

[REDACTED]

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

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

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

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

[REDACTED]

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

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

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

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

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

²⁷¹ Ibid.

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

²⁷³ Ibid.

[REDACTED]

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

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

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

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

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

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

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

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

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

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

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

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

[REDACTED]

[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.²⁸⁰ LTC Banks contacted the Joint Personnel Recovery Agency (JPRA) for assistance in organizing training for the BSCT.²⁸¹ After speaking to Col Moulton, the JPRA Commander, LTC Banks informed the BSCT that JPRA was willing to modify its prior [REDACTED] interrogation training sessions to suit the BSCT's needs.²⁸²

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

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

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

²⁸¹ Ibid.

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

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

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

²⁸⁵ SASC Hearing (June 17, 2008).

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

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

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

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

[REDACTED]

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

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

[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.²⁹² Others involved in JTF-170 interrogation operations agreed that there was pressure on interrogation personnel to produce intelligence, but did not recall pressure to identify links between Iraq and al Qaeda.²⁹³

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

[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.²⁹⁷ Mr. Becker recalled MG Dunlavey telling him after one of these calls, that the Deputy Secretary himself said that GTMO

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

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

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

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

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

²⁹⁵ [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).

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

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

[REDACTED]

[REDACTED]

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

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

[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.³⁰⁰ In response, the Joint Staff directed COL John P. Custer, then-assistant commandant of the U.S. Army Intelligence Center and School at Ft. Huachuca, Arizona, to lead a review team.

[REDACTED] COL Custer's team visited GTMO in August and submitted its findings to the Joint Staff on September 10, 2002.³⁰¹ Like COL Herrington's assessment six months earlier, the Custer review identified a number of issues hampering GTMO's intelligence collection mission, [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."³⁰⁴ He also recommended combining the FBI's Behavioral Analysis Unit and the JTF-170 BSCT to use both military and law enforcement approaches to create an environment that would be "conducive to extracting information by exploiting the detainee's vulnerabilities."³⁰⁵

²⁹⁸ Ibid.

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

³⁰⁰ [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).

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

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

³⁰³ Ibid. at 11.

³⁰⁴ Ibid. at 12.

³⁰⁵ Ibid. 11-12.

[REDACTED]

[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.³⁰⁶

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

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

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

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

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

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

³⁰⁶ Ibid. at 2.

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

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

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

³¹⁰ Ibid.

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

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

³¹³ Memo from Joseph Witsch to Col Randy Moulton, Col John Atkins, Lt Col Baumgartner and Christopher Wirts, [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.³¹⁴

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

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

[REDACTED] According to a JPRA plan of instruction dated August 28, 2002, the first day of training included instruction on the stages of [REDACTED]

[REDACTED] The next three days of training in the plan of instruction included a range of topics, including [REDACTED]

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[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. . ."³²⁰ The presentation listed a number of "Critical Operational Exploitation Principles," including [REDACTED]

321 The "Principles" listed in the Fort Bragg training presentation

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

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

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

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

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

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

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

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

³²¹ *Ibid.* at 4.

[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.³²²

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

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

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

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

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

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

³²³ JPRA, *Exploitation of Captive*.

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

³²⁵ JPRA, *Exploitation of Captive*.

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

³²⁷ JPRA, *Exploitation of Captive*.

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

³²⁹ *Ibid.* at 25.

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

[REDACTED]

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

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

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

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

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

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

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

³³² Ibid. at 27.

³³³ JPRA, *Counter Measures to Defeat al-Qa’ida Resistance*.

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

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

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

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

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

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

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

³⁴¹ Ibid.

[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.³⁴² LTC Banks told the Committee that using physical pressures designed for students at SERE school in actual interrogations would almost always be unproductive.³⁴³ For example, he told the Committee that slapping a person would harden their resistance.

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

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

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

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

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

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

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

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

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*

[REDACTED]

having some effect, he stated that the positive effect appeared limited to the “younger, inexperienced” detainees.”³⁴⁹

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

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

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

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

[REDACTED] Mr. Witsch continued:

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

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

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

³⁴⁹ Ibid.

³⁵⁰ Ibid.

[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.³⁵¹

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

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

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

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

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

³⁵² Ibid.

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

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

³⁵⁵ Ibid.

³⁵⁶ Ibid.

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

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

[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.³⁵⁹

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

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

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

[REDACTED]

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

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

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

³⁶² Ibid.

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

³⁶⁴ Ibid.

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

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

[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.”³⁶⁹ Category I techniques included incentives and “mildly adverse approaches” such as telling a detainee that he was going to be at GTMO forever unless he cooperated.³⁷⁰ The memorandum stated that an interrogator should be able to ascertain whether a detainee is being cooperative by the end of the initial interrogation and said that if Category I approaches failed to induce cooperation, the interrogator could request approval for Category II approaches.³⁷¹

[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.”³⁷² Category II techniques included stress positions; the use of isolation for up to 30 days (with the possibility of additional 30 day periods, if authorized by the Chief Interrogator); depriving a detainee of food for up to 12 hours (or as long as the interrogator goes without food during an interrogation); the use of back-to-back 20 hour interrogations once per week; removal of all comfort items including religious items; forced grooming; handcuffing a detainee; and placing a hood on a detainee during questioning or movement.³⁷³

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

³⁶⁸ Ibid. at 2.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

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

[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.”³⁷⁴ Category III techniques included the daily use of 20 hour interrogations; the use of strict isolation without the right of visitation by treating medical professionals or the International Committee of the Red Cross (ICRC); the use of food restriction for 24 hours once a week; the use of scenarios designed to convince the detainee he might experience a painful or fatal outcome; non-injurious physical consequences; removal of clothing; and exposure to cold weather or water until such time as the detainee began to shiver.³⁷⁵

[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.³⁷⁶ The BSCT memo described using fans and generators to create white noise as a form of psychological pressure and advocated that “all aspects of the [detention] environment should enhance capture shock, dislocate expectations, foster dependence, and support exploitation to the fullest extent possible.”³⁷⁷

[REDACTED] ([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.”³⁷⁸ They wrote:

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

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

³⁷⁵ Ibid.

³⁷⁶ Ibid. at 4.

³⁷⁷ Ibid. at 4-5.

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

³⁷⁹ 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.³⁸⁰

(U) LTC Banks wrote:

[REDACTED] ([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] ([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.³⁸¹

G. CIA Lawyer Advises GTMO on Interrogations (U)

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

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

³⁸¹ Ibid.

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

[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.³⁸³ Mr. Haynes said he later found out in a discussion with Mr. Rizzo that a CIA lawyer had gone to GTMO and discussed legal authorities applicable to interrogations, but said he could not recall when he first learned of that CIA lawyer's visit.

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

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

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

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

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

³⁸⁵ *Counter Resistance Strategy Meeting Minutes* at 3.

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.* at 2.

³⁹⁰ *Ibid.*

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

³⁹² *Ibid.*

[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.”³⁹³

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

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

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

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

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

³⁹³ Ibid. at 5.

³⁹⁴ Ibid. at 3.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

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

³⁹⁸ Ibid. at 5.

³⁹⁹ Ibid. at 3.

[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.”⁴⁰⁰ LTC Beaver added that there was no legal reason why law enforcement personnel could not participate in those operations.⁴⁰¹

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

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

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

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

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

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

⁴⁰³ [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 JTF-GTMO staff physical pressures used to teach students at SERE school how to resist interrogations. However, the Lieutenant Commander was not deployed to GTMO until November 2002. Committee staff interview of LTC Diane Beaver (October 11, 2007); see Committee staff interview of [REDACTED] (August 22, 2007); [REDACTED] Travel voucher.

⁴⁰⁴ *Counter Resistance Strategy Meeting Minutes* at 4.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid. at 3.

[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.⁴⁰⁸

[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.⁴⁰⁹ 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."⁴¹⁰ MAJ Burney asked whether LTC Banks knew "where task force personnel could go to receive such training" and whether he knew of "any consultants who could assist if any of these measures are eventually approved."⁴¹¹

[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."⁴¹²

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

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

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

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

⁴¹¹ Ibid.

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

[REDACTED]

turned him over to U.S. forces on December 26, 2001.⁴¹³ He was transferred to Guantanamo Bay on February 13, 2002, where he was initially interrogated by JTF-170, CITF and FBI personnel at Camp X-Ray.

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

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

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

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

[REDACTED]

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

⁴¹⁴ Khatani was identified as a possible twentieth 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 deported. When Khatani arrived at the Orlando airport, Mohammed Atta was waiting. JTF-GTMO, *Analyst Support Summary* (March 18, 2003), attached as Tab 22 to Inge Report (August 24, 2006).

⁴¹⁵ Inge Report at 5.

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

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

⁴¹⁸ Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

[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.⁴²⁵ Major General Dunlavey said that he did not recall whether or not he personally consulted with LTC Beaver, that the letter would likely have been drafted by his Director for Intelligence, LTC Jerald Phifer, and that it was possible that the statement in the letter that LTC Beaver had been consulted was based on a representation by his staff.⁴²⁶

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

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

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ Ibid.

⁴²⁴ Ibid.

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

⁴²⁶ Committee staff interview of MG Michael Dunlavey (November 30, 2007).

[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.⁴²⁷ A summarized statement of testimony provided by one of the FBI agents present at the time indicated that the FBI objected to the use of dogs and raised those objections to Mr. Becker, the JTF-170 ICE Chief.⁴²⁸ In testimony to the Army IG, Mr. Becker acknowledged that he permitted the military working dog to enter the interrogation in order to raise the detainee's stress level.⁴²⁹

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

[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.⁴³⁴ Mr. Becker told the Committee that the interrogation plan did not work and that JTF-170 ceased the interrogation after approximately a week and moved Khatani back to the Navy brig.⁴³⁵

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

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

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

⁴³⁰ Committee staff interview of David Becker (September 17, 2007).

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

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

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

⁴³⁴ Email from FBI Special Agent to FBI Special Agent (October 8, 2002).

⁴³⁵ Committee staff interview of David Becker (September 17, 2007).

[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.'"⁴³⁶

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

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

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

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

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

[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

⁴³⁶ Email from FBI Special Agent to FBI Special Agent (October 8, 2002).

⁴³⁷ Memo from LTC Jerald Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies* (October 11, 2002) (hereinafter LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*).

⁴³⁸ MAJ Burney told the Army IG that the October 11, 2002 memo "wasn't the exact same document that we had written but the general structure and overall organization—a lot of the things did remain intact from our original brainstorm to what was eventually requested." Army IG, Interview of MAJ Paul Burney (August 21, 2007) at 11.

⁴³⁹ The October 11 memo also stated that "current guidelines for interrogation procedures at GTMO limit the ability of interrogators to counter advanced resistance." LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

⁴⁴⁰ Ibid.

⁴⁴¹ Additional Category II techniques included use of falsified documents or reports, interrogating the detainee in an environment other than the standard interrogation booth, use of 20 hour interrogations, removal of all comfort items (including religious items), switching the detainee from hot rations to MREs, and forced grooming. Ibid.

[REDACTED]

positions” at GTMO.⁴⁴² When asked how stress positions came to be included in LTC Phifer’s memo, given the agreement referenced in her earlier email, LTC Beaver said that she did not know, but added that LTC Phifer later advocated for their use.⁴⁴³ LTC Beaver said that she relied on Mr. Becker and LTC Phifer to decide which techniques to put in the memo and that she never commented or changed their drafts.⁴⁴⁴

(U) The proposed Category III techniques in the October 11, 2002 request were the most aggressive and included the use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him and/or his family; exposure to cold weather or water; the use of a wet towel and dripping water to induce the misperception of suffocation; and the use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.⁴⁴⁵ According to the October 11, 2002 memo, Category III techniques “and other aversive techniques, such as those used in U.S. military resistance training or by other U.S. government agencies” would be utilized to interrogate “exceptionally resistant detainees,” which LTC Phifer estimated as “less than 3%” of the detainees held at GTMO.⁴⁴⁶

(U) Two of the Category III techniques in LTC Phifer’s memo – the use of phobias and the use of the wet towel and dripping water to induce the misperception of suffocation – were not derived from the October 2, 2002 BSCT memo.⁴⁴⁷ CIA lawyer Jonathan Fredman, however, had reportedly discussed both of these techniques during his October 2, 2002 meeting with GTMO personnel, noting that the use of phobias was “very effective” and that the use of the “wet towel technique” makes a body react as if it’s suffocating.⁴⁴⁸ Mr. Becker told the Committee that he (the ICE Chief) may have recommended adding those two techniques to the request for authority.⁴⁴⁹

(U) LTC Phifer said that he drafted his memo with Mr. Becker.⁴⁵⁰ Mr. Becker, however, told the Committee that he was provided a draft only after it was nearly complete. He said that

⁴⁴² Vice Admiral Albert T. Church, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques* (March 7, 2005) (hereinafter “Church Report”) at 109 (citing email from LTC Beaver (August 19, 2002)).

⁴⁴³ LTC Beaver told the Committee that LTC Phifer advocated the use of stress positions in the interrogation of Mohammed al Khatani (discussed below). Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁴⁴⁴ Ibid.

⁴⁴⁵ LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

⁴⁴⁶ Ibid.

⁴⁴⁷ The use of a wet towel and dripping water to induce the misperception of drowning appears to describe waterboarding. The Navy is the only service that used waterboarding in SERE training, which it ceased in November 2007.

⁴⁴⁸ *Counter Resistance Strategy Meeting Minutes* at 5 (The CTC Chief Counsel explained that if a “well-trained individual is used to perform” the “wet-towel technique,” it can “feel like you’re drowning. The lymphatic system will react as if you’re suffocating but your body will not cease to function.”)

⁴⁴⁹ Committee staff interview of David Becker (September 17, 2007).

⁴⁵⁰ Committee staff interview of LTC Jerald Phifer (June 27, 2007).

[REDACTED]

he thought the techniques memo was “stupid,” though he did not share his view with LTC Phifer at the time.⁴⁵¹ LTC Phifer told the Committee that he was uncomfortable with the idea of using some of the techniques in his memo but that MG Dunlavey pressured him to finish the request.⁴⁵²

B. GTMO Staff Judge Advocate Conducts “Legal Review of Aggressive Interrogation Techniques” (U)

(U) The October 11, 2002 techniques memo was accompanied by a cover memo and legal brief written by GTMO’s Staff Judge Advocate (SJA) LTC Diane Beaver. The cover memo stated simply that “the proposed strategies do not violate applicable federal law.”⁴⁵³

(U) LTC Beaver told the Committee that she drafted the legal brief with her staff over the course of the 2002 Columbus Day weekend.⁴⁵⁴ She told the Committee that she had not seen either of the legal memoranda produced by the Department of Justice Office of Legal Counsel on August 1, 2002 and that she did not receive input on the legal brief from anyone outside of GTMO. The minutes of the October 2, 2002 meeting with CIA lawyer Jonathan Fredman, however, reflect that LTC Beaver was present when he discussed the Torture Convention (and the federal law implementing the treaty). In that discussion, Mr. Fredman described “severe physical pain” as “anything causing permanent damage to major organs or body parts.”⁴⁵⁵ The idea that “severe physical pain” constituting torture had to rise to the level of “organ failure, impairment of bodily functions or even death” had been discussed in the OLC legal memo of August 1 2002, known as the First Bybee memo.⁴⁵⁶

(U) LTC Beaver began her analysis of the “aggressive” techniques by stating that the “detainees currently held at Guantanamo Bay . . . are not protected by the Geneva Conventions.”⁴⁵⁷ LTC Beaver stated that the Office of the Secretary of Defense “had not adopted specific guidelines regarding interrogation techniques for detainee operations at GTMO” and she dismissed the longstanding guidance on interrogation of detainees contained in the Army Field Manual (FM) 34-52 as not binding.⁴⁵⁸

⁴⁵¹ Committee staff interview of David Becker (September 17, 2007).

⁴⁵² Committee staff interview of LTC Jerald Phifer (June 27, 2007).

⁴⁵³ Memo from LTC Diane Beaver for Commander, Joint Task Force 170, *Legal Review of Aggressive Interrogation Techniques* (October 11, 2002).

⁴⁵⁴ Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁴⁵⁵ *Counter Resistance Strategy Meeting Minutes* at 3.

⁴⁵⁶ Memo from Assistant Attorney General Jay Bybee to White House Counsel Alberto Gonzales, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (August 1, 2002).

⁴⁵⁷ Memo from LTC Diane Beaver for Commander, Joint Task Force 170, *Legal Brief on Proposed Counter-Resistance Strategies* (October 11, 2002) (hereinafter “LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies*”).

⁴⁵⁸ The SJA concluded that because the techniques in the Army FM 34-52 are “constrained by, and conform to the Geneva Conventions and applicable international law,” and that the Geneva Conventions do not apply as a matter of law, the Field Manual was “not binding.” See LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 1.

[REDACTED]

(U) In her memo, LTC Beaver stated that U.S. obligations under the Convention Against Torture restricted only those cruel, inhuman, or degrading acts that were also prohibited by the “current standard articulated in the Eighth Amendment” against “cruel and unusual punishment.”⁴⁵⁹ The memo concluded that the proposed interrogation techniques would be consistent with the Eighth Amendment standard so long as any force used could “plausibly have been thought necessary . . . to achieve a legitimate governmental objective and it was applied in a good faith effort and not maliciously or sadistically for the very purpose of causing harm.”⁴⁶⁰

(U) LTC Beaver also concluded that the proposed interrogation techniques would not violate the federal anti-torture statute so long as they were not specifically intended to cause severe physical pain or suffering or prolonged mental harm. LTC Beaver conducted her analysis with the “assum[ption] that severe physical pain [would not be] inflicted” and “absent any evidence that any of these strategies [would] in fact cause prolonged and long lasting mental harm.”⁴⁶¹ LTC Beaver told the Committee that she did not conduct any research to determine whether the use of the techniques described in the accompanying request for authority would, in fact, result in long-term mental harm.⁴⁶²

[REDACTED] (U) The October 2, 2002 BSCT memo, however, had specifically cautioned that the techniques “could affect the short term and/or long term physical and/or mental health of the detainee . . . [and that] physical and/or emotional harm from the . . . techniques may emerge months or even years after their use.”⁴⁶³

(U) LTC Beaver also found that some of the proposed tactics would constitute a “*per se* violation” of the Uniform Code of Military Justice (UCMJ) Article that prohibits military personnel from committing assault, and could violate the Article that prohibits military personnel from communicating a threat.⁴⁶⁴ As a result, LTC Beaver said it would be “advisable to have permission or immunity in advance from the convening authority for military members utilizing these methods.”⁴⁶⁵ In a November 4, 2002 letter to the Joint Staff J-5, the Marine Corps commented on the SJA’s recommendation to convey “permission or immunity in advance,” noting that “[w]e are unaware of any authority that would allow a convening authority to give ‘permission or immunity’ in advance to commit a criminal violation.”⁴⁶⁶ Likewise, military lawyers from the Judge Advocate General’s Legal Center and School later said that LTC Beaver’s “proposal to immunize interrogators, given that a number of the proposed techniques in

⁴⁵⁹ LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 2.

⁴⁶⁰ *Ibid.* at 5.

⁴⁶¹ *Ibid.*

⁴⁶² Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁴⁶³ BSCT, *Counter-Resistance Strategies* (October 2, 2002).

⁴⁶⁴ LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 5.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002) *see also* Section IV D, *infra*.

[REDACTED]

issue constituted violations of the UCMJ, was not only unprecedented, but lacked any basis in law.”⁴⁶⁷

(U) Based on her legal review, LTC Beaver recommended that the “proposed methods of interrogation be approved,” but that interrogators be trained to use the methods and that “interrogations involving category II and III methods” undergo a legal, medical, behavioral science, and intelligence review prior to commencement.⁴⁶⁸

(U) LTC Beaver told the Committee that she called the SOUTHCOM Staff Judge Advocate COL Manny Supervielle, likely on Sunday, October 10, 2002 and sent SOUTHCOM a draft of the legal memo that same day.⁴⁶⁹ She said that she told COL Supervielle that she “really needed some help” but that she received no comments from SOUTHCOM prior to submitting the final memo the next day.⁴⁷⁰ LTC Beaver said that she also talked to the Legal Counsel to the Chairman of the Joint Chiefs of Staff CAPT Jane Dalton and asked for her help, but was told that she should talk to COL Supervielle.⁴⁷¹ CAPT Dalton said that she did not recall that conversation with LTC Beaver.⁴⁷² LTC Beaver also told the Committee that MG Dunlavey did not comment on drafts of the memo and that she did not discuss it with him after it was completed.⁴⁷³

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

(U) On October 11, 2002, MG Dunlavey submitted LTC Phifer’s memo and LTC Beaver’s legal analysis to General James Hill, the Commander of the United States Southern Command (SOUTHCOM). He also sent his own memo requesting approval to use the interrogation techniques.⁴⁷⁴ MG Dunlavey wrote:

I am fully aware of the techniques currently employed to gain valuable intelligence in support of the Global War on Terrorism. Although these techniques have resulted in significant exploitable intelligence, the same methods have become less effective over time. I believe the methods and techniques delineated in the accompanying J-2 memorandum will enhance our efforts to extract additional information. Based on the analysis provided by the JTF-170

⁴⁶⁷ Lt Col Kantwill et al., *Improving the Fighting Position, A Practitioner’s Guide to Operational Law Support to the Interrogation Process*, 2005 Army Lawyer (July 2005) at 12, 14.

⁴⁶⁸ LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 7.

⁴⁶⁹ Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁴⁷⁰ SASC Hearing (June 17, 2008); Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁴⁷¹ SASC Hearing (June 17, 2008).

⁴⁷² Ibid.

⁴⁷³ Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁴⁷⁴ Memo from MG Michael Dunlavey to USSOUTHCOM Commander GEN James Hill, *Counter-Resistance Strategies* (October 11, 2002) (hereinafter “MG Dunlavey to GEN Hill, *Counter-Resistance Strategies*.”)

[REDACTED]

SJA, I have concluded that these techniques do not violate U.S. or international laws.⁴⁷⁵

(U) On October 25, 2002, GEN Hill forwarded the JTF-170 request to Chairman of the Joint Chiefs of Staff, Gen Richard Myers, with a memorandum stating that “despite our best efforts, some detainees have tenaciously resisted our current interrogation methods.”⁴⁷⁶ He continued: “[o]ur respective staffs, the Office of the Secretary of Defense, and Joint Task Force 170 have been trying to identify counter-resistant techniques that we can lawfully employ.”⁴⁷⁷ When later asked, GEN Hill could not recall whether SOUTHCOM produced a written opinion analyzing the GTMO request separate from LTC Beaver’s opinion.⁴⁷⁸

(U) As to techniques in the GTMO request for interrogation techniques, GEN Hill said that he “did discuss the topic of SERE training in a general manner with MG Dunlavey.”⁴⁷⁹ Years later, in a June 3, 2004 press briefing, GEN Hill noted the influence of the Fort Bragg trip and SERE school techniques on the request, stating:

The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK. I sent that list of techniques up to the Secretary and said, in order for us to get at some of these very high-profile, high-value targets who are resistant to techniques, I may need greater flexibility. But I want a legal review of it and you to tell me that, policy-wise, it’s the right way to do business.⁴⁸⁰

(U) In his October 25, 2002 memo, GEN Hill stated that, although he believed Categories I and II techniques were “legal and humane,” he was uncertain about techniques in Category III and was “particularly troubled by the use of implied or expressed threats of death of the detainee or his family.”⁴⁸¹ Nevertheless, GEN Hill said that he “desire[d] to have as many options as possible at [his] disposal” and asked that Departments of Defense and Justice attorneys review the Category III techniques.⁴⁸²

⁴⁷⁵ MG Dunlavey to GEN Hill, *Counter-Resistance Strategies*.

⁴⁷⁶ Memo from GEN James Hill to Chairman of the Joint Chiefs of Staff GEN Richard Myers, *Counter-Resistance Techniques*, (October 25, 2002) (hereinafter “GEN Hill to CJCS, *Counter-Resistance Techniques*.”)

⁴⁷⁷ GEN Hill to CJCS, *Counter-Resistance Techniques*.

⁴⁷⁸ GEN James T. Hill answers to July 31, 2008 written questions from Senator Carl Levin (August 20, 2008).

⁴⁷⁹ Ibid.

⁴⁸⁰ June 3, 2004 Media Availability with Commander U.S. Southern Command.

⁴⁸¹ GEN Hill to CJCS, *Counter-Resistance Techniques*.

⁴⁸² GEN Hill to CJCS, *Counter-Resistance Techniques*; In testimony to the Army IG, the SOUTHCOM Commander said that he thought the request “was important enough to where there ought to be a high level look at it... There ought to be a major policy discussion of this and everybody ought to be involved.” Army IG, Interview of GEN James T. Hill (October 7, 2005), at 7.

