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

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**R E P O R T**

OF THE

**COMMITTEE ON ARMED SERVICES  
UNITED STATES SENATE**

**NOVEMBER 20, 2008**

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**Note on Source Material Used in the Preparation of the Report**

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

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

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

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**List of Acronyms (U)**

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

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

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

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**Executive Summary**

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

*-- General David Petraeus*

*May 10, 2007*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Department of Justice Redefines Torture (U)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Secretary of Defense Rumsfeld Approves Aggressive Techniques (U)**

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

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

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

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

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

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**SERE Techniques at GTMO (U)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Aggressive Techniques Authorized in Afghanistan and Iraq (U)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Senate Armed Services Committee Conclusions**

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

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

**Conclusions on SERE Training Techniques and Interrogations**

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

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

**Conclusions on Senior Official Consideration of SERE Techniques for Interrogations**

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

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

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

### Conclusions on JPRA Offensive Activities

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

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

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

### Conclusions on GTMO's Request for Aggressive Techniques

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

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

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

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

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

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

**Conclusions on Interrogations in Iraq and Afghanistan**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[REDACTED]

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

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

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

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

<sup>7</sup> *Ibid.*

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

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

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

<sup>11</sup> Memo from President George W. Bush, *Humane Treatment of al Qaeda and Taliban Detainees* (February 7, 2002).

[REDACTED]

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.”<sup>12</sup>

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

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

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

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

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<sup>12</sup> Memo from President George W. Bush, *Humane Treatment of al Qaeda and Taliban Detainees* (February 7, 2002).

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

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Counter Resistance Strategy Meeting Minutes* (undated) at 4, attached to email from Blaine Thomas to Sam McCahon, [REDACTED] and Mark Fallon (October 24, 2002) (hereinafter “*Counter Resistance Strategy Meeting Minutes*”).

<sup>17</sup> Committee staff interview of Daniel Donovan (November 28, 2007).

[REDACTED]

Joint Personnel Recovery Agency (JPRA), headquartered at Fort Belvoir, Virginia, for information about detainee "exploitation."<sup>18</sup>

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

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

<sup>18</sup> "Exploitation" is a term that JPRA uses to describe the means by which captors use prisoners for their own tactical or strategic needs. Interrogation is only one part of the exploitation process. Other examples of exploitation

[REDACTED] Hearing to Receive Information Relating To The Treatment of Detainees, Senate Committee on Armed Services, 110<sup>th</sup> Cong. (August 3, 2007) (Testimony of Terrence Russell) at 32 (hereinafter "Testimony of Terrence Russell (August 3, 2007)"); Fax cover sheet from Lt Col Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

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

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

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

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

[REDACTED]

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

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

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

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

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

<sup>22</sup> The Origins of Aggressive Interrogation Techniques: Part I of the Committee's Inquiry Into the Treatment of Detainees in U.S. Custody, Senate Committee on Armed Services, 110<sup>th</sup> Cong. (June 17, 2008) (hereinafter "SASC Hearing (June 17, 2008)"); FASO Detachment Brunswick Instruction 3305.C (January 1, 1998).

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

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

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

[REDACTED]

safeguards, injuries and accidents do happen. The risk with real detainees is increased exponentially.<sup>27</sup>

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

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

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

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

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

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

<sup>27</sup> Email from LTC Morgan Banks to MAJ Paul Burney and [REDACTED] (October 2, 2002).

<sup>28</sup> Fax cover sheet from LTC Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

<sup>29</sup> *Exploitation Process at 1*, attached to fax from LTC Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

<sup>30</sup> [REDACTED] *Exploitation Process at 1-3*

<sup>31</sup> *Ibid.* at 3-4.

<sup>32</sup> *Ibid.* at 4.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

[REDACTED]



[REDACTED]

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

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

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

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

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

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

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

<sup>36</sup> Email from Bruce Jessen to Col Randy Moulton (February 12, 2002).

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

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.; Memo from Col Mary Moffitt (via BG Ronald Burgess) to BGen Thomas Moore (undated) at 1.

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

<sup>41</sup> Email from BGen Thomas Moore to BG Galen Jackman et al. (February 14, 2002).

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

[REDACTED]

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

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

[REDACTED] The request memo stated that [REDACTED]

[REDACTED] In response to the request, two JPRA personnel – senior SERE psychologist Bruce Jessen and JPRA instructor Joseph Witsch – [REDACTED]

[REDACTED] The two week class was described as an “ad hoc ‘crash’ course on interrogation” for the “next crew (rotation) going to SOUTHCOM.”<sup>46</sup> The JPRA team also participated in a separate video teleconference with [REDACTED] leadership and GTMO interrogation staff where issues [REDACTED] were discussed.<sup>47</sup> Dr. Jessen said that he and Mr. Witsch went to make a “pitch” to [REDACTED] about how JPRA could assist.<sup>48</sup>

[REDACTED] Mr. Witsch stated that he worked with Dr. Jessen to develop a set of briefing slides for the [REDACTED] training.<sup>49</sup> The Department of Defense provided the Committee with slide presentations that appeared to have been produced by JPRA for the March 8, 2002 training. Mr. Witsch testified that two slide presentations (1) [REDACTED]

[REDACTED] Based on Recently Obtained Al Qaeda Documents” and (2) “Exploitation” – appeared to be the same as those used by JPRA in the March 8, 2002 training.<sup>50</sup> Dr. Jessen told the Committee that he did not recognize the slides as those that he presented [REDACTED] but that the vast majority of the slides were consistent with what he would have taught at the training session.<sup>51</sup>

[REDACTED] The “Al Qaeda Resistance Contingency Training” presentation described methods used by al Qaeda to resist interrogation and exploitation and [REDACTED]

<sup>43</sup> Memo from Col Mary Moffitt (via BG Ronald Burgess) to BGen Thomas Moore (undated).

<sup>44</sup> Ibid.

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

<sup>46</sup> Email from Jim Perna to Christopher Wirts, Bruce Jessen, and Joseph Witsch (February 20, 2002).

<sup>47</sup> Email from Bruce Jessen to Col Randy Moulton (March 12, 2002).

<sup>48</sup> Committee staff interview of Bruce Jessen (November 13, 2007).

<sup>49</sup> Hearing to Receive Information Relating To The Treatment of Detainees, Senate Committee on Armed Services, 110<sup>th</sup> Cong. (September 4, 2007) (Testimony of Joseph Witsch) at 20 (hereinafter “Testimony of Joseph Witsch (September 4, 2007)”).

<sup>50</sup> Testimony of Joseph Witsch (September 4, 2007) at 20.

<sup>51</sup> Committee staff interview of Bruce Jessen (November 13, 2007).

[REDACTED]

The presentation also described countermeasures to defeat al Qaeda resistance, including [REDACTED]

[REDACTED] <sup>53</sup> Mr. Witsch testified to the Committee that the countermeasures identified in the slides were “just an interpretation of what we were doing at the time and what we constantly did when we trained SERE students.”<sup>54</sup>

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

[REDACTED] The [REDACTED] instructor guide describes “isolation” as “a main building block of the exploitation process” and says that it “allows the captor total control over personal inputs to the captive.”<sup>57</sup> With respect to degradation, the guide contains examples of the methods used by SERE instructors to take away the “personal dignity” of students at SERE school.<sup>58</sup> Examples of degradation techniques used at SERE school include [REDACTED]

Mr. Witsch, the JPRA instructor who led the March 8, 2002 training, told the Committee that stripping could also be considered a degradation tactic.<sup>60</sup>

[REDACTED] Mr. Witsch could not recall what the JPRA team discussed as part of the instruction to [REDACTED] relating to degradation.<sup>61</sup>

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

<sup>53</sup> Ibid.

<sup>54</sup> Testimony of Joseph Witsch (September 4, 2007) at 46.

<sup>55</sup> Joint Personnel Recovery Agency, *Exploitation* (undated).

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

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

<sup>58</sup> Ibid. at para 5.3.3.

<sup>59</sup> Ibid.

<sup>60</sup> Testimony of Joseph Witsch (September 4, 2007) at 22.

<sup>61</sup> Ibid.

[REDACTED]

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

[REDACTED] Mr. Witsch could not recall the discussion of "sensory deprivation" at the [REDACTED] training.<sup>65</sup>

(U) When used in the context of simulated interrogations conducted at SERE school, JPRAs uses the term "physiological pressures" synonymously with approved physical pressures.<sup>66</sup>

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

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

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<sup>62</sup> *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees.*

<sup>63</sup> Testimony of Joseph Witsch (September 4, 2007) at 23-24.

<sup>64</sup> *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees, See Section II D, infra.*

<sup>65</sup> Testimony of Joseph Witsch (September 4, 2007) at 22.

<sup>66</sup> Committee staff interview of Bruce Jessen (July 11, 2002).

<sup>67</sup> Testimony of Joseph Witsch (September 4, 2007).

<sup>68</sup> *Ibid.* at 44.

<sup>69</sup> *Ibid.* at 25.

<sup>70</sup> Committee staff interview of Bruce Jessen (July 11, 2002).

<sup>71</sup> Email from Bruce Jessen to Col Randy Moulton (March 12, 2002).

<sup>72</sup> *Ibid.*

[REDACTED]

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

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

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

*E. JPRA Recommendations for GTMO (U)*

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

[REDACTED] [REDACTED] The JPRA memo contained specific recommendations for GTMO, including that GTMO “enforce the strictest ‘base line’ prison behavior policy possible within [Rules of Engagement]” by imposing and enforcing punishment consequences more restrictive than base line rules, and [REDACTED].<sup>80</sup> JPRA also recommended that GTMO tailor punishment to maximize cultural undesirability and tailor rewards to maximize cultural desirability.

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

<sup>74</sup> Email from Bruce Jessen to Col Randy Moulton et al. (March 18, 2002).

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

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

<sup>78</sup> Email from Bruce Jessen to Joseph Witsch (March 13, 2002). Committee staff interview of Bruce Jessen (November 13, 2007).

<sup>79</sup> Memo for Col Cooney, *Prisoner Handling Recommendations* (February 28, 2002).

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

[REDACTED]

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

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

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

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

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

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

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

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

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

<sup>84</sup> COL Herrington, *Report of Visit and Recommendations* at 1-2.

<sup>85</sup> *Ibid.* at 2.

<sup>86</sup> *Ibid.* at 3.

[REDACTED]

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

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

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

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

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

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

[REDACTED]

<sup>87</sup> Ibid. at 4.

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

<sup>89</sup> Ibid. at 6.

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

<sup>91</sup> COL Mike Fox, *JTF-170 Methods and Techniques Info Paper* (April 22, 2002).

[REDACTED]

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

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

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

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

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

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Email from Dr. Bruce Jessen to Christopher Wirts, Mike Dozier and Randy Moulton (April 16, 2002).

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

<sup>96</sup> Ibid.

[REDACTED]

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

[REDACTED]



[REDACTED]

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

[REDACTED] The third option was described as follows:

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

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

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

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

[REDACTED]

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

[REDACTED]

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

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

<sup>104</sup> JPRA, *Exploitation Draft Plan* (emphasis added).

[REDACTED]

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

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

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

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

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

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

<sup>106</sup> Committee staff interview of Bruce Jessen (July 11, 2007).

<sup>107</sup> Committee staff interview of Bruce Jessen (November 13, 2007).

<sup>108</sup> Email from Col Randy Moulton to Bruce Jessen, Christopher Wirts, Mike Dozier (April 17, 2002).

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

<sup>110</sup> George Tenet, *At The Center Of The Storm* (New York: Harper Collins Publishers 2007) at 241.

<sup>111</sup> Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>112</sup> John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[REDACTED]

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

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

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

[REDACTED]

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

<sup>114</sup> Ibid.

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

<sup>116</sup> Current and Projected National Security Threats, Senate Select Committee on Intelligence, 110<sup>th</sup> Cong. (February 5, 2008).

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

<sup>118</sup> Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>119</sup> John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

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

<sup>121</sup> Committee staff interview of James Mitchell (July 10, 2007); Letter to Senator Carl Levin (June 22, 2007).

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

<sup>122</sup> Committee staff interview of FBI Special Agent (December 21, 2007).

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> DoJ IG Report at 68.

<sup>126</sup> Committee staff interview of James Mitchell (July 10, 2007); Committee staff interview of FBI Special Agent (December 21, 2007).

<sup>127</sup> Committee staff interview of FBI Special Agent (December 21, 2007).

<sup>128</sup> Ibid.

<sup>129</sup> [REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

(U) According to the DoJ Inspector General’s report, FBI Counterterrorism Assistant Director Pat D’Amuro gave the instruction to both FBI agents to “come home and not participate in the CIA interrogation.” The first FBI Special Agent left immediately, but the other FBI agent remained until early June 2002.<sup>132</sup> The report said that around the time of Zubaydah’s interrogation, FBI Director Robert Mueller decided that FBI agents would not participate in interrogations involving techniques the FBI did not normally use in the United States, even though the OLC had determined such techniques were legal.<sup>134</sup> Then-National Security Advisor Condoleezza Rice said that she had a “general recollection that FBI had decided not to participate in the CIA interrogations” but “was not aware that FBI personnel objected to interrogation techniques used or proposed for use with Abu Zubaydah.”<sup>135</sup>

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

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

<sup>130</sup> U.S. Department of Justice, Office of the Inspector General, *A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq* (May 2008) at 68 (hereinafter “DoJ IG Report”).

<sup>131</sup> *Ibid.* at 69.

<sup>132</sup> Committee staff interview of FBI Special Agent (December 21, 2007).

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

<sup>134</sup> DoJ IG Report at 73.

<sup>135</sup> Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

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

[REDACTED]

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

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

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

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

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

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

<sup>138</sup> Ibid.

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

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

<sup>141</sup> [REDACTED] *Request for JPRA Personnel for Training* (June 17, 2002).

<sup>142</sup> [REDACTED] Fax cover sheet from [REDACTED] to Christopher Wirts (via Colin Jenkins) (June 18, 2002).

<sup>143</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 40.

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

<sup>145</sup> [REDACTED] *Request for JPRA Personnel for Training* (June 17, 2002).

[REDACTED]

Because of the urgent need to extract information from captured al Qaeda operatives, and because JPRA has the sole repository of the required skill set, JPRA personnel should provide this expertise and training to [REDACTED]

To prevent compromise and inadvertent modification of JPRA's charter, personnel will avoid linking JPRA directly to this training.

