandum had legal conclusions that you significantly disagreed with, didn't you feel an obligation to at least make General Myers aware of this?

Admiral DALTON. After the fact, Senator?

Senator REED. Sure.

Admiral DALTON. Since the Secretary had not authorized those techniques, I didn't feel that it was necessary to go into a lot of detail with the Chairman about whether or not every word in the memorandum was correct. The Secretary authorized less than the full category of techniques, and that's what I was satisfied with and what General Myers was satisfied with.

Senator REED. The memorandum essentially said that all these techniques are legal, the category 3 techniques, but, as a matter of policy, we're not going to have a blanket approval. (Appendix A)

Admiral DALTON. Right. Yes, Senator.

Senator REED. Leaving it up to—leaving the issue that these are legal techniques—at least the official opinion endorsed by the SECDEF is, these are legal techniques, correct?

Admiral DALTON. I would not——

Senator REED. What did——

Admiral DALTON. I'm sorry.

Senator REED. No, I—go ahead. Excuse me.

Admiral DALTON. Senator, I would not say that that was the legal opinion endorsed by the SECDEF. The SECDEF was approving the use of particular techniques. As to whether or not other techniques might or might not be legal, if the combatant commander wanted to use those techniques, he would then have to come up and ask, and there could then be a separate and additional review. It was not necessary to reach that question, given that the Secretary approved the ones that he did.

Senator REED. But, the only reason that this is not a blanket approval is a matter of policy, not of law. As I read this, category 3 techniques may be legally available, but, as a matter of policy—that's what this—what it says, essentially. You didn't think—you thought that was an appropriate legal analysis?

Admiral DALTON. No, sir, I did not think that was an appropriate legal analysis. I did not think it was necessary to engage on that subject, since the Secretary had already approved the techniques, and that was what we were providing to the combatant commander.

Senator REED. You are aware of Lieutenant Colonel Beaver's memorandum, is that correct?

Admiral DALTON. I am, Senator.

Senator REED. You read it?

Admiral DALTON. I did, sir.

Senator REED. In her memorandum, she said, "Regarding UCMJ, the proposal to grab, poke in the chest, push lightly, and place a wet towel or hood over the detainee's head would constitute a per-se violation of Article 128 assault." One of the techniques that you approved was pushing or poking lightly. Do you disagree with her analysis?

Admiral DALTON. I disagree with that analysis, yes.

Senator REED. How about Article 93 of the UCMJ, which forbids maltreatment of anyone under the control of military personnel?

Admiral DALTON. Senator, I did not view light pushing and poking with a finger to be maltreatment.

Senator REED. All right. You would also disagree with Colonel Beaver in her suggestion that, because of the potential violation of UCMJ, there would have to be some type of immunity or—you disagree with that?

Admiral DALTON. That's correct, sir. I don't believe that's correct.

Senator REED. Mr. Mora, what's your view with respect to Article 128 and Article 93 of the UCMJ?

Mr. MORA. Senator, I'm not a specialist in that area. I never focused on those specific matters. My concern with the memorandum is that it did not include a bright line of abuse which could not be transgressed. For example, you look at Lieutenant Colonel Beaver's memorandum, and nowhere does it say that, "You may engage in these tactics just until you reach the point where it reaches cruel, inhuman, and degrading treatment, and you may go no further." Because there was no such boundary anywhere in the memorandum, it was all subject to abuse.

Senator REED. Colonel Dalton, I have a final question. Part of your rationale for agreeing with the conclusion is the fact that you object—and you've indicated certain objection to techniques that may or may not have been approved legally by Mr. Haynes. But, you keep citing the "conditions." Where, in any of these materials, are there those conditions, as Mr. Mora refers to, that would give specific guidance? I don't think the SECDEF signed a memorandum that talked about the conditions. Are you aware of those conditions that he approved?

Admiral DALTON. Senator, the conditions were in several different contexts. In the Colonel Phifer memo that came up, it specifically said—that was attached to General Hill's memo, Colonel Phifer's memo was the one that listed the techniques—and that one made it clear that the use of the techniques, at least the category 3 techniques——

Senator REED. The Phifer memo said the techniques were needed. Where is there a direction of the SECDEF that these are mandatory as part of the use of these techniques?

Admiral DALTON. The only thing in writing from the SECDEF was his approval of Mr. Haynes's memo. There were meetings leading up to the Secretary's approval of the memo, and the context of the conversation was—and of the discussions—were one particular detainee, the particularly high-value detainee who had resisted. It was in the context of the discussions.

Senator REED. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Senator McCaskill?

Senator MCCASKILL. Let me start by saying how proud, as an American, I am of you, Mr. Mora. Courage comes in all forms, and you showed great courage.

Let me cut to the chase here and see if we can reach some agreement.

Ms. Dalton and Ms. Beaver, do you both believe that putting a group of detainees together completely naked, hooded, and siccing dogs on them is legal under the UCMJ or anything else that our military should be paying attention to? Do you think that's legal?

Admiral DALTON. Senator, I don't believe that's legal, and that was never approved by the SECDEF.

Senator MCCASKILL. Okay. Ms. Beaver, do you think that's legal?

Colonel BEAVER. No, ma'am, and it never occurred at GTMO.

Senator MCCASKILL. Okay. All right. I'm reading this legal memo, and I'm reading the memo by Mr. Feith. Now, I have to tell you—you're both trained lawyers, correct?

Colonel BEAVER. Yes, ma'am.

Senator MCCASKILL. You both know that words matter a lot in the law. The difference of one word can make a huge impact on a legal analysis, and that's what you're trained, as a lawyer, to understand. Is that correct?

Ms. Beaver?

Colonel BEAVER. Yes.

Senator MCCASKILL. Admiral Dalton?

Admiral DALTON. Yes, Senator.

Senator MCCASKILL. All right. I'm looking at this memo. It says, removal of clothing, under category 2, and it says, under category 2, using detainee phobias, such as fear of dogs. (Appendix A) Now, I'm trying to figure out, as a lawyer, how removal of clothing and using fear of dogs does not envision naked people—and, by the way, the hood is in there, too—naked people having dogs sicced on them. How does it not occur to either of you, that that might be envisioned?

Colonel BEAVER. Because, ma'am, in the discussions that the staff had, when you develop a plan, a professional plan of interrogation, there are limits and there are conditions, and there's command approval. If somebody said, "Let's sic the dogs on them," that would have never happened. That's just not professional. That indicates something——

Senator MCCASKILL. But, it did happen.

Colonel BEAVER. It did not happen, ma'am.

Senator MCCASKILL. Dogs were used with naked people.

Colonel BEAVER. In the context that you're saying it, I'm not aware that that ever happened at GTMO.

Senator MCCASKILL. I'm not talking about GTMO. I'm talking about within our military, it happened.

Colonel BEAVER. My experience is GTMO, and so, I can't comment on how it came to be that this happened in Iraq.

Senator MCCASKILL. Ms. Dalton, can you comment on how it happened?

Admiral DALTON. No, Senator. Those techniques that we're talking about were approved for GTMO, and GTMO only. They did not involve nudity, they did not involve siccing snarling dogs——

Senator MCCASKILL. You say it doesn't involve nudity. It says "removal of"——

Colonel FRIEND. Can I ask that the witness be allowed to finish her answer before the question comes again?

Senator MCCASKILL. I apologize. Go ahead, Ms. Dalton.

Admiral DALTON. Senator, as I was saying, the techniques approved by the Secretary did not involve nudity, they did not involve siccing snarling dogs on detainees.

Senator MCCASKILL. All right. "Removal of clothing." Now, when you were discussing the safeguards, Ms. Dalton, in these discus-

sions you had about safeguards, did anybody talk about putting in the word "all"? "Not allowed"? Did anybody talk about that phrase, that removal of clothing—if I saw "removal of clothing," and I was trying to get information out of a detainee, there's nothing there that says "removal of some clothing." It says "removal of clothing." How would anyone know, from that guidance, that nudity was not allowed?

Admiral DALTON. Senator, that was one of the specific questions that was addressed in discussions with GTMO, with General Miller, and with others concerning these techniques. I specifically recall that we had discussions about that particular issue—the people I spoke with—and my recollection is that it was General Miller—said it did not involve nudity.

Colonel BEAVER. Right.

Senator MCCASKILL. It doesn't say that. There's nothing in this, as a legal analysis, as a lawyer, that would tell you that nudity is prohibited. It says "removal of clothing." It doesn't say "removal of some clothing." It just says "removal of clothing." So, I don't understand how that is a safeguard.

Let me ask you about this concept I talked about with the last panel, advance immunity. Are you aware of any concept in the law, Ms. Dalton, concerning immunity in advance?

Admiral DALTON. I'm not.

Senator MCCASKILL. Did you read that phrase in Lieutenant Colonel Beaver's legal opinion?

Admiral DALTON. I did.

Senator MCCASKILL. Did it jump out at you?

Admiral DALTON. Yes, Senator, it did. It was one of the issues in the legal memo that I thought was not accurate or correct.

Senator MCCASKILL. Did it concern you that a legal opinion that people were relying on contained a concept that, on its face, would be illegal, which it would be, to give somebody immunity in advance?

Admiral DALTON. Senator, that's my understanding of why both Colonel Beaver and General Hill asked for additional legal and policy review. That's why I believe that there needed to be additional legal and policy review at the Joint Chiefs or at the OSD General Counsel level.

Senator MCCASKILL. Okay. Your opinion—and, by the way, Lieutenant Colonel Beaver, I feel for you today. This is hard, and I think you're a good American, and I think that you were asked to do something. I don't really understand how it happened. My job is to figure that out and try to make sure it never happens again.

I'm reading from your legal memo, where you say, "I agree"—you say, "The proposed strategies do not violate applicable Federal law." Do you still stand by that opinion?

Colonel BEAVER. At the time I wrote that opinion, the law was such that I believed that the law allowed a lot. I'm not talking about policy. I'm talking about the law at that time, with the Geneva Conventions not applying. If you would look at European Court of Human Rights (ECHR) opinion, when you mention "hoods," frequently even the ECHR would tell you that—I'm not advocating anything, I'm telling you hoods are allowed in interrogation.

Senator MCCASKILL. Okay.

Colonel BEAVER. So, even in decisions by the ECHR, which I looked at—for example, hooding, by itself, is allowed and is not cruel, and it also is not torture. So, I tried to weigh all of these things, but I understood that I was at the bottom of the bottom of the food chain, and that I might not have all the facts, and I might not be aware of all the issues. I didn't think of many of the things that I later saw in the opinion—the 50-page opinion written by the DOJ. So, I was confident that if this got off the island, and then it went to a command that was in the continental United States, like SOUTHCOM, where it could be looked at by people who were not directly involved in the interrogation of—in the instance of this high-value detainee, that we thought might have knowledge about another attack against the United States—that the right policy decision would be made.

On the military justice point, I did not artfully craft that section, and that's the only part of my opinion I regret, because I was trying to highlight my extreme concern for the military personnel under the command of Major General Miller, that if techniques weren't lawful, that military police personnel, in particular, could find themselves maybe—be prosecuted later. So I did not draft that very well, and I admit that. But, for me, it was a red flag to people like Captain Dalton, at the time, to say, "I'm very concerned about the military personnel. Please take a look at this." Unfortunately, Colonel Superville never responded, so I never got any feedback until——

Senator MCCASKILL. Right.

Colonel BEAVER. —the SECDEF's memo——

Senator MCCASKILL. No, I get what happened here. You felt you were at the bottom, and you needed to move it off the island, and somebody, I think you said, in a calm and rational way, was going to look at it. The scary thing for me is that you put your name on it as the lawyer——

Colonel BEAVER. Absolutely.

Senator MCCASKILL. —who was asked to give a legal opinion, and then, of course everyone wanted to glob on your opinion, because—why should they have to take the heat if you'd already done it for them? Here's what I want to—if I can, before—I know my time's up, but let me just finish this point. In your statement, you have said, in interviews with the staff, that you didn't feel pressure from anyone.

Colonel BEAVER. I did not, ma'am.

Senator MCCASKILL. Okay. I'm trying to figure this out. You said in your memo, "The proposed strategy is not violative of applicable Federal law," but the whole phrase is, "agree that proposed strategies do not violate Federal law." Who were you agreeing with?

Colonel BEAVER. I'm not sure. It was my opinion. I don't recall that phrase. I'm sorry. I just——

Senator MCCASKILL. Yes. Well, that's what you said. You wrote, "I have reviewed the memorandum, and I agree that the proposed strategies do not violate applicable"——

Colonel BEAVER. Oh, that's just my——

Senator MCCASKILL. —"Federal law."

Colonel BEAVER. —personal opinion. Perhaps I just didn't write that artfully. But, I—my opinion is that it doesn't violate the law.

Senator MCCASKILL. Okay.

Colonel BEAVER. That's with—I had built-in conditions. I had built-in safeguards with legal opinion, medical involvement, and so forth. So it was not a blank check. It was from—what was from my view. If we did this professionally—there was a legitimate government purpose, there were safeguards—then there wouldn't be abuses. Because interrogation is always a gray area, you—unlike what Mr. Mora says with—there weren't these specific conditions—you can't come up with all the conditions of an interrogation that, ahead of time, you can say, "When it comes to 4 days," I don't know—anyway, and so, I knew that if you would do these reviews and have these safeguards in place for these interrogations, that the law would be met. I felt very strongly about that, and I believed in my colleagues from the intelligence community, that we would not allow the law to be violated or detainees to be harmed. I still believe that today, and that's why I believe there was no violation of the law at GTMO, despite what others may believe.

Detainees were beaten to death at Bagram, Afghanistan. That happened in December, before the SECDEF even had time to get out something, and those detainees were beaten to death. So, it's more than just what I said.

Senator MCCASKILL. It's a sad day in this hearing room when we say, "Well, it's not that bad. At least they weren't beaten to death."

Colonel BEAVER. No, I didn't say that, ma'am.

Senator MCCASKILL. Well, it——

Colonel BEAVER. They did not——

Senator MCCASKILL. —sounded that way.

Colonel BEAVER. —the law was not violated at GTMO. Detainees were not abused. They were treated humanely within the bounds of the law.

Senator MCCASKILL. We're—what we're trying to do—and I—my time's up, and I'll wait for my next round, Mr. Chairman.

Chairman LEVIN. Thank you.

Senator Graham.

Senator GRAHAM. Thank you.

Colonel Beaver, it's my understanding that the Schmidt-Furlow report found that, in October 2002, a military working dog was used as part of an interrogation of a high-value target, and the dog was brought into the room, directed to growl, bark, and show the teeth at the detainee. Is that correct?

Colonel BEAVER. I only heard that later. I was not aware of it at the time. My understanding of the use of the dogs, because they were bomb dogs, they were not protection dogs, were that, by roaming the perimeter——

Senator GRAHAM. When did you leave GTMO?

Colonel BEAVER. June 2003, sir.

Senator GRAHAM. So, were you there in October 2002?

Colonel BEAVER. Yes, sir, I was there. I said, at the time, I was not aware that that happened. I found out about it later.

Senator GRAHAM. Do you doubt that it happened?

Colonel BEAVER. If an investigator found that it happened, I'm not disputing that, I'm just saying I was not aware of it at the time.

Senator GRAHAM. So when you said this didn't happen at GTMO, you're not right.

Colonel BEAVER. What I said was approved by the commander and what was authorized by the commander did not happen.

Senator GRAHAM. Well, who did this?

Colonel BEAVER. I don't——

Senator GRAHAM. Did somebody make it up on their own?

Colonel BEAVER. I don't know, sir. I didn't do the——

Senator GRAHAM. The report found that it was part of an interrogation plan.

Colonel BEAVER. The interrogation plan that was written did not authorize the use of dogs in that manner.

Senator GRAHAM. Okay. The report also found that a detainee—the same detainee was strip-searched in front of female personnel. Is that correct?

Colonel BEAVER. I heard that that happened, yes, sir.

Senator GRAHAM. Okay. Do you know who authorized that?

Colonel BEAVER. I do not know.

Senator GRAHAM. So, based on this independent investigation, we know, at least on one occasion, dogs were used as part of an interrogation technique at GTMO, and a person was stripped naked, a man stripped naked in front of female personnel at GTMO. Is that correct?

Colonel BEAVER. Sir, I've heard that that's what the Schmidt-Furlow investigation found.

Senator GRAHAM. Okay.

Colonel BEAVER. I've not seen it for myself. I'm just saying I take your word for it that that's what was found in the investigation.

Senator GRAHAM. Mr. Mora, wrap this up. It's my understanding that when you saw the interrogation techniques being proposed, you felt a need to speak up, and you did. You felt a need to continue to speak up, and you did. Is that correct?

Mr. MORA. That's right, sir.

Senator GRAHAM. You had a lot of military lawyers speaking up to you that this is not right, what they're proposing, this creates problems. That's correct?

Mr. MORA. That's also correct, Senator.

Senator GRAHAM. I think we had 35 techniques at one time, and some of your criticism was listened to and the techniques were ratcheted down, in terms of number. Is that correct?

Mr. MORA. I'm not sure about how it ended up, Senator. But, if you're referring to the working group report——

Senator GRAHAM. Yes. This is important for later on. We had a list of techniques that Rumsfeld signed off on. Then you had pushback, and you were part of the pushback. Then they re-evaluated these techniques, and, Admiral Dalton, a new group came out. That's where the Joint Chiefs and others said, "We need to look at this thing again," and they did.

Admiral DALTON. Yes, Senator.

Senator GRAHAM. As I understand it, you were never involved in any final approval of the new techniques. You were sort of shut out. Is that true?

Mr. MORA. That's correct. We were all engaged in the working—so-called working group process, and it was—the working group

was generating a draft that was to be issued on behalf of all the Services. To my knowledge, I thought that the draft was never finalized, although I learned later, after Abu Ghraib, that, in fact, the draft was finalized. So, yes, I was not part of the final approval that led to the final working group report.

Senator GRAHAM. Colonel Beaver, do you ever recall General Miller going from GTMO to Iraq as the invitation of General Sanchez?

Colonel BEAVER. Yes, sir. After I left GTMO, he asked me to travel with him to Iraq at end of August, beginning of September 2003.

Senator GRAHAM. Now, as I understand his testimony, he went there to—sent—General Sanchez, said, "We need to get better intelligence. We need to know more about these IEDs. Come over here and help us." Is that the nature of the visit?

Colonel BEAVER. Yes. They had a number of problems, from the use of their classified network systems to just basic interrogation, and also General Karpinski was having difficulties just in detaining Iraqis, separate from interrogation, so some military police experts were brought along.

Senator GRAHAM. Was there any information provided by General Miller or yourself to people in Iraq that Arabs are afraid of dogs, and one way to get information is to use dogs or to humiliate them by taking their clothes off in front of women?

Colonel BEAVER. I don't recall being in a conversation that that was discussed at all.

Senator GRAHAM. What did you tell the people in Iraq to do?

Colonel BEAVER. I had conversations with a number of the lawyers—Colonel Warren on down—about a number of—if you want to say, a number of different issues, not just interrogation, but even detention. I was appalled at how detainees were being held at a Corps holding area that Karpinski was in charge of, and the conditions were so severe and so disgusting that it was hard to believe that Americans were detaining people in that manner. General Miller was so disgusted, he called up General Sanchez to get this corrected as soon as possible.

Senator GRAHAM. But, do you—thank you—do you think it's an accident that the techniques that we're talking about in GTMO, on at least one occasion—and that's the use of dogs in interrogation and the stripping down of a detainee in front of female personnel—wound up migrating to Iraq?

Colonel BEAVER. I can say I was certainly surprised when I saw Captain Wood in Iraq, who had been the MI commander at Bagram when the two detainees were beaten to death. I was shocked to see her there, quite frankly. So, I know there were people that went from Afghanistan to Iraq. She showed me an SOP that she had written that contained techniques and that she said the lawyers had approved. So I went up the legal chain of Mark Warren's to see who had approved these, because I knew, in a Geneva setting, it was potentially a problem, and I brought that to the attention of Colonel Warren.

Senator GRAHAM. Thank you.

Chairman LEVIN. Mr. Mora, you've heard that what happened at GTMO did not constitute abuse of detainees. Do you agree with that?

Mr. MORA. Sir, I think abuse occurred, and potentially even torture of some detainees.

Chairman LEVIN. In terms of what was authorized by the Secretary, do you believe that that constituted abuse? In other words, what he has said was okay, those category 2 and some of the category 3 techniques that he approved on December 2, in your judgment were those abuses permissible under Geneva or under other law?

Mr. MORA. Senator, it depends upon how those techniques would be applied.

Chairman LEVIN. How about nakedness, nudity? Would that be permitted?

Mr. MORA. I think it would not be permitted.

Chairman LEVIN. How about use of dogs to induce stress?

Mr. MORA. It would not be permitted under Geneva.

Chairman LEVIN. All right.

Now, Admiral Dalton, I think you said that part of the reason that you understood to—that was the reason why you were told to stop your legal review was because Mr. Haynes did not want the Services' critical comments disseminated. Is that correct?

Admiral DALTON. Senator, I don't recall if those were my exact words.

Chairman LEVIN. Was that one of the reasons?

Admiral DALTON. I believe that—I understood that Mr. Haynes did not want broadbased discussions of this topic and of these issues, and dissemination of various memos and memoranda and that sort of thing.

Chairman LEVIN. All right. Now, did you see the memorandum from the various Services objecting to these techniques? Did you read those memoranda?

Admiral DALTON. Yes, Senator.

Chairman LEVIN. Those memoranda came before the decision of the SECDEF on December 2, is that correct?

Admiral DALTON. That's correct.

Chairman LEVIN. I think it's very important—and this is really what is one of the things that is new here this morning—is that the protests, the objections of the military, the JAG officers in the Services, came both before and after the December 2, 2002, memorandum. Is that correct? In other words, when that task force was appointed, later on there were some objections. Mr. Mora was involved in those. But, prior to December 2, prior to the SECDEF signing that category 2 and some category 3 techniques were going to be authorized, the military JAG officers and the military lawyers objected strongly to the recommendation that came from GTMO. Is that correct?

Admiral DALTON. Senator, the memos were not all written by JAG officers, they came from the staff planners, generally with input from some of the JAG officers——

Chairman LEVIN. Fine. It came from the Services.

Admiral DALTON. From the Services, yes, Senator. While they raised serious concerns about the use of, particularly, the category 3 techniques, they also identified the need for valuable intelligence and suggested that there should be further legal and policy review.

Chairman LEVIN. Of course. That legal and policy review, you were undertaking until you were stopped. Is that correct?

Admiral DALTON. Yes, sir.

Chairman LEVIN. So, that didn't occur, the way they recommended.

Admiral DALTON. The broadbased legal and policy review, such as the one that took place later, January to April 2003, did not occur.

Chairman LEVIN. That's what you were told you were supposed to do, until you were stopped.

Admiral DALTON. Senator, that's what I took upon myself to do.

Chairman LEVIN. Weren't you asked to give a legal analysis by the Chairman of the Joint Chiefs?

Admiral DALTON. Senator, that was a part of my job. I didn't have to be asked; I understood that there was a requirement for a legal and policy review, and I initiated such.

Chairman LEVIN. All right. Now, let's take a look at some of those objections from the Army.

Army interposes significant policy and practical concerns regarding most of category 2—not just category 3—category 2 and all of category 3 techniques proposed. The International Operational Law Division of the Army, the chief, said that the stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress "crosses the line of humane treatment and will likely be considered maltreatment under the UCMJ, and may violate the Torture Statute." (Appendix A)

Did that trouble you when you read that? Were you troubled when you read that?

Admiral DALTON. Yes, Senator, I recognized that there were concerns, absolutely.

Chairman LEVIN. I'm asking you whether you were troubled. Is the answer yes?

Admiral DALTON. I'm not sure——

Chairman LEVIN. Were you troubled that there was a request to authorize the treatment of detainees, which, in the judgment of lawyers and the judgment of the military, said, their judgment, that case of, now, the Chief of the Army's International Operational Law Division—stress positions, deprivation of light, use of phobias to induce stress crosses the line of humane treatment, would likely be considered maltreatment under the UCMJ—were you troubled that you were being requested that the SECDEF was being requested to approve something which, in the judgment of that Chief of the Army's International Operational Division, would do that? Was that troubling to you? Did it cause you concern?

Admiral DALTON. Senator, those comments were made by the Army—in this case, the International Law Division—without a complete analysis being done. It was the initial response from the Service that occurred—that came to the Joint Staff within 2 to 4 days after the initial tasker went to them.

Chairman LEVIN. Right.

Admiral DALTON. It certainly was of concern. My own office had concerns. I had concerns when we saw the request come in. However, I felt that we owed it to the combatant commander to do a

full and complete review, and not to simply turn around and deny the request.

Chairman LEVIN. Of course.

Admiral DALTON. The initial responses from the Services indicated that there were concerns, and that's what I took them for, as concerns.

Chairman LEVIN. You were stopped right in the middle of that review, is that correct?

Admiral DALTON. I was stopped from conducting——

Chairman LEVIN. The review you were conducting—you were stopped in the middle of the review you were conducting.

Admiral DALTON. —of coordinating with the Services and engaging other agencies to come in, that's——

Chairman LEVIN. That's the review you were conducting.

Admiral DALTON. Yes, sir.

Chairman LEVIN. You were stopped in the middle. Or was it the beginning, or was it two-thirds through it? You were stopped during that review from finishing it, isn't that correct?

Admiral DALTON. Yes, sir.

Chairman LEVIN. Why is that so hard, to say yes, if you were?

Admiral DALTON. Because I want to be very clear that what I was stopped from doing was engaging in a broad and open discussion with all of the Services. That does not mean that I completely divorced myself from the process. I continued to work with Mr. Haynes and his office. My staff continued to work with Mr. Haynes and his office.

Chairman LEVIN. You were stopped from doing what you thought was appropriate, what you should be doing. How's that?

Admiral DALTON. I was stopped from conducting the broadbased review that I had intended to conduct, Senator.

Chairman LEVIN. Which you thought was an appropriate review.

Admiral DALTON. Yes, sir.

Chairman LEVIN. Okay.

Now, in terms of the dog that was there, I think it was you, Admiral, that said the purpose of the dog—what was the purpose of the request for the use of a dog? I think it was you, Admiral, who said it wasn't to scare, it was something else. Or was that you, Colonel Beaver?

Colonel BEAVER. From the perspective at GTMO, it was explained to me that the purpose of the dog, it could be used as perimeter security, which would be fine, and that if that unsettled the detainee, then it would work a dual purpose, because part of interrogation is to keep you unsettled, when you play the mental chess game. So, when I asked about the dog, because I am a former military police officer before I was an attorney, I know that you don't take dogs into a detention cell or any other kind of cell or whatever. I was assured that that would not happen. I found out, after I left GTMO, during the Schmidt-Furlow investigation, that it had happened on one occasion. I was unaware of that at the time.

Chairman LEVIN. Colonel, was the purpose of that dog to induce stress on the part of detainees?

Colonel BEAVER. If the detainee was actually afraid of a dog—by patrolling the perimeter, if that kept the detainee off balance or

unsettled, then that was the purpose of it. I can't say with certainty that he was afraid of a dog.

Chairman LEVIN. Was the purpose of the dog being brought there to induce stress?

Colonel BEAVER. I would say——

Chairman LEVIN. It's a very direct question.

Colonel BEAVER. —my understanding—yes, I would say, from my understanding, yes.

Chairman LEVIN. How about the words of the request, "Using detainees' individual phobias, such as fear of dogs, to induce stress." That was the request that you approved.

Colonel BEAVER. Right.

Chairman LEVIN. So, it wasn't "if" the——

Colonel BEAVER. Yes, sir.

Chairman LEVIN. —detainee did something, or if the perimeter walk did something. That was the purpose stated in the request that you approved.

Colonel BEAVER. I'm not disagreeing, sir.

Chairman LEVIN. Sounded like you were.

Colonel BEAVER. Oh. Sorry. I'm not disagreeing.

Chairman LEVIN. Last question this round.

Admiral Dalton, was it clear to you that Mr. Haynes was aware of the fact that the Services had real problems with this request before he recommended to the SECDEF that that be signed?

Admiral DALTON. Senator, it's my recollection that my staff briefed his staff on the issues that were brought to—in the memos from the Services, and that he was aware of those concerns. Now, again, those concerns were addressed very early on in the process without the benefit of knowing what the safeguards would be, what the oversight would be, and so, I cannot say what the Services' opinions would have been, had they had the same knowledge that Mr. Haynes and the rest of us had, after the process had gone through.

Chairman LEVIN. Now, that wasn't my question, was it, "what their opinions would have been if"? My question was, "was Mr. Haynes aware of the opinions of the Services at that time?" That's my question.

Admiral DALTON. Senator, I believe that he was aware that the Services had concerns, yes, sir.

Chairman LEVIN. Was aware of those letters?

Did you brief his staff on those letters?

Admiral DALTON. My staff briefed his staff.

Chairman LEVIN. On those letters.

Admiral DALTON. Yes, sir.

Chairman LEVIN. Thank you.

Senator McCaskill.

Senator MCCASKILL. Before you wrote your legal opinion stating that all of these techniques—the techniques that we've referenced—all of 1, all of 2, and some of 3—were legal under the Federal law, you attended a meeting that's been discussed here, where there was a strategy meeting on counterresistance, Lieutenant Colonel Beaver, and there were a number of people at that meeting, including the CIA lawyer and the chief of interrogation control, Dave Becker. Do you remember that meeting?

Colonel BEAVER. These meetings were mine. I started them in, I think it was late August, when I became aware that the military intelligence personnel wanted—were considering requesting additional techniques, so I thought it best if I held the meetings, brainstorming sessions, for lack of a better way to describe it, and invited everyone, including the law enforcement agencies, that there would be a more open discussion, as opposed to just the military intelligence people. So, that was a regularly scheduled meeting that Mr. Fredman, who just happened to come down to the island that day, was there for. So, it wasn't held for him, it was a meeting that I had—I scheduled those meetings and invited everyone.

Senator MCCASKILL. Okay. So, the CIA lawyer was just invited in for that meeting that was already planned.

Colonel BEAVER. Yes.

Senator MCCASKILL. Okay.

Colonel BEAVER. That's how I recall it.

Senator MCCASKILL. Okay. I want to go through some of the notes about this meeting, and I know that you didn't write these notes. I just need to know whether you think that this recollection of what was said is flat wrong and just absolutely not true. It's important to know whether you deny that these things were said in front of you or that you said these things.

Colonel BEAVER. Okay.

Senator MCCASKILL. The first thing is attributed to you, "We need to curb the harsher operations when the Red Cross is around. It's better not to expose them to any controversial techniques. We must have support of the DOD." (Appendix A)

Colonel BEAVER. Mr. Pryor, I think when you were absent, asked a similar question, and what I can say is, I do not recall, of course, 6 years later, anything that I actually said in that meeting. What I do—because I, as a liaison to the ICRC, and I have great respect for what they do—what I believe that I think I would have said is that when you are conducting an interrogation, if the ICRC is on the island and they want to see a particular detainee, you can't disrupt the interrogation for that purpose. So that automatically, if you want to say, can cause some controversy. So, I——

Senator MCCASKILL. That's not what this says. This says you need to curb——

Colonel BEAVER. But, I didn't write it. All I can say is, ma'am——

Senator MCCASKILL. Okay.

Colonel BEAVER. —I don't know what actually happened or what was actually said. I'm just saying I don't think I would have said something in that manner, because I worked with the ICRC very closely, and we had an excellent relationship, and I have great respect for what they do. But, they came in 6-week cycles. They might be there for 6 weeks and then gone for 6 weeks. So, I don't know, all I can guess is, I might have been referring to—when they're not there, you would be doing your more aggressive interrogation, because then there wouldn't be any problems, and then, when they come back, if they wanted to see that particular detainee, they were allowed to see the detainee. They had access to all the detainees.

Senator MCCASKILL. Why would there be a problem of them ever seeing the detainee?

Colonel BEAVER. When you're conducting an interrogation, you can't disrupt it for just the purpose of an ICRC visit.

Senator MCCASKILL. Whether it's harsh or not?

Colonel BEAVER. Correct.

Senator MCCASKILL. Then why would you delineate "harsh" in your statement just now? Why would it make a difference whether it was harsh?

Colonel BEAVER. I'm just using it in context of this conversation. But, yes, there were many times when detainees were undergoing—like, they had just arrived on the island, and the ICRC was told they would not have access to them for 2 weeks while we processed them.

Senator MCCASKILL. All right.

Colonel BEAVER. So, there were many engagements like that, where we explained why they could or could not see a detainee.

Senator MCCASKILL. The notes—I want to make sure the record's clear who wrote these notes. These notes were written by the CITF of DOD.

Colonel BEAVER. That's correct, ma'am.

Senator MCCASKILL. Okay.

Colonel BEAVER. They're the executive agent of the Secretary of the Army.

Senator MCCASKILL. Okay. So, these are criminal investigators that are used to contemporaneously taking notes and making sure that they're reliable, because they must rely on them in a criminal investigation.

Colonel BEAVER. Again, all I'm saying is, I didn't write them, and, 6 years later, I cannot recall what I said in a meeting.

Senator MCCASKILL. Part of their professional training, in fact, is the ability to take notes contemporaneously with an event so they can recall, later, for purposes of the investigation, what happened. Is that correct?

Colonel BEAVER. I don't dispute that.

Senator MCCASKILL. Okay. Now, let me ask you about something else that was said there.

Mr. Fredman, the CIA attorney, said, "The DOJ has provided much guidance on this issue. The CIA is not held to the same rules as the military. 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 detainees merited no status under the Geneva Conventions. The CIA has employed aggressive techniques on less than a handful of suspects since September 11." (Appendix A)

Do you recall that—those words being said by the lawyer from the CIA, that there was a habit of moving these detainees if the ICRC started asking questions?

Colonel BEAVER. Again, I would say, I don't recall, with any kind of specificity, what was said at that meeting. I know how we handled these issues. In fact, Qahtani, which the law enforcement folks had custody of him at the brig before JTF–170 did, and the FBI and the CITF agents did not allow the ICRC to speak to him. He

was seen through the—the ICRC was allowed, if they wished, to go in and see him in the brig, that he was alive and well. That was in the July-August timeframe. So, this was one of the detainees, this particular gentleman, ISN–63, that had been of interest to the law enforcement community, as well as the intelligence community, and there had been many discussions. So, again, I can't attribute anything to what Mr. Fredman said about the CIA, but I knew that DOD had different rules regarding the ICRC and how we operated on a DOD installation.

Senator MCCASKILL. All right. Going further in the notes that were taken by law enforcement contemporaneous with this meeting, the chief interrogation control person, Mr. Becker, "Videotapes are subject to too much scrutiny in court. We don't want the law enforcement authority (LEA) people in aggressive sessions anyway."

Lieutenant Colonel Beaver, LEA's choice not to participate in these types of interrogations is more ethical and moral, as opposed to legal.

Then, this line from Mr. Fredman, "The videotaping of even totally legal techniques will look ugly."

Now, that phrase is particularly troubling to me, because inherent is that phrase that videotaping even the totally legal ones would look bad; for God's sakes, let's don't tape the ones that are illegal.

Colonel BEAVER. For people who have never participated in a police interrogation, I would just say that it would make anyone uncomfortable. So without a context, without understanding the situation, again, I'm not trying to be in Mr. Fredman's mind. I'm saying I understand, probably, what he is saying is, is that even when you have a legal police custodial interrogation, that people can be uncomfortable. I would just say, videotaping is not necessary unless your military intelligence people need it, for whatever purpose, because we had closed-circuit TVs where the people could watch the interrogations 24/7, and so, it wasn't necessary to videotape it unless there was an intelligence purpose. So, my only point is that even when again, if you've never witnessed a police interrogation for hours and hours when you're interviewing a suspect, it can be very uncomfortable. It's not pleasant.

Senator MCCASKILL. I will tell you, Lieutenant Colonel Beaver, I have witnessed——

Colonel BEAVER. I'm not saying you personally.

Colonel FRIEND. I must object to this line of questioning, ma'am, with all due respect, Senator.

Chairman LEVIN. Excuse me. Excuse me.

Colonel FRIEND. Mr. Chairman——

Chairman LEVIN. Excuse me.

Colonel FRIEND. Yes, sir.

Chairman LEVIN. Can you, first of all, identify yourself?

Colonel FRIEND. Yes, Mr. Chairman. I'm Lieutenant Colonel James Friend. I'm the defense counsel for Lieutenant Colonel Beaver.

My objection, sir, if I may.

Chairman LEVIN. Yes, I'll tell you what, can you consult with your client, there, and then either you or her speak into the microphone—one or the other? You need to speak into the microphone.

Colonel FRIEND. I would like to object to my client being asked about what someone else said, and the inference is it's attributed to her. I think that's an unfair——

Chairman LEVIN. All right. Let me just—your objection is noted. Okay. Senator?

Senator MCCASKILL. Yes, I was asking you, Lieutenant Colonel Beaver, if these things were said in front of you; in your capacity as the staff judge advocate, if this—if you recall—these were notes taken by CITF within DOD, contemporaneous with this meeting, attributing some statements to you and some statements to Mr. Fredman. I was asking, do you recall those statements being made. I was not saying—and I think I was very clear—that Mr. Fredman said this, not Lieutenant Colonel Beaver. Do you recall those statements being made in front of you in your capacity as the staff judge advocate at GTMO?

Colonel BEAVER. Ma'am, the meeting was for non-attribution purposes, so that people could speak their minds and that opinions not be held against someone in an adverse way. It was a brainstorming session. People spoke up and had different opinions. I don't recall what was said 6 years ago. But, the purpose of the session was to allow people to speak freely and address their concerns, whether it be the law enforcement community, the Intelligence Community, the lawyers, the military police, and so that we would get a genuine discussion of the issues. So, if you restrict what can be said, then you're going to have people doing things, perhaps, in darkness, and you won't know about it. So, I wanted people to have a good collegial discussion. As I recall, we had a good collegial discussion. But, I cannot recall precisely what was said by a particular person or whether law enforcement—and the law enforcement people were particularly hostile towards me, and were very unhappy with me that I was even having these conversations. But, I still thought it was best to do it in the light of day and include everyone than to just limit it to military intelligence personnel. But, I'm sorry, I really cannot recall with any certainty what was said 6 years ago.

Senator MCCASKILL. I think it's important that the law enforcement personnel were included in these meetings, and I'm sure they have witnessed, as I have, many, many, many interrogations. I'm sure that's why they thought it was important to take notes.

Let me close my questioning by reading into the record, Mr. Chairman, what one of those law enforcement task force—the Deputy Commander of the CITF said in an e-mail within a month of this meeting, in looking at the notes from the meeting: "This looks like the kind of stuff congressional hearings are made." Quotes from Lieutenant Colonel Beaver regarding things that are not being reported give the appearance of impropriety. Other comments, like 'It's basically subject to perception. If the detainee dies, you're doing it wrong,' and 'any of the techniques that lie in the harshest end of 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 pro-

priety. Talk of 'wet-towel treatment,' which results in the lymphatic 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 in the interrogators. Someone needs to be considering how history will look back at this." (Appendix A)

Colonel BEAVER. Mr. Chairman, I just—please, one comment—I invited the CITF, law enforcement, if they had concerns, to put them in writing and put them through to General Miller so that they could be considered. They did not. I also said that if they had any concerns about violations of the law, that was never—not a single FBI agent or CITF person ever, ever, ever, except on one occasion, where they said Dave Becker put tape on a detainee's mouth, ever came to me and said, "There's a violation of the law." They had policy arguments and ethical arguments, but they never came to me and said, "Right now there is something going on. I think it's a violation of the law." This has all been years later, through e-mails and hearsay. So, if they felt that way at the time, they could have given me the same courtesy that I gave them.

Senator MCCASKILL. I couldn't agree with you more.

Colonel BEAVER. It did not happen. They went to Mr. Mora. That's fine. I didn't know about that. But, at the time, I would have looked at anything seriously, and they knew that.

Senator MCCASKILL. I couldn't agree with you more, and that's why I called Mr. Mora a hero.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

If you could look at tab 11, Colonel Beaver, I think you'll find there a letter from the CITF giving an assessment of the JTF–170 counterresistance strategies.

Colonel BEAVER. It was never shared with me, Chairman.

Chairman LEVIN. But, they shared it in writing.

Colonel BEAVER. Not with——

Chairman LEVIN. You didn't mean to imply that they never put in writing their objections, did you?

Colonel BEAVER. In terms of meetings I had and discussions I had, they did not provide me anything in writing with specific interrogation techniques of that nature. I understood that they were discussing it with the Army Office of the General Counsel, and also, I didn't know Mr. Mora, but I knew higher headquarters, and I was told by an attorney at the Office of the Army General Counsel that their objections were policy-based, and not legal-based.

But, I never——

Chairman LEVIN. Let me read you this from that, if you could take a look at that exhibit. (Appendix A)

Colonel BEAVER. Sure.

Chairman LEVIN. "CITF personnel who are aware of the use or abuse of certain techniques may be exposed to liability under the UCMJ." Sounds legal to me. This is what they provided to the SECDEF. This is what they provided to Admiral Dalton. Admiral Dalton says she saw this. I mean, this is—this is the——

Colonel BEAVER. I never saw it.

Chairman LEVIN. I know you didn't see it. I'm not asking you if you saw it.

Colonel BEAVER. Right.

Chairman LEVIN. I'm saying that you didn't mean to imply, in your testimony, that they never set out their objections to what you were recommending, in writing. It's just that you say you never saw them. Is that correct?

Colonel BEAVER. We lived and worked together there, and I'm just saying they didn't afford me the same opportunity that I afforded them, which I gave them——

Chairman LEVIN. I'm just asking you a very direct question. You're not suggesting that they didn't put their strong——

Colonel BEAVER. I don't—sorry, sir.

No, I'm sorry.

Chairman LEVIN. You didn't mean to suggest that, did you?

You just didn't—weren't aware of it.

Colonel BEAVER. Until today, this is the first time I've seen this memo.

Chairman LEVIN. That's fine.

Colonel BEAVER. Thank you.

Chairman LEVIN. It's just that you were not brought into that loop. You had already sent your opinion on. The Joint Chiefs had asked for an opinion in Washington, "What do they think about your opinion?" They then asked the Services, what did they think? This is a response from one of the Services as to what——

Colonel BEAVER. Okay.

Chairman LEVIN. —they thought of your opinion.

Colonel BEAVER. This is after the discussions.

Chairman LEVIN. Whether they should——

Colonel BEAVER. —the discussions.

Chairman LEVIN. It's after what?

Colonel BEAVER. This—no, sorry. I'm sorry, sir.

Chairman LEVIN. It's after what?

Colonel BEAVER. I thought you were done. No, this is after discussions that we had on the island.

Chairman LEVIN. It's dated November 4, 2002, which is a month, to the day prior to the SECDEF signing his memo. Is that correct?

Colonel BEAVER. Yes.

Chairman LEVIN. All right.

Now, Colonel Beaver, after the SECDEF approved the techniques, on December 2, did you work with the senior staff at GTMO to develop the SOP at tab 16? If you could take a look at tab 16. (Appendix A)

Colonel BEAVER. No, I did not, sir. That was done by some of the folks at the interrogation cell. But, I had nothing to do with that.

Chairman LEVIN. Were you familiar with this document?

Colonel BEAVER. I recall seeing it when the staff showed it to me. I might have recalled seeing it at the time at GTMO, but I know that some of the personnel at GTMO, the intelligence side, in preparation, should the Secretary approve something, they were preparing an SOP so that they wouldn't be behind the timeline. But, that was not at the direction of General Miller or certainly myself.

Chairman LEVIN. Did you have communications with them about the SOPs to implement the Secretary's December 2, 2002, decision?

Colonel BEAVER. Right, I certainly told them that anything that they did, they needed to have a military doctrine, a SOP, so that it was clear to everybody concerned what the right and left limits

were, and what the chain of command was, who to report things to. So, yes, I'm aware of that.

Chairman LEVIN. All right. You never saw any of the drafts, though.

Colonel BEAVER. I can't say with certainty I saw this draft or not at the time. I've certainly seen it since.

Chairman LEVIN. Okay.

Colonel BEAVER. I know who Ted Moss is, but I——

Chairman LEVIN. Is it possible you saw this draft at the time?

Colonel BEAVER. I could have, sir.

Chairman LEVIN. All right. If you could read on page 80—I think it's page 2——

Colonel BEAVER. Okay.

Chairman LEVIN. —where it says, "The basis for this document is the standard operating"—it's about halfway down. Do you see that? "The basis for this document is the SOP used at the U.S. Navy SERE School in Brunswick, Maine, as defined by reference (a)." Do you see that reference?

Colonel BEAVER. On page 2?

Chairman LEVIN. The heading of the page is "JTF"—well, that's the first page.

Colonel BEAVER. Oh, oh, I'm sorry.

Chairman LEVIN. No, I said page 2, so I misled you.

Colonel BEAVER. Right, I see where you're referring to.

Chairman LEVIN. See where it says "JTF GTMO SERE"——

Colonel BEAVER. Right.

Chairman LEVIN. "SERE standard"——

Colonel BEAVER. Right.

Chairman LEVIN. —"operating procedure"?

Colonel BEAVER. I don't recall.

Chairman LEVIN. Then you see "JTF GTMO SERE interrogation"——

Colonel BEAVER. Yes.

Chairman LEVIN. SOP? Then you see "Guidelines for employing SERE," crossed out——

Colonel BEAVER. Right.

Chairman LEVIN. —"management techniques during detainee interrogations." It's that page I'm asking you to look at.

Colonel BEAVER. Right.

Chairman LEVIN. Then, if you would look at the "purpose," would you follow me? "This SOP document promulgates procedures to be followed by JTF GTMO personnel engaged in interrogation operations on detained persons."

Colonel BEAVER. Right.

Chairman LEVIN. "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 operations. The basis for this document is the SOP used at the U.S. Navy SERE School in Brunswick, ME, and is defined by reference (a)." Did you follow all that?

Colonel BEAVER. Yes, sir.

Chairman LEVIN. Is it possible you saw this when you were at GTMO?

Colonel BEAVER. I can't say. I know it certainly never left the intelligence sector, or—what were they called then? I think they were—it was the ICE.

Chairman LEVIN. Did you——

Colonel BEAVER. It's nothing that came to the attention of General Miller for approval. It was a beginning draft, as I recall, that Ted Moss took, on his own initiative, to start drafting. But, I don't think it ever received any serious consideration. But, that's my just basic recollection.

Chairman LEVIN. Did you participate in drafting at all?

Colonel BEAVER. No, sir, not this.

Chairman LEVIN. But, did you participate in any of the SOP drafts to implement that order of the SECDEF?

Colonel BEAVER. I gave them a—as part of the SOP, the legal brief, or the legal piece of it, the—I don't know what to call it. But, they had a list of things that were in there from my legal briefing in their SOP.

Chairman LEVIN. All right, and you gave your approval of that.

Colonel BEAVER. It's not this SOP.

Chairman LEVIN. In other SOPs, did you give your——

Colonel BEAVER. It was a different SOP, as I recall, that actually listed the actual procedures that were approved, and all of the nuts and bolts that go into preparing an interrogation plan, who has to approve it, at what level.

Chairman LEVIN. Right.

Colonel BEAVER. —and all the way up to General Miller. So that's the SOP, I think, that I recall.

Chairman LEVIN. Were the SERE techniques in that particular document that you saw?

Colonel BEAVER. No.

Chairman LEVIN. Were they based on the SERE techniques?

Colonel BEAVER. It was based on the SECDEF's memo.

Chairman LEVIN. Which incorporated category 2—certain——

Colonel BEAVER. But——

Chairman LEVIN. —category 3—is that right?

Colonel BEAVER. It wasn't——

Chairman LEVIN. Were they specified in the SOP?

Colonel BEAVER. Right, but it wasn't specified as SERE; it was specified as, "This is what's authorized." The SECDEF's memo.

Chairman LEVIN. All right.

Colonel BEAVER. Then, here's who has to approve what, as I recall.

Chairman LEVIN. Gotcha.

Finally, Admiral Dalton, have you ever, before this event, been told to stop analyzing a request or issue that came up for your review?

Admiral DALTON. Senator, there was a previous occasion where I was directed that I could not attend interagency meetings and participate in an interagency discussion of the issues. But, again, like this time, I was——

Chairman LEVIN. Let me just ask my question again. Had you ever before been told to stop analyzing a request that came up for your review?

Admiral DALTON. Senator, no.

Chairman LEVIN. Do you know whether the Joint Staff has ever been asked to stop analyzing a request that came up for their review?

Admiral DALTON. I don't know, sir.

Chairman LEVIN. You don't know that—or, you don't know whether——

Admiral DALTON. I don't know whether that has occurred.

Chairman LEVIN. All right.

Now—do you have any more questions of this panel? All right. There's a vote on. The panel is excused. Thank you, all.

No, I want to ask you, Mr. Mora—I'm sorry. There are two questions I must ask you.

First of all, you heard my description in my opening statement of your activities which came in January, I believe, after the SECDEF entered his order, and your efforts to get that rescinded were recounted in my opening statement.

Mr. MORA. Yes, Senator, I heard that.

Chairman LEVIN. Was that accurate?

Mr. MORA. That's accurate.

Chairman LEVIN. Thank you.

Now, when the Secretary approved, on December 2, the recommendation for aggressive interrogation techniques for GTMO, he was handed a handwritten note which said, "Why is standing limited to 4 hours? I stand for 8 to 10 hours a day." What impact might that note have on military personnel who read it?

Mr. MORA. Senator, when I first saw that note, I was shocked that any such note would appear on this kind of document, and I was reacting as a litigator to seeing a client's comment of this nature on a document. I felt, at the time, that, even though it may have been intended jocularly, and Secretary Rumsfeld has that style, in this kind of document such a handwritten notation might be interpreted as a wink and a nod to go beyond the limits of the document.

Chairman LEVIN. You said, in your opening statement, that, "Allied nations have hesitated to participate in combat operations, given the possibility that individuals captured during the operation could be abused by U.S. or other forces." Now, if our allies aren't willing to support combat operations, that would put more U.S. forces in harm's way. Would that be true?

Mr. MORA. That's correct.

Chairman LEVIN. Is that something where you have specific examples, or was that your fear?

Mr. MORA. Senator, I have one specific example that was relayed to me, but I would prefer to discuss that in a closed session rather than an open hearing.

Chairman LEVIN. You had an opinion of the so-called "Yoo memo," which had been commissioned by Mr. Haynes. How would you say that—you had meetings with Mr. Yoo, I believe, about that memo. How would you describe his defense of his memo?

Mr. MORA. I only had one meeting with Mr. Yoo, Senator, and I thought the memo was a travesty of the applicable law, and a very dangerous memo, because it led the DOD into what we see here and what the working group ultimately would issue.

Chairman LEVIN. You were not told about the working group's final product, you were left out, according to my opening statement, which you said was accurate. How did the Yoo memo influence that final working group report?

Mr. MORA. The Yoo memo essentially created the contours and content for the working group report. So, it was dispositive of all the legal issues that were addressed within the Yoo memo.

Chairman LEVIN. Senator Graham.

Senator GRAHAM. Looking forward, Mr. Mora, I think we now understand why we needed to bring some certainty to this whole area, because, like you say, it's very hard to interpret this, these policies and procedures. They do migrate, they do get people confused. People get overzealous sometimes, they don't know what the boundaries are. Do you think it's a good thing that we passed the DTA, the McCain language, outlawing cruel, inhumane, and degrading treatment? That was necessary, given the history of all this?

Mr. MORA. Absolutely necessary, Senator.

Senator GRAHAM. Okay, thank you.

Chairman LEVIN. Thank you all very much. You're all excused.

We will be back after this vote. Let's say—is it 2:40 now? We'll begin at 3 o'clock. The next panel will be at 3 o'clock.

[Whereupon, at 2:40 p.m., the committee adjourned.]

TO CONTINUE TO RECEIVE TESTIMONY ON THE ORIGINS OF AGGRESSIVE INTERROGATION TECHNIQUES: PART I OF THE COMMITTEE'S INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY (P.M. SESSION)

TUESDAY, JUNE 17, 2008

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 3:09 p.m. in room SD–106, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Lieberman, Reed, Akaka, Bill Nelson, E. Benjamin Nelson, Pryor, Webb, McCaskill, Warner, Inhofe, Sessions, Collins, Chambliss, Graham, Dole, Cornyn, Thune, and Martinez.

Committee staff members present: Richard D. DeBobes, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Joseph M. Bryan, professional staff member; Ilona R. Cohen, counsel; Mark R. Jacobson, professional staff member; Gerald J. Leeling, counsel; Peter K. Levine, general counsel; William G.P. Monahan, counsel; and Michael J. Noblet, professional staff member.

Minority staff members present: Michael V. Kostiw, Republican staff director; William M. Caniano, professional staff member; David G. Collins, research assistant; David M. Morriss, minority counsel; and Dana W. White, professional staff member.

Staff assistants present: Kevin A. Cronin, Jessica L. Kingston, Ali Z. Pasha, Benjamin L. Rubin, Brian F. Sebold, and Breon N. Wells.

Committee members' assistants present: Jay Maroney, assistant to Senator Kennedy; James Tuite, assistant to Senator Byrd; Frederick M. Downey, assistant to Senator Lieberman; Elizabeth King, assistant to Senator Reed; Bonni Berge and Darcie Tokioka, assistants to Senator Akaka; Christopher Caple, assistant to Senator Bill Nelson; Andrew R. Vanlandingham, assistant to Senator Ben Nelson; Jon Davey, assistant to Senator Bayh; M. Bradford Foley, assistant to Senator Pryor; Gordon I. Peterson, assistant to Senator Webb; Peg Gustafson, assistant to Senator McCaskill; Sandra Luff, assistant to Senator Warner; Anthony J. Lazarski and Nathan Reese, assistants to Senator Inhofe; Mark J. Winter, assistant to

Senator Collins; Clyde A. Taylor IV, assistant to Senator Chambliss; Jennifer Olson, assistant to Senator Graham; Lindsey Neas, assistant to Senator Dole; David Hanke, assistant to Senator Cornyn; Jason Van Beek, assistant to Senator Thune; and Erskine W. Wells III, assistant to Senator Wicker.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. The committee will come back into session.

Our third and final panel is Jim Haynes, who is the former general counsel of the Department of Defense (DOD).

We welcome you, Mr. Haynes. If you have an opening statement, we'd be happy to hear from you now.

STATEMENT OF WILLIAM J. HAYNES II, FORMER GENERAL COUNSEL, DEPARTMENT OF DEFENSE

Mr. HAYNES. Thank you, Mr. Chairman.

I don't have a formal opening statement, except to observe that this hearing today is part of a process that's been going on for some time now and will continue for many years to come, I'm sure. How our country deals with this unprecedented threat is the subject of discussion among Members of Congress, the executive and the judiciary, the media, and many politically active citizens. This is as it should be.

Ultimately, however, the end of these discussions can only come with history's larger judgment of how well our leaders in the various branches of government performed in work—in the work of protecting Americans after an attack, and, of course, how well the country remains equipped to deal with this threat in the future.

So, I just want to say, I think this hearing today can serve a larger purpose and a most useful purpose. We all rightly fear another assault on our country, one perhaps even more horrific than the last. We know that America's enemies, while thwarted, are unrelenting. Indeed, some of those who have been released from Guantanamo (GTMO) have already shown their recidivism, committing acts of terrorism that have left innocent people maimed or killed.

So, along with members of this committee and many other Americans, I look forward, in the years ahead, to watching our Nation's leaders advance the cause of America's security and freedom.

Finally, Mr. Chairman, I'd like to acknowledge my appreciation of all the members of the previous two panels for their service, their good faith, their hard work in trying to deal with a very difficult issue.

I'm ready for your questions.

Chairman LEVIN. Thank you very much, Mr. Haynes.

In July 2002, your deputy general counsel, Mr. Shiffrin, contacted the Joint Personnel Recovery Agency (JPRA), and asked for information about survival, evasion, resistance, and escape (SERE) techniques. Did you ask Mr. Shiffrin to obtain information on SERE techniques?

Mr. HAYNES. Mr. Chairman, the summer of 2002 was 6 years ago, and my memory is not perfect. My memory is not perfect even in more recent times, but 6 years ago is surely the case.

What I remember in the summer of 2002 is a government-wide concern about the possibility of another terrorist attack as the anniversary of September 11 approached. I also remember a widespread belief that the people that the United States had captured in the war on terror were not producing as much information as we believed they had. Similarly, there was widespread frustration that the existing doctrine was inadequate and that the country's capabilities were inadequate to the task. So, as the chief legal officer of DOD, I was interested in that and concerned about it.

I remember inquiring generally about where the sources of information and expertise in the government might be, as a senior leader of DOD and a potential advisor on different matters. Richard Shiffrin would have been the person I would have asked for that kind of information.

Chairman LEVIN. Okay. Do you remember asking Mr. Shiffrin to obtain information specifically on SERE techniques?

Mr. HAYNES. I don't remember that, specifically. What I do remember is what I've said, asking generally about that, and I do also remember, sometime in the late summer—and this is a recollection somewhat refreshed from a recent review of some documents—that I did get some information from the JPRA.

Chairman LEVIN. But, you don't remember requesting it.

Mr. HAYNES. I don't remember requesting, but I do remember being interested in it, and I would have requested it through Richard.

Chairman LEVIN. If you requested it.

Mr. HAYNES. Yes, sir.

Chairman LEVIN. But, again, just to be very precise, you don't remember requesting information on SERE techniques.

Mr. HAYNES. I don't remember that, specifically, sir.

Chairman LEVIN. All right. Now, you met regularly with a small group of senior administration lawyers, including Mr. Gonzales, the President's counsel, Mr. Addington, the Vice President's counsel, Mr. Rizzo, the acting CIA general counsel, and the Department of Justice (DOJ) Office of Legal Counsel (OLC) attorneys, Mr. Yoo and Patrick Philbin, to discuss legal matters relating to the war. Did this request to Mr. Shiffrin for the information that you've described you did request, did that come from that group? Was it a result of discussions with that group?

Mr. HAYNES. Senator, again, 6 years ago is a long time. I had probably 10 meetings a day during the course of my time as general counsel. I met with many people, many groups. I met with subsets of that group, I met with larger sets of lawyers. There were interagency meetings of all types throughout my tenure as general counsel. So, to key into one particular meeting with a particular group of people with a specific request is very difficult for me to do.

Chairman LEVIN. I wasn't asking you for that. Do you remember whether your request to Mr. Shiffrin was the result of discussions with that group?

Mr. HAYNES. No, sir, I don't.

Chairman LEVIN. Now, tab 2 (see Annex A), if you'll take a look at it, is a July 26, 2002, memo from Lieutenant Colonel Baumgartner to your office, and it relates to a JPRA memorandum

dated July 25 and about SERE training programs. Do you remember seeing——

Mr. HAYNES. Sir, I'm sorry to interrupt—this says December—or, July 26.

Chairman LEVIN. All right. Did I miss—did I say July 25?

Mr. HAYNES. I thought you did.

Chairman LEVIN. The reference was to a July 25 JPRA memorandum. You see that? Where it says "reference"?

Mr. HAYNES. Oh, yes——

Chairman LEVIN. Third line down.

Mr. HAYNES.—I do, yes.

Chairman LEVIN. Do you remember seeing this memo at the time?

Mr. HAYNES. No, sir, I don't remember it at the time, but I've seen it before; and I've seen it a long time ago, not just recently.

Chairman LEVIN. All right, but you don't remember seeing that at the time it was sent.

Mr. HAYNES. No, sir, I don't.

Chairman LEVIN. Is it possible you did see it then?