[REDACTED]

(U) One SOUTHCOM Assistant Staff Judge Advocate LTC Mark Gingras testified to the Army IG that lawyers for SOUTHCOM had concerns about Category II *and* Category III techniques.⁴⁸³ Regarding the GTMO request for techniques, LTC Gingras told the Army IG:

As lawyers we're talking about adherence to the rule of law being important, and that's what we're trying to tell everybody as we travel around the world to these other countries. That's paramount to democracy. And so suddenly we look like we're brushing this aside or we're twisting the law. The feeling was that decision makers within the Pentagon didn't much care about that. They cared about winning the War on Terrorism. And if that meant you had to pull out fingernails you'd pull out fingernails, figuratively speaking.⁴⁸⁴

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

(U) On October 30, 2002, after receiving Gen Hill's memo and the GTMO request, the Joint Staff J-5 requested that the military services comment on the request.⁴⁸⁵

(U) On November 1, 2002, the Air Force responded, expressing "serious concerns regarding the legality of many of the proposed techniques" and stating that "some of these techniques could be construed as 'torture,' as that crime is defined by 18 U.S.C. 2340."⁴⁸⁶ The Air Force memorandum added that, with respect to potential prosecutions, the use of Category III techniques would "almost certainly" result in any statements obtained being inadmissible.⁴⁸⁷ The memorandum stated that admissibility of evidence obtained using Categories I and II techniques, the latter of which included stress positions, the use of dogs, removal of clothing, and deprivation of light and auditory stimuli, among other techniques, would be "fact specific, but the same concerns remain."⁴⁸⁸ The Air Force memo continued: "Additionally, the techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely... Implementation of the proposed techniques would require a change in Presidential policy."⁴⁸⁹ The memo stated that the Air Force "concurs in the need to conduct an in-depth legal and policy assessment, as recommended by [the SOUTHCOM Commander], prior to implementation of the proposed counter-resistance interrogation techniques."⁴⁹⁰

(U) On November 4, 2002, the Navy responded to the Joint Staff's request for comment, stating that it "concur[red] with developing a range of advanced counter-resistance techniques,"

⁴⁸³ Army IG, Interview of LTC Mark Gingras (October 11, 2005) at 20.

⁴⁸⁴ Ibid.

⁴⁸⁵ Joint Staff Action Processing Form (SJS 02-06697), *Counter-Resistance Techniques* (October 30, 2002).

⁴⁸⁶ Department of the Air Force Memo for UN and Multilateral Affairs Division (J-5), Joint Staff, *Counter-Resistance Techniques* (November 1, 2002).

⁴⁸⁷ Ibid. at 1.

⁴⁸⁸ Ibid.

⁴⁸⁹ Ibid. at 2.

⁴⁹⁰ Ibid. at 1.

[REDACTED]

but recommending “a more detailed interagency legal and policy review be conducted on the... proposed techniques.”⁴⁹¹

(U) That same day, the Marine Corps submitted its written comments, which concluded that “several of the Category II and III techniques arguably violate federal law, and would expose our service members to possible prosecution.”⁴⁹² The Marine Corps memo stated that the use of the techniques would also create “exposure to criminal prosecution under the UCMJ.”⁴⁹³ Again, Category III techniques included the use of scenarios designed to convince the detainee that death or severely painful consequences were imminent for him or his family, exposure to cold weather or water, use of a wet towel and dripping water to induce the misperception of suffocation, and non-injurious physical contact such as grabbing, poking and light pushing.⁴⁹⁴ Category II included such techniques as stress positions, deprivation of light and auditory stimuli, the use of a hood during questioning, 20 hour interrogations, removal of clothing, and the use of detainee phobias, such as dogs, to induce stress. The memo also stated the Marine Corps “disagree[d] with the position that the proposed plan is legally sufficient.”⁴⁹⁵

(U) A few days later, the Army submitted comments from both the Office of the Judge Advocate General (OTJAG) and the CITF.⁴⁹⁶ The Army’s cover memo stated that “Army interposes significant legal, policy and practical concerns regarding most of the Category II and all of the Category III techniques proposed” and that the Army “concurs in the recommendation for a comprehensive legal review of this proposal in its entirety by the Department of Defense and the Department of Justice.”⁴⁹⁷ The OTJAG’s memorandum, which was attached, stated that Category III techniques “violate the President’s order [on humane treatment] and various UCMJ articles” and that the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family and the use of a wet towel and dripping water to induce the misperception of suffocation “appear to be clear violations of the federal torture statute.”⁴⁹⁸ The OTJAG memorandum also stated that Category II techniques of stress positions, deprivation of light and auditory stimuli, and using individual phobias to induce stress “crosses the line of ‘humane’ treatment, would likely be considered maltreatment under

⁴⁹¹ Department of the Navy Memo for the Director for Strategic Plans and Policy Directorate (J-5) Joint Staff, *Navy Planner’s Memo WRT Counter-Resistance Techniques (SJS 02-06697)* (November 4, 2002).

⁴⁹² Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002).

⁴⁹³ Ibid.

⁴⁹⁴ LTC Phifer to MG Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

⁴⁹⁵ Memo from Marine Corps Service Planner to Director, J-5, The Joint Staff, *Counter-Resistance Techniques* (November 4, 2002).

⁴⁹⁶ Memo from the Army Deputy to the Assistant Deputy Chief of Staff for Operations and Plans (Joint Affairs) to the Joint Staff, J-5/UNMA [UN and Multilateral Affairs Division], *SJS 02-06697* (November 7, 2002); Memo from Department of the Army, Office of the Judge Advocate (International and Operational Law) to The Office of the Army General Counsel, *Review—Proposed Counter-Resistance Techniques* (undated) (hereinafter “DAJA(IO) Memo for Army General Counsel, *Proposed Counter-Resistance Techniques*.”)

⁴⁹⁷ DAJA(IO) Memo for Army General Counsel, *Proposed Counter-Resistance Techniques*.

⁴⁹⁸ Ibid.

[REDACTED]

[REDACTED]

Article 93 of the [Uniform Code of Military Justice], and may violate the Federal torture statute.”⁴⁹⁹ The memo continued that that removal of clothing and forced grooming “may be considered inhumane” if done only for interrogation purposes and stated “if we mistreat detainees, we will quickly lose the moral high ground.”⁵⁰⁰ The Army concurred with GEN Hill’s request for a legal review before techniques were adopted.⁵⁰¹

(U) Military lawyers were not the only personnel to object to GTMO’s request for aggressive techniques. CITF Deputy Commander Mark Fallon told the Committee that it was CITF’s view that the techniques proposed by JTF-170 would actually strengthen, rather than weaken, detainee resistance. He explained:

Our view was that employing techniques that validated [the detainees] prior training and adverse views would serve to harden resistance and reinforce what they had been told to expect... We pointed out that SERE school tactics were developed to better prepare U.S. military personnel to resist interrogations and not as a means of obtaining reliable information. CITF was troubled with the rationale that techniques used to harden resistance to interrogations would be the basis for the utilization of techniques to obtain information.⁵⁰²

(U) CITF’s legal view was reflected in a November 4, 2002 memo from CITF Chief Legal Advisor MAJ Sam McCahon, which was also attached to the Army’s response to the Joint Staff. MAJ McCahon wrote:

[Category] III and certain [Category] II techniques may subject service members to punitive articles of the UCMJ... CITF personnel who are aware of the use or abuse of certain techniques may be exposed to liability under the UCMJ for failing to intercede or report incidents, if an inquiry later determines the conduct to be in violation of either the Eighth Amendment to the U.S. Constitution, the Uniform Code of Military Justice or 18 U.S.C. §2340.⁵⁰³

(U) MAJ McCahon also raised concerns about the impact of the techniques on evidentiary proceedings:

One detainee subjected to these techniques could taint the voluntary nature of all other confessions and information derived from detainees not subjected to the aggressive techniques.⁵⁰⁴

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Responses of Mr. Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006) at 7.

⁵⁰³ Memo from CITF Chief Legal Advisor MAJ Sam McCahon to CITF Commander, *Assessment of JTF-170 Counter-Resistance Strategies and the Potential Impact on CITF Mission and Personnel* (November 4, 2002) (hereinafter “McCahon to CDR CITF, *Assessment of JTF-170 Counter-Resistance Strategies*.”)

⁵⁰⁴ McCahon to CDR CITF, *Assessment of JTF-170 Counter-Resistance Strategies*.

[REDACTED]

(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 CITE personnel not participate in or even observe the use of aggressive techniques.⁵⁰⁵ MAJ McCahon concluded:

I cannot advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business.⁵⁰⁶

(U) MAJ McCahon told the Committee that his memorandum prompted a subsequent meeting at the Pentagon.⁵⁰⁷

(U) When the October 11, 2002 GTMO request arrived in the DoD General Counsel’s office, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson said that she was asked to provide her thoughts on the request. Ms. Davidson said that she had a brief conversation with Mr. Haynes where she told him that the GTMO request needed further assessment.⁵⁰⁸ Mr. Haynes stated that he did not “recall that specifically.”⁵⁰⁹

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

(U) When the October 11, 2002 GTMO request arrived at the Joint Staff, CAPT Jane Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, said it was “obvious to [her] that there were some legal issues” with the request.⁵¹⁰ She said that techniques in Category II of the request “needed to be looked at closely” and that Category III techniques “had significant, significant concerns.”⁵¹¹ CAPT Dalton found LTC Beaver’s legal analysis “woefully inadequate” and said it relied on a methodology and conclusions that were “very strained.”⁵¹² Rather than simply deny the request, however, CAPT Dalton said that “she owed it to the combatant commander to do a full and complete review.”⁵¹³ She subsequently directed her staff to set up a secure video teleconference with representatives from the Defense Intelligence Agency (DIA), the Army’s intelligence school at Fort Huachuca, U.S. Southern Command (SOUTHCOM), and GTMO to find out more information about the techniques in the request and to “begin discussing the legal issues to see if we could do ... our own independent legal analysis.”⁵¹⁴

⁵⁰⁵ Ibid.

⁵⁰⁶ Ibid.

⁵⁰⁷ Committee staff interview of MAJ Sam McCahon (June 15, 2007).

⁵⁰⁸ Committee staff interview of Eliana Davidson (May 23, 2008).

⁵⁰⁹ SASC Hearing (June 17, 2008).

⁵¹⁰ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 33.

⁵¹¹ Ibid. at 45.

⁵¹² Ibid. at 41.

⁵¹³ Ibid. at 33.

⁵¹⁴ Ibid. at 34.

[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.⁵¹⁵ The Chairman said, however, that he did “not specifically recall the objections of the Services being raised” to his attention at that time.⁵¹⁶

(U) CAPT Dalton also recalled that her staff briefed the DoD General Counsel’s office about the concerns submitted by the military services and that the General Counsel himself “was aware of the concerns.”⁵¹⁷ In a February 2008 interview, DoD Associate Deputy General Counsel for International Affairs Eliana Davidson recalled that the service comments were made available to the General Counsel’s office.⁵¹⁸ DoD General Counsel Jim Haynes stated, however, that he “did not recall seeing” the memos at that time and “didn’t know they existed.”⁵¹⁹ He stated that he did not recall being informed by anyone that the military services had concerns about the legality of Category II techniques in the request and that he did not have a “specific recollection” of CAPT Dalton making him aware that there were concerns about the legality of techniques in the GTMO request.⁵²⁰

(U) According to CAPT Dalton, after she and her staff initiated their analysis, CJCS GEN Myers directed her to stop that review. CAPT Dalton said that GEN Myers returned from a meeting and “advised me that [DoD General Counsel] Mr. Haynes wanted me . . . to cancel the video teleconference and to stop” conducting the review because of concerns that “people were going to see” the GTMO request and the military services’ analysis of it.⁵²¹ According to CAPT Dalton, Mr. Haynes “wanted to keep it much more close hold.”⁵²² When CAPT Dalton “learned that [the DoD General Counsel] did not want that broad based legal and policy review to take place,” she and her staff stopped their review.⁵²³ This was the only time that CAPT Dalton had ever been asked to stop analyzing a request that came to her for her review.⁵²⁴

[REDACTED] CAPT Dalton recalled that prior to being directed to stop the review, her staff had begun writing draft comments on the GTMO request.⁵²⁵ An undated draft of a memorandum from GEN Myers to SOUTHCOM Commander GEN Hill, analyzing the October 11, 2002

⁵¹⁵ SASC Hearing (June 17, 2008).

⁵¹⁶ Responses of General Richard Myers to written questions from Senator Carl Levin (April 30, 2008).

⁵¹⁷ SASC Hearing (June 17, 2008).

⁵¹⁸ Committee staff interview of Eliana Davidson (February 21, 2008). Ms. Davidson said in a subsequent interview that she was not aware of the military services’ comments before discussing the October 11, 2002 GTMO request with the DoD General Counsel. Committee staff interview of Eliana Davidson (May 23, 2008).

⁵¹⁹ SASC Hearing (June 17, 2008).

⁵²⁰ Committee staff interview of William J. Haynes II (April 25, 2008) at 163-65.

⁵²¹ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 34.

⁵²² Ibid. at 35.

⁵²³ SASC Hearing (June 17, 2008).

⁵²⁴ Ibid.

⁵²⁵ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 37.

[REDACTED]

[REDACTED]

GTMO request, stated “We do not believe the proposed plan is legally sufficient.”⁵²⁶ The draft memo stated that “several of the Category III techniques arguably violate federal law, and could expose interrogators to possible prosecution” under the federal anti-torture laws.⁵²⁷ The draft stated that techniques in the request “may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely” and recommended an “in-depth technical, policy, and legal assessment” of the techniques prior to their implementation.⁵²⁸

(U) GEN Myers said that he had “no specific recollection” of discussing with CAPT Dalton her efforts to conduct an analysis of the October 11, 2002 GTMO request.⁵²⁹ He said that while he “did not dispute” asking her to stop working on her analysis and acknowledged that Joint Staff records indicated that she did stop work on her analysis, he had “no recollection or doing so” and did “not recall anyone suggesting” to him that she stop her review.⁵³⁰ DoD General Counsel Jim Haynes said that while it was “possible” that the issue could have come up in a conversation with the Chairman of the Joint Chiefs of Staff, he did not “recall that specific conversation” or expressing any opinion of any kind with respect to CAPT Dalton’s review.⁵³¹

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

[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.⁵³² The training plan was virtually identical to a draft agenda developed for the Fort Bragg training of GTMO personnel that took place in September, which included instruction of the “use of physiological pressures.”⁵³³

[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.⁵³⁴ A draft message order circulated between GTMO and JPRA staff in late October requested “mission critical training support” for “approximately [REDACTED]”

⁵²⁶ Draft memo from CJCS Richard Myers to Commander, United States Southern Command, *Counter-Resistance Techniques* (undated).

⁵²⁷ Ibid.

⁵²⁸ Ibid.

⁵²⁹ Responses of GEN (Ret.) Richard Myers to April 16, 2008 written questions from Senator Carl Levin (April 30, 2008).

⁵³⁰ Ibid.

⁵³¹ Committee staff interview of William J. Haynes II (April 25, 2008) at 168.

⁵³² Memorandum From Joseph Witsch to JPRA/CC, JPRA/CD, JPRA/COS, JPRA/OSO, *Plan of Instruction (POI) for TF-170 Training Support* (October 16, 2002).

⁵³³ See Section III D, *supra*, *Plan of Instruction (POI) for TF-170 Training Support* (October 16, 2002).

⁵³⁴ Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

personnel” at GTMO.⁵³⁵ The draft message order stated that the training would “provide the necessary tools JTF-GTMO interrogators require to accomplish their mission critical tasks.”⁵³⁶

[REDACTED] A November 15, 2002 staff memo to the Joint Staff J-2 stated that JTF-GTMO had requested training on the SERE school techniques and that the trainers were expected to arrive in the first week of December.⁵³⁷ The JPRA Operational Support Office (OSO) Chief Christopher Wirts told the Committee that the requirement for JPRA to provide the training was never approved and that his agency never conducted the training.⁵³⁸ However, in January 2003, two instructors from the Navy SERE school, John Rankin and Christopher Ross, travelled to GTMO to train interrogators on the use of physical pressures, including slapping, walling, and stress positions.⁵³⁹

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

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

(U) In November 2002 a new Commander, MG Geoffrey Miller, took command of JTF-GTMO. At the time, MG Miller had no first-hand experience with detainees or interrogations.⁵⁴⁰

(U) MG Miller told the Committee that prior to taking command, he met with SOUTHCOM Commander GEN Hill and his staff.⁵⁴¹ During those meetings, MG Miller got the impression that MG Dunlavey, the previous Commander, had bypassed the chain of command by raising issues directly with the Joint Chiefs of Staff and Department of Defense staff. MG Miller told the Committee that GEN Hill authorized him to speak directly with the Joint Staff and the Office of the Secretary of Defense, but that he told SOUTHCOM he would keep SOUTHCOM informed of those communications.⁵⁴²

(U) MG Miller said that, while he was in Command at GTMO, he had direct discussions with the DoD General Counsel’s office and the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD SO/LIC).⁵⁴³ MG Miller also testified to the Army IG that he and Deputy Secretary of Defense Paul Wolfowitz “talked once a week when I

⁵³⁵ Email from Chris Wirts to [REDACTED], Richard Driggers, Joseph Witsch, [REDACTED] and Gary Percival (October 29, 2002) (hereinafter “Email from Chris Wirts (October 29, 2002).”)

⁵³⁶ Email from Chris Wirts (October 29, 2002).

⁵³⁷ JTF-170 and JTF-160 were combined to form JTF-GTMO in October 2002; Memo from [REDACTED] to [Joint Staff], *GTMO Detainee* [REDACTED] (November 15, 2002).

⁵³⁸ Committee staff interview of Chris Wirts (January 4, 2008).

⁵³⁹ See Section VII C, *infra*.

⁵⁴⁰ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 5.

⁵⁴¹ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁵⁴² *Ibid.*

⁵⁴³ *Ibid.*

[REDACTED]

[REDACTED]

was in Guantanamo.”⁵⁴⁴ Lt Col Ted Moss, the JTF-GTMO ICE Chief who began his tour of duty at GTMO in December 2002, said that Deputy Secretary Wolfowitz was in phone contact with MG Miller “a lot.”⁵⁴⁵ However, MG Miller told the Committee that he misspoke when he testified to the Army IG and that, to the best of his knowledge, he did not speak to Deputy Secretary Wolfowitz on the phone while he was at GTMO, but only briefed him quarterly, in person, on GTMO operations.⁵⁴⁶

(U) Shortly after MG Miller arrived at GTMO, the Director for Intelligence (J-2) LTC Phifer informed him of the October 11, 2002 request.⁵⁴⁷ Although he later approved an interrogation plan that included reference to Category III techniques, MG Miller told the Army IG that he believed that the techniques in Category III and some techniques in Category II were “overly aggressive” and that he had not intended to use them.⁵⁴⁸ MG Miller said he had concerns with stress positions, removal of clothing, and use of dogs, among other techniques. Nevertheless, there is evidence that those techniques were used at GTMO while he was in command. MG Miller told the Committee that he thought he discussed his concerns about the techniques with LTC Beaver in early November before the Secretary approved their use, but that he did not raise it with SOUTHCOM because he wanted to see which techniques would be approved.⁵⁴⁹

(U) MG Miller told the Army IG that when he arrived at GTMO, there was significant tension between JTF-GTMO, CITF, and FBI and that he sought to get all three organizations to work in concert.⁵⁵⁰ Despite MG Miller’s stated intent, his decision to approve an interrogation plan for Mohammed al Khatani that was opposed by the CITF and FBI, drove a deeper wedge between his organization and both CITF and FBI.

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

(U) After their unsuccessful interrogation of Khatani in October 2002, JTF-GTMO staff spent several weeks drafting an extensive new interrogation plan. The plan was the first “Special Interrogation Plan” at GTMO and it would encounter strong resistance from both CITF and the FBI. One FBI Special Agent told the Committee that he thought Khatani’s interrogation would define the conduct of future interrogations at GTMO and therefore they “had to get it right.”⁵⁵¹

[REDACTED] Several drafts of JTF-GTMO’s interrogation plan for Khatani were circulated at GTMO in November 2002. The discussion below focuses primarily on two of those drafts, one circulated on November 12, 2002 and another which was drafted about a week later and appears

⁵⁴⁴ Army IG, Interview of MG Geoffrey Miller (June 28, 2005).

⁵⁴⁵ Committee staff interview of Lt. Col. Ted Moss (October 17, 2007).

⁵⁴⁶ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁵⁴⁷ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 11.

⁵⁴⁸ Ibid.

⁵⁴⁹ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁵⁵⁰ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 7.

⁵⁵¹ Committee staff interview of FBI Special Agent (November 8, 2007).

[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)*

[REDACTED] According to the report completed by Vice Admiral (VADM) Church, "after discussing the matter in early November 2002 with the Secretary of Defense, SOUTHCOM Commander GEN Hill gave verbal approval on November 12, 2002 for use of all Category I and II counter resistance techniques against Khatani."⁵⁵² GEN Hill told the Committee that he had no recollection of that.⁵⁵³ That same day, November 12, 2002, LTC Phifer sent an email and a four page interrogation plan to MG Miller stating "[h]ere is the Interrogation Plan for [Khatani] as approved by you."⁵⁵⁴

[REDACTED] The next day, GTMO ICE Chief David Becker emailed the plan, which he referred to as the "[l]atest approved by MG Miller," to a GTMO interrogator.⁵⁵⁵ According to the plan, the interrogation was scheduled to begin on November 15, 2002.⁵⁵⁶ Mr. Becker told the Committee that the plan was developed by his interrogators with input from him and LTC Phifer.⁵⁵⁷ In 2005, MG Miller testified to the Army IG that he thought the plan circulated on November 12, 2002 was part of the final version of the plan that he approved.⁵⁵⁸ However, in a subsequent investigation, MG Miller identified a later version as the final plan.⁵⁵⁹ He told the Committee that he never approved the version of the plan circulated on November 12, 2002.⁵⁶⁰ However, contemporaneous documents indicate that others believed the plan circulated on November 12, 2002 had been approved by both MG Miller and SOUTHCOM and expected it to be implemented on November 15, 2002:

⁵⁵² *Church Report* at 115.

⁵⁵³ General James Hill answers to July 28, 2008 written questions from Senator Carl Levin (August 20, 2008).

⁵⁵⁴ Email from LTC Jerald Phifer to MG Geoffrey Miller (November 12, 2002).

⁵⁵⁵ Email from David Becker to [Interrogation Control Element Staff Sergeant] (November 13, 2002). Both the plan attached to those emails and the subsequent plan identified by the JTF-GTMO Commander as the "final" plan contained the JTF-GTMO Commander's [Miller] signature block. However, the Committee has not seen any version of the plan that contained the JTF-GTMO Commander's signature.

⁵⁵⁶ Interrogation Plan for ISN: [REDACTED] [Khatani] (November 12, 2002).

⁵⁵⁷ Committee staff interview of David Becker (September 17, 2007). One FBI agent who was a member of the FBI's Behavioral Analysis Unit told the Committee that multiple versions of the plan were actually circulated at GTMO during this period. Committee Staff interview of FBI Special Agent (November 8, 2007).

⁵⁵⁸ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 7.

⁵⁵⁹ Inge Report.

⁵⁶⁰ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

- [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.*”⁵⁶¹
- [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.”⁵⁶²
- [REDACTED]
- [REDACTED] A November 14, 2002 email from the GTMO Staff Judge Advocate LTC Diane Beaver to CITF 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.”⁵⁶⁴
- [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...*”⁵⁶⁵

[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.”⁵⁶⁶ The interrogation would be conducted for “20-hour sessions” and at the completion of each session, Khatani would be permitted four hours of rest, and then “another 20 hour interrogation session [would] begin.”⁵⁶⁷

⁵⁶¹ Email from LTC Jerald Phifer to MG Geoffrey Miller (November 12, 2002) (emphasis added), attached as exhibit 7 to the Inge Report.

⁵⁶² Email from David Becker to [Interrogation Control Element Staff Sergeant] (November 13, 2002).

⁵⁶³ Notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainee #063*, entry at “11/12/2002” (emphasis added).

⁵⁶⁴ Email from LTC Diane Beaver to [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).

⁵⁶⁵ Memo from [REDACTED] [REDACTED] to [Joint Staff], *GTMO Detainee* [REDACTED] (November 15, 2002) (emphasis added).

⁵⁶⁶ Interrogation Plan for ISN: [REDACTED] [Khatani] (November 12, 2002).

⁵⁶⁷ *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.⁵⁶⁹

[REDACTED] The November 12, 2002 plan went on to describe four phases for the interrogation.⁵⁷⁰ During Phase I, interrogators would increase the pressure on Khatani while not permitting him to speak, with the expectation that Khatani, when later presented with the opportunity to speak to an interrogator, would "provide his whole story."⁵⁷¹

[REDACTED] Phase II of the plan was to place a cooperative detainee or a native linguist at Camp X-Ray in full view of Khatani.⁵⁷² [REDACTED]

[REDACTED] Phase III of the plan, which was entitled "Level III techniques," was to utilize techniques based on those used at SERE school. The plan stated:

The third phase of the plan to exploit 063 requires OSD approval for the SERE interrogation technique training and approval of the level three counter interrogation resistance training submitted by JTF-GTMO. Once the approvals are in place, those interrogation techniques will be implemented to encourage 063 to cooperate. [REDACTED]

⁵⁶⁸ Ibid.