... Having the true exploitation and captivity environment experts and specialists, JPRA may be called upon in extremis to actually participate in future exploitation of foreign prisoners; this request would clearly fall outside JPRA's chartered responsibilities; if this request is made, JPRA would require a SecDef policy determination . . .<sup>146</sup>

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

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

[REDACTED] The two day training took place at [REDACTED] headquarters on July 1-2, 2002.<sup>151</sup> According to a July 16, 2002 after action memo prepared for Col Moulton, the training covered [REDACTED]

[REDACTED]<sup>152</sup> Time was also set aside for [REDACTED] who had recently been conducting interrogations in Afghanistan to discuss their experiences. Other time was spent covering the physical and psychological pressures used at SERE school. Dr. Gary

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

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

<sup>148</sup> [REDACTED] Joint Staff Action Processing Form, *(U) JPRA Personnel for Training* (June 27, 2002).

<sup>149</sup> Testimony of Joseph Witsch (September 4, 2007) at 63-64, 69.

<sup>150</sup> Ibid. at 64-69.

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

<sup>152</sup> Ibid.

[REDACTED]

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

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

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

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

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

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

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

<sup>153</sup> Committee staff interview of Gary Percival (July 25, 2007).

<sup>154</sup> Testimony of Joseph Witsch (September 4, 2007) at 69.

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

<sup>156</sup> Testimony of Joseph Witsch (September 4, 2007) at 69.

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

<sup>158</sup> Ibid.

<sup>159</sup> Ibid. (emphasis in original).

<sup>160</sup> Testimony of Joseph Witsch (September 4, 2007) at 75.



[REDACTED]

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

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

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

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

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

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

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

<sup>161</sup> *Counter Resistance Strategy Meeting Minutes at 4.*

<sup>162</sup> [REDACTED] Memo from Joseph Witsch to Col Randy Moulton and Christopher Wirtz, *Exploitation Training for* [REDACTED] (July 16, 2002).

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> Committee staff interview of Bruce Jessen (July 11, 2007).

[REDACTED]

this assignment, Dr. Jessen retired from the Department of Defense and began working as an independent contractor to [REDACTED].<sup>168</sup>

[REDACTED]

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

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

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

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

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<sup>168</sup> Ibid.

<sup>169</sup> Ibid.; Letter to Chairman Levin (June 22, 2007).

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

<sup>171</sup> Committee staff interview of Bruce Jessen (November 13, 2007).

<sup>172</sup> Committee staff interview of James Mitchell (July 10, 2007); Committee staff interview of Bruce Jessen (July 11, 2007).

<sup>173</sup> Committee staff interview of James Mitchell (July 10, 2007); Committee staff interview of Christopher Wirts (January 4, 2008).

<sup>174</sup> Email from Lt Col Dan Baumgartner to Col Randy Moulton et al. (July 25, 2002).

[REDACTED]

[REDACTED]

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

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

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

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

(U) JPRA attached several lesson plans on exploitation and interrogation to the memo.<sup>182</sup> In closing, the memo stated:

<sup>175</sup> DoD IG, Interview of Richard Shiffrin (July 24, 2006) at 6.

<sup>176</sup> Committee staff interview of Richard Shiffrin (May 22, 2007).

<sup>177</sup> SASC Hearing (June 17, 2008).

<sup>178</sup> Ibid.

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

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

<sup>181</sup> Ibid. at 1.

<sup>182</sup> Ibid. at 2-3.

[REDACTED]

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.<sup>183</sup>

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

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

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

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

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

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

<sup>185</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 51, 59.

<sup>186</sup> SASC Hearing (June 17, 2008).

<sup>187</sup> Ibid.

<sup>188</sup> Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

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

[REDACTED]

[REDACTED]

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

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

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

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

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

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<sup>190</sup> Ibid.

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

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

<sup>193</sup> Ibid.

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

[REDACTED]

conditioning, sensory deprivation, sensory overload, disruption of sleep and biorhythms, and manipulation of diet.<sup>195</sup>

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

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

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

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

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

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<sup>195</sup> *Physical Pressures Used In Resistance Training and Against American Prisoners and Detainees.*

<sup>196</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 87.

<sup>197</sup> *Ibid.* at 88.

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

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

[REDACTED]

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

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

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

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

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

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<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

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

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

<sup>209</sup> SASC Hearing (June 17, 2008).

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

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

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

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

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

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<sup>213</sup> *Psychological Effects of Resistance Training*

<sup>214</sup> *Psychological Effects of Resistance Training* at 1.

<sup>215</sup> *Ibid.*

<sup>216</sup> Committee staff interview of Jerald Ogrisseg (June 26, 2007).

<sup>217</sup> SASC Hearing (June 17, 2008); *Psychological Effects of Resistance Training* at 2.

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

<sup>219</sup> Committee staff interview of Jerald Ogrisseg (June 26, 2007).



[REDACTED]

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

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

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

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

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

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

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

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

<sup>221</sup> Committee staff interview of Jerald Ogrisseg (June 26, 2007).

<sup>222</sup> SASC Hearing (June 17, 2008).

<sup>223</sup> Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

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

[REDACTED]

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

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

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

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

<sup>225</sup> Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

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

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> 18 U.S.C. § 2340(1) (2008).

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

[REDACTED]

[REDACTED]

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

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

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

[REDACTED]

<sup>237</sup> John Bellinger, the NSC Legal Advisor, said

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

<sup>232</sup> The Second Bybee memo has been withheld from the Committee.

<sup>233</sup> Sixth Decl. of Marilyn A. Dom, ¶ 56, *American Civil Liberties Union, et al. v. Department of Defense, et al.*, No. 04-Civ. 4151 (January 5, 2007).

<sup>234</sup> Sixth Decl. of Marilyn A. Dom, ¶ 62, *American Civil Liberties Union, et al. v. Department of Defense, et al.*, No. 04-Civ. 4151 (January 5, 2007).

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

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

<sup>237</sup> DoJ IG Report.

[REDACTED]

that he "expressed concern that the proposed CIA interrogation techniques comply with applicable U.S. law, including our international obligations."<sup>238</sup>

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

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

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

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

<sup>238</sup> John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>239</sup> The remainder of the Second Bybee memo has not been released publicly.

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

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

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

<sup>243</sup> Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

<sup>244</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 88.

[REDACTED]

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

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

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

F. JPRAs Special Program In Support of [REDACTED] (U)

1. August 2002 Training Proposal (U)

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

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

<sup>246</sup> John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>247</sup> Jay Bybee answers to July 31, 2008 written questions from Senator Carl Levin (October 14, 2008).

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

<sup>249</sup> Jay Bybee answers to July 31, 2008 written questions from Senator Carl Levin (October 14, 2008).

<sup>250</sup> John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>251</sup> Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>252</sup> Ibid.

[REDACTED]

request for additional JPRA training support.<sup>253</sup> [REDACTED]

<sup>254</sup> The draft requirement continued:

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

[REDACTED] draft described four areas of "training [sought] from JPRA:"  
(1) "Academic Training," including "legal perspectives," [REDACTED] (2)

"Resistance Training," including academic lessons in interrogation and resistance to interrogation techniques, such as psychological or physiological pressures; (3) "Practice Interrogations/Resistance to [I]nterrogations/[F]eedback," including practice on "[p]hysical pressures techniques and training"; and (4) "Review and Training of Resistance Training Operating Instructions."<sup>256</sup>

[REDACTED]

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

<sup>254</sup> *Ibid.* (emphasis added).

<sup>255</sup> *Ibid.*

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

<sup>257</sup> [REDACTED] to JPRA, *Request for Training Support* (August 12, 2002).

<sup>258</sup> *Ibid.*

<sup>259</sup> *Ibid.*

<sup>260</sup> *Ibid.*

<sup>261</sup> *Ibid.*

<sup>262</sup> *Ibid.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

[REDACTED]

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

<sup>263</sup> Ibid.

<sup>264</sup> Ibid. (emphasis in original).

<sup>265</sup> Ibid.

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

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Memo from JPRA OSO, [REDACTED] Concept of Operations for JPRA support to anticipated [REDACTED] requirements (October 3, 2002).

[REDACTED]

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

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

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

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

[REDACTED]

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

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

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

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

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

<sup>271</sup> Ibid.

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

<sup>273</sup> Ibid.



[REDACTED]

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

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

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

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

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

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

<sup>274</sup> Committee staff interview of MAJ Paul Burney (August 21, 2007); Committee staff interview of [REDACTED] (September 12, 2007).

<sup>275</sup> Written statement of MAJ Paul Burney (August 21, 2007).

<sup>276</sup> Committee staff interview of MG Michael Dunlavey (November 30, 2007).

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

<sup>278</sup> Written statement of MAJ Paul Burney (August 21, 2007).

<sup>279</sup> Committee staff interview of [REDACTED] (September 12, 2007).

[REDACTED]

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

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

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

<sup>280</sup> Committee staff interview of LTC Morgan Banks (July 2, 2007).

<sup>281</sup> Ibid.

<sup>282</sup> Email from LTC Morgan Banks to MAJ Paul Burney (July 15, 2002).

<sup>283</sup> Committee staff interview of [REDACTED] (September 12, 2007); Committee staff interview of MAJ Paul Burney (August 21, 2007).

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

<sup>285</sup> SASC Hearing (June 17, 2008).

<sup>286</sup> Written statement of MAJ Paul Burney (August 21, 2007) at 4.

<sup>287</sup> Committee staff interview of [REDACTED] (September 12, 2007); Committee staff interview of MAJ Paul Burney (August 21, 2007).

<sup>288</sup> Committee staff interview of Christopher Wirts (January 4, 2008).

<sup>289</sup> Committee staff interview of LTC Morgan Banks (July 2, 2007).

[REDACTED]

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

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

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

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

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

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

<sup>291</sup> Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 6.

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

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

<sup>294</sup> Committee staff interview of David Becker (September 17, 2007).

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

<sup>296</sup> Committee staff interview of MG Michael Dunlavey (November 30, 2007).

<sup>297</sup> Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

[REDACTED]

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

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

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

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

[REDACTED]

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

[REDACTED]

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

<sup>298</sup> Ibid.

<sup>299</sup> Committee staff interview of MG Michael Dunlavey (November 30, 2007).

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

<sup>301</sup> Custer's team included subject matter experts from Fort Huachuca, the Joint Staff, and Office of the Secretary of Defense.

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

<sup>303</sup> Ibid. at 11.

<sup>304</sup> Ibid. at 12.

<sup>305</sup> Ibid. 11-12.

[REDACTED]

[REDACTED]

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

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

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

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

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

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

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

<sup>306</sup> Ibid. at 2.

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

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

<sup>309</sup> Responses of Mark Fallon to questionnaire of Senator Carl Levin (November 15, 2006).

<sup>310</sup> Ibid.

<sup>311</sup> Committee staff interview of MG Michael Dunlavey (November 30, 2007).

<sup>312</sup> Committee staff interview of MG Geoffrey Miller (December 5, 2007).

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

[REDACTED]

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

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

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

[REDACTED] According to a JPRA plan of instruction dated August 28, 2002, the first day of training included instruction on the stages of [REDACTED]. The next three days of training in the plan of instruction included a range of topics, including [REDACTED].<sup>319</sup>

[REDACTED] JPRA developed a number of presentations to support the training including one called [REDACTED].

[REDACTED] A slide from that presentation stated that "the exploitation process is fairly simple but needs to be adhered to [to] be successful if the goal is to increase the likelihood of obtaining useful intelligence information from enemy prisoners. . . ."<sup>320</sup> The presentation listed a number of "Critical Operational Exploitation Principles," including [REDACTED].

[REDACTED]<sup>321</sup> The "Principles" listed in the Fort Bragg training presentation

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

<sup>314</sup> JPRA to USCINCSOC, *Request JPRA Support*, DTG: 052135ZSEP02 (September 5, 2002).

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

<sup>316</sup> Testimony of Terrence Russell (August 3, 2007) at 79.

<sup>317</sup> Email from Christopher Wirts to JPRA Staff (August 8, 2002).

<sup>318</sup> Testimony of Joseph Witsch (September 4, 2007) at 14; Testimony of Terrence Russell (August 3, 2007) at 25.

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

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

<sup>321</sup> *Ibid.* at 4.

[REDACTED]

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

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

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

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

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

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

<sup>322</sup> Compare JPRA, *Exploitation of Captive* with JPRA, *Exploitation Draft Plan*.

<sup>323</sup> JPRA, *Exploitation of Captive*.

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

<sup>325</sup> JPRA, *Exploitation of Captive*.

<sup>326</sup> Testimony of Joseph Witsch (September 6, 2007) at 16.

<sup>327</sup> JPRA, *Exploitation of Captive*.

<sup>328</sup> Testimony of Joseph Witsch (September 6, 2007) at 18.

<sup>329</sup> *Ibid.* at 25.

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

[REDACTED]

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

[REDACTED] The presentation on countermeasures to defeat al Qaeda resistance also explained that “[i]f the prisoner believes that Americans are immoral barbarians and what he sees counters those beliefs then his core beliefs have been shaken and he is more likely to cooperate. . . . If his core beliefs are reinforced by his treatment he is more likely to stick to his resistance.”<sup>333</sup> Mr. Witsch told the Committee that it was “hard to say” what the effect of [REDACTED]

[REDACTED] would have on a detainee’s resistance – whether it would make the detainee more or less likely to cooperate.<sup>334</sup>

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

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

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

<sup>331</sup> Testimony of Joseph Witsch (September 6, 2007) at 26.

<sup>332</sup> Ibid. at 27.

<sup>333</sup> JPRA, *Counter Measures to Defeat al-Qa'ida Resistance*.

<sup>334</sup> Testimony of Joseph Witsch (September 6, 2007) at 30.

<sup>335</sup> Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 14.

<sup>336</sup> Committee staff interview of GTMO Interrogator (November 6, 2007).

<sup>337</sup> Testimony of Joseph Witsch (September 4, 2007) at 92.

<sup>338</sup> Committee staff interview of MAJ Paul Burney (August 21, 2007).

<sup>339</sup> Committee staff interview of [REDACTED] (September 12, 2007).

<sup>340</sup> Committee staff interview of GTMO Interrogator (November 6, 2007).

<sup>341</sup> Ibid.



[REDACTED]

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

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

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

[REDACTED] During the Fort Bragg training, the GTMO personnel also discussed conditions at GTMO that they felt were hampering intelligence collection efforts. In his after action report summarizing the training, JPRA instructor and training Team Chief Joseph Witsch described some of those conditions, stating for example that [REDACTED]

[REDACTED]<sup>346</sup> Mr. Witsch also stated in his after action report that "[a] lot of interrogation techniques used in the past are no longer effective against the individual detainees because they have developed an awareness and countermeasures to deal with them."<sup>347</sup> Mr. Witsch added that some of the interrogators had become "frustrated over the controls placed on their ability to extract actionable information," such as restrictions on bringing detainees together in a room to confront inconsistencies or on interrogating detainees for "12-15-20 hours at a time."<sup>348</sup> While Mr. Witsch noted that rapport building had proved to be the most effective interrogation technique in eliciting information and that the positive treatment of detainees at GTMO was

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

<sup>343</sup> Committee staff interview of LTC Morgan Banks (June 15, 2007).