Mr. HAYNES. It's possible I did see it. The addressee is the Office of the Secretary of Defense General Counsel, which is not my precise title, or was not my precise title, but if it was so addressed, I would have seen it, probably.

Chairman LEVIN. Now, tab 3 (see Annex A) is an attachment to the July 26 memo, if you could take a look at that. It's a list of physical and psychological pressures used in SERE training, including stress positions, walling, degradation, sensory deprivation, exposure to bright flashing lights, sleep disruption, and water boarding. Did you see this document at the time?

Mr. HAYNES. Was this an attachment to the other one, sir?

Chairman LEVIN. Yes.

Mr. HAYNES. If I had seen the other one, if it was attached, I would have seen it.

Chairman LEVIN. But, do you remember specifically whether you saw this attachment at the time?

Mr. HAYNES. I don't remember specifically when I saw this.

Chairman LEVIN. All right. Now, there's another attachment to Lieutenant Colonel Baumgartner's July 26 memo.

Mr. HAYNES. Is that number 4?

Chairman LEVIN. Tab 4 (see Annex A), on the long-term effects of resistance training on SERE school students, and it was written by Dr. Ogrisseg, who was a witness on our first panel, as you heard, and it includes a psychological assessment of the techniques used at the Air Force SERE School and one technique used at the Navy SERE School—water boarding. Did you ask Mr. Shiffrin to obtain information on the psychological effects of SERE resistance training?

Mr. HAYNES. I may have.

Chairman LEVIN. Did you see Dr. Ogrisseg's memo at the time?

Mr. HAYNES. We're now—this is an attachment to the other——

Chairman LEVIN. Yes.

Mr. HAYNES.—one, you said? If I had seen the first one and it was attached, I——

Chairman LEVIN. But, do you remember specifically whether you saw this memo at the time, this attachment?

Mr. HAYNES. I don't specifically remember when I saw this.

Chairman LEVIN. All right. Now, do you remember receiving this—what would you have done with this information when you got it? Do you remember doing something with this information?

Mr. HAYNES. I don't remember doing something with this information. What I remember, Senator—and I'm sorry about——

Chairman LEVIN. It's all right. If you don't remember, that's okay.

Mr. HAYNES. My recollection—what I recall was the environment that I described earlier.

Chairman LEVIN. I understand.

Mr. HAYNES. I've forgotten what prompted my interest, other than the general concerns; there may have been some other catalyst. I can't be more specific.

Chairman LEVIN. Did you ever discuss SERE techniques with Messrs. Gonzales, Addington, Rizzo, Yoo, or any other senior lawyers with whom you met regularly?

Mr. HAYNES. I believe I did discuss SERE techniques with other people in the administration.

Chairman LEVIN. Prior to the December 2 memo signed by the Secretary of Defense (SECDEF)?

Mr. HAYNES. Yes.

Chairman LEVIN. Would that have happened on more than one occasion?

Mr. HAYNES. I can't remember.

Chairman LEVIN. What was the gist of those conversations?

Mr. HAYNES. I think that—first off, my memory is not great, but if I were to discuss anything further, I think I would have to talk about classified information.

Chairman LEVIN. But, would you remember it better if this were a classified setting?

Mr. HAYNES. I wouldn't be able to discuss it.

Chairman LEVIN. I understand that, but you say your memory's not great, and then you say you want to talk in classified setting.

Mr. HAYNES. No, sir. I don't know what the transcript might say, but what I'm trying to respond to is, did I ever discuss SERE techniques with others in the administration? The answer is yes. Maybe that's the answer to your question.

Chairman LEVIN. No, you answered that clearly. The other one was, what was the gist of those conversations?

Mr. HAYNES. I could not tell you the gist of those conversations without going into classified information.

Chairman LEVIN. But, you do remember them.

Mr. HAYNES. I don't remember them any more clearly than what I've just said, that I have seen information of this nature before. I don't know precisely when, and I cannot discuss it further without getting into classified information.

Chairman LEVIN. You say you don't remember it any more clearly than what you've said. Therefore, going into classified session isn't going to give us any more information than what you've said, which is, you had conversations, but your memory is bad. That's all you've said.

Mr. HAYNES. Correct.

Chairman LEVIN. That's all you remember.

Mr. HAYNES. Correct.

Chairman LEVIN. I don't know what going into classified session would add to it then.

Mr. HAYNES. Okay.

Chairman LEVIN. Senator Graham?

Senator GRAHAM. Thank you, Mr. Haynes. I appreciate 6 years ago is a very long time. Try to put this in context of this puzzle, so to speak, at least from my point of view. The goal was to get better information from people at GTMO. That was the desire of this whole project. We were afraid we were going to be attacked again. We weren't getting the information we hoped to obtain, so we were going to try to come up with a new program to get better information. That was sort of the task at hand?

Mr. HAYNES. I think the goal was broader than—the goal was not GTMO.

Senator GRAHAM. Okay. The goal was to get better information.

Mr. HAYNES. The goal was to understand what capabilities the country had to elicit information from terrorists who had attacked, and might attack, the country.

Senator GRAHAM. Now, I totally understand that. I'm not saying that's a bad goal. I just want to know—there's a reason for everything. The reason this project and all this talk about interrogation techniques and what we can and can't do was a result of trying to get better information from high-value targets.

Mr. HAYNES. That would be an objective of people who were involved in interrogation, yes, sir.

Senator GRAHAM. Okay. So, you and others were tasked with the job of trying to come up with new programs, that were not on the books at that time, that would allow you to get better information. Is that not what started all this?

Mr. HAYNES. No, sir, I wasn't tasked with such a project. I was the senior lawyer in DOD, and one of the missions that our department had was the detention and questioning of terrorists captured in the war on terror.

Senator GRAHAM. Right.

Mr. HAYNES. As the senior lawyer, I had to be—or felt I needed to be—aware of what my client was up to. I was also a senior member of the administration involved in interagency activities.

Senator GRAHAM. Right. There's nothing wrong with doing this. I'm not trying to say anybody did anything wrong. It makes perfect sense that we're going to try—if we don't have adequate information, then let's look for a way to get better information. The Bybee memo—are you familiar with the Bybee memo, the legal analysis about the Convention Against Torture (CAT) and other statutes and treaties?

Mr. HAYNES. I believe I am, yes, sir. I think that there have been a lot of labels and names associated with——

Senator GRAHAM. Yes.

Mr. HAYNES.—a memo that I understand to be in August of——

Senator GRAHAM. Were you aware that it was the opinion of the DOJ OLC that unless there was major organ failure involved, it would not be a violation of CAT?

Mr. HAYNES. Yes, sir.

Senator GRAHAM. Okay. So, there is a line of legal reasoning that you're aware of that was pretty aggressive when it came to existing laws, in terms of—I would argue that something short of major organ failure not being torture is a pretty aggressive point of view.

Now, were you aware of that before Secretary Rumsfeld approved the interrogation techniques?

Mr. HAYNES. I don't know when I became aware of that, Senator.

Senator GRAHAM. Okay, fair enough. Now, these interrogation——

Mr. HAYNES. I don't remember that.

Senator GRAHAM. I understand. These interrogation techniques that Secretary Rumsfeld initially signed off on, the three categories—I think that there were 35, is that correct?

Mr. HAYNES. No, sir, I think there's a lot of confusion out there, and perhaps in this room. When you talk about 35 techniques, what I think about is a product of the working group, which operated from January 2003 until sometime in the end of March 2003. When you talk about what Secretary Rumsfeld approved for the interrogation of Mohammad al Qahtani, the 20th hijacker, you're talking about a decision in November 2002. There were not 35 techniques, that I know of, associated with that analysis in 2002.

Senator GRAHAM. No, I understand. That's a good point. The interrogation of the 20th hijacker, al Qahtani, if I have his name right, Qahtani. We know who we're talking about.

Mr. HAYNES. I think it's al Qahtani.

Senator GRAHAM. Okay.

Mr. HAYNES. Yes, sir.

Senator GRAHAM. That involved the use of dogs and having him stripped naked in front of female personnel. Was that correct? That's what this report found?

Mr. HAYNES. Which report are you referring to?

Senator GRAHAM. The Schmidt-Furlow report.

Mr. HAYNES. Okay. Senator, let me try to untangle that, because I think there's some conflation there.

I sat through the earlier testimony of the earlier panels, and, frankly, was enlightened from some things I don't think I ever knew and some things that I had forgotten. But, the immediate previous panel went into great detail about what was approved by SECDEF in December 2002 for use with al Qahtani, the 20th hijacker. Two of the items in category 2, as I recall—and I don't know if those documents are in here that I can look at or not; if it's important, you can point them to me—involved clothing and use of phobias.

Senator GRAHAM. Right.

Mr. HAYNES. Admiral Dalton and Colonel Beaver testified at great length before this panel about what was approved by the SECDEF and what was not approved by the SECDEF. I think they were very clear that the very widely-held understanding among people who were knowledgeable about what was approved in each of those two categories is not as you've described it. The use of dogs was not intended to be, or authorized to be, dogs in an interrogation room with the detainee; it was to be muzzled dogs walking perimeter.

Senator GRAHAM. Okay. The report found that it was a muzzled dog in a room.

Mr. HAYNES. Let me get to that in a minute. The other thing that was authorized and widely understood by people knowledgeable about the decision was that "removal of clothing" was not nudity.

Senator GRAHAM. Okay.

Mr. HAYNES. So, that's what was approved. Now, let me——

Senator GRAHAM. I have—okay.

Mr. HAYNES. Sir, but I haven't responded to your question.

Senator GRAHAM. Right.

Mr. HAYNES. You then jumped to say that it involved use of dogs in a room and naked people.

Senator GRAHAM. Right.

Mr. HAYNES. What I think you're referring to—and I have looked at it since this exchange that you had—was an investigation by a Lieutenant General Schmidt——

Senator GRAHAM. Right.

Mr. HAYNES.—in conjunction with a General or Admiral Furlow, years after the fact——

Senator GRAHAM. Right.

Mr. HAYNES.—looking into some belatedly disclosed e-mails that came to light at the headquarters level, 2 years after the fact. General Schmidt investigated some 24,000 interrogations conducted between early 2002 and early 2005, when he issued his report, and identified less than a handful of problematic interrogations, two of which you've identified.

Senator GRAHAM. Right.

Mr. HAYNES. One was when somebody walked into a room with a dog.

Senator GRAHAM. Right.

Mr. HAYNES. I have the pages here of his report.

Senator GRAHAM. Your testimony is that they were never authorized. If it happened, it was unauthorized.

Mr. HAYNES. That is. But, I'd just refer you to pages 15 and 19 of that report.

Senator GRAHAM. Right. But, that's my point. You agree that if it did happen, it was never authorized by you or Secretary Rumsfeld in the fashion described.

Mr. HAYNES. Yes, sir.

Senator GRAHAM. Okay, fair enough. Now, these techniques that we're talking about, that were approved in December and later modified, mirror the SERE program in an uncanny way.

Mr. HAYNES. I can't speak to that, Senator.

Senator GRAHAM. Where did they come from? Somebody somewhere had to sit down and make a list of—these are the three categories, these are the things that you can use in different combinations. Somebody somewhere had to sit down and write this stuff down. Who was that somebody, and where did they get this information from?

Mr. HAYNES. I think the last panel spoke to that, and I would just refer you to the people who were involved closer to GTMO than I was.

I'd also say, unless—I don't know if you can point me to something else, I've not seen any other documents or any other categorization of interrogation techniques like that which came up from GTMO—1, 2, and 3—with those particular groupings. There are a couple—as I recall, of itemizations in that list that fall in some categories, like the Army Field Manual.

Senator GRAHAM. Who made up the list? Who made up the list?

Mr. HAYNES. I don't have firsthand knowledge of who made up the list, but Colonel Beaver testified as to how it came about.

Senator GRAHAM. Okay.

Mr. HAYNES. I think there's also, if I may, Senator, some documentation that DOD has provided to the committee that—I can refer you to the Bates stamp—that talked about how they came up with their list. The Bates stamp numbers are 008771 and 008779.

Senator GRAHAM. Yes, right. I know my time's up, but this list that somebody came up with, your client approved, right? Secretary Rumsfeld.

Mr. HAYNES. Secretary Rumsfeld approved a subset of the list that was proposed by GTMO and by General Hill.

Senator GRAHAM. Okay, and you had knowledge of that list.

Mr. HAYNES. Oh, yes, sir.

Senator GRAHAM. Okay, thank you.

Chairman LEVIN. Thank you.

Senator McCaskill.

Senator MCCASKILL. You have just said, Mr. Haynes, that you were the senior lawyer for DOD, correct?

Mr. HAYNES. Yes, ma'am, that's correct.

Senator MCCASKILL. So you had a lot of lawyers under you?

Mr. HAYNES. I'll put it this way, there are over 10,000 lawyers in DOD.

Senator MCCASKILL. A year and a half ago, that would have shocked me. It doesn't surprise me today. I'm not sure that's a good thing.

You have 10,000 lawyers there, and you had received information about this request for more aggressive interrogation techniques. You had received legal input about this prior to you presenting this document for approval by Secretary Rumsfeld, correct? You had received the information from the various lawyers in the Services and other lawyers, Criminal Investigation Task Force (CITF). You had received information from a number of lawyers that were asking questions about these techniques, legal questions about these techniques.

Mr. HAYNES. Let me try to make sure I understand your question. This is, again, 6 years ago, so my memory is not perfect, but I do not recall seeing the memoranda that I think were referenced in the earlier panel's testimony. That's not to say I wasn't aware that there was a lot of anxiety about how DOD would question terrorists. That concern was present from the moment the war began, and it remains a very interesting and difficult issue. It tends to be fueled by two different approaches. It tends to be fueled, on the one hand, by law enforcement-minded people, people of good faith, intelligent, with great intentions, who come at a problem with a law-enforcement mind; and, from the other perspective, people interested in the collection of intelligence during the conduct of warfare,

who are less concerned about preserving a record for ultimate criminal trial.

Senator MCCASKILL. Okay, let me go down that path. I don't mean to interrupt you, but I don't have a lot of time, and I have to go preside, so I apologize if I appear to be rude.

You have said that you relied on the legal analysis of Lieutenant Colonel Beaver. Is that correct?

Mr. HAYNES. I read her opinion, and I made my own decision, based on my own analysis, which would have included considering her memorandum.

Senator MCCASKILL. Did you have a legal analysis that you performed? Do you have any legal memorandum that you prepared that would have augmented her legal opinion?

Mr. HAYNES. My decision and advice is reflected in the memo that you have, which is a one-page memorandum.

Senator MCCASKILL. The one-page memorandum that does not cite any legal precedent whatsoever.

Mr. HAYNES. That's correct.

Senator MCCASKILL. In fact, it doesn't even talk about legal precedent or Geneva or Constitution or the laws against cruel and unusual punishment.

Mr. HAYNES. That's correct.

Senator MCCASKILL. Is there any legal document that you relied on that you can refer to today, other than the memo written by Lieutenant Colonel Beaver?

Mr. HAYNES. There was the package that came up with it. But, let me——

Senator MCCASKILL. Wait, wait, wait. There was no legal opinion in that package, other than her legal opinion. Was there any other legal opinion you relied on? Of those 10,000 lawyers in DOD, was there any legal opinion, written legal opinion, written analysis that lawyers do, based on law and precedent, that you relied on, other than Lieutenant Colonel Beaver's legal opinion?

Mr. HAYNES. I'd like to respond to your question——

Senator MCCASKILL. Okay.

Mr. HAYNES.—Senator. Because it's important that you understand how DOD works.

DOD has 2.5 million employees, $700+ billion budget, worldwide operations, and I was the chief legal officer of DOD. When I would put my initials on a document that was passing on its way to the SECDEF, that was an indication that I had reviewed it and I found it legally sufficient. I didn't have time, and it wasn't my practice—in fact, that memorandum that you have is one of the longer reflections of something that I would have done personally. I typed that memo myself.

Senator MCCASKILL. Okay.

Mr. HAYNES. So, if I may, Senator, the package is important, because it reflects not only where it comes from, who's empowered if it's approved to do what's in there, but also an understanding of the pattern and practice and standard operating procedures (SOPs) and judgment employed by the people who are proposing it and sent it down. Because the Secretary has even less time than the general counsel does. Same thing with the Chairman of the Joint Chiefs of Staff (JCS). The Chairman doesn't write long memoranda;

he initials things. So, the fact that there's not a detailed legal memorandum associated with that was not unusual.

Senator MCCASKILL. I'm not saying it was unusual, sir. I am just trying to get to the bottom of whether or not the legal analysis that you were supposed to be performing as your job, whether you relied—we have a lot of lawyers that were experts in military law, that have been saying, "Red light, red light, problem, problem." The only analysis I can find in all of the material I've reviewed, and I've reviewed a lot of it, that really legally try to lay down a premise supporting this was, in fact, Lieutenant Colonel Beaver's analysis. I am trying to get you to acknowledge that that is, in fact, what you used.

Mr. HAYNES. There was that. There was also the endorsement by General Dunlavey, the Commander of Joint Task Force (JTF) 180, I think—or 170—at the time, who expressed his opinion. He didn't write his opinion as a——

Senator MCCASKILL. I think he referred to her opinion, didn't he?

Mr. HAYNES. You can look at it. I don't have it in front of me.

Senator MCCASKILL. I think he did. I think what he said in his is——

Mr. HAYNES. May I——

Senator MCCASKILL.—"I'm relying on Lieutenant Colonel Beaver's opinion."

Mr. HAYNES. May I finish?

Senator MCCASKILL. Yes, you may.

Mr. HAYNES. I think he also said, "I believe these are legal." General Hill, who was the next layer of command, made a similar assertion. He made the assertion, as I recall—and I don't know if it's in these documents or not—that he believed all of category 1 and category 2 were legal, and he had some questions about category 3. So, those three layers coming up, together with my understanding of the package, my discussions with my staff and Captain Dalton and her staff, to the extent that there was one—there was a very close working relationship between our two offices—led me to make the conclusion that I did.

Senator MCCASKILL. Okay. I don't believe——

Mr. HAYNES.—and it's my decision.

Senator MCCASKILL.—General Hill was a lawyer. Is he?

Mr. HAYNES. No, he's not.

Senator MCCASKILL. I don't believe Major Dunlavey was a lawyer. Is he?

Mr. HAYNES. He's a judge.

Senator MCCASKILL. He's a judge. Okay.

Mr. HAYNES. General Hill has a lawyer. Now, I also heard the earlier—or had a lawyer. He was the combatant commander; he had a legal staff—a staff judge advocate (SJA) with a legal staff, and he wrote the memorandum, as is reflected in your files, and you can read it. But, I heard the exchange on the earlier panel about——

Senator MCCASKILL. Immunity in advance?

Mr. HAYNES. No, Lieutenant Colonel Beaver's difficulties with the SJA at the next-higher level, which was news to me.

Senator MCCASKILL. Okay. A minute ago, you talked about the two approaches, and you said there's the people from law enforce-

ment, and then there's the people that are in a time of war and they're trying to get intelligence. The idea of getting intelligence is getting reliable information. It appears to me that the most experienced people in our country at getting reliable information from people who are wanting to harm other people are, in fact, law enforcement. That's what they do.

They understand interrogation techniques much better, and that's what their profession embraces, is interrogation techniques. I can assure you that there are many instances of tough, tough interrogation techniques within the framework of criminal interrogations within the constitutional framework of our country, but, nonetheless, we have to get really solid, good information in order to keep people from dying, in order to keep people from being hurt, on a constant, ongoing basis. I'm trying to figure out why there should be two sets of laws associated with that—if the goal is to get good information, why there would be two different sets of rules.

Mr. HAYNES. That's a very interesting proposition with a lot of pieces, and let me try to address that.

First, let me tell you that I have only the highest regard for the law enforcement community. I agree with you that they're skilled, professional, well-intentioned people, who do great work in a particular environment. By the way, there were lots of law enforcement people at GTMO who were equally frustrated, including the Federal Bureau of Investigation (FBI). So, I don't mean, for a minute, in trying to describe the environment that the country faced at the time—and still faces, frankly—as favoring one over another; I'm just describing the existence of a set of conflicting philosophical approaches that are fueled by very different purposes.

The law enforcement community, to be sure, as you say, is there to protect us. It's there to enforce the laws and to protect us, and, ultimately, to develop a record to prosecute and punish wrongdoers. Because of our constitutional system and our fantastic system of criminal justice in our country, we have a very generous set of procedural underpinnings that the law enforcement community has to be mindful of in the way it interrogates people.

Senator MCCASKILL. I'm not talking about that, sir. I'm talking about what works. I'm talking about what's effective. I'm talking about how you get good information. What has been talked about over and over and over again in the Senate, in this room, in other rooms like this throughout this Capitol, it's not just a matter of legal analysis, it's also what works.

Mr. HAYNES. Oh, I agree.

Senator MCCASKILL. People will tell you what you want to hear. If you're torturing them, they'll tell you what you want to hear.

It's not an effective way to get good information, and law enforcement knows that. Frankly, I wish I didn't have to go preside, but I know my time is up, Mr. Chairman.

Mr. HAYNES. But, Senator, I need to respond to that, because nobody has advocated torture, period. I don't advocate torture. I don't question your appreciation that effective interrogation is what we're after. I agree with that. I'm not an interrogator. I'm not an intelligence officer. I'm not an FBI person. I'm a lawyer. My job in this exercise that we're probably going to get into at this point is

to talk about, what does the law permit, and what does the law prohibit? It's important to understand those two conflicting approaches from the experts, of which I am not. In appreciating how I can respond to your question, did I know that there were people who had problems with the approaches? Absolutely, and I believe, and I believed at the time, that it sprang from those things, because I saw it repeatedly, and I see it now.

The effectiveness of interrogation approaches is something that we all want. But, in my experience as an observer, a reluctant observer over the last 6 years, as general counsel in doing some of these kinds of things that I had no idea I was going to get into when I took the job, is that it is case-by-case, person-by-person, situation-by-situation, and type-of-information by type-of-information, as to what is the best and what is the most appropriate approach.

Chairman LEVIN. Thank you, Senator McCaskill.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Mr. Haynes, how are you? I appreciate your being here today.

We can all remember, right after September 11, everyone was expecting something else to happen, and I think we have documentation now that there were a lot of plans out there that we successfully were able to stop, to thwart, in one way or another—the Fort Dix plot, the JFK Airport plot, the liquid explosives plot. The media had quite a few things for the Washington Post, "The U.S. has thwarted the dirty bomb terrorist plot a year after"—this is the one that was in the L.A. Times by Josh Meyer—signals high risk on new attacks, terrorism alerts, and all of that.

Now, I would assume that a number of things led to and prompted the use of new techniques, and I assume that that's part of what led to the new techniques. Would you tell us, how does DOD change techniques, and where do the new techniques come from?

Mr. HAYNES. I'll try to answer that, Senator, but let me respond to your opening.

You're absolutely right that the context is very important. You've listed a number of incidents that I had forgotten about, frankly. But, at the time that this particular proposal that we're talking about today came up, the fall of 2002, DOD had discovered, months after he had arrived, that a person named Mohammad al Qahtani was likely the 20th hijacker that would have been the pilot on the plane that went down in Pennsylvania.

Now, in the fall of 2002, we had just passed the anniversary of September 11, and our intelligence people tell us that anniversary dates are important to the al Qaeda. The Bali bombings, which killed hundreds of innocent people, happened on October 12, 2002. The DC snipers, which terrorized this city, had just been captured, and people weren't certain where they were from, whether they were associated with the external threat or whether they were what they turned out to be. The anthrax cases of a year earlier had still not been solved. Zawahiri, who was Osama bin Laden's number two, issued a video threat on October 8, 2002, saying, "God willing, we will continue targeting the keys to the American economy." Early in the summer of 2002, there were deadly attacks in Pakistan and Tunisia. There was a capture earlier that year of an

America citizen who was suspected of being involved in a dirty bomb plot. Plenty of other still-classified threat information.

One of the things that the Intelligence Community was concerned about was that al Qahtani, who is the person who came into Orlando Airport in August 2001, a month before September 11, to be met by Mohamed Atta, the pilot—the ring leader of the September 11 attacks, and had been turned away, whether he had a companion on that plane, because other hijackers had come into the country in pairs, and there were people roaming around the country, and whether al Qahtani had information about other plots. So, there was a high degree of urgency to deal with this.

Now, your question, how do they come up with other interrogation techniques? Again, I would refer, in this case, to the previous panel that talked about that, and to the Bates stamped documents that I told you. But, the bottom-line understanding that I have, Senator, is that the Intelligence Community didn't know how to deal with this, nor did the law enforcement community know how to deal with this. For al Qahtani himself, nobody had been able to get him to talk. He claimed to be a——

Senator INHOFE. I think that's very significant. So, we're dealing with something here that no one had dealt with before. This was all new to us.

Now, on the resistance portion of the SERE program, do other countries train their people—what about Israel, Great Britain, and some of the others—do they train them—have a similar type of program?

Mr. HAYNES. Senator, I suspect that they do, because they're a sophisticated—they have sophisticated militaries, but I am not an expert in that.

Senator INHOFE. Are you familiar with the Manchester document that was found in Manchester, England?

Mr. HAYNES. I am. I've seen it. It's widely reported and available, and it talks about, among other things, training for al Qaeda members who may be captured, how to resist interrogation and what things they should claim, such as torture; whenever they're questioned, they should claim that they're being tortured.

Senator INHOFE. Now, how does an interrogator—maybe you don't know this, because it may not have been a—but, I'm wondering how an interrogator determines whether or not resistance techniques are being used by a detainee.

Mr. HAYNES. I don't know.

Senator INHOFE. Okay, that's fine.

Mr. HAYNES. I assume that they don't talk, for one thing, if they know they have information.

Senator INHOFE. In a Frontline interview with Mark Jacobson, you answered several questions, probing questions about the Field Manual 34–52, and the new techniques that Secretary Rumsfeld approved. Did you agree with all of the new techniques that were approved by Secretary Rumsfeld in, I think it was, December 2002?

Mr. HAYNES. Oh, yes, sir, the ones that he approved in December 2002, I did agree with.

Senator INHOFE. All right. In the same interview, you talk about tiers and percentages relating to the different interrogation techniques, and detainees that they were used against, respectively.

Can you explain to the committee which of these tiers, and what percentage of detainees they were used against, that resulted from the 2002 memo?

Mr. HAYNES. Senator, I'm not sure I know what you're talking about.

Senator INHOFE. Okay. I'm talking about the tiers and the percentages of detainees that had used these. Let me rephrase that.

What rules and regulations or guidance was in place with regards to the use of these techniques at that time?

Mr. HAYNES. I believe, before the Secretary approved the techniques listed in that proposal from Southern Command (SOUTHCOM), what the Command was using was existing doctrine, which was the old Army Field Manual and then whatever the law enforcement community used.

Senator INHOFE. Okay. We hear a lot about the category 3 techniques. Were these ever used at GTMO, or do you know? Category 3?

Mr. HAYNES. Okay, if you're referring to the proposal from GTMO in the fall of 2002, there were, I believe, four category 3 techniques. Only one of those was approved by the Secretary, and I'm told that that was not used at all.

So, if they did what they were authorized to do, none of the category 3 techniques would have been used.

Senator INHOFE. Yes. Mr. Haynes, let me just tell you, one of the concerns I have, and several of us have, about all the hearings that we've had are how they can be used politically. I saw a 1-hour—it's supposedly a documentary—I understand that this documentary is going to be shown sometime prior to the election. It was called "Taxi to the Dark Side." You watch this for an hour, you get the impression that the leadership of the country was encouraging torture, that our troops—it's a real slam at them—are using it on a regular basis. I remember so vividly, the last scene of this movie was someone being hung up by his arms, with his shirt off, being stabbed with electric probes in the chest, and screaming, and all of that. Now, that was actually just a Hollywood set, just like a Rambo movie, but you're led to believe that this is something that is going on.

So, I want you to know that a lot of us are very much concerned that there is a lot of political use of this that I don't really think is very appropriate.

I would like to have you comment on the abuses at Abu Ghraib. Was this sort of thing happening everywhere, to your knowledge? In your former capacity as DOD General Counsel, were the techniques that were used at Abu Ghraib in any way encouraged, approved, endorsed by Secretary Rumsfeld or anyone else in DOD, to your knowledge?

Mr. HAYNES. There are a few things in that to—first off, to my knowledge, no, they were—they were not endorsed or approved or even reviewed by anyone above the Central Command (CENTCOM) level. But, I think it's also very important to point out that what most people think about when they think about Abu Ghraib is the abuses that occurred that were not even interrogation at all. I should add that these incidents have been investigated to a degree probably greater than any other incident in DOD his-

tory, so there is a lot of data about what did happen and what didn't happen. I think it's consistently determined that the photographs that were so widely broadcast in 2003, and even to this day, reflect nothing that was approved interrogation. It was just flat-out abuse by people who were not being supervised.

Senator INHOFE. Thank you very much. That's my feelings exactly, but I would also add that prior to the time we had our very first hearing on Abu Ghraib, the Army had started conducting its own investigation, and it had already taken some steps to disciplinary action. That was my memory.

Thank you very much, Mr. Haynes.

Mr. HAYNES. Thank you, Senator.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Mr. Haynes, you're aware of the memorandum that were prepared by the Judge Advocate General (JAG) officers in the Service branches which expressed significant concerns about most, if not all, of these techniques?

Mr. HAYNES. Senator, you're referring to something that's——

Senator REED. I'm referring to memorandums that the Chairman of the JCS solicited through Admiral Dalton.

Mr. HAYNES. Let me, if I may, try to get some clarity.

You're referring to a group of memoranda that I do not recall seeing at the time. I believe I was shown a couple of them when I appeared before your committee in closed session about a month ago, and that's the first time I recall seeing those memoranda. But, as I was trying to describe to Senator McCaskill, I don't want anyone to walk away from my statement about that to suggest that I don't—or didn't know that there were concerns about how DOD should interrogate prisoners. That's what I was—you probably missed it, but we had a long exchange about this chronic debate about how to interrogate.

Senator REED. I'm less concerned about this chronic debate, but the senior counsel for the Chairman of the JCS deliberately tasked the representatives of the Services to comment on the specific memorandum that Colonel Beaver prepared that was the substance, the foundation of your recommendations, that they prepared written statements expressing significant concerns about all of these techniques. This is the opinion of at least four uniformed officers and some law enforcement personnel who've spent their careers in the uniform of the United States, both as lawyers and as military personnel. You were aware of those, but you weren't curious enough to ask them to be given to you so you could read?

Mr. HAYNES. I don't know that I was aware of those——

Senator REED. You either——

Mr. HAYNES.—specifically, as——

Senator REED.—were or you were not.

Mr. HAYNES. I don't recall being aware of any particular memoranda——

Senator REED. No, but let me—so, you're trying to make a judgment about, a very sophisticated legal judgment about, the Geneva Convention, Law of Torture, UCMJ, and you're aware of a debate going on within the Services, which express significant concerns,

but you have no—forget legal obligation—no intellectual curiosity to ask people specifically, "What's the problem?"

Mr. HAYNES. Oh, Senator——

Senator REED. Is that just——

Mr. HAYNES.—I have lots of curiosity, and I take my responsibilities, and took my responsibilities, very seriously. This was a very serious issue.

Senator REED. All right.

Mr. HAYNES. Absolutely, there were a lot of factors involved, very important questions, including the safety of the country and the urgency of the circumstances to try to get information from this individual, who we knew——

Senator REED. No, no.

Mr. HAYNES.—was to be a hijacker on the 20th plane, who continued to claim he was a falconer.

Senator REED. Your fundamental responsibility was to render a legal opinion to the SECDEF.

Mr. HAYNES. It was, and it——

Senator REED. His responsibilities included many of the things you referred to, the overall danger of the country. In fact, you could certainly have given him an opinion that, in your view, that there were certain matters which would not be consistent, and he could have overruled you. But, your obligation, I think, was to give him the best legal opinion. So, let's just stick to that.

The other factor here is, where in your memorandum is there a reference to, "This is restricted to the Qahtani case only"?

Mr. HAYNES. You can read my memorandum.

Senator REED. I did, and there's no such reference. In fact, category 1 and category 2 are given a blanket approval by the Secretary, at the discretion of General Hill, at the time. The only reservation in category 3 is not that it's illegal—you claim they're all legal—it's just, as a matter of policy, we won't do a blanket. There's nothing here referencing Qahtani.

You're continually referencing, that the only thing you were concerned about was Qahtani, is not substantiated by the memo. Oh, and by the way, everyone can kibbitz about good lawyering, but if the case was Qahtani, I would think your memo would have said, "In the case of Qahtani, you can do this, this, and this."

Mr. HAYNES. Senator, I was there, and that was the catalyst, and that was the purpose, and that was what everyone——

Senator REED. But, that's not the opinion you rendered.

Mr. HAYNES.—that's what every Senator, we don't do these things in a vacuum. You missed my exchange with——

Senator REED. Excuse me, Mr. Haynes, but I think you did it in a vacuum. You knew there was debate going on among the military legal officers, great concerns, yet you did not ask for their written memorandum. In fact, under Admiral Dalton's testimony, you communicated, through General Myers, that she should cease her formal analysis in response to these concerns. Is that accurate?

Mr. HAYNES. I have the highest regard for Admiral Dalton, and I'm sure whatever she said is accurate, to the best of her recollection. I don't have perfect recollection of that time, but I accept her word. There's no question about it.

Senator REED. But——

Mr. HAYNES. Let me finish, Senator, because you say I acted in a vacuum; that's absolutely not true. I looked at this, hard. You know DOD. You're a West Point graduate, you're a Harvard-trained lawyer, you're a fantastic Senator; I have the highest regard for you. But, you know how that place works. There are thousands and thousands and thousands of decisions made every day. This was one. It was an important one, but it was one, and it came in the context that I described a moment ago, with an extraordinary degree of urgency. My client—my boss, the SECDEF, needed a recommendation. It had been sitting in the headquarters for a month, when he—the SECDEF said, "I need a recommendation"—to his senior advisors—me, the Chairman of the JCS, the Deputy SECDEF, the Under Secretary for Policy, and others who met with him every day—"I need a recommendation." I took it. I looked at it. I looked at the package. I looked at the circumstances. I made a legal judgment. I consulted with Captain Dalton during that time. Her testimony reminds me of the care with which we dealt with it, and I rendered my opinion.

Senator REED. But, it doesn't remind you of whether or not you told her to cease her formal analysis.

Mr. HAYNES. I don't remember that, specifically. But, Senator, let me say, it makes sense to me, even in this remote time, because there are 10,000 lawyers in DOD. There has been a portrayal of this event in the press, and in today's hearing by some people, as if the military lawyers all objected and the civilians or somebody just ignored them. There were military lawyers whose job it was to advise those people in that chain of command—the commander at GTMO, the commander of SOUTHCOM, the Chairman's lawyer, and then me, for the SECDEF. The testimony earlier mentioned that CENTCOM—or the SOUTHCOM lawyer was perhaps not as involved as he might have been, but the other three people in the chain of command whose job it was to advise those leaders looked at it carefully, looked at it under the circumstances. There is a paucity of law that was applicable at the time, and my job, as the lawyer, is not just to say no, but to say, "Where is the area of discretion available to the client?"—in this case, the SECDEF. That was my determination, and I stand by it.

Senator REED. What did you rely upon? What legal analysis, specifically? Not your just thinking internally about these great issues, but——

Mr. HAYNES. I'll try to go through it with you right now. The U.S. Constitution, we believed, under the Eisentrager case, did not apply at GTMO. The President had already determined that the Geneva Conventions did not apply to the al Qaeda detainees or the Taliban detainees. The CAT would apply, but it's a non-self-executing treaty. The implementation of that was the statute passed by the Congress of the United States and signed by the President, so the prohibition against torture reflected in that statute applied. Article 16 of the CAT prohibiting—or imposing on the United States and undertaking to prohibit cruel, inhumane, and degrading treatment, was applicable. The President's order to treat detainees humanely was a restriction. The application—and the Uniform Code of Military Justice (UCMJ), to some degree, would apply, as well—and the application of those strictures to this circumstance

under the operating procedures that all of the decisionmakers and advisors understood to be applicable led me to believe that the Secretary had the discretion to authorize the techniques that we recommended.

Senator REED. If the UCMJ applied, do you agree with Colonel Beaver's analysis that it would be a per-se violation of Article 128 to engage in the poking and light pushing?

Mr. HAYNES. I did not think so.

Senator REED. Did you make that—any clarification why she didn't agree with you?

Mr. HAYNES. I didn't write a memorandum to that effect. I——

Senator REED. Did you write any memoranda to this effect?

Mr. HAYNES. I wrote the memorandum that you have in front of you, and that was actually more expansive than the General Counsel of the DOD usually does in decisionmaking for packages going to the SECDEF.

Senator REED. How did you communicate this decision to SOUTHCOM and to GTMO? Did you send them a copy of the memorandum?

Mr. HAYNES. I did not. I think it's important also to note, Senator—and I'm sure you'll appreciate this—as the lawyer, I was not the decisionmaker. I was an advisor. The SECDEF made the decision, based, in part, on my advice, as well as the Chairman of the JCS's advice. The normal transmittal of a decision of that nature would be through the Joint Staff, and I would assume that's how it was passed.

Senator REED. So, once the Secretary signed off in it, you had no followup on this at all. You don't know how it was communicated.

Mr. HAYNES. I would think it was communicated in the normal fashion.

Senator REED. Was this memorandum sent down to——

Mr. HAYNES. I—Senator, I don't—I mean——

Senator REED. You don't know.

Mr. HAYNES.—I don't—that's——

Senator REED. Admiral Dalton——

Mr. HAYNES.—not part of my job to do.

Senator REED.—went to great length to say that her recommendation to you, her concurrence was based upon the conditions that would govern the use of these techniques. How were these conditions communicated by the SECDEF, and where are they reflected in your memo?

Mr. HAYNES. They're not in my memo. But, as I told you, most decision documents that would go to the SECDEF would—I wouldn't write, nor would most of the other staff people who would sign a—on a block, would not write extensive——

Senator REED. But, if those——

Mr. HAYNES.—"Don't do this"——

Senator REED.—conditions were——

Mr. HAYNES.—"don't do that."

Senator REED. If those conditions were central to the legality of your advice, wouldn't you have a legal obligation to make the Secretary aware of them? This goes to a more fundamental——

Mr. HAYNES. Can I——

Senator REED. Did you——

Mr. HAYNES.—answer, or——

Senator REED. Did you tell the Secretary how difficult and close a call this was and how that there was significant adverse conclusions by subordinates, and that his—if you follow Admiral Dalton's logic, that his concurrence would require significant conditions that he also must approve, or at least be aware of?

Mr. HAYNES. Senator, you're assuming something that's not so. You're assuming that there were no understood conditions.

Senator REED. But, understood by who?

Mr. HAYNES. Understood by everybody involved in the process. People who were knowledgeable about the proposal and how it would be applied all understood what was meant by the proposal. Captain Dalton talked at length about that in the earlier panel, and I don't know if you were here to hear that——

Senator REED. I was here.

Mr. HAYNES.—to listen to it. But——

Senator REED. Could you list the conditions——

Mr. HAYNES.—as—sir, as well as——

Senator REED.—that were applicable? Could you list the conditions that an interrogator had to follow?

Mr. HAYNES. Could I list them?

Senator REED. Yes. Everyone understood them.

They were clear to the interrogators, clear to everyone else.

Mr. HAYNES. Senator, you've probably got access to more documents than I——

Senator REED. No, no, I'm asking you——

Mr. HAYNES. Let me finish.

Senator REED.—Can you list the conditions?

Mr. HAYNES. If I may——

Senator REED. No, I'd like you to answer the question.

Mr. HAYNES. If you'd let me finish, I'd say you have more documents than I've ever seen on this, and you will have, in the documents that you have, the SOPs, the people assigned to monitor. You had testimony earlier. There were interrogation plans that were supposed to be designed for each individual detainee who was to be interrogated. That would involve a psychological review. There had to be medical care associated with it. There had to be a legal review. There had to be substantial command monitoring. There was a step process that they were supposed to go through. They were supposed to stop if anything came up. There were all sorts of conditions, and not to mention, Senator——

Senator REED. Where in this memorandum is the reference to those conditions?

Mr. HAYNES. Sir, not to mention the training and the quality of the soldiers that I think these questions malign.

Senator REED. I object strenuously to that. You did a disservice to the soldiers of this Nation. You empowered them to violate basic conditions which every soldier respects, the UCMJ, the Geneva Conventions. Here's what soldiers do. You said the Geneva Conventions don't apply, and they honestly asked, "What does apply?" The only thing you sent them was, "These techniques apply." No conditions, nothing. So, don't go around with this attitude of you're protecting the integrity of the military. You degraded the integrity of the United States military.

I have finished my questions.

Mr. HAYNES. Senator, I object to that, and I disagree with that. I would also point out that the President of the United States, with the advice of the entire Cabinet, made the determination about the applicability of the Geneva Conventions.

Chairman LEVIN. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Haynes, and thank you for your service. You've served your country in uniform. I know your son is in ROTC now, and seeking to be a military officer, and I know you love and respect the military, and I know that you care about getting this matter right.

But, I would just ask you this question, because, despite what the accusations have been made here today, and criticisms and second-guessings, I think the evidence shows that it was intensely legal studied all throughout this process. I believe Mr. Goldsmith, who thought that President Bush was too aggressive in some of these matters, and, after he left the DOJ, wrote a book—and I'll ask you if you agree with him—"Many people believe the Bush administration had been indifferent to these legal constraints in the fight against terrorism. In my experience the opposite is true; the administration has paid scrupulous attention to law."

Do you think you paid scrupulous attention to law in trying to get this right?

Mr. HAYNES. Every time I acted, I understood the enormous responsibilities of my job, and I tried to do that.

Senator SESSIONS. He also wrote, "Many people think the Bush administration has been indifferent to wartime legal constraints, but the opposite is true; the administration has been strangled by law, and, since September 11, 2001, this law has been lawyered to death." Is there some truth in that, in your opinion?

Mr. HAYNES. Oh, yes, sir, I think so.

Senator SESSIONS. With regard to these techniques that were discussed and approved, did you say that Major General—two-star General Dunlavey, who headed the GTMO JTF, was a judge?

Mr. HAYNES. He's a judge in civilian life.

Senator SESSIONS. So, this is a lawyer and a judge, and he has the advice of a JAG attorney on his staff, and they concluded that they had a high-value individual there who claimed to be a falconer, but who had met with Mohammad Atta and been rearrested in—was it Iraq or Afghanistan?

Mr. HAYNES. I think he was captured in Afghanistan.

Senator SESSIONS. In Afghanistan. The normal interrogation techniques had not worked, and they submitted a request to do enhanced techniques. Is that right?

Mr. HAYNES. Yes, sir.

Senator SESSIONS. That came up through General Hill, and he's the SOUTHCOM Commander, a four-star general.

Mr. HAYNES. Yes, sir.

Senator SESSIONS. You evaluated the categories and the requested techniques, and you had to make a recommendation to the SECDEF. You were his lawyer, and you had to recommend that.

Mr. HAYNES. Yes, sir.

Senator SESSIONS. Now, you had other things on your plate at this time, too, did you not?

Mr. HAYNES. I did.

Senator SESSIONS. But, did you rubberstamp what they asked you, or did you pare back in any way the requests that they had made?

Mr. HAYNES. Did not rubberstamp. Indeed, I recommended that only a subset of the requested techniques be applied.

Senator SESSIONS. You say a "subset," but you rejected the category 4 techniques and the category 3 techniques, so it all—I think, all of those—is that correct?

Mr. HAYNES. There were three category 3 techniques that I recommended not be used.

Senator SESSIONS. So, that was your recommendation to the SECDEF, and he approved that.

Mr. HAYNES. Yes, sir.

Senator SESSIONS. Now, after that, is it not so that other JAG officers raised questions about this and the wisdom of some of these techniques, and a working group came together?

Mr. HAYNES. Sir, that requires some explanation. As I've said in response to some other questions, the difficulty of these issues never abated. After the Secretary approved, in other words, there was a difficult decision leading up to the one that the Secretary made, and then, after that decision, that continued, including in my own—I mean, these are not easy questions. This is not something that I did, as you say, as a rubber stamp or did lightly. I continued to stew on that, frankly. I talked with people, and I heard from Mr. Mora, made sure that I alerted the Secretary. I had daily meetings with the Secretary and the Chairman, and so forth, and I made sure they were aware of this continuing concern.

Over time, I went back, from time to time, to the Secretary and ultimately convinced him that we needed to take another look at what he had recommended, or what he had approved—what I had recommended, what he had approved—and convinced him that he should rescind his approval, which he did on January 12, as I recall. I believe it was a Sunday, because I got a call from General Hill. That decision was memorialized on January 15.

In preparing that rescission document for the Secretary, I recommended that he instruct me to set up a working group to look at this more thoroughly, which I did. I don't want to take up all of your time, but the point is that there was a very, very thorough, broad-gauged, multidisciplined look at how we, DOD, should deal with this problem, going forward.

Senator SESSIONS. Do you think you were aware of the tensions between too much aggressiveness and the need to get information and the legality and the treaties and the law and the policies of the United States? Do you feel like you were wrestling with all those issues as you made these decisions in a fair and objective way?

Mr. HAYNES. Sir, let me point out again, the decision to employ particular techniques was not mine to make, but, in the course of trying to come up with recommendations for the Secretary, all of those things that you've described were in the mix, so to speak.

Senator SESSIONS. You concluded they were lawful.

Mr. HAYNES. Yes, sir, but the "they" that you're talking about now, when you're talking about the working group, is a different

set of interrogation techniques that the SECDEF approved in April 2003.

Senator SESSIONS. Okay. Let's get that straight. So, after the first approval, or disapproval, of a number of the requested techniques, and you approved a certain number, you continued to look at that, and you recommended to the SECDEF that some of those not be approved in the future and to be taken off the approved list, and you restricted further the request of the GTMO Task Force for approval of techniques.

Mr. HAYNES. Yes, sir, that's generally correct. There were other people involved in that, but that was my view.

Senator SESSIONS. Take a moment and explain what you meant when you and Senator Reed discussed the question of medical review being—the people being interrogated being monitored for medical review or psychological review, that there be a command review, and—of these conditions; and what role of approval did General Hill, the four-star Commander of SOUTHCOM—what role did he play in having to approve the utilization of extraordinary techniques?

Mr. HAYNES. There is a document that lays that out what was embodied with the SECDEF's decision in April 2003, that lays out those approval levels. Some things could be delegated—some decisions about interrogation approaches could be delegated below General Hill, but some decisions needed to be approved by the combatant commander—General Hill, in that case.

Senator SESSIONS. What requirements did they have on them with regard to observing the physical condition of a individual being interrogated or did they have to watch out for their health?

Mr. HAYNES. Oh, yes, sir.

Senator SESSIONS. What requirements were placed on that?

Mr. HAYNES. That was a fundamental requirement. There is an obligation to safeguard the people who had been captured, and to keep them healthy and safe and secure. So, there was the fundamental humane-treatment requirement that the President had demanded of the Armed Forces from the beginning of the war, but, even during the interrogations, of course, there was particular attention required of those people who were involved in the interrogations, including medical care and psychological care, as well as the interrogator and legal oversight.

Senator SESSIONS. Failure to do that would have been in violation of military standards.

Mr. HAYNES. Of the direct order.

Senator SESSIONS. Now, just to wrap that up, there was the Bybee memo by the DOJ, not DOD, and that memo has been criticized, and that's the one that was withdrawn, is that not correct, as going too far?

Mr. HAYNES. I believe you're referring to a memorandum interpreting the United States Code provision on torture, prohibiting torture. If I recall correctly, that memorandum—that legal opinion was rescinded by the DOJ in the middle part of 2004 and replaced with a different opinion at the end of 2004.

Senator SESSIONS. Let me just point out, category 2 techniques in your—that you approved—stress position; maximum 4 hours standing; falsified documents—presumably, you could present fal-

sified documents to encourage discussion or admissions; isolation for up to 30 days only—Federal prisoners are often kept in isolation longer than that; nonstandard interrogation environments, hooding, 20-hour interrogation periods, and so forth. But, the torture statute that Congress passed in 1994, 92 to 8, prohibits severe physical or mental pain or suffering—"severe." I just don't think the things that are mentioned in there are in violation of the congressional definition of torture. I think that's what Attorney General Ashcroft said at a Judiciary Committee lunch, "I didn't define 'torture,' Senators, you defined it." So, Congress defined "torture," did it not?

Mr. HAYNES. Yes, sir, and they used the words that you described.

Senator SESSIONS. Severe physical pain or suffering.

Thank you, Mr. Chairman. I just would conclude and say, I'm not sure we got it right. I know President Bush was concerned about America. I know he was determined to get better intelligence, as we all were. I'm not sure we've yet figured it out precisely. But, I object strenuously to the suggestion that DOD went out with a policy of reckless disregard for law and were systematically abusing prisoners. Indeed, those in Abu Ghraib who were not part of an interrogation, but were really abused prisoners—those people—many of them went to jail. They were tried and convicted in the military court-martial. So, I just want to emphasize that it's never been our policy to torture people, and then, the definition of what's permissible, I guess we can all agree or disagree.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Sessions.

Senator Graham.

Senator GRAHAM. As we conclude, here—at least my part of it will be concluded—I'd like to go through some scenarios, here, and make sure I understand what your testimony is.

According to the FBI, in the October-November timeframe 2002, before the Rumsfeld memo was approved, FBI agents indicated they witnessed interrogation techniques against the 20th hijacker that included making him pray to an idol shrine; abusive conduct, including having a dog used in interrogation. That's what the Schmidt-Furlow report revealed. Is it your testimony that Secretary Rumsfeld—neither Secretary Rumsfeld nor yourself ever approved any such techniques for the 20th hijacker?

Mr. HAYNES. I tell you today that, to my knowledge, the SECDEF had no knowledge of that, nor did I.

Senator GRAHAM. That's all I'm asking.

Mr. HAYNES. I think that's what General Schmidt concluded in his report.

Senator GRAHAM. Okay. That's all I'm asking. I just wanted to get that right.

All right. Now, the General Counsel for the Navy came to you with concerns before the memo was signed in December, is that correct? Or after?

Mr. HAYNES. After.

Senator GRAHAM. Okay. Did he threaten that, "If you do not revisit this, I will draft up a memo, and I will go public about this?"

Mr. HAYNES. I think I heard him say that today, and I've seen accounts of that. I don't remember that exchange. I remember him coming in at least twice, very passionately and understandably concerned, because he had been hearing things. In each case—my recollection—in each case, I listened to him, I reported up the chain, and I asked Captain Dalton to look into it, to see whether there was anything untoward going on.

Senator GRAHAM. Okay. Right. So, it's your testimony that he's saying today, and other days, that he had to threaten the release of his opinion about these interrogation techniques to the public at large, and it would look bad for the administration, that he felt compelled to go on the record, so to speak, about this, that had nothing to do with you revisiting the December memo?

Mr. HAYNES. There's an assumption in that question that I'm not rejecting, I'm not accepting it. I don't remember that particular edge to the discussions.

Senator GRAHAM.—Mr. Haynes, from December to January, I believe it is—when was the memo repealed and replaced?

Mr. HAYNES. There are two significant dates: January 12, when there was an oral rescission and January 15, when there was a writing.

Senator GRAHAM. I got you. From December 2, I think was when he approved this memo until January 12, what happened in that intervening period to make you recommend to him, "We need to take this thing off the table"?

Mr. HAYNES. I think I said, earlier today, that all through this period, I had my own misgivings. So, it's hard to identify a single thing.

Senator GRAHAM. Right, your testimony is that certainly you don't recall that it was the threat that Mr. Mora made about going public if nothing was done.

Mr. HAYNES. I don't recall him doing that. I do recall him being very passionate about his objection to what was approved. But I want to be——

Senator GRAHAM. Okay. Yes, please.

Mr. HAYNES.—I want to be responsive.

Senator GRAHAM. That's a pretty quick turnaround, from December 2 to January 12. Something had to happen that was fairly earthshattering, I would think to create a policy for DOD and have it rescinded 6 weeks later.

Mr. HAYNES. No, sir, because—I've tried to impart the chronic and very intense passion about how one goes about doing this. It's one of the reasons that I felt very strongly that the Secretary ought to get this working group with all the players involved, because there were so many competing concerns.

Senator GRAHAM. Okay, that's right. Now, did the working group that was formed ever review the final product that was later approved?

Mr. HAYNES. You and I have had a discussion about this in another context, where I think we were talking past each other. So, I can tell you great detail about that, but let me just tell you what my recollection was, briefly. The answer was——

Senator GRAHAM. No, we're not going to do it that way. I'm tired of doing it that way. Here's what we're going to do.

Mr. HAYNES. Okay.

Senator GRAHAM. We're going to get to the bottom of this.

Mr. HAYNES. Okay.

Senator GRAHAM. The point of the matter is that other people have testified that they were assembled as part of a working group, giving input; a memo was issued that they never saw, and they didn't find out about it until a year later. Are they correct when they say that?

Mr. HAYNES. I don't have firsthand knowledge about that. My understanding then was that they saw the final report.

Senator GRAHAM. If there's so much passion about this, and everybody's so upset, you can't verify the fact that the working group got to look at the final product?

Mr. HAYNES. I thought they did. I thought they did.

Senator GRAHAM. They say they didn't.

Mr. HAYNES. I wrote a letter that explained my view of that.

Senator GRAHAM. Where did all the passion go?

Mr. HAYNES. I don't know how to answer that, Senator.

Senator GRAHAM. Where did your passion go?

Mr. HAYNES. My passion was to try to get the Secretary some good counsel. What this working group did, which I think was a great exercise of government, frankly——

Senator GRAHAM. Their point of view is that they were assembled to give input; and they read about, in the paper, what the final product was. Now, that's what they've testified, under oath, that these guys and gals had no clue about what the final product was. They were brought in to be part of a working group, and they read in the paper, a year later, that you found out a new way of doing this, and they looked at it and still had concerns.

Mr. HAYNES. I wasn't running the working group.

Senator GRAHAM. Okay.

Mr. HAYNES. But, I will tell you that the entire leadership of DOD felt like that the work of the working group led to a very good result. When I say that, I'm talking about, not just the Secretary, not just the Chairman of the Chiefs and the Service Secretaries who advised——

Senator GRAHAM. With all due respect, Mr. Haynes—and I know you had a very difficult job, and a lot of this is uncertain. I'm just worried about the process. The process here, to me, is clear. Just my two cents worth is that the working group was formed because you got criticism from Mora, and you had to deal with that criticism, and you did rescind the memo. To your credit—to your credit, you did that. But, the working group never really got to see the final product, and I'm not so sure that's much of a working group.

Now, let's go back to the December 2nd memo. One of the techniques, the category 3 techniques that were never used, was water boarding. Is that correct? Water boarding was a category 3 technique?

Mr. HAYNES. I think it was described as a cloth with water dripped on it, not—I've never really understood—what that technique was, but it was listed and it was not approved.

Senator GRAHAM. I understand. Now, do you think that's legal? Would that violate the UCMJ? Would it violate the UCMJ for one

of our—a couple of our military personnel to grab somebody, hold them down, put a cloth over their face, and simulate drowning?

Mr. HAYNES. As we sit here today, absolutely yes, it would be illegal.

Senator GRAHAM. Okay.

Mr. HAYNES. At the time? I don't know.

Senator GRAHAM. Okay.

Mr. HAYNES. But, the law is very clear now.

Senator GRAHAM. Yes. You don't think it was clear then that waterboarding a prisoner was a violation of Article 90—Article 128 in—the Maltreatment of Prisoner Article?

Mr. HAYNES. I didn't reach that question, Senator.

Senator GRAHAM. Okay. Thank you for your service. I know you were dealt a difficult hand.

Mr. Chairman, I appreciate this hearing.

I guess the thing that I'm left with is that there certainly was an attitude that we may be attacked again, and people were rightly concerned. The law took on the view of being an impediment to our safety, not our strength. I think what got us to this problem—got us in this mess was that a lot of people saw the laws that regulated conduct made us more at risk, not safe. I guess we've learned—if we've learned anything from this, that the rule of law in this war is a strength, not a weakness. Now I think we have it right, and I appreciate those who were trying to do this early on after September 11.

But, it is clear to me, Mr. Chairman, the memo was never limited to one person. It is clear to me that these techniques do encompass techniques that we were defending against, and it became an offensive weapon. It is clear to me they migrated all over the military. It is clear to me that we created confusion for those serving this country, and it was a—one of the great tragedies of—after September 11, that we allowed our enemy to take advantage of this situation, because they surely have. In an effort to make us safe and to conquer our enemy, I think, for a period of time, we could not have done more to help them by creating this confusion and this mess. In that regard, these hearings have been helpful.

Chairman LEVIN. Thank you, Senator Graham.

Mr. Haynes, I want to go back now to October 2002. This is when the GTMO request was forwarded by General Hill to the JCS. On October 30, General Myers, Chairman of the JCS, circulated that request from GTMO to the military Services for comment. I want to go through those military Services comments with you.

Tab 12 (see Annex A), that's a November 7, 2002, memorandum from the Army. Paragraph 2, the memorandum says, "The Army interposes significant legal, policy, and practical concerns regarding most of category 2 and all of category 3 techniques." Were you aware that the Army had concerns with those techniques?

Mr. HAYNES. Senator, I think I've testified to this—I don't recall seeing this memorandum before. I'm not even sure this is one I've seen before, but you——

Chairman LEVIN. I mean at the time. Were you aware, at the time——

Mr. HAYNES. I don't recall seeing——

Chairman LEVIN. All right.

Mr. HAYNES.—memorandum, and I don't recall specific objections of this nature.

Chairman LEVIN. The next page on that tab 12 is a memo from the chief of the Army's International Operational Law Division. It says, "Stress positions, deprivation of light and auditory stimuli, the use of phobias to induce stress crosses the line of humane treatment and would likely be considered maltreatment under the UCMJ, and may violate the torture statute." Were you aware of the Army's International Operational Law Division, that they had concerns with these techniques?

Mr. HAYNES. You—I'm sorry, I was—I lost you. Is this the third—there are three——

Chairman LEVIN. Memo from the chief of the Army's International Operational Law Division.

Mr. HAYNES. Is that the one that has "IO" at the top?

Chairman LEVIN. Yes, it's tab 12 (see Annex A).

Mr. HAYNES. All right, the third one at tab 12. I'm sorry, and your question is, was I aware of this——

Chairman LEVIN. Were you aware of that?

Mr. HAYNES.—memorandum? I don't recall seeing this memorandum.

Chairman LEVIN. All right. Tab 11 (see Annex A) is a memo from the chief legal advisor to the CITF at GTMO. It says category 3 techniques and certain category 2 techniques, "may subject servicemembers to punitive articles of the UCMJ," called the "utility and legality of applying certain techniques questionable." That's tab 11. Were you aware that the CITF had concerns with those techniques?

Mr. HAYNES. This is the——

Chairman LEVIN. Tab 11 (see Annex A).

Mr. HAYNES. This is the unsigned thing at tab 11, with—is that the three-page document?

Chairman LEVIN. Tab 11.

Mr. HAYNES. I——

Chairman LEVIN. The memo from——

Mr. HAYNES. I'm at tab 11, but you've read a bunch of things that I can't find, so—so, am I looking at the right document?

Chairman LEVIN. You're looking at the right document.

Mr. HAYNES. I don't recall seeing this document——

Chairman LEVIN. All right, thank you.