⁵⁶⁹ Ibid. A third draft of the plan which appears to have been produced after November 12 stated that "written approval for use of gauze and for the presence of dogs have been approved by [MG Miller]" and was sent from an attorney in the DoD General Counsel's office to an attorney at the Department of Justice's Office of Legal Counsel in May 2003. January 31, 2008 SASC staff notes on Vaughn declaration documents.

⁵⁷⁰ Interrogation Plan for ISN: [REDACTED] [Khatani] (November 12, 2002).

⁵⁷¹ Ibid.

⁵⁷² Ibid.

⁵⁷³ Ibid.

[REDACTED]

[REDACTED] The plan's final phase, Phase IV, was entitled "Coalition Exploitation" and stated that:

The fourth phase of the plan to exploit 063 requires that he be sent off island either temporarily or permanently to either [two specified third countries], or another country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information.⁵⁷⁴

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

(U) On November 14, 2002, CITF Commander COL Britt Mallow sent an email to MG Miller raising concerns about both the Khatani interrogation and the October 11, 2002 request for authority to use aggressive interrogation techniques.⁵⁷⁵ He stated:

I strongly disagree with the use of many of the proposed [Category] 3 and some [Category] 2 techniques. I feel they will be largely ineffective, and that they will have serious negative material and legal effects on our investigations. I also am extremely concerned that the use of many of these techniques will open any military members up for potential criminal charges, and that my agents, as well as other [military personnel] will face both legal and ethical problems if they become aware of their use.⁵⁷⁶

(U) COL Mallow told the Committee that in addition to his email, he raised concerns about the Khatani interrogation in conversations with MG Miller and in "several meetings with the DoD [General Counsel]."⁵⁷⁷ COL Mallow said that MG Miller told him in a meeting that "if [CITF] did not want to participate in interrogations with the intelligence community because of our objections to methods, that [CITF] would not have the benefit of information resulting from any of those interrogations."⁵⁷⁸

(U) MG Miller told the Committee that, while he did not recall the CITF Commander's November 14, 2002 email specifically, he did recall communications from COL Mallow to that effect.⁵⁷⁹ DoD General Counsel Jim Haynes stated that he did not recall seeing a copy of the Khatani interrogation plan at that time and did not "specifically" recall his staff advising him that CITF and FBI had concerns with interrogation techniques in the Khatani interrogation plan.⁵⁸⁰

[REDACTED] A CITF Legal Advisor, [REDACTED], also raised objections to JTF-GTMO's interrogation plan for Khatani. In a November 15, 2002 memo for MG Miller, [REDACTED]

⁵⁷⁴ Ibid.

⁵⁷⁵ Email from COL Britt Mallow to MG Geoffrey Miller (November 14, 2002).

⁵⁷⁶ Ibid.

⁵⁷⁷ Responses of COL (Ret.) Britt Mallow to questionnaire of Senator Carl Levin (September 15, 2006).

⁵⁷⁸ Ibid.

⁵⁷⁹ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁵⁸⁰ Committee staff interview of William J. Haynes II (April 25, 2008) at 221, 228.

[REDACTED]

[REDACTED] said that “the reliability of any information gained from aggressive techniques will be highly questionable” and objected to all “physical stresses intended for use” in Phase III of the interrogation plan.⁵⁸¹ [REDACTED] also objected to Phase IV of the plan, stating that it implied “that third country nationals with harsher interrogation standards could be used to convey threats to persons of family or inflict harm contrary to the Convention Against Torture.”⁵⁸²

[REDACTED] The Khatani interrogation did not proceed on November 15, 2002 as planned. A November 15, 2002 staff memo to the Joint Staff J-2 indicated that the interrogation was delayed while MG Miller “consider[ed] COL Mallow’s objections.”⁵⁸³ MG Miller denied that the Khatani interrogation was delayed because of COL Mallow’s concerns, instead telling the Committee that the interrogation was delayed because he had not received SOUTHCOM’s approval.⁵⁸⁴ However, as noted above, GTMO Staff Judge Advocate LTC Diane Beaver indicated in a November 14, 2002 email that JTF-GTMO planned to move forward “with support of SOUTHCOM.”⁵⁸⁵

(U) In his November 14, 2002 email to MG Miller, COL Mallow proposed that JTF-GTMO and CITF develop a mutually acceptable interrogation plan for Khatani.⁵⁸⁶ On November 20, 2002, FBI personnel, who were working closely with CITF, met with JTF-GTMO staff to discuss developing such a plan.⁵⁸⁷



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

⁵⁸¹ Memo from [REDACTED] for Major General Geoffrey Miller, *Objection to Aggressive Interrogation Techniques* (November 15, 2002).

⁵⁸² Ibid.

⁵⁸³ Memo from [REDACTED] to J-2, Joint Staff, *GTMO Detainee* [REDACTED] 063 [REDACTED] (November 15, 2002).

⁵⁸⁴ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁵⁸⁵ Email from LTC Diane Beaver to [REDACTED] (November 14, 2002) (emphasis added).

⁵⁸⁶ Email from COL Britt Mallow to MG Geoffrey Miller (November 14, 2002).

⁵⁸⁷ FBI memo to Major General Miller, *VTC 21 November 2002* (undated).

⁵⁸⁸ Committee staff interview of FBI Special agent (November 8, 2007).

⁵⁸⁹ Internal FBI Email, *Interview Plans* (November 21, 2002).

⁵⁹⁰ Ibid.

[REDACTED]

[REDACTED] On November 21, 2002, MG Miller, LTC Phifer, and representatives from the FBI, CITF, SOUTHCOM, and the DoD General Counsel's office all participated in a video teleconference (VTC) to discuss the Khatani interrogation.⁵⁹¹

[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.⁵⁹² MG Miller told the Committee that he did not recall the VTC.⁵⁹³ Ms. Davidson said that she recalled participating in VTCs where the Khatani interrogation was discussed, but she did not recall if she had a copy of the interrogation plan itself and did not recall saying that the Department of Defense was comfortable with what JTF-GTMO proposed for the interrogation.⁵⁹⁴ [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."⁵⁹⁵

(U) Subsequent to the VTC, the FBI sent a memo to MG Miller alerting him to FBI "misgivings about the overall coercive nature and possible illegality" of the Khatani interrogation plan and informing him that the FBI had presented JTF-GTMO staff with "an alternative interrogation approach based on long-term rapport building."⁵⁹⁶ A draft of that alternative approach, which was the product of both the FBI and CITF, stated that Khatani's negative interactions with interrogators "only reinforces Al-Qaeda stereotypes about evil Americans and validates their expectation of harsh treatment and potential torture."⁵⁹⁷

(U) On November 22, 2002, Naval Criminal Investigative Service (NCIS) Chief Psychologist Michael Gelles drafted a formal review of a JTF-GTMO draft plan.⁵⁹⁸ Dr. Gelles concluded that the interrogation plan "lack[ed] substantive and thoughtful consideration."⁵⁹⁹ Among other concerns, Dr. Gelles stated:

⁵⁹¹ Notes of FBI Special Agent, *Timeline Regarding Interrogation Plans for Detainee #063*, entry at "11/21/2002."

⁵⁹² [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 Detainee #063*, entry at "11/21/2002."

⁵⁹³ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁵⁹⁴ Committee staff interview of Eliana Davidson (February 21, 2008).

⁵⁹⁵ Written statement of [REDACTED] (August 21, 2007) at 8.

⁵⁹⁶ FBI memo to Major General Miller, *VTC 21 November 2002* (undated).

⁵⁹⁷ FBI and CITF Draft Interrogation Plan (November 22, 2002).

⁵⁹⁸ Memo from Michael G. Gelles, Psy.D. to Mark Fallon, *Review of JTF-GTMO Interrogation Plan Detainee 063*, (November 22, 2002) (hereinafter "*Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002)").

⁵⁹⁹ *Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002).

[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...⁶⁰⁰

(U) Dr. Gelles noted that “the choice to use force with this adversary in an interrogation may only reinforce his resistance” and stated that if the plan were implemented he would “have trouble not finding myself from a professional perspective, being forced into an adversary position through cross examination in a military tribunal as an expert in interrogation.”⁶⁰¹

(U) Notwithstanding the CITF and FBI concerns, MG Miller authorized interrogators to proceed with the Khatani interrogation beginning November 23, 2002.

4. “Final” Khatani Interrogation Plan (U)

[REDACTED] ([REDACTED]) MG Miller identified a version of the Khatani plan that had been written on November 22, 2002 as the “final” plan that he authorized to be implemented on November 23, 2002.⁶⁰² While similar to the plan circulated on November 12, 2002, the November 22, 2002 plan contained notable differences from the earlier version that contemporaneous documents indicated had also been approved.

[REDACTED] ([REDACTED]) Although there is evidence that both stress positions and dogs were used in the Khatani interrogation, the November 22, 2002 plan does not mention either of these two techniques.⁶⁰³ MG Miller said the stress positions and use of dogs were removed from the plan at his direction.⁶⁰⁴

[REDACTED] With respect to dogs, MG Miller said that neither LTC Phifer, nor LTC Beaver objected to the use of dogs and that his ICE Chief, Mr. Becker, actually favored the use of dogs in interrogations.⁶⁰⁵ MG Miller said, however, that he only approved the use of dogs for security around the perimeter of Camp X-Ray, where the interrogation was to take place, and that he made that view absolutely clear to Mr. Becker. CAPT Jane Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff said, however, that she met with MG Miller in early November and discussed the use of dogs for interrogation purposes.⁶⁰⁶ She said that the “theory was that certain individuals are afraid of dogs” and that, while MG Miller talked about dogs

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid.

⁶⁰² Inge Report at 9.

⁶⁰³ Interrogation Plan for ISN: [REDACTED] [Khatani] (November 22, 2002) (hereinafter “Khatani interrogation plan (November 22, 2002).”).

⁶⁰⁴ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁶⁰⁵ Ibid.

⁶⁰⁶ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 84.

[REDACTED]

being outside the interrogation room, they discussed the purpose of the dogs' presence during interrogations was that it "exploits [the detainee's] fear."⁶⁰⁷

[REDACTED] Mr. Becker told the Committee that MG Miller told him to remove dogs from the plan.⁶⁰⁸ Nevertheless, a document describing interrogation techniques used in the Khatani interrogation and a witness account (both discussed below) suggest that dogs were used during the interrogation to shock and agitate Khatani.⁶⁰⁹

[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.⁶¹⁰ A document that appears to have been produced during the Khatani interrogation, however, stated that stress positions would "be employed."⁶¹¹ In addition, a 2005 memo from the JTF-GTMO Chief of Staff referencing the 2002 interrogation stated that Khatani had "slight abrasions caused by stress positions and shackle restraints."⁶¹²

[REDACTED] The November 22, 2002 plan identified by MG Miller as the final plan described five phases to the interrogation.⁶¹³ Phase I, which was added after November 12, called for the interrogators to "Induce and exploit Stockholm Syndrome" by establishing "an isolated, austere environment where the detainee becomes completely dependent on the interrogators and the interrogator presents himself as a 'caretaker' of the detainee."⁶¹⁴ Dr. Gelles said that the idea of inducing the Stockholm syndrome implied that "the subject feels that he is to be killed and the information provided may in fact be distorted."⁶¹⁵

[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."⁶¹⁶ In addition, the plan stated that MG Miller had approved the use of hospital gauze to restrain the detainee's mouth to prevent him from becoming argumentative and verbally abusive.

⁶⁰⁷ Ibid.

⁶⁰⁸ Committee staff interview of David Becker (September 17, 2007).

⁶⁰⁹ [REDACTED] Memorandum, *Methods Employed X-Ray Interrogation ISN 63(S)* (January 17, 2003). Army IG, Interview of [REDACTED] (April 28, 2006).

⁶¹⁰ Committee staff interview of David Becker (September 17, 2007).

⁶¹¹ Memo, *063 Plan of Attack: Phase I Bravo* (undated).

⁶¹² Memo from COL John A. Hadiis to Chief of Staff, USSOUTHCOM, *Executive Summary on Information Concerning Detainee ISN: [REDACTED]* (U) (March 14, 2005).

⁶¹³ Khatani interrogation plan (November 22, 2002).

⁶¹⁴ Khatani interrogation plan (November 22, 2002). The Stockholm Syndrome refers to a psychological event where hostages begin to identify with and grow sympathetic to their captors. The syndrome draws its name from a bank robbery and hostage situation in Stockholm, Sweden in 1973.

⁶¹⁵ *Review of JTF-GTMO Interrogation Plan Detainee 063* (November 22, 2002).

⁶¹⁶ Khatani interrogation plan (November 22, 2002).

[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.⁶¹⁷

[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.⁶¹⁸

[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.⁶¹⁹ However, MG Miller acknowledged to the Committee that these techniques were included in the approved plan and that, if the first three phases of the Khatani plan were unsuccessful, that he was willing to consider the use of SERE techniques.⁶²⁰

[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.⁶²¹ Instead, under “Coalition Exploitation” the November 22, 2002 plan stated that:

The fifth phase of the plan to exploit 063 will be determined at the national, interagency level where the future disposition of 063 will be determined.⁶²²

[REDACTED]

⁶¹⁷ Interrogation Plan for ISN: [REDACTED] [Khatani] (November 15, 2002) (hereinafter “Khatani interrogation plan (November 15, 2002)”; Khatani interrogation plan (November 22, 2002).

⁶¹⁸ Khatani interrogation plan (November 22, 2002).

⁶¹⁹ Army IG, Interview of MG Geoffrey Miller (March 26, 2006).

⁶²⁰ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁶²¹ Khatani interrogation plan (November 22, 2002).

⁶²² Ibid.

⁶²³ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[REDACTED]

[REDACTED]⁶²⁴ Nevertheless, the idea of transferring Khatani to a third country was discussed.⁶²⁵

[REDACTED]

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

(U) On November 22, 2002 the FBI sent MG Miller a memo that outlined FBI's continuing concerns about JTF-GTMO interrogation techniques. The FBI also requested a meeting with the Commander.⁶²⁸ The memo stated:

Many of [JTF-GTMO's] methods are considered coercive by Federal Law Enforcement and UCMJ standards. Not only this, but reports from those knowledgeable about the use of these coercive techniques are highly skeptical as to their effectiveness and reliability.⁶²⁹

(U) The memo stated further that the "FBI/CITF strongly believes that the continued use of diametrically opposed interrogation strategies in GTMO will only weaken our efforts to obtain valuable information."⁶³⁰

(U) In late November, FBI agents at GTMO asked that their concerns about JTF-GTMO interrogation techniques be relayed to Marion "Spike" Bowman, a senior attorney in the FBI's Office of General Counsel.⁶³¹ Mr. Bowman said that "[a]s soon as I heard from the [the FBI agents] I talked with (now retired) Executive Assistant Director Pat D'Amuro who immediately said we (the FBI) would not be a party to actions of any kind that were contrary to FBI policy and that individuals should distance themselves from any such actions."⁶³² Mr. Bowman also recommended to FBI General Counsel Kenneth Wainstein that FBI relay the concerns to the DoD General Counsel's office. Mr. Bowman subsequently called the acting DoD Deputy General Counsel for Intelligence and believes he also spoke with the DoD Principal Deputy

⁶²⁴ Ibid.

⁶²⁵ See Section V B 5, *infra*.

⁶²⁶ Khatani interrogation plan (November 22, 2002).

⁶²⁷ Ibid.; Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁶²⁸ FBI Memorandum to JTF-170 Commander MG Geoffrey Miller (November 22, 2002). Despite the heading on the memorandum, JTF-GTMO had replaced JTF-170 by the time this memo was written.

⁶²⁹ Ibid.

⁶³⁰ Ibid.

⁶³¹ Committee staff interview of FBI Special Agent (November 8, 2007).

⁶³² Responses of Marion Bowman to questionnaire of Senator Carl Levin (August 7, 2006).

[REDACTED]

General Counsel. DoD General Counsel Jim Haynes said that he did not recall being aware that the FBI had contacted his office with concerns.⁶³³

(U) On December 2, 2002, an FBI Special Agent, who was also an attorney, sent his own legal analysis of the October 11, 2002 GTMO request to another Special Agent for forwarding to Mr. Bowman.⁶³⁴ The FBI Special Agent referred to several techniques – such as all the Category III techniques and several Category II techniques, including stress positions, hooding, removal of clothing, 20 hour interrogations, and use of individual phobias (such as fear of dogs) to induce stress – as “coercive interrogation techniques which are not permitted by the U.S. Constitution.”⁶³⁵ The Special Agent’s analysis also identified several techniques – including all Category III techniques and two Category II techniques, i.e. hooding and use of phobias – as “examples of coercive interrogation techniques which may violate 18 U.S.C. § 2340, (Torture Statute)” and warned that “it is possible that those who employ these techniques may be indicted, prosecuted, and possibly convicted if the trier of fact determines that the user had the requisite intent.”⁶³⁶

(U) The following day, Mr. Bowman sent an email to another FBI Special Agent, stating “[i]t is irrelevant whether these detainees are considered prisoners of war, they are still entitled to minimal conditions of treatment – many of the techniques addressed appear to move well beyond the minimal requirements . . . I concur that we can’t control what the military is doing, but we need to stand well clear of it and get as much information as possible to D’Amuro, Gebhart, and Mueller as soon as possible.”⁶³⁷ Director Mueller said that he was not aware of the FBI’s concerns with DoD interrogation techniques at GTMO until May 2004.⁶³⁸

[REDACTED]

⁶³³ Committee staff interview of William J. Haynes II (April 25, 2008) at 236.

⁶³⁴ Email from FBI Special Agent (December 2, 2002).

⁶³⁵ FBI Memo, *Legal Issues Re Interrogation Techniques*, attached to Email from FBI Special Agent (December 2, 2002).

⁶³⁶ Ibid.

⁶³⁷ Email from Marion Bowman (December 3, 2002).

⁶³⁸ Current and Projected National Security Threats to the United States, Senate Select Committee on Intelligence, 109th Cong. (February 16, 2005).

⁶³⁹ Committee staff interview of FBI Special Agent (November 8, 2007).

⁶⁴⁰ Email from FBI Special Agent (May 10, 2004).

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁴¹ The DoD Associate Deputy General Counsel for International Affairs, Eliana Davidson, said that the FBI's Unit Chief believed that efforts at GTMO were not being productive and that he advocated for Khatani's transfer during the VTC.⁶⁴² [REDACTED]

⁶⁴³ [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."⁶⁴⁸

(U) CITF Deputy Commander Mark Fallon said that FBI proposed to CITF the idea of rendering Khatani to a third country but that CITF "considered it possibly unlawful" and opposed the proposal.⁶⁴⁹ He said CITF staff made Mr. Cobb aware of their concerns and that Mr. Cobb supported the CITF position.

⁶⁴¹ Committee staff interview of FBI Special Agent (November 8, 2007).

⁶⁴² Committee staff interview of Eliana Davidson (May 23, 2008).

⁶⁴³ Committee staff interview of FBI Unit Chief (May 17, 2008).

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid.

⁶⁴⁷ Committee staff interview of FBI Special Agent (November 8, 2007).

⁶⁴⁸ Committee staff interview of William J. Haynes II (April 25, 2008) at 232.

⁶⁴⁹ Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006).

[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.⁶⁵⁰ One FBI Special Agent told the Committee that MG Miller thanked the FBI personnel for their views, but told them that JTF-GTMO staff knew what they were doing.⁶⁵¹

(U) On December 9, 2002, another FBI Special Agent who attended the meeting sent an email stating, "when I return to D.C., I will bring a copy of the military's interview plan [for Khatani]... You won't believe it!"⁶⁵² Several months later he characterized the December 5, 2002 meeting with MG Miller:

Although [MG] Miller acknowledged positive aspects of [the FBI's approach to interrogations] it was apparent that he favored [JTF-GTMO's] interrogation methods, despite FBI assertions that such methods could easily result in the elicitation of unreliable and legally inadmissible information.⁶⁵³

[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.⁶⁵⁴

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

(U) On November 23, 2002, JTF-GTMO personnel took Khatani to Camp X-Ray to begin Phase I of the interrogation.⁶⁵⁵ Two days later, CITF attorney [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."⁶⁵⁶ CITF later drafted formal guidance for its agents stating that "Detainees will be treated humanely. Physical torture, corporal punishment and mental torture are not acceptable interrogation tactics and are not allowed under any circumstances... CITF personnel will not participate in any interrogation that employs tactics inconsistent with or in direct violation of this policy."⁶⁵⁷

⁶⁵⁰ Committee staff interview of FBI Special Agents (November 8, 2007).

⁶⁵¹ Committee staff interview of FBI Special Agent (November 8, 2007).

⁶⁵² Email from FBI Special Agent (December 9, 2002).

⁶⁵³ Electronic Communication from FBI Behavioral Analysis Unit (BAU) (May 30, 2003).

⁶⁵⁴ Committee staff interview of David Becker (September 17, 2007).

⁶⁵⁵ Army Regulation 15-6: Final Report: Investigation Into FBI Allegations of Detainee Abuse At Guantanamo Bay, Cuba Detention Facility, prepared by Lt. Gen. Randall Schmidt and Brig. Gen. John Furlow (hereinafter "Schmidt-Furlow Report").

⁶⁵⁶ Email from [REDACTED] to LTC Diane Beaver (November 25, 2002).

⁶⁵⁷ DoD CITF Memo for All Personnel Assigned to the DoD Criminal Investigation Task Force, *ALCITF Memorandum 004-02, Interrogation Procedures* (December 16, 2002).

[REDACTED]

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

(U) According to [REDACTED] the GTMO BSCT psychiatrist who participated in the interrogation, just before the Khatani interrogation began, Khatani was “made [to] believe he was sent to a hostile country which advocated torture.”⁶⁵⁸ [REDACTED] stated that Khatani was also “led to believe he himself might be killed if he did not cooperate with questioning.”⁶⁵⁹ The actual interrogation took place at GTMO’s Camp X-Ray. LTC Phifer told the Committee that Khatani was taken to X-Ray [REDACTED]

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[REDACTED] However, an interrogator who participated in the interrogation told the Committee that part of the reason Khatani was taken to X-Ray was to scare him.⁶⁶¹

(U) Khatani was interrogated from November 23, 2002 through January 16, 2003.⁶⁶² In June 2004, SOUTHCOM Commander GEN Hill, described the origin of some of the interrogation techniques used in the interrogation:

The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK. I sent that list of techniques up to the Secretary and said, in order for us to get at some of these very high-profile, high-value targets who are resistant to techniques, I may need greater flexibility. But I want a legal review of it and you to tell me that, policywise, it’s the right way to do business. He did that. And he approved additional techniques, which I would not describe as harsh, but additional techniques and gave them to me the first part of December. *And we began to use a few of those techniques, a few of those techniques on this individual...*⁶⁶³

[REDACTED] A memo dated January 17, 2003 also described techniques “used” against Khatani between November 23, 2002 and January 16, 2003, including stripping, forced grooming, invasion of space by a female interrogator, treating Khatani like an animal, using a military working dog, and forcing him to pray to an idol shrine.⁶⁶⁴

⁶⁵⁸ Written statement of [REDACTED] (August 21, 2007).

⁶⁵⁹ Ibid.

⁶⁶⁰ Committee staff interview of LTC Jerald Phifer (June 27, 2007).

⁶⁶¹ Committee staff interview of JTF-GTMO Interrogator (January 9, 2008).

⁶⁶² Schmidt-Furlow Report at 17.

⁶⁶³ Transcript of Media Availability with Commander U.S. Southern Command General James Hill (June 3, 2004) (emphasis added). Despite General Hill’s acknowledgement in 2004, in comments submitted to the DoD IG’s August 25, 2006 report, the DoD General Counsel’s office stated that “there is no evidence that SERE techniques were ever adopted at Guantanamo or anywhere else.” See DoD Office of General Counsel, *Legal Review of DRAFT SECRET/NOFORN DoD IG Report, “Review of DoD-Directed Investigations of Detainee Abuse (Project No. D2004-DINT01-0174) (U)”* (June 8, 2006) at 8.

⁶⁶⁴ Memo, *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003). The author of the memo is unknown but a copy of the memo was sent by the JTF-GTMO BSCT psychiatrist, [REDACTED] to LTC Morgan Banks, [REDACTED]

[REDACTED]

[REDACTED] These techniques are similar to techniques used in SERE school. In fact, JPRA training slides, identified by a JPRA instructor as those presented to interrogation personnel deploying for GTMO, identified “religious disgrace” and “invasion of personal space by a female” as methods to defeat resistance.⁶⁶⁵ Likewise, JPRA materials identified “degradation” as a method to defeat resistance, which was understood to include such methods as stripping the individual, having the guards address the individual as if that person were an “animal” or of “very low status,” and controlling use of the latrine.⁶⁶⁶

[REDACTED] The January 17, 2003 memo stated that “[s]earch/strip search” was used on Khatani “for security and to assert control.”⁶⁶⁷ A second document that appears to have been produced while the Khatani interrogation was ongoing stated that “removal of clothing” would “be employed” as part of Khatani’s interrogation.⁶⁶⁸ Despite the contemporaneous documents suggesting that removal of clothing was used during the interrogation, several senior JTF-GTMO personnel have said they were unaware of its use as an interrogation technique.