<sup>344</sup> Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 8.

<sup>345</sup> Written statement of MAJ Paul Burney (August 21, 2007).

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

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

[REDACTED]

having some effect, he stated that the positive effect appeared limited to the "younger, inexperienced" detainees.<sup>349</sup>

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

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

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

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

[REDACTED] Mr. Witsch continued:

I believe the techniques and tactics that we use in training have applicability. What I am wrestling with is the implications of using these tactics as it relates to current legal constraints, the totally different motivations of the detainees, and the lack of direction of senior leadership within the [U.S. Government] on how to uniformly treat detainees.

I think we are well within our sphere of influence if we stick to providing methods to counter resistance trained [Designated Unlawful Combatants]. We are out of our sphere when we begin to profess the proper ways to exploit these detainees. We are now attempting to educate lower level personnel in DoD and OGAs with concepts and principles that are somewhat foreign to them and while it all sounds good they are not in a position nor do they have the depth of knowledge in these matters to effect change and do it in reasonable safety.

The handling of [Designated Unlawful Combatants] is a screwed up mess and everyone is scrambling to unscrew the mess... If we want a more profound role in this effort we need to sell our capabilities to the top level people in the USG and

<sup>349</sup> Ibid.

<sup>350</sup> Ibid.

[REDACTED]

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

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

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

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

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

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

<sup>352</sup> Ibid.

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

<sup>354</sup> Col. Terrence Farrell, *Trip Report - DoD General Counsel Visit to GTMO* (September 27, 2002).

<sup>355</sup> Ibid.

<sup>356</sup> Ibid.

<sup>357</sup> Committee staff interview of MG Michael Dunlavey (November 30, 2007).

<sup>358</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 139-42.

[REDACTED]

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

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

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

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

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

[REDACTED]

<sup>359</sup> Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>360</sup> Committee staff interview of LTC Jerald Phifer (June 27, 2007).

<sup>361</sup> Written statement of MAJ Paul Burney (August 21, 2007).

<sup>362</sup> Ibid.

<sup>363</sup> Army IG, Interview of MAJ Paul Burney (April 28, 2006) at 11.

<sup>364</sup> Ibid.

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

<sup>366</sup> Committee staff interview of [REDACTED] (September 12, 2007).

[REDACTED]

[REDACTED]

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

[REDACTED]

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

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

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

<sup>368</sup> Ibid. at 2.

<sup>369</sup> Ibid.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> Ibid.

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

[REDACTED]

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

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

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

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

<sup>374</sup> BSCT, *Counter-resistance Strategies* at 3 (emphasis in original).

<sup>375</sup> *Ibid.*

<sup>376</sup> *Ibid.* at 4.

<sup>377</sup> *Ibid.* at 4-5.

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

<sup>379</sup> BSCT, *Counter-resistance Strategies* at 6.

[REDACTED]

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

(U) LTC Banks wrote:

[REDACTED] The use of physical pressures brings with it a large number of potential negative side effects. . . . When individuals are gradually exposed to increasing levels of discomfort, it is more common for them to resist harder. That is one of the reasons we use it [in SERE school] - to increase the resistance posture of our soldiers. If individuals are put under enough discomfort, i.e. pain, they will eventually do whatever it takes to stop the pain. This will increase the amount of information they tell the interrogator, but it does not mean the information is accurate. In fact, it usually decreases the reliability of the information because the person will say whatever he believes will stop the pain. Now, there are certain exceptions, like with all generalizations, but they are not common. Bottom line: The likelihood that the use of physical pressures will increase the delivery of accurate information from a detainee is very low. The likelihood that the use of physical pressures will increase the level of resistance in a detainee is very high...

[REDACTED] It is important to remember that SERE instructors use these techniques [physical pressures] because they are effective at increasing resistance. . . . Because of the danger involved, very few SERE instructors are allowed to actually use physical pressures. . . everything that is occurring [in SERE school] is very carefully monitored and paced. . . Even with all these safeguards, injuries and accidents do happen. The risk with real detainees is increased exponentially.

(U) My strong recommendation is that you do not use physical pressures . . . [If GTMO does decide to use them] you are taking a substantial risk, with very limited potential benefit.<sup>381</sup>

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

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

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

<sup>381</sup> Ibid.

<sup>382</sup> *Counter Resistance Strategy Meeting Minutes* at 2. The meeting minutes stated that questions and comments from the meeting were paraphrased.

[REDACTED]

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

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

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

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

<sup>383</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 145-47.

<sup>384</sup> SASC Hearing (June 17, 2008); *Counter Resistance Strategy Meeting Minutes* at 3.

<sup>385</sup> *Counter Resistance Strategy Meeting Minutes* at 3.

<sup>386</sup> *Ibid.*

<sup>387</sup> *Ibid.*

<sup>388</sup> *Ibid.*

<sup>389</sup> *Ibid.* at 2.

<sup>390</sup> *Ibid.*

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

<sup>392</sup> *Ibid.*



[REDACTED]

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

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

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

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

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

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

<sup>393</sup> Ibid. at 5.

<sup>394</sup> Ibid. at 3.

<sup>395</sup> Ibid.

<sup>396</sup> Ibid.

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

<sup>398</sup> Ibid. at 5.

<sup>399</sup> Ibid. at 3.

[REDACTED]

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

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

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

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

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

<sup>400</sup> Ibid.

<sup>401</sup> Ibid.

<sup>402</sup> SASC Hearing (June 17, 2008); BSCT, *Counter-resistance Strategies* at 4.

<sup>403</sup> [REDACTED] *Counter Resistance Strategy Meeting Minutes* at 4. LTC Beaver said that she had learned about the wet towel technique from a Navy doctor who had been assigned to the Hospital at Guantanamo and who described to her its use at the Navy SERE school. It is unclear, however, to whom LTC Beaver is referring. The Committee interviewed a Navy Lieutenant Commander who was deployed to GTMO and who had previously worked at the Navy SERE school at the Naval Air Station in Brunswick, Maine. The Lieutenant Commander told the Committee that he discussed with JIF-GTMO staff physical pressures used to teach students at SERE school how to resist interrogations. However, the Lieutenant Commander was not deployed to GTMO until November 2002. Committee staff interview of LTC Diane Beaver (October 11, 2007); see Committee staff interview of [REDACTED] (August 22, 2007); [REDACTED] Travel voucher.

<sup>404</sup> *Counter Resistance Strategy Meeting Minutes* at 4.

<sup>405</sup> Ibid.

<sup>406</sup> Ibid.

<sup>407</sup> Ibid. at 3.

[REDACTED]

[REDACTED]

(U) Weeks later, CITF Deputy Commander Mark Fallon wrote an email to CITF's Chief Legal Counsel Major Sam McCahon regarding the meeting minutes:

Quotes from LTC Beaver regarding things that are not being reported give the appearance of impropriety. Other comments like "It is basically subject to perception. If the detainee dies you're doing it wrong" and "Any of the techniques that lie on the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents." Seem to stretch beyond the bounds of legal propriety. Talk of "wet towel treatment" which results in the lymphatic gland reacting as if you are suffocating, would in my opinion; shock the conscience of any legal body looking at using the results of the interrogations or possibly even the interrogators. Someone needs to be considering how history will look back at this.<sup>408</sup>

[REDACTED] The October 2, 2002 meeting minutes indicated that the group discussed Mohammed al Khatani, a high value detainee suspected of being connected to the September 11, 2001 attacks. A week before the meeting, JTF-170 had assumed the lead on Khatani's interrogation.<sup>409</sup> By the October 2, 2002 meeting, JTF-170 had already developed an aggressive interrogation plan for Khatani.

[REDACTED] Two days after the meeting, BSCT psychiatrist MAJ Paul Burney sent an email to LTC Banks, stating that "persons here at this operation are still interested in pursuing the potential use of more aversive interrogation techniques . . . Were more aversive techniques approved for use in the future by appropriate people, the operation would like to have a few task force personnel specifically trained in various techniques."<sup>410</sup> MAJ Burney asked whether LTC Banks knew "where task force personnel could go to receive such training" and whether he knew of "any consultants who could assist if any of these measures are eventually approved."<sup>411</sup>

[REDACTED] LTC Banks replied "I do not envy you. I suspect I know where this is coming from. The answer is no, I do not know of anyone who could provide that training... The training that SERE instructors receive is designed to simulate that of a foreign power, and to do so in a manner that encourages resistance among the students. I do not believe that training interrogators to use what SERE instructors use would be particularly productive."<sup>412</sup>

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

[REDACTED] According to the Department of Defense, Pakistani authorities captured Mohammed al Khatani along the Pakistani-Afghanistan border on December 15, 2001 and

<sup>408</sup> Email from Mark Fallon to MAJ Sam McCahon et al. (October 28, 2002).

<sup>409</sup> [REDACTED] LTG Joseph Inge, *DEPSECDEF Inquiry Regarding Location of Interrogation Plan for ISN 063* (August 24, 2006) at 5 (hereinafter "Inge Report").

<sup>410</sup> Email from MAJ Paul Burney to LTC Morgan Banks (October 4, 2002).

<sup>411</sup> Ibid.

<sup>412</sup> Email from LTC Morgan Banks to MAJ Paul Burney (October 4, 2002).

[REDACTED]

turned him over to U.S. forces on December 26, 2001.<sup>413</sup> He was transferred to Guantanamo Bay on February 13, 2002, where he was initially interrogated by JTF-170, CITF and FBI personnel at Camp X-Ray.

[REDACTED] [REDACTED] In the summer of 2002, Khatani was identified as a possible "twentieth hijacker" of the September 11 attacks.<sup>414</sup> From July 27, 2002 until September 19, 2002, Khatani was questioned by the FBI.<sup>415</sup> During this period, Khatani was held at the recently built Camp Delta until August 8, 2002 when he was transferred to the Naval Brig at Guantanamo Bay.<sup>416</sup> While he was in FBI custody, JTF-170 began drafting an interrogation plan for Khatani.

(U) On September 23, 2002, the CITF Special Agent in Charge sent a memorandum to CITF's Deputy Commander raising concerns about JTF-170's proposed interrogation plan for Khatani. The memo stated:

DoD Intelligence personnel contacted FBI [Supervisory Special Agent] in order to conduct an interview of a detainee assigned to the FBI. The DoD personnel indicated that they intend to employ the following interrogation techniques: drive the hooded detainee around the island to disorient him, disrobe him to his underwear, have an interrogator with an Egyptian accent (it is known among the detainees that Egyptians are aggressive interrogators and commonly use coercion, to include maiming) . . .

As a law enforcement agency, CITF is clearly prohibited from participating in these techniques and we also do not want to turn a deaf ear when we learn of these issues. . .<sup>417</sup>

[REDACTED]

<sup>413</sup> Memo from COL John Hadis (JTF-GTMO Chief of Staff) to SOUTHCOM Chief of Staff (March 14, 2005), attached as Tab 1 to Inge Report (August 24, 2006).

<sup>414</sup> Khatani was identified as a possible twentieth hijacker after it was determined that he had tried to enter the U.S. in August 2001 but was detained at the Orlando, Florida airport and later departed. When Khatani arrived at the Orlando airport, Mohammed Atta was waiting. JTF-GTMO, *Analyst Support Summary* (March 18, 2003), attached as Tab 22 to Inge Report (August 24, 2006).

<sup>415</sup> Inge Report at 5.

<sup>416</sup> Memo from COL John Hadis (JTF-GTMO Chief of Staff) to SOUTHCOM Chief of Staff (March 14, 2005), attached as Tab 1 to Inge Report (August 24, 2006); Inge Report at 5.

<sup>417</sup> Memo from J.K. Sieber (CITF SAC) to CITF Deputy Commander, CITF Operations Officer, CITF SJA, *DOD Interrogation Techniques Issue* (September 23, 2002).

<sup>418</sup> Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

[REDACTED]

(U) While MG Dunlavey's memo stated that the request had "been reviewed by my Staff Judge Advocate and determined to be legally sufficient," the SJA, LTC Diane Beaver, told the Committee that she had not been consulted on the interrogation plan and did not recall reviewing the memo or providing the Commander with guidance regarding the legal sufficiency of the request.<sup>425</sup> Major General Dunlavey said that he did not recall whether or not he personally consulted with LTC Beaver, that the letter would likely have been drafted by his Director for Intelligence, LTC Jerald Phifer, and that it was possible that the statement in the letter that LTC Beaver had been consulted was based on a representation by his staff.<sup>426</sup>

<sup>419</sup> The memo was provided to the Committee as an appendix to the AR-15-6 Report completed by Lieutenant General Randall Schmidt and Brigadier General John T. Furlow into FBI allegations of abuse at Guantanamo Bay (hereinafter "Schmidt-Furlow Report"). The memo is unsigned but contains a handwritten notation "////signed on 1 Oct 02////." Committee staff requested the Department of Defense provide a signed copy or advise the Committee of any reason why the Committee should not rely on the document. The Department provided neither.

<sup>420</sup> Memo from MG Michael Dunlavey to JTF-160 Commander, *Interrogation Plan for ISN 063* (October 1, 2002), attached as exhibit 40 to Schmidt-Furlow Report.

<sup>421</sup> Ibid.

<sup>422</sup> Ibid.

<sup>423</sup> Ibid.

<sup>424</sup> Ibid.

<sup>425</sup> Ibid.; Committee staff interview of LTC Diane Beaver (October 11, 2007); see also Memo from J.K. Sieber (CITF SAC) to CITF Deputy Commander, CITF Operations Officer, CITF SJA, *DOD Interrogation Techniques Issues* (September 23, 2002) ("the JTF 170 SJA had not been briefed on the plan prior to her contact with the FBI SSA. When she learned of the plan, she sought guidance from up her chain of command and also sought guidance from DOD legal and other intelligence agencies. She wants to ensure that even if these techniques are not legally objectionable, her chain of command is aware that these types of techniques are being utilized and that the personnel on the ground are properly trained to conduct these techniques.")