Next, tab 10 (see Annex A)—it's the Air Force's memo. It says, "The Air Force has serious concerns regarding the legality of the proposed techniques"—that's in quotes—states that the techniques described may be subject to challenges failing to meet the requirements outlined in the military order to treat detainees humanely. Were you aware that the Air Force had those concerns with those techniques?

Mr. HAYNES. I don't recall seeing this memorandum, either.

Chairman LEVIN. Were you aware of their concerns?

Mr. HAYNES. I don't recall specific concerns. I've told the panel, sir, with all due respect, I knew there were concerns. I don't recall these, and I don't recall seeing these memoranda.

Chairman LEVIN. Tab 14 (see Annex A) is the Marine Corps response—mind you, they're responding, now, to a request of the JCS

to comment on a recommendation for treatment—relative to treatment of detainees. Each one of the Services now responding. Tab 14 is the Marine Corps. It says, in the third full paragraph, "Several of the category 2 and 3 techniques arguably violate Federal law, would expose our servicemembers to possible retribution"—were you aware of the Marine Corps' concerns with those techniques?

Mr. HAYNES. Sir, I think I've answered that before. I can't even read this document, but I don't remember seeing it.

Chairman LEVIN. Okay. Now, when the GTMO request got to your office, do you recall Eliana Davidson, who worked in your office, telling you that she thought the request needed further assessment?

Mr. HAYNES. I don't recall that, specifically.

Chairman LEVIN. Do you know who Eliana Davidson is?

Mr. HAYNES. Oh, absolutely. Yes, sir.

Chairman LEVIN. You don't recall her telling you that there was further assessment needed.

Mr. HAYNES. I don't recall that, specifically, but there was a long period of time, and we did some further assessing, so maybe she said that at the beginning, and maybe we did it.

Chairman LEVIN. All right. Now, before the SECDEF signed an order approving these—all of category 2 and some of category 3 techniques—the Services' lawyers let your office know that they had serious problems with that request. You vaguely remember that there may have been something, but apparently you never took the time to ask for those documents. Yet, when you were asked, "Did you pay scrupulous attention to the law?" you studiously ignored the memos from the lawyers of the Services that came to your office. You studiously ignored them.

Mr. HAYNES. I disagree with that characterization.

Chairman LEVIN. Then you cut off the review, which had been requested, and that Admiral Dalton was carrying out. Now, I don't know how anybody can testify that you paid attention to the law when you ignored the lawyers in the Services who brought to your office these concerns, and then, when there was a review going on by an attorney for the JCS, you sent the word, which you don't doubt, that you wanted that review stopped. That is not studious attention to the law.

It's quite the opposite. It is stymying consideration of one of the most significant legal decisions which this country has made, and that is how to treat detainees. The errors that result in those opinions have caused this country tremendous security damage.

So, now I'm going to ask you this question.

Mr. HAYNES. May I respond to your comments? Because I don't——

Chairman LEVIN. Yes.

Mr. HAYNES.—I don't——

Chairman LEVIN. I know—I'm going to ask you a question, and then you're more than free to do it.

Mr. HAYNES. Okay.

Chairman LEVIN. Do you agree that you cut off the Dalton review in the middle?

Mr. HAYNES. I don't remember doing that.

Chairman LEVIN. How often have you ever cut off review—how many times has this happened?

Mr. HAYNES. Senator——

Chairman LEVIN. She says it's never happened.

Mr. HAYNES. Senator, what I heard her say was that we restricted the number of people involved. That's——

Chairman LEVIN. No.

Mr. HAYNES. That's what I heard her say.

Chairman LEVIN. No. She said that she stopped the broad review. That's what she said.

Mr. HAYNES. She said she stopped——

Chairman LEVIN. It had never happened before or after, as far as she knew. This is the one time that that had ever happened, as far as she knows, and this is the one time where you intervened—and you don't doubt this, apparently—to stop that review.

Mr. HAYNES. I don't remember it.

Chairman LEVIN. That is not paying attention to the law.

Mr. HAYNES. Senator——

Chairman LEVIN. That is stymying a review of the law to make sure that what we are doing comports with the law.

Mr. HAYNES. Senator, I don't agree with that characterization. There are plenty of examples of restricting people who have a need to know, for security and speed reasons.

Chairman LEVIN. Of course. That's not what she was testifying here. She was testifying to a review which was taking place.

Mr. HAYNES. A broad review.

Chairman LEVIN. A broad review which——

Mr. HAYNES. A broad review.

Chairman LEVIN.—was taking place for the JCS, at their request. She says she never had had that kind of a request stopped in the middle before. She never knows of it happening afterward.

Then you say—then you have, to me, the audacity to say that all of this is caused because there's two groups that are in conflict—two groups in conflict—one are the law enforcement people and the other are the people who want information from interrogation, ignoring the third group, which you ignored in November 2002. It's the third group, you ignored. That third group were the lawyers for the military. The military Services, to your office while this was under review, sent those memos, raising all kinds of red flags, and you ignored them, you don't remember seeing them. Then, when that broad review was taking place by Admiral Dalton, stymied that review.

Now, how can you say that there's only two groups here that are involved, and this is tension between two groups—on the one hand, the law enforcement folks; on the other hand, the people who are doing the interrogation, who want information—when there's that third group that sent to your office—and we have testimony today that your office was definitely sent those memos, and your staff had discussions about those memos with the people who sent you those memos—how do you ignore that third group of those Services

and their lawyers who raised those red flags? How do you ignore that? Why aren't they in your equation?

Mr. HAYNES. Okay. Senator, let me just make, at the outset, my vigorous disagreement with your characterization. Just so——

Chairman LEVIN. How do you ignore the presence of those lawyers?

Mr. HAYNES.—just so we understand, Chairman.

Chairman LEVIN. I'm sure.

Mr. HAYNES.—I disagree with your——

Chairman LEVIN. We understand.

Mr. HAYNES.—characterization. I——

Chairman LEVIN. Now my question.

Mr. HAYNES.—did not——

Chairman LEVIN. Now my question.

Mr. HAYNES. I did not ignore concerns. I addressed the concerns that—of the legality. There has to be a decisionmaker. That was the job of the General Counsel of the DOD. When you have multiple different perspectives and opinions, when you have a short period of time, when you have a novel situation, I made a decision. I did not ignore anything. It was my practice to be as open as I possibly could.

Now, there are physical constraints to that. There is other—there's time, there's classification, there's volume, there's a certain amount of redundancy when one sees different perspectives replayed from time to time. I've never denied that there were disagreements, including legal disagreements, about——

Chairman LEVIN. What you have denied is seeing them, asking for them——

Mr. HAYNES. Well——

Chairman LEVIN.—remembering them. That's——

Mr. HAYNES. Senator, if——

Chairman LEVIN.—what's——

Mr. HAYNES.—I may finish, I——

Chairman LEVIN. You may finish, but——

Mr. HAYNES. I——

Chairman LEVIN.—I ask that you——

Mr. HAYNES. I have——

Chairman LEVIN.—answer those questions.

Mr. HAYNES. I told you that I don't recall seeing these things. So, for you to say that I ignored them——

Chairman LEVIN. You did ignore them.

Mr. HAYNES. If I——

Chairman LEVIN. You didn't ask for them.

Mr. HAYNES.—didn't see them—if I didn't see them, I didn't ignore them.

Chairman LEVIN. You mean—well, you knew there were concerns.

Mr. HAYNES. I——

Chairman LEVIN. Why not ask to see the memos that contained those concerns?

Mr. HAYNES. I told you, I didn't know that they existed. I don't recall——

Chairman LEVIN. You didn't know those memos——

Mr. HAYNES. I don't——

Chairman LEVIN.—existed?

Mr. HAYNES. Senator, I don't recall seeing them, and I don't recall knowing about the memoranda. I knew—I recall—listen, this is 6 years ago. We had—I probably saw millions and millions and millions of pages of information over the 7 years that I served in that job. So, for you to suggest that because I didn't see every single piece of paper that a lawyer might have expressed a view on an issue is ignoring it, I think, is an unfair characterization.

Chairman LEVIN. I think it's very fair. I think it's right on target. You indicated, a few moments ago, you had misgivings, yourself, through this period.

Mr. HAYNES. Sure.

Chairman LEVIN. What did——

Mr. HAYNES. I did.

Chairman LEVIN. I've never heard you——

Mr. HAYNES. I still do.

Chairman LEVIN.—never heard you express that before.

Mr. HAYNES. I still do. I think this is a——

Chairman LEVIN. Have you ever——

Mr. HAYNES.—very——

Chairman LEVIN.—expressed that, before today——

Mr. HAYNES. Oh, sure.

Chairman LEVIN.—publicly——

Mr. HAYNES. Absolutely.

Chairman LEVIN.—publicly, that you had misgivings about that opinion?

Mr. HAYNES. Oh—well, I don't—I don't know. But, I——

Chairman LEVIN. I don't either.

Mr. HAYNES. But, I tell you, this is a very hard question.

Chairman LEVIN. It is very hard. It's a very hard question which has a——

Mr. HAYNES. But, it's more than just a legal issue——

Chairman LEVIN.—very critically important answer. I just want to—I just want to be—you said there's two groups—and then I'm going to turn this over to Senator Sessions—there's two groups, you said, out there that cause this tension. You haven't answered my question about that third group, the military Services, who told your office, in memo after memo after memo, all four Services—they wanted much more analysis, they had great concerns about this. It may open up their troops and their men and women to legal action, including criminal action. That came to your office, concerns of the military Services that their people may be subject to criminal action——

Mr. HAYNES. Sir——

Chairman LEVIN.—and you say that, "Gee, I don't remember if I saw those. I don't.

Mr. HAYNES. Mr. Chairman, I don't.

Chairman LEVIN.—"remember. Gosh"—that's the third group, and you have not answered the question.

Mr. HAYNES. Mr. Chairman——

Chairman LEVIN. Is there not that third group which you should have consulted and considered?

Mr. HAYNES. Mr. Chairman, I think that's also a misperception of the reality that I experienced, because if you think that the two

extraordinarily gifted women lawyers that were up here before, Admiral Dalton and Colonel Beaver, are not military lawyers who expressed views, then I don't know what they are.

Chairman LEVIN. I'm not talking about their views here now. I'm not talking about their views here today.

Mr. HAYNES. I'm talking about——

Chairman LEVIN. I'm saying that——

Mr. HAYNES.—their views then.

Chairman LEVIN. Admiral Dalton was in the middle of a review, which you squelched.

Mr. HAYNES. No—sir, I talked with her at—she testified that——

Chairman LEVIN. I heard her.

Mr. HAYNES.—she talked at length.

Chairman LEVIN. You stopped that review in the middle, and she balked when I said "the middle." I said, "Well, was it two-thirds or one-third?" She finally acknowledged it was stopped in the middle. It's the only time she's ever heard that.

Mr. HAYNES. Again, I've told you what my views are on that. I think that there was substantial discussion between me and her, and evidently with our staffs, as well. I mean—and there was a limited amount of time and a high degree of urgency and a—and an uncertain set of rules because of the—because of the conflict that we're in—alien enemy combatants outside the United States not covered by the Geneva Conventions, with potentially nation-threatening information.

Chairman LEVIN. Thank you.

Senator Sessions?

Senator SESSIONS. Thank you.

Mr. Haynes, I know these hearings are difficult and Senators care deeply about these issues. I think it's healthy in our country that they do. But, I do think you deserve fairness.

I'm looking at Exhibit 11 (see Annex A), which was the Air Force memorandum concerning these matters. The Chairman quoted where it said that the problems and liabilities might occur if all these techniques are used. But, if you go back up to the top—first of all, let me ask you, was that directed to you?

Mr. HAYNES. This is Exhibit 11, which is the three-page unsigned document——

Senator SESSIONS. From the Air Force—Air Force document.

Mr. HAYNES. My tab 11 is——

Senator SESSIONS. Are you not——

Mr. HAYNES.—is CITF.

Senator SESSIONS. Maybe it's 10 (see Annex A). Excuse me, 10. I'm incorrect. So, it raised questions about these techniques, but—all right, but was it directed to you?

Mr. HAYNES. No, sir, this is directed to the United Nations and Multilateral Affairs Decision, J–5 of the JCS, Commander Lippold.

Senator SESSIONS. That's not you. It wasn't directed to you. Is that right?

Mr. HAYNES. Yes, you're right.

Senator SESSIONS. Then, look at the first paragraph, "General Comment. The Air Force has serious concerns regarding the legality of many of the proposed techniques, particularly those under category 3. Some of these techniques could be construed as torture

as that crime is defined by 18 U.S.C. 2340. One of the proposed techniques is the use of scenarios designed to convinced a detainee that death may—or severely painful consequences are imminent for him or his family." Now, did you approve that technique when you recommended to the attorney general your recommendation as to what, within the request, should be approved, or did you disapprove that?

Mr. HAYNES. I did not recommend that. I'm glad you pointed that out, Senator. Having not seen these before, and not being able to read it while I was being asked questions, I didn't see that the concern highlighted here is that which was not recommended, nor approved.

Senator SESSIONS. In fact, this memorandum was directed to the request from CENTCOM, General Hill's office, originating from GTMO, not your memorandum. Isn't that correct?

Mr. HAYNES. Yes, sir, that's correct.

Senator SESSIONS. So, it wasn't your decision that they are complaining about here, but the request from GTMO, which you didn't approve.

Now, look at the next one you were asked about, on Exhibit 13 (see Annex A). It originally starts out—it's a Memorandum for Legal Counsel to Chairman of JCS, but that was struck through. That's not you, either, is it?

Mr. HAYNES. Again, I think we have—we're looking at something different.

Senator SESSIONS. Okay. Well, maybe it's 12 (see Annex A).

Mr. HAYNES. Oh, this is——

Senator SESSIONS. Excuse me, 12.

Mr. HAYNES. Okay.

Senator SESSIONS. All right. Do you see that? So, this memorandum that the Chairman asked you about, that he said you're supposed to know about, it wasn't directed to you, either, was it?

Mr. HAYNES. No, sir, it's addressed to the J–5 UNMA, attention Commander Lippold.

Senator SESSIONS. Their criticism, is it not, in paragraph 1, states that "The Army has reviewed the request of the Commander U.S. SOUTHCOM"—that's General Hill, four-star general—"for further legal review by the DOD and the DOJ of the proposal to employ counter-resistance techniques in the intelligence interrogation of enemy combatants detained at GTMO Naval Base Station."

So, that again was a reference to the request that was sent to you, an expression of concern. It was not directed to you, so we shouldn't presume that you saw it. Number two, it didn't refer to your decision, which rejected many of the requests that came from GTMO. Is that right?

Mr. HAYNES. That's right, Senator.

Senator SESSIONS. Looking at, I guess, number 12—or within that—2 pages further on is the memorandum for the Office of the Army General Counsel. Now, you're not the Army General Counsel, are you?

Mr. HAYNES. I was not, at the time.

Senator SESSIONS. You were counsel for the DOD. This memorandum says, from John Ley, whoever that is, "I have reviewed the proposed request"—that's General Hill's request—"for approval of

counter-resistance strategies. I concur in proposed category 1 techniques, but have significant concerns—legal, policy, and practical—regarding most of category 2 and all of category 3 techniques." Is that correct?

Mr. HAYNES. That's what it says.

Senator SESSIONS. That was not sent to you, not directed to you.

Mr. HAYNES. Yes, sir.

Senator SESSIONS. With regard to Exhibit 14 (see Annex A), this would be a memorandum—I think you were asked about this one—it was a memorandum for the Director of J–5, the JCS. Would that be a memorandum directed to you or to somebody else in the DOD?

Mr. HAYNES. It would be to somebody else.

Senator SESSIONS. So, if the routing had been appropriate, it wouldn't have come to you, is that right?

Mr. HAYNES. It might have—it might have gotten up to my office eventually. I just don't recall seeing it.

Senator SESSIONS. It wasn't directed to you.

Mr. HAYNES. Correct.

Senator SESSIONS. —what office—who is that from, do you see, there, what department? Is that an Army——

Mr. HAYNES. This says the one I'm looking at is Captain, U.S.——

Senator SESSIONS. That's the Marine——

Mr. HAYNES.—this is Captain, U.S. Navy, the one I'm looking at. Is that——

Senator SESSIONS. No, no.

Mr. HAYNES. You're at a different one?

Senator SESSIONS. We're still on the wrong page. You and Senator Levin couldn't get on the same page, and neither can you and I.

Mr. HAYNES. I'm looking at 13.

Senator SESSIONS. I'm looking at, I guess, 14.

Mr. HAYNES. 14. This is the one that's very blurry.

Senator SESSIONS. Yes, it's blurry.

Mr. HAYNES. It does say "U.S. Marine Corps Reserve" at the bottom.

Senator SESSIONS. Yes. That's—it says "Memorandum for the Director J–5, the Joint Staff," not directed to you, either.

Mr. HAYNES. Yes, sir, that's right.

Senator SESSIONS. The first paragraph says, "We concur with the general proposition of developing a more robust interrogation plan." Then it goes on to say, "We're concerned, however, with the measures proposed in the subject documents, especially category 3," which you rejected all but one of those techniques.

Mr. HAYNES. Like——

Senator SESSIONS.—so, there again, referring to the proposal from GTMO, not from your and the—your recommendation to the Secretary that he put in the policy document.

Mr. HAYNES. Yes, sir, that's correct.

Senator SESSIONS. One question—there was some suggestion about this issue, and I'll just ask you directly. When you visited GTMO in September 2002, did you or any of the senior administration lawyers suggest to Major General Dunlavey that he request

harsh techniques, based on the SERE program, when you talked with him?

Mr. HAYNES. I sure don't recall doing anything like that, and I can't imagine I would have. The purpose of that visit, as I recall, was to visit three different detention facilities in a single day.

Senator SESSIONS. I just would say I—this is a difficult, difficult thing. You were under great pressure. The American people wanted intelligence. We had great criticism of our failure to have good intelligence. People were afraid this country was going to be attacked again. They felt this 20th hijacker, particularly, had information that could perhaps prevent another attack. I hope that—and believe—that you tried your best to strike the right balance. Some can question that, and maybe in the future we'll see it a different way. But, at this point, I believe you did your best to serve your country.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Sessions.

It's been said that this matter has been investigated over and over again, at least the part of it that relates to how these techniques got to Afghanistan and Iraq. The focus of our investigation, of course, is not that; it's where they all began, not where they ended up.

But, in terms of those investigations, just again for the record, General Fay stated in his report that a January 24, 2003, memo, called an "Interrogation Techniques Memo"—and this was 9 days after the rescission by Secretary Rumsfeld—that memo, according to General Fay in an unclassified statement, recommended removal of clothing, a technique that had been in the Secretary's December 2 authorization, in General Fay's words, and it discussed, "exploiting the Arab fear of dogs," another techniques which was approved by the Secretary on December 2, I point out.

Now, from Afghanistan, how did they get to Iraq? This is another report. It's been stated that this trail of these techniques from GTMO to Afghanistan and then Iraq have been investigated. Yes, they have been, and here's what the DOD Inspector General (IG) said, that at the beginning of the Iraq war, the Special Mission Unit forces in Iraq, "used a January 2003 SOP which had been developed for operations in Afghanistan." Here's what the DOD IG said about the Afghanistan SOP, that that had been "influenced by the counter-resistance memorandum that the SECDEF approved on December 2, 2002, and incorporated techniques designed for detainees who were identified as unlawful combatants. Subsequent battlefield interrogation standard operation procedures included techniques such as yelling, loud music, light control, environmental manipulation, sleep deprivation adjustment, stress positions, 20-hour interrogations, and controlled fear, muzzled dogs."

Then, General Fay, again in his report, said that the removal of clothing was imported to Abu Ghraib, and it 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."

Again, as I mentioned in my opening remarks, that when I asked General Fay at a hearing whether the policy approved by SECDEF

on December 2, 2002, contributed to the use of aggressive interrogation techniques at Abu Ghraib, he responded simply, "Yes."

So, yes, there's been a number of investigations of the events in 2003 and 2004, but what this focuses on today—number one, that shows the connection, those investigations, between what happened at GTMO between the December 2, 2002, decision of the SECDEF and what happened a year later or so in Afghanistan and Iraq.

Now, my question—just a couple of more questions and then I'll be done, Mr. Haynes. Did you ever discuss the SERE techniques with Major General Dunlavey?

Mr. HAYNES. I don't recall. I may have. I don't recall.

Chairman LEVIN. All right. Now, there is a memo of Mr. Bybee from the OLC, which was dated August 1, 2002, that provided guidance on interrogations prior to your recommendation to the Secretary. That was an OLC memo. Did you read it?

Mr. HAYNES. I have read it.

Chairman LEVIN. No, at the time. Had you read it before you made your recommendation to the Secretary?

Mr. HAYNES. I don't know when I first read the memorandum.

Chairman LEVIN. Did you rely on that memo in your recommendation to the Secretary?

Mr. HAYNES. Senator, since I don't remember when I read that, I have told you what I relied on. But that——

Chairman LEVIN. Was that included in what you told us?

Mr. HAYNES. I don't think so. I think——

Chairman LEVIN. I don't either.

Mr. HAYNES.—what I told you is what I—is the thought process that I remember employing in determining that the request that I—the subset of the request that I recommended be approved was legal.

Chairman LEVIN. Did you tell our staff that it's likely that you did read it before November 27?

Mr. HAYNES. I may have. I just don't remember when I first read it.

Chairman LEVIN. Now, this is an OLC legal memo which would be binding on the entire Government, right?

Mr. HAYNES. Would be authoritative——

Chairman LEVIN. For you. As General Counsel at the DOD.

Mr. HAYNES. Sure. Yes, sir. If it expressed an opinion on the law for the executive branch, that would be authoritative within the executive branch.

Chairman LEVIN. So, why would you not have read that before recommending a decision to the SECDEF?

Mr. HAYNES. I——

Chairman LEVIN. It was dated before that.

Mr. HAYNES. For one thing, that one is addressed to somebody else.

Chairman LEVIN. So, you may not have known about it.

Mr. HAYNES. I just don't remember, Senator, when I read it. I just don't remember. I may have. I just don't remember. It's 6 years ago. There were a lot of things going on, Mr. Chairman.

Chairman LEVIN. Even though you may not have read it, were you aware of the contents of it when you made the recommendation to the Secretary to sign his December 2, 2002, order?

Mr. HAYNES. Chairman, I just—I told you, I just don't remember.

Chairman LEVIN. Senator Sessions, are you all set?

Senator SESSIONS. Attorney General Casey, in his confirmation, pointed out a Bybee memo, which apparently attempted to set forth the full power of the executive branch during a time of war in dealing with prisoners. As he said, not only was—it was a mistake; it was worse, because it was unnecessary. I think that's—was unwise for us to try to anticipate and set the Bybee memo to anticipate all kinds of possible scenarios, and then to approve or disapprove them. You're much better off going case-by-case by carefully considering all the circumstances in a fact-based circumstance. While I think it did set some constitutional limits, I have doubts about its wisdom. I guess it's fair to say the DOD, as a matter of policy, did not feel, with regard to these interrogations, that it was appropriate to use every single power you may have, because some of the things that you prohibited were policy decisions, as well as legal decisions, were they not?

Mr. HAYNES. Yes, but let me remind everyone that the lawyers don't decide what gets used. We give advice, and that's what I did.

Senator SESSIONS. So, your advice was what?

Mr. HAYNES. My advice was—well, it depends on what the question was, but in the case of the—I guess it was the December 2 decision by the Secretary, based on my recommendation that was—that was shared with the Chairman of the JCS, the Deputy SECDEF, and the Under Secretary for Policy—was that only a subset of those techniques requested by GTMO be approved, and implicitly—and I'm sure I said so explicitly—that those that we recommended, that I recommended, were legal—as did Colonel Beaver and as did Admiral Dalton—that they were legal.

Now, the next go-round, which was as a result not only of the working group—and this is where I—I just wish that exercise had a better appreciation by Chairman Levin and some others, because it was very valuable to the leadership of the DOD—that second round that resulted in Secretary Rumsfeld's decision in April of 2003 about what techniques should employ—should be employed, was also——

Senator SESSIONS. Where he restricted some he had previously approved.

Mr. HAYNES. He restricted, or outright did not authorize at all, a different of, I believe, 24 techniques, with extraordinary safeguards and approval levels. Far short of what the DOJ advised the law would allow.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman LEVIN. To go beyond that would require approval of the Secretary, is that correct?

Mr. HAYNES. Yes, sir. That's my recollection of what the documents say, and it—I think that's what it says.

Senator SESSIONS. One more question, Mr. Haynes. With regard to Secretary Rumsfeld, on either of those occasions did he impose a personal action to approve a technique that you didn't recommend, to your recollection?

Mr. HAYNES. I'm not sure I can tell you about that kind of thing, I think I'm restricted in what deliberative and attorney-client com-

munications I've had. So, I probably should not answer that question. But, there's not a sinister answer.

Chairman LEVIN. Mr. Haynes, we thank you.

What today's hearing is focused on is the SERE techniques which were incorporated into interrogation documents which were never intended to be incorporated into interrogation rules. Those SERE procedures were properly designed to help our men and women survive, should they be exposed to the actions that violated Geneva of our enemies. They were never intended to be taught to interrogators, used by interrogators against our enemies. That testimony was very, very clear in the panels that we had today. Yet, we found those techniques, including stripping detainees, including the use of dogs to induce stress—we found those techniques—not only were they adopted at GTMO and used in special instances, but then they moved over to Afghanistan and Iraq in ways that the various investigations have disclosed.

We've paid a huge price, as a country, for what was unleashed when that December 2, 2002, order of the SECDEF was signed. When it was rescinded, 6 weeks later, and then a different document was put in its place a couple of months after that, by then what had spread to Afghanistan and Iraq was what we, I'm afraid, saw in those tragic pictures at Abu Ghraib, because, while they were not the interrogators that were photographed, they were the guards, and those guards, according to our own—the investigations that have been shared with this country, were influenced by the techniques which were the interrogation techniques which had been shipped over to Afghanistan and then Iraq. So, we paid a very large price for what happened.

We will continue this investigation by asking people who have been named in this investigation as being present in meetings where SERE techniques have been discussed, whether or not they were present at those meetings in GTMO, what was discussed. We will, of course, continue our effort to find out what happened to those Services' documents, those Services' recommendations, those Services' red flags that were shared with the SECDEF's legal counsel. They may not have been addressed there. They were not addressed to the Legal Counsel, but the testimony today indicated that, as a matter of fact, they were shared with the General Counsel, excuse me, of the SECDEF. That's what the testimony was today.

The General Counsel—or, the former General Counsel, Mr. Haynes, isn't sure that he saw them. He heard about concerns, does not remember whether he saw the documents or asked for the documents. That is a—to put it mildly, a very disappointing kind of a response to what is an extraordinarily serious question, which is, how do you deal with detainees? The legal response here was inadequate, and—to put it, I think—to understate it. But, we will continue to get into the various questions that I have just indicated, and others.

It's been a long day, I know, for our witnesses. We thank all of our witnesses. We thank you, Mr. Haynes, for being here voluntarily. We thank our colleagues for participating in this.

We will stand adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR CARL LEVIN

OGRISSEG MEMO

1. Senator LEVIN. Dr. Ogrisseg, given the differences between training conducted at survival, evasion, resistance, and escape (SERE) school and real world interrogations, would the conclusion in your July 24, 2002, memo to Lieutenant Colonel Baumgartner be that you felt reasonably certain that SERE resistance training does not cause long-term psychological harm apply if resistance training techniques were used against detainees?

Dr. OGRISSEG. The conclusion in my July 24, 2002, memo to Lieutenant Colonel Baumgartner was very specific to medically and psychologically screened personnel with medical and psychological staff monitoring the training and immediately available to intervene if necessary. There are a number of important differences between SERE school and real world interrogations that would limit my conclusions to the SERE school training populations. I will review those differences that I am aware of below:

1. Previous level of functioning and demographic factors.

Military SERE training students are screened multiple times prior to participating in training to ensure that they are physically 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 identifying people who could be provided preventative interventions in order to increase their probably of success in training.

Obviously, no such screening can take place with detainees. In the SERE training environment nearly 100 percent of the trainees graduate. However, in nearly every instance in my experience when students did not graduate (outside of those who were injured during field survival training) we subsequently found out that they had pre-existing psychological conditions which were not reported on the screening forms.

Detainees frequently arrive in interrogation facilities with substantial injuries they sustained during battle prior to their capture. Numerous studies of American prisoners of war (POWs) indicate that being physically injured increases the likelihood of developing psychological disorders. Furthermore, from extensive studies of allied World War II and Korean War POWs, severe nutritional deprivation increases the likelihood of developing psychological disorders. These factors are not present in SERE training.

Students may arrive to the resistance training facility with minor injuries such as minor bumps and bruises from spending several days in the field. However, if they have acquired any significant injuries, or arrive with histories of previous injuries that the medical staff deems significant, they will be medically restricted from selected training situations if necessary to avoid further injury. Likewise, to gain a sense of what food deprivation is like and to motivate them to work as teams to take care of their own nutritional needs, they certainly aren't provided with three square meals per day as they would be in garrison. However, they are never close to deprivation that would cause nutritional disorders.

Aside from physical and mental health status, SERE training student populations may be different from detainee populations in other important ways. For example, previous successful coping with tough realistic training that many in our military populations have experienced likely makes them more resilient to start with. Differences at the behavioral and hormonal levels between how special forces and non special forces personnel respond to SERE training have been published numerous times in peer reviewed professional journals. Similarly, studies of POWs from World War II, the Korean War, and Vietnam have consistently found differences in follow-up mental health status based the POWs' age and military rank at time of capture, with older and higher ranking personnel faring better. I would assume that SERE training students are more homogeneous along these dimensions than are enemy detainees.

2. Purpose of the experience.

SERE resistance training instruction is provided to increase the survivability, enhance the resistance capabilities of the students, and increase their confidence in their abilities to resist and survive. To achieve all of these goals, SERE students need to experience a very challenging environment and learn how to succeed in it. Students learn to be more confident because of the challenge, not in spite of it. Aggressive, coercive training approaches are a realistic part of this challenging training environment because they've been used by nearly all of our adversaries in past conflicts. Under these circumstances of simulated captivity, students learn to reset their mental schema of what success means. In this context, the aggressive, coercive training approaches serve to increase resistance. As part of the overall process however, students, like nearly all previous American POWs, will make mistakes. One of the chief aims of training is to learn how to bounce back from mistakes after they occur and continue to apply resistance and survival skills. The operating instructions and rules of engagement for training are all geared towards reinforcing these student-centered goals.

Real world interrogation and detention facilities exist to elicit information from the enemy that will be used to shape future and ongoing military operations and provide our troops with tactical, operational, and strategic advantages. As such, the detention environment is another form of the conflict between adversaries. Unlike in SERE training where the goal is not to defeat the student, the real world interrogator wants to win. As in the SERE training situation, the subject of the interrogation will make mistakes. Regardless of whether aggressive, coercive interrogations methods are used or not, the aim is certainly not to have the subject or detainee bounce back from these mistakes and continue to resist, but rather to have them continue to provide valid information to the allies. The goal of the interrogator would seem to be to alter the detainee's mental schema about the "mistakes" in a manner that would lower the barriers to cooperation with the interrogator. In any event, the mistakes made by a cooperating detainee and the effect on his/her confidence is not a significant concern or cause for corrective action by a real world interrogator like it is for a resistance training instructor.

3. Risk management oversight functions.

Within the SERE training environment, there are multiple levels of oversight mechanisms in place to reinforce the purpose of the training and the training objectives, and to prevent harmful behavioral drift. These include detailed operating instructions, and multiple levels of out-of-role personnel, including out-of-role instructors, command staff, and SERE psychologists. The primary purpose of the oversight mechanisms is to watch the instructors to ensure they are complying with the operating instructions. The secondary purpose is to watch the students for indications that they are not coping well with training tasks, provide corrective interventions with them long before they become overwhelmed, and if need be, remotivate students who have become overwhelmed to enable them to succeed.

Comparable oversight mechanisms to prevent behavioral drift should exist within a real world detention facility. In this environment, it is still necessary to have detailed operating instructions and have personnel monitoring the operations who are removed from direct interaction with detainees. However, rather than being geared towards training aims, the operating instructions would be geared towards standards and procedures that effectively elicit information while upholding our obligations to Federal laws and international conventions. The oversight personnel would monitor and control for drift away from these standards in order to ensure effective detention operations and to protect the national integrity. Unlike the training environment, remotivating detainees to succeed is not an oversight responsibility or concern. While it is U.S. policy to have physical and mental health services available to detainees, it is not ethical to have these services provided by practitioners serving other roles within the detention environment.

4. Propensity for moral disengagement.

Moral disengagement is a term that refers to the attitude changes that allow someone to violate their internal moral standards and act in more aggressive and reprehensible ways. As part of the risk management oversight role, SERE psychologists train the resistance training staff on attitudinal and behavioral signs of moral disengagement, monitor the instructors for signs of moral disengagement, and then intervene if necessary to bring instructors back in line within the spirit of training operational instructions.

A significant barrier to moral disengagement is removed in the transition from SERE training to real world detention operations. While moral disengagement can still occur in a SERE resistance training setting (which is why the oversight mecha-

nisms are in place), the instructors are still dealing with their own country personnel. When dealing with non-country personnel, as in the case of detainee handling, there is greater risk of dehumanization of these personnel, and thus a greater likelihood of worse treatment that exceeds the limits of operational instructions.

5. Psychological and operational debriefings.

As I described in my July 24, 2002 memo to Lieutenant Colonel Baumgartner, SERE training students receive several training debriefs that serve to reinforce training objectives and decrease the students' risk of developing psychological disorders by normalizing the students' training experiences and reactions.

These debriefings are obviously not available to real world detainees like they are to our students.

6. "Voluntary" nature of training.

SERE training, to an extent, is a voluntary experience. Students can withdraw from training. It is not entirely voluntary, in that completing training is a job requirement for many military specialties. Failing to complete training can result in administrative consequences, disqualification from worldwide deployment, and possibly retraining into a different career specialty if students aren't ultimately able to complete training. Nonetheless, students may terminate the training experience if they desire to.

Being a detainee, like being incarcerated in the criminal prison system, is not voluntary. Detainees cannot choose to withdraw from their detention.

7. Limited duration of the experience.

The SERE training experience is of limited duration and has defined starting and ending points. While the actual duration of training events may vary depending upon how long it takes for students to accomplish the training objectives, the variance in duration is usually a matter of minutes or hours. At a minimum, trainees arrive on a certain date and know that they will depart on a specified date.

Detainees do not know when their detention will end. Some detentions last only over a span of hours, while others can last for years. While 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.

8. Adjustment to the experience and follow-on support.

Numerous studies of POWs and hostages indicate that captivity does increase the likelihood of long-term psychological dysfunction. As a SERE psychologist, I've worked with a number of people who have returned from captivity, and analyzed the circumstances and coping strategies of a numerous other returnees that my colleagues have worked with. As a result of my experience in this area, I do not assume that people return from captivity broken or psychologically damaged. Indeed, a majority of personnel returning from harsh captivity circumstances exhibit no long-term psychological disorders.

What is clear to me is that captivity causes captives to have to adjust. Some returnees adjust in maladaptive ways. Other returnees exhibit what has been termed "post-traumatic growth", indicating that the manner in which they adjusted to their experience (not the experience itself) enhanced their lives in significant ways. For example, Terry Waite, after his return from nearly 5 years of being held hostage by the Islamic Jihad, the first 4 years of which was in total solitary confinement, indicated that he learned to enjoy solitude in a manner which he could never do prior to his kidnapping.

The simulated captivity experience we put people through in SERE training causes students to have to adjust as well. Unlike real world detention, SERE training is structured in a way to enhance and reinforce positive adjustments and coping styles that have helped past POWs and hostages to survive and return with honor.

Finally, the operational and psychological debriefing processes used in SERE training help students adjust by understanding and normalizing their responses to training dilemmas rather than pathologizing them. The reintegration processes we have in place for our personnel returned from captivity perform the same functions, helping returnees successfully manage their re-emergence into everyday life, and aiding future trainees to learn from their experiences. In addition we help them develop action plans for how to handle future situations the returnee may find challenging. Obviously, we cannot assume that enemy detainees have comparable reintegration programs to aid their adjustment, thus increasing the likelihood of them developing long-term problems.

2. Senator LEVIN. Lieutenant Colonel Baumgartner, when you received Mr. Shiffrin's request for information, why did you call Dr. Ogrisseg at the Air Force

SERE school and not the senior psychologist at the Joint Personnel Recovery Agency (JPRA)?

Lieutenant Colonel BAUMGARTNER. Having been stationed at the Air Force SERE School from 1900 to mid-1993 I knew that SERE psychologists had done research on various aspects of SERE training because of the large annual student population the school afforded. Additionally, when stationed at the Pentagon on the Air Staff from mid-1993 to fall 1996, I answered several congressional inquiries with regard to SERE training and my investigation for the inquiries indicated some research had been completed at the SERE school. Having had a close familiarity with JPRA and its predecessor organizations, I was unaware of any such research specifically by JPRA.

OCTOBER 2, 2002 MEETING MINUTES

3. Senator LEVIN. Lieutenant Colonel Beaver, do you know who wrote the October 2, 2002, meeting minutes?

Lieutenant Colonel BEAVER. I do not but I assume it was someone from the Criminal Investigation Task Force (CITF) because the e-mail addresses containing the minutes referred to in this question were to and from CITF personnel.

4. Senator LEVIN. Lieutenant Colonel Beaver, Jonathan Fredman attended the October 2, 2002, meeting with you and other Guantanamo (GTMO) personnel and discussed interrogations. Prior to that meeting, had you discussed interrogations with anyone else from the Central Intelligence Agency (CIA)? If so, please indicate the person with whom you had discussions and describe those discussions.

Lieutenant Colonel BEAVER. No.

MEMO FOR THE DEPARTMENT OF THE NAVY INSPECTOR GENERAL

5. Senator LEVIN. Mr. Mora, you said in your July 7, 2004, memo that you spoke with Jim Haynes on January 15, 2003, to tell him that you intended to sign out a memo objecting to the use of techniques unless you "heard definitively that the use of the interrogation had been or was being suspended." Did Mr. Haynes give you any indication during your conversations with him that the techniques had already been orally rescinded?

Mr. MORA. On January 15, 2003, Mr. Haynes indicated to me initially that Secretary Rumsfeld was "considering" rescinding the interrogation techniques he had previously authorized for use in Guantanamo. As I was weighing whether to sign or not sign out my memo in light of the Secretary's promise to "consider" the withdrawal of the interrogation techniques, Mr. Haynes interjected that he would inquire further and get back to me. A few hours later that same day he called me to say that the Secretary had "rescinded" his authorization of the techniques. At no time did Mr. Haynes give me any indication that the techniques had been previously rescinded. Had this been the case, Mr. Haynes could have simply informed me of the fact upon our first conversation that day.

NATIONAL SECURITY COUNCIL'S PRINCIPALS COMMITTEE MEETINGS

6. Senator LEVIN. Mr. Haynes, did you attend any meetings of the National Security Council's Principals Committee in 2002 or 2003 where detainee interrogations were discussed? If so,

a. When and where did those meetings take place?

Mr. HAYNES. During 2002–2003, I attended a number of Principals Committee meetings. While it is very difficult to remember with clarity meetings from many years ago, I recall attending one meeting with the Principals Committee of the National Security Council in that time period in which I recall interrogations were discussed, and I think that was in early 2003. Principals Committee meetings often covered many topics, but I think I remember one meeting in this time period touching on the Department of Defense's (DOD) plans to convene a working group to address the challenges posed by the Qatani matter as discussed in part during the June 17, 2008 hearing. In my experience, Principals Committee meetings took place in the Situation Room in the West Wing of the White House.

b. Who else attended those meetings?

Mr. HAYNES. I do not have a specific memory of everyone who attended, but such meetings normally would have included the Principals of the National Security

Council, and occasionally supporting staff from the National Security Council staff and the attending agencies.

c. Was there any discussion at those meetings of specific interrogation techniques used or proposed for use in detainee interrogations?

Mr. HAYNES. My memory is not perfect, but I think the discussion of interrogations primarily concerned a brief description of the challenge presented by an uncooperative suspected 20th hijacker from the September 11 attacks, the history of interrogation efforts at Guantanamo Bay Naval Station, Cuba, to date, and the DOD's plans to use a working group representing many different perspectives to develop recommendations for the way ahead.

d. Was there any discussion about using techniques derived from military SERE training in detainee interrogations?

Mr. HAYNES. See answer to question 6c above.

e. Was there a briefing for the Principals on legal issues associated with detainee interrogations? If so, who provided that briefing?

Mr. HAYNES. See answer to question 6c above.

f. Did any of the Principals or their advisors express concern with any of the interrogation techniques or legal guidance discussed? If so, please identify the person who raised the concern and describe their concerns.

Mr. HAYNES. See answer to question 6c above.

DETAINEE WORKING GROUP

7. Senator LEVIN. Mr. Haynes, on January 15, 2003, Secretary Rumsfeld directed you to set up a working group to assess the legal, policy, and operational issues relating to interrogations. On April 4, 2003, the working group recommended a number of aggressive techniques, but omitted stress positions and deprivation of light and auditory stimuli, because they "lacked sufficient information" to fully evaluate them. On November 27, 2002, you had recommended that the Secretary approve those two techniques for use at GTMO. What information had you based your November 27, 2002, recommendation on?

Mr. HAYNES. Again, recognizing that these events occurred almost 6 years ago, I have trouble remembering such details. That being said, I based my November 27, 2002 recommendation on a number of things including among other things: the proposal forwarded by U.S. Southern Command; the legal opinions and recommendations of Lieutenant Colonel Beaver, Major General Dunlavey, and General Hill; my discussions with Deputy Secretary Wolfowitz, General Myers, Under Secretary Feith and then-Captain Dalton; a high degree of confidence in the integrity, motivations, and judgment of the men and women of the Armed Forces at Southern Command who would implement any proposal approved by the Secretary of Defense; the law applicable at the time; and my own experience and judgment.

8. Senator LEVIN. Mr. Haynes, did you make that information available to the working group?

Mr. HAYNES. The working group was provided broad access to materials to conduct its review.

GENERAL HILL MEMO

9. Senator LEVIN. Mr. Haynes, in General James T. Hill's October 25, 2002 memorandum on counter-resistance techniques sent to the Chairman, Joint Chiefs of Staff, U.S. Southern Command Commander, he requested that "Department of Justice (DOJ) lawyers review the third category of techniques." Did you or anyone in your office request a DOJ legal review of the third category of JTF–170's proposed counter-resistance techniques? If not, why not? If so, how did the DOJ respond?

Mr. HAYNES. Lawyers within the DOD, not the DOJ, normally review requests from DOD commanders. I recommended against three of the four requested category III techniques. The only category III technique that I recommended be approved was the "use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing." I felt confident that, if done humanely and with the appropriate safeguards and command supervision, this technique was lawful. Accordingly, further DOJ review would have been unnecessary.

QUESTIONS SUBMITTED BY SENATOR EDWARD M. KENNEDY

RENDITION POLICIES

10. Senator KENNEDY. Mr. Haynes, at your judicial confirmation hearing in 2003, when asked whether you knew details surrounding the "extraordinary rendition" of Maher Arar, a Canadian and Syrian citizen, you responded that you had no knowledge of his transfer. You also advised the Judiciary Committee to direct related questions to the Department of Homeland Security and the DOJ, implying that the DOD had no role in operations involving Mr. Arar. Since that time, numerous reports have confirmed that Mr. Arar was tortured and held in abhorrent conditions in Syria. When did you first become aware of the rendition of Mr. Arar?

Mr. HAYNES. I do not recall when I first became aware of Mr. Arar's alleged rendition.

11. Senator KENNEDY. Mr. Haynes, would you please describe in detail your knowledge of, and activities relating to, U.S. rendition policies during your tenure at the DOD?

Mr. HAYNES. While I am not permitted to discuss classified information in this setting, I would point out that it is my understanding that the Senate Select Committee on Intelligence has been provided extensive information on classified programs involving apprehension and treatment of detained terrorists in the war on terror.

12. Senator KENNEDY. Mr. Haynes, would you please describe in detail your knowledge of the DOD's renditions of terrorist suspects, foreign citizens, or other individuals for purposes of interrogation or detention?

Mr. HAYNES. While I am not permitted to discuss classified information in this setting, I would point out that it is my understanding that the Senate Select Committee on Intelligence has been provided extensive information on classified programs involving apprehension and treatment of detained terrorists in the war on terror.

13. Senator KENNEDY. Mr. Haynes, you were also asked in 2003 about presidential findings authorizing foreign renditions of terrorist suspects, but you declined to comment at that time. Would you please describe your knowledge of such findings?

Mr. HAYNES. While I am not permitted to discuss classified information in this setting, I would point out that it is my understanding that the Senate Select Committee on Intelligence has been provided extensive information on classified programs involving apprehension and treatment of detained terrorists in the war on terror.

CONVENTION AGAINST TORTURE

14. Senator KENNEDY. Mr. Haynes, in response to written questions during your confirmation proceedings in 2003, you said that the DOD "takes its compliance with U.S. obligations very seriously, including the Convention Against Torture (CAT)." Article 16 of this Convention, which you testified has always been applicable in the administration's fight against terrorism, binds the United States to "undertake . . . to prevent" cruel, inhuman, or degrading treatment. In order to prevent cruel, inhuman, or degrading treatment under our CAT obligations, policies that clearly and unambiguously define boundaries are necessary. Do you think that the DOD fulfilled its CAT obligations when it issued policies that safeguarded detainees' dignity only by the "understanding" that tacit limits of those policies would be respected?

Mr. HAYNES. I believe that the DOD's policies were consistent with the U.S. Government's obligations under the CAT.

15. Senator KENNEDY. Mr. Haynes, when asked about interrogation practices that you approved, you said at last week's hearing that it was "widely understood by people knowledgeable about the decision" what was meant by the practices you said might be permissible. Do you have any documents—training manuals, memoranda, etc.—that would support the claim that these details were "widely understood" by the individuals who would be applying them?

Mr. HAYNES. I am no longer an employee of the DOD, and I do not have any such documents. I believe, however, that the committee has available to it ample materials which show that Southern Command intended to employ safeguards such as, among other things, legal, medical, behavioral science, and intelligence review of in-

terrogation plans as well as local training of interrogators in approved methods of interrogation.

16. Senator KENNEDY. Mr. Haynes, on what do you base your belief that interrogators "understood" the precise limits of these approved techniques?

Mr. HAYNES. I was not assigned to Guantanamo Bay, Cuba. I cannot opine as to what any particular interrogator understood. I do believe the members of our uniformed services are highly professional, competent and ethical and can be entrusted to supervise and execute the most sensitive of missions. Military commands routinely establish standard operating procedures to execute complex missions that are supervised by leaders within the command at multiple levels. I had no reason to believe that this would not take place when the command at Guantanamo implemented the approved subset of the techniques it had requested. Notwithstanding questions about a few incidents out of thousands of interrogations, I continue to believe that they did so.

17. Senator KENNEDY. Mr. Haynes, did you ever ask to see or approve the operating procedures that were developed to implement the policies you recommended?

Mr. HAYNES. I assume this question refers to the recommendation of late November 2002, discussed in part during the June 17, 2008 hearing. I do not recall asking to see such operating procedures at that time. This would not be something normally done at the General Counsel's level. I also would not have been the appropriate person to approve any such procedures.

INTERROGATION RECOMMENDATIONS

18. Senator KENNEDY. Mr. Haynes, in the packet of memoranda containing the analysis by Lieutenant Colonel Beaver upon which you based your interrogation recommendations to Secretary Rumsfeld, there was a memo by General Hill stating that he was "uncertain whether all the techniques in the third category are legal." He was "particularly troubled" by some of the techniques. Yet in your recommendation to Secretary Rumsfeld, you expressed the opinion that those tactics may be legal while providing no additional rationale on which to base that view. We now know that not only General Hill, but also many others raised serious concerns that you failed to act on. Four different opinions solicited by General Myers and Admiral Dalton contradicted your conclusions. In fact, the Office of Army's General Counsel indicated that it would need a "more detailed" explanation of the techniques to begin to assess their legality. Mr. Mora testified that every Judge Advocate General he'd spoken to believed Lieutenant Colonel Beaver's analysis was deficient. Yet, you not only cut off the review of her analysis, you never even asked to see what assessments had been gathered to date. You claim that stopping the more extensive review was based on "a sense of urgency." Yet it appears you did not convey your recommendation memo to Secretary Rumsfeld until 3 weeks after the Services' views were communicated. Is this correct?

Mr. HAYNES. There are a number of implicit assumptions within this question that are incorrect. For example, I did not need to reach a definitive legal conclusion that all of the category III techniques were legal. Such a conclusion was unnecessary because I recommended against the approval of three of the four category III techniques. It is not an unusual practice to defer answering legal questions that are premature. I also disagree with the characterization that I failed to act on serious concerns raised by others. Indeed, in retrospect, it appears that the three techniques that I recommended against approving were the techniques that raised the most concerns in the memoranda you cite. Moreover, I recall there was a sense by the DOD leadership that this decision was taking too long. There was a sense throughout the Government that another attack might be imminent and that information known by Qatani—the person believed to be the 20th hijacker in the September 11 attacks—might help to thwart such an attack. I do not recall at this time seeing the "four different opinions" to which you refer before I made my recommendation to the Secretary.

ADMIRAL DALTON'S LEGAL REVIEW

19. Senator KENNEDY. Mr. Haynes, who or what, specifically, gave you the impression that there was not enough time to complete the review that Admiral Dalton had begun?

Mr. HAYNES. See responses to question 18 above and 30 below.

20. Senator KENNEDY. Mr. Haynes, did anyone request or authorize, or was anyone else otherwise involved in, your decision to halt Admiral Dalton's review of the legality of the proposed interrogation practices?

Mr. HAYNES. I do not recall at this time specifically stopping such a review, but do not dispute that I did so if Admiral Dalton remembers this. See responses to question 12 above and question 24 below. In any case, since the Secretary of Defense made his decision to approve a subset of the requested techniques, a review antecedent to such a decision would become unnecessary. Moreover, weeks later a much broader and more inclusive review was chartered by the Secretary of Defense.

21. Senator KENNEDY. Mr. Haynes, is there any other reason why you stopped the review?

Mr. HAYNES. I do not recall at this time specifically stopping such a review, but do not dispute that I did so if Admiral Dalton remembers this. Many decisions within DOD are made without an in-depth review by the Joint Staff because such review is unnecessary, inappropriate, or too time consuming. I recall that there was a sense by the DOD leadership that this decision was taking too long. There was a sense throughout the Government that another attack might be imminent and that information known by certain detainees might help to thwart such an attack. There had been a number of terrorist-related attacks and significant intelligence reports during the timeframe of this decision, which heightened the sense of urgency. I had decided to recommend against three of the four category III techniques including the techniques that in retrospect raised the most concerns. Accordingly, if such a Joint Staff review was not completed, that would not be extraordinary under the circumstances.

DISMISSAL OF THE REVIEW OF TOP MILITARY LAWYERS

22. Senator KENNEDY. Mr. Haynes, at your confirmation hearings in 2003, you acknowledged that your responsibilities as General Counsel of the DOD included acting as the "final legal authority" for the Department. You were the last stop for legal advice that would reach the Secretary of Defense. Given that there were differences in opinion about whether the use of certain tactics would violate both civilian and military law, even as between the opinions you acknowledge that you read (those of Lieutenant Colonel Beaver and Generals Hill and Dunlavey), do you think it would have been wise to seek and scrutinize the competing views before sending your recommendation on permissible techniques to Secretary Rumsfeld?

Mr. HAYNES. I believed I understood in general the concerns inherent in this decision and appropriately balanced those concerns in conferring with Deputy Secretary Wolfowitz, Chairman Myers, Under Secretary Feith, and then-Captain (now retired Rear Admiral) Dalton in making my recommendation to the Secretary. During my time in DOD, I believe I did take into consideration competing points of view on issues including this one.

23. Senator KENNEDY. Mr. Haynes, given the immense responsibility you bore in acting as the final legal authority for decisions affecting the entire DOD, do you see why many people find it so troubling that you apparently dismissed the reservations of Army Generals and top military lawyers on an important matter without explaining your rationale to them or to your superiors?

Mr. HAYNES. It is erroneous to say that I dismissed the reservations of others. I understand that people have differences of opinion. I understand how those who have the benefit of hindsight and who disagree with policy judgments that were made by the administration can be "troubled" by and continue to disagree with some decisions. There are thousands of lawyers within the DOD. The views of these lawyers are not uniform. They also have differences of opinion. It was my practice, given the constraints of time, resources, and the need-to-know, to listen and appropriately take into consideration the views of civilian and military lawyers within DOD as well as the views of commanders.

DOCUMENTATION OF CONTACTS

24. Senator KENNEDY. Mr. Haynes, at last week's hearing, you said that your office and Admiral Dalton's office enjoyed a "close working relationship." Yet you claim to be unaware of the memoranda on interrogation that she, on General Myers's direction, solicited from the Services. Do you have any documentation of the contacts made between your office and Admiral Dalton's regarding interrogation policy?

Mr. HAYNES. I am no longer employed by the DOD and do not have such documentation nor do I know which documents on these matters, if any, may be available. I would refer you to the Department.

25. Senator KENNEDY. Mr. Haynes, please indicate what documents—including memoranda, letters, phone records, and e-mails—you believe exist.

Mr. HAYNES. See answer to question 24 above.

HAYNES MEMO

26. Senator KENNEDY. Mr. Haynes, your memo from November 27, 2002, states that you believed that the Under Secretary of Defense for Policy, Douglas Feith, and General Myers joined your recommendation on permissible interrogation techniques. Yet General Myers never initialed your memorandum or, it seems, saw it at all. Why did you believe that he had, and do you continue to stand by that claim?

Mr. HAYNES. General Myers is an honorable man. I have the highest respect for his integrity and his service to our country over decades, including during these recent years. I am honored to have served with him, and I continue to consider him a friend. I stand by my statements regarding his role in the process.

CORRESPONDENCE WITH THE WHITE HOUSE

27. Senator KENNEDY. Mr. Haynes, during your testimony last Tuesday, you acknowledged that the following legal restrictions were applicable during the time periods discussed at the hearing:

- The categorical Federal prohibition on torture inside or outside the United States under 8 U.S.C. 2340–2340A.
- The requirement in Article 16 of the CAT that the United States undertake to prohibit cruel, inhuman, and degrading treatment.
- The Uniform Code of Military Justice's (UCMJ) prohibition on U.S. Armed Forces engaging in cruelty, oppression, or maltreatment of prisoners (art. 93); assaulting prisoners (art. 128); or communicating a threat to wrongfully injure a detainee (art. 134).
- The 2001 Presidential Order that all detainees be treated "humanely."

Yet, if you had read the November 4, 2002, memorandum on interrogation from Air Force Headquarters, you would have been informed that several of the tactics you approved—even some in Category II—clearly violated the President's policy on detainees. Virtually every legal analyst who has considered the issue has found that many of the techniques you approved violate all of the legal restrictions listed above. Did you ever seek approval from the White House to effect a deviation from its stated policy on humane treatment of detainees? Why or why not?

Mr. HAYNES. Many elements of this question are inaccurate. For example, the Air Force memorandum to which you refer apparently represents the view of one lawyer who had provided a preliminary analysis and was not addressed to me. Second, I did not approve any techniques; I, along with other advisors, recommended that certain techniques be approved by the Secretary. Third, I believe that all of the techniques that I recommended be approved were lawful if conducted with the safeguards to be applied by U.S. Southern Command and the joint task force at Guantanamo Bay Naval Station, Cuba and consistent with the President's directive. Accordingly, the Department did not seek a deviation from the President's policy.

28. Senator KENNEDY. Mr. Haynes, did you ever seek or receive any legal advice from the White House or from any other executive department, such as the DOJ, that the prohibitions on torture in the UCMJ, the CAT, or the criminal code may not apply to U.S. personnel in certain circumstances? If so, would you please describe any such contacts in detail?

Mr. HAYNES. The testimonial guidelines from the DOD do not permit me to discuss specific deliberative communications or the predecisional advice, recommendations, or other positions taken by individuals or entities. With the exception of the specific disclosures authorized by the Department's guidance to me, the Department has not waived deliberative process or attorney-client privileges. I became aware of legal opinions from the DOJ from time to time, although I cannot recall specifically when I became aware of those opinions. In early 2003, I sought an opinion from the Office of Legal Counsel (OLC) regarding the legal standards governing military interrogations of alien unlawful combatants held outside the United States for the use of the DOD working group. That opinion was provided to me on March 14, 2003 and previously has been released publicly.

29. Senator KENNEDY. Mr. Haynes, you testified that the law enforcement community did not know how to deal with the impasse it had encountered in interrogating Mohammad Al-Qatani. Before turning to the JPRA and its SERE training program for recommendations on interrogation, did you consult with actual law enforcement officials or with the Federal Bureau of Investigation (FBI)?

Mr. HAYNES. Without accepting your characterization of my testimony or other assumptions inherent within this question, I nevertheless would point out that the FBI and other law enforcement entities were well-represented al Guantanamo Bay Naval Station, Cuba, during the period in which Mr. Qatani was detained and questioned.

It is my understanding that numerous interrogation efforts over many months in 2002 by the FBI and other law enforcement professionals, as well as numerous interrogation efforts by intelligence professionals using then-existing doctrine, were uniformly unsuccessful in eliciting truthful information from Qatani, the intended 20th hijacker in the September 11 attacks on the United States.

Indeed, it is my understanding that agents of the FBI questioned Qatani at some substantial length—without success—before JTF–170 requested permission to use more aggressive techniques.

CONSIDERATION OF MORE AGGRESSIVE INTERROGATION TECHNIQUES

30. Senator KENNEDY. Mr. Haynes, would you please provide details of how the decision was made to consider more aggressive techniques than those which were initially used against Mr. Al-Qatani and others?

Mr. HAYNES. Please see the transcript of the Senate Armed Services Committee hearing conducted on June 17, 2008.

I can only answer with regard to my own recollection, understanding, and belief. During the 2001 and 2002 timeframe, many individuals throughout the Government were engaging in efforts to collect information that might be useful during the war on terror including lessons learned or new ideas relating to detainee operations and interrogations. This was a new kind of conflict against a new kind of enemy that presented complex and novel questions.

During the summer and fall of 2002, as the country approached the 1-year anniversary of the September 11 attack, there were increasing indications from the world scene and intelligence reports that additional attacks on America might be imminent. There was a sense in Government, across all branches, that U.S. agencies like the DOJ (i.e., the FBI), the CIA and the DOD, in practice and as reflected in policy decisions made in prior administrations, had been overly cautious and constrained, and that those choices had contributed to the failure to prevent the treacherous and deadly attack against America on September 11, 2001. This critique had been widely discussed and was not an uncommon sentiment throughout the country, including in Congress.

As I have explained, my understanding is that Mr. Qatani had been interrogated for some time using more traditional law enforcement oriented or Army field manual interrogation techniques. My understanding is that, consistent with the training he received from al Qaeda, Mr. Qatani resisted providing useful information in response to those techniques. My understanding is that, despite his status as the intended 20th highjacker on the flights that struck America on September 11, 2001, Mr. Qatani maintained that he was an "innocent falconer." My understanding is that those on the ground at Guantanamo, who were responsible for collecting intelligence from the detainees, were frustrated by Mr. Qatani's duplicity and lack of cooperation.