- [REDACTED] MG Miller told the Committee that he informed his Director for Intelligence, LTC Phifer, that he opposed the forced removal of clothing as an interrogation technique and in a 2004 sworn statement stated that “to the best of my knowledge JTF-GTMO never used [removal of clothing]” during the six week period in late 2002 early 2003 when it was authorized.⁶⁶⁹
- LTC Phifer and his replacement, COL Richard Sanders (who was given the title of Joint Intelligence Group (JIG) Commander) told the Committee that they were not aware that Khatani was strip searched.⁶⁷⁰
- Both Mr. Becker, the ICE Chief present for the development of the Khatani plan, and his successor Lt Col Ted Moss, who assumed the position when the interrogation was already underway, told the Committee that they were unaware of Khatani being stripped at the direction or suggestion of interrogation personnel.⁶⁷¹

the Chief of the Psychological Applications Directorate (PAD) at the U.S. Army’s Special Operations Command (USASOC).

⁶⁶⁵ See Section I D, *supra*.

⁶⁶⁶ Testimony of Joseph Witsch (September 4, 2007) at 22; Level C Peacetime Governmental Detention Survival JPRA Instructor Guide, *Exploitation: Threats and Pressures*, Module 6.0, Lesson 6.1, para 5.3.3 (Version G01.1).

⁶⁶⁷ *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

⁶⁶⁸ Memo, 063 *Plan of Attack: Phase I Bravo* (undated).

⁶⁶⁹ Committee staff interview of MG Geoffrey Miller (December 6, 2007); Sworn Statement of MG Geoffrey Miller (June 19, 2004).

⁶⁷⁰ Committee staff interview of LTC Jerald Phifer (June 27, 2007); Committee staff interview of COL Richard Sanders (August 10, 2007).

⁶⁷¹ Committee staff interview of Lt Col Ted Moss (October 17, 2007); Committee staff interview of David Becker (September 17, 2007).

[REDACTED]

[REDACTED] The January 17, 2003 memo stated that Khatani's head and beard were shaved "for hygienic purposes and to assert control over the detainee," that Khatani's hands were shackled to a chair to prevent him from praying, and that prayer was denied in circumstances where prayer was "used as a resistance technique."⁶⁷² The memo stated that up to eight ounces of water was poured over Khatani's head as a "method of asserting control" when Khatani exhibited "undesired behavior."⁶⁷³ And it said Khatani was forced to "sit, stand, lay down, walk or other non-stress position activities by guards to enforce the control of the interrogator."⁶⁷⁴ MAJ Burney said that Khatani was "made to stand for several hours at a time or sit on a hard chair for several hours at a time."⁶⁷⁵ The January 17, 2003 memo also stated that Khatani was ridiculed and berated "to elicit an adversarial response."⁶⁷⁶

[REDACTED] The memorandum listed several techniques used to increase Khatani's stress level including using of a female interrogator who "touch[ed] [Khatani] in close proximity," instructing Khatani "to pray to idol shrine to test religious temperance and incur," [REDACTED]

[REDACTED]⁶⁷⁷

[REDACTED] The memo stated that "K-9 units [were] present during interrogation but outside of booth to provide barking in order to agitate the detainee and provide shock value."⁶⁷⁸

[REDACTED] One interrogator who participated in the Khatani interrogation told the Committee that he understood that dogs could be used in a manner consistent with the description in the January 17, 2003 memo, i.e. they could be present during interrogation but outside the booth in order to agitate Khatani and provide shock value.⁶⁷⁹ The interrogator told the Committee that during one of his shifts interrogating Khatani, an MP brought a dog to the outside of the room in which the interrogation was taking place and that the MP got the dog to bark.⁶⁸⁰ The interrogator said that he did not ask the MP to do so and told the MP not to do it again.

(U) MAJ Burney, who was present for portions of the interrogation, testified to the Army IG that a dog was brought into the Khatani interrogation during late November or early December an estimated "half dozen times."⁶⁸¹ MAJ Burney testified:

⁶⁷² *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

⁶⁷³ Ibid.

⁶⁷⁴ Ibid.

⁶⁷⁵ Written statement from MAJ Paul Burney (August 21, 2007).

⁶⁷⁶ *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

⁶⁷⁷ Ibid.

⁶⁷⁸ Ibid.

⁶⁷⁹ Committee staff interview of JTF-GTMO Interrogator (January 9, 2008); *Methods Employed X-Ray Interrogation ISN 63* (January 17, 2003).

⁶⁸⁰ Committee staff interview of JTF-GTMO Interrogator (January 9, 2008).

⁶⁸¹ Army IG, Interview of MAJ Paul Burney (April 28, 2006).

[The] dog was never allowed to bite the detainee but would be ordered to bark loudly close to the detainee, to sort of sniff or muzzle the detainee, to put paws up on the detainee.⁶⁸²

(U) MAJ Burney said that interrogators stopped using the dog “not because anybody had necessarily objected to [the use of the dog],” but because “the initial shock value had worn off” and “it just wasn’t felt to be effective anymore.”⁶⁸³ None of the other witnesses interviewed by the Committee stated that they were aware of a dog being brought into the interrogation booth.

[REDACTED] who was present for portions of the interrogation, stated that at one point during an interrogation, either a guard or an interrogator suggested that a dog be used to scare Khatani.⁶⁸⁴ [REDACTED] said that he informed Mr. Becker, who intervened before the dogs were used.⁶⁸⁵

(U) As discussed above, MG Miller told the Committee that dogs were present at Camp X-Ray solely for securing the perimeter and that he was absolutely clear with ICE Chief David Becker that dogs were not to be used in interrogations.⁶⁸⁶ He testified to the Army IG that he “rejected [using dogs in interrogations] as an acceptable technique” and that dogs “were not to be used during active interrogation.”⁶⁸⁷ In written answers to questions posed by Vice Admiral Church, however, the Director for Intelligence, LTC Phifer stated that dogs were used in the Khatani interrogation and that “We would bring the dog around to within 10 feet [of Khatani] and he would be somewhat unnerved by it. We did it to keep him off balance as well as to enhance security.”⁶⁸⁸ Despite the testimony of the BSCT psychiatrist and LTC Phifer, Mr. Becker stated that the Commander “refused to allow dogs” in interrogations while he was in command of JTF-GTMO and told the Committee that dogs were not at the Khatani interrogation.⁶⁸⁹

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

[REDACTED] As the disagreement continued at GTMO about interrogation techniques being used by military interrogators in the Khatani interrogation, JPRA was developing another training session on the use of physical pressures and other interrogation techniques for [REDACTED] interrogators.⁶⁹⁰

⁶⁸² Ibid.

⁶⁸³ Ibid.

⁶⁸⁴ Committee staff interview of [REDACTED] (August 13, 2007).

⁶⁸⁵ Ibid.

⁶⁸⁶ Committee staff interview of MG Geoffrey Miller (December 5, 2007).

⁶⁸⁷ Army IG, Interview of MG Geoffrey Miller (May 2, 2006).

⁶⁸⁸ LTC Jerry Phifer written answers to Church Report Questionnaire (July 16, 2004). It is not clear from those written answers whether the Director for Intelligence [Phifer] was referring to the use of dogs in the interrogation of Khatani that began in November or the interrogation that took place in October 2003. See section B supra.

⁶⁸⁹ Army IG, Interview of David Becker (September 20, 2005) at 31.

⁶⁹⁰ Email from Christopher Wirts to Joe Witsch, Gary Percival, and Terry Russell (November 12, 2002).

[REDACTED]

[REDACTED] A Joint Staff Action Processing Form shows that [REDACTED] request was endorsed by JPRA, JFCOM, Joint Staff, and the Undersecretary of Defense for Policy's office and approved on November 12, 2002.⁶⁹³ The Chief of JPRA's Operational Support Office (OSO) Christopher Wirts "received the approved requirement [for training] from JFCOM DSSO [Defense Sensitive Support Office] and [Joint Staff] DSSO" and subsequently informed three JPRA personnel that the requirement for training included a lesson in "physical pressures, techniques used in DoD [SERE] training" and "practical exercise[s] in interrogation and physical pressures."⁶⁹⁴

[REDACTED] The training took place at the [REDACTED] facility in mid-to-late November 2002.⁶⁹⁵ Three JPRA personnel conducted the multi-day training session and Mr. Wirts attended part of a one day session.⁶⁹⁶ According to Joseph Witsch, the JPRA instructor who led the training, the instructors followed the JFCOM and Joint Staff-approved requirement and instructed [REDACTED] interrogators on physical pressures used on students at SERE school.⁶⁹⁷

[REDACTED] The training session also included a demonstration of physical pressures.⁶⁹⁸ This was in accordance with the requirement, approved by JFCOM and Joint Staff, for "practical exercise[s] in interrogation and physical pressures."⁶⁹⁹ Mr. Witsch recalled that he "participated in a couple of those demonstrations," which included role play sessions, where JPRA personnel demonstrated the SERE physical pressures in "mock interrogation[s]."⁷⁰⁰ Another JPRA instructor, Terrence Russell, recalled that [REDACTED], rather than JPRA, led the demonstration of physical pressures.⁷⁰¹

⁶⁹¹ [REDACTED]

⁶⁹² Ibid.

⁶⁹³ Joint Staff Action Processing Form (November 12, 2002).

⁶⁹⁴ Email from Christopher Wirts to Joe Witsch, Gary Percival, and Terry Russell (November 12, 2002).

⁶⁹⁵ Committee staff interview of Christopher Wirts (January 4, 2008).

⁶⁹⁶ Ibid.

⁶⁹⁷ Testimony of Joseph Witsch (September 6, 2007) at 37.

⁶⁹⁸ Testimony of Terrence Russell (August 3, 2007) at 85.

⁶⁹⁹ Ibid.

⁷⁰⁰ Testimony of Joseph Witsch (September 6, 2007) at 38.

⁷⁰¹ Testimony of Terrence Russell (August 3, 2007) at 85.

[REDACTED]

[REDACTED] According to Mr. Russell, in the demonstration of one of those physical pressures, a [REDACTED] suggested that to “enhance... the pain threshold” of a detainee being placed in a [REDACTED]

[REDACTED]⁷⁰² According to Mr. Russell: “I thought that would be improper” because “[i]t would cause physical damage, permanent physical damage to an individual. And I think that that would be totally inappropriate to do to anybody, whether it’s an American or a foreign detainee. We would not do something that would cause permanent physical damage.”⁷⁰³ The JPRA training team said they raised that concern with their superiors when they returned from the trip.⁷⁰⁴ The senior SERE psychologist, Dr. Gary Percival, who also participated in the training session later described it as a “fiasco” and said that the [REDACTED] and interrogators did not understand the concepts being taught.⁷⁰⁵

[REDACTED] JPRA personnel also instructed [REDACTED] interrogators on how to perform waterboarding.⁷⁰⁶ In his testimony to the Committee, Mr. Witsch said that the JPRA instructors “mentioned [waterboarding to [REDACTED] and how it’s done, [and described] basic steps in order to do it.”⁷⁰⁷

[REDACTED] None of the JPRA personnel at [REDACTED] training had performed waterboarding or were qualified to teach others how to perform the technique.⁷⁰⁸ In fact, Mr. Witsch, who described the technique to [REDACTED] at the training, testified that he did not recall all of the safety limitations associated with waterboarding.⁷⁰⁹ For example, he testified that he was not aware that students at the U.S. Navy’s SERE school could not be subjected to waterboarding for more than twenty seconds, if a cloth is placed over the student’s face.⁷¹⁰ The twenty second time limit

⁷⁰² Ibid. at 128, 86.

⁷⁰³ Ibid. at 129.

⁷⁰⁴ Testimony of Joseph Witsch (September 6, 2007) at 41.

⁷⁰⁵ Committee staff interview of Dr. Gary Percival (July 25, 2007).

⁷⁰⁶ Testimony of Joseph Witsch (September 6, 2007) at 107.

⁷⁰⁷ Ibid. at 109.

⁷⁰⁸ Committee staff interview of Christopher Wirts (January 4, 2008); Testimony of Joseph Witsch (September 6, 2007) at 113-14

⁷⁰⁹ Testimony of Joseph Witsch (September 4, 2007) at 112-113.

⁷¹⁰ [REDACTED] FASO Detachment Brunswick Instruction 3305.C, p. E-5 (January 1, 1998) (emphasis in original) (“Water Board. ***** The student is subjected to interrogation while strapped to a specially rigged, flat, wooded surface about four by seven feet with quick release bindings which will neither chafe nor cut when the student is strapped to the board. Two canteen cups (one pint each) of water may be slowly poured directly onto the student’s face from a height of about twelve inches throughout the interrogation. No attempt will be made to direct the stream of water into the student’s nostrils or mouth. **NO CHEST OR STOMACH** pressure may be used to compel the student to breathe in any water. If a cloth is placed over the student’s face, it will remain in place for a maximum time of TWENTY seconds, with a hospital corpsman instructor holding the face cloth in place. The cloth may be applied only twice in this manner to any given student. A student may be threatened at a later time with the water board and may even be strapped to the board again but under no circumstances may water actually be applied. The Watch Officer and a designated 9505 hospital corpsman shall be present whenever the water board is being used. The water board demonstrates omnipotence of the captor. Once the tactic is used on a student, it may be used as a credible threat.”)

[REDACTED]

was emphasized in bold and in all capital letters in the Navy SERE school's instruction manual.⁷¹¹

[REDACTED] ([REDACTED] After Mr. Witsch described how to waterboard, [REDACTED] interrogators proceeded to perform the technique on each other.⁷¹² Another JPRA trainer, Terrence Russell, said that it was a requirement that [REDACTED] interrogators experience the sensation of waterboarding and that [REDACTED] staff ran "everybody through a small experience with the waterboard, in that they were [REDACTED]"⁷¹³

According to Mr. Russell, nobody endured the waterboard for "very long."⁷¹⁴ The experience was "purely voluntary," and [REDACTED] interrogators "stayed there five seconds, ten seconds, thirty seconds," but not longer than that.⁷¹⁵ Mr. Russell said that if the interrogators "wanted to get off, they hopped off. But they had to experience the sensation. That was [REDACTED] requirement."⁷¹⁶

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

A. Secretary of Defense Authorizes Aggressive Techniques for use at GTMO

(U) On November 27, 2002, Mr. Haynes sent a memo to Secretary of Defense Donald Rumsfeld recommending that the Secretary authorize the Commander of SOUTHCOM to employ, at his discretion, all Category I and II techniques and one Category III technique ("use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing") in the JTF-GTMO October 11, 2002 request.⁷¹⁷

(U) Mr. Haynes's memo stated that he had discussed the issue with Deputy Secretary of Defense Paul Wolfowitz, Undersecretary of Defense for Policy Doug Feith, and Chairman of the Joint Chiefs of Staff (CJCS) General Richard Myers and that they concurred with his recommendation.⁷¹⁸ According to Mr. Haynes, his recommendation came after the Secretary of Defense expressed "some exasperation that he didn't have a recommendation" on the October 11, 2002 GTMO request and told his senior advisors "I need a recommendation."⁷¹⁹

⁷¹¹ Ibid.

⁷¹² Testimony of Terrence Russell (August 3, 2007) at 87-88.

⁷¹³ Ibid.

⁷¹⁴ Ibid.

⁷¹⁵ Ibid.

⁷¹⁶ Ibid.

⁷¹⁷ Action Memorandum from William J. Haynes II to Secretary of Defense, *Counter-Resistance Techniques*, (November 27, 2002), approved by the Secretary of Defense on December 2, 2002 (hereinafter "Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002)").

⁷¹⁸ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

⁷¹⁹ Committee interview of William J. Haynes II (April 25, 2008) at 193; SASC Hearing (June 17, 2008).

[REDACTED]

(U) Mr. Haynes's memo concluded that while "all Category III techniques may be legally available, we believe that a blanket approval of Category III techniques is not warranted at this time."⁷²⁰ While the CJCS, General Myers, said that he "did not recall seeing the November 27, 2002 memo before it was presented to the Secretary," his Legal Counsel, CAPT Dalton, said that she and the Chairman were "satisfied with" the techniques that were recommended to the Secretary for approval.⁷²¹ CAPT Dalton also said, however, that she did not think the statement in the DoD General Counsel's memo that "all Category III techniques may be legally available" "was an appropriate legal analysis."⁷²² She did not raise that concern with the Chairman.⁷²³

(U) Mr. Haynes stated that he "probably" read LTC Beaver's legal analysis of the request prior to making his recommendation but that he could not recall his opinion of it.⁷²⁴ He could not recall whether he asked anyone on his staff to review or comment on the analysis or whether his office conducted its own legal review.⁷²⁵

(U) As discussed above, General Hill, the SOUTHCOM Commander, had requested in his October 25, 2002 memorandum that Department of Justice and Department of Defense lawyers review Category III techniques included in the October 11, 2002 GTMO request.⁷²⁶ While the Department of Justice's Office of Legal Counsel (OLC) had issued an opinion on August 1, 2002 evaluating standards of conduct for interrogations required under the anti-torture statute, Mr. Haynes testified in July 2006 that he "did not have a copy" of that opinion and that the OLC "had not expressed a view [to him] at that time."⁷²⁷ In April 2008, however, Mr. Haynes stated that it was "very, very likely" that he had read the OLC opinion prior to making his recommendation to the Secretary and recalled it being "very permissive."⁷²⁸ Two months later, in June 2008, Mr. Haynes testified that he did not "remember when he first read" the OLC memo.⁷²⁹ The General Counsel said that he did not know whether anyone in his office consulted the Department of Justice about the October 11, 2002 GTMO request and he did not believe DOJ reviewed the techniques "in the context of [the GTMO] request."⁷³⁰

(U) Other than his November 27, 2002 memo to Secretary Rumsfeld recommending that the techniques be approved, Mr. Haynes said that he "did not write anything down" to support

⁷²⁰ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

⁷²¹ Responses of General Richard Myers to April 16, 2008 written questions from Senator Carl Levin (April 30, 2008); SASC Hearing (June 17, 2008).

⁷²² SASC Hearing (June 17, 2008).

⁷²³ Ibid.

⁷²⁴ Committee staff interview of William J. Haynes II (April 25, 2008) at 172.

⁷²⁵ Ibid.

⁷²⁶ GEN Hill to CJCS, *Counter-Resistance Techniques*.

⁷²⁷ Confirmation Hearing of William James Haynes II to be Circuit Judge for the Fourth Circuit, Senate Committee on Judiciary, 109th Cong. (July 11, 2006).

⁷²⁸ Committee staff interview of William J. Haynes II (April 25, 2008) at 175-177, 190.

⁷²⁹ Ibid. at 193; SASC Hearing (June 17, 2008).

⁷³⁰ Committee staff interview of William J. Haynes II (April 25, 2008) at 175-177, 186.

[REDACTED]

[REDACTED]

his legal analysis.⁷³¹ GTMO Staff Judge Advocate Diane Beaver stated that she “fully expected” that her legal review would be “carefully reviewed by legal and policy experts at the highest levels before a decision was reached” and was “shocked” that her opinion became the opinion upon which the Department of Defense relied.⁷³² LTC Beaver stated that she did not expect that her opinion “would become the final word on interrogation policies and practices within the Department of Defense” and that for her “such a result was simply not foreseeable.”⁷³³ She stated that she “did not expect to be the only lawyer issuing a written opinion on this monumentally important issue” and that in hindsight, could not “help but conclude that others chose not to write on this issue to avoid being linked to it.”⁷³⁴

(U) Despite the fact that his memo recommended the Secretary of Defense authorize the use of aggressive interrogation techniques including stress positions, deprivation of light and auditory stimuli, hooding, removal of clothing, the use of dogs to induce stress, and pushing and poking detainees, Mr. Haynes stated that he was not recommending blanket approval of other aggressive techniques in the GTMO request (like the use of a wet towel and dripping water to induce the misperception of drowning) because “Our Armed Forces are trained to a standard of interrogation that reflects a tradition of restraint.”⁷³⁵

(U) While several techniques included in the request were similar to techniques used in SERE training and provided by JPRA to the General Counsel’s office in the July 26, 2002 memo, Mr. Haynes said that he did not “specifically recall” making a connection between the request and SERE.⁷³⁶ In comments submitted to the DoD IG’s August 25, 2006 report, the DoD General Counsel’s office even stated that “There is no evidence that SERE techniques were ever adopted at Guantanamo or anywhere else.”⁷³⁷ Those comments were submitted two years after the SOUTHCOM Commander, General Hill, had said that “the staff at Guantanamo” had traveled to “SERE school,” where they “developed a list of techniques . . .” and despite the fact that some of the techniques in the October 11, 2002 GTMO request were specifically identified as “those used in U.S. military interrogation resistance training.”⁷³⁸

(U) Mr. Haynes said that he raised legal concerns about the October 11, 2002 GTMO request with the Secretary prior to making his recommendation.⁷³⁹ On December 2, 2002, however, Secretary Rumsfeld approved Mr. Haynes’s recommendation that SOUTHCOM be

⁷³¹ Ibid. at 177.

⁷³² SASC Hearing (June 17, 2008).

⁷³³ Ibid.

⁷³⁴ Ibid.

⁷³⁵ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

⁷³⁶ Committee staff interview of William J. Haynes II (April 25, 2008) at 188.

⁷³⁷ Comment matrix, *Legal Review of Draft SECRET//NOFORN DoD IG Report, Review of DoD-Directed Investigations of Detainee Abuse (Project No. D2004-DINT01-0174) (U)* (June 8, 2006) at 8.

⁷³⁸ Media Availability with GEN Hill (June 3, 2004); MG Dunlavy to GEN Hill, *Counter-Resistance Strategies* (October 11, 2002).

⁷³⁹ Committee staff interview of William J. Haynes II (April 25, 2008) at 170.

[REDACTED]

[REDACTED]

given authority to use all Categories I and II techniques and one Category III technique in interrogations at GTMO.⁷⁴⁰ In approving the techniques, the Secretary added a handwritten note at the bottom of the memo that questioned one of the limitations in the JTF-GTMO request.⁷⁴¹ In reference to “the use of stress positions (like standing) for a maximum of four hours,” the Secretary wrote: “However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?”⁷⁴²

[REDACTED] Despite having previously approved the Khatani plan, which included a phase to employ Category III techniques, MG Geoffrey Miller told the Committee that shortly after the authorization was issued, he told the SOUTHCOM Commander that he did not intend to use the Category III techniques at GTMO.⁷⁴³

(U) However, following the Secretary of Defense’s December 2, 2002 authorization, JTF-GTMO senior staff began developing standard operating procedures to implement stress positions, stripping detainees, and non-injurious physical contact, such as pushing and poking detainees, all of which were authorized by the Secretary of Defense. The CITF Special Agent in Charge at GTMO, Timothy James, said that when he saw the Secretary’s authorization, he was “in shock” and that it “told us we had lost the battle.”⁷⁴⁴

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

[REDACTED] ([REDACTED]) On December 14, 2002, just prior to a staff meeting, GTMO’s Director for Intelligence, LTC Phifer, gave Mr. James, the CITF Special Agent in Charge, a document entitled “JTF-GTMO ‘SERE’ Interrogation Standard Operating Procedure” and asked for his comments on the document.⁷⁴⁵ The techniques described in the draft SOP, such as stress positions, non-injurious physical contact, removal of clothing, and hooding, had all been authorized by the Secretary of Defense on December 2, 2002.⁷⁴⁶

[REDACTED] ([REDACTED]) The Department of Defense provided the Committee with two versions of the draft SERE SOP, one dated December 18, 2002 and another earlier undated draft. The draft SOPs were based on the Navy SERE school manual.⁷⁴⁷

(U) Under “purpose” both drafts of the SOP stated:

⁷⁴⁰ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

⁷⁴¹ Ibid.

⁷⁴² Ibid.

⁷⁴³ Committee staff interview of MG Geoffrey Miller (December 5, 2007).

⁷⁴⁴ Committee staff interview of Timothy James (May 18, 2007).

⁷⁴⁵ Email from Timothy James to Mark Fallon et al. (December 17, 2002).

⁷⁴⁶ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

⁷⁴⁷ JTF-GTMO “SERE” Interrogation Standard Operating Procedure (undated) (hereinafter “JTF-GTMO SERE SOP (undated)”); JTF-GTMO “SERE” Interrogation Standard Operating Procedure (December 18, 2002); (hereinafter “JTF-GTMO SERE SOP (December 18, 2002)”).

[REDACTED]

This SOP document promulgates procedures to be followed by JTF-GTMO personnel engaged in interrogation operations on detained persons. The premise behind this is that the interrogation tactics used at U.S. military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to 'break' detainees. The same tactics and techniques can be used to break real detainees during interrogation operations.