<sup>426</sup> Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[REDACTED]

[REDACTED] From October 2 until October 10, 2002, JTF-170 personnel interrogated Khatani. According to multiple witness accounts, on or about October 5, 2002, military working dogs were brought into the room where Khatani was being interrogated.<sup>427</sup> A summarized statement of testimony provided by one of the FBI agents present at the time indicated that the FBI objected to the use of dogs and raised those objections to Mr. Becker, the JTF-170 ICE Chief.<sup>428</sup> In testimony to the Army IG, Mr. Becker acknowledged that he permitted the military working dog to enter the interrogation in order to raise the detainee's stress level.<sup>429</sup>

[REDACTED] Mr. Becker told the Committee that he had authorized dogs entering the interrogation room on two occasions and that the dog barked but was not permitted to place its paws on Khatani.<sup>430</sup> Mr. Becker also told the Committee that LTC Phifer provided verbal authority for the dogs to be used in this manner. LTC Phifer recalled discussing dogs with Mr. Becker as a technique because Arabs "saw dogs as a dirty animal and they didn't like them," not because they should be "used as a fear factor."<sup>431</sup> LTC Phifer told the Army IG, however, that Mr. Becker never told him that he had approved the use of a dog during the Khatani interrogation. However, in written answers to questions posed by Vice Admiral Church, LTC Phifer stated that dogs were used in the Khatani interrogation and that "[w]e would bring the dog around to within 10 feet [of Khatani] and he would be somewhat unnerved by it. We did it to keep him off balance as well as to enhance security."<sup>432</sup> Major General Dunlavey said that he did not recall being aware that a dog was used in the interrogation of Khatani.<sup>433</sup>

[REDACTED] In an October 8, 2002 email to his colleague, an FBI agent described JTF-170's interrogation of Khatani, stating that DoD had tried "sleep deprivation," "loud music, bright lights, and 'body placement discomfort,' all with negative results" and that DoD interrogators planned to stop the interrogation.<sup>434</sup> Mr. Becker told the Committee that the interrogation plan did not work and that JTF-170 ceased the interrogation after approximately a week and moved Khatani back to the Navy brig.<sup>435</sup>

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<sup>427</sup> Summarized witness statement of David Becker (March 3, 2005), exhibit 21 to Schmidt-Furlow Report; summarized witness statement of ENS Mary Travers (February 23, 2005), exhibit 33 to Schmidt-Furlow Report; summarized witness statement of Agent Robert Morton (January 20, 2005), exhibit 36 to Schmidt-Furlow Report; summarized witness statement of Agent Charles Dorsey (January 20, 2005), exhibit 41 to Schmidt-Furlow Report.

<sup>428</sup> Summarized witness statement of Agent Charles Dorsey (January 20, 2005), exhibit 41 to Schmidt-Furlow Report.

<sup>429</sup> Army IG, Interview of David Becker (September 20, 2005) at 30.

<sup>430</sup> Committee staff interview of David Becker (September 17, 2007).

<sup>431</sup> Army IG, Interview of LTC Jerald Phifer (March 16, 2006) at 13.

<sup>432</sup> Responses of LTC Jerald Phifer to questionnaire of VADM Church (July 16, 2004). It is not clear from those written answers whether LTC Phifer was referring to the use of dogs in JTF-170's October 2002 interrogation of Khatani or in the subsequent interrogation of Khatani that began in late November.

<sup>433</sup> Committee staff interview of Major General Michael Dunlavey (November 30, 2007).

<sup>434</sup> Email from FBI Special Agent to FBI Special Agent (October 8, 2002).

<sup>435</sup> Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

(U) Another FBI agent reflected upon the failed interrogation in his own email of October 8, 2002, observing that "I think we should consider leaving him alone, let him get healthy again and do something 'different.'"<sup>436</sup>

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

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

(U) On October 11, 2002, just days after the JTF-170 moved Khatani back to the Navy Brig and shortly after meeting with the Chief Counsel of the CIA's CounterTerrorist Center Jonathan Fredman, LTC Phifer submitted a memorandum to JTF-170 Commander MG Dunlavey requesting approval to use "counter-resistance" interrogation techniques.<sup>437</sup> LTC Phifer's memo was largely drawn from the October 2, 2002 memorandum that the GTMO Behavioral Science Consultation Team (BSCT) had written upon their return from the JPRA training at Fort Bragg.<sup>438</sup> The memo requested approval for three categories of progressively more aggressive interrogation techniques, many of which were similar to techniques used at SERE schools to increase U.S. soldiers' resistance to illegal enemy interrogation.<sup>439</sup>

(U) Of the three categories of proposed techniques, those in Category I were the least aggressive. Category I proposed yelling at the detainee and using certain "techniques of deception," such as using multiple interrogators or having an interrogator "identify himself as a citizen of a foreign nation or as an interrogator from a country with a reputation for harsh treatment of detainees."<sup>440</sup>

(U) The proposed Category II techniques were more aggressive and included several techniques similar to those used in SERE schools, such as stress positions, isolation, deprivation of light and auditory stimuli, using a hood during transport and questioning, removal of clothing, and using detainees' individual phobias to induce stress.<sup>441</sup>

[REDACTED] An August 19, 2002 email from LTC Beaver reflected discussions among JTF-170 staff about stress positions, which she said resulted in an agreed upon policy of "no stress

<sup>436</sup> Email from FBI Special Agent to FBI Special Agent (October 8, 2002).

<sup>437</sup> Memo from LTC Jerald Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies* (October 11, 2002) (hereinafter LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*).

<sup>438</sup> MAJ Burney told the Army IG that the October 11, 2002 memo "wasn't the exact same document that we had written but the general structure and overall organization—a lot of the things did remain intact from our original brainstorm to what was eventually requested." Army IG, Interview of MAJ Paul Burney (August 21, 2007) at 11.

<sup>439</sup> The October 11 memo also stated that "current guidelines for interrogation procedures at GTMO limit the ability of interrogators to counter advanced resistance." LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

<sup>440</sup> Ibid.

<sup>441</sup> Additional Category II techniques included use of falsified documents or reports, interrogating the detainee in an environment other than the standard interrogation booth, use of 20 hour interrogations, removal of all comfort items (including religious items), switching the detainee from hot rations to MREs, and forced grooming. Ibid.

[REDACTED]

positions" at GTMO.<sup>442</sup> When asked how stress positions came to be included in LTC Phifer's memo, given the agreement referenced in her earlier email, LTC Beaver said that she did not know, but added that LTC Phifer later advocated for their use.<sup>443</sup> LTC Beaver said that she relied on Mr. Becker and LTC Phifer to decide which techniques to put in the memo and that she never commented or changed their drafts.<sup>444</sup>

(U) The proposed Category III techniques in the October 11, 2002 request were the most aggressive and included the use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him and/or his family; exposure to cold weather or water; the use of a wet towel and dripping water to induce the misperception of suffocation; and the use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.<sup>445</sup> According to the October 11, 2002 memo, Category III techniques "and other aversive techniques, such as those used in U.S. military resistance training or by other U.S. government agencies" would be utilized to interrogate "exceptionally resistant detainees," which LTC Phifer estimated as "less than 3%" of the detainees held at GTMO.<sup>446</sup>

(U) Two of the Category III techniques in LTC Phifer's memo – the use of phobias and the use of the wet towel and dripping water to induce the misperception of suffocation – were not derived from the October 2, 2002 BSCT memo.<sup>447</sup> CIA lawyer Jonathan Fredman, however, had reportedly discussed both of these techniques during his October 2, 2002 meeting with GTMO personnel, noting that the use of phobias was "very effective" and that the use of the "wet towel technique" makes a body react as if it's suffocating.<sup>448</sup> Mr. Becker told the Committee that he (the ICE Chief) may have recommended adding those two techniques to the request for authority.<sup>449</sup>

(U) LTC Phifer said that he drafted his memo with Mr. Becker.<sup>450</sup> Mr. Becker, however, told the Committee that he was provided a draft only after it was nearly complete. He said that

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<sup>442</sup> Vice Admiral Albert T. Church, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques* (March 7, 2005) (hereinafter "*Church Report*") at 109 (citing email from LTC Beaver (August 19, 2002)).

<sup>443</sup> LTC Beaver told the Committee that LTC Phifer advocated the use of stress positions in the interrogation of Mohammed al Khatani (discussed below). Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>444</sup> *Ibid.*

<sup>445</sup> LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

<sup>446</sup> *Ibid.*

<sup>447</sup> The use of a wet towel and dripping water to induce the misperception of drowning appears to describe waterboarding. The Navy is the only service that used waterboarding in SERE training, which it ceased in November 2007.

<sup>448</sup> *Counter Resistance Strategy Meeting Minutes* at 5 (The CTC Chief Counsel explained that if a "well-trained individual is used to perform" the "wet-towel technique," it can "feel like you're drowning. The lymphatic system will react as if you're suffocating but your body will not cease to function.")

<sup>449</sup> Committee staff interview of David Becker (September 17, 2007).

<sup>450</sup> Committee staff interview of LTC Jerald Phifer (June 27, 2007).



[REDACTED]

he thought the techniques memo was "stupid," though he did not share his view with LTC Phifer at the time.<sup>451</sup> LTC Phifer told the Committee that he was uncomfortable with the idea of using some of the techniques in his memo but that MG Dunlavey pressured him to finish the request.<sup>452</sup>

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

(U) The October 11, 2002 techniques memo was accompanied by a cover memo and legal brief written by GTMO's Staff Judge Advocate (SJA) LTC Diane Beaver. The cover memo stated simply that "the proposed strategies do not violate applicable federal law."<sup>453</sup>

(U) LTC Beaver told the Committee that she drafted the legal brief with her staff over the course of the 2002 Columbus Day weekend.<sup>454</sup> She told the Committee that she had not seen either of the legal memoranda produced by the Department of Justice Office of Legal Counsel on August 1, 2002 and that she did not receive input on the legal brief from anyone outside of GTMO. The minutes of the October 2, 2002 meeting with CIA lawyer Jonathan Fredman, however, reflect that LTC Beaver was present when he discussed the Torture Convention (and the federal law implementing the treaty). In that discussion, Mr. Fredman described "severe physical pain" as "anything causing permanent damage to major organs or body parts."<sup>455</sup> The idea that "severe physical pain" constituting torture had to rise to the level of "organ failure, impairment of bodily functions or even death" had been discussed in the OLC legal memo of August 1 2002, known as the First Bybee memo.<sup>456</sup>

(U) LTC Beaver began her analysis of the "aggressive" techniques by stating that the "detainees currently held at Guantanamo Bay . . . are not protected by the Geneva Conventions."<sup>457</sup> LTC Beaver stated that the Office of the Secretary of Defense "had not adopted specific guidelines regarding interrogation techniques for detainee operations at GTMO" and she dismissed the longstanding guidance on interrogation of detainees contained in the Army Field Manual (FM) 34-52 as not binding.<sup>458</sup>

<sup>451</sup> Committee staff interview of David Becker (September 17, 2007).

<sup>452</sup> Committee staff interview of LTC Jerald Phifer (June 27, 2007).

<sup>453</sup> Memo from LTC Diane Beaver for Commander, Joint Task Force 170, *Legal Review of Aggressive Interrogation Techniques* (October 11, 2002).

<sup>454</sup> Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>455</sup> *Counter Resistance Strategy Meeting Minutes* at 3.

<sup>456</sup> Memo from Assistant Attorney General Jay Bybee to White House Counsel Alberto Gonzales, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (August 1, 2002).

<sup>457</sup> Memo from LTC Diane Beaver for Commander, Joint Task Force 170, *Legal Brief on Proposed Counter-Resistance Strategies* (October 11, 2002) (hereinafter "LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies*").

<sup>458</sup> The SJA concluded that because the techniques in the Army FM 34-52 are "constrained by, and conform to the Geneva Conventions and applicable international law," and that the Geneva Conventions do not apply as a matter of law, the Field Manual was "not binding." See LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 1.

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(U) In her memo, LTC Beaver stated that U.S. obligations under the Convention Against Torture restricted only those cruel, inhuman, or degrading acts that were also prohibited by the "current standard articulated in the Eighth Amendment" against "cruel and unusual punishment."<sup>459</sup> The memo concluded that the proposed interrogation techniques would be consistent with the Eighth Amendment standard so long as any force used could "plausibly have been thought necessary . . . to achieve a legitimate governmental objective and it was applied in a good faith effort and not maliciously or sadistically for the very purpose of causing harm."<sup>460</sup>

(U) LTC Beaver also concluded that the proposed interrogation techniques would not violate the federal anti-torture statute so long as they were not specifically intended to cause severe physical pain or suffering or prolonged mental harm. LTC Beaver conducted her analysis with the "assum[ption] that severe physical pain [would not be] inflicted" and "absent any evidence that any of these strategies [would] in fact cause prolonged and long lasting mental harm."<sup>461</sup> LTC Beaver told the Committee that she did not conduct any research to determine whether the use of the techniques described in the accompanying request for authority would, in fact, result in long-term mental harm.<sup>462</sup>

[REDACTED] The October 2, 2002 BSCT memo, however, had specifically cautioned that the techniques "could affect the short term and/or long term physical and/or mental health of the detainee . . . [and that] physical and/or emotional harm from the . . . techniques may emerge months or even years after their use."<sup>463</sup>

(U) LTC Beaver also found that some of the proposed tactics would constitute a "per se violation" of the Uniform Code of Military Justice (UCMJ) Article that prohibits military personnel from committing assault, and could violate the Article that prohibits military personnel from communicating a threat.<sup>464</sup> As a result, LTC Beaver said it would be "advisable to have permission or immunity in advance from the convening authority for military members utilizing these methods."<sup>465</sup> In a November 4, 2002 letter to the Joint Staff J-5, the Marine Corps commented on the SJA's recommendation to convey "permission or immunity in advance," noting that "[w]e are unaware of any authority that would allow a convening authority to give 'permission or immunity' in advance to commit a criminal violation."<sup>466</sup> Likewise, military lawyers from the Judge Advocate General's Legal Center and School later said that LTC Beaver's "proposal to immunize interrogators, given that a number of the proposed techniques in

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<sup>459</sup> LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 2.

<sup>460</sup> *Ibid.* at 5.

<sup>461</sup> *Ibid.*

<sup>462</sup> Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>463</sup> BSCT, *Counter-Resistance Strategies* (October 2, 2002).

<sup>464</sup> LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 5.

<sup>465</sup> *Ibid.*

<sup>466</sup> Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002) *see also* Section IV D, *infra*.