In this context, I understand that the command from Guantanamo generated a list of additional techniques that they requested be approved for use at Guantanamo Bay, Cuba. This request was reviewed by command lawyers and command personnel, in accordance with normal procedure. The local legal review conditioned its approval of the requested techniques upon the existence of certain conditions including legal, medical, behavioral science, and intelligence review as well as local training of interrogators in approved methods of interrogation. These additional techniques were to be implemented and supervised by the local command and, so I and others understood, would be implemented in accordance with those restrictions. This list of requested techniques was forwarded to the Secretary for consideration. Ultimately, based upon my and others' recommendations, the Secretary approved a subset of those requested techniques for use at Guantanamo Bay.

SPECIAL HANDLING OF MEMOS

31. Senator KENNEDY. Mr. Haynes, Professor Philippe Sands, who testified at a recent Senate Judiciary Committee hearing, has written that the November 27, 2002, Haynes memorandum on interrogation techniques received special handling. Professor Sands's research shows that the memo was missing a buck slip that would have shown the memo's circulation path, as is done in normal practice. Further, the legal review by the DOD and the DOJ that had been requested by General Hill in his October 25, 2002, memo to the Chairman was never documented. Did your memo receive special handling by you or by others? Please explain.

Mr. HAYNES. I am not familiar with this specific critique by Mr. Sands. I do not believe my November 27, 2002 memo was handled in a way that was inappropriate.

32. Senator KENNEDY. Mr. Mora, based on your experience in military legal practice, did this memo receive special handling, and, if so, what does that suggest about the motivations of those involved?

Mr. MORA. I am not sufficiently knowledgeable of DOD or Joint Staff document handling procedures or protocols to state with assurance that the November 27, 2002, Haynes memorandum on interrogation received special or unusual handling. I am aware that the Joint Staff did not complete its review of General Hill's request, including the legal review of the request, but I do not have enough knowledge of Joint Staff procedures to say whether the intervention by Secretary Rumsfeld's staff to assume control of the issue was unusual or usual. Accordingly, I am unable to extrapolate a view on the motivations of those involved based on this fact alone.

ARMY FIELD MANUAL STANDARDS

33. Senator KENNEDY. Mr. Mora, do you believe that the Army Field Manual (AFM) standards on interrogation should apply to all U.S. interrogations?

Mr. MORA. The baseline AFM standard on interrogations is the standard that should apply to all interrogations conducted directly or indirectly by all agencies of the United States Government or anyone acting on its behalf. Simply stated, the United States does not apply torture or cruel, inhuman, or degrading treatment to anyone in its direct or indirect custody or control. Violation of this treatment standard should constitute a criminal act under Federal statutes.

Whether the AFM (as opposed to its standards) is applied to non-DOD agencies is a separate issue. Because the AFM is complex and geared to the military, it is my view that non-DOD agencies, particularly in the intelligence and law enforcement communities, should adopt separate manuals that embody the AFM standard without reference to DOD-specific procedures. However, if (for political or other reasons) the choice is between applying the AFM to all agencies, on the one hand, or only to DOD, on the other, then I would opt for applying it across the board to all agencies.

QUESTIONS SUBMITTED BY SENATOR HILLARY RODHAM CLINTON

OFFICE OF LEGAL COUNCIL MEMO

34. Senator CLINTON. Mr. Shiffrin, when did you recall first seeing the August 1, 2002, OLC memorandum from Jay Bybee to Attorney General Gonzales regarding the legality of interrogation methods?

Mr. SHIFFRIN. I never saw nor knew of the existence of this memorandum during my service at the DOD. The only OLC memorandum on the subject of interrogation I recall seeing was a draft opinion authored by Deputy Assistant Attorney General John Yoo shared with a DOD lawyers working group early in 2003. I also recall attending at least one meeting of that working group at which John Yoo was present.

35. Senator CLINTON. Mr. Shiffrin, did you discuss the memo with other lawyers in the General Counsel's office at the DOD?

Mr. SHIFFRIN. I never discussed the Jay Bybee memorandum with other lawyers in the DOD General Counsel's office, nor do I recall discussing the draft John Yoo memorandum with those lawyers.

36. Senator CLINTON. Mr. Haynes, do you recall when you received the August 1, 2002, OLC memorandum from Jay Bybee to Attorney General Gonzales regarding the legality of interrogation methods?

Mr. HAYNES. I do not recall precisely when I received a copy of the August 1, 2002 opinion interpreting 18 U.S.C. §§ 2340–2340A. Too much time has passed and I have now seen the memo in so many contexts that I can no longer be certain when I saw it for the first time. I cannot even recall whether I simply read the opinion al some point or whether I received a copy of the opinion and, if so, who transmitted the copy. I did, eventually, get a copy of that opinion, but I do not remember when I first got it.

37. Senator CLINTON. Mr. Haynes, do you recall who first sent you a copy of that memorandum?

Mr. HAYNES. Please see the answer to question 36 above.

CONVERSATION ON WATERBOARDING

38. Senator CLINTON. Lieutenant Colonel Baumgartner, in his testimony Dr. Ogrisseg recalls a conversation with you in which you said that individuals from above were asking about the utility of using the technique of waterboarding against the enemy. Do you recall having a conversation with Dr. Ogrisseg specifically about the use of waterboarding?

Lieutenant Colonel BAUMGARTNER. I do recall a conversation on the use of physical pressures in an offensive interrogation setting, as opposed to SERE training, but I do not recall the specific pressures we discussed.

39. Senator CLINTON. Lieutenant Colonel Baumgartner, do you recall which individuals from above you were referencing in that conversation?

Lieutenant Colonel BAUMGARTNER. I was referring generally to the Office of the Secretary of Defense (OSD) Office of the General Counsel. As I testified, Mr. Shiffrin had contacted our office about obtaining information.

JULY 26, 2002, MEMO

40. Senator CLINTON. Lieutenant Colonel Baumgartner, in a July 26, 2002, memorandum you wrote that the purpose of the memorandum was to "answer follow-on questions" that resulted "from the meeting between JPRA and OSD Office of General Counsel (OGC) on 25 July 02." What can you tell us about this meeting and the questions it produced?

Lieutenant Colonel BAUMGARTNER. I recall answering this question during my testimony. I was responded to OSD OGC requests for information as a result of a few phone conversations with Mr. Schifrin earlier in July. These led to the two memos written at request of OSD OGC that were supplied to OGC at the end of July. Until the June 2008 hearing I had never met Mr. Shiffrin.

SEPTEMBER 29, 2004, MEMO

41. Senator CLINTON. Lieutenant Colonel Baumgartner, when did you first see the memorandum dated September 29, 2004, from Major General James N. Soligan regarding JPRA Mission Guidance?

Lieutenant Colonel BAUMGARTNER. I believe I saw the memo the first time when my lawyer and I went over documents supplied to us from OGC that the staffers wanted to discuss during their interviews. As I testified, I had retired from my position at JPRA in the spring 2003.

42. Senator CLINTON. Lieutenant Colonel Baumgartner, do you have any knowledge about the circumstances that led to the drafting of this memorandum?

Lieutenant Colonel BAUMGARTNER. No.

43. Senator CLINTON. Lieutenant Colonel Baumgartner, prior to your retirement, had any concerns been communicated to you from within the Air Force or any other component of DOD about the use of SERE techniques for offensive purposes in connection with DOD interrogations?

Lieutenant Colonel BAUMGARTNER. The use of physical pressures or other techniques to interview detainees was discussed at length. Some individuals had positive views and some had negative views. These matters were of professional interest since many of the same techniques were used to train our SERE students.

COUNTER-RESISTANCE STRATEGY MEETING

44. Senator CLINTON. Lieutenant Colonel Beaver, can you please describe the chain of events that led to the creation of the October 2, 2002, counter-resistance strategy meeting?

Lieutenant Colonel BEAVER. I organized meetings to discuss interrogation issues and invited members from JTF–170 and CITF to participate in the discussions. I held the meetings because I thought it was important to have an exchange of ideas from all concerned and not just members of the Intelligence Community. I established a "non-attribution policy" to ensure that personnel could express their opinions without fear of retribution. I started holding these ad hoc meetings in August 2002 when the intelligence personnel first approached me about the use of additional interrogation techniques.

45. Senator CLINTON. Lieutenant Colonel Beaver, whose idea was it to hold the meeting?

Lieutenant Colonel BEAVER. See answer to question 44.

46. Senator CLINTON. Lieutenant Colonel Beaver, who organized the meeting?

Lieutenant Colonel BEAVER. I organized the meeting.

47. Lieutenant Colonel Beaver, who invited officials from intelligence agencies to the meeting?

Lieutenant Colonel BEAVER. I don't recall exactly how this happened but I invited personnel from JTF–170 and CITF. I encouraged these organizations to bring anyone who could provide substantive input on interrogation matters. Mr. Fredman just happened to be at Guantanamo Bay, Cuba visiting his personnel the day this meeting was scheduled. I invited him to attend. I thought the involvement of many different personnel with different backgrounds would lead to the best discussion of the issues—legal and policy. These were brain storming sessions and the ideas expressed were not to be attributed to the individual but just the group's discussion on that particular day. Without the establishment of a non-attribution policy it was unlikely that personnel would have felt comfortable expressing opinions about this controversial topic.

48. Senator CLINTON. Lieutenant Colonel Beaver, how many similar meetings were held, and when?

Lieutenant Colonel BEAVER. I don't recall but I believe I held approximately three such meetings during the period August to October 2002.

49. Senator CLINTON. Lieutenant Colonel Beaver, the minutes of the counter-resistance strategy meeting on October 2, 2002, include a passage in which John Fredman is quoted as saying, "In the past when the International Committee of the Red Cross (ICRC) has made a big deal about certain detainees, the DOD has moved them away from the attention of ICRC." Are you familiar with any cases where this has happened, and if so, can you describe the circumstances?

Lieutenant Colonel BEAVER. I do not know. Regarding Guantanamo Bay, Cuba, the ICRC had access to interview detainees privately. The ICRC did not have a permanent presence on Guantanamo Bay, Cuba. ICRC personnel usually were at Guantanamo for 6-week periods and would leave for 6–8 weeks. When the ICRC returned to Guantanamo for a scheduled visit, its personnel were provided an updated list of detainees, as necessary, by the Commander, Military Police, so that the ICRC could schedule its interviews with detainees. There were times when the Commander, JTF–170 and later, JTF GTMO denied the ICRC access to a particular detainee for a limited period of time for reasons of operational security. These reasons were discussed with the ICRC personnel by the Commander, JTF–170 and JTF GTMO. Sometimes, these situations were documented by memorandum. These situations were rare.

DISCUSSION OF INTERROGATION METHODS

50. Senator CLINTON. Mr. Haynes, when did you become aware that CIA and Defense Intelligence Agency personnel were meeting with officers at GTMO in October 2002 to discuss interrogation methods?

Mr. HAYNES. I do not recall exactly when I first learned this information. I would point out, however, that it was very widely known, including among Members and staff of Congress, that all manner of attention and resources were being devoted to the difficult challenge of eliciting information from those detained at Guantanamo

Bay Naval Station, Cuba, throughout 2002. It also was known that many representatives of many agencies were present at Guantanamo Bay Naval Station, Cuba, and were actively participating in discussions regarding matters pertaining to detainees, including interrogation.

51. Senator CLINTON. Mr. Haynes, were you aware of those meetings at the time they were taking place?

Mr. HAYNES. Please see the answer to question 50 above.

ARMED FORCES MEMOS

52. Senator CLINTON. Mr. Haynes, you testified that you had not seen the memoranda from the Air Force, Army, Navy, and Marine Corps raising concerns about the proposed counter-resistance interrogation techniques until a month before the hearing. However, were you aware at any point earlier than that that those memoranda had been written?

Mr. HAYNES. As I testified to at the June 17 hearing, I do not remember seeing the memoranda from the various Service lawyers concerning the JTF–170 request for additional interrogation techniques in the fall of 2002. The first time I recall seeing these memoranda was at my voluntary interview with the Senate Armed Services Committee on April 25, 2008. Six years later, I am not sure whether I even knew such memoranda existed prior to that time, although I cannot rule out that I may have been told the memoranda existed at the time. I do not believe I was provided with copies of these memos before the April Senate Armed Services Committee interview, and I do not recall seeing them again until the June 17 Senate Armed Services Committee hearing. I would note that the memoranda were not addressed to me and that internal Joint Staff staffing memoranda were frequently retained within the Joint Staff.

53. Senator CLINTON. Mr. Haynes, outside of your conversations with former General Counsel Mora, were you aware at any point earlier than that that any of the four Services held the views expressed in that memorandum?

Mr. HAYNES. I would not characterize the "Services" as holding a view expressed in any particular memorandum. Individual lawyers from the Services apparently expressed some preliminary views in memoranda that were part of the Joint Staff staffing process and were not addressed to me. It is very difficult to recall with precision the timing of what I knew about any specific topic given the length of time that has passed, the number of issues I dealt with as General Counsel, and information concerning these topics that I have learned after the fact. I did know that there were concerns regarding what techniques were appropriate for detainee interrogations. It is not surprising that there would be differences of opinion on such an issue. I took these general concerns into consideration. I believe others did as well. Some of the proposed additional techniques that were ultimately approved were not particularly controversial. I recommended against the use of the three category III techniques that would have raised the most concerns. I recommended approval of other techniques that were less controversial, but that nevertheless with which some people take issue. In doing so, I attempted to strike a balance and accommodate competing points of view while always adhering to applicable legal standards.

[Whereupon, at 5:15 p.m., the committee adjourned.]

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 THE DETAINEES IN U.S. CUSTODY

THURSDAY, SEPTEMBER 25, 2008

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:36 a.m. in room SD–106, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Dole, and Thune.

Committee staff members present: Richard D. DeBobes, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Joseph M. Bryan, professional staff member; Ilona R. Cohen, counsel; Mark R. Jacobson, professional staff member; and Peter K. Levine, general counsel.

Minority staff members present: Michael V. Kostiw, Republican staff director; William M. Caniano, professional staff member; and David M. Morriss, minority counsel.

Staff assistants present: Jessica L. Kingston, Brian F. Sebold, and Breon N. Wells.

Committee members' assistants present: Jay Maroney, assistant to Senator Kennedy; Elizabeth King, assistant to Senator Reed; Caroline Tess, assistant to Senator Bill Nelson; Gordon I. Peterson, assistant to Senator Webb; Mark J. Winter, assistant to Senator Collins; Andi Fouberg and Jason Van Beek, assistants to Senator Thune.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody.

In June 2008, this committee held a hearing on the origins of aggressive interrogation techniques used against detainees in U.S. custody at Guantanamo Bay (GTMO), Abu Ghraib, and elsewhere. At that hearing, the committee heard how techniques such as stress positions, forced nudity, and sleep deprivation used in military survival, evasion, resistance, and escape (SERE) training to teach U.S. personnel to resist abusive interrogations, and based in part on Chinese communist techniques used during the Korean War to elicit false confessions, were turned on their head and au-

thorized at senior levels of our government for use in interrogations of detainees in U.S. custody.

Today's hearing will cover one way that those techniques made their way to Iraq. While some have claimed that detainee abuses at Abu Ghraib and elsewhere were simply the result of a few bad apples acting on their own, at our June hearing we heard that as far back as December 2001 senior Department of Defense (DOD) officials, including General Counsel William "Jim" Haynes' office, sought out information from the Joint Personnel Recovery Agency (JPRA), the DOD agency responsible for overseeing SERE training. We heard how, when he later received a request from GTMO to use techniques similar to those used in SERE training, Mr. Haynes ignored strong concerns, from the military Services themselves, that some of the techniques were illegal. He cut short an effort by the legal counsel to the Chairman of the Joint Chiefs of Staff to conduct a legal and policy review of the techniques, and he recommended that the Secretary of Defense approve most of them for use against detainees.

In December 2002, Secretary Rumsfeld approved Mr. Haynes' recommendation, sending the message that stripping detainees, placing them in stress positions, and using dogs to intimidate them was acceptable. Policies authorizing some of those same abusive techniques in Afghanistan and Iraq followed the Secretary's decision.

This morning, we'll hear how one military commander in Iraq sought and obtained interrogation support from JPRA, the agency whose expertise is in teaching soldiers to resist abusive interrogations conducted by our enemies. We'll hear from Colonel Steven Kleinman, the former Director of Intelligence at JPRA's Personnel Recovery Academy, and we'll hear from retired Colonel John Moulton II, former Commander of JPRA. Both witnesses have been cooperative with the committee's inquiry. We thank them for their appearance here today, and we thank them for their service to our Nation.

Some new information and recently declassified documents provide further insight into the extent to which SERE training techniques influenced detainee interrogations conducted by U.S. personnel and the role of senior officials in approving policies authorizing the use of those techniques against detainees.

At our June 17 hearing, we heard that the DOD General Counsel's Office, led by Jim Haynes, sought advice from JPRA as far back as December 2001. Specifically, in mid-December 2001, Deputy General Counsel for Intelligence Richard Shiffrin solicited information from JPRA on detainee exploitation. JPRA chief of staff, Lieutenant Colonel Daniel Baumgartner, responded to Mr. Shiffrin's call with a six-page fax. An unclassified fax cover sheet addressed to Mr. Shiffrin and dated December 17, 2001, states that the document provided JPRA's "spin on exploitation," and that if the General Counsel's Office needed "experts to facilitate this process, the JPRA stood ready to assist." That December 2001 call from Mr. Shiffrin appears to have been JPRA's first foray into what are called offensive interrogation operations, but other efforts soon followed.

On April 16, 2002, Dr. Bruce Jessen, who was then the senior SERE psychologist at JPRA, circulated a draft exploitation plan to the JPRA Commander, Colonel Randy Moulton, and other senior officials at the agency. E-mails exchanged between Dr. Jessen and Colonel Moulton suggest that JPRA intended to seek approval of the exploitation plan.

Also in the spring of 2002, the Central Intelligence Agency (CIA) sought approval from the National Security Council (NSC) to begin an interrogation program for high-level al Qaeda detainees. In a written response to questions dated September 12, 2008, which I sent to her in July 2008, Secretary of State Condoleezza Rice, who was then the National Security Advisor to the President, stated that in 2002 and 2003 there were meetings at the White House where specific CIA interrogation techniques were discussed.

I also asked Secretary Rice whether she attended meetings where SERE training was discussed. Secretary Rice responded that she recalled being told that U.S. military personnel were subjected in training to "physical and psychological interrogation techniques," and her legal advisor at the time, John Bellinger, said in his September 12, 2008, written answers to my questions that he was present in meetings at the White House or the Eisenhower Executive Office Building next door, "at which SERE training was discussed."

Secretary Rice also wrote, in her September 12 response that John Yoo, Deputy Assistant Attorney General at the Department of Justice's (DOJ) Office of Legal Counsel (OLC) provided legal advice at several meetings that she attended, and that the DOJ's advice on the program "was being coordinated by Counsel to the President Alberto Gonzales." She wrote that CIA's interrogation program was reviewed by NSC principals, and that Secretary of Defense Rumsfeld participated in that review.

Secretary Rice said that when CIA sought approval of the interrogation program, she asked Director of Central Intelligence George Tenet to brief the NSC principals, and asked Attorney General John Ashcroft to "personally advise NSC principals whether the program was lawful."

Mr. Bellinger, her legal advisor, wrote us that he asked CIA lawyers to seek legal advice, not only from the OLC, but also from the criminal division of DOJ, which was headed at that time by Michael Chertoff.

The meetings referred to by Secretary Rice and Mr. Bellinger were not meetings between some low-level bureaucrats. These are the most senior officials in the United States Government, advisors to the President, meeting in the White House.

Mr. Bellinger said that some of the legal analyses of proposed interrogation techniques that were prepared by DOJ referred to the "psychological effects of military resistance training," and that during that 2002–2003 timeframe he "expressed concern that the proposed CIA interrogation techniques comply with applicable U.S. law, including our international obligations."

At our June 17 hearing, the committee heard that, in July 2002, prompted by a request from DOD General Counsel Jim Haynes, Deputy General Counsel for Intelligence Richard Shiffrin called JPRA and asked for a list of physical and psychological pressures

used in SERE training. In response to that request, on July 26, 2002, JPRA provided a list of techniques that included stress positions, water boarding, slapping, sleep disruption, and sensory deprivation. The JPRA list also made reference to a section of the JPRA manual that talks about "coercive pressures" including treating a person like an animal. Mr. Shiffrin testified that part of the reason that the General Counsel's Office sought the information was its interest in reverse-engineering the techniques for use offensively in detainee interrogations.

At that hearing a few months ago, we also heard that in October 2002, Major General Michael Dunlavey, the Commander at GTMO, requested authority to use some of the same SERE training techniques that had been on the list which JPRA provided to Mr. Haynes' office in July.

The military Services registered serious concerns about the legality of some of the techniques in Major General Dunlavey's request. Rear Admiral Jane Dalton, who was the legal counsel to the Chairman of the Joint Chiefs of Staff, testified that she initiated a broad-based legal and policy review of the request, but, at Mr. Haynes' request, her review was cut short by General Richard Myers, the Chairman of the Joint Chiefs of Staff at that time.

Mr. Haynes subsequently recommended that Secretary of Defense Donald Rumsfeld approve most of the techniques in Major General Dunlavey's request. Again, on December 2, 2002, Secretary Rumsfeld approved Mr. Haynes' recommendation authorizing the use of aggressive interrogation techniques at GTMO, including stress positions, instilling fear through the use of dogs, and removal of clothing.

At the June 17 hearing, we heard from then-Navy General Counsel Alberto Mora about concerns that he raised in December 2002 and January 2003 with Mr. Haynes about interrogations at GTMO. We learned, from John Bellinger, the NSC Advisor, in his September 12 response to my questions, that on several occasions Deputy Assistant Attorney General Bruce Swartz raised concerns with him about allegations of detainee abuse at GTMO. Mr. Bellinger wrote to me that he, in turn, raised these concerns "on several occasions with DOD officials."

In her September 12 response, Secretary Rice wrote that Mr. Bellinger also advised her "on a regular basis regarding concerns and issues relating to DOD detention practices and policies at GTMO." She wrote 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 DOD."

At our last hearing, I described how aggressive techniques authorized by the Secretary of Defense for use at GTMO made their way to Afghanistan and Iraq. Many of these same techniques were authorized by senior military commanders.

For instance, on September 14, 2003, Lieutenant General Ricardo Sanchez, the Commander of the Combined Joint Task Force-7 in Iraq, authorized the use of dogs, stress positions, and other aggressive techniques in interrogations. In the summer of 2003, the commander of a special mission unit task force in Iraq went further. He contacted JPRA for help with interrogations. Again, JPRA's expertise is in training soldiers to resist abusive interroga-

tions by enemies that refuse to follow the Geneva Conventions. In response to the commander's request and with explicit approval from the U.S. Joint Forces Command (JFCOM), JPRA's higher headquarters, JPRA sent an interrogation support team to Iraq. Colonel Kleinman, who is here with us this morning, was the team leader during that visit.

Here's some of what we know about the Iraq trip from unclassified or declassified sources:

The task force's request for JPRA "interrogator support" was submitted through official channels, and was approved by JFCOM on August 27, 2003. JPRA put together a three-person team to support the request.

On September 4, 2003, just as the JPRA team was arriving in Iraq, Lieutenant General Robert Wagner, the Deputy Commander of JFCOM, which is JPRA's senior command, sent an e-mail to Colonel Moulton, the JPRA Commander, about the trip, asking, "What in JPRA's charter places JPRA in the business of intelligence collection?"

Again, just a week earlier, JFCOM had approved the trip. Colonel Moulton replied to Lieutenant General Wagner's e-mail that "there is nothing in our charter or elsewhere that points us toward the offensive side of captivity conduct," and that JPRA was "well aware of the problems associated with crossing the Rubicon into intelligence collection (or anything close)."

A second e-mail from Colonel Moulton, however, sent on September 9, 2003, to the JFCOM Director of Operations stated that "recent history, to include discussions and training with the Defense Intelligence Agency (DIA), U.S. Special Operations Command (SOCOM), and CIA shows that no DOD entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation. Our subject-matter experts and certain SERE psychologists currently have the most knowledge and depth within DOD on the captivity environment and exploitation."

While Colonel Moulton's e-mail said that JPRA was "not looking to expand our involvement to active participation," he noted that JPRA's "potential participation is predicated solely on the request of the combatant commander."

A recently declassified summary of a 2005 interview with Colonel Moulton, and Colonel Moulton's prepared statement for today's hearing, both describe conversations which he had with Colonel Kleinman while the JPRA team was in Iraq. Colonel Moulton acknowledges telling Colonel Kleinman that the JPRA team was authorized to participate in interrogations using SERE training techniques. Colonel Moulton said he granted that authority only after seeking approval from JFCOM.

Colonel Kleinman has said he objected to the use of SERE training techniques during the trip, and that he told Colonel Moulton both that those techniques were inconsistent with the Geneva Conventions and that granting authority for the team to use them was an illegal order.

This morning, we will hear both Colonel Moulton's and Colonel Kleinman's account of those conversations and events that occurred during that trip.

Toward the end of their trip, members of the JPRA team produced a draft concept of operations (CONOP) for the interrogation of detainees. E-mails from Captain Daniel Donovan, JFCOM Staff Judge Advocate, reveal some of what the CONOP proposed and what JPRA thought was acceptable.

Captain Donovan, in a September 26, 2003, e-mail to Colonel Moulton and others at JPRA, raised a concern that techniques proposed in the CONOP would "not be legal under the Geneva Conventions." A few days later, in an e-mail to JFCOM leadership, Captain Donovan reiterated his concern that 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, that they need to be damn sure they're appropriate in both a legal and policy sense."

Captain Donovan added, "JPRA got its list of techniques from a DOD General Counsel working group report dated March 6, 2003, so I'm sure that they felt that their list might have already been 'blessed by Pentagon lawyers.'"

The working group referred to by Captain Donovan's e-mail had been established at Secretary Rumsfeld's direction in January 2003. As the committee heard at our June 17 hearing, over the strong objections of senior military lawyers, the working group relied on a March 14, 2003, legal opinion from DOJ's OLC written by John Yoo. The working group's final report, issued on April 4, 2003, recommended several aggressive techniques, including removal of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, increased anxiety through the use of a detainee's aversions, like dogs, and face and stomach slaps. While the final working group report did not mention SERE, many of the techniques it recommended were strikingly similar to techniques used in JPRA's SERE training.

Captain Donovan's e-mail said that the techniques which were approved by Secretary Rumsfeld for use at GTMO in April 2003 were not the same as those in the working group report, and said that what the Secretary had approved was more restrictive. As we heard at our June 17 hearing, Secretary Rumsfeld's April 2003 memo to the U.S. Southern Command (SOUTHCOM), GTMO's higher headquarters, was silent on most of the techniques in the working group's report. The Secretary's memo said that if techniques beyond the 24 that he specifically authorized were required, SOUTHCOM should "provide a written request describing the proposed technique, recommending safeguards and the rationale for applying it with an identified detainee." We heard at our last hearing that one such request arrived at the Pentagon just a few months later and was approved by the Secretary.

Secretary of Defense Rumsfeld's original December 2, 2002, authorization of aggressive interrogation techniques, including stress positions, use of dogs, and removing detainees' clothing, and his working group's April 2003 recommendation of many other additional aggressive techniques conveyed the message that senior officials felt that the physical pressures and degrading tactics were appropriate for use during interrogations of detainees in U.S. military

custody. Many of the aggressive techniques that the Secretary approved in December 2002, including the three that I just mentioned—stripping detainees, putting them in stress positions, and using dogs to intimidate them—were used against detainees at Abu Ghraib.

However, even the public disclosure of abuses at Abu Ghraib apparently did not eliminate interest in using SERE specialists to provide advice on interrogations. The DOD Inspector General (IG) said in its 2006 report that it was only after a request to send a JPRA team to Afghanistan in 2004 that JFCOM finally issued guidance that the use of SERE for offensive purposes lies outside the roles and responsibilities of JPRA.

I see that there are no other Senators here for an opening statement so I'm going to call first on Colonel Moulton.

If you would provide us with your statement. Again, thank you so much for being with us and for your cooperation with this committee.

STATEMENT OF COL. JOHN R. MOULTON II, USAF (RET.), FORMER COMMANDER, JOINT PERSONNEL RECOVERY AGENCY

Colonel MOULTON. Yes, sir. Mr. Chairman, thank you for allowing me to appear before your committee today. The issue of treatment of detainees in U.S. custody is a critically important matter, and I'm pleased to provide information and testimony relative to the questions raised in the memo to me, dated September 12.

In accordance with the committee's specific request, I have written testimony addressing my recollections of the events cited in that memo.

I do want to take this opportunity to say that I've read some of Colonel Kleinman's previous testimony and some of the papers he had written, and I feel that we are pretty much of one mind when it comes to the treatment of detainees in U.S. custody. I commend his service and contribution to this important effort.

I'd like to provide a brief background on my service to the United States, focusing particularly on my time and efforts at JPRA.

I graduated from the United States Air Force Academy in 1978 and spent the first 10 years of my career flying operational jobs with WC–130s and rescue HC–130s. From 1989 to 2000, I served in various command and staff positions, twice at the Air Staff. I was a research fellow at Georgetown University, where I taught American defense policy. I was also a legislative liaison for SOCOM and held the positions of director of operations and commander for operational squadrons.

In July 2000, I was assigned as the Deputy Commander of JPRA, and assumed command in March 2001. I served as commander until September 2004, and retired in December of that year.

JPRA's mission is to shape personnel recovery for DOD interagency and partner nations to enable commanders, forces, and individuals to effectively accomplish their personnel recovery responsibilities. As part of that mission, JPRA provides training to DOD personnel on critical tasks essential to SERE. JPRA's mission has never been to conduct interrogations of captured personnel, nor

were the JPRA personnel that I commanded trained to do that mission.

Commanding the professional men and women of JPRA was, without a doubt, the most rewarding assignment of my career. The value of the myriad services performed by that agency is unparalleled and is only superceded by the commitment of the men and women working there.

Upon assuming command, I had three primary goals for my command tenure. The first of those was to restructure the organization to mirror that of other joint organizations. This restructuring included placing uniformed personnel in charge of directorates which had previously been headed by government civilians. I determined this restructuring to be critical to the accountability associated with our many varied missions.

My second priority was to create the Personnel Recovery Academy using our training facilities at Fairchild Air Force Base as the nucleus for that. I also wanted to create a uniformed command position equivalent to that of squadron commander to oversee their programs and to report directly to me.

Due to the geographic separation and the different missions from the JPRA headquarters, I determined it was necessary to have full-time oversight by a uniformed officer. That change had nothing to do with any old perceptions I had of the personnel working at Fairchild Air Force Base. I believed it would provide them with more unit identity and cohesion.

My third priority was to create a core captivity curriculum that would bring all the Service survival schools together with one standardized approach to SERE training.

After the events of September 11, 2001, JPRA refocused its attention on the training curriculum and personnel recovery planning essential to support the warfighter in a new and ambiguous operating environment. With operations in Afghanistan and, later, Iraq, we immediately became focused on developing new area survival and evasion charts, "pointy-talkies," which are cards that help us communicate with indigenous, mostly illiterate personnel, and also to develop a survival crib sheet for deploying soldiers, sailors, and airmen who had not previously had SERE training.

Permission was especially difficult during this time, because we were faced, for the first time in history, with a conflict where our Armed Forces were in an operational environment where they could find themselves detained as either prisoners of war (POWs), peacetime governmental detainees, or hostages. Each of these situations requires the detainee to comport himself differently, and there are different legal ramifications with each scenario and how U.S. personnel are trained to interact with their captors.

Synthesizing these requirements into something that junior servicemembers focused on their primary mission could easily understand and retain was our most critical task. The requirement resulted in a significant increase in deployment operations tempo for JPRA to ensure that all forces were trained properly.

As Commander of JPRA, I reported directly to the Commander of JFCOM. On a day-to-day basis, I worked through the chief of staff or the director of operations, the J–3.

As had been my direction when I had assumed command of JPRA, all requests for support would be forwarded through JFCOM, who would then task JPRA after their review and approval. The JFCOM J–3 had an officer and a J–35 who was directly responsible for dealing with the requests from other combatant commands and Services that the JPRA support.

While JPRA routinely provided support teams in theater to conduct SERE training and also supported other DOD organizations with subject-matter experts on captivity psychology and counter-resistance, prior to September 2003 I'm not aware of any other direct support to interrogation operations in the field.

Throughout my tenure, I had discussions with JFCOM leadership about our mission and my reservations about extending support to interrogation operations. I believe there is a consensus among JFCOM leadership and my staff that JPRA as an organization was limited by its authorities. There was also a common agreement that the only personnel within DOD with subject-matter expertise on captivity psychology and counter-resistance were the training instructors assigned to JPRA in the Service SERE schools.

The dilemma we faced was how to provide support in these areas, while not extending past JPRA's charter. My recommendation to senior leadership at JFCOM, as early as February 2002, was to provide support requests by having individual Service subject-matter experts. This approach was endorsed by JFCOM and followed throughout my tenure and command.

I believe now, as I did during these events, that JPRA should not be in the business of conducting interrogations or interrogator training. Our personnel were not trained interrogators, and JPRA is not organized, trained, and equipped to perform that mission. However, the unique knowledge and expertise of the JPRA professionals did provide invaluable support for DOD's intelligence collection efforts. At the time, the confluence of events, especially the infusion of unlawful combatants into the conflict, the lack of clear guidance on their legal status in written operating procedures, and the lack of knowledge within the Intelligence Community about the psychology of captivity required tough decisions to be made. I believe that JPRA's efforts expanded the knowledge of captivity psychology, which led to improvements in the collection of actual human intelligence.

I appreciate the opportunity to speak today, and look forward to answering any questions you may have.

[The prepared statement of Colonel Moulton follows:]

PREPARED STATEMENT COL. JOHN R. MOULTON II (RET.), USAF

Mr. Chairman, distinguished members of the committee. Thank you for allowing me to appear before your committee today. The issue of treatment of detainees in U.S. custody is a critically important matter and I am pleased to provide information and testimony relative to the questions raised in your memo to me dated September 12, 2008.

In accordance with the committee's specific request, my written testimony today addresses my recollections of: (1) Joint Personnel Recovery Agency (JPRA) support to the Special Mission Unit Task Force (SMU TF) operations, including the September 2003 assistance visit to the SMU TF; (2) the purpose of the September 2003 visit; (3) any discussions I had with the SMU TF Commander relative to that visit; (4) any discussions I had with the JPRA Team Chief during that visit; (5) authorities granted to the JPRA team during that visit; and (6) any discussions I had with

the U.S. Joint Forces Command (JFCOM) relative to the September 2003 visit to the SMU TF and other JPRA assistance to interrogation operations.

Before I address these specific questions, I would like to provide a brief background on my service in the United States Air Force, particularly focusing on my time and efforts at JPRA. I graduated from the United States Air Force Academy in 1978 and spent the first 10 years of my career in various operational positions as a navigator in weather WC–130s and search and rescue HC–130s. From 1989 to 2000, I served in various command and staff positions to include two assignments to Headquarters, U.S. Air Force, National Defense Fellow at Georgetown University, legislative liaison for the U.S. Special Operations Command, and Director of Operations and Commander of Operational squadrons. In July 2000, I was assigned as the Deputy Commander of JPRA and assumed command in March 2001. I served as the Commander of JPRA until September 2004 and retired from Active Duty in December 2004.

JPRA's mission is to shape Personnel Recovery (PR) for the DOD, interagency, and partner nations and to enable commanders, forces, and individuals, to effectively accomplish their Personnel Recovery responsibilities. As part of that mission JPRA provides training to DOD personnel on critical tasks essential to survive, evade, resist, and escape captivity. JPRA's mission has never been to conduct interrogations of captured personnel nor were the JPRA personnel that I commanded trained to do that mission.

Commanding the professional men and women of JPRA was without a doubt the most rewarding assignment of my career. The value of the myriad services performed by that agency in support of the Department of Defense (DOD) is dwarfed only by the commitment of the men and women working there. Upon assuming command I had three primary goals for my command tenure. First I wanted to restructure the organization to mirror that of other joint commands. This restructuring included placing uniformed personnel in charge of directorates, most of which were previously headed by government civilians. I determined this restructuring to be critical to the accountability associated with our many varied missions. My second priority was to create a Personnel Recovery Academy (PRA) using our training facilities at Fairchild Air Force Base (AFB), WA, as the nucleus and to create a uniformed command position equivalent to that of a squadron commander to oversee their programs and report directly to me. Due to geographic separation and difference in mission from the JPRA headquarters, I determined it was necessary to have full-time oversight by a uniformed officer. This change had nothing to do with any ill perceptions of the personnel working at Fairchild AFB, but rather I believed it would provide them with more unit identity and cohesion. My third priority was to create a core captivity curriculum that would bring all the service survival schools together with one standardized approach to survival, evasion, resistance, and escape (SERE) training.

After the events of September 11, 2001, JPRA refocused its attention on the training curriculum and personnel recovery planning essential to support the warfighter in new and ambiguous operating environments. With operations in Afghanistan (and again later for Iraq) we immediately became focused on developing new area survival and evasion charts, "pointy-talkies" (cards that allowed DOD personnel to communicate with indigenous personnel), and trying to develop a survival crib sheet for deploying soldiers, sailors, and airmen who had not previously received any SERE training.

JPRA's mission was especially difficult during this time because we were faced for the first time in the history of the United States with a conflict where our Armed Forces were in an operational environment where they could find themselves detained as prisoners of war, peacetime governmental detainees, or hostages. Each of these situations requires the detainee to comport himself differently. There are different legal ramifications with each scenario and how U.S. personnel are trained to interact with their captors is also different. Synthesizing these requirements into something junior servicemembers—focused on their primary missions—could easily understand and retain was our most critical task. This requirement resulted in a significant increase deployment operations tempo for JPRA to ensure all forces were trained properly.

As the JPRA Commander, I reported directly to Commander, JFCOM. On a daily basis, I worked with the Command primarily through the Chief of Staff and the Director of Operations (J–3). As had been my direction to JPRA staff upon assuming command, all requests for JPRA assistance were required to be forwarded through JFCOM who would then task JPRA after their review and approval. The JFCOM J–3 had an officer in the J–35 who was directly responsible for dealing with the requests from other combatant commanders and the Services for JPRA support.

While JPRA routinely provided support teams in theater to conduct SERE training and also supported other DOD organizations with subject matter experts (SMEs) on captivity psychology and counterresistance prior to September 2003, I am not aware of any other direct support to interrogation operations in the field. Throughout my tenure, I had discussions with JFCOM leadership about our mission and my reservations about extending support to interrogation operations, I believe there was consensus among JFCOM leadership and my staff that JPRA as an organization that was limited by its authorities. There was also common agreement that the only personnel within DOD with subject matter expertise on captivity psychology and counter-resistance were the training instructors assigned to JPRA and the Service SERE schools. The dilemma we faced was how to provide support on these areas while not extending past JPRA's charter. My recommendation to senior leadership at JFCOM as early as February 2002 was to support requests by having individuals serve as SMEs. This approach was endorsed by JFCOM and followed throughout my tenure in command.

The request for support from the SMU TF came in late July or early August 2003 when I received a call from the TF Commander. We had served together off and on during our careers. The purpose of his call was to enlist JPRA's assistance in identifying resistance techniques being used by some of the high value target detainees they were capturing. I relayed to the TF commander that if he wanted assistance he would have to request SME support through the proper channels. In this case the request went through the U.S. Central Command chain of command, to the Joint Staff, and then down through JFCOM to JPRA.

After receiving the call from the SMU TF Commander, I notified the JFCOM J–3. In the follow-up e-mail to the J–3, dated September 9, 2003. I reiterated and clarified my intent not to pursue an expansive JPRA role (to avoid the risk of mission creep). When the request for support came down from JFCOM, we identified a three person team to deploy. I specifically asked by name for Lieutenant Colonel Kleinman to lead the group so I would have an experienced, uniformed officer on the ground. JFCOM leadership was briefed and after their approval the team departed.

At some point during the trip, I was called by Lieutenant Colonel Kleinman on my secure phone at my personal residence. Lieutenant Colonel Kleinman relayed that the SMU TF wanted training on counterresistance measures, something we had not planned for. I asked Lieutenant Colonel Kleinman what the legal status of the detainees was and what techniques the TF wanted to see demonstrated. I was told that the detainees were designated unlawful combatants and that the techniques being requested were ones used by JPRA personnel during SERE training. Lieutenant Colonel Kleinman did mention he had some reservations and I asked him to talk with the TF legal adviser. I then discussed the request with JFCOM senior leadership. The decision was made to have Lieutenant Colonel Kleinman check again with the SMU TF legal advisor and support, if the request for training was given the okay.

Later, I received another request from Lieutenant Colonel Kleinman. He said the TF was now asking for the JPRA instructors to demonstrate the counterresistance techniques with a detainee. Again Lieutenant Colonel Kleinman expressed his concern. I again contacted JFCOM leadership and relayed the request and Lieutenant Colonel Kleinman's concerns. The JFCOM decision was to permit the demonstrations to proceed, but only after coordinating with the TF legal adviser. I relayed this to Lieutenant Colonel Kleinman who again voiced his concern. I relayed the directions from JFCOM and said something to the effect that he was there on the ground and if he thought it was going beyond what he felt comfortable with that he could make the call on whether to proceed.

At some point during the demonstration, Lieutenant Colonel Kleinman did intercede and stopped it. Shortly thereafter, the JPRA personnel were sent back home. I called the TF commander back to inquire about the support provided by my team and he indicated the team had delivered to his expectations and that he was satisfied with the support he got. I asked for and got after action reports from all the team members. While recollections differed, I got the sense from these reports that the TF Director of Intelligence (J–2) desired more participation from the deployed personnel than they were prepared to provide and the mission was terminated. I had no further contact with the TF commander on this matter after I got his feedback.

I do not recall providing a formal debriefing to JFCOM leadership, but the trip was covered in my weekly classified updates to JFCOM Commander. The after action reports were forwarded to JFCOM through secure channels to the J–35.

I believe now, as I did during these events, that JPRA should not be in the business of conducting interrogations or interrogator training. Our personnel were not

trained interrogators and JPRA is not organized, manned, or equipped to perform that mission. However, the unique knowledge and expertise of JPRA professionals did provide invaluable support to DOD's intelligence collection efforts. At the time, the confluence of events, especially the infusion of unlawful combatants into the conflict, the lack of clear guidance on their legal status and written operating procedures, and the lack of knowledge within the Intelligence Community about the psychology of captivity required tough decisions to be made. I believe that JPRA's efforts expanded the knowledge of captivity psychology which led to improvements in the collection of actionable human intelligence. I appreciate the opportunity to speak with you today and look forward to answering any questions you may have.

Chairman LEVIN. Thank you very much, Colonel. We'll put your entire statement in the record. I noted that you shortened it.

Colonel MOULTON. Yes, sir.

Chairman LEVIN. If there's no objection, we'll put the entire statement in the record.

Colonel MOULTON. Yes, sir.

Chairman LEVIN. Colonel Kleinman?

STATEMENT OF COL. STEVEN M. KLEINMAN, USAFR, FORMER DIRECTOR OF INTELLIGENCE, PERSONNEL RECOVERY ACADEMY, JOINT PERSONNEL RECOVERY AGENCY

Colonel KLEINMAN. Mr. Chairman, it's a pleasure and certainly an honor to appear before you today, and I thank you for the invitation.

The military resumé that I submitted along with my written statement, I offer up as the bona fides for a career that was involved with human intelligence, interrogation, special survival training, and special operations, and I hope that supports the credibility of the statements and observations that I make today.

Clearly, of particular interest to the committee are the events that transpired in conjunction with the deployment of the JPRA team in September 2003 to Iraq, but I must admit that the problematic event was just symptomatic of much larger issues that transcend any single command. But, I think, in sifting through the answer to a single question, we might uncover some very surprising and useful truths. The question is: Why did the special operations community feel that it was necessary and appropriate to request interrogation support from a command that you've pointed out has a mission of not interrogation, but providing resistance to interrogation training?

To adequately address that question, I need to detail several contributing events that began after the horrific attacks on September 11 and our invasion of Iraq in 2003.

The Armed Forces and intelligence services of this country were shifting their focus from a conventional strategic threat to one defined as asymmetric and operational. But, much about that new threat was unavailable through our strength in technical intelligence. Surprising to most, that gap was filled by the interrogation of detainees. We are now literally face to face with an enemy that most described as unlike any we'd ever encountered. A stereotyped caricature of this enemy soon emerged and it did not take long for us to decide that special treatment, including the so-called enhanced interrogation methods, were required, even though those were prohibited by the standards of conduct that we previously adhered to.

From the beginning, there was incredible pressure placed on interrogators to elicit actionable information—information that operators can act upon within a 24- to 48-hour cycle—from almost every individual that we took into custody. Some of these detainees were complicit, and some were innocent. Some were truly knowledgeable, and some were truly clueless. Nonetheless, we erred in simply pressing interrogation and interrogators beyond the edge of the envelope. As a result, interrogation was no longer an intelligence collection method; rather, in many cases it had morphed into a form of punishment for those who would not cooperate.

We sent very young, very inexperienced interrogators to collect this intelligence. We asked them to do that in an asymmetric battlespace, even though they were trained for a Cold War tactical model. We matched them against detainees about whom we know so little. So, we should not be surprised that the results were less than optimal.

When this proved ineffective in producing the type of actionable intelligence that senior leaders required, other viable strategies, such as those I hope to be able to outline today, were ignored or rejected as irrelevant in this new battlespace in the 21st century. Instead, we opted to do more of the same, only now we have ratcheted up the pressure, and in some cases to an alarming degree.

We had the choice of getting smarter or getting tougher. Unfortunately, we chose the latter. Nonetheless, the intelligence shortfall continued, and operational commanders demanded more intelligence.

The resourceful special operations community, to which I'm assigned right now, then sought solutions outside the Intelligence Community. With clear memories of their experiences during intensive resistance to interrogation exercises that are a key part of SERE training, their search led them to the cadre of very talented survival instructors who demonstrated exceptional skill in conducting interrogations using the high pressure, often threatening tactic deployed by countries that were not signatories to the Geneva Convention. These special operators were understandably impressed by the ability of these instructors to compel compliance with both force and subterfuge.

To the nonintelligence officer, the transfer of SERE methods from the training environment to real-world operations seemed a logical option. However, several critical factors were overlooked. First, many of the methods used in SERE training are based on what was once known as a communist interrogation model; a system designed to physically and psychologically debilitate a person, a detainee, as a means of gaining compliance. Second, the model's primary objective was to compel a prisoner to generate propaganda, not provide intelligence. Third, it was expressly designed to mirror a program whose methods were considered in the west as violations of the Geneva Convention.

The problems with employing SERE techniques in the interrogation of detainees did not stop there. I want to emphasize, Mr. Chairman, that the survival instructors are some of the most dedicated professionals in the Armed Forces. Their tireless work is in support of a single mission, and that is to help others return with

honor. But, I'd be remiss if I did not make abundantly clear that they are not interrogators. While there's much in common between interrogation and teaching resistance to interrogation, there are very profound differences. Survival instructors, for example, operate in the domestic environment with students who share a language and a culture. In contrast, interrogators operate worldwide, interacting with foreign nationals, often across a very substantial cultural and linguistic divide. If questions arise about a student's veracity in the course of role play, the survival instructor need only call the student's unit of assignment to verify the information. Clearly, that's not an option for an interrogator for whom detecting deception is a critical skill.

While resistance to interrogation role play is limited in duration, frequency, and scope, interrogations of custodial detainees may last hours and continue over a span of months.

Finally, the survival instructor's focus is on the performance of the student, not collecting information. An interrogator must doggedly pursue and record every detail of intelligence information detainees possess. With little expertise in interrogation operations at the senior level—and it should be noted that the CIA did not get involved in interrogation until after September 11—the legal, operational, and moral factors that should govern the employment of SERE methods went largely unrecognized. There were very few internal safeguards that should have maintained a clear separation between these two activities.

It is this lack of expertise at the senior level that provides the final piece of the puzzle. As an experienced interrogator and a former director of the Air Force Combat Interrogation Course, I am acutely aware of how the laws of armed conflict apply to interrogation of detainees. Therefore, I was stunned upon my return from Iraq at the number of senior officers who challenged my on-the-ground assessment of the unlawful interrogation methods with the argument that psychologically and physically punishing interrogations are precisely what they would expect had they found themselves captured. In a sense, they deferred the standards to the enemy.

In summary, the following are the key factors contributing to our current state of affairs:

Number one, our approach to interrogation has failed to keep pace with our understanding of the operational environment or with knowledge of the behavioral sciences. In addition, interrogation continues to be viewed as a simple task that we can assign to our most junior military personnel.

Number two, pressed to find a solution to the critical intelligence shortfall, special operators followed their professional instincts. They could not wait for the intelligence community to catch up.

Number three, the lack of expertise at the senior level in managing and conducting interrogation was a single point of failure that facilitated the introduction of SERE techniques into the repertoire of allowable interrogation methods. As a result, adversaries and allies alike have accused this Nation of gross violations of the Geneva Convention and of violating the basic human rights of those in detention. The geostrategic consequences are likely to last decades.

Mr. Chairman, I'm hopeful that we might leverage our collective wisdom, expertise, and sense of justice to finally take steps necessary to revisit and refine our policies on the handling and interrogation of detainees in a manner that reflects the best of America's core values. Having had the honor of interviewing a number of World War II-era interrogators who set the standard for both operational effectiveness and propriety, I can tell you this; members of that great generation are watching us carefully. We walk in their shadows. Let us give them one more reason to be proud of their country.

Thank you, Mr. Chairman.

[The prepared statement of Colonel Kleinman follows:]

PREPARED STATEMENT BY COL. STEVEN M. KLEINMAN, USAFR

Mr. Chairman and distinguished members of the committee, it is an honor to appear before you today.

The military resumé submitted to the committee along with my written statement recounts a career invested in human intelligence, interrogation, special survival training, and special operations. I offer that as bona fides for the observations and recommendations I will provide today.

Of particular interest to the committee are the actions that transpired in conjunction with the deployment of the Joint Personnel Recovery Agency (JPRA) team to Baghdad in September 2003. That problematic event was, in my view, symptomatic of much larger issues that transcend any single command. However, in sifting through the answer to a single question, we might uncover some surprising truths:

> Why did the special operations community find it necessary—and appropriate—to request interrogation support from an organization whose mission was, and is, to teach resistance to interrogation?

To adequately address this question, I need to outline a series of contributing events that began shortly after the horrific attacks of September 11, 2001, and the invasion of Iraq in March 2003. At that time, the Nation's Armed Forces and intelligence services were struggling to shift the focus from a conventional and strategic threat to one defined as asymmetric and operational. Much about this new adversary, however, could not be gathered through our edge in technical intelligence. In a surprise to many, this critical gap was filled by the interrogation of detainees.

We were literally face-to-face with an enemy described as unlike any we had previously encountered. A stereotyped caricature of our adversary soon emerged and it did not take long for us to determine that he required special treatment, including so-called enhanced interrogation techniques that were prohibited under the standards of conduct we hewed to in the past.

From the beginning, there was incredible pressure on interrogators to elicit actionable intelligence from practically every individual we took into custody. Some of these detainees were complicit, others innocent; some were knowledgeable, some truly clueless. In far too many cases, we simply erred in pressing interrogation and interrogators beyond the edge of the envelope. As a result, interrogation was no longer an intelligence collection method; rather, it had morphed into a form of punishment for those who wouldn't cooperate.

We sent very young and inexperienced interrogators to collect intelligence. We tasked them to do so in an asymmetric battlespace using a Cold War tactical interrogation model. We matched them against detainees about whom we seemed to know so little. Should we have then been surprised with less than optimal results?

When this approach proved ineffective in producing the type of actionable intelligence required by senior leaders, other viable strategies—such as those I'll describe in a moment—were ignored or rejected as irrelevant in the "unique" battleground of the new century. We instead opted for more of the same, except the pressure would be ratcheted up . . . in some cases to an alarming degree. When presented with the choice of getting smarter or getting tougher, we chose the latter. Nonetheless, the intelligence shortfall continued and left commanders demanding more.

I'd like to briefly segue to a relevant event that took place this summer. I was privileged to join 14 of America's most accomplished intelligence and law enforcement professionals in an intensive discussion of best practices in interrogation. Representing the Central Intelligence Agency, the Department of Defense, and the Federal Bureau of Investigation, we collectively represented 350 years of operational ex-

perience in conducting thousands of interrogations and debriefings. Our respective professional experiences led us to a single, emphatic conclusion: the most effective method for consistently eliciting accurate and comprehensive information from even the most defiant individuals—to include terrorists and insurgents—was through a patient, systematic, and culturally enlightened effort to build an operationally useful relationship. Similarly, we shared the belief that coercive tactics that relied on psychological, emotional, and/or physical pressures were, in the long run, not only ineffective but also counterproductive.

Ironically, this long-overdue conclave was hosted not by the U.S. Intelligence Community, but by Human Rights First, a remarkable organization with a vision that our recommendations might constructively inform government policy.

Independent from that affair, the resourceful special operations community sought solutions outside the Intelligence Community. With clear memories of their experiences during intensive resistance to interrogation exercises that are a key element of survival, evasion, resistance, and escape (SERE) training, their search led them to the cadre of talented survival instructors who had demonstrated exceptional skill in conducting interrogations using the high-pressure, often threatening tactics employed by countries that are not signatories to the Geneva Convention. The special operators were understandably impressed with the ability of these instructors to compel compliance with both force and subterfuge.

To the nonintelligence officer, the transfer of SERE methods from the training environment to real-world operations seemed a logical option. Several critical factors, however, were overlooked. First, many of the methods used in SERE training are based on what was once known as the Communist Interrogation Model, a system designed to physically and psychologically debilitate a detainee as a means of gaining compliance. Second, that model's primary objective was to compel a prisoner to generate propaganda not intelligence. Third, it was expressly designed to mirror a program that employed methods of interrogation considered by the West to be violations of the Geneva Conventions.

The problems with employing SERE techniques in the interrogation of detainees do not stop there. I want to emphasize that survival instructors are some of the most dedicated professionals in Armed Forces. Their tireless work supports a noble mission: to prepare others to return with honor. I would be remiss, though, if I did not make one point abundantly clear: survival instructors are not interrogators. While interrogation and teaching resistance to interrogation have much in common, they are nonetheless profoundly different activities.

- Survival instructors operate in a domestic training environment and share both a language and culture with the students they teach. In contrast, interrogators are involved in worldwide operations and interact with foreign nationals across an often substantial cultural and linguistic divide.
- If questions arise about the student's veracity during role-play, a survival instructor need only call the student's unit of assignment to verify the information. Clearly, this is not an option for an interrogator for whom detecting deception is a critical skill.
- While interrogation role-play is limited in duration, frequency, and scope, interrogations of custodial detainees may last hours and continue over a span of months.
- The survival instructor's focus is not on information but the performance of the student while the interrogator must doggedly pursue—and record—every detail of intelligence information a detainee possesses.

With little expertise in interrogation operations at the senior levels—and it must be noted that the Central Intelligence Agency only became involved in interrogation after September 11—the legal, operational, and even moral concerns about the employment of SERE methods went largely unrecognized. There were few internal safeguards that should have maintained a clear separation between these two activities.

It is this lack of expertise that provides the final piece of the puzzle. As an experienced interrogator and former director of the Air Force Combat Interrogation Course, I am acutely aware of how the laws of armed conflict apply to the interrogation of detainees. I was therefore stunned upon my return from Iraq at the number of times senior officers challenged my on-the-ground assessment of unlawful interrogation methods with the argument that psychologically and physically punishing interrogations are acceptable because that is how they would expect to be treated if

captured by the enemy. In other words, they deferred to the adversary in setting standards of conduct.[1]

In summary, the following are the key factors contributing to our current state:

1. Our approach to interrogation has not kept pace with our understanding of the operational environment nor with current knowledge in the behavioral sciences. In addition, interrogation continues to be viewed as a relatively simple task that can be assigned to our most junior military personnel.
2. Pressed to find a solution to a critical intelligence shortfall, special operators followed their professional instincts. They could not wait for the intelligence community to respond.
3. A lack of expertise at the senior levels in managing and conducting interrogation operations was a single point of failure that facilitated the introduction of SERE techniques into the repertoire of allowable interrogation methods.

As a result, adversaries and allies alike have accused this nation of gross violations of the Geneva Conventions and of violating the basic human rights of detainees in our custody. The geostrategic consequences are likely to last decades.

Mr. Chairman, I am hopeful we might leverage our collective wisdom, expertise, and sense of justice to finally take the steps necessary to revisit and refine our policies on the handling and interrogation of detainees in a manner that reflects the best of America's core values.

Having interviewed a number of World War II-era interrogators who set the standard for both operational effectiveness and propriety, I can tell you this: members of that Greatest Generation are watching us carefully; we walk in their shadow. Let us give them one more reason to be proud of their country.

Chairman LEVIN. Thank you, Colonel, very much.

Colonel Kleinman, let me start with you. You went to Iraq with a team of two others, so there were three of you in the JPRA team. Is that correct?

Colonel KLEINMAN. That's correct, Mr. Chairman.

Chairman LEVIN. When you got there, that was during the week of September 4, 2003? Does that sound right?

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. When you got there, you raised concerns, as I understand it, about the interrogation tactics which were being employed against detainees in our custody, and called Colonel Moulton. Is that correct, Colonel Kleinman?

Colonel KLEINMAN. Not exactly, Mr. Chairman.

Chairman LEVIN. Oh. Well then, what happened?

Colonel MOULTON. I observed a number of what I thought were abuses, and during at least one interrogation, I intervened and stopped it. This is before I fed it back to Colonel Moulton, because I didn't think there were systemic problems. I did talk to the Captain who was in charge of the J–2X, which is a position responsible for overseeing interrogation and human intelligence operations and counterintelligence. His quote was, "Your judgment is my judgment." So, I stopped the interrogation. I did brief the task force commander of what I did and why. He had absolutely no reservations about that action.

Chairman LEVIN. The task force commander was whom?

Colonel KLEINMAN. I've been briefed, sir. I'm not sure if I'm——

[1] The Lexington Principles on the Rights of Detainees, a project of the Washington and Lee University School of Law, sets forth an excellent examination of the international legal standards with respect to the treatment of detainees. The Lexington Principles was produced by an association of legal scholars, military officers, and representatives of a cross-section of related disciplines who seek to implement the 9/11 Commission's recommendation that America engage the international community on issues that include minimum standards for prisoner detention and treatment. Additional information may be found at <http://law.wlu.edu/lexingtonprinciples/>.

Chairman LEVIN. All right. Let me ask you this question. You witnessed an interrogation that you thought was abusive?

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. Can you describe what you saw?

Colonel KLEINMAN. Yes, sir. Very simply. I walked into an interrogation room all painted in black with a spotlight on the detainee. Behind the detainee was a military guard with an iron bar, literally the caricature or stereotype of the old gangster movies, slapping it in his hand. The interrogator was sitting in a chair. The interpreter was to his left. The detainee was on his knees. A question was asked by the interrogator and interpreted. The response came back, and upon interpretation the detainee would be slapped across the face. 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. They didn't seem to think there was a problem, because in SERE training there's a facial slap. But, it's conducted in a very specific way to a very specific part of the face so that it causes more shock than pain. This was not conducted in that fashion.

Chairman LEVIN. Who was conducting it?

Colonel KLEINMAN. One of the interrogators who was assigned to the task force. Not one of the JPRA members.

Chairman LEVIN. Were the other two JPRA members in the room?

Colonel KLEINMAN. Yes, sir, they were sitting in chairs behind the detainee, 2 or 3 yards away. They weren't involved, other than observing at the time I was there. They made no comment.

Chairman LEVIN. Following that incident is when you first called Colonel Moulton. Is that correct?