... Note that all tactics are strictly intended to be non-lethal.⁷⁴⁸

(U) The December 18, 2002 draft stated that "interrogators will undergo training by certified SERE instructors prior to being approved for use of any of the techniques described in this document" and stated that the draft SOP was "applicable to military and civilian interrogators assigned to Joint Task Force Guantanamo Bay, Cuba."⁷⁴⁹

(U) In addition, the December 18, 2002 draft included a section describing "interrogation control and safety" that listed safeguards to "avoid injuries to the detainee, especially his head and/or neck" and stated that a "corpsman or medic should be onsite, and a doctor on-call should medical care be necessary."⁷⁵⁰ The December 18, 2002 draft was unsigned but contained signature blocks for the JTF-GTMO's new ICE Chief, Lt Col Moss, the new JIG Commander, COL Sanders, and the JTF-GTMO Commander, MG Miller.

[REDACTED] Under "Degradation Tactics" the draft SOPs described the "shoulder slap," the "insult slap," the "stomach slap," and "stripping," all of which were included in the Secretary of Defense's December 2, 2002 authorization.⁷⁵¹

[REDACTED] ([REDACTED] Regarding the shoulder slap, John Rankin, a Navy SERE Training Specialist who reviewed the draft SOPs at the time, noted that the SOPs' description of the shoulder slap differed from the technique as applied at the Navy SERE school.⁷⁵² The Navy instruction manual described the shoulder slap [REDACTED],⁷⁵³ However, the draft GTMO SOPs described the shoulder slap as [REDACTED],⁷⁵⁴

[REDACTED] ([REDACTED] The draft SOPs described how to administer "insult slap[s]" and "stomach slap[s]" to "shock and intimidate the detainee."⁷⁵⁵ The draft SOPs explained that the use of "stripping" involved the "forceful removal of detainees' clothing."⁷⁵⁶ The drafts also stated that

⁷⁴⁸ JTF-GTMO SERE SOP (undated); JTF-GTMO SERE SOP (December 18, 2002).

⁷⁴⁹ JTF-GTMO SERE SOP (December 18, 2002).

⁷⁵⁰ JTF-GTMO SERE SOP (December 18, 2002).

⁷⁵¹ Ibid. JTF-GTMO SERE SOP (undated).

⁷⁵² Committee staff interview of John Rankin (September 25, 2007).

⁷⁵³ FASO Detachment Brunswick Instruction 3305.C (January 1, 1998) (emphasis added).

⁷⁵⁴ JTF-GTMO SERE SOP (undated); JTF-GTMO SERE SOP (December 18, 2002).

⁷⁵⁵ JTF-GTMO SERE SOP (undated); JTF-GTMO SERE SOP (December 18, 2002).

⁷⁵⁶ Ibid.

[REDACTED]

“[i]n addition to degradation of the detainee, stripping can be used to demonstrate the omnipotence of the captor or to debilitate the detainee.”⁷⁵⁷

[REDACTED] ([REDACTED] Under “Physical Debilitation Tactics” the draft SOPs described various stress positions and said the purpose of using them was to “punish detainees.”⁷⁵⁸ Among the stress positions listed was the “kneeling position,” [REDACTED]

[REDACTED]⁷⁵⁹
Another stress position, the “standing position,” [REDACTED]

[REDACTED]⁷⁶⁰ The draft SOPs also listed “Worship-the-Gods” where a detainee would [REDACTED]

[REDACTED]⁷⁶¹
[REDACTED] The draft SERE SOPs described a number of other techniques including hooding; “manhandling,” described as “pulling or pushing a detainee,” and “walling,” described as “placing a detainee forcibly against a specially constructed wall.”⁷⁶² According to the draft SOPs, the purpose of walling was to “physically intimidate a detainee.”⁷⁶³

(U) In an email sent shortly after the December 14, 2002 staff meeting where LTC Phifer provided him the draft SOP, CITF Special Agent in Charge Timothy James said that LTC Phifer briefed MG Miller and his staff on the draft SOP at the meeting.⁷⁶⁴

[REDACTED] Several senior GTMO staff reviewed drafts of the GTMO SERE SOP. On December 14, LTC Beaver sent an email to LTC Phifer, Lt Col Moss (the newly arrived ICE Chief) and members of the GTMO Behavioral Science Consultation Team (BSCT) proposing changes to the draft SERE SOP.⁷⁶⁵ LTC Beaver recommended:

[S]trictly prohibiting use of force to the head such as when detainee looks away. Pressure to head and neck must be avoided. Guiding chin up with two fingers for example or using other techniques to make detainee comply. This would avoid inadvertent injury... We can gain some control with use of pressure to shoulder and arms or upper body and less charge of injury to face, neck or head.⁷⁶⁶

⁷⁵⁷ Ibid.

⁷⁵⁸ Ibid.

⁷⁵⁹ Ibid.

⁷⁶⁰ Ibid.

⁷⁶¹ Ibid.

⁷⁶² Ibid.

⁷⁶³ Ibid.

⁷⁶⁴ Email from Timothy James to Mark Fallon et al (December 17, 2002).

⁷⁶⁵ Email from LTC Diane Beaver to Lt Col Ted Moss and LTC Jerald Phifer (December 14, 2002).

⁷⁶⁶ Ibid.

[REDACTED]

(U) LTC Beaver later testified to the Committee that she might have recalled seeing a SERE SOP at the time but that she “had nothing to do” with drafting the December 18, 2002 version of the SOP and did not participate at all in drafting it.⁷⁶⁷

[REDACTED] On December 16, 2002, BSCT psychiatrist MAJ Paul Burney responded to LTC Beaver’s email, stating that “if these techniques are employed at GTMO, our training/preparation must match that of the instructors who are allowed to use these same techniques at SERE school.”⁷⁶⁸ MAJ Burney described some of the requirements for SERE instructors, such as having them “go through SERE school themselves,” “undergo strict psychiatric screening,” and be strictly supervised while doing their jobs at the SERE school.⁷⁶⁹ MAJ Burney said that “there are still times when instructors go a bit too far and have to be redirected by other instructors. The SERE school takes this training VERY seriously. It clearly is not a see one, do one, teach one kind of situation.”⁷⁷⁰ The psychiatrist warned:

The environment down here is much different than at SERE school. There is not a cadre of experienced SERE instructors. The interrogators have not gone through SERE school or been subjected to this treatment themselves. There is not a psychiatric screening process in place. The interrogators are away from home, family, friends and are under a lot more stress than SERE instructors at the SERE school. The detainees being questioned are the enemy and are not U.S. personnel posing as the enemy... All these factors make using this kind of pressure much more dangerous in this environment compared to at the SERE school.⁷⁷¹

[REDACTED] As to the utility of the SERE resistance techniques, MAJ Burney also stated that “[i]t is quite possible that employing these techniques exactly as employed in SERE school may actually strengthen a detainee’s ability to resist interrogation rather than overcome it.”⁷⁷² MAJ Burney stated that he was “not suggesting that the use of physical pressures should be totally abandoned,” but recommended that they should bring an experienced senior SERE trainer to GTMO to discuss the issue stating “the interrogation element feels these tools will greatly assist the interrogations process. It would be very interesting to me to know if senior SERE trainers... agree with this assessment or not.”⁷⁷³ MAJ Burney also recommended that, if JTF-GTMO determined the techniques might be effective, then they should institute the same screening processes that SERE schools use and that SERE school instructors be “sent to GTMO to help with the interrogation process.”⁷⁷⁴

⁷⁶⁷ SASC Hearing (June 17, 2008).

⁷⁶⁸ Email from MAJ Paul Burney to LTC Diane Beaver (December 16, 2002).

⁷⁶⁹ Ibid.

⁷⁷⁰ Ibid.

⁷⁷¹ Ibid.

⁷⁷² Ibid.

⁷⁷³ Ibid.

⁷⁷⁴ Ibid.

[REDACTED]

(U) Mr. Becker, the ICE Chief who left GTMO in December 2002, told the Committee that prior to his departure he had begun drafting the SOP and had discussed it with LTC Phifer.⁷⁷⁵

(U) As discussed above, contemporaneous documents suggest that LTC Phifer gave a copy of the draft SERE SOP to Timothy James, the CITF Special Agent in Charge, and briefed the draft to a JTF-GTMO staff meeting.⁷⁷⁶ LTC Phifer was also a recipient of the December 14, 2002 email from LTC Beaver that proposed changes to the draft SERE SOP.⁷⁷⁷ However, LTC Phifer testified to the Army IG that he had “never heard of [the SOP] or saw [the SOP].”⁷⁷⁸ He later told the Committee that he did not recall the SOP or the December 14, 2002 staff meeting and said that he would not have been comfortable briefing the SOP.⁷⁷⁹

(U) LTC Phifer was replaced on or about December 17, 2002 by COL Richard Sanders, who was given the title of Joint Intelligence Group (JIG) Commander.⁷⁸⁰ COL Sanders, whose signature block was included on the December 18, 2002 draft SERE SOP, did not recall seeing the SOP, but said he vaguely recalled discussions about it.⁷⁸¹ Lt Col Moss, the new ICE Chief whose signature block was also on the draft SERE SOP, told the Committee that he recalled the draft SOP but that he never signed it.⁷⁸²

(U) LTC Beaver told the Committee that she did not know who directed the development of the SOP and could not recall whether she discussed it with MG Miller.⁷⁸³ MAJ Burney told the Committee that he recalled being provided a copy of the Navy SERE school’s SOP but did not recall seeing a document drafted by GTMO personnel.⁷⁸⁴

[REDACTED] Despite having approved an interrogation plan that included SERE techniques and telling the Committee that, in the context of the Khatani interrogation, he was “willing to consider” SERE tactics, MG Miller testified to the Army IG that the techniques in the SOP “were too aggressive and not appropriate for use [at GTMO].”⁷⁸⁵

(U) While a contemporaneous document suggests that LTC Phifer briefed MG Miller on the SOP, MG Miller told the Army IG that the SOP was never brought to his attention and that

⁷⁷⁵ Committee staff interview of David Becker (October 17, 2007).

⁷⁷⁶ Email from Timothy James to Mark Fallon et al. (December 17, 2002).

⁷⁷⁷ Email from LTC Diane Beaver to Lt Col Ted Moss and LTC Jerald Phifer (December 14, 2002).

⁷⁷⁸ Army IG, Interview of LTC Jerald Phifer (March 16, 2006) at 9.

⁷⁷⁹ Committee staff interview of LTC Jerald Phifer (June 27, 2007).

⁷⁸⁰ Ibid.

⁷⁸¹ Committee staff interview of COL Richard Sanders (August 10, 2007).

⁷⁸² Committee staff interview of LTC Ted Moss (October 17, 2007).

⁷⁸³ Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁷⁸⁴ Committee staff interview of MAJ Paul Burney (August 21, 2007).

⁷⁸⁵ Army IG, Interview of MG Geoffrey Miller (March 28, 2006); Committee staff interview of MG Geoffrey Miller (December 5, 2007).

[REDACTED]

he had no knowledge of it.⁷⁸⁶ MG Miller later told the Committee that he did not recall being briefed on the draft SOP.⁷⁸⁷ As noted above, he also told the Committee that he opposed stress positions, removal of clothing, and the use of non-injurious physical contact – all techniques described in the draft SERE SOP – and that he had made his opposition clear to his staff prior to the time that the SOPs were drafted.⁷⁸⁸

(U) In response to LTC Phifer's request for comments on the draft SERE SOP, CITF raised concerns about the SOP verbally to LTC Phifer and drafted written comments about the SOP.⁷⁸⁹ A draft of CITF's written comments (which they coordinated with FBI) was addressed to LTC Phifer and stated:

[There is a] fundamental difference between the military and [CITF and FBI] regarding which style of interrogation should be used... the military model is based on SERE tactics... This school teaches coercion and aggressive interrogation techniques as a way to "break" soldiers who are being trained in methods to resist interrogation by a foreign power... [CITF and FBI] believe these techniques discourage, rather than encourage, detainee cooperation.⁷⁹⁰

(U) CITF and FBI also argued that the use of the methods "only serves to reinforce" the negative perception of the detainees toward Americans and would create "real potential for mistreatment" of detainees.⁷⁹¹ CITF and FBI called the SERE techniques "unsuitable" and "ineffective" and said there were "serious concerns about the legal implications of the techniques."⁷⁹²

(U) On December 18, 2002, CITF Special Agent in Charge Timothy James sent an email to Mr. Fallon stating "at this moment the JTF-GTMO staff is working the SOP issue, and [MG Miller] will most likely make a decision in the next day or so."⁷⁹³

(U) Individuals interviewed by the Committee stated that the SOP was never signed or implemented at GTMO.⁷⁹⁴ Less than two weeks after the December 18, 2002 draft SERE SOP

⁷⁸⁶ Email from CITF Special Agent in Charge (December 18, 2002); Army IG, Interview of MG Geoffrey Miller (March 28, 2006).

⁷⁸⁷ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁷⁸⁸ Ibid.

⁷⁸⁹ Committee staff interview of Timothy James (May 18, 2007).

⁷⁹⁰ Draft Memo from Timothy James to JTF-GTMO/J2, *JTF-GTMO "SERE" Interrogation SOP DTD 10 Dec 02* (December 17, 2002). CITF Special Agent in Charge Timothy James told the Committee that he was sure he shared CITF's concerns with LTC Phifer verbally and thought he gave LTC Phifer a memo documenting those concerns. Committee staff interview of Timothy James (May 18, 2007).

⁷⁹¹ Draft Memo from Timothy James to JTF-GTMO/J2, *JTF-GTMO "SERE" Interrogation SOP DTD 10 Dec 02* (December 17, 2002).

⁷⁹² Ibid.

⁷⁹³ Email from Timothy James to Mark Fallon et al. (December 18, 2002).

⁷⁹⁴ Committee staff interview of Lt Col Ted Moss (October 17, 2007); Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[REDACTED]

[REDACTED]

was written, however, two instructors from the Navy SERE school traveled to GTMO to train interrogators on how to perform some of the physical pressures authorized by the Secretary of Defense and contained in the draft SERE SOPs.

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

(U) On December 30, 2002, a SERE Training Specialist, John Rankin, and a SERE Coordinator, Christopher Ross from the Navy SERE school in Brunswick, Maine arrived at GTMO to “provide [JTF-GTMO Interrogation Control Element] personnel with the theory and application of the physical pressures utilized during [Navy SERE school] training evolutions.”⁷⁹⁵ Lt Col Moss told the Committee that his predecessor, Mr. Becker, had invited the SERE school trainers to GTMO.⁷⁹⁶ MG Miller told the Committee that he was aware of the visit.⁷⁹⁷

(U) The trainers arrived on December 30, 2002 and met with Lt Col Moss and the ICE Operations Officer.⁷⁹⁸ Lt Col Moss told them that “a high level directive had initiated [their] subsequent trip for the purpose of providing ‘physical pressures’ training.” According to the SERE Training Specialist, John Rankin, that directive was a letter from the Secretary of Defense which was shown to him by Lt Col Moss.⁷⁹⁹ Lt Col Moss also gave the two Navy SERE school personnel a copy of the December 18, 2002 draft SERE SOP.⁸⁰⁰

(U) The next day, the two Navy SERE school instructors led training for GTMO interrogators and other ICE personnel at Camp Delta.⁸⁰¹ The training included instruction on “Biderman’s Principles,” including lessons from a chart that was originally included in a 1957 article about how communists elicited false confessions.⁸⁰²

(U) The training also consisted of both lectures and instruction on the application of physical pressures.⁸⁰³ The SERE Training Specialist John Rankin told the Committee that the instructors showed interrogators how to administer the insult slap, the shoulder slap, the stomach slap and demonstrated at least one stress position.⁸⁰⁴ Mr. Rankin also said that they discussed the

⁷⁹⁵ Memorandum from John Rankin and Christopher Ross to Officer in Charge, *FASOTRAGRULANT Det Brunswick, After Action Report Joint Task Force Guantanamo Bay (JTF-GTMO) Training Evolution* (January 15, 2003) (hereinafter “*AAR JTF-GTMO Training Evolution* (January 15, 2003)”).

⁷⁹⁶ Committee staff interview of David Becker (October 17, 2007).

⁷⁹⁷ Committee staff interview of MG Geoffrey Miller (December 5, 2007).

⁷⁹⁸ *AAR JTF-GTMO Training Evolution* (January 15, 2003).

⁷⁹⁹ Committee staff interview of John Rankin (September 24, 2007).

⁸⁰⁰ *Ibid.*

⁸⁰¹ *AAR JTF-GTMO Training Evolution* (January 15, 2003).

⁸⁰² *Ibid*; Intelligence Science Board, Phase I Report: *Educating Information: Interrogation: Science and Art* (December 2006) at 316.

⁸⁰³ The Navy SERE instructors first provided a lecture on “Biderman’s Chart of Coercion,” which described the effects of various physical and psychological pressures on individuals in captivity. See *AAR JTF-GTMO Training Evolution* (January 15, 2003); Committee staff interviews of JTF-GTMO interrogators (July 12, 2007), (November 6, 2007), and (January 9, 2008).

⁸⁰⁴ Committee staff interview of John Rankin (September 24, 2007).

[REDACTED]

[REDACTED]

walling technique but did not demonstrate it because the facility lacked the specially constructed wall used at SERE school.⁸⁰⁵ Two JTF-GTMO interrogators who attended the training stated that, following the demonstration, the interrogators broke off into pairs and practiced slapping each other.⁸⁰⁶

(U) Two interrogators who attended the training said that they understood that the techniques were available for interrogators to put in their “toolbox.”⁸⁰⁷ One of those interrogators recalled being told that if interrogators wanted to use the techniques, they would need to notify their interrogation team chief.⁸⁰⁸ A third interrogator who attended the training told the Committee that he believed Lt Col Moss said the techniques could not be used while they were pending approval.⁸⁰⁹

(U) The JIG Commander, COL Sanders, testified to the Army IG that he attended the initial portion of the training and “made it quite clear, at least I believe I made it quite clear [to the interrogators]... the use of physical measures was not one of the things that we should consider was appropriate and would not be permitted.”⁸¹⁰ COL Sanders also testified that he expressed the same concerns to MG Miller.⁸¹¹ Those statements are inconsistent with the recollections of others.

(U) Of the three interrogators interviewed by the Committee who attended the training, none recalled COL Sanders making such a statement.⁸¹² Lt Col Moss, the ICE Chief at the time, did not recall COL Sanders being present at the training.⁸¹³ MG Miller told the Committee that no one on his staff expressed concern to him about the training.⁸¹⁴

(U) On the morning of January 2, 2003 the Navy SERE school personnel presented additional instruction on interrogation fundamentals and resistance to interrogation.⁸¹⁵ Later that day the instructors “presented an abbreviated theoretical physical pressures and peacetime guidance (government and hostage) to Marine JTF-GTMO personnel and two JTF-GTMO Staff

⁸⁰⁵ Ibid.

⁸⁰⁶ Committee staff interviews of JTF-GTMO interrogators (July 12, 2007) and (January 9, 2008).

⁸⁰⁷ Ibid.

⁸⁰⁸ Committee staff interview of JTF-GTMO interrogator (July 12, 2007).

⁸⁰⁹ Committee staff interview of JTF-GTMO interrogator (January 9, 2008).

⁸¹⁰ Army IG, Interview of COL Richard Sanders (March 14, 2006).

⁸¹¹ Ibid. at 6.

⁸¹² Committee staff interviews of JTF-GTMO interrogators (July 12, 2007), (November 6, 2007), and (January 9, 2008).

⁸¹³ Committee staff interview of Lt Col Ted Moss (October 17, 2007).

⁸¹⁴ Committee staff interview of MG Geoffrey Miller (December 5, 2007).

⁸¹⁵ *AAR JTF-GTMO Training Evolution* (January 15, 2003).

[REDACTED]

[REDACTED]

Judge Advocate (SJA) officials.”⁸¹⁶ LTC Beaver told the Committee that she was not aware the SERE instructors were coming to GTMO and did not attend any of the sessions.⁸¹⁷

(U) In the weeks following the Secretary of Defense’s December 2, 2002 authorization of the interrogation techniques, word had spread that serious concerns were emerging about the techniques. In mid-to-late December, prior to the SERE trainers’ arrival at GTMO, General Hill, the SOUTHCOM Commander, alerted MG Miller that a debate had ensued regarding the Secretary’s decision to authorize the techniques.⁸¹⁸

(U) Prior to their departure on January 3, 2003, the two Navy SERE instructors met with MG Miller.⁸¹⁹ The GTMO Commander told the Committee that he informed the SERE instructors, in the presence of his staff, that he did not want the techniques they had demonstrated used in interrogations at GTMO.⁸²⁰ Others who attended the meeting confirmed the Commander’s account.⁸²¹ Mr. Rankin told the Committee that MG Miller said that he did not want interrogators using techniques that might “bite them” later on.⁸²²

[REDACTED] Before leaving, Mr. Rankin provided a memo for the ICE Operations Chief on the use of physical and psychological pressures during interrogations. The memo stated:

[The] use of physical and psychological pressures during interrogations, if deemed appropriate, are tools that can be applied in order to establish and reinforce [Biderman’s] principles... these principles and associated pressures allow the interrogation system to establish and maintain control of the exploitation process... The application of physical pressures is only part of the overall captive management process. They are initially used to shock and intimidate by setting the stage and establishing control. There must be a statement made by demonstrating there are rewards and punishments for compliant and combative or resistive behavior.⁸²³

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

(U) CITF had been established as a joint military organization composed of personnel from the Army Criminal Investigative Division (CID), the Naval Criminal Investigative Service

⁸¹⁶ Ibid.

⁸¹⁷ Committee staff interview of LTC Diane Beaver (November 9, 2007).

⁸¹⁸ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

⁸¹⁹ *AAR JTF-GTMO Training Evolution* (January 15, 2003).

⁸²⁰ Committee staff interview of MG Geoffrey Miller (December 5, 2007).

⁸²¹ Committee staff interview of Lt Col Ted Moss (October 17, 2007); Committee staff interview of John Rankin (September 24, 2007); Committee staff interview of Christopher Ross (September 24, 2007).

⁸²² Committee staff interview of John Rankin (September 24, 2007).

⁸²³ Memorandum from John Rankin to Captain Weis, *Physical and Psychological Pressures During Interrogations* (January 3, 2003).

[REDACTED]

(NCIS), and Air Force Office of Special Investigations. While CITF's Commander COL Britt Mallow was an Army Colonel assigned to CITF from CID, Deputy Commander Mark Fallon was an NCIS civilian employee on detail to the CITF. While COL Mallow reported concerns about JTF-GTMO interrogation techniques through his Army chain of command, Mr. Fallon also brought the concerns to NCIS leadership.⁸²⁴

(U) On December 17, 2002, two weeks after the Secretary authorized the interrogation techniques for use at GTMO and with the Khatani interrogation underway, David Brant, the NCIS Director informed Navy General Counsel Alberto Mora about recent objections raised by CITF.⁸²⁵ The next day, Mr. Mora met with NCIS Chief Psychologist Dr. Michael Gelles, who had been to GTMO and was familiar with the interrogation techniques in use there. Dr. Gelles provided Mr. Mora excerpts of interrogation logs reflecting detainee mistreatment. Dismayed by what he read and heard, Mr. Mora met with Steven Morello, the Army General Counsel, and for the first time had the opportunity to review the October 11, 2002 GTMO request, LTC Beaver's legal analysis, and the Secretary of Defense's December 2, 2002 authorization of interrogation techniques for use in GTMO interrogations, which included stress positions, removal of clothing, dogs, deprivation of light and auditory stimuli, 20 hour interrogations, forced grooming, and grabbing, pushing and poking detainees.⁸²⁶ Mr. Mora testified to the Committee: "[W]hen I saw the December 2nd Rumsfeld memo, and then reviewed Lieutenant Colonel Beaver's legal memorandum, when I saw that the memorandum was completely unbounded concerning the limit of abuse that could be applied to the detainees, I knew instantaneously . . . that this was a flawed policy based upon inadequate legal analysis."⁸²⁷

(U) The following day, Mr. Mora briefed Navy Secretary Gordon England on the NCIS report of detainee mistreatment and received authorization to meet with DoD General Counsel Jim Haynes.⁸²⁸ That afternoon, Mr. Mora met with Mr. Haynes and advised him that in his view "some of the authorized techniques could rise to the level of torture."⁸²⁹ He recalled urging the DoD General Counsel to "think about the techniques more closely" questioning him "What did 'deprivation of light and auditory stimuli' mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What precisely did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in?"⁸³⁰

⁸²⁴ Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2007).

⁸²⁵ Memo from Alberto J. Mora to the Inspector General, Department of the Navy, *Statement for the Record: Office of General Counsel Involvement in Interrogation Issues* (July 7, 2004) at 2-3 (hereinafter "Mora, *Statement for the Record*").

⁸²⁶ The Army General Counsel also "demonstrated great concern with [the Secretary's] decision to authorize the interrogation techniques." Army lawyers explained to the Navy General Counsel that they had "tried to stop" the authorization "without success, and had been advised not to question the settled decision further." Mora, *Statement for the Record* at 5-6.

⁸²⁷ SASC Hearing (June 17, 2008).

⁸²⁸ Mora, *Statement for the Record* at 7.