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issue constituted violations of the UCMJ, was not only unprecedented, but lacked any basis in law.<sup>467</sup>

(U) Based on her legal review, LTC Beaver recommended that the “proposed methods of interrogation be approved,” but that interrogators be trained to use the methods and that “interrogations involving category II and III methods” undergo a legal, medical, behavioral science, and intelligence review prior to commencement.<sup>468</sup>

(U) LTC Beaver told the Committee that she called the SOUTHCOM Staff Judge Advocate COL Manny Supervielle, likely on Sunday, October 10, 2002 and sent SOUTHCOM a draft of the legal memo that same day.<sup>469</sup> She said that she told COL Supervielle that she “really needed some help” but that she received no comments from SOUTHCOM prior to submitting the final memo the next day.<sup>470</sup> LTC Beaver said that she also talked to the Legal Counsel to the Chairman of the Joint Chiefs of Staff CAPT Jane Dalton and asked for her help, but was told that she should talk to COL Supervielle.<sup>471</sup> CAPT Dalton said that she did not recall that conversation with LTC Beaver.<sup>472</sup> LTC Beaver also told the Committee that MG Dunlavey did not comment on drafts of the memo and that she did not discuss it with him after it was completed.<sup>473</sup>

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

(U) On October 11, 2002, MG Dunlavey submitted LTC Phifer’s memo and LTC Beaver’s legal analysis to General James Hill, the Commander of the United States Southern Command (SOUTHCOM). He also sent his own memo requesting approval to use the interrogation techniques.<sup>474</sup> MG Dunlavey wrote:

I am fully aware of the techniques currently employed to gain valuable intelligence in support of the Global War on Terrorism. Although these techniques have resulted in significant exploitable intelligence, the same methods have become less effective over time. I believe the methods and techniques delineated in the accompanying J-2 memorandum will enhance our efforts to extract additional information. Based on the analysis provided by the JTF-170

<sup>467</sup> Lt Col Kentwill et al., *Improving the Fighting Position, A Practitioner’s Guide to Operational Law Support to the Interrogation Process*, 2005 Army Lawyer (July 2005) at 12, 14.

<sup>468</sup> LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 7.

<sup>469</sup> Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>470</sup> SASC Hearing (June 17, 2008); Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>471</sup> SASC Hearing (June 17, 2008).

<sup>472</sup> *Ibid.*

<sup>473</sup> Committee staff interview of LTC Diane Beaver (November 9, 2007).

<sup>474</sup> Memo from MG Michael Dunlavey to USSOUTHCOM Commander GEN James Hill, *Counter-Resistance Strategies* (October 11, 2002) (hereinafter “MG Dunlavey to GEN Hill, *Counter-Resistance Strategies*.”)

[REDACTED]

SJA, I have concluded that these techniques do not violate U.S. or international laws.<sup>475</sup>

(U) On October 25, 2002, GEN Hill forwarded the JTF-170 request to Chairman of the Joint Chiefs of Staff, Gen Richard Myers, with a memorandum stating that "despite our best efforts, some detainees have tenaciously resisted our current interrogation methods."<sup>476</sup> He continued: "[o]ur respective staffs, the Office of the Secretary of Defense, and Joint Task Force 170 have been trying to identify counter-resistant techniques that we can lawfully employ."<sup>477</sup> When later asked, GEN Hill could not recall whether SOUTHCOM produced a written opinion analyzing the GTMO request separate from LTC Beaver's opinion.<sup>478</sup>

(U) As to techniques in the GTMO request for interrogation techniques, GEN Hill said that he "did discuss the topic of SERE training in a general manner with MG Dunlavey."<sup>479</sup> Years later, in a June 3, 2004 press briefing, GEN Hill noted the influence of the Fort Bragg trip and SERE school techniques on the request, stating:

The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK. I sent that list of techniques up to the Secretary and said, in order for us to get at some of these very high-profile, high-value targets who are resistant to techniques, I may need greater flexibility. But I want a legal review of it and you to tell me that, policy-wise, it's the right way to do business.<sup>480</sup>

(U) In his October 25, 2002 memo, GEN Hill stated that, although he believed Categories I and II techniques were "legal and humane," he was uncertain about techniques in Category III and was "particularly troubled by the use of implied or expressed threats of death of the detainee or his family."<sup>481</sup> Nevertheless, GEN Hill said that he "desire[d] to have as many options as possible at [his] disposal" and asked that Departments of Defense and Justice attorneys review the Category III techniques.<sup>482</sup>

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<sup>475</sup> MG Dunlavey to GEN Hill, *Counter-Resistance Strategies*.

<sup>476</sup> Memo from GEN James Hill to Chairman of the Joint Chiefs of Staff GEN Richard Myers, *Counter-Resistance Techniques*, (October 25, 2002) (hereinafter "GEN Hill to CJCS, *Counter-Resistance Techniques*."

<sup>477</sup> GEN Hill to CJCS, *Counter-Resistance Techniques*.

<sup>478</sup> GEN James T. Hill answers to July 31, 2008 written questions from Senator Carl Levin (August 20, 2008).

<sup>479</sup> *Ibid.*

<sup>480</sup> June 3, 2004 Media Availability with Commander U.S. Southern Command.

<sup>481</sup> GEN Hill to CJCS, *Counter-Resistance Techniques*.

<sup>482</sup> GEN Hill to CJCS, *Counter-Resistance Techniques*; In testimony to the Army IG, the SOUTHCOM Commander said that he thought the request "was important enough to where there ought to be a high level look at it... There ought to be a major policy discussion of this and everybody ought to be involved." Army IG, Interview of GEN James T. Hill (October 7, 2005), at 7.

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(U) One SOUTHCOM Assistant Staff Judge Advocate LTC Mark Gingras testified to the Army IG that lawyers for SOUTHCOM had concerns about Category II and Category III techniques.<sup>483</sup> Regarding the GTMO request for techniques, LTC Gingras told the Army IG:

As lawyers we're talking about adherence to the rule of law being important, and that's what we're trying to tell everybody as we travel around the world to these other countries. That's paramount to democracy. And so suddenly we look like we're brushing this aside or we're twisting the law. The feeling was that decision makers within the Pentagon didn't much care about that. They cared about winning the War on Terrorism. And if that meant you had to pull out fingernails you'd pull out fingernails, figuratively speaking.<sup>484</sup>

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

(U) On October 30, 2002, after receiving Gen Hill's memo and the GTMO request, the Joint Staff J-5 requested that the military services comment on the request.<sup>485</sup>

(U) On November 1, 2002, the Air Force responded, expressing "serious concerns regarding the legality of many of the proposed techniques" and stating that "some of these techniques could be construed as 'torture,' as that crime is defined by 18 U.S.C. 2340."<sup>486</sup> The Air Force memorandum added that, with respect to potential prosecutions, the use of Category III techniques would "almost certainly" result in any statements obtained being inadmissible.<sup>487</sup> The memorandum stated that admissibility of evidence obtained using Categories I and II techniques, the latter of which included stress positions, the use of dogs, removal of clothing, and deprivation of light and auditory stimuli, among other techniques, would be "fact specific, but the same concerns remain."<sup>488</sup> The Air Force memo continued: "Additionally, the techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely... Implementation of the proposed techniques would require a change in Presidential policy."<sup>489</sup> The memo stated that the Air Force "concur[s] in the need to conduct an in-depth legal and policy assessment, as recommended by [the SOUTHCOM Commander], prior to implementation of the proposed counter-resistance interrogation techniques."<sup>490</sup>

(U) On November 4, 2002, the Navy responded to the Joint Staff's request for comment, stating that it "concur[red] with developing a range of advanced counter-resistance techniques,"

<sup>483</sup> Army IG, Interview of LTC Mark Gingras (October 11, 2005) at 20.

<sup>484</sup> Ibid.

<sup>485</sup> Joint Staff Action Processing Form (SJS 02-06697), *Counter-Resistance Techniques* (October 30, 2002).

<sup>486</sup> Department of the Air Force Memo for UN and Multilateral Affairs Division (J-5), Joint Staff, *Counter-Resistance Techniques* (November 1, 2002).

<sup>487</sup> Ibid. at 1.

<sup>488</sup> Ibid.

<sup>489</sup> Ibid. at 2.

<sup>490</sup> Ibid. at 1.

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but recommending "a more detailed interagency legal and policy review be conducted on the... proposed techniques."<sup>491</sup>

(U) That same day, the Marine Corps submitted its written comments, which concluded that "several of the Category II and III techniques arguably violate federal law, and would expose our service members to possible prosecution."<sup>492</sup> The Marine Corps memo stated that the use of the techniques would also create "exposure to criminal prosecution under the UCMJ."<sup>493</sup> Again, Category III techniques included the use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him or his family, exposure to cold weather or water, use of a wet towel and dripping water to induce the misperception of suffocation, and non-injurious physical contact such as grabbing, poking and light pushing.<sup>494</sup> Category II included such techniques as stress positions, deprivation of light and auditory stimuli, the use of a hood during questioning, 20 hour interrogations, removal of clothing, and the use of detainee phobias, such as dogs, to induce stress. The memo also stated the Marine Corps "disagree[d] with the position that the proposed plan is legally sufficient."<sup>495</sup>

(U) A few days later, the Army submitted comments from both the Office of the Judge Advocate General (OTJAG) and the CITE.<sup>496</sup> The Army's cover memo stated that "Army interposes significant legal, policy and practical concerns regarding most of the Category II and all of the Category III techniques proposed" and that the Army "concur[s] in the recommendation for a comprehensive legal review of this proposal in its entirety by the Department of Defense and the Department of Justice."<sup>497</sup> The OTJAG's memorandum, which was attached, stated that Category III techniques "violate the President's order [on humane treatment] and various UCMJ articles" and that the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family and the use of a wet towel and dripping water to induce the misperception of suffocation "appear to be clear violations of the federal torture statute."<sup>498</sup> The OTJAG memorandum also stated that Category II techniques of stress positions, deprivation of light and auditory stimuli, and using individual phobias to induce stress "crosses the line of 'humane' treatment, would likely be considered maltreatment under

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<sup>491</sup> Department of the Navy Memo for the Director for Strategic Plans and Policy Directorate (J-5) Joint Staff, *Navy Planner's Memo WRT Counter-Resistance Techniques (SJS 02-06697)* (November 4, 2002).

<sup>492</sup> Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002).

<sup>493</sup> *Ibid.*

<sup>494</sup> LTC Phifer to MG Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

<sup>495</sup> Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002).

<sup>496</sup> Memo from the Army Deputy to the Assistant Deputy Chief of Staff for Operations and Plans (Joint Affairs) to the Joint Staff, J-5/UNMA [UN and Multilateral Affairs Division], *SJS 02-06697* (November 7, 2002); Memo from Department of the Army, Office of the Judge Advocate (International and Operational Law) to The Office of the Army General Counsel, *Review--Proposed Counter-Resistance Techniques* (undated) (hereinafter "DAJA(IO) Memo for Army General Counsel, *Proposed Counter-Resistance Techniques*."

<sup>497</sup> DAJA(IO) Memo for Army General Counsel, *Proposed Counter-Resistance Techniques*.

<sup>498</sup> *Ibid.*

[REDACTED]

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Article 93 of the [Uniform Code of Military Justice], and may violate the Federal torture statute.<sup>499</sup> The memo continued that that removal of clothing and forced grooming "may be considered inhumane" if done only for interrogation purposes and stated "if we mistreat detainees, we will quickly lose the moral high ground."<sup>500</sup> The Army concurred with GEN Hill's request for a legal review before techniques were adopted.<sup>501</sup>

(U) Military lawyers were not the only personnel to object to GTMO's request for aggressive techniques. CITF Deputy Commander Mark Fallon told the Committee that it was CITF's view that the techniques proposed by JTF-170 would actually strengthen, rather than weaken, detainee resistance. He explained:

Our view was that employing techniques that validated [the detainees] prior training and adverse views would serve to harden resistance and reinforce what they had been told to expect... We pointed out that SERE school tactics were developed to better prepare U.S. military personnel to resist interrogations and not as a means of obtaining reliable information. CITF was troubled with the rationale that techniques used to harden resistance to interrogations would be the basis for the utilization of techniques to obtain information.<sup>502</sup>

(U) CITF's legal view was reflected in a November 4, 2002 memo from CITF Chief Legal Advisor MAJ Sam McCahon, which was also attached to the Army's response to the Joint Staff. MAJ McCahon wrote:

[Category] III and certain [Category] II techniques may subject service members to punitive articles of the UCMJ... CITF personnel who are aware of the use or abuse of certain techniques may be exposed to liability under the UCMJ for failing to intercede or report incidents, if an inquiry later determines the conduct to be in violation of either the Eighth Amendment to the U.S. Constitution, the Uniform Code of Military Justice or 18 U.S.C. §2340.<sup>503</sup>

(U) MAJ McCahon also raised concerns about the impact of the techniques on evidentiary proceedings:

One detainee subjected to these techniques could taint the voluntary nature of all other confessions and information derived from detainees not subjected to the aggressive techniques.<sup>504</sup>

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<sup>499</sup> Ibid.

<sup>500</sup> Ibid.

<sup>501</sup> Ibid.

<sup>502</sup> Responses of Mr. Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006) at 7.

<sup>503</sup> Memo from CITF Chief Legal Advisor MAJ Sam McCahon to CITF Commander, *Assessment of JTF-170 Counter-Resistance Strategies and the Potential Impact on CITF Mission and Personnel* (November 4, 2002) (hereinafter "McCahon to CDR CITF, *Assessment of JTF-170 Counter-Resistance Strategies*.")

<sup>504</sup> McCahon to CDR CITF, *Assessment of JTF-170 Counter-Resistance Strategies*.

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(U) MAJ McCahon added that “[b]oth the utility and legality of applying certain techniques” in the October 11, 2002 memo are “questionable,” and recommended that CITF personnel not participate in or even observe the use of aggressive techniques.<sup>505</sup> MAJ McCahon concluded:

I cannot advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business.<sup>506</sup>

(U) MAJ McCahon told the Committee that his memorandum prompted a subsequent meeting at the Pentagon.<sup>507</sup>

(U) When the October 11, 2002 GTMO request arrived in the DoD General Counsel’s office, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson said that she was asked to provide her thoughts on the request. Ms. Davidson said that she had a brief conversation with Mr. Haynes where she told him that the GTMO request needed further assessment.<sup>508</sup> Mr. Haynes stated that he did not “recall that specifically.”<sup>509</sup>

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

(U) When the October 11, 2002 GTMO request arrived at the Joint Staff, CAPT Jane Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, said it was “obvious to [her] that there were some legal issues” with the request.<sup>510</sup> She said that techniques in Category II of the request “needed to be looked at closely” and that Category III techniques “had significant, significant concerns.”<sup>511</sup> CAPT Dalton found LTC Beaver’s legal analysis “woefully inadequate” and said it relied on a methodology and conclusions that were “very strained.”<sup>512</sup> Rather than simply deny the request, however, CAPT Dalton said that “she owed it to the combatant commander to do a full and complete review.”<sup>513</sup> She subsequently directed her staff to set up a secure video teleconference with representatives from the Defense Intelligence Agency (DIA), the Army’s intelligence school at Fort Huachuca, U.S. Southern Command (SOUTHCOM), and GTMO to find out more information about the techniques in the request and to “begin discussing the legal issues to see if we could do ... our own independent legal analysis.”<sup>514</sup>

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<sup>505</sup> Ibid.