Colonel KLEINMAN. No, sir.

Chairman LEVIN. When did you call Colonel Moulton? How long after you witnessed that?

Colonel KLEINMAN. Thinking that it was an individual problem that we could handle at the task force level, that JPRA's interests weren't really involved there, it must have been a week before I talked to Colonel Moulton, maybe even longer.

Chairman LEVIN. All right.

Colonel KLEINMAN. That time, I was observing the activities at this interrogation facility and reporting back to the task force commander with my assessment of where the problems lied and where the possible solutions were.

Chairman LEVIN. Was there another incident that you witnessed which you considered abusive?

Colonel KLEINMAN. Yes, sir. There was one case. 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, 45 minutes, I think. The idea was that maybe they would give them 4 hours of sleep over a 24-hour period, but it wouldn't be continuous, it would be in little 45-minute increments. It was literally specific. This time to this time, they'd be in stress position. This time to this time, they would be allowed to sleep. This time to this time, they would be interrogated. I stopped that, also.

Chairman LEVIN. Was it at that point you first called Colonel Moulton?

Colonel KLEINMAN. No, I think it was shortly after that point that a disagreement arose between myself and the two other members of the team. They felt that I had no authority to have stopped any of the interrogations.

Chairman LEVIN. This is your JPRA team that you're talking about?

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. You had stopped the interrogation. You were arguing with them as to whether you had the authority to do so?

Colonel KLEINMAN. That's correct.

Chairman LEVIN. It was at that point you called the Colonel?

Colonel KLEINMAN. Yes, at that point.

Chairman LEVIN. When you called, what was the conversation?

Colonel KLEINMAN. I want to provide as accurate information as possible, so let me reflect on this. It was about the point when I saw other challenges, how things weren't going to get better, and that my two JPRA colleagues were pushing to get more involved. I told them that they should, precisely as advisors. For instance, how to handle prisoners when they first come in, how to go through pocket litter, et cetera, the things that I thought JPRA had a strength that they could offer. But, it was when they started making recommendations about the treatment of a detainee that would be essentially a replication of what we do during our role-play exercises, which sometimes are very intensive, but are supervised by a psychologist, by medical personnel, by seasoned individuals. That's when I called.

Chairman LEVIN. Those were the techniques that you considered abusive when applied to detainees?

Colonel KLEINMAN. Yes, sir. I can enumerate what those were.

Chairman LEVIN. Please.

Colonel KLEINMAN. Stripped naked——

Chairman LEVIN. Well, now, did you see that?

Colonel KLEINMAN. Ultimately, I did, sir. This was after, I believe, I talked with Colonel Moulton.

Chairman LEVIN. All right, that comes afterward, the stripping naked.

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. Let's go back, now, to the call that you had with Colonel Moulton.

Colonel KLEINMAN. All right. I talked to the task force commander. I expressed my concerns that the SERE methods for interrogation were unlawful, they violated the Geneva Convention and national law. The task force commander had, again, absolutely no reservation about that. He said, "Well, of course. Survival training is conducted by people who volunteer under very controlled measures. This is a whole different field out here." I said, "Well, my colleagues and others at the task force are expecting us to use these other methods." So, I told him that I was going to call Colonel Moulton, and I think, actually, this officer had discussions with Colonel Moulton beforehand.

Chairman LEVIN. Following that conversation, you called Colonel Moulton?

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. Would you now tell us what that conversation was?

Colonel KLEINMAN. Yes, sir. I explained that we were being asked to use the full range of SERE methods in the interrogation of detainees, and I told him that it was my view that those were violations of the Geneva Convention, they weren't authorized, and we should not do them.

Chairman LEVIN. Did you describe what you had seen?

Colonel KLEINMAN. Yes, sir. I told him that I had stopped interrogations, and the approaches that had been used I thought were unlawful.

Chairman LEVIN. What was his response?

Colonel KLEINMAN. I believe, at that time, he said that he was going to check other sources to make sure that we were clear on what we could and could not do.

Chairman LEVIN. Was there anything else in that conversation that you remember?

Colonel KLEINMAN. I was directed to call him again 24 hours later.

Chairman LEVIN. Did you do that?

Colonel KLEINMAN. Yes, sir, I did.

Chairman LEVIN. Tell us about that second conversation.

Colonel KLEINMAN. The second was very short. I was told, "We are cleared hot to use SERE methods." In the flying community, especially, when you're cleared hot, weapons-free, you can act on orders to fire weapons, no further direction necessary.

So, I asked him specifically if he could enumerate those approaches, which he did. Maybe he wondered why I was asking. I just wanted to make sure we were clear that we were talking about belly slap, walling, we went into the entire list, the isolation, that sort of thing.

I explained to him that, in my opinion, not as a member of JPRA, but as an experienced interrogator, that this was a violation of Geneva Conventions. I might add, the task force Judge Advocate General (JAG) that I talked to agreed with me 100 percent, and apparently he briefed the task force commander, but when it was time for him to brief the interrogators, it kind of fell back to the "it depends" mode.

Chairman LEVIN. Did you explain to your headquarters that you had stopped the interrogation, you had considered them illegal? They knew that when you called Colonel Moulton, you had explained to him what you had done?

Colonel KLEINMAN. Yes, sir. In addition, one of my team members had a satellite telephone, and he had made calls to another individual at JPRA who's pretty much our point of contact, and briefed them on what I had done, as well.

Chairman LEVIN. Was stripping one of those methods?

Colonel KLEINMAN. Subsequent to the conversation I had with Colonel Moulton, yes, sir.

Chairman LEVIN. Not what you saw, but, in terms of the list of JPRA approved tactics?

Colonel KLEINMAN. Well, I won't testify to that, sir. Only because it's been years now, and it was an intensive phone call.

Chairman LEVIN. No, no. I'm looking at the list of JPRA methods—body slaps, stripping, immersion in water. Are those the JPRA techniques that you went through with Colonel Moulton?

Colonel KLEINMAN. Yes, sir. I'm not sure if we went through the entire list, Mr. Chairman.

Chairman LEVIN. But, you talked about specific techniques?

Colonel KLEINMAN. Right.

Chairman LEVIN. After that second phone call, did you witness another incident involving your two JPRA colleagues?

Colonel KLEINMAN. Yes, Mr. Chairman, I did.

Chairman LEVIN. Will you describe that incident?

Colonel KLEINMAN. Yes, sir. After the phone call with Colonel Moulton——

Chairman LEVIN. That would be the second phone call?

Colonel KLEINMAN. Yes, sir. I related to them my discussion with Colonel Moulton.

Chairman LEVIN. "Them" being?

Colonel KLEINMAN. The two members of the JPRA team. I explained the difference of opinion that I had with Colonel Moulton, that I told him that I thought it was an unlawful order, and I wasn't going to have any involvement with it, and I didn't think that they should, either.

One was a contractor, and one was a civilian. The military line of authority was very unclear at the time. But, they decided that there was going to be one effort to demonstrate the way you handled an interrogation. So, there was an individual that was suspected of being a terrorist. How it unfolded is, I said, "Well, let's take control and show them how to do one in a methodical fashion." My plan was for this person, who hadn't provided any information, "Why don't we create a false release sort of scenario. We'll make him think that we're letting him go, almost kind of a reset button. We'll bring him back in here, and we'll approach him in a much more mature, much more systematic fashion, and not threatening, we'll just be very purposeful. Will we use ploys and stratagems? Absolutely. But, we didn't need to use any of the survival methods."

Chairman LEVIN. The "survival methods" being those SERE methods, the aggressive physical methods, the stripping and things like that.

Colonel KLEINMAN. Yes, Mr. Chairman.

Chairman LEVIN. That's not what you were proposing.

Colonel KLEINMAN. That's correct, I was not proposing that.

Chairman LEVIN. Okay.

Colonel KLEINMAN. The other two members took charge of the interrogation.

Chairman LEVIN. Where was the interrogation?

Colonel KLEINMAN. It was at the same interrogation center that was associated with the task force.

Chairman LEVIN. Was that detainee driven to that place?

Colonel KLEINMAN. He was driven away, then brought back.

Chairman LEVIN. He was driven. Was this a cell of some kind?

Colonel KLEINMAN. Actually, where it took place was a bunker that was about a story into the ground; cement, cold, dark. I think it was either an ammo bunker or even a defensive position.

Chairman LEVIN. But, he was driven away first, and then brought back?

Colonel KLEINMAN. Yes.

Chairman LEVIN. What was the purpose of that?

Colonel KLEINMAN. The idea was to make him think that he was being released and then picked up by different people.

Chairman LEVIN. Okay. What happened in that bunker then?

Colonel KLEINMAN. What happened in that bunker was something I'd seen hundreds of times. It's the way we go about some of the survival training.

Chairman LEVIN. You've seen it hundreds of times in your survival training of our own people under the very controlled environment that you've described.

Colonel KLEINMAN. Yes, Mr. Chairman.

Chairman LEVIN. That's not what this environment was, I take it.

Colonel KLEINMAN. This was an uncontrolled environment by any measure.

Chairman LEVIN. Okay, and against a detainee?

Colonel KLEINMAN. Yes.

Chairman LEVIN. Now, would you describe what you saw?

Colonel KLEINMAN. He 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. They ripped his disdasha off, not cut, they ripped it off.

Chairman LEVIN. His what?

Colonel KLEINMAN. The traditional Middle Eastern wear, a long, almost dresslike garment. They ripped it off his body, ripped off his underwear, and took his shoes. They had hooded him already. Then they shackled him by the wrists and ankles and screamed at him in his ear the entire time in English about essentially what a poor specimen of human that he was. 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. It wasn't until after 12 hours that we'd start to interrogate. He was left in that position, in a cement room about, maybe, 6 foot by 6 foot. Small enough that, had he lost consciousness and fallen over in any direction, he would have clearly hit his head on a wall.

Chairman LEVIN. Okay. So, he was stripped naked and left standing.

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. That's when you left?

Colonel KLEINMAN. That's when I left.

Chairman LEVIN. What did you say to your JPRA colleagues?

Colonel KLEINMAN. I told them that this is unlawful. I went into detail about the operational effectiveness, trying to gain their support in that way. But, I just told them, "This is unlawful," and we ended up putting a stop to it right there. There was no reason to continue, at that point.

Chairman LEVIN. You put a stop to that?

Colonel KLEINMAN. Yes.

Chairman LEVIN. Was there another conversation, then, you had with Colonel Moulton?

Colonel KLEINMAN. No, sir. At that point, my discussions were almost daily with the task force commander, telling him what we could not do and giving him my assessment of what his options were. At that point, what happened for the remainder of our time out there is, my two colleagues pretty much stayed inside a room. They did provide survival training to some of the Rangers there, refresher training, getting back to their strength, what they do incredibly well.

Chairman LEVIN. This is the survival training that they were trained to do?

Colonel KLEINMAN. Yes. Both these individuals were career survival instructors.

Chairman LEVIN. You said one was a contractor and one was a civilian.

Colonel KLEINMAN. Yes, sir. One was a government civilian, a full-time employee with the Department of the Air Force, and the other was a contractor.

Chairman LEVIN. Colonel Moulton, does your memory of these phone calls differ in any significant way from Colonel Kleinman's?

Colonel MOULTON. Pretty close. First off, our team was sent in to help identify resistance techniques being employed by detained unlawful combatants (DUCs). The first call, as I recall, Colonel Kleinman said that the task force had wanted us to demonstrate to the task force interrogators some of the counter-resistance techniques that we had employed in our survival school. That was one that I took up the chain to JFCOM, and they came back and said, "You're authorized to do that." The second call I got from Colonel Kleinman, I believe, was the one where he said that they now wanted participation. That's the one that I asked two questions. I wanted to know the legal status. I said, "Are these DUCs?" The response was yes.

Chairman LEVIN. After the second call, you then made this inquiry that you're now talking about? That you wanted to know two things?

Colonel MOULTON. This is during the second call.

Chairman LEVIN. You asked him?

Colonel MOULTON. Right. Yes.

Chairman LEVIN. Colonel Kleinman?

Colonel MOULTON. Right. I wanted to know if these were POWs, or if they were DUCs. I wanted to know if any of the techniques were over and beyond what we had done in our survival training. He said, basically, that he was told they were DUCs, from my recollection, and that they weren't going over and above what we did in our survival schools.

I took that message back to JFCOM. We talked about the charter responsibilities. I had that conversation, as I recall, with the senior leadership. At that time, they said, "All right, let them all do it once or twice," but I think it was just one time, "Demonstrate, one time, with the actual detainees, and then that's it," because my senior leadership, as well as I, were concerned about us getting involved in the offensive side of the interrogation business.

Chairman LEVIN. Did they tell you that it was beyond your charter to get involved in offensive activity?

Colonel MOULTON. I told them it was beyond our charter.

Chairman LEVIN. Who was it, in the senior leadership, that you talked to?

Colonel MOULTON. I believe it was either Admiral Bird or General Wagner. I know I talked to both of them. I'm not sure which one was with which conversation.

Chairman LEVIN. Did you tell them what Colonel Kleinman had observed, that he considered it illegal and he had stopped it?

Colonel MOULTON. No, and that's probably the only significant disagreement I had with Colonel Kleinman. I do remember he said he thought it was not covered under the Geneva Convention. I did not hear the words "illegal order." In fact, I specifically remember receiving one of the after-action reports from one of the other members that mentioned "illegal order," and obviously, something like that hit me pretty hard. So, I talked to Colonel Kleinman about it. He was adamant that he thought it was against the Geneva Convention.

Chairman LEVIN. Were you told that enemy combatants are not protected by the Geneva Convention? Is that what you were told?

Colonel MOULTON. Yes, sir, that was the assumption that we were under.

Chairman LEVIN. Did you assume it or were you told that by somebody?

Colonel MOULTON. We were told that. That's my recollection, I don't remember where.

Chairman LEVIN. Do you remember who told you that?

Colonel MOULTON. No, sir. There were several discussions, both publicly and within DOD channels about: What is the legal status of these terrorists that we're fighting? Are they POWs? Are they DUCs? In fact, before I sent the team over, I talked to the task force commander and asked him what the legal status was. I was told that they were DUCs and not covered under the Geneva Conventions.

Chairman LEVIN. That was people in Iraq. You were told that people in Iraq who were not POWs, not wearing uniforms, but were illegal combatants were not covered by Geneva Conventions, even though they were in Iraq?

Colonel MOULTON. Yes, sir, that's correct.

Chairman LEVIN. You don't remember who told you that?

Colonel MOULTON. I believe it was the task force commander. Sir, one other thing I failed to mention was, when I did talk to the JFCOM leadership they always said that it really has to go through Central Command's (CENTCOM) legal office or the people on the ground. I'm pretty positive I relayed that to Colonel Kleinman.

Chairman LEVIN. Who was supposed to go through CENTCOM? Was that something that Colonel Kleinman was supposed to do?

Colonel MOULTON. Yes, sir. He was supposed to take the legal advice from the legal authorities within CENTCOM.

Chairman LEVIN. Do you remember that, Colonel?

Colonel KLEINMAN. Yes, sir, I did. I talked to the task force JAG.

Chairman LEVIN. What was his reaction to what you saw?

Colonel KLEINMAN. His reaction was that what I did was the right thing, that it was unlawful to use those methods.

Chairman LEVIN. Did you inform Colonel Moulton of that?

Colonel KLEINMAN. At that point, I informed the task force commander. I don't know that we had another discussion after that. The problem was, that's what the JAG officer told me, that's what he also told me in the presence of the task force psychologist. But, when it was time to brief the interrogators, he briefed it that way, then when the question arose, it was, "Well, it depends." There was not any clarity anymore.

Chairman LEVIN. Colonel Moulton, the bottom line is that you checked with your command, and you were told that the team was authorized to use the SERE physical pressures, but not go beyond those.

Colonel MOULTON. Yes, sir, predicated on the legal advice they got from the CENTCOM legal representative.

Chairman LEVIN. Well, the legal advice they got was that it was not proper.

Colonel MOULTON. Senator, the first time I heard anything about an "illegal order" was in the after-action report from one of the other members.

Chairman LEVIN. Okay. But, your recollection, Colonel Kleinman, is that you told Colonel Moulton that you thought it was an illegal order.

Colonel KLEINMAN. Yes, sir, I told him that the methods were unlawful, and therefore, the order to execute them would be unlawful.

Chairman LEVIN. All right.

Colonel KLEINMAN. Now, Mr. Chairman, I might want to add, we were talking over a secure line halfway around the world. I don't at all question Colonel Moulton's view of what happened or his judgment based on the context from which he was operating. I thought I was very clear about it, and if he doesn't recall it that way, I think it's just a matter of he didn't hear it.

Chairman LEVIN. You just have either different recollections or you didn't hear something.

Colonel MOULTON. No, in both phone calls, Colonel Kleinman specifically said he thought that the actions being taken were not in accordance with the Geneva Convention. Of course, at that time, we were under the assumption, from the information that we had gotten from the task force, that these were DUCs, and the Geneva Convention did not apply. But, I do not remember the words "illegal order."

Chairman LEVIN. Well, if Geneva applies in Iraq, that would be an illegal order, right?

Colonel MOULTON. Yes, sir. But, I did not hear those specific words.

Chairman LEVIN. All right.

Colonel Kleinman, I understand that it is permissible that your JPRA colleagues' names be part of the record. As I understand it, their names are Terrence Russell and Lenny Miller. Is that correct?

Colonel KLEINMAN. That's correct, Mr. Chairman.

Chairman LEVIN. I just want to clarify the point, in the phone calls, as to whether or not you told Colonel Moulton that you had stopped the interrogation that you had witnessed, the first one.

Colonel KLEINMAN. Yes, I did explain that I had done that.

Chairman LEVIN. Do you remember that, Colonel Moulton?

Colonel MOULTON. I don't remember if that came from the conversation with Colonel Kleinman or one of the people back at Fairchild. At some point, I was told that he had stopped and intervened, but I think it was after the phone calls. I can't remember exactly when.

Chairman LEVIN. Colonel Kleinman, you've mentioned these two JPRA employees. Were either of them trained interrogators?

Colonel KLEINMAN. No, Mr. Chairman. They both had very impressive backgrounds as survival instructors. Both were retired, I believe, master sergeants in the United States Air Force, where their entire careers were spent. They were never interrogators. To the best of my knowledge, up to the point that we appeared in Iraq, they had never actually seen what I would describe as a real-world interrogation.

Chairman LEVIN. Colonel Kleinman, you mentioned the task force psychologist. Did the task force SERE psychologist have a view on the appropriateness of using SERE techniques in detainee interrogations?

Colonel KLEINMAN. Yes, sir, he did.

Chairman LEVIN. Who was that, if it's appropriate to name him, and what was his or her view?

Colonel KLEINMAN. His view was that it was absolutely inappropriate. It was designed for a very specific purpose, being resistant to interrogation. It was not designed to be used against detainees as a method of interrogation.

Chairman LEVIN. Were you aware of that, Colonel Moulton?

Colonel MOULTON. No, sir. Senator Levin, if I may add one thing?

Chairman LEVIN. Please.

Colonel MOULTON. The only conversations I had with the team were through Colonel Kleinman, and the only contact I had with the task force was through the commander there. Once I found out that there was an intervention, that there might be some type of an issue, I called back and talked to the task force commander who told me that he was very satisfied with the support he was receiving and everything was going fine, which was a little bit different when the team got back, but that was the message that was conveyed to me. That's probably why I wasn't more excited about this.

Chairman LEVIN. Did the task force commander tell you, Colonel Moulton, that the Geneva Conventions did not apply?

Colonel MOULTON. Sir, I don't know if he specifically told me that. I specifically asked him the legal status of the detainees and whether or not they were allowed to do these things.

Colonel KLEINMAN. Mr. Chairman, I did have that conversation with the task force commander specifically.

Chairman LEVIN. All right. Colonel Kleinman?

Colonel KLEINMAN. I explained to him, the Brigadier General, that it was my view that these tactics were unlawful and were a violation of the Geneva Convention and national law. He didn't hesitate for a moment, saying very clearly, which I've heard from others', "SERE methods have a purpose, they have a real important purpose under controlled conditions for training volunteers." He emphasized that. He didn't have any argument about that.

Chairman LEVIN. Are we talking about the same task force commander?

Colonel KLEINMAN. Yes, we are, sir.

Chairman LEVIN. Who is it? Has he been named here already?

Colonel KLEINMAN. No, he has not been named.

Chairman LEVIN. Do you remember the name?

Colonel MOULTON. Yes, sir, I do.

Chairman LEVIN. Who was that?

Colonel MOULTON. It's General Koenig.

Chairman LEVIN. Is that the same person?

Colonel KLEINMAN. Yes, Mr. Chairman.

Chairman LEVIN. So, everyone at the task force thought these SERE techniques should not be used against detainees. Who on the ground, if anybody, was authorizing these, or did that authority come from headquarters?

Colonel KLEINMAN. Initially, there was no real clear authority given to either employ SERE methods or not. Their understanding was, JPRA was out there to demonstrate the use of these SERE methods. When I went back to the task force commander with concerns it seemed to fall into a void. I would brief the task force commander very clearly, and he very clearly agreed with my assessment of it, but there were never any orders issued. When I'd go over to the interrogation center, their senior interrogator never got any guidance about that except from me.

Chairman LEVIN. You stopped them?

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. Well then, who gave them the order to proceed after you had stopped them? Where did that come from? On the ground, everyone seems to be opposed to it.

Colonel KLEINMAN. I don't know, Mr. Chairman.

Chairman LEVIN. Everyone who's been identified so far has been opposed to it. You said the commander agreed with you.

Colonel KLEINMAN. Right.

Chairman LEVIN. I don't know who disagreed with him, but he's the commander.

Colonel KLEINMAN. Yes, sir.

Chairman LEVIN. So, the commander agrees with you, you stop them, you say they're illegal, you say they violate Geneva, and somehow they start again. Then you stop the second one, or the one that you saw in that bunker that you described. We don't know what happened after that, do we, whether or not the techniques were used after that?

Colonel KLEINMAN. I don't know.

Chairman LEVIN. You said that you talked to the task force legal advisor. Do you remember his name or her name?

Colonel KLEINMAN. No, I don't recall. No.

Chairman LEVIN. Colonel Moulton, do you remember his or her name?

Colonel MOULTON. No, sir.

Chairman LEVIN. Is it accurate that other task force personnel were not pleased with your decision to stop the use of those tactics? Is that true?

Colonel KLEINMAN. That's very accurate, Mr. Chairman.

Chairman LEVIN. Now, while you were still in Iraq, you prepared a draft CONOP for the interrogation of detainees, and your staff sent this CONOP to Captain Dan Donovan, who was the JFCOM staff judge advocate. You did that, according to our information, on September 22, 2003.

According to e-mails from Captain Donovan, JPRA based the CONOP on a draft report on interrogation techniques that had been written by the DOD Detainee Working Group. So, DOD had a working group. According to Captain Donovan, this CONOP included highly aggressive interrogation techniques, including the water board. I think you also mentioned the draft working group report. Where did JPRA get a copy of that draft DOD working group report? Do you know, Colonel Kleinman?

Colonel KLEINMAN. Let me clarify that, Mr. Chairman. I did not draft that. That tasking to draft a CONOP came direct from one of the staff officers.

Chairman LEVIN. Are you familiar with this?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. Okay.

Colonel KLEINMAN. We were given direction that we should capture our experience out there and begin drafting a CONOP, with the idea that perhaps JPRA was moving down towards an expansion of the charter. So, I passed that order on to Terry Russell to prepare that. I told him I wasn't going to draft it myself because I absolutely disagreed with that type of expansion of the use of SERE methods, and so, my contribution would be nothing but contrary. But, the commander asked for a CONOP, and he'd been, I believe, asked for one in turn, so I directed Mr. Russell to prepare it.

Chairman LEVIN. Is that your recollection, too, Colonel Moulton?

Colonel MOULTON. Yes, sir. I think the genesis of that was, from the after-action reports, the fact that there was no standardized process involved there. If something like that was going to happen again, we wanted to make sure that there was some kind of a comprehensive process.

With respect to the SERE techniques that was, I believe, a cut-and-paste out of the guide. Our concern was more about working with the SERE psychologist to make sure that whoever was doing this understood that there is a very involved comprehensive process of properly handling detainees.

Just this last week, I reviewed an after-action report. I noticed, from General Wagner's statement, he said one wasn't forwarded until 2005. But, we did forward one up to JFCOM afterwards. Unfortunately, it's classified. But, if you look at the recommendations that came out of that after-action report, it really addressed many of the issues that Colonel Kleinman is talking about, and also may have prevented the types of things that happened at Abu Ghraib and other places.

Chairman LEVIN. Okay. There was a draft CONOP report. Is that correct? You didn't do it, but someone in your party did it. Is that right?

Colonel KLEINMAN. Yes, Mr. Chairman.

Chairman LEVIN. Was the CONOP written before the after-action reports, do you know?

Colonel KLEINMAN. Our after-action reports from our trip to Iraq?

Chairman LEVIN. Yes.

Colonel KLEINMAN. Yes, sir, it was.

Chairman LEVIN. The draft?

Colonel KLEINMAN. Yes. It was completed and transmitted before we left Iraq.

Chairman LEVIN. Captain Donovan said that the CONOP included highly aggressive interrogation techniques, including the water board. He specifically made reference, however, to that working group at DOD. I think I've asked you, Colonel Kleinman, and you said you don't know where they got that.

Colonel KLEINMAN. That's correct.

Chairman LEVIN. Colonel Moulton, do you know?

Colonel MOULTON. No, sir.

Chairman LEVIN. Are either of you familiar with that working group at DOD?

Colonel MOULTON. Sir, I'm very familiar with the working group.

Chairman LEVIN. The working group I'm referring to is a group of senior lawyers. Is that the same working group?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. You're familiar with the product of that working group?

Colonel MOULTON. Parts of it. I was told the draft that was included in our CONOP came from that working group.

Chairman LEVIN. Did you see that draft?

Colonel MOULTON. I didn't read the whole thing, sir.

Chairman LEVIN. Did you have a copy of it? Was it available to you?

Colonel MOULTON. Yes, sir. That was what was forwarded to Captain Donovan.

Chairman LEVIN. By you?

Colonel MOULTON. Well, I don't know if it was me specifically, but I chop everything before it goes up to JFCOM so, I would have signed the package.

Chairman LEVIN. You would have signed the package that contained that draft of that working group of senior lawyers at DOD?

Colonel MOULTON. No, sir. The SERE resistance techniques were taken from whatever the working group put together.

Chairman LEVIN. I'm talking about a specific draft of that working group. They came up with a draft.

Colonel MOULTON. Yes, sir.

Chairman LEVIN. You had access to it and forwarded that draft to your commander?

Colonel MOULTON. No, sir, I don't think it was the entire draft, I think it was just resistance-technique portions of that draft. I'm not sure. I just think that's what it was.

Chairman LEVIN. Anyway, there was reference to that working group's draft?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. Did JPRA play any role in the working group?

Colonel MOULTON. No, sir. I believe some of the techniques were probably part of the documentation that was sent to Mr. Shiffrin

at an earlier time, but we did not actively participate in the working group.

Chairman LEVIN. Colonel Moulton, shortly after the JPRA team left for Iraq in September, you sent an e-mail to JPRA's liaison office at CENTCOM that discussed a possible trip by you and a couple other JPRA employees to visit various CENTCOM interrogation facilities. You said, "I can support, and have already presented, the concept to JFCOM. We just need the invite." Did you ever get the invitation from CENTCOM?

Colonel MOULTON. Yes, sir, I believe we did.

Chairman LEVIN. In his report, the DOD IG said that there was a planned JPRA trip to Afghanistan in May 2004.

Colonel MOULTON. I believe that's correct.

Chairman LEVIN. Who requested the JPRA support in Afghanistan?

Colonel MOULTON. That was CENTCOM, sir.

Chairman LEVIN. Do you know what they wanted JPRA to do in Afghanistan?

Colonel MOULTON. They wanted us to go and take a look at the entire process of interrogation, from the constabulary process all the way through the interrogation process. A lot of that had to do with the outcome in the after-action that came out of the trip that Colonel Kleinman's folks took.

Chairman LEVIN. Was the trip canceled?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. Why was that canceled?

Colonel MOULTON. I'm not sure exactly why. I believe Admiral Giambastiani decided not to go further with it.

Chairman LEVIN. When would that have been?

Colonel MOULTON. I'm not positive. I'd say it was probably within a week of when the departure was supposed to be.

Chairman LEVIN. Okay. Just excuse me a minute. [Pause.]

What was Admiral Giambastiani's position?

Colonel MOULTON. Sir, he was the Commander of JFCOM.

Chairman LEVIN. Let me go back to the visit to Iraq. Colonel Moulton, why did you think that the task force in Iraq wanted a JPRA team to go to Iraq?

Colonel MOULTON. Sir, the request that came from the commander specifically said he was having problems with interrogation, and he had heard that our people were able to identify resistance techniques being used by detainees.

Chairman LEVIN. Did he make reference to JPRA interrogators?

Colonel MOULTON. I don't believe so, sir.

Chairman LEVIN. Was there a complaint that you registered at the time, or did you tell JFCOM that your folks should not be used as interrogators?

Colonel MOULTON. I don't recall that, but that would have been my position.

Chairman LEVIN. But, you don't remember telling them that you didn't want them used as interrogators?

Colonel MOULTON. I don't remember that, no, sir.

Chairman LEVIN. But, that was your position?

Colonel MOULTON. Yes, sir, absolutely.

Chairman LEVIN. Dr. Bruce Jessen, who was the senior SERE psychologist at JPRA, sent you an e-mail on April 16, 2002 (see Annex B); and attached to that e-mail was a draft exploitation plan. Do you know what prompted Dr. Jessen to draft that plan?

Colonel MOULTON. Sir, I just don't have the information.

Chairman LEVIN. We're going back to 2002 now. This was way before Iraq. Your reply, dated April 17, 2002, said that he should put together a briefing to take up for approval. Take up to whom?

Colonel MOULTON. That would have been to JFCOM.

Chairman LEVIN. Did that briefing ever occur?

Colonel MOULTON. Sir, I don't believe so. I don't remember Dr. Jessen going up with me for any briefings. It may have happened. I just don't recall that, sir.

Chairman LEVIN. Do you remember whether or not the exploitation plan was ever implemented?

Colonel MOULTON. Sir, I don't remember.

Chairman LEVIN. Colonel Moulton, a September 9, 2003, e-mail from you to Rear Admiral Bird, who is the Director of Operations at JFCOM says, "A recent history, to include discussions and training with Defense Human Intelligence Service (DHS), SOCOM, and CIA, shows that no DOD entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation. Our subject matter experts and certain Service SERE psychologists currently have the most knowledge and depth within DOD on the captivity environment and exploitation."

What are the discussions and training with DHS, SOCOM, and CIA that your e-mail makes reference to?

Colonel MOULTON. Sir, initially, the training we were providing was to help those organizations actually do their own resistance or survival training. The feedback I was getting from my SERE psychologist was that those folks were not familiar with the captivity environment, the psychology of captivity, and they noted that they didn't have any standardized methodology for doing any kind of strategic debriefing.

Chairman LEVIN. Colonel Moulton, the committee has heard today, and on June 17, about several JPRA offensive activities. This is a list of what we've heard: JPRA's December 2001 response to a request from the DOD General Counsel's Office for information on exploitation; briefings by JPRA for deploying DIA personnel; JPRA's July 2002 response to a request from DOD General Counsel's Office for information on physical and psychological pressures used in SERE training; the August 2002 JPRA training for GTMO personnel at Fort Bragg; September 2003 deployment of the JPRA interrogation assistance team to Iraq.

The JFCOM staff judge advocate's account of her interview with you says that you never deployed a support team without approval from the JFCOM J–3, the Director of Operations.

Colonel MOULTON. Yes, sir, that's correct.

Chairman LEVIN. I just mentioned all those activities. Who at JFCOM did you speak to about JPRA's offensive operations?

Colonel MOULTON. Sir, it would have been the J–3. That's where all the tasking went through.

Chairman LEVIN. Who was that?

Colonel MOULTON. Depending on the timeframe, it would have been either Brigadier General Moore or Rear Admiral Bird.

Chairman LEVIN. Was that General Thomas Moore?

Colonel MOULTON. We called him Tango. I think it might be, yes.

Chairman LEVIN. You talked to the JFCOM Director of Operations?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. Did you talk to the chief of staff, General James Soligan?

Colonel MOULTON. Sir, I probably did, but I'd talk to those gentleman on a daily basis.

Chairman LEVIN. Would you have talked about all or some of those items that I just specified?

Colonel MOULTON. I would have talked about every one of those.

Chairman LEVIN. What about General Wagner, the Deputy Commander?

Colonel MOULTON. No, sir. I think the first time I got involved with General Wagner was when Colonel Kleinman's phone call came in, I think it was on a Friday evening. I couldn't get ahold of Admiral Bird or General Soligan, the Chief of Staff, so I went up the chain and spoke with General Wagner.

Chairman LEVIN. About that conversation?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. What about the commander, Admiral Giambastiani?

Colonel MOULTON. No, sir, I think the only time we got Admiral Giambastiani involved was when we briefed him on that 2004 trip.

Chairman LEVIN. Other than that one time with General Wagner, they never gave their approval of offensive operations?

Colonel MOULTON. Yes, sir, they did. Prior to every deployment we briefed exactly what we were going to do. Our folks were over there assessing, providing observations and feedback, but the only time they actually got involved was in Colonel Kleinman's trip.

Chairman LEVIN. In terms of active participation in offensive operations, other than pure observation, that was approved by any of those folks?

Colonel MOULTON. The observation and training was. Everything we did was approved by JFCOM.

Chairman LEVIN. So, the list of what I told you, that was approved, but none of those included the use of those specific techniques against detainees. Is that correct?

Colonel MOULTON. The training may have.

Chairman LEVIN. Against detainees?

Colonel MOULTON. No, sir.

Chairman LEVIN. Okay. In September 2003, Captain Donovan, the JFCOM staff judge advocate, found out about JPRA's offensive activities, the actual use of those activities against detainees, and he raised concerns about them. Colonel Moulton, prior to that, did anyone else at JFCOM express concern about those activities?

Colonel MOULTON. Yes, sir. Every time I brought it up to the leadership, we always had the discussion about whether or not this was within the charter of JPRA. From the very beginning, my staff, the JFCOM staff all said it was outside. However, because there were no subject matter experts within DOD, outside of those resi-

dent with JPRA and the SERE schools, we decided to go ahead and provide support as subject matter experts, but not as JPRA personnel.

Chairman LEVIN. So, it was outside of your charter?

Colonel MOULTON. Yes, sir. I think the easiest way to explain it is if I went to Colonel Kleinman and we needed a Russian speaker, even though he's intelligence.

Chairman LEVIN. I understand. This list of things that were requested were outside of the charter.

Colonel MOULTON. Yes, sir.

Chairman LEVIN. In a February 2005 statement to the DOD IG, Lieutenant General Wagner, who is the Deputy Commander at JFCOM, said that, "relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond to and resist interrogations, not in how to conduct interrogations." Do you agree with Lieutenant General Wagner's statement?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. On September 29, 2004, Major General Soligan, JFCOM's Chief of Staff, wrote a memorandum for you saying that requests for JPRA offensive support for the Office of the Secretary of Defense and combatant commands went "beyond the chartered responsibility of JPRA." In his February 2005 statement, Lieutenant General Wagner said that requests for JPRA interrogation support were "both inconsistent with the unit's charter and might create conditions which task JPRA to engage in offensive operational activities outside of JPRA's defensive mission."

In a September 8, 2003, e-mail to Lieutenant General Wagner, you said, "There is nothing in JPRA's charter or elsewhere that points us toward the offensive side of captivity conduct."

Those are a list of offensive activities in which JPRA engaged in. I read you that list.

Colonel MOULTON. Yes, sir.

Chairman LEVIN. You said that they had been approved, despite the fact that there's nothing in the charter or elsewhere that provides for JPRA doing that. Do you know of anyone who's been held accountable for those violations of JPRA's charter?

Colonel MOULTON. Sir, as I put in my written statement, we all had concerns with that, and that's why we only went to support with subject matter experts, not representatives from JPRA.

Chairman LEVIN. All right. But, do you know of anybody that's been held accountable for the decision to go outside of JPRA's charter?

Colonel MOULTON. No, sir.

Chairman LEVIN. Colonel Moulton, describe for us the protections which are in place for our soldiers that go through SERE training.

Colonel MOULTON. Sir, it's very comprehensive. It starts with the SERE psychologist to monitor them. Obviously, there are some psychological ramifications to this kind of training. We have medical doctors on board. We have several instructors that are just reviewing the entire operation. It's a very methodical and closely supervised activity.

Chairman LEVIN. Can our personnel end it when they give a signal of some kind?

Colonel MOULTON. Yes, sir.

Chairman LEVIN. Colonel Kleinman, do you want to add anything to that, in terms of protections given in the SERE program to our people who are being trained?

Colonel KLEINMAN. Yes, sir. Mr. Chairman, it's an exceptionally professional program. I was certified as an instructor in the course; one of the few officers privileged to do so. It began with a psychological test to weed out those who have a high propensity for acting out. On a regular basis, I'd be interviewed by either the psychologist or the technicians to see how my life is going, to make sure that I didn't come in one day when I was supposed to use a more aggressive approach after getting a Dear John letter the day before. It's very specific about training. You're taught to use the physical pressures; you receive them, so you know what it feels like; you're observed all the time; and you're constantly checked and rechecked. There are no gaps in the way it's conducted.

The psychologists have a dual role. Not only are they watching the psychological health of the students, but they're also monitoring, just as closely, the instructor staff to make sure that somebody who is pushing somebody against a wall is doing it because it's consistent with the learning objective, rather than because of anger. So, it's very specific.

Chairman LEVIN. Colonel Kleinman, were these safeguards in place at the task force interrogation facility in Iraq that you've described?

Colonel KLEINMAN. None of those were in place, Mr. Chairman.

Chairman LEVIN. Colonel Moulton, when you heard Colonel Kleinman's description of what he observed in Iraq and how these techniques, which were supposed to be used for a totally different purpose, were used against detainees, what was your reaction to what you heard here this morning?

Colonel MOULTON. Well, obviously I'm disappointed at what happened there.

Chairman LEVIN. Is it beyond disappointment? These techniques were supposed to be used to help people resist abuse, and were used by our enemies in order to force confessions. The Communist Chinese didn't care if the confession was true; they wanted the confession. They wanted the propaganda value of the confession.When you heard that these techniques, the way Colonel Kleinman described them, were used for a purpose which they were never intended to be used, were you just disappointed?

Colonel MOULTON. No, sir. I'm sorry, it's much worse than that. What's sad about this is I think it was done, initially, with good intentions. I think we understood that, on what we'd call the defensive side, we have a focal point, which is JPRA. There is no focal point within DOD on the offensive side, and that's one of the messages that we were trying to bring up over and over again, which lead to all the problems we had, whether it was at the task force over in Iraq, GTMO, or Abu Ghraib. That was a very serious concern for us.

So, yes, I'm more than disappointed. I feel terrible that that's where it went. However, at the time, we were acting on good intentions. Initially, when we got involved, it was just to help them identify those detainees who were using resistance techniques.

Colonel KLEINMAN. May I add to that comment, Mr. Chairman?

Chairman LEVIN. Sure.

Colonel KLEINMAN. I agree 100 percent with Colonel Moulton's characterization of the need for an overriding authority, a responsible party to oversee standards of training, standards of selection, and standards of conduct for interrogation, which did not, and frankly, still do not exist today. One of the aspects of JPRA that I was most impressed with, coming to that agency after being an interrogator, was their purposeful very professional approach to what they did. We didn't have those standards of conduct. We didn't have psychologists monitoring our activities, informing us how we did what we did.

I think JPRA, in its model, offered a great deal to the United States Intelligence Community. Had they followed through and said, "Well, let's adapt the JPRA model," in terms of systems management, program management, and professionalism, it's my professional judgment that some of the difficulty we had today, Abu Ghraib and elsewhere, would have been avoided.

Chairman LEVIN. What's the price that we've paid for Abu Ghraib? Do you have an opinion on that?

Colonel MOULTON. I think it's pretty severe, as far as international opinion. That hurt us gravely. It also may have some ramifications for our own detainees in the future. It's definitely severe.

Chairman LEVIN. Let me thank both of our witnesses here.

The abuses of detainees at Abu Ghraib, as we've learned from these hearings, was not simply the result of a few soldiers acting on their own interrogation. Techniques similar to those used in SERE resistance training, such as stripping detainees of their clothes, placing them in stress positions, and use of dogs appeared in Iraq only after they had been approved for use in Afghanistan and at GTMO.

Secretary of Defense Rumsfeld's December 2002 authorization and subsequent interrogation policies, plans, and techniques approved by senior military and civilian officials, some of which we've heard about this morning, conveyed a very clear message to the troops; that physical pressure and degradation were appropriate treatment for detainees in U.S. military custody, and the abuses that resulted from these decisions have damaged our efforts to win the support of the people of the world and our allies to our side in the war in which we are fighting.

I hope that by shedding light on what occurred and how it occurred, this hearing and the previous hearing and our committee's inquiry will help us to begin to repair that damage and to make sure that our men and women never are involved in these kinds of activities again.

For reasons which you both have given, severe damage has been done to our security, and to the view of our country by the rest of the world, whose support we need in the war that we're waging. The future threat to our troops, as Colonel Moulton just mentioned, could also be severe. We have to begin to repair this damage. Your testimony, because of its openness, and you, Colonel Kleinman, in terms of your behavior at the time, will help us to show the kind of openness that we can be proud of in this country. Hopefully the

rest of the world will understand and appreciate that, at least when we make these kind of horrific mistakes, we own up to them, we acknowledge them, and we seek to repair them.

Your presence here this morning, and your cooperation with this committee is helpful. In that regard, we thank you both, we thank you both for your service to our country and we stand adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR CARL LEVIN

INTERROGATION

1. Senator LEVIN. Colonel Moulton, a September 9, 2003, e-mail from you to Rear Admiral John Bird who was the Director of Operations at Joint Forces Command (JFCOM), says:

". . . Recent history (to include discussions and training with the Defense Human Intelligence Service, United States Special Operations Command, and the Central Intelligence Agency (CIA)) shows that no Department of Defense (DOD) entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation. Our subject matter experts (and certain Service Survival, Evasion, Resistance, and Escape (SERE) psychologist) currently have the most knowledge and depth within DOD on the captivity environment and exploitation."

You testified to the committee that "initially the training we were providing was to help those organizations actually do their own resistance or survival training. . ." Is training for those organizations to do their own resistance or survival training what you were referring to in your e-mail?

Colonel MOULTON. In my testimony, the training I was referring to was specifically resistance to interrogation and basic survival training that we were providing to personnel from other government agencies. In the course of this training, as we came into contact with organizational psychologists, Joint Personnel Recovery Agency (JPRA) personnel became aware that these other agencies generally were unfamiliar with the differences between persons being treated in a clinical environment and the human responses encountered in captivity. What JPRA has learned over the years or supporting repatriations and conducting SERE training is that individuals in a captivity situation often react in a manner that is counter-intuitive to what would be expected from a person undergoing other types of stress. My comments in the e-mail regarding the lack of a "comprehensive approach" were specifically addressing the lack of knowledge in the psychology of captivity and its important role in the debriefing/interrogation process. I still firmly believe that a better understanding and promulgation of this knowledge early on in the development of interrogation policy could have prevented much of the later mishandling of detainees encountered.

2. Senator LEVIN. Colonel Moulton, please list each instance in which the JPRA or personnel employed by JPRA provided support relating to the interrogation of detainees in U.S. custody during your command. For each instance please indicate to whom the support was provided and describe the support, including whether it included providing information or instruction on physical or psychological pressures used in military resistance training.

Colonel MOULTON. During the tenure of my command, JPRA provided support relating to the interrogation of detainees in U.S. custody only one time. This support was provided to a special mission unit task force and occurred in Iraq in September 2003. The specific circumstances of this support were the subject of my testimony on September 25, 2008, and my earlier written statement. In summary, the JPRA support involved a three-person team of subject matter experts. The request for support was validated in advance by Central Command and the team's deployment was approved by JFCOM. The team leader was an experienced intelligence officer and the accompanying two team members were both trained, highly experienced SERE instructors. The support included guidance on captivity psychology and instruction/demonstration of counter-resistance techniques employed by JPRA cadre during SERE training. The team's support was approved by the local commander in consultation with the commander's judge advocate and coordinated in advance with JPRA's higher headquarters, JFCOM.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

MITCHELL AND JESSEN

3. Senator AKAKA. Colonel Kleinman, you have indicated having professional knowledge of, and work experiences with, Mr. James Mitchell, the retired military psychologist described in journalist Jane Mayer's new book, The Dark Side. Described as the CIA team leader that took over the interrogation of terrorism detainee Abu Zubayda, he had no background in Middle East culture, Islam, and had never even conducted an interrogation before.

In your opinion, why would the CIA hire James Mitchell, an ex-military psychologist that specialized in tortuous practices and their effect on the human mind, as leader of a team meant to extract information from Zubayda unless there was clear intent to take a path that would lead away from adherence to the Geneva Conventions?

Colonel KLEINMAN. In my professional view, there have been a number of ill-founded and erroneous assumptions made about the role of the CIA in the interrogation of detainees and this question probes deep into the underlying cause-and-effect.

First, in the discourse over whether the CIA should be authorized to employ so-called enhanced interrogation techniques due to the unique nature of their mission, it is important to highlight the fact that prior to the attacks of September 11, the Agency was not specifically charged with an interrogation mission nor had it assumed one; it therefore did not possess an organic capability to conduct such activities. In the aftermath of that horrific event, the Agency not only became heavily involved in interrogation operations, they also progressively exerted a curiously unchallenged prerogative to control, conduct, and/or manage the interrogation of many high value detainees.

Second, to execute this mission, the Agency followed two paths:

a. They sought out volunteers from within the Agency to conduct interrogations of these critical intelligence sources. Unfortunately, few of these individuals possessed any prior experience or training in interrogation or even, in some cases, in field intelligence collection.

b. They also sought interrogation expertise from outside the Agency in the form of contractors. Through an inexplicable decisionmaking process, the Agency did not seek such professional support from the available cadre of highly experienced interrogators (e.g.. from the military intelligence and/or law enforcement communities); rather, they quickly turned to two former military SERE psychologists (Drs. Mitchell and Jessen) who collectively possessed neither operational experience nor training in intelligence interrogation. The rationale behind this choice appears to be the fact that these two individuals were acknowledged subject matter experts in resistance to interrogation, a well-deserved reputation based on their education, military training, and impressive contributions to the Nation's SERE training programs.

The decision to pursue this second course highlights a major competency shortfall: the CIA lacked the substantive corporate knowledge of interrogation to render a meaningful distinction between: (1) the conduct of interrogation for intelligence purposes; and (2) a resistance to interrogation program designed to mirror the strategies and methods conducted by selected foreign (primarily hostile) nations. Of critical importance is the fact that many of those strategies and methods, if employed against U.S. personnel, would be viewed by American authorities as violations of the Geneva Convention guidelines on the treatment of prisoners/detainees. In addition, this approach had historically been primarily focused on compelling individuals to produce propaganda rather than intelligence.

This melding of cultures—between Geneva Convention-bound interrogation operations and resistance to interrogation training that systematically involved practices in violation of these Conventions—created an atmosphere where significant errors in judgment were almost certain to occur. When an individual has spent a considerable portion of his career—as Drs. Mitchell and Jessen have—designing, supervising, and participating in realistic training scenarios where slapping, poking, isolation, white noise, forced nudity, and overt threats of physical abuse for noncompliant behavior were integral elements of the paradigm, it would seem problematic if that same individual were given responsibility for setting the standards of conduct for the interrogation of foreign nationals that would be consistent with applicable U.S. and international law.

Beyond the framework of any individual's value set or familiarity with legal guidelines, the longstanding SERE experience would very likely leave one ill-

equipped to recognize the distinctive contextual differences between activities that are acceptable (and necessary) within a resistance to interrogation training environment and that involving the real-world interrogation of foreign nationals. What must not be overlooked is that many, if not all, of the physical pressures to which U.S. military personnel are subjected on a short-term basis during resistance training would clearly cross the legal, moral, and operational definitions of unacceptable coercive practices—even torture—if employed in the longer term against foreign detainees in U.S. custody.

In sum, I can only speculate as to the rationale behind the selection of Drs. Mitchell and Jessen for this role. I would like to emphasize that both of these individuals served honorably in defense of this Nation through their respective decades-long military careers. Their individual and collaborative contributions to SERE training remain both distinctive and irreplaceable. While I have profound disagreement with their perspectives on what constitutes an effective model of interrogation, I am confident that their intentions upon accepting the contractual positions with the CIA were to continue to serve their country. What they did not understand—and, more importantly, what the leadership at the CIA did not appear to understand—are the many critical differences between the American way of interrogation and the systematic application of SERE-related techniques.

4. Senator AKAKA. Colonel Kleinman, James Mitchell and his partner, John Bruce Jessen, have released a statement defending their involvement in CIA interrogations that reads: "We are proud of the work we have done for our country. The advice we have provided and the actions we have taken have been legal and ethical. We resolutely oppose torture. Under no circumstances have we ever endorsed, nor would we endorse, the use of interrogation methods designed to do physical or psychological harm."

From your direct knowledge of working with James Mitchell, do you consider this to be a truthful statement?

Colonel KLEINMAN. Continuing on the theme of my previous answer, I would submit that it is very likely that Dr. Mitchell believed he answered that question truthfully. My qualification rests on the fact that, as previously noted, the totality of his professional experience and knowledge of interrogation prior to his service with the CIA was limited to SERE training programs where the application of various degrees of physical, emotional, and psychological stress were de rigueur. The focus on such training is exclusively to aid others to return with honor, for the SERE instructors playing the role of the interrogator during such training, the implications of the laws of armed conflict and/or the role of the Geneva Conventions are of little relevance.

Intelligence interrogations conducted in real-world settings with foreign nationals present an entirely different set of legal, moral, and operational considerations. As a clinical psychologist with a specialization in SERE and operational psychology, Dr. Mitchell is, in my view, not well-prepared to draw meaningful distinctions as to what is considered acceptable conduct in the interrogation of persons held in U.S. custody. It is very possible—even probable—that his experiential background would materially influence his standard for acceptable conduct and behaviors. As a career intelligence officer and interrogator (who has also completed an assignment as a resistance to interrogation instructor), I have serious reservations about the ability of anyone with extensive experience in resistance to interrogation training—who therefore has witnessed and orchestrated literally thousands of facial slaps, hours of isolation, application of white noise, and both physical and verbal abuse—to render meaningful judgments as to what constitutes torture or coercion in another, seemingly familiar yet critically different context.

5. Senator AKAKA. Colonel Kleinman, what is your overall impression of James Mitchell, especially since you considered the CIA's reliance on him for interrogations "surreal"?

Colonel KLEINMAN. Dr. Mitchell has dedicated a substantial portion of his professional career to the noble cause of SERE training. The fundamental mission of SERE training, as referenced above, is to prepare U.S. military personnel to successfully navigate the most extreme and threatening circumstances of capture by a hostile power and to return with honor. Dr. Mitchell has invested his considerable talents and intellect in the continued and invaluable refinement of the relevant tactics, techniques, and procedures.

On several occasions, I have had the opportunity to discuss with him the philosophical underpinnings of his perceived model of interrogation (as well as longer engagements with SERE professionals who count themselves among the proponents Dr. Mitchell's perspectives). The model he espoused focused on a systematic effort

to undermine an individual's emotional, psychological, and physical ability to resist as a central tenant. An essential outcome of this process is the establishment of a considerable level of dependence on the part of the detainee toward his/her interrogator.

Beyond my substantial operational experience as an interrogator, I have also conducted extensive research into the craft, to include the interview and observation of hundreds of interrogators of various skill levels. My conclusions—which have been supported by dozens of this Nation's most gifted and accomplished interrogators—suggest that the systematic application of psychological, emotional, and/or physical stress with the objective of overcoming resistance and/or to create some degree of dependence is not only ineffective, but also largely counterproductive. Under the protocol that has been championed by Dr. Mitchell, the ability to explore the full range of the detainee's knowledgeability (which requires a significant degree of fostered cooperation as opposed to forced compliance) is severely obstructed. In addition, the personal and environmental pressures that are integral to Dr. Mitchell's approach have been shown to undermine an individual's ability to accurately recall detailed information, which is a fundamental objective of any interrogation. Further, the model does not appear to incorporate any emphasis on, or even concern with, the critically important need to adapt to organic cultural tendencies present within the detainee's demographic.

In the period following the attacks of September 11, 2001, the Nation's premier intelligence organization, with longstanding primacy in the area of human intelligence (i.e., the CIA), when faced with the requirement to expeditiously develop a strategic- and operational-level interrogation capability: (1) found it necessary to build that program from external, contracted resources; and (2) selected an individual with no previous training or operational experience in the actual conduct of interrogation for intelligence purposes. This appears to be a bizarre and unexpected set of circumstances where fact (e.g., interrogation is a critical intelligence methodology, American resistance to interrogation programs are arguably the world standard for excellence) was mixed with fantasy (e.g., practical exercises involving SERE instructors in the role of a foreign interrogator and U.S. military personnel in the role of the detainee mirrors lawful and effective interrogation methods employed by intelligence officers to obtain useful information from foreign detainees in U.S. custody) led to the observations accurately captured by Jane Mayer in her book. The Dark Side. It was—and remains—surreal.

INTERROGATION TECHNIQUES

6. Senator AKAKA. Colonel Moulton, during the last hearing conducted by this committee into the background of detainee interrogations, testimony was given that each of the military Services had raised legal and ethical concerns over the decision to approve SERE-style interrogation techniques.

What was your knowledge of the intra-Department conflicts over the application of SERE school interrogation methods to detainees held at Guantanamo Bay, and did you have any contact with senior leaders from any of these Services that highlighted their concerns?

Colonel MOULTON. During my tenure as JPRA commander, I did not participate in any Service-level discussions regarding interrogation policy, nor, to the best of my knowledge, did any personnel under my command. To the best of my knowledge, I did not have any particularized knowledge at the time of intra-Department conflicts over the application of SERE school interrogation methods to detainees held at Guantanamo Bay, nor did I have any contact with senior leaders from any of the Services that highlighted their concerns. JPRA did provide background information on SERE resistance training in response to a request for information from the DOD Office of the General Counsel in 2002. JPRA had no further requests from the Office of the General Counsel or other DOD authorities for information on the SERE resistance training and did not participate in any internal deliberations with DOD or the Services on interrogation policy.

[Annexes A and B follow:]

ANNEX A

INDEX – UNCLASSIFIED BINDER – 17 JUNE 2008 HEARING

1. **July 25, 2002 Memorandum from Headquarters JPRA Chief of Staff to Office of the Secretary of Defense General Counsel, Subject: Exploitation.**

2. **July 26, 2002 Memorandum from Headquarters JPRA Chief of Staff for Office of the Secretary of Defense General Counsel, Subject: Exploitation and Physical Pressures.**

3. **Attachment to JPRA Memorandum of July 26, 2002 entitled, "Physical Pressures used in Resistance Training and Against American Prisoners and Detainees," Dated July 25, 2002.**

4. **Attachment to JPRA Memorandum of July 26, 2002 from the Chief of Psychology Services at the 336th Training Support Squadron, Surgeon General Flight, Subject: Psychological Effects of Resistance Training, dated 24 Jul 2002:**

5. **Department of Justice, Office of Legal Counsel Memorandum for Alberto Gonzales dated August 1, 2002, Re: Standards of Conduct for Interrogation under 18 U.S.C.§§2340-2340A.**

6. **USSOUTHCOM (Office of the Staff Judge Advocate) Trip Report, DoD General Counsel Visit to GTMO, 27 September 2002.**

7. **October 24, 2002 Email traffic between DoD CITF Personnel, Subject: FW: Counter Resistance Strategy Meeting Minutes [Minutes of an October 2, 2002 Meeting at Guantanamo Bay, Cuba)**

8. **Memorandum for Commander USSOUTHCOM from MG Michael Dunlavey, dated October 11, 2002, Subject: Counter-Resistance Strategies. Two Attachments: JTF 170 J02 Memo, Subject: Request for Approval of Counter-Resistance Strategies; and JTF-170 SJA Memo, Subject: Legal Brief on Proposed Counter-Resistance Strategies.**

9. **USSOUTHCOM (General Hill) Transmittal Memo to Chairman, Joint Chiefs of Staff, dated October 25, 2002, Subject: Counter-Resistance Techniques.**

10. **Headquarters U.S. Air Force Memo to Joint Staff: Review of SOUTHCOM / GTMO Request for Techniques (Nov 4, 2002)**

11. **Criminal Investigative Task Force (CITF) Memo to Joint Staff: Review of SOUTHCOM / GTMO Request for Techniques (Nov 4, 2002)**

12. **Headquarters, Department of the Army Memo to Joint Staff: Review of SOUTHCOM / GTMO Request for Techniques (Nov 7, 2002)**

13. **Chief of Naval Operations Memo to Joint Staff: Review of SOUTHCOM / GTMO Request for Techniques (Nov 4, 2002)**

14. **Headquarters U.S. Marine Corps Memo to Joint Staff: Review of SOUTHCOM / GTMO Request for Techniques (Nov 4, 2002)**

15. **Jim Haynes (DoDGC) Memo to Secretary of Defense Rumsfeld, Subject: Counter-Resistance Techniques (November 27, 2002)**

16. **JTF GTMO "SERE" Interrogation Standard Operating Procedure," dated 18 December 2002.**

17. **Draft CITF Memorandum for the JTF-GTMO J-2, Subject: JTF GTMO "SERE" Interrogation SOP," (December 17, 2002).**

18. **Memorandum for Inspector General, Department of the Navy, Subject: Statement for the Record of Alberto Mora for the Department of the Navy Inspector General (July 7, 2004)**

19. **Navy SERE School Training Specialist and SERE Coordinator Memorandum, Subject: After Action Report, JTF GTMO Training Evolution (January 15, 2003)**

20. **SECDEF Memorandum for SOUTHCOM rescinding counter-resistance techniques memo of December 2, 2002 (January 15, 2003); and SECDEF Memo establishing DoD Working Group on Interrogation of Detainees (January 15, 2003).**

21. **Department of Justice, Office of Legal Counsel, Memorandum from John Yoo to William J. Haynes, Re: Military Interrogations of Alien Unlawful Combatants Held Outside of the United States (March 14, 2003)**

22. **Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations: April 4, 2003.**

23. **Memorandum for Secretary of Defense to Commander, USSOUTHCOM, Subject: Counter-Resistance Techniques in the War on Terrorism (April 16, 2003).**

24. **Memorandum from MG Soligan, Chief of Staff, JFCOM, for Commander, JPRA, Subject: JPRA Mission Guidance. (September 29, 2004)**

25. **Memorandum from LTG Wagner, Deputy Commander, Joint Forces Command for the Department of Defense Inspector General (February 10, 2005).**

(Tab 1) Unclassified excerpts from the July 25, 2002 Memorandum from Headquarters JPRA Chief of Staff to Office of the Secretary of Defense General Counsel, Subject: Exploitation

1. (U) BACKGROUND: JPRA is the principal DoD Agency for Joint Personnel Recovery (PR) support. JPRA provides Joint PR functional expertise and assistance to the Office of the Secretary of Defense (OSD), Combatant Commands (CINCs), Chairman, Joint Chiefs of Staff (CJCS), Services, Defense Agencies, DoD Field activities and other Governmental Agencies (OGAs). JPRA is under combatant command (command authority) (COCOM) of the Commander in Chief, U.S. Joint Forces Command (USJFCOM), the DoD Executive Agent for Personnel Recovery. JPRA is designated as the DoD Office of Primary Responsibility (OPR) for DoD-wide Joint PR support matters responsible for executing SecDef directed USJFCOM Executive Agent (EA) functions. The JPRA staff works five core mission areas: Joint Combat Search and Rescue (JCSAR), Non-conventional Assisted Recovery (NAR), Code of Conduct Training (includes Survival, Evasion, Resistance, and Escape [SERE]), Operational POW/MIA Matters (includes repatriation and debriefing), and PR Research, Development, Testing and Evaluation (RDT&E) as the DoD OPR for PR in accordance with USJFCOMINST 3100.4, *Charter for the Joint Personnel Recovery Agency, 22 Nov 00.*

(U) Under the Code of Conduct Training mission area JPRA oversees Service SERE training programs and at an advanced level, provides selected SERE training to special mission units, sensitive reconnaissance operations personnel, military attaches and other designated high-risk-of-capture personnel. JPRA also is responsible for training Service SERE instructors and certifying SERE courses of instruction. Resistance training to teach DoD personnel how to maintain dignity and honor in the face of the enemy through effective use of the Code of Conduct is core to SERE training. Within that training piece JPRA has arguably developed into the DoD's experts on exploitation as predecessor organizations have been teaching advanced resistance techniques with regard to exploitation since 1961. JPRA's collateral mission as the DoD lead for repatriation and debriefing activities (having facilitated all repatriations from Operation HOMECOMING to present) under the Operational POW/MIA Affairs mission area also provides the real time lessons learned products on detention situations to ensure techniques and strategies incorporated into training courses are accurate and in step with the world geopolitical scene.