⁸²⁹ *Ibid.*

⁸³⁰ *Ibid.* at 7.

[REDACTED]

(U) Mr. Mora also urged Mr. Haynes not to rely on LTC Beaver's legal analysis, characterizing it as "an incompetent product of legal analysis."⁸³¹ Mr. Mora left the meeting feeling confident that the Secretary's authorization for interrogation techniques would be suspended.⁸³²

(U) More than two weeks later, on January 6, 2003, the NCIS Director informed Mr. Mora that the Secretary's December 2, 2002 memo had not been suspended and that detainee mistreatment was continuing at GTMO.⁸³³ Two days later, Mr. Mora met with a Special Assistant to both the Secretary of Defense and the Deputy Secretary of Defense and informed him of the concerns. On January 9, 2003, Mr. Mora met again with DoD General Counsel Jim Haynes, warning him that the "interrogation policies could threaten Secretary Rumsfeld's tenure and could even damage the presidency."⁸³⁴ The Navy General Counsel also left Mr. Haynes with a draft copy of a memo written by a Navy JAG Corps Commander, Stephen Gallotta.⁸³⁵

[REDACTED] In that memo, CDR Gallotta summarized and attached comments that the military Services had submitted in November 2002 in response to the Joint Staff request.⁸³⁶ CDR Gallotta's memo also assessed the legality of the techniques, concluding that several of the techniques "may violate the President's policy for the treatment of detainees," may violate international legal standards, and may violate the federal anti-torture statute (18 U.S.C. § 2340) and various articles of the Uniform Code of Military Justice (UCMJ).⁸³⁷

[REDACTED] In his January 9, 2003 memo, CDR Gallotta concluded:

Category III techniques that threaten death to the detainee or his family (#1) or which create the misapprehension of suffocation (#3) would likely be judged to constitute torture under the statute and customary international law. They reflect conduct specifically defined as torture in [18 U.S.C.] § 2340 and recognized as torture in international law. Category III, technique #4, mild, non-injurious grabbing and poking, is an assault under the UCMJ. Absent lawful purpose, these techniques may be *per se* unlawful.

Category II techniques could also, depending in their implementation, i.e., frequency of use, degree of pain inflicted, or combinations of techniques, rise to a

⁸³¹ Ibid.

⁸³² Ibid. at 8.

⁸³³ Ibid. at 9.

⁸³⁴ A series of meetings followed between Mr. Mora and senior officials, where Mr. Mora reiterated his concerns. Mr. Mora met with the Legal Counsel to the Chairman of the Joint Chiefs of Staff CAPT Jane Dalton, the Service General Counsels and senior Judge Advocates General, Army General Counsel Steven Morello, Air Force General Counsel Mary Walker, and the DoD Principal Deputy General Counsel Daniel Dell'Orto. Ibid. at 13-14.

⁸³⁵ Ibid. at 10.

⁸³⁶ Memo by CDR Stephen Gallotta, *Counter-Resistance Techniques* (January 9, 2003). The Services raised legal concerns about many of the Categories II and III techniques and called for further legal review of the proposal. See Section IV D, *supra*.

⁸³⁷ Gallotta, *Counter-Resistance Techniques* (January 9, 2003).

[REDACTED]

level where they could be determined to be torture. Thus, additional analysis with specific guidance for implementation is recommended.⁸³⁸

(U) On January 15, 2003, “uncertain whether there would be any change to the interrogation policy,” Mr. Mora delivered a draft memorandum to Mr. Haynes stating that “the majority of the proposed category II and all of the proposed category III techniques were violative of domestic and international legal norms in that they constituted, at a minimum, cruel and unusual treatment and, at worst, torture.”⁸³⁹ In a phone call that same day, Mr. Mora told the DoD General Counsel that he intended to sign the memo that afternoon if he had not heard that the Secretary’s December 2, 2002 memo for interrogation techniques had been or was being suspended.⁸⁴⁰ According to Mr. Mora, Mr. Haynes indicated during their conversations that “Secretary Rumsfeld was ‘considering’ rescinding the interrogation techniques he had previously authorized for use in Guantanamo.”⁸⁴¹ In light of Mr. Mora’s draft memo, Mr. Haynes also indicated that he would inquire further about the “Secretary’s promise to ‘consider’ the withdrawal of the interrogation techniques.”⁸⁴² Mr. Haynes called Mr. Mora later that day to tell him the Secretary had suspended his authorization for interrogation techniques.⁸⁴³

(U) On January 15, 2003, the Secretary of Defense issued a memorandum for GEN Hill, the SOUTHCOM Commander, rescinding blanket authority for one Category III and all Category II techniques at GTMO.⁸⁴⁴ GEN Hill said that Secretary Rumsfeld had called him days before formally rescinding authority for the techniques on January 15, 2003 and asked whether the interrogation should continue. GEN Hill said that he told the Secretary that he “would discuss the question with MG Miller, did so that day and reported back to [Secretary Rumsfeld] recommending we continue the interrogation.”⁸⁴⁵ According to GEN Hill, Secretary Rumsfeld agreed at that time that the interrogation should continue but subsequently called him back and directed that it be stopped.⁸⁴⁶

(U) Just days after the Secretary of Defense rescinded authority for JTF-GTMO to use the interrogation techniques he had authorized in December, CITF’s Deputy Commander Mark Fallon and NCIS Chief Psychologist Michael Gelles met with MG Miller to discuss their concerns about interrogation approaches. Mr. Fallon said MG Miller was “dismissive” of their

⁸³⁸ Ibid.

⁸³⁹ Mora, *Statement for the Record* at 14.

⁸⁴⁰ Ibid. at 15.

⁸⁴¹ Mora responses to questions for the record from SASC Hearing (June 17, 2008).

⁸⁴² Ibid.

⁸⁴³ Mora, *Statement for the Record* at 15; see also Mora responses to questions for the record from SASC Hearing (June 17, 2008) (“At no time did Mr. Haynes give me any indication that the techniques had been previous rescinded. Had his been the case, Mr. Haynes could have simply informed me of the fact upon our first conversation that day.”).

⁸⁴⁴ Memo from the Secretary of Defense to Commander USSOUTHCOM, *Counter-Resistance Techniques* (January 15, 2003) (hereinafter “SECDEF memo to CDR SOUTHCOM (January 15, 2003)”).

⁸⁴⁵ GEN James Hill answers to July 31, 2008 written questions (August 20, 2008).

⁸⁴⁶ Ibid.

[REDACTED]

[REDACTED]

concerns and reported that the GTMO Commander said ““you have got to put on the same jersey if you want to be on the team.””⁸⁴⁷

[REDACTED] Following the Secretary’s rescission, Khatani was moved out of Camp X-Ray.⁸⁴⁸ Beginning on January 15, 2003 only Category I techniques were used in his interrogation. Category I techniques included yelling and techniques of deception. An April 19, 2003 memo from MG Miller, the GTMO Commander, said that on April 9, 2003, [REDACTED]

[REDACTED]” interrogators and analysts attributed his cooperation to his failing a polygraph test, his being told that his information was becoming less important because other members of al Qaeda were cooperating, and interrogators informing Khatani that release or repatriation to Saudi Arabia depended on his truthfulness.⁸⁵⁰

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

(U) In a June 9, 2008 letter to the DoJ Inspector General, John Bellinger the former NSC Legal Advisor, stated that he “repeatedly asked the Defense Department about conditions and detention policies at Guantanamo Bay” and that he “specifically raised concerns about interrogations practices used at Guantanamo, including concerns raised by the Department of Justice.”⁸⁵¹

(U) Mr. Bellinger told the Committee that Deputy Assistant Attorney General Bruce Swartz raised concerns with him “about allegations of abuse of detainees at Guantanamo.”⁸⁵² Mr. Bellinger said that Mr. Swartz called him on “several occasions” to express his concerns and that, in response, he “raised these concerns on several occasions with DoD officials and was told that the allegations were being investigated by the Naval Criminal Investigative Service.”⁸⁵³ He said that then-National Security Advisor Condoleezza Rice “convened a series of meeting of NSC Principals in order to ensure that concerns about conditions and other issues relating to Guantanamo were fully discussed with the Department of Defense and other agencies.”⁸⁵⁴

(U) Secretary Rice confirmed Mr. Bellinger’s account, stating that he advised her “on a regular basis” regarding concerns and issues relating to Department of Defense detention policies and practices at Guantanamo.⁸⁵⁵ She said that, as a result she “convened a series of meetings of

⁸⁴⁷ Responses of Mark Fallon to questionnaire of Senator Carl Levin (September 15, 2006) at 16.

⁸⁴⁸ Memo from Major General Geoffrey Miller to Commander, U.S. Southern Command, *Techniques Used on ISN 63 Since 15 January 2003 (S)* (April 19, 2003).

⁸⁴⁹ *Ibid.*

⁸⁵⁰ *Ibid.*

⁸⁵¹ Letter from John Bellinger, III to Glenn Fine (June 9, 2008).

⁸⁵² John Bellinger answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

⁸⁵³ *Ibid.*

⁸⁵⁴ *Ibid.*

⁸⁵⁵ Condoleezza Rice answers to July 31, 2008 written questions from Senator Carl Levin (September 12, 2008).

[REDACTED]

NSC Principals in 2002 and 2003 to discuss various issues and concerns relating to detainees in the custody of the Department of Defense.”⁸⁵⁶

VIII. New Interrogation Policy Developed for GTMO (U)

(U) When he rescinded authority for GTMO to use aggressive interrogation techniques, Secretary Rumsfeld directed the DoD General Counsel to set up a “Detainee Interrogation Working Group” within the Department “to assess the legal, policy, and operational issues relating to the interrogations of detainees held by the United States Armed Forces in the war on terrorism.”⁸⁵⁷

(U) Two days later, on January 17, 2003, Mr. Haynes directed Air Force General Counsel Mary Walker to convene the Working Group.⁸⁵⁸ Per the Secretary’s guidance, the Working Group was comprised of representatives from the Office of the Undersecretary of Defense (Policy), the Defense Intelligence Agency, the General Counsels of the Air Force, Army, and Navy, and Counsel to the Commandant of the Marine Corps, the Judge Advocates General of the Air Force, Army, and Navy, the Staff Judge Advocate for the Marine Corps, and the Joint Staff Legal Counsel and the Joint Staff Directorate for Strategic Plans and Policy (J5).⁸⁵⁹

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

(U) As Working Group participants began considering issues relating to interrogations of detainees, they sought information on interrogation techniques to evaluate. Within the first two weeks, Working Group participants solicited information about interrogation techniques from the Defense Intelligence Agency (DIA) and the Combatant Commands.⁸⁶⁰

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

(U) The Working Group’s principals and their action officers met for the first time on January 23, 2003.⁸⁶¹ At that meeting, the Working Group received a briefing from the DIA

⁸⁵⁶ Ibid.

⁸⁵⁷ Memorandum from the Secretary of Defense for the General Counsel of the Department of Defense, *Detainee Interrogations* (January 15, 2003). In this memo, the Secretary also directed the Working Group to address the “[l]egal considerations raised by interrogation of detainees held by U.S. Armed Forces;” “[p]olicy considerations with respect to the choice of interrogation techniques, including contribution to intelligence collection, effect on treatment of captured U.S. military personnel, effect on detainee prosecutions, [and] historical role of U.S. armed forces in conducting interrogations;” and “[r]ecommendations for employment of particular interrogation techniques by DoD interrogators.”

⁸⁵⁸ Memorandum from Department of Defense General Counsel William J. Haynes to Air Force General Counsel Mary Walker, *Working Group to Assess Legal, Policy, and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (January 17, 2003).

⁸⁵⁹ Department of Defense, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations* (April 4, 2003); Memorandum from the Secretary of Defense for the General Counsel of the Department of Defense, *Detainee Interrogations* (January 15, 2003).

⁸⁶⁰ *Proposed Agenda, Working Group Meeting* (January 23, 2003).

⁸⁶¹ *Church Report* at 124.

[REDACTED]

[REDACTED]

about specific interrogation techniques.⁸⁶² A proposed agenda for the first Working Group meeting tasked David Becker with providing an overview of interrogation techniques to the Group.⁸⁶³

[REDACTED] Mr. Becker, the former JTF-GTMO Interrogation Control Element (ICE) Chief, had recently returned from GTMO to a civilian job at DIA. Mr. Becker told the Committee that he discussed interrogation operations as well as particular interrogation techniques with the Working Group's senior JAG officers and their civilian counterparts.⁸⁶⁴ He told the Committee that he was asked about aggressive techniques and was encouraged to talk about techniques that inflict pain.⁸⁶⁵ He also said that he advised the Working Group to consider SERE resistance training techniques.⁸⁶⁶

[REDACTED] The Working Group tasked DIA with providing a list of interrogation techniques and their effectiveness so that the Group could assess their legality.⁸⁶⁷ DIA relied on Mr. Becker to produce that list.⁸⁶⁸

[REDACTED] Mr. Becker compiled a list of 36 techniques for the Working Group.⁸⁶⁹ The list included techniques from Army Field Manual 34-52; techniques from Category II of the October 11, 2002 GTMO request, including stress positions, isolation, deprivation of light and auditory stimuli, hooding, 20 hour interrogations, forced grooming, and use of phobias, such as dogs; and

⁸⁶² Ibid.; *Proposed Agenda, Working Group Meeting* (January 23, 2003).

⁸⁶³ *Proposed Agenda, Working Group Meeting* (January 23, 2003).

⁸⁶⁴ Committee staff interview of David Becker (September 17, 2007).

⁸⁶⁵ Ibid.

⁸⁶⁶ Ibid. The proposed agenda for the Working Group meeting (dated January 23, 2003) includes handwritten comments that reflect a discussion about "All [service] SEER [sic] guidelines" and "techniques." Since this document was produced to the Committee as a part of the source materials collected by VADM Church for his report, the Committee cannot determine whether these handwritten comments are those of a Working Group participant or VADM Church's team. *Proposed Agenda, Working Group Meeting* (January 23, 2003).

⁸⁶⁷ [REDACTED] *Proposed Agenda, Working Group Meeting* (January 23, 2003); (U) *Proposed Detainee Interrogation Working Group Responsibilities (Initial)* (Undated) [REDACTED] DIA's role was described in the memo as, "List, describe and assess the effectiveness of all interrogation techniques that may be effective in obtaining useful information from detainees in the war on terrorism. Suggest relevant policy considerations affecting each."

⁸⁶⁸ Committee staff interview of David Becker (September 17, 2007).

⁸⁶⁹ [REDACTED] Committee staff interview of David Becker (September 17, 2007). The 36 techniques included Direct, Incentive, Emotional Love, Emotional Hate, Fear Up Harsh, Fear Up Mild, Decreased Fear, Pride and Ego Up, Pride and Ego Down, Futility, We Know All, Establish Your Identity, Repetition Approach, File and Dossier, Mutt and Jeff, Rapid Fire, Silence, Change of Scenery, Use of Stress Positions, Use of Falsified Documents and Reports, Use of Isolation Facility, Interrogating Detainees in an Environment other than the Standard Interrogation Booth, Deprivation of Light and Auditory Stimuli, Hooding, Use of 20-Hour Interrogations, Switching the Detainee from Hot Rations to MREs, Removal of All Comfort Items, Forced Grooming, Use of Detainee Phobias, Use of Scenarios Designed to Convince the Detainees that Death or Severely Painful Consequences are Imminent, Exposure to Cold Weather or Water, Use of a Wet Towel and Dripping Water, Use of Mild, Non-Injurious Physical Contact, Use of Drugs, Use of Female Interrogators, and Sleep Deprivation. Defense Intelligence Agency memo, *List, describe and assess the effectiveness of all interrogation techniques that may be effective in obtaining useful information from detainees in the war on terrorism. Suggest relevant policy considerations affecting each* (undated) (hereinafter "List of interrogation techniques compiled by DIA.")

[REDACTED]

all four techniques from Category III of the GTMO request, i.e., use of scenarios to convince the detainee that death or severely painful consequences are imminent, exposure to cold weather or water, use of a wet towel and dripping water, and the use of mild, non-injurious physical contact.⁸⁷⁰ Mr. Becker also listed three “less common techniques” for the Working Group’s consideration, i.e., use of drugs, use of female interrogators, and sleep deprivation.”⁸⁷¹ Mr. Becker’s memo identified each technique, assessed its effectiveness, and in some instances, also assessed legal and policy considerations.⁸⁷²

[REDACTED] ([REDACTED]) Mr. Becker’s memo stated that the Category III techniques from the October 11, 2002 GTMO request were “the most aggressive and controversial” techniques.⁸⁷³ Mr. Becker stated that the techniques were “currently used against U.S. soldiers in SERE schools, with their consent,” but that they would “not comport with the Geneva Conventions” if applied to Prisoners of War (POWs).⁸⁷⁴ His memo recommended that the Working Group conduct a policy review on the “reciprocity of treatment of captured U.S. personnel” before implementing any of the Category III techniques.⁸⁷⁵ Mr. Becker said that attorneys who consulted with him on the memo added this recommendation.⁸⁷⁶

[REDACTED] ([REDACTED]) Mr. Becker’s memo stated [REDACTED] may have already been using the Category III techniques and stated that [REDACTED] had apparently obtained assistance from JPRA.⁸⁷⁷ He wrote:

These [Category III] techniques may be employed by [REDACTED] against the detainees they have in custody overseas. We understand [REDACTED] office of the General Counsel did a legal review and established a finding similar to the legal review of the [GTMO SJA]. [REDACTED]

[REDACTED] The U.S. military uses standardized SOPs and training in their SERE schools. The SOPs establish the necessary checks and oversight that make SERE training both safe and effective. If adopted, those same standards should be applied when

⁸⁷⁰ [REDACTED] List of interrogation techniques compiled by DIA. In describing one technique – use of mild, non-injurious physical contact – the ICE Chief explained that “[i]ssues such as grabbing and poking have very minimal policy issues and play a part in the interrogator’s efforts to be sincere. Other non-injurious contact such as a face slap or stomach slap are effective in gaining compliance and are used at SERE school. UCMJ policy issues should be resolved.”

⁸⁷¹ List of interrogation techniques compiled by DIA.

⁸⁷² Ibid.

⁸⁷³ Ibid. at 3.

⁸⁷⁴ Ibid.

⁸⁷⁵ Ibid.

⁸⁷⁶ Committee staff interview of David Becker (September 17, 2007).

⁸⁷⁷ List of interrogation techniques compiled by DIA at 3.

[REDACTED]

interrogating detainees in the GWOT. The SERE SOPs should resolve most of the policy issues regarding the use of the Category [III] counter-resistance techniques.⁸⁷⁸

[REDACTED] [REDACTED] In describing one Category III technique – “use of a wet towel and dripping water” – Mr. Becker’s memo stated that the technique is “very effective,” but that there are “wide ranging policy issues.”⁸⁷⁹ According to the memo, “[t]his particular method is no longer in use at SERE schools, but a similar method, called the waterboard, is very effective and it is understood that the waterboard is one of the techniques used with effect by [REDACTED] interrogators.”⁸⁸⁰

[REDACTED] [REDACTED] As to the three “less common techniques” in his memo – use of drugs, use of female interrogators, and sleep deprivation – Mr. Becker stated that “interrogation approaches are limited only by the imagination of interrogators” and that it would be “impossible to list every possible interrogation approach.”⁸⁸¹ His memo stated that “drugs such as sodium pentothal and demerol may be used with some effectiveness,” that female interrogators could be used to make the detainee feel “unclean,” and that “sleep deprivation” can be effective.⁸⁸² Mr. Becker told the Committee that he based his statement about the effectiveness of the use of drugs on a rumor that [REDACTED] had used drugs in their interrogation program.⁸⁸³

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

[REDACTED] In addition to asking DIA for a list of interrogation techniques, the Working Group also requested that the Joint Staff provide a list of techniques “currently in effect or previously employed in CENTCOM and SOUTHCOM, techniques the combatant commanders have found to be effective, and techniques the combatant commanders desire to implement with accompanying rationale.”⁸⁸⁴

[REDACTED] [REDACTED] SOUTHCOM relied on the JTF-GTMO Commander to respond to the Joint Staff tasking. MG Miller sent SOUTHCOM Commander General Hill a memo on January

⁸⁷⁸ Ibid.

⁸⁷⁹ Ibid.

⁸⁸⁰ Ibid.

⁸⁸¹ Ibid. at 4.

⁸⁸² [REDACTED] “[1] Use of Drugs: Drugs such as sodium pentothal and demerol may be used with some effectiveness. Significant policy issues must be resolved. [2] Use of Female Interrogators: One al-Qaida resistance method is to pray during interrogations. Prayer is only allowed if the detainee is ‘clean.’ Having a woman rub scented oil on the detainee’s arms and face makes the detainee perceive that he is unclean and he cannot pray until he cleans himself, which he is unable to do until he returns to his cell. The use of female interrogators to put oil on a detainee does not exceed limits already established by DoD policy or the Geneva Conventions. [3] Sleep Deprivation: This can be effective; however there are obvious policy considerations. Guidelines as to the use of sleep deprivation would have to be established.” List of interrogation techniques compiled by DIA at 4.

⁸⁸³ Committee staff interview of David Becker (September 17, 2007).

⁸⁸⁴ *Proposed Detainee Interrogation Working Group Responsibilities (Initial)* (undated) at 1; *Proposed Agenda, Working Group Meeting* (January 23, 2003).

[REDACTED]

21, 2003 on the effectiveness of techniques that had been rescinded by the Secretary of Defense earlier that month.⁸⁸⁵ In his memo, MG Miller stated that “[t]he command must have the ability to conduct interrogations using a wide variety of techniques” and listed nine techniques as “essential to mission success.” Those nine included use of an isolation facility; interrogating the detainee in an environment other than the standard interrogation room at Camp Delta such as Camp X-Ray; varying levels of deprivation of light and auditory stimuli to include the use of a white room for up to three days; the use of up to 20-hour interrogations; the use of a hood during transportation and movement; removal of all comfort items (including religious items); serving of meals ready to eat (MREs) instead of hot rations; forced grooming, to include shaving of facial hair and head; and the use of false documents and reports.⁸⁸⁶

[REDACTED] MG Miller’s January 21, 2003 memo stated that he believed that those nine techniques were lawful and stated:

These techniques are not intended to cause gratuitous, severe, physical pain or suffering or prolonged mental harm, but are instead intended to induce cooperation over a period of time by weakening the detainee’s mental and physical ability to resist.⁸⁸⁷

[REDACTED] MG Miller attached another memo to his January 21, 2003 memo for General Hill. That attached memo, also dated January 21, 2003 and entitled “Methods Employed X-Ray Interrogation of ISN 63,” bore the same title as a memo dated January 17, 2003. (The earlier memo is described in detail above). Despite describing the same events and being written just days apart, the January 21, 2003 and the January 17, 2003 memos contain substantive differences.

[REDACTED] Several interrogation techniques that the January 17, 2003 memo identified as techniques used in the Khatani interrogation were omitted from the January 21, 2003 version. Among the techniques left out of the latter memo were “physical posturing,” “search/strip search,” and the presence of “K-9 military police” dogs.⁸⁸⁸ In addition, the description of certain techniques differed in the two versions of the memo. For example, in the latter version, “denial of prayer” was removed and replaced with “postponement of prayer” and

⁸⁸⁵ Memo from MG Geoffrey Miller for Commander, U.S. Southern Command, *Effectiveness of the Use of Certain Category II Counter-Resistance Strategies* (January 21, 2003) (hereinafter “MG Miller memo, *Effectiveness of Certain Category II Strategies* (January 21, 2003)”).

⁸⁸⁶ [REDACTED] MG Miller, *Effectiveness of Certain Category II Strategies* (January 21, 2003). Although MG Miller identified only nine “essential” techniques on January 21, 2003, a subsequent memo sent by the SOUTHCOM Commander GEN Hill called all the Category II and the one Category III technique (non-injurious physical contact such as poking and pushing) that the Secretary had authorized in December “critical to maximizing our ability to accomplish the mission, now and in the future.” See *Church Report* at 135 and Section VIII D, *infra*.

⁸⁸⁷ MG Miller, *Effectiveness of Certain Category II Strategies* (January 21, 2003).

⁸⁸⁸ *Methods Employed X-Ray Interrogation ISN 63* [REDACTED] (January 17, 2003); *Methods Employed X-Ray Interrogation ISN 63 (S)* (January 23, 2003), attached to MG Miller memo, *Effectiveness of Certain Category II Strategies* (January 21, 2003).