<sup>506</sup> Ibid.

<sup>507</sup> Committee staff interview of MAJ Sam McCahon (June 15, 2007).

<sup>508</sup> Committee staff interview of Eliana Davidson (May 23, 2008).

<sup>509</sup> SASC Hearing (June 17, 2008).

<sup>510</sup> Committee staff interview of RADM Jane Dalton (April 10, 2008) at 33.

<sup>511</sup> Ibid. at 45.

<sup>512</sup> Ibid. at 41.

<sup>513</sup> Ibid. at 33.

<sup>514</sup> Ibid. at 34.



[REDACTED]

(U) CAPT Dalton recalled making Chairman of the Joint Chiefs of Staff General Richard Myers aware of the concerns expressed by the military services.<sup>515</sup> The Chairman said, however, that he did “not specifically recall the objections of the Services being raised” to his attention at that time.<sup>516</sup>

(U) CAPT Dalton also recalled that her staff briefed the DoD General Counsel’s office about the concerns submitted by the military services and that the General Counsel himself “was aware of the concerns.”<sup>517</sup> In a February 2008 interview, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson recalled that the service comments were made available to the General Counsel’s office.<sup>518</sup> DoD General Counsel Jim Haynes stated, however, that he “did not recall seeing” the memos at that time and “didn’t know they existed.”<sup>519</sup> He stated that he did not recall being informed by anyone that the military services had concerns about the legality of Category II techniques in the request and that he did not have a “specific recollection” of CAPT Dalton making him aware that there were concerns about the legality of techniques in the GTMO request.<sup>520</sup>

(U) According to CAPT Dalton, after she and her staff initiated their analysis, CJCS GEN Myers directed her to stop that review. CAPT Dalton said that GEN Myers returned from a meeting and “advised me that [DoD General Counsel] Mr. Haynes wanted me . . . to cancel the video teleconference and to stop” conducting the review because of concerns that “people were going to see” the GTMO request and the military services’ analysis of it.<sup>521</sup> According to CAPT Dalton, Mr. Haynes “wanted to keep it much more close hold.”<sup>522</sup> When CAPT Dalton “learned that [the DoD General Counsel] did not want that broad based legal and policy review to take place,” she and her staff stopped their review.<sup>523</sup> This was the only time that CAPT Dalton had ever been asked to stop analyzing a request that came to her for her review.<sup>524</sup>

[REDACTED] CAPT Dalton recalled that prior to being directed to stop the review, her staff had begun writing draft comments on the GTMO request.<sup>525</sup> An undated draft of a memorandum from GEN Myers to SOUTHCOM Commander GEN Hill, analyzing the October 11, 2002

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<sup>515</sup> SASC Hearing (June 17, 2008).

<sup>516</sup> Responses of General Richard Myers to written questions from Senator Carl Levin (April 30, 2008).

<sup>517</sup> SASC Hearing (June 17, 2008).

<sup>518</sup> Committee staff interview of Eliana Davidson (February 21, 2008). Ms. Davidson said in a subsequent interview that she was not aware of the military services’ comments before discussing the October 11, 2002 GTMO request with the DoD General Counsel. Committee staff interview of Eliana Davidson (May 23, 2008).

<sup>519</sup> SASC Hearing (June 17, 2008).

<sup>520</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 163-65.

<sup>521</sup> Committee staff interview of RADM Jane Dalton (April 10, 2008) at 34.

<sup>522</sup> *Ibid.* at 35.

<sup>523</sup> SASC Hearing (June 17, 2008).

<sup>524</sup> *Ibid.*

<sup>525</sup> Committee staff interview of RADM Jane Dalton (April 10, 2008) at 37.

[REDACTED]

GTMO request, stated "We do not believe the proposed plan is legally sufficient."<sup>526</sup> The draft memo stated that "several of the Category III techniques arguably violate federal law, and could expose interrogators to possible prosecution" under the federal anti-torture laws.<sup>527</sup> The draft stated that techniques in the request "may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely" and recommended an "in-depth technical, policy, and legal assessment" of the techniques prior to their implementation.<sup>528</sup>

(U) GEN Myers said that he had "no specific recollection" of discussing with CAPT Dalton her efforts to conduct an analysis of the October 11, 2002 GTMO request.<sup>529</sup> He said that while he "did not dispute" asking her to stop working on her analysis and acknowledged that Joint Staff records indicated that she did stop work on her analysis, he had "no recollection or doing so" and did "not recall anyone suggesting" to him that she stop her review.<sup>530</sup> DoD General Counsel Jim Haynes said that while it was "possible" that the issue could have come up in a conversation with the Chairman of the Joint Chiefs of Staff, he did not "recall that specific conversation" or expressing any opinion of any kind with respect to CAPT Dalton's review.<sup>531</sup>

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

[REDACTED] While GTMO's request for approval to use aggressive interrogation techniques was pending, JPRA staff was developing an agenda for possible follow-up training for interrogation personnel at GTMO.

[REDACTED] In mid-October 2002, JPRA developed a plan of instruction to provide training on the techniques to GTMO interrogators.<sup>532</sup> The training plan was virtually identical to a draft agenda developed for the Fort Bragg training of GTMO personnel that took place in September, which included instruction of the "use of physiological pressures."<sup>533</sup>

[REDACTED] (FOUO) David Becker, the GTMO ICE Chief, told the Committee that once they received authority to use the techniques in the October 11, 2002 memo, GTMO interrogators would need training on the techniques.<sup>534</sup> A draft message order circulated between GTMO and JPRA staff in late October requested "mission critical training support" for "approximately [REDACTED]"

<sup>526</sup> Draft memo from CJCS Richard Myers to Commander, United States Southern Command, *Counter-Resistance Techniques* (undated).

<sup>527</sup> *Ibid.*

<sup>528</sup> *Ibid.*

<sup>529</sup> Responses of GEN (Ret.) Richard Myers to April 16, 2008 written questions from Senator Carl Levin (April 30, 2008).

<sup>530</sup> *Ibid.*

<sup>531</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 168.

<sup>532</sup> Memorandum From Joseph Witsch to JPRA/CC, JPRA/CD, JPRA/COS, JPRA/OSO, *Plan of Instruction (POI) for TF-170 Training Support* (October 16, 2002).

<sup>533</sup> See Section III D, *supra*, *Plan of Instruction (POI) for TF-170 Training Support* (October 16, 2002).

<sup>534</sup> Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

personnel" at GTMO.<sup>535</sup> The draft message order stated that the training would "provide the necessary tools JTF-GTMO interrogators require to accomplish their mission critical tasks."<sup>536</sup>

[REDACTED] A November 15, 2002 staff memo to the Joint Staff J-2 stated that JTF-GTMO had requested training on the SERE school techniques and that the trainers were expected to arrive in the first week of December.<sup>537</sup> The JPRC Operational Support Office (OSO) Chief Christopher Wirts told the Committee that the requirement for JPRC to provide the training was never approved and that his agency never conducted the training.<sup>538</sup> However, in January 2003, two instructors from the Navy SERE school, John Rankin and Christopher Ross, travelled to GTMO to train interrogators on the use of physical pressures, including slapping, walling, and stress positions.<sup>539</sup>

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

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

(U) In November 2002 a new Commander, MG Geoffrey Miller, took command of JTF-GTMO. At the time, MG Miller had no first-hand experience with detainees or interrogations.<sup>540</sup>

(U) MG Miller told the Committee that prior to taking command, he met with SOUTHCOM Commander GEN Hill and his staff.<sup>541</sup> During those meetings, MG Miller got the impression that MG Dunlavey, the previous Commander, had bypassed the chain of command by raising issues directly with the Joint Chiefs of Staff and Department of Defense staff. MG Miller told the Committee that GEN Hill authorized him to speak directly with the Joint Staff and the Office of the Secretary of Defense, but that he told SOUTHCOM he would keep SOUTHCOM informed of those communications.<sup>542</sup>

(U) MG Miller said that, while he was in Command at GTMO, he had direct discussions with the DoD General Counsel's office and the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD SO/LIC).<sup>543</sup> MG Miller also testified to the Army IG that he and Deputy Secretary of Defense Paul Wolfowitz "talked once a week when I

<sup>535</sup> Email from Chris Wirts to [REDACTED], Richard Driggers, Joseph Witsch, [REDACTED] and Gary Percival (October 29, 2002) (hereinafter "Email from Chris Wirts (October 29, 2002).")

<sup>536</sup> Email from Chris Wirts (October 29, 2002).

<sup>537</sup> JTF-170 and JTF-160 were combined to form JTF-GTMO in October 2002; Memo from [REDACTED] to [Joint Staff], *GTMO Detainee* [REDACTED] (November 15, 2002).

<sup>538</sup> Committee staff interview of Chris Wirts (January 4, 2008).

<sup>539</sup> See Section VII C, *infra*.

<sup>540</sup> Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 5.

<sup>541</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>542</sup> *Ibid.*

<sup>543</sup> *Ibid.*

[REDACTED]

[REDACTED]

was in Guantanamo.”<sup>544</sup> Lt Col Ted Moss, the JTF-GTMO ICE Chief who began his tour of duty at GTMO in December 2002, said that Deputy Secretary Wolfowitz was in phone contact with MG Miller “a lot.”<sup>545</sup> However, MG Miller told the Committee that he misspoke when he testified to the Army IG and that, to the best of his knowledge, he did not speak to Deputy Secretary Wolfowitz on the phone while he was at GTMO, but only briefed him quarterly, in person, on GTMO operations.<sup>546</sup>

(U) Shortly after MG Miller arrived at GTMO, the Director for Intelligence (J-2) LTC Phifer informed him of the October 11, 2002 request.<sup>547</sup> Although he later approved an interrogation plan that included reference to Category III techniques, MG Miller told the Army IG that he believed that the techniques in Category III and some techniques in Category II were “overly aggressive” and that he had not intended to use them.<sup>548</sup> MG Miller said he had concerns with stress positions, removal of clothing, and use of dogs, among other techniques. Nevertheless, there is evidence that those techniques were used at GTMO while he was in command. MG Miller told the Committee that he thought he discussed his concerns about the techniques with LTC Beaver in early November before the Secretary approved their use, but that he did not raise it with SOUTHCOM because he wanted to see which techniques would be approved.<sup>549</sup>

(U) MG Miller told the Army IG that when he arrived at GTMO, there was significant tension between JTF-GTMO, CITF, and FBI and that he sought to get all three organizations to work in concert.<sup>550</sup> Despite MG Miller’s stated intent, his decision to approve an interrogation plan for Mohammed al Khatani that was opposed by the CITF and FBI, drove a deeper wedge between his organization and both CITF and FBI.

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

(U) After their unsuccessful interrogation of Khatani in October 2002, JTF-GTMO staff spent several weeks drafting an extensive new interrogation plan. The plan was the first “Special Interrogation Plan” at GTMO and it would encounter strong resistance from both CITF and the FBI. One FBI Special Agent told the Committee that he thought Khatani’s interrogation would define the conduct of future interrogations at GTMO and therefore they “had to get it right.”<sup>551</sup>

Several drafts of JTF-GTMO’s interrogation plan for Khatani were circulated at GTMO in November 2002. The discussion below focuses primarily on two of those drafts, one circulated on November 12, 2002 and another which was drafted about a week later and appears

<sup>544</sup> Army IG, Interview of MG Geoffrey Miller (June 28, 2005).

<sup>545</sup> Committee staff interview of Lt. Col. Ted Moss (October 17, 2007).

<sup>546</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>547</sup> Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 11.

<sup>548</sup> Ibid.

<sup>549</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>550</sup> Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 7.

<sup>551</sup> Committee staff interview of FBI Special Agent (November 8, 2007).

[REDACTED]

to have been finalized on November 22, 2002. Both drafts are discussed here because each provides insight on the range of interrogation techniques considered by senior officials at GTMO. In addition, there is evidence that both draft plans were approved by MG Miller. Finally, there is evidence that techniques which were included in the "draft" circulated on November 12, 2002 but removed from the purported "final" plan, were nevertheless used during Khatani's interrogation.

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

According to the report completed by Vice Admiral (VADM) Church, "after discussing the matter in early November 2002 with the Secretary of Defense, SOUTHCOM Commander GEN Hill gave verbal approval on November 12, 2002 for use of all Category I and II counter resistance techniques against Khatani."<sup>552</sup> GEN Hill told the Committee that he had no recollection of that.<sup>553</sup> That same day, November 12, 2002, LTC Phifer sent an email and a four page interrogation plan to MG Miller stating "[h]ere is the Interrogation Plan for [Khatani] as approved by you."<sup>554</sup>

The next day, GTMO ICE Chief David Becker emailed the plan, which he referred to as the "[l]atest approved by MG Miller," to a GTMO interrogator.<sup>555</sup> According to the plan, the interrogation was scheduled to begin on November 15, 2002.<sup>556</sup> Mr. Becker told the Committee that the plan was developed by his interrogators with input from him and LTC Phifer.<sup>557</sup> In 2005, MG Miller testified to the Army IG that he thought the plan circulated on November 12, 2002 was part of the final version of the plan that he approved.<sup>558</sup> However, in a subsequent investigation, MG Miller identified a later version as the final plan.<sup>559</sup> He told the Committee that he never approved the version of the plan circulated on November 12, 2002.<sup>560</sup> However, contemporaneous documents indicate that others believed the plan circulated on November 12, 2002 had been approved by both MG Miller and SOUTHCOM and expected it to be implemented on November 15, 2002:

<sup>552</sup> Church Report at 115.

<sup>553</sup> General James Hill answers to July 28, 2008 written questions from Senator Carl Levin (August 20, 2008).

<sup>554</sup> Email from LTC Jerald Phifer to MG Geoffrey Miller (November 12, 2002).

<sup>555</sup> Email from David Becker to [Interrogation Control Element Staff Sergeant] (November 13, 2002). Both the plan attached to those emails and the subsequent plan identified by the JTF-GTMO Commander as the "final" plan contained the JTF-GTMO Commander's [Miller] signature block. However, the Committee has not seen any version of the plan that contained the JTF-GTMO Commander's signature.

<sup>556</sup> Interrogation Plan for ISN: [REDACTED] [Khatani] (November 12, 2002).

<sup>557</sup> Committee staff interview of David Becker (September 17, 2007). One FBI agent who was a member of the FBI's Behavioral Analysis Unit told the Committee that multiple versions of the plan were actually circulated at GTMO during this period. Committee Staff interview of FBI Special Agent (November 8, 2007).

<sup>558</sup> Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 7.

<sup>559</sup> Ings Report.