2. (U) With regard to your request for assistance on exploitation/interrogation techniques that have been effective against Americans JPRA offers the following documents:

a. (U) Attachment 1: *(U) Exploitation Processes Used Against American Prisoners And Detainees, A Historical Overview, 25 Jul 02.* This paper explains the exploitation process as an overall systematic approach on how to get detainees to cooperate.

b. (U) Attachment 2: *(S /NF) Interrogation Methods Used Against American Prisoners And Detainees, A Historical Overview of Effective Methods, 25 Jul 02.* This paper explains the interrogation techniques used within the exploitation process. Each technique is explained and has lessons learned examples that highlight the effectiveness of these techniques used against Americans. Only a few representative examples were used per technique to keep the length of the paper reasonable.

c. (U) Attachment 3: *(U) Psychological Aspects of Detention.* The goal of this lesson plan (used in JPRA courses of instruction) is to highlight for students the fact that psychological stresses are inherent in detention situations, but that they can be successfully overcome. From an exploitation perspective the goal would be to induce these in detainees. Obviously with this lesson plan and the next three provided, classification increases to SECRET NOFORN and above when using certain operational lessons learned as examples.

d. (U) Attachment 4: *(U) Exploitation -Threats and Pressures.* The goal of this lesson plan is to focus students' attention on a peacetime governmental detainer's most likely exploitation goals and the historically effective tools used to achieve them. Reversing this, an exploiter/interrogator has a plan for exploitation of enemy detainee.

e. (U) Attachment 5: *(U) Methods of Interrogation.* The goal of this lesson plan is to ensure that students have a clear understanding of the processes and tools a professional exploiter employs in order to obtain his desired results. Stress that such an understanding is critical to successfully resisting. The applicability to the interrogator is to thoroughly understand the techniques and how to use them with the greatest effect.

f. (U) Attachment 6: *(C) Resistance to Interrogation.* The goal of this lesson plan is to emphasize to the students that time tested resistance techniques, logically combined with a planned personal resistance posture can defeat the most professional exploiter. The utility to the interrogator is what to look for and use strategies designed to defeat resistance in enemy detainees.

3. (U) 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. We trust this has answered your question. If you need further information please call me at [phone number redacted].

//signed//
DANIEL J. BAUMGARTNER JR., Lt Col, USAF
Chief of Staff

(Tab 2) Unclassified excerpts from the July 26, 2002 Memorandum from Headquarters JPRA Chief of Staff for Office of the Secretary of Defense General Counsel, Subject: Exploitation and Physical Pressures

1. (U) The purpose of this memorandum is to answer follow-on questions resulted from the meeting between JPRA and OSD GC on 25 Jul 02.

2. (U) BACKGROUND: Under the Code of Conduct Training mission area JPRA oversees Service SERE training programs and at an advanced level, provides selected SERE training to "special" designated high-risk-of-capture personnel. Resistance training to teach DoD personnel how to maintain dignity and honor in the face of the enemy through effective use of the Code of Conduct is core to SERE training. Within that training piece 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 to highlight inappropriate coping strategies and provide realism in a contrived captivity environment.

4. JPRA will continue to offer exploitation assistance to those governmental organizations charged with the mission of gleaning intelligence from enemy detainees. We trust this has answered your additional questions. If you need further information please call me at [phone number redacted].

//signed//
DANIEL J. BAUMGARTNER JR., Lt Col, USAF
Chief of Staff

(Tab 3) Unclassified excerpts from Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees [Attachment to the July 26, 2002 Memorandum from Headquarters JPRA Chief of Staff for Office of the Secretary of Defense General Counsel, Subject: Exploitation and Physical Pressures]

INTRODUCTION

~~(FOUO)~~ Physical pressures used in resistance training are not designed to elicit compliance, to produce enduring or damaging consequences, or to render the student so incapacitated by physical or emotional duress that learning does not take place. The purpose of applying physical pressures is to project the students' focus into the resistance scenario and realistically simulate conditions associated with captivity and resistance efforts. The pressures used in training are minor in comparison to that which American prisoners have experienced in the past. The tactics are used in lieu of pressures used historically.

~~(FOUO)~~ The application of physical pressures in training is necessary to produce the correct emotion and physiological projection a student requires for stress inoculation and stress resolution to be accomplished. This "Controlled Realism" must exist for the correct learning to take place. If too little physical pressure is applied, the student will fail to acquire the necessary inoculation effect and run the risk of underestimating the demands real captivity can produce. If too much physical pressure is applied, the student is made vulnerable to the effects of learned helplessness, which will render him/her less prepared for captivity than s/he was prior to training.

~~(FOUO)~~ Applying physical pressures in an intense, simulated captivity role-play requires considerable skill and composure on the part of the resistance-training instructor. This is an acquired skill which demands considerable knowledge, experience, and grounding in human behavior and resistance theory. Not all resistance-training role-players are necessarily suited to perform this particular element of instruction. Careful training and monitoring of the instructor of qualified individuals are necessary to maintain the desired application of this critical education tool. The instructor who uses these physical pressures in training must:

- Remember physical pressure must be uniquely applied to each individual student depending on his/her physical size and resilience.
- Constantly monitor the student's resistance behavior and appropriately applied physical pressure in a manner that is consistent with controlled realism, but also facilitates the desired learning outcome.

~~(FOUO)~~ APPROVED PHYSICAL PRESSURES USED IN JPRA RESISTANCE TRAINING INCLUDE:

1. ~~(FOUO)~~ FACIAL SLAP: Slap the subject's face midway between the chin and the bottom of the corresponding ear lobe. The arm swing follows an ark no greater than approximately 18 inches. "Pull" the force of the slap to generate the appropriate effect. Use no more than 2 slaps with any singular application--typically, the training effectiveness of slapping has become negligible after 3 to 4 applications. (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

2. ~~(FOUO)~~ WALLING: With a hood, towel or similar aide, roll or fold the hood the long way, place it around the subject's neck. Grasp each side firmly and roll your fist inwardly till a relatively flat surface is created by the first joint of your fingers or the back of your hand. Quickly and firmly push, numerous times, the student into the wall in a manner, which eliminates a 'whip lash' effect of the head - push with

your arms only. Do not use 'leg force' to push the student--ensure the wall you are using will accommodate the student without injury and adjust your 'push' accordingly. (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

3. ([redacted]) SILENCING FACIAL HOLD: This tactic is used when the subject is talking too much or about inappropriate subjects. The interrogator attempts to physically intimidate the subject into silence by placing their hand over the subject's mount and violating their personal space. (Typical conditions for application: to threaten or intimidate via invasion of personal space, to instill fear and apprehension without using direct physical force, to punish illogical, defiant, or repetitive responses).

4. [redacted] FACIAL HOLD: This tactic is used when the subject fails to maintain eye contact with the interrogator. The interrogator grasps the subject's head with both hands holding the head immobile. Again, the interrogator moves into and violates the subject's personal space (Typical conditions for application: to threaten or intimidate via invasion of personal space, to instill fear and apprehension without using direct physical force, to punish illogical, defiant, or repetitive responses).

5. ([redacted]) ABDOMEN SLAP: This tactic is used when the subject is illogical, defiant, arrogant and generally uncooperative. It is designed to gain the subject's attention (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

6. ([redacted]) FINGER PRESS: This tactic is using the forefinger to forcefully, repeatedly jab the chest of the subject. The motion should be firm but not forceful enough to cause injury. (Typical conditions for application: to instill apprehension and insult).

7. ([redacted]) WATER: When using this tactic, water is poured, flicked, or tossed on the subject. The water is used as a distracter, to disturb the subject's focus on the line of interrogation. When pouring, the subject is usually on their knees and the water is poured slowly over their head. Flicking water is generally directed to the face and again used to distract the subject's attention and focus. Tossing water is more forceful and should come as a surprise. The water is usually directed to the mouth and chin area of the face and care is used to avoid the subject's eyes. (Typical conditions for application: to create a distracting pressure, to startle, to instill humiliation or cause insult).

8. ([redacted]) BLOCK HOLD: The subject can be sitting, kneeling or standing with their arms extended out straight with the palms up. The interrogator puts a weighted block, 10-15 lbs., on their hands. The subject is required to keep their arms straight, told not to drop the block at risk of additional punishment (typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).

9. ([redacted]) BLOCK SIT: Using a block with a pointed end that is pointed to the floor, the subject is told sit on the flat top with feet and knees together. The knees are bent 90 degrees, and the subject is not allowed to spread their legs to form a tripod. The process of trying to balance on this very unstable seat and concentrate on the interrogator's questions at the same time is very difficult (typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).

10. ([redacted]) ATTENTION GRASP: In a controlled, quick motion the subject is grabbed with two hands, one on each side of the collar. In the same motion, the interrogator draws the subject into his or her own space. (Typical conditions for application: to startle, to instill fear, apprehension, and humiliation or cause insult).

11. [redacted] STRESS POSITION: The subject is placed on their knees, told to extend their arms either straight up or straight to the front. The subject is not allowed to lean back on their heels, arch their back or relieve the pressure off the point of the knee. Note: there are any number of uncomfortable physical positions that can be used and considered in this category (typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).

[redacted] APPROVED PHYSICAL PRESSURES USED IN OTHER SERVICE SCHOOL RESISTANCE TRAINING PROGRAMS INCLUDE:

NOTE: In addition to the tactics listed below, the individual service school programs include many of the same pressures used in JPRA training. It is important to remember that as with any physical pressure, these tactics are closely monitored, strict time limits are applied and training safety is always paramount.

1. [redacted] SMOKE: Pipe tobacco smoke is blown into the subject's face while in a standing, sitting or kneeling position. This is used during interrogation to produce discomfort. A smoking pipe is filled with dry tobacco, the pipe is lit and the bit of the pipe has a hose attached. The interrogator blows back through the pipe bowl creating an extraordinary amount of thick, sickening smoke. Maximum duration is five minutes (typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

2. [redacted] WATERBOARD: Subject is interrogated while strapped to a wooden board, approximately 4'x7'. Often the subject's feet are elevated after being strapped down and having their torso stripped. Up to 1.5 gallons of water is slowly poured directly onto the subject's face from a height of 12-24 inches. In some cases, a wet cloth is placed over the subject's face. It will remain in place for a short period of time. Trained supervisory and medial staff monitors the subject's physical condition. Student may be threatened or strapped back onto the board at a later time. However, no student will have water applied a second time. This tactic instills a feeling of drowning and quickly compels cooperation (typical conditions for application: to instill fear and despair, to punish selective behavior).

3. [redacted] SHAKING AND MANHANDLING: Subject is grasped with a rolled cloth hood or towel around their neck (provides stability to the head and neck). The subject's clothing is grasped firmly and then a side-to-side motion is used to shake the subject. Care is used to not create a whipping effect to the neck. (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

4. [redacted] GROUNDING: This tactic is using the manhandling pressure and forcefully guiding the subject to the ground, never letting go (typical conditions for application: to instill fear and despair, to punish selective behavior).

5. [redacted] CRAMPED CONFINEMENT ("the little box"): This is administered by placing a subject into a small box in a kneeling position with legs crossed at the ankle and having him learn [sic]forward to allow the door to be closed without exerting pressure on the back. Time and temperature is closely monitored (typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

6. [redacted] IMMERSION IN WATER / WETTING DOWN: Wetting the subject consists of spraying with a hose, hand pressure water cans, or immersing in a shallow pool of water. Depending on wind and temperature, the subject may be either fully clothed or stripped. Immersion of the head or back of head is prohibited for safety reasons (typical conditions for application: to instill fear and despair, to punish selective behavior, instill humiliation or cause insult).

OTHER TACTICS TO INDUCE CONTROL, DEPENDENCY, COMPLIACE, AND COOPERATION

1. [redacted] Isolation / Solitary confinement: See JPRA Instructor Guide Module 6.0 *I* Lesson 6.1; para. 5.3.1

2. [redacted] Induced Physical Weakness and Exhaustion: See JPRA Instructor Guide Module *6.0* / Lesson 6.1; para. 5.3.2

3. [redacted] Degradation: See JPRA Instructor Guide Module 6.0 / Lesson 6.1; para. 5.3.3

4. [redacted] Conditioning: See JPRA Instructor Guide Module 6.0 / Lesson 6.1; para. 5.3.4

5. [redacted] Sensory Deprivation: When a subject is deprived of sensory input for an 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. This tactic is used in conjunction with other methods to promote dislocation of expectations and induce emotions.

6. [redacted] Sensory overload: This includes being continually exposed to bright, flashing lights, loud music, annoying / irritating sounds, etc. This tactic elevates the agitation level of a person and increases their emotionality, as well as enhances the effects of isolation.

7. [redacted] Disruption of sleep and biorhythms: Sleep patterns are purposefully disrupted to make it more difficult for the subject to think clearly, concentrate, and make rational decisions.

8. [redacted] Manipulation of diet: Purposeful manipulation of diet, nutrients, and vitamins can have a negative impact on the subject's general health and emotional state. Medical personnel in the POW camps in North Korea believe that a B vitamin compound was responsible, in large part, to the phenomena called "give-up-itis." Recent studies suggest the removal of certain amino acids from a diet can induce heightened levels of emotional agitation.

TAB 4

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

24 Jul 2002

MEMORANDUM FOR JPRA
ATTENTION: LTCOL BAUMGARTNER

FROM: 336 TRSS/SGF

SUBJECT: Psychological Effects of Resistance Training

1. Psychology Services at the Air Force Survival School at Fairchild AFB, WA maintains a log of psychological interventions conducted with students during training and prepares a yearly report of these interventions for risk monitoring purposes. Additionally, periodically Psychology Services conducts research to assess student confidence in ability to adhere to the Code of Conduct. We do not, however, routinely survey students in the years after training completion to conduct any psychological assessments of students.

2. Historically, a small minority of students in USAF Resistance Training (RT) have had temporary adverse psychological reactions during training. From 1992 through 2001, 26,829 students participated in RT, with 1,156 (4.3%) of them having contact with Psychology Services during training. Out of the students Psychology Services intervened with, 1,119 (96.8%) were successfully remotivated to complete training with only 37 (3.2%) psychological pulls. Out of the entire student population, only 0.14% were psychologically pulled from training.

3. Data from the Code of Conduct confidence studies are more complex to report in this format. In general, however, student confidence in their ability to adhere to the Code of Conduct is high prior to training, is reduced as expected after the Pre-Academic RT Laboratory, recovers during RT Academics, and is sustained or improves in the Post-Academic Laboratory. This suggests that RT is building realistic confidence to adhere to the Code of Conduct, and certainly is not crushing the spirit of the students.

4. While we have not surveyed students after completion of training for long-term psychological effects of RT during my tenure as Chief of Psychology Services at the Air Force Survival School, I feel reasonably certain that USAF RT training does not cause long-term psychological harm for a couple of reasons.

a. First, we minimize carryover of temporary psychological effects by performing three extensive debriefings during training. Two of the debriefings are performed by Psychology Services staff trained in advanced Critical Incident Stress Management, and the other debriefing is a thorough operational debriefing. 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.

b. Second, in spite of the training needing to be extremely stressful in order to be effective, we have encountered very few complaints about the training we provide. In my tenure in which nearly 10,000 students have completed training, we have had no congressional complaints about RT and only one Inspector General complaint which was not due to psychological concerns. I am aware of only letter of inquiry sent to the schoolhouse inquiring about long-term effects of training after completing training over twenty years ago. Even in this one inquiry out of 50,000 or so students completing RT since then, it was impossible to attribute this person's reported symptoms to his training.

c. Thus, I have to conclude that if there are any long-term negative psychological effects of USAF RT, they are certainly minimal.

5. I was also asked to comment from a psychological perspective on the effects of using the watering board.

a. The watering board is an intense physical and psychological stressor utilized by the Navy RT programs. We do not use this pressure in USAF RT.

b. I observed the watering board being utilized approximately 10-12 times when I was conducting a Staff Assistance Visit to the Navy North Island SERE School in September of 2001. The effects of the pressure were highly predictable. Use of the watering board resulted in student capitulation and compliance 100% of the time. I do not believe the watering board posed a real and serious physical danger to the students when I observed. 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 watering board broke the students' will to resist providing information and induced helplessness.

///signed///
JERALD F. OGRISSEG, Maj, USAF, BSC
Chief, Psychology Services

- **(Tab 6) USSOUTHCOM (Office of the Staff Judge Advocate) Trip Report, DoD General Counsel Visit to GTMO, 27 September 2002.**

(U) Purpose: Provide summary of visit by DoD General Counsel (GC) and others to GTMO on 25 Sep 02.

(U) Background:

(U) On 25 Sep 02, Mr. Haynes, DOD GC; Mr. Addington, Counsel to the VP; Mr. Rizzo, CIA Acting GC; the Honorable Mr. Chertoff, DOJ, Criminal Division; and others (complete list of visitors at Tab B) visited GTMO.

(U) Stated purpose of their visit was:

- Tour facilities
- Receive briefings on Intel successes, Intel challenges, Intel techniques, Intel problems and future plans for facilities.

(U) Hurricane evacuation plan was briefed in detail.

(FOUO) Overall

- Visitors asked very few questions and made very few comments
- MG D did take Mr. Haynes and a few others aside for private conversations.
- It appeared that MG D was doing most, if not all, of the speaking at these side meetings.

(U) Recommendation: None. FYI only.

TAB 7

Rhodes, Barry A

From: Zolper, Peter C
Sent: Wednesday, August 27, 2003 4:02 PM
To: Fallon, Mark
Cc: Rhodes, Barry A
Subject: (U) RE: Counter Resistance Strategy Meeting Minutes

Classification: UNCLASSIFIED//FOR OFFICIAL USE ONLY

Barry

-----Original Message-----
From: Fallon, Mark
Sent: Wednesday, August 27, 2003 12:46 PM
To: Zolper, Peter C
Subject: FW: Counter Resistance Strategy Meeting Minutes

R/Mark Fallon
Deputy Commander/SAC
[redacted]

-----Original Message-----
From: Fallon Mark
Sent: Monday, October 28, 2002 4:52 PM
To: McCahon Sam
Cc: Mallow Brittain; Thomas Blaine; Johnson Scott; Smith David
Subject: RE: Counter Resistance Strategy Meeting Minutes

Sam:
We need to ensure seniors at OGC are aware of the 170 strategies and how it might impact CITF and Commissions. This looks like the kinds of stuff Congressional hearings are made of. 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.

R/Mark Fallon
Deputy Commander
Criminal Investigation Task Force
[redacted]

-----Original Message-----
From: Thomas Blaine
Sent: Thursday, October 24, 2002 7:57 PM
To: McCahon Sam; Johnson Scott; Fallon Mark
Subject: FW: Counter Resistance Strategy Meeting Minutes

Sam,

Very interesting reading on how detainees are being treated for info.

Scott, Mark,

FYI

Blaine

Counter Resistance Strategy Meeting Minutes

Persons in Attendance:

COL Cummings, LTC Phifer, CDR Bridges, LTC Beaver, MAJ Burney, MAJ Leso, Dave Becker, John Fredman, 1LT Seek, SPC Pimentel

The following notes were taken during the aforementioned meeting at 1340 on October 2, 2002. All questions and comments have been paraphrased:

BSCT Description of SERE Psych Training (MAJ Burney and MAJ Leso)

- Identify trained resisters
  - Al Qaeda Training
- Methods to overcome resistance
  - Rapport building (approach proven to yield positive results)
  - Friendly approach (approach proven to yield positive results)
  - Fear Based Approaches are unreliable, ineffective in almost all cases
- What's more effective than fear based strategies are camp-wide, environmental strategies designed to disrupt cohesion and communication among detainees.
  - Environment should foster dependence and compliance

LTC Phifer	Harsh techniques used on our service members have worked and will work on some, what about those?
MAJ Leso	Force is risky, and may be ineffective due to the detainees' frame of reference. They are used to seeing much more barbaric treatment.
Becker	Agreed

→ At this point a discussion about ISN 63 ensued, recalling how he has responded to certain types of deprivation and psychological stressors. After short discussion the BSCT continued to address the overall manipulation of the detainees' environment.

BSCT continued:

- Psychological stressors are extremely effective (ie, sleep deprivation, withholding food, isolation, loss of time)

COL Cummings We can't do sleep deprivation
LTC Beaver Yes, we can - with approval.

- Disrupting the normal camp operations is vital. We need to create an environment of "controlled chaos"

LTC Beaver We may need to curb the harsher operations while ICRC is around. It is better not to expose them to any controversial techniques. We must have the support of the DOD.

Becker We have had many reports from Bagram about sleep deprivation being used.

LTC Beaver True, but officially it is not happening. It is not being reported officially. The 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.

COL Cummings The new PSYOP plan has been passed up the chain
LTC Beaver It's at J3 at SOUTHCOM.

Fredman The DOJ has provided much guidance on this issue. The CIA is not held to the same rules as the military. In the past when the ICRC has made a big deal about certain detainees, the DOD has "moved' them away from the attention of 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. The CIA has employed aggressive techniques on less than a handful of suspects since 9/11.
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 described as anything causing permanent damage to major organs or body parts. Mental torture 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 on the BSCT white paper is legal from a civilian standpoint.[Any questions of severe weather or temperature conditions should be deferred to medical staff.] 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. The CIA operates without military intervention. When the 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.

LTC Beaver We will need documentation to protect us

Fredman	Yes, if someone dies while aggressive techniques are being used, regardless of cause of death, the backlash of attention would be severely detrimental. Everything must be approved and documented.
Becker	LEA personnel will not participate in harsh techniques
LTC Beaver	There is no legal reason why LEA personnel cannot participate in these operations
→At this point a discussion about whether or not to video tape the aggressive sessions, or interrogations at all ensued.	
Becker	Videotapes are subject to too much scrutiny in court. We don't want the LEA people in aggressive sessions anyway.
LTC Beaver	LEA choice not to participate in these types of interrogations is more ethical and moral as opposed to legal.
Fredman	The videotaping of even totally legal techniques will look "ugly".
Becker	(Agreed)
Fredman	The Torture Convention prohibits torture and cruel, inhumane and degrading treatment. The US did not sign up on the second part, because of the 8th amendment (cruel and unusual punishment), but we did sign the part about torture. This gives us more license to use more controversial techniques.
LTC Beaver	Does SERE employ the "wet towel" technique?
Fredman	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 (ie, insects, snakes, claustrophobia). The level of resistance is directly related to person's experience.
MAJ Burney	Whether or not significant stress occurs lies in the eye of the beholder. The burden of proof is the big issue. It is very difficult to disprove someone else's PTSD.
Fredman	These techniques need involvement from interrogators, psych, medical, legal, etc.
Becker	Would we get blanket approval or would it be case by case?
Fredman	The CIA makes the call internally on most of the types of techniques found in the BSCT paper, and this discussion. Significantly harsh techniques are approved through the DOJ.
LTC Phifer	Who approves ours? The CG? SOUTHCOM CG?
Fredman	Does the Geneva Convention apply? The CIA rallied for it not to.
LTC Phifer	Can we get DOJ opinion about these topics on paper?
LTC Beaver	Will it go from DOJ to DOD?
LTC Phifer	Can we get to see a CIA request to use advanced aggressive techniques?
Fredman	Yes, but we can't provide you with a copy. You will probably be able to look at it. An example of a different perspective on torture is Turkey. In Turkey they say that interrogation at all, or anything you do to that results in the subject betraying his comrades is torture.
LTC Beaver	In the BSCT paper it says something about "imminent threat of death", ...
Fredman	The threat of death is also subject to scrutiny, and 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.

Becker I like the part about ambient noise.

→At this point a discussion about ways to manipulate the environment ensued, and the following ideas were offered:

- Medical visits should be scheduled randomly, rather than on a set system
- Let 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
- More meals per day induce loss of time
- Truth serum; even though it may not actually work, it does have a placebo effect.

Meeting ended at 1450.

NO. 225 P. 1
NO. 079 P. 2

TAB 8

DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
GUANTANAMO BAY, CUBA
APO AE 09360

JTF 170-CG

11 October 2002

MEMORANDUM FOR Commander, United States Southern Command, 3511 NW 91st Avenue, Miami, Florida 33172-1217

SUBJECT: Counter-Resistance Strategies

1. Request that you approve the interrogation techniques delineated in the enclosed Counter-Resistance Strategies memorandum. I have reviewed this memorandum and the legal review provided to me by the JTF-170 Staff Judge Advocate and concur with the legal analysis provided.

2. 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 SJA, I have concluded that these techniques do not violate U.S. or international laws.

3. My point of contact for this issue is LTC Jerald Phifer at DSN 660-3476.

MICHAEL B. DUNLAVEY
Major General, USA
Commanding

2 Encls
1. JTF 170-J2 Memo, 11 Oct 02
2. JTF 170-SJA Memo, 11 Oct 02

OCT. 10. 2002 9:48AM SJA NO. 225 P. 2
NO. 075 P. 3

DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
GUANTANAMO BAY, CUBA
APO AE 09360

JTF 170-SJA

11 October 2002

MEMORANDUM FOR Commander, Joint Task Force 170

SUBJ: Legal Review of Aggressive Interrogation Techniques

1. I have reviewed the memorandum on Counter-Resistance Strategies, dated 11 Oct 02, and agree that the proposed strategies do not violate applicable federal law. Attached is a more detailed legal analysis that addresses the proposal.

2. I recommend that interrogators be properly trained in the use of the approved methods of interrogation, and that interrogations involving category II and III methods undergo a legal review prior to their commencement.

3. This matter is forwarded to you for your recommendation and action.

DIANE E. BEAVER
LTC, USA
Staff Judge Advocate

2 Encls
1. JTF 170-J2 Memo, 11 Oct 02
2. JTF 170-SJA Memo, 11 Oct 02

OCT. 10. 2002 9:50AM SJA NO. 225 P. 3
NO. 075 P. 4

~~SECRET/NOFORN~~ UNCLASSIFIED

DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
GUANTANAMO BAY, CUBA
APO AE 09360

JTF-J2

11 October 2002

MEMORANDUM FOR Commander, Joint Task Force 170

SUBJECT: Request for Approval of Counter-Resistance Strategies

1. ~~(S/NF)~~ PROBLEM: The current guidelines for interrogation procedures at GTMO limit the ability of interrogators to counter advanced resistance.

2. ~~(S/NF)~~ Request approval for use of the following interrogation plan.

a. Category I techniques. During the initial category of interrogation the detainee should be provided a chair and the environment should be generally comfortable. The format of the interrogation is the direct approach. The use of rewards like cookies or cigarettes may be helpful. If the detainee is determined by the interrogator to be uncooperative, the interrogator may use the following techniques.

(1) Yelling at the detainee (not directly in his ear or to the level that it would cause physical pain or hearing problems)

(2) Techniques of deception:

(a) Multiple interrogator techniques.

(b) Interrogator identity. The interviewer may identify himself as a citizen of a foreign nation or as an interrogator from a country with a reputation for harsh treatment of detainees.

b. Category II techniques. With the permission of the OIC, Interrogation Section, the interrogator may use the following techniques.

(1) The use of stress positions (like standing), for a maximum of four hours.

(2) The use of falsified documents or reports.

(3) Use of the isolation facility for up to 30 days. Request must be made to through the OIC, Interrogation Section, to the Director, Joint Interrogation Group (JIG). Extensions beyond the initial 30 days must be approved by the Commanding General. For selected

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By Executive Secretary, Office of the Secretary of Defense
By William P. Marriott, CAPT, USN
June 21, 2004

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JTF 170-J2
SUBJECT: Request for Approval of Counter-Resistance Strategies

detainees, the OIC, Interrogation Section, will approve all contacts with the detainee, to include medical visits of a non-emergent nature.

(4) Interrogating the detainee in an environment other than the standard interrogation booth.

(5) Deprivation of light and auditory stimuli.

(6) The detainee may also have a hood placed over his head during transportation and questioning. The hood should not restrict breathing in any way and the detainee should be under direct observation when hooded.

(7) The use of 20-hour interrogations.

(8) Removal of all comfort items (including religious items).

(9) Switching the detainee from hot rations to MREs.

(10) Removal of clothing.

(11) Forced grooming (shaving of facial hair etc...)

(12) Using detainees individual phobias (such as fear of dogs) to induce stress.

c. Category III techniques. Techniques in this category may be used only by submitting a request through the Director, JIG, for approval by the Commanding General with appropriate legal review and information to Commander, USSOUTHCOM. These techniques are required for a very small percentage of the most uncooperative detainees (less than 3%). The following techniques and other aversive techniques, such as those used in U.S. military interrogation resistance training or by other U.S. government agencies, may be utilized in a carefully coordinated manner to help interrogate exceptionally resistant detainees. Any or these techniques that require more than light grabbing, poking, or pushing, will be administered only by individuals specifically trained in their safe application.

(1) The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family.

(2) Exposure to cold weather or water (with appropriate medical monitoring).

(3) Use of a wet towel and dripping water to induce the misperception of suffocation.

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JTF 170-J2
SUBJECT: Request for Approval of Counter-Resistance Strategies

(4) Use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.

~~3. (U) The POC for this memorandum is the undersigned at x3476.~~

JERALD PHIFER
LTC, USA
Director, J2

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~~SECRET/NOFORN~~

DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
GUANTANAMO BAY, CUBA
APO AE 09360

JTF 170-SJA

11 October 2002

MEMORANDUM FOR Commander, Joint Task Force 170

SUBJECT: Legal Brief on Proposed Counter-Resistance Strategies

1. (S/NF) ISSUE: To ensure the security of the United States and its Allies, more aggressive interrogation techniques than the ones presently used, such as the methods proposed in the attached recommendation, may be required in order to obtain information from detainees that are resisting interrogation efforts and are suspected of having significant information essential to national security. This legal brief references the recommendations outlined in the JTF-170-J2 memorandum, dated 11 October 2002.

2. (S/NF) FACTS: The detainees currently held at Guantanamo Bay, Cuba (GTMO), are not protected by the Geneva Conventions (GC). Nonetheless, DoD interrogators trained to apply the Geneva Conventions have been using commonly approved methods of interrogation such as rapport building through the direct approach, rewards, the multiple interrogator approach, and the use of deception. However, because detainees have been able to communicate among themselves and debrief each other about their respective interrogations, their interrogation resistance strategies have become more sophisticated. Compounding this problem is the fact that there is no established clear policy for interrogation limits and operations at GTMO, and many interrogators have felt in the past that they could not do anything that could be considered "controversial." In accordance with President Bush's 7 February 2002 directive, the detainees are not Enemy Prisoners of War (EPW). They must be treated humanely and, subject to military necessity, in accordance with the principles of GC.

3. (S/NF) DISCUSSION: The Office of the Secretary of Defense (OSD) has not adopted specific guidelines regarding interrogation techniques for detainee operations at GTMO. While the procedures outlined in, Army FM 34-52 Intelligence Interrogation (28 September 1992), are utilized, they are constrained by, and conform to the GC and applicable international law, and therefore are not binding. Since the detainees are not EPWs, the Geneva Conventions limitations that ordinarily would govern captured enemy personnel interrogations are not binding on U.S. personnel conducting detainee interrogations at GTMO. Consequently, in the absence of specific binding guidance, and in accordance with the President's directive to treat the detainees humanely, we must look to applicable international and domestic law in order to determine the legality of the more aggressive interrogation techniques recommended in the J2 proposal.

a. (U) International Law: Although no international body of law directly applies, the more notable international treaties and relevant law are listed below.

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By Executive Secretary, Office of the Secretary of Defe
By William P. Marriott, CAPT, USN
June 21, 2004

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SUBJECT: Legal Brief on Proposed Counter-Resistance Strategies

(1) (U) In November of 1994, the United States ratified The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. However, the United States took a reservation to Article 16, which defined cruel, inhumane and degrading treatment or punishment, by instead deferring to the current standard articulated in the 8th Amendment to the United States Constitution. Therefore, the United States is only prohibited from committing those acts that would otherwise be prohibited under the United States Constitutional Amendment against cruel and unusual punishment. The United States ratified the treaty with the understanding that the convention would not be self-executing, that is, that it would not create a private cause of action in U.S. Courts. This convention is the principal U.N. treaty regarding torture and other cruel, inhumane, or degrading treatment.

(2) (U) The International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, prohibits inhumane treatment in Article 7, and arbitrary arrest and detention in Article 9. The United States ratified it on the condition that it would not be self-executing, and it took a reservation to Article 7 that we would only be bound to the extent that the United States Constitution prohibits cruel and unusual punishment.

(3) (U) The American Convention on Human Rights forbids inhumane treatment, arbitrary imprisonment, and requires the state to promptly inform detainees of the charges against them, to review their pretrial confinement, and to conduct a trial within a reasonable time. The United States signed the convention on 1 June 1977, but never ratified it.

(4) (U) The Rome Statute established the International Criminal Court and criminalized inhumane treatment, unlawful deportation, and imprisonment. The United States not only failed to ratify the Rome Statute, but also later withdrew from it.

(5) (U) The United Nations' Universal Declaration of Human Rights, prohibits inhumane or degrading punishment, arbitrary arrest, detention, or exile. Although international declarations may provide evidence of customary international law (which is considered binding on all nations even without a treaty), they are not enforceable by themselves.

(6) (U) There is some European case law stemming from the European Court of Human Rights on the issue of torture. The Court ruled on allegations of torture and other forms of inhumane treatment by the British in the Northern Ireland conflict. The British authorities developed practices of interrogation such as forcing detainees to stand for long hours, placing black hoods over their heads, holding the detainees prior to interrogation in a room with continuing loud noise, and depriving them of sleep, food, and water. The European Court concluded that these acts did not rise to the level of torture as defined in the Convention Against Torture, because torture was defined as an aggravated form of cruel, inhuman, or degrading treatment or punishment. However, the Court did find that these techniques constituted cruel, inhumane, and degrading treatment. Nonetheless, and as previously mentioned, not only is the United States not a part of the European Human Rights Court, but as previously stated, it only ratified the definition of cruel, inhuman, and degrading treatment consistent with the U.S. Constitution. See also Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322 (N.D. Geor. 2002); Committee Against Torture v. Israel, Supreme Court of Israel, 6 Sep 99, 7 BHRC 31; Ireland v. UK (1978), 2 EHRR 25.

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JTF170-SJA
SUBJECT: Legal Brief on Proposed Counter-Resistance Strategies

b. (U) Domestic Law: Although the detainee interrogations are not occurring in the continental United States, U.S. personnel conducting said interrogations are still bound by applicable Federal Law, specifically, the Eighth Amendment of the United States Constitution, 18 U.S.C. § 2340, and for military interrogators, the Uniform Code of Military Justice (UCMJ).

(1) (U) The Eighth Amendment of the United States Constitution provides that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. There is a lack of Eighth Amendment case law relating in the context of interrogations, as most of the Eighth Amendment litigation in federal court involves either the death penalty, or 42 U.S.C. § 1983 actions from inmates based on prison conditions. The Eighth Amendment applies as to whether or not torture or inhumane treatment has occurred under the federal torture statute.[1]

(a) (U) A principal case in the confinement context that is instructive regarding Eighth Amendment analysis (which is relevant because the United States adopted the Convention Against Torture, Cruel, Inhumane and Degrading Treatment, it did so deferring to the Eighth Amendment of the United States Constitution) and conditions of confinement if a U.S. court were to examine the issue is Hudson v. McMillian, 503 U.S. 1 (1992). The issue in Hudson stemmed from a 42 U.S.C. § 1983 action alleging that a prison inmate suffered minor bruises, facial swelling, loosened teeth, and a cracked dental plate resulting from a beating by prison guards while he was cuffed and shackled. In this case the Court held that there was no governmental interest in beating an inmate in such a manner. The Court further ruled that the use of excessive physical force against a prisoner might constitute cruel and unusual punishment, even though the inmate does not suffer serious injury.

(b) (U) In Hudson, the Court relied on Whitley v. Albers, 475 U.S. 312 (1986), as the seminal case that establishes whether a constitutional violation has occurred. The Court stated that the extent of the injury suffered by an inmate is only one of the factors to be considered, but that there is no significant injury requirement in order to establish an Eighth Amendment violation, and that the absence of serious injury is relevant to, but does not end, the Eighth Amendment inquiry. The Court based its decision on the "...settled rule that the unnecessary and wanton infliction of pain ... constitutes cruel and unusual punishment forbidden by the Eighth Amendment." Whitley at 319, *quoting* Ingraham v. Wright, 430 U.S. 651, 670 (1977). The Hudson Court then held that in the excessive force or conditions of confinement context, the Eighth Amendment violation test delineated by the Supreme Court in Hudson is that when prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency are always violated, whether or not significant injury is evident. The extent of injury suffered by an inmate is one factor that may suggest whether the use of force could plausibly have been thought necessary in a particular situation, but the question of whether the measure taken inflicted unnecessary and wanton pain and suffering, ultimately turns on whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very (emphasis added) purpose of causing harm. If so, the Eighth Amendment claim will prevail.

[1] Notwithstanding the argument that U.S. personnel are bound by the Constitution, the detainees confined at GTMO have no jurisdictional standing to bring a section 1983 action alleging an Eighth Amendment violation in U.S. Federal Court.

(c) (U) At the District Court level, the typical conditions-of-confinement claims involve a disturbance of the inmate's physical comfort, such as sleep deprivation or loud noise. The Eighth Circuit ruled in Singh v. Holcomb, 1992 U.S. App. LEXIS 24790, that an allegation by an inmate that he was constantly deprived of sleep which resulted in emotional distress, loss of memory, headaches, and poor concentration, did not show either the extreme deprivation level, or the officials' culpable state of mind required to fulfill the objective component of an Eighth Amendment conditions-of-confinement claim.

(d) (U) In another sleep deprivation case alleging an Eighth Amendment violation, the Eighth Circuit established a totality of the circumstances test, and stated that if a particular condition of detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to punishment. In Ferguson v. Cape Girardeau County, 88 F.3d 647 (8th Cir. 1996), the complainant was confined to a 5-1/2 by 5-1/2 foot cell without a toilet or sink, and was forced to sleep on a mat on the floor under bright lights that were on twenty-four hours a day. His Eighth Amendment claim was not successful because he was able to sleep at some point, and because he was kept under those conditions due to a concern for his health, as well as the perceived danger that he presented. This totality of the circumstances test has also been adopted by the Ninth Circuit. In Green v. CSO Strack, 1995 U.S. App. LEXIS 14451, the Court held that threats of bodily injury are insufficient to state a claim under the Eighth Amendment, and that sleep deprivation did not rise to a constitutional violation where the prisoner failed to present evidence that he either lost sleep or was otherwise harmed.

(e) (U) Ultimately, an Eighth Amendment analysis is based primarily on whether the government had a good faith legitimate governmental interest, and did not act maliciously and sadistically for the very purpose of causing harm.

(2) (U) The torture statute (18 U.S.C. § 2340) is the United States' codification of the signed and ratified provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and pursuant to subsection 2340B, does not create any substantive or procedural rights enforceable by law by any party in any civil proceeding.

(a) (U) The statute provides that "whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life."

(b) (U) Torture is defined as "an act committed by a person acting under color of law *specifically intended* (emphasis added) to inflict severe physical or mental pain or suffering (other than pain or suffering incident to lawful sanctions) upon another person within his custody or physical control." The statute defines "severe mental pain or suffering" as "the *prolonged mental harm caused by or resulting* (emphasis added) from the intentional infliction or threatened infliction of severe physical pain or suffering; or the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses of the personality; or the threat of imminent death; or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality."

(c) (U) Case law in the context of the federal torture statute and interrogations is also lacking, as the majority of the case law involving torture relates to either the illegality of brutal tactics used by the police to obtain confessions (in which the Court simply states that these confessions will be deemed as involuntary for the purposes of admissibility and due process, but does not actually address torture or the Eighth Amendment), or the Alien Torts Claim Act, in which federal courts have defined that certain uses of force (such as kidnapping, beating and raping of a man with the consent or acquiescence of a public official, See Ortiz v. Gramajo, 886 F.Supp. 162 (D. Mass. 1995)) constituted torture. However, no case law on point within the context of 18 USC 2340.

(3) (U) Finally, U.S. military personnel are subject to the Uniform Code of Military Justice. The punitive articles that could potentially be violated depending on the circumstances and results of an interrogation are: Article 93 (cruelty and maltreatment), Article 118 (murder), Article 119 (manslaughter), Article 124 (maiming), Article 128 (assault), Article 134 (communicating a threat, and negligent homicide), and the inchoate offenses of attempt (Article 80), conspiracy (Article 81), accessory after the fact (Article 78), and solicitation (Article 82). Article 128 is the article most likely to be violated because a simple assault can be consummated by an unlawful demonstration of violence which creates in the mind of another a reasonable apprehension of receiving immediate bodily harm, and a specific intent to actually inflict bodily harm is not required.

4. ~~(S//NF)~~ U ANALYSIS: The counter-resistance techniques proposed in the JTF-170-J2 memorandum are lawful because they do not violate the Eighth Amendment to the United States Constitution or the federal torture statute as explained below. An international law analysis is not required for the current proposal because the Geneva Conventions do not apply to these detainees since they are not EPWs.

(a) ~~(S//NF)~~ U Based on the Supreme Court framework utilized to assess whether a public official has violated the Eighth Amendment, so long as the force used could plausibly have been thought necessary in a particular situation 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, the proposed techniques are likely to pass constitutional muster. The federal torture statute will not be violated so long as any of the proposed strategies are not specifically intended to cause severe physical pain or suffering or prolonged mental harm. Assuming that severe physical pain is not inflicted, absent any evidence that any of those strategies will in fact cause prolonged and long lasting mental harm, the proposed methods will not violate the statute.

(b) ~~(S//NF)~~ U Regarding the Uniform Code of Military Justice, the proposal to grab, poke in the chest, push lightly, and place a wet towel or hood over the detainee's head would constitute a per se violation of Article 128 (Assault). Threatening a detainee with death may also constitute a violation of Article 128, or also Article 134 (communicating a threat). It would be advisable to have permission or immunity in advance from the convening authority, for military members utilizing these methods.

(c) ~~(S//NF)~~ U Specifically, with regard to Category I techniques, the use of mild and fear related approaches such as yelling at the detainee is not illegal because in order to communicate a threat, there must also exist an intent to injure. Yelling at the detainee is legal so long as the yelling is not done with the intent to cause severe physical damage or prolonged mental harm. Techniques of deception such as multiple interrogator techniques, and deception regarding interrogator identity are all permissible methods of interrogation, since there is no legal requirement to be truthful while conducting an interrogation.

JTF170-SJA
SUBJECT: Legal Brief on Proposed Counter-Resistance Strategies

(d) ~~(S/NF)~~ With regard to Category II methods, the use of stress positions such as the proposed standing for four hours, the use of isolation for up to thirty days, and interrogating the detainee in an environment other than the standard interrogation booth are all legally permissible so long as no severe physical pain is inflicted and prolonged mental harm intended, and because there is a legitimate governmental objective in obtaining the information necessary that the high value detainees on which these methods would be utilized possess, for the protection of the national security of the United States, its citizens, and allies. Furthermore, these methods would not be utilized for the "very malicious and sadistic purpose of causing harm," and absent medical evidence to the contrary, there is no evidence that prolonged mental harm would result from the use of these strategies. The use of falsified documents is legally permissible because interrogators may use deception to achieve their purpose.

(e) ~~(S/NF)~~ The deprivation of light and auditory stimuli, the placement of a hood over the detainee's head during transportation and questioning, and the use of 20 hour interrogations are all legally permissible so long as there is an important governmental objective, and it is not done for the purpose of causing harm or with the intent to cause prolonged mental suffering. There is no legal requirement that detainees must receive four hours of sleep per night, but if a U.S. Court ever had to rule on this procedure, in order to pass Eighth Amendment scrutiny, and as a cautionary measure, they should receive some amount of sleep so that no severe physical or mental harm will result. Removal of comfort items is permissible because there is no legal requirement to provide comfort items. The requirement is to provide adequate food, water, shelter, and medical care. The issue of removing published religious items or materials would be relevant if these were United States citizens with a First Amendment right. Such is not the case with the detainees. Forced grooming and removal of clothing are not illegal, so long as it is not done to punish or cause harm, as there is a legitimate governmental objective to obtain information, maintain health standards in the camp and protect both the detainees and the guards. There is no illegality in removing hot meals because there is no specific requirement to provide hot meals, only adequate food. The use of the detainee's phobias is equally permissible.

(f) ~~(S/NF)~~ With respect to the Category III advanced counter-resistance strategies, the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent is not illegal for the same aforementioned reasons that there is a compelling governmental interest and it is not done intentionally to cause prolonged harm. However, caution should be utilized with this technique because the torture statute specifically mentions making death threats as an example of inflicting mental pain and suffering. Exposure to cold weather or water is permissible with appropriate medical monitoring. The use of a wet towel to induce the misperception of suffocation would also be permissible if not done with the specific intent to cause prolonged mental harm, and absent medical evidence that it would. Caution should be exercised with this method, as foreign courts have already advised about the potential mental harm that this method may cause. The use of physical contact with the detainee, such as pushing and poking will technically constitute an assault under Article 128, UCMJ.

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JTF170-SJA
SUBJECT: Legal Brief on Proposed Counter-Resistance Strategies

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5. ~~(S//NF)~~ RECOMMENDATION: I recommend that the proposed methods of interrogation be approved, and that the interrogators be properly trained in the use of the approved methods of interrogation. Since the law requires examination of all facts under a totality of circumstances test, I further recommend that all proposed interrogations involving category II and III methods must undergo a legal, medical, behavioral science, and intelligence review prior to their commencement.

6. (U) POC: Captain Michael Borden, x3596.

DIANE H. BEAVER
LTC, USA
Staff Judge Advocate

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TAB 9

AUG. 1.1999 1:09AM UNCLASSIFIED NO.224 P.2

~~SECRET/NOFORN~~

DEPARTMENT OF DEFENSE
UNITED STATES SOUTHERN COMMAND
OFFICE OF THE COMMANDER
3511 NW 91ST AVENUE
MIAMI, FL 33172-1217

REPLY TO ATTENTION OF

SCCDR

25 October 2002

MEMORANDUM FOR Chairman of the Joint Chiefs of Staff, Washington, DC 20318-9999

SUBJECT: Counter-Resistance Techniques

1. The activities of Joint Task Force 170 have yielded critical intelligence support for forces in combat, combatant commanders, and other intelligence/law enforcement entities prosecuting the War on Terrorism. However, despite our best efforts, some detainees have tenaciously resisted our current interrogation methods. Our 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.

2. I am forwarding Joint Task Force 170's proposed counter-resistance techniques. I believe the first two categories of techniques are legal and humane. I am uncertain whether all the techniques in the third category are legal under US law, given the absence of judicial interpretation of the US torture statute. I am particularly troubled by the use of implied or expressed threats of death of the detainee or his family. However, I desire to have as many options as possible at my disposal and therefore request that Department of Defense and Department of Justice lawyers review the third category of techniques.

3. As part of any review of Joint Task Force 170's proposed strategy, I welcome any suggested interrogation methods that others may propose. I believe we should provide our interrogators with as many legally permissible tools as possible.

4. Although I am cognizant of the important policy ramifications of some of these proposed techniques, I firmly believe that we must quickly provide Joint Task Force 170 counter-resistance techniques to maximize the value of our intelligence collection mission.

James T. Hill
General, US Army
Commander

Encls

1. JTF 170 CDR Memo did 11 October, 2002
2. JTF 170 SJA Memo did 11 October, 2002
3. JTF 170 J-2 Memo did 11 October, 2002

Declassify Under the Authority of Executive Order 12958
By Executive Secretary, Office of the Secretary of Defense
By William P. Marriott, CAPT, USN
June 21, 2004

~~SECRET/NOFORN~~

[redacted]

TAB 10

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS, UNITED STATES AIR FORCE
WASHINGTON DC

RETURN TO AF JACO

AFPM 8523-02
4 Nov 02

MEMORANDUM FOR UN AND MULTILATERAL AFFAIRS DIVISION (J-5), JOINT STAFF (Attn: CDR Lippold)

SUBJECT: (U) Counter-Resistance Techniques

1. (U) The Air Force concurs with the need to conduct an in-depth legal and policy assessment, as recommended by CDRUSSOUTHCOM, prior to implementation of the proposed counter-resistance interrogation techniques. As such, we offer the following critical comments on the proposed techniques:

(U) **AF-1. CRITICAL.** General Comment. The Air Force has serious concerns regarding the legality of many of the proposed techniques, particularly those under Category III. Some of these techniques could be construed as "torture," as that crime is defined by 18 U.S.C. 2340. That statute, for example, defines "torture" to include "the threat of imminent death," or "the threat that another person will imminently be subjected to death, severe physical pain or suffering…" One of the proposed techniques, under Category III, is "the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family." The torture statute also prohibits the intentional infliction, or threatened infliction, of severe physical pain or suffering, as well the administration or application, or threatened administration or application, of "procedures calculated to disrupt profoundly the senses or the personality." The extent to which the proposed techniques may violate this statute requires thorough and careful analysis.

(U) **AF-2. CRITICAL.** General Comment. Implementation of these techniques could preclude the ability to prosecute the individuals interrogated. Successful prosecutions in military commissions or subsequent use of detainee statements in Federal prosecutions will require that the evidence obtained be admissible. Although the President's military order establishes a fairly low evidentiary threshold of probative value to a reasonable person, many of the techniques described in the memo will place a burden on the prosecution's ability to convince commission members that the evidence meets even that low standard. The Level III techniques will almost certainly result in any statements obtained being declared as coerced and involuntary, and therefore inadmissible. Such a finding may also potentially exclude any evidence derived from the coerced statement. Admissibility of evidence obtained using the Level I and II techniques will be fact specific, but the same concerns remain. Additionally, the techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to

Re-Marked consistent with the AF/JAO document declassified on June 21, 2004, by
[redacted]

[redacted]

[redacted]

treat detainees humanely and to provide them with adequate food, water, shelter and medical treatment.[1] Defense counsel will undoubtedly argue that any evidence derived by the prosecution must be excluded because the Government did not abide by its own rules. Application of the interrogation methods may also have an adverse impact on the DoJ's ability to use the detainees in support of on-going and future prosecutions, a stated objective of the SECDEF. Any statements obtained under these circumstances will be inherently suspect and of questionable value in a prosecution using established rules of criminal procedure that prohibit such conduct on the part of law enforcement agents.

(S) **AF-3. CRITICAL.** General Comment. Implementation of the proposed techniques would require a change in Presidential policy. On 7 Feb 02 President Bush determined that the detainees "will be provided many POW privileges as a matter of policy."[2] Included among those privileges are "clothing and shoes," "three meals a day that meet Muslim dietary laws," "soap and toilet articles," and "the opportunity to worship." A number of the Category II techniques would appear to deprive detainees of these privileges. In addition, the President declared that "[t]he detainees will not be subjected to physical or mental abuse or cruel treatment," and that the detainees would be able to "raise concerns about their conditions" during private visits with representatives of the ICRC. Obviously implementation of the techniques under consideration by SOUTHCOM would require a modification of, or exception to, the President's policy regarding treatment of detainees. Consequently, NSC-level review and Presidential-level approval will be required prior to implementing the proposed techniques.

2. (U) Air Force POC is [redacted]

RONALD E. RICHBURG, Colonel, USAF
USAF Planner, Joint/NSC Matters

cc:
USA
USN
USMC

[1] Presidential Order of 13 November 2001, found at http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html.
[2] White House Fact Sheet, 7 February 2002, found at http://www.whitehouse.gov/releases/2002/02/20020207-13.html.

[redacted]

CLASSIFICATION: [redacted] UNCLASSIFIED	AF PLANNER JOINT ACTION BRIEF SHEET		
	JCS ACTION # SJS 02-06697		JCS SUSPENSE: 4 Nov o2
ACTION OFFICER: Mr. Thomas Randall, GS-15	OFC SYM: AF/JAI	TEL: [redacted]	DATE: 01 Nov 02

SUBJECT: [redacted] Counter-Resistance Techniques (U)

1. (U) **ISSUE:** To provide initial Air Force legal assessment of proposal by CDRSOUTHCOM to implement counter-resistance interrogation techniques proposed by Commander, JTF-170

2. (U) **DISCUSSION:**

- Category III techniques may constitute criminal conduct under 18 U.S.C. 2340, which prohibits "torture" by person acting under the color of law upon another person within his or her custody or physical control.
  - Torture is defined to include threats of imminent death or severe physical pain or suffering.
  - The statute applies outside the United States.
- Use of these techniques may preclude any later prosecution of detainees interrogated.
- The President's Military Order Number 1, 13 Nov 01, on Military Commissions states that those detained by the order shall be treated humanely and allowed the free exercise of religion consistent with the requirements of such confinement.
- White House Fact Sheet issued 7 Feb 02 states the President has determined that the Geneva Convention applies to the Talibon but not to the al-Qaida detainees.
  - The Fact Sheet states that even though the detainees are not entitled to POW privileges, they will be provided many POW privileges as a matter of policy.
  - Further, it states that the detainees will not be subjected to physical or mental abuse or cruel treatment, and the International Committee of the Red Cross will continue to be able to visit the detainees privately during which times the detainees will be permitted to raise concerns about their conditions.
- Further legal and policy analysis, and high-level review and approval are necessary prior to implementation.

3. [redacted] (U) **AIR STAFF VIEWS:** Air Staff concurs with critical comment.

4. (U) **OTHER VIEWS:** Army: Unknown, suspense not until 4 Nov. Navy and Marine Corps: Concur with critical comments raising serious concerns with legality of proposed techniques.

5. (U) **RECOMMENDATION:** Submit Air Staff views

JOINT READER: AF/JAI Maj Duffin	PLANNER RER 4Nov02	GREEN DESK: DGB (4)	OK AS ANNOTATED CIRCULATE	VOTED TO: RECORDING DATE: 4 NOV 02 TIME: 0854 BY: ARR

WITHOUT ATTACHMENT THIS PAGE CLASSIFED: [redacted]

CLASSIFICATION: [redacted] UNCLASSIFIED	CLASSIFIED BY: LTG G.W. Casey DJ-5	SAF/GCI Mr. Bridge	AFLSA Mr. Russell		
		Concur	Concur		

Re-Marked consistent with the AF/JAO document declassified on June 21, 2004, by [redacted]

TAB 11

UNCLASSIFIED

~~SECRET/NOFORN~~

DEPARTMENT OF DEFENSE
CRIMINAL INVESTIGATION TASK FORCE
6010 8th Street
FORT BELVOIR, VA 22060-5506

REPLY TO ATTENTION OF:

CITF

4 November 2002

MEMORANDUM THRU

Division Chief, Plans, Policy and Integration, DoD CITF, Bldg. 714, Fort Belvoir, Virginia 22060-5506

FOR COMMANDER, CITF

SUBJECT: Assessment of JTF-170 Counter-Resistance Strategies and the Potential Impact on CITF Mission and Personnel.

1. Pursuant to your directive I have reviewed the following documents in order to provide an assessment of potential impacts on the CITF mission:

- DOD JTF 170 Memorandum from LTC Beaver, dated 11 October 2002, SUBJECT: Legal Review of Aggressive Interrogation Techniques, with attached Legal Brief of the same date.

- DOD JTF 170 Memorandum from LTC Jerald Phifer, dated 11 October 2002, SUBJECT: Request for Approval of Counter-Resistance Strategies

- DOD JTF 170 Memorandum from MG Michael E. Dunlavey dated 11 October 2002, SUBJECT: Counter-Resistance Strategies

- USSOCOM Memorandum from General James T. Hill, dated 25 October 2002, SUBJECT: Counter-Resistance Techniques

2. The following represents my assessment of the adverse impacts on the CITF mission if certain counter-resistant techniques are used at GTMO:

a. Liability. 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.

(1) The legal memorandum cited above opines that certain treatment, although not amounting to torture, has been determined to constitute cruel and unusual, or inhumane treatment or punishment insofar as it is defined in the Convention Against Torture. ("CAT"). Although the United States has not ratified the entire CAT, it has

Remarks UNCLASSIFIED 20 FEB 05
Source Documents Declassified
By OSD 2004

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ratified the definition of cruel, inhuman, and degrading treatment insofar as the Eighth Amendment to the U.S. Constitution defines it. Therefore, any conduct that would constitute cruel and unusual punishment would be prohibited by the Constitution and would be illegal.

(2) The suggested Tier III and certain Tier II techniques may subject service members to punitive articles of the UCMJ. The following are the most likely provisions to be violated if service members participated in the described techniques: Article 93 (Cruelty and Maltreatment), Article 124 (Maiming), Article 128 (assault) and Article 134 (Communicating a Threat). Should the detainee die in the process or as a result of the techniques, then Article 118 (Murder) and Article 134 (Negligent Homicide) could apply. CITF members who are aware of or participate in the conduct could be held responsible under the inchoate offenses of Article 80 (Attempt), Article 81 (Conspiracy) or Article 82 (Accessory After the Fact).

prob. value to reasonable person

b. Evidentiary Issues. Under Military Commission Order Number 1, if the Presiding Officer determines that the information is probative to a reasonable person, then it will be admitted. This would apply to confessions as well as statements about other defendants. The voluntary nature of any statement, however, will affect the weight accorded that evidence. Consequently, any information derived from the aggressive techniques, although admissible, will be of diminished value during any subsequent proceedings. The taint concerning the diminished weight accorded the statements would apply not only to the detainee making the statements, but also against those individuals about whom the detainee has provided incriminating information.

Additionally, the adverse impact may have consequences on all Commission actions. The al Qaeda training manual instructs members to assert that they have been tortured. The assertion is designed to mitigate the value of any incriminating statements the al Qaeda member may have made during the course of the interrogation. 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.