[REDACTED]

reference to the [REDACTED] to deny him the ability to pray was omitted.⁸⁸⁹

[REDACTED] CENTCOM sent the Working Group's request for a list of techniques to CJTF-180, in Afghanistan. In response, LTC Robert Cotell, the CJTF-180 Deputy Staff Judge Advocate (SJA) produced a memo on January 24, 2003 describing "current and past" interrogation techniques used by CJTF-180 interrogators.⁸⁹⁰ LTC Cotell's memo was sent to the Working Group and to the Office of the Secretary of Defense.⁸⁹¹

[REDACTED] ([REDACTED]) LTC Cotell's January 24, 2003 memo stated that "[p]rior to their rescission, CJTF-180 used selected techniques contained in SOUTHCOM's [Category] II and III techniques."⁸⁹² He identified interrogation techniques used by CJTF-180, including up to 96 hours of isolation; the use of female interrogators to create "discomfort" and gain more information; sleep adjustment, defined as "four hours of sleep every 24 hours, not necessarily consecutive;" use of individual fears; removal of comfort items; use of safety positions; isolation; deprivation of light and sound in living areas; the use of a hood during interrogation; and mild physical contact.⁸⁹³ Several of these techniques were similar to those approved by the Secretary of Defense for use at GTMO in December 2002. CJTF-180 had obtained a list of those GTMO techniques prior to the time that LTC Cotell had drafted his January 24, 2003 memo.⁸⁹⁴

[REDACTED] ([REDACTED]) The January 24, 2003 memo also recommended use of five additional techniques, including "deprivation of clothing" to put detainees in a "shameful, uncomfortable situation;" "food deprivation;" "sensory overload – loud music or temperature regulation;" "controlled fear through the use of muzzled, trained, military working dogs;" and "use of light and noise deprivation."⁸⁹⁵

(U) LTG John Abizaid, the Deputy Commander (Forward) U.S. Central Command, stated that the January 24, 2003 memorandum "was thoroughly reviewed" by the Working Group.⁸⁹⁶

⁸⁸⁹ Ibid.

⁸⁹⁰ *Church Report* at 197; Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1.

⁸⁹¹ US Central Command Action Processing Form, *Approval for the Use of Certain Interrogation Techniques in CJTF-180's AOR* (April 4, 2003); Memorandum from GEN John P. Abizaid to VADM Church, *Responses to Request for Information from VADM Church* (August 6, 2004).

⁸⁹² Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1.

⁸⁹³ Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 8. The Church Report called the distinction between stress positions and safety positions at the Bagram Collection Point "largely academic." *Church Report* at 200.

⁸⁹⁴ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002); Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1.

⁸⁹⁵ Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1, 4-5, and 9.

⁸⁹⁶ Memorandum from GEN John Abizaid to VADM Church, *Responses to Request for Information from VADM Church* (August 6, 2004).

[REDACTED]

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

(U) The Working Group also sought information on interrogation techniques from the SERE community. On January 30, 2003, MAJ Nick Lovelace, an action officer at the Joint Staff Directorate for Intelligence (J2), contacted JPRA on behalf of the Working Group.⁸⁹⁷

[REDACTED] MAJ Lovelace called Mr. Joseph Witsch, the JPRA instructor who had previously conducted training for [REDACTED] and had served as Team Chief at the September 2002 training for GTMO interrogators and behavioral science personnel at Fort Bragg.⁸⁹⁸

[REDACTED] MAJ Lovelace requested material from JPRA “identifying interrogation techniques and methodologies used by the SERE community.”⁸⁹⁹ According to Mr. Witsch, MAJ Lovelace had already received information from the Army SERE school, but he described the information provided as “insufficient for his tasking.”⁹⁰⁰

[REDACTED] Mr. Witsch advised MAJ Lovelace that information on interrogation techniques had already been provided to the Department of Defense General Counsel and to the DIA and he suggested that the Joint Staff action officer coordinate with them.⁹⁰¹ MAJ Lovelace indicated, however, that he was familiar with those materials but that he was looking for “more detail on exact procedures, techniques, and constraints” than had already been provided.⁹⁰²

[REDACTED] MAJ Lovelace’s request on behalf of the Working Group prompted a discussion at JPRA about the advisability of providing “SERE school methodology in support of the GWOT” to the Working Group and other organizations.⁹⁰³ In an email to JPRA Chief of Staff Daniel Baumgartner, Mr. Witsch expressed four “serious concerns” about sharing the requested information.⁹⁰⁴

[REDACTED] ([REDACTED] First among his concerns was the potential effect that sharing SERE school techniques could have on the training of American personnel. Mr. Witsch wrote:

Open source intel and media is flooded with what the USG/OGAs and DOD are currently doing with [Designated Unlawful Combatants (DUCs)]. How long will it take before we see some discussion on SERE school methods and techniques being used to interrogate DUCs. I’ll take bets that it will occur in days and weeks

⁸⁹⁷ Email from Joseph Witsch to Lt Col Dan Baumgartner (January 30, 2003).

⁸⁹⁸ Ibid.

⁸⁹⁹ The Joint Staff action officer stated that they needed the information immediately, since the “blue ribbon panel” organized by the AF General Counsel” intended to “work through the weekend to meet this immediate requirement.” Email from Joseph Witsch to Dan Baumgartner (January 30, 2003).

⁹⁰⁰ Ibid.

⁹⁰¹ Ibid.

⁹⁰² Ibid.

⁹⁰³ Ibid.

⁹⁰⁴ Email from Joseph Witsch to Lt Col Daniel Baumgartner (January 31, 2003).

[REDACTED]

versus months! It ain't healthy for our operators to expose how we prepare them to deal with interrogation and captivity in open source media.⁹⁰⁵

[REDACTED] ([REDACTED] Second, Mr. Witsch stated that the SERE techniques violated national and international laws. He wrote:

Our training is based on simulating our captors' passed [sic] performance while tapering the physical/psychological severity and harm to our students. The physical and psychological pressures we apply in training violate national and international laws. We are only allowed to do these things based on permission from DOD management and intense oversight by numerous organizations within DOD. I hope someone is explaining this to all these folks asking for our techniques and methodology!⁹⁰⁶

[REDACTED] His third concern was that a lack of proper oversight could give rise to significant drift, which, in turn, could pose a risk of investigation and exposure of the organization. Mr. Witsch asked:

What do you think is more than likely to happen when one of these organizations gets exposed and because of significant 'drift' and a lack of oversight they go beyond what we do in the SERE schools? The first question will be 'Where did you get your guidance?' Then we get investigated and exposed [].⁹⁰⁷

[REDACTED] ([REDACTED] Mr. Witsch's fourth concern was that JPRA would have no control over how the information would be used. He asked:

What's been handed out in hard copy and electronically from [] us and the SERE community to meet numerous requests from everybody? We use [sic] to have some general idea when we were dealing with primarily the SERE community. Now it's anybody's guess where the JTTP has gone and how it's being incorporated and used.⁹⁰⁸

[REDACTED] ([REDACTED] Mr. Witsch added:

I know this is cool stuff and may provide some utility when dealing with DUCs. I'm not saying that we should totally remove ourselves from this endeavor. We must get a handle on all these people seeking information on our stuff within the USG and DOD and control the amount [of] exposure our SERE community/programs are getting. This is getting out of control!!⁹⁰⁹

⁹⁰⁵ Ibid.

⁹⁰⁶ Ibid.

⁹⁰⁷ Ibid.

⁹⁰⁸ Ibid.

⁹⁰⁹ Ibid.

[REDACTED]

[REDACTED] Lt Col Baumgartner recalled that he managed to delay providing information to the Working Group, but that JPRA later briefed The Judge Advocate General of the Air Force, who was a member of the Working Group, on SERE techniques, including physical pressures.⁹¹⁰

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

(U) At the initial meeting of the Working Group, in addition to a briefing from the DIA, participants also received a briefing from the Department of Justice's Office of Legal Counsel (OLC).⁹¹¹ Despite the Secretary's guidance that the Working Group assess the legal issues relating to the interrogations of detainees, DoD General Counsel Jim Haynes, who knew that the OLC "had already done some work" on the issues, requested that the OLC produce a legal opinion to guide the Working Group's deliberations.⁹¹²

(U) In the early stages of the Working Group's deliberations, Working Group members had set out to develop their own legal analysis and utilize that analysis in the evaluation of interrogation techniques.⁹¹³ A draft of that analysis, dated January 25, 2003, was shared with the DoD General Counsel's office and the OLC.⁹¹⁴

[REDACTED] The draft reviewed U.S. obligations under international law and concluded that "obligations under the Torture Convention... apply to the interrogation of Operation Enduring Freedom detainees . . ."⁹¹⁵ The draft analysis also included a review of articles of the UCMJ and other U.S. legal standards that were potentially applicable to U.S. interrogators. For example, the analysis found that unlawful force used against a detainee could constitute an offense under Article 128 (assault) of the UCMJ, and stated that assault:

May be interpreted to include unreasonably offensive poking, slapping, hitting, prodding, or pushing. Hooding not likely included if used for security reasons. Offensive touching would also include more severe techniques (e.g., wet towels, hand cuffing) if not inherent and necessary to custodial conduct.⁹¹⁶

[REDACTED] The draft analysis also assessed the legality of the techniques that had been requested for approval by GTMO in October 2002, including some of those that the Secretary of Defense had approved for use at GTMO in December 2002. In its draft, the Working Group

⁹¹⁰ Committee staff interview of Lt Col Dan Baumgartner (August 8, 2007); *See* Section VIII F, *infra*.

⁹¹¹ *Church Report* at 124; *Proposed Agenda, Working Group Meeting* (January 23, 2003).

⁹¹² Memorandum from the Secretary of Defense for the General Counsel of the Department of Defense, *Detainee Interrogations* (January 15, 2003); Committee staff interview of William J. Haynes II (April 25, 2008) at 250; Hearing on the Nomination of William James Haynes II to be U.S. Circuit Judge for the Fourth Circuit, U.S. Senate Committee on the Judiciary, 109th Cong. (July 11, 2006) at 14.

⁹¹³ *Church Report* at 124.

⁹¹⁴ [REDACTED] Committee staff interview of Eliana Davidson (February 21, 2008); *Detainee Interrogations: Survey of Legal and Policy Considerations* (draft) (undated). The Department of Defense allowed the Committee to review this document, but would not permit the Committee to keep a copy of the document.

⁹¹⁵ [REDACTED] *Detainee Interrogations: Survey of Legal and Policy Considerations* at 1-8.

⁹¹⁶ *Ibid.* at 10.

[REDACTED]

adopted the conclusion that Navy JAG Corps CDR Stephen Gallotta had reached in his January 9, 2003 memo, writing that:

Category III techniques that threaten death to the detainee or his family (#1) or which create the misapprehension of suffocation (#3) would likely be judged to constitute torture under the statute and customary international law. They reflect conduct specifically defined as torture in [18 U.S.C.] §2340 and recognized as torture in international law. Category III, technique #4, mild, non-injurious grabbing and poking, is an assault under the UCMJ. Absent lawful purpose, these techniques may be *per se* unlawful.

Category II techniques [] could also, depending in their implementation, i.e., frequency of use, degree of pain inflicted, or combinations of techniques, rise to a level where they could be determined to be torture. Thus, additional analysis with specific guidance for implementation is recommended.⁹¹⁷

[REDACTED] The draft Working Group analysis recommended “[a]dditional factual information and legal analysis” to “establish both the legality of the proposed techniques and any limits to be applied to their use.”⁹¹⁸ The draft also expressed “significant concerns with some of the substantive measures in the [October 11, 2002 GTMO] proposal as submitted, particularly in Category II and almost all of Category III.”⁹¹⁹ The Working Group’s legal analysis was, however, soon superseded by that of the OLC.⁹²⁰

(U) Within the first two weeks of the Working Group’s deliberations, the OLC delivered a draft legal memo to Air Force General Counsel Mary Walker.⁹²¹ The OLC’s memo, which would be finalized on March 14, 2003, was presented to the Working Group as the “controlling authority for all questions of domestic and international law.”⁹²² Among the Working Group members there was a “great deal of disagreement” with the OLC analysis and “serious concerns and objections over some of the legal conclusions reached by OLC.”⁹²³

⁹¹⁷ Ibid. at 20.

⁹¹⁸ Ibid.

⁹¹⁹ Ibid.

⁹²⁰ In comments to the Air Force General Counsel Mary Walker about a March 6, 2003 draft of the Working Group report, the Navy TJAG RADM Michael Lohr encouraged the Working Group to incorporate a reference to the OLC opinion into its report, noting that the draft report “contain[ed] large segments of DoJ work product, rather than being ‘informed’ by DOJ.” Memo from RADM Michael Lohr to Mary Walker, *Comments on the 6 March 2003 Detainee Interrogation Working Group Report* (March 13, 2002) at 1.

⁹²¹ Mora, *Statement for the Record* at 16; Hearing on the Nomination of William Haynes II to be U.S. Circuit Judge for the Fourth Circuit, U.S. Senate Committee on the Judiciary (July 11, 2006) at 14.

⁹²² *Church Report* at 124.

⁹²³ Ibid.

[REDACTED]

[REDACTED] Nevertheless, at Mr. Haynes's direction, Ms. Walker instructed the Working Group to consider the "OLC memorandum as authoritative" and directed that it "supplant the legal analysis being prepared by the Working Group action officers."⁹²⁴

(U) CAPT Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, said she was "very angry" when told that the Working Group would be governed by the OLC's legal analysis.⁹²⁵ She told the Committee: "There was a point [during the Working Group process] where we were told that we could not argue against the OLC opinion . . . that any other legal ideas that we had would not be accepted, particularly when we commented on the draft report."⁹²⁶ Likewise, Alberto Mora, the Navy General Counsel and a participant in the Working Group, said that "[s]oon upon receipt of the OLC memo, the Working Group leadership began to apply its guidance to shape the content of its report."⁹²⁷ Mr. Mora stated that "contributions from the members of the Working Group, including [contributions from his office], began to be rejected if they did not conform to the OLC guidance."⁹²⁸

(U) The final OLC memo, signed by John Yoo on March 14, 2003 (and known commonly as the "Yoo memo"), adopted many of the same conclusions as those of the First Bybee memo (dated August 1, 2002), in which the OLC had significantly narrowed the scope of what constituted torture under federal law. For example, Mr. Yoo's memo repeated OLC's previous analysis of the federal anti-torture statute, 18 U.S.C. § 2340, finding that the statute prohibited "only extreme acts" and that in order to constitute torture, physical pain would have to be equivalent in intensity to that accompanying "serious physical injury, such as organ failure, impairment of bodily functions or even death."⁹²⁹

(U) The final March 14, 2003 OLC memo, however, added that general criminal statutes, such as the federal anti-torture statute, were inapplicable to the military during the conduct of a war.⁹³⁰ The OLC concluded that the assault, maiming, interstate stalking, and anti-torture statutes do not apply to the "properly-authorized interrogation of enemy combatants by the United States Armed Forces during an armed conflict."⁹³¹

⁹²⁴ *Church Report* at 126 (citing February 2, 2003 Working Group draft)

⁹²⁵ Committee staff interview of Jane Dalton (April 10, 2008) at 167.

⁹²⁶ *Ibid.* at 165.

⁹²⁷ Mora, *Statement for the Record* at 17. Other participants of the Working Group confirmed that "in drafting the subject report and recommendations, the legal opinions of the [OLC] were relied on almost exclusively." Memo from Air Force Deputy JAG Jack Rives to Air Force General Counsel, *Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (February 5, 2003).

⁹²⁸ Mora, *Statement for the Record* at 17.

⁹²⁹ Memorandum from John Yoo to William J. Haynes II, *Re: Military Interrogations of Alien Unlawful Combatants Held Outside the United States* (March 14, 2003) at 34-47 (hereinafter "Yoo Memo (March 14, 2003)").

⁹³⁰ Those canons included "the avoidance of constitutional difficulties, inapplicability of general criminal statutes to the conduct of the military during war, inapplicability of general statutes to the sovereign, and the specific governs the general." Yoo Memo (March 14, 2003) at 11-19.

⁹³¹ Yoo Memo (March 14, 2003) at 11-19. Despite concluding that such statutes are inapplicable to the military during the conduct of a war, the OLC memo nonetheless considered whether use of certain specific techniques by an

[REDACTED]

(U) The OLC's conclusion was based, in part, on its analysis of the President's Commander in Chief authority. In the First Bybee memo, the OLC had asserted that "any effort by Congress to regulate the interrogation of battlefield detainees would violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."⁹³² In keeping with that finding, the March 14, 2003 final OLC memo held that the power to detain and interrogate enemy combatants arose out of the President's constitutional authority as Commander in Chief.⁹³³ "In wartime," according to the memo, "it is for the president alone to decide what methods to use to best prevail against the enemy."⁹³⁴

(U) In the March 14, 2003 final opinion, the OLC used its broad reading of the Commander-in-Chief authority to conclude that "even if" federal criminal statutes "were misconstrued to apply" to interrogations, the "Department of Justice could not enforce this law or any of the other [applicable] criminal statutes."⁹³⁵ According to the OLC, "[e]ven if an interrogation method arguably were to violate a criminal statute, the Justice Department could not bring a prosecution because the statute would be unconstitutional as applied in this context."⁹³⁶

(U) The First Bybee memo and the March 14, 2003 final OLC memo were withdrawn in June 2004 and December 2003, respectively.⁹³⁷ According to Assistant Attorney General for OLC Jack Goldsmith, the memos were "legally flawed, tendentious in substance and tone, and overbroad . . ."⁹³⁸

(U) The Navy General Counsel Alberto Mora called the OLC memo relied on by the Working Group in 2003 "profoundly in error" and a "travesty of the applicable law."⁹³⁹

interrogator would constitute an offense under those laws. For example, the OLC memo considered whether slapping (or attempting to slap) a detainee would constitute assault or run afoul of U.S. constitutional standards. See Yoo Memo (March 14, 2003) at 25, 28, 62, 68.

⁹³² According to Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, who withdrew both the First Bybee memo and the March 14, 2003 final OLC memo, "this extreme conclusion has no foundation in prior OLC opinions, or in judicial decisions, or in any other source of law." Goldsmith continued: "And the conclusion's significance sweeps far beyond the interrogation opinion or the torture statute. It implies that many other federal laws that limit interrogation—anti-assault laws, the 1996 War Crimes Act, and the Uniform Code of Military Justice—are also unconstitutional, a conclusion that would have surprised the many prior presidents who signed or ratified those laws, or complied with them during wartime." The conclusion was even more "inappropriate," according to Goldsmith because "it rested on cursory and one-sided legal arguments that failed to consider Congress's competing wartime constitutional authorities, or the many Supreme Court decisions potentially in tension with the conclusion." Goldsmith, The Terror Presidency at 148-149.

⁹³³ Yoo Memo (March 14, 2003) at 2-6.

⁹³⁴ Ibid. at 5.

⁹³⁵ Ibid. at 18.

⁹³⁶ Ibid.

⁹³⁷ Goldsmith, The Terror Presidency at 159; In December 2003, Assistant Attorney General Jack Goldsmith advised the Department of Defense General Counsel William J. Haynes not to rely on the March 14, 2003 final OLC memo. Committee staff interview of Jack Goldsmith (February 4, 2008).

⁹³⁸ Goldsmith, The Terror Presidency at 151.

⁹³⁹ Mora, *Statement for the Record* at 17; SASC Hearing (June 17, 2008).

[REDACTED]

According to Mr. Mora, the “OLC memo proved a vastly more sophisticated version of the Beaver Legal Brief, but it was a much more dangerous document because of the statutory requirement that OLC opinions are binding provided much more weight to its virtually equivalent conclusions.”⁹⁴⁰ He stated that it became evident to those on the Working Group that the “report being assembled would contain profound mistakes in its legal analysis, in large measure because of its reliance on the flawed OLC Memo.”⁹⁴¹ CAPT Dalton likewise said that “to the extent that [the Working Group report] relied on the OLC memo, it did not include what I considered to be a fair and complete legal analysis of the issues involved.”⁹⁴² She added that being told what their legal opinion had to be “severely constrained [the Working Group’s] ability to do an adequate job.”⁹⁴³ The report, she said, had been “geared toward a particular conclusion[]” and the legal analysis was written to support that conclusion.⁹⁴⁴

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

(U) When the Secretary of Defense directed the DoD General Counsel to set up the Working Group, the Secretary instructed him to complete the work within 15 days.⁹⁴⁵ Although that goal was not met, the Working Group produced several drafts during that time frame and circulated a draft “Final Report” on February 4, 2003.⁹⁴⁶

[REDACTED] According to VADM Church’s report, the General Counsel of the Department of Defense, Jim Haynes, “participated in several meetings” from the “initiation of the Working Group until the report was finalized” at which “the Working Group progress and recommendations were discussed.”⁹⁴⁷

[REDACTED] Drafts of their report from this time period reflect the influence that SERE had on the Working Group’s consideration of interrogation techniques. In a draft of the Working Group report, dated January 27, 2003, the report identified two categories of “interrogation techniques proven to be effective” – (1) those techniques that were “currently used by trained interrogators in accordance with U.S. Military Doctrine and policy” and (2) “additional techniques” deemed “acceptable for use in accordance with ancillary military training processes such as SERE schools.”⁹⁴⁸

⁹⁴⁰ Mora, *Statement for the Record* at 17. Legal Counsel to the Joint Chiefs then-CAPT Jane Dalton also noted that the March 14, 2003 final OLC opinion was “similar to the Beaver analysis” in “approaches and methodology.” Committee staff interview of RADM Jane Dalton (April 10, 2008) at 171.

⁹⁴¹ Mora, *Statement for the Record* at 17.

⁹⁴² Committee staff interview of RADM Jane Dalton (April 10, 2008) at 173.

⁹⁴³ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 167.

⁹⁴⁴ *Ibid.* at 171.

⁹⁴⁵ Memorandum from Secretary of Defense Donald Rumsfeld to Department of Defense General Counsel William J. Haynes II, *Detainee Interrogations* (January 15, 2003).

⁹⁴⁶ *Church Report* at 130.

⁹⁴⁷ *Ibid.*

⁹⁴⁸ DoD Working Group draft report (January 27, 2003) at 25-28.

[REDACTED]

[REDACTED] The first category of techniques, which the January 27, 2003 draft report identified as those already in use and “proven to be effective,” included techniques not listed in Army Field Manual 34-52, such as isolation, hooding, use of prolonged interrogations, mild physical contact, removal of clothing, forced grooming, dietary manipulation, use of phobias to increase levels of stress, deprivation of light and auditory stimuli, environmental manipulation, sleep adjustment, prolonged standing, and deception.⁹⁴⁹ In describing one of these techniques – deprivation of light and auditory stimuli – the draft report noted (in an apparent reference to SERE resistance training) that it was an “effective technique used in military training.”⁹⁵⁰

[REDACTED] ([REDACTED] The second category of techniques in the January 27, 2003 draft Working Group report identified as “proven to be effective” were those in use “with ancillary military training processes such as SERE schools.”⁹⁵¹ The draft report noted that this second category of techniques “should only be applied for detainees who are extremely resistant” to the first category of techniques and “who the interrogators strongly believe have vital information.”⁹⁵² The techniques include use of stress positions, sleep deprivation, enforced physical training, face slap/stomach slap, water immersion, walling, use of wet towel on face or the “waterboard,” use of smoke pipe, and use of drugs.⁹⁵³ In describing these techniques, the Working Group draft made repeated reference to use of the techniques at SERE schools – e.g., “selected stress positions are used in U.S. Military Survival Evasion Resistance and Escape (SERE) schools,” the “face slap/stomach slap . . . is used in SERE training,” “water immersion . . . is effectively used in SERE courses,” “use of a wet towel on face or the ‘waterboard’ . . . is the most severe technique used at U.S. Military SERE schools,” “use of smoke pipe . . . is also used at the SERE School.”⁹⁵⁴

[REDACTED] According to JPRA’s operating instructions, the purpose of subjecting students to physical pressures in SERE school is not to obtain information, but “to project the student’s focus into the *resistance* scenario and realistically simulate conditions associated with captivity and resistance efforts.”⁹⁵⁵ The JPRA operating instructions state that “the application of physical pressure is necessary to produce the correct emotional and physiological projection a student requires for *stress inoculation* . . . ”⁹⁵⁶

[REDACTED] While the draft report described the two lists of techniques as “proven to be effective,” it did not discuss the purpose for which the techniques were proven effective.

[REDACTED] As Working Group participants made revisions to the draft report, the list of interrogation techniques in the report remained largely unchanged. A February 2, 2003 draft

⁹⁴⁹ Ibid. at 26-28.

⁹⁵⁰ Ibid. at 27.

⁹⁵¹ Ibid. at 28.

⁹⁵² Ibid.

⁹⁵³ Ibid.

⁹⁵⁴ Ibid.

⁹⁵⁵ JPRA, *OL-FA JSSA Instructor Guide*, Section 5.1 (September 21, 1994) (emphasis added)

⁹⁵⁶ Ibid.