<sup>560</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[REDACTED]

- [REDACTED]
- [REDACTED] The November 12, 2002 email from the Director for Intelligence LTC Phifer to MG Miller stated, “[h]ere is the Interrogation Plan for ISN: 063 *as approved by you. Request you fwd to Gen Hill, info J2/J3/COS. We will begin at 0001 15 Nov per your guidance.*”<sup>561</sup>
  - [REDACTED] The November 13, 2002 email from the GTMO ICE Chief David Becker referred to the November 12, 2002 plan, which was attached to his email, as the “[l]atest approved by MG Miller.”<sup>562</sup>
  - [REDACTED]
  - [REDACTED] A November 14, 2002 email from the GTMO Staff Judge Advocate LTC Diane Beaver to CTF lawyer [REDACTED] stated, “[c]oncerning 63 [Khatani] my understanding is that NSC has weighed in and stated that intel on this guy is utmost matter of national security...*We are driving forward with support of SOUTHCOM. Not sure anything else needs to be said.*”<sup>564</sup>
  - [REDACTED] A November 15, 2002 staff memorandum for the J-2 of the Joint Staff stated that “*interrogators were preparing to interrogate [Khatani] beginning at 15 0001 November 2002...*”<sup>565</sup>

[REDACTED] According to the November 12, 2002 plan, the purpose of the interrogation was to “break the detainee and establish his role in the attacks of Sept[ember] 11, 2001.”<sup>566</sup> The interrogation would be conducted for “20-hour sessions” and at the completion of each session, Khatani would be permitted four hours of rest, and then “another 20 hour interrogation session [would] begin.”<sup>567</sup>

<sup>561</sup> Email from LTC Jerald Phifer to MG Geoffrey Miller (November 12, 2002) (emphasis added), attached as exhibit 7 to the Inge Report.

<sup>562</sup> Email from David Becker to [Interrogation Control Element Staff Sergeant] (November 13, 2002).

<sup>563</sup> Notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainee #063*, entry at “11/12/2002” (emphasis added).

<sup>564</sup> Email from LTC Diane Beaver to [REDACTED] (November 14, 2002) (emphasis added). Then-National Security Advisor Condoleezza Rice said that she was neither briefed on, nor did she review, the Khatani interrogation plan. Similarly, then-NSC Legal Advisor John Bellinger said that, to the best of his recollection, he too was neither briefed on, nor did he review the plan. Secretary of State Condoleezza Rice and John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

<sup>565</sup> Memo from [REDACTED] to [Joint Staff], *GTMO Detainee [REDACTED]* (November 15, 2002) (emphasis added).

<sup>566</sup> Interrogation Plan for ISN: [REDACTED] [Khatani] (November 12, 2002).

<sup>567</sup> *Ibid.*

[REDACTED]

[REDACTED]

Prior to the first interrogation, we would like to have the detainee's head and beard shaved. This is to be done for both psychological and hygiene purposes.

[REDACTED] During the interrogations the detainee will at times be placed in stress positions and blindfolded. If necessary the detainee may have his mouth taped shut in order to keep him from talking. Written approval for the tape and for the presence of dogs will be submitted and obtained prior to implementation.<sup>569</sup>

[REDACTED] The November 12, 2002 plan went on to describe four phases for the interrogation.<sup>570</sup> During Phase I, interrogators would increase the pressure on Khatani while not permitting him to speak, with the expectation that Khatani, when later presented with the opportunity to speak to an interrogator, would "provide his whole story."<sup>571</sup>

[REDACTED] Phase II of the plan was to place a cooperative detainee or a native linguist at Camp X-Ray in full view of Khatani.<sup>572</sup>

[REDACTED]

[REDACTED] Phase III of the plan, which was entitled "Level III techniques," was to utilize techniques based on those used at SERE school. The plan stated:

The third phase of the plan to exploit 063 requires OSD approval for the SERE interrogation technique training and approval of the level three counter interrogation resistance training submitted by JTF-GTMO. Once the approvals are in place, those interrogation techniques will be implemented to encourage 063 to cooperate.

[REDACTED]

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<sup>568</sup> Ibid.

<sup>569</sup> Ibid. A third draft of the plan which appears to have been produced after November 12 stated that "written approval for use of gauze and for the presence of dogs have been approved by [MG Miller]" and was sent from an attorney in the DoD General Counsel's office to an attorney at the Department of Justice's Office of Legal Counsel in May 2003. January 31, 2008 SASC staff notes on Vaughn declaration documents.

<sup>570</sup> Interrogation Plan for ISN: [REDACTED] [Khatani] (November 12, 2002).

<sup>571</sup> Ibid.

<sup>572</sup> Ibid.

<sup>573</sup> Ibid.

[REDACTED]

[REDACTED] The plan's final phase, Phase IV, was entitled "Coalition Exploitation" and stated that:

The fourth phase of the plan to exploit 063 requires that he be sent off island either temporarily or permanently to either [two specified third countries], or another country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information.<sup>574</sup>

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

(U) On November 14, 2002, CITF Commander COL Britt Mallow sent an email to MG Miller raising concerns about both the Khatani interrogation and the October 11, 2002 request for authority to use aggressive interrogation techniques.<sup>575</sup> He stated:

I strongly disagree with the use of many of the proposed [Category] 3 and some [Category] 2 techniques. I feel they will be largely ineffective, and that they will have serious negative material and legal effects on our investigations. I also am extremely concerned that the use of many of these techniques will open any military members up for potential criminal charges, and that my agents, as well as other [military personnel] will face both legal and ethical problems if they become aware of their use.<sup>576</sup>

(U) COL Mallow told the Committee that in addition to his email, he raised concerns about the Khatani interrogation in conversations with MG Miller and in "several meetings with the DoD [General Counsel]."<sup>577</sup> COL Mallow said that MG Miller told him in a meeting that "if [CITF] did not want to participate in interrogations with the intelligence community because of our objections to methods, that [CITF] would not have the benefit of information resulting from any of those interrogations."<sup>578</sup>

(U) MG Miller told the Committee that, while he did not recall the CITF Commander's November 14, 2002 email specifically, he did recall communications from COL Mallow to that effect.<sup>579</sup> DoD General Counsel Jim Haynes stated that he did not recall seeing a copy of the Khatani interrogation plan at that time and did not "specifically" recall his staff advising him that CITF and FBI had concerns with interrogation techniques in the Khatani interrogation plan.<sup>580</sup>

[REDACTED] A CITF Legal Advisor, [REDACTED], also raised objections to JTF-GTMO's interrogation plan for Khatani. In a November 15, 2002 memo for MG Miller, [REDACTED]

<sup>574</sup> Ibid.

<sup>575</sup> Email from COL Britt Mallow to MG Geoffrey Miller (November 14, 2002).

<sup>576</sup> Ibid.

<sup>577</sup> Responses of COL (Ret.) Britt Mallow to questionnaire of Senator Carl Levin (September 15, 2006).

<sup>578</sup> Ibid.

<sup>579</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>580</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 221, 228.



[REDACTED]

[REDACTED] said that "the reliability of any information gained from aggressive techniques will be highly questionable" and objected to all "physical stresses intended for use" in Phase III of the interrogation plan.<sup>581</sup> [REDACTED] also objected to Phase IV of the plan, stating that it implied "that third country nationals with harsher interrogation standards could be used to convey threats to persons of family or inflict harm contrary to the Convention Against Torture."<sup>582</sup>

[REDACTED] The Khatani interrogation did not proceed on November 15, 2002 as planned. A November 15, 2002 staff memo to the Joint Staff J-2 indicated that the interrogation was delayed while MG Miller "consider[ed] COL Mallow's objections."<sup>583</sup> MG Miller denied that the Khatani interrogation was delayed because of COL Mallow's concerns, instead telling the Committee that the interrogation was delayed because he had not received SOUTHCOM's approval.<sup>584</sup> However, as noted above, GTMO Staff Judge Advocate LTC Diane Beaver indicated in a November 14, 2002 email that JTF-GTMO planned to move forward "with support of SOUTHCOM."<sup>585</sup>

(U) In his November 14, 2002 email to MG Miller, COL Mallow proposed that JTF-GTMO and CTF develop a mutually acceptable interrogation plan for Khatani.<sup>586</sup> On November 20, 2002, FBI personnel, who were working closely with CTF, met with JTF-GTMO staff to discuss developing such a plan.<sup>587</sup>

[REDACTED]

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

<sup>581</sup> Memo from [REDACTED] for Major General Geoffrey Miller, *Objection to Aggressive Interrogation Techniques* (November 15, 2002).

<sup>582</sup> Ibid.

<sup>583</sup> Memo from [REDACTED] to J-2, Joint Staff, *GTMO Detainee [REDACTED] 063 [REDACTED]* (November 15, 2002).

<sup>584</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>585</sup> Email from LTC Diane Beaver to [REDACTED] (November 14, 2002) (emphasis added).

<sup>586</sup> Email from COL Britt Mallow to MG Geoffrey Miller (November 14, 2002).

<sup>587</sup> FBI memo to Major General Miller, *VTC 21 November 2002* (undated).

<sup>588</sup> Committee staff interview of FBI Special agent (November 8, 2007).

<sup>589</sup> Internal FBI Email, *Interview Plans* (November 21, 2002).

<sup>590</sup> Ibid.

[REDACTED]

[REDACTED] On November 21, 2002, MG Miller, LTC Phifer, and representatives from the FBI, CITE, SOUTHCOM, and the DoD General Counsel's office all participated in a video teleconference (VTC) to discuss the Khatani interrogation.<sup>591</sup>

[REDACTED] LTC Phifer told the Committee that he and MG Miller briefed the group on the Khatani plan and that during the VTC, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson stated that the Department was comfortable with what JTF-GTMO had planned.<sup>592</sup> MG Miller told the Committee that he did not recall the VTC.<sup>593</sup> Ms. Davidson said that she recalled participating in VTCs where the Khatani interrogation was discussed, but she did not recall if she had a copy of the interrogation plan itself and did not recall saying that the Department of Defense was comfortable with what JTF-GTMO proposed for the interrogation.<sup>594</sup> [REDACTED] the psychiatrist with the GTMO Behavioral Science Consultation Team, said that in the context of the Khatani interrogation, "we were routinely told that the interrogation strategy was approved up to [the Secretary of Defense] level."<sup>595</sup>

(U) Subsequent to the VTC, the FBI sent a memo to MG Miller alerting him to FBI "misgivings about the overall coercive nature and possible illegality" of the Khatani interrogation plan and informing him that the FBI had presented JTF-GTMO staff with "an alternative interrogation approach based on long-term rapport building."<sup>596</sup> A draft of that alternative approach, which was the product of both the FBI and CITE, stated that Khatani's negative interactions with interrogators "only reinforces Al-Qaeda stereotypes about evil Americans and validates their expectation of harsh treatment and potential torture."<sup>597</sup>

(U) On November 22, 2002, Naval Criminal Investigative Service (NCIS) Chief Psychologist Michael Gelles drafted a formal review of a JTF-GTMO draft plan.<sup>598</sup> Dr. Gelles concluded that the interrogation plan "lack[ed] substantive and thoughtful consideration."<sup>599</sup> Among other concerns, Dr. Gelles stated:

<sup>591</sup> Notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainees #063*, entry at "11/21/2002."

<sup>592</sup> [REDACTED] Committee staff interview of LTC Jerry Phifer (June 27, 2007). Notes taken by an FBI Special Agent who participated in the VTC indicate that, in briefing the Defense HUMINT Service (DHS) plan, LTC Phifer "portray[ed] the DHS Interrogation Plan to SOUTHCOM and the General Counsel at the Pentagon as a unified FBI/DHS Interrogation Plan." The FBI Special Agent's notes state that the LTC Phifer characterization was "in direct contradiction" to what the Special Agent had told Phifer the previous day. See notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainees #063*, entry at "11/21/2002."

<sup>593</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>594</sup> Committee staff interview of Eliana Davidson (February 21, 2008).

<sup>595</sup> Written statement of [REDACTED] (August 21, 2007) at 8.

<sup>596</sup> FBI memo to Major General Miller, *PTC 21 November 2002* (undated).

<sup>597</sup> FBI and CITE Draft Interrogation Plan (November 22, 2002).

<sup>598</sup> Memo from Michael G. Gelles, Psy.D. to Mark Fallon, *Review of JTF-GTMO Interrogation Plan Detainees 063*, (November 22, 2002) (hereinafter "*Review of JTF-GTMO Interrogation Plan Detainees 063* (November 22, 2002)").

<sup>599</sup> *Review of JTF-GTMO Interrogation Plan Detainees 063* (November 22, 2002).

[REDACTED]

Strategies articulated in the later phases reflect techniques used to train US forces in resisting interrogation by foreign enemies... [These techniques] would prove not only to be ineffective but also border on techniques and strategies deemed unacceptable by law enforcement professionals...<sup>600</sup>

(U) Dr. Gelles noted that "the choice to use force with this adversary in an interrogation may only reinforce his resistance" and stated that if the plan were implemented he would "have trouble not finding myself from a professional perspective, being forced into an adversary position through cross examination in a military tribunal as an expert in interrogation."<sup>601</sup>

(U) Notwithstanding the CITF and FBI concerns, MG Miller authorized interrogators to proceed with the Khatani interrogation beginning November 23, 2002.

#### 4. "Final" Khatani Interrogation Plan (U)

[REDACTED] MG Miller identified a version of the Khatani plan that had been written on November 22, 2002 as the "final" plan that he authorized to be implemented on November 23, 2002.<sup>602</sup> While similar to the plan circulated on November 12, 2002, the November 22, 2002 plan contained notable differences from the earlier version that contemporaneous documents indicated had also been approved.

[REDACTED] Although there is evidence that both stress positions and dogs were used in the Khatani interrogation, the November 22, 2002 plan does not mention either of these two techniques.<sup>603</sup> MG Miller said the stress positions and use of dogs were removed from the plan at his direction.<sup>604</sup>

[REDACTED] With respect to dogs, MG Miller said that neither LTC Phifer, nor LTC Beaver objected to the use of dogs and that his ICE Chief, Mr. Becker, actually favored the use of dogs in interrogations.<sup>605</sup> MG Miller said, however, that he only approved the use of dogs for security around the perimeter of Camp X-Ray, where the interrogation was to take place, and that he made that view absolutely clear to Mr. Becker. CAPT Jane Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff said, however, that she met with MG Miller in early November and discussed the use of dogs for interrogation purposes.<sup>606</sup> She said that the "theory was that certain individuals are afraid of dogs" and that, while MG Miller talked about dogs

<sup>600</sup> Ibid.

<sup>601</sup> Ibid.

<sup>602</sup> Inge Report at 9.

<sup>603</sup> Interrogation Plan for ISN: [REDACTED] [Khatani] (November 22, 2002) (hereinafter "Khatani interrogation plan (November 22, 2002).").