3. Recommendations: Both the utility and legality of applying certain techniques identified in the memorandum listed above are, in my opinion, questionable. Any policy decision to use the Tier III techniques, or any technique inconsistent with the analysis herein, will be contrary to my recommendation. Nonetheless, if the application of the requested measures is approved, I recommend the following actions to mitigate the adverse impact on the CITF:

a. The aggressive techniques should not occur at GTMO where both CITF and the intelligence community are conducting interviews and interrogations. By not using these techniques in a co-located setting, other detainees not subjected to these techniques are less likely to be under the impression that they will be subjected to similar treatment if they do not provide the answers the government is seeking. It is unlikely that a detainee who has been exposed to Tier III techniques will distinguish between CITF and

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Intelligence Interrogators. His impression will be that he will be punished for any responses that differ from what the interrogator determines to be acceptable.

b. A decision should be made prior to applying the aggressive procedures that the detainee subject to the treatment would not be a considered for referral to the Military Commission. This will reduce the risk that the more aggressive techniques used against a few detainees would be revealed resulting in assumption that these techniques had been used on all the detainees.

c. CITF personnel should not participate in the aggressive techniques, either in their administration, observation or designation of who will be subjected to the strategies. A firm nonporous wall should be erected between CITF personnel and those planning and engaging in the aggressive techniques. This measure will help preserve the integrity of our investigations, any Commission case and will insulate CITF personnel from potential administrative or criminal liability.

4. Conclusion. While some of the techniques identified in Tier I and II pose no threat to either the integrity of the investigation or to subsequent liability of the CITF personnel, i.e. using a ruse, raising one's voice, for the most part they are inconsistent with well-established law enforcement techniques. Any of the Tier III techniques could expose persons involved to administrative and criminal liability as well as negatively impact on subsequent Military Commission proceedings.

In legal analysis conducted by the SJA for JTF-170, there are two common themes running throughout the document justifying the use of the procedures, 1) There is no civil liability that will flow to the U.S. Government by using the asserted techniques, and 2) because the purpose of inflicting pain and treating detainees in a degrading manner is not in and of itself to cause pain or harm but to elicit information, it does not conflict with the well established authority under the U.S. Constitution.

There is no Constitutional case law related to the infliction of pain on prisoners, other than that related to causing pain for pain's sake, because it is not the prison official's objective to elicit information from those in their custody. Conversely, our objective is specifically to elicit information from the detainees. The intended use of Tier III techniques, if detected, will establish new case law in this area, much to the detriment of the U.S. foreign and domestic interests. I cannot advocate any action, interrogation or otherwise, that is predicated upon the principal that all is well if the ends justify the means and others are not aware of how we conduct our business.

4 Encls

SAM W. MCCAHON
MAJ, JA
Chief Legal Advisor

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UNCLASSIFIED

[redacted]

HEADQUARTER, DEPARTMENT OF THE ARMY
Assistant Deputy Chief of Staff for Operations and Plans
(Joint Affairs)

07 NOV 2002
ARMY PLANNER DAMO-ZC
Memorandum No. 574-02

MEMORANDUM FOR: ~~LEGAL COUNSEL TO CHAIRMAN, JOINT CHIEFS OF STAFF~~ J-5/UNMA, ATTN: CDR LITFOLD

SUBJECT: [redacted]

1. [redacted] Army has reviewed the request of the Commander, United States Southern Command, for further legal review by the Department of Defense and the Department of Justice of the proposal to employ Counter-Resistance Techniques in the intelligence interrogation of enemy combatants detained at Guantanamo Bay Naval Station.

2. [redacted] As set forth in the enclosed memoranda, Army interposes significant legal, policy and practical concerns regarding most of the Category II and all of the Category III techniques proposed.

3. [redacted] 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.

4. ARSTAF POC is [redacted]

Encls
1. CITF Legal Opinion
2. OTJAG e-mail

RANDY C. WRIGHT
Colonel, GS
Deputy to the ADCSOPS (JA)

[redacted]

21445

TAB 12

UNCLASSIFIED

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HEADQUARTER, DEPARTMENT OF THE ARMY
Assistant Deputy Chief of Staff for Operations and Plans
(Joint Affairs)

ARMY PLANNER DAMO-ZC
Memorandum No.

MEMORANDUM FOR LEGAL COUNSEL TO CHAIRMAN, JOINT CHIEFS OF STAFF

SUBJECT: ~~(S/NF)~~ SJS 02-06697

1. ~~(S/NF)~~ Army has reviewed the request of the Commander, United States Southern Command, for further legal review by the Department of Defense and the Department of Justice of the proposal to employ Counter-Resistance Techniques in the intelligence interrogation of enemy combatants detained at Guantanamo Bay Naval Station.

2. ~~(S/NF)~~ As set forth in the enclosed memoranda, Army interposes significant legal, policy and practical concerns regarding most of the Category II and all of the Category III techniques proposed.

3. ~~(S/NF)~~ 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.

Encls
1. CITF Legal Opinion
2. OTJAG e-mail

~~SECRET/NOFORN~~

UNCLASSIFIED

Remarked unclassified 20 Feb 08
Source Documents declassified
By OSD 2004

DAJA-IO

MEMORANDUM FOR THE OFFICE OF THE ARMY GENERAL COUNSEL

SUBJECT: Review – Proposed Counter-Resistance Techniques

1. I have reviewed the proposed request for approval of counter resistance strategies. I concur in the proposed Category I techniques, but have significant concerns (legal, policy, and practical) regarding most of the Category II and all of the Category III techniques.

2. My legal concerns are summarized as follows:

a. The President directed in Military Order 1 (13 Nov 01) that detainees would be treated "humanely." In a White House Memo, dated 7 Feb 02, he reaffirmed this order and stated further that they will be treated "to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

b. In addition to comporting with the President's order, any techniques employed must be consistent with Federal law, to include the UCMJ. As noted in LTC Beaver's legal review, the U.S. has enacted a Federal torture statute (18 U.S.C. 2340, *et seq*). This statute defines torture as an act "intended to inflict severe physical or mental pain or suffering ... upon another person within his custody or physical control." Severe physical pain or suffering is further defined as "the prolonged mental harm caused by or resulting from ... the intentional infliction or threatened infliction of severe physical pain or suffering; ... threat of imminent death; or the threat that another person will imminently be subjected to death, severe physical pain or suffering."

c. In my opinion, the listed Category III techniques violate the President's order, and various UCMJ articles. In addition, techniques 1 (use of scenarios designed to convince the detainee of death or severely painful consequences are imminent for him and/or his family), and 3 (use of a wet towel and dripping water to induce the misperception of suffocation) appear to be clear violations of the Federal torture statute.

d. Regarding the Category II techniques, numbers 2 (prolonged use of stress positions), 5 (deprivation of light and auditory stimuli, and 12 (using individual phobias to induce stress), in my opinion, crosses the line of "humane" treatment, would likely be considered maltreatment under Article 93 of the UCMJ, and may violate the Federal torture statute if it results in severe physical pain or suffering. Techniques 10 (removal of clothing) and 11 (forced grooming) are certainly permissible for health reasons, but are problematic (may be considered inhumane) if done only for interrogation purposes. To properly assess these and the other techniques listed Category II, we would need a more detailed plan of exactly how these techniques are going to be used.

3. From a policy standpoint, employing many of the suggested techniques would create a PA nightmare. The War on Terror is expected to last many years and ultimate success requires strong domestic and international support. Whatever interrogation techniques we adopt will eventually become public knowledge. If we mistreat detainees, we will quickly lose the morale high ground and public support will erode. The techniques noted above will not read well in either the New York Times or the Cairo Times. Additionally, many of the techniques arguably violate the torture and inhumane treatment provisions of the ICC. While we may not be subject to the ICC, failure to adhere to these provisions severely undercuts our stated position that we follow international law and principles and will police our own.

4. Finally, the plan does not adequately lay out how these techniques will result in our forces gaining any useful information.

5. In view of the foregoing, I believe the proposed plan is legally insufficient, and that a more thorough legal, policy and practical analysis should be conducted before any of the Category II and III techniques are adopted.

John Ley

ME134

TAB 13

[redacted]

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO
N3/N5L
NPM 466-02
4 Nov 02

MEMORANDUM FOR THE DIRECTOR FOR STRATEGIC PLANS AND POLICY DIRECTORATE (J-5), JOINT STAFF

Subj: NAVY PLANNER'S MEMO WRT COUNTER-RESISTANCE TECHNIQUES (SJS 02-06697) (S/NF)

1. (U) The Navy staff has review subject tasker and concurs with the following substantive comment:

SUBSTANTIVE COMMENT:

[redacted] Navy staff concurs with developing a range of advance counter-resistance techniques to apply to foreign detainees. Navy staff recommends, however that more detailed interagency legal and policy review be conducted on proposed techniques. Such policy review should address the possibility, if not the likelihood, that techniques will be inadvertently disclosed though the visits to the detainees in Cuba by the International Committee of the Red Cross or foreign government delegations, which could lead to international scrutiny. Navy staff also recommends that the classification level of counter-resistance techniques be increased to the Top Secret level.

2. (U) OPNAV point of contact is [redacted]

D. D. Thompson
D. D. THOMPSON
Captain, U.S. Navy
Special Assistant to the CNO
for JCS Matters

[redacted]

Enc 5 A-1250

APR-02-2008 11:48 OLA HQMC [redacted] P.03

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TAB 14

JA
MEM 053-03
4 Nov 02

MEMORANDUM FOR THE DIRECTOR, J-3, THE JOINT STAFF

Subj: COUNTER-RESISTANCE TECHNIQUES (U)

1. (U) We have reviewed the subject documents, and have the following comments.

(U/FOUO) CRITICAL:

a. MD-3. (U/FOUO) General. We concur with the general proposition of developing a more robust interrogation plan. We are concerned, however, with the measures proposed in the subject documents, especially the Category III techniques. We disagree with the position that the proposed plan is legally sufficient. Any new techniques proposed should not be implemented without a more thorough legal and policy review.

(1) REASON: (U/FOUO) It is the policy of the US Government to treat Al Qaeda and Taliban detainees humanely. This policy was stressed in the President's Military Order No. 1, dated 13 Nov 01. Under Section 3 (Detention Authority of the Secretary of Defense), the President directed that the detainees "shall be ... treated humanely." Moreover, in a White House Memorandum, dated 7 Feb 02, the President "reaffirm[ed] the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." A White House Fact Sheet, issued in conjunction with the 7 Feb 02 Memorandum, amplifies the meaning of humane treatment by stating that the detainees will not be subjected to physical or mental abuse or cruel treatment. While the principles of Geneva may be "waived" because of military necessity, humane treatment is not subject to waiver.

(U/FOUO) In addition, several of the Category II and III, techniques arguably violate federal law, and would expose our service members to possible prosecution. (See 18 U.S.C. 2340 et seq). This federal statute states that "[w]hoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life." The statute defines torture as "an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering ... upon another person within his custody or physical control." The statute defines "severe physical or mental pain or suffering," as "the prolonged mental harm caused by or resulting from ... the intentional infliction or threatened infliction of severe physical pain or suffering; ... threat of imminent death; or the threats that another person will imminently be subjected to death, severe physical pain or suffering." Clearly, the "use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for his and/or his family," would be a violation of the federal torture statute. To argue otherwise is disingenuous. There also would be exposure to criminal prosecution under the UCMJ. We are unaware of any authority that would allow a convening authority to give "permission or immunity in advance" to commit a criminal violation.

(U/FOUO) Moreover, the International Criminal Court (ICC) purports to have jurisdiction over "War Crimes." (See Article 8, Rome Statute of the International Criminal Court): the Rome Statute defines "war crimes" as, "Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons ... protected under the provisions of the relevant Geneva Convention: ... Torture or inhuman treatment ... ." The Rome Statute defines "torture" to mean "the

001225

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international infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.' While President Bush has stated that the Geneva Conventions do not apply to al Qaeda, he did state, "That the provisions of Geneva will apply to our present conflict with the Taliban." (See President's Memorandum, dated 7 Feb 02). Regardless, there are many in the international community, and domestically, that dispute the President's determination of the inapplicability of the Geneva Conventions to al Qaeda. The ICC could very well determine that it does in fact apply to both al Qaeda and the Taliban, and therefore seek jurisdiction to try our service members involved in "torture" of the detainees. Notwithstanding the applicability of the Geneva Conventions, customary international law prohibits the mistreatment of prisoners.

(S/NF) It also is clear that any statements, and evidence derived from these statements, will be inadmissible in federal court. While the procedures for the military tribunals have not been finalized, it is doubtful that statements elicited through coercive means will be admissible, not to mention the reliability of such statements will be called into question.

b. MCI-2. (S/NF) We also are concerned over the self-imposed approval process for escalating to the deployment of category II or III techniques.

(1) [redacted]: (S/NF) Prolonged pauses in an interrogation, that are not part of the interrogation strategy, will certainly diminish the interrogator's effectiveness in eliciting information. Undue delay in gaining approval for employment of a particular interrogation technique during the course of an interrogation, could significantly undermine any momentum already achieved by the interrogator. Rather, any approval process adopted must be sufficiently responsive to operate effectively during the course of the interrogation process, and not cause interruption. Clear guidance in the form of well-defined limits, afford the interrogator a range of maneuverability that obviates the need to pause for "policy clarification."

c. MCI-3. (S/NF) Comment. Regarding the use of the isolation facility (described as a category II technique), segregating the detainees, individually or by resistance levels, maintains the shock of capture (SOC) and enhances the ability to gather intelligence. Once detainees have been allowed to communicate with one another, SOC is diminished. Isolation is an effective means to SOC almost indefinitely (if conducted properly). In fact, depending on the level of isolation, SOC can be maintained without the need for other questionable techniques.

3. MQMC point of contact is [redacted]

M. A. [illegible]
Colonel, U. S. Marine Corps Reserve
Marine Corps Service Planner

001226

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TAB 15

UNCLASSIFIED

-C.
-PD.

GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

2002 DEC -2 AM 11: 03
OFFICE OF THE
SECRETARY OF DEFENSE

ACTION MEMO

November 27, 2002 (1:00 PM)

DEPSEC_____

FOR: SECRETARY OF DEFENSE

FROM: William J. Haynes II, General Counsel

SUBJECT: Counter-Resistance Techniques

- The Commander of USSOUTHCOM has forwarded a request by the Commander of Joint Task Force 170 (now JTF GTMO) for approval of counter-resistance techniques to aid in the interrogation of detainees at Guantanamo Bay (Tab A).
- The request contains three categories of counter-resistance techniques, with the first category the least aggressive and the third category the most aggressive (Tab B).
- I have discussed this with the Deputy, Doug Feith and General Myers. I believe that all join in my recommendation that, as a matter of policy, you authorize the Commander of USSOUTHCOM to employ, in his discretion, only Categories I and II and the fourth technique listed in Category III ("Use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing").
- While all Category III techniques may be legally available, we believe that, as a matter of policy, a blanket approval of Category III techniques is not warranted at this time. Our Armed Forces are trained to a standard of interrogation that reflects a tradition of restraint.

RECOMMENDATION: That SECDEF approve the USSOUTHCOM Commander's use of those counter-resistance techniques listed in Categories I and II and the fourth technique listed in Category III during the interrogation of detainees at Guantanamo Bay.

SECDEF DECISION

Approved D.R. Disapproved_____ Other _____

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

D.R. DEC 0 2 2002

Attachments
As stated

cc: CJCS, USD(P)

ssified Under Authority of Executive Order 12958

TAB 16

03/21/2007 12:20 2079212438 ADMIN PAGE 02

THIS DOCUMENT IS PRIVILEGED AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER 5 U.S.C. SECTION 552
"FOR OFFICIAL USE ONLY"

All reference to SERE will be removed at the LtCol level

JTF GTMO SERE SOP
18 DECEMBER 2002

Management

JTF GTMO "SERE" INTERROGATION STANDARD OPERATING PROCEDURE

Subj: GUIDELINES FOR EMPLOYING "SERE" TECHNIQUES DURING DETAINEE INTERROGATIONS

Management

Ref: (a) FASO DETACHMENT BRUNSWICK INSTRUCTION 3305.3D

Coercive management Techniques

1. Purpose. 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" SERE detainees. The same tactics and techniques cannot be used to break real detainees during interrogation operations.

The basis for this document is the SOP used at the U.S. Navy SERE (Survival, Evasion, Resistance and Escape) school in Brunswick, Maine and is defined by reference (a).

Note that all tactics are strictly non-lethal.

STRICT COMPLIANCE WITH THE GUIDELINES
LAID OUT IN THIS DOCUMENT IS MANDATORY!

2. Training. All interrogators will undergo training by certified SERE instructors prior to being approved for use of any of the techniques described in this document. Training will be documented and maintained on file by the Interrogation Control Element (ICE) Chief.

3. Scope. Applicable to designated military and civilian interrogators assigned to Joint Task Force - Guantanamo Bay, Cuba.

Approved: _____
LT COL TED K. HOSS
ICE CHIEF

Approved: _____
COL RICHARD BANKERS
JIC COMMANDER

Approved: _____
MG GEOFFREY MILLER
COMMANDING GENERAL JTF GTMO

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[redacted]

THIS DOCUMENT IS PRIVILEGED AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER 5 U.S.C. 552

2007-1870

- **(Tab 16 Extract) JTF GTMO "SERE" Interrogation Standard Operating Procedure," dated 18 December 2002.**

3. Degradation Tactics
    a. Shoulder Slap
    b. Insult Slap
    c. Stomach Slap
    d. Stripping

4. Physical Debilitation Tactics

    a. Stress Positions
        1. Head Rest Index Finger Position
        2. Kneeling Position
        3. Worship-the-Gods
        4. Sitting Position
        5. Standing position

3. Demonstrate Omnipotence Tactics

    a. Manhandling
    b. Walling

TAB 17

230 (1 of 3)

DEPARTMENT OF DEFENSE
CRIMINAL INVESTIGATION TASK FORCE (DEPLOYED)
GUANTANAMO BAY, CUBA

REPLY TO ATTENTION OF

CITF-G/SAC

17 Dec 02

MEMORANDUM FOR JTF-GTMO/J2

SUBJECT: JTF GTMO "SERE" INTERROGATION SOP DTD 10 DEC 02

1. On 14 December 02, prior the "Decision Making" brief with the CG, you provided me a copy of JTF GTMO SERE INTERROGATION SOP dated 10 Dec 02 and asked me to review it and provide you my opinion. Consistent with our "stand clear" policy, I cannot offer you any specific input or advise ~~as you suggested~~. However, I do want to reiterate CITF-G's general position on this matter. As outlined in our memorandum for JTF GTMO dated 15 Nov 02, CITF-G objects to these aggressive interrogation techniques. While the subject SOP clearly does not apply to LEA (CITF and FBI) interrogators (applicable only to military and civilian interrogators assigned to JTF-GTMO), LEA in conjunction with the FBI's Behavioral Analysis Unit want to provide you the following general observations on why employing "SERE" tactics and techniques are not effective methods, with very limited potential benefit.

2. General Observations: Both the military and LEA share the identical mission of obtaining intelligence in order to prevent future attacks on Americans. However, LEA has the additional responsibility of seeking reliable information/evidence from detainees to be used in subsequent legal proceedings.

3. Presently, there is a fundamental difference between the military and LEA regarding which style of interrogation should be used. The overall LEA model emphasizes a rapport-based approach without relying on the use of coercion. The military model is based on SERE tactics, which are taught in a two-week military school. 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.

In some cases

4. The SERE methods were designed for use in a battlefield environment as a means of collecting tactical intelligence (e.g., to uncover enemy plans, determine enemy strength, movement, weapon capabilities and logistical support, etc.) However, there is no evidence to support that captured combatant techniques work effectively in the interrogation of detainees in a non-combat environment such as GTMO. LEA believes that these techniques discourage, rather than encourage, detainee cooperation.

5. LEA agents are responsible for investigating a wide variety of criminal and counterintelligence matters around the world. Accordingly, they are highly trained and experienced in eliciting information from reluctant subjects of diverse cultural and socio-economic backgrounds. LEA agents only use rapport-based methods that not only yield results,

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(2 of 3)

but also are legally sound. LEA agents are neither trained nor authorized to use coercive interrogation techniques under any circumstances.

7. Utilizing rapport-based methods, LEA have realized numerous successes during several major terrorism investigations including the bombings of embassies in East Africa, the bombing of the USS Cole and the 1993 World Trade Center bombing. Like most of the GTMO detainees, the perpetrators of these terrorist acts were motivated by a distorted religious doctrine and reinforced by a group/cultural dynamic.

8. LEA does not believe that coercive interrogation techniques are effective. However, on those rare occasions when those techniques have yielded results, the *reliability* of the information gathered has proven to be highly questionable. Detainees who are coerced into making admissions often develop strong feelings of anger and resentment toward their interrogators. Instead of creating an environment conducive to fostering continued cooperation, the interrogation process ends up fueling hostility and strengthening a detainee's will to resist.

9. A recovered Al Qaeda training manual instructs its members to expect Americans to use coercive interrogation tactics, even torture, to elicit information. The manual draws attention to these techniques and characterizes them as further proof of the evil and unjust acts which Americans commit against Muslims. Thus, the use of coercive techniques only serves to reinforce these erroneous perceptions. In essence, we end up proving ourselves worthy of the detainees' righteous resolve and inspiring continued resistance. By contrast, the use of a rapport-based approach represents the first step in disrupting a detainee's belief system. Intelligence officers, law enforcement personnel and diplomats have long recognized the value of this tact.

10. An advantage of a rapport-based model is that it allows interrogators to capitalize on a collective knowledge acquired about the unique mindset of those drawn to radical fundamentalism. It allows interviewers the opportunity to tailor specific approaches based on a careful review of a detainee's particular circumstances, rather than relying on haphazard, prescriptive approaches.

11. Rapport-based approaches work best after a detainee's motivations are understood and incorporated into a specific plan designed to exploit his psychological needs and vulnerabilities.

12. A rapport-based model avoids the potential for detainee abuse by practitioners. This point cannot be overstated. Both research and experience demonstrate that when coercive techniques are used in closed environments, there is a real potential for mistreatment to occur. This holds true even for highly trained and disciplined interrogators for whom the line between permissive behavior and abuse can easily become blurred. This phenomenon is often so subtle that it can escape the attention of interrogators as well as their leaders tasked with oversight responsibilities.

13. LEA have previously addressed these issues in both private discussions and in written communications with command personnel on many occasions. LEA has formally voiced its collective view that coercive SERE tactics are not only unsuitable in GTMO (where both LEA and the intelligence community are conducting interrogations), but more importantly they are

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(393)

ineffective. Additionally, there are serious concerns about the legal implications of these techniques.

14. Despite the advice of LEA behavioral experts who have consistently advocated the use of a rapport-based approach, there appears to be a tendency to revert to a shortsighted coercive model of interrogation. LEA recognizes that everyone involved in interrogation efforts at GTMO is under intense pressure to succeed in eliciting information from the detainees. However, LEA believes that an expectation to produce immediate results should not distract us from employing sound methodological tools to accomplish our ultimate objective – preventing and disrupting future acts of terrorism.

TIMOTHY JAMES
~~GTMO OSAC~~
Special Agent in Charge
Criminal Investigation Task Force
Guantanamo

Copy:
JTF-GTMO/SJA
FBI SSA

1320

TAB 19

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15 Jan 2003

From: John F. Rankin, SERE Training Specialist
Christopher Ross, SERE Coordinator
To: Officer in Charge, FASOTRAGRULANT Det Brunswick
Via: SERE Department Head

Subj: AFTER ACTION REPORT JOINT TASK FORCE GUANTANAMO BAY (JTF-GTMO) TRAINING EVOLUTION

Encl: (1) Draft ICE SOP
(2) Coercive Management Worksheet
(3) Physical and Psychological Pressures paper
(4) Al Queda Training Manual

1. Background: Dates of report are 29 Dec 02 - 4 Jan 03. Mr. Ross and I were directed to proceed to Guantanamo Bay, Cuba at the request of LtCol Moss, Commander of the Interrogation Control Element (ICE), JTF-GTMO. Our initial impression concerning the reason for the trip was to provide ICE personnel with the theory and application of the physical pressures utilized during our training evolutions.

2. We arrived 30 Dec 02 and were met by SFC Sessions, ICE Operations Chief, at the Ferry Landing, Windward Side - GTMO. He transported us to the security building wherein we received our access badges. Immediately following we proceeded to the ICE command center located in Camp Delta, the primary detention facility. Here we met with LtCol Moss (USA) and Capt Weis (USMC), the ICE Operations Officer. After a thorough in-brief, it was confirmed that a high-level directive had initiated our subsequent trip for the purpose of providing "physical pressures" training. LtCol Moss also provided us with a draft ICE SOP for utilization of physical pressures, enclosure (1). A tentative training plan was drafted.

3. On the morning of 31 Dec 02, Mr. Ross and I initiated training with an in-depth class on Biderman's Principles, enclosure (2) and the theory and practical application of selected physical pressures, IAW our "Blue Book", to approximately 24 ICE personnel. This training was conducted in one of the newly constructed interrogation facilities located at Camp Delta. During this training it was stressed that the physical pressures are only part of the overall conditioning process designed to establish and maintain an effective captive

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"FOR OFFICIAL USE ONLY"

Subj: AFTER ACTION REPORT ON OPERATION VALIANT RETURN

management program, as described in enclosure (3). Later in the day Mr. Ross and I were taken on a tour of one of the inactive "blocks" and the Maximum Security Unit (MSU) located in Camp Delta.

4. On morning of 2 Jan 03, Mr. Ross and I presented classes to ICE personnel covering interrogation fundamentals and resistance to interrogation. Resistance was specifically requested since it was evident that some of the higher priority detainees had received some kind of resistance training, as evidenced by the Al Queda Training Manual, enclosure (4). Theory is that ICE personnel would be able to more readily recognize if the detainee was applying resistance techniques and then counter or report their efforts. During the afternoon, we presented an abbreviated theoretical physical pressures and peacetime guidance (governmental and hostage) to Marine JTF-GTMO personnel and two JTF-GTMO Staff Judge Advocate (SJA) officials.

5. During the evening Mr. Ross and I were taken to another detention site and allowed to observe operations being conducted. (Recommendations included in enclosure (3))

6. On 3 Jan 03, Mr. Ross and I met with Major General Miller, JTF-GTMO Commander, at the ICE command center. During the meeting the high-level directive was sighted which outlined specific guidance regarding current and proposed ICE operations in dealing with detainees. Major General Miller clearly expressed his guidance as to the application of physical pressures. He gratefully accepted our advice as to how operations and management of detainees could be improved and thanked us for our efforts. Later that afternoon we were taken into the active blocks and observed some interviews of detainees. We later received an out-brief by LtCol Moss and Capt Weis wherein Capt Weis was provided enclosure (3).

7. Issues and Recommendations:

Issue: Security clearance information

Discussion: Due to short notice of trip, no POC was provided or obtained to pass security clearance information to facilitate issuance of badges. I was in one of the clearance systems and my information was available. Mr. Ross' was not. Mr. Hill was called and immediately responded by faxing information to the Special Security Office (SSO), GTMO.

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Subj: AFTER ACTION REPORT ON OPERATION VALIANT RETURN

Recommendation: Participants and sponsors send clearance information or POCs expeditiously to avoid delays. SSO, GTMO POC is [redacted]
Mr. Hill investigate reason why my clearance information was available through one of the systems/database and Mr. Ross' was not.

Issue: Rental car availability

Discussion: We were authorized a rental car, however, orders did not specify which agency. Most rental agencies located in Jacksonville, FL airport do not afford the convenience of drop off sites. Since we were only transiting from the airport to NAS Jacksonville, a drop off capability was needed to avoid the $50.00 cab fare.

Recommendation: Future trips of this nature should utilize ~~Enterprise Rental~~ since they have a satellite office located in the military terminal. Enterprise has also waived the drop fee for personnel on orders. A reservation request form and business card has been provided to the Resource Department. Resources

8. A debrief of the trip was provided to available SERE personnel. A make-up brief is available upon request for those that missed it.

9. Conclusion: It is unknown at this time whether another request for support will made. Recommend that future trainers, if requested, be thoroughly prepared to discuss and explain Biderman's Principles and captive management techniques.

JF Rankin
John F. Rankin

Maybe a good idea to plan/coord a return trip to see how things are progressing.

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Coercive Management Techniques

Chart 10. Biderman's Chart of Coercion		
General Method	Effects (Purposes)	Variants
1. Isolation.	Deprives victim of all social support of his ability to resist. Develops and intense concern with self. Makes victim dependent upon interrogator.	Complete solitary confinement. Complete isolations. Semi-isolation. Group isolation.
2. Monopolization of Perception.	Fixes attention upon immediate predicament. Fosters introspection. Eliminates stimuli competing with those controlled by captor. Frustrates all action not consistent with compliance.	Physical isolation. Darkness or bright light. Barren environment. Restricted movement. Monotonous food.
3. Induced Debilitation and Exhaustion	Weakens mental and physical ability to resist.	Semi-starvation. Exposure. Exploitation of wounds. Induced illness. Sleep deprivation. Prolonged constraint. Prolonged interrogation. Forced writing. Over- exertion.
4. Threats.	Cultivates anxiety and despair.	Threats of death. Threats of non return. Threats of endless interrogation and isolation. Threats against family. Vague threats. Mysterious changes of treatment.
5. Occasional Indulgences.	Provides positive motivation for compliance. Hinders adjustment to deprivation.	Occasional favors. Fluctuations of interrogator's attitudes. Promises. Rewards for partial compliance. Tantalizing.
6. Demonstrating 'Omnipotence' and 'Omniscience'.	Suggests futility of resistance.	Confrontation. Pretending cooperation taken for granted. Demonstrating complete control over victim's fate.
7. Degradation.	Makes cost of resistance more damaging to self-esteem than capitulation. Reduces prisoner to 'animal level' concerns.	Personal hygiene prevented. Filthy infested surrounds. Demeaning punishments. Insults and taunts. Denial of privacy.
8. Enforcing Trivial Demands.	Develops habits of compliance.	Forced writing. Enforcement of minute rules.

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Enclosure (2)

THIS DOCUMENT IS PRIVILEGED AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER 5 U.S.C. SECTION 552

MEMORANDUM 01/03/03

From: John F. Rankin, SERE Training Specialist, FASOTRAGRULANT Det. Brunswick ME.
To: Captain Weis, ICE, JTF-GTMO

Subj: PHYSICAL AND PSYCHOLOGICAL PRESSURES DURING INTERROGATIONS

Ref: (a) Coercive Management Techniques Chart

1. The use of physical and psychological pressures during interrogations, if deemed appropriate, are tools that can be applied in order to establish and reinforce the principles contained in reference (a). These principles must be supported by an interrogation or collection system that facilitates complete control of actions prior to, during and after interrogations.

2. These principles and associated pressures allow the interrogation system to establish and maintain control of the exploitation process of HUMINT sources under the authority of the ICE.

3. The management techniques are most effective if used in concert with each other since they are all mutually supporting and build upon the effects of others. They are all designed to elicit compliance from HUMINT sources by setting up the "captive environment." This is ideally accomplished by establishing control, instilling dependencies for basic existence, rewards and punishments, gaining compliance and in the end cooperation. A distinction must be drawn in that compliance is not always a willful or voluntary act. Conversely, if someone freely cooperates without inducement or the aforementioned pressures, the cycle has for the most part been completed.

4. The application of physical pressures is only a 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.

5. Implementation of an effective program that supports these principles is dependant on a comprehensive training plan and supervisory controls that prevent abuse and stresses safety and oversight.

John F. Rankin

Enclosure (3)

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TAB 20

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~~SECRET~~

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JAN 15 2003

MEMORANDUM FOR THE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Detainee Interrogations (U)

(U) Establish a working group within the Department of Defense to assess the legal, policy, and operational issues relating to the interrogations of detainees held by the U.S. Armed Forces in the war on terrorism.

(U) The working group should consist of experts from your Office, the Office of the Under Secretary of Defense for Policy, the Military Departments, and the Joint Staff. The working group should address and make recommendations as warranted on the following issues:

- (S) Legal considerations raised by interrogation of detainees held by U.S. Armed Forces.
- (S) Policy considerations with respect to the choice of interrogation techniques, including:
  - (S) contribution to intelligence collection
  - (S) effect on treatment of captured US military personnel
  - (S) effect on detainee prosecutions
  - (S) historical role of US armed forces in conducting interrogations
- (S) Recommendations for employment of particular interrogation techniques by DoD interrogators.

(U) You should report your assessment and recommendations to me within 15 days.

Classified by: Secretary Rumsfeld
Reason: 1.5(c)
Declassify on: 10 years

UNCLASSIFIED

Declassify Under the Authority of Executive Order 12958
By Executive Secretary, Office of the Secretary of Defense
By William P. Marriott, CAPT, USN
June 21, 2004

UNCLASSIFIED

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MEMORANDUM FOR COMMANDER USSOUTHCOM JAN 15 2003

SUBJECT: Counter-Resistance Techniques (U)

(S) My December 2, 2002, approval of the use of all Category II techniques and one Category III technique during interrogations at Guantanamo is hereby rescinded. Should you determine that particular techniques in either of these categories are warranted in an individual case, you should forward that request to me. Such a request should include a thorough justification for the employment of those techniques and a detailed plan for the use of such techniques.

(U) In all interrogations, you should continue the humane treatment of detainees, regardless of the type of interrogation technique employed.

(U) Attached is a memo to the General Counsel setting in motion a study to be completed within 15 days. After my review, I will provide further guidance.

Classified by: Secretary Rumsfeld
Reason: 1.5(c)
Declassify on: 10 years

UNCLASSIFIED

Declassify Under the Authority of Executive Order 12958
By Executive Secretary, Office of the Secretary of Defense
By William P. Marriott, CAPT, USN
June 21, 2004

TAB 23

UNCLASSIFIED

~~SECRET/NOFORN~~

THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

APR 1 6 2003

MEMORANDUM FOR THE COMMANDER, US SOUTHERN COMMAND

SUBJECT: Counter-Resistance Techniques in the War on Terrorism (S)

(U) ~~(S/NF)~~ I have considered the report of the Working Group that I directed be established on January 15, 2003.

(U) ~~(S/NF)~~ I approve the use of specified counter-resistance techniques, subject to the following:

(U) a. The techniques I authorize are those lettered A-X, set out at Tab A.

(U) b. These techniques must be used with all the safeguards described at Tab B.

(U) (S) c. Use of these techniques is limited to interrogations of unlawful combatants held at Guantanamo Bay, Cuba.

(U) (S) d. Prior to the use of these techniques, the Chairman of the Working Group on Detainee Interrogations in the Global War on Terrorism must brief you and your staff.

(U) ~~(S/NF)~~ I reiterate that US 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. In addition, if you intend to use techniques B, I, O, or X, you must specifically determine that military necessity requires its use and notify me in advance.

(U) ~~(S/NF)~~ 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) (S) Nothing in this memorandum in any way restricts your existing authority to maintain good order and discipline among detainees.

Attachments:
As stated

ssified Under Authority of Executive Order 12958
xative Secretary, Office of the Secretary of Defense
P. Marriott, CAPT, USN
June 18, 2004

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Classified By: Secretary of Defense
Reason: 1.5(a)
Declassify On: 2 April 2013

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TAB A

INTERROGATION TECHNIQUES

(U) ~~(S//NF)~~ The use of techniques A - X is subject to the general safeguards as provided below as well as specific implementation guidelines to be provided by the appropriate authority. Specific implementation guidance with respect to techniques A - Q is provided in Army Field Manual 34-52. Further implementation guidance with respect to techniques R - X will need to be developed by the appropriate authority.

(U) ~~(S//NF)~~ Of the techniques set forth below, the policy aspects of certain techniques should be considered to the extent those policy aspects reflect the views of other major U.S. partner nations. Where applicable, the description of the technique is annotated to include a summary of the policy issues that should be considered before application of the technique.

A. (U) ~~(S//NF)~~ Direct: Asking straightforward questions.

B. (U) ~~(S//NF)~~ Incentive/Removal of Incentive: Providing a reward or removing a privilege, above and beyond those that are required by the Geneva Convention, from detainees. [Caution: Other nations that believe that detainees are entitled to POW protections may consider that provision and retention of religious items (e.g., the Koran) are protected under international law (see, Geneva III, Article 34). Although the provisions of the Geneva Convention are not applicable to the interrogation of unlawful combatants, consideration should be given to these views prior to application of the technique.]

C. (U) ~~(S//NF)~~ Emotional Love: Playing on the love a detainee has for an individual or group.

D. (U) ~~(S//NF)~~ Emotional Hate: Playing on the hatred a detainee has for an individual or group.

E. (U) ~~(S//NF)~~ Fear Up Harsh: Significantly increasing the fear level in a detainee.

F. (U) ~~(S//NF)~~ Fear Up Mild: Moderately increasing the fear level in a detainee.

G. (U) ~~(S//NF)~~ Reduced Fear: Reducing the fear level in a detainee.

H. (U) ~~(S//NF)~~ Pride and Ego Up: Boosting the ego of a detainee.

Classified By:	Secretary of Defense
Reason:	1.5(a)
Declassify On:	2 April 2013

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[redacted]

I. (U) ~~(S//NF)~~ Pride and Ego Down: Attacking or insulting the ego of a detainee, not beyond the limits that would apply to a POW. [Caution: Article 17 of Geneva III provides, "Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind." Other nations that believe that detainees are entitled to POW protections may consider this technique inconsistent with the provisions of Geneva. Although the provisions of Geneva are not applicable to the interrogation of unlawful combatants, consideration should be given to these views prior to application of the technique.]

J. (U) ~~(S//NF)~~ Futility: Invoking the feeling of futility of a detainee.

K. (U) ~~(S//NF)~~ We Know All: Convincing the detainee that the interrogator knows the answer to questions he asks the detainee.

L. (U) ~~(S//NF)~~ Establish Your Identity: Convincing the detainee that the interrogator has mistaken the detainee for someone else.

M. (U) ~~(S//NF)~~ Repetition Approach: Continuously repeating the same question to the detainee within interrogation periods of normal duration.

N. (U) ~~(S//NF)~~ File and Dossier: Convincing detainee that the interrogator has a damning and inaccurate file, which must be fixed.

O. (U) ~~(S//NF)~~ Mutt and Jeff: A team consisting of a friendly and harsh interrogator. The harsh interrogator might employ the Pride and Ego Down technique. [Caution: Other nations that believe that POW protections apply to detainees may view this technique as inconsistent with Geneva III, Article 13 which provides that POWs must be protected against acts of intimidation. Although the provisions of Geneva are not applicable to the interrogation of unlawful combatants, consideration should be given to these views prior to application of the technique.]

P. (U) ~~(S//NF)~~ Rapid Fire: Questioning in rapid succession without allowing detainee to answer.

Q. (U) ~~(S//NF)~~ Silence: Staring at the detainee to encourage discomfort.

R. (U) ~~(S//NF)~~ Change of Scenery Up: Removing the detainee from the standard interrogation setting (generally to a location more pleasant, but no worse).

S. (U) ~~(S//NF)~~ Change of Scenery Down: Removing the detainee from the standard interrogation setting and placing him in a setting that may be less comfortable; would not constitute a substantial change in environmental quality.

T. (U) ~~(S//NF)~~ Dietary Manipulation: Changing the diet of a detainee; no intended deprivation of food or water; no adverse medical or cultural effect and without intent to deprive subject of food or water, e.g., hot rations to MREs.

[redacted]

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[redacted]

U. (U) ~~(S//NF)~~ Environmental Manipulation: Altering the environment to create moderate discomfort (e.g., adjusting temperature or introducing an unpleasant smell). Conditions would not be such that they would injure the detainee. Detainee would be accompanied by interrogator at all times. [Caution: Based on court cases in other countries, some nations may view application of this technique in certain circumstances to be inhumane. Consideration of these views should be given prior to use of this technique.]

V. (U) ~~(S//NF)~~ Sleep Adjustment: Adjusting the sleeping times of the detainee (e.g., reversing sleep cycles from night to day.) This technique is NOT sleep deprivation.

W. (U) ~~(S//NF)~~ False Flag: Convincing the detainee that individuals from a country other than the United States are interrogating him.

X. (U) ~~(S//NF)~~ Isolation: Isolating the detainee from other detainees while still complying with basic standards of treatment. [Caution: The use of isolation as an interrogation technique requires detailed implementation instructions, including specific guidelines regarding the length of isolation, medical and psychological review, and approval for extensions of the length of isolation by the appropriate level in the chain of command. This technique is not known to have been generally used for interrogation purposes for longer than 30 days. Those nations that believe detainees are subject to POW protections may view use of this technique as inconsistent with the requirements of Geneva III, Article 13 which provides that POWs must be protected against acts of intimidation; Article 14 which provides that POWs are entitled to respect for their person; Article 34 which prohibits coercion and Article 126 which ensures access and basic standards of treatment. Although the provisions of Geneva are not applicable to the interrogation of unlawful combatants, consideration should be given to these views prior to application of the technique.]

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[redacted]

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TAB B

GENERAL SAFEGUARDS

(U) ~~(S//NF)~~ Application of these interrogation techniques is subject to the following general safeguards: (i) limited to use only at strategic interrogation facilities; (ii) there is a good basis to believe that the detainee possesses critical intelligence; (iii) the detainee is medically and operationally evaluated as suitable (considering all techniques to be used in combination); (iv) interrogators are specifically trained for the technique(s); (v) a specific interrogation plan (including reasonable safeguards, limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel) has been developed; (vi) there is appropriate supervision; and, (vii) there is appropriate specified senior approval for use with any specific detainee (after considering the foregoing and receiving legal advice).

(U) The purpose of all interviews and interrogations is to get the most information from a detainee with the least intrusive method, always applied in a humane and lawful manner with sufficient oversight by trained investigators or interrogators. Operating instructions must be developed based on command policies to insure uniform, careful, and safe application of any interrogations of detainees.

(U) ~~(S//NF)~~ Interrogations must always be planned, deliberate actions that take into account numerous, often interlocking factors such as a detainee's current and past performance in both detention and interrogation, a detainee's emotional and physical strengths and weaknesses, an assessment of possible approaches that may work on a certain detainee in an effort to gain the trust of the detainee, strengths and weaknesses of interrogators, and augmentation by other personnel for a certain detainee based on other factors.

(U) ~~(S//NF)~~ Interrogation approaches are designed to manipulate the detainee's emotions and weaknesses to gain his willing cooperation. Interrogation operations are never conducted in a vacuum; they are conducted in close cooperation with the units detaining the individuals. The policies established by the detaining units that pertain to searching, silencing, and segregating also play a role in the interrogation of a detainee. Detainee interrogation involves developing a plan tailored to an individual and approved by senior interrogators. Strict adherence to policies/standard operating procedures governing the administration of interrogation techniques and oversight is essential.

Classified By: Secretary of Defense
Reason: 1.5(a)
Declassify On: 2 April 2013

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(U) ~~(S//NF)~~ It is important that interrogators be provided reasonable latitude to vary techniques depending on the detainee's culture, strengths, weaknesses, environment, extent of training in resistance techniques as well as the urgency of obtaining information that the detainee is known to have.

(U) ~~(S//NF)~~ While techniques are considered individually within this analysis, it must be understood that in practice, techniques are usually used in combination; the cumulative effect of all techniques to be employed must be considered before any decisions are made regarding approval for particular situations. The title of a particular technique is not always fully descriptive of a particular technique. With respect to the employment of any techniques involving physical contact, stress or that could produce physical pain or harm, a detailed explanation of that technique must be provided to the decision authority prior to any decision.

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[redacted]

TAB 24

DEPARTMENT OF DEFENSE
COMMANDER
U.S. JOINT FORCES COMMAND
1562 MITSCHER AVENUE SUITE 200
NORFOLK, VA 23551-2488

IN REPLY REFER TO:

J02
29 Sep 04

MEMORANDUM FOR COMMANDER, JOINT PERSONNEL RECOVERY AGENCY

Subject: Joint Personnel Recovery Agency Mission Guidance

1. The Joint Personnel Recovery Agency (JPRA) is the DoD Office of Primary Responsibility for DoD-wide personnel recovery matters. JPRA provides Joint Personnel Recovery functional expertise and assistance throughout DoD and other government agencies on issues related to Combat Search and Rescue; Evasion and Recovery; Operational POW/MIA Matters and Code of Conduct Training. JPRA will conduct operations in accordance with its mission as stated in USJFCOMINST 3100.4.

2. JPRA's training mission is focused on ensuring the survivability of U.S. personnel in hostile environments or captivity. The Code of Conduct training, designed to develop uniform training programs in the areas of combat survival, evasion, resistance, and escape within the Services, is of particular importance given the current operational climate. Focus must remain on training personnel in these "defensive" techniques. Recent requests from OSD 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. These "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.

3. The use of resistance to interrogation knowledge for "offensive" purposes lies outside the roles and responsibilities of JPRA. Accordingly, any deviation in roles and responsibilities must be carefully scrutinized and vetted through proper legal and policy channels. JPRA personnel will not conduct any activities or make any recommendations on offensive interrogation techniques or 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.

JAMES N. SOLIGAN
Major General, U.S. Air Force
Chief of Staff

TAB 25

Robert Wagner, IG, DCIS
10 February 2005

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

Subject: Investigation into Training Activities of the Joint Personnel Recovery Agency

1. The attached records show email discussions and other records relevant to activities of the Joint Personnel Recovery Agency (JPRA), including a memorandum dated 29 September 2004, signed by the Chief of Staff, U.S. Joint Forces Command (USJFCOM), to the Commander, JPRA. The question has been asked, "Why was this memo issued?" The attached email traffic provides useful information but is insufficient to answer the question, as it does not reflect verbal Command Group discussions leading to drafting the memorandum.

2. Quite simply, the memorandum was written as a proactive measure to provide clear guidance and to prevent use of JPRA outside the command's mission scope. The USJFCOM Command Group had learned that various personnel in the CENTCOM AOR and at the Joint Staff level, with incomplete understanding of JPRA's mission, were interested in JPRA's availability to assist/support in-theater interrogations. Relative to the expressed interest, the Command Group focused on the following points:

a. JPRA is primarily a school house, not an intelligence gathering activity. It focuses on training our own forces in evasion, survival, resistance and escape. Resistance training includes exposure to conditions our forces might expect to encounter.

b. JPRA does not have personnel assigned to be interrogators, and does not advocate interrogation measures to be executed by our force. Relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations.

c. JRPA does assist in personnel repatriation.

3. The Command Group summarized the limits of JPRA's mission as training and defensive response to interrogation – not offensive interrogation techniques or operations. Thus, the 29 September 2004 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 – but rather, simply to ensure that JPRA activities remained within the scope of that Agency's mission charter. This was accomplished by specifically directing Commander, JPRA not to engage in any activities that could be considered as in support of interrogations of people captured and detained by U.S. or coalition forces during the conduct of operations. The memorandum was not viewed as a "change of mission," but rather it was intended to ensure continued operation within the assigned charter.

4. To summarize, the view of this Headquarters now, at the time, and during the preceding year, has told had been that requests from various sources for JPRA "interrogation support" were both inconsistent with the unit's charter and might create conditions which tasked JRPA to engage in offensive operational activities outside of

JPRA's defensive mission. Therefore, to the extent that requests for JPRA support might pull that Agency outside the scope of its training mission and into the actual conduct of offensive operations, such requests were viewed as inappropriate. While there was no harm in a request, the appropriate answer was, "No." To ensure and maintain the credibility of the JPRA training expertise within the scope of its mission, the Command Group wanted to make it clear that JPRA personnel should not attempt to apply any perceived individual or unit interrogation expertise – notwithstanding a certain level of external demand for that kind of "outside the scope activity."

5. I hope that this memorandum and the attached records provide you with information adequate to answer your questions. If you require further information, please contact my point of contact for this matter, [redacted] the USJFCOM Inspector General.

APPENDIX B

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.

Index of Documents

1. **(TAB 1) Fax Cover Sheet – December 17, 2001 Fax to Mr. Richard Shiffrin from JPRA**

2. **(TAB 2) Email from Col. Moulton to Bruce Jessen et al, Subject: "Draft Exploitation Plan," (April 17, 2002)**

3. **(TAB 3) Responses of Condoleezza Rice to Questions from Senator Levin (September 12, 2008)**

4. **(TAB 4) Responses of John Bellinger to Questions from Senator Levin (September 12, 2008)**

5. **(TAB 5) Multiple Documents**

    a. **Email from Col. Moulton to RADM Bird (September 9, 2003)**
    b. **Email from Col. Moulton to LTG Wagner (September 8, 2003)**
    c. **Email from LTG Wagner to Col. Moulton w/ JPRA Weekly Report 4 Sep 03 (September 6, 2003)**

6. **(TAB 6) Memorandum from LTG Wagner for Inspector General Department of Defense (September 23, 2005) with attachment:**

    a. **Memorandum for [JFCOM] Force Judge Advocate, Subject: "Results of Telephonic interview on 10 Aug 05 with Colonel Randy Moulton, former Commanding Officer JPRA (September 23, 2005)"**
    b. **Email from Randy Moulton to Lt. Col. McCue (August 11, 2005)**
    c. **JPRA Weekly Report (September 4, 2003)**

7. **(TAB 7) Email from CAPT Dan Donovan, "HVT CONOP" (September 26, 2003)**

8. **(TAB 8) Email from CAPT Dan Donovan, "FW: HVT CONOP" (September 29, 2003)**

9. **(TAB 9) Email from Col. Moulton to JPRA CENTCOM LNO (September 3, 2003)**

10. **(TAB 10) Memorandum from MG Soligan for Commander, JPRA, Subject: "JPRA Mission Guidance" (September 29, 2004)**

11. **(TAB 11) Memorandum for the Department of Defense Inspector General from LTG Wagner, Deputy Commander, Joint Forces Command, February 10, 2005**

12. **(TAB 12) Memorandum, "Policy No. 1 – Battlefield Interrogation Team and Facility (BIT/F) Policy," (July 15, 2003)**

TAB 1

Page 1 of 6

DATE: 17 Dec 01

From: Joint Personnel Revcovery Agency (JPRA)
Chief of Staff
United States Joint Forces Command (USJFCOM)

Name/Rank: Lt Col Dan Baumgartner
Office Symbol: HQ JPRA(USJFCOM)/CS
10244 Burbeck Road, Building 358
Ft Belvoir, VA 22060-5805
Voice: [redacted]
FAX:

TO:
Name/Rank: Mr. Richard Shiffrin
Office Symbol: OSD GC
Voice: [redacted]
FAX:

REMARKS: Mr. Shiffrin -
Here's our spin on exploitation. If you need experts to facilitate this process, we stand ready to assist. There are not many in DoD outside JPRA that have the level of expertise we do in exploitation and how to resist it.
VR
Dan

**** WARNING!! - DO NOT TRANSMIT CLASSIFIED INFORMATION OVER UNSECURED TELECOMMUNICATIONS SYSTEMS. OFFICIAL DOD TELECOMMUNICATIONS SYSTEMS ARE SUBJECT TO MONITORING AND USE ...

TAB 2

16 Apr E-MAIL
File Attached

3.6

...chburn Dennis GG-13 JPRA/PRA-MSS

From: Moulton, Randy, Col, Commander, JPRA
Sent: Wednesday, April 17, 2002 7:10 AM
To: Jessen, Bruce, GG-15, JPRA-West; Wirts, Christopher, GG-14, JPRA/J3; Dozier, Mike, GG-15, JPRA/J3
Subject: RE: Draft Exploitation Plan

[redacted]

Doc,

We need to craft a 10-12 slide briefing to take up for approval to include what generated this requirement, 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.

rm

Colonel Randy Moulton
Commander, JPRA
[redacted]

"That others may live...
To return with honor"

—Original Message—
From: Jessen, Bruce, GG-15, JPRA-West
Sent: Tuesday, April 16, 2002 3:43 PM
To: Wirts, Christopher, GG-14, JPRA/J3; Dozier, Mike, GG-15, JPRA/J3; Randy. Moulton (E-mail)
Subject: Draft Exploitation Plan
Importance: High

[redacted]

Sir

My initial draft plan. If you decide to proceed with this I will have more details to add to this skeleton.

I am sending this to Mike and Chris so they can operationalize my draft into a CONOP for your consideration.

Bruce

[redacted]

Log 49

TAB 3

12 September 2008

Responses of Condoleezza Rice

The following answers are based on my best recollection.

QUESTION:

1. **Have you ever seen a list of physical and/or psychological pressures used in military Survival Evasion Resistance and Escape (SERE) training? If so:**

   a. When did you first see the list(s)?
   b. Who compiled the list(s)?
   c. Who provided the list(s) to you?

RESPONSE:

I have never seen a list of SERE training techniques.

QUESTION:

2. **Please indicate whether, in 2002 or 2003, you were present when the interrogation of detainees in U.S custody was discussed by or with any of the following individuals:**

   a. **Secretary of Defense Donald Rumsfeld**
   b. **Attorney General John Ashcroft**
   c. **Secretary of State Colin Powell**
   d. **CIA Director George Tenet**
   e. **Deputy Secretary of Defense Paul Wolfowitz**
   f. **Counsel to the President Alberto Gonzales**
   g. **Counsel to the Vice President David Addington**
   h. **National Security Council Legal Adviser John Bellinger**
   i. **Department of Defense General Counsel Jim Haynes**
   j. **Acting-CIA General Counsel John Rizzo**
   k. **CIA General Counsel Scott Muller**
   l. **Deputy Assistant Attorney General at the Department of Justice's Office of Legal Counsel John Yoo**
   m. **Assistant Attorney General at the Department of Justice's Office of Legal Counsel (OLC) Jay Bybee.**

RESPONSE:

I participated in a number of meetings in 2002 and 2003 with one or more of the listed individuals (with the exception of Jay Bybee) at which issues relating to detainees in U.S.

custody, including interrogation issues, were discussed. I do not recall ever meeting Mr. Bybee or being in a meeting with him.

QUESTION:

3. **For each discussion noted in response to Question 2 above, please answer the following:**

    a. **When did that discussion(s) take place?**
    b. **Where did it take place (e.g., meeting at the Pentagon, etc.)?**
    c. **Who was present for that discussion(s)? Please list the individuals and the offices they represented.**
    d. **Was there any discussion(s) of specific interrogation techniques used or proposed for use in detainee interrogations?**
    e. **Was there any discussion(s) about physical and/or psychological pressures used in SERE training?**
    f. **Was there a discussion on legal issues associated with detainee interrogations?**
    g. **Did anyone express concern with any of the interrogation techniques or legal guidance discussed? If so, please identify the person(s) who raised the concern(s) and describe the concern(s).**

RESPONSE:

a. I do not recall specifically when any of these meetings took place.
b. All of the meetings I attended on these matters occurred inside the White House.
c. I do not recall who specifically was present at each meeting.
d. I participated in a number of discussions of specific interrogation techniques proposed for use by the CIA. I do not recall being present during any discussion of interrogation techniques used by or proposed for use by the Department of Defense.
e. I recall being told that U.S. military personnel were subjected in training to certain physical and psychological interrogation techniques and that these techniques had been deemed not to cause significant physical or psychological harm.
f. I participated in a number of meetings at which legal aspects of CIA's proposed interrogation program were discussed. The purpose of these meetings was to ensure that CIA's proposed interrogation program complied fully with U.S. legal obligations. I asked Attorney General Ashcroft personally to review and confirm the legal advice prepared by the Office of Legal Counsel.
g. Participants in these meetings were concerned to make certain the DCI considered the techniques to be effective and necessary and that the Attorney General considered them to be lawful.

QUESTION:

4. **On July 25, 2002 the Chief of Staff to the Joint Personnel Recovery Agency (JPRA) informed the DoD Office of General Counsel that "JPRA will**

continue to offer exploitation assistance to those governmental organizations charged with the mission of gleaning intelligence from enemy detainees."

a. **Were you aware that JPRA was offering such assistance?**
b. **If so, please indicate how and when you became aware of that and describe your understanding of that assistance.**

RESPONSE:

I am unfamiliar with the JPRA and am unaware of whether it offered any assistance with interrogations.

QUESTION:

5. **On June 26, 2008 John Yoo testified to the House Judiciary Committee that "the offices of the CIA General Counsel and of the NSC legal advisor asked OLC for an opinion on the meaning of the anti-torture statute." Please describe the role your office played in requesting legal advice from the Department of Justice's Office of Legal Counsel (OLC) on standards of conduct in interrogation required under federal anti-torture statutes.**

RESPONSE:

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. NSC Legal Adviser John Bellinger asked CIA to have the proposed program reviewed by the Department of Justice. When CIA's proposed program was later reviewed by the NSC Principals, I asked that Attorney General Ashcroft personally advise NSC Principals whether the program was lawful.

QUESTION:

6. **According to page 73 of the Department of Justice Inspector General's May 2008 report, Daniel Levin recalled that in 2002, "in the context of the Zubaydah interrogation, he attended a meeting at the National Security Council (NSC) at which CIA techniques were discussed. Levin stated that a DOJ Office of Legal Counsel (OLC) attorney gave advice at the meeting about the legality of CIA interrogation techniques. Levin stated that in connection with this meeting, or immediately after it, FBI Director Mueller decided that FBI agents would not participate in interrogations involving techniques the FBI did not normally use in the United States, even though OLC had determined such techniques were legal."**

   a. **Were you present at a meeting at which the OLC gave oral advice about the legality of interrogation techniques proposed for use or in use by the CIA?**

b. **When and where did that meeting(s) take place?**
c. **Who else was present?**
d. **Who from the OLC provided that advice?**
e. **Did the oral advice provided by the OLC attorney(s) differ from the written advice provided on August 1, 2002?**

RESPONSE:

I was present in meetings at which DoJ lawyers provided legal advice about the CIA program. I recall that John Yoo provided advice at several of these meetings. I do not recall if other members of OLC were also present. As noted above, I asked the Attorney General personally to review the legal guidance prepared by OLC and to provide advice on behalf of the Department of Justice. I do not know whether any oral advice provided by OLC attorneys differed from OLC's written advice.

QUESTION:

7. **Were you aware that FBI personnel objected to techniques used or proposed for use with Zubaydah? If so:**

    a. **Who made you aware of those concerns and when?**
    b. **Describe your understanding of those concerns.**

RESPONSE:

I was not aware that FBI personnel objected to interrogation techniques used or proposed for use with Abu Zubaydah.

QUESTION:

8. **Were you aware of discussions about withdrawing FBI personnel from the Zubaydah interrogation? If so, please describe:**

    a. **The substance of those discussions.**
    b. **NSC's role in the decision to withdraw FBI personnel from the Zubaydah interrogation.**

RESPONSE:

I have a general recollection that FBI had decided not to participate in the CIA interrogations but I do not recall any specific discussions about withdrawing FBI personnel from the Abu Zubaydah interrogation.

QUESTION:

9. **Other than the August 1, 2002 OLC legal memos, are you aware of any other legal advice provided to CIA relative to the interrogation of Zubaydah?**

    a. **If so, please indicate who provided that advice and when it was provided.**

RESPONSE:

I was aware of the existence of, but I did not read, the August 1, 2002 OLC memorandum, which was addressed to the Counsel to the President. NSC Legal Adviser John Bellinger briefed me on its conclusions. It was my general understanding that OLC had prepared a written opinion regarding the legality of the CIA program, and I understood that the Department of Justice was providing advice to CIA, and that this advice was being coordinated by Counsel to the President Alberto Gonzales.

QUESTION:

10. **Were you briefed or did you review Joint Task Force Guantanamo Bay's (JTF-GTMO) November 2002 plan for interrogating Mohammed al Khatani? If so, please indicate who provided the plan or conducted the briefing and whether or not you or your staff expressed any view as to whether or not the plan should be implemented.**

RESPONSE:

I was not briefed on nor did I review JTF-GTMO's interrogation plan for Mohammad al Khatani.