[REDACTED]

report shows virtually the same list of interrogation techniques as the earlier draft.⁹⁵⁷ However, unlike the earlier draft, the February 2, 2003 draft excluded almost all references to “SERE schools” or to techniques used in “military training.”⁹⁵⁸ For example, the entire category of techniques previously identified as techniques in use “with ancillary military training processes such as SERE schools” were instead described in the February 2, 2003 draft as techniques “considered effective by interrogators and for which USSOUTHCOM and USCENTCOM have requested approval.”⁹⁵⁹

[REDACTED] By the time the Working Group issued its draft “Final Report” on February 4, 2003, the report made no reference to SERE schools or techniques used in “military training,”⁹⁶⁰ despite the fact that most of the SERE techniques remained in the report.⁹⁶¹

[REDACTED] The February 4, 2003 draft “Final Report” recommended approval of 36 interrogation techniques for use with unlawful combatants outside the United States.⁹⁶²

(U) The report also listed, but did not recommend approval of, three additional techniques that the Working Group said it lacked sufficient information to evaluate fully – use of stress positions, deprivation of light and auditory stimuli, and water immersion/wetting down.⁹⁶³ Two of the three techniques that the Working Group lacked enough information to make a judgment on, i.e., stress positions and deprivation of light and auditory stimuli, were among those recommended for approval by Mr. Haynes and approved by the Secretary of Defense two months earlier, on December 2, 2002.

[REDACTED] Of the 36 recommended interrogation techniques in the February 4, 2003 draft, 26 techniques were recommended for general use and 10 techniques were recommended for use with certain limitations.⁹⁶⁴ The 26 techniques recommended in the February 4, 2003 report for general use included 19 techniques from Army Field Manual 34-52 or its predecessor, and seven techniques that did not comport with the Field Manual, i.e., hooding, mild physical contact, dietary manipulation, environmental manipulation, sleep adjustment, false flag, and threat of transfer.⁹⁶⁵ The report also recommended approval of 10 additional “exceptional” techniques for

⁹⁵⁷ The one exception was that the “deception” technique in the January 27, 2003 draft was replaced with the “false flag” technique in the February 2, 2003 draft. False flag is a type of deception technique used to try and “convince the detainee that individuals from a country other than the United States are interrogating him.” DoD Working Group draft report (February 2, 2003).

⁹⁵⁸ Ibid.

⁹⁵⁹ In the February 2, 2003 draft, the technique known as “deprivation of light and auditory stimuli,” which was identified in the earlier draft as an “effective technique used in military training” was moved into this category. DoD Working Group draft report (January 27, 2003) at 28; DoD Working Group draft report (February 2, 2003).

⁹⁶⁰ DoD Working Group draft report (February 4, 2003) at 60-64.

⁹⁶¹ Ibid. at 60-64.

⁹⁶² Ibid. at 70; *Church Report* at 130.

⁹⁶³ *Church Report* at 136.

⁹⁶⁴ *Church Report* at 130; Working Group draft report (February 4, 2003).

⁹⁶⁵ [REDACTED] According to the Church Report, “The first 19 of the techniques were identical to the 17 specifically enumerated in FM 34-52, except that the draft added one technique (‘Mutt and Jeff,’ which the draft described as ‘a

[REDACTED]

use with certain limitations.⁹⁶⁶ The 10 “exceptional” techniques included isolation, prolonged interrogations, forced grooming, prolonged standing, sleep deprivation, physical training, face slap/stomach slap, removal of clothing, increasing anxiety by use of aversions, and the waterboard.⁹⁶⁷

(U) Many of the 10 “exceptional” techniques in the report, were similar to techniques identified in earlier versions of the report as either having originated in SERE school or among those previously approved for use at GTMO and identified by Mr. Becker, the former GTMO ICE Chief, in his list for the Working Group.

(U) Each of the 36 recommended techniques was included in a color-coded matrix or a “stoplight” chart and designated as either “green,” “yellow,” or “red” to signify the Working Group’s assessment of legal and policy considerations.⁹⁶⁸

[REDACTED] Waterboarding was the only technique evaluated as “red” in any area of consideration in the February 4, 2003 report, but the Working Group report continued to recommend at that time that it be approved for use.⁹⁶⁹ That “red” designation meant that the Working Group determined that there was a major issue in law or policy with respect to waterboarding “that cannot be eliminated.”⁹⁷⁰ The Working Group rated the waterboard as red under U.S. domestic law and the prohibition against cruel, inhuman and degrading treatment in the Torture Convention.⁹⁷¹ The Working Group also indicated that the waterboard was not consistent with historical U.S. forces’ interrogation role; prior U.S. public statements; or major

team consisting of a friendly and harsh interrogator’) that was in the 1987 version of FM 34-52 but was not found in the [then] current version, and the draft also listed Change of Scenery Up and Change of Scenery Down as separate techniques, rather than using the more general Change of Scene technique listed in FM 34-52.” *Church Report* at 127.

⁹⁶⁶ [REDACTED] The report stated that use of techniques listed in the report would be subject to conditions, i.e., “Limited to specified interrogation centers; There is a good basis to believe that the detainee possesses critical intelligence; The detainee is medically and operationally evaluated as suitable (considering all techniques in combination); Interrogators are specifically trained for the technique(s); Subject to a special interrogation plan (including reasonable safeguards, limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel); Appropriate supervision; and Appropriate specified senior level approval for use with any specific detainee (after considering the foregoing and receiving legal advice).” Working Group draft report (February 4, 2003) at 60-64, 70.

⁹⁶⁷ *Church Report* at 130; [REDACTED] Working Group Report at 60-64, 70 (February 4, 2003) “Increasing anxiety by use of aversions” replaced a technique referred to as “use of phobias to increase levels of stress” in previous versions of the report. Despite their differing names, the techniques were described similarly and included use of dogs as examples of the technique.

⁹⁶⁸ Green indicated “no significant constraint on use raised by the respective” law or policy under consideration, assuming adequate procedural safeguards; Yellow indicated that the law or policy under consideration did “not preclude use,” but that there were “problematic aspects that cannot be eliminated by procedural safeguards; and “Red” indicated a “major issue” in the law or policy under consideration “that cannot be eliminated.” Working Group draft report (February 4, 2003).

⁹⁶⁹ *Ibid.*

⁹⁷⁰ *Church Report* at 130; Working Group draft report (February 4, 2003).

⁹⁷¹ [REDACTED] The Working Group also rated the waterboard as yellow under the prohibition against torture in the Torture Convention. Working Group draft report (February 4, 2003).

[REDACTED]

partner nation reviews. In addition, the report indicated that the technique could have an effect on the treatment of captured U.S. forces, could potentially affect detainee prosecutions; was “inconsistent with modern U.S. military perceptions in decency in dealing with prisoners” and was “a significant departure from contemporary American military approach to the laws of war.”⁹⁷² The February 4, 2003 Working Group Report gave the waterboard its only overall red rating and recommended that the approval authority for the technique be “no lower than the [Secretary of Defense].”⁹⁷³

(U) The Working Group’s assessment of the techniques on the stoplight chart was governed by the Office of Legal Counsel (OLC) memo. The result, according to then-CAPT (now RADM) Dalton, was that drafts of the stoplight chart were “absolutely wrong legally.”⁹⁷⁴ According to RADM Dalton:

[T]here was a column originally . . . in the stoplight chart, that was labeled “Customary International Law.” So one of the things we were supposed to assess was whether or not the techniques were consistent with customary international law. The stoplight chart had all 36 techniques green under customary international law because the OLC opinion and thus the Working Group report maintained that customary international law did not impose any constraints on the actions . . . That green column was absolutely wrong legally . . . it was embarrassing to have it in there, and one of my comments to the report was . . . You need to delete that column entirely because it’s embarrassing to have it in there and it’s not reflective of the law.⁹⁷⁵

(U) In addition to concerns raised by then-CAPT Dalton, almost immediately, the February 4, 2003 draft final report and its recommended techniques generated objections from top military lawyers. Within days of receiving the report and continuing over the next month, the Deputy Judge Advocate General (JAG) of the Air Force Jack Rives, the Navy JAG Michael Lohr, the Army JAG Thomas Romig, and the Staff Judge Advocate to the Commandant of the Marine Corps Kevin Sandkuhler submitted memoranda expressing serious concerns about the report and the techniques it recommended.

(U) The senior military lawyers raised the following concerns:

- (U) The OLC opinion, which was relied on almost exclusively by the Working Group, was “notably silent” on the Uniform Code of Military Justice (UCMJ), the military justice system applicable to U.S. personnel conducting interrogations.⁹⁷⁶

⁹⁷² Working Group draft report (February 4, 2003).

⁹⁷³ Ibid.; *Church Report* at 130.

⁹⁷⁴ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 175.

⁹⁷⁵ Ibid. at 175-176.

⁹⁷⁶ Memo from Maj Gen Jack Rives to Mary Walker, *Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (February 5, 2003) (hereinafter “Rives to Walker (February 5, 2003)”); Memo from Brig Gen Kevin Sandkuhler to Mary Walker, *Working Group Recommendations on Detainee Interrogations* (February 27, 2003) (hereinafter Sandkuhler to Walker (February 27, 2003)”); Memo from U.S. Navy Judge

[REDACTED]

Several of the recommended “exceptional” techniques, on their face, amounted to violations of the UCMJ (e.g., assault) and domestic criminal law.⁹⁷⁷ As a result, “applying the more [exceptional] techniques during interrogation of detainees places the interrogators and the chain of command at risk of criminal accusations domestically” and could result in criminal prosecution in domestic court.⁹⁷⁸

- (U) U.S. servicemembers may be at risk for criminal prosecution or civil liability in foreign domestic courts and international fora.⁹⁷⁹
- (U) Employment of exceptional techniques may have a negative effect on the treatment of U.S. POWs by their captors and raises questions about the ability of the U.S. to call others to account for mistreatment of U.S. servicemembers.⁹⁸⁰
- (U) Authorization of the exceptional interrogation techniques “may be seen as giving official approval and legal sanction to the application of interrogation techniques that U.S. Armed Forces have heretofore been trained are unlawful” and use of the techniques will adversely impact “pride, discipline, and self-respect within the U.S. Armed Forces.”⁹⁸¹
- (U) Authorization of the exceptional techniques will negatively impact U.S. and international public support and respect of the U.S. Armed Forces and could have a negative impact on the public perception of the U.S. military.⁹⁸²
- (U) Authorization of the techniques will adversely impact “human intelligence exploitation and surrender of foreign enemy forces and cooperation and support of friendly nations.”⁹⁸³

Advocate General RADM Michael Lohr to Air Force General Counsel Mary Walker, *Working Group Recommendations Relating to Interrogation of Detainees* (February 6, 2003) (hereinafter “Lohr to Walker (February 6, 2003)”).

⁹⁷⁷ Rives to Walker (February 5, 2003); Memo from Air Force Deputy Judge Advocate General MG Jack Rives to Air Force General Counsel Mary Walker, *Comments on Draft Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (February 6, 2003) (hereinafter “Rives to Walker (February 6, 2003)”).

⁹⁷⁸ Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003); Memo from MG Thomas Romig to Mary Walker, *Draft Report and Recommendations of the Working Group to Assess [sic] the Legal, Policy and Operational Issues Related to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (March 3, 2003) (hereinafter “Romig to Walker (March 3, 2003)”).

⁹⁷⁹ Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (Feb 27, 2003); Romig to Walker (March 3, 2003).

⁹⁸⁰ Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Lohr to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

⁹⁸¹ Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

⁹⁸² Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

⁹⁸³ Sandkuhler to Walker (February 27, 2003).

[REDACTED]

[REDACTED]

(U) According to DoD General Counsel Jim Haynes, the Secretary of Defense met with participants of the Working Group and was aware of concerns reflected in the comments made by the senior military lawyers.⁹⁸⁴

(U) On March 6, 2003, the Working Group circulated another version of its report entitled "Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations."

[REDACTED] According to the Church Report, when circulated, the March 6, 2003 version was considered final, but at some point, it was later re-characterized as a draft.⁹⁸⁵ Over the objections of the military lawyers, all 36 techniques from the February 4, 2003 draft report remained a part of the Working Group's recommendations and were included in the March 6, 2003 report.⁹⁸⁶ The three techniques that the Working Group could not evaluate fully also remained in the March 6, 2003 report, but were not recommended for approval.⁹⁸⁷ By March 6, 2003, the Working Group still "had not received adequate information" regarding these three techniques, including two that had been approved by the Secretary in December 2002, to conduct a "legal or policy analysis."⁹⁸⁸

(U) Upon receiving the March 6, 2003 version, senior military lawyers continued to raise concerns that the recommendations were based on a flawed OLC legal analysis. One JAG noted that the draft report's introduction, which said it was "'informed' by [the] OLC opinion . . . create[d] an incorrect impression" since "[m]ost (if not all) working group members and TJAGs disagree[d] with significant portions of [the] OLC opinion, but were forced to accept it."⁹⁸⁹ The military lawyers also continued to express the view that the recommended techniques would expose American soldiers to potential prosecution; would invite reciprocal treatment of captured U.S. personnel; could affect the admissibility of detainee statements in criminal prosecutions, including military commissions; and were not proven to result in obtaining reliable information from those being interrogated.⁹⁹⁰

D. SOUTHCOM Presses for Additional Techniques (U)

[REDACTED] As the various Working Group drafts were being discussed, JTF-GTMO and SOUTHCOM pressed for authority to use additional interrogation techniques at GTMO. On February 12, 2003, in advance of a planned briefing by MG Miller to Deputy Secretary of Defense Wolfowitz, LTC Beaver sent an email to the Department of Defense's Associate Deputy

⁹⁸⁴ Committee staff interview of William J. Haynes II (April 25, 2008) at 263.

⁹⁸⁵ *Church Report* at 5.

⁹⁸⁶ [REDACTED] "An additional caution was incorporated into the March 6, 2003 recommendations regarding technique 36, the waterboard: 'As a matter of policy, technique 36 should be used only in instances of extreme necessity. Some members of the working group believed that it should not be used by U.S. Armed Forces personnel.'" *Church Report* at 34; Working Group draft report (March 6, 2003) at 68-69.

⁹⁸⁷ Working Group draft report (March 6, 2003) at 68-69.

⁹⁸⁸ *Ibid.*

⁹⁸⁹ Email from Col James Walker to Daniel Ramos (March 10, 2003).

⁹⁹⁰ *Church Report* at 134-135.

[REDACTED]

General Counsel for International Affairs Eliana Davidson stating that “we must have interrogation technique approval immediately and will speak to Mr. Wolfowitz about this. The hallmark is isolation and up to 20 hour interrogation. Without that we can’t be successful in the community environment. We need commitment from the senior leadership to let us do this mission.”⁹⁹¹

[REDACTED] Three days later, LTC Beaver followed up with the General Counsel’s office, stating that MG Miller “was informed by DEPSECDEF that we would have interrogation techniques (isolation and up to 20 hours) approved by Wednesday [February 19, 2003]. We hope this happens.”⁹⁹²

[REDACTED] A month later, on March 12, 2003, a Deputy Staff Judge Advocate at SOUTHCOM sent LTC Beaver an email informing her about a March 11, 2003 meeting that was attended by Secretary of Defense Donald Rumsfeld, SOUTHCOM Commander GEN James Hill, and Chairman of the Joint Chiefs of Staff (CJCS) Gen Richard Myers, where interrogation techniques were discussed.⁹⁹³ According to the Deputy SJA at SOUTHCOM, during the meeting, Gen Myers, raised a concern that some of the techniques discussed for GTMO “could be illegal depending on how far they were used.”⁹⁹⁴ The Deputy SJA informed LTC Beaver that GEN Hill “promised the Chairman a paper discussing the techniques we want” and that SOUTHCOM wanted to get a draft memo to GEN Hill by close of business March 20, 2003.⁹⁹⁵ LTC Beaver forwarded the email to DoD Associate Deputy General Counsel Eliana Davidson and told her “This email is not good news. It appears something went wrong.”⁹⁹⁶ Ms. Davidson replied that Mr. Haynes had been at the meeting where interrogation techniques were discussed and that she was trying to get some clarification on the meeting.⁹⁹⁷

[REDACTED] On March 21, 2003, GEN Hill sent a memorandum to Gen Myers regarding the interrogation techniques that had been rescinded in January. While MG Miller’s January 21, 2003 letter to General Hill had listed only nine Category II techniques as “essential,” General Hill’s March 21, 2003 memo stated that both he and MG Miller felt that approval of *all* of the previously authorized techniques (in Categories I, II and III) was “essential.”⁹⁹⁸ General Hill stated that “both Geoff Miller and I believe that we need as many appropriate tools as possible” and called Category II and the one previously authorized Category III technique “critical to maximizing our ability to accomplish the mission, now and in the future.”⁹⁹⁹ The “critical” techniques referred to by General Hill included stress positions, deprivation of light and auditory

⁹⁹¹ Email from LTC Diane Beaver to Eliana Davidson (February 12, 2003).

⁹⁹² Ibid.

⁹⁹³ Email from COL Terrence Farrell to LTC Diane Beaver (March 12, 2003).

⁹⁹⁴ Ibid.

⁹⁹⁵ Ibid.

⁹⁹⁶ Email from LTC Diane Beaver to Eliana Davidson (March 13, 2003).

⁹⁹⁷ Email from Eliana Davidson to LTC Diane Beaver (March 13, 2003).

⁹⁹⁸ Memo from GEN Hill to Chairman of the Joint Chiefs of Staff, *Information on Interrogation Techniques* (March 21, 2003).

⁹⁹⁹ Ibid.

[REDACTED]

stimuli, removal of clothing, use of detainee phobias such as dogs, and the one Category III technique the Secretary had authorized, which included grabbing, poking, and light pushing.

E. JPRA Briefs Members of the Working Group on SERE Techniques (U)

[REDACTED] Prior to issuing a final report on April 4, 2003, members of the Working Group again sought information from JPRA on SERE techniques. The JAG of the Air Force, Maj Gen Thomas Fiscus, and two other military officers, visited JPRA and were briefed on SERE physical pressures.¹⁰⁰⁰ At the briefing, JPRA described its previous support to “high value target” interrogations, discussed the processes and procedures used in SERE training, and reviewed the “application of physical pressures in an operational environment.”¹⁰⁰¹ JPRA Chief of Staff Daniel Baumgartner told Maj Gen Fiscus that JPRA had previously provided information on techniques used in SERE schools to DoD Deputy General Counsel Richard Shiffrin.¹⁰⁰²

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

[REDACTED] On March 28, 2003, the Secretary of Defense met with a number of senior advisors including Deputy Secretary Paul Wolfowitz, DoD General Counsel Jim Haynes, and Chairman of the Joint Chiefs of Staff Gen Richard Myers, to discuss the interrogation techniques being considered by the Working Group.¹⁰⁰³ After that meeting, the Secretary decided to expressly authorize 24 interrogation techniques, including five that were not listed in the Army Field Manual (one of these five was classified as an “exceptional” technique).¹⁰⁰⁴

[REDACTED] The Joint Chiefs of Staff met on March 31, 2003, and were briefed about Secretary Rumsfeld’s decision. According to CAPT Dalton, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, the “Chiefs recognized that the approved strategies would not hamper the combatant commander in the accomplishment of his mission, because the door was open to request additional strategies on a case-by-case basis if needed in compelling cases.”¹⁰⁰⁵

[REDACTED] The last and final version of the Working Group report was issued on April 4, 2003. The report was similar to the March 6, 2003 version, except that it did not recommend waterboarding or list the three other exceptional techniques that the Working Group could not evaluate fully – stress positions, deprivation of light and auditory stimuli, and water

¹⁰⁰⁰ Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

¹⁰⁰¹ JPRA Power Point presentation, *Project 22B* (June 2003).

¹⁰⁰² Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007).

¹⁰⁰³ [REDACTED] “According to the Secretary’s daily schedule, the advisors at the meeting included Mr. Haynes, Gen Myers, the Deputy Secretary of Defense, Paul Wolfowitz, the Undersecretary of Defense for Intelligence, Stephen Cambone, the Under Secretary of Defense for Policy, Douglas Feith, the Principal Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, Marshall Billingslea, and CAPT Dalton.” *Church Report* at 136. By the time the Secretary met with his advisors, the Working Group had removed waterboarding from consideration. *Ibid.* at 135-6.

¹⁰⁰⁴ *Ibid.* at 136.

¹⁰⁰⁵ Memo from RADM Jane Dalton to VADM Church, *Request for Information* (August 10, 2004) at 5.

[REDACTED]

immersion/wetting down.¹⁰⁰⁶ At the direction of the DoD Principal Deputy General Counsel Daniel Dell’Orto, the April 4, 2003 report was not circulated to the participants of the Working Group.¹⁰⁰⁷

(U) In fact, when it came to finalizing the report, some participants of the Working Group who had raised objections to the report were excluded from the process and did not even know that the report had been completed.¹⁰⁰⁸ According to Alberto Mora, the Navy General Counsel, “Neither I, [the Navy Office of the General Counsel], nor – to my knowledge – anyone else in the [Department of Navy] ever received a completed version of the Working Group report. It was never circulated for clearance. Over time, I would come to assume that the report had never been finalized.”¹⁰⁰⁹ Mr. Mora said that he only learned of the final report nearly a year later while watching a “televised congressional hearing on the Abu Ghraib scandal.”¹⁰¹⁰

[REDACTED] On April 5, 2003, Gen Myers forwarded a memo proposing that the Secretary of Defense authorize 24 of the interrogation techniques reviewed during the Working Group process.¹⁰¹¹ In response, Marshall Billingslea, the Principal Deputy Assistant Secretary of Defense for Special Operations/ Low-Intensity Conflict sent a memo to the Secretary of Defense raising concerns about the omission of certain techniques and recommending that the Secretary approve all 35 techniques “endorsed by the Working Group.”¹⁰¹² Mr. Billingslea’s memo stated:

The current memo omits some interrogation techniques that are not controversial from either a legal, or policy standpoint. For instance, blindfolding (‘hooding’), lightly touching a detainee, and threatening transfer to a 3rd country all seem reasonable techniques to approve.

The draft memo also omits some techniques which the Working Group found to be legally-permissible, but which should be done only with appropriate oversight. While the Working Group felt that the Combatant Commander could approve these measures, we recommend requiring that you be notified prior to their use.

The measures in question include using prolonged interrogations, prolonged standing in non-stress positions, forced grooming, requiring physical exercise, face/stomach slaps to cause surprise but not pain or injury, etc.

¹⁰⁰⁶ Department of Defense, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations* (April 4, 2003).

¹⁰⁰⁷ *Church Report* at 136.

¹⁰⁰⁸ SASC Hearing (June 17, 2008) (Testimony of Alberto Mora); Military Justice and Detention Policy in the Global War on Terrorism, Senate Committee on Armed Services, Subcommittee on Personnel, 109th Cong. (July 14, 2005) (Testimony of MG Thomas Romig).

¹⁰⁰⁹ Mora, *Statement for the Record* at 20.

¹⁰¹⁰ *Ibid.*

¹⁰¹¹ *Church Report* at 137.

¹⁰¹² Memo from Marshall Billingslea to Secretary Rumsfeld, *Interrogation Methods for GTMO* (April 10, 2003).

[REDACTED]

Finally, we recommend delegating certain techniques to General Miller at GTMO.¹⁰¹³

(U) On April 16, 2003, the Secretary of Defense authorized the Commander of SOUTHCOM to use 24 interrogation techniques.¹⁰¹⁴ Of the 24 techniques, four – Mutt and Jeff, incentive/removal of incentive, pride and ego down, and isolation – required that the SOUTHCOM Commander make a determination of “military necessity” and notify the Secretary in advance of using them.¹⁰¹⁵ The Secretary authorized the use of the other 20 techniques with all detainees at GTMO so long as GTMO personnel adhered to certain safeguards. Those authorized techniques included dietary manipulation, environmental manipulation, sleep adjustment, and false flag, none of which were listed in the Army Field Manual.

(U) In addition to expressly authorizing the 24 techniques listed in his April 16, 2003 memorandum, Secretary Rumsfeld wrote in his memo: “If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee.”¹⁰¹⁶

(U) CAPT Dalton told the Committee that all of the techniques recommended by the Working Group were available for request.¹⁰¹⁷ That understanding was shared by the Joint Chiefs, who she said believed that the door was open to request additional strategies on a case-by-case basis if needed in compelling cases.¹⁰¹⁸ The GTMO Commander would soon seek and receive authority to use additional techniques that went beyond the 24 expressly approved in the Secretary’s April 16, 2003 memo.

IX. Aggressive Interrogations at GTMO (U)

A. Allegations of Detainee Mistreatment (U)

[REDACTED] As the final Working Group report was being generated, and on the heels of SOUTHCOM and GTMO’s press for additional interrogation authorities, a Commander’s inquiry was initiated at GTMO following allegations that, between March and April 2003, interrogation personnel and military police had forced detainees to engage in physical training.¹⁰¹⁹

¹⁰¹³ Ibid.

¹⁰¹⁴ Memorandum from Secretary of Defense Donald Rumsfeld to GEN James T. Hill, *Counter-Resistance Techniques in the War on Terrorism* (April 16, 2003) (hereinafter “Secretary Rumsfeld to GEN Hill (April 16, 2003)”).

¹⁰¹⁵ Secretary Rumsfeld to GEN Hill (April 16, 2003).

¹⁰¹⁶ Ibid.

¹⁰¹⁷ Committee staff interview of RADM Jane Dalton (April 10, 2008) at 225.

¹⁰¹⁸ Memo from RADM Jane Dalton to VADM Church, *Request for Information* (August 10, 2004) at 5.

¹⁰¹⁹ Memo for Record from ACS Contractor, *Possible Inappropriate Activities* (undated).