<sup>604</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>605</sup> Ibid.

<sup>606</sup> Committee staff interview of RADM Jane Dalton (April 10, 2008) at 84.

[REDACTED]

being outside the interrogation room, they discussed the purpose of the dogs' presence during interrogations was that it "exploits [the detainee's] fear."<sup>607</sup>

[REDACTED] Mr. Becker told the Committee that MG Miller told him to remove dogs from the plan.<sup>608</sup> Nevertheless, a document describing interrogation techniques used in the Khatani interrogation and a witness account (both discussed below) suggest that dogs were used during the interrogation to shock and agitate Khatani.<sup>609</sup>

[REDACTED] With respect to stress positions, Mr. Becker told the Committee that, notwithstanding the fact that they were included in the earlier plan, there was never an intent to use stress positions with Khatani.<sup>610</sup> A document that appears to have been produced during the Khatani interrogation, however, stated that stress positions would "be employed."<sup>611</sup> In addition, a 2005 memo from the JTF-GTMO Chief of Staff referencing the 2002 interrogation stated that Khatani had "slight abrasions caused by stress positions and shackle restraints."<sup>612</sup>

[REDACTED] The November 22, 2002 plan identified by MG Miller as the final plan described five phases to the interrogation.<sup>613</sup> Phase I, which was added after November 12, called for the interrogators to "Induce and exploit Stockholm Syndrome" by establishing "an isolated, austere environment where the detainee becomes completely dependent on the interrogators and the interrogator presents himself as a 'caretaker' of the detainee."<sup>614</sup> Dr. Gelles said that the idea of inducing the Stockholm syndrome implied that "the subject feels that he is to be killed and the information provided may in fact be distorted."<sup>615</sup>

[REDACTED] Phase II of the November 22, 2002 plan (which is largely the same as Phase I of the earlier plan) stated that prior to the start of the first Phase II interrogation session, Khatani's head and beard would be shaved for "safety, hygiene and psychological purposes."<sup>616</sup> In addition, the plan stated that MG Miller had approved the use of hospital gauze to restrain the detainee's mouth to prevent him from becoming argumentative and verbally abusive.

<sup>607</sup> Ibid.

<sup>608</sup> Committee staff interview of David Becker (September 17, 2007).

<sup>609</sup> [REDACTED] Memorandum, *Methods Employed X-Ray Interrogation ISN 63(S)* (January 17, 2003). Army IG, Interview of [REDACTED] (April 28, 2006).

<sup>610</sup> Committee staff interview of David Becker (September 17, 2007).

<sup>611</sup> Memo, *063 Plan of Attack: Phase I Bravo* (undated).

<sup>612</sup> Memo from COL John A. Hadijs to Chief of Staff, USSOUTHCOM, *Executive Summary on Information Concerning Detainees ISN: [REDACTED]* (U) (March 14, 2005).

<sup>613</sup> Khatani interrogation plan (November 22, 2002).

<sup>614</sup> Khatani interrogation plan (November 22, 2002). The Stockholm Syndrome refers to a psychological event where hostages begin to identify with and grow sympathetic to their captors. The syndrome draws its name from a bank robbery and hostage situation in Stockholm, Sweden in 1973.

<sup>615</sup> *Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002).

<sup>616</sup> Khatani interrogation plan (November 22, 2002).

[REDACTED]

[REDACTED]

[REDACTED] Phase III of the November 22, 2002 plan was largely the same as Phase II of the earlier plan and proposed having a native linguist translator play the role of a detainee to elicit information from Khatani.<sup>617</sup>

[REDACTED] Phase IV of the November 22, 2002 plan – which described the use of interrogation techniques based on those used in SERE school to increase U.S. personnel's resistance to illegal enemy interrogations – was virtually identical to the earlier plan and stated:

The fourth phase of the plan to exploit 063 [Khatani] requires [Office of the Secretary of Defense] approval for the SERE interrogation technique training and approval of the level three counter interrogation resistance training submitted by JTF-GTMO. Once the approvals are in place, those interrogation techniques will be implemented to encourage 063 to cooperate. The intent of raising the stakes to this level is to convince 063 that it is futile to resist. Success of Phase III is when his sense of futility is raised to a high enough level that source gives in and provides the necessary information. Phase III ends with success or a standstill, after the exhaustion of all tools JTF GTMO has to offer.<sup>618</sup>

[REDACTED] Despite having approved the plan, MG Miller testified to the Army IG that he knew “little about SERE” and “wasn’t comfortable” with SERE techniques.<sup>619</sup> However, MG Miller acknowledged to the Committee that these techniques were included in the approved plan and that, if the first three phases of the Khatani plan were unsuccessful, that he was willing to consider the use of SERE techniques.<sup>620</sup>

[REDACTED] The plan's final phase, Phase V, maintained the same title “Coalition Exploitation” as Phase IV of the earlier plan but did not explicitly state an intention to render Khatani to a third country, as did the earlier plan.<sup>621</sup> Instead, under “Coalition Exploitation” the November 22, 2002 plan stated that:

The fifth phase of the plan to exploit 063 will be determined at the national, interagency level where the future disposition of 063 will be determined.<sup>622</sup>

[REDACTED]

<sup>617</sup> Interrogation Plan for ISN: [REDACTED] [Khatani] (November 15, 2002) (hereinafter “Khatani interrogation plan (November 15, 2002)”; Khatani interrogation plan (November 22, 2002).

<sup>618</sup> Khatani interrogation plan (November 22, 2002).

<sup>619</sup> Army IG, Interview of MG Geoffrey Miller (March 26, 2006).

<sup>620</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>621</sup> Khatani interrogation plan (November 22, 2002).

<sup>622</sup> Ibid.

<sup>623</sup> Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[REDACTED]

[REDACTED] <sup>624</sup> Nevertheless, the idea of transferring Khatani to a third country was discussed. <sup>625</sup>

[REDACTED]

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

(U) On November 22, 2002 the FBI sent MG Miller a memo that outlined FBI's continuing concerns about JTF-GTMO interrogation techniques. The FBI also requested a meeting with the Commander. <sup>628</sup> The memo stated:

Many of [JTF-GTMO's] methods are considered coercive by Federal Law Enforcement and UCMJ standards. Not only this, but reports from those knowledgeable about the use of these coercive techniques are highly skeptical as to their effectiveness and reliability. <sup>629</sup>

(U) The memo stated further that the "FBI/CITF strongly believes that the continued use of diametrically opposed interrogation strategies in GTMO will only weaken our efforts to obtain valuable information." <sup>630</sup>

(U) In late November, FBI agents at GTMO asked that their concerns about JTF-GTMO interrogation techniques be relayed to Marion "Spike" Bowman, a senior attorney in the FBI's Office of General Counsel. <sup>631</sup> Mr. Bowman said that "[a]s soon as I heard from the [the FBI agents] I talked with (now retired) Executive Assistant Director Pat D'Amuro who immediately said we (the FBI) would not be a party to actions of any kind that were contrary to FBI policy and that individuals should distance themselves from any such actions." <sup>632</sup> Mr. Bowman also recommended to FBI General Counsel Kenneth Wainstein that FBI relay the concerns to the DoD General Counsel's office. Mr. Bowman subsequently called the acting DoD Deputy General Counsel for Intelligence and believes he also spoke with the DoD Principal Deputy

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<sup>624</sup> Ibid.

<sup>625</sup> See Section V B 5, *infra*.

<sup>626</sup> Khatani interrogation plan (November 22, 2002).

<sup>627</sup> Ibid.; Committee staff interview of MG Geoffrey Miller (December 6, 2007).

<sup>628</sup> FBI Memorandum to JTF-170 Commander MG Geoffrey Miller (November 22, 2002). Despite the heading on the memorandum, JTF-GTMO had replaced JTF-170 by the time this memo was written.

<sup>629</sup> Ibid.

<sup>630</sup> Ibid.

<sup>631</sup> Committee staff interview of FBI Special Agent (November 8, 2007).

<sup>632</sup> Responses of Marion Bowman to questionnaire of Senator Carl Levin (August 7, 2006).

[REDACTED]

[REDACTED]

General Counsel. DoD General Counsel Jim Haynes said that he did not recall being aware that the FBI had contacted his office with concerns.<sup>633</sup>

(U) On December 2, 2002, an FBI Special Agent, who was also an attorney, sent his own legal analysis of the October 11, 2002 GTMO request to another Special Agent for forwarding to Mr. Bowman.<sup>634</sup> The FBI Special Agent referred to several techniques – such as all the Category III techniques and several Category II techniques, including stress positions, hooding, removal of clothing, 20 hour interrogations, and use of individual phobias (such as fear of dogs) to induce stress – as “coercive interrogation techniques which are not permitted by the U.S. Constitution.”<sup>635</sup> The Special Agent’s analysis also identified several techniques – including all Category III techniques and two Category II techniques, i.e. hooding and use of phobias – as “examples of coercive interrogation techniques which may violate 18 U.S.C. § 2340, (Torture Statute)” and warned that “it is possible that those who employ these techniques may be indicted, prosecuted, and possibly convicted if the trier of fact determines that the user had the requisite intent.”<sup>636</sup>

(U) The following day, Mr. Bowman sent an email to another FBI Special Agent, stating “[i]t is irrelevant whether these detainees are considered prisoners of war, they are still entitled to minimal conditions of treatment – many of the techniques addressed appear to move well beyond the minimal requirements . . . I concur that we can’t control what the military is doing, but we need to stand well clear of it and get as much information as possible to D’Amuro, Gebhart, and Mueller as soon as possible.”<sup>637</sup> Director Mueller said that he was not aware of the FBI’s concerns with DoD interrogation techniques at GTMO until May 2004.<sup>638</sup>

[REDACTED]

<sup>633</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 236.

<sup>634</sup> Email from FBI Special Agent (December 2, 2002).

<sup>635</sup> FBI Memo, *Legal Issues Re Interrogation Techniques*, attached to Email from FBI Special Agent (December 2, 2002).

<sup>636</sup> *Ibid.*

<sup>637</sup> Email from Marion Bowman (December 3, 2002).

<sup>638</sup> *Current and Projected National Security Threats to the United States*, Senate Select Committee on Intelligence, 109<sup>th</sup> Cong. (February 16, 2005).

<sup>639</sup> Committee staff interview of FBI Special Agent (November 8, 2007).

<sup>640</sup> Email from FBI Special Agent (May 10, 2004).

[REDACTED]

[REDACTED]

<sup>641</sup> The DoD Associate Deputy General Counsel for International Affairs, Eliana Davidson, said that the FBI's Unit Chief believed that efforts at GTMO were not being productive and that he advocated for Khatani's transfer during the VTC.<sup>642</sup>

[REDACTED]

<sup>643</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] DoD General Counsel Jim Haynes said he did not remember discussing the possible rendition of Khatani, but that "it may have been considered."<sup>648</sup>

(U) CITF Deputy Commander Mark Fallon said that FBI proposed to CITF the idea of rendering Khatani to a third country but that CITF "considered it possibly unlawful" and opposed the proposal.<sup>649</sup> He said CITF staff made Mr. Cobb aware of their concerns and that Mr. Cobb supported the CITF position.

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<sup>641</sup> Committee staff interview of FBI Special Agent (November 8, 2007).

<sup>642</sup> Committee staff interview of Eliana Davidson (May 23, 2008).

<sup>643</sup> Committee staff interview of FBI Unit Chief (May 17, 2008).

<sup>644</sup> Ibid.

<sup>645</sup> Ibid.

<sup>646</sup> Ibid.

<sup>647</sup> Committee staff interview of FBI Special Agent (November 8, 2007).

<sup>648</sup> Committee staff interview of William J. Haynes II (April 25, 2008) at 232.

<sup>649</sup> Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006).



[REDACTED]

(U) The same day the VTC took place, FBI's on-site supervisor and two Special Agents met with MG Miller where they again raised their concerns about JTF-GTMO interrogation techniques.<sup>650</sup> One FBI Special Agent told the Committee that MG Miller thanked the FBI personnel for their views, but told them that JTF-GTMO staff knew what they were doing.<sup>651</sup>

(U) On December 9, 2002, another FBI Special Agent who attended the meeting sent an email stating, "when I return to D.C., I will bring a copy of the military's interview plan [for Khatani]... You won't believe it!"<sup>652</sup> Several months later he characterized the December 5, 2002 meeting with MG Miller:

Although [MG] Miller acknowledged positive aspects of [the FBI's approach to interrogations] it was apparent that he favored [JTF-GTMO's] interrogation methods, despite FBI assertions that such methods could easily result in the elicitation of unreliable and legally inadmissible information.<sup>653</sup>

[REDACTED] JTF-GTMO ICE Chief David Becker told the Committee that MG Miller asked him at one point why the JTF was not using the FBI's approach, to which Mr. Becker replied that the JTF had already tried the FBI approach, that it did not work, and that he wanted to be more aggressive.<sup>654</sup>

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

(U) On November 23, 2002, JTF-GTMO personnel took Khatani to Camp X-Ray to begin Phase I of the interrogation.<sup>655</sup> Two days later, CITF attorney [REDACTED] sent the GTMO Staff Judge Advocate, LTC Diane Beaver, an email indicating that "CITF is not on board with aggressive techniques including 20 hour [plus] interrogations. Therefore, according to our policy, we will 'stand clear' and not offer participation, advisements, support or recommendations as to its implementation."<sup>656</sup> CITF later drafted formal guidance for its agents stating that "Detainees will be treated humanely. Physical torture, corporal punishment and mental torture are not acceptable interrogation tactics and are not allowed under any circumstances... CITF personnel will not participate in any interrogation that employs tactics inconsistent with or in direct violation of this policy."<sup>657</sup>

<sup>650</sup> Committee staff interview of FBI Special Agents (November 8, 2007).

<sup>651</sup> Committee staff interview of FBI Special Agent (November 8, 2007).

<sup>652</sup> Email from FBI Special Agent (December 9, 2002).

<sup>653</sup> Electronic Communication from FBI Behavioral Analysis Unit (BAU) (May 30, 2003).

<sup>654</sup> Committee staff interview of David Becker (September 17, 2007).

<sup>655</sup> Army Regulation 15-6: Final Report: Investigation Into FBI Allegations of Detainee Abuse At Guantanamo Bay, Cuba Detention Facility, prepared by Lt. Gen. Randall Schmidt and Brig. Gen. John Furlow (hereinafter "Schmidt-Furlow Report").

<sup>656</sup> Email from [REDACTED] to LTC Diane Beaver (November 25, 2002).

<sup>657</sup> DoD CITF Memo for All Personnel Assigned to the DoD Criminal Investigation Task Force, *ALCITF Memorandum 004-02, Interrogation Procedures* (December 16, 2002).