QUESTION:

11. **The DOJ IG report stated that David Nahmias, an attorney with the DOJ Criminal Division said that Attorney General Ashcroft "spoke with someone at the NSC, most likely National Security Advisor Condoleezza Rice, about DOJ's concerns" about the DoD's interrogations of Khatani. Did you ever speak with Attorney General Ashcroft about DoD's interrogation of Khatani? If so, please indicate when and where that discussion(s) took place and describe the sub stance of that discussion(s).**

RESPONSE:

I do not recall Attorney General Ashcroft's having raised concerns with me regarding DoD's interrogation of al Khatani.

QUESTION:

12. On page 241 of his book, At the Center of the Storm, former Director of Central Intelligence George Tenet wrote that after Abu Zubaydah's capture, CIA "opened discussions within the National Security Counsel as to how to handle him."

a. When and where did those discussions occur?
b. Who at the NSC was party to those discussions?
c. Please describe the substance of those discussions.
d. Was anyone from the Department of Defense involved in those discussions?
e. If so, who?

RESPONSE:

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. I asked DCI Tenet to brief NSC Principals on the proposed CIA program. I asked Attorney General Ashcroft personally to review the legality of the proposed program. Secretary of Defense Rumsfeld participated in the NSC review of CIA's program.

QUESTION:

13. The May 2008 DoJ JG report stated that David Nahmias, a senior attorney in the Department of Justice's Criminal Di vision, said that in 2003 he shared concerns about interrogation techniques being used at GTMO with the NSC legal advisor. Did anyone at NSC ever discuss Mr. Nahmias's concerns with you: If so:

a. When and where did those discussions take place?
b. Who was party to those discussions?
c. Describe Mr. Nahmias's concerns.

RESPONSE:

I do not know Mr. Nahmias, and I do not recall anyone discussing with me any concerns he may have had.

QUESTION:

14. According to that same DoJ IG report, Bruce Swartz, Deputy Attorney General for the Criminal Division, recalled discussing interrogation issues in meetings at the NSC-chaired Policy Coordinating Committee (PCC) meetings. According to the DoJ IG, Mr. Swartz said that he "raised the ineffective and wrongheaded practice of the military interrogations at GTMO as a continuing theme of these PCC meetings." Did anyone at NSC ever discuss Mr. Nahmias's concerns with you? If so:

a. **With whom and when did those discussions take place?**
b. **Describe Mr. Swartz's concerns.**

RESPONSE:

I do not know Mr. Swartz, and I do not recall anyone discussing with me any concerns he may have had. NSC Legal Adviser John Bellinger advised me on a regular basis regarding concerns and issues relating to DoD detention policies and practices at Guantanamo. As a result, I 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, but I do not recall that specific interrogation techniques used by DoD were ever discussed.

QUESTION:

15. Please describe any actions taken by you or the NSC in response to concerns raised by Department of Justice officials about interrogations at GTMO.

RESPONSE:

I do not recall that any DoJ official raised with me any concerns about interrogations at Guantanamo. I was aware that NSC Legal Adviser John Bellinger was attempting to deconflict and respond to various interagency issues and concerns relating to detainee matters on an ongoing basis.

TAB 4

12 September 2008

Responses of John B. Bellinger, III

The Committee's questions relate to events that occurred five and six years ago while I served as NSC Legal Adviser during an extraordinarily busy and taxing period. In many cases, I simply do not recall the specific details the Committee has requested. I do not have access to any records for this period and have therefore not had a chance to refresh my recollection regarding any of these events. I have attempted to answer the Committee's questions to the best of my recollection and in an unclassified format.

QUESTION:

1. **Have you ever seen a list of physical and/or psychological pressures used in military Survival Evasion Resistance and Escape (SERE) training? If so:**

    a. **When did you first see the list(s)?**
    b. **Who compiled the list(s)?**
    c. **Who provided the list(s) to you?**

RESPONSE:

To the best of my recollection, I have never seen a list of interrogation techniques used in SERE training.

QUESTION:

2. **Have you ever seen an assessment of the psychological effects of military resistance training? If so:**

    a. **When did you first see that assessment?**
    b. **Who conducted that assessment?**
    c. **Who provided that assessment to you?**

RESPONSE:

To the best of my recollection, I have never seen a written assessment of the psychological effects of military resistance training. Some of the legal analyses of proposed interrogation techniques that were prepared by the Department of Justice and that I have seen did refer to the psychological effects of military resistance training.

QUESTION:

4. **Please indicate whether, in 2002 or 2003, you were present when the interrogation of detainees in U.S. custody was discussed by or with any of the following individuals:**

a. **Secretary of Defense Donald Rumsfeld**
b. **Secretary of State Colin Powell**
c. **Attorney General John Ashcroft**
d. **CIA Director George Tenet**
e. **National Security Advisor Condoleezza Rice**
f. **Deputy Secretary of Defense Paul Wolfowitz**
g. **Counsel to the President Alberto Gonzales**
h. **Counsel to the Vice President David Addington**
i. **Department of Defense General Counsel Jim Haynes**
j. **Acting-CIA General Counsel John Rizzo**
k. **CIA General Counsel Scott Muller**
l. **Assistant Attorney General at the Department of Justice's Office of the Legal Counsel (OLC) Jay Bybee**
m. **Deputy Assistant Attorney General at the Department of Justice's OLC John Yoo**
n. **Department of State Legal Adviser William Taft**

RESPONSE:

I was present at a number of meetings in 2002 and 2003 at which numerous issues relating to detainees in U.S. custody, including at times interrogation issues, were discussed by or with some or all of the individuals listed in the Committee's question, except for Assistant Attorney General Jay Bybee. I do not recall ever being present in a meeting with Jay Bybee.

QUESTION:

4. **For each discussion noted in response to Question 3 above, please answer the following:**

   a. **When did that discussion(s) take place?**
   b. **Where did it take place (e.g., meeting at the Pentagon, etc.)?**
   c. **Who was present for that discussion(s)? Please list the individuals and the offices they represented.**
   d. **Was there any discussion(s) of specific interrogation techniques used or proposed for use in detainee interrogations?**
   e. **Was there any discussion(s) about physical and/or psychological pressures used in SERE training?**
   f. **Was there a discussion on legal issues associated with detainee interrogations?**
   g. **Did anyone express concern with any of the interrogation techniques or legal guidance discussed? If so, please identify the person(s) who raised the concern(s) and describe the concern(s).**

RESPONSE:

a. I do not recall the dates of specific meetings.
b. To the best of my recollection, all of the meetings I attended with the individuals listed took place at the White House or in the Eisenhower Executive Office Building, except that I also recall visiting Guantanamo Bay together with DoD General Counsel Jim Haynes on at least one occasion in 2002 or 2003. To the best of my recollection, I was not present if any specific detainee interrogation techniques were discussed.
c. I do not recall specifically who attended which meeting.
d. I was present at meetings in 2002 and 2003 with some or most of the listed individuals at which specific techniques used or proposed for use in detainee interrogations by the CIA were discussed. However, I do not recall being present in any meeting in 2002 or 2003 at which specific interrogation techniques used or proposed for use by the Department of Defense were discussed.
e. I was present in meetings at which SERE training was discussed. I recall being told that numerous U.S. military personnel had undergone SERE training without significant ill-effect.
f. I was present at a number of meetings with some or most of the individuals listed at which the legal issues associated with detainee interrogations were discussed.
g. A number of individuals who were present at meetings I attended on the CIA program, or the legal guidance thereon, asked questions or expressed concerns about these issues. During the 2002-2003 timeframe, based on the information available to me at that time, I expressed concern that the proposed CIA interrogation techniques comply with applicable U.S. law, including our international obligations.

QUESTION:

5. **On June 26, 2008 John Yoo testified to the House Judiciary Committee "the offices of the CIA General Counsel and of the NSC legal advisor asked OLC for an opinion on the meaning of the anti-torture statute." Please describe the role the National Security Council (NSC) and/or your office played in requesting legal advice from the Department of Justice's Office of Legal Counsel (OLC) on standards of conduct in interrogation required under federal anti-torture statutes.**

RESPONSE:

In the spring of 2002, I asked CIA lawyers to seek advice not only from the Office of Legal Counsel but also from the Criminal Division of the Department of Justice to ensure that any proposed CIA interrogation program was consistent with applicable U.S. law, including applicable criminal statutes, and our international obligations. I was not involved in requesting legal advice from the Department of Justice concerning techniques used or proposed for use with detainees in the custody of the Department of Defense.

QUESTION:

6. **According to page 73 of the Department of Justice Inspector General's May 2008 report, Daniel Levin recalled that in 2002, "in the context of the Zubaydah interrogation, he attended a meeting at the National Security Council NSC) at which CIA techniques were discussed. Levin stated that a DOJ Office of Legal Counsel (OLC) attorney gave advice at the meeting about the legality of CIA interrogation techniques. Levin stated that in connection with this meeting, or immediately after it, FBI Director Mueller decided that FBI agents would not participate in interrogations involving techniques the FBI did not normally use in the United States, even though OLC had determined such techniques were legal."**

    a. **Were you present at a meeting at which the OLC gave oral advice about the legality of interrogation techniques proposed for use or in use by the CIA?**
    b. **When did that meeting(s) take place?**
    c. **Who else was present?**
    d. **Who from the OLC provided that advice?**
    e. **Did the oral advice provided by the OLC attorney(s) differ from the written advice provided on August 1, 2002?**

RESPONSE:

a. I was present at several meetings at which OLC attorneys provided oral advice regarding interrogation techniques proposed to be used by CIA.
b. I do not recall the dates of such meetings.
c. I do not recall specifically who was present at which meeting.
d. I recall that Deputy Assistant Attorney General John Yoo provided legal guidance in some of the meetings; other OLC attorneys may also have provided advice.
e. I do not recall whether the oral guidance differed materially from the written advice. To the best of my recollection, the oral advice was a summary of OLC's written analysis.

QUESTION:

7. **Where you aware that FBI personnel objected to techniques used or proposed for use with Zubaydah?**

    a. **Who made you aware of those concerns and when?**
    b. **Describe your understanding of those concerns.**

RESPONSE:

To the best of my recollection, I was never told that FBI personnel objected to interrogation techniques used or proposed to be used with Abu Zubaydah.

QUESTION:

8. **Where you aware of discussions about withdrawing FBI personnel from the Zubaydah interrogation? If so, please describe:**

    a. **The substance of those discussions.**
    b. **NSC's role in the decision to withdraw FBI personnel from the Zubaydah interrogation.**

RESPONSE:

I recall being told at some point that FBI Director Mueller had directed that FBI officials not participate in at least some interrogations conducted by CIA officials. I do not recall who told me about these concerns or when I learned of them. I do not recall the substance of Director Mueller's concerns, whether they involved the Abu Zubaydah interrogation, or whether these concerns related to specific techniques, the absence of Miranda warnings, or to bureaucratic differences between CIA and FBI. If the NSC played a role in any decision to withdraw FBI personnel from the interrogation of Abu Zubaydah, I was not aware of it.

QUESTION:

9. **The May 2008 DoJ IG report stated that David Nahmias, a senior attorney in the Department of Justice's Criminal Division, said that in 2003 he shared concerns about interrogation techniques being used at GTMO with the NSC legal adviser. Did Mr. Nahmias discuss concerns with you about GTMO interrogations: If so:**

    a. **When and where did those discussions take place?**
    b. **Describe Mr. Nahmia's concerns and indicate whether you discussed them with National Security Advisor Condoleezza Rice.**

RESPONSE:

I recall that Deputy Assistant Attorney General Bruce Swartz raised concerns with me about allegations of abuse of detainees at Guantanamo. My recollection is that he called me on several occasions by telephone to express such concerns, but I do not recall the dates or time frame. It is possible that Mr. Nahmias may have participated in one or more of these phone calls. In response, I raised these concerns on several occasions with DoD officials and was told that the allegations were being investigated by the Naval Criminal Investigative Service. I do not recall whether I raised these concerns with Dr. Rice.

QUESTION:

10. **According to that same DoJ IG report, Bruce Swartz, Deputy Attorney General for the Criminal Division, recalled discussing interrogation issues in meetings at the NSC-chaired Policy Coordinating Committee (PCC) meetings. According to the DoJ IG Mr. Swartz said that he "raised the ineffective and wrongheaded practice of the military interrogations at GTMO as a continuing theme of these PCC meetings." Were you present at NSC PCC meetings where Mr. Swartz raised concerns about GTMO interrogations? If so:**

    a. **When and where did those meetings take place?**
    b. **Describe Mr. Swartz's concerns and indicate whether you discussed them with National Security Advisor Condoleezza Rice.**

RESPONSE:

During 2002 and 2003, I chaired or co-chaired a biweekly interagency meeting (which came to be known as a Policy Coordinating Committee or "PCC") that addressed certain detainee policies, and Mr. Swartz represented the Department of Justice at many of these meetings. The meetings were held in the White House or Eisenhower Executive Office Building. To the best of my recollection, the PCC never discussed specific interrogation techniques or practices, and I do not recall that Mr. Swartz ever raised concerns about the legality or propriety of specific interrogation techniques or practices in these meetings. However, individuals representing various agencies, including Mr. Swartz, regularly raised concerns about whether interrogations conducted by DoD interrogators at Guantanamo were effective and professional and were being resourced in the most effective way. I do not specifically recall whether I raised any of these concerns with Dr. Rice but I may have done so.

QUESTION:

11. **Please describe any actions taken by you or the NSC in response to concerns raised by Department of Justice officials about interrogations at GTMO.**

RESPONSE:

In response to concerns raised by Mr. Swartz about allegations of abuse of detainees at Guantanamo, I raised these concerns on several occasions with DoD officials and was told that the allegations were being investigated by the Naval Criminal Investigative Service (NCIS). See attached June 9, 2008 letter I sent to DoJ Inspector General Glenn Fine.

QUESTION:

12. **Were you briefed or did you review Joint Task Force Guantanamo Bay's (JTF-GTMO) November 2002 plan for interrogating Mohammed al Khatani? If so, please indicate who provided the plan or conducted the**

briefing and whether you or anyone on your staff expressed any view as to whether or not the plan should be implemented.

RESPONSE:

To the best of my recollection, I was never briefed on, nor did I review, JTF-GTMO's November 2002 plan for interrogation of Mohammed al Khatani.

QUESTION:

13. **On page 241 of his book, *At the Center of the Storm*, former Director of Central Intelligence George Tenet wrote that after Abu Zubaydah's capture, CIA "opened discussions within the National Security Counsel as to how to handle him."**

    a. **When and where did those discussions occur?**
    b. **Who at NSC was involved in those discussions?**
    c. **Please describe the substance of those discussions.**
    d. **Was anyone from the Department of Defense involved in those discussions?**
    e. **If so, who?**

RESPONSE:

I do not know specifically to what "discussions within the National Security Council" Director Tenet was referring in his book. In the spring of 2002, CIA lawyers approached me about obtaining a legal and policy review for a proposed CIA program to interrogate certain high-level al Qaida terrorists. I asked the CIA lawyers to seek the advice of both the Criminal Division and the Office of Legal Counsel of the Department of Justice to ensure that any proposed interrogation program was consistent with applicable U.S. law, including international obligations. Subsequently, National Security Council Principals reviewed CIA's proposed program on several occasions in 2002 and 2003. I do not recall specifically which NSC Principals or other officials participated in which meeting. I recall that Secretary Rumsfeld participated in one or more of these meetings, and he may have been accompanied by other DoD officials.

QUESTION:

14. **Other than the August 1, 2002 OLC legal memos, are you aware of any other legal advice provided to CIA relative to the interrogation of Zubaydah?**

    a. **If so, please indicate who provided that advice and when it was provided.**

RESPONSE:

I was present at several meetings at which OLC attorneys provided oral advice regarding interrogation techniques proposed to be used by CIA. Deputy Assistant Attorney General John Yoo provided legal guidance in some of the meetings; other OLC attorneys may also have provided advice. I do not recall whether this advice related specifically to the interrogation of Abu Zubaydah. It was my understanding that during 2002 and 2003 the Office of Legal Counsel provided ongoing advice to CIA regarding CIA's interrogation program, although I was not involved in these exchanges.

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

June 9, 2008

The Honorable Glenn A. Fine
Inspector General
U. S. Department of Justice
Robert F. Kennedy Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Glenn:

Thank you for providing me with a copy of your May 2008 report entitled "A Review of the FBI's involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq."

As I discussed with your staff when they interviewed me in connection with this report, and is well known by numerous Department of Justice and other officials, during my tenure as NSC Legal Adviser I repeatedly asked the Defense Department about conditions and detention policies at Guantanamo Bay, and I specifically raised concerns about interrogation practices used at Guantanamo, including concerns raised by the Department of Justice. I also supported, among other things, access by the International Committee of the Red Cross to all detainees at Guantanamo.

With my assistance, the Assistant to the President for National Security Affairs convened a series of meetings of NSC Principals in order to ensure that concerns about conditions at and other issues relating to Guantanamo were fully discussed with the Department of Defense and other agencies.

I appreciate that in a hearing before the House Foreign Affairs Committee on June 4 you testified that your office was in fact aware that I had asked the Department of Defense to investigate the concerns the Department of Justice had raised with me.

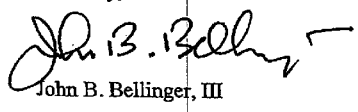
I am concerned, however, that your report has left an inaccurate impression of actions I took in response to concerns raised by the Department of Justice. In particular, the report states in the Executive Summary (p. xii) that "We [the Office of Inspector General] found no evidence that the FBI's concerns influenced DoD interrogation practices" and in Chapter V (p. 116) that "The DoJ officials who discussed the issue of GTMO interrogations with the NSC legal adviser told us that they generally did not recall learning of any follow-up or change in policy as a result of these discussions." These statements may imply, and have led some to infer, that I or others at the NSC took no action when these concerns were raised. As you know, this is not the case. I and others

took these concerns very seriously and urged the Department of Defense to investigate and take appropriate follow-up action.

In fact, the statement on page 116 of your report is contradicted by the subsequent statement on page 127 of your report which confirms that I asked the Department of Defense to investigate an allegation that one detainee was taken up in a helicopter in order to scare him and then reported back to the Department of Justice that I had been told that the Naval Criminal Investigative Service had investigated the allegation and had concluded that it had not occurred.

I appreciate that the purpose of your report was to examine the activities of Department of Justice employees with respect to detainee interrogations in Guantanamo, not the actions NSC staff took with information provided to us. Nonetheless, because your report may have created a misimpression about my efforts to follow up on the concerns raised by the Department of Justice and others, I am writing to correct the record.

Sincerely,



John B. Bellinger, III

cc: Chairman, Committee on the Judiciary, US Senate
Chairman, Committee on Foreign Relations, US Senate
Chairman, Committee on the Judiciary, House of Representatives
Chairman, Committee on Foreign Affairs, House of Representatives

TAB 5

J66

[redacted]

From: Wirts Christopher GG-14 JPRA/PRA-DT
Sent: Friday, January 21, 2005 3:35 PM
To: Markland, Thomas Lt Col, Chief of Staff JPRA/CS
Cc: Huffstutter John Lt Col JPRA/PRA-CC
Subject: FW: ~~(S)~~ U JPRA Weekly Report 4 Sep 03

CLASSIFICATION: ~~SECRET~~

CAVEATS: ~~NOFORN~~

TERMS: NONE

Another lead - there were SITREPS posted via [redacted]. This also shows JFCOM visibility and concerns.

Chris
-----Original Message-----
From: Huffstutter, John, Lt Col, JPRA/J2
Sent: Tuesday, September 09, 2003 2:27 PM
To: Wirts, Christopher, GG-14, JPRA/J3
Subject: FW: ~~(S)~~ U JPRA Weekly Report 4 Sep 03

From: Moulton, Randy, Col, Commander, JPRA
Sent: Tuesday, September 09, 2003 5:26:41 PM
To: [redacted]; Okita, Mike COL/USA (USJFCOM J3A)
Cc: Atkins, John, Col, Deputy Commander, JPRA; Huffstutter, John, Lt Col, JPRA/J2; Reichart, Tim, Lt Col, JPRA/PRA-CC
Subject: FW: ~~(S)~~ U JPRA Weekly Report 4 Sep 03
Auto forwarded by a Rule

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: NONE

Admiral Bird,
U *~~(S/NF)~~ Sir, didn't have your correct SIPR address on this e-mail from yesterday. Below is my response to a query from LTG Wagner. As to the issue of mission creep in assisting strategic debriefers, I am very concerned that this takes us outside not only our chartered responsibilities, but also our traditional role of "blue force" isolation/captivity support. There is a strong synergy between the fundamentals of both missions (resistance training and interrogation). Both rely heavily on environmental conditions, captivity psychology, and situation dominance and control. While I think this probably falls within DHS responsibility lines, recent history (to include*

discussions and training with DHS, USSOCOM, CIA) shows that no DoD entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation. Our subject matter experts (and certain Service SERE psychologist) 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. As I mentioned below, I do feel the issue merits discussion in the Lessons Learned process. My folks will provide daily updates via [redacted] focal point channels.

V/R

Colonel Randy Moulton
Commander, JPRA
[redacted]

"That others may live...
To return with honor"

-----Original Message-----
From: Moulton, Randy, Col, Commander, JPRA
Sent: Monday, September 08, 2003 8:15 AM
To: Wagner, Robert LTG (USJFCOM J01)
Cc: Holbein, Jack R. MAJ GEN/USAF; Fengya, Darryl J. CAPT/USN (USJFCOM J2); Cone, Robert BrigGen/USA (USJFCOM JW14); Okita, Mike COL/USA (USJFCOM J3A)
Subject: RE: ~~(S)~~ U JPRA Weekly Report 4 Sep 03

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: NONE

General Wagner,

U *~~(S/NF)~~ Sir, your observation is correct. 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. However, there will be a need to remain engaged in a symbiotic relationship with whatever entity is identified to manage the debriefing/interrogation program. There is much we can learn and apply to resistance training from our brethren conducting offensive applications, and they 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 TTP development, while leaving actual debriefing/interrogation to those already assigned the responsibility.*

U *~~(S/NF)~~ This is not meant to be a recommended course of action. I still believe a thorough review as part of the lessons learned process would help to clarify the true requirement/deficiency (if one exists).*

V/R

Colonel Randy Moulton
Commander, JPRA
[redacted]

"That others may live...
To return with honor"

-----Original Message-----
From: Wagner, Robert LTG (USJFCOM J01) [redacted]
Sent: Saturday, September 06, 2003 7:53 AM
To: Moulton, Randy, Col, Commander, JPRA
Cc: Soligan, James Maj Gen/USAF.(USJFCOM J02); Fengya, Darryl J. CAPT/USN (USJFCOM J2); Cone, Robert BrigGen/USA (USJFCOM JW14)
Subject: FW: ~~(S)~~ U JPRA Weekly Report 4 Sep 03

~~CLASSIFICATION:SECRET~~

Please see comments below.
RW

-----Original Message-----
From: Huffstutter, John, Lt Col, JPRA/J2
Sent: Thursday, September 04, 2003 10:49 AM
To: Weekly Report; Aldrich, Roger, GG-15, PRA/DT; All Civilians; All Command Representatives; All Deputy Directors Only; All Directors and CG; All Military; Atkins, John, Col, Deputy Commander, JPRA; Ayres, David, Contractor, JPRA; Burrell, Michael J LCDR/USN (USJFCOM J355C); Camilletti, Michael CONTR (USJFCOM J3JPRA); Camilletti, Michael, Contractor, JPRA/J2; Gray, Carrie L - LT - USN; Deets, Douglas M. CAPT/USN (USJFCOM J011); Deputy Directors; Directors; Dorey, John CDR/USN (USJFCOM J002); Fengya, Darryl J. CAPT/USN (USJFCOM J2); Ferriter, Michael COL/USA (USJFCOM J001); Hoeft, Jefre, L., Contractor, JPRA/J3; Soligan, James Maj Gen/USAF (USJFCOM J02); Johns, Steven LTCOL/USAF (USJFCOM J359P); Kelly, Paul T., Contractor, JPRA/J31; [redacted] Yopp, William D. - CAPT - JFIC XO; [redacted] Laskowsky, Karl, Contractor, JPRA/J3; Lewis, Michael MAJ/USA (USJFCOM J231A); Manske, Chad T. LtCol/USAF (USJFCOM J004B); McCullough, Bernard CAPT/USN (USJFCOM J5T); Bird, John RADM/USN (USJFCOM J3); Parker, Teresa A. Col/USAF (USJFCOM J2A); Perkins, Stephen P COL/USA (USJFCOM J23); Phillips, James W. MAJ/USA (USJFCOM J02EA); Venture, Darrell LTC/USAF; Walter, David L. COL/USMC (USJFCOM J35)
Subject: ~~(S)~~ U JPRA Weekly Report 4 Sep 03

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NONE~~
TERMS: NONE

Joint Personnel Recovery Agency (JPRA) Weekly Report
4 Sep 03

PART ONE: (Information Above Secret/NOFORN): N/A

PART TWO: ~~(Secret/NOFORN~~ or Lower Information):

1. (U) This Week:

a. (U) CC Comments: The Personnel Recovery Advisory Group will meet this afternoon, 4 Sep 03, at the Defense Intelligence Analysis Center, Bolling AFB. JPRA will present information briefings on the PR Modernization Strategy and the Core Captivity Curriculum to the audience of senior advisors, which will include Deputy Assistant Secretary of Defense for POW/Missing Personnel Affairs and USJFCOM Chief of Staff, Maj Gen Soligan.

Request an AAR

b. (S) CC Comments cont: 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 TTP development (offensive). Currently, subject matter expertise on captivity environments, psychology, and maintenance resides almost solely within JPRA (defensive).

I'm not sure I see the connection between your assigned responsibilities and this task. It is a good observation and recommendation. But, what charter places JPRA in the business of intelligence collection?

c. (S) Operations: A JPRA team is in Plovdiv, Bulgaria, supporting Exercise COOPERATIVE KEY, which continues through next week. The SOUTHCOM Personnel Recovery Support Team remains on a 24-hour recall standby to support Combatant Commander requirements should Colombian rebels release detained DoD personnel

d. (U) Transformation: JPRA J9 is meeting with United Kingdom Personnel Recovery program managers in London on interoperability of US and UK survival equipment and procedures.

2. (U) Next Week 8-12 Sep 03): JPRA is holding an internal Repatriation Working Group on 9-11 Sep 03 to review procedures used to debrief and return personnel to duty following isolation or detention events.

3. (U) Later this quarter (Sep - Dec 03): The Air Force Communications Agency, Scott AFB, IL, will visit the JPRA headquarters facility to conduct a formal Communications Security (COMSEC) command inspection of the JPRA COMSEC account on 23-25 Sep 03. JPRA is holding the second joint-Service Core Captivity Curriculum Working Group on 23-25 Sep 03 at Naval Air Station Brunswick, ME. Our Human Factors directorate will make a presentation to the US Army Aeromedical Psychology Course from 26 Sep to 10 Oct 03 at Fort Rucker, AL. A meeting with the curriculum director for the US Army Flight Surgeon basic course will be connected to this visit. Our J9 staff has a series of upcoming engagements including a presentation survival radios to the Military Radios Conference in San Diego CA on 15-16 Sep 03; the final meeting of the Personnel Recovery Modernization Working Group at JPRA on 18 Sep 03; a 19 Sep 03 briefing to the Joint Staff Combat Identification (CID) Action Team (CIDAT) on Personnel Recovery and Combat Identification interrelationships; and the fourth quarterly Personnel Recovery Technology and Interoperability Forum (PRTIF) on 30 Oct 03.

4. (U) Answers to USJFCOM Commander questions: None

v/r

Col Randy Moulton

"That others may live...
...To return with honor"

CLASSIFIED BY: ~~dPRACC~~

TAB 6

[redacted]

J00LRM
23 Sept 2005

[redacted] - Unclassified when separated from attachment

MEMORANDUM FOR INSPECTOR GENERAL DEPARTMENT OF DEFENSE

Subject: Follow up response to June 2003 USJFCOM IG Meeting on DoD IG Inquiry to USJFCOM of 27 May 2005

1. 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 conclude that information did flow up the chain of command to the appropriate authority.

2. Action was taken based on JPRA Commanding Officer's (CO) judgment and input from the chain of command during a crucial stage of the war on terror for intelligence collection. The after action reports in question were not forwarded up to the USJFCOM chain of command until Jan 2005. The attached secret/noforn memorandum details the timeline and the former JPRA CO's rationale and actions.

3. The actions LtCol Kleinman witnessed did occur. However, all others involved, including the JPRA CO and the CO of the task force believed them to be authorized actions under the existing decisions by DoD General Counsel. The CO conveyed this to LtCol Kleinman both during and after the deployment. LtCol Kleinman did not seek any other response or relief, nor take any issue up his chain of command.

4. All issues raised by the subject inquiry under the cognizance of USJFCOM are considered closed.

Robert W. Wagner
Lieutenant General, U.S. Army
Acting Commander

Attachment:
Secret J00LRM memo for Force Judge Advocate of 23 Sept 05

~~SECRET/NOFORN~~

J00LRM
23 Sept 2005

MEMORANDUM FOR FORCE JUDGE ADVOCATE

Subject: Results of telephonic interview on 10 Aug 05 with Colonel Randy Moulton, (USA Ret), former Commanding Officer, JPRA

1. Chronology of events regarding the [redacted] support mission as remembered and conveyed by COL Moulton (COL M). It also includes information gathered from JPRA emails and documents:

a. In July or Aug 2003 COL Moulton received a phone call from the Commander of [redacted] requesting assistance to observe the on-going interrogations and offer inputs and advice based on their experience and expertise in the "psychology of captivity."

b. COL M told CO, [redacted] that he would brief up to the JFCOM J3 and advised him to send the request in hard copy to JFCOM J3. To date, no hard copy has been located. COL M received the verbal authority to proceed with the planning and arrange the logistics. Attachment 1 is the 4 Sept 2003 weekly report that included the deployment of the team to support [redacted] interrogation requirements.

c. A Concept of Operations for High Value Targets Exploitation (CONOP for HVT) was drafted and forwarded up the chain at the same time as the team was deployed.

d. COL M emphasized that he understood all detainees were determined to be "Designated Unlawful Combatants" (DUC's), not Enemy Prisoners of War (EPW) protected by the Geneva Convention (GC) and that the interrogation techniques authorized were pre-approved by DoD GC or higher and that the team was not to exceed the standards used in SERE training on our own service members. If any techniques beyond those guidelines arose it must be cleared through [redacted] legal chain and through DoD. Attachment 2 is an email from COL M detailing his views.

e. On 5 Sept, COL M got a phone call on his home STU-3 from Lt Col Steve Kleinman, (Lt Col K), the team chief, relaying that [redacted] wanted active participation by the JPRA team. COL M called the [redacted] to confirm and inquire about the new request. COL M relayed the request to the 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.

~~SECRET/NOFORN~~

~~SECRET/NOFORN~~

f. On 11 Sept Lt Col K called with "reservations about the tactics employed" in that they did not comply with the GC, but also advised that the rest of the team did not agree with him. COL M relayed that the GC did not apply to DUCs and confirmed the techniques at issue were the ones pre-approved by DoD GC. He also told Lt Col K to use the chain of command and SJA at [redacted]. COL M relayed that Lt Col K did not seem upset, nor raise the issue of an illegal order. COL M then called CO [redacted] to confirm and to recommend he check in with his SJA. [redacted] acknowledged some personality issues between the team and his staff, but was positive in general and satisfied with the JPRA support.

g. Around Sept 15, COL M requested the JPRA team to stand down and get ready to depart. Upon their return on 24 Sept, given the differing opinions of the team, COL M did ask for individual reports. He was surprised to read Lt Col K's and had a long discussion with him about it. COL M felt that Lt Col K understood the rules they were operating under, that the GC did not apply and that the techniques were approved by higher authority. The issue never came up again.

h. In Oct 03, the reports submitted by Lt Col K and Mr. Russell were sent to CO [redacted] by COL M. Col M treated them as internal documents (as was the usual course of business) and had the Executive Summary drafted (to be attached to the CONOP for HVT when approved). He can not recall when it was submitted because the CONOP was never approved. COL M was not trying to hide Lt Col K's report – he did not think it was an issue. He also felt that it was appropriately elevated in [redacted] chain of command, to which the JPRA team belonged during the mission. COL M offered that in hindsight he should have forwarded/elevated Lt Col K's written report to JFCOM. He did not believe there was a law of war violation (detainee abuse) nor did he believe Lt Col K still held that view.

i. During this same time frame, the official guidance regarding the approved or disapproved interrogation techniques was changing and JPRA's draft CONOP was in staffing. By Dec 03/Jan 04 CENTCOM submitted another similar support request. The staffing of that request is not in question and is well documented.

~~SECRET/NOFORN~~

~~SECRET/NOFORN~~

2. Regarding the 24 Sept 02 Memo from Mr. Witsch. COL M states that JPRA support to train and teach at a variety of Service schools and for a lot of agencies was so common, that he probably got 15 of this type of report a week. COL M's views on training are also expressed in attachment 2. It was not practice to forward them to JFCOM. COL M emphasized that he never deployed a support team without approval from JFCOM J3. He added that JPRA is the repository for all POW materials and that reports of this type were reviewed and archived there.

A. M. McCue
LtCol, USMCR
Deputy Judge Advocate
USJFCOM

Attachments:
1. Email provided by COL Moulton of 11 Aug 05 to LtCol McCue
2. Electronic copy of JPRA Weekly Report of 4 Sept 2003

~~SECRET/NOFORN~~

From: McCue, Arlene M LtCol
Sent: Thursday, August 11, 2005 12:04 PM
To: 'Randy Moulton'
Cc: Kaufman, Alan CAPT
Subject: RE: Meeting LtCol McCue

Thank you, Sir. I will include your inputs. Thank you again for taking the time to talk to me. I am going to pass all your contact info and my report to CAPT Kaufman today. If there is further action required before I come back part-time in Sept someone else may have to contact you.

VR,
LtCol McCue

From: Randy Moulton[redacted]
Sent: Thursday, August 11, 2005 10:57 AM
To: McCue, Arlene M LtCol
Subject: RE: Meeting LtCol McCue

LtCol McCue,

Something I didn't mention during our conversations that I think is important to note in your records. We knew from early 02 when OSD/GC made some initial that "offensive" assistance was outside our charter. That point was discussed with the leadership at JFCOM. For that reason, we were very careful to couch our in terms of "individual DoD subject matter experts" using personnel, who through their prior training, possessed expertise on captivity psychology and resistance to interrogation. While this experience and expertise was gained through chartered "defensive" resistance to interrogation training, the fact remained that the intellectual capital WRT captivity psychology/resistance within DoD resided solely within JPRA and a few of the Service survival schools. That is why support was requested from Ft Huchuca (Sp?), DHS, SOF, and US Army MI.

Here are some points that I think are important to include in your report:

- JPRA provided <u>individual</u> DoD subject matter experts on captivity psychology/resistance. This was a team of DoD SMEs, not a JPRA PR support team. Their observations were based on individual experience and expert analysis - not official JPRA promulgated doctrine or TTP (JPRA only promulgates defensive resistance TTP). This point was stressed to the JFCOM J3, and Legal and later to the CDR, DCDR, and COS.

- Observations and TTP proffered during operations in Sep 03 were strictly IAW approved OSD/GC guidance.

- TTP was developed/proffered only for use against designated unlawful combatants (DUCs), not PWs. (also IAW OSD/GC)

The intent of this differentiation was to insure that supported the Joint Staff, and OSD understood that JPRA was NOT in the business of developing/working/assisting in "offensive" detainee operations. I think this was later emphasized by Adm G. during our meeting in Mar 04 where he directed the JFCOM staff to draft a position paper for SECDEF approval to change/temporarily amend the JPRA charter. To my knowledge that staff action never left the JFCOM staff.

Hope this helps.

R. Moulton

~~SECRET//X1, X3, X4~~

Joint Personnel Recovery Agency (JPRA) Weekly Report
4 Sep 03

PART ONE: (Information Above Secret/NOFORN): N/A

PART TWO: (~~Secret/NOFORN~~ or Lower Information):

1. (U) This Week:

a. (U) CC Comments: The Personnel Recovery Advisory Group will meet this afternoon, 4 Sep 03, at the Defense Intelligence Analysis Center, Bolling AFB. JPRA will present information briefings on the PR Modernization Strategy and the Core Captivity Curriculum to the audience of senior advisors, which will include Deputy Assistant Secretary of Defense for POW/Missing Personnel Affairs and USJFCOM Chief of Staff, Maj Gen Soligan.

b. U ~~(S)~~ CC Comments cont: 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 TTP development (offensive). Currently, subject matter expertise on captivity environments, psychology, and maintenance resides almost solely within JPRA (defensive).

c: U ~~(S)~~ Operations: A JPRA team is in Plovdiv, Bulgaria, supporting Exercise COOPERATIVE KEY, which continues through next week. The SOUTHCOM Personnel Recovery Support Team remains on a 24-hour recall standby to support Combatant Commander requirements should Colombian rebels release detained DoD personnel

d. (U) Transformation: JPRA J9 is meeting with United Kingdom Personnel Recovery program managers in London on interoperability of US and UK survival equipment and procedures.

2. (U) Next Week 8-12 Sep 03): JPRA is holding an internal Repatriation Working Group on 9-11 Sep 03 to review procedures used to debrief and return personnel to duty following isolation or detention events.

3. (U) Later this quarter (Sep - Dec 03): The Air Force Communications Agency, Scott AFB, IL, will visit the JPRA headquarters facility to conduct a formal Communications Security (COMSEC) command inspection of the JPRA COMSEC account on 23-25 Sep 03. JPRA is holding the second joint-Service Core Captivity Curriculum Working Group on 23-25 Sep 03 at Naval Air Station Brunswick, ME. Our Human Factors directorate will make a presentation to the US Army Aeromedical Psychology Course from 26 Sep to 10 Oct 03 at Fort Rucker, AL. A meeting with the curriculum director for the US Army Flight Surgeon basic course will be connected to this visit. Our J9 staff has a series of upcoming engagements including a presentation survival radios to the Military Radios Conference in San Diego CA on 15-16 Sep 03; the final meeting of the Personnel Recovery Modernization Working Group at JPRA on 18 Sep 03; a 19 Sep 03 briefing to the Joint Staff Combat Identification (CID) Action Team (CIDAT) on Personnel Recovery and Combat Identification interrelationships; and the fourth quarterly Personnel Recovery Technology and Interoperability Forum (PRTIF) on 30 Oct 03.

4. (U) Answers to USJFCOM Commander questions: None

Classified by: [redacted]
Derived From: [redacted]
Reason: [redacted]
Declassify on: ~~X1, X3, X4~~

~~SECRET//X1, X3, X4~~

TAB 7

-----Original Message-----
From: Donovan, Daniel G. CAPT/USN (USJFCOM J00L)
Sent: Friday, September 26, 2003 3:43 PM
To: Jagielski, John, GG-14, JPRA/DJ5
; Atkins, John, Col, Deputy Commander, JPRA; Haase, Morris, Lt Col,
JPRA/J3; Moulton, Randy, Col, Commander, JPRA; Wirts, Christopher,
GG-14, JPRA/J3
Subject: RE: HVT CONOP ~~(S/NF)~~ U

CLASSIFICATION: ~~SECRET NOFORN~~

Sirs- I have reviewed the draft HVT CONOP and have provided specific comments in the Word document attached below. Comments are in blue font, in line-in/line-out format with explanations following most recommended changes.

I also reviewed the draft 6 Mar 03 Working Group Report on Detainee Interrogations in the GWOT: Assessment of Legal, Historical, Policy, and Operational Considerations, which you provided as a possible reference to attach to the CONOP. However, please note that the Working Group Report is NOT authoritative DOD guidance. On 16 Apr 03, SECDEF issued a Memo to CDR, SOUTHCOM approving the use of certain specified counter-resistance techniques during interrogations of unlawful combatants held at GTMO- while SECDEF stated in this Memo that he had "considered" the Working Group Report, the guidance he actually issued to SOUTHCOM is more restrictive than what the Working Group recommended. A copy of that 16 Apr 03 SECDEF Memo to SOUTHCOM, along with two SOUTHCOM letters implementing SECDEF's guidance, are attached below. I would ask you to keep them close hold, since they pertain to a different combatant command. Please do not distribute them unless it is operationally necessary.

Here is one key point I'd like to emphasize as you consider my comments on the draft HVT CONOP: 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. Therefore, the legal status of each captured person within Iraq must be sorted out within the operational chain of command before any exploitation operations begin, because the legal status determination has real implications for what techniques may be utilized by interrogators. Unfortunately, other than the interrogation doctrine found in Army FM 34-52, I am not aware of any "one stop reference" that spells out counter-resistance technique guidance for use within CENTCOM- each case will have to be evaluated individually.

Way Ahead- if you concur with my recommended changes, I would be happy to forward a cleaned up version to Joint Staff legal and DOD General Counsel for their review/approval if you wish me to do so. However, I recommend that you provide the revised draft HVT CONOP to the operational unit(s) JPRA is supporting within the CENTCOM AOR, and suggest to them that they forward it to their higher headquarters in theater for review/approval. In my view, they will definitely want sign-in/legal reviews from their operational chain of command before executing the CONOP. Indeed, since SECDEF is requiring SOUTHCOM to provide him with advance notice of intent to use certain techniques against unlawful combatants detained at GTMO, this CONOP may well have to be cleared on at the CENTCOM/SOCOM level.

Hope this helps you. If you have any questions, please let me know. r/
CAPT Dan Donovan

TAB 8

>
>
DERIVED FROM: ~~Multiple Sources~~
DECLASSIFY ON: X1, X4

CLASSIFICATION W/O ATCH: UNCLASSIFIED
CAVEATS W/O ATCH: ~~FOUO~~
TERMS W/O ATCH: NONE

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: NONE

-----Original Message-----
From: Donovan, Daniel G. CAPT/USN (USJFCOM J00L)
Sent: Monday, September 29, 2003 2:50 PM
To: Wagner, Robert LTG (USJFCOM J01); Soligan, James Maj Gen/USAF (USJFCOM J02)
Cc: Bird, John RADM/USN (USJFCOM J3); Fengya, Darryl J. CAPT/USN (USJFCOM J2); Hollahan, David COL/USMC (USJFCOM J021); Okita, Mike COL/USA (USJFCOM J3A) U
Subject: FW: HVT CONOP ~~(S/NF)~~

CLASSIFICATION: ~~SECRET NOFORN~~

Sirs- I note from your schedules that both of you may visit JPRA this week. Therefore, I wanted you to be aware that this past Friday I provided JPRA some legal input on a proposed CONOP they apparently developed at the request of [redacted] for interrogation of "high value targets" (HVTs) captured in Iraq.

I am aware that DIA has previously approached JPRA to discuss "interrogation techniques" for possible use in interrogating terrorist enemy combatants detained during the GWOT. Since JPRA's expertise is training our US military personnel to resist interrogations, it makes a certain amount of sense to seek JPRA's advice regarding the interrogation techniques that have been successfully used against us by our enemies. Apparently [redacted] may have gone a bit further by asking JPRA to develop a CONOP for "more effective" interrogations [redacted] of HVTs captured in Iraq.

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 AOR, they need to be damn sure they're appropriate in both a legal and policy sense. JPRA got its list of techniques from a DOD General Counsel Working Group Report dated 6 Mar 03, so I'm sure they felt that their list might have already been "blessed" by Pentagon lawyers. However, during my review I discovered that the "techniques" SECDEF actually approved in Apr 03 for use by SOUTHCOM at GTMO were NOT the same as the ones recommended by that DOD General Counsel's Working Group- what SECDEF approved was far more restrictive. Accordingly, I have provided JPRA specific comments on their draft CONOP based on the guidance SECDEF actually issued to SOUTHCOM.

JPRA is now considering my comments, and indicated they will then forward me a revised CONOP for further review. Full credit to Col Randy Moulton and his team for getting this legal sanity check. Thought you would be aware of this- while it is beyond my expertise to know whether it is appropriate for JPRA to be doing this, I do understand the spirit of trying to assist those forward deployed in any way we can. Therefore, UNODIR I will keep trying to help JPRA finalize their CONOP for eventual transmission to [redacted]. V/r, Dan

TAB 9

J67

No Classification Marking in Message Body

[redacted]

From: Wirts Christopher GG-14 JPRA/PRA-DT
Sent: Friday, January 21, 2005 3:32 PM
To: Markland, Thomas Lt Col, Chief of Staff JPRA/CS
Cc: Huffstutter John Lt Col JPRA/PRA-CC
Subject: FW: ~~(S)~~ U USCC-JPRA Weekly Activity Report Sep 04-03

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: ~~NONE~~

Ron jogged my memory

Chris

-----Original Message-----
From: Moulton, Randy, Col, Commander, JPRA
Sent: Wednesday, September 03, 2003 6:53 AM
To: McNeal, Ron, GG14, JPRA CENTCOM INO
Cc: Wirts, Christopher, GG-14, JPRA/J3; Atkins, John, Col, Deputy Commander, JPRA; Huffstutter, John, Lt Col, JPRA/J2; Bracich, Mark, Col, JPRA/J7; Reichart, Tim, Lt Col, JPRA/PRA-CC
Subject: RE: ~~(S)~~ U USCC-JPRA Weekly Activity Report Sep 04-03

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: ~~NONE~~

Ron,

~~(S/NF)~~ U I've been in contact with [redacted] in Baghdad. He was the one who requested the PRST 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 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. 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 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/DHS/SOCOM) is not the issue, but rather that someone has to take the lead. Comments???

Colonel Randy Moulton
Commander, JPRA
[redacted]

"That others may live...
To return with honor"

-----Original Message-----
From: McNeal, GS-14 Ronald E. [redacted]
Sent: Wednesday, September 03, 2003 8:42 AM
To: John Col Deputy Commander JPRA Atkins (E-mail); JPRA Cheif of Staff (E-mail); Randy Col Commander JPRA Moulton (E-mail); Todd CMSgt JPRA/CCMS Nelson (E-mail)

No Classification Marking in Message Body

Cc: Plumer, David B., Marc, SOCOM; James Roberts (E-mail); John C Scroggins (Contractor) (E-mail); Rick Barnes (USEUCOM) (E-mail); XOOP Garrison (E-mail); Dave GS14 Pitts (E-mail); Jim Perna (E-mail); John Contractor JPRA/J3 Jagielski (E-mail 2); Kenneth Col Rollins (E-mail); Mark Lt Col JPRA/J7 Bracich (E-mail); Morris Lt Col JPRA/J3 Haase (E-mail); Richard GG-13 JPRA/J3 Driggers (E-mail); Scott Capt Brown (E-mail); Scott Fales (E-mail); Susan Saunders (E-mail); Thom GG-15 JPRA/J8 Beres (E-mail); Timothy. Reichart (E-mail); Tony 2 Lt JPRA/J7 Alexander (E-mail); William. Naumann (E-mail); Laskowsky Karl (E-mail); William GG-13 JPRA/J3 Krieg (E-mail); 'Miller, David -- CONTRACTOR--MR (H)!
Subject: ~~(S)~~ U USCC-JPRA Weekly Activity Report Sep 04-03

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NONE~~
TERMS:

Sir,

~~(S)~~ U Continuing assistance and preparation for the PRAG, 4 SEP 03. Also, I am preparing for support to the JPRA DV Briefings this month, the first being 8 SEP 03 at our HQs. Much of the USCC planning staff is preparing for deployment to the CFH in As Saliyah, Qatar. No decision yet on how long that deployment will be, but the focus remains the development of an Iraqi Campaign Plan.

<<JPRA-USCC Weekly Report Sep 04-03.doc>>
Regards,
Ron McNeal
USCC JPRA REPRESENTATIVE (CCJ3-PP)
[redacted]

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NONE~~
TERMS:

CLASSIFIED BY: [redacted]
REASON: [redacted]
DECLASSIFY ON: ~~X1,4~~

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: ~~NONE~~

CLASSIFIED BY: ~~Multiple Sources~~
REASON: [redacted]
DECLASSIFY ON: ~~X3~~

CLASSIFICATION: ~~SECRET~~
CAVEATS: ~~NOFORN~~
TERMS: NONE

No Classification Marking in Message Body

TAB 10

DEPARTMENT OF DEFENSE
COMMANDER
U.S. JOINT FORCES COMMAND
1562 MITSCHER AVENUE SUITE 200
NORFOLK, VA 23551-2488

IN REPLY REFER TO:

J02
29 Sep 04

MEMORANDUM FOR COMMANDER, JOINT PERSONNEL RECOVERY AGENCY

Subject: Joint Personnel Recovery Agency Mission Guidance

1. The Joint Personnel Recovery Agency (JPRA) is the DoD Office of Primary Responsibility for DoD-wide personnel recovery matters. JPRA provides Joint Personnel Recovery functional expertise and assistance throughout DoD and other government agencies on issues related to Combat Search and Rescue; Evasion and Recovery; Operational POW/MIA Matters and Code of Conduct Training. JPRA will conduct operations in accordance with its mission as stated in USJFCOMINST 3100.4.

2. JPRA's training mission is focused on ensuring the survivability of U.S. personnel in hostile environments or captivity. The Code of Conduct training, designed to develop uniform training programs in the areas of combat survival, evasion, resistance, and escape within the Services, is of particular importance given the current operational climate. Focus must remain on training personnel in these "defensive" techniques. Recent requests from OSD 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. These "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.

3. The use of resistance to interrogation knowledge for "offensive" purposes lies outside the roles and responsibilities of JPRA. Accordingly, any deviation in roles and responsibilities must be carefully scrutinized and vetted through proper legal and policy channels. JPRA personnel will not conduct any activities or make any recommendations on offensive interrogation techniques or 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.

JAMES N. SOLIGAN
Major General, U.S. Air Force
Chief of Staff

TAB 11

Robert Wagner - LTC, DCOL
10 February 2005

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

Subject: Investigation into Training Activities of the Joint Personnel Recovery Agency

1. The attached records show email discussions and other records relevant to activities of the Joint Personnel Recovery Agency (JPRA), including a memorandum dated 29 September 2004, signed by the Chief of Staff, U.S. Joint Forces Command (USJFCOM), to the Commander, JPRA. The question has been asked, "Why was this memo issued?" The attached email traffic provides useful information but is insufficient to answer the question, as it does not reflect verbal Command Group discussions leading to drafting the memorandum.

2. Quite simply, the memorandum was written as a proactive measure to provide clear guidance and to prevent use of JPRA outside the command's mission scope. The USJFCOM Command Group had learned that various personnel in the CENTCOM AOR and at the Joint Staff level, with incomplete understanding of JPRA's mission, were interested in JPRA's availability to assist/support in-theater interrogations. Relative to the expressed interest, the Command Group focused on the following points:

a. JPRA is primarily a school house, not an intelligence gathering activity. It focuses on training our own forces in evasion, survival, resistance and escape. Resistance training includes exposure to conditions our forces might expect to encounter.

b. JPRA does not have personnel assigned to be interrogators, and does not advocate interrogation measures to be executed by our force. Relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations -- not in how to conduct interrogations.

c. JRPA does assist in personnel repatriation.

3. The Command Group summarized the limits of JPRA's mission as training and defensive response to interrogation -- not offensive interrogation techniques or operations. Thus, the 29 September 2004 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 -- but rather, simply to ensure that JPRA activities remained within the scope of that Agency's mission charter. This was accomplished by specifically directing Commander, JPRA not to engage in any activities that could be considered as in support of interrogations of people captured and detained by U.S. or coalition forces during the conduct of operations. The memorandum was not viewed as a "change of mission," but rather it was intended to ensure continued operation within the assigned charter.

4. To summarize, the view of this Headquarters now, at the time, and during the preceding year, has and had been that requests from various sources for JPRA "interrogation support" were both inconsistent with the unit's charter and might create conditions which tasked JRPA to engage in offensive operational activities outside of

JPRA's defensive mission. Therefore, to the extent that requests for JPRA support might pull that Agency outside the scope of its training mission and into the actual conduct of offensive operations, such requests were viewed as inappropriate. While there was no harm in a request, the appropriate answer was, "No." To ensure and maintain the credibility of the JPRA training expertise within the scope of its mission, the Command Group wanted to make it clear that JPRA personnel should not attempt to apply any perceived individual or unit interrogation expertise – notwithstanding a certain level of external demand for that kind of "outside the scope activity."

5. I hope that this memorandum and the attached records provide you with information adequate to answer your questions. If you require further information, please contact my point of contact for this matter, Colonel Charles S. Shaw, the USJFCOM Inspector General.

TAB 12
2007-0406

DEPARTMENT OF DEFENSE
[redacted]
BAGHDAD AIR BASE, IRAQ

[redacted] 15 Jul 03

MEMORANDUM FOR ALL [redacted]

SUBJECT: Policy No. 1 – Battlefield Interrogation Team and Facility (BIT/F) Policy

1. (U) References.

a. (U) Geneva Convention Relative to the Treatment of Prisoners of War, 12 Aug 49.

b. (U) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 Aug 49.

c. (U) DoD Directive 2310.1, DoD Enemy POW Detainee Program, 18 Aug 94.

d. (U) AR 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, 1 Oct 97.

e. (U) DA Pam 27-1, Treaties Governing Land Warfare, 7 Dec 56.

f. (U) FM 27-10, The Law of Land Warfare, 18 Jul 56.

g. (U/FOUO) FM 34-52, Interrogation Intelligence, 8 May 87.

h. (U) CENTCOM Reg 27-13, Captured Persons, 7 Feb 95.

2. (U) Implementation.

a. (U) Applicability. This policy shall apply to all battlefield interrogations conducted by units or personnel under the operational or tactical control of [redacted] and its successor commands.

b. (U) Office of Primary Responsibility (OPR). [redacted] is the OPR for all battlefield interrogation teams and facilities subject to this policy. Within 10 days of the publication of the policy, [redacted] shall publish standard operating procedures to implement this policy in applicable areas of operation. All BIT/F interrogation TTPs must be approved by [redacted]. Annex A lists the approved TTPs.

c. (U) Training. All personnel assigned or tasked as interrogators, interpreters or guards shall receive training on this policy, the BIT/F SOP, and the laws of war and DoD regulations applicable to enemy prisoner of war (EPW) and detainee operations in the USCENTCOM AOR.

3. (U) Policy.

a. U ~~(S)~~ [redacted] units and personnel conduct battlefield interrogations to obtain tactical intelligence for mission accomplishment. Battlefield interrogation TTPs exploit capture shock syndrome experienced by most detainees during combat operations. For the purposes of this policy, "detainee" refers to "civilian internees" and "other detainees" (in Iraq) and "persons under control" elsewhere in the USCENTCOM AOR.

b. U ~~(S)~~ Use the minimum amount of force necessary in self-defense, defense of others (including other EPWs and detainees), to prevent escape or to protect mission-essential equipment IAW the approved BIT ROE (Annex B). No person will strike any EPW or detainee on any part of his body, except when authorized by the BIT ROE.

c. U ~~(S)~~ Enemy combatants and Iraqi regime or WMD leadership on approved black or gray lists, and designated high value targets (HVTs) elsewhere in the USCENTCOM AOR, are subject to detention at any time. Noncombatants who are believed to possess information important to, or are interfering with, mission accomplishment may be temporarily detained. EPWs and detainees who are not suspected of possessing information to answer [redacted] intelligence requirements will be repatriated, released or turned over to a theater collection point, detention facility or designated authority.

d. (S) [redacted]

e. U ~~(S)~~ EPWs and detainees must at all times be humanely treated. No EPW or detainee may be subjected to physical mutilation or to medical or scientific experimentation of any kind. However, [redacted] personnel will provide medical care in accordance with the laws of war and DoD regulations. EPWs and detainees must be protected against all acts of violence, public intimidation, public insults and public curiosity. Reprisals against EPWs or detainees and group punishment are prohibited. EPWs that refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind. EPWs and detainees shall be permitted to sleep for at least four hours in every 24 hour period

f. (~~S~~ U) [redacted] forces will take all possible sanitary measures to ensure the cleanliness and healthfulness of the BIT/F, taking into account local conditions. EPWs and detainees shall have for their use, day and night, lavatories which are maintained according to the sanitary conditions of the camp. All EPWs and detainees will receive a medical screening (within the capturing unit's capabilities) for injuries, illness and disease within 4 hours after intake at the BIT/F, or within 12 hours after detention by [redacted] forces, whichever is sooner. EPWs and detainees may not be prohibited from presenting themselves to medical authorities for examination. [redacted] medical personnel will inspect the BIT/F and all detainees daily and perform further medical examinations or treatment on individual EPWs and detainees as medically required. Medical personnel and guards will document the intake medical screening and all significant medical treatment for each EPW and detainee.

g. (U) Daily food rations shall be sufficient in type, quantity, quality, and variety to keep EPWs and detainees in a good state of health and prevent weight loss or the development of nutritional deficiencies. Water will be readily available for EPW and detainee consumption and will not be withheld. All EPWs and detainees will be provided not less than one full ration of HDR for consumption during each 24-hour period.

h. (S) [redacted]

4. (U) Review. The OPR will review this policy every six months. The next mandatory review of this policy is on 15 Jan 04.

[redacted]

ANNEX B TO [redacted] POLICY NO. 2

[redacted] BIT RULES OF ENGAGEMENT

1. [redacted] personnel have the inherent authority and obligation to use all necessary means available and to take all appropriate action in self-defense of themselves, their unit, other US and coalition forces, and EPWs and detainees in their custody or control.

2. Use the least amount of force necessary to prevent escape. Lethal force is authorized if there is no other effective means to prevent escape. Use verbal commands ("HALT!"- *Arabic: "AWGUF!"* or *"QIF!;"* "SIT!" – *Arabic: "IJLIS!;"* "SHUT-UP!" – *Arabic: "ISCOT!"*) whenever possible before resorting to the use of lethal force.

3. Lethal force is authorized to protect mission-essential property listed below:

a. Weapons, ammunition, ordnance and signaling pyrotechnics;
b. Controlled cryptographic items (CCI);
c. Electronic devices (laptops, toughbooks, camera/video equipment, etc.) Containing classified data;
d. Night vision devices (NVDs), laser and electro-optical devices;
e. Classified documents or media;
f. GPS or navigation equipment (black boxes) containing sensitive information, whether for air or ground navigation;
g. Sensitive aircraft mission equipment, including aircraft and fuel sources;
h. Radios and radio equipment;
i. Blood chits and essential evasion and recovery equipment;
j. Fire support equipment (SOFLAM, MK VII, etc.);
k. Controlled drugs (morphine, Dexedrine, NAAK injectors);
l. Covert collection devices (e.g., [redacted] DSOT equipment);
m. Specially-trained unit bomb/working dogs;
n. Enemy CBRN weapons, munitions and delivery systems
o. CBRN detection, testing, alarm, and decontamination equipment;
p. Vehicles, including rover, containing any of the items listed above; and,
q. Any other items critical to the execution of a designated mission.

ANNEX A TO [redacted] POLICY NO. 1

[redacted] BIT INTERROGATION TTPS (S/REL UK)

Interrogation TTP	Description	FM 35-42 Reference (if any)
Direct approach	Using rewards, privileges during direct questioning.	App. H, Direct Approach, Incentive Approach
Yelling, Loud Music, Light Control	Create fear, disorient source and prolong capture shock. Volume controlled to prevent injury.	App. H, Increased Fear Up Approach (Harsh); Chap. 3, Interrogation Process, manipulation of environment to establish and maintain control.
Deception	Use of falsified documents, reports	App. H, "Establish Your Identity" Approach, File and Dossier Approach.

[redacted]

[Whereupon, at 11:20 a.m., the committee adjourned.]

○